

**3 February 2012**

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Ms Analena Gilhome  
Director, NBN Co Access Co-ordination Section - Communications Group  
Australian Competition and Consumer Commission  
Level 35, 360 Elizabeth Street  
Melbourne, VIC 3000

Dear Ms Gilhome,

### **Statement of differences—Symbio Wholesale Pty Ltd**

On 30 November 2011, NBN Co published on its website the Wholesale Broadband Agreement (**WBA**) under section 152BE of the *Competition and Consumer Act 2010* (**CCA**) as a standard form of access agreement (**SFAA**).

An access agreement was entered into between NBN Co and Symbio Wholesale Pty Ltd on 2 February 2012. This access agreement commenced on its execution date, and will terminate on 30 November 2012 (subject to extension in accordance with clause F2.2), or on such other date as the parties may agree in writing.

As required by section 152BEBA of the CCA, NBN Co provides this statement of differences setting out how the terms and conditions of this access agreement differ from those contained in the SFAA. NBN Co is providing this statement of differences in the form specified in the draft *Part XIC non-discrimination guidelines* published by the ACCC in December 2011.

A marked-up copy of the relevant part of the access agreement is provided with this letter, specifying how this access agreement is different from the SFAA.

This access agreement is different from the SFAA in the following respects:

1. **Module E (Risk Management)—indemnity.** Clause E3.5 has been amended to limit the liability of Customers to Claims by Downstream Customers, End Users and other third parties.
2. **Module E (Risk Management)—force majeure.** Clause E7 has been amended to limit a Customer's liability for Charges for Ordered Products after a Force Majeure Event occurs.

NBN Co made these changes at the request of some access seekers. These differences are improvements in favour of NBN Co customers.

NBN Co intends to offer these differences to all access seekers who wish to adopt them, and to update NBN Co's SFAA to incorporate the changes.

Any terms not defined in this letter should be read as defined in the access agreement provided with this letter.

NBN Co will also shortly lodge the access agreement executed by Symbio Wholesale Pty Ltd, as required by section 152BEA of the CCA.

Please do not hesitate to contact me if you have any queries.

Yours sincerely,



**Caroline Lovell**  
Principal, Regulatory Affairs and Industry Engagement