

NBN Co Special Access Undertaking

**Telstra's response to the ACCC Draft Notice to Vary
NBN Co's Special Access Undertaking**

26 July 2013

PUBLIC VERSION

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Abbreviations, acronyms and key definitions

Capitalised terms in this submission have the meanings set out in this submission. Capitalised terms that are not defined within this submission, have the meaning given to those terms in the table below, in the Proposed SAU and in the Response to Submissions.

ACCC	Australian Competition and Consumer Commission
ACCC-declared services	Services declared under section 152AL(8A) of the CCA
ACCC Regulatory Decisions	Binding Rules of Conduct and Access Determinations
AD	Access Determinations
BROC	Binding Rules of Conduct
CCA	<i>Competition and Consumer Act 2010</i> (Cth)
Consultation Paper	ACCC, <i>Consultation Paper – variation of NBN Co's Special Access Undertaking</i> , dated April 2013
Corporate Plan	NBN Co's Corporate Plan 2012 - 2015
CVC	Connectivity Virtual Circuit
December SAU	NBN Co's Special Access Undertaking, as lodged by NBN Co on 18 December 2012
Draft Decision	ACCC Draft Decision on the December SAU, dated April 2013
Draft Notice	Draft notice to vary published by the ACCC in the form of a mark-up to the December SAU, dated 4 July 2013
ICRA	Initial Cost Recovery Account
LTIE	Long term interests of end-users
LTRC	Long Term Revenue Constraint
NBN	National Broadband Network
NBN Co	Collectively, NBN Co Limited and NBN Tasmania Limited
NBN Co SAU	Final form of NBN Co's Special Access Undertaking
NPTC	Non-price terms and conditions
POI	Point of Interconnection
Previous Submission	Telstra's response to the Consultation Paper, dated 2 May 2013
Proposed SAU	The December SAU as amended by the Draft Notice
Response to Submissions	ACCC's " <i>Variation of NBN Co Special Access Undertaking – response to submissions</i> ", dated July 2013
RSP	In this submission, Telstra uses the terminology "RSP" to describe both (a) a direct customer of NBN Co that is a wholesale or retail service provider, and (b) a direct customer of NBN Co that is a retail service provider only. Accordingly, the term "RSP" should be interpreted in a manner consistent with its context within this submission.
SAU	Special Access Undertaking
SFAA	NBN Co's standard form of access agreement
WBA	Wholesale Broadband Agreement

1. Executive Summary

Telstra welcomes the opportunity to provide feedback on the ACCC's "Draft Notice to Vary" (**Draft Notice**) NBN Co's Special Access Undertaking lodged by NBN Co on 18 December 2012 (**December SAU**), to be read in conjunction with the views expressed in the ACCC's "Variation of NBN Co SAU - response to submissions" dated July 2013 (**Response to Submissions**). Both the Draft Notice and the Response to Submissions build on the earlier "ACCC Draft Decision on the Special Access Undertaking lodged by NBN Co on 18 December 2012 – April 2013" (**Draft Decision**).

Telstra has consistently sought to ensure that the NBN Co SAU (and broader commercial and regulatory arrangements between NBN Co and the industry) enables RSPs to provide a high quality customer experience over the NBN.

To this end, Telstra considers that it is critical that the ACCC ensures that RSPs are able to offer their customers who connect to the NBN an end-to-end service experience which is at least the same (in terms of quality, performance attributes and timeframe commitments) as the end-to-end service experience of equivalent end-users and downstream customers today. Specifically, Telstra and other RSPs must be able to provide certainty for end-users in relation to terms of supply (including price), and to respond expeditiously to the evolving needs of end-users.

Telstra supports many of the proposed changes set out by the ACCC in its mark-up to the December SAU (**Proposed SAU**). The proposed changes are generally consistent with the well-supported views expressed by the ACCC in its earlier Draft Decision. The ACCC is to be commended for putting forward substantive improvements to the December SAU and acknowledging the concerns of RSPs in the course of this inquiry.

1.1. Design of the SAU

Telstra reconfirms that in broad terms (and subject to specific required amendments set out in this submission) the SAU design reflected in the Proposed SAU is likely to facilitate reasonable outcomes that promote the long term interests of end-users (**LTIE**).

However, the Proposed SAU no longer includes any commitments by NBN Co to implement or give effect to the SAU and ACCC Regulatory Decisions through NBN Co's standard form of access agreement (**SFAA**). Absent such commitments, NBN Co has the discretion to set the terms of the SFAA without regulatory oversight, as Part XIC of the CCA does not contain any positive requirement that NBN Co maintain an SFAA which is consistent with NBN Co's SAU or ACCC Regulatory Decisions. This is a critical issue. RSPs may have little choice but to take supply under SFAA-based access agreements given that:

- the SFAA is likely to be the only document available with a full suite of supply terms; and
- NBN Co's stated intention is that an executed SFAA will be NBN Co's primary set of supply terms.

Given that an executed SFAA would then sit at the top of the legislative hierarchy, it is important to ensure that the SFAA itself is required to be consistent with NBN Co's SAU and ACCC Regulatory Decisions. RSPs will then have the comfort and certainty that they will be able to take the full benefit of these regulatory instruments at the time that they enter into a new SFAA-based access agreement.

Telstra believes that the NBN Co SAU can address this issue, in a manner that is consistent with legislative intent and provides certainty for all of industry, by including specific commitments to align the SFAA with the terms and conditions of the NBN Co SAU and any ACCC Regulatory Decisions.

1.2. Price terms

The Proposed SAU sets out a number of proposed changes to the December SAU, which in general are consistent with positions set out by the ACCC in its Draft Decision and supported by Telstra and

other RSPs.

These changes include the introduction of a broad price review mechanism (albeit highly limited in its application), a review process for the pricing of new products and greater oversight and ACCC involvement in the calculation of NBN Co's Long Term Revenue Constraint (**LTRC**). The changes proposed by the ACCC in relation to the calculation and review of the LTRC, and the proposed review mechanism for new service prices, are welcomed.

Despite the above, Telstra remains concerned that the Proposed SAU does not provide NBN Co with sufficient pricing incentives to ensure the promotion of the LTIE. In particular, Telstra is concerned that:

- the assumptions underpinning the current CVC price point do not reflect current market conditions, and the “demand gap” between NBN Co's assumptions and expected demand is likely to grow significantly, resulting in uneconomic CVC costs per end-user (Telstra's calculations based on current projections indicate CVC costs will quadruple by 2016);
- there are no clear incentives on NBN Co to proactively reduce CVC prices as aggregate demand increases (whether express or through review processes);
- the price review mechanism set out in the Proposed SAU does not provide practical regulatory recourse to RSPs for the first five years of the Proposed SAU (which, in the context of CVC pricing, is more than six years from the introduction of that price); and
- there is a lack of consultation in the Proposed SAU with respect to the introduction of pricing for zero-priced offers.

As a consequence, there is a material risk in the near term that RSPs will be forced to either significantly increase end-user service prices or reduce the quality of end-user services in response to ongoing demand growth. When coupled with the lack of ongoing regulatory recourse, there is significant risk and uncertainty to RSPs that is likely to impact their investment decisions for NBN-based services. It is clear this outcome is not in the LTIE.

For the reasons set out above, Telstra considers the NBN Co SAU should confer on the ACCC the option to actively consider, at least once every three years, whether it should initiate a price review.

1.3. Products and Services

While Telstra supports many of the product related changes set out in the Proposed SAU, Telstra remains concerned that the confidentiality and intellectual property proposals associated with product development may impact on an RSP's willingness to engage in these processes.

Telstra is also concerned to ensure that a failure to agree on these terms will not impact on an RSP's ability to participate in important consultation processes.

Given these concerns, Telstra proposes certain clarification amendments to ensure the efficacy of the Product Development Forum is not undermined.

1.4. Other issues

In addition to these key issues, Telstra also sets out a number of suggested changes to the Proposed SAU with respect to product development over the NBN more generally and terms and conditions associated with the appointment of dispute resolution adjudicators.

2. Design of the SAU

2.1. Introduction

Telstra acknowledges that significant progress has been made with the design of the SAU and the interaction between the SAU, ACCC Regulatory Decisions and the SFAA. Despite this progress, there remain a number of areas where the Proposed SAU can and should be strengthened to ensure that the interests of end-users are given priority.

Telstra wishes to ensure that its retail and wholesale customers are provided with a high quality experience for services over the NBN and that there is certainty for end-users in relation to the terms of supply, including price.

Telstra believes it is important to provide certainty to RSPs that they will be able to effectively access ACCC Regulatory Decisions and pass on these benefits to their customers.

In relation to the design of the SAU, Telstra is concerned to ensure:

- the SAU and ACCC Regulatory Decisions are able to be readily accessed by RSPs taking supply by executing an SFAA;
- the two-year term in the SFAA (including its application in the context of the Multilateral SFAA Forum) is clear, and that commercially-agreed bilateral engagement is not compromised; and
- Replacement Module proposals are appropriately consulted upon, with Regulatory Cycles consistent with current regulatory practice.

Telstra believes that these issues can be effectively dealt with through a number of discrete amendments to the Proposed SAU and Telstra encourages the ACCC to take the opportunity to address these outstanding issues through its notice to vary.

2.2. Conduct concerning elements of the telecommunications access regime

Conduct about including terms and conditions in SFAAs

The ACCC has taken an approach that largely decouples the SAU from the SFAA. While this approach is not universally adopted in the Proposed SAU,¹ in general the Proposed SAU is intended to operate independently of ACCC Regulatory Decisions and the terms of the SFAA.

However, given that SFAA-based access agreements are likely to be the primary terms of supply, it is important that the SFAA is not used to undermine the ex-ante commitments made by NBN Co under the NBN Co SAU and the terms set down in ACCC Regulatory Decisions. To ensure the terms of the SFAA cannot operate inconsistently with ACCC Regulatory Decisions, and to ensure NBN Co's SAU commitments are appropriately implemented through the SFAA, Telstra believes that important linkages between these documents should be reinstated. This is particularly important given the lack of clarity in Part XIC of the CCA in relation to any positive obligation on NBN Co to ensure that the SFAA is at all times consistent with an SAU and ACCC Regulatory Decisions. These are described below and a mark-up is set out in Annexure 1 (SFAA related amendments) to this submission.

Conduct about updating SFAAs in response to Regulatory Decisions

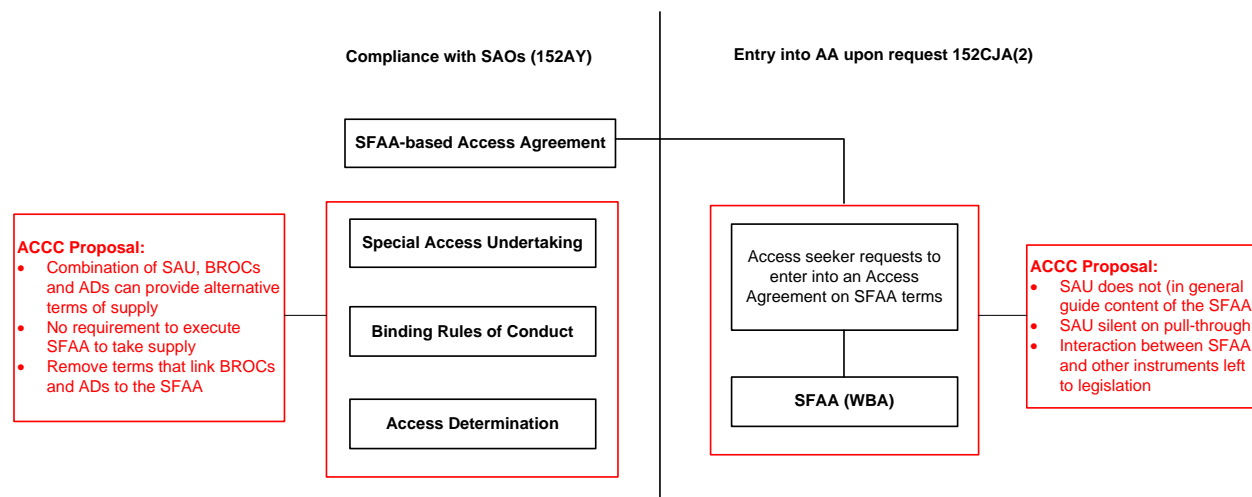
Previously, the ACCC put forward two options to manage the interaction between the SFAA and ACCC Regulatory Decisions, including one option (**Option 1**) where NBN Co would commit to make the SFAA "consistent" with ACCC Regulatory Decisions and another option (**Option 2**) where references to ACCC

¹ For example, commitments in relation to dispute management still oblige NBN Co to include certain provisions in the SFAA. While Telstra has some concerns with the dispute management arrangements at a substantive level (and these are outlined in section 5.1 of this submission), Telstra agrees with the ACCC's general approach to risk management in this circumstance.

Regulatory Decisions would be removed from the NBN Co SAU altogether.² In its Previous Submission, Telstra endorsed Option 1, an approach supported by NBN Co itself having included a commitment in its December SAU to “give effect to any Regulatory Determination by ensuring that the new SFAA...will be consistent with such Regulatory Determination”.³

The Proposed SAU now confirms that the ACCC’s preferred approach is in fact Option 2. This is illustrated in the diagram below.

Figure 1: Proposed SAU – Regulatory Recourse (ACCC’s “Option 2”)



This design ensures the SFAA stands independent of any regulatory oversight (including, subject to a number of limited exceptions, any oversight through the NBN Co SAU). The Proposed SAU no longer includes any express commitments from NBN Co to implement or give effect to the SAU or ACCC Regulatory Decisions through the SFAA.

Although it must be acknowledged that the access regime under Part XIC does not prevent NBN Co having “first go” at its SFAA without express regulatory oversight, this right must not undermine the ability for RSPs to gain access to ACCC Regulatory Decisions. This is a distinct possibility under the Proposed SAU given that:

- NBN Co has the discretion to set the terms of the SFAA without regulatory oversight;
- RSPs may have little choice but to take supply under the SFAA, the SFAA being the only document available with the full suite of supply terms;
- it is NBN Co’s stated intention⁴ that an executed SFAA will be NBN Co’s primary set of supply terms;
- the SFAA forms an “access agreement” for the purposes of the CCA upon execution;
- NBN Co is a true, statutory monopoly supplier, with few incentives to “commercially” negotiate; and

² ACCC, *Consultation Paper – variation of NBN Co Special Access Undertaking*, April 2013, section 2.1.1.2, p 12-13.

³ December SAU, clause 6 and Schedule 1B, clause 1B.2.2(b). While Telstra agreed with the ACCC that this drafting had the potential to undermine the ability to get access to ACCC Regulatory Decisions outside of the SFAA (i.e. by potentially creating a regime where ACCC Regulatory Decisions could only be accessed through the SFAA), Telstra supported the principle that the SAU should expressly require ACCC Regulatory Decisions to be “pulled through” to the SFAA.

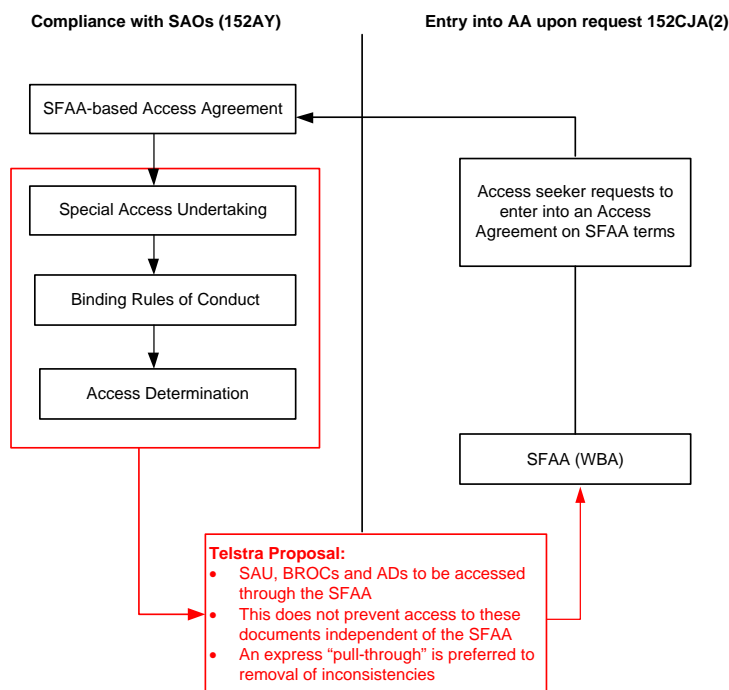
⁴ NBN Co, *Supporting Submission: NBN Co Special Access Undertaking*, 28 September 2012, p 19 and p 48.

- there is (at this point in time) an absence of alternative terms of supply that stand independent of the SFAA.

Telstra believes the NBN Co SAU provides an avenue to address this issue in a manner consistent with the legislative intent and in a manner that provides certainty for all of industry.

To this end, Telstra recommends that the NBN Co SAU contains express commitments by NBN Co to ensure, if an RSP chooses to take supply under the terms of the SFAA, that the terms of the SFAA enable RSPs to access ACCC Regulatory Decisions on foot at the time of execution. This proposal is illustrated in the diagram below.

Figure 2: Telstra Proposal – Regulatory Recourse (ACCC’s “Option 1”)



To be clear, Telstra is not advocating a regime that:

- requires the NBN Co SAU to operate as a full suite of supply terms on a stand-alone basis; or
- “pulls-through” ACCC Regulatory Decisions that are inconsistent with an access agreement during the term of that agreement.

Telstra maintains its support for the primacy of the commercial agreement. Telstra does, however, support a regime that ensures the SFAA is a vehicle through which RSPs can access ACCC Regulatory Decisions in force at the time of execution. Given that NBN Co is insisting on acquisition of services through SFAA-based access agreements, this is, in practice, imperative.

Telstra’s proposal requires slightly more than a simple clause committing NBN Co to ensure consistency between the SFAA and ACCC Regulatory Decisions (as proposed in the December SAU). The drafting solution must ensure:

- the terms of an SFAA incorporate the provisions of ACCC Regulatory Decisions. While this may be achieved by removing inconsistency and having an executed SFAA and ACCC Regulatory Decision operate in parallel, Telstra’s preference is to ensure the terms of the SFAA are amended to positively incorporate ACCC Regulatory Decisions;

- ACCC Regulatory Decisions are not to be bundled with other changes to the SFAA such that RSPs who choose to take supply under an SFAA-based access agreement are obliged to take other unilateral amendments to the SFAA in order to access ACCC Regulatory Decisions i.e. there should be an option to “pull-through” ACCC Regulatory Decisions independent of other SFAA changes; and
- NBN Co has correctly aligned the SFAA with ACCC Regulatory Decisions, including by ensuring any alignment proposal is subject to industry engagement in advance of the expiration of the current access agreement. Telstra believes that the ACCC should be involved in this verification process and in the absence of a correct “pull-through”, RSPs should not be forced on to a flawed SFAA.

This is a solution that acknowledges the complexity of aligning the SFAA with ACCC Regulatory Decisions but ensures that ACCC Regulatory Decisions are effective from the commencement of any new SFAA-based access agreement.

Under Telstra’s proposed solution, RSPs will have a number of potential supply options including, at least in theory,⁵ supply solely through a combination of the SAU and ACCC Regulatory Decisions. Importantly, however, given (a) the fact that such a combination is highly unlikely to provide a full suite of supply terms, (b) NBN Co’s intention that SFAA-based access agreements will be the primary terms of supply and (c) the practical risk that the SFAA could compromise access to ACCC Regulatory Decisions, Telstra believes that the SFAA must enable RSPs to access ACCC Regulatory Decisions expressly through its terms and that the NBN Co SAU is the appropriate regulatory instrument to ensure this occurs.

It is equally important that the SFAA continues to be consistent with NBN Co’s SAU commitments so that SFAA-based access agreements can be entered into by RSPs with the comfort that the SFAA (at the time of execution) reflects NBN Co’s ex-ante SAU commitments. Telstra believes that a similar drafting solution will be required to ensure the SFAA remains aligned with the SAU. Telstra’s drafting proposal is set out in Annexure 1 (SFAA related amendments) to this submission.

Conduct about development of SFAAs

In general, Telstra supports the SFAA development commitments in the Proposed SAU. However, Telstra has a number of concerns with the Multilateral SFAA Forum and how it will operate in practice.

Telstra is concerned to ensure the Multilateral SFAA Forum is not seen as a proxy or substitute for continuous, bilateral engagement on the terms of the SFAA. While the Proposed SAU ensures that bilateral consultation is not precluded,⁶ it is imperative that ongoing engagement on the detail of the SFAA continues without constraint as to timing, scope or terms of engagement.

It is also unclear from the Proposed SAU whether the ACCC has now moved away from the co-terminus access agreement model proposed earlier in the consultation process. While the Proposed SAU states that the SFAA term is not permitted to extend beyond 2 years, it does not state whether all RSPs will be brought into line through co-terminus Access Agreements. Telstra does not believe that co-terminus arrangements are required provided the term of any SFAA-based access agreement is limited to 2 years (subject to agreement otherwise).

On the assumption the ACCC is no longer endorsing a co-terminus SFAA regime, there is uncertainty in the Proposed SAU as to when the Multilateral SFAA Forum will commence. If RSPs are on different terms (i.e. terminating / expiring at different dates), the commencement of the Multilateral SFAA Forum should not be linked to SFAA expiry. Telstra believes that the Multilateral SFAA Forum should

⁵ Private enforcement of ADs and BROCs on application to the Federal Court remains available in accordance with ss 152BCQ and 152BDH of the CCA. This is, however, a more difficult and less preferable means of ensuring access to ACCC Regulatory Decisions than an ex-ante commitment in NBN Co’s SAU to provide for “pull-through” of such decisions into the SFAA.

⁶ Proposed SAU, clause 1B.2.1(f).

commence no later than 12 months after the SAU Commencement Date and continue for the first 5 years of the NBN Co SAU.

Telstra has a proposed drafting solution to address these concerns. This is set out in Annexure 1 (SFAA related amendments) to this submission.

2.3. Conduct concerning changes to the NBN Co SAU over time

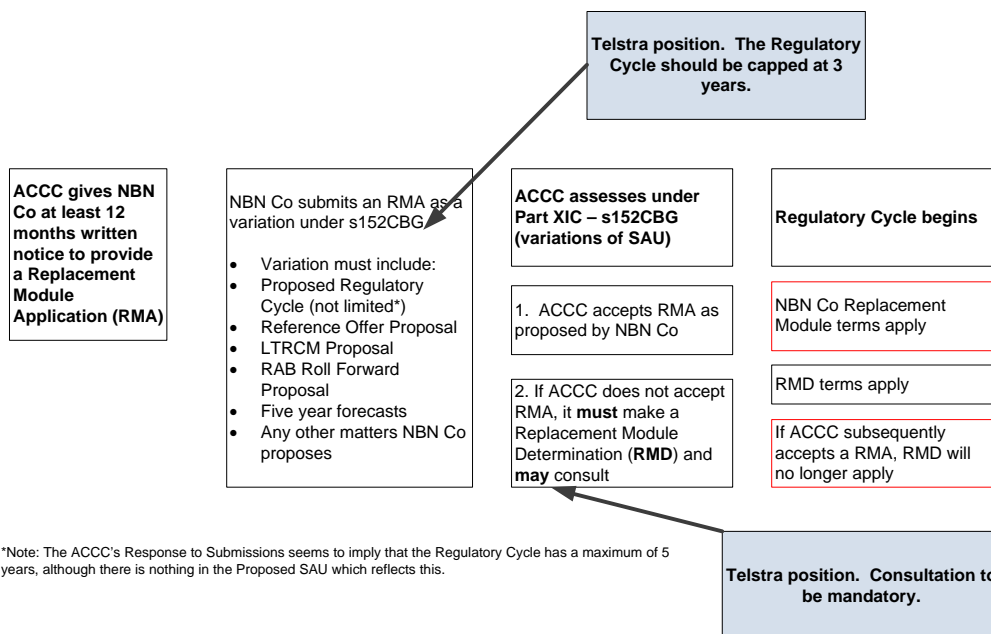
In general, Telstra supports the ACCC's proposed Replacement Module process, in particular:

- the ACCC's role in calling for Replacement Module applications;
- the use of the statutory criteria applicable to SAU variations to assess the application; and
- the obligation on the ACCC to make Replacement Module Determinations, rather than having any deeming provisions or creating uncertainty through delay in decision making.

However, Telstra believes that Replacement Module Regulatory Cycles should be no more than 3 years (consistent with regulatory periods adopted by the ACCC for previous access determinations) and should obligate the ACCC to consult on any Replacement Module Determination rather than leaving this as an ACCC discretion (again, consistent with the public inquiry process that applies to access determinations).⁷

Telstra's recommended amendments are relatively discrete and are illustrated in the diagram below. Specific amendments are included in Annexure 2 (Replacement Module related amendments) to this submission.

Figure 3: ACCC Replacement Module Proposal



2.4. Fixed Principles

Telstra supports the ACCC's approach to Fixed Principles in the Proposed SAU and has no further comments in this regard.

⁷ s 152BCH of the CCA.

3. Price Terms

3.1. Introduction

The Proposed SAU sets out a number of proposed changes to the December SAU, which in general are consistent with positions set out by the ACCC in its Draft Decision and those supported by Telstra and other RSPs. These changes include the introduction of a broad price review mechanism (albeit highly limited in its application), a review process for the pricing of new product prices and greater oversight and ACCC involvement in the calculation of NBN Co's LTRC.

When compared to the price terms set out in the December SAU, the Proposed SAU represents a material improvement. In particular, Telstra supports:

- the proposed change to the calculation and oversight framework for the LTRC – including the ACCC's proposal for an oversight role in the administration of the LTRC in Module 1 and the amended threshold prudency criteria for capital and operating expenditure. Telstra recognises that, due to the long timeframe of the NBN Co SAU, it is important not to lock in overly prescriptive rules around determination of LTRC parameters, particularly in Module 2; and
- the proposed amendments to pricing of new products which now include regulatory oversight in respect of the determination of Maximum Regulated Prices for these services.

Despite the above, in a number of key areas, Telstra remains concerned that the Proposed SAU does not provide NBN Co with sufficient incentives to ensure the promotion of the LTIE. In particular, Telstra is concerned that:

- the price review mechanism set out in the Proposed SAU does not provide practical regulatory recourse to RSPs for the first five years of the Proposed SAU (which, in the context of CVC pricing, is six to seven years from when the current CVC price was first introduced). The absence of any opportunity to review and rebalance NBN Co pricing, and for such a review to be implemented before 1 July 2018, places undue risk on RSPs and is likely to adversely impact their incentives to invest in NBN-based applications and services. This will ultimately adversely affect end-users and their NBN experience; and
- there is a lack of consultation by NBN Co in the Proposed SAU with respect to the introduction of pricing for zero-priced offers.

It is important for end-users that NBN Co is subject to appropriate regulatory oversight to ensure that, as a monopoly supplier of a service, it is pricing in a manner that avoids adversely impacting the LTIE. This is a key priority for Telstra.

The following sections address the key issues outlined above, and set out Telstra's recommendations as to how these can effectively be addressed to ensure the promotion of the LTIE. In summary, those recommendations include:

- an obligation on the ACCC to actively consider whether to conduct a price review every three years for the term of Module 1, with this obligation first activated in 2016. This would require the ACCC to consider whether to undertake a price review (which could include a review of CVC pricing) at more regular intervals than is currently provided for under the Proposed SAU. Further detail on the need for this proposal and how it could be implemented is set out in sections 3.2 and 3.3; and
- similar to the process for new products, NBN Co should be required to consult with RSPs in relation to prices to be introduced for zero-priced offers. This proposal is outlined in section 3.4 below.

3.2. CVC Pricing

Risks faced by RSPs and end-users with respect to incorrect pricing of CVC

CVC capacity is integral to the delivery of all NBN-based services. It cannot be bypassed or substituted for an alternative service and RSPs currently face significant uncertainty with respect to the quantity of CVC capacity required to support end-user demand over time.

In addition to the CVC price issues raised by Telstra in previous submissions, it is critical for the ACCC to recognise that the risks to the LTIE arising from the incorrect pricing of CVC are likely to arise in the near term – and are not solely issues for concern during Module 2. Specifically, it is clear that:

- the risks facing RSPs and end-users arising from NBN Co failing to proactively adjust CVC prices are already significant and are likely to increase substantially over the *near term*;
- the assumptions underpinning NBN Co's current CVC pricing are outdated and not reflective of the current experience on high bandwidth networks. Unless NBN Co proactively moves to reduce CVC pricing in the near term, RSPs will be forced to either significantly increase end-user service prices or reduce the quality of end-user services in response to ongoing demand growth; and
- previous public statements made by NBN Co have recognised an intent that CVC prices will reduce as aggregate demand increases.⁸ Despite these public statements and a commitment in the December SAU that it would regularly review CVC pricing in line with changes in demand, NBN Co has not done so to date. In fact, NBN Co has progressively withdrawn from any clear commitment on how and to what levels that CVC prices will decrease over time. CVC prices have been maintained at the same level since December 2010, despite ongoing increases in demand that are well in excess of NBN Co's starting assumptions.⁹

Given the above, Telstra is concerned that there is no access to recourse options and no price rebalancing of NBN Co's pricing for the first five years of the Proposed SAU's operation (effectively six to seven years since NBN Co introduced current CVC prices). Telstra is most concerned that the ACCC's analysis (as set out in both the Draft Decision and the more recent Response to Submissions) suggests that the ACCC neither recognises that current CVC prices are likely to negatively impact on the LTIE, nor adequately addresses the risks facing RSPs and end-users.

NBN Co's current CVC demand assumptions are not reflective of current market conditions

Telstra is concerned that NBN Co's current CVC prices are based on unrealistic assumptions of end-user demand. As set out in the Corporate Plan, in setting the \$20 per Mbps CVC price, NBN Co assumes an average level of usage of 30GB per end-user per month. Based on conservative network engineering assumptions, this translates to an effective assumed average peak hour throughput per end-user of approximately 150kbps.

In Telstra's experience, this is already insufficient to cater for the requirements of end-users on high

⁸ The Corporate Plan retains the assumption that both CVC and AVC prices will fall over time in both real and nominal terms. NBN Co retains the flexibility to modify the rate at which future prices are decreased in the event that actual data usage and / or speed growth is higher or lower than assumed in the Corporate Plan – for example, should actual data usage growth exceed the assumed growth rate, then NBN Co would be able to reduce prices more quickly and still maintain the same overall return: Joint Committee on the National Broadband Network – Fifth Report Public Hearing, Friday 19 April 2013 – Hansard Transcript Question 33; Corporate Plan, section 8.2 p 61.

⁹ NBN Co has not materially responded on price matters, particularly to the fact that NBN Co acknowledges that demand for higher speed tiers and capacity usage are above those assumed in the Corporate Plan:

- NBN Co Report showed that the current AVC fibre tier mix compared to that assumed in the Corporate Plan to be vastly different (Report to Parliamentary Joint Committee on the National Broadband Network Financial and Rollout Data, 19 April 2013, p 16).
- NBN Co CEO, Mike Quigley stated recently that CVC take-up is higher than anticipated: Joint Committee on the National Broadband Network – Fifth Report Public Hearing Friday 19 April 2013 – Hansard Transcript, p 20.

speed broadband networks and, in the near term, this will create excessive CVC costs per end-user. In response, Telstra believes that RSPs will be forced to increase end-user service prices or reduce the quality of end-user services.

It is important to note that the divergence between NBN Co's assumptions for CVC usage and actual experience is not a short-term issue due to the predominance of "early adopters" or network scale issues. Rather, Telstra believes that NBN Co's demand assumptions are simply incorrect.

As set out in Figure 4 below, the actual average peak hour throughput per end-user across Telstra's ADSL and HFC (DOCSIS 3) networks, as well as for NBN based end-users, considerably exceeds the throughput assumptions underpinning NBN Co's current CVC price – approximately 150kbps. Furthermore, end-users on the well established ADSL and HFC networks show levels of peak demand approximately [C-I-C] higher for ADSL and HFC respectively than what has been assumed by NBN Co in setting its current CVC prices.

The fact that the average peak hour throughput on well-established networks is well in excess of NBN Co's assumptions suggests that the observed disparity between actual peak hour demand on the NBN and NBN Co's assumptions is not due to a temporary surge arising from "early adopters". Furthermore, given the dispersed geography (and associated demographics) of the NBN rollout to date, Telstra believes it would be incorrect to conclude that currently NBN connected end-users are necessarily "early adopters".

Figure 4 – Actual and forecast peak throughput per end-user

[C-I-C]

As can be seen in the differences between peak throughput between the networks set out in Figure 4, end-users on higher speed networks (such as HFC) demand greater network capacity at peak times than end-users connected to relatively lower speeds networks (such as ADSL). NBN-connected end-user demand for bandwidth at peak times is consistent with end-users connected to higher speed networks.¹⁰

It is clear that the current disparity between actual CVC requirements per end-user and NBN Co's current assumptions will increase significantly over the near term. As shown in Figure 4, based on current forecasts of demand growth over the near term, the anticipated "demand gap" between what Telstra expects end-users to demand over the NBN and the current 150kbps assumption underpinning NBN Co's CVC pricing will grow significantly in the period up to 2016. Telstra forecasts that average peak throughput per end-user will increase to [C-I-C] by June 2016. [C-I-C]

It is also unlikely that the current disparity between actual CVC usage and NBN Co's assumptions will reduce in the near term even as the NBN deployment scales. Telstra's experience on its own higher speed networks suggests that scale (i.e. the number of end-users connected within a geographic area) provides only limited network efficiencies beyond a relatively low number of end-users. Furthermore, the design rules of the NBN and engineering practice impose practical limits on the number of end-users that can be supported over a given CVC, which also serve to negate any theoretical scale benefit.¹¹

¹⁰ It should also be noted that on aggregate, the level of demand is fundamentally different between networks due to technical capabilities and dimensioning. NBN Co has also reported that the average fibre usage per end-user was 47Gb per month as at December 2012, as compared to usage of 31Gb per month for the average broadband end-user: Report to Parliamentary Joint Committee on the National Broadband Network Financial and Rollout Data, 19 April 2013, p 17.

¹¹ Even though NBN Co allows for up to 4,000 SIOs to be supported using a single CVC, the practical limit on the number of end-users that can be supported per CVC (with a quality service offering) is in practice far less. This is principally driven by the 20Mbps limit NBN place on TC-1 bandwidth within a given CVC pipe. In order to provide a quality voice experience to end-users, with sufficient capacity to accommodate peak time demand, approximately 30kbps of TC-1 bandwidth is required per end-user with a voice only or voice and broadband bundle service. Therefore, the effective maximum number of end-users that can be supported on a given CVC is 600. In any event, the 600 end-user practical limit is unlikely to result in scale inefficiencies. As the minimum CVC capacity that can be purchased from NBN Co is 150Mbps, once 600 end-users are subscribed to a given CVC the average

Footnote continued on the next page

The near term impact of this anticipated growth in end-user demand on the CVC costs imposed on the RSP will be significant. Specifically:

- based on NBN Co's Corporate Plan,¹² NBN Co has not provided any indication that it will reduce CVC charges until average network usage is in excess of 110GB per month per end-user. Based on conservative engineering assumptions, this translates to a peak hour throughput of 543Kbps per end-user;
- if NBN Co maintains the \$20 per Mbps CVC price when peak throughput is [C-I-C] per end-user, then, after taking account of network dimensioning requirements, Telstra estimates the expected CVC cost to be approximately [C-I-C] on average per end-user by June 2016, even after taking into account the transitional CVC rebate; and
- if CVC costs per end-user were to reach [C-I-C] by June 2016, then Telstra would see CVC costs quadrupling from the current CVC cost of [C-I-C] per end-user (June 2013). In effect, this would see CVC costs per end-user increasing [C-I-C] year on year.

Continuation of NBN Co's CVC pricing, without timely review, is contrary to the LTIE

The above analysis shows that the CVC demand gap that already exists between actual requirements and the assumptions underpinning NBN Co's current pricing is likely to increase significantly in the near term. The practical effect will be that unless NBN Co proactively reduces CVC pricing, RSPs will be required to either increase end-user prices, or reduce service quality in order to ensure the economic provision of services.

Of more concern for the LTIE is the likely impact of protracted excessive CVC costs (and CVC cost uncertainty) over the near to medium term. If NBN Co does not reduce CVC prices in response to demand growth, the likely outcome will be a reduction in investment in NBN-based services by RSPs. In other words, without the option of regular review during Module 1 (particularly given NBN Co's reluctance to adjust CVC prices to date), the risks facing RSPs will adversely impact their decisions to invest in NBN-based services.

These concerns could be mitigated by providing for earlier and more regular price reviews over the life of the NBN Co SAU (including in Module 1) with an ACCC option to rebalance prices if necessary. This is considered further below in the context of price reviews more generally.

3.3. Regular price reviews are needed

For the reasons set out above and below, Telstra believes the NBN Co SAU should provide for the ACCC to actively consider whether to conduct a price review every three years for the term of Module 1, with the consideration of the first review taking place in the period between the commencement of the SAU and 1 July 2016. Telstra's suggested drafting amendments to the Proposed SAU to implement this proposal are set out in Annexure 3 (Price related amendments) to this submission.

The suggested drafting amendments do not oblige the ACCC to issue a Price Review Notice and conduct a price review every three years. Rather, it would require the ACCC to regularly and actively consider whether to initiate a price review where NBN Co's prices are unlikely to be promoting the LTIE, e.g. due to key assumptions (such as demand levels) being incorrect or materially changing in a particular period. This would in turn:

- ensure the continued promotion of the LTIE;

CVC capacity per end-user will be around 250kbps. This is less than the actual observed network capacity demanded by NBN-connected end-users.

¹² Corporate Plan, section 7.1.2 p 67.

- provide RSPs with some regulatory certainty during Module 1 that the ACCC will regularly review pricing for NBN products, particularly CVC pricing; and
- allow for the appropriate allocation of risk between NBN Co and RSPs in relation to demand levels and efficient use of the NBN products over the term of the NBN Co SAU, including in the immediate period of transition from legacy networks.

As noted above, Telstra considers that the requirement in Module 1 to consider whether to conduct a review should occur on a three yearly basis. Telstra is not proposing any amendment to the price review mechanism in Module 2. However, in light of the issues raised above, the ACCC should consider whether to conduct a price review on a three-yearly basis during Module 2. Telstra considers that the ACCC has the discretion to do so under the existing drafting.

Three-year reviews are consistent with Australian and international regulatory frameworks, including frameworks applying to next-generation network access. For example, in Australia:

- in its inquiry to make final access determinations for the Telstra declared fixed line services, the ACCC accepted industry submissions seeking a shorter regulatory period of three years, even though it had a preference for a five-year period. In making this decision, the ACCC stated that it: *“recognises the difficulties of developing sufficiently reliable forecasts for a five-year period. Setting access prices for three years will still give industry participants sufficient certainty and stability to facilitate their business and investment planning during the initial transition to the NBN”*,¹³ and
- in its review of the greater metropolitan water businesses of Victoria, the Essential Services Commission of Victoria shortened the regulatory period for Melbourne Water from five years to three years because: *“the Commission was not in the position to decide on the amount [of desalination costs] to be capitalised in these years given insufficient information. In particular, this was due to material but unclear changes to the modelling assumptions made by Melbourne Water following the draft decision. Accordingly, the Commission has shortened the regulatory period for Melbourne Water to three years so that these matters can be properly examined and decided in the interests of customers in Melbourne Water's fourth regulatory period.”*¹⁴

A similar preference for three-year reviews is held by overseas regulators, including:

- in Singapore, the Infocomm Development Authority has the power to review prices for mandated services offered by OpenNet, the operator of Singapore's fibre NBN, every three years.¹⁵ The first review can take place three years after OpenNet makes an interconnection offer; and
- in the EU, the regulatory framework for electronic communications was updated in 2009 to require all national regulatory authorities to conduct market reviews every three years on whether certain markets are effectively competitive and whether any remedies, including pricing remedies, should be imposed if there has been a finding that an operator has significant market power.¹⁶ As a result of these changes, Ofcom in the UK is now required to conduct market reviews every three years instead of every five years.¹⁷

While there may be examples of less frequent price reviews, or lighter forms of price regulation (e.g. for next generation networks), the primary reason for advocating pricing flexibility appears to be the

¹³ ACCC, *Inquiry to make final access determinations for the declared fixed line services, Final Report*, July 2011, p 9.

¹⁴ Essential Services Commission of Victoria, *Price Review 2013: Greater Metropolitan Water Businesses*, Final Decision, June 2013, p xviii.

¹⁵ IDA, *Code of Practice for Next Generation National Broadband Network NetCo Interconnection*, clause 12.3.

¹⁶ Revised Telecommunications Regulatory Framework (Directive 2002/21/EC, as amended by Directive 2009/140/EC), Article 16.

¹⁷ National regulatory authorities, including Ofcom, may seek to extend the period for up to three additional years by the notifying the European Commission of the reason for the proposed extension. The period is then extended if the European Commission does not object.

need to give private operators incentives and certainty to invest in upgrading their networks while also competing against other wholesale networks. This is not the case in Australia in respect of the NBN rollout and NBN Co.

The more analogous frameworks to the NBN are those outlined above, which support the need for more regular price reviews in circumstances where the assumptions underlying the prices are subject to change. Telstra considers that, at a minimum, and consistent with regulatory best practice both in Australia and overseas, the ACCC should actively consider whether to conduct a price review of NBN Co's pricing every three years in Module 1.

Lastly, Telstra has closely reviewed the clauses dealing with the implementation of a Price Review Arrangement (and associated changes to Maximum Regulated Prices) made following a price review. The current drafting does not provide that a Price Review Arrangement (and any associated changes to Maximum Regulated Prices) will flow through to the SFAA or access agreements. As set out in section 2.2 above, it is imperative that the Proposed SAU provide that the SFAA aligns with the SAU (including changed Maximum Regulated Prices) and ACCC Regulatory Decisions. This ensures that RSPs will be able to access services on the basis of the up-to-date SAU and ACCC Regulatory Decisions when executing a new SFAA-based access agreement.

3.4. Treatment of zero-priced offers

Telstra agrees with the ACCC that the introduction of a new price for an item that has been "zero-priced" is analogous to the introduction of new prices generally.¹⁸ However, although the Proposed SAU provides the ACCC with oversight when a new price for zero-priced offers is to be introduced, there is currently a misalignment in respect of setting pricing levels for new products and for zero-priced offers, with the former being subject to consultation. Telstra considers that both processes should be subject to consultation.

Under the Proposed SAU, there is no requirement on NBN Co to give any notice of, or consult on, the price to be introduced for a zero-priced offer. This is different to the regime in place for introducing prices for new products, where there is an obligation on NBN Co to consult with RSPs through the Product Development Forum. It is unclear why the regimes are different when, in effect, a new price will be introduced in both circumstances. In fact, the impact of a new price for zero-priced offers is more likely to immediately impact RSPs given the likely pre-existence of demand in the market for such offers.

Telstra is concerned that, without consultation, NBN Co may be able to introduce prices for zero-priced offers that are not consistent with the LTIE and in respect of which RSPs have no notice of the likely level of pricing until the date of introduction. Although regulatory recourse is then available, there will be a necessary time lag between being able to obtain recourse and payment of the introduced prices. Consultation is an effective means of increasing the likelihood of the most appropriate pricing for end-users and also reducing the time period between the introduction of a price and any required ACCC Regulatory Decisions (as RSPs would be in a better position to understand the level of, and reasons for, a new price at its introduction).

NBN Co should be required to commence consultation with RSPs on the level of the proposed prices for zero-priced items at the same time as giving notice of its intention to introduce new prices.

Telstra considers that this proposal requires minimal change to the existing drafting of the Proposed SAU and is consistent with the ACCC's stated intention. Telstra's suggested drafting amendments are set out in Annexure 3 (Price related amendments) to this submission.

¹⁸ ACCC, *Variation of NBN Co Special Access Undertaking – response to submissions*, July 2013, pp 73-74.

4. Products and Services

4.1. Introduction

Telstra's priority is to ensure that its wholesale and retail customers receive a high quality customer experience, both in terms of migration to the NBN and ongoing supply. Product evolution and product innovation are key to achieving this objective and, naturally, this will require new (and better) products to be introduced and dated legacy products to be withdrawn over time.

4.2. Services to which the NBN Co SAU relates

Telstra supports those parts of the Proposed SAU which are discussed in section 2.2 of the Response to Submissions, but considers that there is a need for further clarity regarding the interaction between the NBN Co SAU and ACCC Regulatory Decisions in relation to ACCC-declared services (**ACCC-declared services**) i.e. services declared under section 152AL(8A) of the CCA.

The Response to Submissions states: "*The ACCC . . . proposes to clarify its previously proposed drafting so that terms and conditions in any regulatory determinations in relation to an ACCC-declared service will apply only to the extent that they are not inconsistent with the SAU*".¹⁹

Despite the direction given in the Response to Submissions above, Telstra reads clause 1A.7.2 of the Proposed SAU to mean that an ACCC Regulatory Decision in relation to an ACCC-declared service will apply *even if* inconsistent with the NBN Co SAU. The drafting does this by deeming that the Regulatory Decision *will not be inconsistent with* the NBN Co SAU for the purposes of sections 152CBIA and 152CBIB of the CCA, to the extent it relates to a service that is not a Reference Offer or Non Reference Offer supplied under the NBN Co SAU.

Telstra supports an approach which provides that an ACCC Regulatory Decision in relation to an ACCC-declared service will apply *even if* inconsistent with the NBN Co SAU. It is logical that the ACCC should not be constrained by the NBN Co SAU in setting terms and conditions for services that are not subject to the NBN Co SAU, and equally, that the NBN Co SAU should not be binding on NBN Co in circumstances where the NBN Co SAU has not been given in respect of those services.

Given the apparent contradiction between the Response to Submissions and the actual text of the Proposed SAU, Telstra seeks clarification from the ACCC that clause 1A.7.2 of the Proposed SAU is intended to operate in the manner supported by Telstra above.

4.3. Product development, product withdrawal and reference offers

Telstra supports those parts of the Proposed SAU which are discussed in section 2.3 of the Response to Submission. Telstra's key remaining concern relates to the processes that apply at the product development and product withdrawal stages of the product lifecycle.

4.3.1. Product development

Without appropriate product development processes, there is a risk that products may be introduced before their essential attributes have been developed and consulted on. This could lead to uncertainty about critical aspects of supply.

Telstra notes that clause 1J.3.5(b) of the Proposed SAU specifically contemplates that NBN Co may introduce a product before the service levels applicable to that product have been developed and settled.²⁰ The absence of clearly defined service levels creates significant uncertainty, and makes it very difficult for RSPs to develop downstream products. As a consequence, it can be expected that take-up rates for the relevant product will be low, leading to inefficient investment in new products and services.

¹⁹ Response to Submissions, section 2.2.1, p 35.

²⁰ In its drafting amendments to the Proposed SAU (see Annexure 4), Telstra suggests specific drafting amendments to clause 1J.3.5 to remove this possibility.

In its Previous Submission, Telstra proposed certain variations to the product development commitments given by NBN Co. The ACCC has noted that Telstra's proposals have the potential to reduce information asymmetries and facilitate more effective consultation, and has sought submissions from interested parties in relation to the proposals.²¹

Telstra welcomes the ACCC's response and reiterates its previous submissions in this regard. Rather than restate these, Telstra has focused this submission on the amendments to the Proposed SAU which give effect to these proposed variations. These amendments are set out in Annexure 4 (Product related amendments) to this submission.

Initial Products

Telstra accepts the general principle that certain initial products should be exempt from the operation of Schedule 1J and 2E where there has already been a significant level of customer engagement by NBN Co in respect of those products. To this end, Telstra supports the approach adopted by the ACCC in the Proposed SAU which specifically identifies the "Initial Products" (in Attachment D to the Proposed SAU) that will not be subject to the product development commitments in the NBN Co SAU. Telstra has considered each of the "Initial Products" and assessed whether there is a legitimate basis for excluding them from the product development commitments in the NBN Co SAU.

The table in Annexure 6 (Initial Products that should not be subject to the product development commitments) to this submission identifies those "Initial Products" that Telstra considers should not be excluded from the product development commitments, along with reasons for these conclusions. The mark-up in Annexure 4 (Product related amendments) to this submission also includes amendments to Attachment D (Initial Products) of the Proposed SAU to reflect Telstra's position.

Telstra also notes that in Attachment D (Initial Products) to the Proposed SAU, the Product Feature for the Connectivity Virtual Circuit (TC-1) only sets out Data Transfer Rates of 5, 10, 20 Mbps even though the Connectivity Virtual Circuit Offers (TC-1), as set out in clause 1C.2.5 of Schedule 1C of the Proposed SAU, specifies additional Data Transfer Rates from 50 to 500 Mbps. For consistency, these additional Data Transfer Rates should be reflected in Attachment D (Initial Products). The mark-up in Annexure 4 (Product related amendments) includes amendments to Attachment D (Initial Products) to address this issue.

Confidentiality and Intellectual Property

The ACCC's approach to confidentiality and intellectual property for product development, as set out in clause 1J.3.2 of the Proposed SAU, gives the ACCC the power to determine the confidentiality and intellectual property terms to apply in the PDF in the event that parties are unable to agree.

Telstra is concerned that these proposals may impact on an RSP's willingness to engage in these processes, given the value of an RSP's pre-existing intellectual property or commercially valuable information may be materially devalued (or destroyed) if it is passed to NBN Co or other participants without adequate consideration.

Furthermore, the regime fails to acknowledge that there are two very different roles that participants will play in the Product Development Forum: (1) there is the role of the participant who submits a "Product Idea", and (2) there is the role of the participant who is simply an interested party in the PDF consultation processes. Telstra contends that the regime must necessarily accommodate these roles in different ways.

Submitting "Product Ideas"

When a party submits a "Product Idea" to NBN Co, the confidentiality and intellectual property terms associated with that idea should be subject to agreement between the parties, including commercial

²¹ Response to Submissions, section 2.3.1.5, p 51.

terms that may place a monetary value on those rights. This principle should also apply when, as part of a party's participation in any product related consultation, a party wishes to contribute confidential information or valuable intellectual property.

Telstra accepts that if these terms cannot be agreed, then the RSP may be unwilling to submit a "Product Idea" to NBN Co. Telstra contends that this is actually more likely to foster participation (given commercial value is protected) than a regime in which terms are imposed (potentially undermining that commercial value). Telstra does not believe that these terms can, or should, be settled through the intervention of the ACCC.

Participation by interested parties in PDF consultation processes

Participation by an interested party in PDF consultation processes should not be conditional upon that party reaching agreement on (or having ACCC-determined) confidentiality and intellectual property provisions associated with "Product Ideas" – these provisions are irrelevant to such a participant.

For example, the ability to participate in any consultation processes associated with pricing for products (clause 1J.3.4) or the development of service levels (clause 1J.3.5) should not be predicated on the participant reaching agreement on (or having ACCC-determined) terms and conditions associated with submitting "Product Ideas". These terms and conditions are unrelated to that participant's role in the consultation process.

This is not to say that certain protections should be excluded. In this context:

- any intellectual property provisions should remain relatively simple, that is, no intellectual property is transferred, licensed or otherwise assigned in the absence of an agreement to do so. Any provisions beyond this principle are not necessary for general participation in the PDF; and
- Telstra acknowledges that more detailed confidentiality provisions may need to be agreed prior to participation to ensure that information that is shared with participants is appropriately protected. In this regard, Telstra accepts that agreement on confidentiality terms should be a pre-requisite for participation and that the ACCC may well have a role in setting these terms if agreement on these terms cannot be reached.

Telstra has a proposed drafting solution to address these various concerns. This is set out in Annexure 4 (Product related amendments) to this submission.

4.3.2. Product withdrawal

In its Previous Submission, Telstra proposed certain variations to the product withdrawal and transition commitments.²² In its Response to Submissions, the ACCC notes that Telstra's proposals have the potential to increase the extent to which the product withdrawal provisions encourage efficient investment in, and use of, the NBN, and has sought submissions from interested parties in relation to these proposed variations.²³

Telstra welcomes this response and confirms that Telstra's overriding objective is to ensure that RSPs have the information they need to make informed business planning and investment decisions in response to NBN Co's decision to withdraw products. Informed planning and efficient investment decision making by RSPs will have a positive downstream impact for end-users.

Telstra's focus in this submission has been to develop amendments to the Proposed SAU which give effect to the proposed variations put forward in its Previous Submission. These amendments are set out in Annexure 4 (Product related amendments) to this submission.

²² See section 3.3 of the Previous Submission, pp 23 and 24.

²³ Response to Submissions, section 2.3.2.2, p 60.

5. Non-price terms and conditions

5.1. SFAA Commitments in the Proposed SAU

Telstra supports the ACCC's proposal to remove most of the detailed NPTC commitments from the NBN Co SAU. As previously noted, the NPTC commitments proposed in the December SAU were in no state to be "locked away", whether from further commercial negotiation or regulatory oversight.

In the Proposed SAU, only four NPTC concepts remain - network rollout information, POI rollout progress, POI changes and dispute management appointment processes.

In relation to the network rollout and POI commitments, Telstra supports the ACCC's proposal set out in the Proposed SAU.

In relation to dispute management, while significant progress has been made to address the potential for perceived and actual bias, Telstra believes further strengthening of the dispute management regime is required. It also appears that the drafting of clause 11.5 of the Proposed SAU, and the interaction with the SFAA, requires clarification in a number of places.

Specifically, the Proposed SAU continues to vest in NBN Co the ability to identify potential dispute adjudicators (including the Resolution Advisor, Pool Members and Panel Members), make nomination decisions and set terms and conditions of engagement. While the inclusion of the ACCC in this process is welcome, Telstra believes the RSP should have a more active role in this process, and NBN Co's role should align with the RSPs, consistent with commercial dispute management processes.

In general, Telstra believes that NBN Co's role in the appointment, management and termination of adjudicators should be administrative only, coordinating on behalf of RSPs, collecting submissions from RSPs and submitting these to the ACCC, along with its own submissions, in order for the ACCC to then make key engagement decisions.

Telstra has proposed amendments to clause 11.5 of Schedule 11 and Annexure 1 of Schedule 11 to address these concerns. These amendments are designed to ensure appointments are free from bias by (a) removing any unequal involvement between NBN Co and Access Seekers in the appointment of "neutrals" involved in dispute resolution, (b) empowering the ACCC to appoint the Resolution Advisor, with the Resolution Advisor then appointing Pool Members and drafting Dispute Resolution Guidelines, and (c) ensuring terms of appointment are standardised (avoiding the need for further consultation or decision-making about these terms). This proposal is set out in Annexure 5 (Dispute management related amendments) to this submission.

5.2. Downstream regulatory compliance

In the Draft Decision, the ACCC noted that "*a general commitment to support retail-level regulatory requirements would promote the long-term interests of end-users.*"²⁴ However, the ACCC did not provide specific guidance as to how this commitment should be implemented and the Proposed SAU does not contain such a commitment.

As previously noted, Telstra would welcome the inclusion in the NBN Co SAU of a general commitment to support retail-level regulatory requirements. Given NBN Co will (indirectly) set the terms and conditions of downstream supply through its SFAA, an RSP's ability to meet its own regulatory commitments, whether now or in the future, will be directly affected by the extent to which NBN Co enables this compliance.

To assist the ACCC, Telstra has proposed amendments to the NBN Co SAU (for inclusion in Module 0 – applicable for the duration of the SAU Term) to address these issues. These are set out in Annexure 1 (SFAA related amendments) to this submission.

²⁴ Draft Decision, p 176.

6 ~~Obligations in relation to the for NBN Co to produce and maintain SFAA~~

6.1 ~~Obligation to produce and maintain an 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.

6.2 ~~Obligation to align SFAA with Special Access Undertaking~~

NBN Co will ensure, for the duration of the SAU Term, that the terms of the SFAA, including any additions or amendments that are made to the terms of the SFAA from time to time, are at all times consistent with this Special Access Undertaking, including any Replacement Module, Replacement Module Determination, Price Review Arrangement, changes to the Maximum Regulated Price or any other variation to this Special Access Undertaking that is accepted by the ACCC in accordance with section 152CBG of the CCA.

6.3 ~~Obligation to align the SFAA with Regulatory Determinations~~

NBN Co will ensure, for the duration of the SAU Term, that:

- (a) Access Seekers have the option to acquire the NBN Access Service, the Ancillary Services and the Facilities Access Service on the terms of the SFAA;
- (b) the terms of the SFAA are at all times consistent with current Regulatory Determinations;
- (c) Access Seekers can elect to:
 - (i) take supply under the terms of the SFAA referred to in clause 6.3(b), in which case, NBN Co must not compel an Access Seeker, whether through conditionality or otherwise, to accept NBN Co unilateral changes to the SFAA unrelated to current Regulatory Determinations in order to take supply under that SFAA; or
 - (ii) continue to take supply under that Access Seeker's current Access Agreement until that Access Seeker is satisfied the terms of the SFAA are consistent with current Regulatory Determinations;
- (d) SFAA-based Access Agreements include an expiry date, to be a date not later than 2 years after the date on which the SFAA-based Access Agreement commences. For clarity, this does not preclude NBN Co agreeing with the

Access Seeker to extend the term of that SFAA-based Access Agreement beyond such expiry date;

- (e) prior to making any changes to its SFAA, including those intended to give effect to clause 6.3(b), and without prejudice to NBN Co's obligations under Schedule 1B, NBN Co must consult with all Customers about those changes; and
- (f) nothing in this clause 6.3 has the effect of limiting the ability for an Access Seeker to get the benefit of Regulatory Determinations, or take supply of services from NBN Co, independently of the SFAA.

6.4 Obligation to support retail-level regulatory requirements

NBN Co must ensure, for the duration of the SAU Term, that the terms of the SFAA enable Access Seekers to comply, and do not prevent Access Seekers from complying, with obligations imposed at law that apply to the Access Seeker (including legislation, regulations, licence conditions, codes and binding orders, directives, determinations or findings of a regulator, governmental body or court of competent jurisdiction) to the extent those laws relate to the supply of Downstream Products to Downstream Customers or End Users.

6.5 Recourse to the ACCC

- (a) If an Access Seeker, acting reasonably, forms the view that NBN Co is not in compliance with any of its obligations set out under this clause 6, the Access Seeker may give written notice to the ACCC setting out the alleged non-compliance.
- (b) If the ACCC is given a notice by an Access Seeker pursuant to clause 6.5(a) above, and the ACCC forms the view that NBN Co is not in compliance with any of its obligations set out under clause 6, then:
 - (i) the ACCC may determine the amendments required to the SFAA to ensure that NBN Co is in compliance; and
 - (ii) within 20 Business Days of the ACCC making the determination under clause 6.5(b)(i), NBN Co must amend the SFAA (or in the case of clause 6.3(a)(iv), the applicable SFAA-based Access Agreement) in the manner determined by the ACCC.
- (c) Prior to making a determination under clause 6.5(b), the ACCC must consult with the applicable Access Seeker under clause 6.5(a) and all Customers on SFAA-based Access Agreements at the time of making the determination.
- (d) Nothing in this clause 6.5 amends, limits or negates an Access Seeker's right to enforce compliance with the SAU at law or reach agreement with NBN Co

on terms that differ from the terms determined by the ACCC under this clause 6.5.

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

1B.1 General

1B.1.1 Scope

This Schedule 1B applies for a period of five years from the SAU Commencement Date~~the Initial Regulatory Period~~.

~~1B.1.2 Standard Form of Access Agreement~~

~~(a) NBN Co will ensure that any SFAA that is published includes an expiry date, to be a date no later than 2 years after the date on which the SFAA commences. For clarity, this does not preclude NBN Co publishing any SFAA which includes the option of the parties to an Access Agreement agreeing to extend the term of that Access Agreement beyond such expiry date.~~

1B.2 Multilateral Consultation on changes to any SFAA

1B.2.1 Establishment of a Multilateral SFAA Forum

- (a) NBN Co will establish a multilateral consultation forum to engage with Access Seekers and Consumer Advocacy Groups on possible future changes to the terms of an SFAA (**Multilateral SFAA Forum**).
- (b) NBN Co will convene a Multilateral SFAA Forum no later than 12 months after the SAU Commencement Date~~prior to the expiry of the term of each version of the SFAA published under 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.2 precludes NBN Co from conducting bilateral consultation with Access Seekers in relation to any SFAA in a manner that is consistent with NBN Co's Non-Discrimination Obligations.

Annexure 2: Replacement Module amendments

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 acknowledges that:
 - (i) each Replacement Module Application will be assessed by the ACCC as an SAU variation application under section 152CBG of the CCA;
 - (ii) each Replacement Module Application will be accepted or rejected by the ACCC in accordance with section 152CBG of the CCA; and
 - (iii) when determining whether to accept or reject a Replacement Module Application, the ACCC may assess proposed key elements of 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
- (d) NBN Co may:
 - (A) withdraw an SAU variation application that contains a Replacement Module Application; and
 - (B) re-submit an SAU variation application under section 152CBG of the CCA that contains an amended Replacement Module Application for approval by the ACCC.

4.5. 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:

- (A) the end of the Initial Regulatory Period; or
- (B) 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) 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, such period of time not exceeding 3 years;
 - (ii) a Reference Offer Proposal established in accordance with clause 4.6;
 - (iii) a LTRCM Proposal established in accordance with clause 4.7;
 - (iv) a RAB Roll Forward Proposal established in accordance with clause 4.8;
 - (v) ~~if the duration of the Regulatory Cycle proposed under clause 4.5(e)(i) is less than 5 years,~~ all of the forecasts referred to in clause 4.7 for each Financial Year that is within 5 Financial Years of the commencement of the proposed Regulatory Cycle but is not within the proposed Regulatory Cycle; and
 - (vi) 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.

4.7. 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 2D.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) 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 forecast information will use inputs that are consistent with the inputs used to forecast the ABBRR.
- (d) 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 2D.3 is to be made as a result of the change in tax and, if so, how the change is to be determined; and
 - (iii) whether any change to the Forecast Real ABBRR and, therefore, the amount that NBN Co is entitled to earn under clause 2D.5.1(a) (if applicable), is to be made as a result of the change in tax and, if so, how the change is to be determined.

4.8. RAB Roll Forward Proposal

A RAB Roll Forward Proposal must include:

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

4.9. ACCC Replacement Module Determination

- (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, such period of time not exceeding 3 years; and
 - (ii) the matters referred to in clauses 4.6, 4.7 and 4.8.
- (c) In making an ACCC Replacement Module Determination under this clause 4.9, the ACCC must take into account the matters set out in subsection 152BCA(1) of the CCA and may take into account any other matters it thinks are relevant.
- (d) The ACCC must publish any ACCC Replacement Module Determination made under this clause 4.9, together with its reasons, on its website.
- (e) Sections 152BCB(1), (3B), (3C) and (4A) of Part XIC apply to an ACCC Replacement Module Determination as if the references to an access determination in those sections were references to an ACCC Replacement Module Determination.
- (f) In making an ACCC Replacement Module Determination under this clause 4.9, the ACCC must consult with NBN Co and existing Customers and may consult with such other persons as the ACCC considers appropriate, and must consider any submissions that are received within the time limit it specifies.
- (g) NBN Co will comply with the terms of an ACCC Replacement Module Determination for the duration of the Regulatory Cycle to which it relates, subject to clause 4.9(h).
- (h) If:
- (i) the ACCC has issued an ACCC Replacement Module Determination for a Regulatory Cycle; but
 - (ii) the ACCC subsequently accepts a Replacement Module Application for that upcoming Regulatory Cycle prior to the Cycle Expiry Date for the then current Regulatory Cycle,
- any ACCC Replacement Module Determination that was to apply for the next Regulatory Cycle as at the date of acceptance of a Replacement Module Application will no longer have effect.

Annexure 3: Price related amendments

Proposed Amendments to Price Review Mechanism (clause 1H.3.1)

1H.3.1. Initiation of Price Review

(a) Subject to clause 1H.3.1(c), no earlier than 1 July 2016, either the ACCC or NBN Co may issue a written notice (in this clause 1H.3, **Price Review Notice**) to the other stating that it wishes to commence a review of the Maximum Regulated Prices applicable to Reference Offers, Non-Reference Offers and/or Other Charges under this clause 1H.3 (in this clause 1H.3, **Price Review**).

(b) Without limiting clause 1H.3.1(a), the ACCC will consider whether to initiate a Price Review at least once every three years between the SAU Commencement Date and the end of the Initial Regulatory Period.

~~(c)~~ After considering whether to initiate a Price Review pursuant to clause 1H.3.1(b), if the ACCC decides not to initiate a Price Review, the ACCC must publish a notice on its website setting out the reasons why it has decided not to initiate a Price Review.

~~(d)~~ The Price Review Notice must:

- (i) identify one or more Maximum Regulated Prices that the notifying party considers should be reviewed; and
- (ii) the reasons why the notifying party considers the Maximum Regulated Prices should be reviewed.

~~(c)~~ A Price Review Notice cannot be issued under clause 1H.3.1(a) if a Price Review Arrangement applies to any Financial Year in the Initial Regulatory Period.

Proposed Amendments to Treatment of Zero-Priced Offers (changes marked up against clause 1C.4.6 in relation to Reference Offers but to be mirrored for Non-Reference Offers and Other Charges)

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(~~de~~).

(b) NBN Co may propose that a Reference Offer cease to be Zero-Priced by providing no less than 6 months' notice to Access Seekers and the ACCC of its intention that the 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(gf).

(c) At the same time as when NBN Co gives notice of its intention that a Reference Offer ceases to be Zero-Priced, NBN Co will commence consultation with Access Seekers in relation to the Price that NBN Co is proposing to introduce for that Reference Offer for all Access Seekers.

(e)(d) 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).

(e)(e) 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)(f) 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.

(e)(g) 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.

(f)(h) The ACCC must publish on its website any New Price Disallowance Determination and its reasons for issuing that New Price Disallowance Determination.

(g)(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 1C.4.6(he).

~~(h)~~(j) If the ACCC does not make a New Price Disallowance Determination within the required time under clause 1C.4.6(~~de~~), the Reference Offer specified in NBN Co's proposal may cease to be Zero-Priced.

~~(i)~~(k) 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.

Annexure 4: Product related amendments

Attachment D Initial Products

Initial Products

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

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

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, 200, 300, 400, 500, 600, 700, 800, 900, 1000 Mbps	✓	✓	✓
	TC-1: 5, 10, 20, 50, 100, 150, 200, 250, 300, 400, 500 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 Mbps	✓		
	Enterprise Ethernet: 50-1000Mbps symmetrical pipe model (but excluding product features, service levels and pricing)	✓		
	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	✓		

Product Component	Product Feature	Fibre	FW	LTS
	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 	✓	✓	✓

Schedule 1J Product Development and Withdrawal

1J.1 General

1J.1.1 Scope

- (a) Subject to clause 1J.1.1(b), this Schedule 1J applies for the Initial Regulatory Period.
- (b) Annexure 1 to this Schedule 1J (PDF Processes) applies for a period of five years from the SAU Commencement Date.
- (c) Notwithstanding any provision in this Schedule 1J, NBN Co must comply with any applicable requirements in relation to the identification, selection, consultation and endorsement of any Network Change including, during the period in which they have effect, clauses 1E.8 to 1E.12.

1J.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 1J.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 1J.1.2(a)(i) in a manner consistent with NBN Co's scope of permitted activities as described in clause 1J.1.2(a)(ii).

- (b) Accordingly, NBN Co has designed a product development process which seeks Access Seeker and Consumer Advocacy Group input as part of the process of developing detailed design requirements.

1J.1.3 Application of this Schedule

- (a) This Schedule 1J sets out the process that NBN Co will apply to the introduction, variation or withdrawal of Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service.
- (b) This Schedule 1J 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 1J.4; and
 - (iv) subject to clause 1J.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 1J.5.3.

1J.2 Product Roadmap and Integrated Roadmap

1J.2.1 Product roadmap

- (a) NBN Co will publish and maintain a product roadmap.
- (b) On or around 1 July each year, NBN Co will publish an updated product roadmap setting out the Products, Product Components,

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.

(c) The product roadmap will be made available on NBN Co's Website.

1J.2.2 Integrated roadmap

(a) On or around the commencement of each calendar quarter (being 1 July, 1 October, 1 January and 1 April) NBN Co will publish an integrated roadmap which specifies for each Product, Product Component, Product Feature, Ancillary Service and type of Facilities Access Service set out in the product roadmap:

(i) the IT support systems and operational support systems to be developed by NBN Co for that Product, Product Component, Product Feature, Ancillary Service and type of Facilities Access Service; and

(ii) NBN Co's quarterly development program for those IT support systems and operational support systems covering the ensuing 12 month period.

(e)(b) The integrated roadmap will be made available on NBN Co's Website.

1J.3 Development

1J.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 the engagement and endorsement process under clause 1E.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 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.

1J.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 1J.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 1J.1.1(b).

(c) If an Access Seeker or Consumer Advocacy Group (as the case may be) submits a Product Idea to the Product Development Forum (**Product Idea PDF Participation**), NBN Co acknowledges and accepts that 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

Product Idea PDF Participation will be subject to a specific agreement between the applicable parties. In all other respects (General PDF Participation):

(i) -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;

(ii) NBN Co will not require participation in the Product Development Forum to be conditional upon agreement between an Access Seeker or Consumer Advocacy Group (as the case may be) and NBN Co regarding the treatment of intellectual property; and

(iii) NBN Co acknowledges and accepts that intellectual property owned or otherwise held by an Access Seeker or Consumer Advocacy Group will not be assigned, transferred or licensed to NBN Co, and the intellectual property rights held by an Access Seeker or Consumer Advocacy Group will not be otherwise acquired by NBN Co or any other third party, as a consequence of participation in the Product Development Forum in the absence of a written agreement between the applicable parties to this effect.

~~(c)~~(d) For the purposes of clause 1J.3.2(c)(i) and that applicable Access Seeker or Consumer Advocacy Group's General PDF Participation, 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 1J.3.2(f).

~~(d)~~(e) NBN Co must give written notice to the ACCC if, within 20 Business Days of an Access Seeker or Consumer Advocacy Group seeking General PDF Participation, to participate in the Product Development Forum NBN Co and that party are unable to agree on the terms and conditions pursuant to which the confidential information ~~and intellectual property~~ of NBN Co and that Access Seeker or Consumer Advocacy Group (as the case may be) that may be disclosed ~~or created~~

in connection with ~~General PDF Participation the Product Development Forum~~ will be dealt with.

~~(e)(f)~~ If the ACCC is given a notice by NBN Co pursuant to clause 1J.3.2(e), or is otherwise notified by an Access Seeker or Consumer Advocacy Group, that ~~the parties have it has~~ been unable to agree the terms on which ~~their its and NBN Co's~~ confidential information ~~and intellectual property~~ will be dealt with in connection with ~~General PDF Participation~~ ~~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 General PDF Participation~~ ~~with the Product Development Forum~~ will be dealt with.

~~(f)(g)~~ The ACCC may consult with any person in making a determination under clause 1J.3.2(f).

1J.3.3 Assessment of Product Ideas

NBN Co will consider, and may weigh as it considers appropriate, such criteria as it determines appropriate in selecting which Product Ideas to develop through the Product Development Forum. Consistent with the general principles set out in clause 1J.1.2 those criteria may include the following:

- (a) whether the Product Idea is within NBN Co's permitted scope of activities;
- (b) whether there is sufficient demand or potential demand for the Product Idea;
- (c) whether the Product Idea will be commercially viable;
- (d) whether the Product Idea is technically and operationally viable;
- (e) whether expenditure on the Product Idea will, or is reasonably likely to, meet the requirements specified in:
 - (i) in the case of Capital Expenditure, clause 1E.3.1(a)(i) or clause 1E.3.1(a)(ii); or
 - (ii) in the case of Operating Expenditure, clause 1F.8.1(a)(i) or clause 1F.8.1(a)(ii);
- (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.

1J.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.

1J.3.5 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);~~

~~(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).~~

1J.3.6 PASS Test

~~(a) 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 must ensure that all the following requirements are satisfied in respect of that Product Idea (PASS Test):~~

~~(i) all product features, functionality and specifications are complete and fully documented;~~

~~(ii) all product limitations and exclusions (including, for example, expected packet loss due to jitter and delay) are complete and fully documented;~~

~~(iii) all service levels (including any remedies which may apply for breach of the service levels) are complete and fully documented;~~

- (iv) all other applicable terms and conditions that are specific to supply of the new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service are complete and fully documented; and
- (v) NBN Co has consulted with Access Seekers and Consumer Advocacy Groups through the Product Development Forum in relation to the above matters, and has complied with clause 1J.6 in relation to such consultation.
- (b) NBN Co must not introduce a new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service which has been the subject of a Product Idea, unless and until:

 - (i) that Product Idea has satisfied the PASS Test; and
 - (ii) NBN Co has provided a written notice to Access Seekers and Consumer Advocacy Groups of the results of the PASS Test for that Product Idea, including reasons why NBN Co considers each of the requirements in clause 1J.3.6(a) has been satisfied.

1J.4 Minor Product Changes

- (a) Notwithstanding anything to the contrary in this Schedule 1J, NBN Co may carry out minor product variations or enhancements which update or improve the functionality or performance of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service and which will have no material adverse impact on Access Seekers (in this clause 1J.4, **Minor Product Variation**), including without limitation where the Minor Product Variation is related to a Permitted Variation.
- (b) For Minor Product Variations, NBN Co will use the Product Development Forum to notify Access Seekers and Consumer Advocacy Groups of the proposed change and implementation timeframe, including through the product roadmap.
- (c) NBN Co will ensure that the withdrawal of the supply of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service is not treated as a Minor Product Variation.

1J.5 Withdrawal

1J.5.1 Notice period for Withdrawals

- (a) Subject to Schedule 1C (Reference Offers) and clause 1J.5.2, NBN Co may withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service and will provide the ACCC, Access Seekers and Consumer Advocacy Groups 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 1J.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:

(iv) NBN Co's assessment of each of the matters that it is required to have regard to under clause 1J.5.1(b) in respect of the withdrawal of that Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;

(v) details of NBN Co's proposed alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (or if NBN Co does not propose to offer such an alternative, NBN Co's reasons for not doing so); and

(vi) the transitional arrangements that NBN Co ~~may~~ will 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~~ that alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, including:

(A) NBN Co's proposed timeframes for transitioning to the alternative Product, Product Component, Product

Feature, Ancillary Service or type of Facilities Access Service; and

(B) details about testing, trials and phasing-in processes for transition to the alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service.

(b) NBN Co will have regard to the following factors when considering whether to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service:

- (i) existing demand for the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;
- (ii) the avoidable cost to NBN Co of maintaining and continuing to supply, the existing Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;
- (iii) the functionality offered by an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service to the relevant Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service to be withdrawn;
- (iv) the technical feasibility of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;
- (v) the commercial viability of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service; ~~and~~

(vi) the Price of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service; and

~~(vi)~~(vii) the social and community impacts that may be caused by withdrawing the existing Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service.

(c) Prior to withdrawing a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, NBN Co will:

(i) consult with the ACCC, Access Seekers and Consumer Advocacy Groups in relation to the withdrawal and the matters referred to in clause 1J.5.1(a)(iv) to 1J.5.1(a)(vi); and

~~(e)(ii)~~ discuss and consider in good faith any feedback received from, the ACCC, Access Seekers and Consumer Advocacy Groups through consultation 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.

In doing so, NBN Co will comply with the principles in clause 1J.6.

1J.5.2 ACCC objection power

- (a) If NBN Co seeks to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 1J.5.1(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 1J.5.2(b) on the ACCC's website.
- (c) In making a decision to issue a notice under clause 1J.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 have regard to the factors listed in clause 1J.5.1(b); and
 - (iii) may consult with NBN Co and such other persons as the ACCC considers appropriate.
- (d) Any notice issued by the ACCC under clause 1J.5.2(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 1J.5.1(a).
- (e) The ACCC may extend the period referred to in clause 1J.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 1J.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 years.
- (g) If the ACCC gives a notice pursuant to clause 1J.5.2(b), NBN Co may give a further notice pursuant to clause 1J.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 1J.5.2 will apply in respect of that further notice.

1J.5.3 Product withdrawal required by law or directed by Shareholder Ministers

- (a) Subject to clause 1J.5.3(b), this clause 1J.5 does not apply to the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.
- (b) In the event of a withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 1J.5.3(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.

1J.6 Consultation principles

- (a) Prior to making any decision about a matter on which NBN Co is required to consult under this Schedule 1J or the PDF Processes:

- (i) NBN Co will undertake such consultation in accordance with the principles in clause 1J.6(b); and
 - (ii) NBN Co will consider and have regard to the views and submissions expressed by Access Seekers and Consumer Advocacy Groups through such consultation.
- (b) When undertaking any consultation required under this Schedule 1J or the PDF Processes NBN Co will adhere to the following principles:
- (i) NBN Co will provide Access Seekers and Consumer Advocacy Groups with up-to-date and relevant information so that they are able to undertake an informed assessment of the matter that is the subject of consultation;
 - (ii) prior to commencing consultation, NBN Co will notify Access Seekers and Consumer Advocacy Groups of the consultation processes that NBN Co will undertake in relation to the matter that is the subject of consultation, together with reasons why NBN Co considers such consultation processes to be reasonable, appropriate and effective;
 - (iii) the consultation processes will (without limitation):
 - (A) include NBN Co's proposal regarding the use of both bi-lateral and multi-lateral consultation as part of the consultation process (which may include the use of Workshops and Formal Submissions as contemplated in the PDF Processes, where applicable); and
 - (B) always provide Access Seekers and Consumer Advocacy Groups with an opportunity to make submissions in relation to the matter that is the subject of consultation; and
 - (iv) NBN Co will act reasonably when setting timeframes for Access Seekers and Consumer Advocacy Groups to make submissions and attend meetings and workshops. Where any of the information provided to Access Seekers and Consumer Advocacy Groups becomes outdated, inaccurate, incomplete or misleading in any material respect, or new information is provided, NBN Co will amend the consultation timeframes so that Access Seekers and Consumer Advocacy Groups have a reasonable opportunity to respond.

Annexure 1 PDF Processes

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 1J (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 1E.8 to 1E.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), 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) will be dealt with in accordance with the terms and conditions agreed or determined in accordance with clause 1J.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) 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) 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).
- (c) NBN Co will maintain a register of Product Ideas (**Product Ideas Register**) 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.
- ~~(c)~~(d) NBN Co will ensure that the Product Ideas Register includes at least the following information in respect of each Product Idea:
- (i) information that NBN Co possesses in relation to the Product Idea, subject to any applicable confidentiality obligations;
 - (ii) the date that the Product Idea was received by NBN Co or proposed by NBN Co;
 - (iii) the date that the Product Idea was included in the Product Ideas Register;
 - (iv) the status of NBN Co's decision regarding the development of the Product Idea (namely, whether NBN Co has accepted or rejected development of the Product Idea, or whether NBN Co's decision is still pending); and
 - (v) the status of the development of the Product Idea (namely, whether the development has been finalised, is pending or has ceased).
- For the avoidance of doubt, the requirements in this clause 4.3(d) apply to each Product Idea received from an Access Seeker or Consumer Advocacy Group and each an NBN Co Product Idea notified by NBN Co in accordance with clause 4.3(b).
- (e) NBN Co will update the Product Ideas Register as soon as possible after:

(i) NBN Co receives a Product Idea, or NBN Co proposes an NBN Co Product Idea; and

(ii) any of the information included in the Product Ideas Register becomes outdated, inaccurate, incomplete or misleading in any material respect.

~~(d)~~(f) NBN Co will:

- (i) as soon as possible after receiving a Product Idea and such additional information listed in clause 4.1(b) as is available, provide the Submitting 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~~(f)~~(i).

5 NBN Co's assessment of a Product Idea

5.1 Criteria for assessment

NBN Co will assess Product Ideas in accordance with Schedule 1J (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), NBN Co may rely solely upon the information provided by the Submitting Party to assess the Product Idea under this clause 5.

5.3 Initial assessment

- (a) In initially assessing a Product Idea using the criteria in Schedule 1J (Product Development and Withdrawal), NBN Co will take into consideration that the Product Idea is at an initial stage of development and is likely to be refined and amended through the Product Development Forum.
- (b) NBN Co will, in particular, make allowances in its initial assessment of a Product Idea for:
 - (i) information asymmetry between NBN Co and the Submitting Party; and
 - (ii) information available specifically to the Submitting Party regarding ascertainable demand for the Product Idea.

- (c) Prior to making any decision about whether to develop a Product Idea, NBN Co must consult with Access Seekers and Consumer Advocacy Groups in relation to this decision. In doing so, NBN Co will comply with the principles in clause 1J.6 of the Special Access Undertaking.

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 1E.8 to 1E.12 of the Special Access Undertaking, publish a summary of the Product Idea, including proposed features, functionality, product specification and service levels (including any remedies which may apply for breach of the service levels) as refined by NBN Co (a **Product Construct Paper**).
- (b) To the extent practical, NBN Co will also include in the Product Construct Paper:
- (i) pre-conditions for an 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 4.2, 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; and
 - ~~(v)~~(vi) information about the proposed price related terms of supply for the Product Idea.
- (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 1J (Product Development and Withdrawal) in respect of the relevant Product Idea, NBN Co will:
- (i) 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, including NBN Co's proposal regarding the use of Workshops and Formal Submissions as described in clauses 6 and 7 and the reasons why NBN Co considers this to be

reasonable, appropriate and effective (together, the **Idea Development Plan**); and

(vi)(ii) develop the Idea Development Plan, and consult with Access Seekers and Consumer Advocacy Groups in relation to the matters set out in the Product Construct Paper, in accordance with the principles in clause 1J.6 of the Special Access Undertaking.

(c)(d) For the avoidance of doubt, the requirements in this clause 5.4 apply to an NBN Co Product Idea notified by NBN Co in accordance with clause 4.3(b).

5.5 Ongoing assessment

At any time between initial assessment of a Product Idea under clause 5.3 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, provided that NBN Co has first consulted Access Seekers and Consumer Advocacy Groups in relation to this decision. In undertaking such consultation, NBN Co will comply with the principles in clause 1J.6 of the Special Access Undertaking.

5.6 Rejection of Product Ideas

Following assessment of a Product Idea either under clause 5.3 or clause 5.5, 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) 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).
- (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 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, 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

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**).

- (a) 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.
- (b) NBN Co may extend a deadline notified under clause 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.
- (c) 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

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.

- (b) Following a notification under clause 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 1E.8 to 1E.12 of the Special Access Undertaking in relation to expenditure which may be incurred in connection with the implementation and supply of the Product Idea.
- (c) NBN Co will publish a final Product Construct Paper for 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 an 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



NBNCo
Bringing broadband to life

Schedule 2E Product Development and Withdrawal

2E.1 General

2E.1.1 Scope

- (a) This Schedule 2E applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or ACCC Replacement Module Determination is in effect.
- (b) Notwithstanding any other provision of this Schedule 2E, NBN Co must comply with any applicable requirements in relation to the identification, selection, consultation and endorsement of any network change.

2E.1.2 Product development principles

- (a) The following general principles apply to NBN Co's development of Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service (referred to collectively in this clause 2E.1.2 as **Products**):
 - (i) NBN Co is committed to developing Products that 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 2E.1.2(a)(i) in a manner consistent with NBN Co's scope of permitted activities as described in clause 2E.1.2(a)(ii).

- (b) Accordingly, NBN Co will utilise a 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 Application of this Schedule

- (a) This Schedule 2E (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 2E.6.1.
- (b) This Schedule 2E 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 2E.6.4(b), the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that NBN Co is required to withdraw for the reasons referred to in clause 2E.6.4.

2E.2 Withdrawal – Access Seeker Focused Approach

- (a) Subject to this clause 2E.2 and to clause 2E.6, NBN Co may withdraw Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service subject to NBN Co meeting its commitments set out in clauses 2E.3 and 2E.4 of this Schedule 2E.
- (b) Any withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service must be 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 Product Roadmap and Integrated Roadmap

- (a) NBN Co will publish and maintain a product roadmap in respect of Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service (as applicable).
- (b) The product roadmap will be made available on NBN Co's Website.
- (c) On or around the commencement of each calendar quarter (being 1 July, 1 October, 1 January and 1 April) NBN Co will publish an integrated roadmap which specifies for each Product, Product Component, Product Feature, Ancillary Service and type of Facilities Access Service set out in the product roadmap:
 - (i) the IT support systems and operational support systems to be developed by NBN Co for that Product, Product Component, Product Feature, Ancillary Service and type of Facilities Access Service; and
 - (ii) NBN Co's quarterly development program for those IT support systems and operational support systems covering the ensuing 12 month period.
- ~~(d)~~ The integrated roadmap will be made available on NBN Co's Website.

2E.4 Development

2E.4.1 Product Development Forum

- (a) NBN Co will implement a product development process through which NBN Co will engage with 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 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 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 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 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 2E.4.2(a), an agreement regarding the treatment of the confidential information and intellectual property of NBN Co and the relevant Access Seeker or Consumer Advocacy Group will be on such terms and conditions:
 - (i) as agreed between NBN Co and the relevant Access Seeker or Consumer Advocacy Group; or
 - (ii) failing agreement, as determined by the ACCC pursuant to clause 2E.4.2(d).
- (c) NBN Co must give written notice to the ACCC if, within 20 Business Days of an Access Seeker or Consumer Advocacy Group seeking to participate in the Product Development Forum, NBN Co and that party are unable to agree on the terms and conditions pursuant to which the confidential information and intellectual property of NBN Co and that Access Seeker or Consumer Advocacy Group (as the case may be) that may be disclosed or created in connection with the Product Development Forum will be dealt with.
- (d) If the ACCC is given a notice by NBN Co pursuant to clause 2E.4.2(c), or is otherwise notified by an Access Seeker or Consumer Advocacy Group that it has been unable to agree the terms on which its and NBN Co's confidential information and intellectual property will be dealt with in connection with their participation in the Product Development Forum, the ACCC may determine the terms and conditions on which the confidential information and intellectual property of each of NBN Co and the relevant Access Seeker or Consumer Advocacy Group that may be disclosed or created in connection with the Product Development Forum will be dealt with.
- (e) The ACCC may consult with any person in making a determination under clause 2E.4.2(d).

2E.4.3 Assessment of Product Ideas

NBN Co will consider, and may weigh as it considers appropriate, such criteria as it determines appropriate in selecting which Product Ideas to develop through the Product Development Forum. Consistent with the general principles set out in clause 2E.1.2, those criteria may include the following:

- (a) whether the Product Idea is within NBN Co's permitted scope of activities;

- (b) whether there is sufficient demand or potential demand for the Product Idea;
- (c) whether the Product Idea will be commercially viable;
- (d) whether the Product Idea is technically and operationally viable;
- (e) whether expenditure on the Product Idea will be, or is reasonably likely to be, prudently incurred;
- (f) the Intellectual Property Rights that may be required to develop the Product Idea; and
- (g) any other factor that NBN Co reasonably considers should be taken into account.

2E.4.4 Pricing of new Products, Product Components and Product Features

Prior to introducing a new Product, Product Component, 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.

2E.4.5 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~~

~~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.4.6 PASS Test

~~(a) 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 must ensure that all the following requirements are satisfied in respect of that Product Idea (PASS Test):

- (i) all product features, functionality and specifications are complete and fully documented;
 - (ii) all product limitations and exclusions (including, for example expected packet loss due to jitter and delay) are complete and fully documented;
 - (iii) all service levels (including any remedies which may apply for breach of the service levels) are complete and fully documented;
 - (iv) all other applicable terms and conditions that are specific to supply of the new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service are complete and fully documented; and
 - (v) NBN Co has consulted with Access Seekers and Consumer Advocacy Groups through the Product Development Forum in relation to the above matters, and has complied with clause 2E.7 in relation to such consultation.
- (b) NBN Co must not introduce a new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service which has been the subject of a Product Idea, unless and until:
- (i) that Product Idea has satisfied the PASS Test; and
 - (ii) NBN Co has provided a written notice to Access Seekers and Consumer Advocacy Groups of the results of the PASS Test for that Product Idea, including reasons why NBN Co considers each of the requirements in clause 2E.4.6(a) has been satisfied.

2E.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 2E.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 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.

2E.6 Withdrawal

2E.6.1 Prohibition

NBN Co will not withdraw the Reference Offers, during their relevant terms.

2E.6.2 Notice period for Withdrawals

- (a) Subject to Schedule 2B (Reference Offers) and clause and 2E.6.3, NBN Co may withdraw a Product, Product Component, Product Feature, Ancillary Service and type of Facilities Access Service and will provide the ACCC, Access Seekers and Consumer Advocacy Groups with no less than:

- (i) 24 months' written notice of its intention to withdraw a Product, Product Component, Ancillary Service or type of Facilities Access Service;
- (ii) subject to 2E.6.2(a)(iii), 12 months' written notice of its intention to withdraw a Product Feature; and
- (iii) 24 months' written notice of its intention to withdraw a Product Feature where withdrawal will have a material adverse effect on the functionality or performance of a Product with which the Product Feature is associated,

and in each case will also provide written notice to the ACCC, Access Seekers and Consumer Advocacy Groups of:

(iv) NBN Co's assessment of each of the matters that it is required to have regard to under clause 2E.6.2(b) in respect of the withdrawal of that Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;

(v) details of NBN Co's proposed alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (or if NBN Co does not propose to offer such an alternative, NBN Co's reasons for not doing so); and

(vi) the transitional arrangements that NBN Co ~~may~~ will 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~~that alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, including:

(A) NBN Co's proposed timeframes for transitioning to the alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service; and

(B) details about testing, trials and phasing-in processes for transition to the alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service.

(b) NBN Co will have regard to the following factors when considering whether to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service:

(i) existing demand for the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;

(ii) the avoidable cost to NBN Co of maintaining and continuing to supply, the existing Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;

(iii) the functionality offered by an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service to the relevant Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service to be withdrawn;

(iv) the technical feasibility of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;

(v) the commercial viability of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service; and

(vi) the Price of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service; and

~~(vi)~~(vii) the social and community impacts that may be caused by withdrawing the existing Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service.

(c) Prior to withdrawing a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, NBN Co will:

(i) consult with the ACCC, Access Seekers and Consumer Advocacy Groups in relation to the withdrawal and the matters referred to in clause 2E.6.2(a)(iv) to 2E.6.2(a)(vi); and

~~(ii)~~ discuss and consider in good faith any feedback received from the ACCC, Access Seekers and Consumer Advocacy Groups through consultation 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.

In doing so, NBN Co will comply with the principles in clause 2E.7.

(d) If NBN Co wishes to withdraw a Product Feature, Ancillary Service or type of Facilities Access Service that has ceased to be a Reference Offer then the earliest that the notice period in clause 2E.6.2(a) can start is the date that the relevant Product Feature, Ancillary Service or type of Facilities Access Service ceases to be a Reference Offer.

2E.6.3 ACCC objection power

(a) If NBN Co seeks to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 2E.6.2(a), the ACCC may object to the withdrawal of that Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service.

(b) If the ACCC objects to the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, the ACCC must give NBN Co a written notice stating its objection and providing reasons for its objection and publish any notice (and reasons) issued under this clause 2E.6.3(b) on the ACCC's website.

(c) In making a decision to issue a notice under clause 2E.6.3(b) the ACCC:

(i) will have regard to the long-term interests of end-users in accordance with section 152AB of the CCA;

(ii) may have regard to the factors listed in clause 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 2E.6.3(b) must be issued within the period of 60 Business Days from the date on which NBN Co

notified the ACCC of its intention to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 2E.6.2(a).

- (e) The ACCC may extend the period referred to in clause 2E.6.3(d) by a period of not more than 40 Business Days by giving written notice to NBN Co and publishing that notice on the ACCC's website.
- (f) If the ACCC issues a notice under clause 2E.6.3(b), NBN Co must:
 - (i) inform Access Seekers and Consumer Advocacy Groups in writing that the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service will not be withdrawn; and
 - (ii) not withdraw the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service the subject of the notice for the period specified by the ACCC in that notice which may not be more than five years.
- (g) If the ACCC gives a notice pursuant to clause 2E.6.3(b), NBN Co may give a further notice pursuant to clause 2E.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 2E.6.3 will apply in respect of that further notice.

2E.6.4 Product withdrawal required by law or directed by Shareholder Ministers

- (a) Subject to clause 2E.6.4(b), this clause 2E.6 does not apply to the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.
- (b) In the event of a withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service in accordance with clause 2E.6.4(a), NBN Co will, to the extent permitted by law and consistent with any temporal requirements for the withdrawal imposed on NBN Co by law or by the Shareholder Minister (as the case may be):

- (i) provide Access Seekers, Consumer Advocacy Groups and the ACCC with written notice of the withdrawal within 20 Business Days of NBN Co being made aware of the requirement to withdraw the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (as the case may be);
- (ii) consult with, and consider any feedback received from, Access Seekers, Consumer Advocacy Groups and the ACCC in relation to the impending withdrawal and related issues, such as migration.

2E.7 Consultation principles

(a) Prior to making any decision about a matter on which NBN Co is required to consult under this Schedule 2E:

(i) NBN Co will undertake such consultation in accordance with the principles in clause 2E.7(b); and

(ii) NBN Co will consider and have regard to the views and submissions expressed by Access Seekers and Consumer Advocacy Groups through such consultation.

(b) When undertaking any consultation required under this Schedule 2E or the PDF Processes NBN Co will adhere to the following principles:

(i) NBN Co will provide Access Seekers and Consumer Advocacy Groups with up-to-date and relevant information so that they are able to undertake an informed assessment of the matter that is the subject of consultation;

(ii) prior to commencing consultation, NBN Co will notify Access Seekers and Consumer Advocacy Groups of the consultation processes that NBN Co will undertake in relation to the matter that is the subject of consultation, together with reasons why NBN Co considers such consultation processes to be reasonable, appropriate and effective;

(iii) the consultation processes will (without limitation):

(A) include NBN Co's proposal regarding the use of both bi-lateral and multi-lateral consultation as part of the consultation process (which may include the use of Workshops and Formal Submissions as contemplated in the PDF Processes, where applicable); and

(B) always provide Access Seekers and Consumer Advocacy Groups with an opportunity to make submissions in relation to the matter that is the subject of consultation; and

(iv) NBN Co will act reasonably when setting timeframes for Access Seekers and Consumer Advocacy Groups to make submissions and attend meetings and workshops. Where any of the information provided to Access Seekers and Consumer Advocacy Groups becomes outdated, inaccurate, incomplete or misleading in any material respect, or new information is provided, NBN Co will amend the consultation timeframes so that Access Seekers and Consumer Advocacy Groups have a reasonable opportunity to respond.

11.5 Dispute Management

11.5.1 Dispute resolution process in a SFAA

- (a) NBN Co must ~~provide~~ include provisions in any SFAA which have the effect 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 , the selection of a Panel by a Resolution Advisor referred to in clause 11.5.1(a)(i), and the conduct of a Panel Arbitration referred to in clause 11.5.1(a)(ii)~~ include provisions requiring a Resolution Advisor and a Pool to be appointed pursuant to this Special Access Undertaking and have the powers and obligations conferred by, and perform the functions described in, this Special Access Undertaking.
- (c) A SFAA must include an acknowledgment that 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
- (i) ~~—————~~ ; and
- (ii) ~~a Panel Member will perform his or her function in relation to a Dispute in accordance with the Approved Pool Terms and the Approved Panel Terms, including the requirements to comply with the Dispute Management Rules and to have regard to any Approved Dispute Guideline.~~

11.5.2 Definitions

In this clause 11.5, the terms **Dispute**, **Dispute Management Rules**, **Panel**, **Panel Arbitration**, ~~**Panel Member Pool**~~ and **Resolution Advisor** each have the meaning given in Annexure 1 (Dispute Resolution) to this Schedule 1~~1~~.

Annexure 1 Dispute Resolution

Part A Appointments

1 Appointment of Resolution Advisor

Drafting Notes: These changes are designed to ensure appointment is without bias: (a) Any unequal involvement between NBN Co and Access Seekers in the appointment of neutrals involved in dispute resolution has the potential to undermine the dispute resolution process, (b) the ACCC should appoint the Resolution Advisor and the Resolution Advisor should appoint Pool Members and draft the Dispute Resolution Guidelines and (c) terms of appointment should be standard and included as an appendix - this avoids the need for consultation / decision-making and the potential for disputes about the terms of appointment.

1.1 ~~Approval Appointment~~ of the Resolution Advisor ~~and terms of appointment~~

- (a) Within 10 Business Days after the SAU Commencement Date, or ~~in accordance with when required by~~ clause 4.35.4, NBN Co must:
- (i) seek ~~views nominations~~ from Customers and Access Seekers ~~on:~~
 - ~~(A) — of 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 nominations~~, which must be at least 15 Business Days after NBN Co requested ~~views nominations~~ under clause 1.1(a)(i).
- ~~(b) Customers and Access Seekers may, before the deadline specified in clause 1.1(a)(ii), give NBN Co nominations of candidate(s) to act as Resolution Advisor, with each such nomination being deemed valid only if it is accompanied by a document signed by the candidate consenting to act as Resolution Advisor on the terms in Appendix 1 to this Annexure 1.~~
- ~~(b)(c) NBN Co must forward to the ACCC all nominations received under 1.1(b), together with any nominations it may wish to make on its own behalf, having regard to submissions received from Customers and Access Seekers pursuant to clause 1.1(a), as soon as reasonably practicable and in any event within 10 Business Days following the deadline for submissions under clause 1.1(a) above:~~
- ~~(i) — nominate one or more Proposed Resolution Advisor(s) to the ACCC by providing the ACCC with a notice in the form prescribed in~~

Appendix 1 to this Annexure 1 (~~Resolution Advisor Nomination Notice~~); and

~~(ii) — attach the proposed terms of appointment of the Resolution Advisor(s) to the Resolution Advisor Nomination Notice.~~

~~(c)(d) After receiving a Resolution Advisor Nomination Notice, nominations under clause 1.1(b), the ACCC must decide whether to decide which of the persons nominated will be the Resolution Advisor, or~~

~~(i) — approve the appointment of the Proposed Resolution Advisor(s) named in the Resolution Advisor Nomination Notice as a Resolution Advisor, which includes approving the terms of appointment attached to the Resolution Advisor Nomination Notice; or~~

~~(ii) not approve the Proposed Resolution Advisor(s) named in the Resolution Advisor Nomination Notice and, at the ACCC's absolute discretion after consultation with NBN Co, Customers and Access Seekers:~~

~~(A) — identify and approve one or more persons as a Resolution Advisor (which may be one or more of the Proposed Resolution Advisor(s)); and/or~~

~~(B) — approve the proposed terms of appointment of the Resolution Advisor subject to any variations required by the ACCC.~~

~~(d)(e) Without limiting the ACCC's discretion, in making the decision in clause 1.1(d), 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 will be able to acquire such an understanding quickly; and~~

~~(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)(f)~~ As soon as reasonably practicable, and in any event within 60 Business Days (or such longer period notified by the ACCC to NBN Co) after receiving a ~~Resolution Advisor Nomination Notice~~ nominations under clause 1.1(b), the ACCC must notify NBN Co in writing of its decisions made pursuant to clause ~~1.1(d)1.1(e)~~.

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(f)1.1(e)~~, appoint the person(s) approved by the ACCC pursuant to clause ~~1.1(d)1.1(c)(i) or clause 1.1(c)(iii)(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) in Appendix 1 to this Annexure 1~~; and
 - (ii) forward to the ACCC a copy of the executed terms of appointment within 5 Business Days of its execution.
- (b) A Resolution Advisor will be appointed for a period not exceeding 5 years.
- (c) A Resolution Advisor may be re-appointed for one or more successive terms, provided that any re-appointment is undertaken in accordance with the process set out in this clause 1.

1.3 Obligations and powers of the Resolution Advisor

- (a) ~~A Resolution Advisor will have the powers and obligations set out in this Special Access Undertaking and in the terms of appointment of the Resolution Advisor. NBN Co must procure that the terms of appointment of a Resolution Advisor include obligations on the Resolution Advisor to maintain his or her independence from each of NBN Co and Customers, including by not forming or, where an Access Seeker becomes a Customer, maintaining any relationship of the types described in clause 2(c) of Appendix 1 to this Annexure 1 (with the exception of relationships described in clause 2(d) of Appendix 1 to this Annexure 1) with either NBN Co or a Customer for the period of his or her appointment as Resolution Advisor.~~
- (b) ~~NBN Co must include in the terms of appointment of a Resolution Advisor an obligation on the Resolution Advisor to:~~

- ~~(i)~~ follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Resolution Advisor under this Annexure 1 to Schedule 11;
- ~~(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)~~(b)- NBN Co must:

- (i) comply with the terms of appointment of the Resolution Advisor, including as to payment of the Resolution Advisor;

Drafting Notes: Enforcement of terms by NBN Co is not required because the Resolution Advisor can be removed by the ACCC for non-compliance with terms of appointment. It may compromise independence of the Resolution Advisor if NBN Co can unilaterally enforce terms.

- ~~(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)~~(ii) not interfere with, or otherwise hinder, a Resolution Advisor's ability to carry out his or her functions as a Resolution Advisor; and
- ~~(iv)~~(iii) 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

Drafting Notes: It will not be necessary to publish terms of appointment. They should be standard and be included in the SAU.

- ~~(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~~The Resolution Advisor will establish and maintain a pool of persons from which members of a Panel may be selected (each a **Pool Member**, together the **Pool**).
- (b) Within 10 Business Days of the ~~SAU Commencement Date, NBN Co~~appointment of the first Resolution Advisor, the Resolution Advisor must:
 - (i) seek views from NBN Co, Customers and Access Seekers on the candidate(s) for appointment to the Pool; and
 - (ii) notify NBN Co, 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~~The Resolution Advisor 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), and accompanied by a document signed by the candidate consenting to act as Resolution Advisor on the terms in Appendix 1 to this Annexure 1.
- (d) In selecting a person for nomination under clause 2.1(c), ~~NBN Co~~the Resolution Advisor will have regard to the:
 - (i) submissions in response to ~~NBN Co's~~the Resolution Advisor's request pursuant to clause 2.1(b)(i) received from NBN Co, Customers and Access Seekers prior to the deadline for submissions notified to the same by ~~NBN Co~~the Resolution Advisor;
 - (ii) need for the Pool to comprise members who have a reasonably diverse and balanced range of professional skills and experience, whether commercial, technical, operational or legal;
 - (iii) need for the Pool to comprise a sufficient number of members to enable arbitrations by a Panel to proceed in the manner contemplated in Access Agreements;
 - (iv) need for the Pool to contain a reasonable proportion of Legal Practitioners or Dispute Resolution Practitioners in its membership;
 - (v) need for Pool candidates to have an understanding of the Australian telecommunications industry (or be able to acquire such an understanding quickly); and

- (vi) experience of Pool candidates in dispute resolution procedures, with more weight given to candidates with over 10 years experience.
- (e) The ACCC must, as soon as reasonably practicable and in and event within 60 Business Days (or such longer period notified by the ACCC to ~~NBN Co~~the Resolution Advisor) following receipt of a notice of nomination under clause 2.1(c), approve or reject the selection of persons nominated by ~~the NBN Co~~the Resolution Advisor in that notice to be members of the Pool.
- (f) ~~NBN Co~~The Resolution Advisor must appoint to the Pool the persons approved by the ACCC under clause 2.1(e) on the ~~Approved Pool Terms~~terms in Appendix 1 to this Annexure 1.
- (g) A Pool Member may be appointed for a period not exceeding 5 years.
- (h) A Pool Member may be re-appointed for one or more successive terms provided that any re-appointment is undertaken in accordance with the process set out in this clause 2.

~~2.2~~ **Standard terms of appointment of Pool Members**

~~(a)~~ **NBN Co must:**

- ~~(i)~~ **within 10 Business Days of the SAU Commencement Date seek views from Customers and Access Seekers on the standard terms of appointment of Pool Members;**
- ~~(ii)~~ **otherwise from time to time seek views from Customers and Access Seekers on any variations to any Approved Pool Terms published pursuant to clause 2.2(e); and**
- ~~(iii)~~ **notify Customers and Access Seekers of the deadline for submissions, which must be at least 15 Business Days after NBN Co 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 10 Business Days following the deadline for submissions, prepare and submit to the ACCC a draft standard terms of appointment for Pool Members or proposed variations to any published Approved Pool Terms (each the **Proposed Pool Terms**); and**
- ~~(iii)~~ **publish the Proposed Pool Terms on NBN Co's website, subject to redacting any personal or confidential information.**

- (c) ~~After receiving the Proposed Pool Terms, the ACCC must as soon as reasonably practicable and in any event within 60 Business Days (or such longer period notified by the ACCC to NBN Co), decide whether the ACCC approves the Proposed Pool Terms in the form submitted to it or subject to variation in the form required by the ACCC (**Approved Pool Terms**) and notify NBN Co of its decision.~~
- (d) ~~The Approved Pool Terms must:~~
- ~~(i) impose an obligation on each Pool Member to comply with his or her terms of appointment to the Pool;~~
 - ~~(ii) impose an obligation on each Pool Member to comply with the responsibilities of an arbitrator under the CAA in respect to his or her functions as a Pool Member;~~
 - ~~(iii) impose an obligation to comply with any relevant Dispute Management Rules; and~~
 - ~~(iv) provide for NBN Co to take all steps reasonably necessary to enforce any material non-compliance by a Pool Member with the terms of his or her appointment.~~
- (e) ~~NBN Co must publish the current Approved Pool Terms on NBN Co's website (subject to redacting any personal or confidential information).~~

~~3~~ **Panel**

~~3.1~~ **Standard Panel Terms of Appointment**

- (a) ~~NBN Co must:~~
- ~~(i) within 10 Business Days of the SAU Commencement Date, seek views from Customers and Access Seekers on the standard terms of appointment members of a Panel (**Panel Members**);~~
 - ~~(ii) otherwise from time to time seek views from Customers and Access Seekers on any variations to any Approved Panel Terms published pursuant to clause 3.1(f), save that this variation procedure shall not apply to variations made pursuant to clause 3.1(e); and~~
 - ~~(iii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 15 Business Days after NBN Co requests their respective views under clause 3.1(a)(i) or 3.1(a)(iii).~~
- (b) ~~NBN Co must:~~

- ~~(i) have regard to submissions received from Customers and Access Seekers prior to the deadline for submissions notified to the same by NBN Co pursuant to clause 3.1(a);~~
 - ~~(ii) as soon as reasonably practicable and in any event within 10 Business Days following the deadline for submissions, prepare and submit to the ACCC a draft standard terms of appointment for Panel Members or proposed variations to any published Approved Panel Terms (each the **Proposed Panel Terms**); and~~
 - ~~(iii) publish the Proposed Panel Terms on NBN Co's website, subject to redacting any confidential information.~~
- ~~(c) After receiving the Proposed Panel Terms, the ACCC must as soon as reasonably practicable and in any event within 60 Business Days (or such longer period notified by the ACCC to NBN Co), decide whether the ACCC approves the Proposed Panel Terms in the form submitted to it or subject to variation in the form required by the ACCC (**Approved Panel Terms**) and notify NBN Co of its decision.~~
- ~~(d) The Approved Panel Terms must include a requirement that the Panel Member:~~
- ~~(i) comply with his or her terms of appointment to the Panel;~~
 - ~~(ii) comply with any Dispute Management Rules; and~~
 - ~~(iii) have regard to any Approved Dispute Guidelines published in accordance with clause 6;~~
- ~~and provide for NBN Co to take all steps reasonably necessary to enforce any material non-compliance by a Panel Member with the terms of his or her appointment.~~
- ~~(e) The Approved Panel Terms may provide for the Resolution Advisor prior to engagement of the Panel Members by the parties to the Dispute, or for the Panel following confirmation of its composition, to:~~
- ~~(i) insert into the Approved Panel Terms the details of the Dispute; and~~
 - ~~(ii) specify in the Approved Panel Terms any special procedural steps considered by the Resolution Advisor or the Panel in its reasonable belief to aid the efficient resolution of the Dispute; and/or~~
 - ~~(iii) vary the Approved Panel Terms where the parties to the Dispute and Panel Members agree to the variation.~~
- ~~(f) NBN Co must publish the current Approved Panel Terms on NBN Co's website (subject to redacting any personal or confidential information).~~

43 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 B Termination of appointments

54 Termination of appointment of Resolution Advisor or Pool Member

5.14.1 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.

5.24.2 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)~~4.2(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)~~4.2(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)~~4.2(a) or ~~5.2(b)~~4.2(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)~~4.2(a); or
 - (ii) direct NBN Co (on its own initiative or following a proposal submitted by a Customer under clause ~~4~~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 ~~of~~ 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)~~4.2(a) or ~~5.2(b)~~4.2(b), consider that proposal and notify the party making the proposal whether the ACCC will exercise its discretion under clause ~~5.2(d)~~4.2(d).

- (f) NBN Co must comply with any direction given by the ACCC pursuant to clause 45.2(d).

Drafting Notes: Provisions for termination of a Panel Member have been removed. This can be effected in accordance with the CAA.

~~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.~~

5.44.3 Replacement of a Resolution Advisor

- (a) NBN Co must:
- (i) within 3 Business Days of receiving a:
- (A) resignation notice from a Resolution Advisor; or
- (B) receiving a notice from the ACCC of the ACCC's approval under clause 54.2(d)(i) or a direction pursuant to clause 54.2(d)(ii); or
- (ii) at least one calendar month prior to expiry of the term of appointment of a Resolution Advisor,

appoint a new Resolution Advisor in accordance with the procedure set out in clause 1 of this Annexure 1 to Schedule 11.

Part C Other approvals

65 Dispute Guidelines

- (a) Within 10 Business Days of the appointment of the SAU Commencement Date first Resolution Advisor and otherwise from time to time, the NBN Co Resolution Advisor must seek views from:

- (i) NBN Co;
- ~~(i)(ii)~~ Customers; and
- ~~(i)(iii)~~ 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~~The Resolution Advisor must:
 - (i) have regard to submissions received from NBN Co, Customers, and Access Seekers, ~~Resolution Advisor(s) and Pool Members (where applicable)~~ prior to the deadline for submissions notified to the same by ~~NBN Co~~The Resolution Advisor under clause ~~6 5(a)~~6 5(a);
 - (ii) as soon as reasonably practicable and in any event within 20 Business Days following the deadline for submissions notified by ~~NBN Co~~The Resolution Advisor under clause ~~6 5(a)~~6 5(a), prepare and submit to the ACCC a draft of the proposed guidelines to be applied to the consideration of Disputes (**Proposed Dispute Guideline**); and
 - (iii) publish the Proposed Dispute Guideline on NBN Co's website, subject to redacting any personal or confidential information.
- (c) After receiving the Proposed Dispute Guideline, the ACCC must, as soon as practicable and in any event within 60 Business Days (or such longer period notified by the ACCC to ~~NBN Co~~The Resolution Advisor), 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~~The Resolution Advisor of its decision.
- (d) NBN Co must publish the Approved Dispute Guideline on NBN Co's website, subject to redacting any personal or confidential information.

76 Directions to Resolution Advisor

The ACCC may give directions to a Resolution Advisor from time to time in relation to the performance of his or her functions as a Resolution Advisor under this Annexure 1 to Schedule 11.

Part D Notices

87 Giving Notices

- (a) Any notice or communication to the ACCC made pursuant to this Schedule 11 must be sent to:

Email address: [insert]

Attention: [insert]

With a copy sent to: [insert]

- (b) Any notice or communication to NBN Co made pursuant to this Schedule 11 must be sent to:

	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.

98 Definitions and Interpretation

98.1 Definitions

~~Approved Panel Terms~~ means the standard terms of appointment of Panel Members approved by the ACCC from time to time pursuant to clause 3 of this Annexure 1 to Schedule 11 and published on the NBN Co website. _____

~~Approved Pool Terms~~ mean the standard terms of appointment of Pool Members approved by the ACCC from time to time pursuant to clause 2.2 of this Annexure 1 to Schedule 11 and published on the NBN Co website. _____

Approved Dispute Guideline has the meaning given to that term in clause 5(c) of this Annexure 1.

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

- (a) the amount of an invoice payable by the Access Seeker under an Access Agreement; or
- (b) the amount of any Discount, Credit or Rebate provided by NBN Co under an Access Agreement.

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

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

Dispute Management Rules means the provisions relating to dispute resolution in an Access Agreement that are relevant to the Dispute.

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

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

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

Panel means a panel of three arbitrators, or such other number of arbitrators as may be agreed by the parties to a Dispute, constituted by the Resolution Advisor to resolve a Dispute.

Panel Arbitration means an arbitration conducted by the Panel.

~~**Panel Member** has the meaning given to that term in clause 3.1(a)(i) of this Annexure 1 to Schedule 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 of this Annexure 1 to this Schedule 1I.

~~**Proposed Dispute Guideline** has the meaning given to that term in clause 5(b)(ii) of this Annexure 1.~~

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.

98.2 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; and

~~(b) reference to a paragraph is a reference to a paragraph of Appendix 2 of this Annexure 1 to Schedule 1I; and~~

~~(c)(b)~~ capitalised terms:

- (i) if defined in this clause 98, have the meaning set out in clause 98; or
- (ii) if not defined in clause 98, have the same meaning as set out in Attachment C (Dictionary) of this Special Access Undertaking.

Appendix 1—Resolution Advisor Nomination Form

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

Method of Delivery to the ACCC

The completed nomination form, along with all additional information requested by the ACCC is to be provided to the ACCC with the subject line “Resolution Advisor Nomination Form—NBN Co Special Access Undertaking” to the below addresses:

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

With an email copies sent to:

{_____}; and
Attention: {_____}

Information Required

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

1. Proposed Resolution Advisor Details:

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

2. A submission containing the following information:

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

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

~~3. A document outlining the terms of appointment of the Proposed Resolution Advisor.~~

Appendix 1 Standard Form Terms of Appointment of Resolution Advisor

PARTIES

NBN Co Limited (NBN Co)

[] **(Resolution Advisor)**

RECITALS

1. The Australian Competition and Consumer Commission (ACCC) accepted NBN Co's Special Access Undertaking on [date] 2013 (the SAU).
2. NBN Co has also entered into Standard Form Access Agreement based access agreements (SFAA-based access agreement) with Customers.
3. The SAU provides for the appointment of a person to act as a dispute resolution advisor, and the SAU and the SFAA-based access agreements confer upon that person certain powers, obligations and functions in connection with certain disputes arising between NBN Co on the one hand and Customers on the other.
4. Resolution Advisor has been appointed by the ACCC under the SAU to be the dispute resolution advisor on the terms of this agreement.

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this agreement:

Dispute means any dispute between NBN Co and a Customer arising under or relating to an SFAA-based access agreement.

Fee means [set out remuneration].

Further Term means any term of appointment of the Resolution Advisor following the expiry of the Initial Term.

GST means:

(a) the same as in the GST Law; and

(b) any other goods and services tax, or any Tax applying to this transaction in a similar way.

GST Law means the same as "GST law" means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Initial Term means the period of [five] years starting on the date of this agreement.

Reimbursable Costs means any reasonable out of pocket expenses, disbursements or other third party costs reasonably incurred by the Resolution Advisor which are directly associated with the performance of his/her functions under this agreement, the SAU or an SFAA-based access agreement.

1.2 Terms defined in the SAU

Terms defined in the SAU have the same meaning when used in this agreement.

1.3 Rules for interpreting this agreement

(a) Headings are for convenience only and do not affect interpretation. The following rules must be applied in interpreting this agreement except where the context makes it clear that a rule is not intended to apply.

(b) A reference to:

(i) legislation includes all subordinate legislation, declarations, instruments, codes and other ministerial determinations made under that legislation;

(ii) a legislative provision or legislation is to that provision or legislation as amended, re-enacted or replaced;

(iii) a document, deed or agreement, or a provision of a document, deed or agreement, is to that document, deed, agreement or provision as amended, supplemented, replaced or novated;

(iv) a party to this deed or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;

(v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identify, and any executor, administrator or successor in law of the person; and

(vi) anything (including a right, obligation or concept) includes each part of it.

(c) If an authority, institution, association or body referred to in this agreement is reconstituted, renamed or replaced, or if its powers or functions are transferred to another organisation, the deed refers to that new organisation.

- (d) A singular word includes the plural, and vice versa.
- (e) A word which suggests one gender includes the other genders.
- (f) If a word is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (g) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (h) A reference to time is to local time in Sydney.
- (i) Terms defined in the GST Law have the same meaning in this agreement unless the context otherwise requires.

2. APPOINTMENT OF RESOLUTION ADVISER

2.1 Appointment

Resolution Advisor agrees to:

- (a) his/her appointment under the SAU to be the Resolution Advisor; and
- (b) perform his/her role as Resolution Advisor in accordance with the SAU, each applicable SFAA-based access agreement and this agreement.

3. TERM

3.1 Initial Term

This agreement will commence on the date of this agreement and will expire at the conclusion of the Initial Term unless it is renewed or terminated earlier in accordance with this agreement.

3.2 Further Term

At the expiry of the Initial Term (and the expiry of each subsequent term), this agreement may, in accordance with the SAU, be renewed for a further term.

3.3 Termination

This agreement will terminate upon the termination of Resolution Advisor's appointment under the SAU.

4. CONFLICTS OF INTEREST

4.1 Warranty

Resolution Advisor warrants that:

(a) as at the date of this agreement, Resolution Advisor has no:

(i) conflict of interest;

(ii) conflict of duty; or

(iii) knowledge of any other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias, impartiality or a lack of independence; and

(b) no conflict of interest is likely to arise in the performance of the Resolution Advisor's obligations and duties under the SAU, an SFAA-based access agreement or this agreement.

4.2 Obligation to keep informed and prevent conflict of interest

Resolution Advisor must, at all times during the operation of this agreement:

(a) use his/her best endeavours to keep himself/herself informed of any potential conflict of interest or duty; and

(b) take all necessary steps to prevent and mitigate the effects of any conflict of interest or duty.

4.3 Notification of conflict of interest

If at any time during the operation of this agreement:

(a) Resolution Advisor becomes aware that Resolution Advisor has or is likely to have:

(i) an interest (whether direct or indirect) in the outcome of a Dispute;

(ii) a conflict of interest; or

(iii) a conflict of duty;

(b) Resolution Advisor becomes aware of any other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias, or a lack of independence or impartiality; or

(c) a conflict of interest is likely to arise in the performance of Resolution Advisor's obligations and duties under this agreement,

Resolution Advisor must immediately notify the ACCC of that fact, matter or circumstance and make full disclosure of all relevant information relating to that fact, matter or circumstance.

5. REMUNERATION

(a) NBN Co must pay:

(i) the Fee; and

(ii) any Reimbursable Costs,

associated with Resolution Advisor's performance of his/her functions, within 30 days after receipt by NBN Co of a tax invoice from Resolution Advisor.

(b) Resolution Advisor will issue valid tax invoices to NBN Co in amounts equal to the Fee and Reimbursable Costs, and will upon request by NBN Co provide reasonable evidence of any Reimbursable Costs incurred.

6. PERFORMANCE OF DUTIES

(a) Resolution Advisor is not an employee of NBN Co, and in the exercise of his/her functions:

(i) must act independently and impartially; and

(ii) is not subject to the supervision or direction of NBN Co.

(b) Resolution Advisor must, in performing his/her functions:

(i) follow any direction given to him/her by the ACCC in relation to the performance of his/her functions as Resolution Advisor;

- (ii) comply with any relevant Dispute Management Rules;
- (iii) comply with the terms of the SAU and any applicable SFAA-based access agreement;
- (iv) have regard to any Approved Dispute Guidelines; and
- (v) immediately report any issues that arise in relation to the performance of his/her functions as Resolution Advisor to the ACCC.

7. GST

- (a) Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in clauses concerning GST.
- (b) If a party makes a supply to another party under or in connection with this agreement, then (unless the consideration is expressly stated to be inclusive of GST) the consideration for that supply is exclusive of GST, and in addition to paying or providing that consideration the recipient must:
 - (i) pay to the supplier an amount equal to the GST for which the supplier is liable on that supply, without deduction or set off of any other amount; and
 - (ii) make that payment as and when the consideration or part of it must be paid or provided, except that the recipient need not pay the GST amount unless the supplier has issued to the recipient a tax invoice (or an adjustment note) for that supply.
- (c) If an adjustment event arises in respect of a taxable supply made by the supplier, the GST amount payable by the recipient under clause 5 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier, or by the supplier to the recipient.
- (d) If a party provides a payment for or any satisfaction of a claim or a right to claim under or in connection with this agreement (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty or for indemnity or for reimbursement of any expense) that gives rise to a liability for GST, the provider must pay, and indemnify the recipient on demand against, the amount of that GST in accordance with clause 5.

(e) If a party has a claim under or in connection with this agreement for a cost on which that party must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which that party (or the representative member for a GST group of which that party is a member) is entitled to an input tax credit).

(f) If a party has a claim under or in connection with this agreement whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

8. LIABILITY OF RESOLUTION ADVISOR

Resolution Advisor will not be liable to NBN Co, a Customer or an Access Seeker for any liability, claim, loss or damage arising out of, or in any way in connection with the appointment of Resolution Advisor or the performance of his/her functions and the exercise of his/her powers, except in the case of fraud.

9. GENERAL

9.1 Governing law

(a) This deed is governed by the laws of the State of New South Wales.

(b) Each party submits to the exclusive jurisdiction of the courts of that State, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed.

9.2 Counterparts

This agreement may be executed in counterparts.

Annexure 6: Initial Products that should not be subject to the product development commitments

Product Component	Product Feature	Reason for removal from Attachment D (Initial Products)
Connectivity Virtual Circuit	TC-4: 700, 800, 900, 1000 Mbps	NBN Co has only recently indicated in the July 2013 Version of the Initial Product Roadmap (refer to http://www.nbnco.com.au/content/dam/nbnco/documents/initial-roadmap.pdf) that it intends to introduce 600Mbps to 2Gbps in 2013 and 3Gbps to 10 Gbps in 2015. Therefore, further customer engagement is required in respect of speeds greater than 600 Mbps.
	TC-2: 50, 100, 150, 200, 250, 300, 400, 500, 600, 700, 800, 900, 1000 Mbps	TC2 & TC3: NBN Co has only introduced the profiles for 600Mbps to 100Mbps in July 2013. Telstra notes that the industry is yet to see detailed product technical specifications on any TC2 or TC3. If NBN Co is in the process of building and testing these product features then it should be able to produce technical specifications for TC2 & TC3. As such technical specifications have not been made available, TC-2 and TC-3 should not be included in Attachment D (Initial Products).
	TC-3: 50, 100, 150, 200, 250, 300, 400, 500, 600, 700, 800, 900, 1000 Mbps	
Access Virtual Circuit	Additional Enhanced Service Levels: 24/7 fault rectification with 12, 8, 6, & 4 hour restoration	While NBN Co distributed a paper for industry comment, it has not produced a paper detailing what will be introduced and the roadmap does not have any planned implementation dates. Additionally, it is not known what the exact timeframes or prices will be in respect of this product feature. Therefore, further customer engagement is required in respect of Additional Enhanced Service Levels.
User Network Interface	Business Grade NTD	While the concept of a Business Grade NTD has been raised by NBN Co, NBN Co has not provided any discussion papers or consulted with industry in respect of this product. Additionally, there has not been any pricing set, along with terms and conditions associated, for the Business Grade NTD. Accordingly, further customer engagement is required and Business Grade NTD should not be included in Attachment D (Initial Products).