

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 response to ACCC Draft Notice to Vary – 26 July
2013](#)



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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Environment

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

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Special Access Undertaking

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

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.
- K 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 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.

~~KL~~ 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.

~~LM~~ If accepted by the ACCC, each Replacement Module will operate for a Regulatory Cycle 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.

~~AN~~ 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.

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.

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.

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**).

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);
 - (iv) Attachment C (Dictionary); and
 - (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 (**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.

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 (Term of any SFAA and consultation on changes to any SFAA) ~~Schedule 1B (Regulatory Oversight)~~;
 - ~~(iii) Schedule 1C (Reference Offers)~~;
 - ~~(iv)(iii) Schedule 1C (NBN Offers and Other Charges) Schedule 1D (Non-Reference Offers and Other Charges)~~;
 - ~~(v)(iv) Schedule 1D (Regulatory Asset Base) Schedule 1E (Regulatory Asset Base)~~;
 - ~~(vi)(v) Schedule 1E (Long Term Revenue Constraint Methodology) Schedule 1F (Long Term Revenue Constraint Methodology)~~;
 - ~~(vii)(vi) Schedule 1F (Regulatory information) Schedule 1G (Regulatory information)~~;
 - ~~(viii)(vii) Schedule 1G (Maximum Regulated Price Review Mechanisms) Schedule 1H (Maximum Regulated Price Review Mechanisms)~~;
 - ~~(ix)(viii) Schedule 1H (Non-price terms and conditions) Schedule 1I (Non-price terms and conditions)~~; and
 - ~~(x)(ix) Schedule 1I (Product Development and Withdrawal) Schedule 1J (Product Development and Withdrawal)~~.

4.3 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);
 - ~~(ii) Schedule 2B (Reference Offers);~~
 - ~~(iii)(ii) Schedule 2B (Pricing Commitments) Schedule 2C (Pricing Commitments);~~
 - ~~(iv)(iii) Schedule 2C (Long Term Revenue Constraint Methodology and Regulatory Asset Base) Schedule 2D (Long Term Revenue Constraint Methodology and Regulatory Asset Base);~~
 - ~~(v)(iv) Schedule 2D (Product Development and Withdrawal) Schedule 2E (Product Development and Withdrawal);~~ and
 - ~~(vi)(v) Schedule 2E (Maximum Regulated Price Review Mechanisms) Schedule 2F (Maximum Regulated Price Review Mechanism).~~

4.4 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.
- (c) NBN Co and the ACCC acknowledges that:
- (i) each Replacement Module Application (and only the contents of each Replacement Module Application) will be assessed by the ACCC as a variation of this 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 assess proposed key elements of

Comment [A1]: Please see section 7 of NBN Co's submission.

the regulatory arrangements (as described in clause 4.5(e)) which, in combination with Module 2, would be applicable to NBN Co for the relevant Regulatory Cycle if the Replacement Module Application was accepted by the ACCC; and

~~(iii)~~(iv) the remainder of Module 0 and Module 2, which is not proposed to be varied by the Replacement Module Application, will remain unaffected by the ACCC's assessment of the Replacement Module Application and its decision to accept or reject the Replacement Module Application. ~~and~~

- (d) NBN Co may:
- (i) withdraw an SAU variation application that contains a Replacement Module Application; and
 - (ii) re-submit an SAU variation application under section 152CBG of the CCA that contains an amended Replacement Module Application for approval by the ACCC.

4.5 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.
- (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 no later than 9 months and no more than 18 months prior to:
 - (i) the end of the Initial Regulatory Period; or
 - (ii) the end of the then current Regulatory Cycle,as the case may be.
- (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) A Replacement Module Application given to the ACCC by NBN Co must **include:**
 - (i) specify 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)~~, which must be either 3, 4 or 5 years in duration;

Comment [A2]: Please see section 2.2.1.1 of NBN Co's submission.

- ~~(ii)~~ a Reference Offer Proposal established in accordance with clause 4.6;
- ~~(iii)~~(ii) include a LTRCM Proposal established in accordance with clause 4.6;
- ~~(iv)~~(iii) include a RAB Roll Forward Proposal established in accordance with clause 4.7;
- ~~(v)~~(iv) if the duration of the Regulatory Cycle proposed under clause 4.5(e)(i) is less than 5 years, include all of the forecasts referred to in clause 4.6 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
- ~~(vi)~~(v) include any other matters that NBN Co proposes to form part of that Replacement Module.

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

Comment [A3]: Please see section 4.2.1.2 of NBN Co's submission.

~~4.74.6~~ LTRCM Proposal

A LTRCM Proposal must include:

- (a) Forecast Nominal ABBRR and Forecast Real ABBRR for each of the Financial Years in the proposed Regulatory Cycle determined in accordance with the principles set out in clause 2C.2.1;
- ~~(b)~~ all necessary forecasts of the inputs required for the calculation of the ABBRR for each of the Financial Years in the proposed Regulatory Cycle, including WACC, asset lifetimes and taxation parameters; ~~and~~
- ~~(c)~~ cash flow adjustment factors to be applied in calculations concerning Operating Expenditure, Capital Expenditure, Revenue and tax in Schedule 2C in the proposed Regulatory Cycle;
- ~~(b)~~(d) a proposal as to whether the calculation of Unrecovered Cost under clause 2C.5.3 should be based on actual Revenue or Annual Forecast Revenue;
- ~~(e)~~(e) Annual Forecast Revenue for each of the Financial Years in the relevant proposed Regulatory Cycle that are in the Initial Cost Recovery Period and the related set of annual demand forecasts, where all revenue and demand

Comment [A4]: Please see section 5.2.3.2 of NBN Co's submission.

Comment [A5]: Please see section 5.2.3.3 of NBN Co's submission.

forecast information will use inputs that are consistent with the inputs used to forecast the ABBRR; ~~and~~

~~(d)~~(f) a proposal of how a change in tax will be addressed in the proposed Regulatory Cycle, including:

- (i) whether any change 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;
- (ii) whether any change to the Annual Forecast Revenues under clause 2C.3 is to be made as a result of the change in tax and, if so, how the change is to be determined; and
- (iii) whether any change to the Forecast Real ABBRR and, therefore, the amount that NBN Co is entitled to earn under clause 2C.6.1(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.

4.84.7 RAB Roll Forward Proposal

A RAB Roll Forward Proposal must include:

- (a) a method, consistent with clause 2C.7.4, 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 2C.7.5, for accounting for depreciation in ~~rolling forward~~ ~~establishing~~ the RAB ~~to~~ at the beginning of the Regulatory Cycle immediately after the proposed Regulatory Cycle to which the Replacement Module Application relates.

4.94.8 ACCC Replacement Module Determination

- (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:
 - (i) a Regulatory Cycle commencing immediately after the relevant Cycle Expiry Date; and

- (ii) the matters referred to in clauses ~~4.6, 4.7 and 4.8.4.6~~ and 4.7.
- (c) In making an ACCC Replacement Module Determination under this clause 4.8, 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 4.8, together with its reasons, on its website.
- (e) Sections 152BCB(1), (3B), (3C) and (4A) of ~~the CCAPart 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 4.8, 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 4.8(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 not ~~longer~~ have effect.

- (i) Section 152CBIA of the CCA applies to an ACCC Replacement Module Determination in operation as if the reference to an access determination in that section was a reference to such an ACCC Replacement Module Determination.

Comment [A6]: Please see section 2.2.1.3 of NBN Co's submission.

5 Fixed principles terms and conditions

5.1 Overview

This clause 5 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

~~This clause 5.3 and clauses 3.2, 2B.2, 2C.2.1(a), 2D.2.1(a), 2C.5.4, 2C.7.2, 2D.6.2(a) and 2C.7.3(a), 2D.6.3(a)~~ are fixed principles terms and conditions of this Special Access Undertaking.

Comment [A7]: Please see section 7 of NBN Co's submission.

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 satisfied that:
 - (i) there is a manifest and material error in the fixed principles term or condition; or
 - (ii) any information on which the fixed principles term or condition was based was false or misleading in a material respect.

6 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, the Ancillary Services and 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, 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.
- (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) and 152CBD(5C) of the CCA:
 - (i) the ACCC is satisfied of the same matters referred to in sections 152CBD(2)(b), 152CBD(2)(c), 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 section 152CBD(4) of the CCA exist,as if all of those matters applied to the extension (or further extension).

Comment [A8]: Please see section 2.3.2 of NBN Co's submission.

Attachment A Service Descriptions

1 General

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

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.3.5.
- (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.

3 Ancillary Services

The Ancillary Services are the services supplied by NBN Co that facilitate the supply of 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.

Attachment B Facilities Access Service

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.

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 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.

Attachment C Dictionary

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.8(a); and
- (b) in relation to the Subsequent Regulatory Period, in clause 2A.2.1(a).

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

- (a) in relation to the Initial Regulatory Period, in clause 1G.3.3(a)(ii)(A); and
- (b) in relation to the Subsequent Regulatory Period, in clause 2E.2.3(a)(ii)(A).

ACCC Replacement Module Determination has the meaning given to that term in clause 4.8(a).

Access Agreement means an “access agreement” within the meaning of section 152BE of the CCA between NBN Co and an 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 in the same CSA; or
- (b) an Access Component to:
 - (i) enable or remove a UNI-V and associated AVC; or
 - (ii) ~~move or relocate an NTD; or~~

Comment [A9]: Consequential change (WBA alignment). This is now captured by the Equipment Modification charge.

(ii) enable or remove an associated MAVC or change the bandwidth profile of an associated MAVC; or

(iii) enable or disable an Enhanced-12 Fault Service Level.

Comment [A10]: WBA alignment. Consequential change.

Access Component Reactivation means the activation of the Access Components to be made available by NBN Co to an Access Seeker 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.~~

Comment [A11]: No longer used

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, or to be 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,

Comment [A12]: WBA alignment. Consequential change.

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.3.2.

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

Actual 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 1C.2.3.

Additional / Replacement Access Card means where NBN Co provides an additional or replacement access card to an Access Seeker in respect of ~~a Type 1 Facility or Type 2 Facility~~ an Aggregation Node Site.

Comment [A13]: Consequential change (WBA alignment).

Aggregation Node Site means, collectively, those parts of a building ~~in which a POI is located that are~~ within the Site Boundary in respect of an Established POI, at which:

(a) NBN Co presents the NNI;

(b) NBN Co supplies NBN Co Co-location; or

~~(d)~~(c) NBN Co supplies Cross Connects.

Comment [A14]: Consequential change (WBA alignment).

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 1 ~~Schedule 1J~~ (Product Development and Withdrawal ~~Product Development and Withdrawal~~) or Schedule 2D ~~Schedule 2E~~ (Product Development and Withdrawal ~~Product Development and Withdrawal~~).

~~**Ancillary Services Offer** means the offer established in accordance with clause 1A.1.1.~~

Comment [A15]: Consequential changes. Concept replaced by NBN Offers.

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

(a) during the Initial Regulatory Period, clause 1E.4; and

(b) during the Subsequent Regulatory Period, clause 2C.2.

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

Annual Forecast Revenue is calculated in accordance with:

(a) during the Initial Cost Recovery Period, clause 2C.3.1(a); and

(b) during the Building Block Revenue Period, clause 2C.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 1C.2.2.

B2B means business to business.

B2B Access has the meaning given to that term in clause 1A.6.1(b)(i).

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

~~(c) — during the Initial Regulatory Period, each of the offers described in clause 1A.1.1 in respect of each NBN Co Network; and~~

~~(d) during the Subsequent Regulatory Period, each of the offers established in accordance with clause 1A.1.1.~~

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 **POI Site or** Aggregation Node Site is located.

Comment [A16]: Consequential change (WBA alignment).

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 1E.5.3; and
- (b) during the Subsequent Regulatory Period, in clause 2C.5.7.

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) to Schedule ~~1C Schedule 1D~~ in relation to Installations related to NFAS connections; and
- (b) in clause 4 of Annexure 2 (Standard NWAS Installation) to Schedule ~~1C Schedule 1D~~ in relation to Installations related to NWAS 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 in a CSA.~~

Comment [A17]: Consequential change (WBA alignment; now 'CVC Modification').

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.3.3.

~~**Connectivity Virtual Circuit Offer** has the meaning given to it in clause 1C.2.6.~~

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

~~(c) during the Initial Regulatory Period, each of the offers described in clause 1A.1.1; and~~

~~(d) during the Subsequent Regulatory Period, each of the offers established in accordance with clause 1A.1.1.~~

~~**Connectivity Virtual Circuit Offer (TC 2 and TC 3)** means each of the offers described in clause 1C.2.7.~~

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

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

Consumer Advocacy Group means a body or association that represents the interests of consumers in relation to telecommunications services and issues in Australia.

Comment [A18]: Please see section 4.1.2 of NBN Co's submission.

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 Module 1(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.7(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 1E.9.4(b); and
- (b) during the Subsequent Regulatory Period, clause 2C.1.4.

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

CVC Modification means the modification of the bandwidth of a CVC supplied by NBN Co to an Access Seeker in a CSA.

Comment [A19]: Consequential change (WBA alignment; previously 'Connectivity Component Modification').

CVC Setup / Activation means the setup and activation of a CVC to be made available by NBN Co to an Access Seeker.

Cycle Expiry Date has the meaning given to that term in clause 4.8(a) ~~4.9(a)~~.

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 Product or Downstream Product under a contract with an Access Seeker or a Downstream Customer (as the case may be).

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

Comment [A20]: Waivers have been included in the definition of discount to cover the full range of discount types that may be offered.

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

Downstream Customer means any person acquiring an Access Seeker Product or a Downstream Product, including:

- (a) any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale Access Seeker 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 Product as an input.

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

Enhanced-12 Fault Service Level means the optional Product Feature supplied by means of the NBN Co Fibre Network which provides Access Seekers with enhanced service levels for the rectification of End User faults which affect the NBN Co Fibre Access Service.

Emergency means an imminent actual or potential risk to the safety of persons or property or the integrity of a telecommunications network requiring immediate action ~~state of danger requiring immediate action~~ to avoid or mitigate any loss, damage or personal injury.

Comment [A21]: Consequential change (WBA alignment).

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

End User means a person who is the ultimate recipient or user of an Access Seeker Product or Downstream Product.

Enhanced Access Offer or EAO means:

(d) ~~during the Initial Regulatory Period, the offer described in clause 1A.1.1 in respect of the NBN Co Fibre Network; and~~

(e) ~~during the Subsequent Regulatory Period, the offer established in accordance with clause 1A.1.11A.1.2 in respect of the NBN Co Fibre Network.~~

Equipment Modification means the rearrangement or modification of any NBN Co Equipment that is installed or located at a Premises where an Access Seeker has validly requested that NBN Co rearrange or modify that NBN Co Equipment.

Comment [A22]: Consequential change (WBA alignment) Formerly the definition of Rearrangement/Modification.

Equipment Removal means the removal of any NBN Co Equipment that is installed or located at a Premises where an Access Seeker 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 (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 listed in the POI List but excluding any Temporary POI.

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

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 1~~Schedule 1J~~ (Product Development and Withdrawal~~Product Development and Withdrawal~~) or Schedule 2D~~Schedule 2E~~ (Product Development and Withdrawal~~Product Development and Withdrawal~~).

~~**Facilities Access Offer** has the meaning given to that term in clause 1C.2.14.~~

~~**Facilities Access Service Offer** means:~~

- ~~(f) — during the Initial Regulatory Period, the offer described in clause 1A.1.1; and~~
- ~~(g) — during the Subsequent Regulatory Period, the offer established in accordance with clause 1A.1.1.~~

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 Access Card** means the first access card that NBN Co provides to Customer in respect of a Type 1 Facility or Type 2 Facility.~~

Comment [A23]: Consequential change (WBA alignment).

~~**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.~~~~

Comment [A24]: Consequential change (WBA alignment).

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 2C.1.4~~2D.2.1(e)~~.

Forecast Financial Information has the meaning given to that term in clause 1F.1.2.

Forecast Nominal ABBRR is calculated in accordance with clause 2C.2.1.

Forecast Real ABBRR is calculated in accordance with clause 2C.2.1(f)~~2D.2.1(e)~~.

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, rounded up to the next full hour required to perform the relevant activity.

Comment [A25]: Please see section 5.3 of NBN Co's submission.

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 demand, to enable the delivery of new Product Features, etc.).

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

~~(f) — for Reference Offers during the Initial Regulatory Period, clause ;~~

- (a) for ~~Non Reference~~NBN Offers and Other Charges during the Initial Regulatory Period, clause 1C.5.2~~D.4.2~~; and
- (b) for ~~Reference Offers, Non Reference~~NBN Offers and Other Charges during a Regulatory Cycle, clause 2B.2.3~~C.2.3~~.

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

- (a) during the Initial Regulatory Period, in clause 1E.5.2; and
- (b) during the Subsequent Regulatory Period, in clause 2C.5.4.

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 (Initial Products) to this Special Access Undertaking.

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

~~(c) — the installation and make ready for service of Connecting Equipment by NBN Co (or an Installer) at a Premises; or~~

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

Comment [A26]: Consequential change (WBA alignment).

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 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.6.1(a).

Late Cancellation (Site Visit Required) means the cancellation of a request by an Access Seeker 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~~) ~~Schedule 1D (Long Term Revenue Constraint Methodology)~~; and
- (b) during the Subsequent Regulatory Period, Schedule 2C (~~Long Term Revenue Constraint Methodology and Regulatory Asset Base~~) ~~Schedule 2C (Long Term Revenue Constraint Methodology)~~.

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

LTRCM Proposal comprises the matters described in clause 4.6 ~~4.7~~.

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.

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 1D.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.

MAVC Reactivation means the activation of the Multicast AVC to be made available by NBN Co to an Access Seeker 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 to each NBN Offer and Other Charge, determined:

~~(a) in respect of to each Reference Offer during the Initial Regulatory Period, as determined in accordance with clauses 1C.3, 1C.4 and 1C.5;~~

~~(f)(b) in respect of the Subsequent Regulatory Period, in accordance with clause 2B.2.~~

~~(g) to each Non-Reference Offer or Other Charge during the Initial Regulatory Period, as determined in accordance with clauses 1D.3 and 1D.4;~~

~~(h) to each Reference Offer, Non-Reference Offer or Other Charge during a Regulatory Cycle, as determined in accordance with clause 2C.2.~~

Media Stream means each coherent stream of content that is conveyed by an Access Seeker 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.

Minor Expenditure Limit means:

- (a) as at the SAU Commencement Date, an amount of \$50 million; and
- (b) thereafter, such amount calculated under clause 1D.7.3(b).

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

Comment [A27]: Consequential change (WBA alignment).

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

Comment [A28]: Consequential change (WBA alignment).

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 Offers means the offers described in clause 1C.2.10~~1C.2.8~~.

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 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.

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 1C.2.11.

Multicast Media Stream Offer means the offers described in clause 1C.2.12.

Comment [A29]: WBA alignment change.

Multilateral SFAA Forum has the meaning given to that term in clause 1B.3(a)~~1B.2.1(a)~~.

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 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.7(b).

NBN Co Co-location Offer has the meaning given to that term in clause 1C.2.13.

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 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 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 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 networks, and any NBN Co Equipment in respect of those networks.

NBN Co ODF ~~means an optical distribution frame that is owned or operated by NBN Co at a POI Site or an Aggregation Node Site, 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.~~

Comment [A30]: Consequential change (WBA alignment).

NBN Co ODF Termination Point has the meaning given to that term in clause 1A.7(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 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 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 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 or such other URL as NBN Co may notify Access Seekers from time to time.

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

NBN Offer includes:

- (a) each of the offers described in clause 1C.2.1;
- (b) any offers introduced in accordance with Schedule 1I (Product Development and Withdrawal); ~~and has the meaning given to that term in clause 1A.1.1;~~
- (c) any other Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that is offered by NBN Co,

but does not include any Other Charge.

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 1D.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-NBN~~ 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 1D.12.1(b)(i); less
- (b) the Network Change Costs associated with that option, determined by reference to the criteria in clause 1D.12.1(b)(iii).

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

Network Change means any variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets that is not:

- (a) materially consistent with or within the scope of the Network Design Rules as described in clauses 1D.7.1 and 1D.7.4; or
- ~~(b) materially consistent with or within the scope of a Permitted Variation as described in clause 1D.7.2; has the meaning given to that term in clause 1D.8.1(a).~~

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

Network Change Dispute means a dispute that may be initiated by NBN Co under clause 1D.10.2(i) ~~1E.10.2(b)(i).~~

Network Change Dispute Condition has the meaning given to that term in clause 1E.10.1(b).

Network Change Dispute Participants has the meaning given to that term in clause ~~1D.10.3(c)~~ ~~1E.10.3(e).~~

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

Comment [A31]: Please see section 5.2.2.4 of NBN Co's submission.

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.3.4.

~~**Network to Network Interface Offer** has the meaning given to it in clause 1C.2.1(f).~~

~~**Network to Network Interface Offer** means:~~

~~(d) during the Initial Regulatory Period, each of the offers described in clause 1A.1.1; and~~

~~(e) during the Subsequent Regulatory Period, each of the offers established in accordance with clause 1A.1.1.~~

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 Price Disallowance Determination** means:~~

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

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

Comment [A32]: No longer used.

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

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

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

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

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

NNI Modification means the modification of the configuration of an NNI which NBN Co supplies to an Access Seeker in respect of a POI where the Access Seeker 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 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 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 1D.2.2; and
- (b) during the Subsequent Regulatory Period, clause 2C.7.8~~2D.6.8~~.

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

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

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

Non-Discrimination Obligations means the obligations that apply to an NBN ~~Corporation~~ 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, 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-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 Address~~.

Comment [A33]: Consequential change (WBA alignment).

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) to Schedule 1C (~~NBN Offers and Other Charges~~) ~~Schedule 2D (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) to Schedule 1C (~~NBN Offers and Other Charges~~) ~~Schedule 2D (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) to Schedule 1C (~~NBN Offers and Other Charges~~) ~~Schedule 2D (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) to Schedule 1C (~~NBN Offers and Other Charges~~) ~~Schedule 2D (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
- (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 and for which NBN Co has accepted an order~~that-;

- (a) ~~has been validly ordered by Access Seeker and for which NBN Co has accepted an order; or~~
- ~~(e)(b)~~ in the case of the NBN Co Platform Interfacing Service and the Sandpit, is supplied by NBN Co to an Access Seeker.

Comment [A34]: Consequential change (WBA alignment).

Ordering Freeze means, if an Access Seeker 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, immediately:

- (a) cease processing any orders for Products already made by that Access Seeker 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.

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 clause 1C.4.2; 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, 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; 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 1H.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 Processes means the provisions of Annexure 1 (PDF Processes) to Schedule 11 (Product Development and Withdrawal).

Permitted Variations has the meaning given to that term in clause 1D.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.2.8.

Platform Interfacing Service has the meaning given to that term in clause 1A.6.1.

POI List means the list of locations made by the ACCC for the purposes of section 151DB of the CCA, as may be varied from time to time pursuant to section 151DB of the CCA.

POI Site means a location within a Type 1 Facility or a Type 2 Facility:

- (a) in respect of which a POI is established; and
- (b) at which NBN Co supplies NBN Co ODF Termination Point; and

Comment [A35]: Consequential change (WBA alignment).

(c) at or in respect of which NBN Co supplies Cross-Connects; and

(d) if that POI is established at a POI Site located within a Type 1 Facility, in respect of which NBN Co supplies the services that enable Access Seekers to install, house, operate, test, maintain and remove lead-in or backhaul transmission cables at that POI Site.

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

Points of Interconnect Plan has the meaning given to that term in clause 1H.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-NBN~~ Offers are increased.

Preferred Network Change Option has the meaning given to that term in clause 1D.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 1G.3~~1H.3~~; and
- (b) in relation to the Subsequent Regulatory Period, a Price Review Arrangement made in accordance with clause 2E.2~~F.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 1E.2.6; and
- (b) during the Subsequent Regulatory Period, clause 2C.5.6.

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 1D.5.1.

Product means the following products that are offered for supply by NBN Co to Access Seekers:

- (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 11 (Product Development and Withdrawal) or Schedule 2D (Product Development and Withdrawal)~~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 1I (Product Development and Withdrawal) or Schedule 2D ~~(Product Development and Withdrawal)~~ ~~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 1I.3.1(a); and
- (b) during the Subsequent Regulatory Period, clause 2D.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 Seeker 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 1I (Product Development and Withdrawal) or Schedule 2D ~~(Product Development and Withdrawal)~~ ~~Schedule 2E (Product Development and Withdrawal)~~.

Product Idea means a proposal for the development of a new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service or a variation or enhancement to an existing Product, Product Component, 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).

Prudent and **Prudently** means:

- (a) in respect of Capital Expenditure, such expenditure which the ACCC considers to be prudently incurred in accordance with clause 1D.3; and
- (b) in respect of Operating Expenditure, such expenditure which the ACCC considers to be prudently incurred in accordance with clause 1E.8 ~~1E.8~~.

~~**Prudent Cost Condition Criteria** means the criteria set out in clause 1E.4.~~

Comment [A36]: Not used.

~~**Prudent Design Condition Criteria** means the criteria set out in clause 1E.6.~~

Comment [A37]: Not used.

RAB Roll Forward Proposal has the meaning given to that term in clause 4.7 ~~4.8~~.

Rack Space means rack space made available by NBN Co to an Access Seeker for the purposes of NBN Co Co-location.

Real RAB is calculated in accordance with:

- (a) during the Initial Regulatory Period, in clause 1D.2.1; and
- (b) during the Subsequent Regulatory Period, in clause 2D.6.7.

Real Straight Line Depreciation has the meaning given to that term in clause 1E.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 has validly requested that NBN Co rearrange or modify that NBN Co Equipment.~~

Comment [A38]: WBA alignment change. This is now covered in the definition of Equipment Modification.

~~**Reference Offer** means:~~

- ~~(c) during the Initial Regulatory Period, an offer described in clause 1A.1; and~~
- ~~(d) during a Regulatory Cycle in the Subsequent Regulatory Period, an offer of the type described in clause 1A.1.1 to 1A.1.1 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,~~
 - ~~(iii) 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 1E.6.1.

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

- (a) during the Initial Regulatory Period, clause 1D.2; and
- (b) during the Subsequent Regulatory Period, clause 2C.7.

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 1D.2.1(b); and
- (b) during the Subsequent Regulatory Period, clause 2C.7.3~~2D.6.3(a)~~.

Regulatory Cycle means a period of ~~either 3, 4 or 5 years~~ ~~time~~ within the Subsequent Regulatory Period in which either:

- (a) a Replacement Module; or

Comment [A39]: Please see section 2.2.1.1 of NBN Co's submission.

- (b) an ACCC Replacement Module Determination,

is in effect.

Regulatory Determination 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.

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 ~~includes~~ ~~means~~ any of the following:

- (a) any Tax other than GST that becomes law and is effective after the SAU Commencement Date, 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
- (b) 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.

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.

Comment [A40]: Please see section 5.1.4 of NBN Co's submission.

Replacement Module Application is an 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 clause 4.5.

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 1E.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 1G.3.7(a)(iii) ~~1H.3.7(a)(iii)~~; and
- (b) in relation to the Subsequent Regulatory Period, in clause 2E.2.7(a)(iii) ~~2F.3.7(a)(iii)~~.

Revised NDR Date has the meaning given to that term in clause 1D.7.4(c) ~~1E.7.4(e)~~.

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.6.2.

Sandpit Offer means the offer described in clause 1C.2.9.

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 1C.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 Portal has the meaning given to that term in clause 1A.6.1(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.

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.

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.

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 ~~-, in respect of an Established POI, the boundary (as 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) which defines those areas of a building within which the relevant POI Site or Aggregation Node Site is located.~~

Comment [A41]: Consequential change (WBA alignment).

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

~~Standard Business Offer or SBO means:~~

~~(c) — during the Initial Regulatory Period, the offer described in clause 1A.1.1 in respect of the NBN Co Fibre Network; and~~

~~(d) — during the Subsequent Regulatory Period, the offer established in accordance with clause 1A.1.11A.1.3 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 for the purposes of section 152CJA of the CCA.

Standard Installation means a Standard NFAS Installation or a Standard NWS 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) 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) to Schedule 1D).

Standard NWS Installation means an Installation in relation to an NWS connection where:

- (a) the conditions set out in clause 1 of Annexure 2 (Standard NWS Installation) to Schedule 1C (NBN Offers and Other Charges) ~~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 2 (Standard NWAS Installation) to Schedule 1C ~~(NBN Offers and Other Charges)~~ ~~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 in respect of an Aggregation Node Site.~~

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

Comment [A42]: Consequential change (WBA alignment).

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 in respect of the same AVC, provided that the aggregate symmetrical Data Transfer Rate acquired by the 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.

Symmetric Access Capacity Offer means each of the offers described in clause 1C.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.

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 that is established temporarily until an Established POI serving the relevant CSA is established and includes ~~temporary~~ POIs temporarily established to serve First Release Trial Sites and new developments.

Comment [A43]: Consequential change (WBA alignment).

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.~~

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 owned, operated or controlled by NBN Co or a Related Body Corporate of NBN Co, and at which a POI is established~~occupied, owned or operated by NBN Co or a Related Body Corporate of NBN Co and in which an Aggregation Node Site is located.~~

Comment [A44]: Consequential change (WBA alignment).

Type 2 Facility means a building that is owned, operated or controlled by an Underlying Facility Provider, and at which a POI is established~~in which an Aggregation Node Site is located that is not a Type 1 Facility.~~

Comment [A45]: Consequential change (WBA alignment).

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 1E.5.1; and
- (b) during the Subsequent Regulatory Period, clause 2C.5.3.

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, 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 1H.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; 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.3.1.

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, an ~~Reference Offer, Non-Reference~~ **NBN** 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

Acronym	Defined term
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
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:

- (a) 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.

- (b) 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:

Product Component	Product Feature	Fibre	FW	LTS
Network-Network Interface	1000BaseLX	✓	✓	✓
	10GBaseLR	✓	✓	✓
	1000BaseEX	✓	✓	✓
	10GBaseER	✓	✓	✓
	Multi-bearer Link Aggregation Groups for load sharing	✓	✓	✓
	Chassis diversity	✓	✓	✓
Connectivity Virtual Circuit	TC-4: up to 50Mbps for wireless or satellite-only.		✓	✓
	TC-4: 100, 150, 200, 250, 300, 400, 500, 600, 700, 800, 900, 1,000, 2,000, 3,000, 4,000, 5,000, 6,000, 7,000, 8,000, 9,000 and 10,000 Mbps	✓	✓	✓
	TC-1: 5, 10, 20 Mbps	✓	✓	✓
	TC-MC (Multicast): 100, 200, 300, 400, 500, 600, 700, 800, 900, 1000 Mbps	✓		
	TC-2: 50, 100, 150, 200, 250, 300, 400, 500, 600, 700, 800, 900, 1000 Mbps	✓	✓	✓
	TC-3: 50, 100, 150, 200, 250, 300, 400, 500, 600, 700, 800, 900, 1000 Mbps	✓	✓	✓
Access Virtual Circuit	TC-4: 12/1, 25/5 Mbps	✓	✓	✓
	TC-4: 25/10, 50/20, 100/40, 250/100, 500/200, 1000/400 Mbps	✓		
	TC-1 : 60kbps			✓
	TC-1 : 0.15Mbps	✓	✓	
	TC-1: 0.3, 0.5, 1, 2, 5Mbps	✓		
	TC-2: 5 Mbps		✓	
	TC-3: 5 Mbps		✓	
	TC-2: 2, 5, 10, 20, 30, 40 Mbps	✓		
	TC-3: 10, 20, 30, 40, 100 Mbps	✓		
	TC-MC: 5, 20, 30, 40, 50, 60 Mbps	✓		
Enterprise Ethernet: 50-100Mbps symmetrical pipe model (but excluding product features, service levels and pricing)	✓			

Comment [A46]: Please refer to section 4.1.4 of NBN Co's submission.

Comment [A47]: Please refer to section 4.1.4 of NBN Co's submission.

Attachment D (Initial Products)

Product Component	Product Feature	Fibre	FW	LTS
	Enhanced Service Level guarantee: Business 7am-9pm; 7 days a week, 1 hour responses, 12 hour restoration (+geographic factor)	✓		
	Additional Enhanced Service Levels: 24/7 fault rectification with 12, 8, 6, & 4 hour restoration	✓		
	Tagged and Priority Tagged Framing	✓		
	Customer Edge Virtual Local Area Network transparency	✓		
	Access Diversity	✓		
	Drop priority based on Class of Service markings	✓		
	Advanced OAM features for Enterprise Ethernet Services (but excluding pricing)	✓		
User Network Interface	Data (4 ports)	✓	✓	✓
	Voice with in-built Analogue Telephony Adaptor (1 or 2 ports)	✓		
	Battery backup capability available on both UNI-V and UNI-D	✓		
	Optional Battery Backup	✓		
	TR-69 configuration for UNI-V	✓		
	IPv6 for DHCP on UNI-D	✓	✓	
	Out of band DTMF and RTCP for UNI-V	✓		
	Business Grade NTD	✓		
Other Service Enhancements	Reporting Phase 1 – SLA Fulfilment and Assurance	✓	✓	✓
	Reporting Phase 2 –Customer Management Reporting, including: <ul style="list-style-type: none"> • Service Performance • Usage • Availability • SLA violations 	✓	✓	✓

Module 1

Initial Regulatory Period



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

1A.1 ~~General~~ **Implementation of NBN Access Service**

~~1A.1.1~~ **Scope**

This Schedule 1A applies for the Initial Regulatory Period.

1A.2 **Implementation of NBN Access Service**

Comment [A48]: Consequential changes to address ACCC restructure

~~1A.1.2~~ **Supply of Product Components and associated Product Features**

Subject to clause 1A.8~~1A.7~~, NBN Co will implement 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.2~~ **1A.3 Product Components of NBN Access Service**

~~1A.2.1~~ **1A.3.1 User Network Interface**

A UNI is a physical interface on the NTD.

~~1A.2.2~~ **1A.3.2 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, in respect of that NTD.

~~1A.2.3~~ **1A.3.3 Connectivity Virtual Circuit**

A CVC is Ethernet-based, Layer 2 virtual capacity for the transport of Access Seeker 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, in respect of that virtual capacity.

~~1A.2.4~~ **1A.3.4 Network to Network Interface**

The NNI is a physical interface between the NBN Co Network and the Access Seeker's network associated with a POI.

~~1A.2.5~~ **1A.3.5 Composition of AVC and CVC**

The AVC and CVC may incorporate some limited Layer 3 awareness, 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,
- (d) 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~~1A.4 Terms and conditions relating to supply of Product Components

~~1A.3.1~~1A.4.1 Availability of Product Components

The supply of the Product Components to an Access Seeker in respect of particular Premises is subject to the following conditions:

- (a) the Premises are NBN Serviceable;
- (b) that Access Seeker's network is connected to the POI associated with the Premises in respect of which supply of the relevant Product Component is sought; and
- (c) all necessary testing of the connectivity between the NBN Co Network and that Access Seeker's network has been successfully completed.

~~1A.3.2~~1A.4.2 NBN Co may make supply of AVC conditional on acquisition of other Product Components

- (a) Subject to clause 1A.4.2(b), NBN Co may require that the supply of an AVC to an Access Seeker be on the condition that the Access Seeker also acquire a UNI, a CVC and a NNI, or an AVC of a different traffic class, in conjunction with 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 in which the AVC is being acquired; or
 - (ii) an NNI, if the Access Seeker has an existing NNI at the POI for the CSA in which the AVC is being acquired,

Comment [A49]: Please see section 3.2.3 of NBN Co's submission

~~in which the AVC is being acquired other than for reasons of technical compatibility, network operations, capacity or scale associated with the supply of the CVC or NNI (as the case may be).~~

~~1A.3.3~~ **1A.4.3 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~~ **1A.4.4 UNI availability**

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

~~1A.3.5~~ **Points of Interconnect**

- ~~(a) — NBN Co will specify 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.~~
- ~~(c) — A POI may serve one or more CSAs.~~
- ~~(d) — Subject to clause 1A.3.5(f), a POI specified under clause 1A.3.5(a) may be a Temporary POI 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 1A.3.5.~~
- ~~(h) — NBN Co will~~
- ~~(i) — 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).~~

Comment [A50]: Please see section 6.2.1 of NBN Co's submission.

~~1A.4~~1A.5 Implementation of Ancillary Services

~~1A.4.1~~ Supply of Ancillary Services

Subject to clause 1A.8, NBN Co will implement 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 11 (Product Development and Withdrawal).

1A.51A.6 Types of Ancillary Services

~~1A.5.1~~1A.6.1 Platform Interfacing Service

- (a) Subject to clause 1A.8, NBN Co will implement the Platform Interfacing Service by 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 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 and NBN Co respectively (**B2B Access**); or

- (ii) service portal, which enables an Access Seeker 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~~ **1A.6.2 Sandpit**

NBN Co will implement the Sandpit by the supply of test and verification facilities that allow an Access Seeker 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 B2B gateway;
 - (ii) interoperability functional testing activities;
 - (iii) functional testing related to the development or maintenance of an Access Seeker's operational support systems, which may include the exchange of messages between that Access Seeker'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 tracking of orders being processed~~ **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 Products that are directly related to the Product Components and Product Features that are or will be acquired by that Access Seeker 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.6.2(a) to 1A.6.2(d).

~~1A.6~~1A.7 **Facilities Access Service**

Subject to clause 1A.8, NBN Co will implement the Facilities Access Service by 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 ~~POI Site or~~ Aggregation Node Site (**Cross-Connect**);
- (b) NBN Co co-location, which enables an Access Seeker to install, operate and maintain Access Seeker Active Equipment in Rack Space ~~within the relevant Aggregation Node Site~~ (**NBN Co Co-Location**);
- ~~(c)~~ NBN Co ODF termination point, which enables an Access Seeker's lead-in or backhaul transmission cables to be connected by NBN Co to the NBN Co ODF at the relevant ~~Aggregation Node Site~~ ~~POI Site~~ (**NBN Co ODF Termination Point**);
- ~~(e)~~(d) other Facilities supplied by NBN Co that are necessary to facilitate entry to buildings such as cable trays or building duct access; and
- ~~(d)~~(e) such other types of facilities access that NBN Co introduces in accordance with Schedule 1I (Product Development and Withdrawal).

Comment [A51]: Consequential change (WBA alignment).

Comment [A52]: Consequential change (WBA alignment).

Comment [A53]: Consequential change (WBA alignment).

1A.8 **Service declared by the ACCC or specified in regulatory determinations**

~~1A.8.1 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.8, **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 or NBN Co's obligations to supply as imposed on NBN Co by terms and conditions specified by the ACCC under 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.~~

Comment [A54]: Please see section 3.1 of NBN Co's submission

~~1A.1.1 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.~~

Comment [A55]: Please see section 3.1 of NBN Co's submission

Schedule 1B Term of any SFAA and consultation on changes to any SFAA

1B.1 General

Scope

This Schedule 1B applies for the Initial Regulatory Period.

1B.2 Standard Form of Access Agreement

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 the option of the parties to an Access Agreement agreeing to extend the term of that Access Agreement beyond such expiry date.

1B.3 Multilateral Consultation on changes to any SFAA

~~1B.3.1 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 a Multilateral SFAA Forum no later than 12 months prior to the expiry of the term of each ~~version of the SFAA~~ published under section 152AL(8D) of the CCA and in accordance with clause 6 of this Special Access Undertaking.
- (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) 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.
- (f) Nothing in this clause 1B.3 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.

Comment [A56]: Please see section 2.1.5 of NBN Co's submission.

~~Schedule 1C — Reference Offers~~

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

~~1C.1.4 — Maximum Regulated Prices for Reference Offers~~

~~The Price for the supply of a Reference Offer at any point in time must not be higher than the Maximum Regulated Price applicable to that Reference Offer at that point in time, as determined in accordance with clauses 1C.3 and 1C.4.~~

~~1C.1.5 — Maximum Regulated Price operates as a ceiling~~

~~Nothing in this Schedule 1C prevents NBN Co from supplying a Reference Offer at any point in time at a Price that is lower than or equal to the Maximum Regulated Price for the Reference Offer and that point in time.~~

~~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); 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 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, 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)*

Schedule 1B Term of any SFAA and consultation on changes to any SFAA

Data Transfer Rate (Mbps)	Traffic Class
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
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 clause 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).~~

- (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).~~

~~1C.4 Maximum Regulated Prices from 1 July 2017 until the end of the Initial Regulatory Period~~

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

- (a) ~~Subject to clause 1H.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) if a Price Review Arrangement applies to the Reference Offer in that Financial Year, determined in accordance with that Price Review Arrangement; or~~
- ~~(c) 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;~~
 - ~~(iv) the price specified in the Regulatory Determination for that point in time; or~~~~
- ~~(d) 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,~~
 - ~~(iii) the new Price for that Reference Offer introduced by NBN Co;~~
~~or~~~~
- ~~(e) 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~~

- ~~(a) The Individual Price Increase Limit of a Reference Offer in year t is the greater of:~~
- ~~(b) \$0; and~~
- ~~(c) $Price_{t-1} * [(1 + CPI_{t-1}^{March}) * (1 - 1.5\%) - 1]$;~~

~~where:~~

- (d) ~~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).~~
- (e) ~~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.~~
- (f) ~~The Individual Price Increase Limit is rounded to the nearest whole cent.~~
- (g) ~~For clarity, the Individual Price Increase Limit will always be a positive or zero value.~~

1C.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 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 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 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 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 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 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 Access Seeker.~~

~~(d) — Once clause 1C.4.3(a) ceases to apply in respect of all CSAs, NBN Co will annually review the 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.4.4 — Exceptions to the Maximum Regulated Price for Reference Offers~~

~~Clauses 1C.3.1, and 1C.4.1 do not apply to 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.4.5 — 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 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~~

~~7~~

~~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:~~

~~(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).~~

~~(b) — NBN Co may propose that a Reference Offer cease to be Zero Priced by~~

~~(i) — providing no less than 6 months' notice to Access Seekers and the ACCC of its intention that the Reference Offer cease to be Zero Priced, including the reasons why NBN Co considers the~~

~~Zero-Priced Reference Offer meets one or more of the criteria specified in clause 1C.4.6(f).~~

- ~~(c) — 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.4.7 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.~~

~~Schedule 1D~~ Schedule 1C **NBN Offers and Other Charges**

Comment [A57]: Please refer to section 4.2.1.2 of NBN Co's submission.

~~1D.1.1~~ 1C.1 **General**

~~1D.1.1.1~~ 1C.1.1 **Scope**

This Schedule 1D applies for the Initial Regulatory Period.

~~1D.1.2~~ 1C.1.2 **Status of ~~Non-Reference~~ NBN Offers**

- (a) NBN Co commits to supply:
- (i) each of the ~~Non-Reference~~ NBN Offers set out in clause 1C.2; and
 - (ii) such other ~~Non-Reference~~ NBN Offers that NBN Co introduces in accordance with Schedule 1I (Product Development and Withdrawal),
- from the date that NBN Co first supplies the ~~NBN Offer~~ ~~Non-Reference Offer~~, and to withdraw it only in accordance with Schedule 1I (Product Development and Withdrawal).
- (b) Clause 1C.1.2(a) does not apply to the withdrawal of an ~~Non-Reference~~ NBN 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~~ 1C.1.3 **Other Charges**

- (a) Other Charges may only be applied to the supply of ~~Non-Reference~~ NBN Offers ~~by NBN Co up to or equal to the applicable~~ ~~Maximum Regulated Price~~ in accordance with this Schedule ~~1C~~ ~~Schedule 1D~~.
- (b) NBN Co may withdraw any Other Charge that applies to an ~~Non-Reference~~ NBN Offer.

Comment [A58]: Please see section 5.1.2.1 of NBN Co's submission.

~~1D.1.4~~ 1C.1.4 **Maximum Regulated Prices for ~~NBN Offers~~ ~~Non-Reference Offers~~ and Other Charges**

- (a) The Price for the supply of an ~~Non-Reference~~ NBN Offer ~~at any point in time~~ must not be higher than the Maximum Regulated Price applicable to that ~~Non-Reference~~ NBN Offer ~~at that point in time~~, as determined in accordance with clauses ~~s~~ 1C.3, 1C.4, 1C.5 ~~and~~ 1E.1.4.
- (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 1C.3, 1C.4, 1C.5 and ~~1E.1.4~~.

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

Nothing in this Schedule 1D prevents NBN Co from supplying a ~~Non-Reference~~NBN Offer or applying an Other Charge at a Price ~~at any point in time~~ that is lower than or equal to the Maximum Regulated Price for the ~~Non-Reference~~NBN Offer or Other Charge ~~at that point in time~~.

~~1D.2~~1C.2 **~~Non-Reference~~NBN Offers**

~~1D.2.1~~1C.2.1 **Overview of ~~Non-Reference~~NBN Offers**

The ~~Non-Reference~~NBN Offers ~~apply only in respect of the NBN Co Fibre Network, unless otherwise noted, and~~ comprise the following ~~as at the SAU Commencement Date~~:

- (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;
 - ~~(d)(e)~~ the Connectivity Virtual Circuit Offers ~~(TC-2 and TC-3)~~;
 - ~~(f)~~ the Network to Network Interface Offers;
 - ~~(g)~~ the Platform Interfacing Offer;
 - ~~(h)~~ the Sandpit Offer;
 - ~~(e)(i)~~ the Multicast AVC Offers;
 - ~~(j)~~ the Multicast Domain Offers;
 - ~~(f)(k)~~ the Multicast Media Stream Offers; ~~and~~
 - ~~(l)~~ the NBN Co Co-location Offer; ~~and~~
 - ~~(m)~~ the Facilities Access Service Offer,
- ~~(each an NBN Offer and together the NBN Offers).~~

~~1D.2.2~~1C.2.2 **Asymmetric AVC Offers**

The Asymmetric AVC Offers comprise the following:

- (a) an AVC with one the following Data Transfer Rates:
 - ~~(i)~~ in respect of the NBN Co Interim Satellite Network, 6 Mbps PIR (TC-4) downlink and 1 Mbps PIR (TC-4) uplink;
 - ~~(ii)~~ in respect of each NBN Co Network (except the NBN Co Interim Satellite Network);

(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;

(iii) in respect of the NBN Co Fibre Network:

(A) 25 Mbps PIR (TC-4) downlink and 10 Mbps PIR (TC-4) uplink;

(B) 50 Mbps PIR (TC-4) downlink and 20 Mbps PIR (TC-4) uplink;

(C) 100 Mbps PIR (TC-4) downlink and 40 Mbps PIR (TC-4) uplink;

(D) 250 Mbps PIR (TC-4) downlink and 100 Mbps PIR (TC-4) uplink;

(E) 500 Mbps PIR (TC-4) downlink and 200 Mbps PIR (TC-4) uplink; and

(F) 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 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, 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:

(i) the NBN Co Fibre Network, an AVC with a 0.15 Mbps~~150 kbps~~ CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services on:

(A) if the option in clause 1C.2.2(c) is exercised, the UNI-V on the Accessed NTD, in which case the 0.15 Mbps~~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 1C.2.2(a); or

(B) if the option in clause 1C.2.2(c) is not exercised, the UNI-D on the Accessed NTD, in which case the 0.15 Mbps~~150 kbps~~ CIR (TC-1) symmetrical Data Transfer Rate will be provided as part of the AVC described in

Comment [A59]: Please see section 5.3 of NBN Co's submission. This change has been replicated throughout the schedule.

clause 1C.2.2(a) and included within the Data Transfer Rate for that AVC;

(ii) the NBN Co Wireless Network, an AVC with a 0.15 Mbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services on the UNI-D on the Accessed NTD, which 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

~~(ii)~~(iii) the NBN Co Interim Satellite Network, an AVC with a 60 kbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services on the UNI-D on the Accessed NTD, which 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.

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

~~1D.2.3~~1C.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 Access Seeker in conjunction with another AVC mapped to the same UNI-D (each an **Additional Asymmetric AVC Offer**).

~~1D.2.4~~1C.2.4 **Symmetric Access Capacity Offers**

The Symmetric Access Capacity Offers in respect of the NBN Co Fibre Network (except where stated otherwise) comprise the following symmetrical Data Transfer Rates on an AVC that are included within the Data Transfer Rates (TC-4) acquired by the Access Seeker in respect of the same AVC:

- (a) in respect of the Symmetric Access Capacity Offers (TC-1):

Comment [A60]: Please see section 5.3 of NBN Co's submission.

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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
40	TC-2 and TC-3
100	TC-3

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

(b) in respect of the Symmetric Access Capacity Offers (TC-2):

Symmetrical Data Transfer Rate (Mbps)	Traffic Class (CIR)
<u>5</u>	<u>TC-2</u>
<u>10</u>	<u>TC-2</u>
<u>20</u>	<u>TC-2</u>
<u>30</u>	<u>TC-2</u>
<u>40</u>	<u>TC-2</u>

(c) in respect of the Symmetric Access Capacity Offers (TC-3):

Symmetrical Data Transfer Rate (Mbps)	Traffic Class (CIR)
<u>10</u>	<u>TC-3</u>
<u>20</u>	<u>TC-3</u>
<u>40</u>	<u>TC-3</u>
<u>100</u>	<u>TC-3</u>

provided that the aggregate symmetrical Data Transfer Rate acquired by the 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~~ **1C.2.5 Second UNI-V and AVC Offer**

The Second UNI-V and AVC Offer in respect of the NBN Co Fibre Network 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 1C.2.5, the

Accessed NTD), for use in conjunction with the AVC described in clause 1C.2.5(b); and

- (b) an AVC with a 0.15 Mbps ~~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.

1C.2.6 Connectivity Virtual Circuit Offers

Comment [A61]: Please see section 5.3 of NBN Co's submission.

The Connectivity Virtual Circuit Offers comprise CVCs with the following Data Transfer Rates:

- (a) _____ in respect of the Connectivity Virtual Circuit Offers (TC-1):

Data Transfer Rate (Mbps)	Traffic Class
<u>5</u>	<u>TC-1 (CIR)</u>
<u>10</u>	<u>TC-1 (CIR)</u>
<u>20</u>	<u>TC-1 (CIR)</u>
<u>50</u>	<u>TC-1 (CIR)</u>
<u>100</u>	<u>TC-1 (CIR)</u>
<u>150</u>	<u>TC-1 (CIR)</u>
<u>200</u>	<u>TC-1 (CIR)</u>
<u>250</u>	<u>TC-1 (CIR)</u>
<u>300</u>	<u>TC-1 (CIR)</u>
<u>400</u>	<u>TC-1 (CIR)</u>
<u>500</u>	<u>TC-1 (CIR)</u>

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:

- (a)-(b) _____ in respect of the Connectivity Virtual Circuit Offers (TC-2):

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

~~(b)(c)~~ in respect of the Connectivity Virtual Circuit Offers (TC-3):

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)

~~(c)(d)~~ in respect of the Connectivity Virtual Circuit Offers (TC-4):

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

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

(each a Connectivity Virtual Circuit Offer).

1C.2.7 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)
<u>1000BaseLX</u>	<u>1</u>
<u>1000BaseT *</u>	<u>1*</u>

NNI Bearer Profiles	Interface capacity (Gbps)
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.2.8 Platform Interfacing Offer

The Platform Interfacing Offer comprises the Platform Interfacing Service.

1C.2.9 Sandpit Offer

The Sandpit Offer comprises the Sandpit.

~~1D.2.7~~**1C.2.10 Multicast AVC Offers**

The Multicast Access Virtual Circuit Offers in respect of the NBN Co Fibre Network comprises ~~the~~ Multicast AVCs 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~~**1C.2.11 Multicast Domain Offers**

The Multicast Domain Offer s in respect of the NBN Co Fibre Network comprises the Multicast Domain ~~and configured Media Streams within that Multicast Domain~~ with one of the following Data Transfer Rates provided to an existing UNI-D on the NTD connected to the NBN Co Network at the Premises and used by the Access Seeker in conjunction with the Multicast Access Virtual Circuit mapped to the same UNI-D:

Comment [A62]: Please see section 5.3 of NBN Co's submission.

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

Downstream Mbps (CIR)
800
900
1000

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

1C.2.12 Multicast Media Stream Offers

The Multicast Media Stream Offers comprise configured Media Streams within a Multicast Domain as follows:

Media Streams per Multicast Domain
0 – 200
> 200

(each a **Multicast Media Stream Offers**).

1C.2.13 NBN Co Co-location Offer

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

1C.2.14 Facilities Access Service Offer

The Facilities Access Service Offer comprises the following types of Facilities Access Service in respect of an Established POI:

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

Comment [A63]: Please see section 5.3 of NBN Co's submission.

1C.3 Maximum Regulated Price for certain NBN Offers during period between SAU Commencement Date and 30 June 2017

Subject to clause 1G.2, the Maximum Regulated Price for each NBN Offer described in this clause 1C.3 in respect of the period between the SAU Commencement Date until 30 June 2017 is as follows:

- (a) _____ for an Asymmetric AVC Offer that includes:
 - (i) _____ an AVC with a Data Transfer Rate of 6 Mbps PIR (TC-4) downlink and 1 Mbps PIR (TC-4) uplink: \$24.00, per SIO, per month;
 - (ii) _____ an AVC with a Data Transfer Rate of 12 Mbps PIR (TC-4) downlink and 1 Mbps PIR (TC-4) uplink: \$24.00, per SIO, per month;

(iii) an AVC with a Data Transfer Rate of 25 Mbps PIR (TC-4) downlink and 5 Mbps PIR (TC-4) uplink: \$27.00, per SIO, per month; and

(iv) an AVC with a Data Transfer Rate of 25 Mbps PIR (TC-4) downlink and 10 Mbps PIR (TC-4) uplink: \$30.00, per SIO, per month;

(b) a Symmetric Access Capacity Offer with a symmetrical Data Transfer Rate of 0.5 Mbps CIR (TC-1): \$33.00, per SIO, per month;

(c) for each Connectivity Virtual Circuit Offer (TC-1): \$20.00 per Mbps, per month;

(d) for each Connectivity Virtual Circuit Offer (TC-4): \$20.00 per Mbps, per month;

(e) for each Network to Network Interface Offer:

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

* There is also a one-off establishment charge as set out in clause 1C.4.2(a).

(f) for the Platform Interfacing Offer: \$0;

(g) for the Sandpit Offer on each NBN Co Network: \$0;

(h) for the Facilities Access Service Offer:

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

* There is also a one-off establishment charge as set out in clause 1C.4.2(d).

1D.31C.4 Maximum Regulated Prices on introduction

1D.3.11C.4.1 Non-ReferenceNBN Offers

Subject to clause 1G.2, the Maximum Regulated Price of each **Non-ReferenceNBN** Offer set out in clause 1C.2, in the Financial Year in which the **Non-ReferenceNBN** Offer is introduced in accordance with clause 1C.1.2(a)(i), will be as follows:

(a) for the Asymmetric AVC Offers:

Schedule 1C NBN Offers and Other Charges

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

Comment [A64]: Moved to clause 1C.3 and locked in until 30 June 2017.

(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, comprising:

(i) the Symmetric Access Capacity Offers (TC-1):

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

(ii) the Symmetric Access Capacity Offers (TC-2):

Schedule 1C NBN Offers and Other Charges

<u>TC (CIR)</u>	<u>Symmetrical Data Transfer Rate (Mbps)</u>	<u>Monthly Recurring Charge, per SIO</u>
<u>TC-1</u>	<u>0.15</u>	<u>\$10.00</u>
<u>TC-2</u>	<u>5</u>	<u>\$32.00</u>
<u>TC-2</u>	<u>10</u>	<u>\$64.00</u>
<u>TC-2</u>	<u>20</u>	<u>\$128.00</u>
<u>TC-2</u>	<u>30</u>	<u>\$192.00</u>
<u>TC-2</u>	<u>40</u>	<u>\$256.00</u>

(iii) the Symmetric Access Capacity Offers (TC-3):

<u>TC (CIR)</u>	<u>Symmetrical Data Transfer Rate (Mbps)</u>	<u>Monthly Recurring Charge, per SIO</u>
<u>TC-3</u>	<u>10</u>	<u>\$48.00</u>
<u>TC-3</u>	<u>20</u>	<u>\$96.00</u>
<u>TC-3</u>	<u>40</u>	<u>\$192.00</u>
<u>TC-3</u>	<u>100</u>	<u>\$480.00</u>

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

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

(i) the Connectivity Virtual Circuit Offers (TC-2):

<u>Data Transfer Rate (Mbps)</u>	<u>Monthly Recurring Charge Traffic Class 2 (CIR)</u>	<u>Monthly Recurring Charge Traffic Class 3 (CIR)</u>
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

(ii) the Connectivity Virtual Circuit Offers (TC-3):

<u>Data Transfer Rate (Mbps)</u>	<u>Monthly Recurring Charge Traffic Class 3 (CIR)</u>
<u>50</u>	<u>\$1,000</u>

Schedule 1C NBN Offers and Other Charges

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

~~(d)~~(f) for the Multicast AVC Offers:

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

~~(e)~~(g) for the Multicast Domain Offers: \$2.50 per Mbps, per month.

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

~~(g)~~(h) for the Multicast Media Stream Offers associated with each Multicast Domain:

<u>Media Streams per Multicast Domain</u>	<u>Media Streams per Multicast Domain Monthly Recurring Charge</u>
0 – 200	\$0.00
> 200	\$50.00 per Media Stream in excess of 200 Media Streams

~~(h)~~(i) for the NBN Co Co-location Offer:

<u>Type of NBN Co Co-location Offer</u>	<u>Monthly Recurring Charge, per month*</u>
Lockable full height equipment rack	\$2,000
Lockable half height equipment rack	\$1,200

* There is also a one-off establishment charge as set out in clause 1C.4.2(d).

1D.3.21C.4.2 Other Charges

Subject to clause 1G.2, ~~the Other Charges, and~~ the Maximum Regulated Price of each Other Charge, in the Financial Year in which the SAU Commencement Date occurs ~~is 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 per Activity
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, charged for a minimum amount equivalent to 3.67 hours
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	\$1,000
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

Comment [A65]: Please see section 5.3 of NBN Co's submission.

Comment [A66]: Please see section 5.3 of NBN Co's submission.

Comment [A67]: Please see section 5.3 of NBN Co's submission.

- (b) for service modifications on the NBN Co Fibre Network, NBN Co Wireless Network or NBN Co Satellite Network:

Activity	Chargeable unit	Charge per Activity
Access Component Modification (no attendance at Premises required)	Per modification	\$0
Connectivity Component CVC Modification	Per event	\$0
Multicast Domain Modification	Per event	\$0
NNI Modification	Per event	\$0
Equipment modification (attendance at Premises required) Rearrangement / Modification	Time and materials	Hourly Labour Rate plus cost of materials
Equipment Removal	Time and materials	Hourly Labour Rate plus cost of

Comment [A68]: Please see section 5.3 of NBN Co's submission.

Comment [A69]: Please see section 5.3 of NBN Co's submission.

Comment [A70]: Please see section 5.3 of NBN Co's submission.

Schedule 1C NBN Offers and Other Charges

Activity	Chargeable unit	Charge per Activity
		materials
Equipment Repair	Time and materials	Hourly Labour Rate plus cost of materials

Comment [A68]: Please see section 5.3 of NBN Co's submission.

(c) for service management on the NBN Co Fibre Network, NBN Co Wireless Network or NBN Co Satellite Network:

Activity	Chargeable unit	Charge per Activity
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

(d) for the Facilities Access Service:

Activity	Charge per Activity
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

Comment [A71]: Consequential change (WBA alignment).

(e) for Enhanced-12 Fault Service Levels, \$15 per AVC, per month.

1C.4.3 CVC credit and pricing intent

Comment [A72]: Please see section 4.2.1.2 of NBN Co's submission.

- (a) From the SAU Commencement Date until the earlier of the end of the Initial Regulatory Period or such time as the number of Premises that are NBN Serviceable in a CSA exceeds 30,000 (excluding Premises served by means of the NBN Co Satellite Network), NBN Co will credit each Access Seeker, 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 Asymmetric AVC Offer supplied to that 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 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 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 Asymmetric AVC Offer supplied to that 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 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 Access Seeker.
- (d) Once clause 1C.4.3(a) ceases to apply in respect of all CSAs, NBN Co will annually review the Price of the Connectivity Virtual Circuit Offer (TC-4) with a view to reducing the Price as aggregate demand for that NBN 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.

~~1D.4~~1C.5 Price limit for Maximum Regulated Prices over time

~~1D.4.1~~1C.5.1 Maximum Regulated Prices for ~~Non-Reference~~NBN Offers and Other Charges

Subject to clause 1C.3 and 1G.2, ~~at any point in time~~ during a Financial Year, the Maximum Regulated Price of an Non-ReferenceNBN Offer or Other Charge ~~at that point in time~~ is:

(a) if a Price Review Arrangement applies to the ~~Non-Reference~~NBN 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~~NBN Offer or Other Charge ceases to be Zero-Priced in that Financial Year in accordance with clause 1C.5.4 or ceased to be Zero-Priced in any prior Financial Year in accordance with clause 1C.5.4; and

(iii) within 24 months of the date the ~~Non-Reference~~NBN Offer or Other Charge ceased to be Zero-Priced and within that Financial Year, the ACCC made a Regulatory Determination (e.g. an Access Determination) or Regulatory Determinations (e.g. an Access Determination followed by a Binding Rule of Conduct) that specifies a price in that Financial Year for that ~~Non-Reference~~NBN Offer or Other Charge ~~at that point in time~~,

the price specified in the relevant Regulatory Determination with effect on and from the date the ACCC made that Regulatory Determination until the earlier of the end of that Financial Year and the date on which another relevant Regulatory Determination is made in that Financial Year ~~for that point in time~~; or

(c) if:

(i) neither paragraph (a) nor paragraph (b) apply; and

(ii) the ~~Non-Reference~~NBN Offer or Other Charge ceases to be Zero-Priced in that Financial Year in accordance with clause 1C.5.4,

the new Price for that ~~Non-Reference~~NBN Offer or Other Charge introduced by NBN Co; or

(d) if:

Comment [A73]: Please see section 5.1.2.1 of NBN Co's submission. Please also see related changes to clauses 1C.1.3, 1E.1.4 and 1E.2.4.

- (i) none of paragraphs (a), (b) or (c) apply;
 - (ii) the ~~Non-Reference~~NBN Offer is not set out in 1C.2 or the Other Charge is not specified in clause 1C.4.2 but has been introduced in that Financial Year or any prior Financial Year; and
 - (iii) within 24 months of the ~~Non-Reference~~NBN Offer or Other Charge being introduced and within that Financial Year, the ACCC has made a Regulatory Determination (e.g. an Access Determination) or Regulatory Determinations (e.g. an Access Determination followed by a Binding Rule of Conduct) that:
 - (A) specifyies a price in that Financial Year for that ~~Non-Reference~~NBN Offer or Other Charge ~~at that point in time~~;
 - ~~(A)~~(B) for the purposes of which, the ACCC is satisfied that the price for that NBN Offer or Other Charge will not result in financial detriment to NBN Co compared to a situation in which NBN Co did not introduce the NBN Offer or Other Charge (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); and
 - ~~(B)~~(C) for the purposes of which, the ACCC has taken into account the characteristics of other ~~Reference Offers, Non-Reference~~NBN Offers and Other Charges (in this clause ~~1C.5.1(d)~~, the **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 ~~the relevant~~that Regulatory Determination with effect on and from the date the ACCC made that Regulatory Determination until the earlier of the end of that Financial Year and the date on which another relevant Regulatory Determination is made in that Financial Year; or
- (e) if:
 - (i) none of paragraphs (a), (b), (c) or (d) apply; and

- (ii) the ~~Non-ReferenceNBN~~ Offer is not set out in 1C.2 or the Other Charge is not specified in clause 1C.4.2 and has been introduced in that Financial Year,

the initial Price for that ~~Non-ReferenceNBN~~ 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,~~

~~except if the NBN Offer set out in clause 1C.2 or the Other Charge set out in clause 1C.4.2;~~

~~(iii) has been introduced in that Financial Year; or~~

- (iv) ~~in respect of the First Financial Year only, is being supplied as at the SAU Commencement Date.~~

~~1D.4.2~~**1C.5.2 Individual Price Increase Limit for ~~Non-ReferenceNBN~~ Offers and Other Charges**

- (a) ~~Subject to clause 1C.3,~~ The Individual Price Increase Limit of a ~~Non-ReferenceNBN~~ 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 for the ~~Non-ReferenceNBN~~ Offer or Other Charge over the immediately preceding Financial Year, calculated as the arithmetic average Price at which the ~~Non-ReferenceNBN~~ 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 1C.5, **Previous Year's Price**), disregarding any months occurring prior to the SAU Commencement Date and the introduction of the ~~Non-Reference-NBN~~ Offer or Other Charge. If the ACCC made a Regulatory Determination as referred to in clause 1C.5.1(b)(iii) or clause 1C.5.1(d)(iii) and that Regulatory Determination took effect part way through the immediately preceding Financial Year, the Prices for the ~~Non-ReferenceNBN~~ 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).

- (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.
- (b) The Individual Price Increase Limit is rounded to the nearest whole cent.
- (c) For clarity, the Individual Price Increase Limit will always be a positive or zero value.

~~1D.4.3~~**1C.5.3** **Exceptions to Maximum Regulated Price for ~~Non-Reference~~NBN Offers and Other Charges**

- (a) Clauses 1C.4.1, 1C.4.2 and 1C.5.1 do not apply to any notional change in Price of an ~~an~~ ~~Non-Reference~~NBN Offer or Other Charge or the reduction, removal or cessation of the application of a Discount applicable to that ~~Non-Reference~~NBN Offer or Other Charge. In other words, in determining the Price of an ~~an~~ ~~Non-Reference~~NBN 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~~NBN Offer or Other Charge; or
- (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.4.4~~**1C.5.4** **Treatment of Zero-Priced ~~Non-Reference~~NBN Offers and Other Charges associated with the supply of ~~Non-Reference~~NBN Offers**

- (a) If an ~~an~~ ~~Non-Reference~~NBN Offer or Other Charge is Zero-Priced, then that ~~Non-Reference~~NBN Offer or Other Charge will remain Zero-Priced, unless NBN Co proposes that the ~~Non-Reference~~NBN Offer or Other Charge ceases to be Zero-Priced in accordance with clause 1C.5.4(b); ~~and~~
 - (i) ~~the ACCC does not make a New Price Disallowance Determination under clause 1C.5.4(b).~~
- (b) ~~NBN Co may propose that an~~ ~~Non-Reference~~NBN Offer or Other Charge ceases to be Zero-Priced;

Comment [A74]: Please see section 5.1.2.2 of NBN Co's submission.

~~(i) _____ by providing no less than 6 months' notice to Access Seekers and the ACCC of its intention that the **Non-ReferenceNBN** Offer or Other Charge ceases to be Zero-Priced, including the reasons why NBN Co considers that the Zero-Priced **Non-ReferenceNBN** Offer or Other Charge meets one or more of the criteria specified in clause 1C.5.4(b)(ii); and;~~

~~(-) _____ 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 _____.~~

~~(-) _____ 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 1C.5.4(b) and must consider any submissions that are received within the time limit specified by the ACCC.~~

~~(-) _____ The ACCC may request that NBN Co give further information on NBN Co's proposal under clause 1C.5.4(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.~~

~~(i) _____ 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:~~

~~(ii) _____ if NBN Co is reasonably satisfied that:~~

~~(-) (A) _____ the behaviour of one or more Access Seekers in relation to the use of the **Non-ReferenceNBN** Offer or the activity associated with the Other Charge results in additional costs to NBN Co;~~

~~(-) (B) _____ the behaviour of one or more Access Seekers in relation to the use of the **Non-ReferenceNBN** Offer or the activity associated with the Other Charge results in degraded service outcomes for other Access Seekers; or~~

~~(C) _____ any other circumstance arises which makes it uneconomic for NBN Co to maintain the **Non-ReferenceNBN** Offer or Other Charge as Zero-Priced.~~

(c) _____ An NBN Offer or Other Charge will cease to be Zero-Priced upon the expiry of the notice period under clause 1C.5.4(b)(i). The revised price of the NBN Offer or Other Charge will become the Maximum Regulated Price for that NBN Offer or Other Charge from the expiry

~~date of that notice period in accordance with clause 1C.5.1(b), subject to the operation of clause 1C.5.1(b).~~

- ~~(d) Nothing in this clause restricts NBN Co from introducing a non-Price term or condition in respect of an Other Charge to address the behaviour or circumstances described in clause 1C.5.4(b)(ii).~~
- ~~(e) The ACCC must publish on its website any New Price Disallowance Determination and its reasons for issuing that New Price Disallowance Determination.~~
- ~~(f) 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.5.4(b).~~
- ~~(g) If the ACCC does not make a New Price Disallowance Determination within the required time under clause 1C.5.4(b), the Non-Reference Offer or Other Charge specified in NBN Co's proposal may cease to be Zero Priced.~~
- ~~Nothing in this clause 1C.5.4 prevents NBN Co from issuing a subsequent notice under clause 1C.5.4(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 1C.5.4 will apply in respect of that subsequent notice.~~

~~1D.4.5~~ **1C.5.5 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 an ~~an~~ **Non-Reference NBN** Offer or Other Charge, any reduction, removal or cessation of a Discount applicable to an ~~an~~ **Non-Reference NBN** 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.

~~1D.4.6~~ **1C.5.6 Treatment of Bundles**

If:

- (a) an ~~an~~ **Non-Reference 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 1C.5.6, 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.

1C.6 Initial pricing principles

Comment [A75]: Please see section 5.1.2.2 of NBN Co's submission.

- (a) If, during the Initial 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 NBN Offer; or
 - (iv) introduces a new Price for a Zero-Priced Other Charge,
then the initial or new Price, or Prices, of that New Offer, New Other Charge, Zero-Priced NBN 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 NBN Offer or Zero-Priced Other Charge and other NBN 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 NBN Offer or Zero-Priced Other Charge under clause 1C.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 NBN Offer or Zero-Priced Other Charge under clause 1C.6(a):
- (i) any New Offer will become an NBN Offer; and
 - (ii) any New Other Charge will become an Other Charge.

Annexure 1 Standard NFAS Installation

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.

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.

3 Acknowledgements

3.1 Safety standards and procedures

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, **Connecting Fibre** or PCD is not required or is already installed and able to service the Premises.

Comment [A76]: WBA alignment change.

4 Definitions

For the purpose of this Annexure 1 to Schedule 1C, ~~Schedule 1D~~:

Appointment means the appointment period requested by an Access Seeker, 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:

- (a) a Drop Fibre;
- (b) a PCD;
- (c) a Connecting Fibre;
- (d) an NTD (and any installation and provision of an associated battery back-up unit and First Battery); and
- (e) 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.

Annexure 2 Standard NWAS Installation

1 Standard NWAS Installation

An installation will be considered to be a **Standard NWAS 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.

2 Non Standard NWAS Installation

Notwithstanding anything in clause 1 of this Annexure 2 to Schedule 2D (~~Non-Reference~~NBN Offers and Other Charges), 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.

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 Connecting Cable or outdoor component of an NTD is not required or is already installed and able to service the Premises.

Comment [A77]: WBA alignment change.

4 Definitions

For the purposes of this Annexure 2 to Schedule 1D:

Appointment means the appointment period requested by an Access Seeker, 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:

- (a) an outdoor NTD component;
- (b) a Connecting Cable;
- (c) an indoor NTD component; and
- (d) 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 1D Regulatory Asset Base

1E.11D.1 General

1E.11D.1.1 Scope

- (a) This Schedule 1D (Regulatory Asset Base) applies for the Initial Regulatory Period.
- (b) Clauses 1D.8 to 1D.12 apply until the end of the Financial Year that is ~~cease to have effect~~ 5 years after the SAU Commencement Date.

1E.12D.1.2 Overview

- (a) Clause 1D.2 sets out how 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 1D.3.1 sets out the requirements the ACCC must be satisfied of before it will recognise Capital Expenditure in the RAB.
- (c) Clauses 1D.3 to 1D.12 set out the circumstances in which Capital Expenditure will be considered to be Prudently incurred.

1E.21D.2 Calculation of the Regulatory Asset Base

1E.21D.2.1 Calculation of Real RAB

The Real RAB will be:

- (a) as at the Cost Commencement Date, zero;
- (b) rolled forward to the start of each Financial Year according to the following methodology:

$$\begin{aligned}
 \text{Real RAB}_{t+1}^{\text{start}} &= \text{Real RAB}_t^{\text{end}} \\
 &= \text{Real RAB}_t^{\text{start}} + (\text{Real Capex}_t - \text{Real Disposals}_t) \\
 &\quad * (1 + R_t^{\text{nominal}})^{0.5} - \text{Real Straight Line Depreciation}_t
 \end{aligned}$$

Comment [A78]: Please see section 5.2.1.3 of NBN Co's submission.

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

where:

t is the Financial Year being evaluated.

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

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

$\text{Real RAB}_t^{\text{start}}$ is zero where the Cost Commencement Date occurs in year t and otherwise the Real RAB at the start of the current Financial Year (t).

where:

~~Real Capex~~, ~~Real Capital Expenditure~~ $_t$ is the real value of the actual Capital Expenditure that the ACCC is satisfied, in accordance with clause 1D.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 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 1E.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~~ $_{\text{vanilla},t}^{\text{nominal}}$ ~~R_t^{nominal}~~ is the nominal rate of return in Financial Year t , calculated in accordance with clause 1E.7.1(a).

~~Real Disposals~~ $_t$ is

where:

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

~~Real Straight Line Depreciation~~ $_t$ is the real value of the depreciation applicable to the Relevant Assets included in the RAB in the current Financial Year t , determined in accordance with clause 1E.9.1.

~~1E.2.2~~1D.2.2 Calculation of Nominal RAB

The Nominal RAB will be:

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

and:

$$\text{Nominal RAB}_t^{\text{start}} = \text{Nominal RAB}_{t-1}^{\text{end}}$$

$$= \text{CIF}_{t-1} * \text{Real RAB}_{t-1}^{\text{end}}$$

$$= \text{CIF}_{t-1} * \text{Real RAB}_t^{\text{start}}$$

where:

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

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

CIF_t is defined in clause ~~1E.9.4(b)~~1E.9.4.

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

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

~~1E.2.3~~1D.2.3 Inclusion of initial Capital Expenditure

Pursuant to clause 1D.3.1(a)(ii)(H), 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 Schedule ~~1DE~~ (Regulatory Asset Base).

~~1E.2.4~~1D.2.4 Treatment of Construction in Progress

- (a) 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 1E.10 and, to the extent that the ACCC has determined that CIP has been Prudently incurred under clause 1D.2.4(c), included by the ACCC in the calculation of the Annual Building Block Revenue Requirement as described in clause 1E.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 1D.3.1, 1D.4 and 1D.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.~~

~~1E.3~~ **1D.3 Prudently incurred Capital Expenditure**

~~1E.3.1~~ **1D.3.1 Inclusion of Capital Expenditure in the RAB**

Comment [A79]: Please see section 5.2.2.2 of NBN Co's submission.

- (a) For the purposes of calculating the RAB for the Relevant Assets pursuant to clause 1D.2.1, an item or category of Capital Expenditure incurred by NBN Co in a Financial Year is only considered to be Prudently incurred and included in the RAB to the extent if the ACCC is satisfied that the Capital Expenditure:
- (i) has been incurred in accordance with:
 - (A) the Prudent Cost Condition (in accordance with clause 1D.4); and
 - (B) the Prudent Design Condition (in accordance with clause 1D.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
 - (H) Capital Expenditure incurred by NBN Co from the Cost Commencement Date until the SAU Commencement Date.

- (b) ~~To the extent~~ if the ACCC is not satisfied that an item or category of the Capital Expenditure incurred by NBN Co in a Financial Year meets the requirements specified in clause 1D.3.1(a):
- (i) that Capital Expenditure may not be included in the RAB; ~~and~~
 - (ii) in making an LTRCM Determination pursuant to clause 1E.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 1D.3.1(a)~~ is consistent with Capital Expenditure that has been included in the RAB in respect of a prior Financial Year, having regard to:
 - (A) the relative amounts of the Capital Expenditure incurred in those Financial Years;
 - (B) the relative cost of particular goods or services in those Financial Years;
 - (C) 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
 - (D) any other matter the ACCC considers relevant.

~~1E.4~~1D.4 Prudent Cost Condition for Capital Expenditure

~~1E.4.1~~1D.4.1 Prudent Cost Condition for the Relevant Assets

An item or category of Capital Expenditure incurred in a Financial Year will satisfy the Prudent Cost Condition in accordance with clause 1D.3.1(a)(i)(A) to the extent the ACCC is satisfied that:

- (a) the Capital Expenditure was incurred pursuant to a contract that was let in accordance with a competitive tendering and procurement process and which includes a process for the management of 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

Comment [A80]: Please see section 5.2.2.2 of NBN Co's submission.

- ~~(iii)~~ that the design, engineering and construction of the Relevant Assets falls within the scope of such a process; or
- ~~(b)~~ the contract was entered into on arm's length terms;
- ~~(c)~~ the contract entered into was in respect of a good or service acquired in an open and competitive market (e.g. a commodity market); or
- ~~(b)(d)~~ 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
 - ~~any other matter the ACCC considers relevant~~

1E.4.2 1D.4.2 Prudently incurred Capital Expenditure Factors

Comment [A81]: Please see section 5.2.2.2 of NBN Co's submission.

- (a) In deciding ~~the extent to which~~ whether an ~~item or category~~ amount of Capital Expenditure meets the requirement specified in clause 1D.4.1(a), the ACCC must have regard to the following:
 - ~~(i)~~ whether the extent to which the contract was entered into in accordance with NBN Co's procurement processes, including ~~in accordance with~~ the Procurement Rules; ~~and~~
 - ~~(i)~~ whether the contract was entered into on arm's length terms;
 - ~~(ii)~~ whether the contract entered into was in respect of a good or service in an open and competitive market (e.g. a commodity market);
 - ~~(iii)~~ ~~(i)~~ any other factor the ACCC considers relevant.
- (b) In determining ~~the extent to which~~ whether exceptional circumstances exist for the purposes of clause 1D.4.1(d), the ACCC ~~must~~ ~~may~~ have regard to:

~~(i)~~ the extent to which the relevant Capital Expenditure was procured to comply with a legal, policy, regulatory or administrative request, or a request of the Shareholder Ministers;

~~(i)(ii)~~ 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)(iii)~~ the extent to which ~~whether~~ the relevant Capital Expenditure was incurred on exceptionally advantageous terms;

~~(iii)(iv)~~ the extent to which ~~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)(v)~~ any other factor the ACCC considers relevant.

~~1E.5~~1D.5 Procurement Rules

~~1E.5.1~~1D.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;~~

Comment [A82]: Repeats 1D.5.1(b)

~~(d)~~(c) any decision to approve a tender that is not the lowest price tender must be appropriately justified and documented;

~~(e)~~(d) the basis for undertaking the works and services must be in accordance with good industry practice and the basis of payment for works and services must be clearly specified; and

~~(f)~~(e) there must be a process for managing contracts (both before and after the award of tenders) that accords with good industry practice and which seeks to achieve value for money and the lowest Total Cost of Ownership,

(the **Procurement Rules**).

~~1E.5.2~~1D.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.

~~1E.6~~1D.6 **Prudent Design Condition for Capital Expenditure**

Capital Expenditure ~~will~~ in a Financial Year will satisfy the Prudent Design Condition in accordance with clause 1D.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 are materially consistent with or within the scope of:

(a) the Network Design Rules, in accordance with clause 1D.7.1 and 1D.7.4;

(b) a Permitted Variation, as described in clause 1D.7.2; or

~~(c)~~ an Endorsed Network Change, in accordance with the process described in clauses 1D.8 to 1D.12, ~~or a Network Change as otherwise determined or permitted by the ACCC.~~

Comment [A83]: Please see section 5.2.2.4 of NBN Co's submission.

1E.7.1D.7 Network Design Rules and Permitted Variations

1E.7.1D.7.1 Scope of Network Design Rules

Subject to clause 1D.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.7.2~~**1D.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 1D.7.3~~1A.1.1(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.7.3~~**1D.7.3** **Minor Expenditure Limit and notification of urgent and unforeseen network issues**

- (a) For the purposes of clause 1D.7.2(viii):
 - (i) clause 1D.7.2(viii) will be satisfied if the ACCC is satisfied that NBN Co 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 1D.7.2(viii) will not be satisfied to the extent that the ACCC is ~~satisfied~~**satisfied** that NBN Co has made an assessment by dividing an integrated solution into distinct and separate parts merely for the purpose of satisfying the requirements of clause 1D.7.2(viii).

- (b) On 1 July each Financial Year during the Initial Regulatory Period, the Minor Expenditure Limit will automatically increase in accordance with the following formula:

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

where:

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

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

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

- (c) If a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets is required to address an urgent and unforeseen network issue pursuant to clause 1D.7.2(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.7.4 **1D.7.4 Updates to the Network Design Rules**

- (a) NBN Co must update the Network Design Rules 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 1D.7.1.

- (b) NBN Co must update the Network Design Rules in accordance with:
 - (i) the terms of this Special Access Undertaking, including any variation to this Special Access Undertaking accepted by the ACCC in accordance with section 152CBG of the CCA; and
 - (ii) any Regulatory Determination made by the ACCC to the extent it is not inconsistent with the terms of this Special Access Undertaking.
- (c) If NBN Co updates the Network Design Rules pursuant to clause 1D.7.4(a) or 1D.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 1D.7.4, the date on which the updated Network Design Rules are provided to the ACCC is the **Revised NDR Date**.
- (d) For the purposes of clause 1D.6, ~~the either of the~~ following approaches may be applied by NBN Co (at its option) to the extent that the ACCC is satisfied that it is reasonable:
 - (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 1D.7.4(a)(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.

Comment [A84]: The deletion in clause 1E.7.4(d) of the words “by NBN Co (at its option or in combination)” makes it unclear how a particular method is employed and by whom. NBN Co proposes to reinstate this wording but add the qualifier “to the extent that the ACCC is satisfied that it is reasonable”. The assessment of whether it is reasonable to continue under the old Network Design Rules or whether to move to the new Network Design Rules can be assessed objectively and subject to discussion during the ex-post review by the ACCC (or beforehand, if necessary).

~~1E.8~~1D.8 **Network Changes: Selection and publication of Preferred Network Change Option**

~~1E.8.1~~1D.8.1 **Network Changes**

- (a) NBN Co will ensure that any Network Change is made by NBN Co in accordance with clauses 1D.8 to 1D.12 (which set out the procedure for the identification, selection, consultation and endorsement of a Network Change).
- (b) ~~For the purposes of this Schedule 1D, a Network Change means any variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets that is not:~~

- (i) materially consistent with or within the scope of the Network Design Rules as described in clauses 1D.7.1 and 1D.7.4; or
- (ii) materially consistent with or within the scope of a Permitted Variation as described in clause 1D.7.2;

Comment [A85]: Please see section 5.2.2.4 of NBN Co's submission. Please also see the definition of Network Change.

(e)(b) Nothing in clauses 1D.8 to 1D.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 1D.8 to 1D.12 where NBN Co decides not to proceed with a Network Change (including where the product development process is terminated under Schedule 1I (Product Development and Withdrawal)).

~~1E.8.2~~ 1D.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 1D.12 (**Network Change Options**);
- (b) select the Preferred Network Change Option in accordance with clause 1D.8.3;
- (c) prepare and publish the NBN Prudency Implementation Paper in accordance with clause 1D.8.4; and
- (d) seek to have the Preferred Network Change Option endorsed in accordance with clauses 1D.9 to 1D.12.

~~1E.8.3~~ 1D.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.8.41D.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 Access Seekers and Consumer Advocacy Groups and also provide the NBN Prudency Implementation Paper to the ACCC.

1E.91D.9 Network Changes: Engagement and endorsement process

1E.9.11D.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 Access Seekers and Consumer Advocacy Groups in accordance with the engagement and endorsement process described in this clause 1D.9.
- (b) While the engagement and endorsement process described in this clause 1D.9 is distinct and separate from the product development process specified in Schedule 1I (Product Development and Withdrawal), the two processes may occur in parallel.

1E.9.21D.9.2 Consultation with Access Seekers and Consumer Advocacy Groups

- (a) Following publication of the NBN Prudency Implementation Paper, NBN Co will invite 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 Access Seekers and Consumer Advocacy Groups through workshops, formal written submissions and such other means as are contemplated in the PDF Processes.

1E.9.31D.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 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 Access Seekers and Consumer Advocacy Groups in response to the NBN Prudency Implementation Paper; and
- (c) notify 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 Access Seeker ~~or Consumer Advocacy Group~~ may notify NBN Co that it objects to the Preferred Network Change Option.

~~1E.10~~1D.10 Network Changes: Dispute resolution mechanism

~~1E.10.1~~1D.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 1D.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 participated in consultations in relation to the Network Change in accordance with clause 1D.9.2;
 - (ii) the Access Seeker must, or is likely to be materially affected by the resolution of the matters that are the subject of the objection; and
 - (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 1D.12 with regard to NBN Co's Preferred Network Change Option,

(together, the **Network Change Dispute Conditions**). If the Access Seeker satisfies the 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 1D.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 1D.12.

~~1E.10.2~~1D.10.2 Formation of a 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 1D.11.1.
- (b) Within 5 Business Days after the date that the ACCC receives notification from NBN Co pursuant to clause 1D.10.2(i)(A), the ACCC will determine, in respect of each Access Seeker referred to in such notification, whether:
- (i) the 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 (**Network Change Dispute**) and NBN Co, the Access Seeker and the ACCC will proceed in accordance with the remainder of this clause 1D.10 and clause 1D.11; or
 - (ii) the Network Change Dispute Conditions have not been satisfied by the Access Seeker, in which case, provided that no other Access Seeker has satisfied the Network Change Dispute Conditions such that a Network Change Dispute has arisen pursuant to clause 1D.10.2(i), the Preferred Network Change Option will be an Endorsed Network Change pursuant to clause 1D.11.1.

~~1E.10.3~~**1D.10.3 Access Seeker participation in, and scope of, the Network Change Dispute**

- (a) Within 5 Business Days after the date that a Network Change Dispute has arisen pursuant to clause 1D.10.2(i), the ACCC will invite, by way of notice on the ACCC website, other Access Seekers to apply to join the Network Change Dispute (except for Access Seekers that the ACCC has already determined have not satisfied the Network Change Dispute Conditions pursuant to clause 1D.10.2(ii)).

- (b) Within 10 Business Days after the date on which the ACCC invites Access Seekers to join the 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 Network Change Dispute, by reference to whether the ACCC considers that Access Seeker has satisfied the Network Change Dispute Conditions;
 - (ii) where the ACCC rejects an Access Seeker's application, provide that 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 Network Change Dispute.
- (c) The scope of the 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 Network Change Dispute pursuant to clauses 1D.10.2(b) and 1D.10.3(a) (the **Network Change Dispute Participants**) and the relevant responses from NBN Co.
- (d) The ACCC may, by written notice to the relevant Network Change Dispute Participants and NBN Co:
 - (i) join separate Network Change Disputes together so that they constitute a single Network Change Dispute; or
 - (ii) divide a single Network Change Dispute into multiple Network Change Disputes,

for the purposes of the efficient administration and resolution of those Network Change Disputes.

1E.10.4 1D.10.4 Submissions regarding Network Change Dispute

The ACCC will provide NBN Co and the Network Change Dispute Participants with the opportunity to make written submissions in respect of the Network Change Dispute, provided that any consultation period is between 30 Business Days and 40 Business Days from the date that a Network Change Dispute has arisen pursuant to clause 1D.10.2(i).

1E.10.5 1D.10.5 Decision making criteria for Network Change Dispute

- (a) The ACCC must make a decision accepting or rejecting the Preferred Network Change Option (and thereby resolving the Network Change Dispute) by reference to the criteria referred to in clauses 1D.10.5(b) and 1D.10.5(c) and must notify NBN Co and the 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 1D.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 1D.8.3), 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 1D.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 1A.1.1(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 1D.10.5(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 1D.12; 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.11D.11~~ **Endorsed Network Change**

~~1E.11.1D.11.1~~ **Endorsement of the Preferred Network Change Option**

- (a) The Preferred Network Change Option will be considered to be endorsed ~~by the Access Seekers and Consumer Advocacy Groups and/or the ACCC (as applicable)~~ where:
- (i) a Network Change Dispute has arisen and the ACCC makes a decision accepting the Preferred Network Change Option in accordance with clause 1D.10.5; or
 - (ii) no Access Seeker has satisfied the Network Change Dispute Conditions under clause 1D.10.2(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.11.2D.11.2~~ **No endorsement of the Preferred Network Change Option**

If the ACCC rejects the Preferred Network Change Option under clause 1D.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.11.3D.11.3~~ **Alternative options to resolve Network Change Dispute**

- (a) NBN Co may, at its discretion and at any time after the formation and/or resolution of a Network Change Dispute, undertake one of the following options as an alternative to the Network Change Dispute in respect of the Preferred Network Change Option:
- (i) recommence the process under clause 1D.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 1D.11.3(a) as an alternative to a Network Change Dispute:
- (i) NBN Co will notify Access Seekers and the ACCC of that fact; and

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

~~1E.12.1~~D.12 Identification and assessment of Network Change Options

~~1E.12.1~~D.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 1D.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 1D.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.
- (d) In performing its assessment of the Network Change Options under this clause 1D.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~~ **Schedule 1E Long Term Revenue Constraint Methodology**

~~1F.1~~ **1E.1 General**

~~1F.1.1~~ **1E.1.1 Scope**

This Schedule 1F applies for the Initial Regulatory Period.

~~1F.1.2~~ **1E.1.2 LTRCM Determination**

Comment [A86]: Please see section 5.2.2.1 of NBN Co's submission.

- (a) The ACCC will determine:
- (i) for each Financial Year in the Initial Regulatory Period, the ABBRR ~~and the~~ 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 Schedule 1D ~~Schedule 1E~~ (Regulatory Asset Base) and this Schedule 1E (Long Term Revenue Constraint Methodology) ~~Schedule 1F (LTRCM Determination)~~

(each determination an LTRCM Determination).

- ~~(b)~~ The ACCC will notify NBN Co as soon as practicable after reviewing the information supplied by NBN Co to the ACCC under Schedule 1F (Regulatory information) if the ACCC considers that:

(i) an item or category of Capital Expenditure does not meet the requirements of clause 1D.3.1(a) and a benchmarking approach will be applied under clause 1D.3.1(b)(ii) and the amount of that Capital Expenditure; and

~~(iv)~~ (ii) an item or category of Operating Expenditure does not meet the requirements of clause 1E.8.2(a), 1E.8.2(b), 1E.8.2(c) or 1E.8.2(d) and a benchmarking approach will be applied under clause 1E.8.2(e) and the amount of that Operating Expenditure.

- ~~(b)~~ (c) The ACCC must issue an LTRCM Determination for each Financial Year in the Initial Regulatory Period (including the First Financial Year) no

later than ~~9~~¹² months after the end of the Financial Year to which that LTRCM Determination relates.

~~(e)~~(d) 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 Schedule 1F~~Schedule 1G~~ (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 Schedule 1F~~Schedule 1G~~ (Regulatory information), 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 1F~~Schedule 1G~~ provided those values are determined in accordance with Schedule 1D~~Schedule 1E~~ (Regulatory Asset Base) and this Schedule 1F;
- (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 Schedule 1F~~Schedule 1G~~ (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 Schedule 1D ~~Schedule 1E~~ (Regulatory Asset Base) and this Schedule 1E ~~Schedule 1F~~, for the purposes of the LTRCM Determination;

except where such information is confidential to NBN Co or another person, in which case such information may only be disclosed in accordance with the ACCC's confidentiality procedures;

(vi) must not permit the disclosure of the confidential information of NBN Co to a third party, except pursuant to confidentiality arrangements between NBN Co and that third party;

(vii) must, prior to publishing the LTRCM Determination under paragraph (v);

(A) publish on its website a draft LTRCM Determination;

(B) ~~and~~ its reasons for the draft LTRCM Determination, including the matters specified in paragraph (v); and

~~(A)~~(C) must consult with NBN Co and other such persons as the ACCC considers appropriate on the draft LTRCM Determination and must consider any submissions that are received within the time limit specified by the ACCC.

~~1F.1.3~~1E.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 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 1E.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 1E.1.3 if the ACCC has first consulted with NBN Co and such other persons as the ACCC considers appropriate.

~~1F.1.4~~ **1E.1.4 Prices to be determined by NBN Co**

- (a) ~~NBN Co will determine the~~ Prices for ~~Reference Offers and Non-Reference~~ ~~NBN~~ Offers and the Prices of Other Charges that NBN Co supplies or applies during the Initial Regulatory Period ~~up to or equal to the applicable Maximum Regulated Price and must be determined in accordance with Schedule 1C and this Schedule 1E. Schedule 1C (Reference Offers), (f) Schedule 1A Schedule 1D (Non-Reference Offers and Other Charges) and this Schedule 1F. Schedule 1E Schedule 1F.~~

Comment [A87]: Please see section 5.1.2.1 of NBN Co's submission.

~~1F.2~~ **1E.2 Initial Cost Recovery Period**

~~1F.2.1~~ **1E.2.1 Initial Cost Recovery Period**

- (a) NBN Co's RAB will be determined by reference to Prudently incurred Capital Expenditure in accordance with Schedule 1D ~~(Regulatory Asset Base) Schedule 1E (Regulatory Asset Base).~~
- (b) 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 Schedule 1D ~~Schedule 1E~~ (Regulatory Asset Base) and this Schedule 1F.

Comment [A88]: Minor editorial

- (c) Any shortfall in NBN Co's Revenues in any given Financial Year relative to the ABBRR in 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 ~~Schedule 1F~~.

~~1F.2.2~~ **1E.2.2 Inclusion of Initial Operating Expenditure and Revenue**

As described in this Schedule 1E, the ABBRR and ICRA will include:

- (a) all Operating Expenditure incurred; and
- (b) Revenue earned,

by NBN Co from the Cost Commencement Date until the SAU Commencement Date.

~~1F.2.3~~ **1E.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~~ **1E.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 1E.2.3, NBN Co will determine the Prices for all existing and new ~~Reference Offers and Non-Reference~~ NBN Offers supplied by NBN Co and Other Charges ~~imposed by NBN Co will be determined~~ up to or equal to the applicable Maximum Regulated Price and 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 1D.3.1;
- (b) NBN Co's Regulated Revenue in any given Financial Year will be determined by reference to NBN Co's ABBRR in that Financial Year in accordance with clause 1E.6.1;

Comment [A89]: Please see section 5.1.2.1 of NBN Co's submission.

- (c) subject to the requirements of Schedule 1C (~~Reference Offers~~) and ~~Schedule 1D (Non-ReferenceNBN~~ Offers and Other Charges), ~~Reference Offers, Non-ReferenceNBN~~ Offers and Other Charges will be priced so that the forecast value of nominal Revenue in any given Financial Year in the Building Block Revenue Period does not exceed the forecast value of Regulated Revenue for that Financial Year; 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 for subsequent Financial Years in accordance with clause 1E.6.

~~1E.2.5~~**1E.2.5 Likely Methodology Change Event Notice**

- (a) NBN Co will use reasonable endeavours to issue a Likely Methodology Change Event Notice to 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 Access Seekers and the ACCC each year following any previous Likely Methodology Change Event Notice until the Methodology Change Event has occurred.

~~1E.2.6~~**1E.2.6 Pricing Intention Statement**

- (a) NBN Co will use reasonable endeavours to issue a Pricing Intention Statement to 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-ReferenceNBN~~ 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 1E.2.6(b)(i) will impact on the individual Price of each ~~Reference Offer, Non-ReferenceNBN~~ 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 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 Access Seekers.

~~1F.3~~1E.3 Designation of Financial Years

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

1F.41E.4 Annual Building Block Revenue Requirement

1F.4.11E.4.1 Calculation of ABBRR

$$\begin{aligned}
 \text{ABBRR}_t &= R_t^{\text{nominal}} * \text{Nominal RAB}_t^{\text{start}} \\
 &+ \text{Nominal Regulatory Depreciation}_t + \text{Nominal Opex}_t \\
 &+ \text{Net Tax Allowance}_t \\
 &+ \text{Annual Construction in Progress Allowance}_t
 \end{aligned}$$

$$\begin{aligned}
 \text{ABBRR}_t &= R_t^{\text{nominal}} * \text{Nominal RAB}_t^{\text{start}} \\
 &+ \text{Nominal Regulatory Depreciation}_t + \text{Nominal Opex}_t \\
 &* (1 + R_t^{\text{nominal}})^{0.5} + \text{Net Tax Allowance}_t \\
 &+ \text{Annual Construction in Progress Allowance}_t
 \end{aligned}$$

where:

R_t^{nominal} is the nominal rate of return for Financial Year t determined in accordance with clause 1E.7.1(a).

$\text{Nominal RAB}_t^{\text{start}}$ is the nominal value of the RAB at the start of the relevant Financial Year t .

Comment [A90]: Please see section 5.2.1.3 of NBN Co's submission.

Comment [A91]: Minor editorial

Nominal Regulatory Depreciation_t is the Nominal Regulatory Depreciation in the relevant Financial Year *t*, calculated in accordance with clause 1E.9.

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 1E.8.1(a), was Prudently incurred or that the ACCC has determined in accordance with clauses 1E.8.1(b) and 1E.1.2.

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 1E.9.3.

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

~~1F.5.1~~ 1E.5 Initial Cost Recovery Account

~~1F.5.1~~ 1E.5.1 Unrecovered Cost

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

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

$$\text{Unrecovered Cost}_t = \text{ABBRR}_t - \text{Nominal Revenue}_t * (1 + R_t^{\text{nominal}})^{0.5}$$

where:

R_t^{nominal} is the nominal rate of return for Financial Year *t* determined in accordance with clause 1E.7.1(a).

ABBRR_t is the nominal Annual Building Block Revenue Requirement calculated in accordance with clause 1E.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~~ 1E.5.2 Initial Cost Recovery Account

During the Initial Cost Recovery Period, the ICRA is:

(a) as at the Cost Commencement Date, zero; and

Comment [A92]: Please see section 5.2.1.3 of NBN Co's submission.

Comment [A93]: Minor editorial

- (b) for each Financial Year of the remainder of the Initial Cost Recovery Period:

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

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_t calculated in accordance with clause 1E.5.1.

~~1F.5.3~~ 1E.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 1E.5.2 will be the Carry Forward Revenue Adjustment. That is:

$$\begin{aligned} \text{Carry Forward Revenue Adjustment}_t \\ = Unrecovered Cost_t + ICRA_t^{start} * (1 + R_t^{nominal}) \end{aligned}$$

- (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 1E.6.1.
- (c) For clarity, the Carry Forward Revenue Adjustment will have a negative or zero value.

1F.6 1E.6 Building Block Revenue Period

~~1F.6.1~~ 1E.6.1 Calculation of Regulated Revenue

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

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

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

- (b) in all other Financial Years:

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

where:

$ABRR_t$ is the nominal ABRR in the relevant Financial Year t , as determined in accordance with clause 1E.4.1.

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

$CFRA_{t-1}$ is the Carry Forward Revenue Adjustment from the final Financial Year of the Initial Cost Recovery Period, as determined in accordance with clause 1E.5.3.

$R_t^{nominal}$ is the nominal rate of return for the current Financial Year (t), as determined in accordance with clause 1F.7.1(a)

~~1F.6.2~~ 1E.6.2 Revenue Variation

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

Comment [A94]: Please see section 5.2.1.3 of NBN Co's submission.

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

$$Revenue\ Variation_t = RR_t - Nominal\ Revenue_t * (1 + R_t^{nominal})^{0.5}$$

where:

$R_t^{nominal}$ is the nominal rate of return for Financial Year t determined in accordance with clause 1E.7.1(a).

Comment [A95]: Minor editorial

RR_t is the Regulated Revenue in Financial Year t .

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

- (b) This Revenue Variation calculated for Financial Year t will be applied to the Regulated Revenue that is established for Financial Year $t+1$.

1F.7 1E.7 Cost of Capital

~~1F.7.1~~ 1E.7.1 Rate of return Calculation

- (a) The nominal rate of return for a Financial Year will be determined using the following formula:

Comment [A96]: Minor editorial

$$R_t^{nominal} = r_f + 3.50\%$$

where:

r_f is the risk-free rate of interest determined each Financial Year in accordance with clause 1E.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 1E.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) The real rate of return will be determined using the following formula:

$$R_t^{real} = \frac{1 + R_t^{nominal}}{1 + CPI_t^{June}} - 1$$

where:

R_t^{real} is the real rate of return for 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)

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

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

~~1F.8~~1E.8 Prudently incurred Operating Expenditure

~~1F.8.1~~1E.8.1 Inclusion of Operating Expenditure in the ABBRR ~~and ICRA~~

- (a) For the purposes of calculating the ABBRR ~~and the ICRA~~ pursuant to clauses 1E.4 and 1E.5, an item or category of Operating Expenditure incurred by NBN Co in a Financial Year is only considered to be Prudently incurred and included in the ABBRR to the extent ~~if~~ the ACCC is satisfied:

Comment [A97]: Please see section 5.2.2.5 of NBN Co's submission.

- (i) of one of the matters specified in clause 1E.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 1D.7.2(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) ~~To the extent if~~ the ACCC is not satisfied that ~~an item or category of the~~ Operating Expenditure incurred by NBN Co in a Financial Year meets the requirements specified in clause 1E.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 1E.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 1E.8.1(a).

Comment [A98]: Please see section 5.2.2.5 of NBN Co's submission.

Comment [A99]: Please see section 5.2.2.5 of NBN Co's submission.

~~1E.8.2~~ **1E.8.2** **Conditions for Operating Expenditure to be considered as Prudently incurred**

Comment [A100]: Please see section 5.2.2.5 of NBN Co's submission.

An item or category of Operating Expenditure incurred in a Financial Year will be considered to be Prudently incurred for the purposes of clause 1E.8.1(a)(i) to the extent ~~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) the contract was entered into on arm's length terms;
- (c) the contract entered into was in respect of a good or service acquired in an open and competitive market (e.g. a commodity market);
- ~~(b)(d)~~ exceptional circumstances exist such that a contract that meets the requirements of paragraph (a) was not necessary or desirable; or
- ~~(e)~~(e) if paragraphs (a), (b), (c) or (d) do not apply or are not satisfied, 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.

~~1E.8.2~~1E.8.3 **Operating Expenditure Factors**

- (a) In deciding whether or not the ACCC is satisfied that an item or category amount of Operating Expenditure meets the requirement specified in clause 1E.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; and
 - ~~(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)~~(ii) any other factor the ACCC considers relevant.
- (b) In determining the extent to which~~whether~~ exceptional circumstances exist for the purposes of clause 1E.8.2(d), the ACCC ~~must~~may have regard to:
- (i) the extent to which the relevant Operating Expenditure was procured to comply with a legal, policy, regulatory or administrative request, or a request of the Shareholder Ministers;
 - (ii) the extent to which there was only one potential supplier of a particular good or service and there were no reasonable alternatives or substitutes;
 - (iii) ~~whether~~ the extent to which the relevant Operating Expenditure was incurred on exceptionally advantageous terms;
 - (iv) the extent to which~~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;
 - (v) the extent to which~~whether~~ the Operating Expenditure is incurred in a manner that seeks to achieve value for money and the lowest Total Cost of Ownership; and
 - (vi) any other factor the ACCC considers relevant.

1F.91E.9 Treatment of Taxation and Depreciation

1F.9.1E.9.1 Regulatory Depreciation

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

- (a) The Real Straight Line Depreciation is the sum of the straight line depreciation of the real Capital Expenditure value of each Asset Type incurred prior to the relevant Financial Year, using asset lifetimes for each Asset Type determined in a manner consistent with NBN Co's audited accounts, to the extent the ACCC is satisfied this is reasonable 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:

Comment [A101]: Please see section 5.2.2.8 of NBN Co's submission.

Asset Real Straight Line Depreciation _{i,t}

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

where:

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

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

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

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

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

Comment [A102]: Please see section 5.2.1.3 of NBN Co's submission.

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

Net Real Capex _{i,k} -

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

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

where:

i is the Asset Type.

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

Net Real Capex_{i,k}

$$= (\text{Real Capex}_{i,k} - \text{Real Disposals}_{i,k}) * (1 + R_k^{\text{nominal}})^{0.5}$$

$$\text{Net Real Capex}_{i,k} = (\text{Real Capital Expenditure}_{i,k} - \text{Real Value of Disposals}_{i,k})$$

where:

Real Capex_{i,k} ~~*Real Capital Expenditure_{i,k}*~~ is the real value of actual Capital Expenditure that the ACCC is satisfied, in accordance with clause 1D.3.1, has been Prudently incurred 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 Relevant Asset is Placed in Service.

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

R_k^{nominal} is the nominal rate of return for Financial Year *k* in accordance with [clause 1E.7.1\(a\)](#).

Hence, Real Straight Line Depreciation for a Financial Year *t* is the sum of the [Asset Real Straight Line Depreciation values for each Asset Type](#).

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

where:

N is the number of Asset Types.

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

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

That is:

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

where:

CIF_t is the Cumulative Inflation Factor as defined in clause 1E.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:

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

1E.9.2 Nominal Tax Depreciation Expense

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

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

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

where:

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

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

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 .

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

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

where:

Nominal Capital Expenditure $_{i,k}$ is the nominal value of actual Capital Expenditure that the ACCC is satisfied, in accordance with clause 1D.3.1, has been Prudently incurred in connection with the design, engineering, construction, replacement and augmentation of Asset Type i in Financial Year k. Capital Expenditure is recognised at the time the asset is Placed in Service.

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

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

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

where:

N is the number of Asset Types.

~~1F.9.3~~ 1E.9.3 Taxation Calculations

For the purposes of calculating the allowance for taxation expenses in the calculation of ABBRR and Unrecovered Cost, 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:

τ is the statutory company taxation rate that applies in Financial Year t , as determined in clause Module 1(b).

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

Taxable Profit $_t$ 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_t is the nominal Revenue in the relevant Financial Year *t*.

Nominal Opex_t is the nominal Operating Expenditure in the relevant Financial Year *t*.

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

Nominal Tax Depreciation_t is the Nominal Tax Depreciation Expense in the relevant Financial Year (*t*), calculated in accordance with clause 1E.9.2.

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

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

otherwise, Tax Loss Carried Forward_{t-1}

$$= \text{Min}(0, \text{Taxable Profit}_{t-1} + \text{Tax Loss Carried Forward}_{t-2})$$

1E.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 *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:

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

- (c) ~~In this Schedule 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).

Comment [A103]: Clarification – the calculation of CIF for Financial Years before the First Financial Year are used in both Schedules 1E and 1F

~~1F.9.5~~ 1E.9.5 Tax parameters

For the purposes of this clause 1E.9:

- (a) impact of dividend imputation franking credits (“gamma”): the gamma in Financial Year t will be :
- (i) if the value of the sum of *Taxable Profit_t* and *Tax Losses Carried Forward_{t-1}* is negative, unspecified; or
 - (ii) ~~(ii)~~ if the value of the sum of *Taxable Profit_t* and *Tax Losses Carried Forward_{t-1}* is positive, determined by the ACCC in the LTRCM Determination made under clause 1E.1.2,
 - (iii) where *Taxable Profit_t* and *Tax Loss Carried Forward_{t-1}* are as defined in clause 1E.9.3.
- (b) Corporate Tax Rate (τ): In the event of a change in the statutory corporate taxation rate, 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.101E.10 Annual Construction in Progress Allowance

1F.10.11E.10.1 ACIPA calculation

(a) An ACIPA will be calculated each year and included in the calculation of the ABBRR as described in clause 1E.4.

(b) The ACIPA for year t is calculated as follows:

Comment [A104]: Please see section 5.2.1.3 of NBN Co's submission.

$$ACIPA_t = CIP_t^{start} * R_t^{nominal} + (CIP_t^{end} - CIP_t^{start}) * \left[(1 + R_t^{nominal})^{0.5} - 1 \right]$$

$$ACIPA_t = CIP_t^{start} * R_t^{nominal}$$

where:

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

$R_t^{nominal}$ is the nominal rate of return for the current Financial Year (t), determined in accordance with clause 1E.7.1(a).

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

~~Schedule 1G~~ **Schedule 1F Regulatory information**

~~1G.1.1~~ **1F.1 Compliance and forecasting during Initial Regulatory Period**

Comment [A105]: Please see section 6.3 of NBN Co's submission.

~~1G.1.1.1~~ **1F.1.1 Scope**

This Schedule 1G applies for the Initial Regulatory Period.

~~1G.1.2~~ **1F.1.2 Submission by NBN Co of 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; and
- (d) the opening value and closing value of CIP;
- ~~(e) the risk free rate to be used in the calculation of the rate of return under clause 1F.7.1(b); and~~
- ~~(f) the nominal rate of to be calculated under clause 1F.7.1(a).~~

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

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

- (a) the actual financial information for the following matters in respect of that Financial Year (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;

- (vii) accounting and tax asset lifetimes; ~~and~~
- (viii) the risk free rate to be used in the calculation of the rate of return under clause 1E.7.1(b); and
- (ix) the nominal rate of return to be calculated under clause 1E.7.1(a); and
- (b) information which sets out any material variance between the Forecast Financial Information and the Actual Financial Information, including reasons for the variances.

~~1G.1.4~~**1F.1.4** **Provision of Proposed Financial Information**

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**):

- (a) the Annual Building Block Revenue Requirement, including each of the inputs to that Annual Building Block Revenue Requirement;
- ~~(a)(b)~~ opening and closing values of the RAB (nominal and real);
- ~~(a)(c)~~ opening and closing values of the ICRA (nominal and real);
- ~~(a)(d)~~ the opening and closing value of CIP;
- ~~(a)(e)~~ Unrecovered Cost;
- ~~(a)(f)~~ if the value of the sum of the *Taxable Profit_t* and *Tax Loss Carried Forward_{t-1}* proposed for the purposes of the Net Tax Allowance is positive, the proposed impact of dividend imputation franking credits (“gamma”); and
- ~~(b)(g)~~ the applicable corporate tax rate to be calculated in accordance with clause 1E.9.5; ~~and~~
- ~~(v)~~ accounting and tax asset lifetimes.

~~1G.1.5~~**1F.1.5** **First Financial Year**

The information provided to the ACCC pursuant to clauses 1F.1.3 and 1F.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.

Comment [A106]: The item “accounting and tax asset lifetimes” is already in 1G.1.3(vii)

~~1G.1.6~~**1F.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) 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 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 proposed values in respect of that Financial Year:
 - (i) the Regulated Revenue; and
 - (ii) the Revenue Variation.

~~1G.1.7~~**1F.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 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 Schedule 1D (~~Regulatory Asset Base~~) ~~Schedule 1E (Regulatory Asset Base)~~ and Schedule 1E (~~Long Term Revenue Constraint Methodology~~) ~~Schedule 1F (Long Term Revenue Constraint Methodology)~~, and NBN Co must comply with a request made by the ACCC under this clause 1F.1.7 within the timeframe specified by the ACCC.

~~1G.2~~**1F.2** **Expenditure compliance and reporting**

~~1G.2.1~~**1F.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 ~~in which signed by~~ the Chief Financial Officer of NBN Co (or his or her authorised delegate) ~~expresses their opinion on the extent to which, as if the Chief Executive Officer or authorised delegate was in the ACCC's position, that:~~

- (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)(a) ~~certifies that,~~ in relation to that Financial Year, the Capital Expenditure proposed for inclusion in the RAB ~~can be considered to have~~ been incurred in accordance with Schedule 1D (~~Regulatory Asset Base~~) ~~Schedule 1E (Regulatory Asset Base)~~, including that the Capital Expenditure ~~can be considered:~~

Comment [A107]: This duplicates the requirement in 1G.1.3(a)(ii)

- (i) ~~to have been incurred~~ ~~was incurred~~ in accordance with the Prudent Cost Condition and the Prudent Design Condition; ~~or~~
 - (ii) ~~to have been incurred~~ ~~was incurred~~ in connection with one or more of the matters specified in clause 1D.3.1(a)(ii) ~~1E.3.1(a)(ii); or~~
 - ~~(ii)(iii)~~ (iii) ~~to satisfy the one of the matters specified in clause 1D.3.1(b)(ii) 1D.3.1(a)(iii).~~
- ~~(c)(b)~~ (b) ~~certifies that,~~ in relation to the Operating Expenditure proposed for inclusion in the ABBRR, ~~that the Operating Expenditure can be considered to satisfy one of the matters specified in clause 1E.8.1 or 1E.8.2.;~~
- ~~(i) — the Chief Financial Officer is satisfied of one of the matters specified in clause — 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 —~~

~~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.~~

Comment [A108]: Please see section 6.3 of NBN Co's submission.

~~1G.2.3~~ **1F.2.2 Expenditure Compliance Information Request**

At any time, the ACCC may request information from NBN Co that is reasonably necessary for the ACCC to assess the matters contained in a report submitted in accordance with clause 1F.2.1 and NBN Co must comply with a request made by the ACCC under this clause 1G.2.3 within the timeframe specified by the ACCC.

~~1G.2.4~~ **1F.2.3 Procurement Rules compliance**

- (a) 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 Procurement Officer certifying that, in relation to that Financial Year, the Procurement Rules satisfied the requirements in clause 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 1D.5.1 and NBN Co must comply with a request made by the ACCC under this clause 1F.2.3(b) within the timeframe specified by the ACCC.

~~1G.2.5~~1F.2.4 **Price compliance and reporting**

- (a) By 31 October after the end of each Financial Year 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 of each ~~Reference-NBN~~ Offer did not exceed, at any time during the Financial Year, the Maximum Regulated Price applicable to that ~~Reference-NBN~~ Offer at the relevant point in time;
 - (ii) the Price for the supply of each ~~Non-ReferenceNBN~~ Offer did not exceed, at any time during the Financial Year, the Maximum Regulated Price for that ~~Non-ReferenceNBN~~ Offer at the relevant point in time;
 - (iii) the Price of each Other Charge imposed did not exceed, at any time during the Financial Year, the Maximum Regulated Price for that Other Charge at the relevant point in time; and
 - (iv) Prices complied with the requirements of Schedule 1C, 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 Schedule 1C Schedule 1D Non-Reference Offers and Other Charges).
- (b) At any time, the ACCC may request information from NBN Co that is reasonably necessary for the ACCC to determine NBN Co's compliance with Schedule 1C and Schedule 1D Non-Reference Offers and Other Charges, and NBN Co must comply with a request made by the ACCC under this clause 1F.2.4(b) within the timeframe specified by the ACCC.

~~Schedule 1H~~ **Schedule 1G Integrated Maximum Regulated Price Review Mechanisms**

~~1H.1~~ **1G.1 Introduction**

~~1H.1.1~~ **1G.1.1 Scope**

This Schedule 1G ~~Schedule 1H~~ (Maximum Regulated Price Review Mechanisms ~~Integrated Maximum Regulated Price Review Mechanisms~~) applies for the Initial Regulatory Period.

~~1H.1.2~~ **1G.1.2 Overview**

This Schedule 1G ~~Schedule 1H~~ (Maximum Regulated Price Review Mechanisms) 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)~~(a) **Non-Reference NBN Offers;** and
- ~~(c)~~(b) **Other Charges.**

~~1H.2~~ **1G.2 Tax Change Events**

~~1H.2.1~~ **1G.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 an ~~n Reference Offer, Non-Reference NBN~~ Offer and/or Other Charge may be changed in accordance with this clause 1G.2

~~1H.2.2~~ **1G.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 provide ~~s~~ Access Seekers and the ACCC with, a written statement in respect one or more Tax Change Events that occurred in a period of ~~12 months~~ ~~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 NBN Offers** as a result of the Tax Change Event or Tax Change Events; and

Comment [A109]: Please refer to section 5.1.4 of NBN Co's submission.

- (iii) the proposed apportionment of that change in costs across each affected ~~Reference Offer, Non-Reference~~NBN Offer and/or Other Charge, and the change in the Maximum Regulated Price of each affected ~~Reference Offer, Non-Reference~~NBN Offer and/or Other Charge to reflect those changed costs; and
- (iv) the proposed date (in this clause 1G.2, **Proposed Change Effective Date**) on which the changes in the Maximum Regulated Prices referred to in clause 1G.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 1G.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 1G.2.2(b).
- (d) If no notice is given to NBN Co under clause 1G.2.2(b), the changes in the Maximum Regulated Price of each affected ~~Reference Offer, Non-Reference~~NBN 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 1G.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~~1G.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 1G.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 1G.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~~**1G.2.4 Negative Tax Change Events not notified to ACCC**

If clause 1G.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 1G.2.3, then the ACCC may notify NBN Co of the occurrence of that Negative Tax Change Event.

~~1H.2.5~~**1G.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 1G.2.3 or if the ACCC notifies NBN Co of the occurrence of a Negative Tax Change Event under clause 1G.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~~NBN 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~~NBN Offer and/or Other Charge, and the change in the Maximum Regulated Price of each affected ~~Reference Offer, Non-Reference~~NBN 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 1G.2.5(a) within 40 Business Days of NBN Co submitting a written statement under clause 1G.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~~NBN 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~~NBN 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 1G.2.5(a) are reasonable, the ACCC must have regard to:

- (i) any written statement submitted by NBN Co under clause 1G.2.3;
 - (ii) whether the likely change in costs in the supply of ~~Reference Offers and/or Non-Reference~~NBN 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.
- (b) Before issuing a statement in accordance with clause 1G.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~~1G.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 1G.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 1G.2.5(a) are reasonable.
- (b) NBN Co must comply with a request made by the ACCC under clause 1G.2.6(a) within the timeframe specified by the ACCC.
- (c) The period between when the ACCC requests information under clause 1G.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 1G.2.5(b) ~~1A.1.1(e)~~.

~~1H.3~~1G.3 Price Review Arrangement

~~1H.3.1~~1G.3.1 Initiation of Price Review

- (a) Subject to clause 1G.3.1(c), no earlier than 1 July 2016, either the ACCC or NBN Co may issue a written notice (in this clause 1G.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~~NBN Offers and/or Other Charges under this clause 1G.3 (in this clause 1G.3, **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 1G.3.1(a) if a Price Review Arrangement applies to any Financial Year in the Initial Regulatory Period.

~~1H.3.2~~1G.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 1G.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 1G.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~~1G.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 1G.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 1G.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 1G.3.3(a) unless the ACCC has had regard to the information in the Price Review Proposal provided by NBN Co under clause 1G.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 1G.3.3(a), including the reasons for the decision and any resulting Price Review Arrangement.

~~1H.3.4~~**1G.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 1G.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 1G.3.4(a), the ACCC will consider the varied Price Review Proposal under clause 1G.3.3 as if the varied Price Review Proposal had been given instead of the original Price Review Proposal.

~~1H.3.5~~**1G.3.5 Acceptance of Price Review Proposal**

- (a) The ACCC must not accept the Price Review Proposal under clause 1G.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~~1G.3.6 **ACCC Determined Price Review Arrangement**

- (a) The ACCC must not issue an ACCC Determined Price Review Arrangement under clause 1G.3.3(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.

~~1H.3.7~~1G.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~~NBN Offers and/or Other Charges to which the Price Review Arrangement applies (in this clause 1G.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.

~~11.3.8~~ **1G.3.8 Price Review Criteria**

Comment [A110]: Please see section 5.1.3 of NBN Co's submission.

- (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 ~~M~~material ~~D~~ifference between:
 - (A) the present value of the difference between the expected Revenue and ~~the expected costs that would be inputs to the ABBRR~~ sum of expected Operating Expenditure, Capital Expenditure and tax, 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 ~~sum of expected Operating Expenditure, Capital Expenditure and tax~~ 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,

and

- (b) Section 152CBD(5A) of the CCA applies to the ACCC's decision whether to accept or reject a Price Review Proposal as if references to not

rejecting the undertaking in that section were references to not rejecting the Price Review Proposal.

~~(b)~~(c) Section 152BCB(3C) of the CCA applies to the ACCC's decision whether to make an ACCC Determined Price Arrangement as if the references to making an access determination in that section were references to making an ACCC Determined Price Review Arrangement.

~~(c)~~(d) 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~~have regard to:

- (i) the characteristics of the ~~Reference Offers, Non-Reference~~NBN Offers and Other Charges other than the Reviewed Offers (in this clause ~~1G.3.8(b), the~~ **Other Offers**);
- (ii) the costs associated with Other Offers;
- (iii) the Revenue associated with Other Offers; ~~and~~
- (iv) demand for Other Offers; and
- (v) the objective of minimising the difference between:

(A) the present value of the difference between the expected Revenue and the sum of expected Operating Expenditure, Capital Expenditure and tax, for the five year period from the commencement of the Price Review Arrangement, if the Price Review Arrangement were in operation; and

(B) the present value of the difference between the expected Revenue and the sum of expected Operating Expenditure, Capital Expenditure and tax, for the five year period from the commencement of the Price Review Arrangement, if the Price Review Arrangement were not in operation.

(e) Section 152CBIA of the CCA applies to a Price Review Arrangement in operation as if the reference to an Access Determination in that section was a reference to such a Price Review Arrangement.

(f) For the purposes of this clause 1G.3.8, a Material Difference means a difference of greater than \$1 million * CIF_t (where CIF_t has the meaning given to that term in clause 1E.9.4).

~~1H.1~~ **Schedule 1H Non-price terms and conditions**

~~1H.1.1~~ **General**

~~1H.1.1.1~~ **Scope**

- (a) Subject to clause 1H.1.1(b), this Schedule 1H (Non-price terms and conditions) ~~Schedule 1H~~ applies for the Initial Regulatory Period.
- (b) Clause 1H.5 and Annexure 1 to this Schedule 1H apply for a period of 5 years from the SAU Commencement Date.

~~1H.2~~ **Rollout progress information**

~~1H.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~~ **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~~ **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.

~~11.2.4~~ **11H.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.

~~11.3~~ **11H.3 POI rollout progress**

~~11.3.1~~ **11H.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.

~~11.4.1~~ **11.4** Closure, relocation and new Points of Interconnect

~~11.4.1~~ **11.4.1** Closures and Relocations of Established POIs

- (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.
- (b) This clause 11.4.1 does not apply to the relocation or closure of an Established POI in response to an Emergency.

~~11.4.2~~ **11.4.2** New POIs

- (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 11.4.2.
- (b) This clause 11.4.2 does not apply to the opening of a new Temporary POI.

~~11.4.3~~ **11.4.3** Commitment to close Temporary POIs

- (a) ~~Subject to clause 1A.1.1,~~ NBN Co will close a Temporary POI when NBN Co reasonably considers that the Temporary POI is no longer required having regard to:
 - (i) whether an Established POI is available and serves the Premises served by the Temporary POI;
 - (ii) the number of Access Seekers 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 Seeker and the ACCC with at least 12 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.

Comment [A111]: Consequential deletion, given proposed deletion of clause 1A.3.5.

~~11.4.4~~ **11.4.4** Scope of this clause

Except as expressly stated, this clause 11.4 does not apply in respect of Temporary POIs.

~~11.4.5~~ **11.4.5** 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~~

Comment [A112]: Please see section 6.2.1 of NBN Co's submission.

~~of POIs is inconsistent with this Special Access Undertaking for the purposes of section 152CBIA or section 152CBIB of the CCA.~~

~~11.5~~1H.5 **Dispute Management**

~~11.5.1~~1H.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 1H.5.1(a)(i), the selection of a Panel by a Resolution Advisor referred to in clause 1H.5.1(a)(ii), and the conduct of a Panel Arbitration referred to in clause 1H.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~~1H.5.2 **Definitions**

In this clause 1H.5~~11.5~~, the terms **Dispute**, **Dispute Management Rules**, **Panel**, **Panel Arbitration**, **Panel Member** and **Resolution Advisor** each have the meaning given in Annexure 1~~Annexure 1~~ (Appointment of Resolution Advisor~~Dispute Resolution~~) to this Schedule 1H.

2 — Dispute Resolution

Appointments

Annexure 1 Appointment of Resolution Advisor

Part A Appointments

1 Resolution Advisor

1.1 Approval of the Resolution Advisor and terms of appointment

- (a) Within ~~2010~~ 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 ~~2010~~ 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 ~~draft~~**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:

Comment [A113]: NBN Co believes that slightly longer in each relevant timeframe to consult relevant parties and obtain information including potentially from Customers, potential candidates for the role and the ACCC would be beneficial to allow an adequately inclusive process.

Comment [A114]: NBN Co uses this formulation here and in all subsequent references to time periods applicable to NBN Co and ACCC to ensure there is a backstop for certainty.

- (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 1; and
 - (iv) the terms of appointment are otherwise acceptable to the ACCC.
- (e) As soon as reasonably practicable, and in any event within ~~2060~~ 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).

Comment [A115]: NBN Co proposes that this (and other instances of 60 Business Days) be reduced to 20 Business Days, as otherwise the period required to implement the dispute management arrangements, could be unreasonably lengthy. A period of 20 Business Days should be sufficient for the relevant steps and there is a mechanism for extension if required in specific circumstances.

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~~ Annexure 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 in accordance with his or her terms of appointment and the Dispute Guidelines 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;

Comment [A116]: NBN Co intends that this power to direct should be related to the terms of appointment and Dispute Guidelines, which the ACCC is involved in developing and are subject to ACCC's approval. The power drafted in section 6 is otherwise not related to the framework within which the RA must work.

- (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).

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 ~~20~~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(c), 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 Arbitrations to proceed in the manner contemplated in Access Agreements;

Comment [A117]: As per our earlier comment.

- (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 any event within ~~2060~~ 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 ~~2040~~ 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 requests 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 ~~2040~~ Business Days following the deadline for submissions, prepare and submit to the ACCC a draft standard terms of appointment for Pool

Comment [A118]: As per our earlier comment.

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 ~~w~~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 ~~2060~~ 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 ~~w~~Website (subject to redacting any personal or confidential information).

3 Panel

3.1 Standard Panel Terms of Appointment

- (a) NBN Co must:
 - (i) within ~~2010~~ 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

Comment [A119]: As per our earlier comment.

- (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 ~~2010~~ 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 ~~2060~~ 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 [wW](#)website (subject to redacting any personal or confidential information).

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.

~~Part C~~ Part B Termination of appointments

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 clause 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

NBN Co must:

~~(e)~~(a) within 3 Business Days of receiving a:

~~(i)~~(i) resignation notice from a Resolution Advisor; or

~~(i)~~(ii) 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

~~(e)~~(b) 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~~ commence the procedure to appoint a new Resolution Advisor set out in ~~clause~~ Annexure 1 of this ~~Annexure 1 to~~ Schedule 1H.

Comment [A120]: This amendment seeks to address a potential drafting ambiguity and clarifies that the process must start (and not start and finish) in the designated timeframe.

Part C Other approvals

6 Dispute Guidelines

- (a) Within ~~20~~ Business Days of the first appointment of a Resolution Advisor pursuant to clause 1.2(a)(i) 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 ~~w~~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 ~~20~~ 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 ~~w~~Website, subject to redacting any personal or confidential information.

Comment [A121]: NBN Co expects that there will be helpful input from stakeholders and wishes to provide adequate opportunity for them to be heard and buy-in to the guidelines. Specifically NBN Co wishes to consult with the Resolution Advisers on the Dispute Guidelines given the important role which they play. In order to accommodate this time should run from the appointment of the first Resolution Adviser.

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 in accordance with the Resolution Advisor's terms of appointment and the Dispute Guidelines under this Annexure 1 to Schedule 1H ~~Schedule 1H~~.

Comment [A122]: Please see comment above - power to direct is based upon the framework within which the RA is to work.

Part ~~E~~ Part D Notices

8 Giving Notices

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

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

- (c) NBN Co 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 1H ~~Schedule 1H~~ and published on the NBN Co ~~w~~ 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 1H ~~Schedule 1I~~ and published on the NBN Co ~~w~~Website.

Billing Dispute means a dispute between the parties which arises because an Access Seeker who is a party to an Access Agreement, acting reasonably, considers there is an error in:

Comment [A123]: The CCA uses "Access Seeker" while the WBA uses "Customer" to mean a party to an Access Agreement. This is for clarification.

- (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 resolving the Dispute.

Comment [A124]: For clarity.

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 1I.

Pool means the pool of persons constituted in accordance with clause 2 of this Annexure 1 to Schedule 1I.

Pool Member has the meaning given to that term in clause 2.1(a) of this Annexure 1 to this Schedule 1I.

Proposed Resolution Advisor means a candidate nominated by NBN Co to the ACCC in a 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 1I.

Resolution Advisor Nomination Notice has the meaning in clause 1.1(b) of this Annexure 1 to Schedule 1I.

9.2 Interpretation

Unless the context otherwise requires, in this Schedule 1I:

- (a) reference to a clause is a reference to a clause of this Annexure 1 to Schedule 1I;
- (b) reference to a paragraph is a reference to a paragraph of Appendix 2 of this Annexure 1 to Schedule 1I; 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:
 - (i) Address;
 - (ii) Contact name;
 - (iii) Telephone number;
 - (iv) 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).
 - (viii) 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).
 - (ix) 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.

~~Schedule 1I~~ Schedule 1I Product Development and Withdrawal

~~1I.1~~ 1I.1 General

~~1I.1.1~~ 1I.1.1 Scope

- (a) Subject to clause 1I.1.1(b)~~1I.1.1(b)~~, this Schedule 1I (Product Development and Withdrawal) applies for the Initial Regulatory Period.
- (b) Annexure 1 to this Schedule 1I~~Schedule 1I~~ (Product Development and Withdrawal~~PDF Processes~~) applies until the end of the Financial Year that is for a period of five years after~~from~~ the SAU Commencement Date.
- (c) Notwithstanding any provision in this Schedule 1I (Product Development and Withdrawal)~~Schedule 1I~~, NBN Co must comply with clauses 1D.8 to 1D.12~~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 1D.8 to 1D.12.

Comment [A125]: Please see section 4.1.1 of NBN Co's submission.

Comment [A126]: NBN Co considers that it unreasonable for NBN Co to be obliged to comply with a requirement where that requirement is not yet specified or known. NBN Co has amended this clause to limit to the obligation to compliance with the network change process in Schedule 1D.

~~1I.1.2~~ 1I.1.2 Product development principles

- (a) The following general principles apply to NBN Co's development of Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service (referred to collectively in this clause 1I.1.2 as **Products**):
- (i) NBN Co is committed to developing Products that Access Seekers want, that have sufficient demand to be commercially viable and from which 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 Access Seekers; and

- (iii) NBN Co wishes to encourage Access Seeker and Consumer Advocacy Group participation in the design of Products, and facilitate engagement and consultation in relation to Product Ideas, to enable NBN Co to fulfil the commitment described in clause 11.1.2(a)(i) in a manner consistent with NBN Co's scope of permitted activities as described in clause 11.1.2(a)(ii).
- (b) Accordingly, NBN Co has designed a product development process which seeks Access Seeker and Consumer Advocacy Group input as part of the process of developing detailed design requirements.

~~11.1.3~~ **11.1.3 Application of this Schedule**

- (a) This Schedule 1I sets out the process that NBN Co will apply to the introduction, variation or withdrawal of Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service.
- (b) This Schedule 1I does not apply in respect of any of the following:
 - (i) the introduction of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that is an Initial Product;
 - (ii) the introduction of a Product, Product Component, 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 11.4; and
 - (iv) subject to clause 11.5.3(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 11.5.3.

~~11.2~~ **11.2**

Integrated Product Roadmap

- (a) NBN Co will publish and maintain an integrated product roadmap.
- (b) On or around 1 July each year, NBN Co will publish an updated integrated product roadmap setting out the Products, Product

Comment [A127]: Please see section 4.1.5 of NBN Co's submission

Components, Product Features, Ancillary Services and types of Facilities Access Service then offered by NBN Co and the new Products, Product Components, 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.

~~(b)~~(c) The integrated product roadmap will also set out details on developments in relation to NBN Co's IT and operational support systems that NBN Co expects (as at the date the updated roadmap is published) to introduce in the 3 years following the date of publication and which are likely to impact the integrated product roadmap.

~~(c)~~(d) The integrated product roadmap will be made available on NBN Co's Website.

~~11.3.1~~ 11.3.1.3 Development

~~11.3.1.1~~ 11.3.1.3.1 Product Development Forum

- (a) NBN Co will implement a product development process through which NBN Co will engage with 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 Access Seekers and Consumer Advocacy Groups.
- (c) NBN Co will ensure that the Product Development Forum:
 - (i) identifies and records all Product Ideas;
 - (ii) is the primary forum through which:
 - (A) Product Ideas are developed, refined and disseminated; and
 - (B) NBN Co will ~~engage in~~undertake the the engagement and endorsement processes under clause 1D.9;
 - (iii) ~~provides a forum that~~ facilitates an open and consultative dialogue with Access Seekers and Consumer Advocacy Groups in respect of Product Ideas for new Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service and for enhancements and variations to existing Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service, whilst respecting the confidential information and Intellectual

Property Rights of Access Seekers and Consumer Advocacy Groups;

- (iv) provides ~~a forum~~ for Access Seekers and Consumer Advocacy Groups to:
 - (A) obtain information about NBN Co's integrated 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 Access Seekers and Consumer Advocacy Groups to provide feedback in relation to, the withdrawal of Products, Product Components, 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

- (a) NBN Co will comply with the PDF Processes during the period in which they apply in accordance with clause 11.1.1(b).
- (b) To participate in the Product Development Forum, 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 11.1.1(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 11.3.2(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
 - (ii) failing agreement, as determined by the ACCC pursuant to clause 11.3.2(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 person are unable to agree on the terms and conditions regarding the treatment of pursuant to which the confidential information and intellectual property of NBN Co and that person 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 under clause 11.3.2(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 11.3.2(f).

Comment [A128]: Please see section 4.1.3 of NBN Co's submission.

Comment [A129]: Please see section 4.1.3 of NBN Co's submission.

Comment [A130]: The obligation under clause (e) requires NBN Co provide this notice. Hence, the option for an access seeker or CAG is unnecessary. If this drafting was retained, then additional drafting would need to be included for the ACCC to inform NBN Co about this notification by an Access Seeker or the CAG.

~~11.3.3~~ 11.3.3 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 Consistent with the general principles set out in clause 11.1.2 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, or is reasonably likely to, meet the requirements specified in:
- (i) in the case of Capital Expenditure, clause 1D.3.1(a)(i) or clause 1D.3.1(a)(ii); or
- (ii) in the case of Operating Expenditure, clause 1E.8.1(a) ~~1F.8.1(a)(i) or clause 1F.8.1(a)(iii)~~;

- (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.

~~11.3.4~~**11.3.4 -Pricing of new Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Services**

Prior to introducing a new Product, Product Component, 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 through the Product Development Forum in relation to the Price or Prices at which such new Products, Product Components, Product Features, Ancillary Service or types of Facilities Access Service will be introduced by NBN Co for all Access Seekers.

11.3.5 Technical Attributes for new Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Services

Prior to introducing a new Product, Product Component, 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 through the Product Development Forum in relation to the technical attributes applicable to that new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, including the network technology used, network architecture, network dimensioning and congestion management.

Comment [A131]: Please see section 4.1.5 of NBN Co's submission

~~11.3.5~~**11.3.6 Service levels for new Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Services**

Prior to introducing a new Product, Product Component, 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 through the Product Development Forum in relation to:

- (a) the service levels applicable to that new Product, Product Component, 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, 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).

11.3.7 Implementation of Product Developments

Nothing in this Schedule 11 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 1D.8 to 1D.12.

Comment [A132]: Please see section 4.1.6.1 of NBN Co's submission.

11.4.1.4 Minor Product Changes

- (a) Notwithstanding anything to the contrary in this Schedule 11, NBN Co may carry out minor product variations or enhancements which update or improve the functionality or performance of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service and which will have no material adverse impact on Access Seekers (in this clause 11.4, **Minor Product Variation**), including without limitation where the Minor Product Variation is related to a Permitted Variation.
- (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 integrated 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.

11.5.1.5 Withdrawal

11.5.1.5.1 Notice period for Withdrawals

- (a) Subject to Schedule 1A (Implementation of NBN Access Service, Ancillary Services and the Facilities Access Service) and clause 11.5.2, NBN Co may withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (referred to collectively in this clause 11.5 as the Products) and will provide the ACCC, Access Seekers and Consumer Advocacy Groups 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 ISS in respect of which NBN Co will provide no less than 6 months' written notice;

- (ii) subject to clause 11.5.1(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 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~~ compared 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)~~ In conjunction with the written notice provided under clause 11.5.1(a), NBN will also provide written notice to the ACCC, Access Seekers and Consumer Advocacy Groups of:

Comment [A133]: Please refer to section 4.2.2.2 of NBN o's submission.

~~(i)~~ the transitional arrangements that NBN Co may put in place (if any) to migrate Access Seekers from the relevant Product to an alternative Product, including

~~(A)~~ the proposed alternative Product;

~~(B)~~ the proposed timeframe for migration to that alternative Product;

~~(C)~~ the proposed testing arrangement for the alternative Product; and

~~(D)~~ the details of any proposed trials or transition processes for the alternative Product; and

~~(vi)(ii)~~ NBN Co's assessment of the factors set out in clause 11.5.1(b).

~~(e)(d)~~ NBN Co will discuss and consider in good faith any feedback received from, 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~~ those set out in clause 11.5.1(c)(i).

Comment [A134]: Please see section 4.2.2.2 of NBN Co's submission.

~~11.5.2~~ **11.5.2 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 11.5.1(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 11.5.2(b) on the ACCC's website.
- (c) In making a decision to issue a notice under clause 11.5.2(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 will~~ have regard to the factors listed in clause 11.5.2(c);
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 11.5.2(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 11.5.1(a).
- (e) The ACCC may extend the period referred to in clause 11.5.2(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 11.5.2(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 two~~ years.
- (g) If the ACCC gives a notice pursuant to clause 11.5.2(b), NBN Co may give a further notice pursuant to clause 11.5.1(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 11.5.2 will apply in respect of that further notice.

Comment [A135]: Please see section 4.2.1.1 of NBN Co's submission.

Comment [A136]: Please see section 4.2.1.1 of NBN Co's submission.

~~11.5.3~~ **11.5.3 Product withdrawal required by law or directed by Shareholder Ministers**

- (a) Subject to clause 11.5.3(b), this clause 11.5 does not apply to the withdrawal of a Product, ~~Product Component, Product Feature, Ancillary Service or type of Facilities Access Service~~ that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.

- (b) In the event of a withdrawal of a Product, ~~Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with~~ on the grounds referred to in clause 11.5.3(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.

Annexure 1 PDF Processes

Comment [A137]: Please see section 4.1.5 of NBN Co's submission

Background

- A NBN Co has established a Product Development Forum, through which NBN Co will:
- i. seek feedback from Access Seekers and Consumer Advocacy Groups on Product Ideas as required by Schedule 11 (Product Development and Withdrawal); and
 - ii. engage with 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 1D.8 to 1D.12 of the Special Access Undertaking.
- B These PDF Processes set out the basis on which NBN Co will engage with Access Seekers and Consumer Advocacy Groups through the Product Development Forum.

1 Objectives of the PDF

- (a) NBN Co is committed to implementing Product Ideas that Access Seekers want, that have sufficient demand to be commercially viable, and from which Access Seekers gain value.
- (b) The Product Development Forum is designed to promote innovation in NBN Co's development of Product Ideas.

2 Membership of the PDF

- (a) Each 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 Access Seeker and Consumer Advocacy Group acknowledges that, as a condition of 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 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 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 Access Seekers and Consumer Advocacy Groups on NBN Co's Website. 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, if an 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 that entity's involvement in the Product Development Forum in relation to that Product Idea on a temporary or permanent basis.

3 Specific information requests for development of ideas

- (a) Access Seekers and Consumer Advocacy Groups may request specific information regarding NBN Co Networks for the purpose of developing Product Ideas.
- (b) If information is requested by an Access Seeker or Consumer Advocacy Group under clause 3(a)~~3(a)~~, NBN Co must consider that request 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.
- (c) Any information disclosed by NBN Co in response to a request made pursuant to clause 3(a)~~3(a)~~ will be dealt with in accordance with the terms and conditions agreed or determined in accordance with clause 11.3.2(d)~~11.3.2(d)~~.

4 Submitting an idea to the PDF

4.1 Idea submission

- (a) If an Access Seeker or Consumer Advocacy Group wants NBN Co to consider a Product Idea, that Access Seeker or Consumer Advocacy Group, as the case may be (**Submitting Party**), may submit details of the Product Idea using the features provided on NBN Co's Website for that purpose.
- (b) The Submitting 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 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;
 - (viii) any information which is confidential; 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 Party 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 Access Seekers;
 - (v) the demonstrated need for the Product Idea;
 - (vi) the level of engagement of the Submitting Party in the assessment and development of the Product Idea; and
 - (vii) government policy.
- (b) Prioritisation under clause 4.2(a) ~~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 Product Idea from an Access Seeker or Consumer Advocacy Group, and such additional information listed in clause 4.1(b)~~4.1(b)~~ as is available, NBN Co will inform all 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.
- (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)~~4.1(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 that have registered to participate in the Product Development Forum.
- (d) NBN Co will make the following information available in respect of each Product Idea in the register described in clause 4.3(c):
- (i) information of the type set out in clause 4.1(b), subject to applicable confidentiality and intellectual property requirements;
 - (ii) the date that the Product Idea was received by NBN Co, or was developed by NBN Co;
 - (iii) the date that Product Idea was included in the register;
 - (iv) the status of NBN Co's decision regarding the development of the Product Idea; and
 - (v) the status of the development of that Product Idea.
- ~~(e)~~(e) NBN Co will:
- (i) as soon as possible after receiving a Product Idea and such additional information listed in clause 4.1(b)~~4.1(b)~~ as is available, provide the Submitting Party with an estimate for when NBN Co expects to conduct an initial review of the Product Idea; and
 - (ii) update the Submitting Party if there are material changes to the estimate provided under clause 4.3(e)(i)~~4.3(d)(i)~~.

~~(d)(f)~~ As part of informing Access Seekers and Consumer Advocacy Groups in relation to the Product Idea under clause 4.3(a) or 4.3(b), NBN Co will invite submissions from Access Seekers and Consumer Advocacy Groups other than the Submitting Party. NBN Co will consider any submissions received from Access Seekers and Consumer Advocacy Groups in assessing the Product Idea in accordance with clause 5.

5 NBN Co's assessment of a Product Idea

5.1 Criteria for assessment

NBN Co will assess Product Ideas in accordance with Schedule 11 (Product Development and Withdrawal).

5.2 Assessment based on information provided

- (a) Upon receiving a Product Idea from an Access Seeker or Consumer Advocacy Group, NBN Co may seek and consider further information from the Submitting Party in assessing the Product Idea.
- (b) If NBN Co does not seek further information about a Product Idea under clause 5.2(a)~~5.2(a)~~, NBN Co may rely solely upon the information provided by the Submitting Party to assess the Product Idea under this clause ~~5.5~~.

5.3 Initial assessment

- (a) In initially assessing a Product Idea using the criteria in Schedule 11 (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 Party; and
 - (ii) information available specifically to the Submitting Party regarding ascertainable demand for the Product Idea.

5.4 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 1D.8 to 1D.12 of the Special Access Undertaking, publish a summary of the Product Idea, including proposed features, functionality, product specification, technical specification, price related

- terms** 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 Access Seeker using the Product, Product Component, 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 4.24-2, 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 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 5.4(a) and no exception from the Product Development Forum applies under the terms of Schedule 11 (Product Development and Withdrawal), NBN Co will also provide Access Seekers and Consumer Advocacy Groups with supplementary information regarding the Access Seeker and Consumer Advocacy Group Consultation processes that will be used to develop the Product Idea, as described in clauses 66 and 77 (together, the **Idea Development Plan**).
- (d) For the avoidance of doubt, the requirements in this clause 5.45-4 apply to an NBN Co Product Idea notified by NBN Co in accordance with clause 4.3(b)4.3(b).

5.5 Ongoing assessment

At any time between initial assessment of a Product Idea under clause 5.35-3 and NBN Co's offer of the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service proposed in the Product Idea to Access Seekers, NBN Co may in its absolute discretion decide to stop developing the Product Idea.

5.6 Rejection of Product Ideas

Following assessment of a Product Idea either under clause 5.35-3 or clause 5.55-5, 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.

6 Workshops

6.1 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 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 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 6.1(a)~~6.1(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.

6.2 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). NBN Co will ensure that participants have reasonable prior notice of each Workshop.

- (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 a Product Idea is developed through Workshops, NBN Co ~~may~~will 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.

6.3 Participation in Workshops

- (a) Subject to compliance with these PDF Processes, including clause 2.2, Access Seekers and Consumer Advocacy Groups may participate in each Workshop. If a Access Seeker or Consumer Advocacy Group declines or fails to participate in a Workshop at any time, the 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 Access Seeker or Consumer Advocacy Group did not participate in the Workshop.
- (b) If an 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 that entity's PDF Representative or other appropriate relationship manager.

7 Formal Submissions

7.1 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 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 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 7.1(b)~~7.1(b)~~. If NBN Co extends a deadline, it will extend the deadline for all Access Seekers and Consumer Advocacy Groups and notify all Access Seekers and Consumer Advocacy Groups of the extension to the deadline.
- (d) To the extent practicable, NBN Co will provide each Access Seeker and Consumer Advocacy Group an equivalent period of time to file a Formal Submission if the Access Seeker or Consumer Advocacy Group wishes to do so.

7.2 Publication of Formal Submissions

- (a) Subject to any written notice that a Formal Submission or a part of a Formal Submission is confidential, NBN Co will publish each Formal Submission on NBN Co's Website, and each Formal Submission will be publicly available.

8 Finalisation of Product, Product Component or Product Feature

- (a) NBN Co will inform Access Seekers and Consumer Advocacy Groups when it determines that the Workshops, Formal Submissions and other contributions provided by 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.
- ~~(a)~~(b) NBN Co will consider and have regard to views expressed in any Workshops, Formal Submissions and other contributions provided by Access Seekers and Consumer Advocacy Groups when finalising a Product Construct Paper.
- ~~(b)~~(c) Following a notification under clause 8(a)~~8(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 1D.8 to 1D.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)~~(d) NBN Co will publish a final Product Construct Paper for the information of Access Seekers and Consumer Advocacy Groups.

9 Communications

9.1 NBN Co communication

- (a) Any communication from NBN Co to a single Access Seeker or Consumer Advocacy Group in relation to the PDF may be given by:
 - (i) e-mail to that entity's PDF Representative;
 - (ii) letter to that 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 Access Seeker or Consumer Advocacy Group may be given by:
 - (i) e-mail to each relevant entity's PDF Representative;
 - (ii) letter to each relevant entity's PDF Representative;
 - (iii) notice on NBN Co's Website; or
 - (iv) other communication technology which NBN Co may notify to 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 the nominated Workshop representative of the Access Seekers and Consumer Advocacy Groups who participated in that Workshop instead of its PDF Representative. If a 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 entity.
- (d) If NBN Co proposes to consult 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 9.1(b) and such consultation may take place in any way in which a Workshop may take place under clauses 6.1(c) and 6.1(d).

9.2 Communications to NBN Co

Any communication from an 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.

9.3 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 Access Seekers and Consumer Advocacy Groups.

10 Definitions and Interpretation

10.1 Definitions

Access Seeker and Consumer Advocacy Group Consultation means the processes set out in clause 6 and (where applicable) clause 7.

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

Idea Development Plan has the meaning given to that term in clause 5.4(c).

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).

Product Construct Paper has the meaning given to that term in clause 5.4(a).

Rejection Notice has the meaning given to that term in clause 5.6.

Submitting Party has the meaning given to that term in clause 4.1(a).

Workshop has the meaning given to that term in clause 6.1(a).

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 10.1, have the meaning set out in clause 10.1; or
 - (ii) if not defined in clause 10.1, have the same meaning as set out in Attachment C (Dictionary) of the Special Access Undertaking.

Module 2

Subsequent Regulatory Period



Schedule 2A Implementation

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 or ACCC Replacement Module Determination is in effect.

2A.1.2 Supply of Product Components and Product Features

Subject to clause 2A.2, NBN Co will implement 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 Supply of Ancillary Services

Subject to clause 2A.2, NBN Co will implement 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 1A.1.1.

Comment [A138]: Consequential changes. Concept replaced by NBN Offers.

2A.1.4 Supply of the Facilities Access Service

Subject to clause 2A.2, NBN Co will implement 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 1A.1.1.

Comment [A139]: Consequential changes. Concept replaced by NBN Offers.

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 or NBN Co's obligations to supply as imposed on NBN Co by terms and

~~conditions specified by the ACCC under 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. 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.8, 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.~~

Comment [A140]: Please see section 3.1 of NBN Co's submission.

2A.3 NBN Co may make supply of 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 the Access Seeker also acquires a UNI, a CVC and a NNI, or an AVC of a different traffic class, in conjunction with 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 in which the AVC is being acquired; or
 - (ii) an NNI, if the Access Seeker has an existing NNI at the POI for the CSA in which the AVC is being acquired,

Comment [A141]: Please see section 3.2.3 of NBN Co's submission.

~~other than for reasons of technical compatibility, network operations, capacity or scale associated with the supply of the CVC or NNI (as the case may be) in which the AVC is being acquired.~~

~~Schedule 2B — Reference Offers~~

~~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 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 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 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.~~

~~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.~~

~~2C.1~~ Schedule 2B Pricing Commitments

~~2C.1.2~~ 2B.1 General

~~2C.1.1~~ 2B.1.1 Scope

This Schedule 2B (Pricing Commitments) applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or ACCC Replacement Module Determination 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.~~

~~2C.1.4~~ 2B.1.2 Overview

This Schedule 2B (Pricing Commitments) sets out the key principles in relation to:

- (a) how the Maximum Regulated Price of each NBN Offer and Other Charge is to be determined; and
- (b) the treatment of Zero-Priced NBN Offers,

during the Subsequent Regulatory Period.

2B.1.3 NBN Offers

- (a) NBN Co commits to supply:
 - (i) each of the NBN Offers; and
 - (ii) such other NBN Offers that NBN Co introduces in accordance with Schedule 2D (Product Development and Withdrawal),
and to withdraw it only in accordance with Schedule 2D (Product Development and Withdrawal).

~~(b)~~ Clause 2B.1.3(a) does not apply to the withdrawal of an NBN 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.

2B.1.4 Other Charges

~~(a)~~ Other Charges may only be applied to the supply of NBN Offers by NBN Co up to or equal to the applicable Maximum Regulated Price in accordance with this Schedule 2B.

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

2B.1.5 Maximum Regulated Prices at start of Subsequent Regulatory Period

The Maximum Regulated Price that applies to an NBN Offer or Other Charge on the last day of the Initial Regulatory Period will be the Maximum Regulated Price that applies to that NBN Offer or Other Charge on the first day of the Subsequent Regulatory Period.

Comment [A142]: Please refer to section 5.1.2.1 of NBN Co's submission.

~~2C.2.2~~ **2B.2 Maximum Regulated Prices for NBN Offers**

~~2C.2.1~~ **2B.2.1 General**

The Price for each NBN Offer ~~or Other Charge at any point in time~~ during a Financial Year must not be higher than the Maximum Regulated Price of that NBN Offer ~~or Other Charge at that point in time~~, as determined in accordance with this clause 2B.2.

~~2C.2.2~~ **2B.2.2 Maximum Regulated Prices for NBN Offers and Other Charges**

Subject to the provisions of the relevant Replacement Module or the relevant ACCC Replacement Module Determination addressing the matters referred to in clause 4.6(f)(i), ~~at any point in time~~ during a Financial Year, the Maximum Regulated Price of an NBN Offer ~~or Other Charge at that point in time~~ is:

- (a) if a Price Review Arrangement applies to the NBN 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 NBN Offer ~~or Other Charge~~ ceases to be Zero-Priced in that Financial Year in accordance with clause 2B.3 or ceased to be Zero-Priced in any prior Financial Year in accordance with clause 2B.3; and

Comment [A143]: Please see section 5.1.2.1 of NBN Co's submission.

- (iii) within 24 months of the date the NBN Offer or Other Charge ceased to be Zero-Priced and within that Financial Year, the ACCC made a Regulatory Determination (e.g. an Access Determination) or Regulatory Determinations (e.g. an Access Determination followed by a Binding Rule of Conduct) that specifies a price in that Financial Year for that NBN Offer or Other Charge ~~at that point in time~~,

the price specified in the relevant Regulatory Determination with effect on and from the date the ACCC made that Regulatory Determination until the earlier of the end of that Financial Year and the date on which another relevant Regulatory Determination is made in that Financial Year; or-

- (c) if:

- (i) neither paragraph (a) nor (b) apply; and
- (ii) the NBN Offer or Other Charge ceases to be Zero-Priced in that Financial Year in accordance with clause 2B.3,

the new Price for that NBN Offer or Other Charge introduced by NBN Co; or

- (d) if:

- (i) none of the paragraphs (a), (b) or (c) apply;
- (ii) the NBN Offer or Other Charge 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 (e.g. an Access Determination) or Regulatory Determinations (e.g. an Access Determination followed by a Binding Rule of Conduct):

(A) that specifies a price in that Financial Year for that NBN Offer or Other Charge ~~at that point in time~~;

(B) that was made within 24 months of the date the NBN Offer or Other Charge was first supplied or applied and within that Financial Year;

(C) for the purposes of which, the ACCC is satisfied that the price for that NBN Offer or Other Charge will not result in financial detriment to NBN Co compared to a situation in which NBN Co did not introduce the NBN Offer or Other Charge (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);

~~(B)(D)~~ that specifies any changes required to the Nominal ABBRR and Forecast Real ABBRR under clause 2C.2.1 and the Annual Forecast Revenue under clause 2C.3, to account for the matters set out in clause 2C.4.1 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; and

~~(C)(E)~~ for the purposes of which, the ACCC has taken into account the characteristics of other NBN Offers or Other Charge, the costs associated with other NBN Offers or Other Charge (in this clause, the Other Offers), the Revenue associated with the eOther NBN Offers and demand for the eOther 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 relevant Regulatory Determination with effect on and from the earlier of the date the ACCC made that Regulatory Determination until the end of that Financial Year and the date on which another relevant Regulatory Determination is made in that Financial Year; or

- (e) if:
- (i) none of paragraphs (a), (b), (c) or (d) apply; and
 - (ii) the NBN Offer or Other Charge 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 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.

2C.2.3 2B.2.3 Individual Price Increase Limit for NBN Offers

- (a) The Individual Price Increase Limit applicable to an NBN Offer or Other Charge in year t is the greater of:
- (b) \$0; and
- (c) $Price_{t-1} * [(1 + CPI_{t-1}^{March}) * (1 - 1.5\%) - 1]$,

where:

- (d) $Price_{t-1}$ is the average Price for or of the NBN Offer or Other Charge 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 2B.2, **Previous Year's Price**), disregarding any months occurring prior to the introduction of the NBN Offer or Other Charge. If the ACCC made a Regulatory Determination as referred to in clause 2B.2.2(b)(iii) or clause 2B.2.2(d)(iii) and that Regulatory Determination took effect part way through the immediately preceding Financial Year, the Prices for the NBN Offer or 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).
- (e) 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.
- (f) The Individual Price Increase Limit is rounded to the nearest whole cent.
- (g) For clarity, the Individual Price Increase Limit will always be a positive or zero value.

2C.2.4 2B.2.4 Exceptions to Maximum Regulated Price for NBN Offers or Other Charge

Clause 2C.2.1 does not apply to:

- (a) any notional change in Price, during a Regulatory Cycle, of an NBN Offer or Other Charge or the reduction, removal or cessation of the application of a Discount applicable to that NBN Offer or Other Charge. In other words, in determining the Price of an NBN 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 NBN Offer or Other Charge; or

- (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.2.5~~ **2B.2.5 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 an NBN Offer or Other Charge, any reduction, removal or cessation of a Discount applicable to an NBN 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.

~~2C.2.6~~ **2B.2.6 Treatment of Bundles**

If:

- (a) an NBN Offer or Other Charge comprises a bundle of one or more Products, Product Components, Product Features, Ancillary Services or types of Facilities Access Service (in this clause 2B.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.

~~2C.3~~ **2B.3 Treatment of Zero-Priced NBN Offers**

- ~~(a)~~ If an NBN Offer or Other Charge is Zero-Priced, then that NBN Offer or Other Charge will remain Zero-Priced, unless:
 - ~~(b)(a)~~ NBN Co proposes that the NBN Offer or Other Charge cease to be Zero-Priced in accordance with clause 2B.3(b), ~~and~~
 - ~~(i)~~ the ACCC does not make a New Price Disallowance Determination under clause ~~2B.3(c)~~.
 - ~~(b)~~ NBN Co may propose that an NBN Offer ceases to be Zero-Priced;

Comment [A144]: Please see section 5.1.2.2 of NBN Co's submission.

- ~~(ii)(i)~~ by providing no less than 6 months' notice to Access Seekers and the ACCC of its intention that the NBN Offer ceases 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 2B.3(b)(ii); and.
- ~~(-)~~ The ACCC may make a determination that an NBN 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 2B.3(b).
- ~~(-)~~ 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 2B.3(b) and must consider any submissions that are received within the time limit specified by the ACCC.
- ~~(-)~~ The ACCC may request that NBN Co give further information on NBN Co's proposal under clause 2B.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.
- ~~(-)(ii)~~ if NBN Co is reasonably satisfied thatThe 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:
 - ~~(-)(A)~~ the behaviour of one or more Access Seekers in relation to the use of the NBN Offer or the activity associated with the Other Charge results in additional costs to NBN Co;
 - ~~(-)(B)~~ the behaviour of one or more Access Seekers in relation to the use of the NBN Offer or the activity associated with the Other Charge results in degraded service outcomes for other Customers; or
 - (C) any other circumstance arises which makes it uneconomic for NBN Co to maintain the NBN Offer as Zero-Priced.
- (c) An NBN Offer or Other Charge will cease to be Zero-Priced upon the expiry of the notice period under clause 2B.3(b)(i). The revised price of the NBN Offer or Other Charge will become the Maximum Regulated Price for that NBN Offer or Other Charge from the expiry date of that notice period in accordance with clause 2B.2.2(b), subject to the operation of clause 2B.2.2(b).

- ~~(g)(d) Nothing in this clause restricts NBN Co from introducing a non-Price term or condition in respect of an Other Charge to address the behaviour or circumstances described in clause 2B.3(b)(ii).~~
- ~~(h) The ACCC must publish on its website any New Price Disallowance Determination and its reasons for issuing that New Price Disallowance Determination.~~
- ~~(i) 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.~~
- ~~(j) If the ACCC does not make a New Price Disallowance Determination within the required time under clause, the NBN Offer specified in NBN Co's proposal may cease to be Zero Priced.~~
- ~~(k) Nothing in this clause prevents NBN Co from issuing a subsequent notice under clause 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 will apply in respect of that subsequent notice.~~

2B.4 Initial pricing principles

Comment [A145]: Please see section 5.1.2.2 of NBN Co's submission.

- ~~(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 NBN Offer; or~~
 - ~~(iv) introduces a new Price for a Zero-Priced Other Charge,~~~~then the initial or new Price, or Prices, of that New Offer, New Other Charge, Zero-Priced NBN 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 NBN 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 NBN Offer or Zero-Priced Other Charge under clause 2B.4(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 NBN Offer or Zero-Priced Other Charge under clause 2B.4(a):

 - (i) any New Offer will become an NBN Offer; and
 - (ii) any New Other Charge will become an Other Charge.

~~Schedule 2D~~ **Schedule 2C Long Term Revenue Constraint Methodology and Regulatory Asset Base**

~~2D.1.1~~ **2C.1 Introduction**

~~2D.1.1.1~~ **2C.1.1 Scope**

This Schedule 2C (Long Term Revenue Constraint Methodology and Regulatory Asset Base) applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or ACCC Replacement Module Determination is in effect.

~~2D.1.2~~ **2C.1.2 General**

- (a) ~~NBN Co will determine the~~ Prices for ~~Reference Offers and Non-Reference~~ NBN Offers supplied or Other Charges imposed during the Subsequent Regulatory Period ~~up to or equal to the applicable Maximum Regulated Price and in accordance must be determined consistently with this Schedule 2C, and must not be higher than the Maximum Regulated Price determined in accordance with clause 2B.2.~~
- (b) This Schedule 2C (Long Term Revenue Constraint Methodology and Regulatory Asset Base):
- (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 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.

Comment [A146]: Please see section 5.1.2.1 of NBN Co's submission.

2D.1.32C.1.3 Designation of Financial Years

The First Financial Year will be designated as year $t = 1$ in all calculations under this Schedule 2C. 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.1.42C.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.1.52C.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.

~~2D.2.2~~ 2C.2 Annual Building Block Revenue Requirement

~~2D.2.1~~ 2C.2.1 Forecast ABBRR Requirements

Comment [A147]: Please see section 5.2.3.1 of NBN Co's submission.

- (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 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 ;
 - (iii) a return on capital for Financial Year t , calculated by reference to a rate of return and the forecast nominal RAB at the start ~~offer~~ Financial Year t ; and
 - (iv) a forecast tax allowance for Financial Year t .
- (b) For the purposes of clause 2C.2.1(a)(ii), forecast nominal regulatory depreciation for Financial Year t will be calculated as the Real Forecast Depreciation for Financial Year t , determined in accordance with clause 2C.7.7, adjusted to nominal terms consistent with clause 2C.1.5 less CPI indexation of the opening value of the nominal RAB for Financial Year t .
- (c) ~~For the avoidance of doubt, the~~ Forecast Nominal ABBRR may include elements other than those specified in clauses 2C.2.1(a)(i) to 2C.2.1(a)(iv) ~~2D.2.1(a)(i) to (iv).~~
- (d) For the purposes of clause 2C.2.1(a)(iii), the rate or return will be determined by estimating a nominal vanilla WACC for Financial Year t having regard to the risk involved in making the investment in the Relevant Assets ~~the rate of return will be determined by estimating a~~

~~nominal vanilla WACC having regard to the risks involved in making the investment.~~

- (e) The Forecast Nominal ABBRR must be calculated in such a way as to satisfy the NPV=0 expectation during the Regulatory Cycle, (i.e. that the expected net present value of the relevant future cash flow inputs (e.g. relating to Operating Expenditure, Capital Expenditure, tax and Revenue, with adjustments as required to account for the timing of how such amounts are ~~incurred~~ recognised) and initial and terminal values of relevant stock inputs (e.g. RAB and ICRA) during the Regulatory Cycle must be zero when evaluated using the forecast rate of return on capital).
- (f) 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.

- (g) All forecasts used in this clause 2C.2.1 must use consistent base assumptions with respect to demand, economic conditions, unit costs and asset management.

Comment [A148]: Please see section 5.2.1.3 of NBN Co's submission.

~~2D.32C.3~~ **Forecast Revenue**

~~2D.3.12C.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~~**2C.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.

2C.4 **Adjustments to Forecast Nominal ABBRR and Annual Forecast Revenue**

Comment [A149]: Please see section 5.1.2.1 of NBN Co's submission.

2C.4.1 **Adjustments arising from operation of a Price Review Arrangement or Regulatory Determinations**

- (a) The Forecast Nominal ABBRR, the Forecast Real ABBRR and the Annual Forecast Revenue will be adjusted to the extent necessary to account for the incremental effects on those forecast amounts from the Financial Year in the Regulatory Cycle in which:
- (i) a Price Review Arrangement came into effect; or
 - (ii) a Regulatory Determination that sets the Maximum Regulated Price for a new NBN Offer, new Other Charge or new Price for a Zero-Priced NBN Offer or Other Charge in that Financial Year, as the case may be, until the last Financial Year in that Regulatory Cycle.
- (b) Any adjustments for the purposes of clause 2C.4.1 will be:
- (i) in respect of a Price Review Arrangement, as specified in that Price Review Arrangement; or
 - ~~(i)~~(ii) in respect of a relevant Regulatory Determination, as specified, if at all, in that Regulatory Determination.

~~2D.4.2~~**2C.5** **Initial Cost Recovery Account**

~~2D.4.1~~**2C.5.1** **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 2C.5.4 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 ICRA and whether and when the Initial Cost Recovery Period ends.

2D.4.2C.5.2 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.4.3C.5.3 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:

$$\begin{aligned} \text{Unrecovered Cost}_t &= \text{Real } ABRR_t^F * CIF_t \\ &\quad - \text{Annual Revenue}_t [(1 + R_{real,t}^F)(1 + CPI_t^{June})]^{CF_{R,t}} \end{aligned}$$

$$\text{Unrecovered Cost}_t = \left(\text{Real } ABRR_t^F - \frac{\text{Annual Forecast Revenue}_t}{CIF_t^F} \right) * CIF_t$$

where:

Annual Revenue t is either:

- (i) actual Revenue in Financial Year t ; or
- (ii) $\left(\frac{\text{Annual Forecast Revenue}_t}{CIF_t^F} \right) * CIF_{t+}$

Comment [A150]: Please see section 5.2.3.3 of NBN Co's submission.

Comment [A151]: Please see section 5.2.1.3 of NBN Co's submission.

The same basis (actual or forecast Revenue) must be used in each Financial Year in a Regulatory Cycle.

$CF_{R,t}$ is a cash flow adjustment factor applicable to Annual Revenue in Financial Year t and is a number between 0 and 1 inclusive.

$Real\ ABBRR_t^F$ is the Forecast Real ABBRR for the relevant Financial Year t , calculated in accordance with clause 2C.2.1(f) ~~2D.2.1(e)~~.

$Annual\ Forecast\ Revenue_t$ is the Forecast Annual Revenue for the relevant Financial Year t .

$R_{real,t}^F$ is the estimated real rate of return for the current Financial Year (t)

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

~~2D.4.4~~ 2C.5.4 Initial Cost Recovery Account

If the Subsequent Regulatory Period starts within the Initial Cost Recovery Period, then the ICRA is:

- (a) 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 1E.5; and
- (b) for each Financial Year of the remainder of the Initial Cost Recovery Period:

$$\begin{aligned} ICRA_{t+1}^{start} &= ICRA_t^{end} \\ &= ICRA_t^{start} * (1 + R_{real,t}^F)(1 + CPI_t^{June}) + Unrecovered\ Cost_t \end{aligned}$$

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). $R_{real,t}^F$ has the meaning in clause 2C.5.3(a).

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).

- (c) ~~For the purposes of clause 2C.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.~~

Comment [A152]: Please see section 5.2.12 of NBN Co's submission.

~~2D.4.5~~ **2C.5.5 Likely Methodology Change Event Notice**

- (a) NBN Co will use reasonable endeavours to issue a Likely Methodology Change Event Notice to Access 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 2C.5.5(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 Access 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 2C.5.5(b) will not apply if the Methodology Change Event has already occurred.

~~2D.4.6~~ **2C.5.6 Pricing Intention Statement**

- (a) NBN Co will use reasonable endeavours to issue a Pricing Intention Statement to 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 2C.5.6(a) will not apply if NBN Co has previously issued a 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~~ NBN 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 2C.5.6(b)(i) will impact on the individual Price of each ~~Reference Offer, Non-Reference~~ NBN 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 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 2C.5.6(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 Access Seekers.

~~2D.4.7~~**2C.5.7** **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 2C.5.4 will be the Carry Forward Revenue Adjustment. That is:

- (b) $Carry\ Forward\ Revenue\ Adjustment_t$

$$= Unrecovered\ Cost_t + ICRA_t^{start} * (1 + R_{real,t}^F)(1 + CPI_t^{June})$$

- (c)

- (d) where:

$Unrecovered\ Cost_t$ is the Unrecovered Cost for 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). $R_{real,t}^F$ has the meaning in clause 2C.5.3(a).~~

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

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

~~2D.5.2~~**2C.6** **Building Block Revenue Period**

~~2D.5.12~~**2C.6.1** **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, 2C.6.2 and

paragraphs (b) and (c) [below](#), NBN Co will be entitled to earn Revenue in those Financial Years up to the sum of the Forecast Real ABBRR for those same Financial Years as set out in the Replacement Module or ACCC Replacement Module Determination.

- (b) For the purposes of clause 2C.6.1(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 using the forecast real rate of return on capital calculated for the purposes of clause 2C.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 2C.6.1(a) by:
 - (i) 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 4.6(f);
 - (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, the present value of the Revenue Variation, evaluated consistently with clause 2C.6.1(b)(ii), calculated under clause 1E.6.2 for the last Financial Year of the Initial Regulatory Period;
 - (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, the present value of the Carry Forward Revenue Adjustment, evaluated consistently with clause 2C.6.1(b)(ii), calculated under clause 1E.5.3; or
 - (B) if the previous Financial Year was in the Subsequent Regulatory Period, the present value of the Carry Forward Revenue Adjustment, evaluated consistently with clause 2C.6.1(b)(ii), calculated under clause 2C.5.7.

~~2D.5.2~~**2C.6.2** **Amounts to be carried forward between Regulatory Cycles**

- (a) This clause 2C.6.2 will only apply in Regulatory Cycles that start in the Building Block Revenue Period.
- (b) If, in 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 2C.6.1 (in this clause 2C.6.2(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 2C.6.1, will be increased by the present value of the Under-recovered Amount, evaluated consistently with clause 2C.6.1(b)(ii).
- (c) If, in any immediately preceding Regulatory Cycle, NBN Co earned more Revenue than the amount of Revenue that NBN Co was entitled to earn under clause 2C.6.1 (in this clause 2C.6.2(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 2C.6.1, will be decreased by the present value of the Over-recovered Amount, evaluated consistently with clause 2C.6.1(b)(ii).

~~2D.5.3~~**2C.6.3** **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 2C.6.1 (together with any amounts carried forward under clause 2C.6.2) in that Regulatory Cycle.

~~2D.6~~**2C.7** **Calculation of the Regulatory Asset Base**

~~2D.6.1~~**2C.7.1** **RAB Roll Forward Arrangements**

In this clause 2C.7, 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 4.7.

~~2D.6.2~~**2C.7.2** **RAB at the Commencement of the Subsequent Regulatory Period**

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 1D.2.

- (a) ~~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.~~

Comment [A153]: Please see section 5.2.1.2 of NBN Co's submission.

~~2D.6.3~~ **2C.7.3 RAB roll forward**

Comment [A154]: Please see section 5.2.3.2 of NBN Co's submission.

- (a) ~~The RAB at the commencement of a Financial Year, other than the first Financial Year of the Subsequent Regulatory Period, will be rolled forward from the commencement of the previous Financial Year. 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:~~

Comment [A155]: Please see section 5.2.1.3 of NBN Co's submission.

$$\begin{aligned}
 \text{Real RAB}_t^{\text{start}} &= \text{Real RAB}_{t-1}^{\text{end}} \\
 &= \text{Real RAB}_{t-1}^{\text{start}} + \text{Real Capex}_{t-1} * [(1 + R_{\text{real},t}^F)(1 + \text{CPI}_t^{\text{June}})]^{CF_{C,t}} \\
 &\quad - \text{Real Disposals}_{t-1} * [(1 + R_{\text{real},t}^F)(1 + \text{CPI}_t^{\text{June}})]^{CF_{D,t}} - \text{Real Depreciation}_{t-1}
 \end{aligned}$$

where:

t is the Financial Year for which the Real RAB is being calculated;

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

Real RAB_{t-1}^{end} is the Real RAB at the end of the immediately prior Financial Year (t-1);

Real Capex_{t-1} is the real value of Capital Expenditure during the immediately prior Financial Year (t-1);

R_{real,t}^F has the meaning in clause 2C.5.3(a).

CF_{C,t} is a cash flow adjustment factor applicable to Capital Expenditure in Financial Year t and is a number between 0 and 1 inclusive;

Real Disposals_{t-1} is the real value of any Disposals of Relevant Assets during the immediately prior Financial Year (t-1);

CF_{D,t} is a cash flow adjustment factor applicable to Disposals in Financial Year t and is a number between 0 and 1 inclusive; and

Real Depreciation_{t-1} is the real value of the depreciation applicable to the opening value of the Relevant Assets included in the RAB at the start of immediately prior Financial Year (t-1).

$$\begin{aligned}
 RAB_{\text{Cycle}}^{\text{start}} &= RAB_{\text{Cycle}-1}^{\text{end}} \\
 &= RAB_{\text{Cycle}-1}^{\text{start}} + Capex_{\text{Cycle}-1} \\
 &\quad - Disposals_{\text{Cycle}-1} - Depreciation_{\text{Cycle}-1}
 \end{aligned}$$

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*).

$RAB_{\text{Cycle}-1}^{\text{start}}$ is the RAB at the start of the immediately prior Regulatory Cycle (*Cycle-1*).

$Capex_{\text{Cycle}-1}$ is the Capital Expenditure during the immediately prior Regulatory Cycle (*Cycle-1*).

$Disposals_{\text{Cycle}-1}$ is the value of any Disposals of Relevant Assets during the immediately prior Regulatory Cycle (*Cycle-1*).

$Depreciation_{\text{Cycle}-1}$ 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 2C.7.3(a), the real value of Capital Expenditure and the real value of depreciation for each Financial Year in during a particular Regulatory Cycle will be determined in accordance with the RAB Roll Forward Arrangements applicable to that Regulatory Cycle in that immediately preceding Regulatory.

(b) For the purposes of clause 2C.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.6.42C.7.4 Treatment of Capital Expenditure in RAB roll forward

In respect of each Regulatory Cycle, the method for determining the amount of Capital Expenditure to be included in the value of the RAB at the end of Financial Year t in that Regulatory Cycle (that is, the value of Real Capex_t for the purposes of applying clause 2C.7.3(a) at the end of Financial Year t) will be The method for determining the amount of Capital Expenditure in a

Comment [A156]: Please see section 5.2.1.2 of NBN Co's submission.

Comment [A157]: Please see section 5.2.3.2 of NBN Co's submission.

Regulatory Cycle to be included in the value of RAB at the start of the subsequent Regulatory Cycle will be:

- (a) the roll-in of actual Capital Expenditure for Financial Year t if the ACCC is satisfied that this method is reasonable, such an assessment to be made during the assessment of a Replacement Module Application or an applicable ACCC Replacement Module Determination in relation to the Regulatory Cycle;
- (b) where paragraph (a) does not apply, the roll-in of an amount of Capital Expenditure for Financial Year t determined by the ACCC pursuant to any power conferred on the ACCC under the RAB Roll Forward Arrangements applicable to the Regulatory Cycle, which must be:
 - (i) if actual Capital Expenditure is the same or less than the forecast of Capital Expenditure used to set the Forecast Nominal ABBRR (after accounting for the difference between actual and forecast CPI), at least equal to actual Capital Expenditure, but no more than the relevant forecast of Capital Expenditure; and
 - (ii) otherwise:
 - (A) no less than the forecast of Capital Expenditure for Financial Year t used to set the Forecast Nominal ABBRR (after accounting for the difference between actual and forecast CPI);
 - (B) if the sum of the actual Capital Expenditure over the Regulatory Cycle is less than or equal to the sum of the forecasts of Capital Expenditure as used to set the Forecast Nominal ABBRR over the Regulatory Cycle (after accounting for the difference between actual and forecast CPI), equal to actual Capital Expenditure for Financial Year t; and
 - (C) if the sum of the actual Capital Expenditure over the Regulatory Cycle is greater than the sum of the forecasts of Capital Expenditure as used to set the Forecast Nominal ABBRR over the Regulatory Cycle (after accounting for the difference between actual and forecast CPI), consistent with the sum of the amounts of Capital Expenditure determined by the ACCC for roll-in to the RAB over the Regulatory Cycle being no less than the sum of the forecasts of Capital Expenditure as used to set the Forecast Nominal

ABRR over the Regulatory Cycle (after accounting for the difference between actual and forecast CPI),

if the ACCC is satisfied that this method is reasonable as part of its assessment of a Replacement Module Application or ACCC Replacement Module Determination (as the case may be) in relation to the Regulatory Cycle; and

(c) if paragraphs (a) and (b) do not apply, the roll in of an amount of Capital Expenditure determined by any other method that is consistent with NBN Co achieving a reasonable likelihood of long term recovery of prudently incurred costs.

(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 ABRR for that Regulatory Cycle under clause 2C.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 ABRR 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 ABRR for that Regulatory Cycle under clause 2C.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~~ **2C.7.5 Depreciation for RAB roll forward**

Comment [A158]: Please see section 5.2.3.2 of NBN Co's submission.

~~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. In respect of each Regulatory Cycle, the method for determining the depreciation applicable to the opening value of the Relevant Assets included in the RAB at the start of Financial Year t in that Regulatory Cycle (that is, the value of *Real Depreciation_t*, for the purposes of applying clause 2C.7.3(a) at the end of Financial Year t) will be:~~

- ~~(a) real straight-line depreciation, to the extent the ACCC is satisfied that this method is reasonable as part of its assessment of a Replacement Module Application or ACCC Replacement Module Determination (as the case may be) in relation to the Regulatory Cycle;~~
- ~~(b) to the extent that paragraph (a) does not apply, any other depreciation method that is consistent with NBN Co achieving a reasonable likelihood of long term recovery of prudently incurred costs; and~~
- ~~(c) in applying the depreciation method in respect of Capital Expenditure for a particular Financial Year during the Regulatory Cycle, the relevant depreciation amount will be:
 - ~~(i) based on either the value of the Capital Expenditure rolled into the RAB for that Financial Year or the value of the Forecast Capital Expenditure Capital Expenditure for that Financial Year as used to set the Forecast Nominal ABBRR, if the ACCC is satisfied that either approach is reasonable as part of its assessment of a Replacement Module Application or ACCC Replacement Module Determination (as the case may be) in relation to the Regulatory Cycle; or~~
 - ~~(ii) if paragraph (i) does not apply, based on any other approach that is consistent with NBN Co achieving a reasonable likelihood of long term recovery of prudently incurred costs.~~~~

2D.6.62C.7.6 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.6.72C.7.7 Calculation of forecast Real RAB within Regulatory Cycle

- (a) For the purposes of calculating the Forecast Nominal ABBRR pursuant to clause 2C.2.1(a), the Real RAB at the start of each Financial Year in a Regulatory Cycle, ~~including other than~~ the first Financial Year of the Regulatory Cycle to the extent that the relevant RAB values under clause 2C.7.3 are not yet available, will be forecast according to the following methodology:

Comment [A159]: Please see section 5.2.1.3 of NBN Co's submission.

Comment [A160]: Please see section 5.2.1.2 of NBN Co's submission.

$$\begin{aligned}
 \text{Real Forecast } RAB_t^{\text{start}} &= \text{Real Forecast } RAB_{t-1}^{\text{end}} \\
 &= \text{Real Forecast } RAB_{t-1}^{\text{start}} + \text{Real Forecast Capex}_{t-1} \\
 &\quad * [(1 + R_{\text{real},t}^F)(1 + CPI_t^{\text{une}})]^{CF_{D,t}} \\
 &\quad - \text{Real Forecast Disposals}_{t-1} \\
 &\quad * [(1 + R_{\text{real},t}^F)(1 + CPI_t^{\text{une}})]^{CF_{D,t}} \\
 &\quad - \text{Real Forecast Depreciation}_{t-1}
 \end{aligned}$$

$$\begin{aligned}
 \text{Real Forecast } RAB_t^{\text{start}} &= \text{Real Forecast } RAB_{t-1}^{\text{end}} \\
 &= \text{Real Forecast } RAB_{t-1}^{\text{start}} + \text{Real Forecast Capex}_{t-1} \\
 &\quad - \text{Real Forecast Disposals}_{t-1} - \text{Real Forecast Depreciation}_{t-1}
 \end{aligned}$$

where:

~~CF_{D,t} is a cash flow adjustment factor applicable to Disposals in Financial Year t and is a number between 0 and 1 inclusive.~~

t is the Financial Year for which a forecast of the Real RAB at the start of the Financial Year is being calculated.

Real Forecast RAB_t^{start} is the forecast Real RAB at the start of the Financial Year (t).

Real Forecast RAB_{t-1}^{end} is the forecast of the Real RAB at the end of the immediately prior Financial Year (t-1).

Real Forecast RAB_{t-1}^{start} is the forecast of the Real RAB at the start of the immediately prior Financial Year (t-1).

Real Forecast 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*), including any Capital Expenditure to be incurred pursuant to the Telstra Arrangements or the Optus Arrangements.

CF_{C,t} is a cash flow adjustment factor applicable to Capital Expenditure in Financial Year *t* and is a number between 0 and 1 inclusive.

Real Forecast Disposals_t is the forecast of the real value of any Disposals of Relevant Assets during the immediately prior Financial Year (*t-1*), adjusted to reflect the timing of forecast Disposals during that Financial Year.

CF_{D,t} is a cash flow adjustment factor applicable to Disposals in Financial Year *t* and is a number between 0 and 1 inclusive.

Real Forecast Depreciation_{t-1} is the 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 immediately prior Financial Year (*t-1*), determined in accordance with the Roll Forward Arrangements.

R^F_{real,t} has the meaning in clause 2C.5.3(a).

~~2D.6.8~~ 2C.7.8 Calculation of Nominal RAB

(a) The Nominal RAB will be:

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

and:

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

where:

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

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

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

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

(b) The Nominal Forecast RAB will be:

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

and:

$$\begin{aligned} \text{Nominal Forecast } RAB_t^{start} &= \text{Nominal Forecast } RAB_{t-1}^{end} \\ &= CIF_{t-1} * \text{Real Forecast } RAB_{t-1}^{end} \\ &= CIF_{t-1} * \text{Real Forecast } RAB_t^{start} \end{aligned}$$

where:

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

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

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

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

~~Schedule 2E~~ **Schedule 2D Product Development and Withdrawal**

~~2E.1.1~~ **2D.1 General**

~~2E.1.1.1~~ **2D.1.1 Scope**

This Schedule 2D (Product Development and Withdrawal) applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or ACCC Replacement Module Determination is in effect.

- (a) ~~Notwithstanding any other provision of this Schedule 2D (Product Development and Withdrawal), NBN Co must comply with any applicable requirements in relation to the identification, selection, consultation and endorsement of any network change.~~

Comment [A161]: Please refer to section 4.2.1.1 of NBN Co's submission.

~~2E.1.2~~ **2D.1.2 Product development principles**

- (a) The following general principles apply to NBN Co's development of Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service (referred to collectively in this clause 2D.1.2 as **Products**):
- (i) NBN Co is committed to developing Products that Access Seekers want, that have sufficient demand to be commercially viable and from which 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 Access Seekers; and
 - (iii) NBN Co wishes to encourage Access Seeker and Consumer Advocacy Group participation in the design of Products, and facilitate engagement and consultation in relation to Product Ideas, to enable NBN Co to fulfil the commitment described in clause 2D.1.2(a)(i) in a manner consistent with NBN Co's scope of permitted activities as described in clause 2D.1.2(a)(ii).

- (b) Accordingly, NBN Co will utilise a product development process which seeks Access Seeker and Consumer Advocacy Group input as part of the process of developing detailed design requirements.

~~2E.1.3~~ **2D.1.3 Application of this Schedule**

- (a) This Schedule 2D (Product Development and Withdrawal ~~Product Development and Withdrawal~~) sets out the process that NBN Co will apply to the introduction, variation or withdrawal of Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service, subject to clause 2D.6.1 ~~2D.6.1~~.
- (b) This Schedule 2D (~~Product Development and Withdrawal~~) does not apply in respect of any of the following:
 - (i) the introduction of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that is an Initial Product;
 - (ii) the introduction of a Product, Product Component, 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 2D.6.3(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 2D.6.3.

~~2E.2~~ **2D.2 Withdrawal – Access Seeker Focused Approach**

- (a) Subject to this clause 2E.2 and to clause 2D.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 2D.3 and 2D.4 of this Schedule 2D (~~Product Development and Withdrawal~~) ~~Schedule 2E~~.
- (b) Any withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service must be focussed on Access Seekers and NBN Co will first encourage Access Seeker and

Consumer Advocacy Group feedback on NBN Co proposals to withdraw a Product and be responsive to any suggestions in relation to that withdrawal.

~~2E.3~~2D.3 **Integrated Product Roadmap**

- (a) NBN Co will publish and maintain an integrated product roadmap in respect of Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service (as applicable).
- (b) The integrated product roadmap will be made available on NBN Co's Website.

2E.42D.4 **Development**

~~2E.4.1~~2D.4.1 **Product Development Forum**

- (a) NBN Co will implement a product development process through which NBN Co will engage with 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 Access Seekers and Consumer Advocacy Groups.
- (c) NBN Co will ensure that the Product Development Forum:
 - (i) identifies and records all Product Ideas;
 - (ii) is the primary forum through which Product Ideas are developed, refined and disseminated;
~~(A) Product Ideas are developed, refined and disseminated; and~~
~~(B) NBN Co will engage in any applicable 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 Access Seekers and Consumer Advocacy Groups in respect of Product Ideas for new Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service and for enhancements and variations to existing Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service, whilst respecting the confidential information and Intellectual

Comment [A162]: Redundant drafting

Property Rights of Access Seekers and Consumer Advocacy Groups;

- (iv) provides ~~a forum~~ for the development of Product Ideas into Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service to be offered to Access Seekers;
- (v) provides ~~a forum~~ for Access Seekers and Consumer Advocacy Groups to:
 - (A) obtain information about NBN Co's integrated product roadmap, including existing Products, Product Components, 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 Access Seekers and Consumer Advocacy Groups to provide feedback in relation to, the withdrawal of Products, Product Components, Product Features Ancillary Services or types of Facilities Access Service and related issues.

~~2E.4.2~~2D.4.2 **Processes relating to the Product Development Forum**

- (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 2D.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
 - (ii) failing agreement, as determined by the ACCC pursuant to clause 2D.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 ~~person party~~ are unable to agree on the terms and conditions ~~regarding the treatment of pursuant to which~~ the confidential information and intellectual property of NBN Co and that ~~person 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 ~~under pursuant to~~ clause 2D.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.~~
- (e) The ACCC may consult with any person in making a determination under clause 2D.4.2(d).

Comment [A163]: Please see section 4.1.3 of NBN Co's submission.

Comment [A164]: Please see section 4.1.3 of NBN Co's submission.

Comment [A165]: The obligation under clause (c) requires NBN Co provide this notice. Hence, the option for an access seeker/CAG is unnecessary. If this drafting was retained, then additional drafting would need to be included for the ACCC to inform NBN Co about this notification by an Access Seeker or the CAG.

~~2E.4.3~~ 2D.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 Product Development Forum. Consistent with the general principles set out in clause 2D.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.4.42D.4.4 Pricing of new Products, Product Components and Product Features

Prior to introducing a new Product, Product Component, 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 through the Product Development Forum in relation to the Price or Prices at which such new Products, Product Components, Product Features, Ancillary Services or types of Facilities Access Service will be introduced by NBN Co for all Access Seekers.

2D.4.5 Technical Attributes for new Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Services

Prior to introducing a new Product, Product Component, 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 through the Product Development Forum in relation to the technical attributes applicable to that new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, including the network technology used, network architecture, network dimensioning and congestion management.

Comment [A166]: Please see section 4.1.5 of NBN Co's submission

2E.4.52D.4.6 Service levels for new Products, Product Components and Product Features

Prior to introducing a new Product, Product Component, 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 through the Product Development Forum in relation to:

- (a) the service levels applicable to such a new Product, Product Component, 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, 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).

~~2E.5~~2D.5 **Minor Product Changes**

- (a) NBN Co may carry out minor product variations or enhancements which update or improve the functionality or performance of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service and which will have no material adverse impact on Access Seekers (in this clause ~~2D.5~~, **Minor Product Variation**).
- (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 integrated 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.
- (d)

~~2E.6~~2D.6 **Withdrawal**

~~2E.6.1~~ **Prohibition**

~~NBN Co will not withdraw the Reference Offers, during their relevant terms.~~

Comment [A167]: Consequential change relating to removal of Reference Offers in SAU in favour of NBN Offers.

~~2E.6.2~~2D.6.1 **Notice period for Withdrawals**

- (a) Subject to Schedule 2A (~~Implementation~~) Schedule 1A (~~+~~) and clause ~~and~~ 2D.6.2, NBN Co may withdraw a Product, Product Component, Product Feature, Ancillary Service and type of Facilities Access Service (referred to collectively in this clause 2D.6 as the Products) and will provide the ACCC, Access Seekers and Consumer Advocacy Groups 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 2D.6.1(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 ~~compared, 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) In conjunction with the written notice provided under clause 2D.6.1(a), NBN Co will also provide written notice to the ACCC, Access Seekers and Consumer Advocacy Groups of:~~

- ~~(i) the transitional arrangements that NBN Co may put in place (if any) to migrate Access Seekers from the relevant Product to an alternative Product, including~~
 - ~~(A) the proposed alternative Product;~~
 - ~~(B) the proposed timeframe for migration to that alternative Product;~~

Comment [A168]: Please refer to section 4.2.2.2 of NBN Co's submission.

~~(C) the proposed testing arrangement for the alternative Product; and~~

~~(D) the details of any proposed trials or transition processes for the alternative Product; and~~

~~(ii) NBN Co's assessment of the factors set out in clause 2D.6.1(b).~~

~~(e)(d)~~ NBN Co will discuss and consider in good faith any feedback received from 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 those set out in clause 2D.6.1(c)(i) 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 can start is the date that the relevant Product Feature, Ancillary Service or type of Facilities Access Service ceases to be a Reference Offer.~~

Comment [A169]: Please refer to section 4.2.2.2 of NBN Co's submission.

~~2E.6.3~~ **2D.6.2 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 2D.6.1(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 2D.6.2(b) on the ACCC's website.

(c) In making a decision to issue a notice under clause 2D.6.2(b) the ACCC:

(i) will have regard to the long-term interests of end-users in accordance with section 152AB of the CCA;

(ii) ~~will~~ may have regard to the factors listed in clause 2D.6.2(b) ~~2E.6.2(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 2D.6.2(b) must be issued within the period of 60 Business Days from the date on which NBN Co

Comment [A170]: Please see section 4.2.1.1 of NBN Co's submission.

- 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 2D.6.1(a).
- (e) The ACCC may extend the period referred to in clause 2D.6.2(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 2D.6.2(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 ~~two~~five years.
- (g) If the ACCC gives a notice pursuant to clause 2D.6.2(b), NBN Co may give a further notice pursuant to clause 2D.6.2(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 2D.6.2 will apply in respect of that further notice.

Comment [A171]: Please see section 4.2.1.1 of NBN Co's submission.

~~2E.6.4~~**2D.6.3** **Product withdrawal required by law or directed by Shareholder Ministers**

- (a) Subject to clause 2D.6.3(b), this clause 2D.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 on the grounds referred to in clause 2D.6.3(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):

Schedule 2D (Product Development and Withdrawal)

- (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.

~~Schedule 2F~~ **Schedule 2E Maximum Regulated Price Review Mechanisms**

~~2F.1~~ **2E.1 Introduction**

~~2F.1.1~~ **2E.1.1 Scope**

- (a) Subject to paragraph (b), this Schedule 2E (~~(Maximum Regulated Price Review Mechanisms)~~) applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or ACCC Replacement Module Determination is in effect.
- (b) To avoid doubt, nothing in this Schedule 2E (~~(Maximum Regulated Price Review Mechanisms)~~) 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 2E.2.

~~2F.1.2~~ **2E.1.2 Overview**

This Schedule 2E (~~(Maximum Regulated Price Review Mechanisms)~~) 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)~~(a) Non-Reference NBN Offers; and
- ~~(c)~~(b) Other Charges.

~~2F.2~~ **2E.2 Price Review Arrangements**

~~2F.2.1~~ **2E.2.1 Initiation of Price Review**

- (a) Subject to clause 2E.2.1(c), either the ACCC or NBN Co may issue a written notice (in this clause 2E.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 NBN~~ Offers and/or Other charges under this clause 2E.2 (in this clause 2E.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 2E.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.

~~2E.2.2~~ **2E.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 2E.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 2E.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.

~~2E.2.3~~ **2E.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 2E.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 2E.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 2E.2.3(a) unless the ACCC has had regard to the information in the Price Review Proposal provided by NBN Co under clause 2E.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 2E.2.3(a), including the reasons for the decision and any resulting Price Review Arrangement.

~~2E.2.4~~ **2E.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 2E.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 2E.2.4(a), the ACCC will consider the varied Price Review Proposal under clause 2E.2.3 as if the varied Price Review Proposal had been given instead of the original Price Review Proposal.

~~2F.2.5~~2E.2.5 **Acceptance of Price Review Proposal**

- (a) The ACCC must not accept the Price Review Proposal under clause 2E.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~~2E.2.6 **ACCC Determined Price Review Arrangement**

- (a) The ACCC must not issue an ACCC Determined Price Review Arrangement under clause 2E.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~~2E.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 ~~31~~ and 5 Financial Years after the commencement date;
 - (iii) the ~~Reference Offers, Non-Reference~~NBN Offers and/or Other Charges to which the Price Review Arrangement applies (in this clause 2E.2.7, 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; and

(v) any changes required to the Forecast Nominal ABBRR and Forecast Real ABBRR under clause 2C.2.1 and the Annual Revenue Forecast under clause 2C.3 to account for the matters set out in clause 2C.4.1.

- (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~~ 2E.2.8

Price Review Criteria

Comment [A172]: Please see section 5.1.3 of NBN Co's submission.

- (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 ~~m~~Material ~~d~~Difference between:
 - (A) the present value of the difference between the expected Revenue and ~~expected costs that would be inputs to the ABBRR~~ the sum of expected Operating Expenditure, Capital Expenditure and tax, between the commencement of the Price Review Arrangement and the SAU Expiry Date, if the Price Review Arrangement were in operation; and,

and

- (B) the present value of the difference between the expected Revenue and ~~expected costs that would be inputs to the ABBRR~~ the sum of expected Operating Expenditure, Capital Expenditure and tax, 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 2E.2, **Price Review Criteria**).

(b) Section 152CBD(5A) of the CCA applies to the ACCC's decision whether to accept or reject a Price Review Proposal as if the references to not rejecting the undertaking in that section were references to not rejecting the Price Review Proposal.

(c) Section 152BCB(3C) of CCA applies to the ACCC's decision whether to make an ACCC Determined Price Review Arrangement as if the references to making an access determination in that section were references to making an ACCC Determined Price Review Arrangement.

~~(b)~~(d) 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~~ have regard to:

(i) the characteristics of the ~~Reference Offers, Non-Reference~~ NBN Offers and Other Charges other than the Reviewed Offers (in this clause ~~2E.2.8(b)~~, the Other Offers);

(ii) the costs associated with Other Offers;

(iii) the Revenue associated with Other Offers; ~~and~~

(iv) demand for Other Offers; and

(v) the objective of minimising the difference between:

(A) the present value of the difference between the expected Revenue and the sum of expected Operating Expenditure, Capital Expenditure and tax, for the five year period from the commencement of the Price Review Arrangement, if the Price Review Arrangement were in operation; and

(B) the present value of the difference between the expected Revenue and the sum of expected Operating Expenditure, Capital Expenditure and tax, for the five year period from the commencement of the Price Review Arrangement, if the Price Review Arrangement were not in operation.

- (e) Section 152CBIA of the CCA applies to a Price Review Arrangement in operation as if the reference to an Access Determination in that section was a reference to such a Price Review Arrangement.
- (f) For the purposes of this clause 2E.2.8, a Material Difference means a difference of greater than \$1 million * CIF_t (where CIF_t has the meaning given to that term in clause 2C.1.4).

Execution page

Executed on

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

Mike Quigley

Chief Executive Officer and Director

Witness

~~Jim Hassell~~

~~Product Management & Industry Relations~~

Witness