



**Final Access Determination No. 1 of 2011 (LSS)**  
**Final Access Determination No. 2 of 2011 (LCS)**  
**Final Access Determination No. 3 of 2011 (PSTN OA)**  
**Final Access Determination No. 4 of 2011 (PSTN TA)**  
**Final Access Determination No. 5 of 2011 (ULLS)**  
**Final Access Determination No. 6 of 2011 (WLR)**

*Competition and Consumer Act 2010*

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The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes these final access determinations under section 152BC of the *Competition and Consumer Act 2010*.

Date of decision: 20 July 2011

[As varied: 14 December 2011]

[Variations commenced: 17 December 2011]

## 1. Application

1.1 This instrument sets out final access determinations (FADs) in respect of the declared services ('relevant declared service') specified in the table.

Declared service	Expiry of declaration	Title of final access determination	Applicable schedules
Line Sharing Service ('LSS')	31 July 2014	Final Access Determination No. 1 of 2011 (LSS)	1, 2, 8, 9, 10, 11, 12, 13, 14, 16
Local Carriage Service ('LCS')	31 July 2014	Final Access Determination No. 2 of 2011 (LCS)	1, 3, 8, 9, 10, 11, 12, 13, 14
Domestic PSTN Originating Access Service ('PSTN OA')	31 July 2014	Final Access Determination No. 3 of 2011 (PSTN OA)	1, 4, 8, 9, 10, 11, 12, 13, 14
Domestic PSTN Terminating Access Service ('PSTN TA')	31 July 2014	Final Access Determination No. 4 of 2011 (PSTN TA)	1, 5, 8, 9, 10, 11, 12, 13, 14
Unconditioned Local Loop Service ('ULLS')	31 July 2014	Final Access Determination No. 5 of 2011 (ULLS)	1, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16
Wholesale Line Rental Service ('WLR')	31 July 2014	Final Access Determination No. 6 of 2011 (WLR)	1, 7, 8, 9, 10, 11, 12, 13, 14

1.2 These FADs do not apply to services provided by a carrier or carriage service provider over the National Broadband Network.

1.3 The prices in these FADs are exclusive of tax payable under the *Utilities (Network Facilities Tax) Act 2006* (ACT).

1.4 The prices in these FADs are exclusive of Goods and Services Tax (GST).

Note:

- From 1 January 2011:
  - a carrier licence held by a carrier is subject to a condition that the carrier must comply with any access determinations that are applicable to the carrier; and
  - a carriage service provider must comply with any access determinations that are applicable to the provider.
- An Access Provider and Access Seeker may enter into an Access Agreement relating to a declared service. Access Agreements prevail over inconsistent access determinations: section 152BCC of the *Competition and Consumer Act 2010*.
- The declared services that are the subject of these final access determinations are commonly referred to as the 'fixed line services'.

## **2. Definitions and interpretation**

- 2.1 Schedule 1 applies to the interpretation of this instrument. The Schedules form part of this instrument.

## **3. Commencement and duration**

- 3.1 These final access determinations commence on 1 January 2011.
- 3.2 These final access determinations remain in force up until and including 30 June 2014.

Note:

1. An access determination may come into force on a day which is earlier than the day the determination is made: subsections 152BCF(1), 152BCF(2) and 152BCF(2A) of the *Competition and Consumer Act 2010*.
2. These final access determinations revoke the interim access determinations for these declared services, made on 2 March 2011 by the operation of subsection 152BCF(9A) of the *Competition and Consumer Act 2010*.

## **4. Terms and conditions of access**

- 4.1 If a carrier or carriage service provider is required to comply with any or all of the standard access obligations in respect of a relevant declared service, the carrier or carriage service provider must comply with those obligations on the terms and conditions set out in this clause 4.

Note: The terms and conditions in a final access determination apply only to those terms and conditions where terms and conditions on that matter in an Access Agreement cannot be reached, no special access undertaking is in operation setting out terms and conditions on that matter and no binding rules of conduct have been made setting out terms and conditions on that matter: section 152AY of the *Competition and Consumer Act 2010*.

- 4.2 If the carrier or carriage service provider is required to supply the relevant declared service to a service provider, the carrier or carriage service provider must supply the service:
- (a) at the price specified in the applicable schedule set out in the table below;  
and

Declared service	Applicable schedule
LSS	2
LCS	3
PSTN OA	4
PSTN TA	5
ULLS	6
WLR	7

- (b) on the non-price terms and conditions specified in the applicable schedules set out in the table below.

Declared service	Applicable schedules
LSS	8, 9, 10, 11, 12, 13, 14, 16
LCS	8, 9, 10, 11, 12, 13, 14
PSTN OA	8, 9, 10, 11, 12, 13, 14
PSTN TA	8, 9, 10, 11, 12, 13, 14
ULLS	8, 9, 10, 11, 12, 13, 14, 15, 16
WLR	8, 9, 10, 11, 12, 13, 14

4.3 [Deleted]

5. [Deleted]

## 6. Fixed principles provisions

6.1 This clause 6 sets out fixed principles provisions that apply to the six FADs contained in this document.

6.2 The six FADs contained in this document must not be varied so as to alter or remove any of the fixed principles provisions in this clause 6 except when the ACCC is satisfied that:

- (a) there is a manifest and material error in these fixed principles provisions;
- (b) any information on which these fixed principles provisions was based was false or misleading in a material respect; or
- (c) such amendment or adjustment is necessary or desirable to avoid an unintended consequence of these fixed principles provisions.

- 6.3 The below fixed principles provisions come into force on 1 July 2011.
- 6.4 The nominal termination date for the fixed principles provisions is 30 June 2021.
- 6.5 The opening regulatory asset base (RAB) for the calculation of prices for the relevant declared fixed line services is \$15,515,621,288 as at 1 July 2011 (in nominal terms).
- 6.6 The opening tax asset value for the calculation of prices for the relevant declared fixed line services is \$10,144,121,785 as at 1 July 2011 (in nominal terms).
- 6.7 Roll-forward mechanism
- (a) The RAB is to be rolled forward each year according to the formula below:
- $$RAB_{t+1} = RAB_t + capex_t - depreciation_t - asset\ disposals_t$$
- where  $RAB_{t+1}$  = opening RAB for the next regulatory year  
 $RAB_t$  = opening RAB for the current year  
 $capex_t$  = forecast capital expenditure during the current year  
 $depreciation_t$  = regulatory depreciation during the current year  
 $asset\ disposals_t$  = asset disposals during the current year
- (b) Land asset values will be indexed by the Consumer Price Index (CPI) where it is available or by the forecast for the CPI used in the Fixed Line Services Model (FLSM) where actual CPI is not available. This will account for appreciation over time in land values.
- (c) To roll forward RAB values in nominal terms, any variables that are specified in real terms will be indexed by the actual CPI where it is available or by the forecast for the CPI used in the FLSM where the actual CPI is not available.
- (d) Any variables that are specified in nominal terms will not be indexed, with the exception of land values as specified above.
- (e) In these fixed principles provisions ‘the FLSM’ means the FLSM as it may be varied from time to time or similar model used by the ACCC for the calculation of prices for the relevant declared services.
- 6.8 The annual revenue requirement for each regulatory period will comprise:
- (a) a return on the RAB calculated by multiplying the Weighted Average Cost of Capital (WACC) by the opening RAB for the regulatory year;
- (b) a return of the RAB, that is regulatory depreciation, for that regulatory year;
- (c) operating expenditure forecast to be incurred in that regulatory year; and
- (d) an allowance for tax liabilities.
- 6.9 Under a building block model (BBM) approach, forecast operating expenditures should reflect prudent and efficient costs. The following matters are relevant to whether forecast operating expenditures reflect prudent and efficient costs:

- (a) the access provider's level of operating expenditure in the previous regulatory period;
  - (b) reasons for proposed changes to operating expenditure from one regulatory period to the next regulatory period;
  - (c) any relevant regulatory obligations, or changes to such obligations, applicable to providing the relevant declared fixed line services; and
  - (d) any other matters relevant to whether forecast operating expenditures reflect prudent and efficient costs.
- 6.10 Under a BBM approach, forecast capital expenditures should reflect prudent and efficient costs. The following matters are relevant to whether capital expenditure forecasts reflect prudent and efficient costs:
- (a) the access provider's level of capital expenditure in the previous regulatory period;
  - (b) reasons for proposed changes to capital expenditure from one regulatory period to the next regulatory period;
  - (c) whether the access provider's asset management and planning framework reflects best practice;
  - (d) any relevant regulatory obligations, or changes to such obligations, applicable to providing the relevant declared fixed line services; and
  - (e) any other matters relevant to whether forecast capital expenditures reflect prudent and efficient costs.
- 6.11 Demand forecasts should:
- (a) be based on an appropriate forecasting methodology;
  - (b) be based on reasonable assumptions about the key drivers of demand;
  - (c) be determined utilising the best available information before the ACCC, including historical data that can identify trends in demand; and
  - (d) be determined taking into account current demand and economic conditions.
- 6.12 Weighted average cost of capital
- (a) A vanilla WACC is used to estimate the return on capital.
  - (b) The cost of equity is estimated using the Capital Asset Pricing Model.
- 6.13 Tax liabilities
- (a) The tax rate used in estimating tax liabilities in the FLSM will be set equal to the corporate tax rate specified in subsection 23(2) of the *Income Tax Rates Act 1986* (Cth) as amended from time to time.
- 6.14 Cost allocation factors
- (a) The allocation of the costs of operating the PSTN should reflect the relative usage of the network by various services.
  - (b) Direct costs should be attributed to the service to which they relate.

The cost allocation factors for shared costs should reflect causal relationships between supplying services and incurring costs.

- (c) No cost should be allocated more than once to any service
  - (d) The determination of cost allocation factors should reflect the principles in 6.14 (a) – (c) above except where reliable information is not available to support the application of the principles.
- 6.15 The matters set out in the fixed principles provisions at clauses 6.7 – 6.14 inclusive are subject to assessment, calculation, implementation and/or application, as relevant, by the ACCC in making interim and final access determinations for the relevant declared services.

## INDEX TO SCHEDULES

Schedule			Page
1		Definitions and interpretation	10
2	Price	LSS	16
3		LCS	18
4		PSTN OA	19
5		PSTN TA	20
6		ULLS	21
7		WLR	24
8		Non-price	Billing and notifications
9	Creditworthiness and security		30
10	General dispute resolution procedures		33
11	Confidentiality provisions		37
12	Communications with end users		47
13	Network modernisation and upgrade provisions		49
14	Suspension and termination		54
15	Changes to operating manuals		59
16	Ordering and provisioning		60



## Schedule 1 – Interpretation & Definitions

### *Interpretation*

In these FADs, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) the words “including” and “include” mean “including, but not limited to”; and
- (c) terms defined in the CCA or the *Telecommunications Act 1997* have the same meaning.

### *Definitions*

**ACCC** means the Australian Competition and Consumer Commission

**Access Agreement** has the same meaning as given to that term in section 152BE of the CCA

**Access Provider** has the same meaning as given to that term in subsection 152AR(2) of the CCA

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

**ACDC** means the Australian Commercial Disputes Centre Limited

**ACDC Guidelines** means the mediation guidelines of the ACDC as specified in clause 10.10 of Schedule 10

**ACMA** means the Australian Communications and Media Authority

**Band** means the geographic classification of exchange service areas (ESAs)

**Band 1** means the following ESAs located in central business districts:

- (a) NSW (City South, Dalley, Haymarket, Pitt, Kent);
- (b) QLD (Charlotte, Edison, Roma Street, Spring Hill);
- (c) South Australia (Flinders, Waymouth);
- (d) Victoria (Batman, Exhibition, Lonsdale); and
- (e) WA (Bulwer, Pier, Wellington)

**Band 2** means an ESA with more than 108.4 services in operation in a square kilometre area at the time this determination is made, which is not a Band 1 ESA

**Band 3** means an ESA with 6.56 or more, but less than 108.4, services in operation in a square kilometre area at the time this determination is made

**Band 4** means an ESA with 6.55 or less services in operation in a square kilometre area at the time this determination is made.

Note: These Band definitions are taken from Annexure A (Key Performance Indicators Operational Document) to Telstra's Service Quality Strategy dated 23 June 2006 (available at [http://telstrawholesale.com//dobusiness/customer-commitment/docs/op\\_sep\\_quality\\_strategy.pdf](http://telstrawholesale.com//dobusiness/customer-commitment/docs/op_sep_quality_strategy.pdf)).

**Billing Dispute** means a dispute relating to a Charge or an invoice issued by the Access Provider

**Billing Dispute Notice** means a notice given pursuant to clause 8.11 in Schedule 8

**Billing Dispute Procedures** means the procedures set out in clauses 8.11 to 8.29 in Schedule 8

**Breach Notice** has the meaning set out in clause 14.5 of Schedule 14

**Business Hours** means 8.00 am to 5.00 pm Monday to Friday, excluding a day which is a gazetted public holiday in the place where the relevant transaction or work is to be performed

**Business Day** means any day other than Saturday or Sunday or a day which is a gazetted public holiday in the place concerned

**Calendar Day** means a day reckoned from midnight to midnight

**CAN** means a customer access network

**Capped Exchange** means an exchange that is included on a list that the Access Provider has published of exchanges that are subject to capacity constraints

**Carriage Service** has the same meaning given to that term in section 7 of the *Telecommunications Act 1997* (Cth)

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

**Charge** means a charge for the supply of a Service

**Common Infrastructure Works** means where an Access Seeker increases the capacity of existing Facilities at an Exchange that could be used by itself and other service providers.

**Complex Service** means any service which is not a fixed service comprising:

- (a) a connection from a carrier or carriage service provider network boundary to the local exchange;
- (b) a telephone number; and

- (c) access to other kinds of telecommunication services which is indicated by dial-tone

**Connect Outstanding process** has the meaning set out in clauses 16.24 and 16.25 of Schedule 16

**Confidential Information** means all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form and whether coming into existence before or after the commencement of this FAD) relating to or developed in connection with or in support of the business of a party (the **first mentioned party**) but does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of this FAD or a breach of any other obligation of confidence in favour of the provider of the Confidential Information or by any other unlawful means of which the acquirer of the confidential information is aware;
- (b) information rightfully received by the other party from a third person without a duty of confidentiality being owed by the other party to the third person, except where the other party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first mentioned party; or
- (c) information which has been independently developed or obtained by the other party

**Coordinated Capital Works Program** means a planned Major Network Modernisation and Upgrade that extends across more than one exchange service area but does not include an Emergency Network Modernisation and Upgrade

**Coordinated Capital Works Program Forecast** has the meaning set out in clause 13.10 of Schedule 13

**Coordinated Capital Works Program Schedule** has the meaning set out in clause 13.14 of Schedule 13

**Disclosing Party** has the meaning set out in clause 11.5 in Schedule 11 of this FAD

**Emergency** means an emergency due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic or war-like action) which:

- (a) endangers or threatens to endanger the safety or health of persons; or
- (b) destroys or damages, or threatens to destroy or damage property,

being an emergency which requires a significant and co-ordinated response

**Emergency Network Modernisation and Upgrade** means a Major Network Modernisation and Upgrade that is required and is reasonably necessary and a proportionate response to address an Emergency

**Equivalent Period of Notice** means a period of notice commencing at the time that the Access Provider has approved and allocated the capital expenditure or otherwise approved and made a decision to commit to a Major Network Modernisation and Upgrade

**ESA** means an exchange service area which is a geographic area generally serviced by a single Exchange

**Exchange** means a building in which telephone switching or other equipment of an Access Provider or Access Seeker has been installed for use in connection with a telecommunications network

[Deleted]

**Expert Committee** means a committee established under clause 10.11 in Schedule 10

**Facility** has the same meaning given to that term in section 7 of the *Telecommunications Act 1997* (Cth)

**FAD** means Final Access Determination

**Fault** means:

- (a) a failure in the normal operation of a Network or in the delivery of a Service; or
- (b) any issue as to the availability or quality of a Service supplied to an end-user via the Access Seeker, notified by the end-user to the Access Seeker's help desk,

that has been reasonably assessed by the Access Provider as being the Access Provider's responsibility to repair

**General Notification** has the meaning set out in clause 13.1

**Independent Auditor** means a person appointed as an independent auditor in accordance with clause 11.11 of Schedule 11

**Individual Notification** has the meaning set out in clause 13.1 of Schedule 13

**Initiating Notice** has the meaning as set out in clause 10.11 of Schedule 10

**LCS** means local carriage service

**Limitation Notice** has the meaning set out in clause 16.10 of Schedule 16

**Listed Carriage Service** has the same meaning given to that term in section 7 of the *Telecommunications Act 1997* (Cth)

**LSS** means line sharing service

**Major Network Modernisation and Upgrade** means a modernisation or upgrade that:

- (a) involves the installation of Telstra customer access modules closer to end-users than a Telstra exchange building;
- (b) requires the removal/relocation of the LSS or the ULLS provided from Telstra exchange buildings and the establishment of a new POI (or relocation of an existing POI) for the LSS or the ULLS, or alteration of deployment classes of equipment used on the LSS or the ULLS; or
- (c) results in a Service no longer being supplied or adversely affects the quality of that Service (or any services supplied by an Access Seeker to their end-users using the Service), but does not mean, or include, an Emergency Network Modernisation Upgrade or an national broadband network (NBN) related upgrade

**MDF** means a main distribution frame

**MNM** means managed network migration

**Month** means a period commencing at the beginning of any day of a named month and ending:

- (a) at the end of the day before the corresponding day of the next named month; or
- (b) if there is no such corresponding day – at the end of the next named month

**National Broadband Network** means a national telecommunications network for the high-speed carriage of communications, where NBN Co has been, is, or is to be, involved in the creation or development of the network. To avoid doubt, it is immaterial whether the creation or development of the network is, to any extent, attributable to:

- (a) the acquisition of assets that were used, or for use, in connection with another telecommunications network; or
- (b) the obtaining of access to assets that are also used, or for use, in connection with another telecommunications network.

**NBN Co** means NBN Co Limited (ACN 136 533 741), as the company exists from time to time (even if its name is later changed).

**Network** of a party, means that party's system, or series of systems, that carries, or is capable of carrying communications by means of guided or unguided electromagnetic energy

**Non-Billing Dispute** means a dispute other than a Billing Dispute

**Ongoing Creditworthiness Information** has the meaning as set out in clause 9.7 of Schedule 9 of this FAD

**POI** means point of interconnection. A point of interconnection is a physical point of interconnection in Australia between a network operated by a carrier or carriage service provider and another network operated by a service provider.

**Prohibited Traffic** means traffic offered across a POI for which there is no agreement between the Access Provider and the Access Seeker that the Access Provider will carry such traffic or provide a related service to the Access Seeker

**Proof of Occupancy** means a document that verifies occupancy by the end-user at the service address

**PSTN** means public switched telephone network

**PSTN OA** means public switched telephone network originating access service

**PSTN TA** means public switched telephone network terminating access service

**Security** means the amount and type of security provided, or required to be provided, to the Access Provider in respect of the provision by the Access Provider of Services, as set out in Schedule 9

**Service** means a service declared under section 152AL of the CCA

**Service Qualification** is a desktop process where the Access Provider checks:

- (a) the availability of the ULLS from the end user side of the customer access module to the end-user's property boundary point; and
- (b) that the use on that ULLS of the Access Seeker nominated deployment class complies with the *Network Deployment Rules* Industry Code

**Suspension Event** has the meaning set out in clause 14.2 of Schedule 14

**Suspension Notice** has the meaning set out in clause 14.2 of Schedule 14

**TEBA space** means Telstra Exchange Building Access space

**Transfer** means the transfer of a LSS to a ULLS where there is no change of service provider.

**ULL** means unconditioned local loop

**ULLS** means unconditioned local loop service

**WLR** means wholesale line rental service

## Schedule 2 – Price terms for Line Sharing Service (LSS)

2.1. The prices for LSS for the period 1 January 2011 to 30 June 2011 are:

### LSS Monthly charge per service

LSS Monthly charge per service
\$1.80

### LSS single connections

LSS single connections
\$44.26 per connection

Note: These charges do not apply to connections in Band 4

Note: These charges do not apply where the line on which the LSS is connected was being used to supply a ULLS.

### LSS single disconnections (where payable)

LSS single disconnections
\$39.74 per disconnection

Note: These charges are not payable for:

- a disconnection made pursuant to the Telstra churn process by which services can be transferred between LSS, and between LSS and DSL services, or
- any period in which the Access Seeker was participating in the Telstra LSS churn process and Telstra (Bigpond) was not participating in the Telstra LSS churn process.

### LSS managed network migration (MNM) connection charges – where the service is to be connected on a line Telstra is using to supply a wholesale ADSL service

	LSS MNM connection charge
Fixed amount (per MNM)	\$143.88
Variable amount (per connection)	\$33.07

Note: These charges do not apply to MNMs in Band 4

### LSS MNM minimum exchange charge

LSS minimum exchange charge
\$805.27 per exchange

Note: These charges do not apply to MNMs in Band 4

2.2. The prices for LSS for the period 1 July 2011 to 30 June 2014 are:

### LSS Monthly charge per service

LSS Monthly charge per service
\$1.80

### LSS single connections

	Jul 2011 – Jun 2012	Jul 2012 – Jun 2013	Jul 2013 – Jun 2014
Per connection	\$45.04	\$46.16	\$47.55

Note: These charges do not apply to connections in Band 4

Note: These charges do not apply where the line on which the LSS is connected was being used to supply a ULLS.

### LSS single disconnections (where payable)

	Jul 2011 – Jun 2012	Jul 2012 – Jun 2013	Jul 2013 – Jun 2014
Per disconnection	\$40.44	\$41.45	\$42.69

Note: A disconnection charge is not payable if either:

- (a) the disconnection is made pursuant to the Telstra LSS churn process; or
- (b) the access seeker is participating in the Telstra LSS churn process and Telstra (BigPond) is not participating in the Telstra LSS churn process, where the service is being transferred to Telstra (BigPond).

A disconnection charge is payable if:

- (c) the access seeker is participating in the Telstra LSS churn process and the service is being transferred to an access seeker that is not participating in the Telstra LSS churn process.

### LSS managed network migration (MNM) connection charges – where the service is to be connected on a line Telstra is using to supply a wholesale ADSL service

	Jul 2011 – Jun 2012	Jul 2012 – Jun 2013	Jul 2013 – Jun 2014
Fixed amount (per MNM)	\$146.40	\$150.06	\$154.56
Variable amount (per connection)	\$33.65	\$34.49	\$35.52

Note: These charges do not apply to MNMs in Band 4

### LSS MNM minimum exchange charge

	Jul 2011 – Jun 2012	Jul 2012 – Jun 2013	Jul 2013 – Jun 2014
Per exchange	\$819.36	\$839.85	\$865.04

Note: These charges do not apply to MNMs in Band 4



### **Schedule 3 – Price terms for Local Carriage Service (LCS)**

3.1. The price for LCS for the period 1 January 2011 to 30 June 2011 is:

<b>Local Calls</b>
9.1c

3.2. The price for LCS for the period 1 July 2011 to 30 June 2014 is:

<b>Local Calls</b>
8.9c

## Schedule 4 – Price terms for Public Switched Telephone Network Originating Access service (PSTN OA)

4.1. The prices for PSTN OA for the period 1 January 2011 to 30 June 2011 are:

	<b>Flagfall (cents per call)</b>	<b>EMOU charge (cents per minute)</b>	<b>Headline rate (cents per minute)</b>
CBD	0.85	0.35	0.57
Metropolitan	0.84	0.49	0.70
Provincial	0.94	0.68	0.91
Rural	2.06	3.66	4.18
<b>Average</b>	<b>0.95</b>	<b>0.76</b>	<b>1.00</b>

4.2. The national average price for PSTN OA for the period 1 July 2011 to 30 June 2014 is 0.95 cents per minute.

## Schedule 5 – Price terms for Public Switched Telephone Network Terminating Access service (PSTN TA)

5.1. The prices for PSTN TA for the period 1 January 2011 to 30 June 2011 are:

	<b>Flagfall (cents per call)</b>	<b>EMOU charge (cents per mintute)</b>	<b>Headline rate (cents per minute)</b>
CBD	0.85	0.35	0.57
Metropolitan	0.84	0.49	0.70
Provincial	0.94	0.68	0.91
Rural	2.06	3.66	4.18
<b>Average</b>	<b>0.95</b>	<b>0.76</b>	<b>1.00</b>

5.2. The national average price for PSTN TA for the period 1 July 2011 to 30 June 2014 is 0.95 cents per minute.

## Schedule 6 – Price terms for Unconditioned Local Loop Service (ULLS)

6.1. The prices for ULLS for the period 1 January 2011 to 30 June 2011 are:

### ULLS Monthly charges on a per service per Month basis for Bands 1, 2, 3 and 4

Band	Monthly price per service
1	\$16.00
2	\$16.00
3	\$16.00
4	\$48.00

### ULLS single connection charges – in use ULLS and transfer ULLS connections

Band	Per connection
1	\$51.76
2	\$54.53
3	\$59.26

Note: No price is set for the ULLS in Band 4.

Note: No price is set for a Vacant ULLS connection.

### Charges for ULLS MNM – involving the transfer of end user data services from a Telstra wholesale PSTN and/or ADSL service, or from a line that Telstra is using to supply a ULLS to another Access Seeker

	Charge for ULLS MNM
Fixed amount (per MNM)	\$141.73
Variable amount (per connection)	\$25.68

### ULLS cancellation charges

	ULLS cancellation charge
Per service where pre-jumpering has occurred	\$20.54
Where entire MNM is cancelled	\$141.73

### ULLS MNM minimum exchange charge – per MNM

ULLS MNM minimum exchange charge
\$655.23 per exchange

### ULLS call diversion charges for the initial connection/activation of ULLS

	ULLS call diversion charge for initial connection/activation of ULLS
Fixed amount (per ULLS call diversion)	\$9.55
Variable amount (pro rata per month)	\$12.84

6.2. The prices for ULLS for the period 1 July 2011 to 30 June 2014 are:

### ULLS Monthly charges on a per service per Month basis for Bands 1, 2, 3 and 4

Band	Monthly price per service
1	\$16.21
2	\$16.21
3	\$16.21
4	\$48.19

### ULLS single connection charges – in use ULLS and transfer ULLS connections

Band	Jul 2011 – Jun 2012	Jul 2012 – Jun 2013	Jul 2013 – Jun 2014
1	\$52.67	\$53.98	\$55.60
2	\$55.49	\$56.88	\$58.58
3	\$60.29	\$61.80	\$63.66

Note: No price is set for the ULLS in Band 4.

Note: No price is set for a Vacant ULLS connection.

**Charges for ULLS MNM – involving the transfer of end user data services from a Telstra wholesale PSTN and/or ADSL service, or from a line that Telstra is using to supply a ULLS to another Access Seeker**

	Jul 2011 – Jun 2012	Jul 2012 – Jun 2013	Jul 2013 – Jun 2014
Fixed amount (per MNM)	\$144.21	\$147.81	\$152.25
Variable amount (per connection)	\$26.12	\$26.78	\$27.58

**ULLS cancellation charges**

	Jul 2011 – Jun 2012	Jul 2012 – Jun 2013	Jul 2013 – Jun 2014
Per service where pre-jumping has occurred	\$20.90	\$21.42	\$22.06
Where entire MNM is cancelled	\$144.21	\$147.81	\$152.25

**ULLS MNM minimum exchange charge – per MNM**

	Jul 2011 – Jun 2012	Jul 2012 – Jun 2013	Jul 2013 – Jun 2014
Per exchange	\$666.69	\$683.36	\$703.86

**ULLS call diversion charges for the initial connection/activation of ULLS**

	Jul 2011 – Jun 2012	Jul 2012 – Jun 2013	Jul 2013 – Jun 2014
Fixed amount (per ULLS call diversion)	\$9.72	\$9.96	\$10.26
Variable amount (pro rata per Month)	\$13.06	\$13.39	\$13.79

## Schedule 7 – Price terms for Wholesale Line Rental service (WLR)

7.1. The price for WLR for the period 1 January 2011 to 30 June 2011 is:

Monthly price per service
\$22.10

7.2. The price for WLR for the period 1 July 2011 to 30 June 2014 is:

Monthly price per service
\$22.84

## Schedule 8 – Billing and Notifications

- 8.1. The Access Seeker's liability to pay Charges for a Service to the Access Provider arises at the time the Service is supplied by the Access Provider to the Access Seeker, unless the parties agree otherwise.
- 8.2. The Access Seeker must pay Charges in accordance with this FAD, including but not limited to this Schedule 8.
- 8.3. Subject to clause 8.4, the Access Provider shall provide the Access Seeker with an invoice each month in respect of Charges payable for Services unless the parties agree otherwise.
- 8.4. As a statement of general principle, the Access Provider may invoice the Access Seeker more frequently than once a Month, where there has been a decline in the Access Seeker's creditworthiness as assessed in accordance with Schedule 9.
- 8.5. The Access Provider shall be entitled to invoice the Access Seeker for previously uninvoiced Charges or Charges which were understated in a previous invoice, provided that:
  - (a) the Charges to be retrospectively invoiced can be reasonably substantiated to the Access Seeker by the Access Provider; and
  - (b) subject to clause 8.6, no more than five Months have elapsed since the date the relevant amount was incurred by the Access Seeker's customer, except:
    - (i) where the Access Seeker gives written consent to a longer period (such consent not to be unreasonably withheld); or
    - (ii) to the extent that the Charges relate to services supplied by an overseas carrier and the Access Provider has no control over the settlement arrangements as between it and the overseas carrier, in which case the Access Provider shall invoice such amounts as soon as is reasonably practicable.
- 8.6. The parties must comply with the provisions of any applicable industry standard made by the ACMA pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) and the provisions of any applicable industry code registered pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) in relation to billing.
- 8.7. Subject to any Billing Dispute notified in accordance with this FAD, an invoice is payable in full 30 Calendar Days after the date the invoice was issued or such other date as agreed between the parties. The Access Seeker may not deduct, withhold, or set-off any amounts for accounts in credit, for counter-claims or for any other reason or attach any condition to the payment, unless otherwise agreed by the Access Provider. All amounts owing and unpaid after the due date shall accrue interest daily from the due date up to and



including the date it is paid at the rate per annum of the 90 day authorised dealers bank bill rate published in the *Australian Financial Review* on the first Business Day following the due date for payment, plus 2.5%.

- 8.8. In addition to charging interest in accordance with clause 8.7 or exercising any other rights the Access Provider has at law or under this FAD, where an amount is outstanding and remains unpaid for more than 20 Business Days after it is due for payment, and is not an amount subject to any Billing Dispute, the Access Provider may take action, without further notice to the Access Seeker, to recover any such amount as a debt due to the Access Provider. For the avoidance of doubt, this clause 8.8 shall be subject to the Billing Dispute Procedures.
- 8.9. Unless the parties otherwise agree, there shall be no setting-off (i.e. netting) of invoices except where a party goes into liquidation, in which case the other party may set-off. However, in order to minimise the administration and financial costs, the parties shall consider in good faith set-off procedures for inter-party invoices which may require the alignment of the parties' respective invoice dates and other procedures to allow set-off to occur efficiently.
- 8.10. The Access Provider must, at the time of issuing an invoice, provide to the Access Seeker all information reasonably required by the Access Seeker to identify and understand the nature and amount of each component of the invoice. Nothing in this clause 8.10 is intended to limit subsections 152AR(6) and 152AR(7) of the CCA.
- 8.11. If the Access Seeker believes a Billing Dispute exists, it may, by written notice to the Access Provider, invoke the Billing Dispute Procedures (**Billing Dispute Notice**). A Billing Dispute must be initiated only in good faith.
- 8.12. Except where a party seeks urgent injunctive relief, the Billing Dispute Procedures must be invoked before either party may begin legal or regulatory proceedings in relation to any Billing Dispute.
- 8.13. If a Billing Dispute Notice is given to the Access Provider by the due date for payment of the invoice containing the Charge which is being disputed, the Access Seeker may withhold payment of the disputed Charge until such time as the Billing Dispute has been resolved. Otherwise, the Access Seeker must pay the invoice in full in accordance with this FAD (but subject to the outcome of the Billing Dispute Procedures).
- 8.14. Except where payment is withheld in accordance with clause 8.13, the Access Provider is not obliged to accept a Billing Dispute Notice in relation to an invoice unless the invoice has been paid in full.
- 8.15. A Billing Dispute Notice may not be given to the Access Provider in relation to a Charge later than six Months after the due date for the invoice for the Charge issued in accordance with 8.7.

- 8.16. The Access Provider shall acknowledge receipt of a Billing Dispute Notice within two Business Days by providing the Access Seeker with a reference number.
- 8.17. Each party shall, as early as practicable after a Billing Dispute Notice, provide to the other party any relevant materials on which it intends to rely (provided that this obligation is not intended to be the same as the obligation to make discovery in litigation).
- 8.18. The Access Provider shall try to resolve any Billing Dispute as soon as practicable and in any event within 30 Business Days of receipt of a Billing Dispute Notice (or longer period if agreed by the parties), by notifying the Access Seeker in writing of its proposed resolution of a Billing Dispute. That notice shall explain the Access Provider's proposed resolution and any action to be taken by:
  - (a) the Access Provider (e.g. withdrawal, adjustment or refund of the disputed Charge); or
  - (b) the Access Seeker (e.g. payment of the disputed Charge).
- 8.19. Any withdrawal, adjustment or refund of the disputed Charge by the Access Provider or payment of the disputed Charge by the Access Seeker (as the case may be) must occur within as soon as practicable and in any event within one Month of the Access Provider's notice, unless the Access Seeker escalates the Billing Dispute under clause 8.23.
- 8.20. Where the Access Provider is to refund a disputed Charge, the Access Provider shall pay interest (at the rate set out in clause 8.7) on any refund. Interest shall accrue daily from the date on which each relevant amount to be refunded was paid to the Access Provider, until the date the refund is paid.
- 8.21. Where the Access Seeker is to pay a disputed Charge, the Access Seeker shall pay interest (at the rate set out in clause 8.7) on the amount to be paid. Interest shall accrue daily from the date on which each relevant amount was originally due to be paid to the Access Provider, until the date the amount is paid.
- 8.22. If the Access Seeker is not satisfied with the Access Provider's proposed resolution in relation to a Billing Dispute, or if the Access Provider has not provided the Access Seeker with a proposed resolution to the Billing Dispute within the timeframe set out in clause 8.18, the Access Seeker may escalate the matter under clause 8.23. If the Access Seeker does not do so within 30 Business Days of being notified of the Access Provider's proposed resolution (or a longer period if agreed by the parties), the Access Seeker shall be deemed to have accepted the Access Provider's proposed resolution and clauses 8.20 and 8.21 shall apply.
- 8.23. If the Access Seeker wishes to escalate a Billing Dispute, the Access Seeker must give the Access Provider a written notice:

- (a) stating why it does not agree with the Access Provider's proposed resolution; and
  - (b) seeking escalation of the Billing Dispute.
- 8.24. A notice under clause 8.23 must be submitted to the nominated billing manager for the Access Provider, who shall discuss how best to resolve the Billing Dispute with the Access Seeker's nominated counterpart.
- 8.25. If the escalated matter cannot be resolved under clause 8.24 within five Business Days of notice being given under clause 8.23:
  - (a) either party may provide a written proposal to the other party for the appointment of a mediator to assist in resolving the dispute. Mediation shall be conducted in accordance with the mediation guidelines of the ACDC and concluded within three Months of the proposal (unless the parties agree to extend this timeframe); or
  - (b) if the parties either do not agree to proceed to mediation or are unable to resolve the entire Billing Dispute by mediation, either party may commence legal or regulatory proceedings to resolve the matter.
- 8.26. The parties shall ensure that any person appointed or required to resolve a Billing Dispute shall take into account the principle that the Access Seeker shall be entitled to be recompensed in circumstances where the Access Seeker is prevented (due to regulatory restrictions on retrospective invoicing) from recovering from its end-user an amount which is the subject of a Billing Dispute (a **Backbilling Loss**), provided that:
  - (a) such principle shall apply only to the extent to which the Billing Dispute is resolved against the Access Provider; and
  - (b) such principle shall apply only to the extent to which it is determined that the Backbilling Loss was due to the Access Provider unnecessarily delaying resolution of the Billing Dispute.
- 8.27. Each party must continue to fulfill its obligations under this FAD while a Billing Dispute and the Billing Dispute Procedures are pending.
- 8.28. All discussions and information relating to a Billing Dispute must be communicated or exchanged between the parties through the representatives of the parties set out in clause 8.24 (or their respective nominees).
- 8.29. There shall be a presumption that all communications between the parties during the course of a Billing Dispute are made on a without prejudice and confidential basis.
- 8.30. If it is determined by the Billing Dispute Procedures, any other dispute resolution procedure, or by agreement between the parties, that three or more out of any five consecutive invoices for a given Service are incorrect by 5% or more, then, for the purposes of clause 8.20, the interest payable by the Access Provider in respect of the overpaid amount of the invoices in question shall be

the rate set out in clause 8.7, plus 2%. The remedy set out in this clause 8.30 shall be without prejudice to any other right or remedy available to the Access Seeker.

- 8.31. If three or more out of any five consecutive invoices for a given Service are incorrect by 5% or more, then without prejudice to any other right or remedy available to the Access Seeker, the Access Provider shall be deemed to have breached this FAD and the Access Seeker shall have a right to damages for such a breach.

## **Schedule 9 – Creditworthiness and Security**

- 9.1. Unless otherwise agreed by the Access Provider, the Access Seeker must (at the Access Seeker's sole cost and expense) provide to the Access Provider and maintain, on terms and conditions reasonably required by the Access Provider and subject to clause 9.2, the Security (as shall be determined having regard to clause 9.3 and as may be varied pursuant to clause 9.4) in respect of amounts owing by the Access Seeker to the Access Provider under this FAD.
- 9.2. The Access Seeker acknowledges that unless otherwise agreed by the Access Provider, it must maintain (and the Access Provider need not release) the Security specified in clause 9.1 for a period of six Months following the last to occur of: cessation of supply of a Service or Services under this FAD, and payment of all outstanding amounts under this FAD.
- 9.3. The Security (including any varied Security) shall only be requested when it is reasonably necessary to protect the legitimate business interests of the Access Provider and shall be of an amount and in a form which is reasonable in all the circumstances. As a statement of general principle the amount of any Security shall be calculated by reference to:
- (a) the aggregate value of all Services likely to be provided to the Access Seeker under this FAD over a reasonable period; or
  - (b) the value of amounts invoiced under this FAD but unpaid (excluding any amounts in respect of which there is a current Billing Dispute).
- For the avoidance of doubt, any estimates, forecasts or other statements made or provided by the Access Seeker may be used by the Access Provider in determining the amount of a Security.
- 9.4. Examples of appropriate forms of security, having regard to the factors referred to in clause 9.3, may include without limitation:
- (a) fixed and floating charges;
  - (b) personal guarantees from directors;
  - (c) bank guarantees;
  - (d) letters of comfort;
  - (e) mortgages;
  - (f) a right of set-off; or
  - (g) a combination of the forms of security referred to in paragraphs (a) to (f) above.
- 9.5. The Access Provider may from time to time where the circumstances reasonably require, request Ongoing Creditworthiness Information from the

Access Seeker to determine the ongoing creditworthiness of the Access Seeker. The Access Seeker must supply Ongoing Creditworthiness Information to the Access Provider within 15 Business Days of receipt of a request from the Access Provider for such information. The Access Provider may, as a result of such Ongoing Creditworthiness Information, having regard to the factors referred to in clause 9.3 and subject to clause 9.7, reasonably require the Access Seeker to alter the Security, and the Access Seeker must provide that altered Security within 20 Business Days of being notified by the Access Provider in writing of that requirement.

- 9.6. The Access Seeker may from time to time request the Access Provider to consent (in writing) to a decrease in the required Security and/or alteration of the form of the Security. The Access Provider must, within 15 Business Days of the Access Seeker's request, comply with that request if, and to the extent, it is reasonable to do so (having regard to the factors referred to in clause 9.3). The Access Provider may request, and the Access Seeker shall promptly provide, Ongoing Creditworthiness Information, for the purposes of this clause 9.6.
- 9.7. In the event that the Access Seeker provides Ongoing Creditworthiness Information to the Access Provider as required by this Schedule 9, the Access Seeker must warrant that such information is true, fair, accurate and complete as at the date on which it is received by the Access Provider.
- 9.8. For the purposes of this Schedule 9, **Ongoing Creditworthiness Information** means:
  - (a) a copy of the Access Seeker's most recent published audited balance sheet and published audited profit and loss statement (together with any notes attached to or intended to be read with such balance sheet or profit and loss statement);
  - (b) a credit report in respect of the Access Seeker or, where reasonably necessary in the circumstances, any of its owners or directors (Principals) from any credit reporting agency, credit provider or other independent party. The Access Seeker shall co-operate and provide any information necessary for that credit reporting agency, credit provider or other independent party to enable it to form an accurate opinion of the Access Seeker's creditworthiness. To that end, the Access Seeker agrees to procure written consents (as required under the *Privacy Act 1988* (Cth)) from such of its Principals as is reasonably necessary in the circumstances to enable the Access Provider to:
    - (i) obtain from a credit reporting agency, credit provider or other independent party, information contained in a credit report;
    - (ii) disclose to a credit reporting agency, credit provider or other independent party, personal information about each Principal; and
    - (iii) obtain and use a consumer credit report;

- (c) a letter, signed by the company secretary or duly authorised officer of the Access Seeker, stating that the Access Seeker is not insolvent and not under any external administration (as defined in the *Corporations Act 2001* (Cth)) or under any similar form of administration under any laws applicable to it in any jurisdiction; and
  - (d) the Access Seeker's credit rating, if any has been assigned to it.
- 9.9. The Access Seeker may require a confidentiality undertaking to be given by any person having access to confidential information contained in its Ongoing Creditworthiness Information prior to such information being provided to that person.
- 9.10. Subject to this Schedule 9, the Access Provider may, in its absolute discretion, deem a failure by the Access Seeker to provide Ongoing Creditworthiness Information or an altered Security in accordance with clause 9.5 as:
  - (a) an event entitling the Access Provider to alter the Security of the Access Seeker; or
  - (b) a breach of a material term or condition of this FAD.
- 9.11. Any disputes arising out of or in connection with Schedule 9 shall be dealt with in accordance with the procedures in Schedule 10.

## **Schedule 10 – General dispute resolution procedures**

- 10.1. If a dispute arises between the parties in connection with or arising from the supply of a Service under this FAD, the dispute shall be managed as follows:
- (a) in the case of a Billing Dispute, the dispute shall be managed in accordance with the Billing Dispute Procedures; or
  - (b) subject to clause 10.2, in the case of a Non-Billing Dispute, the dispute shall be managed in accordance with the procedures set out in this Schedule 10.
- 10.2. To the extent that a Non-Billing Dispute is raised or arises in connection with, or otherwise relates to, a Billing Dispute, then unless the Access Provider otherwise determines, that Non-Billing Dispute shall be resolved in accordance with the Billing Dispute Procedures.
- 10.3. If a Non-Billing Dispute arises, either party may, by written notice to the other, refer the Non-Billing Dispute for resolution under this Schedule 10. A Non-Billing Dispute must be initiated only in good faith.
- 10.4. Any Non-Billing Dispute notified under clause 10.3 shall be referred:
- (a) initially to the nominated manager (or managers) for each party, who shall endeavour to resolve the dispute within 10 Business Days of the giving of the notice referred to in clause 10.3 or such other time agreed by the parties; and
  - (b) if the persons referred to in paragraph (a) above do not resolve the Non-Billing Dispute within the time specified under paragraph (a), then the parties may agree in writing within a further five Business Days to refer the Non-Billing Dispute to an Expert Committee under clause 10.11, or by written agreement submit it to mediation in accordance with clause 10.10.
- 10.5. If:
- (a) under clause 10.4 the Non-Billing Dispute is not resolved and a written agreement is not made to refer the Non-Billing Dispute to an Expert Committee or submit it to mediation; or,
  - (b) under clause 10.10(f), the mediation is terminated; and
  - (c) after a period of five Business Days after the mediation is terminated as referred to in paragraph (b), the parties do not resolve the Non-Billing Dispute or agree in writing on an alternative procedure to resolve the Non-Billing Dispute (whether by further mediation, written notice to the Expert Committee, arbitration or otherwise) either party may terminate the operation of this dispute resolution procedure in relation to the Non-Billing Dispute by giving written notice of termination to the other party.



- 10.6. A party may not commence legal proceedings in any court or commence any arbitration (except proceedings seeking urgent interlocutory relief) in respect of a Non-Billing Dispute unless:
- (a) the Non-Billing Dispute has first been referred for resolution in accordance with the dispute resolution procedure set out in this Schedule 10 or clause 10.2 (if applicable) and a notice terminating the operation of the dispute resolution procedure has been issued under clause 10.5; or
  - (b) the other party has failed to substantially comply with the dispute resolution procedure set out in this Schedule 10 or clause 10.2 (if applicable).
- 10.7. Each party must continue to fulfill its obligations under this FAD while a Non-Billing Dispute and any dispute resolution procedure under this Schedule 10 are pending.
- 10.8. There shall be a presumption that all communications between the parties during the course of a Non-Billing Dispute are made on a without prejudice and confidential basis.
- 10.9. Each party shall, as early as practicable after the notification of a Non-Billing Dispute pursuant to clause 10.3, provide to the other party any relevant materials on which it intends to rely (provided that this obligation is not intended to be the same as the obligation to make discovery in litigation).
- 10.10. Where a Non-Billing Dispute is referred to mediation by way of written agreement between the parties, pursuant to clause 10.4(b):
- (a) any agreement shall include:
    - (i) a statement of the disputed matters in the Non-Billing Dispute; and
    - (ii) the procedure to be followed during the mediation,and the mediation must take place within 15 Business Days upon the receipt by the mediator of such agreement;
  - (b) it must be conducted in accordance with the mediation guidelines of the ACDC in force from time to time (**ACDC Guidelines**) and the provisions of this clause 10.10. In the event of any inconsistency between them, the provisions of this clause 10.10 shall prevail;
  - (c) it is to be conducted in private;
  - (d) in addition to the qualifications of the mediator contemplated by the ACDC Guidelines, the mediator should:
    - (i) have an understanding of the relevant aspects of the telecommunications industry (or have the capacity to quickly come to such an understanding);

- (ii) have an appreciation of the competition law implications of his/her decisions; and
  - (iii) not be an officer, director or employee of a telecommunications company or otherwise have a potential for a conflict of interest;
- (e) the parties must notify each other no later than 48 hours prior to mediation of the names of their representatives who shall attend the mediation. Nothing in this subclause is intended to suggest that the parties are able to refuse the other's chosen representatives or to limit other representatives from the parties attending during the mediation;
- (f) it shall terminate in accordance with the ACDC Guidelines;
- (g) the parties shall bear their own costs of the mediation including the costs of any representatives and shall each bear half the costs of the mediator; and
- (h) any agreement resulting from mediation shall bind the parties on its terms.

10.11. The parties may by written agreement in accordance with clause 10.4(b), submit a Non-Billing Dispute for resolution by an Expert Committee (**Initiating Notice**), in which case the provisions of this clause 10.11 shall apply as follows:

- (a) The terms of reference of the Expert Committee shall be as agreed by the parties. If the terms of reference are not agreed within five Business Days after the date of submitting the Initiating Notice (or such longer period as agreed between the parties), the referral to the Expert Committee shall be deemed to be terminated.
- (b) An Expert Committee shall act as an expert and not as an arbitrator.
- (c) The parties shall each be represented on the Expert Committee by one appointee.
- (d) The Expert Committee must include an independent chairperson agreed by the parties or, if not agreed, a nominee of the ACDC. The chairperson must have the qualifications listed in paragraphs 10.10(d)(i), (ii) and (iii).
- (e) Each party shall be given an equal opportunity to present its submissions and make representations to the Expert Committee.
- (f) The Expert Committee may determine the dispute (including any procedural matters arising during the course of the dispute) by unanimous or majority decision.
- (g) Unless the parties agree otherwise the parties shall ensure that the Expert Committee uses all reasonable endeavours to reach a decision within 20 Business Days after the date on which the terms of reference are agreed

or the final member of the Expert Committee is appointed (whichever is the later) and undertake to co-operate reasonably with the Expert Committee to achieve that timetable.

- (h) If the dispute is not resolved within the timeframe referred to in clause 10.11(g), either party may by written notice to the other party terminate the appointment of the Expert Committee.
- (i) The Expert Committee shall have the right to conduct any enquiry as it thinks fit, including the right to require and retain relevant evidence during the course of the appointment of the Expert Committee or the resolution of the dispute.
- (j) The Expert Committee must give written reasons for its decision.
- (k) A decision of the Expert Committee is final and binding on the parties except in the case of manifest error or a mistake of law.
- (l) Each party shall bear its own costs of the enquiry by the Expert Committee including the costs of its representatives, any legal counsel and its nominee on the Expert Committee and the parties shall each bear half the costs of the independent member of the Expert Committee.

## Schedule 11 – Confidentiality provisions

- 11.1. Subject to clause 11.4 and any applicable statutory duty, each party must keep confidential all Confidential Information of the other party and must not:
- (a) use or copy such Confidential Information except for the purposes of this FAD; or
  - (b) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any third person.
- 11.2. For the avoidance of doubt, information generated within the Access Provider's Network as a result of or in connection with the supply of the relevant Service to the Access Seeker or the interconnection of the Access Provider's Network with the Access Seeker's Network (other than the aggregate Network information of the Access Provider and all Access Seekers to whom the relevant Service is supplied) is the Confidential Information of the Access Seeker.
- 11.3. The Access Provider shall upon request from the Access Seeker, disclose to the Access Seeker quarterly aggregate traffic flow information generated within the Access Provider's Network in respect of a particular Service provided to the Access Seeker, if the Access Provider measures and provides this information to itself. The Access Seeker must pay the reasonable costs of the Access Provider providing that information.
- 11.4. Subject to clause 11.5, Confidential Information of the Access Seeker:
- (a) referred to in clause 11.2; or
  - (b) relating to or concerning the Access Seeker's end-users,
- may be:
- (c) used by the Access Provider:
    - (i) for the purposes of undertaking planning, maintenance, provisioning, operations or reconfiguration of its Network;
    - (ii) for the purposes of this FAD;
    - (iii) for the purpose of billing; or
    - (iv) for another purpose agreed to by the Access Seeker; and
  - (d) disclosed only to personnel directly involved in the purposes referred to in paragraph (c) above.
- 11.5. A party (**Disclosing Party**) may to the extent necessary disclose the Confidential Information of the other party:

- (a) to those of its directors, officers, employees, agents and representatives to whom the Confidential Information is reasonably required to be disclosed for the purposes of this FAD;
- (b) to any professional person acting for the Disclosing Party to permit that person to protect or advise on the rights of the Disclosing Party in respect of the obligations of the Disclosing Party under this FAD;
- (c) to an auditor acting for the Disclosing Party to the extent necessary to permit that auditor to perform its audit functions;
- (d) in connection with legal proceedings, arbitration, expert determination and other dispute resolution mechanisms set out in this FAD or for the purpose of seeking advice from a professional person in relation thereto;
- (e) as required by law provided that the Disclosing Party has first given as much notice (in writing) as is reasonably practicable to the other party, that it is required to disclose the Confidential Information so that the other party has an opportunity to protect the confidentiality of its Confidential Information;
- (f) with the written consent of the other party provided that if required by the other party as a condition of giving its consent, the Disclosing Party must comply with clause 11.6;
- (g) in accordance with a lawful and binding directive issued by a regulatory authority which is duly authorised to do so;
- (h) if reasonably required to protect the safety of personnel or property;
- (i) as required by the listing rules of any stock exchange where that party's securities are listed or quoted; or
- (j) as reasonably required to facilitate an Access Seeker gaining access to Services (including by undertaking Common Infrastructure Works) at a particular Exchange, provided that the Disclosing Party must comply with clause 11.6.

11.6. If required by another party as a condition of giving its consent to the disclosure of the Confidential Information of that other party, or where the information is reasonably required to facilitate an Access Seeker gaining access to Services (including by undertaking Common Infrastructure Works) at a particular Exchange, the Disclosing Party, before disclosing Confidential Information to a third person, must:

- (a) impose an obligation upon the disclosee by way of a confidentiality undertaking in the form set out in Annexure 1 of this Schedule 11:
  - (i) to use the Confidential Information disclosed solely for the purposes for which the disclosure is made and to observe appropriate confidentiality requirements in relation to such information; and

- (ii) not to disclose the Confidential Information without the prior written consent of the other party;
  - (b) obtain an acknowledgment by way of a confidentiality undertaking in the form set out in Annexure 1 of this Schedule 11 from such a disclosee that:
    - (i) the Confidential Information is and at all times remains proprietary to the other party; and
    - (ii) that misuse or unauthorised disclosure of the Confidential Information may cause serious harm to the other party.
- 11.7. Each party must co-operate in any action taken by the other party to:
- (a) protect the confidentiality of the other party's Confidential Information;  
or
  - (b) enforce its rights in relation to its Confidential Information.
- 11.8. Each party must establish and maintain security measures to safeguard the other party's Confidential Information from unauthorised access, use, copying, reproduction or disclosure.
- 11.9. Confidential Information provided by one party to the other party is provided for the benefit of that other party only. Each party acknowledges that no warranty is given by the Disclosing Party that the Confidential Information is or will be correct.
- 11.10. Each party acknowledges that a breach of this Schedule by one party may cause another party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a party may seek injunctive relief against such a breach or threatened breach of this Schedule 11.
- 11.11. If the Access Seeker believes there is *prima facie* evidence which tends to show that the Access Provider has used, is using or is likely to use Confidential Information relating to the Access Seeker's end-users for a purpose other than as permitted under clause 11.4, the Access Seeker may invoke the audit procedures set out in this clause 11.11 as follows:
- (a) The audit procedures in this clause 11.11 must be initiated only in good faith.
  - (b) The Access Seeker shall give the Access Provider a written notice that it intends to initiate an audit in accordance with this clause 11.11.
  - (c) The Access Seeker shall nominate an Independent Auditor to conduct an audit of the Access Provider's systems for the purpose of determining whether the Access Provider has used, is using or is likely to use Confidential Information relating to the Access Seeker's end-users for a purpose other than as permitted under clause 11.4.

- (d) If the Access Provider objects to the person nominated by the Access Seeker or the parties have not agreed on an Independent Auditor within five Business Days of the notice given under clause 11.11(b), then the Independent Auditor shall be a person nominated by the President for the time being of the Institute of Chartered Accountants in the state in which the Access Provider holds its registered office.
- (e) The Access Seeker shall bear all reasonable costs of the Access Provider relating to the audit, as well as the costs of the Independent Auditor.
- (f) The Independent Auditor shall be required to give a confidentiality undertaking to the Access Provider in terms as set out in Annexure 1 of this Schedule 11.
- (g) The Independent Auditor's first task shall be to determine whether there is *prima facie* evidence which tends to show that the Access Provider has used, is using or is likely to use Confidential Information relating to the Access Seeker's end-users for a purpose other than as permitted under clause 11.4. The Independent Auditor may obtain advice from a barrister or solicitor (who does not act for and has not acted for either of the parties in relation to any matter in question) in determining whether such *prima facie* evidence exists.
- (h) If the Independent Auditor so determines, then he/she shall be required to proceed with the audit.
- (i) If the Independent Auditor is required to proceed with the audit in accordance with clause 11.11(h), he/she shall be required to consult the Access Provider over the most expeditious means by which to conduct an audit of the Access Provider's systems (including but not limited to its computer systems, databases, records and processes) for the purpose specified in clause 11.11(c), and to thereafter conduct the audit as he/she considers appropriate.
- (j) The audit shall be conducted expeditiously and in any event for no longer than 20 Business Days (excluding any delays caused by the Access Provider).
- (k) The Access Provider must permit the Independent Auditor to audit and inspect its systems (including but not limited to its computer systems, databases, records and processes) and the Access Provider must provide the Independent Auditor with such assistance as he/she reasonably requires in order to conduct the audit.
- (l) At the conclusion of the audit, the Independent Auditor shall be required to provide a report to both parties setting out his/her findings and conclusions as to whether the Access Provider has used, is using or is likely to use Confidential Information relating to the Access Seeker's end-users for a purpose other than as permitted under clause 11.4.

- (m) If the Independent Auditor's report contains Confidential Information of the Access Provider, then he/she will mask such information in the version of the report provided to the Access Seeker, provided that the Access Seeker's solicitors are given an unmasked copy of the report (subject to them first giving a confidentiality undertaking to the Access Provider in terms as set out in Annexure 1 of this Schedule 11 to the FAD).
- (n) The parties acknowledge that the Independent Auditor's report shall be prima facie evidence of the matters contained in the report and (subject to any obligation of confidence attaching to the report or the information contained therein) may be used in connection with any dispute concerning whether the Access Provider has used, is using or is likely to use Confidential Information relating to the Access Seeker's end-users for a purpose other than as permitted under clause 11.4.



## Confidentiality undertaking form

*[Amend where necessary]*

### CONFIDENTIALITY UNDERTAKING

I, \_\_\_\_\_ of [employer's company name] ([**undertaking company**]) undertake to [full name of party who owns or is providing the confidential information as the case requires] ([**Provider**]) that:

- 1 Subject to the terms of this Undertaking, I will keep confidential at all times the information listed in Attachment 1 to this Undertaking (**Confidential Information**) that is in my possession, custody, power or control.
- 2 I acknowledge that:
  - (a) this Undertaking is given by me to [Provider] in consideration for [Provider] making the Confidential Information available to me for the Approved Purposes (as defined below);
  - (b) all intellectual property in or to any part of the Confidential Information is and will remain the property of [Provider]; and
  - (c) by reason of this Undertaking, no licence or right is granted to me, or any other employee, agent or representative of [undertaking company] in relation to the Confidential Information except as expressly provided in this Undertaking.
- 3 I will:
  - (a) only use the Confidential Information for:
    - (i) the purposes listed in Attachment 2 to this Undertaking; or
    - (ii) any other purpose approved by [Provider] in writing;**(the Approved Purposes);**
  - (b) comply with any reasonable request or direction from [provider] regarding the Confidential Information.
- 4 Subject to clause 5, I will not disclose any of the Confidential Information to any other person without the prior written consent of [Provider].
- 5 I acknowledge that I may disclose the Confidential Information to which I have access to:

- (a) any employee, external legal advisors, independent experts, internal legal or regulatory staff of [undertaking company], for the Approved Purposes provided that:
  - (i) the person to whom disclosure is proposed to be made (**the person**) is notified in writing to [Provider] and [Provider] has approved the person as a person who may receive the Confidential Information, which approval shall not be unreasonably withheld;
  - (ii) the person has signed a confidentiality undertaking in the form of this Undertaking or in a form otherwise acceptable to [Provider]; and
  - (iii) a signed undertaking of the person has already been served on [Provider];
- (b) if required to do so by law; and
- (c) any secretarial, administrative and support staff, who perform purely administrative tasks, and who assist me or any person referred to in paragraph 5(a) for the Approved Purpose.

6 I will establish and maintain security measures to safeguard the Confidential Information that is in my possession from unauthorised access, use, copying, reproduction or disclosure and use the same degree of care as a prudent person in my position would use to protect that person's confidential information.

7 Except as required by law and subject to paragraph 10 below, within a reasonable time after whichever of the following first occurs:

- (a) termination of this Undertaking;
- (b) my ceasing to be employed or retained by [undertaking company] (provided that I continue to have access to the Confidential Information at that time); or
- (c) my ceasing to be working for [undertaking company] in respect of the Approved Purposes (other than as a result of ceasing to be employed by [undertaking company]);

I will destroy or deliver to [Provider] the Confidential Information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Confidential Information in my possession, custody, power or control.

8 Nothing in this Undertaking shall impose an obligation upon me in respect of information:

- (a) which is in the public domain; or
- (b) which has been obtained by me otherwise than from [Provider] in relation to this Undertaking;

provided that the information is in the public domain and/or has been obtained by me by reason of, or in circumstances which do not involve any breach of a confidentiality undertaking or a breach of any other obligation of confidence in favour of [Provider] or by any other unlawful means, of which I am aware.

- 9 I acknowledge that damages may not be a sufficient remedy for any breach of this Undertaking and that [Provider] may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this Undertaking, in addition to any other remedies available to [Provider] at law or in equity.
- 10 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to [Provider] of the Confidential Information pursuant to paragraph 7 above.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

Print name: \_\_\_\_\_

## **ATTACHMENT 1**

Any document, or information in any document provided by [provider] to [undertaking company] which [provider] claims is confidential information for the purposes of this Undertaking.

**ATTACHMENT 2**

**[Approved purpose(s)]**

## **Schedule 12 – Communications with end users**

- 12.1. The Access Provider may communicate and deal with an Access Seeker's end-users as expressly provided in clauses 12.2 to 12.4 and as otherwise permitted by law.
- 12.2. Subject to clause 12.3, the Access Provider may communicate and deal with the Access Seeker's end-users:
- (a) in relation to goods and services which the Access Provider currently supplies or previously supplied to the end-user;
  - (b) as members of the general public or a part of the general public or members of a particular class of recipients of carriage or other services;
  - (c) where the Access Provider performs wholesale operations which require communications or dealings with such end-users, to the extent necessary to carry out such operations;
  - (d) in a manner or in circumstances agreed by the parties; or
  - (e) in an Emergency, to the extent it reasonably believes necessary to protect the safety of persons or property.
- 12.3. If:
- (a) an end-user of the Access Seeker initiates a communication with the Access Provider in relation to goods and/or services supplied to that end-user by the Access Seeker, the Access Provider must:
    - (i) advise the end-user that they should discuss any matter concerning the Access Seeker's goods and/or services with the Access Seeker; and
    - (ii) not engage in any form of marketing or discussion of the Access Provider's goods and/or services;
  - (b) an end-user of the Access Seeker initiates a communication with the Access Provider in relation to goods and/or services supplied to that end-user by the Access Provider, the Access Provider may engage in any form of marketing or discussion of the Access Provider's goods and/or services; and
  - (c) an end-user of the Access Seeker initiates a communication with the Access Provider in relation to goods and/or services supplied to that end-user by the Access Provider and the Access Seeker, the Access Provider must advise the end-user that they should discuss any matter concerning the Access Seeker's goods and/or services with the Access Seeker, but may otherwise engage in any form of marketing or discussion of the Access Provider's goods and/or services.

- 12.4. Where a party communicates with the end-user of the other party, that first mentioned party must, where practicable, make and maintain records of that communication with the other party's end-user in circumstances where that communication discusses anything concerning the other party's goods or services with the end-user. For the avoidance of doubt, the obligation in this paragraph does not include a requirement to provide such records to the other party (however such a requirement may arise pursuant to any dispute resolution procedure).
- 12.5. For the purposes of clauses 12.2 to 12.4, a "communication" shall include any form of communication, including without limitation telephone discussions and correspondence.
- 12.6. Neither party may represent that:
- (a) it has any special relationship with or special arrangements with the other party;
  - (b) there are consequences for an end-user when an end-user signs an authority to transfer their accounts or services;
  - (c) a Service has any characteristics or functionality other than as specified in a relevant standard form of agreement or the service description for the Service or in any specifications, collateral or brochures published in relation to the Service; or
  - (d) the other party participates in the provision of the first mentioned party's services, provided that a party may, upon enquiry by an end-user, inform the end-user of the nature of its relationship with the other party.
- 12.7. Where a party communicates with an end-user of either party, the first mentioned party shall ensure that it does not attribute to the other party:
- (a) blame for a Fault or other circumstance; or
  - (b) the need for maintenance of a Network; or
  - (c) the suspension of a Service,
- provided that this requirement does not require a party to engage in unethical, misleading or deceptive conduct.
- 12.8. This Schedule 12 shall be subject to any applicable industry standard made by the ACMA pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) and any applicable industry code registered pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) in relation to communications or dealings with end-users.

## **Schedule 13 – Network modernisation and upgrade provisions**

*Notice to be provided where Access Provider undertakes a Major Network Modernisation and Upgrade*

- 13.1. Except were the parties agree otherwise, the Access Provider may make a Major Network Modernisation and Upgrade by:
- (a) providing the Access Seeker with notices in writing in accordance with clauses 13.2 and 13.4 (**General Notification**) and clauses 13.3 and 13.5 (**Individual Notification**); and
  - (b) consulting with the Access Seeker, and negotiating in good faith, any reasonable concerns of the Access Seeker, in relation to the Major Network Modernisation and Upgrade.

This clause 13.1 does not apply to an Emergency Network Modernisation and Upgrade.

- 13.2. The period of notices given under a General Notification provided by the Access Provider to the Access Seeker:
- (a) must be an Equivalent Period of Notice; and
  - (b) in any event, must not be less than 30 weeks before the Major Network Modernisation and Upgrade is scheduled to take effect.
- 13.3. An Individual Notification must be provided by the Access Provider to the Access Seeker as soon as practicable after the General Notification, but, in any event, not less than 26 weeks prior to the anticipated commencement date of the Major Network Modernisation and Upgrade.

*Information to be provided in the notices*

- 13.4. A General Notification must include information on:
- (a) the ESA affected by the proposed Major Network Modernisation and Upgrade;
  - (b) the distribution area affected by the proposed Major Network Modernisation and Upgrade; and
  - (c) a general description of the proposed Major Network Modernisation and Upgrade, including the indicative timing for the implementation of the Major Network Modernisation and Upgrade.
- 13.5. An Individual Notification must include the following information in addition to the information provided in the relevant General Notification:



- (a) the anticipated commencement date for implementing the Major Network Modernisation and Upgrade;
  - (b) details of the Access Seeker's activated Services, or Services in the process of being activated at the date of the notice, that are likely to be affected by the Major Network Modernisation and Upgrade;
  - (c) the likely action required by the Access Seeker as a result of the Major Network Modernisation and Upgrade (including the possible impact of the Major Network Modernisation and Upgrade upon the Access Seeker's Services); and
  - (d) details of who the Access Seeker may contact to obtain further information about the Major Network Modernisation and Upgrade.
- 13.6. An Individual Notification only needs to be given where a Service has been activated or the Access Provider is in the process of activating a service as at the date of the Individual Notification, and:
- (a) the Major Network Modernisation and Upgrade will require the Access Seeker to take particular action in order to continue to use the Service; or
  - (b) the Major Network Modernisation and Upgrade will result in the Service no longer being supplied.
- 13.7. Where the Access Provider has provided the Access Seeker with an Individual Notification, the Access Provider must provide the Access Seeker with:
- (a) updates about the Major Network Modernisation and Upgrade covered by the notice, including:
    - (i) any update or change to the information provided in the Individual Notification;
    - (ii) any new information available at the time of the update about:
      1. services provided by the Access Provider in the relevant ESA that may be available to the Access Seeker;
      2. how the Access Seeker may be impacted by the Major Network Modernisation and Upgrade; and
      3. what steps the Access Seeker will be required to take to facilitate the Major Network Modernisation and Upgrade; and
  - (b) weekly reports about the anticipated cutover dates for the Access Seeker's affected services, beginning no less than five weeks prior to the anticipated commencement date for the Major Network Modernisation and Upgrade.

- 13.8. The updates referred to in subclause 13.7(a) are to be provided regularly (which is not required to be any more frequently than Monthly) after the Individual Notification.

*Emergency Network Modernisation and Upgrade*

- 13.9. In the event of an Emergency, the Access Provider may conduct an Emergency Network Modernisation and Upgrade, and
- (a) will use its best endeavours to provide the Access Seeker with an Individual Notification prior to the Emergency Network Modernisation and Upgrade being implemented; or
  - (b) where it is not practicable for prior notice to be given, the Access Provider will provide the Access Seeker with an Individual Notification as soon as reasonably practicable after the Emergency Network Modernisation and Upgrade is implemented.

*Coordinated Capital Works Program forecast*

- 13.10. The Access Provider must provide the Access Seeker with a written three year Coordinated Capital Works Program forecast in accordance with clause 13.11 14 Calendar Days from the date this Schedule 13 of the FAD takes effect between the parties (**Coordinated Capital Works Program Forecast**).
- 13.11. The Coordinated Capital Works Program Forecast will:
- (a) be for the three year period commencing on the date the forecast is provided;
  - (b) describe generally the Access Provider's indicative investment plans (as at the date of the forecast) for its Coordinated Capital Works Program over the next three years;
  - (c) include an evaluation of the impact that the Access Provider's indicative investment plans may have on individual ESAs areas and distribution areas; and
  - (d) specify anticipated timeframes for implementation.
- 13.12. The Access Provider must update the Coordinated Capital Works Program Forecast (and provided the update forecasts in writing to the Access Seeker) regularly, at not less than six Month intervals.
- 13.13. At the same time as the Access Provider provides a Coordinated Capital Works Program Forecast under clause 13.10, the Access Provider must provide a copy of the Coordinated Capital Works Program Forecast to the ACCC.

*Coordinated Capital Works Program Schedule*

- 13.14. The Access Provider must provide a written Coordinated Capital Works Program schedule to the Access Seeker by giving notice not less than 12 Months before the anticipated commencement date of the Coordinated Capital Works Program in accordance with clause 13.15 (**Coordinated Capital Works Program Schedule**).
- 13.15. The Access Provider must provide the Coordinated Capital Works Program Schedule and make its best endeavours to identify:
- (a) the ESAs and distribution areas affected;
  - (b) the Access Provider's plan for the Coordinated Capital Works Program for each ESA;
  - (c) the Access Seeker's Service(s) in that Exchange that will be affected and the expected impact of the Coordinated Capital Works Program on the Access Seeker's Service(s); and
  - (d) the anticipated timeframe for the implementation of the Coordinated Capital Works Program.
- 13.16. At the same time as the Access Provider provides a Coordinated Capital Works Program Schedule under clause 13.14, the Access Provider must provide a copy of the Coordinated Capital Works Program Schedule to the ACCC.
- 13.17. For the avoidance of doubt, the Access Provider must also comply with clauses 13.1–13.8 when complying with clauses 13.10–13.16.

*Negotiations in good faith*

- 13.18. Except where the parties agree otherwise, the Access Provider must not commence implementation of a Major Network Modernisation and Upgrade unless:
- (a) it complies with clauses 13.1 to 13.8; and
  - (b) it has consulted with the Access Seeker and has negotiated in good faith, and addressed the reasonable concerns of the Access Seeker in relation to the Major Network Modernisation and Upgrade.
- 13.19. Except where the parties agree otherwise, the Access Provider must not commence the implementation of a Coordinated Capital Works Program unless:
- (a) it complies with clauses 13.14 to 13.16; and
  - (b) it has consulted with the Access Seeker and has negotiated in good faith, and addressed the reasonable concerns of the Access Seeker in relation to the Major Network Modernisation and Upgrade.

13.20. Notwithstanding any continuing negotiations between the Access Provider and the Access Seeker pursuant to clauses 13.1, 13.18 and 13.19, if the Access Provider has complied with this Schedule 13, a Major Network Modernisation and Upgrade may proceed 26 weeks after an Individual Notification has been issued, unless both parties agree otherwise.

13.21. In attempting to reach a mutually acceptable resolution in relation to a variation under clauses 13.1, 13.18 and 13.19, the parties must recognise any need that the Access Provider may have to ensure that the specifications for the Services which the Access Providers supplies to more than one of its customers need to be consistent (including, without limitation having regard to the incorporation by the Access Provider of any relevant international standards).

#### *Dispute Resolution*

13.22. If a dispute arises in relation to a Major Network Modernisation and Upgrade, then the matter may be resolved in accordance with the dispute resolution procedures set out in Schedule 10 of this FAD.

#### *Application*

13.23. This Schedule 13 commences 21 Calendar Days after the day this FAD is published by the ACCC.

#### *Miscellaneous*

13.24. A requirement for the Access Provider to provide information in written form includes provision of that information in electronic form.

13.25. Any information provided by the Access Provider in electronic form must be in a text-searchable and readable format.

## **Schedule 14 – Suspension and termination**

14.1. The Access Provider may immediately suspend the supply of a Service or access to the Access Provider's Network, provided it notifies the Access Seeker where practicable and provides the Access Seeker with as much notice as is reasonably practicable:

- (a) during an Emergency; or
- (b) where in the reasonable opinion of the Access Provider, the supply of that Service or access to the Access Provider's Network may pose a threat to safety of persons, hazard to equipment, threat to Network security or is likely to impede the activities of authorised persons responding to an Emergency; or
- (c) where, in the reasonable opinion of the Access Provider, the Access Seeker's Network or equipment adversely affects or threatens to affect the normal operation of the Access Provider's Network or access to the Access Provider's Network or equipment (including for the avoidance of doubt, where the Access Seeker has delivered Prohibited Traffic onto the Access Provider's Network),

and is entitled to continue such suspension until (as the case requires) the relevant Emergency or threat has passed or until the normal operation of the Access Provider's Network or access to the Access Provider's Network or equipment is no longer adversely affected or threatened.

14.2. If:

- (a) the Access Seeker has failed to pay monies owing under this FAD;
- (b) the Access Seeker's use either of its Facilities or the Access Provider's Facilities is in contravention of any law;
- (c) the Access Seeker breaches a material obligation under this FAD; or
- (d) any of the events described in clause 14.8 occurs in respect of the Access Seeker,

**(Suspension Event)** and:

- (e) within 20 Business Days after becoming aware of the Suspension Event, the Access Provider gives a written notice to the Access Seeker:
  - (i) citing this clause;
  - (ii) specifying the Suspension Event and the Service in respect of which the event has occurred;
  - (iii) requiring the Access Seeker to institute remedial action (if any) in respect of that event; and

- (iv) specifying the action which may follow due to a failure to comply with the notice,

**(Suspension Notice)** and:

- (f) the Access Seeker fails to institute remedial action as specified in the Suspension Notice within 20 Business Days after receiving the Suspension Notice (in this clause 14.2, the **Remedy Period**),

the Access Provider may, by written notice given to the Access Seeker within 20 Business Days after the expiry of the Remedy Period:

- (g) refuse to provide the Access Seeker with the Service:
  - (i) of the kind in respect of which the Suspension Event has occurred; and
  - (ii) a request for which is made by the Access Seeker after the date of the breach,

until the remedial action specified in the Suspension Notice is completed or the Suspension Event otherwise ceases to exist; and

- (h) suspend the provision of any Service of the kind in respect of which the Suspension Event has occurred, until the remedial action specified in the Suspension Notice is completed.

14.3. For the avoidance of doubt, subclause 14.2(a) does not apply to a Billing Dispute that has been notified by the Access Seeker.

14.4. In the case of a suspension pursuant to clause 14.2, the Access Provider shall reconnect the Access Seeker to the Access Provider's Network and recommence the supply of any suspended Services as soon as practicable after there no longer exists a reason for suspension and the Access Provider shall do so subject to payment by the Access Seeker of the Access Provider's reasonable costs of suspension and reconnection.

14.5. If:

- (a) a party ceases to be a carrier or carriage service provider; or
- (b) a party ceases to carry on business for a period of more than 10 consecutive Business Days without the prior written consent of the other party (such consent not to be unreasonably withheld); or
- (c) in the case of the Access Seeker, any of the reasonable grounds specified in subsection 152AR(9) of the CCA apply; or
- (d) a party breaches a material obligation under this FAD, and:

- (i) that breach materially impairs or is likely to materially impair the ability of the other party to deliver Listed Carriage Services to its customers; and
- (ii) the other party has given a written notice to the first-mentioned party within 20 Business Days of becoming aware of the breach (**Breach Notice**); and
- (iii) the other party fails to institute remedial action as specified in the Breach Notice within 20 Business Days after receiving the Breach Notice (in this clause 14.5, the **Remedy Period**),

the other party may cease supply of the Service(s) under this FAD by written notice given to the first-mentioned party within 20 Business Days after becoming aware of the cessation, reasonable grounds or expiry of the Remedy Period specified in the Breach Notice (as the case may be).

14.6. A party must not give the other party both a Suspension Notice under clause 14.2 and a Breach Notice under clause 14.5 in respect of:

- (a) the same breach; or
- (b) different breaches that relate to or arise from the same act, omission or event or related acts, omissions or events;

except:

- (c) where a Suspension Notice has previously been given to the Access Seeker by the Access Provider in accordance with clause 14.2 in respect of a Suspension Event and the Suspension Event has not been rectified by the Access Seeker within the relevant Remedy Period specified in clause 14.2; and
- (d) where an Access Seeker has not rectified a Suspension Event, notwithstanding clause 14.5(d)(ii), the Access Provider has given written notice to the Access Seeker within 20 Business Days of the expiry of the time available to remedy the Suspension Event.

14.7. For the avoidance of doubt, a party shall not be required to provide a Suspension Notice under clause 14.2 in respect of a breach before giving a Breach Notice in respect of that breach under clause 14.5.

14.8. Notwithstanding any other provision of this FAD, either party may at any time immediately cease the supply of one or more Services under this FAD by giving written notice of termination to the other party if:

- (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (otherwise than for the purposes of solvent reconstruction or amalgamation) of the other party and the order or resolution remains in effect for a continuous period of five Business Days; or

- (b) a receiver, receiver and manager, official manager, controller, administrator (whether voluntary or otherwise), provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the other party and the appointment remains in effect for a continuous period of five Business Days; or
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the other party, or the other party enters or proposes to enter into any scheme of arrangement or any composition for the benefit of its creditors; or
- (d) the other party is or likely to be unable to pay its debts as and when they fall due or is deemed to be unable to pay its debts pursuant to section 585 or any other section of the *Corporations Act 2001* (Cth); or
- (e) as a result of the operation of section 459F or any other section of the *Corporations Act 2001* (Cth), the other party is taken to have failed to comply with a statutory demand; or
- (f) a force majeure event substantially and adversely affecting the ability of a party to perform its obligations to the other party, continues for a period of three Months; or
- (g) the other party breaches any of the terms of any of its loans, security or like agreements or any lease or agreement relating to significant equipment used in conjunction with the business of that other party related to the supply of a Service under this FAD; or
- (h) the other party seeks or is granted protection from its creditors under any applicable legislation; or
- (i) anything analogous or having a substantially similar effect to any of the events specified above occurs in relation to the other party.

14.9. The cessation of the operation of this FAD:

- (a) shall not operate as a waiver of any breach by a party of any of the provisions of the FAD; and
- (b) is without prejudice to any rights, liabilities or obligations of any party which have accrued up to the date of cessation.

14.10. Without prejudice to the parties' rights upon termination of the supply of a Service under this FAD, or expiry or revocation of this FAD, the Access Provider must refund to the Access Seeker a fair and equitable proportion of those sums paid under this FAD by the Access Seeker which are periodic in nature and have been paid for a Service for a period extending beyond the date on which the supply of a Service under this FAD terminates, or this FAD ceases to have effect, subject to any invoices or other amounts outstanding from the Access Seeker to the Access Provider. In the event of a dispute in relation to the calculation or quantum of a fair and equitable proportion, either



party may refer the matter for dispute resolution in accordance with the dispute resolution procedures set out in Schedule 10 of this FAD.

## Schedule 15 – Changes to operating manuals

15.1. Operational documents concerning the ULLS may be amended:

- (a) by the Access Provider from time to time to implement or reflect a change to its standard processes, subject to:
  - (i) giving 20 Business Days prior written notice to the Access Seeker including a documented list of all amendments, and a marked-up copy of the proposed new operational document that clearly identifies all amendments; and
  - (ii) allowing the Access Seeker to provide comments during the notice period on the proposed amendments, and giving reasonable consideration to any comments which the Access Seeker has made on the proposed amendments; and
- (b) otherwise, by agreement of the parties.

Note: operational documents concerning the ULLS include (i) *The Telstra Operations and Maintenance Manual Part 16 Fault Management Procedures for Telstra Unconditioned Local Loop Service*; and (ii) *The Telstra Ordering and Provisioning Manual Part 16 Telstra Unconditioned Local Loop Service Operations Manual and any replacement document*

15.2. Upon completion of the process set out in clause 15.1, the Access Provider must give the Access Seeker a copy of the new operational document.

15.3. Where operational documents concerning the ULLS are amended in accordance with clause 15.1 and the Access Seeker believes that the amendments:

- (a) are unreasonable; or
- (b) deprive the Access Seeker of a fundamental part of its rights contained in this FAD;

the Access Seeker may seek to have the matter resolved in accordance with the dispute resolution procedures set out in Schedule 10 of this FAD.

## **Schedule 16 – Ordering and provisioning**

### ***Provisions to apply to Managed Network Migrations (MNM) to the ULLS and the LSS***

#### *Minimum number of services*

- 16.1. Except where the parties agree otherwise, it is at the discretion of the Access Seeker whether a particular Service is to be connected as part of an MNM, or outside of a MNM.
- 16.2. The Access Seeker will notify the Access Provider at the time the order is made whether a particular Service is to be connected as part of an MNM or outside of a MNM.
- 16.3. Except where the parties agree otherwise, there is no minimum number of services required as a pre-requisite for requesting an MNM.

#### *Migration plan terms (forecasting timeframes)*

- 16.4. Unless the parties agree otherwise, the period of notice that an Access Seeker must give for an MNM is 56 Calendar Days.
- 16.5. Subject to clause 16.6, the Access Provider must not cancel an MNM where the number of Services to be cutover as specified in the 20 Business Day forecast differs to the number of Services specified in the 56 Calendar Day forecast.
- 16.6. If the cutover of Services cannot occur within the 56 Calendar Day forecast period because of a significant variation between the 56 Calendar Day forecast and the 20 Business Day forecast, the Access Provider must take all reasonable steps to ensure that cutover occurs as soon as practicable following the conclusion of that period.
- 16.7. For the purpose of this determination a reference to a significant variation refers to a variation of more than 10 per cent of the MNM forecast.

Note: For instance the cutover may not occur because of a significant variation between the 56 Calendar Day forecast and the 20 Business Day forecasts

#### *Connections outside Business Hours*

- 16.8. Except where the parties agree otherwise, it is at the discretion of the Access Seeker whether a particular Service is to be connected within Business Hours or outside of Business Hours.

Note: additional charges may be payable for work done outside of Business Hours.

#### *Limits on number of exchanges per state per day at which MNM cutovers can be scheduled*

- 16.9. Except where the parties otherwise agree, and subject to clause 16.10, the Access Provider must not refuse to schedule a cutover for an MNM at an Exchange because the Access Seeker has requested an MNM cutover at another Exchange or other Exchanges in that state on the same day.
- 16.10. The Access Provider may refuse a requested MNM cutover date where it would be inconsistent with a capacity limitation notice (**Limitation Notice**) it has published.
- 16.11. The Limitation Notice must specify:
- (a) the limit that is to apply;
  - (b) the period and the ESAs to which it applies; and
  - (c) the reasons for the limit being necessary by reference to forecast demand and available capacity.
- 16.12. The Limitation Notice lapses 60 Calendar Days after it is published, unless withdrawn earlier.
- Note: Another Limitation Notice may be issued to replace a lapsed notice.
- 16.13. The Access Provider must not unreasonably refuse to vary or withdraw the Limitation Notice on the request of an Access Seeker.
- 16.14. Where an Access Seeker disagrees with a decision made by the Access Provider not to vary or withdraw the Limitation Notice, the Access Seeker may seek dispute resolution in accordance with the dispute resolution procedures set out in Schedule 10 of this FAD.

### ***Capacity Limits on ULLS provisioning***

- 16.15. Except where the parties otherwise agree, and subject to clause 16.16, the Access Provider must not unreasonably limit the number of Services that can be provisioned per day at a particular Exchange and must use its best endeavors to supply all requested cutovers for a particular day.
- 16.16. The Access Provider may refuse a requested cutover for a Service at a particular Exchange where it is not reasonably able to perform the cutover on that day having regard to the volume of work orders, for that Exchange or for all Exchanges, and the labour that is available on that day, subject to the Access Provider performing the cutover the following Business Day.

### ***Advice regarding Complex Services affecting ULLS orders***

- 16.17. Except where the parties agree otherwise, where:
- (a) an Access Seeker has submitted a ULLS request; and
  - (b) the Service Qualification query fails due to the presence of Complex Services on the line,

the Access Provider will provide to the Access Seeker a list of the Complex Services present on the line at the time it advises the Access Seeker of the results of the Service Qualification query.

### ***New ULLS ordering and provisioning processes***

#### *LSS to ULLS Transfer processes*

#### **Scope**

16.18. Except where the parties subsequently agree otherwise, clauses 16.18 to 16.23 apply where an Access Seeker requests the Transfer of a LSS to a ULLS from the Access Provider.

#### **Terms**

16.19. The Access Seeker must provide instructions about whether or not the Transfer should occur as part of a MNM in accordance with the MNM forecasting timeframes and notice periods specified in clauses 16.4 to 16.7 of this FAD, or as otherwise agreed between the parties.

16.20. The Access Provider must take all reasonable efforts to comply with the Access Seekers instructions provided pursuant to clause 16.19.

16.21. Both the Access Provider and the Access Seeker must allow for the Transfer of the LSS to ULLS in accordance with the following minimum characteristics:

- (a) the period in which a LSS to ULLS Transfer is performed (that is, the period in which a LSS is disconnected and a ULLS is connected) will be no longer than four hours;
- (b) a Transfer must not require end-user involvement with the Access Provider (including, without limitation, the making of a telephone call or sending of correspondence by the end-user to the Access Provider). A request for a LSS to ULLS Transfer will be deemed a cancellation of any existing PSTN line rental and LSS provided the Access Seeker has obtained the necessary customer authority for the cancellation of end-user PSTN services;
- (c) a Transfer is commenced and executed by a single provisioning order from the Access Seeker to the Access Provider; and
- (d) the Access Provider will charge the Access Seeker a single charge for undertaking a LSS to ULLS Transfer whether the Transfer occurs as a single connection or as part of an MNM.

16.22. The Access Provider must ensure that the development and implementation of the LSS to ULLS Transfer process will result in no changes to how the Access Seeker currently interfaces to the ULLS Carrier Interface System (ULLCIS).

## **Application**

16.23. Clauses 16.19 to 16.22 commence on 15 September 2011, unless a prescribed LSS to ULLS Transfer process is established on an earlier date by the Access Provider, in which case clauses 16.19 to 16.22 commence on the date the prescribed LSS to ULLS Migration process is established by the Access Provider.

Note: The commencement date of this clause aligns with similar provisions contained in final determinations between Telstra and a number of Access Seekers in the context of access disputes involving the ULLS. Some of these final determinations have been published by the ACCC and are available on its website.

See: <http://www.accc.gov.au/content/index.phtml?itemId=793062>

### *Connect Outstanding process for ULLS orders*

16.24. Except where the parties agree otherwise, the Access Provider will support a Connect Outstanding process for the ULLS, by no later than six Months from the Commencement Date.

16.25. The Connect Outstanding process for the ULLS must:

- (a) support the cancellation of an existing service on a line upon the Access Provider receiving from the Access Seeker advice that the Access Seeker has obtained Proof of Occupancy; and,
- (b) facilitate the connection of a ULLS in response to a ULLS request submitted by an Access Seeker in respect of that line.