

# NBN Co Special Access Undertaking

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

18 December 2012



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

**NBN Co Special Access Undertaking**

18 December 2012

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## Special Access Undertaking

This is a Special Access Undertaking given by NBN Co Limited (ACN 136 533 741) and NBN Tasmania Limited (ACN 138 338 271) to the ACCC under section 152CBA(2) of the *Competition and Consumer Act 2010* (Cth).

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### Background

- A NBN Co Limited and NBN Tasmania Limited (together **NBN Co**) are each a Carrier.
- B NBN Co supplies listed carriage services and services that facilitate the supply of listed carriage services on the NBN Co Network.
- C The NBN Access Service is a listed carriage service within the meaning of the Telecommunications Act for the purposes of section 152CBA(1)(b)(i) of the CCA.
- D The Ancillary Services are services that facilitate the supply of listed carriage services for the purposes of section 152CBA(1)(b)(ii) of the CCA.
- E The NBN Access Service and the Ancillary Services are not declared services under section 152AL(8A) of the CCA and there is no Access Determination that applies in respect of the NBN Access Service or Ancillary Services.
- F NBN Co gives this Special Access Undertaking to the ACCC in accordance with section 152CBA(2) of the CCA in respect of the NBN Access Service and the Ancillary Services.
- G This Special Access Undertaking also provides for NBN Co to engage in specified conduct in relation to access to the NBN Access Service and Ancillary Services under section 152CBA(3B) of the CCA and those matters referred to in section 152CBA(3C) of the CCA.
- H This Special Access Undertaking also sets out the terms and conditions on which NBN Co will make the Facilities Access Service available to Access Seekers in connection with the satisfaction of NBN Co's interconnection obligations under section 152AXB(4) of the CCA in relation to the NBN Access Service and the Ancillary Services.
- I This Special Access Undertaking contains price related terms and conditions that are reasonably necessary for NBN Co to achieve uniform national wholesale pricing in accordance with the requirements of the Statement of Expectations.
- J This Special Access Undertaking has effect from the SAU Commencement Date until the end of the SAU Term. This Special Access Undertaking comprises the following individual modules that have effect over a fixed period of the SAU Term:
  - i. Module 0, which sets out the terms of this Special Access Undertaking, has effect for the entire SAU Term;

- ii. Module 1, which sets out the ~~detailed~~ commitments that NBN Co makes in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service, has effect during the Initial Regulatory Period; and
  - iii. Module 2, which sets out long term regulatory principles that apply in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service, has effect during the Subsequent Regulatory Period.
- K During the Subsequent Regulatory Period, NBN Co will seek to supplement this Special Access Undertaking with Replacement Module Applications to the ACCC that contain terms at a similar level of detail to those in Module 1.
- L If accepted by the ACCC, each Replacement Module will operate for a Regulatory Cycle (~~e.g. 5 years~~) and will include detailed commitments, forecasts and regulatory values (e.g. WACC) that implement and operate in conjunction with Module 0 and Module 2 for that Regulatory Cycle.
- M NBN Co intends to introduce such Replacement Modules as variations to this Special Access Undertaking which will only take effect if accepted by the ACCC under section 152CBG of the CCA. A Replacement Module Application may also include variations in respect of Module 2 of this Special Access Undertaking under section 152CBG of the CCA, to update Module 2 to reflect updated commitments under this Special Access Undertaking.

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## 1 Compliance

### 1.1 Compliance with category B standard access obligations

In the event that NBN Co supplies, or becomes capable of supplying, the NBN Access Service and the Ancillary Services (whether to itself or to other persons), NBN Co agrees to be bound by the obligations referred to in section 152AXB of the CCA, to the extent that those obligations would apply to NBN Co in relation to the NBN Access Service and Ancillary Services if the NBN Access Service and Ancillary Services were treated as declared services.

### 1.2 Compliance with this Special Access Undertaking

In the event that NBN Co supplies, or becomes capable of supplying, the NBN Access Service and the Ancillary Services (whether to itself or to other persons), NBN Co undertakes to comply with the terms and conditions specified in this Special Access Undertaking in relation to obligations referred to in section 152AXB of the CCA.



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## 2 Scope of this Special Access Undertaking

### 2.1 NBN Access Service and Ancillary Services

This Special Access Undertaking is given in connection with the provision of access to the NBN Access Service and the Ancillary Services.

### 2.2 Facilities Access Service

This Special Access Undertaking sets out commitments in relation to NBN Co's supply of the Facilities Access Service in connection with the satisfaction of NBN Co's interconnection obligations under section 152AXB(4) of the CCA in relation to the NBN Access Service and the Ancillary Services.

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## 3 SAU Term

### 3.1 Commencement

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

### 3.2 Expiry

This Special Access Undertaking expires on 30 June 2040 (**SAU Expiry Date**).

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## 4 Structure of this Special Access Undertaking

### 4.1 Overview

This Special Access Undertaking comprises the following documents:

- (a) Module 0, which sets out the terms of this Special Access Undertaking and comprises:
  - (i) this main body;
  - (ii) Attachment A (Service Descriptions);
  - (iii) Attachment B (Facilities Access Service); ~~and~~
  - (iv) Attachment C (Dictionary); and
  - ~~(iv)~~ (v) Attachment D (Initial Products),

which have effect from the SAU Commencement Date until the end of the SAU Term;

- (b) Module 1, which has effect from the SAU Commencement Date and continues in force until 30 June 2023, ~~or later if extended in accordance with clause 4.3 (Initial Regulatory Period)~~;
- (c) Module 2, which has effect from the end of the Initial Regulatory Period until the end of the SAU Term (**Subsequent Regulatory Period**), irrespective of whether a Replacement Module is in effect; and
- (d) any Replacement Modules incorporated into this Special Access Undertaking by a variation accepted by the ACCC pursuant to section 152CBG of the CCA, each of which has effect for the relevant Regulatory Cycle Replacement Module Term.

## 4.2 Description of Module 1

- (a) Module 1 sets out the detailed commitments that NBN Co makes in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service during the Initial Regulatory Period.
- (b) Module 1 comprises the following schedules:
  - (i) Schedule 1A (Implementation of NBN Access Service, Ancillary Services and the Facilities Access Service);
  - (ii) Schedule 1B (Regulatory Oversight);
  - (iii) Schedule 1C (Reference Offers);
  - (iv) Schedule 1D (Non-Reference Offers and Other Charges);
  - (v) Schedule 1E (Regulatory Asset Base);
  - (vi) Schedule 1F (Long Term Revenue Constraint Methodology);
  - (vii) Schedule 1G (Regulatory information);
  - ~~(viii)~~ Schedule 1H (Maximum Regulated Price Review MechanismsNon-price terms and conditions);
  - ~~(viii)~~(ix) Schedule 1I (Non-price terms and conditions); and
  - ~~(ix)~~(x) Schedule 1J (Product Development and Withdrawal);
  - ~~(x)~~ Schedule 1J (Service Level commitments); and
  - ~~(xi)~~ Schedule 1K (Reviews).

#### **4.3 Extension of Initial Regulatory Period**

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

#### **4.44.3 Description of Module 2**

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

(v) Schedule 2E (Product Development and Withdrawal); and

~~(iv)(vi) Schedule 2FE (Maximum Regulated Price Review Mechanism Product Development and Withdrawal); and~~

~~(v) Schedule 2F (Service Level commitments).~~

#### **4.54.4 Description of Replacement Module**

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

#### **4.64.5 Commitment to submit a Replacement Module Application**

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

- (b) The ACCC will provide NBN Co with no less than 12 months written notice requiring NBN Co to provide a Replacement Module Application.
- ~~(a)~~(c) In a written notice given by the ACCC under clause 4.5(b), the ACCC must specify the due date for NBN Co to provide a Replacement Module Application to the ACCC, which must be NBN Co will, no later than 9 months and no more than 18 months prior to:
- (A) the end of the Initial Regulatory Period; ~~or and~~
- (B) the end of the then current~~each~~ Regulatory Cycle,
- as the case may be, provide the ACCC with a
- ~~(b)~~(d) NBN Co must give a Replacement Module Application to the ACCC no later than the due date specified by the ACCC in accordance with clause 4.5(c).
- ~~(e)~~(e) A Replacement Module Application, given to the ACCC by NBN Co, as part of any Replacement Module Application, will must include:
- (i) a proposed Regulatory Cycle commencing immediately after the last day of the Initial Regulatory Period or the previous Regulatory Cycle, as the case may be; Replacement Module Term of 3, 4 or 5 years (unless fewer than 3 years remain in the SAU Term, in which case, the Replacement Module Term will be for the number of years remaining in the SAU Term);
- ~~(i)~~(ii) a Reference Offer Proposal established in accordance with clause 4.6;
- (iii) a LTRCM Proposal established in accordance with clause 4.7;
- (iv) a RAB Roll Forward Proposal established in accordance with clause 4.7(d);
- ~~(ii)~~(v) if the duration of the Regulatory Cycle proposed under clause 4.5(e)(i) is less than 5 years, all of the forecasts referred to in clause 4.7 for each Financial Year that is within 5 Financial Years of the commencement of the proposed Regulatory Cycle but is not within the proposed Regulatory Cycle; and
- ~~(iii)~~(iii) a Service Level Proposal in accordance with clause 4.9; and
- (vi) any other matters that NBN Co proposes to form part of ~~that a~~ Replacement Module, which may include, for example, arrangements relating to regulatory recourse, product development and withdrawal and non-price terms and conditions for inclusion in an SFAA.

#### **4.6 Reference Offer Proposal**

(a) A Reference Offer Proposal must include the proposed Reference Offers and the composition of each proposed Reference Offer determined in accordance with Schedule 2B (Reference Offers) which NBN Co proposes will apply during the proposed Regulatory Cycle.

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

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

#### **4.7 LTRCM Proposal**

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

- (a) Forecast Nominal ABBRR and Forecast Real ABBRR for each of the Financial yYears in the proposed Replacement Module TermRegulatory Cycle determined in accordance~~consistent~~ with the principles set out in clause 2D.2.1;
- (b) all necessary forecasts of the inputs required for the calculation of the ABBRR for each of the Financial yYears in the proposed Replacement Module TermRegulatory Cycle, including WACC, asset lifetimes~~ves~~ and taxation parameters; and
- (c) Annual Forecast Revenue for each of the Financial yYears in the relevant proposed Regulatory CycleReplacement Module Term that are in the Initial Cost Recovery Period and the related~~associated~~ set of annual demand forecasts to which the Annual Forecast Revenue relate, where all revenue and demand forecast information will use inputs that are consistent with the inputs used to forecast the ABBRR; and
- (d) a proposal of how the incremental tax effect in connection with a change in tax will be addressed in the proposed Regulatory Cycle, including:
  - ~~(i) — any Tax Change Event that has taken effect in the Regulatory Cycle immediately prior to the Regulatory Cycle to which a Replacement Module Application relates (or, in the case of the first Regulatory Cycle, the Initial Regulatory Period); and~~
  - ~~(ii) — any Tax Change Event that may occur in the Regulatory Cycle to which a Replacement Module Application relates,~~will be passed through to CustomersAccess Seekers and reflected by:

- ~~(iii)~~(i) whether any change increasing to the Maximum Regulated Price of NBN Offers is to be made as a result of the change in tax and, if so, how the change is to be determined;
- ~~(iv)~~(ii) whether any change to amending its the Annual Forecast Revenues under clause 2D.3 is to be made as a result of the change in tax and, if so, how the change is to be determined; and
- ~~(v)~~(iii) amending whether any change to the Forecast Real ABBRR and, therefore, the amount that NBN Co is entitled to earn under clause 2D.5.1(a) (if applicable), is to be made as a result of the change in tax and, if so, how the change is to be determined.

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

A RAB Roll Forward Proposal must include:

- (a) a method, consistent with clause 2D.6.4, for the roll-in of Capital Expenditure into the RAB from the proposed Regulatory Cycle to which the Replacement Module Application relates to the immediately following Regulatory Cycle; and
- (b) a method, consistent with clause 2D.6.5, for accounting for depreciation in establishing the RAB at the beginning of the Regulatory Cycle immediately after the proposed Regulatory Cycle to which the Replacement Module Application relates.

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

- ~~(a)~~ This clause 4.10 applies if:
  - ~~(i)~~ the Extended Initial Regulatory Period ends or a Regulatory Cycle ends (the last day of such period being the **Cycle Expiry Date**); and
  - ~~(ii)~~ the ACCC has not accepted a Replacement Module Application to have effect commencing immediately following the Cycle Expiry Date.
- (a) The ACCC must issue a determination at least 20 Business Days prior to the last day of the Initial Regulatory Period or a Regulatory Cycle as the case may be (the last day of such period being the **Cycle Expiry Date**), if the ACCC has not accepted a Replacement Module Application that was to have had effect immediately after the relevant Cycle Expiry Date (an **ACCC Replacement Module Determination**).
- (b) The ACCC Replacement Module Determination must determine the following matters for each Financial Year of the Regulatory Cycle to which it relates that would have otherwise been covered by a Replacement

~~Module: Subject to clauses 0 and 1.1(a), the following matters will be deemed to apply from the Cycle Expiry Date for the Replacement Module Term proposed in the Replacement Module Application provided by NBN Co under clause 4.5:~~

- ~~(i) a Regulatory Cycle commencing immediately after the relevant Cycle Expiry Date; and~~
- ~~(i)(ii) the matters referred to in clauses 4.6, 4.7 and 4.8. Reference Offers provided in the Reference Offer Proposal;~~
- (c) In making an ACCC Replacement Module Determination under this clause 4.9, the ACCC must take into account the matters set out in subsection 152BCA(1) of the CCA and may take into account any other matters it thinks are relevant.
- (d) The ACCC must publish any ACCC Replacement Module Determination made under this clause 4.9, together with its reasons, on its website.
- (e) Sections 152BCB(1), (3B), (3C) and (4A) of Part XIC apply to an ACCC Replacement Module Determination as if the references to an access determination in those sections were references to an ACCC Replacement Module Determination.
- (f) In making an ACCC Replacement Module Determination under this clause 4.9, the ACCC may consult with NBN Co and such other persons as the ACCC considers appropriate, and must consider any submissions that are received within the time limit it specifies.
- (g) NBN Co will comply with the terms of an ACCC Replacement Module Determination for the duration of the Regulatory Cycle to which it relates, subject to clause 4.9(h).
- (h) If:
  - (i) the ACCC has issued an ACCC Replacement Module Determination for a Regulatory Cycle; but
  - (ii) the ACCC subsequently accepts a Replacement Module Application for that upcoming Regulatory Cycle prior to the Cycle Expiry Date for the then current Regulatory Cycle,any ACCC Replacement Module Determination that was to apply for the next Regulatory Cycle as at the date of acceptance of a Replacement Module Application will no longer have effect.
- ~~(d) If, following the withdrawal or rejection of a Replacement Module Application, NBN Co had, at least 20 Business Days prior to the Cycle Expiry Date, lodged another Replacement Module Application (in this clause~~



~~4.10(c), Updated Replacement Module Application~~ that complies with clause 4.6(b), then clause 4.10(b) will apply as though all references to the Replacement Module Application were references to the Updated Replacement Module Application (or the most recent Updated Replacement Module Application, as the case may be).

If the ACCC makes, before the Cycle Expiry Date, an Access Determination or Binding Rule of Conduct that contains terms relating to the matters described in clause 4.10(b), the Access Determination or Binding Rule of Conduct will, to the extent it is not inconsistent with Module 0 and Module 2:

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

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

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

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

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

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

#### **4.10 — Date of effect of Replacement Module**

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

## **5 Fixed principles terms and conditions**

### **5.1 Overview**

This clause 4.1 sets out the fixed principles terms and conditions of this Special Access Undertaking for the purposes of section 152CBAA(1) of the CCA.

## 5.2 Notional fixed period

The notional fixed period for the fixed principles terms and conditions identified in this Special Access Undertaking:

- (a) commences on the SAU Commencement Date; and
- (b) continues in effect until the end of the SAU Term.

## 5.3 Fixed principles terms and conditions

~~Every term and condition in Module 0 and Module 2 (collectively) Clauses 2D.2.1(a), 2D.6.2(a) and 2D.6.3(a) is/are~~ fixed principles terms and conditions of this Special Access Undertaking.

## 5.4 Qualifying circumstances

- (a) This clause 5.4 sets out the qualifying circumstances that, for the purposes of section 152CBAA(2) of the CCA, apply to the fixed principles terms and conditions in this Special Access Undertaking.
- (b) ~~A qualifying circumstance exists if~~ the ACCC ~~is~~~~must be~~ satisfied that:
  - (i) there is ~~not~~ a manifest and material error in the fixed principles term ~~and~~ condition; ~~and~~
  - (ii) any information on which the fixed principles term ~~and~~ condition was based was ~~not~~ false or misleading in a material respect.

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# 6 ~~Alignment of Special Access Undertaking with SFAA~~ Obligation for NBN Co to produce and maintain SFAA

## ~~6.1 — Obligation to align SFAA with Special Access Undertaking to the extent inconsistent~~

- ~~(a) — If the terms of any SFAA are not consistent with the terms of this Special Access Undertaking as at the SAU Commencement Date, NBN Co will amend the SFAA within 20 Business Days after the SAU Commencement Date to ensure consistency.~~

## ~~6.2 — On-going obligation to ensure consistency of SFAA with Special Access Undertaking~~

- ~~(a) — If the terms of any SFAA are not consistent with any variations to this Special Access Undertaking that are accepted by the ACCC in accordance with section 152CBG of the CCA, NBN Co will amend the SFAA within 20 Business Days after the date that the variation to this Special Access Undertaking takes effect to ensure consistency.~~

~~(b) NBN Co will ensure that the terms of each SFAA, including any additions or amendments that are made to the terms of that SFAA from time to time, are and remain consistent with this Special Access Undertaking over the SAU Term. NBN Co will amend each SFAA within 20 Business Days after NBN Co becomes aware of any inconsistency between this Special Access Undertaking and an SFAA.~~

### ~~6.3 Obligation for NBN Co to produce and maintain SFAA~~

~~NBN Co will publish and maintain an SFAA for the duration of the SAU Term in relation to the supply of the NBN Access Service, and the Ancillary Services and the Facilities Access Service. NBN Co may include in an SFAA the terms and conditions in relation to the supply of the Facilities Access Service.~~

## 7 Variation, withdrawal and extension of this Special Access Undertaking

### 7.1 Variation

Pursuant to section 152CBG of the CCA, NBN Co may, at any time, request the ACCC to consider a variation to this Special Access Undertaking by providing the ACCC with such a variation.

### 7.2 Withdrawal

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

### 7.3 Extension of the SAU Term

(a) NBN Co may, at any time within the 12-month period ending at the end of the SAU Term, ~~request apply to the ACCC under section 152CBE of the CCA to extend the SAU Term. If the ACCC approves the extension of the SAU Term pursuant to section 152CBE of the CCA, the SAU Term will be extended in accordance with that approval, subject to the approval of the ACCC.~~

~~(b) The ACCC must approve an extension of the SAU Term (or further extension), if, subject to the same matters referred to in section 152CBD(5A) of the CCA:~~

~~(i) the ACCC is satisfied of the same matters referred to in sections 152CBD(2)(b), 152CBD(2)(c), and 152CBD(2)(ca) and 152CBD(cb) of the CCA; and~~

~~(ii) the ACCC does not consider that any one or more of the conditions specified in sections 152CBD(4) of the CCA exist,~~

~~subject to the same matters referred to in section 152CBD(5A) of the CCA~~ as if all of  
those matters applied to the extension (or further extension).

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## Attachment A Service Descriptions

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### 1 General

NBN Co gives this Special Access Undertaking in respect of the NBN Access Service and the Ancillary Services.

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### 2 NBN Access Service

- (a) The NBN Access Service is a Layer 2 service supplied on the NBN Co Network between and including:
  - (i) a UNI on an NTD; and
  - (ii) the NNI associated with the relevant NTD,for the purpose of enabling an Access Seeker (or another Service Provider that is a customer of an Access Seeker) to supply Carriage Services or Content Services.
- (b) In addition to Layer 2 of the OSI Model at which NBN Co makes the NBN Access Service available to an Access Seeker, the NBN Access Service also comprises components from lower levels of the OSI Model, such as Layer 0 and Layer 1 components and some Layer 3 awareness referred to in clause 1A.2.5.
- (c) The network boundary point in respect of each NBN Co Network:
  - (i) at the Premises, is the End User side of the UNI; and
  - (ii) at the POI, is located on the Access Seeker side of the NNI.

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### 3 Ancillary Services

The Ancillary Services are the services supplied by NBN Co that facilitate the supply of ~~of, and are necessary for Access Seekers to acquire,~~ the NBN Access Service, including:

- (a) a service supplied by NBN Co that supports an Access Seeker to perform activation and assurance related transactions; and
- (b) a test and verification service supplied by NBN Co that enables an Access Seeker to prepare for, and perform, certain network and operational interoperability testing in relation to the NBN Access Service and development and implementation by that Access Seeker of Carriage Services, Content Services and operational platforms that utilise components and functionality of the NBN Access Service,

but excludes the Facilities Access Service.

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## Attachment B Facilities Access Service

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### 1 General

The terms and conditions relating to the Facilities Access Service are set out in this Special Access Undertaking in connection with the satisfaction of NBN Co's interconnection obligations under section 152AXB(4) of the CCA in relation to the NBN Access Service and the Ancillary Services.

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### 2 Facilities Access Service

The Facilities Access Service is a service that provides:

- (a) cross connection;
- (b) co-location for a Carrier or Carriage Service Provider to install, operate and maintain its telecommunications equipment at or near a ~~n-Established~~ POI for the purpose of supporting interconnection with the NBN Co Network in connection with the NBN Access Service and the Ancillary Services;
- (c) NBN Co ODF termination point; and
- (d) other Facilities supplied by NBN Co that are necessary to facilitate entry to buildings, such as cable trays or building duct access.

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## Attachment C Dictionary

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### 1 Definitions

**ABS Labour Price Index for Private Sector Construction** means the Labour Price Index published by the Australian Bureau of Statistics (or successor organisation) on a quarterly basis to measure changes in the price of labour services in the private construction industry. The Labour Price Index is compiled from hourly wage and salary costs for a representative sample of employee jobs within a sample of employing organisations.

**ACCC** means the Australian Competition & Consumer Commission.

**ACCC-Declared Service** has the meaning given to that term:

(a) \_\_\_\_\_ in relation to the Initial Regulatory Period, in clause 1A.7(a); and

(b) \_\_\_\_\_ in relation to the Subsequent Regulatory Period, in clause 2A.2(a).

**ACCC Determined Price Review Arrangement** has the meaning given to that term:

(a) \_\_\_\_\_ in relation to the Initial Regulatory Period, in clause 1H.3.3(a)(ii)(A); and

(b) \_\_\_\_\_ in relation to the Subsequent Regulatory Period, in clause 2F.2.3(a)(ii)(A).

**ACCC Replacement Module Determination** has the meaning given to that term in clause 4.9(a).

**Access Agreement** means an “access agreement” within the meaning of section 152BE of the CCA between NBN Co and an Customer Access Seeker in relation to the supply of the NBN Access Service, the Ancillary Services or the Facilities Access Service.

**Access Component** means the UNI and/or the AVC, as the context requires.

**Access Component Modification** means, in respect of a Premises, the modification of:

- (a) an AVC to:
  - (i) change the bandwidth profile or UNI allocation;
  - (ii) change C-VLAN used to identify the AVC at the NNI; or
  - (iii) associate the AVC with a different CVC supplied to the Access Seeker~~Customer~~ in the same CSA; or
- (b) an Access Component to:
  - (i) enable or remove a UNI-V and associated AVC;



- (ii) move or relocate an NTD; or
- (iii) enable or remove an associated MAVC or change the bandwidth profile of an associated MAVC; or
- ~~(iv) enable or disable an Enhanced 12 Fault Service Level.~~

**Access Component Reactivation** means the activation of the Access Components to be made available by NBN Co to an Access Seeker Customer in respect of an NTD at a Premises where:

- (a) NBN Co has previously made available Access Components in respect of that NTD at that Premises; and
- (b) NBN Co (or an Installer) is not required to attend that Premises to activate those Access Components.

**Access Determination** means an access determination made by the ACCC pursuant to section 152BC of the CCA and includes an Interim Access Determination.

**Access Reference Offer** means, for the purposes of Schedule 2B (Reference Offers), the BAOs, the EAO and the SBO.

**Access Seeker** has the meaning given to that term in section 152AG of the CCA.

**Access Seeker Active Equipment** means active equipment that is:

- (a) owned, controlled or operated by an Access Seeker;
- (b) used by the Access Seeker in relation to the transmission of traffic in connection with the NBN Co Network; and
- (c) of a type approved by NBN Co,

excluding hosting servers, content distribution network infrastructure, any other equipment that is used by the Access Seeker other than in relation to the transmission of traffic on the NBN Access Service, and any other equipment as advised by NBN Co from time to time.

**Access Seeker Product** means a retail or wholesale product or service supplied by an Access Seeker to a third party that relies on an Ordered Product as in input.

**Access Virtual Circuit** or **AVC** has the meaning given to that term in clause 1A.2.2.

**ACT Utilities Tax** means the tax imposed under the *Utilities (Network Facilities Tax) Act 2006* (ACT).

**Actual ~~Cost~~ Financial Information** has the meaning given to that term in clause 1G.1.3(a).

**Additional Asymmetric AVC Offer** means each of the offers described in clause 1D.2.3.

**Additional / Replacement Access Card** means where NBN Co provides an additional or replacement access card to an [Access Seeker-Customer](#) in respect of an Aggregation Node Site.

**Aggregation Node Site** means those parts of a building in which a POI is located that are within the Site Boundary.

**Ancillary Services** has the meaning given to that term in clause 3 of Attachment A (Service Descriptions) [and includes any new or varied Ancillary Service introduced by NBN Co pursuant to Schedule 1J \(Product Development and Withdrawal\) or Schedule 2E \(Product Development and Withdrawal\)](#).

**Ancillary Services Offer** means the offer established in accordance with clause 2B.2.6.

**Annual Building Block Revenue Requirement** or **ABBRR** is calculated in accordance with:

- (a) during the Initial Regulatory Period, clause 1F.4; and
- (b) during the Subsequent Regulatory Period, clause 2D.2.

**Annual Construction in Progress Allowance** or **ACIPA** has the meaning given to that term in clause 1F.10.

**Annual Forecast Revenue** is calculated in accordance with:

- (a) during the Initial Cost Recovery Period, clause 2D.3.1(a); and
- (b) during the Building Block Revenue Period, clause 2D.3.2.

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

**Asymmetric AVC Offer** means each of the offers described in clause 1D.2.2.

[B2B means business to business.](#)

**B2B Access** has the meaning given to that term in clause 1A.5.1(b)(i).

**Basic Access Offer** or **BAO** means:

- (a) during the Initial Regulatory Period, each of the offers described in clause 1C.2.2 in respect of each NBN Co Network; and
- (b) during the Subsequent Regulatory Period, each of the offers established in accordance with clause 2B.2.1.

**Binding Rule of Conduct** means a binding rule of conduct made by the ACCC pursuant to section 152BD of the CCA.

**Building Block Revenue Period** means the period from the start of the Financial Year immediately after the Methodology Change Event occurs until the end of the SAU Term.

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

**Business Hours** means between 9.00am and 5.00pm on a Business Day in the place where the Aggregation Node Site is located.

**Capital Expenditure** means capital expenditure incurred in connection with the Relevant Assets, but excluding GST.

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

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

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

**Carry Forward Revenue Adjustment** has the meaning given to that term:

- (a) during the Initial Regulatory Period, in clause 1F.5.3; and
- (b) during the Subsequent Regulatory Period, in clause 2D.4.7.

**CIR** means committed information rate.

**Common Property** means any real property or part thereof which is owned or managed by a third party strata body, managing corporation or other similar entity, or which is otherwise common to, accessible by, or shared between, two or more separately owned or occupied Premises to which NBN Co may require access to perform an installation and/or activation of Connecting Equipment at a Premises in connection with the supply of a Product Component or Product Feature.

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

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

**Connecting Equipment** has the meaning given to that term:

- (a) in clause 4 of Annexure 1 (~~Standard NFAS Installation~~Standard NFAS Installation~~Standard NFAS Installation~~) to Schedule 1D (Non-Reference

Offers and Other Charges) in relation to Installations related to NFAS connections; and

- (b) in clause 8 of Annexure 2 (~~Standard NWA Installation~~~~Standard NWA Installation~~ to Schedule 1D (Non-Reference Offers and Other Charges) in relation to Installations related to NWA connections.

**Connecting Fibre** means the fibre optic Line which connects from a PCD to an NTD.

**Connectivity Component Modification** means the modification of the bandwidth of a CVC supplied by NBN Co to an [Access Seeker Customer](#) in a CSA.

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

**Connectivity Virtual Circuit** or **CVC** has the meaning given to that term in clause 1A.2.3.

**Connectivity Virtual Circuit Offer (TC-1 and TC-4)** means:

- (a) during the Initial Regulatory Period, each of the offers described in clause 1C.2.5; and
- (b) during the Subsequent Regulatory Period, each of the offers established in accordance with clause 2B.2.4.

**Connectivity Virtual Circuit Offer (TC-2 and TC-3)** means each of the offers described in clause 1D.2.6.

**Construction in Progress** or **CIP** has the meaning given to that term in clause 1E.2.4(a).

**Consultation Period** has the meaning given to that term in clause 1E.9.2(a).

[Consumer Advocacy Group](#) means a body or association that represents the interests of consumers.

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

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

**Corporate Tax Rate** will be 30% as at the Cost Commencement Date unless otherwise determined in accordance with clause 1F.9.5(b).

**Corporations Act** means the *Corporations Act 2001* (Cth).

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

**Cross-Connect** has the meaning given to that term in clause 1A.6(a).

**Cumulative Inflation Factor** or **CIF** means the cumulative inflation factor determined in accordance with the methodology specified in:

- (a) during the Initial Regulatory Period, clause 1F.9.4(b); and
- (b) during the Subsequent Regulatory Period, clause 2D.1.4.

**Customer** means a Carrier or Carriage Service Provider that has entered into, or is otherwise subject to, an Access Agreement.

~~**Customer Active Equipment** means active equipment that is:~~

- ~~(a) — owned, controlled or operated by a Customer;~~
- ~~(b) — used by the Customer in relation to the transmission of traffic in connection with the NBN Co Network; and~~
- ~~(c) — of a type approved by NBN Co,~~

~~excluding hosting servers, content distribution network infrastructure, any other equipment that is used by the Customer other than in relation to the transmission of traffic on the NBN Access Service, and any other equipment as advised by NBN Co from time to time.~~

~~**Customer Engagement Information** means the following information:~~

- ~~(a) — a description of each Network Change which had been the subject of customer engagement during that period;~~
- ~~(b) — details of each NBN Prudency Implementation Paper that was produced in respect of each Network Change;~~
- ~~(c) — a summary of the responses and submissions made in response to each NBN Prudency Implementation Paper;~~
- ~~(d) — whether each NBN Prudency Implementation Paper was endorsed by Customers or whether it was the subject of a Prudency Dispute;~~
- ~~(e) — a report on the Prudency Disputes (if any) in respect of each Network Change (if any), including:
  - ~~(i) — the number of Prudency Disputes arising within that period;~~
  - ~~(ii) — the parties to those Prudency Disputes;~~
  - ~~(iii) — the duration of those Prudency Disputes;~~~~

~~(iv) — the subject matter of those Prudency Disputes and issues in contention; and~~

~~(v) — the result of those Prudency Disputes;~~

~~(f) — a timeline in respect of the end to end process for each Network Change which had been the subject of customer engagement;~~

~~(g) — any information in relation to the trends relevant to the use of customer engagement processes and an assessment of the extent to which the current customer engagement process reflects or takes into account those trends; and~~

~~such other information that NBN Co considers relevant to the efficacy of the customer engagement process.~~

~~**Customer Equipment** means any equipment that is:~~

~~(a) — used by a Customer in connection with the NBN Co Network, the NBN Co Platform, the National Test Facility or any Ordered Product; or~~

~~(b) — provided by or on behalf of a Customer to any Downstream Customer to whom it supplies Customer Products for use in connection with the NBN Co Network or any Customer Product,~~

~~but excludes all NBN Co Equipment.~~

~~**Customer Event** means:~~

~~(a) — any act or omission of a Customer, any Downstream Customer or any End User in breach of an Access Agreement or that is otherwise unlawful; or~~

~~(b) — any event or circumstance to the extent caused or contributed to by:~~

~~(i) — a Customer Network, Access Seeker Platform or any Customer Equipment; or~~

~~(ii) — the network, systems, equipment or facilities of any Downstream Customers or any End Users.~~

~~**Customer Network** means the networks, systems and facilities that are used, or are capable of being used, by a Customer in relation to the carrying of communications by means of guided or unguided electromagnetic or optical energy in connection with the NBN Co Network, the NBN Co Platform, the National Test Facility or any Ordered Product, including Customer Equipment.~~

~~**Customer Platform** means the operational support systems and billing support systems used by a Customer that are directly or indirectly connected to the NBN Co Platform.~~

~~**Customer Product** means a retail or wholesale product or service supplied by a Customer to a third party that relies on an Ordered Product as in input.~~

**CVC Setup / Activation** means the setup and activation of a CVC to be made available by NBN Co to an [Access Seeker Customer](#).

**Cycle Expiry Date** has the meaning given to that term in clause [4.9\(a\)4.10\(a\)\(i\)](#).

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

**Default** means a failure, inability or refusal by a party to comply with the terms of an Access Agreement.

**Default Notice** means a notice issued by a party (**notifying party**) to the other party (**receiving party**) if the notifying party reasonably considers that the receiving party is in Default.

**Designated End User** means an End User acquiring an [Access Seeker Customer](#) Product or Downstream Product under a contract with [an Access Seeker Customer](#) or a Downstream Customer (as the case may be).

**Discount** means any discount, allowance, rebate or credit.

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

~~**Dispute** has the meaning given to that term in the Dispute Management Rules.~~

~~**Dispute Management Information** is the information NBN Co will provide to the ACCC regarding the operation of the Dispute Management Rules in accordance with clause 1K.2.1(a)(iii), which may include information such as:~~

- ~~(a) — the number and nature of Disputes (i.e. Bilateral Disputes or Industry Relevant Disputes);~~
- ~~(b) — the identity of the Resolution Advisors;~~
- ~~(c) — the identity of the Pool members;~~
- ~~(d) — whether Disputes were determined by an expert or by a Panel;~~
- ~~(e) — the number, if any, of joinders to a Dispute;~~
- ~~(f) — the outcomes of the Dispute process;~~
- ~~(g) — the estimated total costs associated with those processes (including NBN Co's and Customers' costs associated with participating in those processes); and~~
- ~~(h) — the time taken to resolve the Disputes.~~

~~**Dispute Management Rules** means the provisions of Annexure 1 (Dispute Management Rules) to Schedule 1H (Non-price terms and conditions) as amended from time to time.~~

**Downstream Customer** means any person acquiring an [Access Seeker Customer](#) Product or a Downstream Product, including:

- (a) any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale [Access Seeker Customer](#) Product;
- (b) any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale Downstream Product; and
- (c) any Designated End User.

**Downstream Product** means a retail or wholesale product or service supplied by a Downstream Customer to a third party that relies on an [Access Seeker Customer](#) Product as an input.

**Drop Fibre** means the fibre optic Line which connects from a NAP to a PCD.

~~**Eligible Service** has the meaning given to that term in section 152AL(1) of the CCA.~~

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

**Endorsed Network Change** has the meaning given to that term in clause 1E.11.1(a).

**End User** means a person who is the ultimate recipient or user of an [Access Seeker Customer](#) Product or Downstream Product.

~~**Engagement Proposal** means the proposal that NBN Co provides to the ACCC under clause 1K.2.1(a)(v), setting out the manner in which the proposed:~~

- ~~(a) customer engagement process is to operate in substitution for the process established under clause 1E.8;~~
- ~~(b) PDF process is to operate in substitution for the PDF Processes;~~
- ~~(c) dispute management process is to operate in substitution for the Dispute Management Rules; and~~
- ~~(d) multilateral SFAA process is to operate in substitution for the Multilateral SFAA Forum process under clause 1B.3.1.~~

**Enhanced Access Offer** or **EAO** means:

- (a) during the Initial Regulatory Period, the offer described in clause 1C.2.3 in respect of the NBN Co Fibre Network; and



- (b) during the Subsequent Regulatory Period, the offer established in accordance with clause 2B.2.2 in respect of the NBN Co Fibre Network.

~~Enhanced 12 Fault Service Level has the meaning given to that term in the Service Levels Schedule.~~

**Equipment Removal** means the removal of any NBN Co Equipment that is installed or located at a Premises where an Access Seeker Customer has validly requested that NBN Co remove that NBN Co Equipment.

**Equipment Repair** means the repair or replacement of any NBN Co Equipment that is installed or located at a Premises where an act or omission of an Access Seeker Customer (or any Downstream Customer or End User) has caused or contributed to the need to perform the repair or replacement.

**Established POI** means a POI:

~~(a) — listed in the POI List as at the SAU Commencement Date; or~~

~~(b) — established at a new location in accordance with clause 11.4 and added to the POI List in accordance with clause 11.4,~~

~~as may be relocated from time to time in accordance with clause 11.4 but excluding any Temporary POI.~~

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

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

~~Facilities Access Decision has the meaning given to that term in clause 1B.2.3(c).~~

**Facilities Access Service** has the meaning given to that term in clause 2 of Attachment B (Facilities Access Service) and includes any new or varied type of facilities access service introduced by NBN Co pursuant to Schedule 1J (Product Development and Withdrawal) or Schedule 2E (Product Development and Withdrawal).

**Facilities Access Service Offer** means:

- (a) during the Initial Regulatory Period, the offer described in clause 1C.2.9; and
- (b) during the Subsequent Regulatory Period, the offer established in accordance with clause 2B.2.7.

**Finance Minister** has the meaning given to that term in section 7 of the Telecommunications Act.

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

**First Battery** means the first battery installed by or on behalf of NBN Co in respect of the NTD at a Premises on or about the time of the installation of that NTD at that Premises.

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

**First Release Trial Sites** means those parts of:

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

identified as “NBN First Release Sites” on NBN Co’s Website.

**Force Majeure Event** means any event or circumstance that:

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

but does not include:

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

**Forecast Cumulative Inflation Factor** or **Forecast CIF** means the cumulative inflation factor calculated in accordance with clause **Error! Reference source not found.**

**Forecast [Financial](#) Information** has the meaning given to that term in clause 1G.1.2.

**Forecast Nominal ABBRR** is calculated in accordance with clause **Error! Reference source not found.** and 2D.2.1.

**Forecast Real ABBRR** is calculated in accordance with clause **Error! Reference source not found.**

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

**GPON** means gigabit passive optical network.

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

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

**Hourly Labour Rate** means, at the SAU Commencement Date, \$75 per hour.

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

**Individual Price Increase Limit** means, in respect of a Reference Offer, Non-Reference Offer or Other Charge in a given Financial Year, the amount determined in accordance with the following:

- (a) for Reference Offers during the Initial Regulatory Period, clause 1C.4.2;
- (b) for Non-Reference Offers and Other Charges during the Initial Regulatory Period, clause 1D.4.2; and
- (c) for Reference Offers, Non-Reference Offers and Other Charges during a Regulatory Cycle, clause 2C.1.4.

**Initial Cost Recovery Account** or **ICRA** has the meaning given to that term:

- (a) during the Initial Regulatory Period, in clause 1F.5.2; and
- (b) during the Subsequent Regulatory Period, in clause 2D.4.4.

**Initial Cost Recovery Period** means the period from the Cost Commencement Date until the end of the Financial Year in which the Methodology Change Event occurs.

**Initial Product** means [any Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service included in Attachment D to this Special Access Undertaking.](#)

~~**Initial Product Roadmap** means the document entitled 'Initial Roadmap July 2012, version 2' published on NBN Co's Website.~~

**Initial Regulatory Period** has the meaning given to that term in clause 4.1(b).

**Initial Non Standard Installation** means a Non Standard Installation that is the first Installation performed by NBN Co (or an Installer) in respect of a Premises.

**Initial Standard Installation** means a Standard Installation that is the first Installation performed by NBN Co (or an Installer) in respect of a Premises.

**Installation** means:

- (a) the installation and make ready for service of Connecting Equipment by NBN Co (or an Installer) at a Premises; or
- (b) the installation, make ready for service and activation of the Connecting Equipment by NBN Co (or an Installer) at a Premises.

**Installer** means a person authorised by, or on behalf of, NBN Co to install and make the Connecting Equipment at a Premises ready for service.

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

**Interest Expense** means the actual interest expense recorded in NBN Co's statutory accounts.

**Interim Access Determination** means an interim access determination made by the ACCC pursuant to section 152BCG of the CCA.

**Interim Satellite Service** or **ISS** means an IP-based, Layer 3 virtual connection on the NBN Co Interim Satellite Network that carries traffic between:

- (a) a UNI on the NTD located at or near a Premises; and
- (b) the NNI associated with the single CSA for the NBN Co Interim Satellite Network that serves the Premises,

for the purposes of enabling an [Access Seeker-Customer](#) or a Downstream Customer to supply a Carriage Service or Content Service.

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

- (a) Temporary POIs;
- (b) modularised fibre access nodes; and
- (c) any associated backhaul transmission, whether supplied by NBN Co or a third party.

**June Quarter CPI** means the percentage change in the Consumer Price Index value published for the June quarter. The Consumer Price Index used is the All Groups -

Weighted Average of Eight Capital Cities value published by the Australian Bureau of Statistics (or successor organisation), showing the percentage change from one June quarter to the next.

**Key Business Transaction** has the meaning given to that term in clause 1A.5.1(a).

**Late Cancellation (Site Visit Required)** means the cancellation of a request by an [Access Seeker-Customer](#) for the performance of an activity that requires NBN Co to attend the Premises where that cancellation occurs after NBN Co has dispatched NBN Co Personnel for the purposes of fulfilling that request.

**Layer 0** means a Facility, but excludes any Lines.

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

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

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

**Likely Methodology Change Event Notice** means a notice issued by NBN Co regarding the date that NBN Co expects the Methodology Change Event will occur.

**Line** means:

- (a) a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy;
- (b) a "line" as defined in the Telecommunications Act if that definition differs from paragraph (a); or
- (c) any other media of a similar nature to any one or more of the media under paragraphs (a) or (b).

**Long Term Revenue Constraint Methodology or LTRCM** means the methodology specified in:

- (a) during the Initial Regulatory Period Schedule 1E (Long Term Revenue Constraint Methodology),; and
- (b) during the Subsequent Regulatory Period, Schedule 2D (~~Long Term Revenue Constraint Methodology~~~~Long Term Revenue Constraint Methodology~~~~Long Term Revenue Constraint Methodology~~).

**LTRCM Determination** has the meaning given to that term in clause 1F.1.2(a).

**LTRCM Proposal** comprises the matters described in clause 4.74.7.

**Managed Service Provider Network** means any satellite network that is owned or controlled by, or operated on behalf of, a third party supplier in respect of which NBN Co acquires satellite services and related services which NBN Co uses and relies

on as an input into the supply of Product Components or Product Features to an [Access Seeker-Customer](#).

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

**Market Benefit** has the meaning given to that term in clause 1E.12.1(b)(i).

**Material Default** means:

- (a) a Default which:
  - (i) itself, or when combined with other Defaults, is a material breach of an Access Agreement; or
  - (ii) is expressly specified to be a Material Default in an Access Agreement; or
- (b) any other Default, the occurrence of which means that NBN Co ceases to be under an obligation under section 152AXB of the CCA (or any other law) to supply Products to an [Access Seeker-Customer](#).

**MAVC Reactivation** means the activation of the Multicast AVC to be made available by NBN Co to an [Access Seeker-Customer](#) in respect of an NTD at a Premises where:

- (a) NBN Co has previously made available the Multicast AVC or NFAS Access Components in respect of that NTD at that Premises; and
- (b) NBN Co (or an Installer) is not required to attend that Premises to activate the Multicast AVC.

**Maximum Data Transfer Rate** means the maximum Data Transfer Rates that can be supplied to an NTD, [as](#) determined by NBN Co, at a given point in time, by reference to:

- (a) the NBN Co Network to which that NTD is connected;
- (b) the architecture of the relevant portion of the NBN Co Network to which that NTD is connected (e.g. GPON, point-to-point, etc.);
- (c) the specific configuration of that architecture (e.g. applicable splitter ratios for GPON);
- (d) the availability of Product Features at a given point in time in respect of that NTD; and

- (e) any other factors that may impact the maximum Data Transfer Rate that can be supplied to an NTD at a given point in time.

**Maximum Regulated Price** means the Price ceiling applicable:

- (a) to each Reference Offer during the Initial Regulatory Period, as determined in accordance with clauses 1C.3 ~~and~~, 1C.4 ~~and~~ 1C.5;
- (b) to each Non-Reference Offer or Other Charge during the Initial Regulatory Period, as determined in accordance with clauses 1D.3 ~~and~~, 1D.4, ~~1D.5 and~~ 1A.1;
- (c) to each Reference Offer, Non-Reference Offer or Other Charge during a Regulatory Cycle, as determined in accordance with clauses 2C.1, ~~2C.3,~~ 2C.3(a)(iii) ~~and~~ 1A.1.

**Media Stream** means each coherent stream of content that is conveyed by an [Access Seeker Customer](#) using the Multicast Components. A Media Stream may be a video-based stream or any other type of media stream which is suitable for distribution using the Multicast Components considering the product construct of the Multicast Components.

**Methodology Change Event** means the instance when the ICRA becomes equal to or less than zero.

~~Metric has the meaning given to that term in section **Error! Reference source not found.** of the Service Levels Schedule.~~

**Minor Expenditure Limit** means:

- (a) as at the SAU Commencement Date, an amount of \$1050 million; and
- (b) thereafter, such amount calculated under clause 1E.7.3(b).

~~**Missed Appointment** means the failure of the Designated End User (or their authorised representative) to be present from the beginning of an applicable Appointment window (under the Service Levels Schedule) during the attendance by NBN Co Personnel at a Premises.~~

**Missed Appointment (During Business Hours)** means where NBN Co and an [Access Seeker Customer](#) have agreed to meet onsite at the building in which an Aggregation Node Site is located during Business Hours and the [Access Seeker Customer](#) is more than 1 hour late to that appointment.

**Missed Appointment (Outside Business Hours)** means where NBN Co and an [Access Seeker Customer](#) have agreed to meet onsite at the building in which an Aggregation Node Site is located at any time other than during Business Hours and the [Access Seeker Customer](#) is more than 1 hour late to that appointment.

**Module** means a document forming part of this Special Access Undertaking as described in clause 4.1.

**Module 0** comprises the documents referred to in clause 4.1(a).

**Module 1** comprises the documents referred to in clause 4.2(b).

**Module 2** comprises the documents referred to in clause 4.3(b).

**Multicast AVC** or **MAVC** means an Ethernet-based, Layer 2 virtual connection on the NBN Co Fibre Network that carries multicast traffic to a UNI-D on the NTD at a Premises.

**Multicast AVC Offer** means the offer described in clause 1D.2.7.

**Multicast Component** means each of the Multicast AVC and the Multicast Domain.

**Multicast Domain** means an Ethernet-based, Layer 2 virtual capacity on the NBN Co Fibre Network for the transport of [Access Seeker Customer](#) traffic to multiple multicast access virtual circuits within a CSA on an aggregated basis and delivered from the NNI at the POI associated with that CSA.

**Multicast Domain Activation** means the activation of a Multicast Domain to be made available by NBN Co to an [Access Seeker Customer](#).

**Multicast Domain Modification** means a Non-Service Impacting Multicast Domain Modification or a Service Impacting Multicast Domain Modification.

**Multicast Domain Offer** means the offer described in clause 1D.2.8.

~~**Multilateral Processes** means those processes listed in clause 1K.2.2(a)(i).~~

**Multilateral SFAA Forum** has the meaning given to that term in clause ~~1B.2.1(a)~~1B.3.1(a).

~~**Multilateral SFAA Forum Information** means the information NBN Co will provide to the ACCC regarding the operation of the Multilateral SFAA Forum in accordance with clause 1K.2.1(a)(iv), which may include information such as:~~

- ~~(a) — when and how often the Multilateral SFAA Forum met;~~
- ~~(b) — the number and identity of Access Seeker participants in the Multilateral SFAA Forum;~~
- ~~(c) — the matters considered in the Multilateral SFAA Forum; and~~
- ~~(d) — the outcomes of the Multilateral SFAA Forum.~~

**NAP**, in respect of a Premises, means the network access point for the Premises for the purposes of the NBN Co Fibre Network.



**National Test Facility** means NBN Co's test environment at a location notified by NBN Co to an [Access Seeker-Customer](#) from time to time, including all NBN Co Equipment located at that site.

**NBN Access Service** has the meaning given to that term in clause 2 of Attachment A (Service Descriptions).

**NBN Co** means NBN Co Limited and NBN Tasmania Limited.

**NBN Co Co-location** has the meaning given to that term in clause 1A.6(b).

**NBN Co Co-location Offer** has the meaning given to that term in clause 1D.2.9.

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

- (a) that is provided by NBN Co (or any Related Body Corporate of NBN Co) to an [Access Seeker-Customer](#) for use as part of, or in connection with, the NBN Access Service, an Ancillary Service or the Facilities Access Service; or
- (b) to which NBN Co (or any Related Body Corporate of NBN Co) permits an [Access Seeker-Customer](#) to access (or on-grant such access to any Downstream Customers or any End Users) as part of, or in connection with, the NBN Access Service, an Ancillary Service or the Facilities Access Service, including NTDs.

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

**NBN Co Fibre Access Service** or **NFAS** means an Ethernet-based, Layer 2 virtual connection on the NBN Co Fibre Network that carries traffic between:

- (a) a UNI on the NTD located at or near a Premises; and
- (b) the NNI associated with the CSA in which that Premises is located,

for the purposes of enabling an [Access Seeker-Customer](#) or a Downstream Customer to supply a Carriage Service or Content Service.

**NBN Co Interim Satellite Network** means a satellite network in respect of which NBN Co or a Related Body Corporate leases or utilises capacity, as part of an interim solution for the delivery of Carriage Services or Content Services over satellite technology, and which includes the Managed Service Provider Network.

**NBN Co Network** means:

- (a) the NBN Co Fibre Network;
- (b) the NBN Co Wireless Network; and
- (c) the NBN Co Satellite Network,

and includes the NBN Co Equipment. A reference in this Special Access Undertaking to the phrase 'NBN Co Network' in the singular refers collectively to all three of [these](#) networks, and the phrase 'each NBN Co Network' refers to each of [these three](#) networks, [in paragraphs \(a\) to \(c\) above](#) and any NBN Co Equipment in respect of those networks.

**NBN Co ODF**, in respect of an Aggregation Node Site, means the ODF that is owned or operated by NBN Co at that Aggregation Node or Established POI.

**NBN Co ODF Termination Point** has the meaning given to that term in clause 1A.6(c).

**NBN Co Operations Manual** means the document entitled "NBN Co Operations Manual" (as amended from time to time in accordance with an Access Agreement) that forms part of an Access Agreement.

**NBN Co Permanent Satellite Network** means a satellite network that is owned or controlled by, or operated on behalf of, NBN Co or any Related Body Corporate of NBN Co.

**NBN Co Platform** means NBN Co's operational support systems and billing support systems for the purpose of ordering and tracking of Products, billing, payment and fault reporting and detection and restoration, where NBN Co provides access to those systems and any functionality of those systems in accordance with an Access Agreement, (and for the purposes of communications, includes NBN Co's Website), but excludes access to NBN Co's core systems or any functionality of those core systems.

**NBN Co Satellite Access Service** or **NSAS** means an Ethernet-based, Layer 2 virtual connection on the NBN Co Satellite Network that carries traffic between:

- (a) a UNI on the NTD located at or near a Premises; and
- (b) the NNI associated with the CSA in which that Premises is located,

for the purposes of enabling an [Access Seeker Customer](#) or a Downstream Customer to supply a Carriage Service or Content Service.

**NBN Co Satellite Network** means:

- (a) the NBN Co Interim Satellite Network; or
- (b) the NBN Co Permanent Satellite Network.

**NBN Co Service Qualification System** means a system or systems made available by NBN Co (whether automated or manually implemented) to enable an [Access Seeker Customer](#) to determine whether a particular address is identified by NBN Co as serviceable (at a given point in time) by the NBN Co Network.

**NBN Co Wireless Access Service** or **NWAS** means an Ethernet-based, Layer 2 virtual connection on the NBN Co Wireless Network that carries traffic between:

- (a) a UNI on the NTD located at or near a Premises; and
- (b) the NNI associated with the CSA in which that Premises is located,

for the purposes of enabling an [Access Seeker Customer](#) or a Downstream Customer to supply a Carriage Service or Content Service.

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

**NBN Co's Website** means NBN Co's website, with the URL [www.nbnco.com.au](http://www.nbnco.com.au) or such other URL as NBN Co may notify [Access Seekers Customers](#) from time to time.

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

**NBN Offer** has the meaning given to that term in clause 2C.1.2.

**NBN Prudency Implementation Paper** means a written report prepared by NBN Co that sets out certain information regarding a Network Change in accordance with clause 1E.8.4.

**NBN-Related Networks** means the NBN Co Network, the NBN Co Platform, the National Test Facility and any other network, systems, equipment and facilities used by NBN Co in connection with the supply of Product Components, Product Features, Ancillary Services or the Facilities Access Service.

**NBN Serviceable**, in respect of each Product, Product Component and Product Feature, means a Premises that NBN Co has determined is serviceable by the NBN Co Network, as shown in the NBN Co Service Qualification System (and, in the case of the NWAS, is confirmed by NBN Co following on site validation by NBN Co in response to an order for the NWAS in respect of that Premises).

**Negative Tax Change Event** occurs if:

(a) any of the following occurs during the Initial Regulatory Period for NBN Co:

(i) a change in a Relevant Tax, in the application or official interpretation of a Relevant Tax, in the rate of a Relevant Tax, or in the way a Relevant Tax is calculated; or

(ii) the removal of a Relevant Tax; and

(b) in consequence, the costs to NBN Co of supplying Reference Offers and/or Non-Reference Offers are decreased.

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

- (a) the Market Benefits associated with that option, determined by reference to the criteria in clause 1E.12.1(b)(i); less
- (b) the Network Change Costs associated with that option, determined by reference to the criteria in clause 1E.12.1(b)(iii).

**Net Tax Allowance** is calculated in accordance with clause 1F.9.3.

**Network Change** has the meaning given to that term in clause 1E.8.1(b).

**Network Change Costs** has the meaning given to that term in clause 1E.12.1(b)(iii).

**Network Change Dispute** means a dispute that may be initiated by NBN Co under clause 1E.10.3(b)(i).

**Network Change Dispute Condition** has the meaning given to that term in clause 1E.10.2(b).

**Network Change Dispute Participants** has the meaning given to that term in clause 1E.10.4(c).

**Network Change Option** has the meaning given to that term in clause 1E.8.2(a).

**Network Design Rules** means the documents in relation to the design of the Relevant Assets that NBN Co provides to the ACCC for the purposes of the ACCC's consideration of this Special Access Undertaking and as updated from time to time by NBN Co in accordance with this Special Access Undertaking.

**Network to Network Interface** or **NNI** has the meaning given to that term in clause 1A.2.4.

**Network to Network Interface Offer** means:

- (a) during the Initial Regulatory Period, each of the offers described in clause 1C.2.6; and
- (b) during the Subsequent Regulatory Period, each of the offers established in accordance with clause 2B.2.5.

**Network Termination Device** or **NTD** means a network termination device that is owned, operated or controlled by NBN Co (or any Related Body Corporate of NBN Co).

~~**New Engagement Proposal** means a proposal containing the same type of information as an Engagement Proposal but which is resubmitted to the ACCC under clause 1K.2.4(a).~~

~~**New Non-Price Proposal** means a proposal containing the same type of information as a Non-Price Proposal but which is resubmitted to the ACCC under clause 1K.3.4(a).~~

**New Offer** means a new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, and any Other Charge, that is not set out in clause 1C.2, 1D.2 or 1D.3.2 or previously introduced under clause 1A.1 or 1A.1.

**New Other Charge** means a new Other Charge for an existing Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, including in respect of a Reference Offer or Non-Reference Offer.

**New Price Disallowance Determination** means:

(a) during the Initial Regulatory Period, has the meaning given to that term in clause 1C.4.6(c); and

~~(c)(b)~~ during the Subsequent Regulatory Period has the meaning given to the term in clause 2C.3(c).

**NNI 1000BaseEX Setup** means the setup and activation of a NNI 1000BaseEX to be made available by NBN Co to an Access Seeker~~Customer~~.

**NNI 1000BaseT Setup** means the setup and activation of a NNI 1000BaseT to be made available by NBN Co to an Access Seeker~~Customer~~.

**NNI 1000BaseLX Setup** means the setup and activation of a NNI 1000BaseLX to be made available by NBN Co to an Access Seeker~~Customer~~.

**NNI 10GBaseER Setup** means the setup and activation of a NNI 10GBaseER to be made available by NBN Co to an Access Seeker~~Customer~~.

**NNI 10GBaseLR Setup** means the setup and activation of a NNI 10GBaseLR to be made available by NBN Co to an Access Seeker~~Customer~~.

**NNI Modification** means the modification of the configuration of an NNI which NBN Co supplies to an Access Seeker~~Customer~~ in respect of a POI where the Access Seeker~~Customer~~ has validly requested that modification be performed.

**No Fault Found (No Truck Roll Required)** means the investigation of a fault that is reported by an Access Seeker~~Customer~~ to NBN Co which NBN Co determines, acting reasonably, is not a Non-NBN-Fault where NBN Co Personnel have not attended the suspected location of the suspected cause of that alleged Service Fault for the purposes of investigating and/or rectifying that alleged Service Fault.

**No Fault Found (Truck Roll Required)** means the investigation of a fault that is reported by an Access Seeker~~Customer~~ to NBN Co which NBN Co determines, acting reasonably, is not a Non-NBN Fault where NBN Co Personnel have attended the suspected location of the suspected cause of that alleged Service Fault for the purposes of investigating and/or rectifying that alleged Service Fault.

**Nominal RAB** is calculated in accordance with:

(a) during the Initial Regulatory Period, clause 1E.2.2; and

- (b) during the Subsequent Regulatory Period, clause **Error! Reference source not found..**

**Nominal Regulatory Depreciation** is calculated in accordance with clause 1F.9.1(c).

**Nominal Straight Line Depreciation** has the meaning given to that term in clause 1F.9.1(b).

**Nominal Tax Depreciation Expense** is calculated in accordance with clause 1F.9.2.

**Non-Discrimination Obligations** means the obligations that apply to an NBN Corporation (as that term is defined in section 5 of the NBN Companies Act) under section 152AXC and section 152AXD of the CCA.

**Non-NBN Fault** means any event or circumstance which is suspected by either party, or reported by an [Access Seeker Customer](#), as being:

- (a) a Service Fault;
  - (b) a fault with an NBN-Related Network; or
  - (c) a fault for which NBN Co is otherwise responsible,
- but which is not a Service Fault.

~~**Non-Price Proposal** has the meaning given to that term in clause 1K.3.1(a).~~

**Non-Reference Offer** means any Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that is offered by NBN Co that is not a Reference Offer and excludes any Other Charge.

**Non-Service Impacting Multicast Domain Modification** means the modification of a Multicast Domain comprising:

- (a) the addition or deletion of one or more Media Streams;
- (b) the modification of the bandwidth; or
- (c) the modification of an existing IGMP report source.

**Non Standard Installation** means a Non Standard NFAS Installation or a Non Standard NWAS Installation (as applicable).

**Non Standard NFAS Installation** means an Installation where:

- (a) the conditions set out in clause 1 of Annexure 1 ([Standard NFAS Installation](#)~~Standard NFAS Installation~~~~Standard NFAS Installation~~) to Schedule 1D (Non-Reference Offers and Other Charges) are not satisfied; or
- (b) the installation is otherwise considered to be a “non standard installation” in accordance with clause 2 of Annexure 1 ([Standard NFAS Installation](#)~~Standard~~

~~NFAS Installation Standard NFAS Installation~~ to Schedule 1D (Non-Reference Offers and Other Charges).

**Non Standard NWAS Installation** means an Installation where:

- (a) the conditions set out in clause 1 of Annexure 2 (~~Standard NWAS Installation Standard NWAS Installation Standard NWAS Installation~~) to Schedule 1D (Non-Reference Offers and Other Charges) are not satisfied; or
- (b) the installation is otherwise considered to be a “non standard installation” in accordance with clause 2 of Annexure 2 (~~Standard NWAS Installation Standard NWAS Installation Standard NWAS Installation~~) to Schedule 1D (Non-Reference Offers and Other Charges).

**ODF** means optical distribution frame.

**Offer** means Reference Offer or Non-Reference Offer.

**On Site Maintenance Call Out** means the performance of works by NBN Co Personnel to rectify a Service Fault that requires NBN Co Personnel to attend the location of the cause of that Service Fault for the purposes of rectifying that Service Fault.

**Operating Expenditure** means operating expenditure incurred by NBN Co or a Related Body Corporate of NBN Co, including labour, marketing, general administration and overheads, materials, licence fees, government charges, universal service obligation levies, insurance premiums and applicable Taxes, including taxes that relate to capital gains but excluding GST and any taxes that relate to income or profit.

**Operating Expenditure Objectives** are the following:

- (a) to meet the expected demand for Product Components and associated Product Features;
- (b) to maintain the quality, reliability and security of supply of the Product Components and associated Product Features and the NBN Co Network;
- (c) to recover NBN Co's corporate overheads; and
- ~~(c)~~(d) to comply with the Statement of Expectations, any other legal, policy, regulatory or administrative requirements, or any requirements of the Shareholder Ministers, applicable to procurement by NBN Co.

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

**Ordered Product** means a Product Component, associated Product Feature, Ancillary Service or type of Facilities Access Service that has been validly ordered by an Access Seeker ~~Customer~~ and for which NBN Co has accepted an order.

**Ordering Freeze** means, if an [Access Seeker-Customer](#) has failed to remedy a Material Default by the deadline in a Default Notice or the Material Default is incapable of being remedied, then NBN Co may, on giving notice to that [Access Seeker-Customer](#), immediately:

- (a) cease processing any orders for Products already made by that [Access Seeker-Customer](#) which have not yet been completed; and
- (b) refuse to accept any further orders for any Products that may be made by that [Access Seeker-Customer](#).

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

**Other Charge** means an ancillary charge associated with the supply of a Product Component, Product Feature, Ancillary Service or type of Facility Access Service, but excluding:

- (a) the Prices (and any increases to the Prices) described in clauses 1C.3.1 and 1D.3.1; and
- (b) the Price (and any increases to the Price) of new Product Components, Product Features, Ancillary Services or types of Facilities Access Service introduced during the SAU Term, ~~as described in clause 1A.1 or 1A.1~~ excluding any charge expressed as being an “other charge”.

**Outage** means a failure of an Ordered Product to perform substantially in accordance with the relevant product description or product technical specification instigated by NBN Co in accordance with an Access Agreement in order to perform:

- (a) any Upgrade;
- (b) any maintenance, repair, rationalisation or remediation of:
  - (i) any NBN-Related Network;
  - (ii) any other matter or thing for which NBN Co is responsible and which affects, or can affect, the supply of products by NBN Co to an [Access Seeker-Customer](#); or
  - (iii) any facilities, at, on or under which the NBN Co Network is attached, located or installed;
- (c) the relocation, closure or replacement of any POI, of which NBN Co has given prior notice in accordance with clause 11.4; or
- (d) any other matter or thing specified in the NBN Co Operations Manual.



**PCD** means the Premises connection device which is owned or controlled by, or operated by or on behalf of, NBN Co for the purposes of the NBN Co Fibre Network.

**PDF Information** means the following information:

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

**PDF Processes** means the provisions of Annexure 1 (PDF Processes) to Schedule 1J (Product Development and Withdrawal) as amended from time to time.

**Permitted Variations** has the meaning given to that term in clause 1E.7.2(a).

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

**PIR** means peak information rate.

**Placed in Service** means the date on which:

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

**Platform Interfacing Offer** means the offer described in clause 1C.2.7.

**Platform Interfacing Service** has the meaning given to that term in clause 1A.5.1.

**POI List** means the list of locations made by the ACCC for the purposes of section 151DB of the CCA, as may be varied ~~in accordance with clause 11.4~~ from time to time pursuant to section 151DB of the CCA.

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

**Points of Interconnect Plan** has the meaning given to that term in clause 11.3.1(a).

**Positive Tax Change Event occurs if:**

(a) any of the following occurs during the Initial Regulatory Period for NBN Co:

(i) a change in a Relevant Tax, in the application or official interpretation of a Relevant Tax, in the rate of a Relevant Tax, or in the way a Relevant Tax is calculated; or

(ii) the imposition of a Relevant Tax; and

(b) in consequence, the costs to NBN Co of supplying Reference Offers and/or Non-Reference Offers are increased.

**Preferred Network Change Option** has the meaning given to that term in clause 1E.8.3.

**Premises** means each of the following where NBN Serviceable:

- (a) an addressable location currently used on an on-going basis for residential, business (whether for profit or not), government, health or educational purposes;
- (b) a school as defined by the Department of Education, Employment and Workplace Relations;
- (c) a location within a new development at an addressable location for which NBN Co is the wholesale provider of last resort;
- (d) an addressable location for a standard telephone service which is activated in compliance with the USO;
- (e) a payphone which is activated in compliance with the USO or which is otherwise specified by NBN Co as a premises from time to time;
- (f) a location which NBN Co is directed by the Shareholder Ministers to connect to, or to be connected by, the NBN Co Network; and
- (g) a non-addressable location that is capable of connection of a type agreed by NBN Co with the Shareholder Ministers.

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

**Price Review Arrangement** means:

- (a) in relation to the Initial Regulatory Period, a Price Review Arrangement made in accordance with clause 1H.3; and
- (b) in relation to the Subsequent Regulatory Period, a Price Review Arrangement made in accordance with clause 2F.2.

**Pricing Intention Statement** means the statement issued by NBN Co regarding NBN Co's pricing intentions in relation to the transition from the Initial Cost Recovery Period to the Building Block Revenue Period in accordance with:

- (a) during the Initial Regulatory Period, clause 1F.2.6; and
- (b) during the Subsequent Regulatory Period, clause 2D.4.6.

**Procurement Rules** means NBN Co's procurement rules that apply from time to time and which are required to contain a competitive tendering and procurement process in accordance with clause [1E.5.1](#).

**Product** means the following products that are offered for supply by NBN Co to ~~Access Seekers~~Customers in an SFAA:

- (a) the NBN Co Fibre Access Service;
- (b) the NBN Co Wireless Access Service;
- (c) the Interim Satellite Service;
- (d) the NBN Co Satellite Access Service;
- (e) the Platform Interfacing Service;
- (f) the Sandpit;
- (g) the Facilities Access Service; and
- (h) any new or varied products introduced by NBN Co pursuant to Schedule 1J (Product Development and Withdrawal) or [Schedule 2E](#)).

**Product Component** means:

- (a) the UNI;
- (b) the AVC;
- (c) the CVC;

- (d) the NNI; or
- (e) any new or varied product components introduced by NBN Co pursuant to Schedule 1J (Product Development and Withdrawal) or [Schedule 2E](#),

including any associated Product Features, but excluding the Ancillary Services and the Facilities Access Service.

**Product Development Forum** or **PDF** has the meaning given to that term in:

- (a) during the Initial Regulatory Period, clause 1J.3.1(a); and
- (b) during the Subsequent Regulatory Period, clause 2E.4.1(a).

**Product Feature** means a feature of a Product Component that is made available by NBN Co and which is selectable by the [Access SeekerCustomer](#) in connection with that Product Component (e.g. Data Transfer Rate of an AVC), [including any new or varied product features introduced by NBN Co pursuant to Schedule 1J \(Product Development and Withdrawal\) or Schedule 2E \(Product Development and Withdrawal\)](#).

**Product Idea** means a proposal for the development of a new Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#) or a variation or enhancement to an existing Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service, including proposals made by Access Seekers, Consumer Advocacy Groups and/or NBN Co](#).

[Proposed Financial Information](#) has the meaning given to that term in clause [1G.1.4\(a\)](#).

~~Prudency Dispute~~ means a dispute that may be initiated by NBN Co under clause [1E.8.3\(b\)\(i\)](#).

~~Prudency Dispute Condition~~ has the meaning given to that term in clause [1E.8.2\(b\)](#).

~~Prudency Dispute Participants~~ has the meaning given to that term in clause [1E.8.4\(c\)](#).

**Prudent** and **Prudently** means:

- (a) in respect of Capital Expenditure, such expenditure which [the ACCC considers is considered](#) to be prudently incurred in accordance with clause 1E.3; and
- (b) in respect of Operating Expenditure, such expenditure which ~~is considered~~ [the ACCC considers](#) to be prudently incurred in accordance with clause 1F.8.1.

**Prudent Cost Condition Criteria** means the [criteria set out in clause 1E.3.1\(a\)](#) ~~measures set out in clause 1E.4 that ensure that the implementation of the design of the NBN Co Network is efficient.~~

**Prudent Design Condition Criteria** means the [criteria set out in clause 1E.3.1\(b\)](#) ~~measures set out in clause 1E.5 that ensure the efficiency of the design of the NBN Co Network.~~

**RAB Roll Forward Proposal** has the meaning given to that term in [clause 4.8](#).

**Rack Space** means rack space made available by NBN Co to an [Access Seeker Customer](#) for the purposes of NBN Co Co-location.

**Real RAB** is calculated in accordance with:

- (a) during the Initial Regulatory Period, in [clause 1E.2.1](#); and
- (b) during the Subsequent Regulatory Period, in [clause 2D.6.1](#).

**Real Straight Line Depreciation** has the meaning given to that term in [clause 1F.9.1\(a\)](#).

**Rearrangement / Modification** means the rearrangement or modification of any NBN Co Equipment that is installed or located at a Premises where an [Access Seeker Customer](#) has validly requested that NBN Co rearrange or modify that NBN Co Equipment.

**Reference Offer** means:

- (a) during the Initial Regulatory Period, an offer described in [clause 1C.2](#); and
- (b) during [a Regulatory Cycle in](#) the Subsequent Regulatory Period, an offer of the type described in [clause 2B.2.1 to 2B.2.7](#) that is:
  - (i) if a Replacement Module is in effect [in the Regulatory Cycle](#), specified as a [Reference Offer](#) in the Replacement Module; and
  - (ii) if a Replacement Module is not in effect, [specified as a Reference Offer in the ACCC Replacement Module Determination that is in effect in the Regulatory Cycle determined in accordance with clause 4.10](#),

and excludes any Other Charge.

**Reference Offer Proposal** has the meaning given to that term in [clause 4.6\(a\)](#).

**Regulated Revenue** or RR is calculated in accordance with [clause 1F.6.1](#).

**Regulatory Asset Base** or RAB is calculated in accordance with:

- (a) during the Initial Regulatory Period, [clause 1E.2](#); and

- (b) during the Subsequent Regulatory Period, clause 2D.6.

**Regulatory Asset Base Roll Forward** or **RAB Roll Forward** means the basis upon which the Regulatory Asset Base will be updated annually, calculated in accordance with:

- (a) during the Initial Regulatory Period, clause 1E.2.1(b); and
- (b) during the Subsequent Regulatory Period, clause ~~Module 1(i)~~1A.1.1(a)(i)Module 1(i).

**Regulatory Cycle** ~~means a period of time within the Subsequent Regulatory Period in which either:~~

- ~~(a) a Replacement Module; or~~
- ~~(b) an ACCC Replacement Module Determination,~~
- ~~is in effect. -has the meaning given to that term in clause 1A.1.~~

~~**Regulatory Determination** has the meaning given to that term in clause 1B.2.2(a) means an Access Determination or a Binding Rule of Conduct.~~

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

~~**Relationship Point of Contact** means a point of contact of NBN Co or the Customer agreed in an Access Agreement.~~

**Relevant Assets** means the assets that comprise:

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

~~**Relevant Tax Change Event** means any of the following: -events-;~~

~~during the Initial Regulatory Period:~~

- (i) any Tax other than GST that becomes law and is effective after the SAU Commencement Date ~~(including any increase in such a Tax after it becomes effective) is~~, assessed, levied or imposed on NBN Co, the NBN Co Network or any facilities or land used, occupied or accessed

in connection with the NBN Co Network, or the supply of Product Components, Product Features, Ancillary Services or types of Facilities Access Service, or anything used, occupied or accessed in connection with the supply of Product Components, Product Features, Ancillary Services or types of Facilities Access Service; ~~or~~

(ii) any Tax (or any amount payable in respect of any Tax) other than GST already assessed, levied or imposed on NBN Co, the NBN Co Network or any facilities or any land used, occupied, accessed in connection with the NBN Co Network, or the supply of Product Components, Product Features, Ancillary Services or types of Facilities Access Service, or anything used, occupied or accessed in connection with the supply of Product Components, Product Features, Ancillary Services or types of Facilities Access Service ~~is increased;~~

~~(iii) — any amount is charged by any person, to NBN Co and specifically identified by that person as a charge for a Tax of the same or similar nature to a Tax described in paragraphs (i) or (ii), or an increased Tax under paragraph (ii), and is an amount that third party is required to pay; or~~

~~(iv) — any amount is charged by any person to NBN Co arising from a Tax imposed on facilities, land or infrastructure used, occupied or accessed in connection with the NBN Co Network; and~~

~~(e) — during the Subsequent Regulatory Period, any new or increased Tax (or any increase in the amount payable in respect of any Tax) other than GST is assessed, levied or imposed on, or charged to, NBN Co either directly or indirectly.~~

**Replacement Module** means a module which applies for any fixed period after the Initial Regulatory Period that has the purpose of setting out the detailed commitments made by NBN Co in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service.

**Replacement Module Application** is ~~an~~the application by NBN Co to the ACCC to vary this Special Access Undertaking under section 152CBG of the CCA by incorporating a Replacement Module into this Special Access Undertaking ~~made~~ in accordance with clauses ~~4.54.5 and~~ 1.1.

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

~~**Restoration** means the restoration of the supply of an Ordered Product after the cessation of an Ordering Freeze, Service Reduction or Suspension in respect of or in connection with that Ordered Product, except where the event or reason giving rise to that Suspension was not contributed to by any act or omission of a Customer.~~

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

- (a) the Product Components and Product Features;
- (b) the Ancillary Services; and
- (c) the Facilities Access Service,

including any applicable Taxes, interest, late payment fees or any other similar additional amount earned by NBN Co but excluding GST.

**Revenue Variation** is calculated in accordance with clause 1F.6.2 for the purposes of aligning NBN Co's Revenues with NBN Co's Regulated Revenue for each Financial Year of the Building Block Revenue Period during the Initial Regulatory Period.

**Reviewed Offer** has the meaning given to that term:

- (a) in relation to the Initial Regulatory Period, in clause 1H.3.7(a)(iii); and
- (b) in relation to the Subsequent Regulatory Period, in clause 2F.3.7(a)(iii).

**Revised NDR Date** has the meaning given to that term in clause ~~Module 1(a)1A.1.1(a)~~ Module 1(a).

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

**Sandpit** has the meaning given to that term in clause 1A.5.2.

**Sandpit Offer** means the offer described in clause 1C.2.8.

**SAU Commencement Date** has the meaning given to that term in clause 3.1.

**SAU Expiry Date** has the meaning given to that term in clause 3.2.

**SAU Term** means the period from the SAU Commencement Date until the SAU Expiry Date, as may be extended pursuant to clause 7.3.

**Second UNI-V and AVC Offer** means the offer described in clause 1D.2.5.

**Service Fault** means a failure of an Ordered Product to perform substantially in accordance with the relevant product description or product technical specification where the failure is contributed to by:

- (a) a fault in or failure of an NBN-Related Network; or
- (b) any other matter or thing for which NBN Co is responsible,

except where the failure is contributed to by an Outage.



**Service Impacting Multicast Domain Modification** means the modification of a Multicast Domain comprising:

- (a) the modification of the IP address of an existing Media Stream;
- (b) the modification of the configured peak bandwidth value of an existing Media Stream; and
- (c) a change to the S-TAG.

**Service in Operation** or **SIO** means:

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

~~**Service Level** means a service level, performance objective or operational target that applies:~~

- ~~(a) during the Initial Regulatory Period, as set out in Schedule 1J (Service Level commitments); and~~
- ~~(b) during the Subsequent Regulatory Period, in accordance with Schedule 2F (Service Level commitments) and:
  - ~~(i) if a Replacement Module is in effect, the Replacement Module; or~~
  - ~~(ii) if no Replacement Module is in effect, clause 4.10.~~~~

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

~~**Service Level Rebate**, in respect of a Service Level, means the rebate or compensation that NBN Co will credit to a Customer if NBN Co fails to meet that Service Level.~~

~~**Service Levels Schedule** means the provisions of Annexure 1 (Service Levels Schedule) to Schedule 1J (Service Level commitments) as amended from time to time.~~

**Service Portal** has the meaning given to that term in clause 1A.5.1(b)(ii).

**Service Provider** has the meaning given to that term in section 86 of the Telecommunications Act.

**Service Qualification Enquiry** means an enquiry that is made through the Platform Interfacing Service as to whether a Product Component is available in respect of a Premises.

~~**Service Reduction** means a limitation or restriction on the supply of an Ordered Product to Customer, or a downgrading of any of the Product Features of an Ordered Product.~~

**Set-up Cross Connect** means the performance of works by NBN Co Personnel to complete the installation of a Cross Connect.

**Set-up NBN Co Co-location (Lockable Full Equipment Rack)** means the performance of works by NBN Co Personnel to allocate and set-up one full equipment rack for the purposes of supplying NBN Co Co-location to [an Access Seeker Customer](#).

**Set-up NBN Co Co-location (Lockable Half Equipment Rack)** means the performance of works by NBN Co Personnel to allocate and set-up one half equipment rack for the purposes of supplying NBN Co Co-location to [an Access Seeker Customer](#).

**Set-up NBN Co ODF Termination Point** means the performance of works by NBN Co Personnel to complete the installation of NBN Co ODF Termination Point.

**Shareholder Ministers** means the Communications Minister and the Finance Minister.

**SIP** means Session-Initiated Protocol.

**Site Boundary** means the area of the building in which a POI is located that is determined by NBN Co to be the site boundary of the relevant Aggregation Node Site, including as agreed between NBN Co and the Underlying Facility Provider.

**Special Access Undertaking** or **SAU** means this special access undertaking.

**Standard Business Offer** or **SBO** means:

- (a) during the Initial Regulatory Period, the offer described in clause 1C.2.4 in respect of the NBN Co Fibre Network; and
- (b) during the Subsequent Regulatory Period, the offer established in accordance with clause 2B.2.3 in respect of the NBN Co Fibre Network.

**Standard Form of Access Agreement** or **SFAA** means a standard form of access agreement published on NBN Co's Website ~~pursuant to for the purposes of~~ section 152CJA of the CCA, ~~that sets out the terms and conditions on which NBN Co will offer to supply the NBN Access Service and Ancillary Services and may offer to supply the Facilities Access Service.~~

**Standard Installation** means a Standard NFAS Installation or a Standard NWAS Installation (as applicable).

**Standard NFAS Installation** means an Installation in relation to an NFAS connection where:

- (a) the conditions set out in clause 1 of Annexure 1 (~~Standard NFAS Installation~~~~Standard NFAS Installation~~ to [Schedule 1D](#)) are satisfied;
- (b) the installation is not in respect of a second or subsequent NTD; and
- (c) the installation is not otherwise considered to be a “non standard installation” in accordance with clause 2 of Annexure 1 (~~Standard NFAS Installation~~~~Standard NFAS Installation~~ to [Schedule 1D](#)).

**Standard NWA Installation** means an Installation in relation to an NWA connection where:

- (a) the conditions set out in clause 5 of Annexure 2 (~~Standard NWA Installation~~~~Standard NWA Installation~~ to [Schedule 1D](#)) are satisfied;
- (b) the installation is not in respect of a second or subsequent NTD; and
- (c) the installation is not otherwise considered to be a “non standard installation” in accordance with clause 6 of Annexure 2 (~~Standard NWA Installation~~~~Standard NWA Installation~~ to [Schedule 1D](#)).

**Statement of Expectations** means the letter dated 17 December 2010 to NBN Co from the Shareholder Ministers and any subsequent variations.

**Subsequent Installation** means any:

- (a) Standard Installation performed by NBN Co (or an Installer) in respect of a Premises that is not an Initial Standard Installation; or
- (b) Non Standard Installation performed by NBN Co (or an Installer) in respect of a Premises that is not an Initial Non Standard Installation.

**Subsequent Regulatory Period** has the meaning given to that term in clause 4.1(c).

**Supply of First Access Card in respect of an Aggregation Node Site** means the supply of the first access card that NBN Co provides to an [Access Seeker Customer](#) in respect of an Aggregation Node Site.

~~Suspend or Suspension~~ means:

- (a) ~~to restrict or cease the supply of an Ordered Product (or any part of an Ordered Product) to a Customer; and~~

~~(b) — to withdraw a Customer’s right to use or on supply an Ordered Product (or any part of an Ordered Product),~~

but does not include an Ordering Freeze, Service Reduction or the disconnection or termination of the supply of an Ordered Product.

**Symmetric Access Capacity (TC-1)** means a symmetrical Data Transfer Rate (TC-1) uplink and downlink on an AVC that is included within the Data Transfer Rate (TC-4) acquired by the [Access Seeker Customer](#) in respect of the same AVC, provided that the aggregate symmetrical Data Transfer Rate acquired by the [Access Seeker Customer](#) does not exceed the TC-4 Data Transfer Rate of the AVC or any other technical requirements of the NBN Co Fibre Network.

**Symmetric Access Capacity Offer** means each of the offers described in clause 1D.2.4.

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

**Tax** means ~~;~~

any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency, including the ACT Utilities Tax, but excluding any tax (howsoever described) that relates to income, profit or capital gains ~~;~~ ~~or~~

~~(a) — for the purposes of a Tax Change Event during the Subsequent Regulatory Period, any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency, including the ACT Utilities Tax and any tax (howsoever described) that relates to income, profit or capital gains.~~

**Tax Change Event** means a [Positive Tax Change Event](#) or a [Negative Tax Change Event](#).

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth).

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

**Temporary POI** means a POI established temporarily until an Established POI serving the relevant CSA is established and includes temporary POIs serving First Release Trial Sites and new developments.

**Third Party** means a [person other than NBN Co or a Related Body Corporate of NBN Co](#).

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

**Third Party IPR** means intellectual property rights of a third party.

**Third Party Operating Expenditure** means Operating Expenditure incurred, or to be incurred, in connection with the supply of goods or services to NBN Co or a Related Body Corporate of NBN Co by a third party in connection with the NBN Co Network, but excludes any Operating Expenditure covered by clause **Error! Reference source not found.**

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

**Type 1 Facility** means a building that is occupied, owned or operated by NBN Co or a Related Body Corporate of NBN Co and in which an Aggregation Node Site is located.

**Type 2 Facility** means a building in which an Aggregation Node Site is located that is not a Type 1 Facility.

**Underlying Facility Provider** means the entity that occupies, owns, operates or controls a Type 2 Facility.

**Unrecovered Cost** is calculated in accordance with:

- (a) during the Initial Regulatory Period, clause 1F.5.1; and
- (b) during the Subsequent Regulatory Period, clause 2D.4.3.

**Upgrade** means any upgrade, enhancement, modernisation, reconfiguration, enablement or augmentation of the NBN Co Network, including the removal, rearrangement, replacement or decommissioning of the network elements and associated electronics comprising the NBN Co Network, which will have, or is likely to have, an impact on an [Access Seeker Customer](#), but does not include any:

- (a) relocation, closure or replacement of a POI or the establishment of a new POI (which are addressed in clause 1I.4);
- (b) routine maintenance or Service Fault rectification activities in relation to:

- (i) any NBN-Related Network;
  - (ii) any other matter or thing for which NBN Co is responsible and which affects, or can affect, the supply of products by NBN Co to an [Access Seeker Customer](#); or
  - (iii) any facilities, at, on or under which the NBN Co Network is attached, located or installed; or
- (c) rollout or expansion of the NBN Co Network.

**User Network Interface** or **UNI** has the meaning given to that term in clause 1A.2.1.

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

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

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

**WACC** means weighted average cost of capital.

**Zero-Priced** means circumstances in which a Price of \$0.00 applies to, or no charge is otherwise payable for, a Reference Offer, Non-Reference Offer or Other Charge.

## 2 Glossary

Acronym	Defined term
ABBRR	Annual Building Block Revenue Requirement
ACIPA	Annual Construction in Progress Allowance
AVC	Access Virtual Circuit
BAO	Basic Access Offer
CCA	Competition and Consumer Act
CSA	Connectivity Serving Area
CVC	Connectivity Virtual Circuit
CIF	Cumulative Inflation Factor
CIP	Construction in Progress
EAO	Enhanced Access Offer
Forecast CIF	Forecast Cumulative Inflation Factor
ICRA	Initial Cost Recovery Account
ISS	Interim Satellite Service
LTRCM	Long Term Revenue Constraint Methodology
MAVC	Multicast AVC

Acronym	Defined term
NFAS	NBN Co Fibre Access Service
NNI	Network to Network Interface
NSAS	NBN Co Satellite Access Service
NTD	Network Termination Device
NWAS	NBN Co Wireless Access Service
PDF	Product Development Forum
POI	Point of Interconnect
RAB	Regulatory Asset Base
RAB Roll Forward	Regulatory Asset Base Roll Forward
RR	Regulated Revenue
SAU	Special Access Undertaking
SBO	Standard Business Offer
SIO	Service in Operation
SFAA	Standard Form of Access Agreement
UNI	User Network Interface
UNI-D	User Network Interface-Data
UNI-V	User Network Interface-Voice

### 3 Interpretation

In this Special Access Undertaking:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) the words ‘including’, ‘particularly’, ‘such as’ and similar expressions are not to be used as words of limitation;
- (e) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, governmental agency or authority, regulator, association, corporation or other body corporate;
  - (ii) a person includes its agents, successors and permitted assigns;
  - (iii) a thing (including a chose in action or other right) includes a part of that thing;

- (iv) a document includes all amendments, supplements, updates and replacements to that document;
- (v) a clause, term, party, schedule or annexure is a reference to a clause or term of, or party, schedule or annexure to this Special Access Undertaking;
- (vi) unless specified otherwise, a reference to a clause in the main body or a schedule is a reference to a clause in the main body or that schedule (as applicable);
- (vii) this Special Access Undertaking includes all schedules and annexures to it;
- (viii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity, or rule of any stock exchange and is a reference to that law as amended, consolidated or replaced and includes any regulations and other subordinate instruments made under or in accordance with those laws;
- (ix) a monetary amount is in Australian dollars; and
- (x) a tax includes any additional or replacement tax of a similar nature;
- (f) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (g) in determining the time of day, where relevant to this Special Access Undertaking, the relevant time of day is:
  - (i) for the purposes of giving or receiving notices, the time of day where a person receiving a notice is located; or
  - (ii) for any other purpose under this Special Access Undertaking, the time of day in the place where the person required to perform an obligation is located.



## Attachment D Initial Products

### Initial Products

The Initial Products comprise the following Product Components and Product Features:

- 1) All Product Components and Product Features provided over the NBN Interim Satellite Network, including 1000 Base T Network-Network Interface, TC-4 CVC, TC-1 CVC.
- 2) The Product Components and Product Features on each of the NBN Fibre, Fixed Wireless (FW) and Long Term Satellite (LTS) Networks shown in the table below:

<u>Product Component</u>	<u>Product Feature</u>	<u>Fibre</u>	<u>FW</u>	<u>LTS</u>
<u>Network-Network Interface</u>	<u>1000BaseLX</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>10GBaseLR</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>1000BaseEX</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>10GBaseER</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>Multi-bearer Link Aggregation Groups for load sharing</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>Chassis diversity</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
<u>Connectivity Virtual Circuit</u>	<u>TC-4: up to 50Mbps for wireless or satellite-only.</u>		<u>✓</u>	<u>✓</u>
	<u>TC-4: 100, 200, 300, 400, 500, 600, 700, 800, 900, 1000 Mbps</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>TC-1: 5, 10, 20 Mbps</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>TC-MC (Multicast): 100, 200, 300, 400, 500, 600, 700, 800, 900, 1000 Mbps</u>	<u>✓</u>		
	<u>TC-2: 50, 100, 150, 200, 250, 300, 400, 500, 600, 700, 800, 900, 1000 Mbps</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>TC-3: 50, 100, 150, 200, 250, 300, 400, 500, 600, 700, 800, 900, 1000 Mbps</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
<u>Access Virtual Circuit</u>	<u>TC-4: 12/1, 25/5 Mbps</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>TC-4: 25/10, 50/20, 100/40, 250/100, 500/200, 1000/400 Mbps</u>	<u>✓</u>		
	<u>TC-1 : 60kbps</u>			<u>✓</u>
	<u>TC-1 : 0.15Mbps</u>	<u>✓</u>	<u>✓</u>	
	<u>TC-1: 0.3, 0.5, 1, 2, 5Mbps</u>	<u>✓</u>		
	<u>TC-2: 5 Mbps</u>		<u>✓</u>	
	<u>TC-3: 5 Mbps</u>		<u>✓</u>	
	<u>TC-2: 2, 5, 10, 20, 30, 40 Mbps</u>	<u>✓</u>		
	<u>TC-3: 10, 20, 30, 40, 100 Mbps</u>	<u>✓</u>		
	<u>TC-MC: 5, 20, 30, 40, 50 Mbps</u>	<u>✓</u>		
	<u>Enterprise Ethernet: 50-1000Mbps symmetrical pipe model (but excluding product features, service levels and pricing)</u>	<u>✓</u>		
	<u>Enhanced Service Level guarantee: Business 7am-9pm; 7 days a week, 1 hour responses, 12 hour restoration (+geographic factor)</u>	<u>✓</u>		
	<u>Additional Enhanced Service Levels: 24/7 fault rectification with 12, 8, 6, &amp; 4 hour restoration</u>	<u>✓</u>		
	<u>Tagged and Priority Tagged Framing</u>	<u>✓</u>		
<u>Customer Edge Virtual Local Area Network transparency</u>	<u>✓</u>			

<u>Product Component</u>	<u>Product Feature</u>	<u>Fibre</u>	<u>FW</u>	<u>LTS</u>
	<u>Access Diversity</u>	<u>✓</u>		
	<u>Drop priority based on Class of Service markings</u>	<u>✓</u>		
	<u>Advanced OAM features for Enterprise Ethernet Services (but excluding pricing)</u>	<u>✓</u>		
<u>User Network Interface</u>	<u>Data (4 ports)</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>Voice with in-built Analogue Telephony Adaptor (1 or 2 ports)</u>	<u>✓</u>		
	<u>Battery backup capability available on both UNI-V and UNI-D</u>	<u>✓</u>		
	<u>Optional Battery Backup</u>	<u>✓</u>		
	<u>TR-69 configuration for UNI-V</u>	<u>✓</u>		
	<u>IPv6 for DHCP on UNI-D</u>	<u>✓</u>	<u>✓</u>	
	<u>Out of band DTMF and RTCP for UNI-V</u>	<u>✓</u>		
	<u>Business Grade NTD</u>	<u>✓</u>		
<u>Other Service Enhancements</u>	<u>Reporting Phase 1 – SLA Fulfilment and Assurance</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	<u>Reporting Phase 2 –Customer Management Reporting, including:</u>			
	• <u>Service Performance</u>	<u>✓</u>	<u>✓</u>	<u>✓</u>
	• <u>Usage</u>			
	• <u>Availability</u>			
	• <u>SLA violations</u>			

# Module 1

## Initial Regulatory Period



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## Schedule 1A Implementation of NBN Access Service, Ancillary Services and the Facilities Access Service

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### 1A.1 Implementation of NBN Access Service

#### 1A.1.1 Scope

This Schedule 1A applies for the Initial Regulatory Period.

#### 1A.1.2 ~~SOffer to supply of~~ Product Components and associated Product Features

~~Subject to clause 1A.7, NBN Co will offer to supply the Product Components and associated Product Features on each NBN Co Network as the means of implementing its obligations under this Special Access Undertaking in connection with the NBN Access Service by the supply of Product Components and associated Product Features on each NBN Co Network.~~

#### ~~1A.1.3 Implementation of NBN Access Service through Product Components and associated Product Features~~

~~The Product Components and associated Product Features provide the means by which:~~

~~(a) NBN Co will fulfil its obligations under this Special Access Undertaking regarding the NBN Access Service; and~~

~~NBN Co will fulfil any category B standard access obligations that apply to NBN Co under the CCA regarding the NBN Access Service.~~

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### 1A.2 Product Components

#### ~~1A.2.1 Obligation to supply Product Components~~

~~NBN Co will offer to supply the following Product Components:~~

~~(a) the UNI;~~

~~(b) the AVC;~~

~~(c) the CVC; and~~

~~(d) the NNI;~~

~~subject to the terms and conditions in clause and Schedule 1J (Product Development and Withdrawal).~~

#### ~~1A.2.2~~ **1A.2.1 User Network Interface**

A UNI is a physical interface on the NTD.

#### ~~1A.2.3~~ **1A.2.2 Access Virtual Circuit**

An AVC is an Ethernet-based, Layer 2 virtual connection on an NBN Co Network that carries traffic to and from a UNI on the NTD at the Premises connected to that NBN Co Network, with the Product Features made available by NBN Co and selected by an [Access Seeker Customer](#), in respect of that NTD.

#### ~~1A.2.4~~ **1A.2.3 Connectivity Virtual Circuit**

A CVC is Ethernet-based, Layer 2 virtual capacity for the transport of [Access Seeker Customer](#) traffic from multiple AVCs within a CSA on an aggregated basis and presented at the NNI at the POI associated with that CSA, with the Product Features made available by NBN Co and selected by an [Access Seeker Customer](#), in respect of that virtual capacity.

#### ~~1A.2.5~~ **1A.2.4 Network to Network Interface**

The NNI is a physical interface between the NBN Co Network and the [Access Seeker's Customer's](#) network associated with a POI.

#### ~~1A.2.6~~ **1A.2.5 Composition of AVC and CVC**

The AVC and CVC may incorporate some limited Layer 3 awareness ~~to support certain services~~, including:

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

[but only to the extent that that Layer 3 awareness is required to support the supply of a Layer 2 service and does not extend to the routing or forwarding of Access Seeker traffic using public Internet Protocol addresses.](#)

## 1A.3 Terms and conditions relating to supply of Product Components

### 1A.3.1 Availability of Product Components

~~NBN Co will offer to~~ The supply of the Product Components to an Access Seeker Customer in respect of those particular Premises is subject to the following conditions:

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

### 1A.3.2 NBN Co may make supply of Product Components AVC conditional on acquisition of other Product Components

(a) Subject to clause 1A.3.2(b), NBN Co may require that the supply of an AVC to an Access Seeker be on the condition that ~~at the~~ Access Seeker also to acquire ~~one or more of the a~~ UNI, ~~AVC, a~~ CVC ~~or and a~~ NNI in conjunction with ~~each other~~ the AVC.

(b) NBN Co must not require an Access Seeker to acquire, in conjunction with the AVC:

(i) a CVC, if the Access Seeker has an existing CVC in the CSA; or

(ii) a NNI, if the Access Seeker has an existing NNI at the POI for the CSA,

in which the AVC is being acquired.

~~Nothing in this Schedule 1A prevents NBN Co from bundling Product Components including to the extent that such bundling is authorised pursuant to section 151DA of the CCA.~~

### 1A.3.3 Maximum Data Transfer Rate

NBN Co may not supply an AVC to an NTD when the supply of that AVC would result in the Maximum Data Transfer Rate for that NTD being exceeded.

### 1A.3.4 UNI availability

NBN Co's supply of an AVC to an [Access Seeker Customer](#) in respect of a Premises is conditional on the availability of a UNI for use by that [Access Seeker Customer](#) on the NTD at the Premises.

### 1A.3.5 Points of Interconnect

~~(a)~~ NBN Co will specify ~~a~~ [POI or POIs](#) for each CSA.

~~(b)~~ [Except in the circumstance referred to in clause 1A.3.5\(f\), NBN Co will not specify more than one POI for each CSA.](#)

~~(a)(c)~~ A POI may serve one or more CSAs.

~~(b)(d)~~ [Subject to clause , a POI specified under clause 1A.3.5\(a\) NBN Co may also utilise may be a Temporary POIs](#) at which NBN Co will provide interconnection to the NBN Co Network.

~~(e)~~ [Except in relation to the NBN Co Satellite Network, an Established POI specified under clause 1A.3.5\(a\) for a CSA must be the Established POI that is the closest in the NBN Co Network to the CSA, determined consistently with the POI planning rules developed by NBN Co in 2010 as amended from time to time with the ACCC's approval.](#)

~~(f)~~ [Where only a Temporary POI was specified for a CSA under clause 1A.3.5\(a\) and NBN Co subsequently opens an Established POI for that CSA, both the Temporary POI and the Established POI may be specified for that CSA under clause 1A.3.5\(a\), for a period of no more than 12 months from the opening of the Established POI.](#)

~~(g)~~ [NBN Co must not offer interconnection for a CSA at any POI other than the POI or POIs specified for that CSA under this clause.](#)

~~(e)(h)~~ NBN Co will:

~~(d)~~ [determine the timetable for the rollout of POIs; and](#)

[provide Access Seekers with details of the locations of POIs and the CSA for which a POI is specified under clause 1A.3.5\(a\).](#)

## 1A.4 Implementation of Ancillary Services

### 1A.4.1 ~~Offer to supply of~~ Ancillary Services

NBN Co will ~~offer to supply the Platform Interfacing Service, the Sandpit and such other Ancillary Services that NBN Co introduces in accordance with Schedule 1J (Product Development and Withdrawal) as the means of~~ implementing its obligations under this Special Access Undertaking in connection with the Ancillary Services ~~by the supply of the Platform Interfacing Service, the Sandpit and such other Ancillary Services that NBN Co introduces in accordance with~~ Schedule 1J ~~(Product Development and Withdrawal)~~.

### ~~1A.4.2 Implementation of Ancillary Services~~

~~The supply of the Ancillary Services in the form of the Platform Interfacing Service, the Sandpit and such other Ancillary Services that NBN Co introduces in accordance with Schedule 1J (Product Development and Withdrawal) provides the means by which:~~

- ~~(a) NBN Co will fulfil its obligations under this Special Access Undertaking regarding the Ancillary Services; and~~
- ~~(b)(a) NBN Co will fulfil any category B standard access obligations that apply to NBN Co under the CCA regarding the Ancillary Services.~~

## 1A.5 Ancillary Services

### 1A.5.1 Platform Interfacing Service

- (a) Subject to clause 1A.7, NBN Co will implement the Platform Interfacing Service by ~~offering to the~~ supply of a service which supports the following key business transactions via access to the NBN Co Platform:
  - (i) activation transactions, including address inquiries, service qualification enquiries, order feasibility checks, submission of orders, enrichment of orders with further information, modification of orders being processed and tracking of orders being processed, and such other transactions as may be described as activation transactions by NBN Co from time to time;
  - (ii) assurance transactions, including submission of trouble tickets, modification of trouble tickets and tracking of trouble tickets, and such other transactions as may be described as assurance transactions by NBN Co from time to time; and



- (iii) billing transactions, including notification of billing events and invoices, retrieval of historical billing information, and such other transactions as may be described as billing transactions by NBN Co from time to time,  
  
(each, a **Key Business Transaction**).
- (b) As at the SAU Commencement Date, NBN Co will permit each of the Key Business Transactions to be performed through at least one of the following means:
  - (i) B2B access, which enables an [Access Seeker-Customer](#) and NBN Co to perform Key Business Transactions using their own operations support systems and billing support systems by exchanging encrypted and digitally-signed messages over the Internet between B2B gateways that are hosted by that [Access Seeker-Customer](#) and NBN Co respectively (**B2B Access**); or
  - (ii) service portal, which enables an [Access Seeker-Customer](#) and NBN Co to perform Key Business Transactions over the Internet using a web-based portal that is designed, created, hosted, operated and maintained by NBN Co (**Service Portal**).
- (c) In respect of the NBN Co Satellite Network, NBN Co may use an interim satellite portal to process service qualification requests.

### 1A.5.2 Sandpit

NBN Co will implement the Sandpit by ~~offering to the~~ supply of test and verification facilities that allow an [Access Seeker-Customer](#) and NBN Co to undertake each of the following activities in relation to the NBN Access Service to be provided over the NBN Co Fibre Network:

- (a) the preparation and performance of testing in respect of the relevant Product Components or Product Features;
- (b) the performance of the following activities that are related to the performance of testing in respect of the Platform Interfacing Service, including:
  - (i) business process interoperability activities related to the development of that [Access Seeker's-Customer's](#) B2B gateway;
  - (ii) interoperability functional testing activities;
  - (iii) functional testing related to the development or maintenance of an [Access Seeker's-Customer's](#) operational support systems, which may include the exchange of messages between that

[Access Seeker's Customer's](#) B2B gateway and NBN Co's B2B gateway in relation to:

- (A) pre-order management, including address queries, service qualification enquiries and order feasibility checks; and
- (B) order management, including submitting orders and fair order progression notifications;
- (c) the preparation and performance of testing in respect of any product functionality developed by NBN Co, subject to NBN Co being able to make the functionality available for testing in relation to the NBN Access Service;
- (d) the development of [Access Seeker Customer](#) Products that are directly related to the Product Components and Product Features that are or will be acquired by that [Access Seeker Customer](#) from NBN Co over the NBN Co Fibre Network; and
- (e) the performance of activities that are related or ancillary to the activities described in clauses 1A.5.2(a) to 1A.5.2(d).

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## 1A.6 Facilities Access Service

Subject to clause 1.7, NBN Co will implement the Facilities Access Service by ~~offering to the~~ supply of the following types of facilities access:

- (a) cross connect, which provides point-to-point connectivity between certain pairs of locations within the relevant Aggregation Node Site (**Cross-Connect**);
- (b) NBN Co co-location, which enables an [Access Seeker Customer](#) to install, operate and maintain [Access Seeker Customer](#) Active Equipment in Rack Space (**NBN Co Co-Location**);
- (c) NBN Co ODF termination point, which enables an [Access Seeker's Customer's](#) lead-in or backhaul transmission cables to be connected by NBN Co to the NBN Co ODF at the relevant Aggregation Node Site (**NBN Co ODF Termination Point**);
- (d) other Facilities supplied by NBN Co that are necessary to facilitate entry to buildings such as cable trays or building duct access; and
- (e) such other types of facilities access that NBN Co introduces in accordance with Schedule 1J (Product Development and Withdrawal).

## **1A.7 Service declared by the ACCC or specified in regulatory determinations**

### **1A.7.1 Service declared by the ACCC**

- (a) NBN Co acknowledges that this Special Access Undertaking does not affect the ACCC's ability to declare a service under section 152AL(8A) of the CCA (in this clause 1A.7, **ACCC-Declared Service**), even if the service falls, to any extent, within the scope of the services declared under section 152AL(8E) of the CCA as a consequence of the operation of this Special Access Undertaking.
- (b) For the avoidance of doubt, this Special Access Undertaking does not affect NBN Co's obligations under section 152AXB of the CCA in respect of any ACCC-Declared Service, including (without limitation) the obligation to supply that ACCC-Declared Service in accordance with the CCA.

### **1A.7.2 Service specified in regulatory determinations**

A Regulatory Determination in relation to a service, including an ACCC-Declared Service, that falls, to any extent, within the scope of the services declared under section 152AL(8E) of the CCA as a consequence of the operation of this Special Access Undertaking will not be inconsistent with this Special Access Undertaking for the purposes of section 152CBIA or section 152CBIB of the CCA to the extent that the Regulatory Determination relates to a service that is not an Offer that NBN Co is committed to supply under this Special Access Undertaking.

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## **Schedule 1B** Term of any SFAA and consultation on changes to any SFAA Regulatory Oversight

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### **1B.1 General**

#### **1B.1.1 Scope**

This Schedule 1B applies for the Initial Regulatory Period.

#### ~~1B.1.2 Pricing not subject to Regulatory Recourse~~

~~Nothing in this Schedule 1B applies in relation to Pricing of any Product, Product Component, Product Feature, Ancillary Service, type of Facilities Access Service or Other Charge, whether specified in this Special Access Undertaking or announced after the SAU Commencement Date.~~

#### ~~1B.1.3~~ **1B.1.2 Standard Form of Access Agreement**

- (a) NBN Co will ensure that any SFAA that is published includes an expiry date, to be a date no later than 2 years after the date on which the SFAA commences. For clarity, this does not preclude NBN Co publishing any SFAA which includes with the option of the parties to an Access Agreement agreeing to extend the term of that Access Agreement ~~any SFAA~~ beyond such expiry date.
- ~~(b) In accordance with clause 1B.2, NBN Co commits to updating, where necessary, an SFAA throughout the Initial Regulatory Period.~~

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## ~~1B.2~~ **Regulatory Recourse**

#### ~~1B.2.1~~ **Application of regulatory recourse**

- ~~(a) This clause 1B.2 applies in relation to an SFAA.~~
- ~~(b) Nothing in this clause 1B.2 has effect in relation to an Access Agreement.~~

#### ~~1B.2.2~~ **ACCC Regulatory Determinations**

- ~~(a) NBN Co acknowledges that the ACCC may make, vary or withdraw an Access Determination or Binding Rule of Conduct that relates to the NBN Access Service or the Ancillary Services. Such Access Determination or Binding Rule of Conduct will have no effect to the extent to which it:~~
- ~~(i) is inconsistent with the terms of this Special Access Undertaking;~~

~~(ii) — has the effect (whether direct or indirect) of discriminating between Access Seekers; or~~

~~(iii) — is not otherwise compliant with Part XIC of the CCA,~~

~~(each a Regulatory Determination).~~

~~(b) — NBN Co will give effect to any Regulatory Determination by ensuring that the new SFAA, published to be available upon expiry of the term of the current SFAA in accordance with clause 1B.1.3(a), will be consistent with such Regulatory Determination.~~

~~(c) — NBN Co will not be required to give effect to any Regulatory Determination by amending any existing published SFAA.~~

~~(d) — When a Regulatory Determination expires, NBN Co may amend any SFAA to remove the effect of that Regulatory Determination on the SFAA.~~

### **1B.2.3 Facilities Access Decision**

~~(a) — The ACCC may decide terms and conditions in relation to the Facilities Access Service in connection with satisfying NBN Co's interconnection obligations under section 152AXB(4) of the CCA in connection with the NBN Access Service and Ancillary Services.~~

~~(b) — The ACCC must undertake consultation with NBN Co and any other persons the ACCC considers have a sufficient interest in the matter before making a decision, and may consider any submissions made in making its decision, under clause 1B.2.3(a).~~

~~(c) — A decision made under clause 1B.2.3(a):~~

~~(i) — must specify an expiry date, such date to be no more than 5 years from the date on which the decision came into effect;~~

~~(ii) — will have no effect to the extent to which the decision:~~

~~(A) — is inconsistent with this Special Access Undertaking;~~

~~(B) — has the effect (whether direct or indirect) of discriminating between Access Seekers;~~

~~(C) — is not otherwise compliant with Part XIC of the CCA; or~~

~~(D) — would have the effect of requiring NBN Co to engage in conduct that is inconsistent with conduct authorised under section 151DA(2) of the CCA for the purpose of section 51(1) of the CCA.~~

~~A decision made under clause 1B.2.3(a), to the extent that it complies with clauses 1B.2.3(c)(i) and 1B.2.3(c)(ii), is a **Facilities Access Decision**.~~

- ~~(d) — The ACCC must publish each Facilities Access Decision, and the reasons for the decision, on its website within 20 Business Days after making the decision.~~
- ~~(e) — NBN Co will give effect to any Facilities Access Decision by ensuring that the new SFAA, published to be available upon expiry of the term of the current SFAA in accordance with clause 1B.1.3(a), will be consistent with such Facilities Access Decision.~~
- ~~(f) — NBN Co will not be required to give effect to any Facilities Access Decision by amending any existing published SFAA.~~
- ~~(g) — When a Facilities Access Decision expires, NBN Co may amend any SFAA to remove the effect of that Facilities Access Decision on the SFAA.~~

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## ~~1B.3~~ **1B.2** **Multilateral Consultation on changes to any SFAA**

### ~~1B.3.1~~ **1B.2.1** **Establishment of a Multilateral SFAA Forum**

- (a) NBN Co will establish a multilateral consultation forum to engage with Access Seekers and Consumer Advocacy Groups on possible future changes to the terms of an SFAA (**Multilateral SFAA Forum**).
- (b) NBN Co will convene the first a Multilateral SFAA Forum no later than 12 months prior to the expiry of the term of each version of the SFAA published under clause 6 of this Special Access Undertaking no later than 18 months after the SAU Commencement Date.
- (c) The purpose of the Multilateral SFAA Forum will include identifying and prioritising issues associated with any SFAA and working to develop multilateral resolutions to changes to any SFAA.
- (d) The Multilateral SFAA Forum will allow Access Seekers, Consumer Advocacy Groups and NBN Co to suggest changes to any SFAA.
- ~~(e) — Subject to clauses 6 and 1B.2, NBN Co may make such changes to any SFAA as NBN Co considers appropriate, including any changes arising from the Multilateral SFAA Forum. Except with the ACCC's prior approval, NBN Co may not make any change to an SFAA under this clause 1B.3.1(e) in relation to the provisions referred to in:~~

- ~~(i) — Annexure 1 (Dispute Management Rules) to Schedule 1H (Non-price terms and conditions);~~
- ~~(ii) — Annexure 2 (Information & Rights Management) to Schedule 1H (Non-price terms and conditions);~~
- ~~(iii) — Annexure 3 (Risk Management) to Schedule 1H (Non-price terms and conditions);~~
- ~~(iv) — Annexure 1 (PDF Processes) to Schedule 1I (Product Development and Withdrawal); or~~
- ~~(v) — Annexure 1 (Service Levels Schedule) to Schedule 1J (Service Level commitments), other than in relation to the supply of new Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service introduced during the Initial Regulatory Period.~~
- ~~(f) — NBN Co will incorporate the changes made under clause 1B.3.1(e) into the new version of the relevant SFAA that NBN Co publishes to be available upon expiry of the term of the current SFAA in accordance with clause 1B.1.3(a).~~
- ~~(g) — If NBN Co does not agree with a suggested change made by an Access Seeker through the Multilateral SFAA Forum, NBN Co will notify Access Seekers and the ACCC of that fact no later than 4 months after convening a Multilateral SFAA Forum.~~
- ~~(h) — NBN Co will convene another Multilateral SFAA Forum no later than 6 months prior to the expiry date of each version of the SFAA published under clause 1B.3.1(f).~~
- ~~(i)(e) — The Multilateral SFAA Forum will be available to all Access Seekers irrespective of whether they have an Access Agreement with NBN Co. However, Access Seeker participation in the Multilateral SFAA Forum will be voluntary such that each Access Seeker can engage as they deem appropriate given their level of interest and/or resources.~~
- ~~(j) — NBN Co may, but is not obliged to, discuss changes to any SFAA arising from a Regulatory Determination within the Multilateral SFAA Forum.~~
- ~~(k) — The operation of the Multilateral SFAA Forum will be reviewed in accordance with clause 1K.2.~~
- ~~(+)(f) — Nothing in this clause 1B.2 precludes NBN Co from conducting bilateral consultation with Access Seekers in relation to any SFAA in a manner that is consistent with NBN Co's Non-Discrimination Obligations.~~

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## Schedule 1C Reference Offers

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### 1C.1 General

#### 1C.1.1 Scope

This Schedule 1C applies for the Initial Regulatory Period.

#### 1C.1.2 Status of Reference Offers

- (a) NBN Co commits to supply, and will not withdraw, each of the Reference Offers:
- (i) in respect of the NBN Co Fibre Network and the NBN Co Wireless Network, for the duration of the Initial Regulatory Period;
  - (ii) in respect of the NBN Co Interim Satellite Network, from the SAU Commencement Date until the date or dates and to the extent that NBN Co declares that services are available for supply on the NBN Co Permanent Satellite Network; and
  - (iii) in respect of the NBN Co Permanent Satellite Network, from the date or dates and to the extent that NBN Co declares that services are available for supply on the NBN Co Permanent Satellite Network until the end of the Initial Regulatory Period.
- (b) Clause 1C.1.2(a) does not apply to the withdrawal of a Reference Offer that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.

#### 1C.1.3 Other Charges

~~(a)~~ NBN Co may also apply Other Charges may only be applied to the supply of Reference Offers subject to in accordance with Schedule 1D (Non Reference Offers and Other Charges) .

~~(a)~~~~(b)~~ NBN Co may withdraw any Other Charge that applies to a Reference Offer.

#### 1C.1.4 Maximum Regulated Prices for Reference Offers between the SAU Commencement Date and 30 June 2017

~~NBN Co will ensure that, from the SAU Commencement Date until 30 June 2017, t~~The Price for the supply of a Reference Offer at any point in times specified in any SFAA is not must not be higher than the Maximum Regulated Price ~~for applicable to~~ that Reference Offer at that point in time,



~~subject to clauses 1C.3, 1C.4, 1C.4.3 and 1A.1 as determined in accordance with clauses 1C.4.1, 1C.3 and 1C.4.~~

### ~~1C.1.5 Price increases to be subject to Individual Price Increase Limit from 1 July 2017 until end of Initial Regulatory Period~~

~~NBN Co will ensure that, from 1 July 2017 until the end of the Initial Regulatory Period, the annual increase in the Price of a Reference Offer specified in any SFAA will not exceed the Individual Price Increase Limit applicable to that Reference Offer, subject to clauses 1C.4 and 1C.5.~~

### ~~1C.1.6~~ **1C.1.5 Maximum Regulated Price operates as a ceiling**

Nothing in this Schedule 1C prevents NBN Co from:

- ~~(a) supplying a Reference Offer at any point in time specifying at a Price in any SFAA that is lower than or equal to the Maximum Regulated Price for the relevant Reference Offer and that point in time; or~~
- ~~(b) increasing the Price specified in any SFAA up to the Maximum Regulated Price for the relevant Reference Offer.~~

## 1C.2 Reference Offers

### 1C.2.1 Overview of Reference Offers

The Reference Offers comprise:

- (a) the Basic Access Offers (**BAOs**);
- (b) the Enhanced Access Offer (**EAO**);
- (c) the Standard Business Offer (**SBO**);
- (d) the Connectivity Virtual Circuit Offers (TC-1 and TC-4);
- (e) the Network to Network Interface Offers;
- (f) the Platform Interfacing Offer;
- (g) the Sandpit Offer; and
- (h) the Facilities Access Service Offer.

### 1C.2.2 Basic Access Offer for each NBN Co Network

The BAO, in respect of each NBN Co Network, comprises:

- (a) an AVC with the following Data Transfer Rates:

- (i) in respect of the NBN Co Fibre Network, NBN Co Wireless Network and NBN Co Permanent Satellite Network:
  - (A) 12 Mbps PIR (TC-4) downlink; and
  - (B) 1 Mbps PIR (TC-4) uplink; and
- (ii) in respect of the NBN Co Interim Satellite Network only:
  - (A) 6 Mbps PIR (TC-4) downlink; and
  - (B) 1 Mbps PIR (TC-4) uplink;
- (b) access to, and use of, one available UNI-D on the NTD connected to the NBN Co Network at the Premises (in this clause 1C.2.2, the **Accessed NTD**), for use in conjunction with the AVC described in clause 1C.2.2(a);
- (c) in respect of the NBN Co Fibre Network only, the option to access and use one available UNI-V on the Accessed NTD in respect of the supply of voice telephony services to the Premises; and
- (d) in respect of voice telephony services at the Premises that are supplied:
  - (i) using the NBN Co Fibre Network, an AVC with a 150 kbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services, provided at the [Access Seeker's](#) option, on either:
    - (A) the UNI-D on the Accessed NTD, in which case the 150 kbps CIR (TC-1) symmetrical Data Transfer Rate will be provided as part of the AVC described in clause 1C.2.2(a) and included within the Data Transfer Rate for that AVC; or
    - (B) the UNI-V on the Accessed NTD, in which case the 150 kbps CIR (TC-1) symmetrical Data Transfer Rate will be provided through an AVC mapped to that UNI-V that is separate, and in addition, to the AVC described in clause 1C.2.2(a); [and/or](#)
  - (ii) for one (and one only) UNI-D on an NTD at a Premises connected to the NBN Co Wireless Network, an AVC with a 150 kbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services provided as part of the AVC described in clause 1C.2.2(a) and included within the Data Transfer Rate for that AVC; or

- (iii) using the NBN Co Interim Satellite Network, an AVC with a 60 kbps CIR (TC-1) symmetrical Data Transfer Rate to only support SIP-based voice telephony services provided as part of the AVC described in clause 1C.2.2(a) and included within the Data Transfer Rate for that AVC.

### 1C.2.3 Enhanced Access Offer for NBN Co Fibre Network

The EAO in respect of the NBN Co Fibre Network comprises:

- (a) an AVC with the following Data Transfer Rates:
  - (i) 25 Mbps PIR (TC-4) downlink; and
  - (ii) 5 Mbps PIR (TC-4) uplink;
- (b) access to, and use of, one available UNI-D on the NTD connected to the NBN Co Network at the Premises (in this clause 1C.2.3, the **Accessed NTD**), for use in conjunction with the AVC described in clause 1C.2.3(a);
- (c) the option to access and use one available UNI-V on the Accessed NTD in respect of the supply of voice telephony services to the Premises; and
- (d) an AVC with a 150 kbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services, provided, at the [Customer's Access Seeker's](#) option, on either:
  - (i) the UNI-D on the Accessed NTD, in which case the 150 kbps CIR (TC-1) symmetrical Data Transfer Rate will be provided as part of the AVC described in clause 1C.2.3(a) and included within the Data Transfer Rate for that AVC; or
  - (ii) the UNI-V on the Accessed NTD, in which case the 150 kbps CIR (TC-1) symmetrical Data Transfer Rate will be provided through an AVC mapped to that UNI-V that is separate, and in addition, to the AVC described in clause 1C.2.3(a).

### 1C.2.4 Standard Business Offer for NBN Co Fibre Network

The SBO in respect of the NBN Co Fibre Network comprises:

- (a) an AVC with the following Data Transfer Rates:
  - (i) 25 Mbps PIR (TC-4) downlink; and
  - (ii) 10 Mbps PIR (TC-4) uplink;

- (b) access to, and use of, one available UNI-D on the NTD connected to the NBN Co Network at the Premises (in this clause [1C.2.4](#)1C.2.4, the **Accessed NTD**), for use in conjunction with the AVC described in clause 1C.2.4(a);
- (c) a Symmetric Access Capacity Offer with a Data Transfer Rate of 500 kbps CIR (TC-1) uplink and downlink, included within the Data Transfer Rate of the AVC described in clause 1C.2.4(a) and supplied on the same UNI-D on the Accessed NTD; and
- (d) the option to access and use one available UNI-V on the Accessed NTD in respect of the supply of voice telephony services to the Premises.

### 1C.2.5 Connectivity Virtual Circuit Offers (TC-1 and TC-4)

The Connectivity Virtual Circuit Offers (TC-1 and TC-4) comprise CVCs with the following Data Transfer Rates:

Data Transfer Rate (Mbps)	Traffic Class
5	TC-1 (CIR)
10	TC-1 (CIR)
20	TC-1 (CIR) and TC-4 (CIR)*
50	TC-1 (CIR) and TC-4 (CIR)*
100	TC-1 (CIR) and TC-4 (CIR)
150	TC-1 (CIR) and TC-4 (CIR)
200	TC-1 (CIR) and TC-4 (CIR)
250	TC-1 (CIR) and TC-4 (CIR)
300	TC-1 (CIR) and TC-4 (CIR)
400	TC-1 (CIR) and TC-4 (CIR)
500	TC-1 (CIR) and TC-4 (CIR)
600	TC-4 (CIR)
700	TC-4 (CIR)
800	TC-4 (CIR)
900	TC-4 (CIR)
1,000	TC-4 (CIR)

\* TC-4 (CIR) for these CVC Data Transfer Rates are applicable in respect of the NBN Co Wireless Network and the NBN Co Interim Satellite Network only.

(each a **Connectivity Virtual Circuit Offer (TC-1 and TC-4)**).

### 1C.2.6 Network to Network Interface Offers

The Network to Network Interface Offers comprise NNIs with the following NNI interface capacities:

NNI Bearer Profiles	Interface capacity (Gbps)
1000BaseLX	1

NNI Bearer Profiles	Interface capacity (Gbps)
1000BaseT *	1*
10GBaseLR	10
1000BaseEX	1
10GBaseER	10

\* This NNI Bearer Profile and interface capacity is applicable in respect of the NBN Co Interim Satellite Network only.

(each a **Network to Network Interface Offer**).

### 1C.2.7 Platform Interfacing Offer

The Platform Interfacing Offer comprises the Platform Interfacing Service.

### 1C.2.8 Sandpit Offer

The Sandpit Offer comprises the Sandpit.

### 1C.2.9 Facilities Access Service Offer

The Facilities Access Service Offer comprises the following types of Facilities Access Service:

Type of Facilities Access Service
Cross-Connect
NBN Co ODF Termination Point

## 1C.3 Maximum Regulated Price for period between SAU Commencement Date and 30 June 2017

### 1C.3.1 [Maximum Regulated Prices for Reference Offers until 30 June 2017](#)

Subject to clauses [1C.4](#) and [1A.1](#) 1H.2, the Maximum Regulated Price of each Reference Offer, from the SAU Commencement Date until 30 June 2017, is:

- (a) for the BAO on each NBN Co Network: \$24.00, per SIO, per month;
- (b) for the EAO on the NBN Co Fibre Network: \$27.00, per SIO, per month;
- (c) for the SBO on the NBN Co Fibre Network: \$53.00, per SIO, per month;
- (d) for each Connectivity Virtual Circuit Offer (TC-1): \$20.00 per Mbps, per month;
- (e) for each Connectivity Virtual Circuit Offer (TC-4): \$20.00 per Mbps, per month;
- (f) for each Network to Network Interface Offer:

NNI Bearer Profiles	Monthly Recurring Charge, per NNI*
1000BaseLX	\$200
1000BaseT	\$200
10GBaseLR	\$400
1000BaseEX	\$500
10GBaseER	\$1,000

\* There is also a one-off establishment charge as set out in clause ~~1D.3.2(a)~~~~1D.3.2(a)~~~~1D.3.2(a)~~.

- (g) for the Platform Interfacing Offer: \$0;
- (h) for the Sandpit Offer on each NBN Co Network: \$0; and
- (i) for the Facilities Access Service Offer:

Type of Facilities Access Service	Monthly Recurring Charge, per month*
Cross-Connect	\$0
NBN Co ODF Termination Point	\$0

\* There is also a one-off establishment charge as set out in clause ~~1D.3.2(d)~~~~1D.3.2(d)~~~~1D.3.2(d)~~.

## ~~1C.4 Individual Price Increase Limit~~ Maximum Regulated Prices from 1 July 2017 until the end of the Initial Regulatory Period

### ~~1C.4.1 Individual Price Increase Limit for Reference Offers~~

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

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

- ~~(i) \$0; and~~

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

~~where:~~

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

- ~~(iv) —  $CPI_{t-1}^{March}$  is the March Quarter CPI published in the Financial Year preceding the Financial Year to which the Individual Price Increase Limit relates;~~
- ~~(v) — the Individual Price Increase Limit is rounded to the nearest whole cent; and~~
- ~~(vi) — for clarity, the Individual Price Increase Limit will always be a positive or zero value.~~
- ~~(c) — From 1 July 2017 until the end of the Initial Regulatory Period, NBN Co will determine the Maximum Regulated Price that NBN Co may charge for a Reference Offer in a Financial Year as the greater of:
  - ~~(i) — the sum of its Previous Year's Price, its Individual Price Increase Limit for that Financial Year and any relevant increase under clause 1C.5; and~~
  - ~~(vii) — the sum of the Price in any SFAA on the last day of the previous Financial Year and any relevant increase under clause 1C.5.~~~~

#### **1C.4.1 Maximum Regulated Prices for Reference Offers from 1 July 2017**

Subject to clause 1C.4.51H.2, at any point in time during a Financial Year from 1 July 2017 until the end of the Initial Regulatory Period, the Maximum Regulated Price for a Reference Offer at that point in time is:

- ~~(b)(a) — if a Price Review Arrangement applies to the Reference Offer in that Financial Year, determined in accordance with that Price Review Arrangement; or~~
- (b) — if:
  - (i) — paragraph (a) does not apply;
  - (ii) — the Reference Offer ceases to be Zero-Priced in that Financial Year in accordance with clause 1C.4.6 or ceased to be Zero-Priced in any prior Financial Year in accordance with clause 1C.4.6; and
  - (iii) — within 24 months of the date of the Reference Offer ceased to be Zero-Priced, the ACCC made a Regulatory Determination that specifies a price for that Reference Offer at that point in time,  
the price specified in the Regulatory Determination for that point in time; or
- (c) — if:

- (i) neither paragraph (a) nor paragraph (b) apply; and
- (ii) the Reference Offer ceases to be Zero-Priced in that Financial Year in accordance with clause 1C.4.6,  
the new Price for that Reference Offer introduced by NBN Co; or
- (d) if none of the above paragraphs apply, the greater of:
  - (i) the sum of its Previous Year's Price and its Individual Price Increase Limit for that Financial Year; and
  - (ii) the Price on the last day of the previous Financial Year.

### **1C.4.2 Individual Price Increase Limit for Reference Offers**

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

- (a) \$0; and
- (b)  $Price_{t-1} * [(1 + CPI_{t-1}^{March}) * (1 - 1.5\%) - 1]$ ,

where:

- (c)  $Price_{t-1}$  is the average Price for the Reference Offer over the immediately preceding Financial Year, calculated as the arithmetic average Price at which the Reference Offer was supplied on the last day of each month of that Financial Year (in this clause 1C.4, **Previous Year's Price**). If the ACCC made a Regulatory Determination as referred to in clause 1C.4.1(b) and that Regulatory Determination took effect part way through the immediately preceding Financial Year, the Prices for the Reference Offer on the last day of each month prior to the ACCC's Regulatory Determination taking effect are to be excluded from the determination of  $Price_{t-1}$  (the Previous Year's Price).
- (d)  $CPI_{t-1}^{March}$  is the March Quarter CPI published in the Financial Year preceding the Financial Year to which the Individual Price Increase Limit relates.
- (e) The Individual Price Increase Limit is rounded to the nearest whole cent.
- (f) For clarity, the Individual Price Increase Limit will always be a positive or zero value.

### **1C.4.21C.4.3 CVC credit and pricing intent**

- (a) From the SAU Commencement Date until the earlier of the end of the Initial Regulatory Period or such time as the number of Premises that



are NBN Serviceable in a CSA exceeds 30,000 (excluding Premises served by means of the NBN Co Satellite Network), NBN Co will credit each [Customer Access Seeker](#), in respect of that CSA, with an amount equal to the greater of:

- (i) the charges that would otherwise apply to the supply of a 50 kbps CVC (TC-4) in respect of every BAO, EAO and Asymmetric AVC Offer supplied to that [Customer Access Seeker](#) in that CSA as at the start of the relevant billing period; and
  - (ii) the charges that would otherwise apply to the amount of the CVC (TC-4) capacity supplied to that [Customer Access Seeker](#) in that CSA during that billing period up to a maximum of 150 Mbps of CVC (TC-4) capacity.
- (b) After such time as the number of Premises that are NBN Serviceable in the CSA exceeds 30,000 (excluding Premises served by means of the NBN Co Satellite Network), and until the end of the Initial Regulatory Period, NBN Co will credit each [Customer Access Seeker](#), in respect of each CSA, with an amount equal to the charges that would otherwise apply to the supply of a 50 kbps CVC (TC-4) in respect of every BAO, EAO and Asymmetric AVC Offer supplied to that [Customer Access Seeker](#) in that CSA as at the start of the relevant billing period.
- (c) In respect of the credit amount that applies to all of the CVCs for a CSA which are provided by NBN Co to an [Customer Access Seeker](#) pursuant to clause 1C.4.3(a) or 1C.4.3(b), the credit amount will be capped at, and will not exceed, the total recurring charges that apply in respect of all CVCs for that CSA which are provided by NBN Co to that [Customer Access Seeker](#).
- (d) Once clause 1C.4.3(a) ceases to apply in respect of all CSAs, NBN Co will annually review the ~~Maximum Regulated~~ Price of the Connectivity Virtual Circuit Offer (TC-4) with a view to ~~reducing~~ the Price as aggregate demand for that Reference Offer increases. In its review, NBN Co will consider the level of aggregate demand for CVC (TC-4) capacity and the information in the most recently published NBN Co Corporate Plan.

~~1C.4.3~~**1C.4.4** **Exceptions to ~~Individual Price Increase Limit~~ the Maximum Regulated Price for Reference Offers**

Clauses ~~1C.1.4, 1C.1.5, 1C.3.1, and 1A.1.1~~ and 1C.4.1 do not apply to:

~~(a) the introduction of a charge applicable to a Zero Priced Reference Offer; or~~

~~(b) ——— any notional change in Price of a Reference Offer or the reduction, removal or cessation of the application of a Discount applicable to that~~

Reference Offer. In other words, in determining the Price of a Reference Offer for the purpose of applying the Individual Price Increase Limit, regard must be had to the Price excluding any Discount applicable to that Reference Offer.

#### ~~1C.4.4~~ 1C.4.5 **Non-circumvention**

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

~~(a)~~ any reduction, removal or cessation of a Discount applicable to a Reference Offer may only occur in accordance with the terms for the reduction, removal or cessation of that Discount specified at the time of its initial introduction; ~~and~~

~~(b)~~ at the time of initial introduction of a Discount, NBN Co must specify in the relevant SFAA details of the length of, and any conditions associated with, the relevant Discount.

#### ~~1C.4.5~~ 1C.4.6 **Treatment of Zero-Priced Reference Offers**

(a) If a Reference Offer is Zero-Priced, then that Price will remain Zero-Priced, unless ~~NBN Co reasonably considers that:~~

~~(i)~~ NBN Co proposes that the Reference Offer cease to be Zero-Priced in accordance with clause 1C.4.6(b); and

~~(ii)~~ the ACCC does not make a New Price Disallowance Determination under clause 1C.4.6(c).

~~(i)~~ Customer behaviour in relation to the use of the Reference Offer results in additional costs to NBN Co;

~~(ii)~~ Customer behaviour in relation to the use of the Reference Offer results in degraded service outcomes for other Customers; or

~~(iii)~~ any other circumstance arises which makes it uneconomic for NBN Co to maintain the relevant Price

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

(b) ~~If NBN Co introduces a new Price may,~~ in accordance with clause 1C.4.7(a), then: propose that a Reference Offer cease to be Zero-Priced by

~~(i)~~ NBN Co will provide providing no less than 36 months' notice to Access Seekers and the ACCC of its intention to introduce the new Price; that the Reference Offer cease to be Zero-

- Priced, including the reasons why NBN Co considers the Zero-Priced Reference Offer is meets one or more of the criteria specified in clause 1C.4.6(f).
- ~~(ii) — at the end of the notification period in clause 1C.4.5(b)(i), the new Price will become the Price, unless the ACCC makes an Access Determination or Binding Rule of Conduct (or, in the case of the Facilities Access Service Offer, a decision using the same process as described in clause 1B.2.3 specifying the Price) during the 3 month notification period that relates to the new Price notified under clause 1C.4.5(b)(i), in which case the Price will be the price as determined in the Access Determination or Binding Rule of Conduct (or, in the case of the Facilities Access Service Offer, as specified in the decision under clause 1B.2.3); and~~
- ~~(iii) — the new Price determined in accordance with clause 1C.4.5(b)(ii) will be the Maximum Regulated Price applicable to that Reference Offer for the Financial Year in which it was introduced.~~
- (c) — NBN Co must not introduce a New Other Charge under clause 1D.6 in respect of a Reference Offer if NBN Co's principal purpose in doing so is to circumvent or avoid the operation of the Individual Price Increase Limit for that Reference Offer. The ACCC may make a determination that the Reference Offer is to remain Zero-Priced (**New Price Disallowance Determination**) no later than the expiry of the notice period referred to in clause 1C.4.6(b).
- (d) — The ACCC may consult with NBN Co and other such persons as the ACCC considers appropriate in relation to NBN Co's proposal submitted under clause 1C.4.6(b) and must consider any submissions that are received within the time limit specified by the ACCC.
- (e) — The ACCC may request that NBN Co give further information on NBN Co's proposal under clause 1C.4.6(b), in which case the timeframe for making a New Price Disallowance Determination will be extended by the period of time it takes for NBN Co to provide the requested information.
- (f) — The ACCC may issue a New Price Disallowance Determination if it is not satisfied that the Zero Priced Reference Offer meets one or more of the following criteria:
- (i) — the behaviour of one or more Access Seekers in relation to the use of the Reference Offer results in additional costs to NBN Co;

- (ii) the behaviour of one or more Access Seekers in relation to the use of the Reference Offer results in degraded service outcomes for other Access Seekers; or
- (iii) any other circumstance arises which makes it uneconomic for NBN Co to maintain the Reference Offer as Zero-Priced.
- (g) The ACCC must publish on its website any New Price Disallowance Determination and its reasons for issuing that New Price Disallowance Determination.
- (h) The ACCC must specify in a New Price Disallowance Determination the period for which the New Price Disallowance Determination will apply, which must not exceed 2 years from the expiry of the notice period referred to in clause 1C.4.6(b).
- (i) If the ACCC does not make a New Price Disallowance Determination within the required time under clause 1C.4.6(c), the Reference Offer specified in NBN Co's proposal may cease to be Zero-Priced.
- (j) Nothing in this clause 1C.4.6 prevents NBN Co from issuing a subsequent notice under clause 1C.4.6(b) to propose that a Reference Offer cease to be Zero-Priced, at any time following the expiry of the New Price Disallowance Determination and where NBN Co issues a subsequent notice, the provisions of this clause 1C.4.6 will apply in respect of that subsequent notice.

#### ~~1C.4.6~~**1C.4.7 Treatment of Bundles**

If:

- (a) a Reference Offer comprises a bundle of one or more Product Components, Product Features, Ancillary Services or types of Facilities Access Service (in this clause 1C.4.7, together a **Bundle**); and
- (b) NBN Co offers that Bundle for a single Price,

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

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## ~~1C.5~~ Tax Change Event

### ~~1C.5.1~~ Increase to Maximum Regulated Price as a result of a Tax Change Event

- ~~(a) If a Tax Change Event occurs, the Maximum Regulated Price of each Reference Offer will increase by an amount estimated by NBN Co to be a reasonably apportioned amount equivalent to that imposed or increased as a result of the Tax Change Event.~~

- ~~(b) — The increase to the Maximum Regulated Price described in clause 1C.5.3(a):~~
- ~~(i) — will apply from the date on which the Tax Change Event takes effect until the end of the Initial Regulatory Period;~~
  - ~~(ii) — will be for an amount that NBN Co reasonably considers reflects the incremental tax effect in connection with the Tax Change Event;~~
  - ~~(iii) — will not include any penalty, interest or fines imposed on NBN Co in relation to the Tax Change Event; and~~
  - ~~(iv) — will apply in addition to the Individual Price Increase Limit, and each other increase under this clause 1C.5.1(a) in respect of previous Tax Change Events, for the purposes of calculating the Maximum Regulated Price of a Reference Offer~~

#### ~~1C.5.2 — Notification of relevant Price increases after Tax Change Event~~

- ~~(a) — NBN Co may increase the Price of a Reference Offer above the Maximum Regulated Price that applied to that Reference Offer without applying any amount under clause 1C.5.1 (in this clause 1C.5.2, **Old MRP**), up to a Price no higher than the Maximum Regulated Price of that Reference Offer after applying all amounts under clause 1C.5.1 (in this clause 1C.5.2, **New MRP**), by giving all Customers and the ACCC:~~
- ~~(i) — no less than 40 Business Days prior written notice; or~~
  - ~~(ii) — if reasonably necessary for NBN Co to comply with the requirements or consequences of its Non-Discrimination Obligations, such notice that NBN Co considers reasonable.~~
- ~~(b) — The notice under clause 1C.5.5(a) must set out:~~
- ~~(i) — the Old MRP;~~
  - ~~(ii) — the New MRP;~~
  - ~~(iii) — the method that NBN Co used to calculate the New MRP; and~~
  - ~~(iv) — the Price,~~
- ~~of each Reference Offer in respect of which clause 1C.5.5(a) applies.~~
- ~~(c) — NBN Co may give a notice under clause 1C.5.5(a) prior to the date on which a Tax Change Event occurs, provided that the relevant Price increase will not occur until the Tax Change Event takes effect.~~

(d) ~~NBN Co may give one or more notices under this clause 1C.5.2 in the same or in different years in respect of the same Tax Change Event, including to recover amounts which were not recovered in previous years.~~

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## Schedule 1D Non-Reference Offers and Other Charges

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### 1D.1 General

#### 1D.1.1 Scope

This Schedule 1D applies for the Initial Regulatory Period.

#### 1D.1.2 Status of Non-Reference Offers

- (a) NBN Co commits to supply:
- (i) each of the Non-Reference Offers set out in clause 1D.2; and
  - (ii) such other Non-Reference Offers that NBN Co introduces in accordance with Schedule 1J (Product Development and Withdrawal),
- from the date that NBN Co ~~introduces~~first supplies the Non-Reference Offer ~~by including it in any SFAA~~, and to withdrawing it only in accordance with Schedule 1J (Product Development and Withdrawal).
- (b) Clause 1D.1.2(a) does not apply to the withdrawal of a Non-Reference Offer that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.

#### 1D.1.3 Other Charges

- (a) ~~NBN Co may also apply~~ Other Charges may only be applied to the supply of Non-Reference Offers, ~~subject to in accordance with~~ this Schedule 1D.
- (b) NBN Co may withdraw any Other Charge that applies to a Non-Reference Offer.

#### 1D.1.4 Maximum Regulated Prices for Non-Reference Offers and Other Charges when introduced

- (a) ~~NBN Co will ensure that, in the Financial Year in which~~The Price for the supply of a Non-Reference Offer set out in clause 1D.2 is introduced in accordance with clause 1D.1.2(a)(i), or an Other Charge at any point in time set out in clause 1D.3.2 is introduced, the Price for the Non-Reference Offer or Other Charge specified in any SFAA is not ~~is~~ must not be higher than the Maximum Regulated Price applicable to that Non-Reference Offer ~~or Other Charge at that point in time, as determined in accordance with~~ subject to clauses ~~1D.3, 1D.4~~1D.4.2 and 1D.5.

~~(a)(b)~~ The Price of an Other Charge at any point in time must not be higher than the Maximum Regulated Price applicable to that Other Charge at that point in time, as determined in accordance with clauses 1D.3 and 1D.4.

#### ~~1D.1.5~~ **Price increases to be subject to Individual Price Increase Limit**

~~NBN Co will ensure that, during the Initial Regulatory Period, the annual increase in the Price of a Non-Reference Offer or Other Charge specified in any SFAA will not exceed the Individual Price Increase Limit applicable to that Non-Reference Offer or Other Charge, subject to clauses 1D.4, 1D.5 and 1A.1.~~

#### ~~1D.1.6~~ **Status of other published Prices**

~~NBN Co commits that:~~

- ~~(a) — any Non-Reference Offer or Other Charge that is not described in this Schedule 1D but is contained in any SFAA as at the SAU Commencement Date will be a Non-Reference Offer or Other Charge (as the case may be) for the purposes of this Schedule 1D from the SAU Commencement Date; and~~
- ~~(b) — the Price, or Prices, in the SFAA for that Non-Reference Offer or Other Charge as at the SAU Commencement Date will be its Maximum Regulated Price for the First Financial Year, subject to clauses 1D.4 and 1D.5.~~

#### ~~1D.1.7~~ ~~1D.1.5~~ **Maximum Regulated Price operates as a ceiling**

~~Nothing in this Schedule 1D prevents NBN Co from:~~

- ~~(a) specifying supplying a Non-Reference Offer or applying an Other Charge at a Price at any point in time in any SFAA that is lower than or equal to the Maximum Regulated Price for the relevant Non-Reference Offer or Other Charge at that point in time.; or~~
- ~~(b) — increasing the Price specified in any SFAA up to the Maximum Regulated Price for the relevant Non-Reference Offer or Other Charge.~~

## **1D.2 Non-Reference Offers**

### **1D.2.1 Overview of Non-Reference Offers**

The Non-Reference Offers apply only in respect of the NBN Co Fibre Network, unless otherwise noted, and comprise the following:

- (a) the Asymmetric AVC Offers;
- (b) the Additional Asymmetric AVC Offers;



- (c) the Symmetric Access Capacity Offers;
- (d) the Second UNI-V and AVC Offer;
- (e) the Connectivity Virtual Circuit Offers (TC-2 and TC-3);
- (f) the Multicast AVC Offer;
- (g) the Multicast Domain Offer; and
- (h) the NBN Co Co-location Offer.

### 1D.2.2 Asymmetric AVC Offers

The Asymmetric AVC Offers comprise the following:

- (a) an AVC with one the following Data Transfer Rates:
  - (i) 25 Mbps PIR (TC-4) downlink and 10 Mbps PIR (TC-4) uplink;
  - (ii) 50 Mbps PIR (TC-4) downlink and 20 Mbps PIR (TC-4) uplink;
  - (iii) 100 Mbps PIR (TC-4) downlink and 40 Mbps PIR (TC-4) uplink;
  - (iv) 250 Mbps PIR (TC-4) downlink and 100 Mbps PIR (TC-4) uplink;
  - (v) 500 Mbps PIR (TC-4) downlink and 200 Mbps PIR (TC-4) uplink;  
and
  - (vi) 1000 Mbps PIR (TC-4) downlink and 400 Mbps PIR (TC-4) uplink;
- (b) access to, and use of, one available UNI-D on the NTD connected to the NBN Co Fibre Network at the Premises (in this clause 1D.2.2, the **Accessed NTD**), for use in conjunction with the AVC described in clause 1D.2.2(a);
- (c) the option to access and use one available UNI-V on the Accessed NTD in respect of the supply of voice telephony services to the Premises;  
and
- (d) an AVC with a 150 kbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services on:
  - (i) if the option in clause 1D.2.2(c) is exercised, the UNI-V on the Accessed NTD, in which case the 150 kbps CIR (TC-1) symmetrical Data Transfer Rate will be provided through an AVC mapped to that UNI-V and is separate, and in addition, to the AVC described in clause 1D.2.2(a); or

- (ii) if the option in clause 1D.2.2(c) is not exercised, the UNI-D on the Accessed NTD, in which case the 150 kbps CIR (TC-1) symmetrical Data Transfer Rate will be provided as part of the AVC described in clause 1D.2.2(a) and included within the Data Transfer Rate for that AVC,

(each an **Asymmetric AVC Offer**).

### 1D.2.3 Additional Asymmetric AVC Offers

The Additional Asymmetric AVC Offers comprise an AVC with one of the following Data Transfer Rates:

- (a) 12 Mbps PIR (TC-4) downlink and 1 Mbps PIR (TC-4) uplink;
- (b) 25 Mbps PIR (TC-4) downlink and 5 Mbps PIR (TC-4) uplink;
- (c) 25 Mbps PIR (TC-4) downlink and 10 Mbps PIR (TC-4) uplink;
- (d) 50 Mbps PIR (TC-4) downlink and 20 Mbps PIR (TC-4) uplink;
- (e) 100 Mbps PIR (TC-4) downlink and 40 Mbps PIR (TC-4) uplink;
- (f) 250 Mbps PIR (TC-4) downlink and 100 Mbps PIR (TC-4) uplink;
- (g) 500 Mbps PIR (TC-4) downlink and 200 Mbps PIR (TC-4) uplink; and
- (h) 1000 Mbps PIR (TC-4) downlink and 400 Mbps PIR (TC-4) uplink,

provided to an existing UNI-D on the NTD connected to the NBN Co Fibre Network at the Premises and used by the [Customer Access Seeker](#) in conjunction with another AVC mapped to the same UNI-D (each an **Additional Asymmetric AVC Offer**).

### 1D.2.4 Symmetric Access Capacity Offers

The Symmetric Access Capacity Offers comprise the following symmetrical Data Transfer Rates on an AVC that are included within the Data Transfer Rates (TC-4) acquired by the [Customer Access Seeker](#) in respect of the same AVC:

Symmetrical Data Transfer Rate (Mbps)	Traffic Class (CIR)
0.15*	TC-1
0.3	TC-1
0.5	TC-1
1	TC-1
2	TC-1
5	TC-1 and TC-2
10	TC-2 and TC-3
20	TC-2 and TC-3
30	TC-2

Symmetrical Data Transfer Rate (Mbps)	Traffic Class (CIR)
40	TC-2 and TC-3
100	TC-3

\* Available on the NBN Fibre Access Network and the NBN Co Wireless Network.

provided that the aggregate symmetrical Data Transfer Rate acquired by the [Customer Access Seeker](#) does not exceed the TC-4 Data Transfer Rate of the AVC or any other technical requirements of the NBN Co Fibre Network (each a **Symmetric Access Capacity Offer**).

### 1D.2.5 Second UNI-V and AVC Offer

The Second UNI-V and AVC Offer comprises the following:

- (a) access to, and use of, one available UNI-V on the NTD connected to the NBN Co Fibre Network at the Premises (in this clause 1D.2.5, the **Accessed NTD**), for use in conjunction with the AVC described in clause 1D.2.5(b); and
- (b) an AVC with a 150 kbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services, provided on the UNI-V on the Accessed NTD,

subject to the Access Seeker acquiring access to, and use of, one other available UNI-V on the Accessed NTD.

### 1D.2.6 Connectivity Virtual Circuit Offers (TC-2 and TC-3)

The Connectivity Virtual Circuit Offers (TC-2 and TC-3) comprise CVCs offered by NBN Co with the following Data Transfer Rates:

Data Transfer Rate (Mbps)	Traffic Class
50	TC-2 (CIR) and TC-3 (CIR)
100	TC-2 (CIR) and TC-3 (CIR)
150	TC-2 (CIR) and TC-3 (CIR)
200	TC-2 (CIR) and TC-3 (CIR)
250	TC-2 (CIR) and TC-3 (CIR)
300	TC-2 (CIR) and TC-3 (CIR)
400	TC-2 (CIR) and TC-3 (CIR)
500	TC-2 (CIR) and TC-3 (CIR)
600	TC-2 (CIR) and TC-3 (CIR)
700	TC-2 (CIR) and TC-3 (CIR)
800	TC-2 (CIR) and TC-3 (CIR)
900	TC-2 (CIR) and TC-3 (CIR)
1,000	TC-2 (CIR) and TC-3 (CIR)

(each a **Connectivity Virtual Circuit Offer (TC-2 and TC-3)**).

### 1D.2.7 Multicast AVC Offer

The Multicast Access Virtual Circuit Offer comprises the Multicast AVC with one of the following Data Transfer Rates:

Downstream Mbps (CIR)	Upstream Mbps (CIR)
5	0
20	0
30	0
40	0
50	0

(each a **Multicast Access Virtual Circuit Offer**).

### 1D.2.8 Multicast Domain Offer

The Multicast Domain Offer comprises the Multicast Domain and configured Media Streams within that Multicast Domain with one of the following Data Transfer Rates:

Downstream Mbps (CIR)
100
200
300
400
500
600
700
800
900
1000

(each a **Multicast Domain Offer**).

### 1D.2.9 NBN Co Co-location Offer

The NBN Co Co-location Offer comprises NBN Co Co-location.

## 1D.3 Maximum Regulated Prices on introduction

### 1D.3.1 Non-Reference Offers

Subject to clauses [1D.4](#) and [1H.21A.1](#), the Maximum Regulated Price of each Non-Reference Offer set out in clause 1D.2, in the Financial Year in which the Non-Reference Offer is introduced in accordance with clause 1D.1.2(a)(i), will be as follows:

(a) for the Asymmetric AVC Offers:

Downlink (Mbps)	Uplink (Mbps)	Monthly Recurring Charge, per SIO
25	10	\$30.00
50	20	\$34.00
100	40	\$38.00
250	100	\$70.00
500	200	\$100.00
1000	400	\$150.00

(b) for the Additional Asymmetric AVC Offers:

Downlink (Mbps)	Uplink (Mbps)	Monthly Recurring Charge, per SIO
12	1	\$16.50
25	5	\$19.50
25	10	\$22.50
50	20	\$26.50
100	40	\$30.50
250	100	\$62.50
500	200	\$92.50
1000	400	\$142.50

(c) for the Symmetric Access Capacity Offers:

TC (CIR)	Symmetrical Data Transfer Rate (Mbps)	Monthly Recurring Charge, per SIO
TC-1	0.15	\$10.00
TC-1	0.3	\$20.00
TC-1	0.5	\$33.00
TC-1	1	\$66.00
TC-1	2	\$132.00
TC-1	5	\$330.00
TC-2	5	\$32.00
TC-2	10	\$64.00
TC-2	20	\$128.00
TC-2	30	\$192.00
TC-2	40	\$256.00
TC-3	10	\$48.00
TC-3	20	\$96.00
TC-3	40	\$192.00
TC-3	100	\$480.00

(d) for the Second UNI-V and AVC Offer, \$17.50 per SIO, per month;

(e) for the Connectivity Virtual Circuit Offers (TC-2 and TC-3):

Data Transfer Rate (Mbps)	Monthly Recurring Charge Traffic Class 2 (CIR)	Monthly Recurring Charge Traffic Class 3 (CIR)
50	\$1,000	\$1,000
100	\$2,000	\$2,000
150	\$3,000	\$3,000
200	\$4,000	\$4,000
250	\$5,000	\$5,000
300	\$6,000	\$6,000
400	\$8,000	\$8,000
500	\$10,000	\$10,000
600	\$12,000	\$12,000
700	\$14,000	\$14,000
800	\$16,000	\$16,000
900	\$18,000	\$18,000
1,000	\$20,000	\$20,000

(f) for the Multicast AVC Offer:

Mbps, per SIO	Monthly Recurring Charge, per SIO
5	\$2.00
20	\$5.00
30	\$10.00
40	\$15.00
50	\$20.00

(g) for the Multicast Domain Offer:

(i) for the Multicast Domain: \$2.50 per Mbps, per month; and

(ii) for the Media Streams associated with each Multicast Domain:

Media Streams per Multicast Domain	Media Streams per Multicast Domain Monthly Recurring Charge
0 - 200	\$0.00
> 200	\$50.00 per Media Stream in excess of 200 Media Streams

(h) for the NBN Co Co-location Offer:

Type of NBN Co Co-location Offer	Monthly Recurring Charge, per month*
Lockable full height equipment rack	\$2,000

Lockable half height equipment rack	\$1,200
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\* There is also a one-off establishment charge as set out in clause

[1D.3.2\(d\)](#)~~1D.3.2(d)~~~~1D.3.2(d)~~.

### 1D.3.2 Other Charges

Subject to clauses [1D.4](#) and [1A.11H.2](#), the Other Charges, and the Maximum Regulated Price of each Other Charge, [in the Financial Year in which as at the SAU Commencement Date occurs](#) will be as follows:

- (a) for installations and activations on the NBN Co Fibre Network, NBN Co Wireless Network or NBN Co Satellite Network:

Activity	Chargeable unit	Charge
Initial Standard Installation	Per installation	\$0
Initial Non Standard Installation	Time and materials	Hourly Labour Rate plus cost of materials
Subsequent Installation	Time and materials	\$270 plus Hourly Labour Rate plus cost of materials
Access Component Reactivation	Per reactivation	\$0
MAVC Reactivation	Per reactivation	\$0
CVC Setup / Activation	Per activation	\$0
Multicast Domain Activation	Per activation	\$0
NNI 1000BaseLX Setup	Per activation	\$1,000
NNI 1000BaseT Setup	Per activation	\$,1000
NNI 10GBaseLR Setup	Per activation	\$5,000
NNI 1000BaseEX Setup	Per activation	\$7,000
NNI 10GBaseER Setup	Per activation	\$35,000
Service Qualification Enquiry	Per enquiry	\$0

- (b) for service modifications on the NBN Co Fibre Network, NBN Co Wireless Network or NBN Co Satellite Network:

Activity	Chargeable unit	Charge
Access Component Modification	Per modification	\$0
Connectivity Component Modification	Per event	\$0
Multicast Domain Modification	Per event	\$0
NNI Modification	Per event	\$0
Rearrangement / Modification	Time and materials	Hourly Labour Rate plus cost of materials
Equipment Removal	Time and materials	Hourly Labour Rate plus cost of materials
Equipment Repair	Time and materials	Hourly Labour Rate plus cost of materials

- (c) for service management on the NBN Co Fibre Network, NBN Co Wireless Network or NBN Co Satellite Network:

Activity	Chargeable unit	Charge
On Site Maintenance Call Out	Per event	\$0
No Fault Found (No Truck Roll Required)	Per event	\$50
No Fault Found (Truck Roll Required)	Per event	Hourly Labour Rate charged for a minimum of 2 hours plus each hour thereafter
Late Cancellation (Site Visit Required)	Per event	\$0
Missed Appointment	Per event	\$0
Restoration	Per Ordered Product	\$50

- (d) for the Facilities Access Service:

Activity	Charge
Set-up NBN Co Co-location (Lockable Full Equipment Rack)	\$1,500 per lockable full height equipment rack
Set-up NBN Co Co-location (Lockable Half Equipment Rack)	\$900 per lockable half height equipment rack
Set-up Cross Connect	\$0 per interface
Set-up NBN Co ODF Termination Point	\$0 per interface
Supply of First Access Card in respect of an Aggregation Node Site	\$0
Additional / Replacement Access Card (excluding the First Access Card)	\$100 per access card
Missed Appointment (During Business Hours)	\$300 per missed appointment
Missed Appointment (Outside Business Hours)	\$450 per missed appointment

- (e) for Enhanced-12 Fault Service Levels, \$15 per AVC, per month.

## ~~1D.4 Individual Price Increase Limit~~ Price limit for Maximum Regulated Prices over time

### ~~1D.4.1 Individual Price Increase Limit for Non-Reference Offers and Other Charges~~ General

- (a) ~~Subject to clause 1D.4.2, during the Initial Regulatory Period, NBN Co will ensure that the Price for each Non-Reference Offer or Other Charge specified in any SFAA is not higher than the Maximum Regulated Price for that Non-Reference Offer or Other Charge, as calculated each Financial Year by reference to the Individual Price Increase Limit for that Non-Reference Offer or Other Charge and any relevant increase under clause 1D.5\_1D.4.2.~~



(a) During the Initial Regulatory Period, NBN Co will ensure that the Price for each Non-Reference Offer or Other Charge specified in any SFAA is not in a Financial Year may not be higher than its Maximum Regulated Price in accordance with clause 1A.1.3.

(b) The Individual Price Increase Limit of a Non-Reference Offer or Other Charge in year  $t$  is the greater of:

(i) \$0; and

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

where:

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

(iv)  $CPI_{t-1}^{March}$  is the March Quarter CPI published in the Financial Year preceding the Financial Year to which the Individual Price Increase Limit relates;

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

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

(c) NBN Co will determine the Maximum Regulated Price that NBN Co may charge for a Non-Reference Offer or Other Charge in a Financial Year as the greater of:

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

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

#### **1D.4.1 Maximum Regulated Prices for Non-Reference Offers and Other Charges**

Subject to clause ~~1D.4.3~~1H.2, at any point in time during a Financial Year, the Maximum Regulated Price of a Non-Reference Offer or Other Charge at that point in time is:

(a) if a Price Review Arrangement applies to the Non-Reference Offer or Other Charge in that Financial Year, determined in accordance with that Price Review Arrangement; or

(b) if:

(i) paragraph (a) does not apply;

(ii) the Non-Reference Offer or Other Charge ceases to be Zero-Priced in that Financial Year in accordance with clause 1D.4.4 or ceased to be Zero-Priced in any prior Financial Year in accordance with clause 1D.4.4; and

(iii) within 24 months of the date the Non-Reference Offer or Other Charge ceased to be Zero-Priced, the ACCC made a Regulatory Determination that specifies a price for that Non-Reference Offer or Other Charge at that point in time,

the price specified in the Regulatory Determination for that point in time; or:

(c) if:

(i) neither paragraph (a) nor paragraph (b) apply; and

(ii) the Non-Reference Offer or Other Charge ceases to be Zero-Priced in that Financial-Year in accordance with clause 1D.4.4,

~~(e)~~ the new Price for that Non-Reference Offer or Other Charge introduced by NBN Co; or

~~(e)~~(d) if:

(i) none of paragraphs (a), (b) or (c) apply;

(ii) the Non-Reference Offer is not set out in 1D.2 or the Other Charge is not specified in clause 1D.3.2 but has been introduced in that Financial Year or any prior Financial Year; and

(iii) within 24 months of the Non-Reference Offer or Other Charge being introduced, the ACCC has made a Regulatory Determination that:

(A) specifies a price for that Non-Reference Offer or Other Charge at that point in time; and

(B) for the purposes of which, the ACCC has taken into account the characteristics of other Reference Offers, Non-Reference Offers and Other Charges (in this clause 1D.4.1(d), **Other Offers**), the costs associated with Other Offers, the Revenue associated with Other Offers and demand for Other Offers, except where the Regulatory Determination is a Binding Rule of Conduct and the ACCC considers that, because of the urgent need to make the Binding Rule of Conduct, it is not practicable to do so,

the price specified in that Regulatory Determination; or

(e) if:

(i) none of paragraphs (a), (b), (c) or (d) apply; and

(ii) the Non-Reference Offer is not set out in 1D.2 or the Other Charge is not specified in clause 1D.3.2 and has been introduced in that Financial Year,

the initial Price for that Non-Reference Offer or Other Charge introduced by NBN Co; or

(f) if none of the above paragraphs apply, the greater of:

(i) the sum of its Previous Year's Price and its Individual Price Increase Limit for that Financial Year; and

(ii) the Price on the last day of the previous Financial Year.

#### **1D.4.2 Individual Price Increase Limit for Non-Reference Offers and Other Charges**

The Individual Price Increase Limit of a Non-Reference Offer or Other Charge in year  $t$  is the greater of:

(a) \$0; and

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

where:

(f)(c)  $Price_{t-1}$  is the average Price for the Non-Reference Offer or Other Charge over the immediately preceding Financial Year, calculated as the arithmetic average Price at which the Non-Reference Offer was supplied on the last day of each month of that Financial Year or the

arithmetic average of the Price of the Other Charge imposed on the last day of each month of that Financial Year (whichever is relevant) (in this clause 1D.4, **Previous Year's Price**), disregarding any months occurring prior to the SAU Commencement Date and the introduction of the Non-Reference Offer or Other Charge. If the ACCC made a Regulatory Determination as referred to in clause 1D.4.1(b)(iii) or clause 1D.4.1(d)(iii) and that Regulatory Determination took effect part way through the immediately preceding Financial Year, the Prices for the Non-Reference Offer or of the Other Charge on the last day of each month prior to the ACCC's Regulatory Determination taking effect are to be excluded from the determination of  $Price_{t-1}$  (the Previous Year's Price).

(d)  $CPI_{t-1}^{March}$  is the March Quarter CPI published in the Financial Year preceding the Financial Year to which the Individual Price Increase Limit relates.

(e) The Individual Price Increase Limit is rounded to the nearest whole cent.

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

#### ~~1D.4.2~~1D.4.3 **Exceptions to Individual Price Increase Limit Maximum Regulated Price for Non-Reference Offers and Other Charges**

Clauses ~~1D.1.4, 1D.1.5, 1D.1.6(b) and 1D.3.1, 1D.3.2 and 1D.4.1~~ do not apply to:

~~(a) the initial Price, or Prices, of a New Offer or New Other Charge in the Financial Year in which it was introduced;~~

~~(b) the introduction of a charge applicable to a Zero Priced Non-Reference Offer or Zero Priced Other Charge;~~

~~(c)~~(a) any notional change in Price of a Non-Reference Offer or Other Charge or the reduction, removal or cessation of the application of a Discount applicable to that Non-Reference Offer or Other Charge. In other words, in determining the Price of a Non-Reference Offer or Other Charge for the purpose of applying the Individual Price Increase Limit, regard must be had to the Price excluding any Discount applicable to that Non-Reference Offer or Other Charge; or

~~(d)~~(b) any Other Charge that is provided on a "hourly labour rate" or "hourly labour rate plus cost of materials basis", to which the following will apply:

(i) hourly labour rates may be indexed to the ABS Labour Price Index for Private Sector Construction and may be periodically

reset with reference to the relevant rates charged to NBN Co by its contractors; and

- (ii) materials will be charged at cost.

~~1D.4.3~~**1D.4.4 Treatment of Zero-Priced Non-Reference Offers and Other Charges associated with the supply of Non-Reference Offers**

- (a) If ~~ana~~ Non-Reference Offer or Other Charge is Zero-Priced, then that Non-Reference Offer or Other Charge will remain Zero-Priced, unless ~~NBN Co reasonably considers that:~~

- (i) NBN Co proposes that the Non-Reference Offer or Other Charge cease to be Zero-Priced in accordance with clause 1D.4.4(b); and

- (ii) the ACCC does not make a New Price Disallowance Determination under clause 1D.4.4(c).

- ~~(i) Customer behaviour in relation to the activity, service, Reference Offer or Non-Reference Offer associated with the Other Charge results in additional costs to NBN Co;~~

- ~~(ii) Customer behaviour in relation to the activity, service, Reference Offer or Non-Reference Offer associated with the Other Charge results in degraded service outcomes for other Customers; or~~

- ~~(iii) any other circumstance arises which makes it uneconomic for NBN Co to maintain the relevant Price of the Other Charge.~~

~~NBN Co is not restricted from introducing a non-Price term or condition under clause 1D.6 in respect of an Other Charge to address the matters referred to in clauses 1D.4.3(a)(i) to 1D.4.3(a)(iii).~~

- (b) NBN Co ~~introduces~~ may propose that a new Price for an Non-Reference Offer or Other Charge cease to be Zero-Priced by

- ~~(i) NBN Co will provide~~ providing no less than ~~36~~ 36 months' notice to Access Seekers and the ACCC of its intention ~~to introduce the new Price of that Other Charge;~~ that the Non-Reference Offer or Other Charge cease to be Zero-Priced, including the reasons why NBN Co considers that the Zero-Priced Non-Reference Offer or Other Charge meets one or more of the criteria specified in clause 1D.4.4(f)

- ~~(ii) at the end of the notification period in clause 1D.4.3(b)(i), the new Price of that Other Charge will become the Price of that Other Charge, unless the ACCC makes an Access~~

~~Determination or Binding Rule of Conduct (or, in the case of the Facilities Access Service, a decision using the same process as described in clause 1B.2.3 specifying the Price) during the 3 month notification period that relates to the new Price of that Other Charge notified under clause 1D.4.3(b)(i), in which case the Price of that Other Charge will be the price as determined in the Access Determination or Binding Rule of Conduct (or, in the case of the Facilities Access Service, as specified in the decision under clause 1B.2.3); and~~

~~(iii) — the new Price of that Other Charge determined in accordance with clause 1D.4.3(b)(ii) will be the Maximum Regulated Price applicable to that Other Charge for the Financial Year in which it was introduced.~~

~~(c) If NBN Co introduces a new Price for an Other Charge that is not associated with the supply of a Reference Offer in accordance with clause 1D.4.3(a), then NBN Co will determine the Price of that Other Charge pursuant to clause 1D.6. The ACCC may make a determination that the Non-Reference Offer or Other Charge is to remain Zero-Priced (**New Price Disallowance Determination**) no later than the expiry of the notice period referred to in clause 1D.4.4(b).~~

~~(d) The ACCC may consult with NBN Co and other such persons as the ACCC considers appropriate in relation to NBN Co's proposal under clause 1D.4.4(b) and must consider any submissions that are received within the time limit specified by the ACCC.~~

~~(e) The ACCC may request that NBN Co give further information on NBN Co's proposal under clause 1D.4.4(b), in which case the timeframe for making a New Price Disallowance Determination will be extended by the period of time it takes for NBN Co to provide the requested information.~~

~~(f) The ACCC may issue a New Price Disallowance Determination if it is not satisfied that the Zero-Priced Non-Reference Offer or Other Charge meets one or more of the following criteria:~~

~~(i) the behaviour of one or more Access Seekers in relation to the use of the Non-Reference Offer or the activity associated with the Other Charge results in additional costs to NBN Co;~~

~~(ii) the behaviour of one or more Access Seekers in relation to the use of the Non-Reference Offer or the activity associated with the Other Charge results in degraded service outcomes for other Access Seekers; or~~

- ~~(iii)~~ any other circumstance arises which makes it uneconomic for NBN Co to maintain the Non-Reference Offer or Other Charge as Zero-Priced.
- ~~(g)~~ The ACCC must publish on its website any New Price Disallowance Determination and its reasons for issuing that New Price Disallowance Determination.
- ~~(h)~~ The ACCC must specify in a New Price Disallowance Determination the period for which the New Price Disallowance Determination will apply, which must not exceed 2 years from the expiry of the notice period referred to in clause 1D.4.4(b).
- ~~(i)~~ If the ACCC does not make a New Price Disallowance Determination within the required time under clause 1D.4.4(c), the Non-Reference Offer or Other Charge specified in NBN Co's proposal may cease to be Zero-Priced.
- ~~(j)~~ Nothing in this clause 1D.4.4 prevents NBN Co from issuing a subsequent notice under clause 1D.4.4(b) to propose that a Non-Reference Offer or Other Charge cease to be Zero-Priced at any time following the expiry of the New Price Disallowance Determination and where NBN Co issues a subsequent notice, the provisions of this clause 1D.4.4 will apply in respect of that subsequent notice.

~~1D.4.4~~**1D.4.5 Non-circumvention**

- ~~(a)~~ — For the purpose of ensuring that the Individual Price Increase Limit is not subject to circumvention through the arbitrary reduction, removal or cessation of a Discount that may apply to the Price of a Non-Reference Offer or Other Charge:

  - ~~(i)~~ — any reduction, removal or cessation of a Discount applicable to a Non-Reference Offer or Other Charge may only occur in accordance with the terms for the reduction, removal or cessation of that Discount specified at the time of initial introduction; ~~and~~
  - ~~(ii)~~ — at the time of initial introduction of a Discount, NBN Co must specify in the relevant SFAA details of the length of, and any conditions associated with, the relevant Discount.
- ~~(b)~~ — NBN Co must not introduce a New Other Charge under clause 1D.6 in respect of a Non-Reference Offer if NBN Co's principal purpose in doing so is to circumvent or avoid the operation of the Individual Price Increase Limit for that Non-Reference Offer.

#### ~~1D.4.5~~ **1D.4.6 Treatment of Bundles**

If:

- (a) a Non-Reference Offer comprises a bundle of one or more Products, Product Components, Product Features, Ancillary Services or types of Facilities Access Service (in this clause 1D.4.6, together a **Bundle**); and
- (b) NBN Co offers that Bundle for a single Price,

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

### ~~1D.5~~ **Tax Change Event**

#### ~~1D.5.1~~ **Increase to Maximum Regulated Price as a result of a Tax Change Event**

- ~~(a) If a Tax Change Event occurs, the Maximum Regulated Price of each Non-Reference Offer or Other Charge will increase by an amount estimated by NBN Co to be a reasonably apportioned amount equivalent to that imposed or increased as a result of the Tax Change Event.~~
- ~~(b) The increase to the Maximum Regulated Price described in clause 1D.5.3(a):~~
  - ~~(i) will apply from the date on which the Tax Change Event takes effect until the end of the Initial Regulatory Period;~~
  - ~~(ii) will be for an amount that NBN Co reasonably considers reflects the incremental tax effect in connection with the Tax Change Event;~~
  - ~~(iii) will not include any penalty, interest or fines imposed on NBN Co in relation to the Tax Change Event; and~~
  - ~~(iv) will apply in addition to the Individual Price Increase Limit, and each other increase under this clause 1D.5.1(a) in respect of previous Tax Change Events, for the purposes of calculating the Maximum Regulated Price of a Non-Reference Offer or Other Charge.~~

#### ~~1D.5.2~~ **Notification of relevant Price increases after Tax Change Event**

- ~~(a) NBN Co may increase the Price of a Non-Reference Offer or Other Charge above the Maximum Regulated Price that applied to that Non-Reference Offer or Other Charge without applying any amount under clause 1D.5.1 (in this clause 1D.5.2, **Old MRP**), up to a Price no higher than the Maximum Regulated Price of that Non-Reference Offer or~~



~~Other Charge after applying all amounts under clause 1D.5.1 (in this clause 1D.5.2, **New MRP**), by giving all Customers and the ACCC:~~

- ~~(i) — no less than 40 Business Days prior written notice; or~~
- ~~(ii) — if reasonably necessary for NBN Co to comply with the requirements or consequences of its Non-Discrimination Obligations, such notice that NBN Co considers reasonable.~~
- ~~(b) — The notice under clause 1D.5.2(a) must set out:
  - ~~(i) — the Old MRP;~~
  - ~~(ii) — the New MRP;~~
  - ~~(iii) — the method that NBN Co used to calculate the New MRP; and~~
  - ~~(iv) — the Price,~~of each Non-Reference Offer or Other Charge in respect of which clause 1D.5.2(a) applies.~~
- ~~(c) — NBN Co may give a notice under clause 1D.5.2(a) prior to the date on which a Tax Change Event occurs, provided that the relevant Price increase will not occur until the Tax Change Event takes effect.~~
- ~~(d) — NBN Co may give one or more notices under this clause 1D.5.2 in the same or in different years in respect of the same Tax Change Event, including to recover amounts which were not recovered in previous years.~~

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## ~~1D.6 — Initial pricing principles~~

- ~~(a) — If, during the Initial Regulatory Period, NBN Co:
  - ~~(i) — introduces or otherwise commences supplying a New Offer; or~~
  - ~~(ii) — introduces or otherwise commences an activity requiring a New Other Charge;~~
  - ~~(iii) — introduces a new Price for a Zero-Priced Non-Reference Offer;~~  
~~or~~
  - ~~(iv) — introduces a new Price for a Zero-Priced Other Charge that is not associated with the supply of a Reference Offer,~~then the initial or new Price, or Prices, of that New Offer, New Other Charge, Zero-Priced Non-Reference Offer or Zero-Priced Other Charge will be determined by NBN Co having regard to, among other relevant matters:~~

- ~~(v) — uniform national wholesale pricing;~~
  - ~~(vi) — the Statement of Expectations;~~
  - ~~(vii) — the nature and extent of market demand;~~
  - ~~(viii) — the relationship between that New Offer, New Other Charge, Zero Priced Non-Reference Offer or Zero Priced Other Charge and other Reference Offers, Non-Reference Offers and Other Charges;~~
  - ~~(ix) — the importance of affordability to drive take-up rates;~~
  - ~~(x) — NBN Co's long term cost recovery; and~~
  - ~~(xi) — the projected timeframe for recovery of initial losses.~~
- ~~(b) — Prior to introducing that New Offer, New Other Charge or new Price for a Zero Priced Non-Reference Offer or Zero Priced Other Charge under clause 1D.6(a), NBN Co will publish a pricing rationale statement describing, in qualitative terms, how the initial or new Price was, or Prices were, determined.~~
- ~~(c) — Once NBN Co introduces that New Offer, New Other Charge or new Price for a Zero Priced Non-Reference Offer or Zero Priced Other Charge under clause 1D.6(a):~~
- ~~(i) — any New Offer will become a Non-Reference Offer; and~~
  - ~~(ii) — the initial or new Price, or Prices, of that New Offer, New Other Charge, Zero Priced Non-Reference Offer or Zero Priced Other Charge will be its Maximum Regulated Price for the Financial Year in which it was introduced.~~

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## Annexure 1 Standard NFAS Installation

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### 1 Standard NFAS Installation

An installation will be considered to be a **Standard NFAS Installation** in respect of a Premises where each of the following conditions is satisfied:

- (a) all Connecting Equipment in respect of that Premises is able to be installed during an Appointment in Standard Hours and activated during Standard Hours;
- (b) the installation requires no more than one Drop Fibre, NTD, Connecting Fibre and PCD to be installed for the Premises;
- (c) NBN Co (or the Installer):
  - (i) has been provided with necessary rights of access to the Premises, as required under an Access Agreement;
  - (ii) is given access to the Common Property, if required by NBN Co; and
  - (iii) is given access to the Premises, if required,

at the time during the Appointment to perform and complete the installation of the Connecting Equipment at that Premises (including any necessary inspection or related works); and

- (d) in respect of the Connecting Equipment:
  - (i) a PCD:
    - (A) is not required;
    - (B) is already installed and able to service the Premises; or
    - (C) is able to be installed on the exterior of the Building at which the Premises is located;
  - (ii) the Drop Fibre:
    - (A) is not required;
    - (B) is already installed and able to service the Premises; or
    - (C) is:
      - (I) only required from the NAP to the PCD which serves the Premises; and
      - (II) able to be installed at the Premises;;

- a. through an existing lead-in conduit;
  - b. through a new lead-in conduit; or
  - c. aerially; and
- (III) no more than 60 metres in length, measured by reference to the cable run distance between:
  - a. the property boundary point that is nearest to the location of both the PCD and NAP; and
  - b. the location of that PCD,or such longer length as may be reasonably determined by NBN Co in the circumstances;
- (iii) the NTD and, if requested by [an Access Seeker](#) or otherwise supplied by NBN Co, any associated battery back-up unit are able to be attached on the interior side of a wall of the Premises, at a location agreed between the End User and NBN Co (or the Installer), and:
  - (A) that location has a 240 volt power source available for the supply of electricity to the NTD; and
  - (B) that power source is located within approximately 3 metres of the location of the NTD; and
- (iv) the Connecting Fibre is no more than 40 metres in length, measured by reference to the cable run distance between the PCD and the location of the NTD, or such longer length as may be reasonably determined by NBN Co in the circumstances.

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## 2 Non Standard [NFAS](#) Installation

Notwithstanding anything in clause 1 of this Annexure 1 to [Schedule 1D](#), an installation will be considered to be a **Non Standard NFAS Installation** in respect of a Premises if NBN Co (or the Installer) determines, acting reasonably, that the installation of Connecting Equipment at the Premises does not properly constitute a “standard installation”, having regard to the following:

- (a) generally accepted industry practices and any applicable industry guidelines, policies, laws, regulations or directions;
- (b) the level of complexity and difficulty associated with the installation;
- (c) the uniqueness of the circumstances associated with the installation; and

- (d) the presence of obstacles, dangers or other safety concerns during the time of installation.

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## 3 Acknowledgements

### 3.1 Safety standards and procedures

~~It is acknowledged that~~ NBN Co will conduct all installations in accordance with safety standards or procedures that apply from time to time.

### 3.2 Requirement for Connecting Equipment

NBN Co will determine when a separate Drop Fibre or PCD is not required or is already installed and able to service the Premises.

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## 4 Definitions

For the purpose of this Annexure 1 to [Schedule 1D](#):

**Appointment** means the appointment period requested by an [Access Seeker Customer](#), and agreed to by NBN Co, in which NBN Co (or the Installer) will perform the installation and activation of Connecting Equipment at a Premises in connection with the supply of a Product Component or Product Feature, including:

- (a) any initial appointment for the installation of the Connecting Equipment at the Premises; and
- (b) any subsequent appointment required to perform or complete the installation of the Connecting Equipment at the Premises.

**Building** means a permanent structure, equipment or a building in respect of which an NTD is able to be installed.

**Connecting Equipment** means any or all (as the context requires) of:

- (c) a Drop Fibre;
- (d) a PCD;
- (e) a Connecting Fibre;
- (f) an NTD (and any installation and provision of an associated battery back-up unit and First Battery); and
- (g) any ancillary equipment, facilities, lines or network owned or controlled by, or operated by or on behalf of NBN Co between, and including, the NAP and the NTD.

**Standard Hours** means a period between 9:00 am and 5:00 pm, Monday to Friday, excluding public holidays in the state or territory in which the Premises is located.

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## Annexure 2 Standard NNAS Installation

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### 5 Standard NNAS Installation

An installation will be considered to be a **Standard NNAS Installation** in respect of a Premises where each of the following conditions is satisfied:

- (a) all Connecting Equipment in respect of that Premises is able to be installed during an Appointment in Standard Hours and activated during Standard Hours;
- (b) the installation requires no more than one NTD (which includes an indoor component and an outdoor component) to be installed at the Premises;
- (c) NBN Co (or the Installer):
  - (i) has been provided with necessary rights of access to the Premises, as required under an Access Agreement;
  - (ii) is given access to the Common Property, if required by NBN Co; and
  - (iii) is given access to the Premises, if required,at the time during the Appointment to perform and complete the installation of the Connecting Equipment at that Premises (including any necessary inspection or related works); and
- (d) in respect of the Connecting Equipment:
  - (i) the outdoor component of the NTD:
    - (A) is not required;
    - (B) is already installed and able to service the Premises; or
    - (C) is able to be installed in a location that is:
      - (I) no more than 30 metres in length, measured by reference to the cable run distance between the proposed location of the indoor component of the NTD and the proposed location of that outdoor component; or
      - (II) such longer length as may be reasonably determined by NBN Co in the circumstances; and
  - (ii) the indoor component of the NTD is able to be attached on the interior side of a wall of the Premises, at a location agreed between the End User and NBN Co (or the Installer), and:

- (A) that location has a 240 volt power source available for the supply of electricity to the NTD; and
- (B) that power source is located within approximately 3 metres of the location of the indoor component of the NTD.

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## 6 Non Standard NWAS Installation

Notwithstanding anything in clause 5 of this Annexure 2 to **Error! Reference source not found.**, an installation will be considered to be a **Non Standard NWAS Installation** in respect of a Premises if NBN Co (or the Installer) determines, acting reasonably, that the installation of Connecting Equipment at the Premises does not properly constitute a “standard installation”, having regard to the following:

- (a) generally accepted industry practices and any applicable industry guidelines, policies, laws, regulations or directions;
- (b) the level of complexity and difficulty associated with the installation;
- (c) the uniqueness of the circumstances associated with the installation; and
- (d) the presence of obstacles, dangers or other safety concerns during the time of installation.

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## 7 Acknowledgements

### 7.1 Safety standards and procedures

It is acknowledged that NBN Co will conduct all installations in accordance with safety standards or procedures that apply from time to time.

### 7.2 Requirement for Connecting Equipment

NBN Co will determine when a separate outdoor component of an NTD is not required or is already installed and able to service the Premises.

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## 8 Definitions

For the purposes of this Annexure 2 to [Schedule 1D](#):

**Appointment** means the appointment period requested by an [Access Seeker Customer](#), and agreed to by NBN Co, in which NBN Co (or the Installer) will perform the installation and activation of Connecting Equipment at a Premises in connection with the supply of a Product Component or Product Feature, including:

- (a) any initial appointment for the installation of the Connecting Equipment at the Premises; and

- (b) any subsequent appointment required to perform or complete the installation of the Connecting Equipment at the Premises.

**Building** means a permanent structure, equipment or a building in respect of which an NTD is able to be installed.

**Connecting Cable** means the Line which connects from the outdoor unit of an NTD to the indoor unit of that NTD.

**Connecting Equipment** means any or all (as the context requires) of:

- (c) an outdoor NTD component;
- (d) a Connecting Cable;
- (e) an indoor NTD component; and
- (f) any ancillary equipment, facilities, lines or network owned or controlled by, or operated by or on behalf of NBN Co between and including the indoor component of the NTD and the outdoor component of the NTD.

**Standard Hours** means a period between 9:00 am and 5:00 pm, Monday to Friday, excluding public holidays in the state or territory in which the Premises is located.



## Schedule 1E Regulatory Asset Base

### 1E.1 General

#### 1E.1.1 Scope

- (a) This Schedule 1E applies for the Initial Regulatory Period.
- (b) Clauses 1E.8 to 1E.12 cease to have effect 5 years after the SAU Commencement Date.

#### 1E.1.2 Overview

- (a) Clause 1E.2 sets out how ~~NBN Co~~ the ACCC will calculate the Regulatory Asset Base (or RAB) for the Relevant Assets. The RAB is the regulatory value of Prudently incurred capital investments made from the Cost Commencement Date.
- (b) Clause 1E.3.1 sets out the ~~requirements~~ conditions the ACCC that NBN Co is only permitted to ~~must be satisfied of before it will~~ recognise Capital Expenditure in the RAB ~~that has been Prudently incurred or is deemed to have been Prudently incurred.~~
- (c) Clauses 1E.3 to 1E.11 1E.12 set out the circumstances in which Capital Expenditure will be considered to be Prudently incurred.

### 1E.2 Calculation of the Regulatory Asset Base

#### 1E.2.1 Calculation of Real RAB

The Real RAB will be:

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

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

~~(b)~~ \_\_\_\_\_

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

where:

$t$  is the Financial Year being evaluated.

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

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

$Real\ RAB_t^{start}$  is zero where the Cost Commencement Date occurs in year  $t$  and otherwise the Real RAB at the start of the current Financial Year ( $t$ ).

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

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

where:

~~$Real\ Capital\ Expenditure_t$  is the real value of the actual Capital Expenditure incurred on a Prudent basis that the ACCC is satisfied, in accordance with clause 1E.3.1(a), Prudently incurred in connection with the design, engineering, construction, replacement and augmentation of the Relevant Assets during Financial Year  $t$ , where Capital Expenditure is recognised as being incurred at the time ~~that~~ the Relevant Asset in connection with which the Capital Expenditure was incurred is Placed in Service. The conversion of real values from nominal values will be calculated in accordance with clause ~~1F.9.41F.9.41F.9.4~~. This Capital Expenditure excludes any capital contributions in respect of the Relevant Assets in connection with which the Capital Expenditure was incurred.~~

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

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

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

where:

*Real Value of Asset Disposals<sub>t</sub>* is the real value of the Relevant Assets that were actually disposed of during Financial Year *t*. The conversion of real values from nominal values will be calculated in accordance with clause ~~1F.9.4~~~~1F.9.4~~~~1F.9.4~~.

~~*WACC<sub>vanilla,t</sub><sup>nominal</sup>* is the nominal vanilla WACC in Financial Year *t*, calculated in accordance with clause 1F.7.1(a).~~

*Real Straight Line Depreciation<sub>t</sub>* is the real value of the depreciation applicable to the Relevant Assets included in the RAB in the current Financial Year *t*, determined in accordance with clause ~~1F.8.1~~1F.9.1.

## 1E.2.2 Calculation of Nominal RAB

The Nominal RAB will be:

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

and:

$$\begin{aligned} Nominal\ RAB_t^{start} &= Nominal\ RAB_{t-1}^{end} \\ &= CIF_{t-1} * Real\ RAB_{t-1}^{end} \\ &= CIF_{t-1} * Real\ RAB_t^{start} \end{aligned}$$

where:

*Nominal RAB<sub>t</sub><sup>start</sup>* is the Nominal RAB at the start of the relevant Financial Year (*t*).

*Nominal RAB<sub>t</sub><sup>end</sup>* is the Nominal RAB at the end of the relevant Financial Year (*t*).

*CIF<sub>t</sub>* is defined in clause ~~1F.8.4(b)~~1F.9.4(b).

*Real RAB<sub>t</sub><sup>start</sup>* is the Real RAB at the start of the relevant Financial Year (*t*).

*Real RAB<sub>t</sub><sup>end</sup>* is the Real RAB at the end of the relevant Financial Year (*t*).

### 1E.2.3 Inclusion of initial Capital Expenditure

~~NBN Co will, pursuant to clause 1E.3.2(h)1E.3.2(h)1E.3.1(a)(ii)(H), include all~~ Capital Expenditure incurred from the Cost Commencement Date until the SAU Commencement Date is to be included within NBN Co's RAB as described in this **Error! Reference source not found.**

### 1E.2.4 Treatment of Construction in Progress

(a) ~~NBN Co will separately account for Prudently incurred~~ Capital Expenditure that has not yet been Placed in Service (**Construction in Progress** or **CIP**) will be accounted for separately. CIP will be consistent with the values in NBN Co's audited accounts and will not include any allowance for interest during construction.

(b) \_\_\_\_\_ An Annual Construction in Progress Allowance (**ACIPA**) will be calculated each year by the ACCC in accordance with clause ~~1F.9~~1F.10 and, ~~provided it to the extent that the ACCC has determined that CIP~~ has been Prudently incurred under clause 1E.2.4(c), included by the ACCC in the calculation of the Annual Building Block Revenue Requirement as described in clause ~~1F.3~~1F.4.

(c) \_\_\_\_\_ CIP will be considered to have been Prudently incurred, for the purposes of the calculation of the ACIPA, to the extent the ACCC is satisfied that the Capital Expenditure incurred in connection with the Relevant Asset not yet Placed In Service meets the requirements of clauses 1E.3.1, 1E.4 and 1E.6 (with all references to Capital Expenditure in those clauses being read as references to CIP).

### 1E.2.5 Provision of Forecast Capital Expenditure

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

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## 1E.3 Prudently incurred Capital Expenditure

### 1E.3.1 ~~Pre-condition to the i~~Inclusion of Capital Expenditure in the RAB

(a) \_\_\_\_\_ For the purposes of calculating the RAB for the Relevant Assets pursuant to clause 1E.2.1, Capital Expenditure will only Capital Expenditure incurred by NBN Co in a Financial Year is only considered to be Prudently incurred and included in the RAB if the ACCC is satisfied~~be included in the RAB to the extent~~ that the Capital Expenditure:

(i) has been ~~Prudently~~ incurred in accordance with:

- (A) the Prudent Cost Condition (in accordance with clause 1E.4); and
  - (B) the Prudent Design Condition (in accordance with clause 1E.6); or
- (ii) was incurred in connection with any of the following matters:
- (A) the interim solution for the NBN Co Satellite Network;
  - (B) the Interim Transit Arrangements;
  - (C) the Telstra Arrangements;
  - (D) the Optus Arrangements;
  - (E) the Tasmania Tri-Area Service Arrangements;
  - (F) the First Release Trial Sites;
  - (G) Third Party Funded Network Changes; or
  - ~~(iii)~~(H) Capital Expenditure incurred by NBN Co from the Cost Commencement Date until the SAU Commencement Date.
- (b) If the ACCC is not satisfied that the Capital Expenditure incurred by NBN Co in a Financial Year meets the requirements specified in clause 1E.3.1(a):
- (i) that Capital Expenditure may not be included in the RAB; and
  - (ii) in making an LTRCM Determination pursuant to clause 1F.1.2, the ACCC must determine an amount of Capital Expenditure that is to be included in the RAB in respect of that Financial Year that the ACCC is satisfied meets the requirements specified in clause 1E.3.1(a).

## 1E.4 Prudent Cost Condition for Capital Expenditure

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

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

~~(a) in accordance with the Procurement Rules; or~~

~~(b)(a) the Capital Expenditure was incurred in connection with the design, engineering and construction of the Relevant Assets~~ pursuant to a

contract ~~agreed with a third party that was let~~ in accordance with a competitive tendering and procurement process ~~and~~ which includes a process for the management of ~~such the~~ design, engineering and construction of the Relevant Assets ~~in connection with which the Capital Expenditure was incurred~~ through a process of contract variations which provides:

- (i) that reasonable consideration be given to managing the risk of such contract variations;
- (ii) for the provision of clear documentary evidence regarding the nature and reasonableness of any such contract variations; and

~~(iii)~~ that the design, engineering and construction of the Relevant Assets falls within the scope of such a process; or

~~(b)~~ exceptional circumstances exist such that a contract that meets the requirements of paragraph (a) was not necessary or desirable; or

~~(c)~~ the Capital Expenditure is consistent with Capital Expenditure that has been included in the RAB in respect of a prior Financial Year, having regard to:

~~(i)~~ the relative amounts of the Capital Expenditure incurred in those Financial Years;

~~(ii)~~ the relative cost of particular goods or services in those Financial Years;

~~(iii)~~ any relevant differences in the scale and scope of the Relevant Assets in connection with which the Capital Expenditure was incurred in those Financial Years; and

~~(e)(iv)~~ any other matter the ACCC considers relevant.

~~(d)~~ pursuant to arrangements which are on arm's length terms; or

~~(e)~~ in respect of a good or service in an open and competitive market (e.g. a commodity market); or

~~(f)~~ in order to comply with a legal, policy, regulatory or administrative requirement, or a requirement of the Shareholder Ministers; or

~~(g)~~ and NBN Co's Chief Executive Officer is satisfied that any one or more of the following applies:

~~(i)~~ there is only one potential supplier of a particular good or service and there are no reasonable alternatives or substitutes; or

- ~~(ii) — such Capital Expenditure is incurred on exceptionally advantageous terms; or~~
- ~~(iii) — such Capital Expenditure falls within a comparable range of benchmarks that would be incurred by a prudent operator in the same or similar position to NBN Co; or~~
- ~~(iv) — it is in the best interests of the company to incur such Capital Expenditure with that particular supplier or in those particular circumstances having regard to the lifetime cost of acquisition and operation of the assets involved.~~

#### **1E.4.2 Prudently incurred Capital Expenditure Factors**

- (a) In deciding whether an amount of Capital Expenditure meets the requirement specified in clause 1E.4.1(a), the ACCC must have regard to the following:
  - (i) whether the contract was entered into in accordance with NBN Co’s procurement processes, including in accordance with the Procurement Rules;
  - (ii) whether the contract was entered into on arm’s length terms;
  - (iii) whether the contract entered into was in respect of a good or service in an open and competitive market (e.g. a commodity market);
  - (iv) any other factor the ACCC considers relevant.
- (b) In determining whether exceptional circumstances exist for the purposes of clause 1E.4.1(b), the ACCC may have regard to:
  - (i) the extent to which there is only one potential supplier of a particular good or service and there are no reasonable alternatives or substitutes;
  - (ii) whether the relevant Capital Expenditure was incurred on exceptionally advantageous terms;
  - (iii) whether it is in the best interests of NBN Co to incur the relevant Capital Expenditure with that particular supplier or in those particular circumstances having regard to the lifetime cost of acquisition and operation of the Relevant Assets involved; and
  - (iv) any other factor the ACCC considers relevant.

## **1E.5 Procurement Rules**

### **1E.4.2 1E.5.1 Procurement Rules**

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

- (a) the process must seek to generate an efficient and competitive outcome by encouraging a reasonable and proportionate amount of competitive tension between tender participants and minimising the possibility of anti-competitive conduct among tender participants in contravention of the CCA;
- (b) there must be a clear process for:
  - (i) the calling and conduct of tenders and the involvement of tender participants; and
  - (ii) the assessment and awarding of tenders to successful participants,which meets reasonable requirements of procedural fairness, probity, fair dealing and good industry practice;
- (c) there must be a clear process for:
  - (i) the calling and conduct of tenders and the involvement of tender participants; and
  - (ii) the assessment and awarding of tenders to successful participants,
  - (iii) which meets reasonable requirements of procedural fairness, probity, fair dealing and good industry practice;
- (d) any decision to approve a tender that is not the lowest price tender must be appropriately justified and documented;
- (e) the basis for undertaking the works and services must be in accordance with good industry practice and the basis of payment for works and services must be clearly specified; and
- (f) there must be a process for managing contracts (both before and after the award of tenders) that accords with good industry practice and which seeks to achieve value for money and the lowest Total Cost of Ownership,

(the **Procurement Rules**).



### ~~1E.4.3~~ ~~1E.5.2~~ **Provision of the Procurement Rules**

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

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## ~~1E.5~~ ~~1E.6~~ **Prudent Design Condition for Capital Expenditure**

~~NBN Co will~~ Capital Expenditure will in a Financial Year will satisfy the Prudent Design Condition in accordance with clause 1E.3.1(a)(i)(B) to the extent the ACCC is satisfied that that the Relevant Assets in connection with which the Capital Expenditure was incurred ~~is~~ are materially consistent with or within the scope of:

- (a) the Network Design Rules, in accordance with clause 1E.7.1 and 1E.7.4;
- (b) a Permitted Variation, as described in clause 1E.7.2; or
- (c) an Endorsed Network Change, in accordance with the process described in clauses 1E.8 to 1E.12.

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## ~~1E.6~~ ~~1E.7~~ **Network Design Rules and Permitted Variations**

### ~~1E.6.1~~ ~~1E.7.1~~ **Scope of Network Design Rules**

Subject to clause ~~1E.6.4~~ 1E.7.4, NBN Co will ensure that, on and from the SAU Commencement Date, the Network Design Rules for the Relevant Assets satisfy the following design scope:

- (a) in respect of the NBN Co Fibre Network:
  - (i) the NBN Co Fibre Network is to have a network footprint that is consistent with the coverage obligations set out in the Statement of Expectations as at 17 December 2010;
  - (ii) the NBN Co Fibre Network is to be primarily designed and built using GPON architecture;
  - (iii) the NBN Co Fibre Network is to be capable of delivering the speed requirements specified in the Statement of Expectations; and
  - (iv) NBN Co is to comply with the Statement of Expectations and the Australian Government's legislative and policy requirements in respect of the deployment of fibre in

greenfield locations, including any alternative models contemplated for such deployments;

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

~~1E.6.2~~1E.7.2 **Permitted Variations from Network Design Rules**

- (a) NBN Co may vary, change, augment or enhance the design, engineering or construction of the Relevant Assets from that specified in the Network Design Rules where such variation, change, augmentation or enhancement:
  - (i) is contemplated by, or made pursuant to, the Network Design Rules; or

- (ii) improves the performance or functionality of the Relevant Assets and results in the same or lower Total Cost of Ownership; or
- (iii) achieves savings in the Total Cost of Ownership; or
- (iv) is reasonably necessary to establish and maintain the quality, reliability and security of the Relevant Assets or the supply of the Product Components; or
- (v) is required in connection with a Force Majeure Event; or
- (vi) is required in order to comply with the Statement of Expectations, or a legal, policy, regulatory or administrative requirement, or any requirement of the Shareholder Ministers; or
- (vii) relates to the maintenance, replacement or re-routing of assets that comprise the NBN Co Network that has a substantial primary purpose other than the augmentation or extension to such network (e.g. straight swap out of assets for assets as part of routine maintenance); or
- (viii) subject to clause 1E.7.3(a), is the subject of an assessment by NBN Co (made at the time NBN Co becomes aware of the need for such variation, change, augmentation or enhancement) that the estimated Capital Expenditure incurred in connection with the relevant variation, change, augmentation or enhancement is likely to be less than the Minor Expenditure Limit; or
- (ix) is required to address an urgent and unforeseen network issue where it is necessary that the variation, change, augmentation or enhancement is operational within 6 months of NBN Co becoming aware of urgent and unforeseen network issue and:
  - (A) the event or circumstance causing the required variation, change, augmentation or enhancement was not reasonably foreseeable by, and was beyond the reasonable control of, NBN Co; and
  - (B) a failure to implement the variation, change, augmentation or enhancement is likely to materially adversely affect the safe and reliable operation of the NBN Co Network or the supply of the Product Components, Product Features, Ancillary Services or the Facilities Access Service,

(each a **Permitted Variation**).

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

~~1E.6.3~~**1E.7.3** **Minor Expenditure Limit and notification of urgent and unforeseen network issues**

- (a) For the purposes of clause 1E.7.2(a)(viii):
- (i) clause 1E.7.2(a)(viii) will be satisfied if [the ACCC is satisfied that](#) NBN Co ~~makes~~[has made](#) an assessment in accordance with the requirements set out in that clause irrespective of whether the Capital Expenditure actually incurred by NBN Co in connection with the implementation of the relevant variation, change or enhancement actually exceeds the Minor Expenditure Limit; and
- (ii) clause 1E.7.2(a)(viii) will not be satisfied to the extent that [the ACCC is satisfied that](#) NBN Co ~~makes~~[has made](#) an assessment by dividing an integrated solution into distinct and separate parts merely for the purpose of satisfying the requirements of clause 1E.7.2(a)(viii).
- (b) On 1 July each Financial Year during the Initial Regulatory Period, the Minor Expenditure Limit will automatically increase in accordance with the following formula:

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

where:

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

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

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

- (c) If a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets is required to address an urgent and unforeseen network issue pursuant to clause 1E.7.2(a)(ix)~~1E.6.2(a)(ix)~~, NBN Co must make the following information available to the ACCC within 6 months of the date that NBN Co

identifies the need for such a variation, change, augmentation or enhancement:

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

#### ~~1E.6.4~~1E.7.4 Updates to the Network Design Rules

~~(a)~~ NBN Co ~~may~~must update the Network Design Rules:

~~(b)~~(a) to reflect a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets in connection with:

- (i) a Permitted Variation;
- (ii) an Endorsed Network Change;
- (iii) any change to the Statement of Expectations; or
- (iv) any legal, policy, regulatory or administrative requirement, or any requirement of the Shareholder Ministers, which has the effect of varying the design scope in clause ~~1E.6.1~~1E.7.1; ~~or~~.

~~(c)~~(b) NBN Co must update the Network Design Rules in accordance with:

- (i) the terms of ~~any variation to~~ this Special Access Undertaking, including any variation to this Special Access Undertaking made pursuant to clause 7.1 and accepted by the ACCC in accordance with section 152CBG of the CCA; ~~or~~and
- (ii) any Access Regulatory Determination ~~or Binding Rule of Conduct~~ made by the ACCC to the extent it is not inconsistent with the terms of this Special Access Undertaking ~~and which otherwise complies with Part XIC of the CCA,~~

~~(d)~~(c) in which case if NBN Co updates the Network Design Rules pursuant to clause 1A.1.1(a)~~1E.7.4(a)~~ and/or 1E.7.4(b), NBN Co will promptly provide a copy of the updated Network Design Rules to the ACCC. For the purposes of the remainder of this clause ~~1E.6.4~~1E.7.4, the date on which the updated Network Design Rules are provided to the ACCC is the Revised NDR Date.

~~(e)~~(d) For the purposes of clause ~~1E.5(a)~~~~1A.1.1(a)(i)~~1E.6(a), the following approach may be applied ~~by NBN Co (at its option or in combination):~~

- (i) the Network Design Rules which applied prior to the Revised NDR Date may continue to apply in respect of Capital Expenditure incurred in connection with the design, engineering or construction of the Relevant Assets which is in progress as at the Revised NDR Date; and
- (ii) subject to clause ~~1E.6.4(d)(i)~~1E.7.4(d)(i), the Network Design Rules which apply on and from the Revised NDR Date will apply in respect of any Capital Expenditure incurred after the Revised NDR Date in connection with the design, construction or engineering of the Relevant Assets commenced after the Revised NDR Date.

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## ~~1E.7~~1E.8 **Network Changes: Selection and publication of Preferred Network Change Option**

### ~~1E.7.1~~1E.8.1 **Network Changes**

- (a) NBN Co will ensure that any Network Change is made by NBN Co in accordance with clauses ~~1E.7 to 1E.11~~1E.8 to 1E.12 (which set out the procedure for the identification, selection, consultation and endorsement of a Network Change).
- (b) For the purposes of this Schedule 1E, a **Network Change** means any variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets where Capital Expenditure incurred by NBN Co in connection with that variation, change, augmentation or enhancement that is not:
  - (i) materially consistent with or within the scope of the Network Design Rules in accordance with as described in clauses ~~1E.5(a)~~1E.7.1 and 1E.7.4; or
  - (ii) materially consistent with or within the scope of a Permitted Variation in accordance with clause 1E.5(b), as described in clause 1E.7.2; or,
  - ~~(iii) deemed to have been Prudently incurred in accordance with clause 1E.3.2~~~~1A.1.1~~~~1E.3.2.~~
- (c) Nothing in clauses ~~1E.7 to 1E.11~~1E.8 to 1E.12 prevents NBN Co from:
  - (i) introducing, varying or enhancing Products, Product Components or Product Features that do not require a

Network Change, or which fall within the scope of, are identified within, or are contemplated by, the Network Design Rules or a Permitted Variation; or

- (ii) terminating the process specified in clauses ~~1E.7 to 1E.11~~ 1E.8 to 1E.12 where NBN Co decides not to proceed with a Network Change (including where the product development process is terminated under Schedule 1J (Product Development and Withdrawal)).

### ~~1E.7.2~~ 1E.8.2 Procedure for selection and publication of the Preferred Network Change Option

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

- (a) identify and assess options for the implementation of the Network Change in accordance with the criteria set out in clause ~~1E.11~~ 1E.12 (**Network Change Options**);
- (b) select the Preferred Network Change Option in accordance with clause ~~1E.7.3~~ 1E.8.3;
- (c) prepare and publish the NBN Prudency Implementation Paper in accordance with clause ~~1E.7.4~~ 1E.8.4; and
- (d) seek to have the Preferred Network Change Option endorsed in accordance with clauses ~~1E.8 to 1E.11~~ 1E.9 to 1E.12.

### ~~1E.7.3~~ 1E.8.3 Selection of Preferred Network Change Option

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

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

having regard to the interests of NBN Co, any Related Body Corporate of NBN Co, Access Seekers and End Users that acquire Carriage Services and Content Services supplied by means of the NBN Co Network (**Preferred Network Change Option**).

## ~~1E.7.4~~1E.8.4 Preparation and publication of NBN Prudency

### Implementation Paper

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

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

Once finalised, NBN Co will publish the NBN Prudency Implementation Paper on an area of NBN Co's Website accessible by [Customers that have become members of the Access Seekers and Consumer Advocacy Groups and also provide the NBN Prudency Implementation Paper to the ACCC.](#)

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## ~~1E.8~~1E.9 Network Changes: **Customer e**Engagement and endorsement process

### ~~1E.8.1~~1E.9.1 Endorsement of the Preferred Network Change Option

- (a) Following publication of the NBN Prudency Implementation Paper, NBN Co will seek the endorsement of [Customers Access Seekers and Consumer Advocacy Groups](#) in accordance with the [customer engagement and endorsement process under described in](#) this clause [1E.8](#)1E.9.



- (b) While the ~~customer~~ engagement and endorsement process [described](#) in this clause ~~1E.8.1~~1E.9 is distinct and separate from the product development process specified in ~~Schedule 1I~~ Schedule 1J (Product Development and Withdrawal), the two processes may occur in parallel.

~~1E.8.2~~**1E.9.2** **Consultation with ~~Product Development Forum~~  
~~members~~ Access Seekers and Consumer Advocacy Groups**

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

~~1E.8.3~~**1E.9.3** **Updating the NBN Prudency Implementation Paper**

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

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

## ~~1E.9~~1E.10 **Network Changes: Prudency-Dispute resolution mechanism**

### ~~1E.9.1~~1E.10.1 **Notification by Access Seekers and Consumer Advocacy Groups of objection to Preferred Network Change Option**

- (a) An Access Seeker may only object to NBN Co's Preferred Network Change Option within the timeframe determined in accordance with clause 1E.9.3(c).
- (b) An Access Seeker may object to NBN Co's Preferred Network Change Option in accordance with, and provided that it complies with, the following conditions:
- ~~(i)~~ the Access Seeker must have entered into an Access Agreement;
  - ~~(ii)~~(i) the Access Seeker must have participated in consultations in relation to the Network Change in accordance with clause ~~1E.8.2~~1E.9.2;
  - ~~(iii)~~(ii) the Access Seeker must, or is likely to, have a sufficient interest in the subject matter of the objection that is likely to be materially affected by the resolution of the matters that are the subject of the objection; and
  - ~~(iv)~~(iii) the Access Seeker must have a reasonable basis for such an objection based on a material error by NBN Co in the application of the criteria in clause ~~1E.11~~1E.12 with regard to NBN Co's Preferred Network Change Option,
- (together, the **Prudency-Network Change Dispute Conditions**). If the Access Seeker satisfies the Prudency-Network Change Dispute Conditions and wishes to object, the Access Seeker must provide written notification to NBN Co and other Access Seekers of the objection within the period of time notified by NBN Co under clause 1E.9.3(c) and set out detailed reasons for its objection, including a description of the manner(s) in which NBN Co has erred in the application of the criteria in clause 1E.12~~1E.11~~.

### ~~1E.9.2~~1E.10.2 **Formation of a Prudency-Network Change Dispute**

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

Option then NBN Co must, within 60 Business Days after the date of receipt of the first notice of objection from an Access Seeker:

- (A) notify the ACCC of the objections lodged by the Access Seeker(s);
  - (B) provide to the ACCC copies of any documentation received from the Access Seeker(s) in connection with the objection; and
  - (C) provide the ACCC with NBN Co's response to those objections; or
- (ii) has not received any notification of objections from Access Seekers regarding the Preferred Network Change Option, then the Preferred Network Change Option will be an Endorsed Network Change pursuant to clause ~~1E.10.1~~1E.11.1.
- (b) Within 5 Business Days after the date that the ACCC receives notification from NBN Co pursuant to clause 1E.10.2(a)(i)(A), the ACCC will determine, in respect of each Access Seeker referred to in such notification, whether:
- (i) the [Prudency Network Change](#) Dispute Conditions have been satisfied by the Access Seeker, in which case the subject matter of the objection(s) will be deemed to be in dispute ([Prudency Network Change Dispute](#)) and NBN Co, the Access Seeker and the ACCC will proceed in accordance with the remainder of this clause ~~1E.9~~1E.10 and clause ~~1E.10~~1E.11; or
  - (ii) the [Prudency Network Change](#) Dispute Conditions have not been satisfied by the Access Seeker, in which case, provided that no other Access Seeker has satisfied the [Prudency Network Change](#) Dispute Conditions such that a [Prudency Network Change](#) Dispute has arisen pursuant to clause 1E.10.2(b)(i), the Preferred Network Change Option will be an Endorsed Network Change pursuant to clause ~~1E.10.1~~1E.11.1.

~~1E.9.3~~**1E.10.3** **Access Seeker participation in, and scope of, the [Prudency Network Change Dispute](#)**

- (a) Within 5 Business Days after the date that a [Prudency Network Change](#) Dispute has arisen pursuant to clause 1E.10.2(b)(i), the ACCC will invite, by way of notice on the ACCC website, other Access Seekers to apply to join the [Prudency Network Change](#) Dispute (except for Access Seekers that the ACCC has already determined have not

satisfied the [Prudency-Network Change](#) Dispute Conditions pursuant to clause 1E.10.2(b)(ii).

- (b) Within 10 Business Days after the date on which the ACCC invites Access Seekers to join the [Prudency-Network Change](#) Dispute, the ACCC will:
- (i) make a decision to either accept or reject each application that the ACCC has received from an Access Seeker to join the [Prudency-Network Change](#) Dispute, by reference to whether the ACCC considers that the Access Seeker has satisfied the [Prudency-Network Change](#) Dispute Conditions;
  - (ii) where the ACCC rejects an Access Seeker's application, provide the [Prudency-Network Change](#) Access Seeker with reasons as to why the Access Seeker's application was rejected; and
  - (iii) publish on the ACCC website the details of the Access Seekers that it has determined may join the [Prudency-Network Change](#) Dispute.
- (c) The scope of the [Prudency-Network Change](#) Dispute will be determined by, and limited to, the specific issues in dispute between Access Seeker(s) and NBN Co, as determined by reference to the objections submitted by Access Seeker(s) who have joined the [Prudency-Network Change](#) Dispute pursuant to clauses 1E.10.2(b) and 1E.10.3(b) (the [Prudency-Network Change](#) Dispute Participants) and the relevant responses from NBN Co.
- (d) The ACCC may, by written notice to the relevant [Prudency-Network Change](#) Dispute Participants and NBN Co:
- (i) join separate [Prudency-Network Change](#) Disputes together so that they constitute a single [Prudency-Network Change](#) Dispute; or
  - (ii) divide a single [Prudency-Network Change](#) Dispute into multiple [Prudency-Network Change](#) Disputes,
- for the purposes of the efficient administration and resolution of those [Prudency-Network Change](#) Disputes.

#### ~~1E.9.4~~ 1E.10.4 Submissions regarding [Prudency-Network Change](#) Dispute

The ACCC will provide NBN Co and the [Prudency-Network Change](#) Dispute Participants with the opportunity to make written submissions in respect of the [Prudency-Network Change](#) Dispute, provided that any consultation period is between 30 Business Days and 40 Business Days from the date that a [Prudency-Network Change](#) Dispute has arisen pursuant to clause 1E.10.2(b)(i).

~~1E.9.5~~ **1E.10.5 Decision making criteria for Prudency Network Change**

**Dispute**

- (a) The ACCC must make a decision accepting or rejecting the Preferred Network Change Option (and thereby resolving the [Prudency Network Change Dispute](#)) by reference to the criteria referred to in clauses 1E.10.5(b) and 1E.10.5(c) and must notify NBN Co and the [Prudency Network Change Dispute](#) Participants of such decision within 50 Business Days after the final date on which submissions are provided to the ACCC under clause ~~1E.9.4~~ 1E.10.4.
- (b) If NBN Co has selected the Preferred Network Change Option that maximises the Net Economic Benefit relative to other Network Change Options (in accordance with clause 1E.8.3(a)), the ACCC must accept the Preferred Network Change Option unless the ACCC reasonably considers that:
- (i) an alternative Network Change Option would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of the Preferred Network Change Option; or
  - (ii) a network change option that has not been considered by NBN Co in the NBN Prudency Implementation Paper (including the option of no network change) would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of the Preferred Network Change Option and otherwise satisfies the criteria in clause ~~1E.11~~ 1E.12,
- in which case, the ACCC may reject the Preferred Network Change Option.
- (c) If NBN Co has selected the Preferred Network Change Option that does not maximise the Net Economic Benefit relative to other Network Change Options but is reasonable in the circumstances in accordance with clause 1E.8.3(b), or the ACCC reasonably considers that an alternative Network Change Option would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of the Preferred Network Change Option (in accordance with clause 1E.10.5(b)(i)), the ACCC will consider whether to accept or reject the Preferred Network Change Option having regard to whether:
- (i) the ACCC considers the Preferred Network Change Option satisfies the criteria in clause 1E.12~~1E.11~~; or

- (ii) there is a greater economic benefit associated with the Preferred Network Change Option compared with the situation where no network change is implemented; or
- (iii) the design scope of the Preferred Network Change Option is not materially different from that which a prudent operator in NBN Co's position would consider to be reasonable.

## ~~1E.10~~ **1E.11 Endorsed Network Change**

### ~~1E.10.1~~ **1E.11.1 Endorsement of the Preferred Network Change Option**

- (a) The Preferred Network Change Option will be considered to be endorsed by the [Customers Access Seekers and Consumer Advocacy Groups](#) and/or the ACCC (as applicable) ~~(and will therefore satisfy the Prudent Design Condition for the purposes of a Network Change pursuant to clause 1E.5(c))~~ where:
  - (i) a [Prudency Network Change](#) Dispute has arisen and the ACCC makes a decision accepting the Preferred Network Change Option in accordance with clause 1E.10.5; or
  - (ii) no Access Seeker has satisfied the [Prudency Network Change](#) Dispute Conditions under clause 1E.10.2(b)(i) in respect of the Preferred Network Change Option,(each, an **Endorsed Network Change**).
- (b) NBN Co will, within 20 Business Days from the date of the Endorsed Network Change, publish the final NBN Prudency Implementation Paper in respect of that Endorsed Network Change on NBN Co's Website and notify Access Seekers and the ACCC of such publication.

### ~~1E.10.2~~ **1E.11.2 No endorsement of the Preferred Network Change Option**

If the ACCC rejects the Preferred Network Change Option under clause 1E.10.5, then the Preferred Network Change Option will not be considered to be endorsed by the ACCC (and will therefore not satisfy the Prudent Design Condition for the purposes of a Network Change pursuant to clause 1E.5(c)).

### ~~1E.10.3~~ **1E.11.3 Alternative options to resolve [Prudency Network Change](#) Dispute**

- (a) NBN Co may, at its discretion and at any time after the formation and/or resolution of a [Prudency Network Change](#) Dispute, undertake one of the following options as an alternative to the [Prudency Network Change](#) Dispute in respect of the Preferred Network Change Option:

- (i) recommence the process under clause ~~1E.7.2~~1E.8.2 in respect of the Network Change or an amended version of the Network Change; or
  - (ii) not pursue the Network Change.
- (b) If NBN Co undertakes one of the options identified in clause 1E.11.3(a) as an alternative to a [Prudency Network Change](#) Dispute:
- (i) NBN Co will notify Access Seekers and the ACCC of that fact; and
  - (ii) the [Prudency Network Change](#) Dispute will be withdrawn and the ACCC will cease all activities in relation to such [Prudency Network Change](#) Dispute from the date that NBN Co gives such notice.

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## ~~1E.11~~1E.12 Identification and assessment of Network Change Options

### ~~1E.11.1~~1E.12.1 Criteria for Network Change Options

- (a) Each Network Change Option must, in NBN Co's opinion:
  - (i) address the Identified Need;
  - (ii) be economically and technically feasible;
  - (iii) be implemented in sufficient time to meet the timelines identified by the PDF (if any) for the expected delivery of, and roadmap for, the new or varied Product, Product Component or Product Feature;
  - (iv) be a viable option to implement, having regard to:
    - (A) the Total Cost of Ownership associated with each of the Network Change Options;
    - (B) the economic life of the assets associated with each of the Network Change Options;
    - (C) the long term planning of the NBN Co Network, including the network upgrade pathway;
    - (D) the availability of infrastructure, capital (including both equity and debt) and scarce resources;

- (E) investment practices of owners and operators of networks with similar characteristics to the NBN Co Network in international markets;
  - (F) the operational and technical complexity of each Network Change Option;
  - (G) operational and technical quality issues associated with each Network Change Option;
  - (H) the likely effect on demand of existing Products, Product Components or Product Features or the new or varied Products, Product Components or Product Features;
  - (I) resource and security requirements;
  - (J) the legal, policy, regulatory or administrative requirements applicable to NBN Co, including NBN Co's Non-Discrimination Obligations; and
  - (K) any other factor that NBN Co reasonably considers should be taken into account.
- (b) When assessing a Network Change Option, NBN Co must:
- (i) consider and identify market benefits that could be delivered by each Network Change Option in respect of the Identified Need, including:
    - (A) the likely effect on demand and Prices for existing Products, Product Components or Product Features and/or new or varied Products, Product Components or Product Features;
    - (B) the likely effect on the performance, functionality or features of existing Products, Product Components or Product Features and/or new or varied Products, Product Components or Product Features;
    - (C) cost effects, including:
      - changes in costs for Access Seekers and End Users;
      - changes in Capital Expenditure and/or Operating Expenditure; and
      - cost savings due to differences in the timing of investment;



- (D) the promotion of competition in relevant markets; and
- (E) any other value gained or foregone from implementing the Network Change Option with respect to the likely future investment needs of Access Seekers (where this value has not already been included in the other classes of market benefits).

(each a **Market Benefit**); and

- (ii) consider and quantify, to the extent possible, the classes of Market Benefits, unless NBN Co can identify why:
  - (A) a particular class of Market Benefit is likely not to materially affect the outcome of the assessment of the Network Change Options; or
  - (B) the estimated cost of undertaking the analysis to quantify the Market Benefits is likely to be disproportionate to the scale, size and potential benefits of each Network Change Option identified by NBN Co; and
- (iii) consider and estimate the following classes of costs associated with each Network Change Option:
  - (A) Capital Expenditure;
  - (B) Operating Expenditure; and
  - (C) cost of complying with legal, policy, regulatory or administrative requirements,

(each a **Network Change Cost**) by reference to the net present value of the direct costs of each Network Change Option (and the effect that these costs will have on NBN Co's Prices). In estimating the classes of cost pursuant to this clause, NBN Co is not required to separately quantify each class of cost.

- (c) When making an assessment under clause 1E.12.1(b), NBN Co must ensure that it:
  - (i) does not include any cost or benefit that cannot be considered to be measured as a Network Change Cost or Market Benefit to NBN Co or any Related Body Corporate of NBN Co, Access Seekers or End Users;

- (ii) identifies the method or methods permitted for estimating the magnitude of the different classes of Market Benefits and Network Change Costs;
- (iii) identifies the appropriate method and value for specific inputs, where relevant, for determining the discount rate or rates to be applied;
- (iv) includes sensitivity analysis in respect of any modelling that forms part of the analysis, having regard to:
  - (A) the risks associated with any Market Benefits not being achieved, or being greater than estimated, or any costs being greater or less than quantified; and
  - (B) the degree of certainty associated with the Market Benefits and Network Change Costs taken into account by NBN Co;
- (v) includes an assessment of reasonable scenarios of future supply and demand if each Network Change Option were implemented compared to the situation where no option is implemented; and
- (vi) does not, in calculating the Market Benefits associated with each Network Change Option:
  - (A) include the classes of Network Change Costs [referred to](#) in clause 1E.12.1(b)(iii); or
  - (B) include the benefits arising from the promotion of competition in relevant markets or any additional value where they have already been accounted for as Market Benefits.

In performing its assessment of the Network Change Options under this clause ~~1E.11.11E.12.1~~1E.12.1, NBN Co will only be required to apply a level of analysis that is proportionate to the scope and size of the required Network Change.

## Schedule 1F Long Term Revenue Constraint Methodology

### 1F.1 ~~Initial Cost Recovery Period~~ General

#### 1F.1.1 Scope

This Schedule 1E applies for the Initial Regulatory Period.

#### 1F.1.2 ~~Overview~~ LTRCM Determination

(a) The ACCC will determine:

(i) for each Financial Year in the Initial Regulatory Period, the ABBRR, RAB;

(ii) for each Financial Year of the Initial Regulatory Period in the Initial Cost Recovery Period (including the First Financial Year), the ICRA;

(iii) for each Financial Year of the Building Block Revenue Period, the Regulated Revenue and Revenue Variation,

including the values of the inputs to each of those values, in accordance with **Error! Reference source not found.** (Regulatory Asset Base) and this Schedule 1E (LTRCM Determination).

(b) The ACCC must issue an LTRCM Determination for each Financial Year in the Initial Regulatory Period (including the First Financial Year) no later than 12 months after the end of the Financial Year to which that LTRCM Determination relates.

(c) In issuing an LTRCM Determination in respect of a Financial Year, the ACCC:

(i) must have regard to the information supplied by NBN Co to the ACCC under 1E.1 (Regulatory information);

(ii) must consult with NBN Co if the ACCC intends, as part of an LTRCM Determination, to determine any values that are different to the values submitted by NBN Co to the ACCC under 1E.1, and must consider any submissions that are received from NBN Co within the time limit specified by the ACCC for the making of those submissions;

(iii) may consult with such other persons as the ACCC considers appropriate in relation to the LTRCM Determination and must consider any submissions that are received within the time

limit specified by the ACCC for the making of those submissions;

(iv) may determine values for the ABBRR, RAB, ICRA, Regulated Revenue, Revenue Variation and/or the values of the inputs to those values, that are different from the values submitted by NBN Co to the ACCC under Schedule 1G provided those values are determined in accordance with **Error! Reference source not found.** (Regulatory Asset Base) and this Schedule 1E;

(v) must publish on its website the LTRCM Determination and its reasons for the LTRCM Determination, including:

(A) the values adopted by the ACCC for each of the input variables in any calculations and formulae;

(B) whether those values have been taken or derived from the information provided by NBN Co under 1E.1 (Regulatory information); and, if not, the rationale for the adoption of those values;

(C) the details of any assumptions made by the ACCC in undertaking any material qualitative or quantitative analysis for the purposes of the LTRCM Determination; and

(D) the reasons for making any decisions, or withholding any approvals, and the exercise of any discretion, as referred to in **Error! Reference source not found.** (Regulatory Asset Base) and this Schedule 1E, for the purposes of the LTRCM Determination; and

(vi) must, prior to publishing the LTRCM Determination under paragraph (v), publish on its website a draft LTRCM Determination and its reasons for the draft LTRCM Determination, including the matters specified in paragraph (v).

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

(a) The ACCC may (but is not required to) amend or revoke an LTRCM Determination no later than 12 months after after the date of such a LTRCM Determination if the ACCC considers that there is a material error or deficiency in the LTRCM Determination of one or more of the following kinds:

(i) a clerical error or an accidental omission;

- (ii) a miscalculation or a misdescription;
  - (iii) a defect in form; or
  - (iv) a deficiency resulting from the provision of false or materially misleading information to the ACCC.
- (b) If the ACCC revokes an LTRCM Determination under clause 1F.1.3(a), the ACCC must make a new LTRCM Determination in substitution for the revoked LTRCM determination to apply for the Financial Year in respect of which the revoked LTRCM Determination was to apply.
- (c) If the ACCC revokes and substitutes an LTRCM Determination under paragraphs (a) and (b), the substituted LTRCM Determination must only vary from the revoked LTRCM Determination to the extent necessary to correct the relevant error or deficiency.
- (d) The ACCC may only revoke and substitute an LTRCM Determination under this clause 1F.1.3 if the ACCC has first consulted with NBN Co and such other persons as the ACCC considers appropriate.

#### ~~1F.1.3~~ **1F.1.4 Prices to be determined**

~~NBN Co will determine~~ The Prices for Reference Offers and Non-Reference Offers and the Prices of Other Charges that NBN Co supplies or applies during the Initial Regulatory Period :

~~(a) the Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service it supplies during the Initial Regulatory Period; and~~

~~(b) any new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service introduced under Schedule 1I (Product Development and Withdrawal),~~

~~and ensure that Prices set out in, or introduced into, any SFAA are~~ **must be determined in accordance consistent with Error! Reference source not found. (Reference Offers), Error! Reference source not found. (Non-Reference Offers and Other Charges) and** this Schedule 1E.

## **1F.2 Initial Cost Recovery Period**

### **1F.2.1 Initial Cost Recovery Period**

- (a) NBN Co's RAB will be determined by reference to Prudently incurred Capital Expenditure ~~as set out in~~ in accordance with Schedule 1E (Regulatory Asset Base).

- (b) ~~NBN Co will determine its~~ The ABBRR will be determined by the ACCC by reference to:
- (i) the RAB, which determines:
    - (A) a return on capital; and
    - (B) a return of capital;
  - (ii) Prudently incurred Operating Expenditure;
  - (iii) tax allowances; and
  - (iv) the ACIPA,
- determined by the ACCC in accordance with **Error! Reference source not found. (Error! Reference source not found.)** and this Schedule 1E.
- (c) Any shortfall in NBN Co's Revenues in any given Financial Year relative to the ABBRR in any given that Financial Year will be capitalised in an ICRA and subsequently recovered in later Financial Years of the Initial Cost Recovery Period in accordance with this Schedule 1E.

### 1F.2.2 Inclusion of Initial Operating Expenditure and Revenue

As described in this Schedule 1E, the ABBRR and ICRA ~~NBN Co~~ will include:

- (a) ~~pursuant to clause 1F.7.2(k),~~ all Operating Expenditure incurred; and
- (b) Revenue earned,

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

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

- (a) If the Methodology Change Event occurs during the Initial Regulatory Period:
  - (i) the Initial Cost Recovery Period will cease at the end of the Financial Year in which the Methodology Change Event occurs; and
  - (ii) the Building Block Revenue Period will commence at the beginning of the Financial Year immediately following the Financial Year in which the Methodology Change Event occurs.
- (b) In the last Financial Year of the Initial Cost Recovery Period, any Revenues earned in excess of that required to recover the ICRA will be

deducted from Revenues able to be earned in the first Financial Year of the Building Block Revenue Period.

#### 1F.2.4 Methodology during Building Block Revenue Period

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

- (a) NBN Co's RAB will be determined by reference to Prudently incurred Capital Expenditure in accordance with clause 1F.3.1 **Error! Reference source not found.**;
- (b) NBN Co's Regulated Revenue in any given Financial Year will be ~~set~~ determined by reference to NBN Co's ABBRR attributable to that ~~period~~ Financial Year in accordance with clause 1F.6.1;
- (c) ~~NBN Co will price its Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service subject to the requirements of~~ **Error! Reference source not found.** (Reference Offers) and **Error! Reference source not found.** (Non-Reference Offers and Other Charges), Reference Offers, Non-Reference Offers and Other Charges will be priced so that ~~having regard to the need for~~ the forecast value of nominal Revenue in any given Financial Year in the Building Block Revenue Period ~~not to~~ does not exceed the forecast value of Regulated Revenue for ~~the relevant~~ that Financial Year, ~~as calculated in accordance with clause 1F.5.2~~; and
- (d) any variation between actual Revenues and Regulated Revenues in a Financial Year of the Building Block Revenue Period will be carried forward in the calculation of Regulated Revenue ~~into for~~ subsequent Financial Years in accordance with clause 1F.5.2 1F.6.

#### 1F.2.5 Likely Methodology Change Event Notice

- (a) NBN Co will use reasonable endeavours to issue a Likely Methodology Change Event Notice to Customers Access Seekers and the ACCC on or around 5 years prior to the date that NBN Co expects the Methodology Change Event will occur (irrespective of whether the date that NBN Co expects the Methodology Change Event to occur is in the Initial Regulatory Period).

- (b) NBN Co will issue an updated Likely Methodology Change Event Notice to [Customers Access Seekers](#) and the ACCC each year following any previous Likely Methodology Change Event Notice until the Methodology Change Event has occurred.

### 1F.2.6 Pricing Intention Statement

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

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## 1F.3 Designation of Financial Years

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



the First Financial Year will be year  $t = -1$ ). The Financial Year immediately after the First Financial Year will be year  $t = 2$ , and so on.

## 1F.4 Annual Building Block Revenue Requirement

### 1F.4.1 Calculation of ABRR

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

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

where:

$WACC_{vanilla,t}^{nominal}$  is the nominal vanilla WACC rate of return in Financial Year  $t$ , calculated/determined in accordance with clause [1F.7.1\(a\)](#).

$Nominal RAB_t^{start}$  is the nominal value of the RAB at the start of the relevant Financial Year  $t$ .

$Nominal Regulatory Depreciation_t$  is the Nominal Regulatory Depreciation in the relevant Financial Year  $t$ , calculated in accordance with clause [1F.9.1\(c\)](#).

$Nominal Opex_t$  is the [nominal value of the actual](#) Operating Expenditure in Financial Year  $t$  that the ACCC is satisfied, in accordance with clause [1F.8.1\(a\)](#), was Prudently incurred or that the ACCC has determined in accordance with clauses [1F.8.1\(b\)](#) and [1F.1.2](#) on a Prudent basis in the relevant Financial Year  $t$  in accordance with clause [1F.7](#).

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

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

## 1F.5 Initial Cost Recovery Account

### 1F.5.1 Unrecovered Cost

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

$$Unrecovered\ Cost_t = ABBRR_t - Nominal\ Revenue_t$$

where:

$ABBRR_t$  is the nominal Annual Building Block Revenue Requirement calculated in accordance with clause ~~1F.3~~1F.4.

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

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

### 1F.5.2 Initial Cost Recovery Account

During the Initial Cost Recovery Period, the ICRA is:

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

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

$$ICRA_{t+1}^{start} = ICRA_t^{end} = ICRA_t^{start} * (1 + R_t^{nominal}) + Unrecovered\ Cost_t$$

where:

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

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

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

$R_t^{nominal}$  is the nominal rate of return for the current Financial Year ( $t$ ), as determined in accordance with clause 1F.7.1(a)

$Unrecovered\ Cost_t$  is the Unrecovered Cost<sub>t</sub> calculated in accordance with clause ~~1F.5.1~~1F.5.1.

### 1F.5.3 Carry Forward Revenue Adjustment

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

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

$$\text{Carry Forward Revenue Adjustment}_t = \text{Unrecovered Cost}_t + \text{ICRA}_t^{\text{start}} * (1 + R_t^{\text{nominal}})$$

- (b) The Carry Forward Revenue Adjustment will be applied to the calculation of Regulated Revenue in the first Financial Year of the Building Block Revenue Period, as described in clause 1F.6.1.
- (c) For clarity, the Carry Forward Revenue Adjustment will have a negative or zero value.

## 1F.6 Building Block Revenue Period

### 1F.6.1 Calculation of Regulated Revenue

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

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

$$\text{RR}_t = \text{ABBRR}_t + \text{CFRA}_{t-1} * (1 + \text{WACC}_{\text{vanilla},t}^{\text{nominal}})$$

$$\text{RR}_t = \text{ABBRR}_t + \text{CFRA}_{t-1} * (1 + R_t^{\text{nominal}})$$

- (b) in all other Financial Years:

$$\text{RR}_t = \text{ABBRR}_t + \text{RV}_{t-1} * (1 + \text{WACC}_{\text{vanilla},t}^{\text{nominal}})$$

$$\text{RR}_t = \text{ABBRR}_t + \text{RV}_{t-1} * (1 + R_t^{\text{nominal}})$$

where:

$\text{ABBRR}_t$  is the nominal ABBRR in the relevant Financial Year  $t$ , as determined in [accordance with clause 1F.4.11F.4.11F.4.1](#).

$\text{RV}_{t-1}$  is the Revenue Variation from ~~the Financial Year prior to~~ the preceding Financial Year ( $t-1$ ), as determined in [accordance with clause 1F.6.21F.6.21F.6.2](#).

$\text{CFRA}_{t-1}$  is the Carry Forward Revenue Adjustment from the final Financial Year of the Initial Cost Recovery Period, as determined in [accordance with clause 1F.5.31F.5.31F.5.3](#).

$R_t^{\text{nominal}}$  is the nominal rate of return for the current Financial Year ( $t$ ), as determined in [accordance with clause 1F.7.1\(a\)](#)

## 1F.6.2 Revenue Variation

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

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

where:

$RR_t$  is the Regulated Revenue in Financial Year  $t$ .

$\text{Nominal Revenue}_t$  is the Revenue earned by NBN Co in the relevant Financial Year  $t$ . This Revenue is measured in the nominal dollar value of Financial Year  $t$ .

- (b) This Revenue Variation calculated for Financial Year  $t$  will be applied to the Regulated Revenue that is established for Financial Year  $t+1$ .

## 1F.7 Cost of Capital

### 1F.7.1 WACC Rate of return Calculation

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

$$\begin{aligned} WACC_{\text{vanilla}}^{\text{nominal}} &= r_f + 3.50\% \\ R_t^{\text{nominal}} &= r_f + 3.50\% \end{aligned}$$

where:

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

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

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

$$R_t^{\text{real}} = \frac{1 + R_t^{\text{nominal}}}{1 + CPI_t^{\text{June}}} - 1$$

where:

$R_t^{\text{real}}$  is the real rate of return for the current Financial Year (t).

$R_t^{\text{nominal}}$  is the nominal rate of return for the current Financial Year (t), as determined in accordance with clause 1F.7.1(a)

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

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

## 1F.8 Prudently incurred Operating Expenditure

### 1F.8.1 Prudently incurred Operating Expenditure Inclusion of Operating Expenditure in the ABBRR and ICRA

- (a) For the purposes of calculating the ABBRR and the ICRA pursuant to clauses 1F.4 and 1F.5, Operating Expenditure incurred by NBN Co in a Financial Year is only considered to be Prudently incurred and included in the ABBRR if the ACCC is satisfied:
- (i) of one of the matters specified in clause 1F.8.2 in respect of that Operating Expenditure; or
  - (ii) the Operating Expenditure was incurred in connection with any of the following matters:
    - (A) the interim solution for the NBN Co Satellite Network;
    - (B) the Interim Transit Arrangements;
    - (C) the Tasmania Tri-Area Service Arrangements;
    - (D) the First Release Trial Sites;
    - (E) the Telstra Arrangements;

(F) the Optus Arrangements;

(G) Third Party Funded Network Changes, to the extent that Operating Expenditure is funded or underwritten by the relevant Third Party;

(H) urgent and unforeseen changes that satisfy the same conditions as under clause 1E.7.2(a)(ix);

(I) a Force Majeure Event;

(J) a requirement specifically imposed on NBN Co by law or by the Shareholder Ministers; and

(K) Operating Expenditure incurred by NBN Co from the Cost Commencement Date until the SAU Commencement Date.

(b) If the ACCC is not satisfied that the Operating Expenditure incurred by NBN Co in a Financial Year meets the requirements specified in clause 1F.8.1(a):

(i) that Operating Expenditure may not be included in the ABBRR or the ICRA; and

(ii) in making an LTRCM Determination pursuant to clause 1F.1.2, the ACCC must determine an amount of Operating Expenditure that is to be included in the ABBRR and the ICRA in respect of that Financial Year that the ACCC is satisfied meets the requirements specified in clause 1F.8.1(a).

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

~~(a) the Operating Expenditure is deemed to have been Prudently incurred under clause 1F.7.2; or~~

~~(b) the Operating Expenditure is Third Party Operating Expenditure and NBN Co satisfies the Prudent Cost Condition in clause 1E.4.1 (as though all references to Capital Expenditure were references to Operating Expenditure) in respect of that Third Party Operating Expenditure; or~~

~~(c) NBN Co:~~

~~(i) ensures that the Operating Expenditure is incurred in a manner that seeks to achieve value for money and the lowest Total Cost of Ownership; and~~

- ~~(ii) manages and controls Operating Expenditure in a manner consistent with the Statement of Expectations, any other legal, policy, regulatory or administrative requirements, or any requirements of the Shareholder Ministers, applicable to procurement by NBN Co.~~

### **1F.8.2 Conditions for Operating Expenditure to be considered as Prudently incurred**

Operating Expenditure incurred in a Financial Year will be considered to be Prudently incurred for the purposes of clause 1F.8.1(a)(i) if the ACCC is satisfied that:

- (a) the Operating Expenditure was incurred pursuant to a contract that was let in accordance with a competitive tender and procurement process and which includes a process for the management of the achievement of the Operating Expenditure Objectives through a process of contract variations which provides:
  - (i) that reasonable consideration be given to managing the risk of such contract variations;
  - (ii) for the provision of clear documentary evidence regarding the nature and reasonableness of any such contract variations; and
  - (iii) that the management of the achievement of the Operating Expenditure Objectives falls within the scope of such a process; or
- (b) exceptional circumstances exist such that a contract that meets the requirements of paragraph (a) was not necessary or desirable; or
- (c) the Operating Expenditure is consistent with Operating Expenditure that has been included in the ABBRR or ICRA for a prior Financial Year, having regard to:
  - (i) the relative amounts of the Operating Expenditure incurred in those Financial Years;
  - (ii) the relative cost of particular goods or services in those Financial Years;
  - (iii) any relevant differences in the scale and scope of the activities in connection with which the Operating Expenditure was incurred in those Financial Years; and
  - (iv) any other matter the ACCC considers relevant.

### **1F.8.3 Operating Expenditure Factors**

- (a) In deciding whether or not the ACCC is satisfied that an amount of Operating Expenditure meets the requirement specified in clause 1F.8.2(a), the ACCC must have regard to the following:
- (i) whether the contract was entered into in accordance with NBN Co's procurement processes, including in accordance with the Procurement Rules;
  - (ii) whether the contract was entered into on arm's length terms;
  - (iii) whether the contract entered into was in respect of a good or service in an open and competitive market (e.g. a commodity market);
  - (iv) any other factor the ACCC considers relevant.
- (b) In determining whether exceptional circumstances exist for the purposes of clause 1F.8.2(b), the ACCC may have regard to:
- (i) the extent to which there was only one potential supplier of a particular good or service and there were no reasonable alternatives or substitutes;
  - (ii) whether the relevant Operating Expenditure was incurred on exceptionally advantageous terms;
  - (iii) whether it was in the best interests of NBN Co to incur such Operating Expenditure with that particular supplier or in those particular circumstances having regard to the lifetime cost of acquisition and operation of the assets involved;
  - (iv) whether the Operating Expenditure is incurred in a manner that seeks to achieve value for money and the lowest Total Cost of Ownership; and
  - (v) any other factor the ACCC considers relevant.

## **1F.9 Treatment of Taxation and Depreciation**

### **1F.9.1 Regulatory Depreciation**

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

- (a) The Real Straight Line Depreciation is the sum of the straight line depreciation of the real Capital Expenditure value of each Asset Type incurred prior to the relevant Financial Year, using asset lifetimes for



each Asset Type determined ~~in a manner consistent with having regard to~~ NBN Co's audited accounts. That is, for each Asset Type, the annual Asset Real Straight Line Depreciation in Financial Year  $t$  is:

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

where:

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

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

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

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

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

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

$i$  is the Asset Type.

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

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

$$\text{Net Real Capex}_{i,k} = (\text{Real Capital Expenditure}_{i,k} - \text{Real Value of Disposals}_{i,k})$$

where:

*Real Capital Expenditure* <sub>$i,k$</sub>  is the real value of actual Capital Expenditure ~~that the ACCC is satisfied, in accordance with clause 1E.3.1, has been Prudently~~ incurred ~~on a Prudent basis~~ in connection with the design, engineering, construction, replacement and augmentation of Asset Type  $i$  in Financial Year  $k$ . Capital Expenditure is recognised at the time the ~~a~~ Relevant Asset is Placed in Service.

*Real Value of Disposals<sub>i,k</sub>* is the real value of Disposals of Asset Type *i* removed from service in Financial Year *k*.

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

where:

*N* is the number of Asset Types.

*Asset Real Straight Line Depreciation<sub>i,t</sub>* is the real value of the straight line depreciation of the Asset Type *i* in Financial Year *t*.

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

That is:

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

where:

*CIF<sub>t</sub>* is the Cumulative Inflation Factor as defined in clause [1F.9.4\(b\)](#)~~1F.9.4(b)~~[1F.9.4\(b\)](#).

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

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

## 1F.9.2 Nominal Tax Depreciation Expense

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

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

*Asset Nominal Tax Depreciation*<sub>*i,t*</sub>

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

where:

*Asset Vintage Nominal Straight Line Tax Depreciation*<sub>*i,k,t*</sub> =

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

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

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

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

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

*i* is the Asset Type.

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

*Net Nominal Capex*<sub>*i,k*</sub> is the nominal value of the net capital investment actually incurred in Financial Year *k* for Asset Type *i* (i.e. Capital Expenditure less Disposals):

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

where:

*Nominal Capital Expenditure*<sub>*i,k*</sub> is the nominal value of actual Capital Expenditure [that the ACCC is satisfied, in accordance with clause 1E.3.1, has been Prudently incurred on a Prudent basis](#) in connection with the design, engineering, construction, replacement and augmentation of Asset Type *i* in Financial Year *k*. Capital Expenditure is recognised at the time the asset is Placed in Service.

*Nominal Asset Disposals*<sub>*i,k*</sub> is the nominal value of Disposals of Asset Type *i* removed from service in Financial Year *k*.

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

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

where:

$N$  is the number of Asset Types.

### 1F.9.3 Taxation Calculations

For the purposes of calculating the allowance for taxation expenses in the calculation of ABBRR and Unrecovered Cost, ~~NBN Co will calculate~~ the Net Tax Allowance will be calculated as follows:

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

where:

$\tau$  is the statutory company taxation rate that applies in Financial Year  $t$ , as determined in clause ~~1F.9.5(b)1F.9.5(b)1F.9.5(b)~~.

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

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

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

where:

*Nominal Revenue* <sub>$t$</sub>  is the nominal Revenue in the relevant Financial Year  $t$ .

*Nominal Opex* <sub>$t$</sub>  is the nominal Operating Expenditure in the relevant Financial Year  $t$ .

~~*Nominal Regulatory Depreciation* <sub>$t$</sub>  is the Nominal Regulatory Depreciation in the relevant Financial Year  $t$ , as calculated in accordance with clause ~~1F.9.11F.9.11F.9.11F.9.11F.9.1~~.~~

*Interest Expense<sub>t</sub>* is the actual interest expense recorded in NBN Co's statutory accounts in Financial Year *t*.

*Nominal Tax Depreciation<sub>t</sub>* is the Nominal Tax Depreciation Expense in the relevant Financial Year (*t*), calculated in accordance with clause ~~1F.9.21~~1F.9.21F.9.2.

*Tax Loss Carried Forward<sub>t-1</sub>* is determined as follows:

$$\begin{aligned} & \text{if } t - 1 \text{ refers to 2007/08, Tax Loss Carried Forward}_{t-1} = 0; \\ & \text{otherwise, Tax Loss Carried Forward}_{t-1} \\ & = \text{Min}(0, \text{Taxable Profit}_{t-1} + \text{Tax Loss Carried Forward}_{t-2}) \end{aligned}$$

#### 1F.9.4 Real Values

- (a) During the Initial Regulatory Period, when reference is made to real values, this refers to the cost or revenue of the relevant parameter in constant dollar terms of the First Financial Year. Except where a specific means of conversion is set out for a particular value, this will be calculated as follows:

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

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

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

where:

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

- (b) The  $\text{CIF}_t$  is the Cumulative Inflation Factor which is the cumulative product of the June Quarter CPI published for each Financial Year from the SAU Commencement Date, relative to the First Financial Year, i.e.:

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

where:

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

values in that year will be the same as the real values for that year.

- (c) In this Schedule 1E, for Financial Years prior to the First Financial Year, the  $CIF_t$  is defined as:

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

where:

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

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

### 1F.9.5 Tax parameters

For the purposes of this clause 1F.9:

(a) impact of dividend imputation franking credits (“gamma”): the gamma in Financial Year  $t$  will be 0.25 throughout the Initial Regulatory Period; and:

(i) if the value of the sum of *Taxable Profit<sub>t</sub>* and *Tax Losses Carried Forward<sub>t-1</sub>* is negative, unspecified; or

(ii) if the value of the sum of *Taxable Profit<sub>t</sub>* and *Tax Losses Carried Forward<sub>t-1</sub>* is positive, determined by the ACCC in the LTRCM Determination made under clause 1F.1.2;

where *Taxable Profit<sub>t</sub>* and *Tax Loss Carried Forward<sub>t-1</sub>* are as defined in clause 1F.9.3.

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

## 1F.10 Annual Construction in Progress Allowance

### 1F.10.1 ACIPA calculation

(a) An ACIPA will be calculated each year and included in the calculation of the Annual Building Block Revenue Requirement (ABRR) as described in clause 1F.4.

(b) The ACIPA for year  $t$  is calculated as follows:

$$ACIPA_t = CIP_t^{start} * R_t^{nominal}$$

(b) \_\_\_\_\_

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

where:

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

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

$WACC_{vanilla,t}^{nominal}$  is the nominal vanilla WACC in Financial Year  $t$  rate of return for the current Financial Year ( $t$ ), calculated/determined in accordance with clause 1F.7.1(a).

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## Schedule 1G Regulatory information

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### 1G.1 Compliance and forecasting during Initial Regulatory Period

#### 1G.1.1 Scope

This Schedule 1G applies for the Initial Regulatory Period.

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

No later than 30 June prior to the commencement of each Financial Year during the Initial Regulatory Period, NBN Co will submit to the ACCC NBN Co's forecasts or estimates of the following information in respect of that Financial Year (in this Schedule 1G, Forecast Financial Information):

- (a) Capital Expenditure, by Asset Type;
- (b) Operating Expenditure;
- (c) Disposals, by Asset Type;
- (d) the opening value and closing value of CIP;

#### (Forecast Financial Information)

- (a) ~~June Quarter CPI;~~
- (b) ~~Capital Expenditure, by Asset Type;~~
- (c) ~~Revenue;~~
- (d) ~~Operating Expenditure;~~
- (e) ~~Nominal Straight Line Depreciation;~~
- (f) ~~Nominal Tax Depreciation Expense;~~
- (g) ~~Disposals, by Asset Type;~~
- (h) ~~opening and closing values of the RAB (nominal and real);~~
- (i) ~~opening and closing values of the ICRA (nominal and real);~~
- (j) ~~Nominal Regulatory Depreciation;~~
- (k) ~~the closing value of CIP;~~
- (l) ~~Annual Building Block Revenue Requirement;~~



- ~~(m)~~ ~~Unrecovered Cost;~~
  - ~~(n)~~ ~~Regulated Revenue;~~
  - ~~(o)~~ ~~the Cumulative Inflation Factor;~~
  - ~~(p)~~(e) ~~the risk free rate to be used in the calculation of the nominal vanilla WACC rate of return under clause 1F.7.1(b); and~~
  - ~~(q)~~(f) ~~the nominal vanilla WACC rate of to be calculated under clause 1F.7.1(a);~~
  - ~~(r)~~ ~~the Interest Expense to be included under clause 1F.8.3;~~
  - ~~(s)~~ ~~applicable corporate tax rate to be calculated in accordance with clause 1F.8.5; and~~
  - ~~(t)~~ ~~accounting and tax asset lifetimes in that Financial Year,~~
- ~~(Forecast Information).~~

**1G.1.3 Provision of ~~actual cost information~~ Actual Financial Information and variance reasons to ACCC**

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

- (a) ~~the actual cost information for the matters set out in clauses 1G.1.2(a) to 1G.1.2(t) in respect of that Financial Year (Actual Cost Information); and~~ the actual financial information for the following matters in respect of that Financial Year (in this Schedule 1G, Actual Financial Information):
  - (i) June Quarter CPI;
  - (ii) Capital Expenditure, by Asset Type;
  - (iii) Revenue;
  - (iv) Operating Expenditure;
  - (v) Disposals, by Asset Type;
  - (vi) the Interest Expense;
  - ~~(i)~~(vii) accounting and tax asset lifetimes; and
- (b) information which sets out any material variance between the Forecast Financial Information and the Actual ~~Cost~~Financial Information, including reasons for the variances.

#### **1G.1.4 Provision of Proposed Financial Information**

- (a) By 31 October after the end of each Financial Year of the Initial Regulatory Period, NBN Co will provide to the ACCC its proposed values in respect of that Financial Year for (in this Schedule 1G, Proposed Financial Information):
- (i) the Annual Building Block Revenue Requirement, including each of the inputs to that Annual Building Block Revenue Requirement;
  - ~~(i)~~(ii) opening and closing values of the RAB (nominal and real);
  - ~~(ii)~~(iii) opening and closing values of the ICRA (nominal and real);
  - ~~(iii)~~(iv) the opening and closing value of CIP;
  - ~~(iv)~~(v) Unrecovered Cost;
  - ~~(v)~~(vi) if the value of the sum of the  $\epsilon$ Taxable  $p$ Profit <sub>$t$</sub>  and  $\epsilon$ Tax  $l$ Losses  $\epsilon$ Carried  $f$ Forward <sub>$t-1$</sub>  proposed for the purposes of the Net Tax Allowance is positive, the proposed impact of dividend imputation franking credits (“gamma”);
  - ~~(vi)~~(vii) the applicable corporate tax rate to be calculated in accordance with clause 1F.9.5; and
  - (viii) accounting and tax asset lifetimes.

#### **1G.1.5 First Financial Year**

- (a) The information provided to the ACCC pursuant to clauses 1G.1.3 and 1G.1.4 in respect of the First Financial Year is to include the Actual Financial Information or Proposed Financial Information (as relevant) for that Financial Year and each prior Financial Year (or part thereof) from the Cost Commencement Date.

#### **1G.1.4 1G.1.6 **Provision of additional information during Building Block Revenue Period****

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

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

- (i) the Regulated Revenue; and
- (ii) the Revenue Variation.

### ~~1G.1.5~~ **1G.1.7 ACCC Enhanced Information Request**

At any time, the ACCC may request information from NBN Co that is reasonably necessary for the ACCC to ~~assess NBN Co's compliance~~ determine the ABBRR, RAB, ICRA, Regulated Revenue and/or Revenue Variation, including the values of the inputs to each of those values, in accordance with **Error! Reference source not found. (Error! Reference source not found.)** and Schedule 1E (Regulatory Asset Base

~~Regulatory Asset Base~~

~~Regulatory Asset Base~~

), and NBN Co must comply with a request made by the ACCC under this clause 1G.1.7 within the timeframe specified by the ACCC.

## **1G.2 Expenditure compliance and reporting**

### **1G.2.1 Expenditure Compliance Reports**

By 31 October after the end of each Financial Year during the Initial Regulatory Period, NBN Co will submit to the ACCC a report signed by the Chief Financial Officer of NBN Co (or his or her authorised delegate) which:

- (a) sets out the total amount of Capital Expenditure incurred in relation to each Asset Type in that Financial Year and the total amount of Operating Expenditure incurred in that Financial Year;
- (b) certifies that, in relation to that Financial Year, the Capital Expenditure included in the NBN Co proposed for inclusion in the RAB has been Prudently incurred in accordance with Schedule 1E (Regulatory Asset Base), including that the Capital Expenditure:
  - (i) was incurred in accordance with the Prudent Cost Condition and the Prudent Design Condition; or
  - ~~(b)(ii)~~ was incurred in connection with one or more of the matters specified in clause 1E.3.1(a)(ii).
  - ~~(i)~~ in respect of the Prudent Design Condition, the allocation of Capital Expenditure incurred in that Financial Year in relation to the following:
    - ~~(A)~~ Capital Expenditure that is deemed to have been Prudently incurred 1A.1.1 under clause 1E.3.2;

- ~~(B) — Capital Expenditure that is materially consistent with, or within the scope of, the Network Design Rules or any Permitted Variations 1A.1.1(a)(i); and~~
- ~~(C) — Capital Expenditure that is materially consistent with, or within the scope of, an Endorsed Network Change; and 1A.1.1(a)(i) 1A.1.1(a)(i)~~
- ~~(ii) — in respect of the Prudent Cost Condition, the allocation of Capital Expenditure incurred in that Financial Year in relation to the following:~~
  - ~~(A) — Capital Expenditure that is deemed to have been Prudently incurred under clause 1E.3.2;~~
  - ~~(B) — Capital Expenditure that has been incurred in accordance with the Procurement Rules; and~~
  - ~~(C) — Capital Expenditure that otherwise satisfies the Prudent Cost Condition in one of the other categories under clause 1E.4.1; and~~
- (c) — certifies that, in relation to that Financial Year, the Operating Expenditure proposed for inclusion included in the ABBRR has been Prudently incurred in accordance with clause 1F.7.:
  - (i) — the Chief Financial Officer is satisfied of one of the matters specified in clause 1F.8.2(a) to 1F.8.2(c) in relation to the Operating Expenditure; or
  - (ii) — the Operating Expenditure was incurred in connection with one or more of the matters specified in clause 1F.8.2(a)(ii).

## **1G.2.2 First Financial Year**

The report provided to the ACCC pursuant to clause 1G.2.1 in respect of the First Financial Year, is to include the information and certifications for that Financial Year and each prior Financial Year (or part thereof) from the Cost Commencement Date.

## **1G.2.2 1G.2.3 **Expenditure Compliance Information Request****

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

### ~~1G.2.3~~ 1G.2.4 Procurement Rules compliance

- (a) By 31 October ~~after the end~~ of each Financial Year ~~of~~ during the Initial Regulatory Period, NBN Co will submit to the ACCC a report signed by the Chief Procurement Officer certifying that, in relation to that Financial Year, the Procurement Rules ~~satisfy~~ satisfied the requirements in clause ~~1E.5.2~~ 1E.5.1.
- (b) At any time, the ACCC may request information from NBN Co that is reasonably necessary for the ACCC to assess compliance of the Procurement Rules with clause ~~1E.5.2~~ 1E.5.1 and NBN Co must comply with a request made by the ACCC under this clause 1G.2.4(b) within the timeframe specified by the ACCC.

## 1G.3 Price compliance and reporting

- (a) By 31 October after the end of each Financial Year in respect of the Initial Regulatory Period, NBN Co will submit to the ACCC a report signed by the Chief Financial Officer of NBN Co (or his or her authorised delegate) which certifies that, in respect of that Financial Year:
  - (i) the Price ~~for the supply specified in any SFAA for each of the~~ each Reference Offers ~~does~~ do not exceed, at any time during the Financial Year, the Maximum Regulated Price applicable to ~~for~~ that Reference Offer at the relevant point in time in that Financial Year;
  - (ii) the Price ~~for the supply specified in any SFAA for each of the~~ each Non-Reference Offers ~~does~~ do not exceed, at any time during the Financial Year, the Maximum Regulated Price for that Non-Reference Offer at the relevant point in time in that Financial Year;
  - (iii) the Price ~~specified in any SFAA for each of the~~ each Other Charges imposed ~~does~~ do not exceed, at any time during the Financial Year, the Maximum Regulated Price for that Other Charge ~~in that Financial Year~~ at the relevant point in time; and
  - (iv) Prices compl~~ied~~ ied with the requirements of **Error! Reference source not found.** (Reference Offers) and Error! Reference source not found. (Non-Reference Offers and Other Charges), ~~clauses 1C.4.5(c) and 1D.4.4(b)~~.

and provide to the ACCC such other information that NBN Co considers is reasonably necessary for the ACCC to assess NBN Co's compliance with **Error! Reference source not found.** (Reference

Offers) and Error! Reference source not found. (Non-Reference Offers and Other Charges) clauses 1C.3, 1C.4, 1D.3 and 1D.4.

- (b) At any time, the ACCC may request information from NBN Co ~~in relation to the report submitted under clause 1G.3(a)~~ that is reasonably necessary for the ACCC to ~~assess~~determine NBN Co's compliance with **Error! Reference source not found. (Reference Offers) and Error! Reference source not found. (Non-Reference Offers and Other Charges) clauses 1C.3, 1C.4, 1D.3 and 1D.4** and NBN Co must comply with a request made by the ACCC under this clause 1G.3(b) within the timeframe specified by the ACCC.

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## **Schedule 1H Integrated-Maximum Regulated Price Review Mechanisms**

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### **1H.1 Introduction**

#### **1H.1.1 Scope**

This Error! Reference source not found. applies for the Initial Regulatory Period.

#### **1H.1.2 Overview**

This Error! Reference source not found. confers functions and powers on the ACCC pursuant to section 152CBA(10A) of the CCA to undertake reviews of the Maximum Regulated Prices of:

- (a) Reference Offers;
- (b) Non-Reference Offers; and
- (c) Other Charges.

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### **1H.2 Tax Change Events**

#### **1H.2.1 Change to Maximum Regulated Price as a result of a Tax Change Event**

If a Tax Change Event occurs during the Initial Regulatory Period, the Maximum Regulated Price of a Reference Offer, Non-Reference Offer and/or Other Charge may be changed in accordance with this clause 1H.2

#### **1H.2.2 Change to Maximum Regulated Price if no Access Seeker objects**

- (a) During the Initial Regulatory Period, NBN Co may publish on its website, and provides Access Seekers and the ACCC with, a written statement in respect one or more Tax Change Events that occurred in a period of 60 Business Days prior to the statement that specifies:
  - (i) the details and the date or dates of the Tax Change Event or Tax Change Events;
  - (ii) the likely change in costs in the supply of Reference Offers and/or Non-Reference Offers as a result of the Tax Change Event or Tax Change Events; and
  - (iii) the proposed apportionment of that change in costs across each affected Reference Offer, Non-Reference Offer and/or Other Charge, and the change in the Maximum Regulated Price of each affected Reference Offer, Non-Reference Offer and/or Other Charge to reflect those changed costs; and

(iv) the proposed date (in this clause 1H.2, **Proposed Change Effective Date**) on which the changes in the Maximum Regulated Prices referred to in clause 1H.2.2(a)(iii) will take effect, which date must be no earlier than 40 Business Days after the NBN Co Tax Change Events Statement is published on NBN Co's website and provided to each Access Seeker and the ACCC.

(in this clause 1H.2, such a statement **NBN Co Tax Change Events Proposal**)

(b) If NBN Co publishes on its website, and provides Access Seekers and the ACCC with, a NBN Co Tax Change Events Proposal, an Access Seeker may at any time prior to the Proposed Change Effect object to the NBN Co Tax Change Events Proposal by giving NBN Co a notice stating its objection.

(c) NBN Co must provide the ACCC with a copy of any notice received under clause 1H.2.2(b).

(d) If no notice is given to NBN Co under clause 1H.2.2(b), the changes in the Maximum Regulated Price of each affected Reference Offer, Non-Reference Offer and/or Other Charge specified in the NBN Co Tax Change Events Proposal will take effect from the Proposed Change Effective Date.

(e) If a notice is given under clause 1H.2.2(b), the changes in the Maximum Regulated Prices specified in the NBN Co Tax Change Events Proposal will not take effect.

### **1H.2.3 Submission of statement by NBN Co to ACCC following a Tax Change Event**

If NBN Co publishes on its website, and provides Access Seekers and the ACCC with, a NBN Co Tax Change Events Proposal and the changes in the Maximum Regulated Prices specified in a NBN Co Tax Change Events Proposal do not take effect pursuant to clause 1H.2.2(e), within 40 Business Days of the Proposed Change Effect Date, NBN Co may submit to the ACCC a written statement that specifies the matters referred to in clauses 1H.2.2(a)(i) to (iv) in respect one or more of the Tax Change Events to which the NBN Co Tax Change Events Proposal relates.

### **1H.2.4 Negative Tax Change Events not notified to ACCC**

If clause 1H.2.2(d) does not apply to a Negative Tax Change Event and the Negative Tax Change Event is not notified by NBN Co to the ACCC under clause 1H.2.3, then the ACCC may notify NBN Co of the occurrence of that Negative Tax Change Event.



### 1H.2.5 ACCC approval of change to Maximum Regulated Price following a Tax Change Event

- (a) If NBN Co submits to the ACCC a written statement under clause 1H.2.3 or if the ACCC notifies NBN Co of the occurrence of a Negative Tax Change Event under clause 1H.2.4, the ACCC may issue a statement to NBN Co that specifies:
- (i) the likely change in costs in the supply of Reference Offers and/or Non-Reference Offers as a result of the Tax Change Event or Tax Change Events, if any; and
  - (ii) apportionment of that change in costs across each affected Reference Offer, Non-Reference Offer and/or Other Charge, and the change in the Maximum Regulated Price of each affected Reference Offer, Non-Reference Offer and/or Other Charge to reflect those increased costs,
- that the ACCC is satisfied are reasonable.
- (b) If the ACCC does not issue a statement in accordance with clause 1H.2.5(a) within 40 Business Days of NBN Co submitting a written statement under clause 1H.2.3:
- (i) the ACCC is taken to be satisfied that the changes in the Maximum Regulated Price of each affected Reference Offer, Non-Reference Offer and/or Other Charge specified in the written statement submitted by NBN Co are reasonable; and
  - (ii) upon the expiry of that period, the Maximum Regulated Price of each affected Reference Offer, Non-Reference Offer and/or Other Charge changes by the amount proposed in the written statement submitted by NBN Co.
- (c) In deciding whether or not the ACCC is satisfied that the matters referred to in clause 1H.2.5(a) are reasonable, the ACCC must have regard to:
- (i) any written statement submitted by NBN Co under clause 1H.2.3;
  - (ii) whether the likely change in costs in the supply of Reference Offers and/or Non-Reference Offers as a result of the Tax Change Event or Tax Change Events is material;
  - (iii) the matters specified in section 152AH of the CCA; and
  - (iv) any other matter the ACCC considers relevant.

(d) Before issuing a statement in accordance with clause 1H.2.5(a), the ACCC may consult with NBN Co and such other persons as the ACCC considers appropriate, on any matters arising out of a Tax Change Event.

### **1H.2.6 ACCC request for information regarding a Tax Change Event**

(a) At any time, the ACCC may request information from NBN Co, further or in addition to the information set out in any written statement submitted by NBN Co in accordance with clause 1H.2.3, that is reasonably necessary for the ACCC to determine whether a Tax Change Event has occurred and/or whether it is satisfied that the matters referred to in clause 1H.2.5(a) are reasonable.

(b) NBN Co must comply with a request made by the ACCC under clause 1H.2.6(a) within the timeframe specified by the ACCC.

(c) The period between when the ACCC requests information under clause 1H.2.6(a) and when the ACCC is provided with that information is to be disregarded for the purposes of calculating the period of time elapsed for the purposes of clause 1H.2.5(b).

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## **1H.3 Price Review Arrangement**

### **1H.3.1 Initiation of Price Review**

(a) Subject to clause 1H.3.1(c), no earlier than 1 July 2016, either the ACCC or NBN Co may issue a written notice (in this clause 1H.3, **Price Review Notice**) to the other stating that it wishes to commence a review of the Maximum Regulated Prices applicable to Reference Offers, Non-Reference Offers and/or Other Charges under this clause 1H.3 (in this 1G.1, **Price Review**).

(b) The Price Review Notice must:

(i) identify one or more Maximum Regulated Prices that the notifying party considers should be reviewed; and

(ii) the reasons why the notifying party considers the Maximum Regulated Prices should be reviewed.

(c) A Price Review Notice cannot be issued under clause 1H.3.1(a) if a Price Review Arrangement applies to any Financial Year in the Initial Regulatory Period.

### 1H.3.2 NBN Co to develop Price Review Proposal

- (a) NBN Co will, no later than 120 calendar days after a Price Review Notice is issued (or such other later date specified by the ACCC), provide the ACCC with a proposal in relation to the Maximum Regulated Prices the subject of the Price Review Notice (in this clause 1H.3, **Price Review Proposal**).
- (b) The Price Review Proposal must include the following information:
  - (i) a proposed Price Review Arrangement developed in accordance with the Price Review Criteria, which includes the matters referred to in clause 1H.3.7(a);
  - (ii) an explanation of the basis on which the proposed Price Review Arrangement meets the Price Review Criteria; and
  - (iii) the forecasts and estimates used by NBN Co to apply the Price Review Criteria to the proposed Price Review Arrangement, and an explanation of the basis on which those forecasts and estimates were prepared, including the methods used and assumptions made.

### 1H.3.3 ACCC response to Price Review Proposal

- (a) The ACCC may either:
  - (i) accept the Price Review Proposal;
  - (ii) reject the Price Review Proposal, in which case the ACCC may either:
    - (A) issue its own Price Review Arrangement (in this clause 1H.3 **an ACCC Determined Price Review Arrangement**); or
    - (B) discontinue the Price Review without establishing a Price Review Arrangement, in which case the Price Review will terminate; or
  - (iii) where the ACCC issued the relevant Price Review Notice, discontinue the Price Review without rejecting the Price Review Proposal or establishing a Price Review Arrangement, in which case the Price Review will terminate.
- (b) The ACCC may request NBN Co to give to the ACCC further information that the ACCC considers reasonably necessary for making a decision under clause 1H.3.3(a) and NBN Co must comply with such a request within the period specified by the ACCC.

- (c) The ACCC must publish on its website a Price Review Proposal provided to it by NBN Co.
- (d) The ACCC must not make a decision under clause 1H.3.3(a) unless the ACCC has had regard to the information in the Price Review Proposal provided by NBN Co under clause 1H.3.2(b).
- (e) The ACCC may consult with NBN Co and other such persons as the ACCC considers appropriate on NBN Co's Price Review Proposal and must consider any submissions that are received within the time limit specified by the ACCC.
- (f) The ACCC must publish on its website its decision under clause 1H.3.3(a), including the reasons for the decision and any resulting Price Review Arrangement.

#### **1H.3.4 Variation of Price Review Proposal**

- (a) The ACCC may issue a written notice to NBN Co stating that if NBN Co:
  - (i) makes such variations to the Price Review Proposal as are specified in the notice; and
  - (ii) gives the varied Price Review Proposal to the ACCC within the period specified in the notice,the ACCC will consider the varied Price Review Proposal under clause 1H.3.3 as if the varied Price Review Proposal had been given instead of the original Price Review Proposal.
- (b) If NBN Co gives the ACCC a varied Price Review Proposal in response to a notice issued under clause 1H.3.4(a), the ACCC will consider the varied Price Review Proposal under clause 1H.3.3 as if the varied Price Review Proposal had been given instead of the original Price Review Proposal.

#### **1H.3.5 Acceptance of Price Review Proposal**

- (a) The ACCC must not accept the Price Review Proposal under clause 1H.3.3(a) unless the ACCC is satisfied that the Price Review Proposal meets the Price Review Criteria.
- (b) If a Price Review Proposal is accepted by the ACCC, the proposed Price Review Arrangement included in that Price Review Proposal will become a Price Review Arrangement.

### 1H.3.6 ACCC Determined Price Review Arrangement

- (a) The ACCC must not issue an ACCC Determined Price Review Arrangement under clause 1H.3.3(a)(ii)(A) **Error! Reference source not found.**, unless the ACCC is satisfied that the ACCC Determined Price Review Arrangement meets the Price Review Criteria.
- (b) If the ACCC issues an ACCC Determined Price Review Arrangement, the ACCC Determined Price Review Arrangement will become a Price Review Arrangement.

### 1H.3.7 Content and operation of Price Review Arrangement

- (a) A Price Review Arrangement must specify :
- (i) the commencement date of the Price Review Arrangement which must:
- (A) be the start of a Financial Year between 1 July 2018 and 30 June 2023;
- (B) not be a date that precedes the date on which the Price Review Arrangement is accepted or issued by the ACCC; and
- (C) be no later than 12 months after the date on which the Price Review Arrangement is accepted or issued by the ACCC;
- (ii) the end date of the Price Review Arrangement which must be on or before 30 June 2023;
- (iii) the Reference Offers, Non-Reference Offers and/or Other Charges to which the Price Review Arrangement applies (in this clause 1H.3, each a **Reviewed Offer**);
- (iv) for each Reviewed Offer, the Maximum Regulated Price for one or more Financial Years within the period of the Price Review Arrangement.
- (b) The Maximum Regulated Price for a Reviewed Offer specified in a Price Review Arrangement may:
- (i) be specified in the form of an amount or as a formula for ascertaining the amount; and
- (ii) be different for each Financial Year for which the Price Review Arrangement specifies a Maximum Regulated Price (including to establish a glide-path in relation to the Maximum Regulated Price for the Reviewed Offer).

(c) If a Price Review Arrangement applies to a Reviewed Offer and a Financial Year within the period between 1 July 2018 and 30 June 2023, then the Maximum Regulated Price for that Reviewed Offer for that Financial Year will be the Maximum Regulated Price specified in that Price Review Arrangement for that Reviewed Offer for that Financial Year.

### **1H.3.8 Price Review Criteria**

(a) The ACCC must not accept a Price Review Proposal, or issue an ACCC Determined Price Review Arrangement, unless:

(i) the ACCC is satisfied that the Maximum Regulated Price of each Reviewed Offer for each Financial Year to which the Price Review Arrangement applies is reasonable, having regard to the matters specified in section 152AH of the CCA and any other matter the ACCC considers relevant; and

(ii) the ACCC is satisfied that there is no material difference between:

(A) the present value of the difference between the expected Revenue and the expected costs that would be inputs to the ABBRR, between the commencement of the Price Review Arrangement and the SAU Expiry Date, if the Price Review Arrangement were in operation,

and

(B) the present value of the difference between the expected Revenue and the expected costs that would be inputs to the ABBRR, between the commencement of the Price Review Arrangement and the SAU Expiry Date, if the Price Review Arrangement were not in operation,

(in this clause 1H.3, **Price Review Criteria**).

(b) In deciding whether to accept or reject a Price Review Proposal and in making an ACCC Determined Price Review Arrangement, the ACCC must take into account:

(i) the characteristics of the Reference Offers, Non-Reference Offers and Other Charges other than the Reviewed Offers (in this clause 1H.3.8(b), **Other Offers**);

(ii) the costs associated with Other Offers;

(iii) the Revenue associated with Other Offers; and

(iv) demand for Other Offers.

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## ~~Schedule 1H~~ **Schedule 1I Non-price terms and conditions**

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### ~~1H.1~~ **1I.1 General**

#### ~~1H.1.1~~ **1I.1.1 Scope**

- (a) [Subject to clause 1I.1.1\(b\), this Schedule 1I applies for the Initial Regulatory Period.](#)
- ~~(a)~~(b) [Clause 1I.5 and Annexure 1 to this Schedule 1I apply for a period of 5 years from the SAU Commencement Date.](#)

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### ~~1H.2~~ **1I.2 Rollout progress information**

#### ~~1H.2.1~~ **1I.2.1 3-year construction rollout plan**

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

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

#### ~~1H.2.2~~ **1I.2.2 1-year construction rollout plan**

On a quarterly basis during the Initial Regulatory Period until the Rollout Built Date, NBN Co will publish a 1-year construction rollout plan that includes the following information:

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

#### ~~1H.2.3~~ **1I.2.3 Monthly ready for service rollout plan**

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



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

#### ~~1H.2.4~~1H.2.4 **Historical footprint list and historical rollout region list**

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

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### ~~1H.3~~1H.3 **POI rollout progress**

#### ~~1H.3.1~~1H.3.1 **Points of Interconnect Plan**

- (a) On:
  - (i) a quarterly basis during the Initial Regulatory Period until the completion of the Established POIs (as at the SAU Commencement Date); and
  - (ii) an annual basis after the completion of the Established POIs (as at the SAU Commencement Date),

NBN Co will publish updates to the status of the Established POIs (**Points of Interconnect Plan**).

- (b) The Points of Interconnect Plan will include:
  - (i) POI name;
  - (ii) POI ID;
  - (iii) approximate number of Premises to be served by the POI (on completion);
  - (iv) forecast date for ODF availability; and
  - (v) forecast date for commissioning of the POI.

## ~~1H.4~~1.4 Closure, relocation and new Points of Interconnect

### ~~1H.4.1~~1.4.1 Closures and Relocations of Established POIs

- ~~(a)~~ NBN Co may, with the ACCC's prior approval:
- ~~(i)~~ close an Established POI; or
  - ~~(ii)~~ relocate an Established POI.
- ~~(b)~~(a) NBN Co will provide Access Seekers and the ACCC with at least 12 months' prior notice of a closure or relocation of an Established POI.
- ~~(c)~~(b) This clause 1.4.1 does not apply to the relocation or closure of an Established POI in response to an Emergency.

### ~~1H.4.2~~1.4.2 New POIs

- ~~(a)~~ NBN Co may, with the ACCC's prior approval, open a new POI at any time.
- ~~(b)~~(a) NBN Co will provide Access Seekers with no less than 12 months' prior notice of the establishment of a new POI under this clause 1.4.2.
- ~~NBN Co will not, and will not be required to, open a new Established POI other than in accordance with this clause 1H.4.2.~~
- ~~(c)~~(b) This clause 1.4.2 does not apply to the opening of a new Temporary POI.

### ~~1H.4.3~~ Timeframes for ACCC decisions

- ~~(a)~~ The ACCC will approve or reject NBN Co's request:
- ~~(i)~~ to close or relocate an Established POI under clause 1H.4.1; or
  - ~~(ii)~~ to open a new POI under clause 1H.4.2;
- ~~within 60 Business Days after NBN Co's request.~~
- ~~(b)~~ The ACCC may extend the period referred to in clause 1H.4.3(a) by a further 20 Business Days in circumstances where it believes such an extension is reasonably necessary for the purposes of making an informed decision in relation to NBN Co's request.
- ~~(c)~~ If the ACCC has not made a decision within the timeframes referred to in clause 1H.4.3(a) (as may be extended under clause 1H.4.3(b)), NBN Co's request will be deemed to have been accepted.

~~(d) The ACCC will provide reasons for its decision to accept or reject NBN Co's request.~~

~~(e) The ACCC may consult with any person in making a decision about whether to accept or reject NBN Co's request.~~

#### ~~1H.4.4~~ **Updating the POI List**

~~The ACCC will update the POI List to reflect the approval, or deemed approval, under clause 1H.4.3 of NBN Co's request.~~

#### ~~1H.4.5~~ **1.4.3 Commitment to close Temporary POIs**

- (a) ~~Subject to clause~~ 1A.3.5, NBN Co will close a Temporary POI when NBN Co reasonably considers that the Temporary POI is no longer required having regard to ~~the following criteria~~:
- (i) ~~when whether~~ an Established POI is available and serves the Premises served by the Temporary POI;
  - (ii) the number of ~~Access Seekers~~ Customers that need to migrate from the Temporary POI to the Established POI; and
  - (iii) the number of Premises served by the Temporary POI.
- (b) NBN Co will provide ~~any affected~~ Access Seekers ~~and the ACCC~~ with at least ~~126~~ months' prior notice of ~~the migration of the Access Seeker's Downstream Customers from a Temporary POI to an Established POI or another Temporary POI, where the migration is required by NBN Co's closure or relocation of a Temporary POI.~~

#### ~~1H.4.6~~ **1.4.4 Scope of this clause**

Except as expressly stated, this clause 1.4 does not apply in respect of Temporary POIs.

#### **1.4.5 Requirement in Regulatory Determination**

No requirement in any Regulatory Determination that NBN Co provide to the ACCC or Access Seekers information regarding the location or proposed location of POIs is inconsistent with this Special Access Undertaking for the purposes of section 152CBIA or section 152CBIB of the CCA.

## ~~11.5~~ 11.5 **Dispute Management**

### ~~11.5.1~~ **Background**

#### 11.5.1 Dispute resolution process in a SFAA

- (a) NBN Co must provide in any SFAA that if the parties cannot resolve a Dispute commercially within a specified time period, the Dispute may be resolved by:
- (i) expert determination by a single expert applying the Expert Determination Rules of the Institute of Arbitrators & Mediators Australia, where the single expert will be as agreed between the parties or, if they cannot agree, an expert selected by a Resolution Advisor; or
  - (ii) if the parties do not seek to resolve the Dispute through expert determination, a Panel Arbitration.
- (b) A SFAA must include Dispute Management Rules that cover the selection of an expert by a Resolution Advisor referred to in clause 11.5.1(a)(i), the selection of a Panel by a Resolution Advisor referred to in clause 11.5.1(a)(ii), and the conduct of a Panel Arbitration referred to in clause 11.5.1(a)(ii).
- (c) A SFAA must include an acknowledgment that
- (i) a Resolution Advisor will perform his or her function in relation to a Dispute in accordance with his or her terms of appointment, including the requirements to comply with the Dispute Management Rules and to have regard to any Approved Dispute Guideline; and
  - (ii) a Panel Member will perform his or her function in relation to a Dispute in accordance with the Approved Pool Terms and the Approved Panel Terms, including the requirements to comply with the Dispute Management Rules and to have regard to any Approved Dispute Guideline.

#### 11.5.2 Definitions

In this clause 11.5, the terms **Dispute, Dispute Management Rules, Panel, Panel Arbitration, Panel Member** and **Resolution Advisor** each have the meaning given in Annexure 1 (Dispute Resolution) to this Schedule 11.

~~NBN Co will incorporate the Dispute Management Rules (as set out in Annexure 1 (Dispute Management Rules) to this Schedule 1H) into any SFAA, and maintain such Dispute Management Rules in any SFAA subject to any changes permitted in the circumstances described in clause 1B.3.1(e) or 1K.2, for the purpose of engaging with Customers to enable the resolution of disputes that may arise between NBN Co and Customers in respect of their Access Agreements.~~

#### ~~1H.5.2 Dispute resolution objectives~~

~~NBN Co will resolve Disputes:~~

- ~~(a) in accordance with the Dispute Management Rules, to the extent applicable; and~~
- ~~(b) in a manner that ensures that NBN Co is capable of complying with its Non-Discrimination Obligations.~~

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### ~~1H.6 Information & Rights Management~~

~~NBN Co will incorporate the terms set out in Annexure 2 (Information & Rights Management) to this Schedule 1H into any SFAA and maintain such terms in any SFAA subject to any changes permitted in the circumstances described in clause 1B.3.1(e) or 1K.3.~~

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### ~~1H.7 Risk Management~~

~~NBN Co will incorporate the terms set out in Annexure 3 (Risk Management) to this Schedule 1H into any SFAA and maintain such terms in any SFAA subject to any changes permitted in the circumstances described in clause 1B.3.1(e) or 1K.3.~~

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## **Annexure 1 ~~Dispute Resolution~~Management Rules**

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### **Part A Appointments**

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#### **1 Appointment of Resolution Advisor**

##### **1.1 Approval of the Resolution Advisor and terms of appointment**

- (a) Within 10 Business Days after the SAU Commencement Date, or in accordance with clause 5.4, NBN Co must:
  - (i) seek views from Customers and Access Seekers on:
    - (A) candidate(s) for the role of Resolution Advisor; and
    - (B) the terms of appointment of the Resolution Advisor(s); and
  - (ii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 15 Business Days after NBN Co requested views under clause 1.1(a)(i).
- (b) NBN Co must, having regard to submissions received from Customers and Access Seekers pursuant to clause 1.1(a), as soon as reasonably practicable and in any event within 10 Business Days following the deadline for submissions under clause 1.1(a) above:
  - (i) nominate one or more Proposed Resolution Advisor(s) to the ACCC by providing the ACCC with a notice in the form prescribed in Appendix 1 to this Annexure 1 (**Resolution Advisor Nomination Notice**); and
  - (ii) attach the proposed terms of appointment of the Resolution Advisor(s) to the Resolution Advisor Nomination Notice.
- (c) After receiving a Resolution Advisor Nomination Notice, the ACCC must decide whether to:
  - (i) approve the appointment of the Proposed Resolution Advisor(s) named in the Resolution Advisor Nomination Notice as a Resolution Advisor, which includes approving the terms of appointment attached to the Resolution Advisor Nomination Notice; or
  - (ii) not approve the Proposed Resolution Advisor(s) named in the Resolution Advisor Nomination Notice and, at the ACCC's absolute discretion after consultation with NBN Co, Customers and Access Seekers:

- (A) identify and approve one or more persons as a Resolution Advisor (which may be one or more of the Proposed Resolution Advisor(s)); and/or
  - (B) approve the proposed terms of appointment of the Resolution Advisor subject to any variations required by the ACCC.
- (d) Without limiting the ACCC's discretion, in making the decisions described in clause 1.1(c), the factors to which the ACCC may have regard include whether:
  - (i) the Proposed Resolution Advisor(s) or person identified by the ACCC pursuant to clause 1.1(c)(ii)(A) has the qualifications and experience necessary to carry out the functions of Resolution Advisor, including whether the person:
    - (A) is a Legal Practitioner or a Dispute Resolution Practitioner; and
    - (B) has an understanding of the Australian telecommunications industry or be able to acquire such an understanding quickly;
  - (ii) the Proposed Resolution Advisor(s) or person identified by the ACCC in clause 1.1(c)(ii)(A) is sufficiently independent of each of NBN Co and its Customers and Access Seekers;
  - (iii) the terms of appointment are consistent with, and give effect to, the provisions of this Annexure 1 to Schedule 11; and
  - (iv) the terms of appointment are otherwise acceptable to the ACCC.
- (e) As soon as reasonably practicable, and in any event within 60 Business Days (or such longer period notified by the ACCC to NBN Co) after receiving a Resolution Advisor Nomination Notice, the ACCC must notify NBN Co in writing of its decisions made pursuant to clause 1.1(c).

## **1.2 Appointment of Resolution Advisor**

- (a) NBN Co must:
  - (i) within 10 Business Days after receiving notice from the ACCC under clause 1.1(e), appoint the person(s) approved by the ACCC pursuant to clause 1.1(c)(i) or clause 1.1(c)(ii)(A) as a Resolution Advisor on the terms of appointment approved by the ACCC pursuant to clause 1.1(c)(i) or clause 1.1(c)(ii)(B); and
  - (ii) forward to the ACCC a copy of the executed terms of appointment within 5 Business Days of its execution.

- (b) A Resolution Advisor will be appointed for a period not exceeding 5 years.
- (c) A Resolution Advisor may be re-appointed for one or more successive terms, provided that any re-appointment is undertaken in accordance with the process set out in this clause 1.

### **1.3 Obligations and powers of the Resolution Advisor**

- (a) NBN Co must procure that the terms of appointment of a Resolution Advisor include obligations on the Resolution Advisor to maintain his or her independence from each of NBN Co and Customers, including by not forming or, where an Access Seeker becomes a Customer, maintaining any relationship of the types described in clause 2(c) of Appendix 1 to this Annexure 1 (with the exception of relationships described in clause 2(d) of Appendix 1 to this Annexure 1) with either NBN Co or a Customer for the period of his or her appointment as Resolution Advisor.
- (b) NBN Co must include in the terms of appointment of a Resolution Advisor an obligation on the Resolution Advisor to:
  - (i) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Resolution Advisor under this Annexure 1 to Schedule 1I;
  - (ii) comply with any relevant Dispute Management Rules;
  - (iii) comply with the terms of his or her appointment;
  - (iv) have regard to any Approved Dispute Guidelines published in accordance with clause 6; and
  - (v) immediately report any issues that arise in relation to the performance of his or her functions as Resolution Advisor or in relation to compliance with this Annexure 1 to the ACCC and NBN Co.
- (c) NBN Co must:
  - (i) comply with the terms of appointment of the Resolution Advisor, including as to payment of the Resolution Advisor;
  - (ii) take all steps reasonably necessary to enforce any material non-compliance by a Resolution Advisor with the terms of his or her appointment;
  - (iii) not interfere with, or otherwise hinder, a Resolution Advisor's ability to carry out his or her functions as a Resolution Advisor;
  - (iv) not appoint a Resolution Advisor, or have any agreements, understandings or arrangements with a Resolution Advisor, to utilise



that Resolution Advisor's services for anything other than compliance with this Special Access Undertaking until at least 12 months after the Resolution Advisor ceases to act in the role of the Resolution Advisor; and

(v) publish the approved terms of appointment of a Resolution Advisor on NBN Co's website (redacting any personal or confidential information of a Resolution Advisor or NBN Co).

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## **2 Pool**

### **2.1 Selection and approval of Pool Members**

- (a) NBN Co will establish and maintain a pool of persons from which members of a Panel may be selected (each a **Pool Member**, together the **Pool**).
- (b) Within 10 Business Days of the SAU Commencement Date, NBN Co must:
- (i) seek views from Customers and Access Seekers on the candidate(s) for appointment to the Pool; and
  - (ii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 15 Business Days after NBN Co requested views under clause 2.1(b)(i); and
- (c) NBN Co must, as soon as reasonably practicable and, in any event, within 10 Business Days following the deadline for submissions, nominate one or more candidates for appointment to the Pool to the ACCC by providing the ACCC with a written notice setting out the name, expertise and experience of the candidate(s).
- (d) In selecting a person for nomination under clause 2.1(b)(ii), NBN Co will have regard to the:
- (i) submissions in response to NBN Co's request pursuant to clause 2.1(b)(i) received from Customers and Access Seekers prior to the deadline for submissions notified to the same by NBN Co;
  - (ii) need for the Pool to comprise members who have a reasonably diverse and balanced range of professional skills and experience, whether commercial, technical, operational or legal;
  - (iii) need for the Pool to comprise a sufficient number of members to enable arbitrations by a Panel to proceed in the manner contemplated in Access Agreements;

- (iv) need for the Pool to contain a reasonable proportion of Legal Practitioners or Dispute Resolution Practitioners in its membership;
- (v) need for Pool candidates to have an understanding of the Australian telecommunications industry (or be able to acquire such an understanding quickly); and
- (vi) experience of Pool candidates in dispute resolution procedures, with more weight given to candidates with over 10 years experience.
- (e) The ACCC must, as soon as reasonably practicable and in and event within 60 Business Days (or such longer period notified by the ACCC to NBN Co) following receipt of a notice of nomination under clause 2.1(c), approve or reject the selection of persons nominated by NBN Co in that notice to be members of the Pool.
- (f) NBN Co must appoint to the Pool the persons approved by the ACCC under clause 2.1(e) on the Approved Pool Terms.
- (g) A Pool Member may be appointed for a period not exceeding 5 years.
- (h) A Pool Member may be re-appointed for one or more successive terms provided that any re-appointment is undertaken in accordance with the process set out in this clause 2.

## **2.2 Standard terms of appointment of Pool Members**

- (a) NBN Co must:

  - (i) within 10 Business Days of the SAU Commencement Date seek views from Customers and Access Seekers on the standard terms of appointment of Pool Members;
  - (ii) otherwise from time to time seek views from Customers and Access Seekers on any variations to any Approved Pool Terms published pursuant to clause 2.2(e); and
  - (iii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 15 Business Days after NBN Co request~~ed~~ their respective views under clause 2.2(a)(i) or 2.2(a)(ii).
- (b) NBN Co must:

  - (i) have regard to submissions received from Customers and Access Seekers prior to the deadline for submissions notified to the same by NBN Co pursuant to clause 2.2(a)(iii);
  - (ii) as soon as reasonably practicable and in any event within 10 Business Days following the deadline for submissions, prepare and submit to the ACCC a draft standard terms of appointment for Pool

Members or proposed variations to any published Approved Pool Terms (each the **Proposed Pool Terms**); and

(iii) publish the Proposed Pool Terms on NBN Co's website, subject to redacting any personal or confidential information.

(c) After receiving the Proposed Pool Terms, the ACCC must as soon as reasonably practicable and in any event within 60 Business Days (or such longer period notified by the ACCC to NBN Co), decide whether the ACCC approves the Proposed Pool Terms in the form submitted to it or subject to variation in the form required by the ACCC (**Approved Pool Terms**) and notify NBN Co of its decision.

(d) The Approved Pool Terms must:

(i) impose an obligation on each Pool Member to comply with his or her terms of appointment to the Pool;

(ii) impose an obligation on each Pool Member to comply with the responsibilities of an arbitrator under the CAA in respect to his or her functions as a Pool Member;

(iii) impose an obligation to comply with any relevant Dispute Management Rules; and

(iv) provide for NBN Co to take all steps reasonably necessary to enforce any material non-compliance by a Pool Member with the terms of his or her appointment.

(e) NBN Co must publish the current Approved Pool Terms on NBN Co's website (subject to redacting any personal or confidential information).

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## **3 Panel**

### **3.1 Standard Panel Terms of Appointment**

(a) NBN Co must:

(i) within 10 Business Days of the SAU Commencement Date, seek views from Customers and Access Seekers on the standard terms of appointment members of a Panel (**Panel Members**);

(ii) otherwise from time to time seek views from Customers and Access Seekers on any variations to any Approved Panel Terms published pursuant to clause 3.1(f), save that this variation procedure shall not apply to variations made pursuant to clause 3.1(e); and

- (iii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 15 Business Days after NBN Co requests their respective views under clause 3.1(a)(i) or 3.1(a)(ii).
- (b) NBN Co must:

  - (i) have regard to submissions received from Customers and Access Seekers prior to the deadline for submissions notified to the same by NBN Co pursuant to clause 3.1(a);
  - (ii) as soon as reasonably practicable and in any event within 10 Business Days following the deadline for submissions, prepare and submit to the ACCC a draft standard terms of appointment for Panel Members or proposed variations to any published Approved Panel Terms (each the **Proposed Panel Terms**); and
  - (iii) publish the Proposed Panel Terms on NBN Co's website, subject to redacting any confidential information.
- (c) After receiving the Proposed Panel Terms, the ACCC must as soon as reasonably practicable and in any event within 60 Business Days (or such longer period notified by the ACCC to NBN Co), decide whether the ACCC approves the Proposed Panel Terms in the form submitted to it or subject to variation in the form required by the ACCC (**Approved Panel Terms**) and notify NBN Co of its decision.
- (d) The Approved Panel Terms must include a requirement that the Panel Member:

  - (i) comply with his or her terms of appointment to the Panel;
  - (ii) comply with any Dispute Management Rules; and
  - (iii) have regard to any Approved Dispute Guidelines published in accordance with clause 6,

and provide for NBN Co to take all steps reasonably necessary to enforce any material non-compliance by a Panel Member with the terms of his or her appointment.
- (e) The Approved Panel Terms may provide for the Resolution Advisor prior to engagement of the Panel Members by the parties to the Dispute, or for the Panel following confirmation of its composition, to:

  - (i) insert into the Approved Panel Terms the details of the Dispute; and
  - (ii) specify in the Approved Panel Terms any special procedural steps considered by the Resolution Advisor or the Panel in its reasonable belief to aid the efficient resolution of the Dispute; and/or

(iii) vary the Approved Panel Terms where the parties to the Dispute and Panel Members agree to the variation.

(f) NBN Co must publish the current Approved Panel Terms on NBN Co's website (subject to redacting any personal or confidential information).

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## **4 Costs of retaining the Resolution Advisor and Pool Members**

(a) NBN Co must:

(i) pay the Resolution Advisor and/or Pool Members; and

(ii) not charge Customers any fees or charges,

for the costs associated with the appointment and retention of the Resolution Advisor or Pool Members (if any). The costs of the Resolution Advisor and the Panel in respect of a Dispute will be shared equally amongst all of the parties to that Dispute.

(b) NBN Co will maintain records of any payments made by NBN Co to a Resolution Advisor and/or Pool Members in connection with the appointment of the Resolution Advisor or Pool Members.

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## **Part B Termination of appointments**

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### **5 Termination of appointment of Resolution Advisor or Pool Member**

#### **5.1 Resignation of a Resolution Advisor**

NBN Co must notify the ACCC and Customers in the event that a Resolution Advisor resigns or otherwise stops acting as soon as reasonably practicable and in any event within 5 Business Days after that resignation or cessation.

#### **5.2 Termination of the Resolution Advisor or Pool Member**

(a) If NBN Co reasonably believes that an event or circumstance has occurred or arisen that is likely to provide grounds for the termination of the appointment of a Resolution Advisor or Pool Member under clause 5.2(d), NBN Co must make a proposal to the ACCC to terminate the appointment of that Resolution Advisor or Pool Member.

(b) If a Customer reasonably believes that an event or circumstance has occurred or arisen that is likely to provide grounds for the termination of the appointment of a Resolution Advisor or Pool Member under clause 5.2(d), it

may make a proposal to the ACCC to terminate the appointment of that Resolution Advisor or Pool Member.

(c) Where NBN Co or a Customer submits a proposal to the ACCC under clauses 5.2(a) or 5.2(b):

(i) the proposal must describe the event or circumstance giving rise to the belief that grounds for termination exist; and

(ii) subject to any applicable confidentiality obligations, NBN Co or the Customer must provide the ACCC with any further information reasonably requested by the ACCC in relation to the proposal.

(d) The ACCC may:

(i) approve any proposal by NBN Co under clause 5.2(a); or

(ii) direct NBN Co (on its own initiative or following a proposal submitted by a Customer under clause 5.2(b)),

to terminate the appointment of a Resolution Advisor or a Pool Member:

(iii) if, in the ACCC's opinion, the Resolution Advisor or Pool Member has acted inconsistently with the terms of his or her appointment in a material way and it is appropriate in all the circumstances to terminate his or her appointment (which circumstances may include any failure of the Resolution Advisor or Pool Member to cure his or her non-compliance within 5 Business Days following receipt of written notice to do so from NBN Co);

(iv) where the ACCC becomes aware that any information relating to a Resolution Advisor provided to it in the Resolution Advisor Nomination Notice, or relating to a Pool Member in the nomination notice provided under clause 2.1(b)(ii), was, or has become, incorrect, inaccurate or misleading; or

(v) if, in the ACCC's opinion, the Resolution Advisor or Pool Member is, or is likely to be, unable to continue to perform his or her responsibilities as a Resolution Advisor or Pool Member:

(A) due to there being a real danger of bias on the part of that Resolution Advisor or Pool Member (as the case may be) that cannot be avoided by delegation of the functions of that Resolution Advisor or Pool Member in respect to a Dispute; or

(B) for a period of more than 10 Business Days due to ill health or other incapacity.

(e) The ACCC must, as soon as reasonably practicable following receipt of a proposal made pursuant to clause 5.2(a) or 5.2(b), consider that proposal and notify the party making the proposal whether the ACCC will exercise its discretion under clause 5.2(d).

(f) NBN Co must comply with any direction given by the ACCC pursuant to clause 5.2(d).

### **5.3 Termination of a Panel Member**

(a) A Pool Member's position as a Panel Member will automatically terminate if that person ceases to be a Pool Member under this Part B.

(b) The ACCC must not require or permit NBN Co to terminate the appointment of a Pool Member during a period in which the Pool Member is empanelled as a Panel Member for a Dispute, unless the reason for termination of a Pool Member is because the ACCC considers that there is a real danger of bias on the part of that Resolution Advisor or Pool Member (as the case may be) in respect to that Dispute.

(c) Clause 5.3(b) does not affect the right of any person to terminate the appointment of a Panel Member under the CAA or his or her terms of appointment.

### **5.4 Replacement of a Resolution Advisor**

(a) NBN Co must:

(i) within 3 Business Days of receiving a:

(A) resignation notice from a Resolution Advisor; or

(B) receiving a notice from the ACCC of the ACCC's approval under clause 5.2(d)(i) or a direction pursuant to clause 5.2(d)(ii); or

(ii) at least one calendar month prior to expiry of the term of appointment of a Resolution Advisor,

appoint a new Resolution Advisor in accordance with the procedure set out in clause 1 of this Annexure 1 to Schedule 11.

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## **Part C Other approvals**

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### **6 Dispute Guidelines**

(a) Within 10 Business Days of the SAU Commencement Date and otherwise from time to time, NBN Co must seek views from:

- (i) Customers;
- (ii) Access Seekers;
- (iii) Resolution Advisor(s) (where appointed); and
- (iv) Pool Members (where appointed),

in relation to the guidelines to be applied by a Panel when considering a Dispute (including, but not limited to, decisions of the Panel relating to the joinder of parties to a Dispute) and advise each of them of the deadline for submissions, which must be at least 15 Business Days after NBN Co has requested their views.

(b) NBN Co must:

- (i) have regard to submissions received from Customers, Access Seekers, Resolution Advisor(s) and Pool Members (where applicable) prior to the deadline for submissions notified to the same by NBN Co under clause 6(a);
- (ii) as soon as reasonably practicable and in any event within 20 Business Days following the deadline for submissions notified by NBN Co under clause 6(a), prepare and submit to the ACCC a draft of the proposed guidelines to be applied to the consideration of Disputes (**Proposed Dispute Guideline**); and
- (iii) publish the Proposed Dispute Guideline on NBN Co's website, subject to redacting any personal or confidential information.

(c) After receiving the Proposed Dispute Guideline, the ACCC must, as soon as practicable and in any event within 60 Business Days (or such longer period notified by the ACCC to NBN Co), decide whether the ACCC approves the Proposed Dispute Guideline in the form submitted to it or incorporating any variations required by the ACCC (**Approved Dispute Guideline**) and notify NBN Co of its decision.

(d) NBN Co must publish the Approved Dispute Guideline on NBN Co's website, subject to redacting any personal or confidential information.

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## **7 Directions to Resolution Advisor**

The ACCC may give directions to a Resolution Advisor from time to time in relation to the performance of his or her functions as a Resolution Advisor under this Annexure 1 to Schedule 11.



## Part D Notices

### 8 Giving Notices

(a) Any notice or communication to the ACCC made pursuant to this Schedule 11 must be sent to:

Email address: [insert]

Attention: [insert]

With a copy sent to: [insert]

(b) Any notice or communication to NBN Co made pursuant to this Schedule 11 must be sent to:

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

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

### 9 Definitions and Interpretation

#### 9.1 Definitions

Approved Panel Terms means the standard terms of appointment of Panel Members approved by the ACCC from time to time pursuant to clause 3 of this Annexure 1 to Schedule 11 and published on the NBN Co website.

Approved Pool Terms mean the standard terms of appointment of Pool Members approved by the ACCC from time to time pursuant to clause 2.2 of this Annexure 1 to Schedule 11 and published on the NBN Co website.

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

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

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

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

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

**Dispute Management Rules** means the provisions relating to dispute resolution in an Access Agreement that are relevant to the Dispute.

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

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

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

**Panel** means a panel of three arbitrators, or such other number of arbitrators as may be agreed by the parties to a Dispute, constituted by the Resolution Advisor to resolve a Dispute.

**Panel Arbitration** means an arbitration conducted by the Panel.

**Panel Member** has the meaning given to that term in clause 3.1(a)(i) of this Annexure 1 to Schedule 11.

**Pool** means the pool of persons constituted in accordance with clause 2 of this Annexure 1 to Schedule 11.

**Pool Member** has the meaning given to that term in clause 2.1 of this Annexure 1 to this Schedule 11.

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

**Related Entity** has the meaning given to that term in the Corporations Act 2001 (Cth).

**Related Party** has the meaning given to that term in the Corporations Act 2001 (Cth).

**Resolution Advisor** means the person or persons appointed as such in accordance with clause 1.2 of this Annexure 1 to Schedule 11.

**Resolution Advisor Nomination Notice** has the meaning in clause 1.1(b) of this Annexure 1 to Schedule 11.

## **9.2 Interpretation**

Unless the context otherwise requires, in this Schedule 11:

(a) reference to a clause is a reference to a clause of this Annexure 1 to Schedule 11;

(b) reference to a paragraph is a reference to a paragraph of Appendix 2 of this Annexure 1 to Schedule 11; and

(c) capitalised terms:

(i) if defined in this clause 9, have the meaning set out in clause 9; or

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

## **Appendix 1 Resolution Advisor Nomination Form**

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

### **Method of Delivery to the ACCC**

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

[Attention: Group General Manager, Communications Group

\_\_\_\_\_  
GPO Box 520

\_\_\_\_\_  
MELBOURNE VIC 3000]

With an email copies sent to:

[ \_\_\_\_\_ ]; and

Attention: [ \_\_\_\_\_ ]

### **Information Required**

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

1. Proposed Resolution Advisor Details:

(a) the name of the Proposed Resolution Advisor; and

(b) the name of the Proposed Resolution Advisor's employer (if applicable) and contact details including:

- Address;
- Contact name;
- Telephone number;
- Other contact details.

2. A submission containing the following information:

(a) Details of the Proposed Resolution Advisor's qualifications and experience relevant to his or her proposed role pursuant to this Special Access Undertaking.

(b) The names of the owner/s and/or the directors of the Proposed Resolution Advisor's employer (if applicable).

(c) Details of any of the following types of relationships between NBN Co or any Customer and the Proposed Resolution Advisor or the Proposed Resolution Advisor's employer (if applicable), or confirmation that no such relationship exists whether within Australia or outside of Australia:

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

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## ~~Part A~~ **Dispute Management Rules**

### ~~1~~ **Application of Dispute Management Rules**

- (a) The Dispute Management Rules apply to any dispute that arises between NBN Co and Customer under or in relation to this Agreement (each, a **Dispute**), except for Billing Disputes.
- (b) Part B of these Dispute Management Rules applies to Bilateral Disputes.

- (c) ~~Part C of these Dispute Management Rules applies to Industry Relevant Disputes.~~
- (d) ~~Part D of these Dispute Management Rules sets out some common processes and principles that apply to all Disputes.~~

---

## ~~2 Referral of Disputes~~

### ~~2.1 Referral of Disputes to a Resolution Advisor~~

- (a) ~~A party that considers that a Dispute has arisen and is satisfied that the Dispute cannot be satisfactorily resolved through the parties' respective Relationship Points of Contact (whether or not any specified or agreed period for attempting to resolve that issue has elapsed) may refer the Dispute to a Resolution Advisor, notifying the other party and providing a copy of its referral at the same time.~~
- (b) ~~The referral of a Dispute to a Resolution Advisor must be in writing and in accordance with any procedural requirements notified by the Resolution Advisor to NBN Co and Customer from time to time.~~
- (c) ~~The parties must consult with and have regard to the advice of the Resolution Advisor and the parties must use reasonable endeavours to seek to agree whether to resolve the Dispute through expert determination in accordance with the processes set out in clause 16 and upon such agreement the Dispute will be determined in accordance with clause 16 and the parties will advise the Resolution Advisor accordingly.~~

### ~~2.2 The Panel~~

- (a) ~~If the parties do not agree to seek to resolve the Dispute through expert determination under clause 2.1(c) within 5 Business Days after referral under clause 2.1(a), the Resolution Advisor must appoint 3 current and available members of the Pool to a panel including a Legal Practitioner or a Dispute Resolution Practitioner as the presiding member (each a **Panel Member**, together the **Panel**) to classify that Dispute under clause 3 and determine that Dispute under these Dispute Management Rules and must notify the parties in writing of the identity of the Panel Members.~~
- (b) ~~In selecting members of the Pool to be appointed to the Panel, the Resolution Advisor must take any circumstances into account likely to give rise to any real danger of bias on the part of any member of the Pool in the performance of his or her duties as a Panel Member, if appointed.~~
- (c) ~~Any challenge by a party to the appointment of any Panel Member (or the Panel) in accordance with the CAA must be made within 5 Business Days of the date of the Resolution Advisor's notice of the constitution of the Panel or occurrence of the event or circumstance which gives rise to the challenge.~~

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### ~~3~~ Classification of Disputes

- ~~(a) — The Panel, after a period of 5 Business Days from the date of a notice given under clause 2.2(a) or, following resolution of a challenge under clause 2.2(c), the date on which the appointment of the Panel is confirmed for the parties and the Resolution Advisor to make submissions on classification, must classify the Dispute as a Bilateral Dispute or an Industry Relevant Dispute.~~
- ~~(b) — The Panel must classify the Dispute as an Industry Relevant Dispute if the Panel considers, based on the materials before it and the facts, matters and circumstances of the Dispute in question, that the resolution of the Dispute will, or is likely to, materially affect Other NBN Co Customers, including by reason of the Non-Discrimination Obligations.~~
- ~~(c) — Any classification by the Panel under clause 3(a) will be made:
  - ~~(i) — irrespective of whether NBN Co and any potentially affected Other NBN Co Customer are currently in dispute; and~~
  - ~~(ii) — subject to reclassification as a Bilateral Dispute in accordance with clause 7.4(b).~~~~
- ~~(d) — The Panel must classify a Dispute as a Bilateral Dispute if the Panel has not classified that Dispute as an Industry Relevant Dispute under clause 3(a).~~
- ~~(e) — Within 5 Business Days following classification of the Dispute under clause 3(a) the Resolution Advisor must notify NBN Co and Customer in writing of the Panel's determination.~~

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### ~~Part B~~ Bilateral Disputes

#### ~~4~~ Resolution of Bilateral Disputes

- ~~(a) — A Bilateral Dispute will be resolved through Panel Arbitration in accordance with clause 5, except where, following consultation with the Resolution Advisor under clause 2.1(c), the parties have agreed to refer the Bilateral Dispute to expert determination in accordance with the processes set out in clause 16.~~
- ~~(b) — Nothing in this Part B is intended to prevent the parties from referring a Bilateral Dispute to mediation by agreement, which shall be conducted in accordance with, and subject to, the Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules and which the parties must endeavour with the assistance of the mediator to resolve within 30 Business Days of the appointment of the mediator.~~

## ~~5 Panel Arbitration~~

### ~~5.1 Panel Arbitration governed by the Commercial Arbitration Act 2010 (NSW)~~

- ~~(a) The provisions of the CAA will apply to the conduct of any Dispute referred to Panel Arbitration, except where (in accordance with the CAA) the parties have agreed otherwise in these Dispute Management Rules.~~
- ~~(b) For the purpose of the CAA, the proceedings in respect of a Panel Arbitration commence on the date of the Resolution Advisor's notice under clause 2.2(a) or, following resolution of a challenge under clause 2.2(c), the date on which the appointment of the Panel is confirmed.~~

### ~~5.2 Panel Arbitration proceedings~~

- ~~(a) Panel Arbitrations will be conducted in English in Sydney, Australia under the law governing this Agreement. The Panel may meet at any other place for consultation among the Panel Members, to attend any inspection or engage in consultation by any electronic medium, but may not hold any hearing at any place other than Sydney, unless otherwise agreed by all parties to the Dispute.~~
- ~~(b) The Panel must have regard to any award previously made by an arbitration panel in respect of a dispute under an Other Wholesale Broadband Agreement, to the extent relevant to the Dispute.~~
- ~~(c) Where the Panel has regard to any award previously made by an arbitration panel in respect of a dispute under an Other Wholesale Broadband Agreement, the Panel must ensure that the confidentiality of any commercially sensitive information of a party to that previous award is preserved.~~

### ~~5.3 Award by the Panel~~

~~The Panel must make its Award in respect of the Dispute as soon as is reasonably practicable, and in any case will provide the parties with a signed copy of its Award by no later than 30 Business Days after the date on which all of the Panel Members are appointed to the Panel or by no later than such other date agreed by the parties to the Dispute and the Panel.~~

### ~~5.4 Raising objections to an Award~~

- ~~(a) Each party has 20 Business Days from receipt of notice of the Panel's Award to exercise its rights to:
  - ~~(i) apply for correction or interpretation of the Award pursuant to section 33(1) of the CAA; or~~~~



~~(ii) — apply for an additional award pursuant to section 33(5) of the CAA.~~

~~(b) — The parties agree that:~~

~~(i) — an Award may be set aside by a court, pursuant to section 34 of the CAA; and~~

~~(ii) — an appeal may be made against an Award on a point of law, pursuant to section 34A of the CAA.~~

#### **5.5 — Publication of the Award**

~~(a) — Within 5 Business Days after:~~

~~(i) — the expiry of the period in which a party can exercise its rights under clause 5.4(a); or~~

~~(ii) — where a party has exercised its rights under clause 5.4(a), the confirmation of the Award or making of a correction, interpretation or additional award,~~

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

~~(iii) — advising that NBN Co will publish a copy of the Award on NBN Co's Website (subject to the confidentiality provisions set out below) for access by Other NBN Co Customers and Access Seekers; and~~

~~(iv) — inviting the party to make a written submission to the Panel within 5 Business Days after the date of that notice identifying and justifying any part of the Award that the party considers is confidential to them and should not, therefore, be published.~~

~~(b) — Within 10 Business Days of issuing a notice under clause 5.5(a), the Panel must:~~

~~(i) — have regard to any written submissions that have been made to the Panel in accordance with this clause 5.5; and~~

~~(ii) — notify NBN Co whether and which parts of the Award need to be redacted to protect confidentiality (if any).~~

~~(c) — When preparing a copy of the Award for publication, NBN Co will redact those parts of that Award that the Panel has required NBN Co to redact in accordance with this clause 5.5.~~

~~(d) — NBN Co will publish on NBN Co's Website a copy of that Award, subject to any redaction required by the Panel in accordance with this clause 5.5, for access by Other NBN Co Customers and Access Seekers.~~

- (c) ~~Notwithstanding section 27E of the CAA, NBN Co and Customer agree and consent to the publication of Awards in accordance with this clause 5.5, and access to published Awards by Other NBN Co Customers and Access Seekers in accordance with this clause 5.5.~~

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## ~~Part C — Industry Relevant Disputes~~

### ~~6 — Resolution of Industry Relevant Disputes~~

~~Industry Relevant Disputes will be resolved through Panel Arbitration.~~

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### ~~7 — Parties to the Panel Arbitration for an Industry Relevant Dispute~~

#### ~~7.1 — Parties to the Panel Arbitration for an Industry Relevant Dispute~~

~~The parties to the Panel Arbitration for an Industry Relevant Dispute are:~~

- (a) ~~NBN Co;~~
- (b) ~~Customer; and~~
- (c) ~~any Other NBN Co Customer whose application to join the Panel Arbitration as a party to an Industry Relevant Dispute is accepted by the Panel in accordance with this clause 7.~~

#### ~~7.2 — Invitation to Other NBN Co Customers to apply to be joined to the Panel Arbitration for an Industry Relevant Dispute~~

- (a) ~~Within 2 Business Days of the Dispute being classified as an Industry Relevant Dispute, the Resolution Advisor must issue a notice (**Invitation**) in writing to all potentially affected Other NBN Co Customers (each, an **Invitee**). An Invitation must inform each Invitee of the commencement of the Industry Relevant Dispute and of their right to make an application to become a party to the Panel Arbitration for that Industry Relevant Dispute.~~
- (b) ~~An Invitation must be in the form prescribed by NBN Co and must set out:~~
  - (i) ~~a brief history of the Industry Relevant Dispute (subject to the preservation of the confidentiality of NBN Co's and Customer's confidential information);~~
  - (ii) ~~the process which the Invitee must comply with in order to make a valid application to become a party to the Panel Arbitration for the Industry Relevant Dispute, including the making of submissions in support of the Invitee's application to be joined as a party to that Panel Arbitration;~~

- (iii) ~~the conditions and/or criteria that the Invitee must meet, to the Panel's satisfaction, to become a party to the Panel Arbitration for the Industry Relevant Dispute; and~~
- (iv) ~~the terms on which the Panel Arbitration for the Industry Relevant Dispute will be conducted.~~

**~~7.3 Invitation to Customer to apply to be joined to a panel arbitration for an industry relevant dispute under an Other Wholesale Broadband Agreement~~**

~~(a) Where:~~

- ~~(i) Customer is an invitee in relation to an industry relevant dispute arising under an Other Wholesale Broadband Agreement; and~~
- ~~(ii) Customer makes an application to become a party to the panel arbitration for that industry relevant dispute in accordance with the requirements set out in the invitation,~~

~~Customer agrees that:~~

~~(iii) Customer will only become a party to that panel arbitration if the panel grants its application to become a party to that panel arbitration; and~~

~~(iv) if the panel accepts that application in accordance with clause 7.3(a)(iii), then:~~

~~(A) the terms on which that panel arbitration will be conducted are those terms that are set out in the invitation; and~~

~~(B) those terms will constitute an arbitration agreement between it, NBN Co, Customer and each Other NBN Co Customer that becomes a party to that panel arbitration for the purpose of the CAA.~~

~~(b) Where Customer is an invitee in relation to an industry relevant dispute arising under an Other Wholesale Broadband Agreement and Customer does not make an application to become a party to the panel arbitration for that industry relevant dispute in accordance with the requirements set out in the invitation within 5 Business Days following the issue of the invitation, then Customer is deemed to have waived its right to apply to become a party to that panel arbitration.~~

~~(c) Where Customer is an invitee in relation to an industry relevant dispute arising under an Other Wholesale Broadband Agreement and makes an application to become a party to the panel arbitration for that industry relevant dispute, Customer may make submissions in support of that application, but is not entitled to make submissions in response to~~

~~applications or submissions made by other invitees and any such submissions shall be disregarded by the panel.~~

- ~~(d) — The panel will, and will only, grant an application by Customer to become a party to a panel arbitration for an industry relevant dispute arising under an Other Wholesale Broadband Agreement if the panel considers Customer has, or is likely to have, a sufficient interest in the subject matter of that industry relevant dispute that is likely to be materially affected by the resolution of that industry relevant dispute (in clauses 7.3 and 7.4, a **sufficient interest**).~~
- ~~(e) — In considering any application made by Customer to become a party to the panel arbitration for that industry relevant dispute, the panel must consider:~~
- ~~(i) — the terms of this Agreement;~~
  - ~~(ii) — whether Customer becoming a party to the panel arbitration might unreasonably interfere with the ability of the then-current parties to the panel arbitration to conduct the proceeding as they wish;~~
  - ~~(iii) — the Non-Discrimination Obligations; and~~
  - ~~(iv) — the criteria and conditions to be applied in determining whether Customer should become a party to a panel arbitration for that industry relevant dispute, as set out in guidelines reasonably determined by NBN Co and issued by NBN Co to Customer from time to time. Before issuing these guidelines, NBN Co must consult with all then currently appointed Resolution Advisors and Pool members, Customer and Other NBN Co Customers.~~

#### **7.4 — Determination of parties to an Industry Relevant Dispute**

- ~~(a) — NBN Co will use reasonable endeavours to procure that within 10 Business Days following the date that an Invitation (or if there is more than one, the last Invitation) is issued by the Resolution Advisor in respect of an Industry Relevant Dispute, the Panel:~~
- ~~(i) — conclusively determines which of those Invitees, that have submitted an application in response to an Invitation, has, or is likely to have, a sufficient interest in the subject matter of the Industry Relevant Dispute;~~
  - ~~(ii) — causes the Resolution Advisor to notify each Invitee, that has submitted an application in response to an Invitation, whether the Panel has determined whether that Invitee:
    - ~~(A) — has, or is likely to have, a sufficient interest in the subject matter of the Industry Relevant Dispute (in which case, the Panel is deemed to have accepted the application and that~~~~

Invitee will be a party to the Panel Arbitration for that Industry Relevant Dispute); or

(B) — does not have, or is likely not to have, a sufficient interest in the subject matter of the Industry Relevant Dispute (in which case, the Panel is deemed to have rejected the application and that Invitee will not be a party to the Panel Arbitration for that Industry Relevant Dispute); and

(iii) — causes the Resolution Advisor to notify in writing each party to the Panel Arbitration for the Industry Relevant Dispute of the identity of each of the other parties to that Panel Arbitration.

(b) — If no Invitees have submitted an application in response to an Invitation or the Panel determines that no Invitee that has submitted an application in response to an Invitation, has, or is likely to have, a sufficient interest in the subject matter of the Dispute, then the Dispute will then be classified as a Bilateral Dispute and the Dispute will be managed and resolved accordingly.

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## ~~8 — Other provisions applicable to the conduct of Panel Arbitrations for Industry Relevant Disputes~~

### ~~8.1 — Provisions for Panel Arbitrations for Bilateral Disputes applicable~~

The provisions that apply to Panel Arbitration under clause 5 also apply to Panel Arbitrations under this Part C, except as set out in this clause 8.

### ~~8.2 — Timeframe for making an Award~~

The Panel must make its Award in respect of the Industry Relevant Dispute as soon as is reasonably practicable, and in any case will provide the parties with a signed copy of its Award by no later than 50 Business Days following the date on which all of the Panel Members are appointed to the Panel or such other date agreed by all of the parties to the Industry Relevant Dispute and the Panel.

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## ~~Part D — Common processes and principles~~

## ~~9 — Rights to use dispute resolution processes outside of the Dispute Management Rules~~

### ~~9.1 — Court proceedings~~

(a) — Neither NBN Co nor Customer may commence any court proceedings in relation to a Dispute, except in accordance with these Dispute Management Rules.

~~(b) — Clause 9.1(a) does not apply where:~~

~~(i) — NBN Co reasonably considers it necessary to commence court proceedings in relation to a Dispute in order to preserve its position with respect to other creditors of Customer in circumstances where Customer is, or is reasonably likely to be, subject to an Insolvency Event;~~

~~(ii) — NBN Co is seeking to enforce unpaid debts;~~

~~(iii) — NBN Co or Customer seeks urgent interlocutory relief; or~~

~~(iv) — the relevant Dispute relates to a failure by NBN Co or Customer to comply with these Dispute Management Rules which is not trivial or immaterial.~~

~~(c) — Neither NBN Co nor Customer may commence any court proceedings in relation to any decision or conduct of a Resolution Advisor under these Dispute Management Rules or any decision of a Panel pursuant to clauses 3(a) or 7.4(a)(i).~~

## ~~9.2 — Disputes concerning Interim Satellite Services~~

~~If a Dispute to be determined under these Dispute Management Rules involves or is likely to involve facts, matters and circumstances in common with a dispute between the parties in relation to the supply by NBN Co under an agreement for the supply of Interim Satellite Services, the two disputes may be conducted and resolved together under these Dispute Management Rules if the parties agree that doing so will likely result in the more efficient disposition of both disputes.~~

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# ~~10 — General rights and obligations~~

## ~~10.1 — Continuation of performance~~

~~(a) — Except in the exercise of a right under this Agreement by:~~

~~(i) — NBN Co to impose an Ordering Freeze, Service Reduction or Suspension;~~

~~(ii) — Customer to withhold payment of a disputed amount;~~

~~(iii) — NBN Co to disconnect, or Customer to place a disconnect order in respect of, an Ordered Product; or~~

~~(iv) — NBN Co or Customer to terminate this Agreement,~~

~~NBN Co and Customer must each continue to perform their obligations in accordance with the terms of this Agreement in the event of, and pending the resolution of, any Dispute or Other NBN Co Customer Dispute.~~

- ~~(b) — If a Dispute involves or relates to:~~
- ~~(i) — the exercise by NBN Co of its rights to impose an Ordering Freeze, Service Reduction or Suspension;~~
  - ~~(ii) — the exercise by Customer of its rights to withhold payment of a disputed amount;~~
  - ~~(iii) — the exercise by NBN Co of its rights to disconnect, or Customer's exercise of its rights to place a disconnect order in respect of, an Ordered Product; or~~
  - ~~(iv) — the exercise by NBN Co or Customer of its rights to terminate this Agreement,~~
- ~~a party may exercise those rights pending the resolution of that Dispute.~~

### **~~10.2 — Further assurances~~**

- ~~(a) — NBN Co and Customer must do all things that are reasonably necessary for the proper and expeditious conduct of the processes set out in these Dispute Management Rules and to give full effect to the matters contemplated by them.~~
- ~~(b) — If these Dispute Management Rules refer to rights or obligations of a person appointed as a Resolution Advisor or Pool member pursuant to these Dispute Management Rules, NBN Co will ensure that the terms of engagement agreed between NBN Co and that person will grant those rights to and impose those obligations on that person.~~

### **~~10.3 — Procedural fairness~~**

- ~~(a) — NBN Co and Customer acknowledge and agree that:~~
- ~~(i) — these Dispute Management Rules exhaustively set out the principles of procedural fairness to be afforded to the parties to a Dispute governed by these Dispute Management Rules; and~~
  - ~~(ii) — accordingly any other obligations of procedural fairness do not apply in respect of the operation of these Dispute Management Rules.~~
- ~~(b) — Clause 10.3(a)(ii) does not operate to waive or vary any rule or obligation of procedural fairness specified in the CAA (including section 18 of the CAA) which is not otherwise expressly waived or varied by these Dispute Management Rules.~~

## ~~11~~ Resolution Advisor

### ~~11.1~~ Appointment

- (a) ~~NBN Co will nominate and NBN Co and Customer must, within the 20 Business Day period following the Execution Date, use their reasonable endeavours to agree on the appointment of one or more individuals (in this clause 11.1, each, a candidate) to the role of Resolution Advisor, on such terms as NBN Co and each candidate may agree.~~
- (b) ~~It is intended that wherever possible, owing to the process for resolution of Disputes contemplated by these Dispute Management Rules, the same Resolution Advisor will be appointed under this Agreement and under Other Wholesale Broadband Agreements.~~
- (c) ~~If the parties cannot agree to the appointment of a Resolution Advisor (including disagreement as to the selection of candidates) in accordance with clause 11.1(a), NBN Co must refer the decision as to the appointment of a Resolution Advisor to the President of IAMA and request that person to make that decision in a manner consistent with the provisions of this clause 11.1.~~
- (d) ~~Before appointing a candidate as a Resolution Advisor, the parties or the President of IAMA (as applicable) will:~~
- (i) ~~require the candidate to disclose any circumstances likely to give rise to claims of any real danger of bias on the part of the candidate in the performance of his or her duties as a Resolution Advisor;~~
  - (ii) ~~consult with Customer and Other NBN Co Customers regarding the candidate's suitability as a Resolution Advisor;~~
  - (iii) ~~provide a written notice to the ACCC setting out the name and the terms of the proposed appointment of such persons; and~~
  - (iv) ~~to the extent a candidate has been appointed as a "Resolution Advisor" for the purposes of an Other Wholesale Broadband Agreement, ensure that the candidate is appointed as a Resolution Advisor under this Agreement, unless a party can demonstrate that the candidate is not suitable for reasons described in clause 13.1(a)(ii).~~
- (e) ~~A person referred to in a written notice provided to the ACCC under clause 11.1(d)(iii) will not be appointed as a Resolution Advisor if, within 20 Business Days of NBN Co providing such written notice to the ACCC, the ACCC issues a notice of objection to the appointment of the person or to the terms of appointment.~~



- ~~(f) — A Resolution Advisor:
  - ~~(i) — must have an understanding of the Australian telecommunications industry (or be able to acquire such an understanding quickly);~~
  - ~~(ii) — must be a Legal Practitioner or a Dispute Resolution Practitioner; and~~
  - ~~(iii) — need not be a citizen or resident of Australia.~~~~
- ~~(g) — A Resolution Advisor will be appointed for a period not exceeding the duration of the Term.~~
- ~~(h) — A Resolution Advisor may be re-appointed for one or more successive periods provided that the Resolution Advisor is re-appointed in accordance with the process set out in this clause 11.1.~~
- ~~(i) — For the duration of the appointment of a Resolution Advisor, NBN Co will require each Resolution Advisor to disclose without delay any circumstances likely to give rise to claims of bias or which indicate there is any real danger of bias on the part of that Resolution Advisor in the performance of his or her duties as a Resolution Advisor to NBN Co, Customer and each Other NBN Co Customer.~~
- ~~(j) — The Resolution Advisor to whom a Dispute is referred will be the Resolution Advisor for all aspects of that Dispute under these Dispute Management Rules, except where he or she is replaced in accordance with these Dispute Management Rules.~~
- ~~(k) — The parties agree that the Resolution Advisor is not, and will not act as, an arbitrator for the purpose of the CAA in respect of any Dispute.~~
- ~~(l) — The Resolution Advisor to whom a Dispute is referred may delegate his or her responsibilities to any other Resolution Advisor where necessary for the purpose of performing his or her responsibilities under these Dispute Management Rules (for example, in the event of temporary illness or holiday absence), but the Resolution Advisor to whom the Dispute is referred will remain fully responsible for the performance of all of his or her responsibilities under these Dispute Management Rules.~~
- ~~(m) — After receiving a request from Customer pursuant to this clause 11.1(m) in respect of a Resolution Advisor, NBN Co will provide Customer with a copy of the terms of appointment agreed between NBN Co and the Resolution Advisor and any other agreement between NBN Co and the Resolution Advisor related to the appointment of the Resolution Advisor (with any personal information of the Resolution Advisor redacted), subject to Customer agreeing to a non-disclosure and confidentiality agreement that is reasonably acceptable to NBN Co.~~

**~~11.2 Resolution Advisor to comply with these Dispute Management Rules and terms of appointment~~**

- ~~(a) NBN Co will:~~
- ~~(i) ensure that the terms of appointment agreed between NBN Co and a Resolution Advisor contain provisions requiring the Resolution Advisor to comply with these Dispute Management Rules and the terms of appointment; and~~
  - ~~(ii) take reasonable steps to enforce the Resolution Advisor's compliance with these Dispute Management Rules and those terms where the Resolution Advisor has failed to comply with these Dispute Management Rules or those terms in a material way.~~
- ~~(b) If Customer reasonably believes that a Resolution Advisor has failed to comply with these Dispute Management Rules or the terms of appointment agreed between NBN Co and the Resolution Advisor in a material way:~~
- ~~(i) Customer may provide written notice to NBN Co setting out particulars of that belief and requesting that NBN Co take reasonable steps to enforce the Resolution Advisor's compliance with these Dispute Management Rules or those terms (as applicable); and~~
  - ~~(ii) if NBN Co agrees, in its discretion, that the Resolution Advisor has failed to comply with these Dispute Management Rules or the terms of appointment agreed between NBN Co and the Resolution Advisor in a material way, NBN Co will seek to enforce the Resolution Advisor's compliance with these Dispute Management Rules or those terms in accordance with and subject to clause 11.2(a)(ii).~~

**~~11.3 Replacement of a Resolution Advisor~~**

- ~~(a) If the appointment of a Resolution Advisor is terminated or expires, or she or he resigns or is for any reason unable to continue their duties in relation to a Dispute, NBN Co will replace that Resolution Advisor with another Resolution Advisor for that Dispute.~~
- ~~(b) If a new Resolution Advisor needs to be appointed to replace a Resolution Advisor pursuant to clause 11.3(a), the new Resolution Advisor will be appointed in accordance with the process set out in clause 11.1.~~

**~~11.4 Costs of retaining the Resolution Advisor~~**

- ~~(a) NBN Co will not charge Customer any separate fees or charges for the costs associated with the appointment, retention and operations of the Resolution Advisor (if any).~~

- (b) ~~NBN Co will maintain records of any payments made by NBN Co to a Resolution Advisor in connection with the appointment of the Resolution Advisor under these Dispute Management Rules.~~

### **~~11.5 Resolution Advisor's decisions not subject of a Dispute~~**

~~The decisions or conduct of the Resolution Advisor under these Dispute Management Rules will not be matters that may be the subject of a Dispute. Any decision of the Resolution Advisor in relation to a Dispute is final, and each party must abide by that decision and comply with the provisions of these Dispute Management Rules which apply as a consequence, regardless of any objection to that decision which that party may have.~~

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## **~~12 The Pool~~**

### **~~12.1 Appointment~~**

- (a) ~~NBN Co will nominate and NBN Co and Customer must, within the 20 Business Day period following the Execution Date, use their reasonable endeavours to agree on the appointment of the members of the Pool, on such terms as NBN Co and each member may agree.~~
- (b) ~~It is intended that wherever possible, owing to the process for resolution of Disputes contemplated by these Dispute Management Rules, the same members of the Pool will be appointed under this Agreement and under Other Wholesale Broadband Agreements.~~
- (c) ~~If the parties cannot agree to the appointment of a member of the Pool (including disagreement as to the selection of a member) in accordance with clause 12.1(a), NBN Co must refer the decision as to the appointment of a member to the President of IAMA and request that person to make that decision in a manner consistent with the provisions of this clause 12.1.~~
- (d) ~~Before making an appointment of a member of the Pool, the parties or the President of IAMA (as applicable) will:~~
- ~~(i) consult with the Resolution Advisor, Customer and Other NBN Co Customers regarding the person or persons being considered for appointment;~~
  - ~~(ii) provide a written notice to the ACCC setting out the name and the terms of the proposed appointment of such persons; and~~
  - ~~(iii) to the extent a person has been appointed as a member of a "Pool" for the purposes of an Other Wholesale Broadband Agreement, ensure that the person is appointed as a member of the Pool under this Agreement, unless a party can demonstrate that the person is~~

~~not suitable for appointment to the Pool for reasons described in clause 13.1(a)(ii).~~

- ~~(e) — A person referred to in a written notice provided to the ACCC under clause 12.1(d)(ii) will not be appointed as a member of the Pool if, within 20 Business Days of NBN Co providing such written notice to the ACCC, the ACCC issues a notice of objection to the appointment of the person or to the terms of appointment.~~
- ~~(f) — The parties will use reasonable endeavours to ensure that, at all times:
  - ~~(i) — the Pool comprises a sufficient number of members to enable Panel Arbitrations to proceed in the manner contemplated by these Dispute Management Rules;~~
  - ~~(ii) — the Pool comprises members who have reasonably diverse and balanced range of professional skills and experience, whether commercial, technical, operational or legal; and~~
  - ~~(iii) — a reasonable proportion of the members of the Pool are Legal Practitioners or Dispute Resolution Practitioners.~~~~
- ~~(g) — A member of the Pool will be appointed for a period not exceeding the duration of the Term.~~
- ~~(h) — A member of the Pool may be re-appointed for one or more successive periods provided that the member is re-appointed in accordance with the process set out in this clause 12.1.~~
- ~~(i) — Each member of the Pool:
  - ~~(i) — must have an understanding of the Australian telecommunications industry (or be able to acquire such an understanding quickly);~~
  - ~~(ii) — must have at least 10 years' experience in dispute resolution procedures; and~~
  - ~~(iii) — need not be a citizen or resident of Australia.~~~~
- ~~(j) — After receiving a request from Customer pursuant to this clause 12.1(j) in respect of a Pool member, NBN Co will provide Customer with a copy of the terms of appointment agreed between NBN Co and the Pool member and any other agreement between NBN Co and the Pool member related to the appointment of the Pool member (with any personal information of the Pool member redacted), subject to Customer agreeing to a non-disclosure and confidentiality agreement that is reasonably acceptable to NBN Co.~~

## **~~12.2~~ — Members of the Pool to comply with these Dispute Management Rules and terms of appointment**

~~(a) — NBN Co will:~~

~~(i) — ensure that the terms of appointment agreed between NBN Co and a member of the Pool contain provisions requiring the member of the Pool to comply with these Dispute Management Rules and their terms of appointment; and~~

~~(ii) — take reasonable steps to enforce the Pool member's compliance with these Dispute Management Rules and those terms where the Pool member has failed to comply with these Dispute Management Rules or those terms in a material way.~~

~~(b) — If Customer reasonably believes that a Pool member has failed to comply with these Dispute Management Rules or the terms of appointment agreed between NBN Co and the Pool member in a material way:~~

~~(i) — Customer may provide written notice to NBN Co setting out reasonable particulars of that belief and requesting that NBN Co take reasonable steps to enforce the Pool member's compliance with these Dispute Management Rules or those terms (as applicable); and~~

~~(ii) — if NBN Co agrees, in its discretion, that the Pool member has failed to comply with these Dispute Management Rules or the terms of appointment agreed between NBN Co and the Pool member in a material way, NBN Co will seek to enforce the Pool member's compliance with these Dispute Management Rules or those terms in accordance with and subject to clause 12.2(a)(ii).~~

## **~~12.3~~ — Costs of retaining the Pool**

~~(a) — Subject to clause 14, NBN Co will not charge Customer any separate fees or charges for the costs associated with the appointment, retention and operations of members of the Pool, including the payment of retainers to members of the Pool (if any).~~

~~(b) — NBN Co will maintain records of any payments made by NBN Co to a Pool member in connection with the appointment of the Pool member to the Pool under these Dispute Management Rules.~~

## ~~13 Termination of appointment of Resolution Advisors and Pool members~~

### ~~13.1 NBN Co's rights~~

- ~~(a) Subject to the remainder of this clause 13.1, NBN Co may terminate the appointment of a Resolution Advisor or Pool member if:~~
- ~~(i) the Resolution Advisor or Pool member does not comply with any provision of these Dispute Management Rules in a material way and does not cure that non-compliance within 5 Business Days after the date on which NBN Co provides the Resolution Advisor or Pool member with written notice to do so; or~~
  - ~~(ii) NBN Co reasonably considers that the Resolution Advisor or Pool member is, or is likely to be, unable to continue to perform his or her responsibilities as a Resolution Advisor or Pool member:~~
    - ~~(A) where NBN Co considers that there is a real danger of bias, on the part of that Resolution Advisor or Pool member; or~~
    - ~~(B) for a period of 10 Business Days or more due to ill health or other incapacity.~~
- ~~(b) Before terminating the appointment of the Resolution Advisor or Pool member, NBN Co must:~~
- ~~(i) provide a confidential written report to the ACCC:~~
    - ~~(A) advising the ACCC of NBN Co's intention to terminate the appointment of the Resolution Advisor or Pool member pursuant to clause 13.1(a);~~
    - ~~(B) specifying the provision on which NBN Co is proposing to terminate the appointment of the Resolution Advisor or Pool member pursuant to clause 13.1(a); and~~
    - ~~(C) describing the event or circumstance giving rise to NBN Co's view that NBN Co may terminate the appointment of the Resolution Advisor or Pool member on the basis of that provision;~~
  - ~~(ii) subject to any applicable confidentiality obligations, promptly provide to the ACCC any further information reasonably requested by the ACCC in relation to the subject matter of the report, provided that the ACCC makes that request within 10 Business Days after the date on which NBN Co provided the report to the ACCC; and~~

- ~~(iii) — refrain from terminating the appointment of the Resolution Advisor or Pool member on the basis of the event or circumstance described in the report for a period of 20 Business Days after the date on which NBN Co provided the report to the ACCC.~~
- ~~(c) — NBN Co must not terminate the appointment of the Resolution Advisor or Pool member on the basis of the event or circumstance described in the report if the ACCC notifies NBN Co, within 20 Business Days after the date on which NBN Co provided the report to the ACCC, that the ACCC does not agree that the event or circumstance described in the report provides a reasonable basis for NBN Co to terminate the appointment of the Resolution Advisor or Pool member on the basis of the provision specified in the report.~~
- ~~(d) — NBN Co must not terminate the appointment of a Pool member during a period in which the Pool member is empanelled as an arbitrator in relation to a Panel Arbitration for a Dispute.~~

### **13.2 — Customer's rights**

- ~~(a) — If Customer reasonably believes that an event or circumstance has occurred or arisen that gives rise to a right for NBN Co to terminate the appointment of a Resolution Advisor or Pool member pursuant to clause 13.1(a), Customer may provide written notice to NBN Co setting out particulars of that belief and requesting that NBN Co terminate the appointment of the Resolution Advisor or Pool member.~~
- ~~(b) — After receiving a notice issued by Customer under clause 13.2(a), NBN Co will:
  - ~~(i) — consider whether NBN Co agrees, in its discretion, that the event or circumstance described in the notice has occurred or arisen and whether that event or circumstance gives rise to a right for NBN Co to terminate the appointment of a Resolution Advisor or Pool member pursuant to clause 13.1(a); and~~
  - ~~(ii) — provide a confidential written report to Customer and the ACCC specifying whether NBN Co agrees, in its discretion, that the event or circumstance described in the notice has occurred or arisen and whether that event or circumstance gives rise to a right for NBN Co to terminate the appointment of a Resolution Advisor or Pool member pursuant to clause 13.1(a); and~~
  - ~~(iii) — if NBN Co agrees, in its discretion, that the event or circumstance described in the notice has occurred or arisen and gives rise to a right for NBN Co to terminate the appointment of a Resolution Advisor or Pool member pursuant to clause 13.1(a), NBN Co will seek to terminate the appointment of the Resolution Advisor or Pool member in accordance with and subject to clause 13.1.~~~~

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## ~~14~~ ~~Costs~~

~~Except as otherwise provided in these Dispute Management Rules or determined in accordance with the CAA, neither NBN Co or Customer will be required to pay the other for any of the other party's costs and expenses in the conduct of Disputes and Other NBN Co Customer Disputes.~~

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## ~~15~~ ~~Non-discrimination~~

### ~~15.1~~ ~~Decisions and determinations to give effect to the Non-Discrimination Obligations~~

~~Before making any orders, decisions, determinations or Awards, the Resolution Advisor and all Panels must, as part of their decision-making process, have regard to whether:~~

- ~~(a) the order, decision, determination or Award; and~~
- ~~(b) the implementation of the order, decision, determination or Award by the parties,~~

~~will or is likely to require NBN Co to treat Customer, any Other NBN Co Customer or any Access Seeker in a manner that does not comply with the Non-Discrimination Obligations.~~

### ~~15.2~~ ~~Ensuring implementation of resolutions is non-discriminatory~~

~~(a) Customer agrees to co-operate with NBN Co to ensure that:~~

- ~~(i) the resolution of any Dispute; and~~
- ~~(ii) the resolution of any Other NBN Co Customer Dispute,~~

~~can be implemented by NBN Co in a manner that does not discriminate between Customer, Other NBN Co Customers and Access Seekers, except where permitted in accordance with this Agreement or the law, special access undertaking or agreement that imposes the Non-Discrimination Obligations.~~

~~(b) Customer agrees that the implementation of:~~

- ~~(i) the resolution of any Dispute; and~~
- ~~(ii) the resolution of any Other NBN Co Customer Dispute,~~

~~in a manner that does not discriminate between Customer, Other NBN Co Customers and Access Seekers may require NBN Co to propose and implement a change to this Agreement.~~



## ~~16~~ — ~~Expert Determination Rules~~

### ~~16.1~~ — ~~Selection of an expert~~

- ~~(a)~~ — Within 5 Business Days of NBN Co and Customer agreeing to refer a Dispute to expert determination pursuant to clause 2.1(c) and each of the parties notifying the Resolution Advisor of that agreement, the Resolution Advisor will nominate 3 persons who are suitable and available to determine the Dispute as an expert and notify NBN Co and Customer in writing of the names, qualifications and relevant experience of those 3 persons (the **Expert Shortlist**).
- ~~(b)~~ — When selecting each person to be included on the Expert Shortlist, the Resolution Advisor must:
- ~~(i)~~ — use reasonable endeavours in the time available to identify any circumstances likely to give rise to claims of any real danger of bias on the part of each of those persons in the performance of their duties in determining the Dispute as an expert, if selected; and
  - ~~(ii)~~ — take any such circumstances into account in selecting each person to be included on the Expert Shortlist.
- ~~(c)~~ — Any person nominated by the Resolution Advisor as being suitable and available to determine the Dispute as an expert:
- ~~(i)~~ — must have an understanding of the Australian telecommunications industry (or be able to acquire such an understanding quickly);
  - ~~(ii)~~ — must have experience or expertise that is relevant to the nature of the Dispute;
  - ~~(iii)~~ — should preferably be experienced in expert determination procedures; and
  - ~~(iv)~~ — need not be a citizen or resident of Australia.
- ~~(d)~~ — NBN Co and Customer may select an expert from the Expert Shortlist by agreement.
- ~~(e)~~ — If NBN Co and Customer agree on the selection of an expert from the Expert Shortlist, then:
- ~~(i)~~ — NBN Co and Customer each must notify the Resolution Advisor of that selection within 5 Business Days of receiving a copy of the Expert Shortlist; and

~~(ii) — as soon as practicable, the Resolution Advisor must do all things necessary to engage the selected expert on behalf of NBN Co and Customer to determine the Dispute as an expert.~~

~~(f) — If:~~

~~(i) — NBN Co and Customer have not each notified the Resolution Advisor of the expert selected by agreement from the Expert Shortlist within 5 Business Days of receiving a copy of the Expert Shortlist; or~~

~~(ii) — the Resolution Advisor (despite doing all things necessary) is unable to engage the expert selected by the agreement of NBN Co and Customer to resolve the dispute;~~

~~then the Resolution Advisor must, as soon as practicable:~~

~~(iii) — select an expert from the Expert Shortlist and notify NBN Co and Customer of that selection; and~~

~~(iv) — do all things necessary to engage the selected expert on behalf of NBN Co and Customer to determine the Dispute as an expert.~~

#### ~~16.2 — Conduct of the expert determination~~

~~(a) — Any expert determination must be conducted in accordance with these Expert Determination Rules and the Institute of Arbitrators & Mediators Australia Expert Determination Rules.~~

~~(b) — If there is any inconsistency between these Expert Determination Rules and the Institute of Arbitrators & Mediators Australia Expert Determination Rules, these Expert Determination Rules will prevail to the extent of any inconsistency.~~

~~(c) — Subject to the foregoing, the expert will determine and adopt a procedure which, in the expert's opinion, is the most efficient procedure practicable in the circumstances.~~

~~(d) — The place of any expert determination hearing will be Sydney, Australia, unless otherwise agreed by all parties to the Dispute. The expert determination may meet at any other place to attend any inspection, but may not hold any hearing at any place other than Sydney, Australia, unless otherwise agreed by all parties to the Dispute.~~

~~(e) — The expert may seek independent legal advice regarding any aspect of the Dispute if in the expert's opinion it would assist in the efficient resolution of the Dispute. If such independent legal advice is sought:~~

- ~~(i) — the expert will nominate 3 members of the NSW Bar Association with the title Senior Counsel or Queens Counsel who are suitable and available to provide legal advice;~~
- ~~(ii) — NBN Co and Customer may select a barrister from the nominated list by agreement; and~~
- ~~(iii) — if NBN Co and Customer do not reach agreement within 2 Business Days, the expert will select one barrister from the nominated list.~~
- ~~(f) — NBN Co and Customer must each provide the expert with any information that the expert reasonably requires within a timeframe reasonably determined by the expert. The expert is entitled to:
  - ~~(i) — make a decision in the absence of provision of any requested information; and~~
  - ~~(ii) — make adverse inferences from the failure of NBN Co or Customer to provide any requested information,~~provided that the expert has reasonably determined the timeframe in which NBN Co or Customer (as applicable) is required to provide that requested information.~~
- ~~(g) — The expert has to act as an expert and not as an arbitrator. The parties acknowledge that the expert is not an arbitrator for the purpose of the CAA.~~
- ~~(h) — The expert is entitled to rely on the expert's own independent judgement and opinion, but must follow any code by CommsAlliance (or any replacement or successor to CommsAlliance) to which NBN Co is a code signatory, any Industry Code, any Industry Standard and any Technical Standard.~~
- ~~(i) — The expert must seek to make decisions in a timely, practical and efficient manner.~~

### **~~16.3 — Determination by the expert~~**

- ~~(a) — The expert must provide NBN Co and Customer with its draft decision, including draft reasons, regarding resolution of the Dispute prior to finalising it.~~
- ~~(b) — The expert must provide NBN Co and Customer with a reasonable period not exceeding 5 Business Days in which to comment on the draft decision and must take any comments received during that period into account in reaching a final decision.~~
- ~~(c) — The expert must make its decision in respect of the Dispute as soon as is reasonably practicable, and in any case will provide the parties with a signed~~

~~copy of its final decision and reasons for that decision by no later than 40 Business Days after its appointment or by no later than such other date agreed by NBN Co, Customer and the expert.~~

- ~~(d) — NBN Co and Customer agree that the final decision by the expert is final and binding on them, except that either NBN Co or Customer may appeal to a court of competent jurisdiction if it considers that the final decision contains a manifest error or that the expert has acted in bad faith.~~
- ~~(e) — The decision of the expert is deemed to be final and binding pending the adjudication by the relevant court of competent jurisdiction.~~

#### **16.4 — Appealing the decision of the expert**

- ~~(a) — Each participant has 20 Business Days after receipt of the final decision to notify the Resolution Advisor and the other party that it considers that the final decision contains a manifest error or that the expert has acted in bad faith, and that it will pursue its rights in a court of competent jurisdiction.~~
- ~~(b) — If neither NBN Co nor Customer provides notice to the Resolution Advisor and the other party in accordance with clause 16.4(a), then each party is deemed to have waived its rights under clause 16.4(a) and agreed that the final decision by the expert is final and binding.~~

#### **16.5 — Costs**

- ~~(a) — Except as set out below:
  - ~~(i) — the costs of the expert, including any costs incurred by the expert in obtaining independent legal advice in accordance with clause 16.2(e), will be borne equally by NBN Co and Customer; and~~
  - ~~(ii) — NBN Co and Customer will each bear their own costs and expenses in relation to the expert determination.~~~~
- ~~(b) — Where NBN Co or Customer has asserted that the expert's final decision contains a manifest error or the expert has acted in bad faith and that assertion or appeal is not upheld by the relevant court of competent jurisdiction, then that court will determine which party will bear the reasonable costs and expenses of both NBN Co and Customer in relation to:
  - ~~(i) — the expert determination; and~~
  - ~~(ii) — the adjudication of its assertion or appeal by the relevant court of competent jurisdiction~~~~

## ~~16.6 Expert's decision to give effect to the Non-Discrimination Obligations~~

~~Before making any decision, the Expert must, as part of its decision-making process, have regard to whether the decision and the implementation of the decision by the parties, will or is likely to require NBN Co to treat Customer, any Other NBN Co Customer or any Access Seeker in a manner that does not comply with the Non-Discrimination Obligations.~~

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## ~~17 Definitions and Interpretation~~

### ~~17.1 Definitions~~

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

~~**Bilateral Dispute** means a dispute that is classified as a bilateral dispute under clause 3(d).~~

~~**Billing Dispute** means a dispute between the parties which arises because Customer, acting reasonably, considers there is an error in the amount of an invoice payable by Customer under an Access Agreement.~~

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

~~**Dispute** has the meaning given to that term in clause 1(a).~~

~~**Dispute Resolution Practitioner** means a practising mediator, expert or arbitrator with at least 10 years dispute resolution experience.~~

~~**Execution Date** means the date that this Agreement is executed by the last party to sign this Agreement.~~

~~**Expert Determination Rules** means the rules for expert determination set out in clause 16.~~

~~**Expert Shortlist** has the meaning given to that term in clause 16.1(a).~~

~~**Industry Code** means an industry code developed and registered with the ACMA under Part 6 of the Telecommunications Act.~~

~~**Industry Relevant Dispute** means a dispute that is classified as an industry relevant dispute under clause 3(a).~~

~~**Industry Standard** means an industry standard determined by the ACMA under Part 6 of the Telecommunications Act.~~

~~**Insolvency Event** means the occurrence of any one or more of the following events in relation to a party:~~

- ~~(a) an order is made that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;~~

- ~~(b) — a liquidator or provisional liquidator is appointed;~~
- ~~(c) — an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;~~
- ~~(d) — a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;~~
- ~~(e) — it enters into an arrangement or composition with one or more of its creditors (in their capacities as creditors) and that arrangement or composition is not terminated within 10 Business Days, or an assignment for the benefit of one or more of its creditors (in their capacities as creditors), in each case other than to carry out a reconstruction or amalgamation while solvent;~~
- ~~(f) — it proposes a winding up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors (in their capacities as creditors), or it proposes a standstill arrangement or composition with one or more of its creditors (in their capacities as creditors) and that standstill, arrangement or composition is not terminated within 10 Business Days;~~
- ~~(g) — it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under sections 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;~~
- ~~(h) — it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;~~
- ~~(i) — a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;~~
- ~~(j) — a writ of execution is levied against it or a material part of its property which is not dismissed within 21 days;~~
- ~~(k) — it ceases to carry on business or threatens to do so; or~~
- ~~(l) — anything occurs under the law of the Commonwealth or any Australian State or Territory which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.~~

~~**Invitation** has the meaning given to that term in clause 7.2(a).~~

~~**Invitee** has the meaning given to that term in clause 7.2(a).~~

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

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

~~**Other NBN Co Customer Dispute** means a dispute between NBN Co and an Other NBN Co Customer under or in relation to an Other Wholesale Broadband Agreement between NBN Co and that Other NBN Co Customer that has been classified as an industry relevant dispute under that Other Wholesale Broadband Agreement.~~

~~**Other Wholesale Broadband Agreement** means an agreement dealing with the subject matter of this Agreement entered into between NBN Co and a customer of NBN Co (other than Customer).~~

~~**Panel** has the meaning given to that term in clause 2.2(a).~~

~~**Panel Arbitration** means an arbitration conducted by the Panel in accordance with clause 5.~~

~~**Panel Member** has the meaning given to that term in clause 2.2(a).~~

~~**Pool** means the pool of members constituted in accordance with clause 12.~~

~~**President of IAMA** means the President, from time to time, of the Institute of Arbitrators and Mediators Australia.~~

~~**Resolution Advisor** means the person or persons appointed as such in accordance with clause 11.1.~~

~~**Technical Standard** means any technical standard made by the ACMA under Part 21 of the Telecommunications Act.~~

~~**Term** means the term of the Access Agreement, as may be extended pursuant to its terms.~~

## ~~17.2 Interpretation~~

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

~~(a) a reference to a clause is a reference to a clause of these Dispute Management Rules; and~~

~~(b) capitalised terms:~~

~~(i) if defined in clause 17.1, have the meaning set out in clause 17.1; or~~

~~(ii) if not defined in clause 17.1, have the same meaning as set out in Attachment C (Dictionary) of the Special Access Undertaking.~~

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## **Annexure 2 — Information & Rights Management**

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### **1 — Confidential Information**

#### **1.1 — Maintaining confidentiality**

- (a) — If a party (a **Discloser**) discloses Confidential Information to the other party (the **Recipient**), the Recipient must keep it confidential and not use or disclose it, except as provided in this Agreement.
- (b) — The Recipient must in maintaining confidentiality of Confidential Information exercise the greater of:
  - (i) — the degree of care that a reasonable person with knowledge of the confidential nature of the Confidential Information would apply; and
  - (ii) — the security or degree of care that it applies to its own confidential information of an equivalent nature.

#### **1.2 — Use and disclosure of Confidential Information**

Unless otherwise provided, the Recipient may only:

- (a) — use the Confidential Information:
  - (i) — to exercise its rights or perform its obligations under this Agreement and an SAU; or
  - (ii) — to the extent necessary for the supply of Customer Products to Downstream Customers and End Users as contemplated by this Agreement; and
- (b) — disclose Confidential Information to:
  - (i) — its Related Bodies Corporate, Personnel and Downstream Customers who are not End Users, to whom disclosure is necessary in order for the Recipient to perform its obligations or exercise its rights under or in connection with this Agreement or an SAU;
  - (ii) — its professional advisers, to the extent necessary for those advisers to provide advice to the Recipient or exercise or protect the rights of the Recipient under or in connection with this Agreement or an SAU;
  - (iii) — a third party, where the Discloser has consented to that disclosure in writing and subject to any conditions that may be placed on that disclosure by the Discloser;
  - (iv) — a third party, to the extent necessary to:



~~(A) — comply with a requirement of any Government Agency or Regulator or any order of any court or tribunal;~~

~~(B) — comply with any obligation of the Recipient under any law;  
or~~

~~(C) — protect the health or safety of any person,~~

~~provided that the Recipient has taken steps that are reasonable in the circumstances to ensure that such information cannot be identified with, or attributed to, the Discloser (where possible) and shall give notice to the Discloser if not reasonable or possible in the circumstances;~~

~~(v) — a third party to the extent necessary to:~~

~~(A) — conduct and complete a review of Customer's credit risk pursuant to the Credit Policy;~~

~~(B) — plan, develop, test, trial and supply Products; or~~

~~(C) — where the third party is a debt collection agent, facilitate the recovery of any amounts due and payable by one party to another under this Agreement;~~

~~(vi) — the Recipient's financiers or investors or potential financiers or investors; or~~

~~(vii) — in relation to the Recipient's financiers or investors in clause 1.2(b)(vi), their respective:~~

~~(A) — professional advisers (but only to the extent necessary for those advisers to provide advice or services to those financiers or investors); and~~

~~(B) — financial advisers or bankers (but only to the extent necessary for those advisers or bankers to provide financial advice or services to those financiers or investors);~~

~~provided that:~~

~~(viii) — the Recipient ensures that a person to whom the proposed disclosure is to be made is subject to substantially equivalent confidentiality obligations to those set out in this 'Information & Rights Management' module of this Agreement;~~

~~(ix) — if unreasonable in all the circumstances to comply with clause 1.2(b)(viii), the Recipient ensures that the person to whom the proposed disclosure is made is subject to an obligation to keep the information confidential; or~~

~~(x) — if unreasonable in all the circumstances to comply with clause 1.2(b)(ix), the Recipient gives the Discloser notice of the proposed disclosure as soon as is reasonably practicable after determining that such confidentiality obligations would be unreasonable.~~

### ~~1.3 — Additional disclosure by NBN Co~~

~~If NBN Co is the Recipient, NBN Co may, in addition to its rights under clause 1.2, disclose the Confidential Information of Customer:~~

- ~~(a) — to a third party to the extent necessary:
  - ~~(i) — to avoid or mitigate the effect of an Emergency or to protect the integrity of the NBN Co Network, the NBN Co Platform or the National Test Facility, provided NBN Co has taken steps that are reasonable in the circumstances to ensure that such information cannot be identified with, or attributed to, Customer (where possible) and shall give notice to Customer if not reasonable or possible in the circumstances; or~~
  - ~~(ii) — for NBN Co to comply with, or demonstrate its compliance with, any obligation owed by NBN Co under any law, any Non-Discrimination Obligation or an SAU, provided that in each case NBN Co has taken all steps that are reasonable in the circumstances to ensure that such information cannot be identified with, or attributed to, Customer and shall give notice to Customer if not reasonable or possible in the circumstances;~~~~
- ~~(b) — subject to NBN Co ensuring that the person to whom the proposed disclosure is made is subject to an obligation to keep the information confidential, to the extent necessary:
  - ~~(i) — for the purposes of pull through activities, investigating and rectifying faults on cables in lead-in conduits;~~
  - ~~(ii) — to enable facilities access by Customer necessary for the supply of Ordered Products; or~~
  - ~~(iii) — for purposes connected with:
    - ~~(A) — the disconnection of premises from the network of a third party (including for calculating any payments from NBN Co to a third party); or~~
    - ~~(B) — the provision by a third party to NBN Co of access to or ownership of parts of a network of a third party; or~~~~~~

- ~~(c) — where required or authorised by law or NBN Co's constitution, to any Commonwealth government minister, their respective government departments and/or their delegates, and, otherwise, to any Regulator.~~

#### ~~1.4 — No disclosure to Other NBN Co Customers~~

~~Except where expressly contemplated by this Agreement, NBN Co may not disclose Confidential Information of Customer to an Other NBN Co Customer.~~

#### ~~1.5 — NBN Co use of Network Information~~

- ~~(a) — NBN Co may use Network Information to:~~

- ~~(i) — exercise its rights or perform its obligations under this Agreement, under any other agreement with Customer or under an SAU;~~
- ~~(ii) — perform planning, maintenance, modernisation or reconfiguration activities of the NBN Related Networks;~~
- ~~(iii) — determine whether Customer is liable to NBN Co for certain Charges or other amounts payable to NBN Co; and~~
- ~~(iv) — fulfil legal or regulatory requirements.~~

- ~~(b) — NBN Co must ensure that in disclosing any Network Information as permitted under this Agreement:~~

- ~~(i) — where it is possible to do so, such information is not identifiable with Customers, Downstream Customers or End Users; or~~
- ~~(ii) — if it is not reasonable or possible in the circumstances to render the Network Information unidentifiable:
  - ~~(A) — NBN Co must ensure that a person to whom the proposed disclosure is to be made is subject to substantially equivalent confidentiality obligations to those set out in this 'Information & Rights Management' module of this Agreement;~~
  - ~~(B) — if unreasonable in all the circumstances to comply with clause 1.5(b)(ii)(A), NBN Co ensures that the person to whom the proposed disclosure is made is subject to an obligation to keep the information confidential; or~~
  - ~~(C) — if unreasonable in all the circumstances to comply with clause 1.5(b)(ii)(B), NBN Co gives the Customer notice of the proposed disclosure as soon as is reasonably practicable after determining that such confidentiality obligations would be unreasonable.~~~~

**~~1.6 — NBN Co use of Aggregated Network Information~~**

- ~~(a) — NBN Co may use Aggregated Network Information for any purpose.~~
- ~~(b) — NBN Co may disclose Aggregated Network Information to any third party.~~

**~~1.7 — Return of Confidential Information on demand~~**

~~The Recipient must return, destroy or delete the Discloser's Confidential Information on demand by the Discloser, except to the extent it is impracticable to do so, or necessary to comply with the Recipient's internal governance processes, or any applicable law.~~

**~~1.8 — Injunctive relief~~**

~~Each party agrees that damages may not be an adequate remedy for a breach of this clause 1 and that a party is entitled to seek specific performance or injunctive relief for a breach, anticipatory breach, or reasonably suspected breach of this clause 1.~~

**~~1.9 — Consent for the purposes of section 152AYA~~**

~~For the purposes of section 152AYA of the Competition and Consumer Act, Customer consents to NBN Co using and disclosing any information that may be given by Customer to NBN Co in connection with this Agreement and which is information to which section 152AYA of the Competition and Consumer Act applies, in accordance with this clause 1.~~

**~~1.10 — Consent for the purposes of sections 152BEA to 152BEC (inclusive)~~**

- ~~(a) — For the purposes of sections 152BEA to 152BEC (inclusive) of the Competition and Consumer Act, Customer consents to NBN Co using and disclosing to the ACCC any Confidential Information of Customer to the extent necessary for NBN Co to comply with any of sections 152BEA to 152BEC (inclusive) of the Competition and Consumer Act.~~
- ~~(b) — Customer may, upon execution of this Agreement or a variation of this Agreement, notify NBN Co in writing of any material in this Agreement which it considers reasonably to contain Confidential Information of Customer, the disclosure of which would reasonably be expected to prejudice substantially the commercial interests of Customer, and NBN Co will request under section 152BED(5) of the Competition and Consumer Act that the ACCC remove the material from the version of any statement that is included in the register maintained under section 152BED of the Competition and Consumer Act, acknowledging that NBN Co cannot require the ACCC to remove the foregoing material.~~

**~~1.11 — Part 4 of Schedule 1 to the Telecommunications Act~~**

~~If Customer is a Carrier, the parties agree that:~~

- (a) ~~the rights and obligations of the parties under this clause 1 are in addition to the rights and obligations of the parties under Part 4 of Schedule 1 to the Telecommunications Act; and~~
- (b) ~~this clause 1 does not, and is not intended to, set out security procedures for the purposes of clause 26 of Schedule 1 to the Telecommunications Act or the terms and conditions referred to in clause 27 of Schedule 1 to the Telecommunications Act.~~

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## ~~2 Data security and Personal Information~~

### ~~2.1 Data Security~~

~~Each party must apply reasonable security standards in respect of any data or information (including Confidential Information) of the other party (having regard to the nature of the data or information and the party's obligations under applicable law) that the party collects, stores, uses or discloses to third parties by any means inside or outside Australia and must not allow any person inside or outside of Australia to access any such data or information except in compliance with those data security standards.~~

### ~~2.2 Personal Information~~

~~If either party collects, uses, discloses, transfers or otherwise handles Personal Information, it must comply with, and ensure that its Related Bodies Corporate and Personnel (and the Personnel of its Related Bodies Corporate) comply with, all Privacy Laws, including the National Privacy Principles, as if it was an "organisation" (as defined in the *Privacy Act 1988 (Cth)*), whether or not that party or its Related Bodies Corporate or Personnel are bound by the Privacy Laws.~~

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## ~~3 Downstream Customers~~

### ~~3.1 Downstream Customers' activities~~

~~Customer may supply Customer Products to any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale Customer Product under a contract with Customer for the purposes of that person supplying Downstream Products.~~

### ~~3.2 Obligations in respect of Downstream Customer Details~~

- (a) ~~Customer must include in the terms of any contract with a Downstream Customer for the supply of Customer Products, provisions (including all necessary consents) to ensure that NBN Co is able to use and process Downstream Customer Details including to supply any Ordered Product, or perform any work required in order to supply any Ordered Product, including to install, maintain, upgrade, repair, reinstate or remove all or part of the NBN Co Network or any other item that is licensed, owned or controlled by~~

~~NBN Co that is or will be located at the premises and, where lawful, any third party network whether or not in relation to the supply of an Ordered Product.~~

- ~~(b) NBN Co may request that Customer provide NBN Co with Downstream Customer Details if NBN Co does not have access to, and cannot otherwise obtain within a reasonable period of time, those Downstream Customer Details.~~
- ~~(c) If Customer receives a request under clause 3.2(b), it must, as soon as is reasonably practicable:
  - ~~(i) provide such Downstream Customer Details to NBN Co; and~~
  - ~~(ii) give all necessary notifications required to ensure that NBN Co is able to use and process those Downstream Customer Details in accordance with this Agreement, and provide, or procure and provide, those Downstream Customer Details to NBN Co.~~~~
- ~~(d) NBN Co may only use and process (including by collecting, storing, using, processing, reproducing and disclosing) any Downstream Customer Details and any information relating to Downstream Customer Details to exercise its rights or perform its obligations under this Agreement or by law.~~
- ~~(e) Customer must use reasonable endeavours to ensure that any Downstream Customer Details provided by it to NBN Co are complete, accurate and up-to-date.~~
- ~~(f) Customer must ensure that it has obtained all necessary consents and given all necessary notifications required to ensure that NBN Co is able to process the Downstream Customer Details in accordance with this Agreement, before providing Downstream Customer Details to NBN Co in accordance with this clause 3.2 so that NBN Co can lawfully exercise its rights under clause 3.2(d).~~
- ~~(g) NBN Co and Customer each agree to comply with all Privacy Laws with respect to Downstream Customer Details.~~

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## ~~4 Rollout and migration communications~~

~~Customer must include in timely communications with Downstream Customers, End Users and other third parties the matters specified by NBN Co to Customer as necessary for the supply of any Ordered Product, or perform any work required in order to supply any Ordered Product, including to install, maintain, upgrade, repair, reinstate or remove all or part of the NBN Co Network or any other item that is licensed, owned or controlled by NBN Co that is or will be located at the premises and, where lawful, any third party network, whether or not in relation to the supply of an Ordered Product.~~

## ~~5 Intellectual Property Rights~~

### ~~5.1 General principles~~

- ~~(a) Nothing in this Agreement operates to transfer or assign ownership of Intellectual Property Rights and, except as expressly provided under this clause 5, nothing in this clause 5 confers on either party any right, title or interest in or to, any of the other party's Intellectual Property Rights or Third Party IPR.~~
- ~~(b) The provisions of this clause 5 do not apply in respect of Intellectual Property Rights provided by NBN Co to Customer or by Customer to NBN Co in connection with, or created or developed:
  - ~~(i) in the course of, product development activities undertaken under the PDF Processes (which will be governed by the terms of the PDF Processes); or~~
  - ~~(ii) under any other agreement with Customer.~~~~

### ~~5.2 Ordered Product licence~~

- ~~(a) Subject to clause 5.6, except as otherwise agreed, NBN Co grants Customer an irrevocable, non-exclusive, royalty-free, non-transferable, worldwide licence for the Term to the NBN Co IPRs embodied in any Ordered Product:
  - ~~(i) subject to clause 5.2(a)(ii), solely to the extent required for Customer (directly or through its Personnel) to use and commercialise any Ordered Product; and~~
  - ~~(ii) otherwise to the extent required for Customer to perform its obligations and exercise its rights pursuant to this Agreement.~~~~
- ~~(b) Subject to clause 5.6, except as otherwise agreed, NBN Co grants Customer a non-exclusive, royalty-free, non-transferable licence for the Term to any Third Party IPR that may become embodied in any Ordered Product to which NBN Co has obtained a licence pursuant to the PDF, where such licence includes the right to sub-licence to Customer on the terms of this clause 5.2, solely to the extent required for Customer (directly or through its Personnel) to use and commercialise that Ordered Product.~~
- ~~(c) Customer may sub-licence any of the rights granted to it under clause 5.2(a) and 5.2(b) to any of its Related Bodies Corporate or Downstream Customers, provided that:
  - ~~(i) any sub-licence to Downstream Customers is limited solely to the extent required for such Downstream Customers to use any Customer Product or Downstream Product, as the case may be (with~~~~

~~the right to further sub-licence solely to the extent necessary to enable any further Downstream Customers to use any Customer Product or Downstream Product);~~

~~(ii) any sub-licence to Related Bodies Corporate is limited solely to the extent required to enable Customer to use and commercialise any Ordered Product; and~~

~~(iii) Customer remains liable for each act and/or omission of all such sub-licensees in connection with the exercise of such sub-licence as though it were an act and/or omission of Customer.~~

~~(d) NBN Co represents and warrants to Customer that, as at the date of supply of an Ordered Product, to the best of its knowledge, the supply and use in accordance with the terms of this Agreement of an Ordered Product will not infringe Third Party IPR.~~

~~(e) Customer must not, and must ensure its Personnel and sub-licensees do not, use any Intellectual Property Rights licensed to it pursuant to this clause 5.2:~~

~~(i) for any purpose other than that expressly licensed;~~

~~(ii) at any time other than that expressly licensed; or~~

~~(iii) otherwise than in accordance with this Agreement.~~

~~(f) Without limiting clauses 3.2 and 3.8 of the 'Risk Management' module of this Agreement, if a third party makes an infringement claim against Customer in relation to the use of an Ordered Product in connection with this Agreement, then NBN Co will use reasonable endeavours, if requested by Customer (at no additional cost to Customer), to:~~

~~(i) procure the right for Customer to continue using the Ordered Product;~~

~~(ii) modify the Ordered Product so that it becomes non-infringing; or~~

~~(iii) replace the Ordered Product with a non-infringing Product,~~

~~except where the infringement claim arises as a result of a Customer Event.~~

### **5.3 NBN Co internal use of Customer IPRs**

~~(a) Customer grants to NBN Co (acting through its Personnel) an irrevocable, non-exclusive, royalty-free, non-transferable licence to use Customer IPRs embodied in Customer Material internally within NBN Co to the extent necessary for NBN Co to exercise its rights and perform its obligations under this Agreement and an SAU excluding use under the PDF Processes **(Permitted Use)**.~~



- (b) The licence in clause 5.3(a) does not extend to any action or purpose other than the Permitted Use and Customer Material remains the property of Customer (or any licensor or supplier to Customer, as the case may be).
- (c) NBN Co must not, and must ensure its Personnel do not, use any Customer IPRs licensed to it pursuant to this clause 5.3:
  - (i) for any purpose other than that expressly licensed; or
  - (ii) otherwise than in accordance with this Agreement.

#### **5.4 Customer IPRs in Proposed Use Materials**

- (a) If NBN Co wishes to use Customer Materials in connection with this Agreement in any manner or for any purpose other than the Permitted Use, NBN Co will give written notice to Customer identifying:
  - (i) the Customer Materials which NBN Co wishes to use (**Proposed Use Materials**); and
  - (ii) the use which NBN Co wishes to make of those Proposed Use Materials.
- (b) Customer will use reasonable endeavours to give written notice to NBN Co no later than 6 weeks after receiving a notice under clause 5.4(a), stating whether or not:
  - (i) Customer IPR subsist in the Proposed Use Materials and the nature of those rights;
  - (ii) Third Party IPR subsist in the Proposed Use Materials and the nature of those rights; and
  - (iii) the Customer is prepared to enter into negotiations with NBN Co for use of Customer or Third Party IPR subsisting in the Proposed Use Materials for the purpose specified by NBN Co under clause 5.4(a).
- (c) If Customer does not provide a response under clause 5.4(b) within the timeframe specified, NBN Co may further request that Customer provide it within a further 2 weeks, and upon the expiry of that further 2-week period, unless the parties have agreed otherwise in the manner contemplated by clause 5.4(d), NBN Co will assume that the Customer is not in a position to authorise NBN Co to use the Proposed Use Materials.
- (d) Notwithstanding the commitments and timeframes referred to in clauses 5.4(b) and 5.4(c):
  - (i) NBN Co and Customer may, at any time, elect to negotiate a licence or assignment of a right to use the IPRs in the Proposed Use Materials; and

~~(ii) — unless the parties agree in writing to the terms of a licence or assignment, no licence or assignment will occur.~~

~~(e) — Unless otherwise agreed by the parties, the following conditions will apply to any licence pursuant to clause 5.4(d):~~

~~(i) — the licence will be made before the Customer IPRs are used by NBN Co for any purpose other than the Permitted Use;~~

~~(ii) — NBN Co will pay a commercially agreed price for the use of the Customer IPRs;~~

~~(iii) — the licence will be on terms that enable NBN Co to use the Customer IPRs for the benefit of Customer and all Other NBN Co Customers and to meet its Non-Discrimination Obligations; and~~

~~(iv) — the licence will include appropriate warranties and other protections in respect of:~~

~~(A) — Customer's ownership of and rights to license the Customer IPRs;~~

~~(B) — moral rights; and~~

~~(C) — indemnities for uses that infringe Third Party IPR.~~

#### **5.5 — Responsibility for procuring third party Intellectual Property Rights**

~~Unless otherwise agreed in writing by the parties, each party must procure, at its own cost and expense, licences of Third Party IPR to the extent reasonably required for the party or its Personnel to perform its obligations pursuant to this Agreement including, in the case of NBN Co, to the extent reasonably required to supply Ordered Products to enable Customer to supply Customer Products in accordance with the terms of this Agreement.~~

#### **5.6 — Use of trade marks and branding, etc.**

~~(a) — A party must not use the trade marks, service marks, logos or branding of the other party without that other party's consent (which may be withheld in the other party's absolute discretion).~~

~~(b) — If a party (in this clause 5.6(b), the **first party**) permits another party to use the first party's trade marks, service marks, logos or branding, the other party must do so in accordance with the terms notified by the first party from time to time.~~

## 6 Definitions and Interpretation

### 6.1 Definitions

**Aggregated Network Information** means Network Information that has been aggregated with other information of a similar or related nature, such that the Network Information (or any part of it) cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify, Customer, any Downstream Customer or any End User.

**Charges** means the charges (including any Taxes) set out in the Access Agreement or relevant product description.

**Confidential Information** of the Discloser means all information of the Discloser or any of its Related Bodies Corporate in connection with this Agreement, including information of a third party that is used or disclosed by the Discloser or any of its Related Bodies Corporate under permission from that third party and including information derived from the Discloser's Confidential Information (regardless of form) which:

(a) is confidential or can reasonably be inferred to be confidential from the circumstances in which it is disclosed; and

(b) is disclosed to or observed by the Recipient in connection with this Agreement;

but does not include information:

(c) which is in or comes into the public domain, other than by disclosure in breach of this Agreement or an obligation of confidence owed to a party;

(d) which, at the time of first disclosure by the Discloser to the Recipient, was already in the lawful possession of that party;

(e) which is disclosed to, or observed by, the Recipient from a third party entitled to disclose it; or

(f) Aggregated Network Information.

Where the Discloser is Customer, Confidential Information includes Network Information, and information of the kind referred to in section 152AYA of the CCA.

**Credit Policy** means the document entitled "Credit Policy" that forms part of this Agreement and which is published on NBN Co's Website (as changed from time to time in accordance with this Agreement).

**Customer IPRs** means any Intellectual Property Rights owned by Customer or a Related Body Corporate of Customer.

~~**Customer Material** means all material provided or otherwise made available by or on behalf of Customer to NBN Co in connection with this Agreement.~~

~~**Discloser** means the party that discloses Confidential Information to the other party.~~

~~**Downstream Customer Details** means any information about any Downstream Customer that is required by NBN Co to exercise its rights or perform its obligations under this Agreement or by law.~~

~~**Execution Date** means the date that this Agreement is executed by the last party to sign this Agreement.~~

~~**infringement claim** has the meaning given to that term in clause 3.2 of the 'Risk Management' module of this Agreement.~~

~~**National Privacy Principle** has the meaning given to that term in section 6 of the *Privacy Act 1998* (Cth).~~

~~**NBN Co IPRs** means any Intellectual Property Rights owned by NBN Co or a Related Body Corporate of NBN Co, whether coming into existence before or after the Execution Date, including any Intellectual Property Rights in:~~

- ~~(a) — existing or new Products;~~
- ~~(b) — any Product Idea;~~
- ~~(c) — the development of new products or services which NBN Co may supply; or~~
- ~~(d) — the NBN Co Network, including the NBN Co Equipment, the NBN Co Platform and the National Test Facility,~~

~~but excluding any Third Party IPR.~~

~~**Network Information** means any information regarding Customer, any Downstream Customer or any End User that is:~~

- ~~(a) — generated within the NBN Co Network, the NBN Co Platform, the National Test Facility and related systems as a result of the supply of Ordered Products by NBN Co to Customer; or~~
- ~~(b) — otherwise obtained from Customer in respect of the supply of an Ordered Product.~~

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

~~**Permitted Use** has the meaning given to that term in clause 5.3(a).~~

~~**Personal Information** is information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a~~

~~material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion that is provided to, or obtained, accessed or generated by, either party in connection with this Agreement.~~

~~**Proposed Use Materials** has the meaning given to that term in clause 5.4(a)(i).~~

~~**Privacy Laws** include:~~

- ~~(a) — the *Privacy Act 1998* (Cth); and~~
- ~~(b) — Part 13 of the Telecommunications Act.~~

~~**Recipient** means a party to whom Confidential Information is disclosed by the other party.~~

~~**Regulator** means, as the context requires:~~

- ~~(a) — the Commonwealth government minister responsible for administering Part XIB and/or Part XIC of the CCA;~~
- ~~(b) — the Commonwealth government minister responsible for administering the Telecommunications Act;~~
- ~~(c) — the ACCC;~~
- ~~(d) — the Australian Communications and Media Authority;~~
- ~~(e) — the Telecommunications Industry Ombudsman; and~~
- ~~(f) — any other Commonwealth government minister, Government Agency or parliamentary committee or body whose activities impact on NBN Co's business.~~

~~**SAU** means any special access undertaking submitted by NBN Co to the ACCC regarding the supply of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that has been accepted by the ACCC and is currently in effect.~~

~~**Term** means the term of the Access Agreement, as may be extended pursuant to its terms.~~

## **6.2 — Interpretation**

~~Unless the context otherwise requires, in this 'Information & Rights Management' module:~~

- ~~(a) — a reference to a clause is a reference to a clause of this 'Information & Rights Management' module; and~~
- ~~(b) — capitalised terms:~~

- (i) ~~if defined in clause 6.1, have the meaning set out in clause 6.1; or~~
- (ii) ~~if not defined in clause 6.1, have the same meaning as set out in Attachment C (Dictionary) of the Special Access Undertaking.~~

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## **Annexure 3 — Risk Management**

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### **1 — Introduction**

This 'Risk Management' module sets out:

- (a) — the liabilities (including exclusions and limitations) of each party to the other arising from or in connection with this Agreement;
- (b) — the indemnities that are given by a party to the other under this Agreement;
- (c) — requirements in relation to the parties' relationships with certain third parties;
- (d) — the parties' required insurances; and
- (e) — how the parties will deal with any Force Majeure Events that may arise.

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### **2 — Liability**

#### **2.1 — Liabilities of each party**

- (a) — This Agreement, to the extent permitted by law, exhaustively governs all of the liabilities that a party owes to the other party arising from, or in connection with, this Agreement (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise however so arising).
- (b) — To the extent permitted by law, each party excludes all liability (including for negligence) that it would otherwise have to the other party arising from, or in connection with, this Agreement, except to the extent that the first party has accepted liability under this Agreement.
- (c) — Each party accepts liability to the other party arising from, or in connection with this Agreement to the extent provided for in this Agreement, including:
  - (i) — liability in contract arising from a failure to perform an obligation pursuant to the provisions of this Agreement;
  - (ii) — liability arising from any negligent or wilful act or omission of that party or any of its Personnel arising in connection with the supply of Products under this Agreement that cause death or personal injury or damage to Tangible Property;
  - (iii) — liability to pay an applicable Rebate; and
  - (iv) — liability arising in respect of a matter referred to in clause 2.3(d) or 2.4(d).

- (d) — Each party releases the other party in respect of any and all Claims and agrees not to make any Claims against the other party for any liability (including negligence) that has not been accepted by the other party pursuant to clause 2.1(c), whether those Claims are based on information known at the Execution Date or becoming known thereafter (and this clause 2.1 will be a bar to any such Claims).
- (e) — Nothing in this Agreement (except as expressly provided for in the Service Levels Schedule) amends, limits or negates the rights and obligations of the parties under section 118A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).
- (f) — Every exclusion, restriction, limitation and indemnity in this Agreement separately applies on its own terms even if one or more of such terms is inapplicable in any circumstances, and survives expiry or termination of this Agreement.

## **2.2 — NBN Co's liability for failure to achieve a Service Level**

- (a) — Subject to clauses 2.1(e) and 2.2(b)(iii), NBN Co's sole and exclusive liability to Customer in respect of any Loss arising by reason of a failure of NBN Co to achieve a Service Level will be the applicable Commercial Rebate (if any).
- (b) — The parties agree that:
  - (i) — the amount of any Commercial Rebate is reflective of the diminution in value of the Ordered Products actually provided;
  - (ii) — Commercial Rebates do not represent agreed damages or liquidated damages and do not amount to a penalty; and
  - (iii) — clause 2.2(a) does not limit NBN Co's liability to the extent that a matter described in clause 2.3(d)(i), (ii) or (iii) applies in respect of a failure to achieve a Service Level.

## **2.3 — Limitation of NBN Co's liability**

### *Annual cap on liability for Losses*

- (a) — To the extent permitted by law, NBN Co's aggregate liability to Customer in any Year in respect of any and all Losses under, arising from or in connection with this Agreement, including under clause 2.2, (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising and irrespective of the number of related or unrelated events) is limited to the following amounts:
  - (i) — if  $X \geq \$200$  million: \$200 million;



(ii) ~~if \$5 million < X < \$200 million: X; or~~

(iii) ~~if X ≤ \$5 million: \$5 million,~~

~~where X = Average Monthly Billings Amount.~~

*Events cap on liability for Losses*

(b) ~~To the extent permitted by law, NBN Co's aggregate liability to Customer in respect of any and all Losses under, arising from or in connection with this Agreement, including pursuant to clause 2.2, (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) in respect of, or connected to, any one occurrence, or in respect of or connected to all occurrences of a series of occurrences attributable to one source or original cause, is limited to the greater of \$5 million or 25 per cent of the liability cap that would otherwise apply under clause 2.3(a).~~

*Rules for determining amount of NBN Co's liability*

(c) ~~The amount of NBN Co's liability for the purposes of this clause 2.3 including for the purposes of the application of the liability caps in clauses 2.3(a) and 2.3(b):~~

(i) ~~must be determined based on the following:~~

(A) ~~where the liability is in respect of, or connected to, a single event or originating or underlying cause, the date that the event or cause giving rise to that liability occurred; or~~

(B) ~~where the liability is in respect of a series of related events or originating or underlying causes, the date of the first event or cause in the series of related events or causes,~~

~~not when any claim is made by Customer in connection with that liability; and~~

(ii) ~~will be reduced in respect of liability arising from the same originating or underlying cause or event:~~

(A) ~~by any amounts that would have been payable by Customer under this Agreement for any goods or services replaced, repaired or resupplied by NBN Co for failing to comply with any condition, warranty or guarantee of the kind described in clause 2.6(c);~~

(B) ~~by the amount of any Commercial Rebates arising from the same originating or underlying cause or event given or due to Customer in accordance with this Agreement; and~~

~~(C) — by any amounts credited as CSG Compensation by NBN Co to Customer or paid by NBN Co to Customer pursuant to section 118A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).~~

*Uncapped liability*

~~(d) — The limitations of liability imposed by this clause 2.3 do not apply to NBN Co's liability:~~

~~(i) — for any negligent or wilful acts or omissions of NBN Co that cause or contribute to death or personal injury;~~

~~(ii) — for any negligent or wilful acts or omissions of NBN Co that cause or contribute to damage to Tangible Property;~~

~~(iii) — for any acts or omissions of NBN Co constituting fraud;~~

~~(iv) — under the indemnities given by NBN Co under clause 3 (Indemnities) (other than clause 3.4(b) (Damage to property, etc.));~~

~~(v) — under the indemnity given by NBN Co under clause 3.4(b) (Damage to property, etc.) to the extent the liability giving rise to that indemnity was caused or contributed to by a negligent or wilful act or omission of NBN Co; or~~

~~(vi) — under section 118A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).~~

**2.4 — Limitation of Customer's liability**

*Annual cap on liability for Losses*

~~(a) — To the extent permitted by law, Customer's aggregate liability to NBN Co in any Year in respect of any and all Losses under, arising from or in connection with this Agreement (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising and irrespective of the number of related or unrelated events) is limited to the following amounts:~~

~~(i) — if  $X \geq \$200$  million: \$200 million;~~

~~(ii) — if  $\$5$  million  $< X < \$200$  million: X; or~~

~~(iii) — if  $X \leq \$5$  million: \$5 million,~~

~~where X = Average Monthly Billings Amount.~~

*Events cap on liability for Losses*

~~(b) — To the extent permitted by law, Customer's aggregate liability to NBN Co in respect of any and all Losses under, arising from or in connection with this Agreement (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) in respect of, or connected to, any one occurrence, or in respect of or connected to all occurrences of a series of occurrences attributable to one source or original cause, is limited to the greater of \$5 million or 25 per cent of the liability cap that would otherwise apply under clause 2.4(a).~~

~~*Rules for determining amount of Customer's liability*~~

~~(c) — The amount of Customer's liability for the purposes of this clause 2.4 including for the purposes of the application of the liability caps in clauses 2.4(a) and 2.4(b) must be determined based on the following:~~

~~(i) — where the liability is in respect of, or connected to, a single event or originating or underlying cause, the date that the event or cause giving rise to that liability occurred; or~~

~~(ii) — where the liability is in respect of a series of related events or originating or underlying causes, the date of the first event or cause in the series of related events or causes,~~

~~not when any claim is made by NBN Co in connection with that liability.~~

~~*Uncapped liability*~~

~~(d) — The limitations of liability imposed by this clause 2.4 do not apply to Customer's liability:~~

~~(i) — to pay any Charges or Overdue Amounts to NBN Co;~~

~~(ii) — for any negligent or wilful acts or omissions of Customer that cause or contribute to death or personal injury;~~

~~(iii) — for any negligent or wilful acts or omissions of Customer that cause or contribute to damage to Tangible Property;~~

~~(iv) — for any acts or omissions of Customer constituting fraud;~~

~~(v) — under the indemnities given by Customer under clause 3 (Indemnities) (other than clause 3.4(a) (Damage to property, etc.)); or~~

~~(vi) — under the indemnity given by Customer under clause 3.4(a) (Damage to property, etc.) to the extent the liability giving rise to that indemnity was caused or contributed to by a negligent or wilful act or omission of Customer.~~

## **2.5 — No liability for Indirect Loss**

~~(a) — No party is liable to make any payment to the other party for any and all Losses of that other party arising from or in connection with this Agreement (regardless of whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) to the extent such liability:~~

~~(i) — does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question; or~~

~~(ii) — constitutes loss of profit, loss of anticipated profit, loss of opportunity or anticipated savings, loss of revenue, loss or impairment of credit rating, loss of data, loss of business opportunities and loss of or damage to reputation or goodwill even if such loss arises directly or naturally in the usual course of things from that breach,~~

~~(in this Agreement, **Indirect Loss**). Indirect Loss does not include the following Losses to the extent that they arise directly, or naturally in the usual course of things, from the breach, action or inaction in question:~~

~~(iii) — reasonable costs incurred in remedying the impact of the breach, action or inaction in question;~~

~~(iv) — reasonable overtime and related expenses (including travel, lodging and wages); and~~

~~(v) — payments or penalties imposed by any Government Agency.~~

~~(b) — The parties acknowledge that this clause 2.5 does not apply to, affect or limit any obligation to pay fees and charges under this Agreement (including a payment obligation arising on termination of this Agreement) or any obligation to credit Commercial Rebates.~~

~~(c) — The exclusion of liability in clause 2.5(a) does not apply in respect of the indemnity set out in clause 3.5 (Claims by Downstream Customers and other third parties).~~

## **2.6 — Exclusion or limitation of certain representations, conditions, warranties and guarantees**

~~(a) — Each party agrees that:~~

~~(i) — other than as expressly set out in this Agreement or as expressly set out in another written agreement between the parties extant at the Execution Date, no representation is or has been expressly or impliedly made and no warranty is or has been expressly or impliedly~~

~~given by or on behalf of a party in respect of any matter relating to this Agreement whether before or on the Execution Date; and~~

~~(ii) — it has not relied on any representation or warranty other than the express representations and warranties given by the other party in this Agreement.~~

~~(b) — To the extent permitted by law, except as expressly set out in this Agreement, each party excludes all express or implied representations, conditions, warranties and guarantees arising from or in connection with this Agreement, whether based in statute, regulation, common law or otherwise.~~

~~(c) — If:~~

~~(i) — a condition, warranty or guarantee of the kind described in clause 2.6(b) is implied or imposed in relation to this Agreement;~~

~~(ii) — a party cannot by law exclude that condition, warranty or guarantee; and~~

~~(iii) — a party is able to limit its liability for failure to comply with that condition, warranty or guarantee,~~

~~then the liability of a party for failing to comply with that condition, warranty or guarantee is limited, at that party's option, to one or more of the following:~~

~~(iv) — in the case of goods, to the replacement of the goods, the supply of equivalent goods or the repair of the goods; and~~

~~(v) — in the case of services, to the supply of the services again.~~

## **2.7 — General exclusions of liability**

To the extent permitted by law, NBN Co excludes all liability for any and all Losses suffered or incurred by Customer to the extent such Losses are caused or contributed to by:

(a) — any and all:

(i) — Claims brought against Customer by a third party to whom Customer provides products or services under a contract between the Customer and the third party to the extent that that liability could have been lawfully excluded, restricted or limited under that contract;

(ii) — Downstream Customer Losses; or

(iii) — events that fall within paragraph (b) of the definition of Excluded Event,

~~except to the extent that such Claims or Losses fall within clauses 2.3(d)(i), 2.3(d)(ii), 2.3(d)(iii), or 3.4(b)(i); or~~

~~(b) — any:~~

~~(i) — Customer Event;~~

~~(ii) — events that fall within paragraphs (a), (c) or (d) of the definition of Excluded Event;~~

~~(iii) — Dispute Outcome Related Event; or~~

~~(iv) — failure to achieve a Service Level (other than an obligation to credit any applicable Commercial Rebates).~~

## **2.8 — Expeditious Claim initiation**

~~Where a party becomes aware of an event that may give rise to it making a Claim, the party must use its reasonable endeavours to make that Claim (if any) within 18 months after the later of:~~

~~(a) — the date on which it first became aware or ought reasonably to have been aware of the event giving rise to the Claim; and~~

~~(b) — in respect of a third party Claim or Loss, the date on which that party first became aware or ought reasonably to have been aware of the Claim by or Loss suffered by the relevant third party.~~

## **2.9 — Apportionment and mitigation**

~~The liability of a party (in this clause 2.9, the **first party**) to the other party in respect of any and all Claims and Losses arising from or in connection with this Agreement (regardless of whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) is reduced proportionally to the extent that:~~

~~(a) — the other party has not taken all reasonable steps to minimise and mitigate its own Losses in relation to the act, omission, event or circumstance giving rise to such Claim or Loss (where such costs are recoverable from the first party); or~~

~~(b) — any Losses of the first party are caused, or contributed to, by any act or omission of the other party or its Personnel.~~

## **2.10 — Minimum amount of Claims**

~~(a) — Subject to clause 2.10(b), neither party may make a Claim (including pursuant to an indemnity under clause 3) for, nor is liable to the other in respect of a Loss, unless that Claim (alone or together with other Claims made together with the Claim), or the amount that other party would be~~

entitled to recover in relation to that Loss (alone or together with other Losses), exceeds \$5,000 within any rolling period of 6 consecutive months determined on a daily basis during the Term (for example, if the initial 6 consecutive month period was 1 January to 30 June, the next rolling period of 6 months would be 2 January to 1 July).

- (b) — An obligation under this Agreement for NBN Co to credit any applicable Commercial Rebate or CSG Compensation and a party's rights or obligations under section 118A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) is not affected by clause 2.10(a).

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## 3 — Indemnities

### 3.1 — Confidentiality

Each party (in this clause 3.1, the **indemnifying party**) must pay to the other party (in this clause 3.1, the **indemnified party**) on demand an amount equal to all Losses suffered or incurred by the indemnified party, any Related Body Corporate of the indemnified party, or their respective Personnel, arising from or in connection with any breach of clause 1 (Confidential Information) of the 'Information & Rights Management' module of this Agreement by the indemnifying party.

### 3.2 — Intellectual property

Each party (in this clause 3.2, the **indemnifying party**) must pay to the other party (in this clause 3.2, the **indemnified party**) on demand an amount equal to all Losses suffered or incurred by the indemnified party, any Related Body Corporate of the indemnified party, or their respective Personnel, arising from, under or in connection with any Claim brought by any third party alleging that:

- (a) — the exercise by the indemnified party of any rights assigned, transferred or granted, or purportedly assigned, transferred or granted, by or on behalf of the indemnifying party in connection with this Agreement infringes any Intellectual Property Rights of that third party; or
- (b) — where Customer is the indemnified party, the use of any Ordered Product by Customer in accordance with the terms of this Agreement infringes any Third Party IPRs;
- (c) — where NBN Co is the indemnified party:
- (i) — the use of any Ordered Product by Customer other than in accordance with the terms of this Agreement; or
  - (ii) — the use by Downstream Customer of Customer Product or Downstream Product (other than where the Claim is in respect of use in accordance with the terms of this Agreement of the Ordered

~~Product upon which the Customer Product or Downstream Product relies),~~

~~infringes any Third Party IPRs,~~

~~(in this clause 3.2, an **infringement claim**).~~

### **3.3 — Death and personal injury**

~~(a) — Each party (in this clause 3.3(a), the **indemnifying party**) must pay to the other party (in this clause 3.3(a), the **indemnified party**) on demand an amount equal to all Losses suffered or incurred by the indemnified party, any Related Body Corporate of the indemnified party, or their respective Personnel, arising from or in connection with the death or personal injury of any person to the extent that death or personal injury is caused or contributed to by:~~

~~(i) — negligent acts or omissions; or~~

~~(ii) — wilful acts or omissions,~~

~~of the indemnifying party, its Related Bodies Corporate or any of their respective Personnel or third party suppliers (provided that third party supplier is not the indemnified party, any Related Body Corporate of the indemnified party, or any of their respective Personnel) in connection with this Agreement.~~

~~(b) — Each party (in this clause 3.3(b), the **indemnifying party**) must pay to the other party (in this clause 3.3(b), the **indemnified party**) on demand an amount equal to all Losses suffered or incurred by the indemnified party arising from or in connection with the death or personal injury of any person to the extent that death or personal injury is caused or contributed to by:~~

~~(i) — where Customer is the indemnifying party:~~

~~(A) — Customer Network;~~

~~(B) — Customer Platform; or~~

~~(C) — any Customer Equipment; or~~

~~(ii) — where NBN Co is the indemnifying party:~~

~~(A) — the NBN Co Network;~~

~~(B) — the NBN Co Platform; or~~

~~(C) — any NBN Co Equipment,~~

~~in connection with this Agreement.~~



### **3.4 — ~~Damage to property, etc.~~**

~~(a) — Customer must pay to NBN Co on demand an amount equal to all Losses suffered or incurred by NBN Co, any Related Body Corporate of NBN Co, or their respective Personnel arising from or in connection with any:~~

~~(i) — damage to, or loss or disruption to the normal operation of, the Tangible Property of NBN Co and/or any third party, including damage to sites or any third party equipment sites at which any POI is located and sites at which facilities access services are supplied to Customer;~~

~~(ii) — damage to, or loss of, the whole or any part of the NBN Co Network, the National Test Facility and/or the NBN Co Platform; or~~

~~(iii) — interruption of access to and use of the Products to Customer or any Other NBN Co Customer,~~

~~to the extent that such Losses are caused, or contributed to, by Customer, its Related Bodies Corporate, any of their respective Personnel or third party suppliers (provided that third party supplier is not NBN Co, any Related Body Corporate of NBN Co, or any of their respective Personnel) or any Downstream Customer in connection with this Agreement.~~

~~(b) — NBN Co must pay to Customer on demand an amount equal to all Losses suffered or incurred by Customer, any Related Body Corporate of Customer, or their respective Personnel arising from or in connection with any damage to, or loss of:~~

~~(i) — the Tangible Property of Customer and/or any third party; or~~

~~(ii) — the whole or any part of Customer Network and/or Customer Platform,~~

~~to the extent that such Losses are caused, or contributed to, by NBN Co, its Related Bodies Corporate or any of their respective Personnel or third party suppliers (provided that third party supplier is not Customer, any Related Body Corporate of Customer, or any of their respective Personnel) in connection with this Agreement.~~

### **3.5 — ~~Claims by Downstream Customers and other third parties~~**

~~(a) — Subject to clause 3.5(b), Customer must pay to NBN Co on demand an amount equal to all Losses suffered or incurred by NBN Co, any Related Body Corporate of NBN Co, or their respective Personnel arising from or in connection with any Claim:~~

~~(i) — against NBN Co for any Downstream Customer Loss to the extent that the Claim is caused, or contributed to, by Customer, its Related~~

- ~~Bodies Corporate, any of their respective Personnel or third party suppliers (provided that third party supplier is not NBN Co, any Related Body Corporate of NBN Co, or any of their respective Personnel) or any Downstream Customer in connection with this Agreement;~~
- ~~(ii) — by any Downstream Customer against NBN Co to the extent that the Claim is caused, or contributed to, by Customer, its Related Bodies Corporate or any of their respective Personnel or third party suppliers (provided that third party supplier is not NBN Co, any Related Body Corporate of NBN Co, or any of their respective Personnel) or any Downstream Customer arising from or in connection with this Agreement; or~~
- ~~(iii) — by a third party against NBN Co to the extent that the Claim arises from or in connection with any:~~
- ~~(A) — breach of this Agreement by Customer; or~~
- ~~(B) — negligent act or omission of Customer, its Related Bodies Corporate, any of their respective Personnel or third party suppliers (provided that third party supplier is not NBN Co, any Related Body Corporate of NBN Co, or any of their respective Personnel) arising directly from or in connection with this Agreement, including the supply of any Customer Product by Customer to any Downstream Customer.~~
- ~~(b) — Clause 3.5(a) does not apply, and there is no obligation on Customer to pay for any Losses referred to in clause 3.5(a), to the extent that the Loss suffered or incurred by NBN Co, any Related Body Corporate of NBN Co, or any of their respective Personnel:~~
- ~~(i) — was caused, or contributed to, by NBN Co, its Related Bodies Corporate or any of their respective Personnel or third party suppliers (provided that third party supplier is not Customer, any Related Body Corporate of Customer, or any of their respective Personnel) arising from, under or in connection with this Agreement, including by a breach of this Agreement or a negligent act or omission; or~~
- ~~(ii) — arose from a Claim in relation to which Customer could not have lawfully excluded liability.~~
- ~~(c) — Customer must pay to NBN Co on demand an amount equal to all Losses suffered or incurred by NBN Co, any Related Body Corporate of NBN Co, or their respective Personnel arising from or in connection with any Claim by Customer to pay CSG Compensation or amounts under section 118A of the Telecommunications (Consumer Protection and Service Standards) Act 1999~~

~~(Cth) in respect of the supply of the NBN Co Wireless Access Service to Customer.~~

### **3.6 — Data transmission**

~~Customer must pay to NBN Co on demand an amount equal to all Losses suffered or incurred by NBN Co, any Related Body Corporate of NBN Co, and their respective Personnel arising from or in connection with the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort), including the defamation of a person, by Customer or any of its Related Bodies Corporate, any Downstream Customer or End User using a Product, Customer Product or Downstream Product.~~

### **3.7 — General rules for all indemnities**

- ~~(a) — The liability of a party to pay on demand an amount under this clause 3 to the party being indemnified for an event set out in this clause 3 will be:
  - ~~(i) — the sole and exclusive financial remedy in respect of the liability the subject of the indemnity; and~~
  - ~~(ii) — reduced to the extent that the liability the subject of the indemnity claim is caused or contributed to by any unlawful act or omission by any indemnified party.~~~~
- ~~(b) — It is not necessary for either party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.~~
- ~~(c) — Payment pursuant to an indemnity given by a party under this clause 3 cannot be the subject of a Billing Dispute.~~

### **3.8 — Step in rights**

~~In relation to any third party Claim against which a party indemnifies the other party under this clause 3, the indemnified party must:~~

- ~~(a) — notify the indemnifying party as soon as is reasonably practicable of the relevant Claim; and~~
- ~~(b) — where the indemnifying party can demonstrate to the reasonable satisfaction of the indemnified party that it has the resources to pay all Losses which are reasonably likely to arise in the event the Claim is successful:
  - ~~(i) — give the indemnifying party the option to conduct the defence of the Claim, including negotiations for settlement or compromise. If the indemnifying party exercises this option, the indemnifying party must not do anything during the course of any defence, settlement or compromise which adversely affects the indemnified party's~~~~

~~business or reputation, must consider in good faith any submissions made by the indemnified party with respect to the defence, settlement or compromise of the Claim and must first obtain the consent of the indemnified party (which must not be unreasonably withheld) to the terms of any settlement or compromise of the relevant Claim, and provided that no consent is required where the terms of any such settlement or compromise involve only the payment of money;~~

~~(ii) promptly provide all assistance reasonably requested by the indemnifying party (at the cost of the indemnifying party) in conducting the defence of the Claim; and~~

~~(iii) not make any admissions in relation to the Claim without the prior written consent of the indemnifying party.~~

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#### ~~4 No claims against certain persons~~

~~(a) Each party agrees that it will not make any Claims against:~~

~~(i) the Personnel of the other party; or~~

~~(ii) the Personnel of any Related Body Corporate of the other party which is not a party to this Agreement,~~

~~arising from or in connection with this Agreement.~~

~~(b) Customer must not make any Claims against:~~

~~(i) any Third Party Supplier; or~~

~~(ii) any tenant of any data centre in respect of which a Third Party Supplier supplies data centre facilities or services to NBN Co,~~

~~arising from or in connection with:~~

~~(iii) any failure of a Third Party Supplier to supply goods, services or facilities to NBN Co under a contract between NBN Co and such a Third Party Supplier; or~~

~~(iv) any act or omission of a tenant referred to in clause 4(b)(ii) in connection with that person's tenancy of that data centre.~~

~~(c) Customer must not make any Claims against NBN Co arising from or in connection with:~~

~~(i) any event that falls within paragraph (d) of the definition of Excluded Event; or~~

- (ii) — any act or omission of a tenant referred to in clause 4(b)(ii) in connection with that person's tenancy of that data centre.

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## ~~5 Downstream Customers~~

### ~~5.1 NBN Co Network Boundaries~~

- (a) — NBN Co is not responsible for (and assumes no liabilities and obligations in respect of) any activities other than as provided for in this Agreement.
- (b) — Without limiting NBN Co's obligations under, and liability under, arising from or in connection with, this Agreement pursuant to clause 2.1(c) and, to the extent Customer's ability to undertake the activities contemplated in this clause is dependent on NBN Co's performance of its obligations under this Agreement, Customer is responsible for (and assumes all liabilities and obligations in respect of) all activities required for the supply of Customer Products and Downstream Products beyond the NBN Co Network Boundaries including:
  - (i) — all carriage, backhaul and cross connects beyond the NBN Co Network Boundaries, including IP transit, Internet gateway connections, customer premises equipment (other than the NTD), BGP routing, soft switching infrastructure and all international connectivity associated with the supply of Customer Products and Downstream Products; and
  - (ii) — designing, building, operating and maintaining Customer Platform and the interfaces between Customer Platform and the NBN Co Platform, and interfacing Customer Platform with the NBN Co Platform.

### ~~5.2 Responsibility for Customer Products and Downstream Products~~

Without limiting NBN Co's obligations under, and liability under, arising from or in connection with, this Agreement pursuant to clause 2.1(c), Customer is responsible for (and assumes all liabilities and obligations in respect of) the design, and supply of Customer Products and Downstream Products, including:

- (a) — contention ratios of Customer Products (to the extent not determined by or established by the design of the NBN Co Network);
- (b) — quality of service, service levels and fault restoration by Customer;
- (c) — all communications with Downstream Customers;
- (d) — customer service, including customer service enquiries and dispute management;

~~(e) product and service information, fault reporting, maintenance and technical issues; and~~

~~(f) customer invoicing and payments.~~

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## **6 Insurance**

### **6.1 Insurance Policies**

Each party must effect and maintain, with an Acceptable Insurer:

~~(a) workers compensation insurance in accordance with applicable law and awards, and insurance against common law liability to a party's Personnel engaged in connection with this Agreement which must, where permitted by law, include an indemnity in favour of the other party in respect of statutory liability to that party's Personnel;~~

~~(b) public liability and product liability insurance:~~

~~(i) each for an amount not less than:~~

~~(A) \$20 million per occurrence (except for product liability insurance, which will be for not less than \$20 million in the annual aggregate); or~~

~~(B) \$50 million per occurrence (except for product liability insurance, which will be for not less than \$50 million in the annual aggregate) if Customer wishes to order a facilities access product from NBN Co pursuant to which Customer or its Personnel requires physical access to POIs; and~~

~~(ii) insuring legal liability for:~~

~~(A) loss of, destruction of or damage to Tangible Property;~~

~~(B) personal injury, sickness, disease or death of any person; and~~

~~(C) Indirect Loss resulting from any of the above circumstances, under, arising from or in connection with this Agreement;~~

~~(c) professional indemnity insurance for an amount not less than \$10 million per claim and in annual aggregate;~~

~~(d) motor vehicle third party property damage insurance for not less than \$20 million in respect of motor vehicles used in connection with this Agreement; and~~

~~(e) any other insurance required by law;~~

~~(together, the Insurance Policies), and ensure, save in respect of the Insurance Policy specified in clause 6.1(c), that the Insurance Policies include terms whereby the insurer's indemnity applies on an occurrence basis (not on a claims-made basis).~~

## **6.2 — Other requirements**

~~(a) — Each party must:~~

- ~~(i) — effect the relevant Insurance Policies within 5 Business Days of the Execution Date and maintain them until this Agreement has terminated or expired, or as otherwise agreed between the parties;~~
- ~~(ii) — provide evidence of the relevant Insurance Policies to NBN Co in the form of certificates of currency on request and in a form acceptable to the other party;~~
- ~~(iii) — not do, permit or fail to do anything which prejudices any of its Insurance Policies or insurance claims or recovery under its Insurance Policies;~~
- ~~(iv) — immediately reinstate any of its Insurance Policies that lapse; and~~
- ~~(v) — immediately notify the relevant insurer of any fact, circumstance or change in circumstances which may prejudice the validity of any of its Insurance Policies or insurance claims or recovery under its Insurance Policies.~~

~~(b) — Customer must, in respect of any Insurance Policies for public liability insurance, ensure that NBN Co is named as an additional insured and indemnified with regard to any vicarious or contingent liability incurred as a result of the activity of Customer's Personnel.~~

## **6.3 — Review of Insurance Policies amounts**

- ~~(a) — On or within a reasonable period after 1 May 2015, and thereafter no more frequently than once every 5 years, NBN Co may change the minimum amount of cover required in respect of the Insurance Policy specified in clause 6.1 by notifying Customer of those changes, subject to this clause 6.3.~~
- ~~(b) — In determining whether, and by how much, to increase the minimum amount of cover required in respect of the Insurance Policies, NBN Co must have regard to what is reasonable and obtainable in the insurance market at the time that it makes its determination.~~
- ~~(c) — A change to the minimum amount of cover required in respect of the Insurance Policies will be effective on the date that is 60 calendar days from the date of the notice referred to in clause 6.3(a) and will not apply retrospectively.~~

## **6.4 — Consequences of failure to procure or maintain Insurance Policies**

- (a) — If Customer fails to procure or maintain the Insurance Policies within 10 Business Days of being required to do so under this Agreement without NBN Co's written consent, which may not be unreasonably withheld where self-insurance arrangements are in place consistent with the requirements described in clause 6.1, NBN Co may on 5 Business Days' notice (but is not obliged to) procure the Insurance Policies on Customer's behalf. If NBN Co does so, Customer must pay NBN Co the cost of arranging such insurance on demand.
- (b) — Customer is not obliged to effect and maintain some or all of the Insurance Policies to the extent that NBN Co has provided written consent to the Customer to that effect (which consent which may not be unreasonably withheld) where Customer has self-insurance arrangements in place that are effective with respect to the quantum of risk to which the Insurance Policies are intended to respond.

## **6.5 — Customer's responsibility for insurance or liability not affected**

- (a) — Notwithstanding the provisions of this clause 6, Customer is responsible for assessing the risks and scope of its own insurance requirements.
- (b) — Nothing in this clause 6 will limit Customer's liability or relieve Customer from any obligation arising from or in connection with this Agreement.

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## **7 — Force Majeure Events**

### **7.1 — Dealing with Force Majeure Events**

- (a) — If the Affected Party is unable to perform an obligation under this Agreement (other than, subject to clause 7.2(c), an obligation to pay money in the ordinary course of business) because of a Force Majeure Event, then to the extent the Force Majeure Event prevents that party from performing that obligation:
  - (i) — the Affected Party will be excused from performing that obligation; and
  - (ii) — the Affected Party will not be liable for any Losses (including Commercial Rebates or CSG Compensation) arising from or in connection with the non-performance of that obligation for the duration of the Force Majeure Event.
- (b) — The Affected Party must:
  - (i) — provide a Force Majeure Event Notice to the other party as soon as is reasonably practicable after that Force Majeure Event arises;



- ~~(ii) — use reasonable endeavours to minimise and overcome the impact of that Force Majeure Event; and~~
- ~~(iii) — use reasonable endeavours to mitigate any Losses that may arise as a result of that Force Majeure Event.~~
- ~~(c) — A Force Majeure Event Notice must include:~~
  - ~~(i) — a description of the nature of the Force Majeure Event;~~
  - ~~(ii) — details of the extent to which the Affected Party is unable to perform its obligations because of that Force Majeure Event; and~~
  - ~~(iii) — an estimate of the duration that the Affected Party expects that it will be unable to perform those obligations because of that Force Majeure Event.~~
- ~~(d) — For the duration of a Force Majeure Event, each party must continue to perform all obligations that they are able to perform (including, subject to clauses 7.1(f), 7.2(c) and 7.2(d), an obligation to pay money under the terms of this Agreement) despite the Force Majeure Event.~~
- ~~(e) — Clause 7.1(a) excuses NBN Co's obligation to credit an applicable Rebate for a failure to achieve any applicable Service Level.~~
- ~~(f) — Without limiting any other part of this Agreement, where NBN Co is excused from supplying all or part of a service or Ordered Product pursuant to clause 7.1(a), Customer is required to pay Charges for that service and/or Ordered Product only to the extent actually supplied by NBN Co.~~

## ~~7.2 — Recovering from Force Majeure Events~~

- ~~(a) — As soon as is reasonably practicable after the Force Majeure Event no longer prevents the Affected Party from performing an obligation, the Affected Party must:~~
  - ~~(i) — notify the other party;~~
  - ~~(ii) — where practicable, provide an estimated date by when the Affected Party considers that it will be able to recommence performance of the obligation; and~~
  - ~~(iii) — recommence performing the obligation as soon as is reasonably practicable after the Force Majeure Event no longer prevents the Affected Party from performing that obligation.~~
- ~~(b) — The Affected Party must fulfil any of its outstanding obligations as soon as reasonably possible after the Force Majeure Event ceases to prevent the Affected Party from performing its obligations, except to the extent that it is no longer possible to do so or it is not required to do so by the other party.~~

- (c) ~~If the Force Majeure Event has prevented the Affected Party from performing a material obligation under this Agreement, and the Force Majeure Event lasts for a continuous period of 40 Business Days or more from the date of the Force Majeure Event Notice, then the other party can elect to terminate this Agreement on 20 Business Days prior notice.~~
- (d) ~~If the Force Majeure Event has prevented Customer as the Affected Party from receiving an Ordered Product substantially in accordance with the Product Description or Product Technical Specification for that Ordered Product, and the Force Majeure Event lasts for a continuous period of 5 Business Days or more from the date of the Force Majeure Event Notice, then Customer can elect to, by notice to NBN Co, suspend Customer's obligation to pay Charges in respect of the affected Ordered Product proportionally to the degree to which that Ordered Product is affected by the Force Majeure Event for the period that the Force Majeure Event prevents Customer from receiving the Ordered Product from the date of commencement of the Force Majeure Event.~~
- (e) ~~If the other party does not terminate this Agreement, then the Affected Party must fulfil any of its outstanding obligations as soon as reasonably possible after the Force Majeure Event has ended, except to the extent that it is no longer possible to do so or it is not required to do so by the other party.~~

### ~~7.3 No obligation to settle strikes, etc.~~

- (a) ~~Nothing in this clause 7 requires the Affected Party to settle an industrial dispute, strike, lockout, boycott, work ban or other labour dispute or difficulty, civil disobedience or native title claim.~~
- (b) ~~The parties agree that the settlement of any such industrial dispute, strike, lockout, boycott, work ban or other labour dispute or difficulty, civil disobedience or native title claim will be determined by the Affected Party in its discretion.~~

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## ~~8 Definitions and Interpretation~~

### ~~8.1 Definitions~~

~~**Acceptable Insurer** means an insurer which is:~~

- (a) ~~a reputable APRA authorised insurer;~~
- (b) ~~APRA exempt and maintains a Standard & Poor's rating of A minus or higher (or an equivalent rating agency rating);~~
- (c) ~~in the case of workers compensation insurance, an authorised self insurer, specialist insurer or scheme agent; or~~

~~(d) — otherwise approved in writing by NBN Co (which consent must not be unreasonably withheld).~~

~~**Affected Party** has the meaning given to that term in the definition of “Force Majeure Event”.~~

~~**Average Monthly Billings Amount** means the monthly average of Customer’s annual billings in any Year and, for a period of less than one Year, the monthly average calculated for that period, as calculated in accordance with the following formula:~~

$$\text{Average Monthly Billings Amount} = ((A+B)/C) \times (365/12)$$

~~where:~~

~~A = the total amount of Charges (excluding GST) paid or payable by Customer between the first day of the relevant Year and the last relevant day of that Year;~~

~~B = the total amount of Charges (excluding GST) which relate to a period other than a particular day, which are attributable to a day between the first day of the relevant Year and the last relevant day of that Year, on a pro rata basis; and~~

~~C = the total number of days between the first day of the relevant Year and the last relevant day of the Year.~~

~~For the purposes of this formula:~~

~~(a) — the last relevant day of the Year will be:~~

~~(i) — the last day of the Year; or~~

~~(ii) — if a determination of liability is made in the same Year in which the relevant Claim is made, the day of that determination and the provisions of paragraph (b) will apply;~~

~~(b) — where paragraph (a)(ii) applies, the days which are taken into account will be those from (and including) the start of the relevant Year up to (and including) the day that the determination is made. In the event that a later determination is made which relates to a Claim made in the same Year as an another Claim in respect of which a determination has already been made, the calculation in the formula above will be made again and the result of that recalculation, less any amount paid or payable with respect to the earlier determination of liability, will be used to determine the maximum amount payable with respect to the subsequent Claim. In no event will a party’s liability for an already determined Claim or the liability limit applicable to a determination of liability pursuant to clause 2.3(a) or clause 2.4(a) in respect of that Claim be recalculated as a result of any recalculation of a liability limit under this paragraph (b).~~

**Award** has the meaning given to that term in the Dispute Management Rules.

**Billing Dispute** means a dispute between the parties which arises because Customer, acting reasonably, considers there is an error in the amount of an invoice payable by Customer under an Access Agreement.

**Charges** means the charges (including any Taxes) set out in the Access Agreement or relevant product description.

**Claim** means any and all claims, alleged claims, actions, suits or proceedings by any person of any nature or kind, whether in contract, tort (including negligence) at common law, in equity, under statute or otherwise howsoever arising.

**Commercial Rebate** has the meaning given to that term in the Schedule Levels Schedule.

**CSG Compensation** has the meaning given to that term in the Schedule Levels Schedule.

**Dispute Outcome Related Event** means any of the following:

- (a) — the publication of any Award on NBN Co's Website in accordance with clause 5.5 of the Dispute Management Rules; and
- (b) — a failure by a Resolution Advisor or any member of the Pool to comply with the Dispute Management Rules or the terms of engagement of the Resolution Advisor or that member (as the case may be) as agreed between NBN Co and the Resolution Advisor or that member (as the case may be).

**Downstream Customer Loss** means:

- (a) — any Loss suffered by:
  - (i) — a person who receives a Carriage Service directly or indirectly from Customer, a Related Body Corporate of Customer or any other entity controlled by Customer within the meaning of the Corporations Act; or
  - (ii) — a person who directly or indirectly provides the Carriage Services referred to in paragraph (a)(i) of this definition,

where that Loss is in connection with any telecommunications network over which Customer is in a position to exercise control or which Customer uses; and

- (b) — any Loss suffered by Customer as result of any loss referred to in paragraph (a) of this definition.

**Due Date** means the due date specified in the invoice.

~~**Execution Date** means the date that this Agreement is executed by the last party to sign this Agreement.~~

~~**Excluded Event** means:~~

- ~~(a) — any Force Majeure Event;~~
- ~~(b) — the implementation of any NBN maintenance, NBN upgrade or relocation or replacement of any POI performed in accordance with the terms of the Access Agreement;~~
- ~~(c) — any Ordering Freeze, Service Reduction or Suspension that has been validly imposed in accordance with the terms of the Access Agreement; or~~
- ~~(d) — the supply of products, services, facilities or infrastructure by third parties (including failures by the third party to provide NBN Co with access to facilities; failures in the actual facilities provided by third parties; a failure by the third party to repair or reinstate those facilities; or delay or non-delivery by any supplier to NBN Co in the supply of equipment necessary for the supply of Ordered Products), where the third party is unable to perform its obligations to NBN Co as a result of a Force Majeure Event.~~

~~**Force Majeure Event** means any event or circumstance that:~~

- ~~(a) — is not within the reasonable control of a person (the **Affected Party**) or any of its Related Bodies Corporate or any of their Personnel;~~
- ~~(b) — the Affected Party or any of its Related Bodies Corporate or any of their Personnel is not reasonably able to prevent or overcome by the exercise of reasonable care, such as by having in place or implementing a disaster recovery plan; and~~
- ~~(c) — causes the Affected Party to fail to perform any of its obligations under this Agreement;~~

~~but does not include:~~

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

~~**Force Majeure Event Notice** means a notice given by an Affected Party pursuant to clause 7.1(b)(i).~~

~~**Indirect Loss** has the meaning given to that term in clause 2.5(a).~~

~~**infringement claim** has the meaning given to that term in clause 3.2.~~

~~**Insurance Policies** has the meaning given to that term in clause 6.1.~~

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

~~**NBN Co Network Boundaries** means:~~

~~(a) — the UNI on the NTD at or near a Premises; and~~

~~(b) — the NNI associated with that Premises.~~

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

~~**Overdue Amount** means an amount set out in an invoice which is not paid by a Customer by the Due Date.~~

~~**Pool** has the meaning given to that term in the Dispute Management Rules.~~

~~**Rebate** has the meaning given to that term in the Schedule Levels Schedule.~~

~~**Resolution Advisor** has the meaning given to that term in the Dispute Management Rules.~~

~~**Tangible Property** means physical property, including real property, but does not include non-physical property such as incorporeal property or Intellectual Property Rights.~~

~~**Term** means the term of the Access Agreement, as may be extended pursuant to its terms.~~

~~**Third Party Supplier** means any person supplying network services or network infrastructure to NBN Co under a contract between NBN Co and that person.~~

~~**Year** means the 12 calendar month period commencing on the execution date of the Access Agreement, and each subsequent 12 month period (or part thereof where the Access Agreement terminates or expires) which commences on an anniversary of the execution date of the Access Agreement.~~

## **8.2 — Interpretation**

~~Unless the context otherwise requires, in this ‘Risk Management’ module:~~

~~(a) — a reference to a clause is a reference to a clause of this ‘Risk Management’ module; and~~

~~(b) — capitalised terms:~~

- (i) ~~if defined in clause 8.1, have the meaning set out in clause 8.1; or~~
- (ii) ~~if not defined in clause 8.1, have the same meaning as set out in Attachment C (Dictionary) of the Special Access Undertaking.~~

## ~~Schedule 1J~~ **Schedule 1J Product Development and Withdrawal**

### ~~1J.1~~ **1J.1 General**

#### ~~1J.1.1~~ **1J.1.1 Scope**

- (a) Subject to clause 1J.1.1(b), this Schedule 1J applies for the Initial Regulatory Period.
- (b) Annexure 1 to this Schedule 1J (PDF Processes) applies for a period of five years from the SAU Commencement Date.
- ~~(a)~~(c) Notwithstanding any provision in this Schedule 1J, NBN Co must comply with any applicable requirements in relation to the identification, selection, consultation and endorsement of any Network Change including, during the period in which they have effect, clauses 1E.7 to 1E.11.

#### ~~1J.1.2~~ **1J.1.2 Product development principles**

- (a) The following general principles apply to NBN Co's development of Products, Product Components, ~~and~~ Product Features, Ancillary Services and types of Facilities Access Service (referred to collectively in this clause 1J.1.2 as **Products**):
  - (i) NBN Co is committed to developing Products that Customers Access Seekers want, that have sufficient demand to be commercially viable and from which Customers Access Seekers gain value;
  - (ii) NBN Co's obligations:
    - (A) to implement Australian Government policy communicated to it (including in the Statement of Expectations) by the Shareholder Ministers; and
    - (B) under the CCA and the NBN Companies Act, determine the permitted scope of its activities and the Products that it can develop and supply, including the requirement that all Products be available on a wholesale-only, open access, non-discriminatory basis, to all Customers Access Seekers; and
  - (iii) NBN Co wishes to encourage Customer Access Seeker and Consumer Advocacy Group participation in the design of Products, and facilitate Customer engagement and consultation in relation to Product Ideas, to enable NBN Co to



fulfil the commitment described in clause 1J.1.2(a)(i) in a manner consistent with NBN Co's scope of permitted activities as described in clause 1J.1.2(a)(ii).

- (b) Accordingly, NBN Co has designed a ~~Customer focussed~~ product development process which seeks ~~Customer Access Seeker and Consumer Advocacy Group~~ input as part of the process of developing detailed design requirements.

### ~~11.1.3~~ **1J.1.3 Application of this Schedule**

- (a) This Schedule 1J sets out the process that NBN Co will apply to the introduction, variation or withdrawal of Products, Product Components, ~~and~~ Product Features, ~~Ancillary Services and types of Facilities Access Service~~, subject to clause ~~1A.1.11A-1.11J.5.1~~.
- (b) This Schedule 1J does not apply in respect of any of the following:
- (i) the introduction of a Product, Product Component, ~~or~~ Product Feature, ~~Ancillary Service or type of Facilities Access Service covered by, or contemplated within, the Initial Product Roadmap that is an Initial Product;~~
  - (ii) the introduction of a Product, Product Component, ~~or~~ Product Feature, ~~Ancillary Service or type of Facilities Access Service~~ that NBN Co is obliged to offer as a result of a licence condition imposed under section 41(1) of the NBN Companies Act ~~but only to the extent that the specification of that Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service is prescribed by that licence condition;~~
  - (iii) a minor variation or enhancement to a Product, Product Component or Product Feature within the terms of clause ~~1J.41J.41J.4~~; and
  - (iv) ~~subject to clause 1J.5.4(b)~~, the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that NBN Co is required to withdraw ~~for the reasons~~ referred to in clause ~~1J.5.4~~.

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## ~~11.2~~ **1J.2 Product Roadmap**

- (a) NBN Co will publish and maintain a product roadmap.

- (b) On or around 1 July each year, NBN Co will publish an updated product roadmap setting out the Products, Product Components, ~~and~~ Product Features, [Ancillary Services and types of Facilities Access Service](#) then offered by NBN Co and the new Products, Product Components, ~~or~~ Product Features, [Ancillary Services or types of Facilities Access Service](#) that NBN Co expects (as at the date the updated roadmap is published) to introduce in the 3 years following the date of publication.
- (c) The product roadmap will be made available on NBN Co's Website.

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## ~~11.3~~1J.3 **Development**

### ~~11.3.1~~1J.3.1 **Product Development Forum**

- (a) NBN Co will implement a product development process through which NBN Co will engage with [Customers Access Seekers and Consumer Advocacy Groups](#) in respect of product development (**Product Development Forum**).
- (b) NBN Co will make the Product Development Forum open to participation by all [Customers Access Seekers and Consumer Advocacy Groups](#). ~~For the purposes of this Schedule 1J and the PDF Processes only, the term "Customer" may, at NBN Co's discretion, include an Access Seeker which is not already a Customer if NBN Co reasonably considers that the Access Seeker has a genuine intention to enter into an Access Agreement.~~
- (c) NBN Co will ensure that the Product Development Forum:
  - (i) identifies and records all Product Ideas ~~from Customers~~;
  - (ii) is the primary forum through which:
    - (A) Product Ideas are developed, refined and disseminated; and
    - (B) NBN Co will engage in the ~~customer~~ engagement and endorsement process under clause ~~1E.6~~~~1E.7~~;
  - (iii) provides a forum that facilitates an open and consultative dialogue with [Customers Access Seekers and Consumer Advocacy Groups](#) in respect of Product Ideas for new Products, Product Components, ~~and~~ Product Features, [Ancillary Services and types of Facilities Access Service](#) and for enhancements and variations to existing Products, Product Components, ~~and~~ Product Features, [Ancillary Services and types of Facilities Access Service](#), whilst respecting ~~Customers' the~~ confidential

- information and Intellectual Property Rights [of Access Seekers and Consumer Advocacy Groups](#);
- (iv) provides a forum for [Customers-Access Seekers and Consumer Advocacy Groups](#) to:
    - (A) obtain information about NBN Co's product roadmap;
    - (B) assist NBN Co to determine whether there is sufficient demand for proposed Product Ideas; and
    - (C) provide information and input to assist NBN Co to determine which Product Ideas to develop and in which order of priority; and
  - (v) provides a forum for NBN Co to discuss, and [Customers-Access Seekers and Consumer Advocacy Groups](#) to provide feedback in relation to, the withdrawal of Products, Product Components, ~~or~~ Product Features, [Ancillary Services and types of Facilities Access Service](#) and related issues.

#### ~~11.3.2~~ **11.3.2 Processes relating to the Product Development Forum** PDF

##### **Processes**

- (a) NBN Co will comply with the PDF Processes [during the period in which they apply in accordance with clause 1J.1.1\(b\)](#).
- ~~(b)~~ [To participate in the Product Development Forum, Customers-Access Seekers and Consumer Advocacy Groups will be required to comply with the PDF Processes during the period in which they apply in accordance with clause 1J.1.1\(b\)](#).
- ~~(c)~~ [NBN Co may require that an Access Seeker or Consumer Advocacy Group \(as the case may be\) enter into an agreement regarding the treatment of the confidential information and intellectual property of NBN Co and the relevant Access Seeker or Consumer Advocacy Group that may be disclosed or created in connection with that party's participation in the Product Development Forum.](#)
- ~~(d)~~ [For the purposes of clause 1J.3.2\(c\), an agreement regarding the treatment of the confidential information and intellectual property of NBN Co and the relevant Access Seeker or Consumer Advocacy Group will be on such terms and conditions:](#)
  - ~~(i)~~ [as agreed between NBN Co and the relevant Access Seeker or Consumer Advocacy Group; or](#)
  - ~~(i)~~ [\(ii\) failing agreement, as determined by the ACCC pursuant to clause 1J.3.2\(f\).](#)

- (e) NBN Co must give written notice to the ACCC if, within 20 Business Days of an Access Seeker or Consumer Advocacy Group seeking to participate in the Product Development Forum NBN Co and that party are unable to agree on the terms and conditions pursuant to which the confidential information and intellectual property of NBN Co and that Access Seeker or Consumer Advocacy Group (as the case may be) that may be disclosed or created in connection with the Product Development Forum will be dealt with.
- (f) If the ACCC is given a notice by NBN Co pursuant to clause 1J.3.2(e), or is otherwise notified by an Access Seeker or Consumer Advocacy Group that it has been unable to agree the terms on which its and NBN Co's confidential information and intellectual property will be dealt with in connection with their participation in the Product Development Forum, the ACCC may determine the terms and conditions on which the confidential information and intellectual property of each of NBN Co and the relevant Access Seeker or Consumer Advocacy Group that may be disclosed or created in connection with the Product Development Forum will be dealt with.
- (g) The ACCC may consult with any person in making a determination under clause 1J.3.2(f).
- (h) NBN Co will not vary the PDF Processes except in the circumstances described in clause 1B.3.1(e) or 1K.2.

### ~~11.3.3~~ 1J.3.3 **Assessment of Product Ideas**

NBN Co will consider, and may weigh as it considers appropriate, such criteria as it determines appropriate in selecting which Product Ideas to develop through the Product Development Forum~~PDF Processes~~. Consistent with the general principles set out in clause 1J.1.2 those criteria may include the following:

- (a) whether the Product Idea is within NBN Co's permitted scope of activities;
- (b) whether there is sufficient demand or potential demand for the Product Idea;
- (c) whether the Product Idea will be commercially viable;
- (d) whether the Product Idea is technically and operationally viable;
- (e) whether expenditure on the Product Idea will ~~be~~, or is reasonably likely to, meet the requirements specified in:

  - (i) in the case of Capital Expenditure, clause 1E.3.1(a)(i) or clause 1E.3.1(a)(ii); or

(ii) in the case of Operating Expenditure, clause 1F.8.1(a)(i) or clause 1F.8.1(a)(ii);

~~be, Prudently incurred (assessed in accordance with (i) and (j));~~

~~(e)(f)~~ the Intellectual Property Rights that may be required to develop the Product Idea; and

~~(f)(g)~~ any other factor that NBN Co reasonably considers should be taken into account.

#### ~~Interaction of Product Development and Prudency~~

~~(g) Where a Product Idea is, or requires, a Network Change, NBN Co must follow the process for the identification, selection, consultation and endorsement of that Network Change in accordance with the process set out in clauses to.~~

~~(h) Nothing in this or the PDF Processes requires NBN Co to implement a Product Idea or provide a new Product, Product Component, and Product Feature which is, or requires, a Network Change until such Network Change is an Endorsed Network Change in accordance with clauses to.~~

#### ~~11.3.4~~ 11.3.4 ~~11.3.4~~ **Pricing of new Products, Product Components, ~~and~~ Product Features, Ancillary Services and types of Facilities Access Services**

Prior to introducing a new Product, Product Component, ~~or~~ Product Feature, Ancillary Service or type of Facilities Access Service which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with ~~Customers~~ Access Seekers and Consumer Advocacy Groups through the Product Development Forum in relation to the Price or Prices at which such new Products, Product Components, ~~or~~ Product Features, Ancillary Service or types of Facilities Access Service will be introduced by NBN Co for all ~~Customers~~ Access Seekers.

~~(a) NBN Co will determine the Price or Prices at which such new Products, Product Components and Product Features will be introduced by NBN Co in accordance with clause 1D.6.~~

#### ~~11.3.5~~ 11.3.5 ~~11.3.5~~ **Service levels for new Products, Product Components, ~~and~~ Product Features, Ancillary Services and types of Facilities Access Services**

Prior to introducing a new Product, Product Component, ~~or~~ Product Feature, Ancillary Service or type of Facilities Access Service which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co

will consult with [Customers Access Seekers and Consumer Advocacy Groups](#) through the Product Development Forum in relation to:

- (a) the service levels applicable to ~~that such a~~ new Product, Product Component, ~~and~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#) (including any remedies which may apply for breach of the service levels); or
- (b) if NBN Co is unable to offer service levels (including any applicable remedies) prior to the introduction of a new Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#), the estimated timetable and process of consultation in relation to the introduction of such service levels (including any applicable remedies).

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## ~~11.4~~ 11.4 **Minor Product Changes**

- (a) Notwithstanding anything to the contrary in this Schedule 1J, NBN Co may carry out minor product variations or enhancements which update or improve the functionality or performance of a Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#) and which, ~~acting reasonably, NBN Co determines~~ will have no material adverse impact on [Customers Access Seekers](#) (in this clause 1J.4, **Minor Product Variation**), including without limitation where the Minor Product Variation is related to a Permitted Variation.
- ~~(b) If a Minor Product Variation requires a Network Change, NBN Co must comply with the requirements of clauses 1E.7 to 1E.11 in relation to the identification, selection, consultation and endorsement of the Network Change.~~
- ~~(c)~~(b) For Minor Product Variations, NBN Co will use the Product Development Forum to notify [Access Seekers and Consumer Advocacy Groups](#) ~~its Customers~~ of the proposed change and implementation timeframe, including through the product roadmap.
- ~~(d)~~(c) NBN Co will ensure that the withdrawal of the supply of a Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#) is not treated as a Minor Product Variation.

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## ~~11.5~~ 11.5 **Withdrawal**

### ~~11.5.1~~ **Non-circumvention**

~~NBN Co will not:~~

~~(a) withdraw any Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (in this clause 1J.5, **Product Withdrawal**); and~~

~~(b) in conjunction with that Product Withdrawal (including both prior to or after the Product Withdrawal), introduce any new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that is substantially similar to, or comparable with, the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that has been subject to a Product Withdrawal,~~

~~for the purpose of circumventing, or avoiding the operation of, the Individual Price Increase Limits under clause 1C.4 and clause 1D.4.~~

### ~~1J.5.2~~ **1J.5.1 Notice period for Withdrawals**

(a) Subject to Schedule 1C (~~Reference Offers~~~~Reference Offers~~~~Reference Offers~~) and clauses ~~1A.1.11A.1.11J.5.1~~ and 1J.5.3, NBN Co may withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service and will provide the ACCC, Access Seekers and Consumer Advocacy Groups~~its Customers~~ with no less than:

- (i) 24 months' written notice of its intention to withdraw a Product, Product Component, Ancillary Service or type of Facilities Access Service, other than the Tasmania Tri-Area Service~~and~~ ISS in respect of which NBN Co will provide no less than 6 months' written notice;
- (ii) subject to clause ~~1J.5.1(a)(iii)~~~~1J.5.1(a)(iii)~~~~1J.5.2(a)(iii)~~, 12 months' written notice of its intention to withdraw a Product Feature; and
- (iii) 24 months' written notice of its intention to withdraw a Product Feature where withdrawal will have a material adverse effect on the functionality or performance of a Product or Product Component with which the Product Feature is associated,

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

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

### **1J.5.2 ACCC objection power**

- (a) [If NBN Co seeks to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 1J.5.2\(a\), the ACCC may object to the withdrawal of that Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service.](#)
- (b) [If the ACCC objects to the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, the ACCC must give NBN Co a written notice stating its objection and providing reasons for its objection and publish any](#)



notice (and reasons) issued under this clause 1J.5.3(b) on the ACCC's website.

(c) In making a decision to issue a notice under clause 1J.5.3(b), the ACCC:

(i) will have regard to the long-term interests of end-users in accordance with section 152AB of the CCA;

(ii) may have regard to the factors listed in clause 1J.5.2(b); and

(iii) may consult with NBN Co and such other persons as the ACCC considers appropriate.

(d) Any notice issued by the ACCC under clause 1J.5.3(b) must be issued within the period of 60 Business Days from the date on which NBN Co notified the ACCC of its intention to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 1J.5.2(a).

(e) The ACCC may extend the period referred to in clause 1J.5.3(d) by a period of not more than 40 Business Days by giving written notice to NBN Co and publishing that notice on the ACCC's website.

(f) If the ACCC issues a notice under clause 1J.5.3(b), NBN Co must:

(i) inform Access Seekers and Consumer Advocacy Groups in writing that the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service will not be withdrawn; and

(ii) not withdraw the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service the subject of the notice for the period specified by the ACCC in that notice which may not be more than five years.

(g) If the ACCC gives a notice pursuant to clause 1J.5.3(b), NBN Co may give a further notice pursuant to clause 1J.5.2(a) in respect of the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service the subject of the ACCC's notice, provided that the withdrawal of that Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service will not occur before the end of the period specified by the ACCC in its notice and, where NBN Co gives a further notice, the provisions of this clause 1J.5.3 will apply in respect of that further notice.

~~11.5.3~~ **11.5.3 Product withdrawal required by law or directed by Shareholder Ministers**

(a) Subject to clause 1J.5.4(b), this clause 1J.5 does not apply to the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.

(b) In the event of a withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 1J.5.4(a), NBN Co will, to the extent permitted by law and consistent with any temporal requirements for the withdrawal imposed on NBN Co by law or by the Shareholder Minister (as the case may be):

(i) provide Access Seekers, Consumer Advocacy Groups and the ACCC with written notice of the withdrawal within 20 Business Days of NBN Co being made aware of the requirement to withdraw the Product, Product Component, Product Feature, Ancillary Service, or type of Facilities Access Service (as the case may be); and

(ii) consult with, and consider any feedback received from, Access Seekers, Consumer Advocacy Groups and the ACCC in relation to the impending withdrawal and related issues, such as migration.

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## Annexure 1 PDF Processes

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### Background

- A NBN Co has established a Product Development Forum, through which NBN Co will:
- i. seek ~~Customers'~~ feedback from Access Seekers and Consumer Advocacy Groups on Product Ideas as required by Schedule 1J (Product Development and Withdrawal); and
  - ii. engage with ~~Customers~~ Access Seekers and Consumer Advocacy Groups on future investments in network changes which are required to implement Product Ideas as required by the process specified in clauses ~~1E.81E.81E.8~~ to ~~1E.121E.121E.12~~ of the Special Access Undertaking.
- B These PDF Processes set out the basis on which NBN Co will engage with ~~Customers~~ Access Seekers and Consumer Advocacy Groups through the Product Development Forum.

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### 1 Objectives of the PDF

- (a) NBN Co is committed to implementing Product Ideas that ~~Customers~~ Access Seekers want, that have sufficient demand to be commercially viable, and from which ~~Customers~~ Access Seekers gain value.
- (b) The Product Development Forum is designed to promote innovation in NBN Co's development of Product Ideas.

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### 2 Membership of the PDF

- (a) Each ~~Customer~~ Access Seeker and Consumer Advocacy Group that wishes to participate in the Product Development Forum must register an authorised representative through NBN Co's Website who will liaise with NBN Co in relation to the Product Development Forum (the **PDF Representative**). NBN Co will send all correspondence regarding the Product Development Forum to that PDF Representative.
- (b) Each ~~Customer~~ Access Seeker and Consumer Advocacy Group acknowledges that, as a condition of ~~a Customer's~~ that entity's participation in the Product Development Forum, NBN Co requires agreement to the terms and conditions which are set out in these PDF Processes.
- (c) Each ~~Customer~~ Access Seeker and Consumer Advocacy Group must ensure that NBN Co's Website contains up-to-date details of the name, mail address, email address and fax number for its PDF Representative.

- (d) Each ~~Customer~~ Access Seeker and Consumer Advocacy Group must update the details of its PDF Representative on NBN Co's Website to ensure such details remain up to date.
- (e) NBN Co may implement security procedures for participation in the Product Development Forum from time to time (such as authentication of identity), details of which will be available to ~~Customers~~ Access Seekers and Consumer Advocacy Groups on NBN Co's Website. ~~Customers~~ Access Seekers and Consumer Advocacy Groups must comply with all such procedures.
- (f) In addition to any other right or remedy available to NBN Co ~~under an Access Agreement or clause 12 dealing with dispute resolution~~, if an Customer Access Seeker or Consumer Advocacy Group fails to comply with these PDF Processes in relation to the development of a particular Product Idea, NBN Co may, acting reasonably, suspend ~~the Customer's~~ that entity's involvement in the Product Development Forum in relation to that Product Idea on a temporary or permanent basis.

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### 3 Specific information requests for development of ideas

- (a) ~~Customers~~ Access Seekers and Consumer Advocacy Groups may request specific information regarding NBN Co Networks for the purpose of developing Product Ideas. ~~NBN Co will comply with its obligations under Part 4 of Schedule 1 of the Telecommunications Act in responding to such specific requests.~~
- (b) If information is requested by an Access Seeker or Consumer Advocacy Group under clause 3(a), NBN Co must~~will~~ consider ~~Customers' that~~ requests ~~for specific information from NBN Co in connection with the development of a Product Idea~~ in good faith and NBN Co must make the information available to that Access Seeker or Consumer Advocacy Group as soon as practicable after the request is made.
- ~~(b)(c)~~ Any information disclosed by NBN Co in response to a request made pursuant to clause 3(a) will be dealt with in accordance with the terms and conditions agreed or determined in accordance with clause 1J.3.2(d).

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### 4 Submitting an idea to the PDF

#### 4.1 ~~Customer~~ idea submission

- (a) If an Customer ~~Access Seeker or Consumer Advocacy Group~~ wants NBN Co to consider a Product Idea, ~~that~~ Customer ~~Access Seeker or Consumer Advocacy Group, as the case may be~~ **(Submitting Customer Party)**, may submit details of the Product Idea using the features provided on NBN Co's Website for that purpose.

- (b) The Submitting [Customer-Party](#) may include, without limitation, the following details in relation to a Product Idea:
- (i) a detailed description of the concept of the Product Idea;
  - (ii) a service and functionality description for the Product Idea;
  - (iii) the proposed commercial use for the Product Idea;
  - (iv) the proposed service levels (including any remedies which may apply for breach of the service levels) that are proposed to apply to the Product Idea;
  - (v) any assessment of the technical feasibility of the Product Idea undertaken by, or available to, the Submitting [Customer-Party](#);
  - (vi) any forecast data, demand analysis or modelling it has regarding the potential demand for the Product Idea (including the reliability of that data);
  - (vii) any Intellectual Property Rights which NBN Co may have to license, or acquire licences for, to develop and implement the Product Idea, ~~in accordance with the process and timelines set out in clause 6.2;~~
  - (viii) any information which is confidential, ~~in accordance with the process and timelines set out in clause 5.1;~~ and
  - (ix) such other information as may be requested by NBN Co on NBN Co's Website from time to time.
- (c) To the extent possible, a Submitting [PartyCustomer](#) should submit a Product Idea as a generic, Layer 2, wholesale only concept.

#### 4.2 Idea prioritisation

- (a) NBN Co may at any time suspend or change the priority of the assessment and development of Product Ideas based on factors including:
- (i) the amount and detail of information available to NBN Co;
  - (ii) NBN Co's confidence regarding the commercial, technical or regulatory viability of the Product Idea;
  - (iii) the utility of the proposed Product Idea (by reference to the long term interest of end-users or directions from its shareholders);
  - (iv) the demand for specific Product Ideas from [CustomersAccess Seekers](#);
  - (v) the demonstrated need for the Product Idea;

- (vi) the level of engagement of the Submitting [Customer Party](#) in the assessment and development of the Product Idea; [and](#)
  - (vii) government policy; ~~and~~
  - ~~(viii) —circumstances arising under either of clauses 5 and 6.~~
- (b) Prioritisation under clause 4.2(a) will affect both the schedule for assessment and development of a Product Idea and the resources committed by NBN Co to the development of that Product Idea.

### 4.3 Publication of ideas

- ~~(a)~~ [As soon as possible after receiving a \[Customer\]\(#\) Product Idea \[from an Access Seeker or Consumer Advocacy Group\]\(#\), and such additional information listed in clause 4.1\(b\) as is available, NBN Co will inform all \[Customers Access Seekers and Consumer Advocacy Groups\]\(#\) that have registered to participate in the Product Development Forum of the Product Idea and any associated information NBN Co has received, subject to \[the confidentiality and intellectual property requirements of the Submitting Party clause 5 in relation to any confidential information and clause 6 in relation to Intellectual Property Rights\]\(#\).](#)
- ~~(a)(b)~~ [NBN Co will inform all Access Seekers and Consumer Advocacy Groups that have registered to participate in the Product Development Forum of any Product Idea that NBN Co proposes \(\*\*NBN Co Product Idea\*\*\) and information about that Product Idea including, but not limited to, information of the kind listed in clause 4.1\(b\).](#)
- ~~(b)(c)~~ NBN Co will maintain a register of Product Ideas submitted and under consideration [and NBN Co Product Ideas](#) on an area of NBN Co's Website which will only be made available to NBN Co and [Access Seekers and Consumer Advocacy Groups](#)~~Customers~~ that have registered to participate in the Product Development Forum.
- ~~(c)(d)~~ NBN Co will:
- (i) as soon as possible after receiving a Product Idea and such additional information listed in clause 4.1(b) as is available, provide the Submitting [Customer Party](#) with an estimate for when NBN Co expects to conduct an initial review of the Product Idea; and
  - (ii) update the Submitting [Customer Party](#) if there are material changes to the estimate provided under clause 4.3(~~de~~)(i).

## 5 Confidential Information

### 5.1 Identification of confidential information

- (a) The Submitting Customer must clearly identify information provided:
- (i) under clause 4.1(b);
  - (ii) through Workshops;
  - (iii) as part of a Deep Dive; or
  - (iv) otherwise in connection with these PDF Processes,
- which it requires NBN Co to treat as confidential information.
- (b) Identification under clause 5.1(a) must be done by giving notice in writing to NBN Co at the time of submitting the relevant information or as soon as reasonably practicable thereafter, and in any case no later than 6 weeks after the day on which the information was submitted.
- (c) Submitting Customers are requested to keep claims for confidentiality under clause 5.1(a)(i), (ii) and (iv) to a minimum, to allow Product Ideas the best chance of being developed by NBN Co in the Product Development Forum.

### 5.2 Maintaining confidentiality

- (a) If a party (a **Discloser**) discloses its Confidential Information to the other party (the **Recipient**), the Recipient must keep it confidential and not use or disclose it, except as provided in these PDF Processes.
- (b) The Recipient must, in maintaining confidentiality of Confidential Information, exercise the greater of:
- (i) the degree of care that a reasonable person with knowledge of the confidential nature of the Confidential Information would apply; and
  - (ii) the security or degree of care that it applies to its own confidential information of an equivalent nature.

### 5.3 Use and disclosure of Confidential Information

- (a) Unless otherwise provided in this clause 5, NBN Co may only use Customer Confidential Information as part of its internal consideration and development of Product Ideas.
- (b) Unless otherwise provided in this clause 5, Customer may only use NBN Co Confidential Information:

- ~~(i) — to exercise its rights or perform its obligations under these PDF Processes; or~~
- ~~(ii) — with the express written permission of NBN Co.~~
- ~~(c) — Unless otherwise provided in this clause 5, the Recipient may only disclose the Discloser's confidential information to:
  - ~~(i) — its Related Bodies Corporate and Personnel and Downstream Customers who are not End Users, to whom disclosure is necessary in order:
    - ~~(A) — where NBN Co is the Recipient, for consideration and development of Product Ideas; and~~
    - ~~(B) — where Customer is the Recipient, to exercise its rights or perform its obligations under these PDF Processes;~~~~
  - ~~(ii) — its professional advisers, to the extent necessary for those advisers to provide advice to the Recipient or exercise or protect the rights of the Recipient under or in connection with these PDF Processes;~~
  - ~~(iii) — a third party, where the Discloser has consented to that disclosure in writing and subject to any conditions that may be placed on that disclosure by the Discloser;~~
  - ~~(iv) — a third party, to the extent necessary to:
    - ~~(A) — comply with a requirement of any Government Agency or Regulator or any order of any court or tribunal;~~
    - ~~(B) — comply with any obligation of the Recipient under any law;~~  
~~or~~
    - ~~(C) — protect the health or safety of any person,~~  
  
~~provided that the Recipient has taken steps that are reasonable in the circumstances to ensure that such information cannot be identified with, or attributed to, the Discloser (where possible) and shall give notice to the Discloser if not reasonable or possible in the circumstances;~~~~
  - ~~(v) — a third party to the extent necessary to:
    - ~~(A) — conduct and complete a review of Customer's credit risk pursuant to the Credit Policy;~~
    - ~~(B) — plan, develop, test, trial and supply Products; or~~~~~~



~~(C) — where the third party is a debt collection agent, facilitate the recovery of any amounts due and payable by one party to another under this Agreement;~~

~~(vi) — the Recipient's financiers or investors or potential financiers or investors; or~~

~~(vii) — in relation to the Recipient's financiers or investors in clause 5.3(c)(vii), their respective:~~

~~(A) — professional advisers (but only to the extent necessary for those advisers to provide advice or services to those financiers or investors); and~~

~~(B) — financial advisers or bankers (but only to the extent necessary for those advisers or bankers to provide financial advice or services to those financiers or investors),~~

~~provided that:~~

~~(viii) — the Recipient ensures that a person to whom the proposed disclosure is to be made is subject to substantially equivalent confidentiality obligations to those set out in this clause 5; or~~

~~(ix) — if unreasonable in all the circumstances to comply with clause 5.3(c)(viii), the Recipient ensures that the person to whom the proposed disclosure is made is subject to an obligation to keep the information confidential; or~~

~~(x) — if unreasonable in all the circumstances to comply with clause 5.3(c)(ix), the Recipient gives the Discloser notice of the proposed disclosure as soon as is reasonably practicable after determining that such confidentiality obligations would be unreasonable.~~

#### **5.4 — Additional disclosure by NBN Co**

If NBN Co is the Recipient, NBN Co may, in addition to its rights under clause 5.3, disclose Customer Confidential Information:

(a) — to a third party to the extent necessary:

(i) — to avoid or mitigate the effect of an Emergency or to protect the integrity of the NBN Co Network, the NBN Co Platform or the National Test Facility, provided NBN Co has taken steps that are reasonable in the circumstances to ensure that such information cannot be identified with, or attributed to, Customer (where possible) and shall give notice to Customer if not reasonable or possible in the circumstances; or

~~(ii) for NBN Co to comply with, or demonstrate its compliance with, any obligation owed by NBN Co under any law, any Non-Discrimination Obligation or any Special Access Undertaking given by NBN Co, provided that in each case NBN Co has taken all steps that are reasonable in the circumstances to ensure that such information cannot be identified with, or attributed to, Customer and shall give notice to Customer if not reasonable or possible in the circumstances; or~~

~~(b) where required or authorised by law or NBN Co's constitution, to any Commonwealth government minister, their respective government departments and/or their delegates, and, otherwise, to any Regulator.~~

### ~~5.5 No disclosure to Other NBN Co Customers~~

~~Except where expressly contemplated by these PDF Processes NBN Co may not disclose Customer Confidential Information to an Other NBN Co Customer.~~

### ~~5.6 Sanitisation of Customer Confidential Information~~

~~(a) NBN Co must, where possible, take steps to:~~

~~(i) anonymise;~~

~~(ii) aggregate; or~~

~~(iii) otherwise sanitise,~~

~~Customer Confidential Information to a form that either overcomes the Submitting Customer's reasons for identifying it as confidential or is otherwise satisfactory to the Submitting Customer (in this clause 5.6, **Sanitised Information**). The Submitting Customer must provide any reasonable assistance requested by NBN Co to facilitate the process provided for in this clause 5.6(a). Before any disclosure of Sanitised Information to a third party under clause 5.6(b)(ii), NBN Co must provide a copy of the Sanitised Information to the Submitting Customer and obtain the Submitting Customer's consent to its disclosure.~~

~~(b) Sanitised Information may be:~~

~~(i) used or disclosed by NBN Co internally for any purpose associated with the Product Development Forum; and~~

~~(ii) used or disclosed by NBN Co to any third party for the purposes of:~~

~~(A) the consideration and development of a Product Idea, or~~

~~(B) the implementation, offer or supply of a Product, Product Component or Product Feature (or any similar or alternative product or service).~~

### **5.7 — Return of Confidential Information on demand**

- (a) — Subject to any agreement made under clause 5.12, the Recipient must return, destroy or delete the Discloser's Confidential Information on demand by the Discloser except to the extent it is impracticable to do so, or necessary to comply with the Recipient's internal governance processes, or any applicable law.
- (b) — To the extent that a demand under clause 5.7(a) leads to NBN Co reasonably forming the view that it is no longer able to continue to consider and develop a Product Idea or that it is no longer able to implement, offer or supply a Product, Product Component or Product Feature, the Submitting Customer must pay on demand to NBN Co costs thrown away by NBN Co in the process of considering and developing a Product Idea or the implementation, offer or supply of a Product, Product Component or Product Feature, as the case may be.

### **5.8 — Injunctive relief**

Each party agrees that damages may not be an adequate remedy for a breach of this clause 5 and that a party is entitled to seek specific performance or injunctive relief for a breach, anticipatory breach, or reasonably suspected breach of this clause 5.

### **5.9 — Consent for the purposes of section 152AYA**

For the purposes of section 152AYA of the CCA, Customer consents to NBN Co using and disclosing any information that may be given by Customer to NBN Co in connection with these PDF Processes and which is information to which section 152AYA of the CCA applies, in accordance with this clause 5.

### **5.10 — Consent for the purposes of sections 152BEA to 152BEC (inclusive)**

- (a) — For the purposes of sections 152BEA to 152BEC (inclusive) of the CCA, Customer consents to NBN Co using and disclosing to the ACCC any Customer Confidential Information to the extent necessary for NBN Co to comply with any of sections 152BEA to 152BEC (inclusive) of the CCA.
- (b) — Customer may, upon entering into these PDF Processes or a variation of these PDF Processes, notify NBN Co in writing of any material it considers reasonably to contain Customer Confidential Information, the disclosure of which would reasonably be expected to prejudice substantially the commercial interests of Customer, and NBN Co will request under section 152BED(5) of the CCA that the ACCC remove the material from the version of any statement that is included in the register maintained under section 152BED of the CCA, acknowledging that NBN Co cannot require the ACCC to remove the foregoing material.

### ~~5.11 Part 4 of Schedule 1 to the Telecommunications Act~~

If Customer is a Carrier, the parties agree that:

- ~~(a) the rights and obligations of the parties under this clause 5 are in addition to the rights and obligations of the parties under Part 4 of Schedule 1 to the Telecommunications Act; and~~
- ~~(b) this clause 5 does not, and is not intended to, set out security procedures for the purposes of clause 26 of Schedule 1 to the Telecommunications Act or the terms and conditions referred to in clause 27 of Schedule 1 to the Telecommunications Act.~~

### ~~5.12 Negotiated access to Customer Confidential Information~~

- ~~(a) Where NBN Co determines it necessary or desirable in relation to:
  - ~~(i) the consideration and development of a Product Idea, or~~
  - ~~(ii) the implementation, offer or supply of a Product, Product Component or Product Feature (or any similar or alternative product or service),~~NBN Co may request the Submitting Customer to:
  - ~~(iii) grant NBN Co additional rights to use and disclose; and~~
  - ~~(iv) waive any restrictions under this clause 5,~~in respect of Customer Confidential Information in relation to that Product Idea, Product, Product Component or Product Feature. NBN Co will negotiate with the Submitting Customer on a case by case basis for the use of that information. Any agreed right to use or disclose Customer Confidential Information, or any waiver, must be in writing.~~
- ~~(b) Customer acknowledges that section 152AXD of the CCA imposes an obligation on NBN Co to not discriminate between Customers in developing a new Eligible Service or enhancing a Declared Service (as those terms are defined in that Act).~~
- ~~(c) In the event that NBN Co and a Submitting Customer cannot agree mutually acceptable access rights on terms that enable NBN Co to meet its Non-Discrimination Obligations under the CCA, or NBN Co forms the view that confidentiality claims preclude the development of a Product Idea, NBN Co will notify the Submitting Customer accordingly and NBN Co may cease consideration of the Product Idea. In that case, NBN Co may not use the relevant Customer Confidential Information except as permitted by this clause 5, but NBN Co can continue to consider and develop the Product Idea~~

~~if it is able to do so without using the Customer Confidential Information in a manner which is inconsistent with this clause 5.~~

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## ~~6 Intellectual property~~

### ~~6.1 General Principles~~

- ~~(a) Except as expressly provided in this clause 6, nothing in this clause confers on either party any right, title or interest in or to (including to permit or cause to be used) any of the other party's, or any third party's, Intellectual Property Rights.~~
- ~~(b) Subject to clause 6.1(c), NBN Co owns all the Intellectual Property Rights in:
  - ~~(i) Materials developed by NBN Co for the purposes of considering and developing a Product Idea; and~~
  - ~~(ii) Products, Product Components or Product Features (or any similar or alternative product or service) developed by NBN Co.~~~~
- ~~(c) NBN Co does not own any Customer IPRs or Third Party IPRs.~~

### ~~6.2 Identification of Customer IPRs~~

- ~~(a) The Submitting Customer must identify exactly the Materials provided:
  - ~~(i) under clause 4.1(b);~~
  - ~~(ii) through Workshops;~~
  - ~~(iii) as part of a Deep Dive; or~~
  - ~~(iv) otherwise in connection with these PDF Processes,~~  
~~in which it:~~
    - ~~(v) or one of its Related Bodies Corporate claims Intellectual Property Rights and the nature of those rights; or~~
    - ~~(vi) knows or should reasonably know that a third party (which is not a Related Body Corporate of the Submitting Customer) holds Intellectual Property Rights and the nature of those rights.~~~~
- ~~(b) The identification under clause 6.2(a) must be done by giving notice in writing to NBN Co at the time of submitting the relevant Materials or as soon as reasonably practicable thereafter, and in any case no later than 6 weeks after the day on which the Materials were submitted.~~

### **6.3 — ~~NBN Co internal use of Customer IPRs~~**

- ~~(a) — The Submitting Customer grants to NBN Co (acting through its Personnel) a non-exclusive, royalty-free licence to use (including to copy, circulate and communicate) Customer IPRs internally within NBN Co to the extent necessary for the purposes of considering and developing a Product Idea (**Permitted Use**).~~
- ~~(b) — The licence in clause 6.3(a) does not extend to incorporating the Customer IPRs into:
  - ~~(i) — Products, Product Components or Product Features (or any similar or alternative product or service); or~~
  - ~~(ii) — Material that will be circulated outside NBN Co.~~~~
- ~~(c) — NBN Co remains liable for each act and omission of its Personnel in connection with the use of Intellectual Property Rights licensed to it pursuant to this clause 6.3 as though it was an act and/or omission of NBN Co.~~
- ~~(d) — NBN Co must not, and must ensure its Personnel do not, use any Intellectual Property Rights licensed to it pursuant to this clause 6.3:
  - ~~(i) — for any purpose other than that expressly licensed;~~
  - ~~(ii) — at any time other than that expressly licensed; or~~
  - ~~(iii) — otherwise than in accordance with these PDF Processes.~~~~

### **6.4 — ~~Negotiated licence to exploit Customer IPRs~~**

- ~~(a) — NBN Co may:
  - ~~(i) — elect not to conduct an initial assessment of a Product Idea under clause 7.3 until NBN Co owns or obtains a licence of any Customer IPRs which, in the view of NBN Co, is necessary for that assessment; and~~
  - ~~(ii) — cease developing a Product Idea in accordance with clause 7.5 if no licence can be agreed pursuant to clause 6.4(b). In that case, NBN Co may not use the relevant Customer IPRs except as permitted by this clause 6, but NBN Co can continue to consider and develop the Product Idea if it is able to do so without using the Customer IPRs in a manner which is inconsistent with this clause 6.~~~~
- ~~(b) — If NBN Co believes it necessary or desirable to use Customer IPRs in any manner or for any purpose other than the Permitted Use, NBN Co will negotiate with the Submitting Customer on a case by case basis for the~~

~~appropriate rights to use the Customer IPRs. Subject to clause 6.6, Customers are under no obligation to grant a licence to NBN Co.~~

- ~~(c) The following conditions will apply to any licence pursuant to clause 6.4(b):~~
- ~~(i) the licence will be made before the Customer IPRs are used by NBN Co for any purpose other than the Permitted Use;~~
  - ~~(ii) the licence will be made before the business case for the development of the Product Idea is finalised;~~
  - ~~(iii) NBN Co will pay a commercially agreed price for the use of the Customer IPRs;~~
  - ~~(iv) the licence will be on terms that enable NBN Co to use the Customer IPRs for the benefit of all Customers and to meet its Non-Discrimination Obligations; and~~
  - ~~(v) the licence will include appropriate warranties and other protections in respect of:
    - ~~(A) the Customer's ownership of and rights to license Customer IPRs;~~
    - ~~(B) moral rights; and~~
    - ~~(C) indemnities for uses that infringe Third Party IPRs.~~~~

### ~~6.5 Third Party IPRs~~

- ~~(a) NBN Co may elect not to conduct an initial assessment of a Product Idea under clause 7.3 until NBN Co owns or obtains a licence of any Third Party IPRs which in the view of NBN Co is necessary for that assessment. Unless and until a licence is granted, NBN Co may not use the relevant Third Party IPRs except as permitted by this clause 6, but NBN Co can assess the Product Idea if it is able to do so without using the Third Party IPRs in a manner which is inconsistent with this clause 6.~~
- ~~(b) If, at any time after the initial assessment of a Product Idea, NBN Co determines that implementing, offering or supplying a Product, Product Component or Product Feature (or any similar or alternative product or service) derived from the Product Idea will require Third Party IPRs, and that requirement was not disclosed in accordance with clause 6.2(a)(vi), NBN Co may cease developing the Product Idea in accordance with clause 7.5.~~
- ~~(c) If a Submitting Customer submits Materials to NBN Co and fails to identify any Third Party IPRs as required by clause 6.2(a)(vi), the Submitting Customer must pay on demand to NBN Co the amount of any Losses~~

~~suffered or incurred by NBN Co arising out of or in connection with any breach by a Submitting Customer of its obligations under clause 6.2(a)(vi).~~

~~(d) — If a Submitting Customer submits Materials to NBN Co in which Third Party IPRs subsist, then (whether or not the Submitting Customer has identified those rights under clause 6.2(a)(vi)) the Submitting Customer must pay on demand to NBN Co the amount of any Losses suffered or incurred by NBN Co arising out of or in connection with any Permitted Use of those Materials by NBN Co.~~

#### **6.6 — When Customer IPRs are not disclosed**

If a Submitting Customer:

~~(a) — fails to identify Customer IPRs as required by clause 6.2; and~~

~~(b) — NBN Co makes use of those Customer IPRs (in this clause 6.6, **Incorporated IP**);~~

~~then the Submitting Customer grants an unconditional and irrevocable waiver of all rights to bring any claim against NBN Co or any related entity in relation to any infringement of the rights adhering in Customer IPRs in the Incorporated IP by NBN Co based upon the Incorporated IP being used.~~

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## **75 NBN Co's assessment of a Product Idea**

### **7.15.1 Criteria for assessment**

NBN Co will assess Product Ideas in accordance with Schedule 1J (Product Development and Withdrawal).

### **7.25.2 Assessment based on information provided**

- (a) Upon receiving a ~~Customer~~ Product Idea [from an Access Seeker or Consumer Advocacy Group](#), NBN Co may seek and consider further information from the Submitting ~~Customer Party~~ in assessing the Product Idea.
- (b) If NBN Co does not seek further information about a Product Idea under clause [57.2\(a\)](#), NBN Co may rely solely upon the information provided by the Submitting ~~Customer Party~~ to assess the Product Idea under this clause [57](#).

### **7.35.3 Initial assessment**

- (a) In initially assessing a Product Idea using the criteria in Schedule 1J (Product Development and Withdrawal), NBN Co will take into consideration that the Product Idea is at an initial stage of development and is likely to be refined and amended through the Product Development Forum.



- (b) NBN Co will, in particular, make allowances in its initial assessment of a Product Idea for:
  - (i) information asymmetry between NBN Co and the Submitting [Customer Party](#); and
  - (ii) information available specifically to the Submitting [Customer Party](#) regarding ascertainable demand for the Product Idea.

#### **7.45.4 Output from NBN Co's initial assessment**

- (a) Following its initial assessment of a Product Idea, if in its absolute discretion NBN Co decides to develop the Product Idea, it will, in addition to any other requirements under clauses ~~1E.81E.81E.8~~ to ~~1E.121E.121E.12~~ of the Special Access Undertaking, publish a summary of the Product Idea, including proposed features, functionality, product specification and service levels (including any remedies which may apply for breach of the service levels) as refined by NBN Co (a **Product Construct Paper**).
- (b) To the extent practical, NBN Co will also include in the Product Construct Paper:
  - (i) pre-conditions for an [Customer Access Seeker](#) using the Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#) proposed in the Product Idea (if any);
  - (ii) a summary of the criteria that NBN Co used to decide to develop the Product Idea;
  - (iii) without limiting clause 4.2, NBN Co's intentions, at the time of issuing the Product Construct Paper, as to the priority to be given to developing the Product Idea;
  - (iv) resources that may be required ~~by Customers~~ to use the Product, Product Component or Product Feature proposed in the Product Idea; and
  - (v) NBN Co's reasons for refining the Product Idea as reflected in the Product Construct Paper.
- (c) When NBN Co publishes a Product Construct Paper and documents under clause ~~57.4~~(a) and no exception from the Product Development Forum applies under the terms of Schedule 1J (Product Development and Withdrawal), NBN Co will also provide [Customers Access Seekers and Consumer Advocacy Groups](#) with supplementary information regarding the [Customer Access Seeker and Consumer Advocacy Group](#) Consultation processes that will be used to develop the Product Idea, as described in clauses ~~68~~ and ~~79~~ (together, the **Idea Development Plan**).

~~(c)~~(d) [For the avoidance of doubt, the requirements in this clause 5.4 apply to an NBN Co Product Idea notified by NBN Co in accordance with clause 4.3\(b\).](#)

#### **7.55.5 Ongoing assessment**

At any time between initial assessment of a Product Idea under clause [57.3](#) and NBN Co's offer of the Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#) proposed in the Product Idea to [Customers Access Seekers](#), NBN Co may in its absolute discretion decide to stop developing the Product Idea.

#### **7.65.6 Rejection of Product Ideas**

Following assessment of a Product Idea either under clause [57.3](#) or clause [57.5](#), if NBN Co decides in its absolute discretion not to develop the Product Idea, it will publish a notice to that effect to the Product Development Forum (a **Rejection Notice**) giving specific reasons for NBN Co deciding not to develop the Product Idea.

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## **86 Workshops**

### **8.16.1 Form and structure of Workshops**

- (a) As part of an Idea Development Plan for a Product Idea, NBN Co may, after considering the subject matter and nature of a Product Idea, arrange workshops which will be held with [Customers Access Seekers and Consumer Advocacy Groups](#) to develop the Product Idea (**Workshops**). If NBN Co does not convene Workshops, it will seek the input of [Customers Access Seekers and Consumer Advocacy Groups](#) through alternative means suited to the particular Product Idea (for example, by seeking written submissions).
- (b) Workshops convened under clause [68.1\(a\)](#) will vary depending on requirements specific to the Product Idea but, as permitted by law, may include:
  - (i) commercial workshops;
  - (ii) technical and engineering workshops;
  - (iii) operational and support workshops; and
  - (iv) workshops regarding service levels (including any remedies which may apply for breach of the service levels).
- (c) As part of the Idea Development Plan for a Product Idea, NBN Co will set out the operational structure of the Workshops, which may vary depending on the Product Idea being developed but may include:
  - (i) online collaboration (for example using wikis or shared documents);

- (ii) mailing list discussions;
  - (iii) teleconferences;
  - (iv) video conferences; and
  - (v) face-to-face meetings.
- (d) All Workshop discussions and contributions are without prejudice ~~and, where applicable, will be subject to the confidentiality provisions in clause 5.~~

### **8.26.2 NBN Co will facilitate Workshops**

- (a) If Workshops are convened under these PDF Processes, NBN Co will organise and chair (or moderate, if applicable) those Workshops. NBN Co will organise Workshops to conform to the Idea Development Plan to the extent practical and desirable (for example, by setting schedules for Workshop discussions which ensure the Product Idea can be finalised within the time estimated in the Idea Development Plan).
- (b) NBN Co will co-ordinate communications between Workshops and may, if necessary or desirable, convene meetings or merge discussions of representatives from multiple Workshops for efficiency or to reconcile differences in Product Idea development.
- (c) As ~~NBN Co and Customers develop~~ a Product Idea is developed through Workshops, NBN Co may from time to time issue updated:
  - (i) Product Construct Papers and associated documents to reflect refinements and changes proposed in the Workshops; and
  - (ii) Idea Development Plans to add, consolidate, change or remove Workshops, change the operational structure of existing Workshops or change the schedule and resources dedicated to the Product Idea.

### **8.36.3 ~~P~~Customer participation in Workshops**

- (a) Subject to compliance with these PDF Processes including clause 2, ~~each Customer Access Seekers and Consumer Advocacy Groups~~ may participate in each Workshop. If a ~~Customer Access Seeker or Consumer Advocacy Group~~ declines or fails to participate in a Workshop at any time, the ~~Customer Access Seeker or Consumer Advocacy Group~~ may not subsequently amend or query the results or contributions achieved by that Workshop during the period in which the ~~Customer Access Seeker or Consumer Advocacy Group~~ did not participate in the Workshop.
- (b) If an ~~Customer Access Seeker or Consumer Advocacy Group~~ representative to a Workshop does not have sufficient authority, knowledge, experience or expertise to participate fully in a Workshop, NBN Co may raise the issue with

~~the Customer's~~that entity's PDF Representative or other appropriate relationship manager.

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## 97 Formal Submissions

### 9.17.1 NBN Co may invite Formal Submissions

- (a) From time to time after a Product Construct Paper and any associated papers have been released, NBN Co may request formal submissions from [Customers-Access Seekers and Consumer Advocacy Groups](#) in relation to a Product Idea described in those documents (each a **Formal Submission**).
- (b) NBN Co may notify [Customers-Access Seekers and Consumer Advocacy Groups](#) that Formal Submissions are required by a particular deadline, which NBN Co will ensure is reasonable in all the circumstances.
- (c) NBN Co may extend a deadline notified under clause 79.1(b). If NBN Co extends a deadline, it will extend the deadline for all [Customers-Access Seekers and Consumer Advocacy Groups](#) and notify all [Customers-Access Seekers and Consumer Advocacy Groups](#) of the extension to the deadline.
- (d) To the extent practicable, NBN Co will provide each [Customer-Access Seeker and Consumer Advocacy Group](#) an equivalent period of time to file a Formal Submission if the [Customer-Access Seeker or Consumer Advocacy Group](#) wishes to do so.

### 9.27.2 Publication of Formal Submissions

Subject to any written notice that a Formal Submission or a part of a Formal Submission is confidential, NBN Co will publish each Formal Submission on NBN Co's Website, and each Formal Submission will be publicly available.

- ~~(a) If a Customer notifies NBN Co that a Formal Submission or part of it is confidential, clause 5 will apply to such information.~~

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## 108 Finalisation of Product, Product Component or Product Feature

- (a) NBN Co will inform [Customers-Access Seekers and Consumer Advocacy Groups](#) when it determines that the Workshops, Formal Submissions and other contributions provided by [Customers-Access Seekers and Consumer Advocacy Groups](#) have provided sufficient input to allow NBN Co to finalise a Product Construct Paper such that it is satisfactory to NBN Co.
- (b) Following a notification under clause 810(a), NBN Co may further amend the Product Construct Paper to reflect:

- (i) refinements to the Product Idea by the Product Development Forum generally, the Workshops, and by NBN Co; and
  - (ii) prudence considerations arising under clauses ~~1E.81E.81E.8~~ to ~~1E.121E.121E.12~~ of the Special Access Undertaking in relation to expenditure which may be incurred in connection with the implementation and supply of the Product Idea.
- (c) NBN Co will publish a final Product Construct Paper for Customers' the information of Access Seekers and Consumer Advocacy Groups.

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## 119 Communications

### ~~11.19.1~~ NBN Co communication ~~to Customers~~

- (a) Any communication from NBN Co to a single Customer Access Seeker or Consumer Advocacy Group in relation to the PDF may be given by:
  - (i) e-mail to that Customer's entity's PDF Representative;
  - (ii) letter to that Customer's entity's PDF Representative; or
  - (iii) any one-to-one messaging application made available on NBN Co's Website.
- (b) Any communication from NBN Co to more than one Customer Access Seeker or Consumer Advocacy Group may be given by:
  - (i) e-mail to each relevant Customer's entity's PDF Representative;
  - (ii) letter to each relevant Customer's entity's PDF Representative;
  - (iii) notice on NBN Co's Website; or
  - (iv) other communication technology which NBN Co may notify to Customers Access Seekers and Consumer Advocacy Groups from time to time.
- (c) If a communication relates to a particular Workshop topic or discussion, it may be given to a Customer's the nominated Workshop representative of the Access Seekers and Consumer Advocacy Groups who participated in that Workshop instead of its PDF Representative. If a Customer Access Seeker or Consumer Advocacy Group does not nominate a Workshop representative in relation to a specific Workshop, NBN Co is not required to send notifications regarding that Workshop to that Customer entity.
- (d) If NBN Co proposes to consult Customers Access Seekers and Consumer Advocacy Groups on matters relating to the Product Development Forum generally, it may provide notice of such consultation in accordance with

clause 911.1(b) and such consultation may take place in any way in which a Workshop may take place under clauses 68.1(c) and 68.1(d).

### ~~11.29.2~~ **Customer communications to NBN Co**

Any communication from an Customer Access Seeker or Consumer Advocacy Group to NBN Co in relation to the Product Development Forum may be given:

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

### ~~11.39.3~~ **Availability for regular updates**

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

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## ~~12~~ **Dispute resolution procedures do not apply to the PDF**

~~(a) Subject to clause 12(b), having regard to the consultative nature of these PDF Processes, the dispute resolution provisions in Access Agreements do not apply to:~~

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

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

~~(b) The dispute resolution provisions in Access Agreements apply to Disputes arising out of the following provisions:~~

- (i) ~~clause 5, except for:~~
  - (A) ~~any decision by NBN Co under 5.7(b) regarding the ability for NBN Co to continue considering and developing the Product Idea or implementing, offering or supplying a Product, Product Component or Product Feature; and~~
  - (B) ~~any decision by NBN Co pursuant to clause 5.12(c) to cease consideration of a Product Idea;~~
- (ii) ~~clause 6, except for any decision by NBN Co not to conduct an initial assessment of a Product Idea or cease considering or developing a Product Idea under:~~
  - (A) ~~clause 6.4(a);~~
  - (B) ~~clause 6.5(a); or~~
  - (C) ~~clause 6.5(b).~~

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## **13.10 Definitions and Interpretation**

### **13.110.1 Definitions**

**Access Seeker and Consumer Advocacy Group Consultation** means the processes set out in clause 68 and (where applicable) clause 79.

**Customer IPRs** means any Intellectual Property Rights owned by a Submitting Customer or a Related Body Corporate of a Submitting Customer which:

- (a) ~~are identified pursuant to clause 6.2(a)(v); or~~
- (b) ~~otherwise subsist in Materials which are provided and required for the purposes of:~~
  - (i) ~~NBN Co considering and developing the Product Idea submitted by the Submitting Customer; or~~
  - (ii) ~~implementing, offering or supplying a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (or any similar or alternative product or service) by NBN Co based on the Product Idea in (b)(i).~~

**Deep Dive** means a confidential bilateral meeting between NBN Co and a Customer for the purpose of collecting customer product requirements, presenting or exchanging ideas or strategies, providing or exchanging feedback on Product Ideas, product concepts and product constructs and sharing other product-related information and ideas.

**Discloser** has the meaning given to that term in clause 5.2(a).

**Formal Submission** has the meaning given to that term in clause [79.1\(a\)](#).

**Idea Development Plan** has the meaning given to that term in clause [57.4\(c\)](#).

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

~~**Materials** means any documentation, data, spreadsheets, graphs, graphics, images and designs (whether physical or digital) and video, audio and software.~~

~~**NBN Co Confidential Information** means all information regardless of form, which:~~

~~(c) — is disclosed by NBN Co under these PDF Processes; and~~

~~(d) — is confidential or can reasonably be inferred to be confidential from the circumstances in which it is disclosed,~~

~~but does not include information:~~

~~(e) — which is in or comes into the public domain, other than by disclosure in breach of the Access Agreement or an obligation of confidence owed to a party under, or a failure to comply with, these PDF Processes;~~

~~(f) — which, at the time of first disclosure to the recipient, was already in the lawful possession of that party; or~~

~~(g) — which is disclosed to, or observed by, the recipient from a third party who is entitled to disclose it.~~

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

~~**NBN Co Product Idea** has the meaning given to that term in clause [4.3\(b\)](#).~~

**PDF Representative** has the meaning given to that term in clause [2\(a\)](#).

~~**Permitted Use** has the meaning given to that term in clause [6.3\(a\)](#).~~

~~**Personnel** means NBN Co's officers, employees, agents, subcontractors and consultants, but does not include external advisors.~~

**Product Construct Paper** has the meaning given to that term in clause [57.4\(a\)](#).

~~**Recipient** has the meaning given to that term in clause [5.2\(a\)](#).~~

~~**Regulator** means, as the context requires:~~



- ~~(h) — the Commonwealth government minister responsible for administering Part XIB and/or Part XIC of the CCA;~~
- ~~(i) — the Commonwealth government minister responsible for administering the Telecommunications Act;~~
- ~~(j) — the ACCC;~~
- ~~(k) — the Australian Communications and Media Authority;~~
- ~~(l) — the Telecommunications Industry Ombudsman; and~~
- ~~(m) — any other Commonwealth government minister, Government Agency or parliamentary committee or body whose activities impact on NBN Co's business.~~

**Rejection Notice** has the meaning given to that term in clause ~~57~~.6.

**Submitting PartyCustomer** has the meaning given to that term in clause 4.1(a).

~~**Third Party IPRs** means any Intellectual Property Rights owned by a party which is not a Submitting Customer or a Related Body Corporate of a Submitting Customer, which:~~

- ~~(n) — are identified pursuant to clause 6.2(a)(vi); or~~
- ~~(o) — otherwise subsist in Materials which are provided and required for the purposes of:
  - ~~(i) — NBN Co considering and developing the Product Idea submitted by the Submitting Customer; or~~
  - ~~(ii) — implementing, offering or supplying a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (or any similar or alternative product or service) by NBN Co based on the Product Idea in (b)(i).~~~~

**Workshop** has the meaning given to that term in clause ~~68~~.1(a).

### ~~13.2~~10.2 **Interpretation**

Unless the context otherwise requires, in these PDF Processes:

- (a) a reference to a clause is a reference to a clause of these PDF Processes; and
- (b) capitalised terms:
  - (i) if defined in clause ~~103~~.1, have the meaning set out in clause ~~103~~.1; or

- (ii) if not defined in clause [103.1](#), have the same meaning as set out in Attachment C (Dictionary) of the Special Access Undertaking.

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## ~~Schedule 1J — Service Level commitments~~

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### ~~1J.1 — General~~

#### ~~1J.1.1 — Scope~~

~~This Schedule 1J applies for the Initial Regulatory Period.~~

#### ~~1J.1.2 — Overview~~

~~This Schedule 1J sets out the Service Levels and Service Level Rebates that NBN Co will make available to Customers under any SFAA in relation to the supply of Product Components, Product Features, Ancillary Services and types of Facilities Access Service during the Initial Regulatory Period.~~

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### ~~1J.2 — Service Levels~~

- ~~(a) — Subject to clauses 1J.2(b) and 1J.2(c), NBN Co will incorporate the terms set out in Annexure 1 (Service Levels Schedule) to this Schedule 1J into any SFAA and maintain such terms that are the same or better (having regard to all the circumstances) in any SFAA.~~
- ~~(b) — Subject to clause 1J.2(c), if any Metric in Annexure 1 (Service Levels Schedule) to this Schedule 1J is expressed to apply until the end of 2014, NBN Co will maintain Metrics that apply after 2014 on terms that are the same or better (having regard to all the circumstances) in any SFAA to the terms that applied to the Metrics in 2014.~~
- ~~(c) — Clauses 1J.2(a) and 1J.2(b) are subject to any changes permitted in the circumstances described in clause 1B.3.1(e) or 1K.3.~~

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## **Annexure 1 Service Levels Schedule**

### **Introduction**

This document describes the Service Levels that apply to the products and services that NBN Co supplies to its customers. It also sets out the Performance Objectives that NBN Co will aim to achieve for certain Service Levels.

The Service Levels are arranged in this Service Levels Schedule to replicate the end user lifecycle experience: connections, appointments, activations, fault rectification, modifications, order processing and completion, availability and disconnections.

Failure to achieve a Service Level or a Performance Objective may give rise to consequences, such as an obligation on NBN Co to take corrective action or credit rebates.

This Service Levels Schedule also includes Operational Targets which are aspirational and do not give rise to corrective action or rebates.

### **Service Levels Schedule Roadmap**

A roadmap describing the structure of this Service Level Schedule follows for the assistance of NBN Co customers.

#### **Part A: Service Levels**

Part A describes NBN Co's Service Levels and Performance Objectives including those that have commercial rebates if not achieved (End User Connections and Enhanced 12 Fault rectification). While not achieving a Service Level or Performance Objective is not a breach of this Agreement, Customers can request NBN Co take Corrective Action under Part B.

#### **Part B: Measurement and Corrective Action**

Part B sets out NBN Co's measurement, monitoring and reporting obligations and the mechanics involved in Corrective Action if NBN Co does not meet a Service Level or Performance Objective.

#### **Part C: CSG Compensation**

Part C sets out the circumstances in which CSG Compensation will be payable by NBN Co.

#### **Part D: Operational Targets**

Part D contains NBN Co's aspirational Operational Targets, which may be developed into Service Levels in the future. These Operational Targets are non-binding.

#### **Part E: Interpretation and exclusions**

Part E contains the rules of interpretation and exclusions which apply to this Service Levels Schedule.

## Part A — Service Levels

### 1 — End User Connections

*This section 1 sets out the Service Levels and Connection Rebates that NBN Co offers for End User Connections.*

#### 1.1 — Service Levels for End User Connections

(a) — The Service Levels for Standard Connections in 2013 from the time of Order Acknowledgement for NFAS and NNAS are:

Location of Premises	NFAS (Business Days)				NNAS (Business Days)		
	Service Class 0	Service Class 1	Service Class 2	Service Class 3	Service Class 4	Service Class 5	Service Class 6
Urban Area	N/A	14	14	±	N/A	14	±
Major Rural Area or Minor Rural Area	N/A	19	19	±	N/A	19	±
Remote Area	N/A	19	19	±	N/A	19	±

(b) — The Service Levels for Standard Connections in 2014 from the time of Order Acknowledgement for NFAS and NNAS are:

Location of Premises	NFAS (Business Days)				NNAS (Business Days)		
	Service Class 0	Service Class 1	Service Class 2	Service Class 3	Service Class 4	Service Class 5	Service Class 6
Urban Area	N/A	9	9	±	N/A	9	±
Major Rural Area or Minor Rural Area	N/A	14	14	±	N/A	14	±
Remote Area	N/A	19	19	±	N/A	19	±

(c) — The Service Levels for Priority Assistance Connections and Accelerated Connections from the time of Order Acknowledgement for NFAS are:

Location of Premises	NFAS	
	Priority Assistance Connection (hours)	Accelerated Connection (Business Days)
Urban Area	24	4
Major Rural Area	24	9
Minor Rural Area	24	14
Remote Area	48	N/A

#### 1.2 — Performance Objective

NBN Co will aim to achieve the following Performance Objectives for the Service Levels set out in this section:

- (a) ~~90% or more of the total of all NBN Co customers' Standard Connections completed in accordance with the relevant Service Level;~~
- (b) ~~90% or more of the total of all NBN Co customers' Accelerated Connections completed in accordance with the relevant Service Level; and~~
- (c) ~~in the case of Priority Assistance Connections, achieve the Service Level at all times.~~

~~Each of these Performance Objectives will be measured based on the total number of the relevant category of End User Connections each month.~~

### **1.3 — Conditions**

- (a) ~~NBN Co is only required to meet the Service Levels for Accelerated Connections for up to 10% of the total NFAS End User Connections ordered by all NBN Co customers in each CSA. NBN Co will measure and apply this 10% cap each month. For any Accelerated Connections above this 10% cap the applicable Service Level for Standard Connections will apply.~~
- (b) ~~Customer must maintain up to date and accurate records, materials, documents and correspondence relevant to each Accelerated Connection that Customer has ordered in each CSA during each month and, on request, provide NBN Co with access to such information. Customer must cooperate with NBN Co to assist NBN Co with any review of this information.~~
- (c) ~~The Service Levels for End User Connections do not apply where Customer has failed to comply with the order process set out in the NBN Co Operations Manual.~~

### **1.4 — Connection Rebate**

- (a) ~~A rebate (**Connection Rebate**) may be payable in relation to Standard Connections. Connection Rebates do not apply to Priority Assistance Connections or Accelerated Connections.~~
- (b) ~~Connection Rebates (if any) are calculated in accordance with the following formula:~~

$$\text{Connection Rebate} = ((\text{Credit Instances} \times \$25) \times \text{Forecast Factor})$$

~~Where:~~

$$\text{Credit Instances} = (\text{Reference Performance} - \text{Actual Performance}) \times \text{Total Connections}$$

~~**Reference Performance** means 80% each month in 2013 and 90% each month in 2014.~~

~~**Actual Performance** means the percentage of Total Connections performed in accordance with the relevant Service Levels for Standard Connections (excluding Accelerated Connections and Priority Assistance Connections) in the relevant month.~~

**Total Connections** means the total number of Standard Connections (excluding Accelerated Connections and Priority Assistance Connections) in Service Class 1, Service Class 2 and Service Class 5 supplied by NBN Co to Customer in the relevant month.

**Forecast Factor** means:

Customer Forecast Accuracy	Forecast Factor
>85% to <115%	1
70-85% or 115-130%	0.5
<70% or >130%	0
No forecast submitted	0

**Note:** If the accuracy of the applicable forecast data in the Rollout Plan is <90% or >110%, the Forecast Factor will be 1.

$$\text{Customer Forecast Accuracy} = \frac{\text{Aggregate of all Standard Connection Forecasts for all CSAs provided by Customer to NBN Co in respect of the relevant month}}{\text{Total Connections}} \times 100$$

**Note:** The Standard Connection Forecast obligations for Customer are set out in the NBN Co Operations Manual. The last forecast provided by Customer before the start of the relevant month will be used to calculate Customer Forecast Accuracy.

- (c) NBN Co will pay the Connection Rebates (if any) claimed by Customer in accordance with the claims process in the NBN Co Operations Manual.

## ~~1.5 Costs Reimbursement for Priority Assistance Connections~~

If:

- (a) NBN Co does not achieve, or notifies Customer that it expects not to achieve, a Service Level for a Priority Assistance Connection; and
- (b) Customer provides the relevant Designated End User with an alternative or interim service for the period until a connection is achieved,

NBN Co will pay Customer the Alternative or Interim Service Amount. The process for determining and claiming this amount is set out in the NBN Co Operations Manual.

## 2 End User Connection appointments

*This section 2 sets out the Service Levels that NBN Co offers for End User Connection appointments.*

### 2.1 Service Levels for End User Connection appointments

The Service Levels for appointments to attend a Premises made by Customer and confirmed by NBN Co for End User Connections in Service Class 1, Service Class 2 and Service Class 5 are:

Appointment window	Service Level
Attend a Premises at a particular time	Attend Premises at that time or within 15 minutes thereafter
Attend a Premises within a four hour period	Attend Premises within the period or within 15 minutes thereafter
Attend a Premises in a Major Rural Area within a period of between four and five hours	Attend Premises within the period
Attend a Premises in a Minor Rural Area or Remote Area within a period of between four and 5 hours	Attend Premises within the period or within 45 minutes thereafter

## 2.2 — Performance Objectives

(a) — NBN Co will aim to achieve the following Performance Objectives for the Service Levels set out in this section:

- (i) — 90% or more of the total of all NBN Co customers' initial appointments kept in accordance with the Service Levels;
- (ii) — 95% or more of all NBN Co customers' re-scheduled initial appointments kept in accordance with the Service Levels; and
- (iii) — 5% or less of all NBN Co customers' initial appointments rescheduled at the request of NBN Co.

Each of these Performance Objectives will be measured based on the total number of NBN Co customers' initial or rescheduled initial appointments each month.

(b) — NBN Co will aim to notify Customer where re-scheduling an End User Connection initial appointment at least 26 hours before the time of the initial appointment.

## 2.3 — Conditions

The Service Levels and Performance Objectives in this section do not apply to appointments that are re-scheduled other than by NBN Co or where the Designated End User (or a representative of the Designated End User) was not at the Premises for the initial appointment.

# 3 — Activations

*This section 3 sets out the Service Levels that NBN Co offers for Activations.*

## 3.1 — Service Levels for Activations

The Service Levels for Activations from the time of Order Acknowledgement are:



Activity	Service Level (Business Days)
CVC activation	5
NNI group activation	15
Multicast Domain activation	10

### 3.2 Performance Objectives

NBN Co will aim to achieve the Service Levels for Activations for 90% or more of the total of all NBN Co customers' Activations in each category. This Performance Objective will be measured based on the total number of all Activations (in the relevant category) each month.

## 4 Service Fault rectification

*This section 4 sets out the Service Levels that NBN Co offers for Service Fault rectification (other than Enhanced-12 Fault rectification).*

### 4.1 Service Levels for End User Fault Response and End User Fault rectification

The Service Levels for End User Fault Response (from the time Customer raises a Trouble Ticket) and rectification of End User Faults (from the time of Trouble Ticket Acknowledgement) are:

Location of Premises	Service Level	
	End User Fault Response (hours)	End User Fault rectification
Urban Area and other locations where End User Fault does not require external or internal plant work or NBN Co attendance at Premises	1	3:00pm next Business Day
Major Rural Area or Minor Rural Area where End User Fault requires external or internal plant work or NBN Co attendance at Premises	1	1:00pm second Business Day
Remote Area where End User Fault requires external or internal plant work or NBN Co attendance at Premises	1	11:00am third Business Day

### 4.2 Service Levels for Priority Assistance End User Fault Response and fault rectification

The Service Levels for End User Fault Response for Priority Assistance Faults (from the time Customer raises a Trouble Ticket) and rectification of Priority Assistance Faults (from the time of Trouble Ticket Acknowledgement) are:

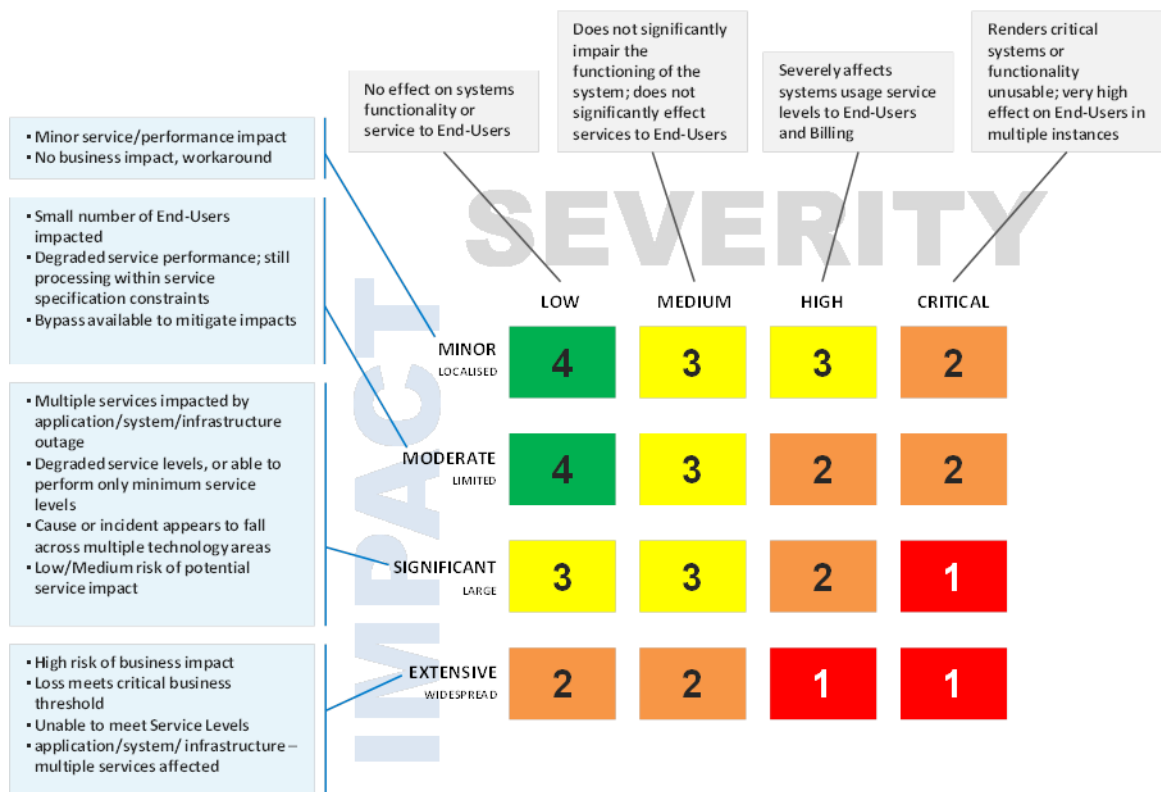
Location of Premises	Service Level	
	End-User Fault Response for Priority Assistance Faults (hours)	End-User Fault rectification for Priority Assistance Faults (hours)
Urban Area, Major Rural Area or Minor Rural Area	1	24
Remote Area	1	48

**4.3 Service Levels for Network Fault Response and rectification**

(a) The Service Levels for Network Fault Responses (from the time a Trouble Ticket is raised) and rectification of Network Faults (from the time of Trouble Ticket Acknowledgement) are:

Incident Priority (see table in (b) below)	Service Level	
	Network Fault Response (hours)	Network Fault rectification (hours)
1	0.5	6
2	1	12
3	2	20
4	4	28

(b) NBN Co will determine the incident priority for a Network Fault in accordance with the priority matrix below:



#### **4.4 — Performance Objectives**

- (a) — NBN Co will aim to achieve the following Performance Objectives for the Service Levels set out in this section:
  - (i) — in the case of End User Fault occurrence, achieve the Service Level at all times;
  - (ii) — 95% or more of the total rectifications of all NBN Co customers' End User Faults (excluding Priority Assistance Faults) rectified in accordance with the relevant Service Levels;
  - (iii) — in 2013, 80% of all Network Fault Responses provided and 80% of all Network Faults rectified in accordance with the relevant Service Levels (increasing in each case to 95% in 2014);
  - (iv) — in the case of rectification of Priority Assistance Faults, achieve the Service Level at all times; and
  - (v) — in the case of End User Fault Responses (including responses for Priority Assistance Faults), achieve the Service Level at all times.

Each of these Performance Objectives will be measured based on the total number of Trouble Tickets raised by all NBN Co customers for the relevant category of Service Faults and the total number of Service Faults rectified for the relevant category of Service Faults for all NBN Co customers, each month.

#### **4.5 — Conditions**

- (a) — The Service Levels do not apply to End User Faults or Network Faults caused by use of an Ordered Product which breaches the Fair Use Policy.
- (b) — NBN Co will take Corrective Action if an End User experiences more than 3 End User Faults in any 60 day period.
- (c) — The Service Levels for Priority Assistance Faults do not apply if Customer does not use the correct notification procedure in accordance with the NBN Co Operations Manual.

#### **4.6 — Costs Reimbursement for Priority Assistance Fault rectification**

If:

- (a) — NBN Co does not achieve, or notifies a Customer that it expects not to achieve, a Priority Assistance Fault rectification Service Level; and
- (b) — Customer provides the relevant Designated End User with an alternative or interim service for the period until the fault is rectified,

NBN Co will pay Customer the Alternative or Interim Service Amount. The process for agreeing and claiming this amount is set out in the NBN Co Operations Manual.

## ~~5 Enhanced 12 Fault rectification~~

*This section 5 sets out the Service Levels and commercial rebates that NBN Co offers for Enhanced 12 Fault rectification.*

### ~~5.1 Service Levels for Enhanced 12 Fault rectification~~

The Service Levels for rectification of Enhanced 12 Faults from the time of Trouble Ticket Acknowledgement are:

<del>Location of Premises</del>	<del>Service Level (hours)</del>
<del>Urban Area</del>	<del>12</del>
<del>Major Rural Area and Minor Rural Area</del>	<del>26</del>
<del>Remote Area</del>	<del>40</del>

### ~~5.2 Performance Objective~~

NBN Co will aim to achieve 80% or more of the total of all NBN Co customers' Enhanced 12 Faults rectified in accordance with the Service Levels each month (increasing to 95% in 2014). This Performance Objective will be measured based on the total number of all NBN Co Customers' Enhanced 12 Fault rectifications each month.

### ~~5.3 Calculation of the Enhanced 12 Fault Rebate~~

NBN Co will pay Customer a rebate (**Enhanced 12 Fault Rebate**) if NBN Co does not achieve an Enhanced 12 Fault Service Level in respect of an Ordered Product as follows:

<del>Enhanced 12 Fault not rectified in accordance with Service Level</del>	<del>Rebate Amount per Ordered Product</del>
<del>First occurrence in Billing Period</del>	<del>Enhanced 12 NFAS Fault Rectification Recurring Charge payable in the relevant Billing Period</del>
<del>First and each subsequent occurrence in Billing Period</del>	<del>20% per full hour in excess of the Enhanced 12 Fault Service Level, of the AVC Recurring Charges (including UNI Charges) for that Billing Period</del>

### ~~5.4 Conditions~~

- ~~(a) The Enhanced 12 Fault Rebate for an Ordered Product is capped in each Billing Period at the total of the AVC Recurring Charges (including UNI Charges) payable for the supply of the Ordered Product in that Billing Period.~~
- ~~(b) NBN Co will credit Customer with the amount of any Enhanced 12 Fault Rebate claimed by Customer within 6 months of the relevant Billing Period in~~

accordance with the claims process contained in the NBN Co Operations Manual.

### **5.5 — No double recovery**

NBN Co is not required to pay Customer a rebate under section 5.3 to the extent that NBN Co has paid Customer CSG Compensation pursuant to section 14, or has already compensated Customer (or been found liable by a court of competent jurisdiction to compensate Customer) pursuant to section 118A of the TCPSS Act, for the act or omission of NBN Co giving rise to the rebate.

## **6 — End User Fault rectification appointments**

*This section 6 sets out the Service Levels that NBN Co offers for End User Fault rectification appointments.*

### **6.1 — Service Levels for kept End User Fault rectification appointments**

The Service Levels for appointments to attend a Premises made by Customer and confirmed by NBN Co for rectification of End User Faults (including Enhanced-12 Faults and Priority Assistance Faults) are:

<b>Appointment window</b>	<b>Service Level</b>
Attend a Premises at a particular time	Attend Premises at that time or within 15 minutes thereafter
Attend a Premises within a four-hour period	Attend Premises within the period or within 15 minutes thereafter
Attend a Premises in a Major Rural Area within a period of between four and five hours	Attend Premises within the period
Attend a Premises in a Minor Rural Area or Remote Area within a period of between four and 5 hours	Attend Premises within the period within 45 minutes thereafter

### **6.2 — Performance Objective**

NBN Co will aim to achieve the following Performance Objectives for the Service Levels set out in this section:

- (a) 90% or more of all NBN Co customers' initial appointments kept in accordance with the Service Levels;
- (b) 95% or more of all NBN Co customers' re-scheduled initial appointments kept in accordance with the Service Levels; and
- (c) 5% or less of all NBN Co customers' initial appointments rescheduled at the request of NBN Co.

Each of these Performance Objectives will be measured based on the total number of all NBN Co's customers' initial or rescheduled initial appointments each month.

### 6.3 Conditions

Where an appointment has been re-scheduled by a person other than NBN Co, or where the Designated End User (or a representative of the Designated End User) was not at the Premises for the initial appointment, the Service Levels and Performance Objectives in this section do not apply.

## 7 Modifications

*This section 7 sets out the Service Levels that NBN Co offers for modifications.*

### 7.1 Service Levels for Access Component Modifications

(a) The Service Levels for Access Component Modifications that do not require attendance at Premises from the time of Order Acknowledgement are:

Activity	Service Level (Business Day)
Access Component Modification (no attendance at Premises required)	±

(b) The Service Levels for Access Component Modifications in 2013 that require attendance at Premises, from the time of Order Acknowledgement are:

Location of Premises	NFAS (Business Days)				NWAS (Business Days)		
	Service Class-0	Service Class-1	Service Class-2	Service Class-3	Service Class-4	Service Class-5	Service Class-6
Urban Area	N/A	14	14	±	N/A	14	±
Major Rural Area or Minor Rural Area	N/A	19	19	±	N/A	19	±
Remote Area	N/A	19	19	±	N/A	19	±

(c) The Service Levels for Access Component Modifications in 2014 that require attendance at Premises, from the time of Order Acknowledgement are:

Location of Premises	NFAS (Business Days)				NWAS (Business Days)		
	Service Class-0	Service Class-1	Service Class-2	Service Class-3	Service Class-4	Service Class-5	Service Class-6
Urban Area	N/A	9	9	±	N/A	9	±
Major Rural Area or Minor Rural Area	N/A	14	14	±	N/A	14	±
Remote Area	N/A	19	19	±	N/A	19	±

(d) The Service Levels for Access Component Modifications in respect of Downstream Priority Assistance Services from the time of Order Acknowledgement are:

Location of Premises	NEAS
	Priority Assistance Connection (hours)
Urban Area, Major Rural Area or Minor Rural Area	24
Remote Area	48

## 7.2 Connectivity Component Modifications

The Service Levels for Connectivity Component Modifications from the time of Order Acknowledgement are:

Activity	Service Level (Business Days)
Connectivity Component Modification	5

## 7.3 Multicast Domain Modifications

The Service Levels for Multicast Domain Modifications from the time of Order Acknowledgement are:

Activity	Service Level (Business Days)
Service Impacting Multicast Domain Modification or Non-Service Impacting Multicast Domain Modification	5

## 7.4 Exceeded Configured Peak Bandwidth Event in relation to a Multicast Domain

The Service Level for responding to an Exceeded Configured Peak Bandwidth Event in relation to a Multicast Domain from the time of that event is:

Activity	Service Level Response
Notification of Exceeded Configured Peak Bandwidth Event	Within 30 minutes of the exceeded bandwidth event

## 7.5 Performance Objectives

NBN Co will aim to achieve the Service Levels for 90% or more of the total of all NBN Co customers' modifications in each category of modification and the response to an Exceeded Configured Peak Bandwidth Event, as set out in this section 7. Each of these Performance Objectives will be measured based on the total number of modifications (in the relevant category) or Exceeded Configured Peak Bandwidth Event responses each month.

## 7.6 Condition in relation to an Exceeded Configured Peak Bandwidth Event

NBN Co will only contact Customer in relation to Exceeded Configured Peak Bandwidth Events in accordance with the process set out in the NBN Co Operations Manual.

## 8 Disconnections

*This section 8 sets out the Service Levels that NBN Co offers for disconnections.*

### 8.1 Service Levels for Access Component Disconnections

The Service Levels for Access Component Disconnections are:

Activity	Service Level (Business Days)
Order received on a Business Day	Completed by the end of the following Business Day

### 8.2 Performance Objective

NBN Co will aim to achieve the Service Levels for Access Component Disconnections for 90% or more of the total of all NBN Co customers' Access Component Disconnections. This target will be measured based on the total number of all NBN Co customers' Access Component Disconnections each month.

## 9 Facilities Access Service orders

*This section 9 sets out the Service Levels that NBN Co offers for Facilities Access Service orders.*

### 9.1 Service Levels for Facilities Access Service Order Processing

The Service Levels for Facilities Access Service Order Processing from the time Customer places order are:

Activity	Service Level (Business Days)
Allocation and set-up of rack space for NBN Co Co-location with or without installation of NBN Co ODF Termination Point and/or installation of Cross Connects	10
Installation of NBN Co ODF Termination Point and/or installation of Cross Connects (without allocation and set-up of rack space for NBN Co Co-location)	2

### 9.2 Service Levels for Facilities Access Service Order Completion

The Service Levels for Facilities Access Service Order Completion from the time of Order Acknowledgement are:

Activity	Service Level (Business Days)
Allocation and set-up of rack space for NBN Co Co-location, with or without installation of NBN Co ODF Termination Point and/or installation of Cross Connects	20
Installation of NBN Co ODF Termination Point with or without installation of Cross Connects (without allocation and set-up of rack space for NBN Co Co-location)	10 +5 if POI outside Urban Area



Installation of Cross-Connects

5 + 5 if POI outside Urban Area

### 9.3 Performance Objectives

NBN Co will aim to achieve the following Performance Objectives for the Service Levels set out in this section:

- (a) 90% or more of the total Facilities Access Service Order Processing processed; and
- (b) 90% or more of the total Facilities Access Service Order Completion completed;

for all NBN Co customers' Facilities Access Service orders in accordance with the relevant Service Levels. Each of these Performance Objectives will be measured based on the total number of all NBN Co customers' Facilities Access Service orders each month.

## 10 NBN Co Platform Interfacing Service availability

*This section 10 sets out the Performance Objectives that NBN Co offers for the NBN Co Platform Interfacing Service availability.*

### 10.1 Performance Objectives for NBN Co Platform Interfacing Service availability

NBN Co will aim to achieve the following Performance Objectives for availability of the NBN Co Platform Interfacing Service:

Period	Performance Objective (availability per Quarter)
2013	97%
2014	99%

These Performance Objectives will be measured based on availability of the NBN Co Platform Interfacing Service to all NBN Co customers and reported each month.

### 10.2 Measuring NBN Co Platform Interfacing Service availability

For the purposes of section 10.1, "availability" is calculated as follows:

$$\frac{(\text{Measurement Period} - \text{Unavailable Time})}{\text{Measurement Period}} \times 100$$

Where (for the purposes of this section only):

**Measurement Period** means the number of minutes in any rolling 3 month period.

**Unavailable Time** means:

- i the number of minutes in the Measurement Period when Customer does not receive a response to Address Enquiries, Service Qualification Enquiries, or Appointment Enquiries

~~described in the NBN Co Operations Manual or Order Feasibility Checks described in the service description for the NBN Co Platform Interfacing Service, or is unable to submit an order or Trouble Ticket; less~~

~~ii any time:~~

~~A when the NBN Co Platform Interfacing Service is non-operational due to any event or matter excluded under section 18; and/or~~

~~B during an Outage.~~

## ~~11 Network performance and availability~~

~~This section 11 sets out the Service Levels that NBN Co offers for Network Availability, utilisation management and traffic class operations.~~

### ~~11.1 Performance Objective for Network Availability~~

~~(a) NBN Co will aim to achieve Network Availability of 99.90% in respect of all NBN Co customers' NFAS and NNAS Ordered Products during the previous 12 month period. This Performance Objective will be measured based on combined availability of each NFAS and NNAS Ordered Product (between NNI operating in chassis-diverse mode and the UNI) supplied by NBN Co to all NBN Co customers each Quarter for the previous 12 months.~~

~~(b) Network Availability is calculated as follows:~~

$$\frac{\text{Measurement Period} - \text{Unavailable Time}}{\text{Measurement Period}} \times 100$$

~~Where:~~

~~**Measurement Period** means, in respect of the relevant 12 month period, the aggregate of the total number of minutes for which NBN Co has agreed to supply each NFAS and NNAS Ordered Product to all NBN Co customers during that 12 month period (excluding Planned Outages).~~

~~**Unavailable Time** means, in respect of the relevant 12 month period, the total number of minutes that each NFAS and NNAS Ordered Product which NBN Co has agreed to supply to all NBN Co customers during that 12 month period (excluding Planned Outages) was Unavailable.~~

~~**Unavailable** means where an TC 1 and/or TC 4 connectivity between the NNI operating in chassis-diverse mode and the UNI is Lost. This is measured from the time of Trouble Ticket Acknowledgement in respect of a valid Trouble Ticket in relation to that loss of connectivity, until time at which NBN Co closes that Trouble Ticket, in accordance with the NBN Co Operations Manual.~~

~~**Lost** means where a Service Fault has occurred, NBN Co has issued a Trouble Ticket in respect of the Service Fault and NBN Co has determined, acting reasonably, that the Service Fault relates to a total loss of connectivity in relation to an Ordered Product.~~

### **11.2 — Conditions for Network Availability**

- (a) — The measurement of Network Availability includes only the time when the NBN Co Fibre Network and NBN Co Wireless Network are in active operation and excludes any time when modifications, activations or installations are occurring.
- (b) — When calculating Network Availability, Unavailable Time does not apply where connectivity is Lost owing to:
  - (i) — any event or matter excluded under section 18;
  - (ii) — a matter, thing, event or circumstance that occurs outside the NBN Co Network Boundaries; or
  - (iii) — breach of the relevant Fair Use Policy.
- (c) — The Performance Objective for Network Availability is based on modelling using a set of assumptions regarding future network performance and may be modified by NBN Co following analysis of empirical Network Availability performance data gathered over time.

### **11.3 — Performance Objectives for Utilisation Management**

- (a) — Parts of the NBN Co Fibre Network are used to supply in AVC TC 4 (PIR) on the fibre network in a contended manner, including NBN Co's transit backhaul network (the **Shared Network Resources**). NBN Co will dimension the average busy hour throughput of the Shared Network Resources at a minimum of 150kbps per AVC TC 4 (PIR).
- (b) — If NBN Co considers that:
  - (i) — more than 70% of a Shared Network Resource is being or has been utilised for a continuous period of 30 minutes or more on 3 or more separate occasions during any rolling 7 day period (**Utilisation Threshold**); and
  - (ii) — the excess utilisation is not due to one-off network events (such as fail-over to a reduced capacity secondary link) or breach of the Fair Use Policy,

NBN Co will aim to return the utilisation of the relevant Shared Network Resource to, at or below the Utilisation Threshold, within 15 Business Days (**Utilisation Management Performance Objective**).

### **11.4 — Conditions for Utilisation Management Performance Objective**

- (a) — The Utilisation Management Performance Objective only applies in relation to Shared Network Resources.

(b) ~~NBN Co will not be required to take any action to achieve the Utilisation Management Performance Objective in relation to any non-NBN Co transit backhaul networks.~~

### ~~11.5 Performance Objectives for Traffic Class Operations~~

~~NBN Co will aim to achieve the following standards (on an individual traffic class basis) for each traffic class:~~

Traffic Class	Frame Delay (One-Way)	Frame Delay Variation	Frame Loss
TC-1	≤6msec	≤3msec	≤0.01%
TC-4	Not applicable	Not applicable	Not applicable

Where:

- (a) ~~**Frame Delay** refers to average, one-way propagation delay for a frame from UNI-D to NNI, where the delay is defined as the time elapsed since the start of transmission of the first bit of the frame at the frame source until the reception of the last bit of the frame at its destination.~~
- (b) ~~**Frame Delay Variation** is a measure of the average variation in delay between the arrival of pair of service frames, where the service frames belong to the same traffic class instance or grouping. Measured to 99.9%.~~
- (c) ~~**Frame Loss** means a ratio of the number of service frames not delivered, divided by the total number of service frames transmitted.~~

### ~~11.6 Conditions for Traffic Class Operations Performance Objective~~

(a) ~~The Performance Objectives for traffic class operations are only applicable under the following conditions:~~

Traffic Class	Layer 2 Frame Size at NNI (Bytes)	Frame Inter-Arrival	CVC Traffic Class Capacity Utilisation
TC-1	250	Periodic	≤70%

- (b) ~~Frame Delay guidance is provided between UNI-D and NNI distances less than 100km. In the case of UNI-D to NNI distance > 100km, an extra allowance of 1.4msec latency per additional 200km air path (as the crow flies) distance (or part thereof) is required.~~
- (c) ~~The Performance Objectives do not apply to services utilising the UNI-V over the NBN Co Fibre Network because they are subject to additional performance-affecting processing which will impact end-to-end performance.~~

- ~~(d) — The Layer 2 Frame Size and Frame Inter Arrival values must result in a data stream which is less than or equal to the subscribed Traffic Class CIR.~~
- ~~(e) — Each traffic class must be validated in the presence of no other traffic from other traffic classes within the AVC.~~

## **Part B — Measurement and Corrective Action**

### **12 — Measurement**

#### **12.1 — Measurement and monitoring**

NBN Co will measure and monitor its performance, and produce reports based on that information, in relation to each Activity, Network Availability, NBN Co Platform Interfacing Service availability and Operational Targets for B2B Access (**Performance Reports**).

#### **12.2 — Information accuracy**

- (a) — Performance Reports and any measurement and monitoring information produced by NBN Co is the Confidential Information of NBN Co.
- (b) — NBN Co will:
  - (i) — use its reasonable endeavours to:
    - (A) — ensure that the Performance Reports generated by the measurement and monitoring tools are accurate (including by correcting any inaccuracies); and
    - (B) — notify Customer within 10 Business Days of becoming aware of any inaccuracy;
  - (ii) — engage an independent auditor to review the general accuracy of its measurement and monitoring tools at least once during the Term and notify Customer of the outcome of that review.

#### **12.3 — Reporting**

NBN Co will provide a Performance Report to Customer on its performance of:

- (a) — the Activities in each month, on or about 20 Business Days after the end of the month;
- (b) — the Activities in each Quarter, on or about 20 Business Days after the end of the Quarter; and
- (c) — Network Availability and Platform Interfacing Service availability in the last 12 months, on or about 20 Business Days after the end of the Quarter.

NBN Co may from the time to time include additional information about NBN Co's performance in its Performance Reports as NBN Co's measurement and monitoring tools are developed.

## **12.4 Data Enquiries**

- (a) Customer may, acting reasonably, make an enquiry (**Data Enquiry**) (via the Relationship Points of Contact) in relation to the accuracy of measurement and monitoring information on which a Performance Report is based, within 6 months after the end of the period to which the Performance Report applies.
- (b) NBN Co must use reasonable endeavours to respond to a Data Enquiry within 10 Business Days after receipt of the Data Enquiry (or such longer period agreed by the parties, acting reasonably).

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## **13 Corrective Action**

### **13.1 Corrective Action**

If NBN Co does not achieve a Service Level or Performance Objective, as soon as reasonably practicable following a request by Customer, NBN Co will:

- (a) inform Customer of the reasons for that non-achievement;
- (b) inform Customer of any relevant corrective action taken or to be undertaken to address the non-achievement (**Corrective Action**);
- (c) take that Corrective Action; and
- (d) notify Customer as soon as reasonably practicable after Corrective Action is taken by NBN Co.

### **13.2 Conditions**

- (a) NBN Co is not required to provide the information set out above or undertake any Corrective Action in a measurement period if NBN Co has already provided information or performed, or is in the process of performing, Corrective Action in relation to an earlier event with the same cause as the subsequent event.
- (b) Corrective Action in the case of Network Availability may include the incremental improvement of Network Availability as the NBN Co Network is expanded and improved in accordance with NBN Co's rollout plans.

## ~~Part C — CSG Compensation~~

### ~~14 — CSG Compensation~~

#### ~~14.1 — NBN Co's obligation to credit CSG Compensation to Customer~~

- ~~(a) — Customer may claim from NBN Co, and NBN Co will credit to Customer, CSG Compensation on Accelerated Connections, appointments associated with Accelerated Connections, End User Fault rectifications and End User Fault rectification appointments if:~~
- ~~(i) — Customer or Downstream Customer contravenes a performance standard that applies pursuant to the CSG Standard in respect of a Customer Product or Downstream Product;~~
  - ~~(ii) — the contravention relates to a particular Designated End User;~~
  - ~~(iii) — Customer warrants to NBN Co that Customer is liable to pay damages (**Primary Damages**):~~
    - ~~(A) — to that Designated End User for that contravention; or~~
    - ~~(B) — to Downstream Customer as a direct result of Downstream Customer being liable to pay damages to that Designated End User for that contravention;~~
  - ~~(iv) — that contravention is wholly or partly caused or contributed to by an act or omission of NBN Co; and~~
  - ~~(v) — Customer has discharged its liability for the Primary Damages.~~
- ~~(b) — NBN Co will credit CSG Compensation to Customer on any valid Accelerated Connection including those Accelerated Connections which are in excess of the 10% cap outlined at section 1.3(a).~~
- ~~(c) — NBN Co is not obliged to pay or credit CSG Compensation to Customer if Customer has not:~~
- ~~(i) — in the case of an Accelerated Connection order, ordered the Access Components as Accelerated Connections where a Premises meets the requirements of an Accelerated Connection and the Access Components will be used as inputs to the supply of Downstream CSG Services;~~
  - ~~(ii) — mitigated the Primary Damages to which the claim relates in accordance with section 15); or~~
  - ~~(iii) — used reasonable endeavours to make a claim under this section 14 as soon as is reasonably practicable after Customer becomes aware~~



~~of the liability to pay Primary Damages to that Downstream Customer and, in any event, within 2 years after Customer paid Primary Damages to that Downstream Customer or Designated End User.~~

#### ~~14.2 When CSG is not payable~~

- ~~(a) No CSG Compensation is payable under this section 14 and Customer waives any right which it may have to recover any amount from NBN Co pursuant to section 118A of the TCPSS Act, in respect of a Migration Connection.~~
- ~~(b) NBN Co will not credit to Customer any CSG Compensation in respect of any Ordered Product supplied using the NBN Co Wireless Network.~~

#### ~~14.3 Process for calculating, claiming and crediting CSG Compensation~~

- ~~(a) Customer may claim from NBN Co, and NBN Co will credit to Customer, CSG Compensation in accordance with the processes set out in the NBN Co Operations Manual.~~
- ~~(b) The amount of CSG Compensation that NBN Co is liable to credit under this Schedule is the amount equal to that part of any Primary Damages caused or contributed to by NBN Co.~~

#### ~~14.4 Audit rights~~

- ~~(a) From the time to time, NBN Co may appoint a person as an auditor (**CSG Auditor**) to audit any claims for CSG Compensation made by Customer under this section 14.~~
- ~~(b) Customer must cooperate with the CSG Auditor to assist with the audit of any claims for CSG Compensation made by Customer under this section 14.~~
- ~~(c) Customer must disclose to the CSG Auditor all records, materials, documents and correspondence which is relevant to the audit, subject to the CSG Auditor entering into reasonable undertakings to protect the confidentiality of such information during the audit.~~
- ~~(d) If NBN Co has paid or credited any CSG Compensation to Customer under this section 14, and it is subsequently determined (either as a result of the audit, or otherwise) that Customer was not entitled to claim that CSG Compensation from NBN Co, then:
  - ~~(i) NBN Co may, at its discretion, notify Customer that the CSG Compensation it has previously paid or credited to Customer was wrongly paid or credited; and~~
  - ~~(ii) Customer must pay the amount immediately to NBN Co.~~~~

#### **14.5 — No double recovery**

NBN Co is not required to pay Customer CSG Compensation under this section 14 if NBN Co has already compensated Customer (or been found liable by a court of competent jurisdiction to compensate Customer) for the act or omission giving rise to that CSG Compensation by making a payment under section 118A of the TCPSS Act.

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### **15 — Mitigation of damages**

- (a) — Customer will take all reasonable action to avoid or mitigate its liability to pay Primary Damages under the CSG Standard where NBN Co may be liable to pay CSG Compensation under this Service Level Schedule or secondary damages under s118A of the TCPSS Act.
- (b) — For the purpose of section 15(a), actions that are reasonably available to Customer include:
  - (i) — Customer making a reasonable offer to supply the relevant End User with an alternative or interim service;
  - (ii) — Customer applying for and claiming the benefit of any applicable exemptions that may be available to Customer under Part 3 of the CSG Standard; and
  - (iii) — requesting a Designated End User to provide a waiver under Part 5 of the CSG Standard where that Designated End User is not prohibited from providing that waiver under section 120(7) of the TCPSS Act.

## ~~Part D — Operational Targets~~

### ~~16 — Operational Targets~~

*This section 16 sets out the Operational Targets that NBN Co has set in relation to certain Service Levels*

The Operational Targets are non-binding and aspirational. They may be developed into Service Levels in the future.

#### ~~16.1 — End User Connections~~

NBN Co's Operational Target for Standard Connections ordered by Customer in 2013 is to complete those Standard Connections in accordance with the applicable Service Levels in 2014.

#### ~~16.2 — Fault Rectification~~

NBN Co's Operational Targets for Network Fault Updates are:

<del>Operational Target activity</del>	<del>Operational Target</del>
<del>Network Fault Update (Incident priority 1)</del>	<del>Hourly</del>
<del>Network Fault Update (Incident priority 2)</del>	<del>Every 2 hours</del>
<del>Network Fault Update (Incident priority 3)</del>	<del>Every 4 hours</del>
<del>Network Fault Update (Incident priority 4)</del>	<del>Every 6 hours</del>

*Note: Refer to table in section 4.3(b) for incident priorities.*

#### ~~16.3 — Access Component Modifications~~

NBN Co's Operational Targets for Access Component Modifications which do not require attendance at Premises from the time of Order Acknowledgement are:

<del>Year</del>	<del>Operational Target (hours)</del>
<del>2013</del>	<del>8</del>
<del>2014</del>	<del>6</del>

#### ~~16.4 — Reporting of Utilisation Management for Shared Network Resources and Traffic Class Operational Performance Objectives~~

NBN Co will aim to introduce reporting on its performance against the Utilisation Management Performance Objective and the Performance Objectives for traffic class operations as soon as practicable and in any event by the end of 2014.

#### ~~16.5 — B2B Access response times~~

The Operational Targets for B2B Access business transaction response times between ingress and egress from the NBN Co B2B Gateway are:

Schedule 1A: Annexure 1 (Service Levels Schedule)

Transaction description		Service Level	
		Average	95% Percentile
Address Search		3 seconds	6 seconds
Single Site Qualification		5 seconds	10 seconds
Order Feasibility Check	Feasible	5 seconds	10 seconds
	Feasible - Appointment Required	7 seconds	13 seconds
	Feasible - Delayed	7 seconds	14 seconds
Order lodgement (submission received to acknowledgement sent)		17 seconds	27 seconds
Service Restoration Trouble Ticket lodgement (submission received to acknowledgement sent)		6 seconds	11 seconds

## ~~Part E — Interpretation and exclusions~~

### ~~17 — Interpretation~~

#### ~~17.1 — Service Levels apply in Operational Hours~~

~~(a) — All references to time in this Service Levels Schedule are calculated by reference Operational Hours as follows:~~

<del>Service Level</del>	<del>Operational Hours</del>
<del>Priority Assistance Connection Priority Assistance Fault rectification Network Availability NBN Co Platform Interfacing Service availability Network Fault rectification Utilisation management Traffic class operations</del>	<del>24 hours a day</del>
<del>Enhanced 12 Fault rectification</del>	<del>0700 to 2100 local time at the Premises to which the Trouble Ticket relates</del>
<del>Facilities Access Service Order Processing service</del>	<del>0800 to 1700 Australian Eastern Time on Business Days</del>
<del>Each other relevant Service Level</del>	<del>0800 to 1700 local time on Business Days where the relevant Activity is occurring</del>

~~(b) — Unless specified otherwise, measurement of NBN Co's performance:~~

~~(i) — starts:~~

~~(A) — during Operational Hours, immediately; and~~

~~(B) — outside of Operational Hours, at the start of the next Operational Hour,~~

~~after Order Acknowledgement or Trouble Ticket Acknowledgement (as applicable); and~~

~~(ii) — ends at the time at which NBN Co notifies Customer (by any means permitted under this Agreement) that NBN Co has successfully completed the relevant work, or rejects or cancels the order or Trouble Ticket in accordance with this Agreement.~~

~~(c) — If:~~

~~(i) — a 'Pending' Status is applied to any order or Trouble Ticket;~~

~~(ii) — a 'Held' Status is applied to any order or Trouble Ticket due to a matter beyond NBN Co's control; or~~

~~(iii) — a 'Resolved' Status is applied to any Trouble Ticket;~~

measurement of NBN Co's performance will be suspended for the period that matter causes or contributes to that status.

### 17.2—Calculating time

<del>If the period of time is expressed to</del>	<del>then the period of time</del>
<del>occur within a number of Business Days</del>	<del>—ends at the end of the last Operational Hour on the last of those Business Days; and —excludes the day on which the relevant order is placed or Trouble Ticket is raised.</del>
<del>occur between 2 days</del>	<del>includes both days.</del>
<del>begin from a specified day or hour</del>	<del>does not include that particular day or hour (as the case may be).</del>

### 17.3—Pro Rata measurement

~~If this Agreement is executed, terminated or expires part way through a measurement period, the measurement of NBN Co's performance under this Service Levels Schedule will be pro-rated to reflect that shorter period.~~

### 17.4—Effect of a Change to Service Class

~~If there is a change to a Service Class, the relevant performance standard applicable to the new Service Class will apply for the purposes of this Service Level Schedule from the time of change.~~

## 18—Exclusions

- ~~(a) — The sole consequence of a failure of NBN Co to achieve a Service Level or Performance Objective will be the consequence (if any), specified in this Service Levels Schedule and a failure to achieve a Service Level or a Performance Objective will not be regarded as a breach of the Agreement.~~
- ~~(b) — A failure to meet the Operational Targets will not be regarded as a breach of the Agreement.~~
- ~~(c) — Service Levels and Performance Objectives do not apply for the period and/or to the extent that NBN Co's ability to achieve a Service Level is adversely affected by an Excluded Event, a Customer Event, any matter, thing, event or circumstance that is not within NBN Co's reasonable control, or where this Agreement otherwise provides that NBN Co does not have an obligation to perform in accordance with the Service Levels, including the following:
 
  - ~~(i) — an extreme weather event;~~~~

- ~~(ii) — any failure or delay in obtaining an approval or consent from a third party, such as a Government Agency, building manager or landlord;~~
- ~~(iii) — inability to gain access to a location necessary to perform works;~~
- ~~(iv) — failure in the supply of mains power to an NTD;~~
- ~~(v) — rejection or cancellation of an order or Trouble Ticket by NBN Co in accordance with this Agreement;~~
- ~~(vi) — faults which are Non-NBN Faults;~~
- ~~(vii) — any safety concern at a site at which NBN Co needs to perform works; or~~
- ~~(viii) — the relevant order or Trouble Ticket is modified by Customer during the period in which the relevant Service Level applies.~~

## ~~19 Definitions and Interpretation~~

### ~~19.1 Definitions~~

~~**Accelerated Connection** means an NFAS End User Connection in respect of a Premises that is:~~

~~(a) — NBN Serviceable; and~~

~~(b) — an Inactive Premises,~~

~~and which is ordered by Customer as an ‘Accelerated Connection’.~~

~~**Access Component Disconnection** means the disconnection of a UNI or AVC supplied by NBN Co to Customer in respect of a Premises.~~

~~**Acknowledged** means the Order Status or the Trouble Ticket Status described in the NBN Co Operations Manual, as the context requires.~~

~~**Activation** means the performance of an activation order for any Product, Product Component or Product Feature.~~

~~**Activity** means those activities of NBN Co that are the subject of Service Levels or Performance Objectives.~~

~~**Address Enquiry** means an enquiry that is made through the NBN Co Platform Interfacing Service as to whether a service delivery location is known to NBN Co.~~

~~**Address Search** has the meaning given to that term in the B2B Interaction Business Process Technical Specification.~~

~~**Affected Party** has the meaning given to that term in the definition of “Force Majeure Event”.~~

~~**Aggregated Network Information** means Network Information that has been aggregated with other information of a similar or related nature, such that the Network Information (or any part of it) cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify Customer, any Downstream Customer or any End User.~~

~~**Alternative or Interim Service Amount** means the amount determined in accordance with the NBN Co Operations Manual, or as otherwise agreed between the parties.~~

~~**Appointment** means the appointment period requested by Customer, and agreed to by NBN Co, in which NBN Co (or the Installer) will perform the installation and activation of Connecting Equipment at a Premises in connection with the supply of a Product, including:~~



(a) ~~any initial appointment for the installation of the Connecting Equipment at the Premises; and~~

(b) ~~any subsequent appointment required to perform or complete the installation of the Connecting Equipment at the Premises.~~

**Appointment Enquiry** has the meaning given to that term in the relevant section of the NBN Co Operations Manual.

**AVC Recurring Charges (including UNI Charges)** means the total of AVC TC 4 (including UNI-D) Recurring Charges and AVC TC 1 Recurring Charges as set out in the Price List.

**AVC TC 1 Bandwidth Profile** has the meaning given to that term in the Product Description for the NBN Co Fibre Access Service or the Product Description for the NBN Co Wireless Access Service, as the context requires.

**AVC TC 4** has the meaning given to that term in the Product Description for the NBN Co Fibre Access Service or the Product Description for the NBN Co Wireless Access Service, as the context requires.

**Billing Period** means each period of one calendar month starting on the day selected or determined in accordance with the NBN Co Operations Manual.

**Booked** means the Appointment Status or the Trouble Ticket Appointment Status described in the NBN Co Operations Manual, as the context requires.

**Business Day** means any day other than a Saturday, Sunday or public holiday in the States or Territories where the relevant works or tasks are being carried out.

**Cables** has the meaning given to that term in the NBN Co Operations Manual.

**Cancelled** means the Order Status, the Appointment Status or the Trouble Ticket Appointment Status described in the NBN Co Operations Manual, as the context requires.

**Closed** means the Trouble Ticket Status described in the NBN Co Operations Manual.

**Commercial Rebate** means a Connections Rebate and/or an Enhanced 12 Fault Rectification Rebate, as the context requires.

**Complete** means the Order Status, the Appointment Status or the Trouble Ticket Appointment Status described in the NBN Co Operations Manual, as the context requires.

**Confidential Information** of the Discloser means all information of the Discloser or any of its Related Bodies Corporate in connection with this Agreement, including information of a third party that is used or disclosed by the Discloser or any of its Related Bodies Corporate under permission from that third party and including

~~information derived from the Discloser's Confidential Information (regardless of form) which:~~

~~(a) — is confidential or can reasonably be inferred to be confidential from the circumstances in which it is disclosed; and~~

~~(b) — is disclosed to or observed by the Recipient in connection with this Agreement;~~

~~but does not include information:~~

~~(c) — which is in or comes into the public domain, other than by disclosure in breach of this Agreement or an obligation of confidence owed to a party;~~

~~(d) — which, at the time of first disclosure by the Discloser to the Recipient, was already in the lawful possession of that party;~~

~~(e) — which is disclosed to, or observed by, the Recipient from a third party entitled to disclose it; or~~

~~(f) — Aggregated Network Information.~~

~~Where the Discloser is Customer, Confidential Information includes Network Information, and information of the kind referred to in section 152AYA of the Competition and Consumer Act.~~

~~**Connection Rebate** means the rebate in respect of NBN Co's failure to achieve Service Levels for End User Connections calculated in accordance with Part A.~~

~~**Connectivity Component** means an NNI or CVC, as the case may be.~~

~~**Copper Network** means the network in Australia comprising copper and aluminium wire lines that is owned, controlled or operated by or on behalf of, Telstra Corporation Limited or any Related Body Corporate of Telstra Corporation Limited.~~

~~**Corrective Action** has the meaning given to that term in section 13.1(b).~~

~~**CSG** means a performance standard that applies pursuant to the CSG Standard.~~

~~**CSG Auditor** has the meaning given to that term in section 14.4(a).~~

~~**CSG Compensation** means a credit amount claimed by Customer and calculated in accordance with section 14.~~

~~**CSG Standard** means the *Telecommunications (Customer Service Guarantee) Standard 2011*.~~

~~**Data Enquiry** means in respect of a Governance Process Report (including a Performance Report), a data enquiry made in accordance with section 12.4(a) or the NBN Co Operations Manual.~~

~~**Discloser** means the party that discloses Confidential Information to the other party.~~

~~**Downstream CSG Service** means a Customer Product or Downstream Product supplied in respect of a Premises that:~~

- ~~(a) — is subject to a performance standard that applies pursuant to the CSG Standard; and~~
- ~~(b) — relies on the Access Components supplied by NBN Co to Customer in respect of that Premises as inputs to the supply of that Customer Product or Downstream Product.~~

~~**Downstream Priority Assistance Service** means a Customer Product or Downstream Product supplied in respect of a Premises that:~~

- ~~(a) — is being used to provide priority assistance to a Designated End User; and~~
- ~~(b) — relies on the Access Components of the NFAS supplied by NBN Co to Customer in respect of that Premises as inputs to the supply of that Customer Product or Downstream Product.~~

~~**Due Date** has the meaning given to that term in this Agreement.~~

~~**ebMS** means ebXML messaging service.~~

~~**ebXML** means extensible business message markup language as described in the OASIS ebXML Message Service Specification (version 2.0) issued 1 April 2002.~~

~~**End User Connection** means the connection and activation of the Access Components, comprising:~~

- ~~(a) — Standard Connections for NFAS and NWAS;~~
- ~~(b) — Priority Assistance Connections for NFAS; and~~
- ~~(c) — Accelerated Connections for NFAS.~~

~~**End User Fault** means a Service Fault affecting a single Ordered Product.~~

~~**End User Fault Response** means a response sent by NBN Co to Customer for a Trouble Ticket raised by Customer in respect of:~~

- ~~(a) — an End User Fault;~~
- ~~(b) — an Enhanced 12 Fault; or~~
- ~~(c) — a Priority Assistance Fault,~~

~~in respect of which a corresponding Service Level applies.~~

~~**Enhanced 12 Fault** is an End User Fault affecting the Ordered Product in respect of which the Enhanced 12 NFAS Fault Rectification Recurring Charge is payable and for~~

~~which Customer has selected the Enhanced 12 Fault Service Level in accordance with the NBN Co Operations Manual and this Schedule.~~

~~**Enhanced 12 Fault Rebate** has the meaning given to that term in section 5.3.~~

~~**Enhanced 12 NFAS Fault Rectification Recurring Charge** has the meaning given to that term in the Price List.~~

~~**Enhanced 12 Fault Service Level** means the Service Level in section 5.1.~~

~~**Exceeded Configured Peak Bandwidth Event** has the meaning given to that term in the Product Technical Specification for the NBN Co Ethernet Bitstream Service.~~

~~**Excluded Event** means:~~

- ~~(a) — any Force Majeure Event;~~
- ~~(b) — the implementation of any Upgrade or relocation or replacement of any Point of Interconnection or Temporary POI performed in accordance with the terms of this Agreement;~~
- ~~(c) — any Ordering Freeze, Service Reduction or Suspension that has been validly imposed in accordance with this Agreement; or~~
- ~~(d) — the supply of products, services, facilities or infrastructure by third parties (including failures by the third party to provide NBN Co with access to facilities; failures in the actual facilities provided by third parties; a failure by the third party to repair or reinstate those facilities; or delay or non-delivery by any supplier to NBN Co in the supply of equipment necessary for the supply of Ordered Products), where the third party is unable to perform its obligations to NBN Co as a result of a Force Majeure Event.~~

~~**Facilities Access Service Order Completion** means the completion of a Facilities Access Service order.~~

~~**Facilities Access Service Order Processing** means the acceptance or rejection of a Customer order for a type of Facilities Access Service.~~

~~**Fair Use Policy** means the policies of that name published from time to time by NBN Co applicable to the Products, including terms set out in the Product Description that are identified as forming part of the “Fair Use Policy” for that Product.~~

~~**Force Majeure Event** means any event or circumstance that:~~

- ~~(a) — is not within the reasonable control of a person (the **Affected Party**) or any of its Related Bodies Corporate or any of their Personnel;~~
- ~~(b) — the Affected Party or any of its Related Bodies Corporate or any of their Personnel is not reasonably able to prevent or overcome by the exercise of~~

~~reasonable care, such as by having in place or implementing a disaster recovery plan; and~~

~~(c) — causes the Affected Party to fail to perform any of its obligations under this Agreement,~~

~~but does not include:~~

~~(d) — any event or circumstance that arises as a result of any lack of funds for any reason or any other inability to pay; or~~

~~(e) — any event or circumstance that arises as a result of any negligent act or omission of the Affected Party.~~

~~**Frame Delay** means average, one-way propagation delay for a frame from UNI-D to NNI, where the delay is defined as the time elapsed since the start of transmission of the first bit of the frame at the frame source until the reception of the last bit of the frame at its destination.~~

~~**Frame Delay Variation** means a measure of the average variation in delay between the arrival of pair of service frames, where the service frames belong to the same traffic class instance or grouping. Measured to 99.9%.~~

~~**Frame Inter-Arrival** has the meaning given to that term in the Technical Specification for the NBN Co Ethernet Bitstream Service.~~

~~**Frame Loss** means a ratio of the number of service frames not delivered, divided by the total number of service frames transmitted.~~

~~**Frame Size** means has the meaning given to that term in the Technical Specification for the NBN Co Ethernet Bitstream Service.~~

~~**Governance Processes Reports** has the meaning given to that term in this Agreement.~~

~~**Held** means the Order Status or the Trouble Ticket Status described in the NBN Co Operations Manual, as the context requires.~~

~~**IGMP Report Source Address** has the meaning given to that term in the Product Technical Specification for the NBN Co Ethernet Bitstream Service.~~

~~**In Progress** means the Trouble Ticket Status or the Trouble Ticket Appointment Status described in the NBN Co Operations Manual, as the context requires.~~

~~**Inactive Premises** means a Service Class 1 or Service Class 2 Premises that has no Copper Network telecommunications service (whether not connected to the Copper Network, because there is no “soft dial tone” or by operation of the Telstra Migration Plan).~~

**Incomplete** means the Appointment Status or the Trouble Ticket Appointment Status described in the NBN Co Operations Manual, as the context requires.

**Lost** has the meaning given to that term in section 11.1(b).

**Major Rural Area** means an urban centre or other recognised community grouping with a population greater than 2,500 but less than 10,000 people.

**Measurement Period** has the meaning given to that term in section 11.1(b).

**Migration Connection** means an End User Connection:

(a) — in respect of a Premises that is Service Class 1 or Service Class 2 and is supplied with a working standard telephone service at the time at which Customer places the order for the End User Connection; and

(b) — in respect of which NBN Co needs to perform an Initial Standard Installation or an Initial Non Standard Installation.

**Minor Rural Area** means an urban centre, locality or recognised community grouping with a population greater than 200 but not more than 2,500 people.

**NBN Co B2B Gateway** means the ebMS 2.0 compliant gateway that is hosted by NBN Co as further described in the Service Description for the NBN Co Platform Interfacing Service.

**NBN Co Ethernet Bitstream Service** has the meaning given to that term in the Product Technical Specification for the NBN Co Ethernet Bitstream Service.

**NBN Co Network Boundaries** means:

(a) — the User Network Interface on the Network Termination Device at or near a Premises; and

(b) — the Network Network Interface at the Point of Interconnection associated with that Premises.

**NBN Co Platform Interfacing Service** means the Platform Interfacing Service.

**Network Availability** means the period during which the NBN Co Fibre Network and the NBN Co Wireless Network are in active operation.

**Network Fault** means a Service Fault affecting multiple Ordered Products.

**Network Fault Response** means a response by NBN Co to a Network Fault in accordance with the NBN Co Operations Manual.

**Network Fault Update** means, in respect of a Network Fault where NBN Co has issued a unique Trouble Ticket ID, an update provided by NBN Co to Customer of NBN Co's progress in rectifying the Network Fault.

**Network Information** means any information regarding Customer, any Downstream Customer or any End User that is:

- (a) — generated within the NBN Co Network, the NBN Co Platform, the National Test Facility and related systems as a result of the supply of Ordered Products by NBN Co to Customer; or
- (b) — otherwise obtained from Customer in respect of the supply of an Ordered Product.

**New** means the Order Status or the Trouble Ticket Status described in the NBN Co Operations Manual, as the context requires.

**Operational Hours** has the meaning given to that term in section 17.1(a).

**Operational Target** means an operational target set out in this Schedule.

**Order Acknowledgment** means the time at which NBN Co assigns an “Acknowledged” status to an order in accordance with the NBN Co Operations Manual.

**Order Feasibility Check** means an enquiry that is made through the NBN Co Platform Interfacing Service as to whether a particular order that Customer intends to place is capable of being placed in accordance with the terms of this Agreement.

**Order Status** means the status of an order as one of New, Acknowledged, In Progress, Held, Complete, Rejected, Pending or Cancelled.

**Pending** means the Order Status or the Trouble Ticket Status described in the NBN Co Operations Manual, as the context requires.

**Performance Objective** means a performance objective set out in this Schedule.

**Performance Report** means reports on NBN Co’s performance under Part B.

**Planned Outage** means an interruption to the supply of an Ordered Product if NBN Co has provided Customer with at least 10 Business Days’ prior notice.

**Price List** means the document entitled “Price List” (as changed from time to time in accordance with this Agreement) that forms part of the WBA Product Catalogue.

**Primary Damages** has the meaning given to that term in section 14.1(a)(iii).

**Priority Assistance Connection** means an NFAS End User Connection where both of the Access Components will be used as an input to the supply of a Downstream Priority Assistance Service and is ordered by Customer as a ‘Priority Assistance Connection’.

**Priority Assistance Fault** means an End User Fault affecting the Priority Assistance Connection supplied in respect of a Premises where Customer has informed NBN Co

~~in accordance with the NBN Co Operations Manual that the End User Fault is affecting the Priority Assistance Connection.~~

~~**Product Description**, in respect of a Product, means the “Product Description” for that Product as amended from time to time in the WBA Product Catalogue. A reference to “Product Description” in this Agreement will be read to include a reference to “Service Description”.~~

~~**Product Technical Specifications**, in respect of a Product, means the Product Technical Specifications for that Product as set out from time to time in the WBA Product Catalogue.~~

~~**Quarter** means each of the following periods in any calendar year: 1 January to 31 March; 1 April to 30 June; 1 July to 30 September; and 1 October to 31 December.~~

~~**Rebate** means a Commercial Rebate, CSG Compensation or other credit or rebate specified in this Agreement.~~

~~**Recipient** means a party to whom Confidential Information is disclosed by the other party.~~

~~**Rejected** means the Order Status or Trouble Ticket Status described in the NBN Co Operations Manual, as the context requires.~~

~~**Remote Area** means an area in which the relevant Premises is located which is not an Urban Area, Major Rural Area or Minor Rural Area at the time of acknowledgment or Appointment Scheduling.~~

~~**Reserved** means the Appointment Status or the Trouble Ticket Appointment Status described in the NBN Co Operations Manual, as the context requires.~~

~~**Resolved** means the Trouble Ticket Status described in the NBN Co Operations Manual.~~

~~**Rollout Plan** has the meaning given to that term in the NBN Co Operations Manual.~~

~~**Service Class** means the classification of a Premises as one of Service Class 0, Service Class 1, Service Class 2, Service Class 3, Service Class 4, Service Class 5 or Service Class 6.~~

~~**Service Class 0** means the Service Class that applies to a Premises that is not NBN Serviceable for the purposes of the NFAS but is in the footprint of the NBN Co Fibre Network.~~

~~**Service Class 1** means the Service Class that applies to a Premises:~~

~~(a) — that is in the footprint of the NBN Co Fibre Network; and~~

~~(b) — that is NBN Serviceable for the purposes of the NFAS; but~~



~~(c) — where a physical connection is not in place between the NAP and the PCD, including because:~~

~~(i) — the Drop Fibre or PCD has not been installed; or~~

~~(ii) — some augmentation or patching between the PCD and the NAP is required for the supply of the NFAS.~~

~~**Service Class 2** means the Service Class that applies to a Premises:~~

~~(a) — that is in the footprint of the NBN Co Fibre Network; and~~

~~(b) — that is NBN Serviceable for the purposes of the NFAS; and~~

~~(c) — where a physical connection is in place between the NAP and the PCD, including because the Drop Fibre and PCD is installed as part of the NBN Co Fibre Network and no augmentation or patching between the PCD and the NAP is required for the supply of the NFAS; but~~

~~(d) — where the NTD has not been installed.~~

~~**Service Class 3** means the Service Class that applies to a Premises that is in the footprint of the NBN Co Fibre Network and to which NBN Co can remotely provision the supply of the NFAS to the Premises, including where:~~

~~(a) — the Premises is NBN Serviceable for the purposes of the NFAS; and~~

~~(b) — a physical connection is in place between the NAP and the PCD, including because the Drop Fibre and PCD is installed as part of the NBN Co Fibre Network and no augmentation or patching between the PCD and the NAP is required for the supply of the NFAS; and~~

~~(c) — the NTD has been installed, is receiving mains power and is able to be made operational as part of the NBN Co Fibre Network.~~

~~**Service Class 4** means the Service Class that applies to a Premises that is:~~

~~(a) — not NBN Serviceable for the purposes of the NWAS; but~~

~~(b) — is in the footprint of the NBN Co Wireless Network.~~

~~**Service Class 5** means the Service Class that applies to a Premises:~~

~~(a) — that is in the footprint of the NBN Co Wireless Network; and~~

~~(b) — that is NBN Serviceable for the purposes of the NWAS; but~~

~~(c) — where the NTD has not been installed.~~

~~**Service Class 6** means the Service Class that applies to a Premises that is in the footprint of the NBN Co Wireless Network and to which NBN Co can remotely provision the supply of the NWAS to the Premises, including where:~~

~~(a) — the Premises is NBN Serviceable for the purposes of the NWAS; and~~

~~(b) — the NTD has been installed, is receiving mains power and is able to be made operational as part of the NBN Co Wireless Network.~~

~~**Service Description**, in respect of a Product, means the “Service Description” for that Product as amended from time to time in the WBA Product Catalogue.~~

~~**Service Level** means a service level set out in this Schedule.~~

~~**Service Restoration Trouble Ticket** has the meaning given to that term in the B2B Interaction Business Process Technical Specification.~~

~~**Shared Network Resources** has the meaning given to that term in section 11.3(a).~~

~~**Single Site Qualification** has the meaning given to that term in the B2B Interaction Business Process Technical Specification.~~

~~**S-TAG** means the identifier described in the Product Technical Specification for the NBN Co Ethernet Bitstream Service.~~

~~**Standard Connection** is an End User Connection which is not an Accelerated Connection or a Priority Assistance Connection.~~

~~**Standard Connection Forecast** means forecasts provided by Customer to NBN Co in accordance with the NBN Co Operations Manual.~~

~~**TC 1 (CIR) Data Transfer Rate** means the Data Transfer Rate for traffic class 1, as specified in the Product Description for the NBN Co Fibre Access Service or the Product Description for the NBN Co Wireless Access Service, as the context requires.~~

~~**TC 4 Data Transfer Rate** means the Data Transfer Rate for traffic class 4, as specified in the Product Description for the NBN Co Fibre Access Service or the Product Description for the NBN Co Wireless Access Service, as the context requires.~~

~~**TCPSA Act** means the *Telecommunications (Consumer Protection and Service Services) Act 1999* (Cth).~~

~~**Term** means the current term of this Agreement.~~

~~**Traffic Class** has the meaning given to that term in the Product Technical Specification for the NBN Co Ethernet Bitstream Service.~~

~~**Trouble Ticket** means a notification and record of a fault (or other matter requiring attention) that is raised by the Customer with NBN Co or raised by NBN Co and notified to Customer (as the context requires) using the NBN Co Service Portal or B2B Access.~~

**Trouble Ticket Acknowledgement** means the time at which NBN Co assigns an “Acknowledged” status to a Trouble Ticket in accordance with the NBN Co Operations Manual.

**Trouble Ticket Appointment Status** means the status of an Appointment as one of “Reserved”, “Booked”, “In Progress”, “Completed”, “Incomplete” or “Cancelled”.

**Trouble Ticket ID** means the identifier described in the NBN Co Operations Manual.

**Trouble Ticket Status** means the status of a Trouble Ticket as one of “New”, “Acknowledged”, “In Progress”, “Resolved”, “Closed”, “Rejected”, “Pending” or “Held”.

**Unavailable Time**, for the purposes of:

(a) section 10, has the meaning given to that term in section 10.2; or

(b) section 11, has the meaning given to that term in section 11.1(b).

**Urban Area** means an urban centre with a population equal to or greater than 10,000 people.

**Utilisation Management Performance Objective** has the meaning given to that term in section 11.3(b).

**Utilisation Threshold** has the meaning given to that term in section 11.3(b)(i).

## **19.2 Interpretation**

Unless the context otherwise requires, in this Service Levels Schedule:

(a) a reference to this “Schedule” is a reference to this Service Levels Schedule;

(b) a reference to a section, table or part is a reference to a section, table or part of this Service Levels Schedule; and

(c) capitalised terms:

(i) if defined in section 19.1, have the meaning set out in section 19.1;  
or

(ii) if not defined in section 19.1, have the same meaning as set out in Attachment C (Dictionary) of the Special Access Undertaking.

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## ~~Schedule 1K — Reviews~~

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### ~~1K.1 — General~~

#### ~~1K.1.1 — Scope~~

~~This Schedule 1K applies for the Initial Regulatory Period.~~

#### ~~1K.1.2 — Overview~~

~~This Schedule 1K sets out the reviews that NBN Co and the ACCC will conduct during the Initial Regulatory Period in respect of:~~

- ~~(a) — the various multilateral processes that take place under this Special Access Undertaking; and~~
- ~~(b) — various non-price terms and conditions that form part of this Special Access Undertaking,~~

~~which may result in a change to, or under, this Special Access Undertaking that would take effect for the remainder of the Initial Regulatory Period.~~

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## ~~1K.2 — Review of customer engagement process, PDF Processes, dispute management and Multilateral SFAA Forum~~

### ~~1K.2.1 — NBN Co to provide information and proposal to ACCC~~

- ~~(a) — No later than 6 months prior to 1 July 2018, NBN Co will provide the ACCC with the following:~~
  - ~~(i) — the Customer Engagement Information about the operation of the customer engagement process under clause 1E.8 since the start of the Initial Regulatory Period;~~
  - ~~(ii) — the PDF Information about the operation of the PDF Processes since the start of the Initial Regulatory Period;~~
  - ~~(iii) — the Dispute Management Information about the operation of the Dispute Management Rules since the start of the Initial Regulatory Period;~~
  - ~~(iv) — the Multilateral SFAA Forum Information about the operation of the Multilateral SFAA Forum since the start of the Initial Regulatory Period; and~~
  - ~~(v) — an Engagement Proposal.~~

(b) — The ACCC may request NBN Co to provide additional information about the customer engagement process, the operation of the PDF Processes, the Dispute Management Rules and the Multilateral SFAA Forum as may be reasonably required for the performance of the ACCC's review under clause 1K.2.2. NBN Co agrees to provide such information as requested by the ACCC under this clause 1K.2.1(b) as soon as reasonably practicable following receipt of such a request.

### **1K.2.2 — ACCC consideration of Engagement Proposal**

(a) — The ACCC will decide:

(i) — the extent to which the combined operation of the customer engagement process in clause 1E.8, the PDF Processes (together with Schedule 1I (Product Development and Withdrawal)), the Dispute Management Rules and the Multilateral SFAA Forum (**Multilateral Processes**) are resulting in effective engagement between NBN Co and Access Seekers; and

(ii) — whether to accept or reject the Engagement Proposal.

For clarity, the Engagement Proposal may propose that no change should be made to one or more of the Multilateral Processes.

(b) — When deciding the extent to which the combined operation of the Multilateral Processes are resulting in effective engagement between NBN Co and Access Seekers, the ACCC will have regard to the following matters:

(i) — whether the Multilateral Processes are resulting in the development of new products for End Users in response to demand;

(ii) — whether the level of Access Seeker understanding of the Multilateral Processes provides for effective engagement;

(iii) — whether NBN Co and Access Seekers (in the aggregate) have devoted sufficient resources to participate in the Multilateral Processes;

(iv) — whether the Multilateral Processes provide for an appropriate balance between the interests of NBN Co, Access Seekers and End Users, having regard to the diversity of those interests and the need for trade-offs between those interests;

(v) — whether Access Seekers are willing to engage with NBN Co through the Multilateral Processes;

(vi) — the level of consensus or disputation arising from the Multilateral Processes; and

(vii) — whether the Multilateral Processes are encouraging the economically efficient use of the NBN Co Network.

### **1K.2.3 — ACCC decision**

(a) — Within 60 Business Days after receipt of the Engagement Proposal, the ACCC will make a decision in relation to the extent to which the Multilateral Processes are resulting in effective engagement between NBN Co and Access Seekers.

(b) — The ACCC will decide that either:

(i) — the Engagement Proposal (or part thereof) should be accepted; or

(ii) — the Engagement Proposal (or part thereof) should be rejected because the ACCC considers that one or more of the Multilateral Processes require variation in a manner which is different to the Engagement Proposal, including the basis on which it is to be varied.

(c) — The ACCC must provide reasons for its decision under clause 1K.2.3(b).

(d) — The ACCC may publish its decision made under clause 1K.2.3(b) on the ACCC website, subject to any confidentiality requirements.

(e) — The ACCC may consult with any person in making a decision under clause 1K.2.3(b). The ACCC may consider submissions made by any person in relation to any of the Multilateral Processes.

### **1K.2.4 — New Engagement Proposal**

(a) — If the ACCC rejects part or all of the Engagement Proposal, NBN Co will, within 60 Business Days after the date of that decision, provide the ACCC with a New Engagement Proposal in respect of the rejected part.

(b) — The process in clauses 1K.2.2 and 1K.2.3 will be repeated in respect of the New Engagement Proposal and references to the Engagement Proposal in clauses 1K.2.2 and 1K.2.3 will be deemed to be references to the New Engagement Proposal.

### **1K.2.5 — Effect of ACCC acceptance**

(a) — To the extent that the ACCC accepts an Engagement Proposal or a New Engagement Proposal, then the Engagement Proposal or the New

Engagement Proposal (as the case may be) will take effect from 1 July 2018.

- (b) — NBN Co undertakes to adopt any aspects of the Engagement Proposal or New Engagement Proposal accepted by the ACCC in replacement for the operation of the Multilateral Processes to the extent specified in the accepted Engagement Proposal or New Engagement Proposal (as the case may be).

### **~~1K.2.6 — Deemed acceptance of Engagement Proposal~~**

If the ACCC does not make a decision within the timeframe specified in clause 1K.2.3(a), then the Engagement Proposal or New Engagement Proposal (as the case may be) will be deemed to be accepted.

### **~~1K.2.7 — Effect of ACCC rejection of New Engagement Proposal~~**

- (a) — To the extent that the ACCC rejects a New Engagement Proposal in accordance with clause 1K.2.3(b)(ii), the ACCC may make its own decision of the relevant Multilateral Processes to apply from 1 July 2018.
- (b) — Subject to clause 1K.2.7(c), NBN Co will comply with an ACCC decision made under clause 1K.2.7(a) from 1 July 2018 until the end of the Initial Regulatory Period, in replacement for the operation of the relevant Multilateral Processes to the extent specified in the ACCC decision.
- (c) — A decision made under clause 1K.2.7(a) has no effect to the extent that the decision:
- (i) — is inconsistent with this Special Access Undertaking;
  - (ii) — has the effect (whether direct or indirect) of discriminating between Access Seekers; or
  - (iii) — is not otherwise compliant with Part XIC of the CCA.

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## **~~1K.3 — Review of non-price terms and conditions, service levels and regulatory recourse and information~~**

### **~~1K.3.1 — NBN Co to provide information and proposal to ACCC~~**

- (a) — No later than 6 months prior to 1 July 2018, NBN Co will provide the ACCC with:
- (i) — a set of non-price terms and conditions to amend or replace the non-price terms and conditions described in Schedule 1H

~~(Non-price terms and conditions) (excluding the dispute management process described in clause 1H.5);~~

~~(ii) — a set of service levels and associated service level rebates to which NBN Co will commit to include in any SFAA to amend or replace the Service Levels and Service Level Rebates described in Schedule 1J (Service Level commitments);~~

~~(iii) — a regulatory recourse mechanism to amend or replace the regulatory recourse mechanism described in clause 1B.2; and~~

~~(iv) — regulatory reporting commitments to amend or replace the reporting commitments described in Schedule 1G (Regulatory information);~~

~~(Non-Price Proposal). For clarity, the Non-Price Proposal may propose that no change should be made to one or more of the matters in clauses 1K.3.1(a)(i) to 1K.3.1(a)(iv).~~

~~(b) — At any time, the ACCC may request information from NBN Co in relation to the Non-Price Proposal that is reasonably necessary for the ACCC to perform its review under clause 1K.3.2 and NBN Co must comply with a request made by the ACCC under this clause 1K.3.1(b).~~

### **~~1K.3.2 ACCC consideration of Non-Price Proposal~~**

~~When considering whether to accept or reject the Non-Price Proposal, the ACCC will have regard to the criteria referred to in section 152AH of the CCA and the following matters:~~

~~(a) — in respect of the non-price terms and conditions:~~

~~(i) — the manner in which NBN Co has complied with the non-price terms and conditions described in Schedule 1H (Non-price terms and conditions) (excluding the dispute management process described in clause 1H.5) from the SAU Commencement Date as the basis for assessing the manner in which NBN Co will be likely to comply with the non-price terms and conditions in the Non-Price Proposal;~~

~~(ii) — good industry practice in comparable industries applicable to wholesale contracting in Australia; and~~

~~(iii) — comparable international standards applicable to non-price terms and conditions in circumstances substantially similar to NBN Co's circumstances;~~

~~(b) — in respect of the Service Levels and Service Level Rebates:~~



- (i) — the extent of NBN Co's compliance with the Service Levels incorporated into any SFAA pursuant to Schedule 1J (Service Level commitments) from the SAU Commencement Date as the basis for assessing the manner in which NBN Co will be likely to comply with the service levels in the Non-Price Proposal;
  - (ii) — the extent to which the Service Levels and Service Level Rebates have supported Customers meeting retail-level regulatory requirements; and
  - (iii) — comparable Australian and international standards applicable to service levels and associated service level rebates in circumstances substantially similar to NBN Co's circumstances;
- (c) — in respect of the regulatory recourse mechanism, the ability of Access Seekers to avail themselves of a regulatory recourse mechanism in a manner consistent with the legislative hierarchy (as currently described in sections 152BCC, 152BDB, 152BDE, 152CBIA, 152CBIB, 152CBIC of the CCA) and the operation of any changes to the legislative hierarchy (including to the extent arising from a policy review under section 152EOA of the CCA); and
- (d) — in respect of regulatory reporting commitments, the effectiveness of the ACCC's ability to monitor NBN Co's compliance with the matters described in Schedule 1G (Regulatory information).

### **1K.3.3 ACCC decision**

- (a) — Within 60 Business Days after receipt of the Non-Price Proposal, the ACCC will decide that either:
- (i) — the Non-Price Proposal (or part thereof) should be accepted;
  - or
  - (ii) — the Non-Price Proposal (or part thereof) should be rejected because the ACCC considers that one or more aspects of the Non-Price Proposal should be varied, including the basis on which it is to be varied.
- (b) — The ACCC must provide reasons for its decision under clause 1K.3.3(a).
- (c) — The ACCC may publish its decision made under clause 1K.3.3(a) on the ACCC website, subject to any confidentiality requirements.
- (d) — The ACCC may consult with any person in making a decision under clause 1K.3.3(a). The ACCC may consider submissions made by any person in making such a decision.

#### ~~1K.3.4 New Non-Price Proposal~~

- ~~(a) If the ACCC rejects part or all of the Non-Price Proposal, NBN Co will, within 60 Business Days after the date of that decision, provide the ACCC with a New Non-Price Proposal in respect of the rejected part.~~
- ~~(b) The process in clauses 1K.3.2 and 1K.3.3 will be repeated in respect of the New Non-Price Proposal and references to the Non-Price Proposal will be deemed to be references to the New Non-Price Proposal.~~

#### ~~1K.3.5 Effect of ACCC acceptance~~

- ~~(a) To the extent that the ACCC accepts a Non-Price Proposal or a New Non-Price Proposal, then the Non-Price Proposal or the New Non-Price Proposal (as the case may be) will take effect from 1 July 2018.~~
- ~~(b) NBN Co undertakes to adopt any aspects of the Non-Price Proposal or New Non-Price Proposal accepted by the ACCC in replacement for the operation of:
  - ~~(i) the existing non-price terms and conditions described in Schedule 1H (Non-price terms and conditions) (excluding the dispute management process described in clause 1H.5);~~
  - ~~(ii) the existing Service Levels and Service Level Rebates described in Schedule 1J (Service Level commitments);~~
  - ~~(iii) the regulatory recourse mechanism described in clause 1B.2; and~~
  - ~~(iv) the existing regulatory reporting commitments in Schedule 1G (Regulatory information);~~to the extent specified in the accepted Non-Price Proposal or New Non-Price Proposal (as the case may be).~~

#### ~~1K.3.6 Deemed acceptance of Non-Price Proposal~~

~~If the ACCC does not make a decision within the timeframe specified in clause 1K.3.3(a), then the Non-Price Proposal or New Non-Price Proposal (as the case may be) will be deemed to be accepted.~~

#### ~~1K.3.7 Effect of ACCC rejection of New Non-Price Proposal~~

- ~~(a) To the extent that the ACCC rejects a New Non-Price Proposal in accordance with clause 1K.3.3(a)(ii), the ACCC may make its own decision in relation to the parts of the New Non-Price Proposal rejected by it to apply from 1 July 2018.~~

- ~~(b) Subject to clause 1K.3.7(c), NBN Co will comply with an ACCC decision made under clause 1K.3.7(a) from 1 July 2018 until the end of the Initial Regulatory Period, in replacement for the operation of:~~
- ~~(i) the existing non-price terms and conditions described in Schedule 1H (Non-price terms and conditions) (excluding the dispute management process described in clause 1H.5);~~
  - ~~(ii) the existing Service Levels and Service Level Rebates described in Schedule 1J (Service Level commitments);~~
  - ~~(iii) the regulatory recourse mechanism described in clause 1B.2; and~~
  - ~~(iv) the existing regulatory reporting commitments in Schedule 1G (Regulatory information);~~
- ~~to the extent specified in the ACCC decision.~~
- ~~(c) A decision made under clause 1K.3.7(a) has no effect to the extent that the decision:~~
- ~~(i) is inconsistent with this Special Access Undertaking;~~
  - ~~(ii) has the effect (whether direct or indirect) of discriminating between Access Seekers; or~~
  - ~~(iii) is not otherwise compliant with Part XIC of the CCA.~~

# Module 2

## Subsequent Regulatory Period



**NBNCo**  
Bringing broadband to life



## Schedule 2A ~~Implementation and Regulatory Cycle~~

### 2A.1 ~~Implementation of NBN Access Service, Ancillary Services and the Facilities Access Service~~

#### 2A.1.1 ~~Scope~~

This Schedule 2A applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module is in effect.

#### 2A.1.2 ~~Offer to supply of Product Components and Product Features~~

~~Subject to clauses 2A.2, NBN Co will offer to supply the Product Components and Product Features on each NBN Co Network as the means of implementing its obligations under this Special Access Undertaking in connection with the NBN Access Service by the supply of the Product Components and Product Features on each NBN Co Network.~~

#### ~~2A.1.3 Implementation of NBN Access Service through Product Components and Product Features~~

~~The Product Components and Product Features provide the means by which:~~

~~(a) NBN Co will fulfil its obligations under this Special Access Undertaking regarding the NBN Access Service; and~~

~~NBN Co will fulfil any category B standard access obligations that apply to NBN Co under the CCA regarding the NBN Access Service.~~

#### ~~2A.1.4~~ 2A.1.3 ~~Offer to supply of Ancillary Services~~

~~Subject to clauses 2A.2, NBN Co will offer to supply the Ancillary Services which comprise the Ancillary Services Offer in accordance with clause 2B.2.6 as the means of implementing its obligations under this Special Access Undertaking in connection with the Ancillary Services by the supply of the Ancillary Services which comprise the Ancillary Services Offer in accordance with clause 2B.2.6.~~

#### ~~2A.1.5 Implementation of Ancillary Services~~

~~The supply of the Ancillary Services under clause 2A.1.4 provides the means by which:~~

~~(a) NBN Co will fulfil its obligations under this Special Access Undertaking regarding the Ancillary Services; and~~

~~(b)(a) NBN Co will fulfil any category B standard access obligations that apply to NBN Co under the CCA regarding the Ancillary Services.~~

#### **2A.1.62A.1.4 Offer to supply of the Facilities Access Service**

Subject to clauses 2A.2, NBN Co will offer to supply the Facilities Access Service which comprises the Facilities Access Service Offer in accordance with clause 2B.2.7 as the means of implementing its obligations under this Special Access Undertaking in connection with the Facilities Access Service through the supply of the Facilities Access Service which comprises the Facilities Access Service Offer in accordance with clause 2B.2.7.

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## **2A.2 Service declared by the ACCC or specified in regulatory determinations**

### **2A.2.1 Service declared by the ACCC**

- (a) NBN Co acknowledges that this Special Access Undertaking does not affect the ACCC's ability to declare a service under section 152AL(8A) of the CCA (in this clause 2A.2, **ACCC-Declared Service**), even if the service falls, to any extent, within the scope of the services declared under section 152AL(8E) of the CCA as a consequence of the operation of this Special Access Undertaking.
- (b) For the avoidance of doubt, this Special Access Undertaking does not affect NBN Co's obligations under section 152AXB of the CCA in respect of any ACCC-Declared Service, including (without limitation) the obligation to supply that ACCC-Declared Service in accordance with the CCA.

### **2A.2.2 Service specified in regulatory determinations**

A Regulatory Determination in relation to a service, including an ACCC-Declared Service, that falls, to any extent, within the scope of the services declared under section 152AL(8E) of the CCA as a consequence of the operation of this Special Access Undertaking will not be inconsistent with this Special Access Undertaking for the purposes of section 152CBIA or section 152CBIB of the CCA to the extent that the Regulatory Determination relates to a service that is not an Offer that NBN Co is committed to supply under this Special Access Undertaking.

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## ~~2A.2~~ **2A.3 NBN Co may make supply of Product Components AVC conditional on acquisition of other Product Components**

- ~~(a) Subject to clause 2A.3(b), NBN Co may require that the supply of an AVC to an Access Seeker be on the condition that ~~an~~ the Access Seeker also ~~to~~ acquires ~~one or more of the a~~ UNI, AVC, ~~a~~ CVC ~~or~~ and a NNI in conjunction with ~~each other~~ the AVC.~~
- ~~(b) NBN Co must not require an Access Seeker to acquire, in conjunction with the AVC:~~
- ~~(i) a CVC, if the Access Seeker has an existing CVC in the CSA; or~~
- ~~(ii) a NNI, if the Access Seeker has an existing NNI at the POI for the CSA,~~
- ~~in which the AVC is being acquired.~~
- ~~(a) Nothing in this Schedule 2A prevents NBN Co from bundling Product Components including to the extent that such bundling is authorised pursuant to section 151DA of the CCA.~~

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## ~~2A.3~~ **Regulatory Cycle**

- ~~(a) A Regulatory Cycle is a defined period of time within the Subsequent Regulatory Period for which:~~
- ~~(i) multiyear forecasts of Revenues, ABBRR, Operating Expenditure, Capital Expenditure and tax are made;~~
- ~~(ii) key regulatory variables such as WACC are determined;~~
- ~~(iii) the NPV=0 expectation is applied; and~~
- ~~(iv) any Reference Offers will be available.~~
- ~~(b) The first Regulatory Cycle in the Subsequent Regulatory Period will:~~
- ~~(i) commence on the first day of the Subsequent Regulatory Period; and~~
- ~~(ii) end:~~
- ~~(A) if a Replacement Module is in effect, at the end of the Replacement Module Term; or~~

~~{B} — if no Replacement Module is in effect, at the end of the period specified as the Replacement Module Term in the most recent Replacement Module Application submitted to the ACCC prior to the commencement of the Subsequent Regulatory Period.~~

~~{c} — After the first Regulatory Cycle, determined in accordance with clause 2A.3(b), subsequent Regulatory Cycles will:~~

~~{i} — commence immediately after the end of the previous Regulatory Cycle; and~~

~~{ii} — end:~~

~~{A} — if a Replacement Module is in effect, at the end of the Replacement Module Term; or~~

~~{B} — if no Replacement Module is in effect, at the end of the period specified as the Replacement Module Term in the most recent Replacement Module Application submitted to the ACCC prior to the end of the previous Regulatory Cycle.~~



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## Schedule 2B Reference Offers

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### 2B.1 General

#### 2B.1.1 Scope

This Schedule 2B applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module is in effect.

#### 2B.1.2 Reference Offer Principles

- (a) Each Reference Offer will exist for the duration of the Regulatory Cycle to which it relates.
- (b) Reference Offers established for each Regulatory Cycle will be [offered supplied](#) and will not be withdrawn during the Regulatory Cycle.
- (c) Reference Offers established for each Regulatory Cycle will be based only on those Reference Offers and Non-Reference Offers that were [available to Access Seekers or](#) being acquired by [Customers-Access Seekers](#) in the Financial Year immediately preceding the start of that Regulatory Cycle.
- (d) Any Reference Offers that were established prior to the Regulatory Cycle but which are not re-established as Reference Offers in the Regulatory Cycle will become Non-Reference Offers at the commencement of the Regulatory Cycle. NBN Co may not commence the process to withdraw a Reference Offer under [Schedule 11](#) Schedule 2E (Product Development and Withdrawal) unless and until the Reference Offer becomes a Non-Reference Offer.
- (e) Clauses 2B.1.2(a) to 2B.1.2(d) do not apply to the withdrawal of a Reference Offer that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.

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### 2B.2 Relevant considerations for determining the composition of Reference Offers

#### 2B.2.1 Basic Access Offer for each NBN Co Network

The Basic Access Offer (**BAO**) in respect of each NBN Co Network will comprise a UNI and an AVC (TC-4) with the lowest Data Transfer Rate which is likely to be acquired over the Regulatory Cycle by a material number of End Users for the primary purpose of achieving basic connectivity to the NBN for voice telephony and/or broadband services, determined by reference to the following:

- (a) the number of End Users acquiring each Data Transfer Rate of AVCs (TC-4) being supplied on each NBN Co Network in the Financial Year immediately preceding the Regulatory Cycle in which the operation of the BAO would commence; and
- (b) observed changes in the factor described in clause 2B.2.1(a) over the 3 Financial Years immediately preceding the Regulatory Cycle in which the operation of the BAO would commence,

and include symmetric AVC capacity suitable for the provision of voice telephony similar to that included in the BAO in the previous Regulatory Cycle (or, in the case of the first Regulatory Cycle, the Initial Regulatory Period).

### **2B.2.2 Enhanced Access Offer for NBN Co Fibre Network**

The Enhanced Access Offer (**EAO**) in respect of the NBN Co Fibre Network will comprise a UNI and an AVC (TC-4) with the Data Transfer Rate which is likely to be most frequently acquired over the Regulatory Cycle by End Users for the purpose of broadband connectivity to the NBN, determined by reference to the following:

- (a) the number of End Users acquiring each Data Transfer Rate of AVCs (TC-4) being supplied on the NBN Co Fibre Network in the Financial Year immediately preceding the Regulatory Cycle in which the operation of the EAO would commence; and
- (b) observed changes in the factor described in clause 2B.2.2(a) over the 3 Financial Years immediately preceding the Regulatory Cycle in which the operation of the EAO would commence,

and include symmetric AVC capacity suitable for the provision of voice telephony similar to that included in the EAO in the previous Regulatory Cycle (or, in the case of the first Regulatory Cycle, the Initial Regulatory Period).

### **2B.2.3 Standard Business Offer for NBN Co Fibre Network**

The Standard Business Offer (**SBO**) in respect of the NBN Co Fibre Network will comprise:

- (a) a UNI;
- (b) a Symmetric Access Capacity (TC-1) with the Data Transfer Rate which is likely to be most frequently acquired over the Regulatory Cycle by End Users for the purpose of business-grade broadband connectivity to the NBN, determined by reference to the following:
  - (i) the number of End Users acquiring each Data Transfer Rate of Symmetric Access Capacity (TC-1) being supplied on the NBN Co Fibre Network for the purpose of business-grade

broadband connectivity in the Financial Year immediately preceding the Regulatory Cycle in which the operation of the SBO would commence. For the purposes of this clause, Symmetric Access Capacity (TC-1) with capacity for only a single voice service will not be considered as being used for business-grade connectivity; and

- (ii) observed changes in the factor described in clause 2B.2.3(b)(i) over the 3 Financial Years immediately preceding the Regulatory Cycle in which the operation of the SBO would commence; and
- (c) asymmetric AVC capacity (TC-4) with the Data Transfer Rate that was most frequently acquired by End Users in conjunction with the Symmetric Access Capacity (TC-1) determined in accordance with clause 2B.2.3(b) in the Financial Year immediately preceding the Regulatory Cycle in which the operation of the SBO would commence.

#### **2B.2.4 Connectivity Virtual Circuit Offer (TC-1 and TC-4)**

The Connectivity Virtual Circuit Offer (TC-1 and TC-4) will comprise all Data Transfer Rates on CVC traffic classes TC-1 and TC-4 that are reasonably necessary for an Access Seeker to acquire and use the Access Reference Offers, based on the composition of the Access Reference Offers determined in accordance with clauses 2B.2.1, 2B.2.2 and 2B.2.3.

#### **2B.2.5 Network to Network Interface Offer**

The Network to Network Interface Offer will comprise all the types of NNI that are reasonably necessary for an Access Seeker to acquire and use the Access Reference Offers, based on the composition of the Access Reference Offers determined in accordance with clauses 2B.2.1, 2B.2.2 and 2B.2.3.

#### **2B.2.6 Ancillary Services Offer**

The Ancillary Services Offer will comprise all the types of Ancillary Services that are reasonably necessary for an Access Seeker to acquire and use the Access Reference Offers, based on the composition of the Access Reference Offers determined in accordance with clauses 2B.2.1, 2B.2.2 and 2B.2.3.

#### **2B.2.7 Facilities Access Service Offer**

The Facilities Access Service Offer will comprise all the types of Facilities Access Service that are reasonably necessary for an Access Seeker to acquire and use the Access Reference Offers, based on the composition of the Access Reference Offers determined in accordance with clauses 2B.2.1, 2B.2.2 and 2B.2.3.

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## Schedule 2C Pricing Commitments

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### 2C.1 General

#### 2C.1.1 Scope

This Schedule 2C applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module is in effect.

#### 2C.1.2 NBN Offers

In this Schedule 2C, when Reference Offers, Non-Reference Offers and Other Charges are to be collectively described, they are described as **NBN Offers**. [A reference to an NBN Offer is a reference to a Reference Offer, Non-Reference Offer or Other Charge.](#)

#### 2C.1.3 Non-Reference Offers

The Non-Reference Offers at the start of each Regulatory Cycle are the Non-Reference Offers that were being supplied at the end of the immediately preceding Regulatory Cycle (or, in the case of the first Regulatory Cycle, the Initial Regulatory Period), except any Non-Reference Offers that become Reference Offers pursuant to [a Replacement Module or ACCC Replacement Module Determination clause 4.10 or 4.11.](#)

#### 2C.1.4 Overview

This Schedule 2C sets out the key principles in relation to:

- (a) ~~the how determination by NBN Co of~~ the Maximum Regulated Price of each NBN Offer ~~is to be determined; and~~
- ~~(b) the effect of Tax Change Events on the Maximum Regulated Price of NBN Offers and other matters;~~
- ~~(c)~~(b) the treatment of Zero-Priced ~~Reference~~**NBN** Offers ~~and Zero-Priced Other Charges;~~ and
- ~~(d) the determination by NBN Co of the initial Price of New Offers and New Other Charges and new Prices for Zero-Priced Non-Reference Offers;~~

during the Subsequent Regulatory Period.

## 2C.2 ~~Individual Price Increase Limit~~ Maximum Regulated Prices for NBN Offers

### 2C.2.1 ~~Individual Price Increase Limit for NBN Offers~~ General

- (a) ~~Subject to clause 2C.2.2, NBN Co will ensure that t~~The Price for each NBN Offer ~~specified in any SFAA is not at any point in time during a Financial Year must not be~~ higher than the Maximum Regulated Price of that NBN Offer ~~at that point in time~~, as ~~calculated each Financial Year by reference to the Individual Price Increase Limit for that NBN Offer and any relevant increase under clause 2C.2.1(b) determined in accordance with clause 2C.2.~~
- (b) ~~The Individual Price Increase Limit applicable to an NBN Offer in year t is the greater of:~~
- (i) ~~— \$0; and~~
- (ii) ~~—  $Price_{t-1} * [(1 + CPI_{t-1}^{March}) * (1 - 1.5\%) - 1]$ ,~~
- where:
- (iii) ~~—  $Price_{t-1}$  is the average Price specified in any SFAA for the NBN Offer over the immediately preceding Financial Year (whether that NBN Offer was a Reference Offer, Non-Reference Offer or Other Charge in that year), calculated as the arithmetic average Price specified in such SFAA on the last day of each month of that Financial Year (in this clause 2C.2.1, **Previous Year's Price**);~~
- (iv) ~~—  $CPI_{t-1}^{March}$  is the March Quarter CPI published in the Financial Year preceding the Financial Year to which the Individual Price Increase Limit relates;~~
- (v) ~~— the Individual Price Increase Limit is rounded to the nearest whole cent; and~~
- (vi) ~~— for clarity, the Individual Price Increase Limit will always be a positive or zero value.~~
- (c) ~~NBN Co will determine the Maximum Regulated Price that NBN Co may charge for an NBN Offer in a Financial Year as the greater of:~~
- (i) ~~— the sum of its Previous Year's Price, its Individual Price Increase Limit for that Financial Year and any relevant increase under clause 2C.3; and~~

- ~~(ii) the sum of the Price in any SFAA on the last day of the previous Financial Year and any relevant increase under clause 2C.3.~~

### **2C.2.2 Maximum Regulated Prices for NBN Offers**

Subject to the provisions of the relevant Replacement Module or the relevant ACCC Replacement Module Determination addressing the matters referred to in clause 4.7(d)(i), at any point in time during a Financial Year, the Maximum Regulated Price of a NBN Offer at that point in time is:

- (a) if a Price Review Arrangement applies to the NBN Offer in that Financial Year, determined in accordance with that Price Review Arrangement; or

- (b) if:

(i) paragraph (a) does not apply;

(ii) the NBN Offer ceases to be Zero-Priced in that Financial Year in accordance with clause 2C.3 or ceased to be Zero-Priced in any prior Financial Year in accordance with clause 2C.3; and

(iii) within 24 months of the date the NBN Offer ceased to be Zero-Priced, the ACCC made a Regulatory Determination that specifies a price for that NBN Offer at that point in time,

the price specified in the Regulatory Determination for that point in time.

- (c) if:

(i) neither paragraph (a) nor (b) apply; and

(ii) the NBN Offer ceases to be Zero-Priced in that Financial Year in accordance with clause 2C.3,

the new Price for that NBN Offer introduced by NBN Co; or

- (d) if:

(i) none of the paragraphs (a), (b) or (c) apply;

(ii) the NBN Offer was not supplied or applied before the commencement of the Subsequent Regulatory Period but has been introduced in the Subsequent Regulatory Period; and

(iii) the ACCC has made a Regulatory Determination:

(A) that specifies a price for that NBN Offer at that point in time;

(B) that was made within 24 months of the date the NBN Offer was first supplied or applied; and

(C) for the purposes of which, the ACCC has taken into account the characteristics of other NBN Offers, the costs associated with other NBN Offers, the Revenue associated with other NBN Offers and demand for other NBN Offers, except where the Regulatory Determination is a Binding Rule of Conduct and the ACCC considers that, because of the urgent need to make the Binding Rule of Conduct, it is not practicable to do so,

the price specified in the Regulatory Determination; or

(e) if:

(i) none of paragraphs (a), (b), (c) or (d) apply; and

(ii) the NBN Offer was not supplied or applied before the commencement of the Subsequent Regulatory Period and has been introduced in that Financial Year,

the initial Price for that NBN Offer introduced by NBN Co.

(f) if none of the above paragraphs apply, the greater of:

(i) the sum of its Previous Year's Price and its Individual Price Increase Limit for that Financial Year; and

(ii) the Price on the last day of the previous Financial Year.

### **2C.2.3 Individual Price Increase Limit for NBN Offers**

The Individual Price Increase Limit applicable to an NBN Offer in year  $t$  is the greater of:

(a) \$0; and

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

where:

(c)  $Price_{t-1}$  is the average Price for or of the NBN Offer over the immediately preceding Financial Year (whether that NBN Offer was a Reference Offer, Non-Reference Offer or Other Charge in that year), calculated as the arithmetic average Price on the last day of each month of that Financial Year (in this clause 2C.2, **Previous Year's Price**), disregarding any months occurring prior to the introduction of the NBN Offer. If the ACCC made a Regulatory Determination as

referred to in clause 2C.2.2(b)(iii) or clause 2C.2.2(d)(iii) and that Regulatory Determination took effect part way through the immediately preceding Financial Year, the Prices for the NBN Offer on the last day of each month prior to the ACCC's Regulatory Determination taking effect are to be excluded from the determination of  $Price_{t-1}$  (the Previous Year's Price).

(d)  $CPI_{t-1}^{March}$  is the March Quarter CPI published in the Financial Year preceding the Financial Year to which the Individual Price Increase Limit relates.

(e) The Individual Price Increase Limit is rounded to the nearest whole cent.

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

#### **2C.2.2C.2.4 Exceptions to Individual Price Increase Limit Maximum Regulated Price for NBN Offers**

Clause 2C.2.1 does not apply to:

~~(a) the initial Price, or Prices, of a New Offer or New Other Charge in the Financial Year in which it was introduced;~~

~~(b) the introduction, during a Regulatory Cycle, of a charge applicable to a Zero-Priced NBN Offer;~~

~~(c)~~(a) any notional change in Price, during a Regulatory Cycle, of an NBN Offer or the reduction, removal or cessation of the application of a Discount applicable to that NBN Offer. In other words, in determining the Price of an NBN Offer for the purpose of applying the Individual Price Increase Limit, regard must be had to the Price excluding any Discount applicable to that NBN Offer; or

~~(d)~~(b) any Other Charge that is provided on a “hourly labour rate” or “hourly labour rate plus cost of materials basis”, to which the following will apply:

(i) hourly labour rates may be indexed to the ABS Labour Price Index for Private Sector Construction and may be periodically reset with reference to the relevant rates charged to NBN Co by its contractors; and

(ii) materials will be charged at cost.



~~2C.2.3~~ **2C.2.5 Non-circumvention**

- (a) For the purpose of ensuring that the Individual Price Increase Limit is not subject to circumvention through the arbitrary reduction, removal or cessation of a Discount that may apply to the Price of an NBN Offer:
- ~~(i) — any reduction, removal or cessation of a Discount applicable to an NBN Offer may only occur in accordance with the terms for the reduction, removal or cessation of that Discount specified at the time of initial introduction; and~~
  - ~~(ii) — at the time of initial introduction of a Discount, NBN Co must specify in the relevant SFAA details of the length of, and any conditions associated with, the relevant Discount.~~
- ~~(b) — NBN Co must not introduce an Other Charge for a Reference Offer or Non-Reference Offer if NBN Co's principal purpose in doing so is to circumvent or avoid the operation of the Individual Price Increase Limit.~~

~~2C.2.4~~ **2C.2.6 Treatment of Bundles**

- If:
- (a) an NBN Offer comprises a bundle of one or more Products, Product Components, Product Features, Ancillary Services or types of Facilities Access Service (in this clause 2C.2.6, together a **Bundle**); and
  - (b) NBN Co offers that Bundle for a single Price,
- then that Bundle will be subject to the Individual Price Increase Limit as though it were an individual item.

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~~2C.3~~ **Tax Change Event**

- ~~(a) — NBN Co will be entitled to pass through to Customers and reflect the incremental tax effect in connection with a Tax Change Event that occurs in the Subsequent Regulatory Period by:~~
- ~~(i) — increasing the Maximum Regulated Price of NBN Offers;~~
  - ~~(ii) — amending its Annual Forecast Revenues under clause 2E.3; and~~
  - ~~(iii) — amending the Forecast Real ABBRR and, therefore, the amount that NBN Co is entitled to earn under clause 2E.5.1(a) (if applicable).~~

~~(b) In respect of each Regulatory Cycle, the right under clause 2C.3(a) will be implemented in accordance with the terms of the relevant Replacement Module or, if there is no Replacement Module in effect, in accordance with clause 4.10.~~

## ~~2C.4~~ **2C.3 Treatment of Zero-Priced Reference Offers and Other Charges** NBN Offers

~~(a) If an NBN Offer Reference Offer or Other Charge is Zero-Priced, then that Reference Offer or Other Charge NBN Offer will remain Zero-Priced, unless NBN Co reasonably considers that:~~

~~(i) NBN Co proposes that the NBN Offer cease to be Zero-Priced in accordance with clause 2C.3(b); and~~

~~(ii) the ACCC does not make a New Price Disallowance Determination under clause 2C.3(c).~~

~~(b) NBN Co may propose that an NBN Offer cease to be Zero-Priced by providing no less than 6 months' notice to Access Seekers and the ACCC of its intention that the NBN Offer cease to be Zero-Priced, including the reasons why NBN Co considers that the Zero-Priced NBN Offer meets one or more of the criteria specified in clause 2C.3(f).~~

~~(c) The ACCC may make a determination that an NBN Offer is to remain Zero-Priced (**New Price Disallowance Determination**) no later than the expiry of the notice period referred to in clause 2C.3(b).~~

~~(d) The ACCC may consult with NBN Co and other such persons as the ACCC considers appropriate in relation to NBN Co's proposal under clause 2C.3(b) and must consider any submissions that are received within the time limit specified by the ACCC.~~

~~(e) The ACCC may request that NBN Co give further information on NBN Co's proposal under clause 2C.3(b), in which case the timeframe for making a New Price Disallowance Determination will be extended by the period of time it takes for NBN Co to provide the requested information.~~

~~(a)(f) The ACCC may issue a New Price Disallowance Determination if it is not satisfied that the Zero-Priced NBN Offer meets one or more of the following criteria:~~

~~(i) Customerthe behaviour of one or more Access Seekers in relation to the use of the Reference Offer or Other Charge NBN Offer results in additional costs to NBN Co;~~

- (ii) ~~Customer~~the behaviour of one or more Access Seekers in relation to the use of the ~~Reference Offer or Other Charge~~NBN Offer results in degraded service outcomes for other Customers; or
  - (iii) any other circumstance arises which makes it uneconomic for NBN Co to maintain the ~~relevant Price~~NBN Offer as Zero-Priced.
- (g) The ACCC must publish on its website any New Price Disallowance Determination and its reasons for issuing that New Price Disallowance Determination .
- (h) The ACCC must specify in a New Price Disallowance Determination the period for which the New Price Disallowance Determination will apply, which must not exceed 2 years from the expiry of the notice period referred to in clause 2C.3(b).
- (i) If the ACCC does not make a New Price Disallowance Determination within the required time under clause 2C.3(c), the NBN Offer specified in NBN Co's proposal may cease to be Zero-Priced.
- (j) Nothing in this clause 2C.3 prevents NBN Co from issuing a subsequent notice under clause 2C.3(b) to propose that an NBN Offer cease to be Zero-Priced at any time following the expiry of the New Price Disallowance Determination and where NBN Co issues a subsequent notice, the provisions of this clause 2C.3 will apply in respect of that subsequent notice.
- (b) ~~If NBN Co introduces a new Price for a Reference Offer or an Other Charge that is associated with the supply of a Reference Offer in accordance with clause 2C.4(a), then:~~
- (i) ~~NBN Co will provide no less than 3 months' notice to Access Seekers of its intention to introduce the new Price;~~
  - (ii) ~~at the end of the notification period in clause 2C.4(b)(i), the new Price will become the Price, unless the ACCC makes an Access Determination or Binding Rule of Conduct during the 3 month notification period that relates to the new Price notified under clause 2C.4(b)(i), in which case the Price will be the price as determined in the Access Determination or Binding Rule of Conduct; and~~
  - (iii) ~~the new Price determined in accordance with clause 2C.4(b)(ii) will be the Maximum Regulated Price applicable to that Reference Offer or Other Charge for the Financial Year in which it was introduced.~~

- (c) — If NBN Co introduces a new Price for an Other Charge that is not associated with the supply of a Reference Offer in accordance with clause 2C.4(a), then NBN Co will determine the Price of that Other Charge pursuant to clause 2C.5.
- (d) — NBN Co may withdraw any Other Charge that applies to a Reference Offer or Non-Reference Offer.

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## ~~2C.5 — Initial pricing principles~~

- (a) — If, during the Subsequent Regulatory Period, NBN Co:
  - (i) — introduces or otherwise commences supplying a New Offer;
  - (ii) — introduces or otherwise commences an activity requiring a New Other Charge;
  - (iii) — introduces a new Price for a Zero-Priced Non-Reference Offer;  
or
  - (iv) — introduces a new Price for a Zero-Priced Other Charge that is not associated with the supply of a Reference Offer,then the initial or new Price, or Prices, of that New Offer, New Other Charge, Zero-Priced Non-Reference Offer or Zero-Priced Other Charge will be determined by NBN Co having regard to, among other relevant matters:
  - (v) — uniform national wholesale pricing;
  - (vi) — the Statement of Expectations;
  - (vii) — the nature and extent of market demand;
  - (viii) — the relationship between that New Offer, New Other Charge, Zero-Priced Non-Reference Offer or Zero-Priced Other Charge and other NBN Offers;
  - (ix) — the importance of affordability to drive take-up rates;
  - (x) — NBN Co's long term cost recovery; and
  - (xi) — the projected timeframe for recovery of initial losses.
- (b) — Prior to introducing that New Offer, New Other Charge or new Price for a Zero-Priced Non-Reference Offer or Zero-Priced Other Charge under clause 2C.5(a), NBN Co will publish a pricing rationale statement describing, in qualitative terms, how the initial or new Price was, or Prices were, determined.

~~(c) — Once NBN Co introduces that New Offer, New Other Charge or new Price for a Zero-Priced Non-Reference Offer or Zero-Priced Other Charge under clause 2C.5(a):~~

~~(i) — any New Offer will become a Non-Reference Offer; and~~

~~(ii) — the initial or new Price, or Prices, of that New Offer, New Other Charge, Zero-Priced Non-Reference Offer or Zero-Priced Other Charge will be its Maximum Regulated Price for the Financial Year in which it was introduced.~~

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## Schedule 2D Long Term Revenue Constraint Methodology and Regulatory Asset Base

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### 2D.1 Introduction

#### 2D.1.1 Scope

This Schedule 2D applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module [or ACCC Replacement Module Determination](#) is in effect.

- ~~(a)~~ NBN Co will ensure that Prices set out in, or introduced into, any SFAA for:
- ~~(i)~~ the Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service; and
  - ~~(ii)~~ any new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service,
- are consistent with this Schedule 2D.

#### 2D.1.2 General

- ~~(a)~~ Prices for ~~the Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service it supplies~~ [Reference Offers and Non-Reference Offers supplied or Other Charges imposed](#) during the Subsequent Regulatory Period, ~~but will do so in a manner which is consistent~~ [must be determined consistently](#) with this ~~Schedule 2D~~ Schedule 2D, and must not be higher than the [Maximum Regulated Price determined in accordance with clause 2C.1](#).

~~(a)~~~~(b)~~ This Schedule 2D:

- (i) sets out principles for the application of the Long Term Revenue Constraint Methodology in the Subsequent Regulatory Period;
- (ii) sets out how the ICRA will be calculated and maintained through the Subsequent Regulatory Period [\(if the Methodology Change Event did not occur in the Initial Regulatory Period\)](#);
- (iii) provides that following the Methodology Change Event:
  - (A) the Building Block Revenue Period will commence; and

(B) NBN Co's actual revenues over a multi-year period will be no greater than the total ABBRR attributable to the same period; [and](#)

~~(iv) sets out relevant factors to be considered in the preparation of Operating Expenditure, Capital Expenditure and Revenue forecast information; and~~

~~(v)~~(iv) sets out how the Regulatory Asset Base (**RAB**) for the Relevant Assets will be calculated and updated during the Subsequent Regulatory Period. The RAB is the regulatory value of NBN Co's capital investments.

### 2D.1.3 Designation of Financial Years

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

### 2D.1.4 Calculation of Cumulative Inflation Factor

(a) The  $CIF_t$  is the Cumulative Inflation Factor which is the cumulative product of the June Quarter CPI published for each Financial Year from the SAU Commencement Date, relative to the First Financial Year, that is:

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

where:

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

(b) For Financial Years prior to the First Financial Year, the  $CIF_t$  is defined as:

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

where:

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

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

### 2D.1.5 Calculation of Real Values

During the Subsequent Regulatory Period, when reference is made to real values, this refers to the cost or revenue of the relevant parameter in constant dollar terms of the First Financial Year. Except where a specific means of conversion is set out for a particular value, this will be calculated as follows:

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

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

$$Nominal\ Value_t = Real\ Value_t * CIF_t$$

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

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## 2D.2 Annual Building Block Revenue Requirement

### 2D.2.1 Forecast ABBRR Requirements

- (a) For a given Financial Year  $t$  within a Regulatory Cycle, the Forecast Nominal ABBRR must specify and include the following elements:
- (i) forecast Operating Expenditure, ~~being the expected value of Operating Expenditure~~ for Financial Year  $t$ , which is to include any Operating Expenditure to be incurred pursuant to the Telstra Arrangements or the Optus Arrangements;
  - (ii) forecast nominal regulatory depreciation for Financial Year  $t$ ; ~~which is calculated as the forecast nominal straight line depreciation less the forecast annual CPI indexation of the opening value of the nominal RAB for year  $t$~~ , where:
    - (A) ~~forecast nominal straight line depreciation is calculated as forecast real straight line depreciation multiplied by the Forecast CIF for year  $t$ , estimated~~



~~consistently with all other forecasts used in the Forecast Nominal ABBRR;~~

~~{B}—forecast real straight line depreciation is the straight line depreciation applicable to the forecast opening real value of the Relevant Assets included in the RAB in the current Financial Year  $t$ , determined in regard to the real value of Capital Expenditure less Disposals as included in the RAB (or forecast to be included consistently with the RAB Roll Forward equation set out in clause 2D.7.1(b)) for each Asset Type in each year since the Cost Commencement Date using the remaining life for each Asset Type; and~~

~~{C}—the remaining life for each Asset Type is calculated based on an asset lifetime for each Asset Type determined in a manner consistent with NBN Co's audited accounts and the number of years since the relevant Capital Expenditure was incurred (or forecast to be incurred);~~

~~(iii) a return on capital for Financial Year  $t$ , calculated as the product of by reference to a rate of return and the forecast nominal RAB for Financial Year  $t$ ; and:-~~

~~{A}—a nominal vanilla WACC, forecast for the Regulatory Cycle with reference to:~~

~~the risks involved in providing the NBN Access Service, Ancillary Services and Facilities Access Service;~~

~~a financing structure that meets benchmark standards as to gearing and other parameters for a similar going concern and reflects in other respects best practice;~~

~~a cost of debt and a cost of equity (determined for the Regulatory Cycle using a well-accepted financial model, such as the Capital Asset Pricing Model) that meet benchmark standards as to efficient financing of equity and debt for a similar going concern, having regard where appropriate to past, present and expected future financial conditions; and~~

~~{B}—the opening value of the nominal RAB for year  $t$ , which is to be forecast consistently with the RAB Roll Forward equation set out clause and using the expected value of Capital Expenditure for the years in between when the forecast is made and year  $t$ ; and~~

- (iv) a forecast tax allowance taking into account for Financial Year  $t$ .
- ~~(b) the tax rate to be used in estimating tax liabilities set equal to the corporate tax rate, as amended from time to time;~~
- ~~(c) estimated utilisation of dividend imputation credits;~~
- ~~(d) Annual Forecast Revenues;~~
- ~~(e) forecast tax deductible expenses;~~
- ~~(f) any tax loss carried forward consistent with prior year ABBRR calculations;~~
- ~~(g) taxation asset lifetimes for each Asset Type determined in a manner consistent with the requirements of the Australian Taxation Office; and~~
- ~~(h) tax depreciation applied in prior year ABBRR calculations.~~
- (b) For the avoidance of doubt, the Forecast Nominal ABBRR may include elements other than those specified in clauses 2D.2.1(a)(i) to (iv).
- (c) For the purposes of clause 2D.2.1(a)(iii), the rate of return will be determined by estimating a nominal vanilla WACC having regard to the risks involved in making the investment.
- ~~(i)(d) The Forecast Nominal ABBRR must be calculated in such a way as to satisfy the NPV=0 expectation during the Regulatory Cycle ~~and across Regulatory Cycles~~, i.e. that the expected net present value of the relevant future cash flow inputs (e.g. relating to Operating Expenditure, Capital Expenditure, ~~Tax~~tax and Revenue, with adjustments as required to account for the timing of how such amounts are recognised) and initial and terminal values of relevant stock inputs (e.g. RAB and ICRA) during the Regulatory Cycle ~~and across Regulatory Cycles~~ must be zero when evaluated using the forecast ~~nominal vanilla WACC~~rate of return on capital.~~
- ~~(i)(e) The Forecast Real ABBRR for Financial Year  $t$  will be calculated as:~~

$$Real\ ABBRR_t^F = \frac{Nominal\ ABBRR_t^F}{CIF_t^F}$$

where:

$Real\ ABBRR_t^F$  is the Forecast Real ABBRR for Financial Year  $t$ .

$Nominal\ ABBRR_t^F$  is the Forecast Nominal ABBRR for Financial Year  $t$ .

$CIF_t^F$  is the Forecast CIF for [Financial Year t](#), estimated consistently with all other forecasts used in the Forecast Nominal ABBRR.

~~(k)(f)~~ [In addition to meeting the Regulatory Cycle forecast requirements as set out in Clause 2D.6.1, a](#)All forecasts used in this clause 2D.2.1 must use [the same consistent](#) base assumptions [in regard with respect](#) to demand, economic conditions, unit costs and asset management.

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## 2D.3 Forecast Revenue

### 2D.3.1 Forecast Revenue during Initial Cost Recovery Period

- (a) For a [Financial Year](#) within a Regulatory Cycle that is anticipated to be in the Initial Cost Recovery Period, the Annual Forecast Revenue for that [Financial Year](#) will be the expected value of the amount of such revenue that NBN Co is expected to earn in that [Financial Year](#).
- (b) For clarity, for a [Financial Year](#) during the Regulatory Cycle that is anticipated to be in the Initial Cost Recovery Period, the Annual Forecast Revenue for that [Financial Year](#) may be above or below the Forecast Nominal ABBRR.

### 2D.3.2 Forecast Revenue during Building Block Revenue Period

For any [Financial Year](#) within a Regulatory Cycle that is forecast to be within the Building Block Revenue Period, the Annual Forecast Revenue [for that Financial Year](#) will equal the Forecast Nominal ABBRR.

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## 2D.4 Initial Cost Recovery Account

### 2D.4.1 Introduction

If the Methodology Change Event:

- (a) occurred in the Initial Regulatory Period, then each Financial Year of the Subsequent Regulatory Period will be in the Building Block Revenue Period; or
- (b) did not occur in the Initial Regulatory Period, then:
  - (i) the Subsequent Regulatory Period will start and continue in the Initial Cost Recovery Period until the Methodology Change Event occurs; and
  - (ii) the ICRA that was established in the Initial Regulatory Period will be rolled forward into the Subsequent Regulatory Period

[in accordance with clause 2D.4.4](#) and will continue to be calculated [in accordance with that clause](#) for the purposes of assessing whether and when NBN Co has achieved full recovery of its ~~ABRR-ICRA~~ and whether and when the Initial Cost Recovery Period ends.

#### 2D.4.2 Transition from Initial Cost Recovery Period to Building Block Revenue Period when the ICRA is extinguished

If the Methodology Change Event occurs during the Subsequent Regulatory Period:

- (a) the Initial Cost Recovery Period will cease at the end of the Financial Year in which the Methodology Change Event occurs; and
- (b) the Building Block Revenue Period will commence at the beginning of the Financial Year immediately following the Financial Year in which the Methodology Change Event occurs.

#### 2D.4.3 Unrecovered Cost

- (a) If the Subsequent Regulatory Period starts within the Initial Cost Recovery Period, then the Unrecovered Cost for each Financial Year  $t$  of the Initial Cost Recovery Period is:

$$\text{Unrecovered Cost}_t = \left( \text{Real ABRR}_t^F - \frac{\text{Annual Forecast Revenue}_t}{\text{CIF}_t^F} \right) * \text{CIF}_t$$

where:

$\text{Real ABRR}_t^F$  is the Forecast Real ABRR for the relevant Financial Year  $t$ , [calculated](#) in accordance with clause **Error! Reference source not found.**

$\text{Annual Forecast Revenue}_t$  is the Forecast Annual Revenue for the relevant Financial Year  $t$ .

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

#### 2D.4.4 Initial Cost Recovery Account

- [\(a\)](#) If the Subsequent Regulatory Period starts within the Initial Cost Recovery Period, then the ICRA is:

- [\(i\)](#) at the start of the Subsequent Regulatory Period, equal to the ICRA at the end of the Initial Regulatory Period, [determined in accordance with clause 1F.5](#); and

(ii) \_\_\_\_\_ for each Financial Year of the remainder of the Initial Cost Recovery Period:

$$\begin{aligned} \underline{ICRA_{t+1}^{start} = ICRA_t^{end}} \\ \underline{= ICRA_t^{start} * (1 + WACC_{real\ vanilla, t}^F)(1 + CPI_t^{June}) + Unrecovered Cost_t} \end{aligned}$$

$$\begin{aligned} ICRA_{t+1}^{start} = ICRA_t^{end} \\ = ICRA_t^{start} * (1 + R_{real, t}^F)(1 + CPI_t^{June}) + Unrecovered Cost_t \end{aligned}$$

where:

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

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

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

$R_{real, t}^F$  is the forecast real rate of return for the current Financial Year (t).

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

$Unrecovered Cost_t$  is the Unrecovered Cost for the current Financial Year (t).

(b) \_\_\_\_\_ For the purposes of clause 2D.4.4(a)(i), the ICRA at the end of the Initial Regulatory Period may include an amount of estimated Unrecovered Cost for any part of the Initial Regulatory Period for which the actual Revenue and or actual ABBRR as determined by the ACCC in an LTRCM Determination is not available.

#### 2D.4.5 Likely Methodology Change Event Notice

- (a) NBN Co will use reasonable endeavours to issue a Likely Methodology Change Event Notice to [CustomersAccess Seekers](#) and the ACCC on or around 5 years prior to the date that NBN Co expects the Methodology Change Event will occur. This clause 2D.4.5(a) will not apply if NBN Co has previously issued a Likely Methodology Change Event Notice during the Initial Regulatory Period.
- (b) NBN Co will issue an updated Likely Methodology Change Event Notice to [CustomersAccess Seekers](#) and the ACCC each year following any previous Likely Methodology Change Event Notice (whether issued during the Initial Regulatory Period or the Subsequent Regulatory

Period) until the Methodology Change Event has occurred. This clause 2D.4.5(b) will not apply if the Methodology Change Event has already occurred.

#### **2D.4.6 Pricing Intention Statement**

- (a) NBN Co will use reasonable endeavours to issue a Pricing Intention Statement to ~~Customers~~[Access Seekers](#) and the ACCC on or around 3 years prior to the date that NBN Co expects the Methodology Change Event will occur. This clause 2D.4.6(a) will not apply if NBN Co has previously issued a ~~Likely Methodology Change Event Notice~~[Pricing Intention Statement](#) during the Initial Regulatory Period.
- (b) The Pricing Intention Statement will include the following:
  - (i) the forecast average Price change, averaged across all Reference Offers, Non-Reference Offers and Other Charges, in the Financial Year immediately following the Financial Year in which NBN Co expects the Methodology Change Event to occur;
  - (ii) NBN Co's estimate of how the forecast average Price change [referred to](#) in clause ~~2D.4.6(b)(i)~~2D.4.6(b)(i) will impact on the individual Price of each Reference Offer, Non-Reference Offer and Other Charge;
  - (iii) any transitional arrangements that NBN Co intends to apply in relation to changes in individual Prices; and
  - (iv) a description, in qualitative terms, of how NBN Co has determined the estimated individual Prices and transitional arrangements.
- (c) NBN Co will issue an updated Pricing Intention Statement to ~~Customers~~[Access Seekers](#) and the ACCC each year following any previous Pricing Intention Statement (whether issued during the Initial Regulatory Period or the Subsequent Regulatory Period) until the Methodology Change Event has occurred. This clause ~~2D.4.6(c)~~2D.4.6(c) will not apply if the Methodology Change Event has already occurred.
- (d) NBN Co will publish each Pricing Intention Statement on NBN Co's Website for access by ~~Customers and~~ Access Seekers.

#### **2D.4.7 Carry Forward Revenue Adjustment**

- (a) At the end of the last Financial Year of the Initial Cost Recovery Period (t), the balance of the Unrecovered Cost that has not been applied to

the ICRA in accordance with clause ~~2D.4.4~~2D.4.4 will be the Carry Forward Revenue Adjustment. That is:

$$\frac{\text{Carry Forward Revenue Adjustment}_t}{= \text{Unrecovered Cost}_t + \text{ICRA}_t^{\text{start}} * (1 + \text{WACC}_{\text{real vanilla},t}^F)(1 + \text{CPI}_t^{\text{June}})}$$

*Carry Forward Revenue Adjustment<sub>t</sub>*

$$= \text{Unrecovered Cost}_t + \text{ICRA}_t^{\text{start}} * (1 + R_{\text{real},t}^F)(1 + \text{CPI}_t^{\text{June}})$$

where:

Unrecovered Cost<sub>t</sub> is the Unrecovered Cost for the current Financial Year (t).

ICRA<sub>t</sub><sup>start</sup> is the ICRA at the start of the current Financial Year (t).

R<sub>real,t</sub><sup>F</sup> is the forecast real rate of return for the current Financial Year (t).

CPI<sub>t</sub><sup>June</sup> means the June Quarter CPI for Financial Year (t).

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

## 2D.5 Building Block Revenue Period

### 2D.5.1 ABBRR Revenue constraint in Building Block Revenue Period

- (a) For those Financial Years in the Regulatory Cycle that are in the Building Block Revenue Period, subject to clauses 2C.2, 2D.5.2 and paragraphs (b) and (c), NBN Co will be entitled to earn Revenue in those Financial Years up to the total sum of the Forecast Real ABBRR for those same Financial Yearsthe same Regulatory Cycle subject to clause 2D.5.1(b) as set out in the Replacement Module or ACCC Replacement Module Determination.
- (b) For the purposes of clause ~~2D.5.1(a)~~2D.5.1(a):
- (i) forecast Revenue is adjusted to nominal terms using actual CPI; and
- (ii) forecast Revenue and actual Revenue earned are evaluated in present value terms with reference to using the forecast real vanilla WACC rate of return on capital calculated for the

purposes of clause 2D.2.1(a)(iii), adjusted to nominal terms using actual CPI;

- (c) The Revenue that NBN Co will be entitled to earn will be adjusted from the amount NBN Co would otherwise be entitled to earn pursuant to clause 2D.5.1(a) by:
- (i) any relevant tax effects, including any incremental tax effect in connection with a Tax Change Event, will be taken into account any change as a result of a change in tax determined in accordance with the provisions of the relevant Replacement Module or the relevant ACCC Replacement Module Determination addressing the matters referred to in clause 4.7(d);
  - (ii) if the Methodology Change Event occurred prior to the last Financial Year of the Initial Regulatory Period and the Regulatory Cycle being evaluated is the first Regulatory Cycle, ~~then~~ the present value of the Revenue Variation, evaluated consistently with clause 2D.5.1(b)(ii), calculated under clause 1F.6.2 for the last Financial Year of the Initial Regulatory Period ~~will be added to the amount of Revenue that NBN Co will be entitled to earn in the first Regulatory Cycle;~~
  - (iii) if the Methodology Change Event occurred in the previous Financial Year and:
    - (A) if the previous Financial Year was in the Initial Regulatory Period, ~~then~~ the present value of the Carry Forward Revenue Adjustment, evaluated consistently with clause 2D.5.1(b)(ii), calculated under clause 1F.5.3 ~~will be added to the amount of Revenue that NBN Co will be entitled to earn in the current Regulatory Cycle;~~ or
    - ~~(B) —~~ if the previous Financial Year was in the Subsequent Regulatory Period, ~~then~~ the present value of the Carry Forward Revenue Adjustment, evaluated consistently with clause 2D.5.1(b)(ii), calculated under clause 2D.4.7 ~~will be added to the amount of Revenue that NBN Co will be entitled to earn in the current Regulatory Cycle;~~ and
    - ~~(B) —~~ the amounts under clause 2D.5.2 ~~will be added to or subtracted from (as the case may be) the amount of Revenue that NBN Co will be entitled to earn.~~



## 2D.5.2 Amounts to be carried forward between Regulatory Cycles

- (a) This clause ~~2D.5.2~~2D.5.2 will only apply in Regulatory Cycles that start in the Building Block Revenue Period.
- (b) If, in ~~the previous~~any immediately preceding Regulatory Cycle, NBN Co earned less Revenue than the amount of Revenue that NBN Co was entitled to earn for that Regulatory Cycle under clause 2D.5.1 (in this clause 2D.5.2(b), such difference being the **Under-recovered Amount**), the Revenue that NBN Co would otherwise have been entitled to earn in the current Regulatory Cycle under clause 2D.5.1, will be increased by the present value of the Under-recovered Amount, evaluated consistently with clause ~~2D.5.1(b)(ii)~~2D.5.1(b)(ii), ~~will be added to the amount of Revenue that NBN Co will be entitled to earn under clause 2D.5.1~~2D.5.1 in the current Regulatory Cycle.
- (c) If, in ~~the previous~~any immediately preceding Regulatory Cycle, NBN Co earned more Revenue than the amount of Revenue that NBN Co was entitled to earn under clause 2D.5.1 (in this clause 2D.5.2(c), such difference being the **Over-recovered Amount**), the Revenue that NBN Co would otherwise have been entitled to earn in the current Regulatory Cycle under clause 2D.5.1, will be decreased by the present value of the Over-recovered Amount, evaluated consistently with clause 2D.5.1(b)(ii), ~~will be subtracted from the amount of Revenue that NBN Co will be entitled to earn under clause 2D.5.1~~2D.5.1 in the current Regulatory Cycle.

## 2D.5.3 Last Regulatory Cycle of SAU Term

If the last Regulatory Cycle of the SAU Term is in the Building Block Revenue Period, NBN Co will not be entitled to earn and retain more than the amount of Revenue calculated under clause 2D.5.1 (together with any amounts carried forward under clause 2D.5.2) in that Regulatory Cycle.

## ~~2D.6~~ **Relevant Considerations for Forecasts**

### ~~2D.6.1~~ **Regulatory Cycle forecast requirements**

- ~~(a)~~ Operating Expenditure forecasts must be based on the expected value of prudent and efficient Operating Expenditure, having regard to the following factors:
- ~~(i)~~ the Network Design Rules as updated by NBN Co from time to time in accordance with clause 2D.8;
- ~~(ii)~~ NBN Co's level of annual Operating Expenditure in the previous Regulatory Cycle or, in the case of the first Regulatory

- Cycle, the level of annual Operating Expenditure in the 3 years prior to the date of the Replacement Module Application;
- (iii) — any relevant regulatory obligations, or changes to such obligations, applicable to NBN Co providing the relevant services;
  - (iv) — any other matters relevant to whether forecast Operating Expenditure reflects prudent and efficient costs; and
  - (v) — any amounts to be incurred in the categories of Operating Expenditure of the same type referred to in clause **Error! Reference source not found.** (which will be deemed to reflect prudent and efficient costs).
- (b) — Capital Expenditure forecasts must be based on the expected value of prudent and efficient Capital Expenditure, having regard to the following factors:
- (i) — the Network Design Rules as updated by NBN Co from time to time in accordance with clause 2D.8;
  - (ii) — NBN Co's level of Capital Expenditure in the previous Regulatory Cycle or, in the case of the first Regulatory Cycle, the level of annual Capital Expenditure in the 3 years prior to the date of the Replacement Module Application;
  - (iii) — the extent to which NBN Co's asset management and planning framework reflects best practice;
  - (iv) — any relevant regulatory obligations, or changes to such obligations, applicable to the relevant services;
  - (v) — any other matters relevant to whether forecast Capital Expenditure reflects prudent and efficient costs; and
  - (vi) — any amounts to be incurred in the categories of Capital Expenditure of the same type referred to in clause **Error! Reference source not found.** (which will be deemed to reflect prudent and efficient costs).
- (c) — Revenue forecasts (during the Initial Cost Recovery Period) and demand forecasts must be based on the expected values of Revenue and demand as determined using an appropriate forecasting methodology and having regard to the following factors:
- (i) — reasonable assumptions about the key drivers of demand, including expected future Prices for Reference Offers, Non-Reference Offers and Other Charges;

- (ii) ~~the best available information, including historical data that can identify trends in revenue and demand; and~~
- (iii) ~~current demand and economic conditions.~~

## ~~2D.7~~2D.6 **Calculation of the Regulatory Asset Base**

### **2D.6.1 RAB Roll Forward Arrangements**

In this clause 2D.6, RAB Roll Forward Arrangements means, in relation to a Regulatory Cycle, the terms of the Replacement Module or the ACCC Replacement Module Determination for the Regulatory Cycle that pertain to the matters referred to in clause 4.8.

### **2D.6.2 RAB at the Commencement of the Subsequent Regulatory Period**

- (a) The RAB at the commencement of the Subsequent Regulatory Period will be equal to the RAB at the end of the Initial Regulatory Period, determined in accordance with clause 1E.2.
- (b) The RAB at the end of the Initial Regulatory Period may be calculated on the basis that an amount of Capital Expenditure or Disposals may be estimated for any part of the Initial Regulatory Period for which the amount of the actual Capital Expenditure or the actual Disposals is not available.

### **2D.6.3 RAB roll forward**

- (a) The RAB at the commencement of a Regulatory Cycle other than the first Regulatory Cycle will be equal to the RAB at the end of the immediately prior Regulatory Cycle, calculated according to the following methodology:

$$\begin{aligned}
 RAB_{\text{Cycle}}^{\text{start}} &= RAB_{\text{Cycle}-1}^{\text{end}} \\
 &= RAB_{\text{Cycle}-1}^{\text{start}} + \text{Capex}_{\text{Cycle}-1} \\
 &\quad - \text{Disposals}_{\text{Cycle}-1} - \text{Depreciation}_{\text{Cycle}-1}
 \end{aligned}$$

where:

Cycle is the Regulatory Cycle for which the RAB at the start of the Financial Year is being calculated.

$RAB_{\text{Cycle}}^{\text{start}}$  is the RAB at the start of the Regulatory Cycle (Cycle).

$RAB_{\text{Cycle}-1}^{\text{end}}$  is the RAB at the end of the immediately prior Regulatory Cycle (Cycle-1).

$RAB_{Cycle-1}^{start}$  is the RAB at the start of the immediately prior Regulatory Cycle (Cycle-1).

$Capex_{Cycle-1}$  is the Capital Expenditure during the immediately prior Regulatory Cycle (Cycle-1).

$Disposals_{Cycle-1}$  is the value of any Disposals of Relevant Assets during the immediately prior Regulatory Cycle (Cycle-1).

$Depreciation_{Cycle-1}$  is the value of the depreciation applicable to the opening value of the Relevant Assets included in the RAB during the immediately prior Regulatory Cycle (Cycle-1).

- ~~(a)~~(b) For the purposes of clause 2D.6.3(a), Capital Expenditure and the value of depreciation during a Regulatory Cycle will be determined in accordance with the RAB Roll Forward Arrangements applicable in that immediately preceding Regulatory.
- (c) For the purposes of clause 2D.6.3(a), Capital Expenditure, the value of Disposals and the value of depreciation may be calculated on the basis that an amount of Capital Expenditure, the value of Disposals of Relevant Assets or the value of depreciation may be estimated for any part of the relevant Regulatory Cycle (Cycle-1) for which actual values are not available.

#### **2D.6.4 Treatment of Capital Expenditure in RAB roll forward**

The method for determining the amount of Capital Expenditure in a Regulatory Cycle to be included in the value of RAB at the start of the subsequent Regulatory Cycle will be:

- (a) in accordance with the following rules:
- (i) where the sum of all actual Capital Expenditure incurred by NBN Co in connection with the design, engineering, construction, replacement and augmentation of the Relevant Assets in the first-mentioned Regulatory Cycle is less than or equal to the sum of the forecast Capital Expenditure used to set the Forecast Nominal ABBRR for that Regulatory Cycle under clause 2D.2.1 (after accounting for the difference between actual and forecast CPI), all of the Capital Expenditure incurred by NBN Co is to be included in the RAB for the subsequent Regulatory Period;
- (ii) where the sum of all actual Capital Expenditure incurred by NBN Co in connection with the design, engineering, construction, replacement and augmentation of the Relevant Assets in the first-mentioned Regulatory Cycle exceeds the

sum of the forecast Capital Expenditure used to set the Forecast Nominal ABBRR for that Regulatory Cycle under clause 2D.2.1 (after accounting for the difference between actual and forecast CPI):

(A) the amount of Capital Expenditure determined by the ACCC pursuant to any power conferred on the ACCC under the RAB Roll Forward Arrangements applicable to the first-mentioned Regulatory Cycle, which amount must be no less than the sum of forecast of Capital Expenditure used to set the Forecast Nominal ABBRR for that Regulatory Cycle under clause 2D.2.1, is to be included in the RAB at the start of the subsequent Regulatory Period; or

(B) all of the Capital Expenditure incurred by NBN Co is to be included in the RAB for the subsequent Regulatory Period; or

(b) in accordance with any another method for the treatment of capital expenditure in establishing regulatory asset base values that is adopted in any other regime for the economic regulation of infrastructure services.

#### **2D.6.5 Depreciation for RAB roll forward**

The method for determining the amount of depreciation in a Regulatory Cycle to be reflected in the value of the RAB at the commencement of the subsequent Regulatory Cycle will be based on actual Capital Expenditure or forecast Capital Expenditure, or any other method for accounting for depreciation in establishing regulatory asset base values that is adopted in any other regime for the economic regulation of infrastructure services.

#### **2D.6.6 Role of ACCC in RAB roll forward**

The ACCC may perform such functions or exercise such powers in the determination of the value of the RAB at the start of a Regulatory Cycle as are conferred on it by the RAB Roll Forward Arrangements applicable to the immediately preceding Regulatory Cycle.

#### **2D.7.22D.6.7 Calculation of forecast Real RAB within Regulatory Cycle**

(a) For the purposes of calculating the Forecast Nominal ABBRR pursuant to clause 2D.2.1(a), ~~The~~ the Real RAB at the start of each Financial Year in a Regulatory Cycle other than the first Financial Year of the Regulatory Cycle will be forecast according to the following methodology:

~~at the commencement of the Subsequent Regulatory Period, equal to the Real RAB at the end of the Initial Regulatory Period; and~~

~~rolled forward annually according to the following methodology:~~

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

$$\text{Real Forecast RAB}_t^{\text{start}} = \text{Real Forecast RAB}_{t-1}^{\text{end}}$$

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

where:

$t$  is the Financial Year ~~being evaluated~~ for which a forecast of the Real RAB at the start of the Financial Year is being calculated.

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

Real Forecast  $\text{RAB}_{t-1}^{\text{end}}$  is the forecast of the Real RAB at the end of the ~~current~~ immediately prior Financial Year ( $t-1$ ).

Real Forecast  $\text{RAB}_{t-1}^{\text{start}}$  is the forecast of the Real RAB at the start of the ~~current~~ immediately prior Financial Year ( $t-1$ ).

Real Forecast  $\text{Capex}_{t-1}$  is the forecast of prudent and efficient real Capital Expenditure in connection with the design, engineering, construction, replacement and augmentation of the Relevant Assets for the relevant Financial Year ( $t-1$ ), adjusted to reflect the timing of actual Capital Expenditure during that Financial Year, calculated using the following formula. This Capital Expenditure excludes any capital contributions of network assets including any Capital Expenditure to be incurred pursuant to the Telstra Arrangements or the Optus Arrangements.

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

where:

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

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

where:

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

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

$Real\ Forecast\ Disposals_t$  is the forecast of the real forecast value of any Disposals of Relevant Assets during the current immediately prior Financial Year ( $t-1$ ), adjusted to reflect the timing of actual forecast Disposals during that Financial Year, calculated using the following formula:

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

where:

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

$Real\ Straight\ Line\ Forecast\ Depreciation_{t-1}$  is the straight line forecast of the real value of the depreciation applicable to the opening real value of the Relevant Assets included in the forecast Real RAB in the current immediately prior Financial Year ( $t-1$ ), determined in accordance with the Roll Forward Arrangements, determined using asset lifetimes consistent with those used in forecasting ABBRR in clause 2D.2.1(a)(ii)(C).

## ~~2D.7.3~~ 2D.6.8 Calculation of Nominal RAB

(a) The Nominal RAB will be:

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

and:

$$\begin{aligned} Nominal\ RAB_t^{start} &= Nominal\ RAB_{t-1}^{end} \\ &= CIF_{t-1} * Real\ RAB_{t-1}^{end} \\ &= CIF_{t-1} * Real\ RAB_t^{start} \end{aligned}$$

where:

*Nominal RAB<sub>t</sub><sup>start</sup>* is the Nominal RAB at the start of the relevant Financial Year (t).

*Nominal RAB<sub>t</sub><sup>end</sup>* is the Nominal RAB at the end of the relevant Financial Year (t).

*Real RAB<sub>t</sub><sup>start</sup>* is the Real RAB at the start of the relevant Financial Year (t).

*Real RAB<sub>t</sub><sup>end</sup>* is the Real RAB at the end of the relevant Financial Year (t).

(b) The Nominal Forecast RAB will be:

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

and:

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

where:

*Nominal Forecast RAB<sub>t</sub><sup>start</sup>* is the Nominal Forecast RAB at the start of the relevant Financial Year (t).

*Nominal Forecast RAB<sub>t</sub><sup>end</sup>* is the Nominal Forecast RAB at the end of the relevant Financial Year (t).

*Real Forecast RAB<sub>t</sub><sup>start</sup>* is the Real Forecast RAB at the start of the relevant Financial Year (t).

*Real Forecast RAB<sub>t</sub><sup>end</sup>* is the Real Forecast RAB at the end of the relevant Financial Year (t).

## ~~2D.8 — Network Design Rules~~

### ~~2D.8.1 — Introduction~~

- (a) ~~The Network Design Rules will be updated during the Subsequent Regulatory Period to reflect changes in the design of the NBN Co Network in accordance with this clause 2D.8.~~
- (b) ~~During the Subsequent Regulatory Period, the Network Design Rules will only be used as a factor to which regard must be had in determining the forecast Operating Expenditure and forecast Capital Expenditure in accordance with clauses 2D.6.1(a) and 2D.6.1(b).~~



### **2D.8.2 Design principles for the Relevant Assets**

- (a) NBN Co will ensure that the Network Design Rules for the Relevant Assets satisfy the design principles set out in clause 2D.8.2(b).
- (b) The design principles for the Relevant Assets include:
  - (i) in respect of each NBN Co Network, NBN Co is to comply with the most recent Statement of Expectations, including with respect to the network footprint, speed requirements and other applicable matters set out in the most recent Statement of Expectations;
  - (ii) in respect of the NBN Co Networks and the Relevant Assets generally:
    - (A) the Relevant Assets are to have a network availability that meets any applicable law;
    - (B) the location of POIs within the NBN Co Network will be those identified in the POI List;
    - (C) NBN Co is to use existing infrastructure for the NBN Co Network where it is economically and technically feasible to do so; and
    - (D) there is to be a path for technology upgrade of the Relevant Assets, to the extent possible.

### **2D.8.3 Updating the Network Design Rules**

- (a) NBN Co may update the Network Design Rules in order to reflect a change in the design, engineering or construction of the NBN Co Network which:
  - (i) improves the performance or functionality of the Relevant Assets and results in the same or lower Total Cost of Ownership; or
  - (ii) achieves savings in the Total Cost of Ownership; or
  - (iii) is reasonably necessary to establish and maintain the quality, reliability and security of the Relevant Assets or the supply of the Product Components; or
  - (iv) is made in connection with compliance with any legal, regulatory or administrative requirement;
  - (v) is made in connection with the satisfaction of the most recent Statement of Expectations; or

- ~~(vi) is made in connection with the implementation of a product development process that has been introduced in accordance with Schedule 2E (Product Development and Withdrawal).~~
- ~~(b) NBN Co may also update the Network Design Rules in accordance with:
  - ~~(i) the terms of any variation to this Special Access Undertaking made pursuant to clause 7.1 and accepted by the ACCC in accordance with section 152CBG of the CCA; or~~
  - ~~(ii) any Access Determination or Binding Rule of Conduct made by the ACCC to the extent it is not inconsistent with the terms of this Special Access Undertaking and which otherwise complies with Part XIC of the CCA.~~~~
- ~~(c) NBN Co will promptly provide any updated Network Design Rules to the ACCC.~~

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## Schedule 2E Product Development and Withdrawal

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### 2E.1 General

#### 2E.1.1 Scope

(a) This ~~Schedule 2E~~~~Error! Reference source not found.~~ applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or ACCC Replacement Module Determination is in effect.

(b) Notwithstanding any other provision of this Schedule 2E, NBN Co must comply with any applicable requirements in relation to the identification, selection, consultation and endorsement of any network change.

#### 2E.1.2 Product development principles

(a) The following general principles apply to NBN Co's development of Products, Product Components, ~~and~~ Product Features, Ancillary Services and types of Facilities Access Service (referred to collectively in this clause 2E.1.2 as **Products**):

(i) NBN Co is committed to developing Products that Customers Access Seekers want, that have sufficient demand to be commercially viable and from which ~~Customers~~Access Seekers gain value;

(ii) NBN Co's obligations:

(A) to implement Australian Government policy communicated to it (including in the Statement of Expectations) by the Shareholder Ministers; and

(B) under the CCA and the NBN Companies Act, determine the permitted scope of its activities and the Products that it can develop and supply, including the requirement that all Products be available on a wholesale-only, open access, non-discriminatory basis, to all CustomersAccess Seekers; and

(iii) NBN Co wishes to encourage CustomerAccess Seeker and Consumer Advocacy Group participation in the design of Products, and facilitate Customer engagement and consultation in relation to Product Ideas, to enable NBN Co to fulfil the commitment described in clause 2E.1.2(a)(i) in a manner consistent with NBN Co's scope of permitted activities as described in clause 2E.1.2(a)(ii).

- (b) Accordingly, NBN Co will utilise a ~~Customer focussed~~ product development process which seeks ~~Customer Access Seeker and Consumer Advocacy Group~~ input as part of the process of developing detailed design requirements.

### 2E.1.3 Application of this Schedule

- (a) This **Error! Reference source not found.** sets out the process that NBN Co will apply to the introduction, variation or withdrawal of Products, Product Components, ~~and~~ Product Features, Ancillary Services and types of Facilities Access Service, subject to clause 2E.6.1.
- (b) This **Error! Reference source not found.** does not apply in respect of any of the following:
- (i) the introduction of a Product, Product Component, ~~or~~ Product Feature, Ancillary Service or type of Facilities Access Service covered by, or contemplated within, the Initial Product Roadmap that is an Initial Product;
  - (ii) the introduction of a Product, Product Component, ~~or~~ Product Feature, Ancillary Service or type of Facilities Access Service that NBN Co is obliged to offer as a result of a licence condition imposed under section 41(1) of the NBN Companies Act but only to the extent that the specification of that Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service is prescribed by that licence condition;
  - (iii) a minor variation or enhancement to a Product, Product Component or Product Feature within the terms of clause 2E.5; and
  - (iv) subject to clause 2E.6.5(b), the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that NBN Co is required to withdraw for the reasons as referred to in clause 2E.6.5.

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## 2E.2 Withdrawal – ~~Access Seeker Customer Focussed~~ Approach

- (a) Subject to this clause 2E.2 and to clause 2E.6, NBN Co may withdraw Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service subject to NBN Co meeting its commitments set out in clauses 2E.3 and 2E.4 of this Schedule 2E.

- (b) Any withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service must be [Customer-focussed on Access Seekers](#) and [NBN Co](#) will first encourage [Customer Access Seeker and Consumer Advocacy Group](#) feedback on NBN Co proposals to withdraw a Product and be responsive to any [Customer](#) suggestions in relation to that withdrawal.

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## 2E.3 Product Roadmap

- (a) NBN Co will publish and maintain a product roadmap in respect of Products, Product Components, ~~and~~ Product Features, [Ancillary Services and types of Facilities Access Service](#) (as applicable).
- (b) The product roadmap will be made available on NBN Co's Website.

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## 2E.4 Development

### 2E.4.1 Product Development Forum

- (a) NBN Co will implement a product development process through which NBN Co will engage with [Customers Access Seekers and Consumer Advocacy Groups](#) in respect of Product development (**Product Development Forum**).
- (b) NBN Co will make the Product Development Forum open to participation by all [Customers Access Seekers and Consumer Advocacy Groups](#). ~~For the purposes of this Schedule 2E and the processes then applying to the Product Development Forum only, the term "Customer" may, at NBN Co's discretion, include an Access Seeker which is not already a Customer if NBN Co reasonably considers that the Access Seeker has a genuine intention to enter into an Access Agreement.~~
- (c) NBN Co will ensure that the Product Development Forum:
  - (i) identifies and records all Product Ideas ~~from Customers~~;
  - (ii) is the primary forum through which:
    - (A) Product Ideas are developed, refined and disseminated; and
    - (B) NBN Co will engage in any applicable [customer](#) engagement and endorsement process in respect of any network change required for the implementation of the Product Idea;

- (iii) provides a forum that facilitates an open and consultative dialogue with Customers Access Seekers and Consumer Advocacy Groups in respect of Product Ideas for new Products, Product Components, ~~and~~ Product Features, Ancillary Services and types of Facilities Access Service and for enhancements and variations to existing Products, Product Components, ~~and~~ Product Features, Ancillary Services and types of Facilities Access Service whilst respecting ~~Customers'~~the confidential information and Intellectual Property Rights of Access Seekers and Consumer Advocacy Groups;
- (iv) provides a forum for the development of Product Ideas into Products, Product Components, ~~and~~ Product Features, Ancillary Services and types of Facilities Access Service to be offered to Customers Access Seekers;
- (v) provides a forum for Customers Access Seekers and Consumer Advocacy Groups to:
  - (A) obtain information about NBN Co's product roadmap, including existing Products, Product Components, ~~and~~ Product Features, Ancillary Services and types of Facilities Access Service;
  - (B) assist NBN Co to determine whether there is sufficient demand for proposed Product Ideas; and
  - (C) provide information and input to assist NBN Co to determine which Product Ideas to develop and in which order of priority; and
- (vi) provides a forum for NBN Co to discuss, and Customers Access Seekers and Consumer Advocacy Groups to provide feedback in relation to, the withdrawal of Products, Product Components, ~~or~~ Product Features Ancillary Services or types of Facilities Access Service and related issues.

#### 2E.4.2 Processes ~~relating~~ applying to the Product Development Forum

~~NBN Co will comply with any processes then applying to the Product Development~~

- (a) NBN Co may require that an Access Seeker or Consumer Advocacy Group (as the case may be) enter into an agreement regarding the treatment of the confidential information and intellectual property of NBN Co and the relevant Access Seeker or Consumer Advocacy Group that may be disclosed or created in connection with that party's participation in the Product Development Forum.

- (b) For the purposes of clause 2E.4.2(a), an agreement regarding the treatment of the confidential information and intellectual property of NBN Co and the relevant Access Seeker or Consumer Advocacy Group will be on such terms and conditions:
- (i) as agreed between NBN Co and the relevant Access Seeker or Consumer Advocacy Group; or
- (i)(ii) failing agreement, as determined by the ACCC pursuant to clause 2E.4.2(d).
- (c) NBN Co must give written notice to the ACCC if, within 20 Business Days of an Access Seeker or Consumer Advocacy Group seeking to participate in the Product Development Forum, NBN Co and that party are unable to agree on the terms and conditions pursuant to which the confidential information and intellectual property of NBN Co and that Access Seeker or Consumer Advocacy Group (as the case may be) that may be disclosed or created in connection with the Product Development Forum will be dealt with.
- (d) If the ACCC is given a notice by NBN Co pursuant to clause 2E.4.2(c), or is otherwise notified by an Access Seeker or Consumer Advocacy Group that it has been unable to agree the terms on which its and NBN Co's confidential information and intellectual property will be dealt with in connection with their participation in the Product Development Forum, the ACCC may determine the terms and conditions on which the confidential information and intellectual property of each of NBN Co and the relevant Access Seeker or Consumer Advocacy Group that may be disclosed or created in connection with the Product Development Forum will be dealt with.
- ~~(b)(e)~~ The ACCC may consult with any person in making a determination under clause 2E.4.2(d).
- ~~(c) To participate in the Product Development Forum, Customers will be required to comply with such processes then applying to the Product Development Forum.~~

### **2E.4.3 Assessment of Product Ideas**

NBN Co will consider, and may weigh as it considers appropriate, such criteria as it determines appropriate in selecting which Product Ideas to develop through ~~the processes then applying to~~ the Product Development Forum. Consistent with the general principles set out in clause 2E.1.2, those criteria may include the following:

- (a) whether the Product Idea is within NBN Co's permitted scope of activities;

- (b) whether there is sufficient demand or potential demand for the Product Idea;
- (c) whether the Product Idea will be commercially viable;
- (d) whether the Product Idea is technically and operationally viable;
- (e) whether expenditure on the Product Idea will be, or is reasonably likely to be, prudently incurred;
- (f) the Intellectual Property Rights that may be required to develop the Product Idea; and
- (g) any other factor that NBN Co reasonably considers should be taken into account.

#### **2E.4.4 Pricing of new Products, Product Components and Product Features**

Prior to introducing a new Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#) which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with [Access Seekers and Consumer Advocacy Groups](#)~~Customers~~ through the Product Development Forum in relation to the Price or Prices at which such new Products, Product Components, ~~or~~ Product Features, [Ancillary Services or types of Facilities Access Service](#) will be introduced by NBN Co for all ~~Customers~~[Access Seekers](#).

- ~~(a) NBN Co will determine the Price or Prices at which such new Products, Product Components or Product Features will be introduced by NBN Co in accordance with clause 2C.5.~~

#### **2E.4.5 Service levels for new Products, Product Components and Product Features**

Prior to introducing a new Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#) which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with [Access Seekers and Consumer Advocacy Groups](#)~~Customers~~ through the Product Development Forum in relation to:

- (a) the service levels applicable to such a new Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#) (including any remedies which may apply for breach of the service levels); or
- (b) if NBN Co is unable to offer service levels (including any applicable remedies) prior to the introduction of a new Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities](#)



[Access Service](#) the estimated timetable and process of consultation in relation to the introduction of such service levels (including any applicable remedies).

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## 2E.5 Minor Product Changes~~Exceptions to commitments~~

### ~~2E.5.1 Licence Condition~~

~~Clauses 2E.3 and 2E.4 do not apply and NBN Co may introduce a Product Component or Product Feature that NBN Co is obliged to offer as a result of a licence condition imposed on it under section 41(1) of the NBN Companies Act.~~

### ~~2E.5.2 Minor product variations~~

- (a) ~~Clauses 2E.3 and 2E.4 do not apply and~~ NBN Co may carry out minor product variations or enhancements which update or improve the functionality or performance of a Product, Product Component, ~~or~~ Product Feature, [Ancillary Service or type of Facilities Access Service](#) and which, ~~acting reasonably, NBN Co determines~~ will have no material adverse impact on [Access Seekers](#)~~Customers~~ (in this clause [2E.5, Minor Product Variation](#)).
- ~~(b) If a Minor Product Variation requires a network change, NBN Co must comply with any applicable requirements in relation to the identification, selection, consultation and endorsement of the network change.~~
- (b) ~~For Minor Product Variations, NBN Co will use the Product Development Forum to notify Access Seekers and Consumer Advocacy Groups of the proposed change and implementation timeframe, including through the product roadmap.~~
- (c) ~~NBN Co will ensure that the withdrawal of the supply of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service is not treated as a Minor Product Variation.~~

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## 2E.6 **Withdrawal**

### 2E.6.1 **Prohibition**

NBN Co will not withdraw the Reference Offers, during their relevant terms.

### ~~2E.6.2 Anti-circumvention~~

~~NBN Co will not:~~

~~(a) withdraw any Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (in this clause 2E.6, **Product Withdrawal**); and~~

~~(b) in conjunction with that Product Withdrawal (including both prior to, or after the Product Withdrawal), introduce any new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that is substantially similar to, or comparable with, the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that has been subject to a Product Withdrawal,~~

~~for the purpose of circumventing, or avoiding the operation of, Individual Price Increase Limits under Schedule 2C (Pricing Commitments).~~

### ~~2E.6.3~~ **2E.6.2 Notice period for Withdrawals**

(a) Subject to Schedule 2B (Reference Offers) and clauses [1A.1.1](#) and [2E.6.4](#), NBN Co may withdraw a Product, Product Component, Product Feature, Ancillary Service and type of Facilities Access Service and will provide [the ACCC, Access Seekers and Consumer Advocacy Groups](#) ~~its Customers~~ with no less than:

- (i) 24 months' written notice of its intention to withdraw a Product, Product Component, Ancillary Service or type of Facilities Access Service;
- (ii) subject to 2E.6.2(a)(iii), 12 months' written notice of its intention to withdraw a Product Feature; and
- (iii) 24 months' written notice of its intention to withdraw a Product Feature where withdrawal will have a material adverse effect on the functionality or performance of a Product with which the Product Feature is associated,

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

(b) NBN Co will have regard to the following factors when considering whether to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service:

- (i) existing demand for the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;
  - (ii) the [avoidable](#) cost to NBN Co of maintaining and continuing to supply, the existing Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;
  - (iii) the functionality offered by an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service to the relevant Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service to be withdrawn;
  - (iv) the technical feasibility of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;
  - (v) the commercial viability of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service; and
  - (vi) the Price of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service.
- (c) NBN Co will discuss and consider in good faith any feedback received from ~~its Customers~~[the ACCC, Access Seekers and Consumer Advocacy Groups](#) in relation to the impending withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service and related issues, such as migration.
- (d) If NBN Co wishes to withdraw a Product Feature, Ancillary Service or type of Facilities Access Service that has ceased to be a Reference Offer then the earliest that the notice period in clause 2E.6.2(a) can start is the date that the relevant Product Feature, Ancillary Service or type of Facilities Access Service ceases to be a Reference Offer.

### **2E.6.3 ACCC objection power**

- (a) If NBN Co seeks to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 2E.6.3(a), the ACCC may object to the withdrawal of that Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service.
- (b) If the ACCC objects to the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, the ACCC must give NBN Co a written notice stating its

objection and providing reasons for its objection and publish any notice (and reasons) issued under this clause 2E.6.4(b) on the ACCC's website.

(c) In making a decision to issue a notice under clause 2E.6.4(b) the ACCC:

(i) will have regard to the long-term interests of end-users in accordance with section 152AB of the CCA;

(ii) may have regard to the factors listed in clause 2E.6.3(b); and

(iii) may consult with NBN Co and such other persons as the ACCC considers appropriate.

(d) Any notice issued by the ACCC under clause 2E.6.4(b) must be issued within the period of 60 Business Days from the date on which NBN Co notified the ACCC of its intention to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 2E.6.3(a).

(e) The ACCC may extend the period referred to in clause 2E.6.4(d) by a period of not more than 40 Business Days by giving written notice to NBN Co and publishing that notice on the ACCC's website.

(f) If the ACCC issues a notice under clause 2E.6.4(b), NBN Co must:

(i) inform Access Seekers and Consumer Advocacy Groups in writing that the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service will not be withdrawn; and

(ii) not withdraw the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service the subject of the notice for the period specified by the ACCC in that notice which may not be more than five years.

~~(d)~~(g) If the ACCC gives a notice pursuant to clause 2E.6.4(b), NBN Co may give a further notice pursuant to clause 2E.6.3(a) in respect of the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service the subject of the ACCC's notice, provided that the withdrawal of that Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service will not occur before the end of the period specified by the ACCC in its notice and, where NBN Co gives a further notice, the provisions of this clause 2E.6.4 will apply in respect of that further notice.

#### **2E.6.4 Product withdrawal required by law or directed by Shareholder Ministers**

- (a) Subject to clause 2E.6.5(b), this clause 2E.6 does not apply to the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.
- (b) In the event of a withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 2E.6.4(a), NBN Co will, to the extent permitted by law and consistent with any temporal requirements for the withdrawal imposed on NBN Co by law or by the Shareholder Minister (as the case may be):
- (i) provide Access Seekers, Consumer Advocacy Groups and the ACCC with written notice of the withdrawal within 20 Business Days of NBN Co being made aware of the requirement to withdraw the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (as the case may be);
  - (ii) consult with, and consider any feedback received from, Access Seekers, Consumer Advocacy Groups and the ACCC in relation to the impending withdrawal and related issues, such as migration.

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## **Schedule 2F Maximum Regulated Price Review Mechanisms**

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### **2F.1 Introduction**

#### **2F.1.1 Scope**

- (a) Subject to paragraph (b), this Schedule 2F applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module is in effect.
- (b) To avoid doubt, nothing in this Schedule 2F is to be taken as preventing the ACCC before the commencement of the Subsequent Regulatory Period, performing a function or exercising a power, for the purposes of clause 2F.2.

#### **2F.1.2 Overview**

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

- (a) Reference Offers;
- (b) Non-Reference Offers; and
- (c) Other Charges.

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### **2F.2 Price Review Arrangements**

#### **2F.2.1 Initiation of Price Review**

- (a) Subject to clause 2F.2.1(c), either the ACCC or NBN Co may issue a written notice (in this clause 2F.2, **Price Review Notice**) to the other stating that it wishes to commence a review of the Maximum Regulated Prices applicable to Reference Offers, Non-Reference Offers and/or Other charges under this clause 2F.2 (in this clause 2F.2, **Price Review**).
- (b) The Price Review Notice must:
  - (i) identify one or more Maximum Regulated Prices that the notifying party considers should be reviewed; and
  - (ii) the reasons why the notifying party considers the Maximum Regulated Prices should be reviewed.
- (c) A Price Review Notice may be issued under clause 2F.2.1(a):

- (i) before the commencement of the Subsequent Regulatory Period, provided that the Price Review Notice is not issued more than 2 years prior to the commencement of the Subsequent Regulatory Period; and/or
- (ii) during the Subsequent Regulatory Period.

### **2F.2.2 NBN Co to develop Price Review Proposal**

- (a) NBN Co will, no later than 120 calendar days after a Price Review Notice is issued (or such other later date specified by the ACCC), provide the ACCC with a proposal in relation to the Maximum Regulated Prices the subject of the Price Review Notice (in this clause 2F.2, **Price Review Proposal**).
- (b) The Price Review Proposal must include the following information:
  - (i) a proposed Price Review Arrangement developed in accordance with the Price Review Criteria, which includes the matters referred to in clause 2F.2.7(a);
  - (ii) an explanation of the basis on which the proposed Price Review Arrangement meets the Price Review Criteria; and
  - (iii) the forecasts and estimates used by NBN Co to apply the Price Review Criteria to the proposed Price Review Arrangement, and an explanation of the basis on which those forecasts and estimates were prepared, including the methods used and assumptions made.

### **2F.2.3 ACCC response to Price Review Proposal**

- (a) The ACCC may either:
  - (i) accept the Price Review Proposal;
  - (ii) reject the Price Review Proposal, in which case the ACCC may either:
    - (A) issues its own Price Review Arrangement (in this clause 2F.2, an **ACCC Determined Price Review Arrangement**); or
    - (B) discontinue the Price Review without establishing a Price Review Arrangement, in which case the Price Review will terminate; or
  - (iii) where the ACCC issued the relevant Price Review Notice, discontinue the Price Review without rejecting the Price

Review Proposal or establishing a Price Review Arrangement, in which case the Price Review will terminate.

- (b) The ACCC may request NBN Co to give to the ACCC further information that the ACCC considers reasonably necessary for making a decision under clause 2F.2.3(a) and NBN Co must comply with such a request within the period specified by the ACCC.
- (c) The ACCC must not make a decision under clause 2F.2.3(a) unless the ACCC has had regard to the information in the Price Review Proposal provided by NBN Co under clause 2F.2.2.
- (d) The ACCC must publish on its website a Price Review Proposal provided to it by NBN Co.
- (e) The ACCC may consult with NBN Co and other such persons as the ACCC considers appropriate on NBN Co's Price Review Proposal and must consider any submissions that are received within the time limit specified by the ACCC.
- (f) The ACCC must publish on its website its decision under clause 2F.2.3(a), including the reasons for the decision and any resulting Price Review Arrangement.

#### **2F.2.4 Variation of Price Review Proposal**

- (a) The ACCC may issue a written notice to NBN Co stating that if NBN Co:
  - (i) makes such variations to the Price Review Proposal as are specified in the notice; and
  - (ii) gives the varied Price Review Proposal to the ACCC within the period specified in the notice,the ACCC will consider the varied Price Review Proposal under clause 2F.2.3 as if the varied Price Review Proposal had been given instead of the original Price Review Proposal.
- (b) If NBN Co gives the ACCC a varied Price Review Proposal in response to the notice issued under clause 2F.2.4(a), the ACCC will consider the varied Price Review Proposal under clause 2F.2.3 as if the varied Price Review Proposal had been given instead of the original Price Review Proposal.

#### **2F.2.5 Acceptance of Price Review Proposal**

- (a) The ACCC must not accept the Price Review Proposal under clause 2F.2.3(a) unless the ACCC is satisfied that the Price Review Proposal meets the Price Review Criteria.



(b) If a Price Review Proposal is accepted by the ACCC, the proposed Price Review Arrangement included in that Price Review Proposal will become a Price Review Arrangement.

### **2F.2.6 ACCC Determined Price Review Arrangement**

(a) The ACCC must not issue an ACCC Determined Price Review Arrangement under clause 2F.2.3(a)(ii)(A), unless the ACCC is satisfied that the ACCC Determined Price Review Arrangement meets the Price Review Criteria.

(b) If the ACCC issues an ACCC Determined Price Review Arrangement, the ACCC Determined Price Review Arrangement will become a Price Review Arrangement.

### **2F.2.7 Content and operation of Price Review Arrangement**

(a) A Price Review Arrangement must specify :

(i) the commencement date of the Price Review Arrangement which must:

(A) be the start of a Financial Year within the Subsequent Regulatory Period;

(B) not be a date that precedes the date on which the Price Review Arrangement is accepted or issued by the ACCC;

(C) not be in a Financial Year in respect of which a previous Price Review Arrangement applies; and

(D) be no later than 12 months after the date on which the Price Review Arrangement is accepted or issued by the ACCC;

(ii) the end date of the Price Review Arrangement, which must be between 3 and 5 Financial Years after the commencement date;

(iii) the Reference Offers, Non-Reference Offers and/or Other Charges to which the Price Review Arrangement applies (in this clause 2F.2, each a **Reviewed Offer**);

(iv) for each Reviewed Offer, the Maximum Regulated Price for one or more Financial Years within the period of the Price Review Arrangement.

(b) The Maximum Regulated Price for a Reviewed Offer specified in a Price Review Arrangement may:

- (i) be specified in the form of an amount or as a formula for ascertaining the amount; and
- (ii) be different for each Financial Year for which the Price Review Arrangement specifies a Maximum Regulated Price (including to establish a glide-path in relation to the Maximum Regulated Price for the Reviewed Offer).
- (c) If a Price Review Arrangement applies to a Reviewed Offer and a Financial Year within the Subsequent Regulatory Period, then the Maximum Regulated Price for that Reviewed Offer for that Financial Year will be the Maximum Regulated Price specified in that Price Review Arrangement for that Reviewed Offer for that Financial Year.

### **2F.2.8 Price Review Criteria**

- (a) The ACCC must not accept a Price Review Proposal, or issue an ACCC Determined Price Review Arrangement, unless:

  - (i) the ACCC is satisfied that the Maximum Regulated Price of each Reviewed Offer for each Financial Year to which the Price Review Arrangement applies is reasonable, having regard to the matters specified in section 152AH of the CCA and any other matter the ACCC considers relevant; and
  - (ii) the ACCC is satisfied that there is no material difference between:

    - (A) the present value of the difference between the expected Revenue and expected costs that would be inputs to the ABBRR, between the commencement of the Price Review Arrangement and the SAU Expiry Date, if the Price Review Arrangement were in operation,
    - and
    - (B) the present value of the difference between the expected Revenue and expected costs that would be inputs to the ABBRR, between the commencement of the Price Review Arrangement and the SAU Expiry Date, if the Price Review Arrangement were not in operation,

(in this clause 2F.2, **Price Review Criteria**).
- (b) In deciding whether to accept or reject a Price Review Proposal and in making an ACCC Determined Price Review Arrangement, the ACCC must take into account:

- (i) the characteristics of the Reference Offers, Non-Reference Offers and Other Charges other than the Reviewed Offers (in this clause 2F.2.8(b), **Other Offers**);
  - (ii) the costs associated with Other Offers;
  - (iii) the Revenue associated with Other Offers; and
  - (iv) demand for Other Offers.
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## Execution page

### Executed on

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

---

**Mike Quigley**  
Chief Executive Officer and Director

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**Witness**

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**Jim Hassell**  
Product Management & Industry Relations

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