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## ITA Deed

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### Parties

**Telstra Corporation Limited** A.C.N. 051 775 556 (**Telstra**)

**The Office of the ITA Limited** A.C.N. 158 274 232 (**ITA**)

[insert name] A.C.N. [insert] (**Wholesale Customer**)

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### Background

- (a) Telstra gave to the ACCC an undertaking dated 23 February 2012 pursuant to section 577A of the *Telecommunications Act 1997* (Cth) (**Undertaking** or **SSU**) and the ACCC accepted the Undertaking on 27 February 2012.
- (b) Telstra established the ITA and the Independent Telecommunications Adjudicator Process (**ITA Process**) in accordance with the Undertaking for the independent and expedited resolution of ITA Disputes.
- (c) Telstra and the Wholesale Customer agree that either party may refer an ITA Dispute to the Adjudicator for resolution on the terms set out in this deed and the Undertaking.

**The parties agree**

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## 1 Defined terms and interpretation

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

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## 2 ITA Process

### 2.1 Reference to the ITA Process

- (a) Telstra and the Wholesale Customer agree that either party to this deed may refer an Equivalence Complaint for resolution in accordance with:
  - (i) the Accelerated Investigation Process set out in clause 19 of the Undertaking; and
  - (ii) if the Equivalence Complaint is not resolved by Telstra using the Accelerated Investigation Process, then the ITA Process in accordance with clause 20 and Schedule 5 of the Undertaking.
- (b) Telstra and the Wholesale Customer agree that either party to this deed may refer a dispute of the kind referred to in clause 31 of the Plan for resolution in accordance with the ITA Process.
- (c) Each party agrees that it will comply with, and be bound by, the terms of the ITA Process set out in Schedule 5 of the Undertaking, in respect of any ITA Dispute referred to the ITA Process.

(d) Without limiting the power of the Adjudicator to refer any ITA Dispute or investigation to the ACCC prior to it making a final determination, a party to this deed must not:

- (i) commence any arbitration or court proceedings or any other dispute resolution process (including but not limited to any process of the Telecommunications Industry Ombudsman); or
- (ii) lodge a complaint with the ACCC under Part IV, XIB or XIC of the *Competition and Consumer Act 2010* (Cth) (**CCA**) or under the *Telecommunications Act 1997* (Cth) (the **Telco Act**),

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

- (iii) a party seeks urgent interlocutory or injunctive relief; or
- (iv) the dispute relates to compliance with this deed.

(e) If a party to this deed has:

- (i) commenced any arbitration or court proceedings or any other dispute resolution process (including but not limited to any process of the Telecommunications Industry Ombudsman); or
- (ii) lodged a complaint with the ACCC under Part IV, XIB or XIC of the CCA or Schedule 1 of the Telco Act,

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

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

- (a) Each party will cooperate in good faith with the Adjudicator, including by providing any information or assistance reasonably requested by the Adjudicator in the course of undertaking an investigation.
- (b) The Wholesale Customer consents to Telstra disclosing to the Adjudicator information that is confidential to the Wholesale Customer, where such disclosure is for the purpose of facilitating:
  - (i) Telstra's compliance with its obligations in respect of the ITA Process; or
  - (ii) the Adjudicator to otherwise undertake a timely investigation and resolution of the ITA Dispute.
- (c) Telstra and the Wholesale Customer agree that they will engage in the ITA Process in good faith and that they will provide all reasonable assistance and information to the Adjudicator.
- (d) Nothing in this deed requires a person to disclose information to another person where such disclosure would constitute a breach of law or an obligation of confidence owed to another person, or where the information is privileged.

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

- (a) Telstra and the Wholesale Customer agree that, where a final determination of the Adjudicator is final and binding as specified in paragraph 14 of Schedule 5 of the SSU, each of them will be bound by, and must comply with, the final determination.
- (b) Any finding of fact made by the Adjudicator in or for the purpose of a final determination must not be tendered or relied upon by either party in any court proceedings or other dispute resolution process as evidence of those facts.

### **2.4 Confidentiality of ITA Process**

Telstra and the Wholesale Customer agree that:

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

is confidential and must not be disclosed without the written consent of the other party unless disclosure is required by law or the rules of any exchange on which the disclosing party's securities are listed or quoted.

### **2.5 ITA Referral Fee**

Where:

- (a) an ITA Dispute is referred to the ITA Adjudicator, the referring party agrees to pay to the ITA the ITA Referral Fee set by the ITA Adjudicator from time to time in respect of any ITA Dispute referred to the ITA Adjudicator; and
- (b) an ITA Dispute is referred to the ACCC as the Adjudicator, the referring party agrees to pay any referral fee set by the ACCC from time to time in respect of any ITA Dispute referred to the ACCC as the Adjudicator.

### **2.6 Annual ITA Process Fee**

- (a) Telstra and the Wholesale Customer agree to pay to the ITA an annual administration fee (**ITA Process Fee**), in an amount notified by the ITA Adjudicator on an annual basis, in respect of its administrative and incidental costs.
- (b) The ITA Process Fee must be paid to the ITA within 20 Business Days after the amount of the ITA Process Fee is notified by the ITA Adjudicator.

### **2.7 Costs**

- (a) In the event the Adjudicator makes a direction in a final determination (whether or not that final determination is binding) in relation to the payment of the costs of the ITA Process, including the Adjudicator's costs and any repayment by Telstra of the ITA Referral Fee to the Wholesale Customer, Telstra and the Wholesale Customer agree that they will pay to the ITA any costs they are directed to pay under such final determination.
- (b) If the Wholesale Customer withdraws from an ITA Dispute by giving notice under paragraph 7.3(a) of Schedule 5 of the Undertaking, the withdrawing party must pay the costs of the ITA Process (including the Adjudicator's costs) as directed by the Adjudicator.

- (c) An amount to be paid by a party under clause 2.7(a) or clause 2.7(b) must be paid to the ITA within 20 Business Days after receipt of the relevant final determination.

## 2.8 Limitation of liability

- (a) Each of Telstra and the Wholesale Customer (severally) agree with the ITA that:
  - (i) neither the ITA or the ITA Adjudicator are liable to pay any compensation or other amount for, or in respect of, any losses caused or contributed to by any act or omission undertaken by or on behalf of the ITA or the ITA Adjudicator in connection with an ITA Dispute, unless such act or omission is shown to have been fraudulent;
  - (ii) it must not make any claim against the ITA or the ITA Adjudicator to recover any such losses; and
  - (iii) the ITA and the ITA Adjudicator are each released from all claims it may have in relation to such losses.
- (b) For the purpose of this clause 2.8:
  - (i) **losses** includes all losses, liabilities, damages and claims, and all related costs and expenses (including any and all reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties); and
  - (ii) **claim** includes any claim, assertion of rights, action, demand or proceeding whether arising in contract, equity, statute or otherwise and whether it is present or future, fixed or unascertained, actual or contingent.

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## 3 General

- (a) Other than clauses 2.5, 2.6, 2.7, 2.8 and this clause 3, the provisions of this deed do not apply to the ITA and any reference to “the parties” or “a party” to this deed should be interpreted as a reference to Telstra and/or the Wholesale Customer (as the context requires) only.
- (b) This deed is governed by the laws of Victoria.
- (c) Each party to this deed submits to the non-exclusive jurisdiction of the courts of Victoria.
- (d) This deed may be executed in any number of counterparts.
- (e) This deed will terminate automatically on the earlier of:
  - (i) the start of the Designated Day; or
  - (ii) the date on which Part D of the Undertaking otherwise ceases to apply to Telstra for any reason.

## **Execution page**

**Executed as a deed**

[Appropriate execution block to be inserted for each ITA Deed]