

# NBN Co Special Access Undertaking

given to the ACCC in accordance with Part XIC of the  
Competition and Consumer Act 2010 (Cth)

accepted by the ACCC on 13 December 2013

as varied up to and including [insert date of ACCC  
acceptance]



**NBNCo**  
Bringing broadband to life

**NBN Co Limited (ACN 136 533 741)**

**NBN Co Special Access Undertaking**

~~18 December 2012~~ Accepted by the ACCC on 13 December 2013, as varied up to and including [insert date of ACCC acceptance]

~~varied on 18 November 2013~~

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### **Environment**

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## Special Access Undertaking

This is a Special Access Undertaking given by NBN Co Limited (ACN 136 533 741) to the ACCC under section 152CBA(2) of the *Competition and Consumer Act 2010* (Cth), as varied from time to time under section 152CBG of the CCA.

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### Background

- A NBN Co Limited (**NBN Co**) is a Carrier.
- B NBN Co supplies listed carriage services and services that facilitate the supply of listed carriage services on the NBN Co Network.
- C The NBN Access Service is a listed carriage service within the meaning of the Telecommunications Act for the purposes of section 152CBA(1)(b)(i) of the CCA.
- D The Ancillary Services are services that facilitate the supply of listed carriage services for the purposes of section 152CBA(1)(b)(ii) of the CCA.
- E The NBN Access Service and the Ancillary Services are not declared services under section 152AL(8A) of the CCA and there is no Access Determination that applies in respect of the NBN Access Service or Ancillary Services.
- F NBN Co gives this Special Access Undertaking to the ACCC in accordance with section 152CBA(2) of the CCA in respect of the NBN Access Service and the Ancillary Services.
- G This Special Access Undertaking also provides for NBN Co to engage in specified conduct in relation to access to the NBN Access Service and Ancillary Services under section 152CBA(3B) of the CCA and those matters referred to in section 152CBA(3C) of the CCA.
- H This Special Access Undertaking also sets out the terms and conditions on which NBN Co will make the Facilities Access Service available to Access Seekers in connection with the satisfaction of NBN Co's interconnection obligations under section 152AXB(4) of the CCA in relation to the NBN Access Service and the Ancillary Services.
- I This Special Access Undertaking contains price related terms and conditions that are reasonably necessary for NBN Co to achieve uniform national wholesale pricing in accordance with the requirements of the Statement of Expectations.
- J This Special Access Undertaking includes any variation made under section 152CBG of the CCA to the terms and conditions in the Special Access Undertaking that was accepted by the ACCC under section 152CBC(2) of the CCA on 13 December 2013.
- JK This Special Access Undertaking has effect from the SAU Commencement Date until the end of the SAU Term.

KL This Special Access Undertaking comprises the following individual modules that have effect over a fixed period of the SAU Term:

- i. Module 0, which sets out the terms of this Special Access Undertaking, has effect for the entire SAU Term;
- ii. Module 1, which sets out the commitments that NBN Co makes in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service, has effect during the Initial Regulatory Period; and
- iii. Module 2, which sets out long term regulatory principles that apply in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service, has effect during the Subsequent Regulatory Period.

LM During the Subsequent Regulatory Period, NBN Co will seek to supplement this Special Access Undertaking with Replacement Module Applications to the ACCC that contain terms at a similar level of detail to those in Module 1.

MN If accepted by the ACCC, each Replacement Module will operate for a Regulatory Cycle and will include detailed commitments, forecasts and regulatory values that implement and operate in conjunction with Module 0 and Module 2 for that Regulatory Cycle.

NO NBN Co intends to introduce such Replacement Modules as variations to this Special Access Undertaking which will only take effect if accepted by the ACCC under section 152CBG of the CCA. A Replacement Module Application may also include variations in respect of Module 2 of this Special Access Undertaking under section 152CBG of the CCA, to update Module 2 to reflect updated commitments under this Special Access Undertaking.

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## 1 Compliance

### 1.1 Compliance with category B standard access obligations

In the event that NBN Co supplies, or becomes capable of supplying, the NBN Access Service and the Ancillary Services (whether to itself or to other persons), NBN Co agrees to be bound by the obligations referred to in section 152AXB of the CCA, to the extent that those obligations would apply to NBN Co in relation to the NBN Access Service and Ancillary Services if the NBN Access Service and Ancillary Services were treated as declared services.

### 1.2 Compliance with this Special Access Undertaking

In the event that NBN Co supplies, or becomes capable of supplying, the NBN Access Service and the Ancillary Services (whether to itself or to other persons), NBN Co

undertakes to comply with the terms and conditions specified in this Special Access Undertaking in relation to obligations referred to in section 152AXB of the CCA.

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## 2 Scope of this Special Access Undertaking

### 2.1 NBN Access Service and Ancillary Services

This Special Access Undertaking is given in connection with the provision of access to the NBN Access Service and the Ancillary Services.

### 2.2 Facilities Access Service

This Special Access Undertaking sets out commitments in relation to NBN Co's supply of the Facilities Access Service in connection with the satisfaction of NBN Co's interconnection obligations under section 152AXB(4) of the CCA in relation to the NBN Access Service and the Ancillary Services.

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## 3 SAU Term

### 3.1 Commencement

This Special Access Undertaking comes into operation on the date that the ACCC provides NBN Co with written notice of acceptance of this undertaking in accordance with section 152CBC(3) of the CCA (**SAU Commencement Date**).

### 3.2 Expiry

This Special Access Undertaking expires on 30 June 2040 (**SAU Expiry Date**).

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## 4 Structure of this Special Access Undertaking

### 4.1 Overview

This Special Access Undertaking comprises the following documents:

- (a) Module 0, which sets out the terms of this Special Access Undertaking and comprises:
  - (i) this main body;
  - (ii) Attachment A (Service Descriptions);
  - (iii) Attachment B (Facilities Access Service);
  - (iv) Attachment C (Dictionary); and
  - (v) Attachment D (Initial Products),



which have effect from the SAU Commencement Date until the end of the SAU Term;

- (b) Module 1, which has effect from the SAU Commencement Date until 30 June 2023 (**Initial Regulatory Period**);
- (c) Module 2, which has effect from the end of the Initial Regulatory Period until the end of the SAU Term (**Subsequent Regulatory Period**), irrespective of whether a Replacement Module or ACCC Replacement Module Determination is in effect; and
- (d) any Replacement Modules incorporated into this Special Access Undertaking by a variation accepted by the ACCC pursuant to section 152CBG of the CCA, each of which has effect for the relevant Regulatory Cycle.

#### **4.2 Description of Module 1**

- (a) Module 1 sets out the commitments that NBN Co makes in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service during the Initial Regulatory Period.
- (b) Module 1 comprises the following schedules:
  - (i) Schedule 1A (Implementation of NBN Access Service, Ancillary Services and the Facilities Access Service);
  - (ii) Schedule 1B (Term of any SFAA and consultation on changes to any SFAA);
  - (iii) Schedule 1C (NBN Offers and Other Charges);
  - (iv) Schedule 1D (Regulatory Asset Base);
  - (v) Schedule 1E (Long Term Revenue Constraint Methodology);
  - (vi) Schedule 1F (Regulatory Information);
  - (vii) Schedule 1G (Maximum Regulated Price Review Mechanisms);
  - (viii) Schedule 1H (Non-price terms and conditions); and
  - (ix) Schedule 1I (Product Development and Withdrawal).

#### **4.3 Description of Module 2**

- (a) Module 2 sets out long term arrangements that apply in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service during the Subsequent Regulatory Period.
- (b) Module 2 comprises the following schedules:

- (i) Schedule 2A (Implementation);
- (ii) Schedule 2B (Pricing Commitments);
- (iii) Schedule 2C (Long Term Revenue Constraint Methodology and Regulatory Asset Base);
- (iv) Schedule 2D (Product Development and Withdrawal); and
- (v) Schedule 2E (Maximum Regulated Price Review Mechanisms).

#### **4.4 Description of Replacement Module**

- (a) NBN Co will, by way of an application to vary this Special Access Undertaking pursuant to section 152CBG of the CCA, seek to incorporate a Replacement Module (and other changes) into this Special Access Undertaking in accordance with clause 4.5.
- (b) Each Replacement Module will set out the detailed commitments that NBN Co makes in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service for the relevant Regulatory Cycle.
- (c) NBN Co acknowledges that:
  - (i) each Replacement Module Application will be assessed by the ACCC as an SAU variation application under section 152CBG of the CCA;
  - (ii) each Replacement Module Application will be accepted or rejected by the ACCC in accordance with section 152CBG of the CCA; and
  - (iii) when determining whether to accept or reject a Replacement Module Application, the ACCC may assess proposed key elements of the regulatory arrangements (as described in clause 4.5(e)) which, in combination with Module 2, would be applicable to NBN Co for the relevant Regulatory Cycle if the Replacement Module Application was accepted by the ACCC.
- (d) NBN Co may:
  - (i) withdraw an SAU variation application that contains a Replacement Module Application before the ACCC accepts or rejects the SAU variation application in accordance with section 152CBG of the CCA; and
  - (ii) re-submit an SAU variation application under section 152CBG of the CCA that contains an amended Replacement Module Application for approval by the ACCC.

#### **4.5 Commitment to submit a Replacement Module Application**

- (a) NBN Co will provide Replacement Module Applications to the ACCC in accordance with this clause 4.5.
- (b) The ACCC will provide NBN Co with no less than 12 months' written notice requiring NBN Co to provide a Replacement Module Application.
- (c) In a written notice given by the ACCC under clause 4.5(b), the ACCC must specify the due date for NBN Co to provide a Replacement Module Application to the ACCC, which must be no less than 9 months and no more than 18 months prior to:
  - (i) the end of the Initial Regulatory Period; or
  - (ii) the end of the then current Regulatory Cycle,as the case may be.
- (d) NBN Co must give a Replacement Module Application to the ACCC no later than the due date specified by the ACCC in accordance with clause 4.5(c).
- (e) A Replacement Module Application given to the ACCC by NBN Co must:
  - (i) specify a proposed Regulatory Cycle commencing immediately after the last day of the Initial Regulatory Period or the previous Regulatory Cycle (as the case may be), which must be either 3, 4 or 5 years in duration (unless fewer than 3 years remain in the SAU Term, in which case, the proposed Regulatory Cycle will be for the number of years remaining in the SAU Term);
  - (ii) include a LTRCM Proposal established in accordance with clause 4.6;
  - (iii) include a RAB Roll Forward Proposal established in accordance with clause 4.7;
  - (iv) if the duration of the Regulatory Cycle proposed under clause 4.5(e)(i) is less than 5 years and the end of the proposed Regulatory Cycle is not the SAU Expiry Date, include all of the forecasts referred to in clause 4.6 for each Financial Year that is within 5 Financial Years of the commencement of the proposed Regulatory Cycle but is not within the proposed Regulatory Cycle; and
  - (v) include any other matters that NBN Co proposes to form part of that Replacement Module.

#### **4.6 LTRCM Proposal**

A LTRCM Proposal must include:

- (a) Forecast Nominal ABBRR and Forecast Real ABBRR for each of the Financial Years in the proposed Regulatory Cycle determined in accordance with the principles set out in clause 2C.2.1;
- (b) if applicable, the Adjusted Forecast ABBRR for those Financial Years in the proposed Regulatory Cycle that are in the Building Block Revenue Period;
- (c) all necessary inputs required for the calculation of the Forecast Nominal ABBRR and Forecast Real ABBRR for each of the Financial Years in the proposed Regulatory Cycle, including the rate of return, asset lifetimes and taxation parameters;
- (d) if applicable, all necessary inputs required for the calculation of the Adjusted Forecast ABBRR for those Financial Years in the proposed Regulatory Cycle that are in the Building Block Revenue Period;
- (e) a proposal as to whether the calculation of Unrecovered Cost under clause 2C.5.3 should be based on actual Revenue or Annual Forecast Revenue;
- (f) Annual Forecast Revenue for each of the Financial Years in the proposed Regulatory Cycle that are in the Initial Cost Recovery Period and the related set of annual demand forecasts, where all revenue and demand forecast information will use inputs that are consistent with the inputs used to forecast the ABBRR; and
- (g) a proposal of how a change in tax will be addressed in the proposed Regulatory Cycle, including:
  - (i) whether any change to the Maximum Regulated Price of NBN Offers or Other Charges is to be made as a result of the change in tax and, if so, how the change is to be determined;
  - (ii) whether any change to the Annual Forecast Revenues under clause 2C.3 is to be made as a result of the change in tax and, if so, how the change is to be determined; and
  - (iii) whether any change to the Forecast Nominal ABBRR and Forecast Real ABBRR and, therefore, to the Adjusted Forecast ABBRR (if applicable), is to be made as a result of the change in tax and, if so, how the change is to be determined.

#### **4.7 RAB Roll Forward Proposal**

A RAB Roll Forward Proposal must include:

- (a) a method, consistent with clauses 2C.7.3 and 2C.7.4, for the roll-in of Capital Expenditure into the RAB from the proposed Regulatory Cycle to which the Replacement Module Application relates to the immediately following Regulatory Cycle; and

- (b) a method, consistent with clauses 2C.7.3 and 2C.7.5, for accounting for depreciation in rolling forward the RAB to the beginning of the Regulatory Cycle immediately after the proposed Regulatory Cycle to which the Replacement Module Application relates.

#### **4.8 ACCC Replacement Module Determination**

- (a) The ACCC must issue a determination at least 20 Business Days prior to the last day of the Initial Regulatory Period or a Regulatory Cycle as the case may be (the last day of such period being the **Cycle Expiry Date**), if the ACCC has not accepted a Replacement Module Application that was to have had effect immediately after the relevant Cycle Expiry Date (an **ACCC Replacement Module Determination**).
- (b) The ACCC Replacement Module Determination must determine the following matters for each Financial Year of the Regulatory Cycle to which it relates that would have otherwise been covered by a Replacement Module:
  - (i) a Regulatory Cycle commencing immediately after the relevant Cycle Expiry Date, which must be either 3, 4 or 5 years in duration (unless fewer than 3 years remain in the SAU Term, in which case, the Regulatory Cycle will be for the number of years remaining in the SAU Term); and
  - (ii) the matters referred to in clauses 4.6 and 4.7.
- (c) In making an ACCC Replacement Module Determination under this clause 4.8, the ACCC must take into account the matters set out in section 152BCA(1) of the CCA and may take into account any other matters it thinks are relevant.
- (d) The ACCC must publish any ACCC Replacement Module Determination made under this clause 4.8, together with its reasons, on its website.
- (e) Sections 152BCB(1), (3B), (3C) and (4A) of the CCA apply to an ACCC Replacement Module Determination as if the references to an access determination in those sections were references to an ACCC Replacement Module Determination.
- (f) In making an ACCC Replacement Module Determination under this clause 4.8, the ACCC may consult with NBN Co and such other persons as the ACCC considers appropriate, and must consider any submissions that are received within the time limit it specifies.
- (g) NBN Co will comply with the terms of an ACCC Replacement Module Determination for the duration of the Regulatory Cycle to which it relates, subject to clause 4.8(h).
- (h) If:

- (i) the ACCC has issued an ACCC Replacement Module Determination for a Regulatory Cycle; but
- (ii) the ACCC subsequently accepts a Replacement Module Application for that upcoming Regulatory Cycle prior to the Cycle Expiry Date for the then current Regulatory Cycle,

any ACCC Replacement Module Determination that was to apply for the next Regulatory Cycle as at the date of acceptance of that Replacement Module Application will no longer have effect.

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## 5 Fixed principles terms and conditions

### 5.1 Overview

This clause 5 sets out the fixed principles terms and conditions of this Special Access Undertaking for the purposes of section 152CBAA(1) of the CCA.

### 5.2 Notional fixed period

The notional fixed period for the fixed principles terms and conditions identified in this Special Access Undertaking:

- (a) commences on the SAU Commencement Date; and
- (b) continues in effect until the end of the SAU Term.

### 5.3 Fixed principles terms and conditions

Clauses 2C.2.1(a), 2C.5.4(a), 2C.7.2 and 2C.7.3(a) are fixed principles terms and conditions of this Special Access Undertaking.

### 5.4 Qualifying circumstances

- (a) This clause 5.4 sets out the qualifying circumstances that, for the purposes of section 152CBAA(2) of the CCA, apply to the fixed principles terms and conditions in this Special Access Undertaking.
- (b) A qualifying circumstance exists if the ACCC is satisfied that:
  - (i) there is a manifest and material error in the fixed principles terms and conditions; or
  - (ii) any information on which the fixed principles terms and conditions was based was false or misleading in a material respect.

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## 6 Obligation for NBN Co to produce and maintain SFAA

NBN Co will publish and maintain an SFAA for the duration of the SAU Term in relation to the supply of the NBN Access Service, the Ancillary Services and the Facilities Access Service.

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## 7 Variation, withdrawal and extension of this Special Access Undertaking

### 7.1 Variation

(a) Pursuant to section 152CBG of the CCA, NBN Co may, at any time, request the ACCC to consider a variation to this Special Access Undertaking by providing the ACCC with such a variation.

~~(a)~~(b) Any variation to this Special Access Undertaking comes into operation on the date that the ACCC provides NBN Co with written notice of acceptance of that variation in accordance with section 152CBG(5) of the CCA.

### 7.2 Withdrawal

Pursuant to section 152CBI(2)(b) of the CCA, NBN Co may withdraw this Special Access Undertaking at any time by giving the ACCC no less than 12 months' prior written notice.

### 7.3 Extension of the SAU Term

(a) NBN Co may, at any time within the 12-month period ending at the end of the SAU Term, apply to the ACCC under section 152CBE of the CCA to extend the SAU Term. If the ACCC approves the extension of the SAU Term pursuant to section 152CBE of the CCA, the SAU Term will be extended in accordance with that approval.

(b) The ACCC must approve an extension of the SAU Term (or further extension) if, subject to the same matters referred to in sections 152CBD(5A) and 152CBD(5C) of the CCA:

- (i) the ACCC is satisfied of the same matters referred to in sections 152CBD(2)(b), 152CBD(2)(c), 152CBD(2)(ca) and 152CBD(2)(cb) of the CCA; and
- (ii) the ACCC does not consider that any one or more of the conditions specified in section 152CBD(4) of the CCA exist,

as if all of the matters referred to in clauses 7.3(b)(i) and 7.3(b)(ii) applied to the extension (or further extension).

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## Attachment A Service Descriptions

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### 1 General

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

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### 2 NBN Access Service

- (a) The NBN Access Service is a Layer 2 service supplied on the NBN Co Network between and including:
  - (i) a UNI on an NTD; and
  - (ii) the NNI associated with the relevant NTD,for the purpose of enabling an Access Seeker (or another Service Provider that is a customer of an Access Seeker) to supply Carriage Services or Content Services.
- (b) In addition to Layer 2 of the OSI Model at which NBN Co makes the NBN Access Service available to an Access Seeker, the NBN Access Service also comprises components from lower levels of the OSI Model, such as Layer 0 and Layer 1 components and some Layer 3 awareness referred to in clause 1A.3.5.
- (c) The network boundary point in respect of each NBN Co Network:
  - (i) at the Premises, is the End User side of the UNI; and
  - (ii) at the POI, is located on the Access Seeker side of the NNI.

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### 3 Ancillary Services

The Ancillary Services are the services supplied by NBN Co that facilitate the supply of the NBN Access Service, including:

- (a) a service supplied by NBN Co that supports an Access Seeker to perform activation and assurance related transactions; and
- (b) a test and verification service supplied by NBN Co that enables an Access Seeker to prepare for, and perform, certain network and operational interoperability testing in relation to the NBN Access Service and development and implementation by that Access Seeker of Carriage Services, Content Services and operational platforms that utilise components and functionality of the NBN Access Service,

but excludes the Facilities Access Service.



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## Attachment B Facilities Access Service

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### 1 General

The terms and conditions relating to the Facilities Access Service are set out in this Special Access Undertaking in connection with the satisfaction of NBN Co's interconnection obligations under section 152AXB(4) of the CCA in relation to the NBN Access Service and the Ancillary Services.

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### 2 Facilities Access Service

The Facilities Access Service is a service that provides:

- (a) cross-connection;
- (b) co-location for a Carrier or Carriage Service Provider to install, operate and maintain its telecommunications equipment at or near a POI for the purpose of supporting interconnection with the NBN Co Network in connection with the NBN Access Service and the Ancillary Services;
- (c) NBN Co ODF termination point; and
- (d) other Facilities supplied by NBN Co that are necessary to facilitate entry to buildings, such as cable trays or building duct access.

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## Attachment C Dictionary

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### 1 Definitions

**ABS Labour Price Index for Private Sector Construction** means the Labour Price Index published by the Australian Bureau of Statistics (or successor organisation) on a quarterly basis to measure changes in the price of labour services in the private construction industry. The Labour Price Index is compiled from hourly wage and salary costs for a representative sample of employee jobs within a sample of employing organisations.

**ACCC** means the Australian Competition & Consumer Commission.

**ACCC-Declared Service** has the meaning given to that term:

- (a) in relation to the Initial Regulatory Period, in clause 1A.8(a); and
- (b) in relation to the Subsequent Regulatory Period, in clause 2A.2(a).

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

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

**ACCC Replacement Module Determination** has the meaning given to that term in clause 4.8.

**Access Agreement** means an “access agreement” within the meaning of section 152BE of the CCA between NBN Co and an Access Seeker in relation to the supply of the NBN Access Service, the Ancillary Services or the Facilities Access Service.

**Access Component** means the UNI and/or the AVC, as the context requires.

**Access Component Modification** means, in respect of a Premises, the modification of:

- (a) an AVC to:
  - (i) change the bandwidth profile or UNI allocation;
  - (ii) change Customer – Virtual Local Area Network used to identify the AVC at the NNI;
  - (iii) associate the AVC with a different CVC supplied to the Access Seeker in the same CSA; or
- (b) an Access Component to:
  - (i) enable or remove a UNI-V and associated AVC;

- (ii) enable or remove an associated MAVC or change the bandwidth profile of an associated MAVC; or
- (iii) enable or disable an Enhanced-12 Fault Service Level.

**Access Component Reactivation** means the activation of the Access Components to be made available by NBN Co to an Access Seeker in respect of an NTD at a Premises where:

- (a) NBN Co has previously made available Access Components in respect of that NTD at that Premises; and
- (b) NBN Co (or an Installer) is not required to attend that Premises to activate those Access Components.

**Access Determination** means an access determination made by the ACCC pursuant to section 152BC of the CCA and includes an Interim Access Determination.

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

**Access Seeker Active Equipment** means active equipment that is:

- (a) owned, controlled or operated by an Access Seeker;
- (b) used, or to be used, by the Access Seeker in relation to the transmission of traffic in connection with the NBN Co Network; and
- (c) of a type approved by NBN Co,

excluding hosting servers, content distribution network infrastructure, any other equipment that is used by the Access Seeker other than in relation to the transmission of traffic on the NBN Access Service, and any other equipment as advised by NBN Co from time to time.

**Access Seeker Product** means a retail or wholesale product or service supplied by an Access Seeker to a third party that relies on an Ordered Product as in input.

**Access Virtual Circuit** or **AVC** has the meaning given to that term in clause 1A.3.2.

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

**Actual Financial Information** has the meaning given to that term in clause 1F.1.3(a).

**Additional Asymmetric AVC Offer** means each of the offers described in clause 1C.2.3.

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

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

- (a) NBN Co presents the NNI;
- (b) NBN Co supplies NBN Co Co-location; or
- (c) NBN Co supplies Cross-Connects.

**Adjusted Forecast ABBRR** has the meaning given to that term in clause 2C.6.1(a).

**Ancillary Services** has the meaning given to that term in clause 3 of Attachment A (Service Descriptions) and includes:

- (a) the Initial Products described in clause 2 of Attachment D (Initial Products);
- (b) any new or varied Ancillary Service introduced by NBN Co pursuant to Schedule 1I (Product Development and Withdrawal) or Schedule 2D (Product Development and Withdrawal); and
- (c) any new or varied Ancillary Service introduced by NBN Co that is a Licence Condition Product.

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

- (a) during the Initial Regulatory Period, clause 1E.4; and
- (b) during the Subsequent Regulatory Period, clause 2C.2.

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

**Annual Forecast Revenue** is calculated in accordance with clause 2C.3.1(a) during the Initial Cost Recovery Period.

**Asset Type** means each distinct type of asset in connection with the Relevant Assets, with the condition that all assets classified in a single Asset Type have the same asset lifetime.

**Asymmetric AVC Offer** means each of the offers described in clause 1C.2.2.

**B2B** means business to business.

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

**Binding Rule of Conduct** means a binding rule of conduct made by the ACCC pursuant to section 152BD of the CCA.

**Building Block Revenue Period** means the period from the start of the Financial Year immediately after the Methodology Change Event occurs until the end of the SAU Term.

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales.

**Business Hours** means between 9.00am and 5.00pm on a Business Day in the place where the relevant POI Site or Aggregation Node Site is located.

**Capital Expenditure** means capital expenditure incurred by NBN Co or any Related Body Corporate of NBN Co in connection with the Relevant Assets, but excluding GST.

**Carriage Service** has the meaning given to that term in section 7 of the Telecommunications Act.

**Carriage Service Provider** has the meaning given to that term in section 87 of the Telecommunications Act.

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

**Carry Forward Revenue Adjustment** has the meaning given to that term:

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

**CIR** means committed information rate.

**Common Property** means any real property or part thereof which is owned or managed by a third party strata body, managing corporation or other similar entity, or which is otherwise common to, accessible by, or shared between, two or more separately owned or occupied Premises to which NBN Co may require access to perform an installation and/or activation of Connecting Equipment at a Premises in connection with the supply of a Product Component or Product Feature.

**Communications Minister** has the meaning given to that term in the NBN Companies Act.

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

**Conforming Contract** has the meaning given to that term:

- (a) in clause 1D.4.1(b) in relation to Capital Expenditure; and
- (b) in clause 1E.8.3(b) in relation to Operating Expenditure.

**Connecting Equipment** has the meaning given to that term:

- (a) in clause 4 of Annexure 1 (Standard NFAS Installation) to Schedule 1C (NBN Offers and Other Charges) in relation to Installations related to NFAS connections; and

- (b) in clause 4 of Annexure 2 (Standard NWA Installation) to Schedule 1C (NBN Offers and Other Charges) in relation to Installations related to NWA connections.

**Connecting Fibre** means the fibre optic Line which connects from a PCD to an NTD.

**Connectivity Serving Area** or **CSA** means a geographical region that is addressable using a single CVC.

**Connectivity Virtual Circuit** or **CVC** has the meaning given to that term in clause 1A.3.3.

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

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

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

**Consumer Advocacy Group** means a body or association whose functions include representing the interests of consumers of telecommunications services in Australia.

**Content Service** has the meaning given to that term in section 15 of the Telecommunications Act.

**Content Service Provider** has the meaning given to that term in section 97 of the Telecommunications Act.

**Corporate Tax Rate** will be 30% as at the Cost Commencement Date unless otherwise determined in accordance with clause 1E.9.5(b).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Cost Commencement Date** means the date that NBN Co and any Related Body Corporate of NBN Co first incurred costs in connection with the Relevant Assets, which is on or around 9 April 2009.

**Cross-Connect** has the meaning given to that term in clause 1A.7(a).

**Cumulative Inflation Factor** or **CIF** means the cumulative inflation factor determined in accordance with the methodology specified in:

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

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

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

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

**Data Transfer Rate** means the average number of bits per second transferred from a data source to a data destination.

**Designated End User** means an End User acquiring an Access Seeker Product or Downstream Product under a contract with an Access Seeker or a Downstream Customer (as the case may be).

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

**Disposal** means the consideration received by NBN Co or any Related Body Corporate of NBN Co as a result of the divestiture of Relevant Assets.

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

- (a) any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale Access Seeker Product;
- (b) any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale Downstream Product; and
- (c) any Designated End User.

**Downstream Product** means a retail or wholesale product or service supplied by a Downstream Customer to a third party that relies on an Access Seeker Product as an input.

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

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

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

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

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

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

**Equipment Removal** means the removal of any NBN Co Equipment that is installed or located at a Premises for which an Access Seeker has validly requested that NBN Co remove that NBN Co Equipment.

**Equipment Repair** means the repair or replacement of any NBN Co Equipment that is installed or located at a Premises where an act or omission of an Access Seeker (or any Downstream Customer or End User) has caused or contributed to the need to perform the repair or replacement.

**Established POI** means a POI listed in the POI List but excluding any Temporary POI.

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

**Facilities Access Service** has the meaning given to that term in clause 2 of Attachment B (Facilities Access Service) and includes:

- (a) the Initial Products described in clause 3 of Attachment D (Initial Products);
- (b) any new or varied type of facilities access service introduced by NBN Co pursuant to Schedule 1I (Product Development and Withdrawal) or Schedule 2D (Product Development and Withdrawal); and
- (c) any new or varied type of facilities access service introduced by NBN Co that is a Licence Condition Product.

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

**Finance Minister** has the meaning given to that term in section 7 of the Telecommunications Act.

**Financial Year** means the period from 1 July to 30 June inclusive.

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

**First Battery** means the first battery installed by or on behalf of NBN Co in respect of the NTD at a Premises.

**First Financial Year** means the Financial Year in which the SAU Commencement Date occurs.

**First Release Trial Sites** means those parts of:

- (a) Brunswick in Victoria;
- (b) Townsville in Queensland;



- (c) Armidale in New South Wales;
- (d) Minnamurra and Kiama Downs in New South Wales; and
- (e) Willunga in South Australia,

identified as “NBN First Release Sites” on NBN Co’s Website.

**Force Majeure Event** means any event or circumstance that:

- (a) is not within the reasonable control of NBN Co or any of its Related Bodies Corporate or any of NBN Co’s Personnel;
- (b) NBN Co or any of its Related Bodies Corporate or any of their Personnel are not reasonably able to prevent or overcome by the exercise of reasonable care; and
- (c) causes NBN Co to fail to perform any relevant obligations under the agreement to which the obligations relate,

but does not include:

- (d) any event or circumstance that arises as a result of any lack of funds for any reason or any other inability to pay; or
- (e) any event or circumstance that arises as a result of any negligent act or omission of NBN Co.

**Forecast Cumulative Inflation Factor** or **Forecast CIF** means the cumulative inflation factor calculated in accordance with clause 2C.2.1(f).

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

**Forecast Nominal ABBRR** is calculated in accordance with clause 2C.2.1(a) to 2C.2.1(e).

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

**Government Agency** means any court or tribunal of competent jurisdiction or any agency, authority, board, department, government, instrumentality, ministry, official or public or statutory person of the Commonwealth or of any State or Territory of Australia, and any local or municipal government or governmental bodies.

**GPON** means gigabit passive optical network.

**GST** means a goods and services tax or similar value added tax levied or imposed under the GST Law.

**GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Hourly Labour Rate** means, at the SAU Commencement Date, \$75 per hour, rounded up to the next full hour required to perform the relevant activity.

**Identified Need** means the reason why NBN Co has proposed a Network Change (e.g. to deliver higher bandwidth services in response to an Access Seeker demand, to enable the delivery of new Product Features, etc.).

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

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

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

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

**Initial Cost Recovery Period** means the period from the Cost Commencement Date until the end of the Financial Year in which the Methodology Change Event occurs.

**Initial Product** means any Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service set out in Attachment D (Initial Products).

**Initial Regulatory Period** has the meaning given to that term in clause 4.1(b).

**Initial Non Standard Installation** means a Non Standard Installation that is the first Installation performed by NBN Co (or an Installer) in respect of a Premises.

**Initial Standard Installation** means a Standard Installation that is the first Installation performed by NBN Co (or an Installer) in respect of a Premises.

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

**Installer** means a person authorised by, or on behalf of, NBN Co to install and make the Connecting Equipment at a Premises ready for service.

**Intellectual Property Rights** means any patent, copyright (including future copyright), design right, trade name, trade mark, service mark, domain name right, semiconductor or circuit layout right or any other form of protection of a similar nature to any of these, anywhere in the world (whether registered or not and including applications for any such right).

**Interest Expense** means the actual interest expense recorded in NBN Co's statutory accounts.

**Interim Access Determination** means an interim access determination made by the ACCC pursuant to section 152BCG of the CCA.

**Interim Satellite Service** or **ISS** means an IP-based, Layer 3 virtual connection on the NBN Co Interim Satellite Network that carries traffic between:

- (a) a UNI on the NTD located at or near a Premises; and
- (b) the NNI associated with the single CSA for the NBN Co Interim Satellite Network that serves the Premises,

for the purposes of enabling an Access Seeker or a Downstream Customer to supply a Carriage Service or Content Service.

**Interim Transit Arrangements** means any interim or short term arrangements undertaken by NBN Co to enable it to supply the Product Components and Product Features on an interim basis, including:

- (a) Temporary POIs;
- (b) modularised fibre access nodes; and
- (c) any associated backhaul transmission, whether supplied by NBN Co or a Third Party.

**June Quarter CPI** means the percentage change in the Consumer Price Index value published for the June quarter. The Consumer Price Index used is the All Groups - Weighted Average of Eight Capital Cities value published by the Australian Bureau of Statistics (or successor organisation), showing the percentage change from one June quarter to the next.

**Key Business Transaction** has the meaning given to that term in clause 1A.6.1(a).

**Late Cancellation (Site Visit Required)** means the cancellation of a request by an Access Seeker for the performance of an activity that requires NBN Co to attend the Premises where that cancellation occurs after NBN Co has dispatched NBN Co Personnel for the purposes of fulfilling that request.

**Layer 0** means a Facility, but excludes any Lines.

**Layer 1** means the 'physical link' layer of the OSI Model.

**Layer 2** means the 'data link' layer of the OSI Model.

**Layer 3** means the network 'IP' layer of the OSI Model.

**Likely Methodology Change Event Notice** means a notice issued by NBN Co regarding the date that NBN Co expects the Methodology Change Event will occur.

**Line** means:

- (a) a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy;
- (a) a “line” as defined in the Telecommunications Act if that definition differs from paragraph (a); or
- (b) any other media of a similar nature to any one or more of the media under paragraphs (a) or (b).

**Licence Condition Product** means a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service referred to in clauses 11.1.3(b)(ii) or 2D.1.3(b)(ii).

**Long Term Revenue Constraint Methodology or LTRCM** means the methodology specified in:

- (a) during the Initial Regulatory Period, Schedule 1E (Long Term Revenue Constraint Methodology); and
- (b) during the Subsequent Regulatory Period, Schedule 2C (Long Term Revenue Constraint Methodology).

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

**LTRCM Proposal** comprises the matters described in clause 4.6.

**Managed Service Provider Network** means any satellite network that is owned or controlled by, or operated on behalf of, a Third Party supplier in respect of which NBN Co or any Related Body Corporate of NBN Co acquires satellite services and related services which NBN Co uses and relies on as an input into the supply of Product Components or Product Features to an Access Seeker.

**March Quarter CPI** means the percentage change in the Consumer Price Index value published for the March quarter. The Consumer Price Index used is the All Groups - Weighted Average of Eight Capital Cities value published by the Australian Bureau of Statistics (or successor organisation), showing the percentage change from one March quarter to the next.

**Market Benefit** has the meaning given to that term in clause 1D.12.1(b)(i).

**Material Change in Circumstances** has the meaning given to that term:

- (a) in clause 1D.4.1(c), in relation to Capital Expenditure; and
- (b) in clause 1E.8.3(c), in relation to Operating Expenditure.

**MAVC Reactivation** means the activation of the Multicast AVC to be made available by NBN Co to an Access Seeker in respect of an NTD at a Premises where:

- (a) NBN Co has previously made available the Multicast AVC or NFAS Access Components in respect of that NTD at that Premises; and
- (b) NBN Co (or an Installer) is not required to attend that Premises to activate the Multicast AVC.

**Maximum Data Transfer Rate** means the maximum Data Transfer Rates that can be supplied to an NTD, as determined by NBN Co, at a given point in time, by reference to:

- (a) the NBN Co Network to which that NTD is connected;
- (b) the architecture of the relevant portion of the NBN Co Network to which that NTD is connected (e.g. GPON, point-to-point);
- (c) the specific configuration of that architecture (e.g. applicable splitter ratios for GPON);
- (d) the availability of Product Features at a given point in time in respect of that NTD; and
- (e) any other factors that may impact the maximum Data Transfer Rate that can be supplied to an NTD at a given point in time.

**Maximum Regulated Price** means the Price ceiling applicable to each NBN Offer and Other Charge, determined:

- (a) in respect of the Initial Regulatory Period, in accordance with clauses 1C.3, 1C.4 and 1C.5 and Schedule 1G (Maximum Regulated Price Review Mechanisms); and
- (b) in respect of the Subsequent Regulatory Period, in accordance with clauses 2B.2 and 2B.3 and Schedule 2E (Maximum Regulated Price Review Mechanisms).

**Media Stream** means each coherent stream of content that is conveyed by an Access Seeker using the Multicast Components. A Media Stream may be a video-based stream or any other type of media stream which is suitable for distribution using the Multicast Components considering the product construct of the Multicast Components.

**Methodology Change Event** means the instance when the ICRA becomes equal to or less than zero.

**Minor Expenditure Limit** means:

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

**Missed Appointment** means when NBN Co Personnel has visited a Premises and the End User was not present for the work to occur such as installation, on-site survey or maintenance call out.

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

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

**Module** means a document forming part of this Special Access Undertaking as described in clause 4.1.

**Module 0** comprises the documents referred to in clause 4.1(a).

**Module 1** comprises the documents referred to in clause 4.2(b).

**Module 2** comprises the documents referred to in clause 4.3(b).

**Multicast AVC** or **MAVC** means an Ethernet-based, Layer 2 virtual connection on the NBN Co Fibre Network that carries multicast traffic to a UNI-D on the NTD at a Premises.

**Multicast AVC Offer** means the offer described in clause 1C.2.10.

**Multicast Component** means each of the Multicast AVC and the Multicast Domain.

**Multicast Domain** means an Ethernet-based, Layer 2 virtual capacity on the NBN Co Fibre Network for the transport of Access Seeker traffic to multiple multicast access virtual circuits within a CSA on an aggregated basis and delivered from the NNI at the POI associated with that CSA.

**Multicast Domain Modification** means a Non-Service Impacting Multicast Domain Modification or a Service Impacting Multicast Domain Modification.

**Multicast Domain Offer** means the offer described in clause 1C.2.11.

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

**Multilateral SFAA Forum** has the meaning given to that term in clause 1B.3.1(a).

**NAP**, in respect of a Premises, means the network access point for the Premises for the purposes of the NBN Co Fibre Network.

**National Test Facility** means NBN Co's test environment at a location notified by NBN Co to an Access Seeker from time to time, including all NBN Co Equipment located at that site.

**NBN Access Service** has the meaning given to that term in clause 2 of Attachment A (Service Descriptions).

**NBN Co** means NBN Co Limited.

**NBN Co Building Entry Service** has the meaning given to that term in clause 1A.7(d).

**NBN Co Co-location** has the meaning given to that term in clause 1A.7(b).

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

**NBN Co Equipment** means any equipment that is owned, operated or controlled by NBN Co (or any Related Body Corporate of NBN Co):

- (a) that is provided by NBN Co (or any Related Body Corporate of NBN Co) to an Access Seeker for use as part of, or in connection with, the NBN Access Service, an Ancillary Service or the Facilities Access Service; or
- (b) to which NBN Co (or any Related Body Corporate of NBN Co) permits an Access Seeker to access (or on-grant such access to any Downstream Customers or any End Users) as part of, or in connection with, the NBN Access Service, an Ancillary Service or the Facilities Access Service, including NTDs.

**NBN Co Fibre Network** means the fibre network that is owned or controlled by, or operated by or on behalf of, NBN Co or any Related Body Corporate of NBN Co.

**NBN Co Fibre Access Service** or **NFAS** means an Ethernet-based, Layer 2 virtual connection on the NBN Co Fibre Network that carries traffic between:

- (a) a UNI on the NTD located at or near a Premises; and
- (b) the NNI associated with the CSA in which that Premises is located,

for the purposes of enabling an Access Seeker or a Downstream Customer to supply a Carriage Service or Content Service.

**NBN Co Interim Satellite Network** means a satellite network in respect of which NBN Co or any Related Body Corporate of NBN Co leases or utilises capacity, as part of an interim solution for the delivery of Carriage Services or Content Services over satellite technology, and which includes the Managed Service Provider Network.

**NBN Co Network** means:

- (a) the NBN Co Fibre Network;
- (b) the NBN Co Wireless Network; and

(c) the NBN Co Satellite Network,

and includes the NBN Co Equipment. A reference in this Special Access Undertaking to the phrase 'NBN Co Network' in the singular refers collectively to all three of these networks, and the phrase 'each NBN Co Network' refers to each of these networks, and any NBN Co Equipment in respect of those networks.

**NBN Co ODF** means an optical distribution frame that is owned or operated by NBN Co or any Related Body Corporate of NBN Co at a POI Site or an Aggregation Node Site.

**NBN Co ODF Termination Point** has the meaning given to that term in clause 1A.7(c).

**NBN Co Operations Manual** means the document entitled "NBN Co Operations Manual" (as amended from time to time in accordance with an Access Agreement) that forms part of an Access Agreement.

**NBN Co Permanent Satellite Network** means a satellite network that is owned or controlled by, or operated on behalf of, NBN Co or any Related Body Corporate of NBN Co.

**NBN Co Platform** means NBN Co's operational support systems and billing support systems for the purpose of ordering and tracking of Products, billing, payment and fault reporting and detection and restoration, where NBN Co provides access to those systems and any functionality of those systems in accordance with an Access Agreement, (and for the purposes of communications, includes NBN Co's Website), but excludes access to NBN Co's core systems or any functionality of those core systems.

**NBN Co Satellite Access Service** or **NSAS** means an Ethernet-based, Layer 2 virtual connection on the NBN Co Satellite Network that carries traffic between:

- (a) a UNI on the NTD located at or near a Premises; and
- (b) the NNI associated with the CSA in which that Premises is located,

for the purposes of enabling an Access Seeker or a Downstream Customer to supply a Carriage Service or Content Service.

**NBN Co Satellite Network** means:

- (a) the NBN Co Interim Satellite Network; and
- (b) the NBN Co Permanent Satellite Network.

**NBN Co Service Qualification System** means a system or systems made available by NBN Co (whether automated or manually implemented) to enable an Access Seeker to determine whether a particular address is identified by NBN Co as serviceable (at a given point in time) by the NBN Co Network.



**NBN Co Wireless Access Service** or **NWAS** means an Ethernet-based, Layer 2 virtual connection on the NBN Co Wireless Network that carries traffic between:

- (a) a UNI on the NTD located at or near a Premises; and
- (b) the NNI associated with the CSA in which that Premises is located,

for the purposes of enabling an Access Seeker or a Downstream Customer to supply a Carriage Service or Content Service.

**NBN Co Wireless Network** means the wireless network that is owned or controlled by, or operated on behalf of, NBN Co or any Related Body Corporate of NBN Co.

**NBN Co's Website** means NBN Co's website, with the URL <http://www.nbnco.com.au> or such other URL as NBN Co may notify Access Seekers from time to time.

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

**NBN Offer** means:

- (a) each of the offers described in clause 1C.2;
- (b) any offers introduced by NBN Co in accordance with Schedule 11 (Product Development and Withdrawal) or Schedule 2D (Product Development and Withdrawal); and
- (c) any offers introduced by NBN Co that are Initial Products or Licence Condition Products,

but does not include Other Charges.

**NBN Prudency Implementation Paper** means a written report prepared by NBN Co that sets out certain information regarding a Network Change in accordance with clause 1D.8.4.

**NBN-Related Networks** means the NBN Co Network, the NBN Co Platform, the National Test Facility and any other network, systems, equipment and facilities used by NBN Co in connection with the supply of Product Components, Product Features, Ancillary Services or the Facilities Access Service.

**NBN Serviceable**, in respect of each Product, Product Component and Product Feature, means a Premises that NBN Co has determined is serviceable by the NBN Co Network, as shown in the NBN Co Service Qualification System (and, in the case of the NWAS, is confirmed by NBN Co following on site validation by NBN Co in response to an order for the NWAS in respect of that Premises).

**Negative Tax Change Event** occurs if:

- (a) any of the following occurs during the Initial Regulatory Period for NBN Co:
  - (i) a change in a Relevant Tax, in the application or official interpretation of a Relevant Tax, in the rate of a Relevant Tax, or in the way a Relevant Tax is calculated; or
  - (ii) the removal of a Relevant Tax; and
- (b) in consequence, the costs to NBN Co of supplying NBN Offers or performing activities associated with Other Charges are decreased.

**Net Economic Benefit** means, in respect of a Network Change Option:

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

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

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

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

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

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

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

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

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

**Network Design Rules** means the documents that set out the design of the Relevant Assets that NBN Co provides to the ACCC for the purposes of the ACCC's consideration of this Special Access Undertaking and as updated from time to time by NBN Co in accordance with this Special Access Undertaking.

**Network to Network Interface** or **NNI** has the meaning given to that term in clause 1A.3.4.

**Network to Network Interface Offer** has the meaning given to that term in clause 1C.2.7.

**Network Termination Device** or **NTD** means a network termination device that is owned, operated or controlled by NBN Co (or any Related Body Corporate of NBN Co).

**NNI Modification** means the modification of the configuration of an NNI which NBN Co supplies to an Access Seeker in respect of a POI where the Access Seeker has validly requested that modification be performed.

**No Fault Found (No Truck Roll Required)** means the investigation of a fault that is reported by an Access Seeker to NBN Co which NBN Co determines, acting reasonably, is a Non-NBN-Fault where NBN Co Personnel have not attended the suspected location of the suspected cause of that alleged Service Fault for the purposes of investigating and/or rectifying that alleged Service Fault.

**No Fault Found (Truck Roll Required)** means the investigation of a fault that is reported by an Access Seeker to NBN Co which NBN Co determines, acting reasonably, is a Non-NBN Fault where NBN Co Personnel have attended the suspected location of the suspected cause of that alleged Service Fault for the purposes of investigating and/or rectifying that alleged Service Fault.

**Nominal RAB** is calculated in accordance with:

- (a) during the Initial Regulatory Period, clause 1D.2.2; and
- (a) during the Subsequent Regulatory Period, clause 2C.7.8.

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

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

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

**Non-Discrimination Obligations** means the obligations that apply to an NBN corporation (as that term is defined in section 5 of the NBN Companies Act) under section 152AXC and section 152AXD of the CCA.

**Non-NBN Fault** means any event or circumstance which is suspected by either party, or reported by an Access Seeker, as being:

- (a) a Service Fault;
- (b) a fault with an NBN-Related Network; or
- (c) a fault for which NBN Co is otherwise responsible,

but which is not a Service Fault.

**Non-Service Impacting Multicast Domain Modification** means the modification of a Multicast Domain comprising:

- (a) the addition or deletion of one or more Media Streams;
- (b) the modification of the bandwidth; or
- (c) the modification of an existing IGMP Report Source Address.

**Non Standard Installation** means a Non Standard NFAS Installation or a Non Standard NWS Installation (as applicable).

**Non Standard NFAS Installation** means an Installation where:

- (a) the conditions set out in clause 1 of Annexure 1 (Standard NFAS Installation) to Schedule 1C (NBN Offers and Other Charges) are not satisfied; or
- (b) the installation is otherwise considered to be a “non standard installation” in accordance with clause 2 of Annexure 1 (Standard NFAS Installation) to Schedule 1C (NBN Offers and Other Charges).

**Non Standard NWS Installation** means an Installation where:

- (a) the conditions set out in clause 1 of Annexure 2 (Standard NWS Installation) to Schedule 1C (NBN Offers and Other Charges) are not satisfied; or
- (b) the installation is otherwise considered to be a “non standard installation” in accordance with clause 2 of Annexure 2 (Standard NWS Installation) to Schedule 1C (NBN Offers and Other Charges).

**ODF** means optical distribution frame.

**On Site Maintenance Call Out** means the performance of works by NBN Co Personnel to rectify a Service Fault that requires NBN Co Personnel to attend the location of the cause of that Service Fault for the purposes of rectifying that Service Fault.

**Operating Expenditure** means operating expenditure incurred by NBN Co or any Related Body Corporate of NBN Co, including labour, marketing, general administration and overheads, materials, licence fees, government charges, universal service obligation levies, insurance premiums and applicable Taxes, but excluding GST and any taxes that relate to income, profit or capital gains.

**Optus Arrangements** means the contracts entered into between SingTel Optus Pty Limited (ABN 90 052 833 208) and NBN Co Limited on or around 23 June 2011.

**Ordered Product** means a Product that:

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

**OSI Model** means the open system interconnection model, which is the framework developed by the International Standards Organisation to provide worldwide standards for computer communications.

**Other Charge** means an ancillary charge associated with the supply of a Product Component, Product Feature, Ancillary Service or type of Facility Access Service, including:

- (a) the other charges described in clause 1C.4.2; and
- (b) an ancillary charge associated with the supply of a new Product Component, Product Feature, Ancillary Service or type of Facilities Access Service introduced during the SAU Term, expressed as being an “other charge”,

but excluding the Price (or any increase to the Price) of an NBN Offer.

**Outage** means a failure of an Ordered Product to perform substantially in accordance with the relevant product description or product technical specification instigated by NBN Co in accordance with an Access Agreement in order to perform:

- (a) any Upgrade;
- (b) any maintenance, repair, rationalisation or remediation of:
  - (i) any NBN-Related Network;
  - (ii) any other matter or thing for which NBN Co is responsible and which affects, or can affect, the supply of products by NBN Co to an Access Seeker; or
  - (iii) any facilities, at, on or under which the NBN Co Network is attached, located or installed;
- (c) the relocation, closure or replacement of any POI, of which NBN Co has given prior notice in accordance with clause 1H.4; or
- (d) any other matter or thing specified in the NBN Co Operations Manual.

**PCD** means the Premises connection device which is owned or controlled by, or operated by or on behalf of, NBN Co or any Related Body Corporate of NBN Co for the purposes of the NBN Co Fibre Network.

**PDF Processes** means the provisions of Annexure 1 (PDF Processes) to Schedule 11 (Product Development and Withdrawal).

**Permitted Variations** has the meaning given to that term in clause 1D.7.2(a).

**Personnel** means officers, employees, agents, contractors, subcontractors and consultants.

**PIR** means peak information rate.

**Placed in Service** means the date on which:

- (a) the Relevant Asset has reached practical completion;
- (b) the Relevant Asset is ready for commercial operation; and
- (c) the Capital Expenditure incurred in connection with the relevant asset is recognised in NBN Co's accounts.

**Platform Interfacing Offer** means the offer described in clause 1C.2.8.

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

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

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

- (a) in respect of which a POI is established;
- (b) at which NBN Co supplies NBN Co ODF Termination Point;
- (c) at or in respect of which NBN Co supplies Cross-Connects; and
- (d) if that POI is established at a POI Site located within a Type 1 Facility, in respect of which NBN Co supplies the NBN Co Building Entry Service.

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

**Points of Interconnect Plan** has the meaning given to that term in clause 1H.3.1(a).

**Positive Tax Change Event** occurs if:

- (a) any of the following occurs during the Initial Regulatory Period for NBN Co:
  - (i) a change in a Relevant Tax, in the application or official interpretation of a Relevant Tax, in the rate of a Relevant Tax, or in the way a Relevant Tax is calculated; or
  - (ii) the imposition of a Relevant Tax; and

- (b) in consequence, the costs to NBN Co of supplying NBN Offers or performing activities associated with Other Charges are increased.

**Preferred Network Change Option** has the meaning given to that term in clause 1D.8.3.

**Premises** means each of the following where NBN Serviceable:

- (a) an addressable location currently used on an on-going basis for residential, business (whether for profit or not), government, health or educational purposes;
- (b) a school as defined by the Department of Education, Employment and Workplace Relations;
- (c) a location within a new development at an addressable location for which NBN Co is the wholesale provider of last resort;
- (d) an addressable location for a standard telephone service which is activated in compliance with the USO;
- (e) a payphone which is activated in compliance with the USO or which is otherwise specified by NBN Co as a premises from time to time;
- (f) a location which NBN Co is directed by the Shareholder Ministers to connect to, or to be connected by, the NBN Co Network; and
- (g) a non-addressable location that is capable of connection of a type agreed by NBN Co with the Shareholder Ministers.

**Previous Year's Price** has the meaning given to that term:

- (a) in relation to the Initial Regulatory Period, in clause 1C.5.2(a); and
- (b) in relation to the Subsequent Regulatory Period, in clause 2B.2.3(a).

**Price** means a charge excluding GST, but including all other applicable Taxes, and excluding any interest, late payment fees, Discounts or any other additions or deductions that may be applicable.

**Price Review** has the meaning given to that term:

- (a) in relation to the Initial Regulatory Period, in clause 1G.3.1(a); and
- (b) in relation to the Subsequent Regulatory Period, in clause 2E.2.1(a).

**Price Review Arrangement** means:

- (a) in relation to the Initial Regulatory Period, a Price Review Arrangement accepted or issued in accordance with clause 1G.3; and

- (b) in relation to the Subsequent Regulatory Period, a Price Review Arrangement accepted or issued in accordance with clause 2E.2.

**Price Review Criteria** has the meaning given to that term:

- (a) in relation to the Initial Regulatory Period, in clause 1G.3.8(a) and
- (b) in relation to the Subsequent Regulatory Period, in clause 2E.2.8(a).

**Price Review Notice** has the meaning given to that term:

- (a) in relation to the Initial Regulatory Period, in clause 1G.3.1(a); and
- (b) in relation to the Subsequent Regulatory Period, in clause 2E.2.1(a).

**Price Review Proposal** has the meaning given to that term:

- (a) in relation to the Initial regulatory period, in clause 1G.3.2; and
- (b) in relation to the Subsequent Regulatory Period, in clause 2E.2.2.

**Pricing Intention Statement** means the statement issued by NBN Co regarding NBN Co's pricing intentions in relation to the transition from the Initial Cost Recovery Period to the Building Block Revenue Period in accordance with:

- (a) during the Initial Regulatory Period, clause 1E.2.6; and
- (b) during the Subsequent Regulatory Period, clause 2C.5.6.

**Procurement Rules** means NBN Co's procurement rules that apply from time to time and which are required to contain a competitive tendering and procurement process in accordance with clause 1D.5.1.

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

- (a) the NBN Co Fibre Access Service;
- (b) the NBN Co Wireless Access Service;
- (c) the Interim Satellite Service;
- (d) the NBN Co Satellite Access Service;
- (e) the Platform Interfacing Service;
- (f) the Sandpit;
- (g) the Facilities Access Service;
- (h) any new or varied products introduced by NBN Co pursuant to Schedule 1I (Product Development and Withdrawal) or Schedule 2D (Product Development and Withdrawal); and



- (i) any new or varied products introduced by NBN Co that are Initial Products or Licence Condition Products.

**Product Component** means:

- (a) the UNI;
- (b) the AVC;
- (c) the CVC;
- (d) the NNI;
- (e) any new or varied product components introduced by NBN Co pursuant to Schedule 1I (Product Development and Withdrawal) or Schedule 2D (Product Development and Withdrawal); or
- (f) any new or varied product components introduced by NBN Co that are Initial Products or Licence Condition Products,

including any associated Product Features, but excluding the Ancillary Services and the Facilities Access Service.

**Product Development Forum** or **PDF** has the meaning given to that term in:

- (a) during the Initial Regulatory Period, clause 1I.3.1(a); and
- (b) during the Subsequent Regulatory Period, clause 2D.4.1(a).

**Product Feature** means a feature of a Product Component that is made available by NBN Co and which is selectable by the Access Seeker in connection with that Product Component (e.g. Data Transfer Rate of an AVC), including:

- (a) the product features described in clause 1 of Attachment D (Initial Products);
- (b) any new or varied product feature introduced by NBN Co pursuant to Schedule 1I (Product Development and Withdrawal) or Schedule 2D (Product Development and Withdrawal); and
- (c) any new or varied product feature introduced by NBN Co as part of a Licence Condition Product.

**Product Idea** means a proposal for the development of a new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service or a variation or enhancement to an existing Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service, including proposals made by Access Seekers, Consumer Advocacy Groups and/or NBN Co.

**Proposed Financial Information** has the meaning given to that term in clause 1F.1.4.

**Proposed Change Effective Date** has the meaning given to that term in clause 1G.2.2(a)(iv).

**Prudent Cost Condition** has the meaning given to that term in clause 1D.4.

**Prudent Design Condition** has the meaning given to that term in clause 1D.6.

**RAB Roll Forward Arrangement** has the meaning given to that term in clause 2C.7.1.

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

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

**Real RAB** is calculated in accordance with:

- (a) during the Initial Regulatory Period, clause 1D.2.1; and
- (b) during the Subsequent Regulatory Period, clause 2C.7.

**Real Straight Line Depreciation** has the meaning given to that term in clause 1E.9.1(a).

**Regulated Revenue** or **RR** is calculated in accordance with clause 1E.6.1.

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

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

**Regulatory Asset Base Roll Forward** or **RAB Roll Forward** means the basis upon which the Regulatory Asset Base will be updated annually, calculated in accordance with:

- (a) during the Initial Regulatory Period, clause 1D.2.1(b); and
- (b) during the Subsequent Regulatory Period, clauses 2C.7.2 and 2C.7.3.

**Regulatory Cycle** means a period within the Subsequent Regulatory Period in which either:

- (a) a Replacement Module; or
- (b) an ACCC Replacement Module Determination,

is in effect or will be in effect.

**Regulatory Determination** means an Access Determination or a Binding Rule of Conduct.

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act.

**Relevant Assets** means the assets that comprise:

- (a) the NBN Co Networks;
- (b) any other telecommunications network owned or controlled by, or operated by or on behalf of, NBN Co or any Related Body Corporate of NBN Co;
- (c) all other network elements, platforms (including the NBN Co Platform), systems and functions owned or controlled by, or operated by or on behalf of, NBN Co or any Related Body Corporate of NBN Co; and
- (d) any other assets owned or controlled by, or operated by or on behalf of, NBN Co or any Related Body Corporate of NBN Co.

**Relevant Financial Year** has the meaning given to that term:

- (a) in relation to the Initial Regulatory Period, in clause 1C.5.1; and
- (b) in relation to the Subsequent Regulatory Period, in clause 2B.2.2.

**Relevant Tax** means any of the following:

- (a) any Tax other than GST that becomes law and is effective after the SAU Commencement Date, assessed, levied or imposed on NBN Co, the NBN Co Network or any facilities or land used, occupied or accessed in connection with the NBN Co Network, or the supply of Product Components, Product Features, Ancillary Services or types of Facilities Access Service, or anything used, occupied or accessed in connection with the supply of Product Components, Product Features, Ancillary Services or types of Facilities Access Service; or
- (b) any Tax (or any amount payable in respect of any Tax) other than GST already assessed, levied or imposed on NBN Co, the NBN Co Network or any facilities or any land used, occupied, accessed in connection with the NBN Co Network, or the supply of Product Components, Product Features, Ancillary Services or types of Facilities Access Service, or anything used, occupied or accessed in connection with the supply of Product Components, Product Features, Ancillary Services or types of Facilities Access Service.

**Replacement Module** means a module which applies for any fixed period after the Initial Regulatory Period that has the purpose of setting out the detailed commitments made by NBN Co in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service.

**Replacement Module Application** is an application by NBN Co to the ACCC to vary this Special Access Undertaking under section 152CBG of the CCA by incorporating a Replacement Module into this Special Access Undertaking submitted in accordance with clause 4.5.

**Resetting Regulatory Determination** means:

(a) in respect of an NBN Offer or Other Charge that was previously Zero-Priced and has ceased to be Zero-Priced in accordance with clauses 1C.5.4 or 2B.3:

- (i) the first Regulatory Determination; or
- (ii) if the first Regulatory Determination is a Binding Rule of Conduct or an Interim Access Determination, the second or subsequent Regulatory Determination,

that in all cases:

- (iii) was made within 24 months of the date on which the NBN Offer or Other Charge ceased to be Zero-Priced;
- (iv) specifies a maximum price for the NBN Offer or Other Charge; and
- (v) comes into force on the date on which that Regulatory Determination is made; or

(b) in respect of a new NBN Offer or a new Other Charge:

- (i) the first Regulatory Determination; or
- (ii) if the first Regulatory Determination is a Binding Rule of Conduct or an Interim Access Determination, the second or subsequent Regulatory Determination,

that in all cases:

- (iii) was made within 24 months of the NBN Offer or Other Charge being introduced;
- (iv) specifies a maximum price for the NBN Offer or Other Charge; and
- (v) comes into force on the date on which that Regulatory Determination is made.

**Revenue** means all revenue earned by NBN Co, or any Related Body Corporate of NBN Co, in connection with the Relevant Assets, including all revenue earned in connection with:

- (a) the Product Components and Product Features;
- (b) the Ancillary Services; and
- (c) the Facilities Access Service,

and including any applicable Taxes, interest, late payment fees or any other similar additional amount earned by NBN Co, or any Related Body Corporate of NBN Co, or any monies paid by one or more persons (other than NBN Co or any Related Body

Corporate of NBN Co) in connection with a Third Party Funded Network Change, but excluding GST.

**Revenue Variation** is calculated in accordance with clause 1E.6.2 for the purposes of aligning Revenues with Regulated Revenue for each Financial Year of the Building Block Revenue Period during the Initial Regulatory Period.

**Reviewed Offer** has the meaning given to that term:

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

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

**Rollout Built Date** means the date on which a declaration is made by the Communications Minister that the NBN should be treated as built and fully operational, under section 48 of the NBN Companies Act.

**Sandpit** has the meaning given to that term in clause 1A.6.2.

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

**SAU Commencement Date** has the meaning given to that term in clause 3.1.

**SAU Expiry Date** has the meaning given to that term in clause 3.2.

**SAU Term** means the period from the SAU Commencement Date until the SAU Expiry Date, as may be extended pursuant to clause 7.3.

**Second UNI-V and AVC Offer** means the offer described in clause 1C.2.5.

**Service Fault** means a failure of an Ordered Product to perform substantially in accordance with the relevant product description or product technical specification where the failure is contributed to by:

- (a) a fault in or failure of an NBN-Related Network; or
- (b) any other matter or thing for which NBN Co is responsible,

except where the failure is contributed to by an Outage.

**Service Impacting Multicast Domain Modification** means the modification of a Multicast Domain comprising:

- (a) the modification of the IP address of an existing Media Stream;
- (b) the modification of the configured peak bandwidth value of an existing Media Stream; and
- (c) a change to the S-TAG.

**Service in Operation** or **SIO** means:

- (a) if only a UNI-D on an NTD is being supplied on an NBN Co Network, the supply of a single AVC for use in conjunction with a single UNI-D; or
- (b) if a UNI-D and UNI-V on an NTD are being supplied on the NBN Co Fibre Network:
  - (i) the supply of a single fibre AVC for use in conjunction with a single UNI-D; and
  - (i) the supply of a single fibre AVC for use in conjunction with a single UNI-V.

**Service Portal** has the meaning given to that term in clause 1A.6.1(b)(ii).

**Service Provider** has the meaning given to that term in section 86 of the Telecommunications Act.

**Service Qualification Enquiry** means an enquiry that is made through the Platform Interfacing Service as to whether a Product Component is available in respect of a Premises.

**Set-up & Activation** means the setup of, and the completion of an activation order for, any Product, Product Component or Product Feature.

**Set-up Cross-Connect** means the performance of works by NBN Co Personnel to complete the installation of a Cross-Connect.

**Set-up NBN Co Co-location (Lockable Full Equipment Rack)** means the performance of works by NBN Co Personnel to allocate and set-up one full equipment rack for the purposes of supplying NBN Co Co-location to an Access Seeker.

**Set-up NBN Co Co-location (Lockable Half Equipment Rack)** means the performance of works by NBN Co Personnel to allocate and set-up one half equipment rack for the purposes of supplying NBN Co Co-location to an Access Seeker.

**Set-up NBN Co ODF Termination Point** means the performance of works by NBN Co Personnel to complete the installation of NBN Co ODF Termination Point.

**Shareholder Ministers** means the Communications Minister and the Finance Minister.

**Site Boundary** means, in respect of an Established POI, the boundary (as determined by NBN Co, including as agreed between NBN Co and the Underlying Facility Provider) which defines those areas of a building within which the relevant POI Site or Aggregation Node Site is located.

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

**Standard Business Offer** has the meaning given to that term in clause 1C.2.15.

**Standard Form of Access Agreement** or **SFAA** means a standard form of access agreement published on NBN Co's Website for the purposes of section 152CJA of the CCA.

**Standard Installation** means a Standard NFAS Installation or a Standard NWA Installation (as applicable).

**Standard NFAS Installation** means an Installation in relation to an NFAS connection where:

- (a) the conditions set out in clause 1 of Annexure 1 (Standard NFAS Installation) to Schedule 1C (NBN Offers and Other Charges) are satisfied;
- (b) the installation is not in respect of a second or subsequent NTD; and
- (c) the installation is not otherwise considered to be a "non standard installation" in accordance with clause 2 of Annexure 1 (Standard NFAS Installation) to Schedule 1C (NBN Offers and Other Charges).

**Standard NWA Installation** means an Installation in relation to an NWA connection where:

- (a) the conditions set out in clause 1 of Annexure 2 (Standard NWA Installation) to Schedule 1C (NBN Offers and Other Charges) are satisfied;
- (b) the installation is not in respect of a second or subsequent NTD; and
- (c) the installation is not otherwise considered to be a "non standard installation" in accordance with clause 2 of Annexure 2 (Standard NWA Installation) to Schedule 1C (NBN Offers and Other Charges).

**Statement of Expectations** means the letter dated 17 December 2010 to NBN Co from the Shareholder Ministers and any subsequent variations.

**Subsequent CVC TC-1/TC-4 Offer** has the meaning given to that term under clause 1C.1.2(a)(i).

**Subsequent Installation** means any:

- (a) Standard Installation performed by NBN Co (or an Installer) in respect of a Premises that is not an Initial Standard Installation; or
- (b) Non Standard Installation performed by NBN Co (or an Installer) in respect of a Premises that is not an Initial Non Standard Installation.

**Subsequent Regulatory Period** has the meaning given to that term in clause 4.1(c).

**Symmetric Access Capacity (TC-1)** means a symmetrical Data Transfer Rate (TC-1) uplink and downlink on an AVC that is included within the Data Transfer Rate (TC-4)

acquired by the Access Seeker in respect of the same AVC, provided that the aggregate symmetrical Data Transfer Rate acquired by the Access Seeker does not exceed the TC-4 Data Transfer Rate of the AVC or any other technical requirements of the NBN Co Fibre Network.

**Symmetric Access Capacity Offer** means each of the offers described in clause 1C.2.4.

**Tasmania Tri-Area Service Arrangements** means the arrangements entered into by NBN Co to construct the NBN Co Network and deliver services in Smithton, Scottsdale and Midway Point in Tasmania.

**Tax** means any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency, including the ACT Utilities Tax, but excluding any tax (howsoever described) that relates to income, profit or capital gains.

**Tax Change Event** means a Positive Tax Change Event or a Negative Tax Change Event.

**Tax Change Events Proposal** has the meaning given to that term in clause 1G.2.2.

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth).

**Telstra Arrangements** means the contracts entered into between Telstra Corporation Limited (ABN 33 051 775 556) and NBN Co Limited on 23 June 2011.

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

**Third Party** means a person other than NBN Co or any Related Body Corporate of NBN Co.

**Third Party Funded Network Change** means a Network Change, or variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets:

- (a) to the extent that one or more persons (other than NBN Co or any Related Body Corporate of NBN Co) have agreed to fund or underwrite (in whole or in part) the Capital Expenditure and, if relevant, the Operating Expenditure, in accordance with a contract, arrangement or understanding between NBN Co or any Related Body Corporate of NBN Co and that person; and
- (b) in respect of which, at the time of entering into such a contract, arrangement or understanding, NBN Co is satisfied that there was a zero or positive expected net present value of incremental Operating Expenditure, Capital Expenditure, tax and Revenue over the term of the contract, arrangement or understanding.



**Total Actual Capital Expenditure** has the meaning given to that term in clause 2C.7.4(a).

**Total Cost of Ownership** means all costs incurred or likely to be incurred over the economic life of the Relevant Assets calculated on a net present value basis, including Capital Expenditure, Operating Expenditure and costs that arise in connection with any variations, changes, augmentations or enhancements to the Relevant Assets (including expansions of the capacity, functionality and geographic reach of the Relevant Assets).

**Total Forecast Capital Expenditure** has the meaning given to that term in clause 2C.7.4(a).

**Type 1 Facility** means a building that is owned, operated or controlled by NBN Co or any Related Body Corporate of NBN Co, and at which a POI is established.

**Type 2 Facility** means a building, other than a Type 1 Facility, at which a POI is established.

**Underlying Facility Provider** means the entity that occupies, owns, operates or controls a Type 2 Facility.

**Unrecovered Cost** is calculated in accordance with:

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

**Upgrade** means any upgrade, enhancement, modernisation, reconfiguration, enablement or augmentation of the NBN Co Network, including the removal, rearrangement, replacement or decommissioning of the network elements and associated electronics comprising the NBN Co Network, which will have, or is likely to have, an impact on an Access Seeker, but does not include any:

- (a) relocation, closure or replacement of a POI or the establishment of a new POI (which are addressed in clause 1H.4);
- (b) routine maintenance or Service Fault rectification activities in relation to:
  - (i) any NBN-Related Network;
  - (ii) any other matter or thing for which NBN Co is responsible and which affects, or can affect, the supply of products by NBN Co to an Access Seeker; or
  - (iii) any facilities, at, on or under which the NBN Co Network is attached, located or installed; or
- (c) rollout or expansion of the NBN Co Network.

**User Network Interface** or **UNI** has the meaning given to that term in clause 1A.3.1.

**User Network Interface-Data** or **UNI-D** means a data port on an NTD.

**User Network Interface-Voice** or **UNI-V** means a port on an NTD that incorporates an analogue telephone adaptor.

**USO** means universal service obligation which has the meaning given in section 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

**WACC** means weighted average cost of capital.

**Zero-Priced** means circumstances in which a Price of \$0.00 applies to, or no charge is otherwise payable for, an NBN Offer or Other Charge.

## 2 Glossary

Acronym	Defined term
ABBRR	Annual Building Block Revenue Requirement
ACIPA	Annual Construction in Progress Allowance
AVC	Access Virtual Circuit
CCA	Competition and Consumer Act
CSA	Connectivity Serving Area
CVC	Connectivity Virtual Circuit
CIF	Cumulative Inflation Factor
CIP	Construction in Progress
DHCP Option 82	Dynamic Host Configuration Protocol Option 82
DSCP	Differentiated Services Code Point
Forecast CIF	Forecast Cumulative Inflation Factor
ICRA	Initial Cost Recovery Account
ISS	Interim Satellite Service
LTRCM	Long Term Revenue Constraint Methodology
MAVC	Multicast AVC
NFAS	NBN Co Fibre Access Service
NNI	Network to Network Interface
NSAS	NBN Co Satellite Access Service
NTD	Network Termination Device
NWAS	NBN Co Wireless Access Service
PDF	Product Development Forum
POI	Point of Interconnect
PPoE	Point-to-Point over Ethernet
RAB	Regulatory Asset Base
RAB Roll Forward	Regulatory Asset Base Roll Forward
RR	Regulated Revenue
SAU	Special Access Undertaking
SIO	Service in Operation

Acronym	Defined term
SFAA	Standard Form of Access Agreement
UNI	User Network Interface
UNI-D	User Network Interface-Data
UNI-V	User Network Interface-Voice

### 3 Interpretation

In this Special Access Undertaking:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) the words 'including', 'particularly', 'such as' and similar expressions are not to be used as words of limitation;
- (e) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, governmental agency or authority, regulator, association, corporation or other body corporate;
  - (ii) a person includes its agents, successors and permitted assigns;
  - (iii) a thing (including a chose in action or other right) includes a part of that thing;
  - (iv) a document includes all amendments, supplements, updates and replacements to that document;
  - (v) a clause, term, party, schedule or annexure is a reference to a clause or term of, or party, schedule or annexure to this Special Access Undertaking;
  - (vi) unless specified otherwise, a reference to a clause in the main body or a schedule is a reference to a clause in the main body or that schedule (as applicable);
  - (vii) this Special Access Undertaking includes all schedules and annexures to it;
  - (viii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common

law or equity, or rule of any stock exchange and is a reference to that law as amended, consolidated or replaced and includes any regulations and other subordinate instruments made under or in accordance with those laws;

- (ix) a monetary amount is in Australian dollars; and
- (x) a tax includes any additional or replacement tax of a similar nature;
- (f) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (g) in determining the time of day, where relevant to this Special Access Undertaking, the relevant time of day is:
  - (i) for the purposes of giving or receiving notices, the time of day where a person receiving a notice is located; or
  - (ii) for any other purpose under this Special Access Undertaking, the time of day in the place where the person required to perform an obligation is located.

## Attachment D Initial Products

### 1 Initial Product Components and Product Features

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

- (a) all Product Components and Product Features provided over the NBN Interim Satellite Network, including 1000 Base T Network-Network Interface, TC-4 CVC, TC-1 CVC; and
- (b) the Product Components and Product Features on each of the NBN Co Fibre Network, NBN Co Wireless Network and NBN Co Permanent Satellite Network shown in the table below:

Product Component	Product Feature	NBN Co Fibre Network	NBN Co Wireless Network	NBN Co Permanent Satellite Network
Network-Network Interface	1000BaseLX	✓	✓	✓
	10GBaseLR	✓	✓	✓
	1000BaseEX	✓	✓	✓
	10GBaseER	✓	✓	✓
	Multi-bearer Link Aggregation Groups for load sharing	✓	✓	✓
	Chassis diversity	✓	✓	✓
Connectivity Virtual Circuit	TC-4: up to 50Mbps for wireless or satellite-only.		✓	✓
	TC-4: 100, 150, 200, 250, 300, 400, 500, 600, 700, 800, 900, 1,000, 1,100, 1,200, 1,300, 1,400, 1,500, 1,600, 1,700, 1,800, 1,900, 2,000 Mbps	✓	✓	✓
	TC-1: 5, 10, 20, 50, 100, 150, 200, 250, 300, 400, 500 Mbps	✓	✓	✓
	TC-MC (Multicast): 100, 200, 300, 400, 500, 600, 700, 800, 900, 1,000 Mbps	✓		
	TC-2: 50, 100, 150, 200, 250, 300, 400, 500, 600, 700, 800, 900, 1,000 Mbps	✓	✓	✓
	TC-3: 50, 100, 150, 200, 250, 300, 400, 500, 600, 700, 800, 900, 1,000 Mbps	✓	✓	✓
Access Virtual Circuit	TC-4: 12/1, 25/5 Mbps	✓	✓	✓
	TC-4: 25/10, 50/20, 100/40, 250/100, 500/200, 1,000/400 Mbps	✓		
	TC-1: 60kbps			✓
	TC-1: 0.15Mbps	✓	✓	
	TC:1: 0.3, 0.5, 1, 2, 5Mbps	✓		
	TC-2: 5 Mbps		✓	

Product Component	Product Feature	NBN Co Fibre Network	NBN Co Wireless Network	NBN Co Permanent Satellite Network
	TC-3: 5 Mbps		✓	
	TC-2: 2, 5, 10, 20, 30, 40 Mbps	✓		
	TC-3: 10, 20, 30, 40, 100 Mbps	✓		
	TC-MC: 5, 20, 30, 40, 50, 60 Mbps	✓		
	Enterprise Ethernet: 50-1,000Mbps symmetrical pipe model (but excluding product features, service levels and pricing)	✓		
	Enhanced Service Level guarantee: Business 7am-9pm; 7 days a week, 1 hour responses, 12 hour restoration (+geographic factor)	✓		
	Additional Enhanced Service Levels: 24/7 fault rectification with 12, 8, 6 and 4 hour restoration	✓		
	Tagged and Priority Tagged Framing	✓		
	Customer Edge Virtual Local Area Network transparency	✓		
	Access Diversity	✓		
	Drop priority based on Class of Service markings	✓		
	Advanced OAM features for Enterprise Ethernet Services (but excluding pricing)	✓		
User Network Interface	Data (4 ports)	✓	✓	✓
	Voice with in-built Analogue Telephony Adaptor (1 or 2 ports)	✓		
	Battery backup capability available on both UNI-V and UNI-D	✓		
	Optional Battery Backup	✓		
	TR-69 configuration for UNI-V	✓		
	IPv6 for DHCP on UNI-D	✓	✓	
	Out of band DTMF and RTCP for UNI-V	✓		
Other Service Enhancements	Reporting Phase 1 – SLA Fulfilment and Assurance	✓	✓	✓
	Reporting Phase 2 –Customer Management Reporting, including: <ul style="list-style-type: none"> <li>• Service Performance</li> <li>• Usage</li> <li>• Availability</li> <li>• SLA violations</li> </ul>	✓	✓	✓

## 2 Initial Ancillary Services

The Initial Products comprise the following types of Ancillary Services:

- (a) the Platform Interfacing Service; and
- (b) the Sandpit.

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### **3 Initial types of Facilities Access Service**

The Initial Products comprise the following types of Facilities Access Services:

- (a) Cross-Connect;
- (b) NBN Co-Location;
- (c) NBN Co ODF Termination Point; and
- (d) NBN Co Building Entry Service.

# Module 1

## Initial Regulatory Period





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

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### 1A.1 General

This Schedule 1A applies for the Initial Regulatory Period.

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

Subject to clause 1A.8, NBN Co will implement its obligations under this Special Access Undertaking in connection with the NBN Access Service by the supply of Product Components and Product Features on each NBN Co Network.

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### 1A.3 Product Components of NBN Access Service

#### 1A.3.1 User Network Interface

A UNI is a physical interface on the NTD.

#### 1A.3.2 Access Virtual Circuit

An AVC is an Ethernet-based, Layer 2 virtual connection on an NBN Co Network that carries traffic to and from a UNI on the NTD at the Premises connected to that NBN Co Network, with the Product Features made available by NBN Co and selected by an Access Seeker, in respect of that NTD.

#### 1A.3.3 Connectivity Virtual Circuit

A CVC is Ethernet-based, Layer 2 virtual capacity for the transport of Access Seeker traffic from multiple AVCs within a CSA on an aggregated basis and presented at the NNI at the POI associated with that CSA, with the Product Features made available by NBN Co and selected by an Access Seeker, in respect of that virtual capacity.

#### 1A.3.4 Network to Network Interface

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

#### 1A.3.5 Composition of AVC and CVC

The AVC and CVC may incorporate some limited Layer 3 awareness, including:

- (a) voice telephony services provided using a UNI-V;
- (b) multicast services provided over the NBN Co Fibre Network; and
- (c) the following optional features on the AVC:

- (i) DSCP for priority encoding;
- (ii) DHCP Option 82 support; and
- (iii) PPOE Intermediate Agent support,

but only to the extent that that Layer 3 awareness is required to support the supply of a Layer 2 service and does not extend to the routing or forwarding of Access Seeker traffic using public Internet Protocol addresses.

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## 1A.4 Terms and conditions relating to supply of Product Components

### 1A.4.1 Availability of Product Components

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

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

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

NBN Co may require that the supply of an AVC to an Access Seeker be on the condition that the Access Seeker also acquire:

- (a) a UNI, CVC and NNI; or
- (b) an AVC of a different traffic class,

in conjunction with the first-mentioned AVC, if, for technical reasons, the first-mentioned AVC could not otherwise be supplied to the Access Seeker.

### 1A.4.3 Maximum Data Transfer Rate

NBN Co may not supply an AVC to an NTD when the supply of that AVC would result in the Maximum Data Transfer Rate for that NTD being exceeded.

### 1A.4.4 UNI availability

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

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## 1A.5 Implementation of Ancillary Services

Subject to clause 1A.8, NBN Co will implement its obligations under this Special Access Undertaking in connection with the Ancillary Services by the supply of the Platform Interfacing Service, the Sandpit and such other Ancillary Services that NBN Co introduces in accordance with Schedule 1I (Product Development and Withdrawal) and such other Ancillary Services introduced by NBN Co that are Licence Condition Products.

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## 1A.6 Types of Ancillary Services

### 1A.6.1 Platform Interfacing Service

- (a) Subject to clause 1A.8, NBN Co will implement the Platform Interfacing Service by the supply of a service which supports the following key business transactions via access to the NBN Co Platform:
- (i) activation transactions, including address enquiries, service qualification enquiries, order feasibility checks, submission of orders, enrichment of orders with further information, modification of orders being processed and tracking of orders being processed, and such other transactions as may be described as activation transactions by NBN Co from time to time;
  - (ii) assurance transactions, including submission of trouble tickets, modification of trouble tickets and tracking of trouble tickets, and such other transactions as may be described as assurance transactions by NBN Co from time to time; and
  - (iii) billing transactions, including notification of billing events and invoices, retrieval of historical billing information, and such other transactions as may be described as billing transactions by NBN Co from time to time,
- (each a **Key Business Transaction**).
- (b) As at the SAU Commencement Date, NBN Co will permit each of the Key Business Transactions to be performed through at least one of the following means:
- (i) B2B access, which enables an Access Seeker and NBN Co to perform Key Business Transactions using their own operations support systems and billing support systems by exchanging encrypted and digitally-signed messages over the Internet between B2B gateways that are hosted by that Access Seeker and NBN Co respectively (**B2B Access**); or

- (ii) service portal, which enables an Access Seeker and NBN Co to perform Key Business Transactions over the Internet using a web-based portal that is designed, created, hosted, operated and maintained by NBN Co (**Service Portal**).
- (c) In respect of the NBN Co Satellite Network, NBN Co may use an interim satellite portal to process service qualification requests.

### 1A.6.2 Sandpit

Subject to clause 1A.8, NBN Co will implement the Sandpit by the supply of test and verification facilities that allow an Access Seeker and NBN Co to undertake each of the following activities in relation to the NBN Access Service to be provided over the NBN Co Fibre Network:

- (a) the preparation and performance of testing in respect of the relevant Product Components or Product Features;
- (b) the performance of the following activities that are related to the performance of testing in respect of the Platform Interfacing Service, including:
  - (i) business process interoperability activities related to the development of that Access Seeker's B2B gateway;
  - (ii) interoperability functional testing activities;
  - (iii) functional testing related to the development or maintenance of an Access Seeker's operational support systems, which may include the exchange of messages between that Access Seeker's B2B gateway and NBN Co's B2B gateway in relation to:
    - (A) pre-order management, including address queries, service qualification enquiries and order feasibility checks; and
    - (B) order management, including submitting orders and tracking of orders being processed;
- (c) the preparation and performance of testing in respect of any product functionality developed by NBN Co, subject to NBN Co being able to make the functionality available for testing in relation to the NBN Access Service;
- (d) the development of Access Seeker Products that are directly related to the Product Components and Product Features that are or will be acquired by that Access Seeker from NBN Co over the NBN Co Fibre Network; and

- (e) the performance of activities that are related or ancillary to the activities described in clauses 1A.6.2(a) to 1A.6.2(d).

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## 1A.7 Facilities Access Service

Subject to clause 1A.8, NBN Co will implement the Facilities Access Service by the supply of the following types of facilities access:

- (a) cross-connect, which provides point-to-point connectivity between certain pairs of locations within the relevant POI Site or Aggregation Node Site (**Cross-Connect**);
- (b) NBN Co co-location, which enables an Access Seeker to install, operate and maintain Access Seeker Active Equipment in Rack Space within the relevant Aggregation Node Site (**NBN Co Co-Location**);
- (c) NBN Co ODF termination point, which enables an Access Seeker's lead-in or backhaul transmission cables to be connected by NBN Co to the NBN Co ODF at the relevant POI Site (**NBN Co ODF Termination Point**);
- (d) NBN Co building entry service, which enables an Access Seeker to install, house, operate, test, maintain and remove lead-in or backhaul transmission cables at a POI Site that is located within a Type 1 Facility (**NBN Co Building Entry Service**);
- (e) such other types of facilities access that NBN Co introduces in accordance with Schedule 1I (Product Development and Withdrawal); and
- (f) such other types of facilities access introduced by NBN Co that are Licence Condition Products.

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## 1A.8 Service declared by the ACCC

- (a) NBN Co acknowledges that this Special Access Undertaking does not affect the ACCC's ability to declare a service under section 152AL(8A) of the CCA (in this clause 1A.8, **ACCC-Declared Service**), even if the service falls, to any extent, within the scope of the services that are declared services under section 152AL(8E) of the CCA as a consequence of the operation of this Special Access Undertaking.
- (b) For the avoidance of doubt, this Special Access Undertaking does not affect NBN Co's obligations under section 152AXB of the CCA in respect of any ACCC-Declared Service, including the obligation to supply that ACCC-Declared Service in accordance with the CCA.

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

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### 1B.1 General

This Schedule 1B applies for the Initial Regulatory Period.

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### 1B.2 Standard Form of Access Agreement

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

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### 1B.3 Multilateral Consultation on changes to any SFAA

#### 1B.3.1 Establishment of a Multilateral SFAA Forum

- (a) NBN Co will establish a multilateral consultation forum to engage with Access Seekers and Consumer Advocacy Groups on possible future changes to the terms of any SFAA (**Multilateral SFAA Forum**).
- (b) NBN Co will convene a Multilateral SFAA Forum no later than 12 months prior to the expiry of the term of each SFAA published under the CCA and in accordance with clause 6 of this Special Access Undertaking. This clause does not apply to any SFAA that exists at the SAU Commencement Date and expires within 12 months of the SAU Commencement Date.
- (c) The purpose of the Multilateral SFAA Forum will include identifying and prioritising issues associated with any SFAA and working to develop multilateral resolutions to changes to any SFAA.
- (d) The Multilateral SFAA Forum will allow Access Seekers, Consumer Advocacy Groups and NBN Co to suggest changes to any SFAA.
- (e) The Multilateral SFAA Forum will be available to all Access Seekers irrespective of whether they have an Access Agreement with NBN Co. However, Access Seeker participation in the Multilateral SFAA Forum will be voluntary such that each Access Seeker can engage as they deem appropriate given their level of interest and/or resources.
- (f) Nothing in this clause 1B.3 precludes NBN Co from conducting bilateral consultation with Access Seekers in relation to any SFAA in a

manner that is consistent with NBN Co's Non-Discrimination Obligations.

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## Schedule 1C NBN Offers and Other Charges

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### 1C.1 General

#### 1C.1.1 Scope

This Schedule 1C applies for the Initial Regulatory Period.

#### 1C.1.2 Status of NBN Offers

- (a) NBN Co will supply each of the NBN Offers which have a Maximum Regulated Price specified in clause 1C.3, as those NBN Offers are specified in clause 1C.2:
- (i) in respect of the NBN Co Fibre Network and the NBN Co Wireless Network, for the duration of the Initial Regulatory Period, except for each of the following NBN Offers (each a **Subsequent CVC TC-1/TC-4 Offer**), which NBN Co will supply from the date that NBN Co first supplies that NBN Offer to the end of the Initial Regulatory Period:
    - (A) Connectivity Virtual Circuit Offers (TC-1) with Data Transfer Rates of 50, 100, 150, 200, 250, 300, 400 and 500 Mbps; and
    - (B) Connectivity Virtual Circuit Offers (TC-4) with Data Transfer Rates of 600, 700, 800, 900, 1,000, 1,100, 1,200, 1,300, 1,400, 1,500, 1,600, 1,700, 1,800, 1,900 and 2,000 Mbps;
  - (ii) in respect of the NBN Co Interim Satellite Network, from the SAU Commencement Date until the date or dates and to the extent that NBN Co declares that services are available for supply on the NBN Co Permanent Satellite Network; and
  - (iii) in respect of the NBN Co Permanent Satellite Network, from the date or dates and to the extent that NBN Co declares that services are available for supply on the NBN Co Permanent Satellite Network until the end of the Initial Regulatory Period, unless the NBN Offer is withdrawn in accordance with Schedule 11 (Product Development and Withdrawal).
- (b) NBN Co will supply:
- (i) each of the NBN Offers set out in clause 1C.2 (excluding the NBN Offers which have a Maximum Regulated Price specified



in clause 1C.3), as those NBN Offers are specified in clause 1C.2;

- (ii) such other NBN Offers that NBN Co introduces in accordance with Schedule 1I (Product Development and Withdrawal); and
- (iii) such other NBN Offers introduced by NBN Co that are Initial Products or Licence Condition Products,

from:

- (iv) where that NBN Offer has been introduced as at the SAU Commencement Date, the SAU Commencement Date; and
- (v) otherwise, the date that NBN Co first supplies the NBN Offer, and

to only withdraw the NBN Offer in accordance with Schedule 1I (Product Development and Withdrawal).

- (c) Clauses 1C.1.2(a) and 1C.1.2(b) do not apply to the withdrawal of an NBN Offer that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.

### **1C.1.3 Other Charges**

- (a) Other Charges may only be applied to the supply of NBN Offers in accordance with this Schedule 1C.
- (b) NBN Co may withdraw any Other Charge that applies to an NBN Offer.

### **1C.1.4 Prices to be determined**

NBN Co will determine the Prices for NBN Offers and Other Charges that NBN Co supplies or applies during the Initial Regulatory Period, subject to this Schedule 1C and Schedule 1E (Long Term Revenue Constraint Methodology).

### **1C.1.5 Maximum Regulated Price for NBN Offers and Other Charges**

- (a) The Price for the supply of an NBN Offer at any point in time during a Financial Year must not be higher than the Maximum Regulated Price applicable to that NBN Offer at that point in time.
- (b) The Price of an Other Charge at any point in time during a Financial Year must not be higher than the Maximum Regulated Price applicable to that Other Charge at that point in time.

### **1C.1.6 Maximum Regulated Price operates as a ceiling**

Subject to other provisions in this Special Access Undertaking, NBN Co may supply an NBN Offer or apply an Other Charge at a Price at any point in time that is lower than or equal to the Maximum Regulated Price for the NBN Offer or Other Charge at that point in time.

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## **1C.2 NBN Offers**

### **1C.2.1 Overview of NBN Offers**

The NBN Offers comprise the following as at the SAU Commencement Date:

- (a) the Asymmetric AVC Offers;
- (b) the Additional Asymmetric AVC Offers;
- (c) the Symmetric Access Capacity Offers;
- (d) the Second UNI-V and AVC Offer;
- (e) the Connectivity Virtual Circuit Offers;
- (f) the Network to Network Interface Offers;
- (g) the Platform Interfacing Offer;
- (h) the Sandpit Offer;
- (i) the Multicast AVC Offers;
- (j) the Multicast Domain Offers;
- (k) the Multicast Media Stream Offers;
- (l) the NBN Co Co-location Offer;
- (m) the Facilities Access Service Offer; and
- (n) the Standard Business Offer.

### **1C.2.2 Asymmetric AVC Offers**

The Asymmetric AVC Offers comprise the following:

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

- (A) 12 Mbps PIR (TC-4) downlink and 1 Mbps PIR (TC-4) uplink;
  - (B) 25 Mbps PIR (TC-4) downlink and 5 Mbps PIR (TC-4) uplink;
- (iii) in respect of the NBN Co Fibre Network:
  - (A) 25 Mbps PIR (TC-4) downlink and 10 Mbps PIR (TC-4) uplink;
  - (B) 50 Mbps PIR (TC-4) downlink and 20 Mbps PIR (TC-4) uplink;
  - (C) 100 Mbps PIR (TC-4) downlink and 40 Mbps PIR (TC-4) uplink;
  - (D) 250 Mbps PIR (TC-4) downlink and 100 Mbps PIR (TC-4) uplink;
  - (E) 500 Mbps PIR (TC-4) downlink and 200 Mbps PIR (TC-4) uplink; and
  - (F) 1,000 Mbps PIR (TC-4) downlink and 400 Mbps PIR (TC-4) uplink;
- (b) access to, and use of, one available UNI-D on the NTD connected to the NBN Co Network at the Premises (in this clause 1C.2.2, the **Accessed NTD**), for use in conjunction with the AVC described in clause 1C.2.2(a);
- (c) in respect of the NBN Co Fibre Network, the option to access and use one available UNI-V on the Accessed NTD in respect of the supply of voice telephony services to the Premises; and
- (d) in respect of:
  - (i) the NBN Co Fibre Network, an AVC with a 0.15 Mbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services on:
    - (A) if the option in clause 1C.2.2(d) is exercised, the UNI-V on the Accessed NTD, in which case the 0.15 Mbps CIR (TC-1) symmetrical Data Transfer Rate will be provided through an AVC mapped to that UNI-V and is separate, and in addition, to the AVC described in clause 1C.2.2(a); or
    - (B) if the option in clause 1C.2.2(d) is not exercised, the UNI-D on the Accessed NTD, in which case the 0.15

Mbps CIR (TC-1) symmetrical Data Transfer Rate will be provided as part of the AVC described in clause 1C.2.2(a) and included within the Data Transfer Rate for that AVC;

- (ii) the NBN Co Wireless Network, an AVC with a 0.15 Mbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services on the UNI-D on the Accessed NTD, which will be provided as part of the AVC described in clause 1C.2.2(a) and included within the Data Transfer Rate for that AVC; or
- (iii) the NBN Co Interim Satellite Network, an AVC with a 60 kbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services on the UNI-D on the Accessed NTD, which will be provided as part of the AVC described in clause 1C.2.2(a) and included within the Data Transfer Rate for that AVC,

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

### 1C.2.3 Additional Asymmetric AVC Offers

The Additional Asymmetric AVC Offers comprise an AVC with one of the following Data Transfer Rates:

- (a) 12 Mbps PIR (TC-4) downlink and 1 Mbps PIR (TC-4) uplink;
- (b) 25 Mbps PIR (TC-4) downlink and 5 Mbps PIR (TC-4) uplink;
- (c) 25 Mbps PIR (TC-4) downlink and 10 Mbps PIR (TC-4) uplink;
- (d) 50 Mbps PIR (TC-4) downlink and 20 Mbps PIR (TC-4) uplink;
- (e) 100 Mbps PIR (TC-4) downlink and 40 Mbps PIR (TC-4) uplink;
- (f) 250 Mbps PIR (TC-4) downlink and 100 Mbps PIR (TC-4) uplink;
- (g) 500 Mbps PIR (TC-4) downlink and 200 Mbps PIR (TC-4) uplink; and
- (h) 1,000 Mbps PIR (TC-4) downlink and 400 Mbps PIR (TC-4) uplink,

provided to an existing UNI-D on the NTD connected to the NBN Co Fibre Network at the Premises and used by the Access Seeker in conjunction with another AVC mapped to the same UNI-D (each an **Additional Asymmetric AVC Offer**).

### 1C.2.4 Symmetric Access Capacity Offers

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

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

Symmetrical Data Transfer Rate (Mbps)	Traffic Class (CIR)
0.15*	TC-1
0.3	TC-1
0.5	TC-1
1	TC-1
2	TC-1
5	TC-1

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

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

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

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

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

provided that the aggregate symmetrical Data Transfer Rate acquired by the Access Seeker does not exceed the TC-4 Data Transfer Rate of the AVC or any other technical requirements of the NBN Co Fibre Network (each a **Symmetric Access Capacity Offer**).

### 1C.2.5 Second UNI-V and AVC Offer

The Second UNI-V and AVC Offer in respect of the NBN Co Fibre Network comprises the following:

- (a) access to, and use of, one available UNI-V on the NTD connected to the NBN Co Fibre Network at the Premises (in this clause 1C.2.5, the **Accessed NTD**), for use in conjunction with the AVC described in clause 1C.2.5(b); and
- (b) an AVC with a 0.15 Mbps CIR (TC-1) symmetrical Data Transfer Rate to support voice telephony services, provided on the UNI-V on the Accessed NTD,

subject to the Access Seeker acquiring access to, and use of, one other available UNI-V on the Accessed NTD.

### 1C.2.6 Connectivity Virtual Circuit Offers

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

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

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

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

Data Transfer Rate (Mbps)	Traffic Class
50	TC-2 (CIR)
100	TC-2 (CIR)
150	TC-2 (CIR)
200	TC-2 (CIR)
250	TC-2 (CIR)
300	TC-2 (CIR)
400	TC-2 (CIR)
500	TC-2 (CIR)
600	TC-2 (CIR)
700	TC-2 (CIR)
800	TC-2 (CIR)
900	TC-2 (CIR)

Data Transfer Rate (Mbps)	Traffic Class
1,000	TC-2 (CIR)

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

Data Transfer Rate (Mbps)	Traffic Class
50	TC-3 (CIR)
100	TC-3 (CIR)
150	TC-3 (CIR)
200	TC-3 (CIR)
250	TC-3 (CIR)
300	TC-3 (CIR)
400	TC-3 (CIR)
500	TC-3 (CIR)
600	TC-3 (CIR)
700	TC-3 (CIR)
800	TC-3 (CIR)
900	TC-3 (CIR)
1,000	TC-3 (CIR)

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

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

Data Transfer Rate (Mbps)	Traffic Class
1,900	TC-4 (CIR)
2,000	TC-4 (CIR)

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

(each a **Connectivity Virtual Circuit Offer**).

### 1C.2.7 Network to Network Interface Offers

The Network to Network Interface Offers comprise NNIs with the following NNI interface capacities:

NNI Bearer Profiles	Interface capacity (Gbps)
1000BaseLX	1
1000BaseT *	1*
10GBaseLR	10
1000BaseEX	1
10GBaseER	10

\* This NNI Bearer Profile and interface capacity is applicable in respect of the NBN Co Interim Satellite Network only.

(each a **Network to Network Interface Offer**).

### 1C.2.8 Platform Interfacing Offer

The Platform Interfacing Offer comprises the Platform Interfacing Service.

### 1C.2.9 Sandpit Offer

The Sandpit Offer comprises the Sandpit.

### 1C.2.10 Multicast AVC Offers

The Multicast AVC Offers in respect of the NBN Co Fibre Network comprise Multicast AVCs with one of the following Data Transfer Rates:

Downstream Mbps (CIR)	Upstream Mbps (CIR)
5	0
20	0
30	0
40	0
50	0

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



### 1C.2.11 Multicast Domain Offers

The Multicast Domain Offers in respect of the NBN Co Fibre Network comprise the Multicast Domain with one of the following Data Transfer Rates provided to an existing UNI-D on the NTD connected to the NBN Co Network at the Premises and used by the Access Seeker in conjunction with the Multicast AVC mapped to the same UNI-D:

Downstream Mbps (CIR)
100
200
300
400
500
600
700
800
900
1,000

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

### 1C.2.12 Multicast Media Stream Offers

The Multicast Media Stream Offers in respect of the NBN Co Fibre Network comprise configured Media Streams within a Multicast Domain as follows:

Media Streams per Multicast Domain
0 – 200
> 200

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

### 1C.2.13 NBN Co Co-location Offer

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

### 1C.2.14 Facilities Access Service Offer

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

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

### 1C.2.15 Standard Business Offer

The Standard Business Offer comprises:

- (a) an Asymmetric AVC Offer with the following Data Transfer Rates:
  - (i) 25 Mbps PIR (TC-4) downlink; and
  - (ii) 10 Mbps PIR (TC-4) uplink; and
- (b) a Symmetric Access Capacity Offer with a symmetrical Data Transfer Rate of 0.5 Mbps CIR (TC-1).

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## 1C.3 Maximum Regulated Price for certain NBN Offers

Subject to clauses 1C.5 and 1G.2, the Maximum Regulated Price for each NBN Offer described in this clause 1C.3:

- (a) if the NBN Offer is not a Subsequent CVC TC-1/TC-4 Offer, in respect of the period between the SAU Commencement Date and 30 June 2017; and
- (b) if the NBN Offer is a Subsequent CVC TC-1/TC-4 Offer,
  - (i) if it is introduced no later than 30 June 2017, from the date on which it is introduced to 30 June 2017; and
  - (ii) if it is introduced after 30 June 2017, for the first Financial Year in which it is introduced,

is as follows:

- (c) for an Asymmetric AVC Offer that includes:
  - (i) an AVC with a Data Transfer Rate of 6 Mbps PIR (TC-4) downlink and 1 Mbps PIR (TC-4) uplink: \$24.00, per SIO, per month;
  - (ii) an AVC with a Data Transfer Rate of 12 Mbps PIR (TC-4) downlink and 1 Mbps PIR (TC-4) uplink: \$24.00, per SIO, per month; and
  - (iii) an AVC with a Data Transfer Rate of 25 Mbps PIR (TC-4) downlink and 5 Mbps PIR (TC-4) uplink: \$27.00, per SIO, per month;
- (d) for each Connectivity Virtual Circuit Offer (TC-1): \$20.00 per Mbps, per month;

- (e) for each Connectivity Virtual Circuit Offer (TC-4): \$20.00 per Mbps, per month;
- (f) for each Network to Network Interface Offer:

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

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

- (g) for the Platform Interfacing Offer: \$0;
- (h) for the Sandpit Offer on each NBN Co Network: \$0;
- (i) for the Facilities Access Service Offer:

Type of Facilities Access Service	Monthly Recurring Charge, per month*
Cross-Connect	\$0
NBN Co ODF Termination Point	\$0
NBN Co Building Entry Service	\$190 per month, per fibre cable

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

- (j) for the Standard Business Offer: \$53.00, per SIO, per month.

## 1C.4 Maximum Regulated Prices on introduction

### 1C.4.1 NBN Offers

Subject to clauses 1C.5 and 1G.2, the Maximum Regulated Price of each NBN Offer set out in clause 1C.2 (excluding the NBN Offers which have a Maximum Regulated Price specified in clause 1C.3):

- (a) where that NBN Offer has been introduced as at the SAU Commencement Date, for the First Financial Year; and
- (b) otherwise, for the Financial Year in which the NBN Offer is introduced, will be as follows:
- (c) for the Asymmetric AVC Offers:

Downlink (Mbps)	Uplink (Mbps)	Monthly Recurring Charge, per SIO
25	10	\$30.00
50	20	\$34.00

Downlink (Mbps)	Uplink (Mbps)	Monthly Recurring Charge, per SIO
100	40	\$38.00
250	100	\$70.00
500	200	\$100.00
1,000	400	\$150.00

(d) for the Additional Asymmetric AVC Offers:

Downlink (Mbps)	Uplink (Mbps)	Monthly Recurring Charge, per SIO
12	1	\$16.50
25	5	\$19.50
25	10	\$22.50
50	20	\$26.50
100	40	\$30.50
250	100	\$62.50
500	200	\$92.50
1,000	400	\$142.50

(e) for the Symmetric Access Capacity Offers, comprising:

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

TC (CIR)	Symmetrical Data Transfer Rate (Mbps)	Monthly Recurring Charge, per SIO
TC-1	0.15	\$10.00
TC-1	0.3	\$20.00
TC-1	0.5	\$33.00
TC-1	1	\$66.00
TC-1	2	\$132.00
TC-1	5	\$330.00

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

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

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

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

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

(g) for the Connectivity Virtual Circuit Offers, comprising:

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

Data Transfer Rate (Mbps)	Monthly Recurring Charge Traffic Class 2 (CIR)
50	\$1,000
100	\$2,000
150	\$3,000
200	\$4,000
250	\$5,000
300	\$6,000
400	\$8,000
500	\$10,000
600	\$12,000
700	\$14,000
800	\$16,000
900	\$18,000
1,000	\$20,000

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

Data Transfer Rate (Mbps)	Monthly Recurring Charge Traffic Class 3 (CIR)
50	\$1,000
100	\$2,000
150	\$3,000
200	\$4,000
250	\$5,000
300	\$6,000
400	\$8,000
500	\$10,000
600	\$12,000
700	\$14,000
800	\$16,000
900	\$18,000
1,000	\$20,000

(h) for the Multicast AVC Offers:

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

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

(j) for the Multicast Media Stream Offers:

Media Streams per Multicast Domain	Media Streams per Multicast Domain Monthly Recurring Charge
0 - 200	\$0.00
> 200	\$50.00 per Media Stream in excess of 200 Media Streams

(k) for the NBN Co Co-location Offer:

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

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

#### 1C.4.2 Other Charges

Subject to clauses 1C.5 and 1G.2, the Maximum Regulated Price of each Other Charge in the First Financial Year is as follows:

(a) for installations and activations on the NBN Co Fibre Network, NBN Co Wireless Network or NBN Co Satellite Network:

Activity	Charge per activity
Initial Standard Installation	\$0
Initial Non Standard Installation	Hourly Labour Rate plus cost of materials
Subsequent Installation	Hourly Labour Rate charged for a minimum amount equivalent to 3.67 hours, plus cost of materials
Access Component Reactivation	\$0
MAVC Reactivation	\$0
CVC Set-up & Activation	\$0
Multicast Domain Set-up & Activation	\$0
NNI 1000BaseLX Set-up & Activation	\$1,000
NNI 1000BaseT Set-up & Activation	\$1,000

Activity	Charge per activity
NNI 10GBaseLR Set-up & Activation	\$5,000
NNI 1000BaseEX Set-up & Activation	\$7,000
NNI 10GBaseER Set-up & Activation	\$35,000
Service Qualification Enquiry	\$0

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

Activity	Charge
Access Component Modification (no attendance at Premises required)	\$0
CVC Modification	\$0
Multicast Domain Modification	\$0
NNI Modification	\$0
Equipment Modification (attendance at Premises required)	Hourly Labour Rate plus cost of materials
Equipment Removal	Hourly Labour Rate plus cost of materials
Equipment Repair	Hourly Labour Rate plus cost of materials

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

Activity	Charge
On Site Maintenance Call Out	\$0
No Fault Found (No Truck Roll Required)	\$50
No Fault Found (Truck Roll Required)	Hourly Labour Rate charged for a minimum of 2 hours plus each hour thereafter
Late Cancellation (Site Visit Required)	\$0
Missed Appointment	\$0

(d) for the Facilities Access Service:

Activity	Charge
Set-up NBN Co Co-location (Lockable Full Height Equipment Rack)	\$1,500 per lockable full height equipment rack
Set-up NBN Co Co-location (Lockable Half Height Equipment Rack)	\$900 per lockable half height equipment rack
Set-up Cross-Connect	\$0 per interface
Set-up NBN Co ODF Termination Point	\$0 per interface
Supply of First Access Card	\$0
Additional / Replacement Access Card (excluding the First Access Card)	\$100 per access card
Missed Appointment (During Business Hours)	\$300 per missed appointment
Missed Appointment (Outside Business Hours)	\$450 per missed appointment

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

### **1C.4.3 CVC credit and pricing intent**

- (a) From the SAU Commencement Date until the earlier of the end of the Initial Regulatory Period or such time as the number of Premises that are NBN Serviceable in a CSA exceeds 30,000 (excluding Premises served by means of the NBN Co Satellite Network), NBN Co will credit each Access Seeker, in respect of that CSA, with an amount equal to the greater of:
  - (i) the charges that would otherwise apply to the supply of a 50 kbps CVC (TC-4) in respect of every Asymmetric AVC Offer supplied to that Access Seeker in that CSA as at the start of the relevant billing period; and
  - (ii) the charges that would otherwise apply to the amount of the CVC (TC-4) capacity supplied to that Access Seeker in that CSA during that billing period up to a maximum of 150 Mbps of CVC (TC-4) capacity.
- (b) After such time as the number of Premises that are NBN Serviceable in the CSA exceeds 30,000 (excluding Premises served by means of the NBN Co Satellite Network), and until the end of the Initial Regulatory Period, NBN Co will credit each Access Seeker in respect of each CSA, with an amount equal to the charges that would otherwise apply to the supply of a 50 kbps CVC (TC-4) in respect of every Asymmetric AVC Offer supplied to that Access Seeker in that CSA as at the start of the relevant billing period.
- (c) In respect of the credit amount that applies to all of the CVCs for a CSA which are provided by NBN Co to an Access Seeker pursuant to clauses 1C.4.3(a) or 1C.4.3(b), the credit amount will be capped at, and will not exceed, the total recurring charges that apply in respect of all CVCs for that CSA which are provided by NBN Co to that Access Seeker.
- (d) Once clause 1C.4.3(a) ceases to apply in respect of all CSAs, NBN Co will annually review the Price of each Connectivity Virtual Circuit Offer (TC-4) with a view to reducing the Price as aggregate demand for that NBN Offer increases. In its review, NBN Co will consider the level of aggregate demand for CVC (TC-4) capacity and the information in the most recently published NBN Co Corporate Plan.

### **1C.4.4 Rebate of recurring charge for a Symmetric Access Capacity Offer (TC-1) 0.15 Mbps, per SIO, per month**

- (a) Subject to clause 1C.4.4(b), if, in respect of the same SIO, an Access Seeker acquires:



- (i) a Symmetric Access Capacity Offer (TC-1); and
- (ii) an Asymmetric AVC Offer,

NBN Co will provide the Access Seeker with a rebate equivalent to the actual Price of the recurring charge for a Symmetric Access Capacity Offer (TC-1) 0.15 Mbps, per SIO, per month.

- (b) Clause 1C.4.4(a) does not apply to the acquisition of the Standard Business Offer.

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## 1C.5 Price limit for Maximum Regulated Prices over time

### 1C.5.1 Maximum Regulated Prices for NBN Offers and Other Charges

Subject to clause 1G.2, at any point in time during a Financial Year (in this clause 1C.5.1, **Relevant Financial Year**) the Maximum Regulated Price of an NBN Offer or Other Charge is:

- (a) if a Price Review Arrangement applies to the NBN Offer or Other Charge in the Relevant Financial Year, determined in accordance with that Price Review Arrangement; or
- (b) if:
  - (i) paragraph (a) does not apply;
  - (ii) the NBN Offer or Other Charge ceased to be Zero-Priced in the Relevant Financial Year in accordance with clause 1C.5.4 or ceased to be Zero-Priced in a prior Financial Year in accordance with clause 1C.5.4;
  - (iii) the ACCC has made a Resetting Regulatory Determination within the Relevant Financial Year in respect of the NBN Offer or Other Charge; and
  - (iv) that Resetting Regulatory Determination is the most recent Resetting Regulatory Determination in respect of the NBN Offer or Other Charge as at that point in time,

the maximum price specified in that Resetting Regulatory Determination (which may be a maximum price of \$0.00); or

- (c) if:
  - (i) neither paragraph (a) nor paragraph (b) apply; and
  - (ii) the NBN Offer or Other Charge ceased to be Zero-Priced in the Relevant Financial Year in accordance with clause 1C.5.4,

the Price for that NBN Offer or Other Charge specified by NBN Co in the notice provided by NBN Co under clause 1C.5.4(b)(i); or

- (d) if:
- (i) none of paragraphs (a), (b) or (c) apply;
  - (ii) the NBN Offer is not set out in clause 1C.2 or the Other Charge is not specified in clause 1C.4.2, and the NBN Offer or the Other Charge has been introduced in the Relevant Financial Year or a prior Financial Year;
  - (iii) the ACCC has made a Resetting Regulatory Determination within the Relevant Financial Year in respect of the NBN Offer or Other Charge for the purposes of which the ACCC has taken into account (except where the Resetting Regulatory Determination is a Binding Rule of Conduct and the ACCC considers, having regard to the urgent need to make the Binding Rule of Conduct, that it is not practicable to do so):
    - (A) the characteristics of other NBN Offers and activities associated with other Other Charges;
    - (B) the costs associated with other NBN Offers and Other Charges;
    - (C) the impact of the Resetting Regulatory Determination on the Revenue associated with other NBN Offers and Other Charges; and
    - (D) the impact of the Resetting Regulatory Determination on the demand for other NBN Offers and activities associated with other Other Charges; and
  - (iv) that Resetting Regulatory Determination is the most recent Resetting Regulatory Determination in respect of the NBN Offer or Other Charge that meets the conditions in clause 1C.5.1(d)(iii) as at that point in time,

the maximum price specified in that Resetting Regulatory Determination (which may be a maximum price of \$0.00); or

- (e) if:
- (i) none of paragraphs (a), (b), (c) or (d) apply; and
  - (ii) the NBN Offer is not set out in clause 1C.2 or the Other Charge is not specified in clause 1C.4.2, and the NBN Offer or the

Other Charge has been introduced in the Relevant Financial Year,

the initial Price for that NBN Offer or Other Charge introduced by NBN Co; or

- (f) if:
- (i) none of paragraphs (a), (b), (c), (d) or (e) apply;
  - (ii) the relevant NBN Offer was introduced as at the SAU Commencement Date or was introduced no later than 30 June 2017, and has a Maximum Regulated Price specified in clause 1C.3; and
  - (iii) the Relevant Financial Year is not later than 30 June 2017,

if the last day of the immediately preceding Financial Year is after the SAU Commencement Date and the Maximum Regulated Price for that NBN Offer applying at the last day of the immediately preceding Financial Year is different from the Maximum Regulated Price set out in clause 1C.3 for that NBN Offer, the Maximum Regulated Price for that NBN Offer applying at the last day of the immediately preceding Financial Year, or otherwise, the Maximum Regulated Price set out in clause 1C.3 for that NBN Offer; or

- (g) if:
- (i) none of paragraphs (a), (b), (c), (d), (e) or (f) apply;
  - (ii) the relevant NBN Offer is a Subsequent CVC TC-1/TC-4 Offer and has a Maximum Regulated Price specified in clause 1C.3;
  - (iii) that NBN Offer was introduced after 30 June 2017; and
  - (iv) the Relevant Financial Year is the Financial Year in which the NBN Offer is introduced,

the Maximum Regulated Price set out in clause 1C.3 for that NBN Offer; or

- (h) if:
- (i) none of paragraphs (a), (b), (c), (d), (e), (f) or (g) apply; and
  - (ii) the relevant NBN Offer or Other Charge has a Maximum Regulated Price specified in clause 1C.4 and the Relevant Financial Year is the Financial Year for which the Maximum Regulated Price set out in clause 1C.4 applies to that NBN Offer or Other Charge,

the Maximum Regulated Price set out in clause 1C.4 for that NBN Offer or Other Charge (as the case may be); or

- (i) if none of the above paragraphs apply, the greater of:
  - (i) the sum of its Previous Year's Price and its Individual Price Increase Limit for the Relevant Financial Year; and
  - (ii) the Price on the last day of the immediately preceding Financial Year.

### 1C.5.2 Individual Price Increase Limit for NBN Offers and Other Charges

- (a) The Individual Price Increase Limit of an NBN Offer or Other Charge for Financial Year ( $t$ ) is the greater of:

- (i) \$0; and
- (ii)  $Price_{t-1} * [(1 + CPI_{t-1}^{March}) * (1 - 1.5\%) - 1]$ ,

where:

- (iii)  $Price_{t-1}$  is the average Price for the NBN Offer or Other Charge over the immediately preceding Financial Year, calculated as the arithmetic average Price at which the NBN Offer was supplied on the last day of each month of that Financial Year or the arithmetic average of the Price of the Other Charge imposed on the last day of each month of that Financial Year (whichever is relevant) (in this clause 1C.5, **Previous Year's Price**), disregarding any months occurring prior to the SAU Commencement Date and the introduction of the NBN Offer or Other Charge. If the ACCC made one or more Resetting Regulatory Determinations as referred to in clauses 1C.5.1(b)(iii) or 1C.5.1(d)(iii) in the immediately preceding Financial Year and the last such Resetting Regulatory Determination took effect part way through that Financial Year, the Prices for the NBN Offer or the Other Charge on the last day of each month prior to the last such Resetting Regulatory Determination taking effect are to be excluded from the determination of  $Price_{t-1}$ ;
  - (iv)  $CPI_{t-1}^{March}$  is the March Quarter CPI published in the Financial Year immediately preceding the Financial Year to which the Individual Price Increase Limit relates.
- (b) The Individual Price Increase Limit is rounded to the nearest whole cent.

- (c) For clarity, the Individual Price Increase Limit will always be a positive or zero value.

### **1C.5.3 Discounts, Hourly Labour Rates and Maximum Regulated Prices for NBN Offers and Other Charges**

- (a) For the avoidance of doubt, for the purpose of determining NBN Co's compliance with the Maximum Regulated Price applicable to an NBN Offer or Other Charge, the removal, reduction or cessation of any Discount applicable to that NBN Offer or Other Charge in accordance with its terms specified at the time of initial introduction of the Discount will not constitute a breach of the Maximum Regulated Price applicable to that NBN Offer or Other Charge.
- (b) The following applies to any Other Charge that is provided on a "hourly labour rate" or "hourly labour rate plus cost of materials basis":
  - (i) an hourly labour rate may only be changed by indexing it to the ABS Labour Price Index for Private Sector Construction or by periodically resetting it with reference to the relevant rates charged to NBN Co by its contractors; and
  - (ii) materials will be charged at cost.

### **1C.5.4 Treatment of Zero-Priced NBN Offers and Other Charges associated with the supply of NBN Offers**

- (a) If an NBN Offer or Other Charge is Zero-Priced, then that NBN Offer or Other Charge will remain Zero-Priced, unless the NBN Offer or Other Charge ceases to be Zero-Priced in accordance with clauses 1C.5.4(b) and 1C.5.4(c).
- (b) NBN Co may propose that an NBN Offer or Other Charge cease to be Zero-Priced by:
  - (i) providing no less than 6 months' notice to Access Seekers and the ACCC of its intention that the NBN Offer or Other Charge cease to be Zero-Priced, which notice must include the reasons why NBN Co considers the NBN Offer or Other Charge should cease to be Zero-Priced and specify NBN Co's proposed Price for the NBN Offer or Other Charge and the expiry date of the notice; and
  - (ii) consulting with Access Seekers in relation to the proposal.
- (c) Unless NBN Co issues a notice to Access Seekers and the ACCC withdrawing its proposal under clause 1C.5.4(b), upon the expiry of

the period of notice given by NBN Co under clause 1C.5.4(b), the NBN Offer or Other Charge specified in the notice will cease to be Zero-Priced and, subject to clause 1C.5.1, the proposed Price specified in the notice will become the Maximum Regulated Price for the NBN Offer or Other Charge from the expiry date of the notice period.

#### **1C.5.5 Non-circumvention**

For the purpose of ensuring that the Maximum Regulated Price is not subject to circumvention through the arbitrary reduction, removal or cessation of a Discount that may apply to the Price of an NBN Offer or Other Charge, any reduction, removal or cessation of a Discount applicable to an NBN Offer or Other Charge may only occur in accordance with the terms for the reduction, removal or cessation of that Discount specified at the time of initial introduction.

#### **1C.5.6 Treatment of Bundles**

If:

- (a) an NBN Offer comprises a bundle of one or more Products, Product Components, Product Features, Ancillary Services or types of Facilities Access Service (in this clause 1C.5.6, together a **Bundle**); and
- (b) NBN Co offers that Bundle for a single Price,

then that Bundle will be subject to the Maximum Regulated Price as though it were an individual item.

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## Annexure 1 Standard NFAS Installation

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### 1 Standard NFAS Installation

An installation will be considered to be a **Standard NFAS Installation** in respect of a Premises where each of the following conditions is satisfied:

- (a) all Connecting Equipment in respect of that Premises is able to be installed during an Appointment in Standard Hours and activated during Standard Hours;
- (b) the installation requires no more than one Drop Fibre, NTD, Connecting Fibre and PCD to be installed for the Premises;
- (c) NBN Co (or the Installer):
  - (i) has been provided with necessary rights of access to the Premises, as required under an Access Agreement;
  - (ii) is given access to the Common Property, if required by NBN Co; and
  - (iii) is given access to the Premises, if required,at the time during the Appointment to perform and complete the installation of the Connecting Equipment at that Premises (including any necessary inspection or related works); and
- (d) in respect of the Connecting Equipment:
  - (i) a PCD:
    - (A) is not required;
    - (B) is already installed and able to service the Premises; or
    - (C) is able to be installed on the exterior of the Building at which the Premises is located;
  - (ii) the Drop Fibre:
    - (A) is not required;
    - (B) is already installed and able to service the Premises; or
    - (C) is:
      - (I) only required from the NAP to the PCD which serves the Premises; and
      - (II) able to be installed at the Premises:

- a. through an existing lead-in conduit;
  - b. through a new lead-in conduit; or
  - c. aerially; and
- (III) no more than 60 metres in length, measured by reference to the cable run distance between:
  - a. the property boundary point that is nearest to the location of both the PCD and NAP; and
  - b. the location of that PCD,or such longer length as may be reasonably determined by NBN Co in the circumstances;
- (iii) the NTD and, if requested by an Access Seeker or otherwise supplied by NBN Co, any associated battery back-up unit are able to be attached on the interior side of a wall of the Premises, at a location agreed between the End User and NBN Co (or the Installer), and:
  - (A) that location has a 240 volt power source available for the supply of electricity to the NTD; and
  - (B) that power source is located within approximately 3 metres of the location of the NTD; and
- (iv) the Connecting Fibre is no more than 40 metres in length, measured by reference to the cable run distance between the PCD and the location of the NTD, or such longer length as may be reasonably determined by NBN Co in the circumstances.

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## 2 Non Standard NFAS Installation

Notwithstanding anything in clause 1 of this Annexure 1 to Schedule 1C, an installation will be considered to be a **Non Standard NFAS Installation** in respect of a Premises if NBN Co (or the Installer) determines, acting reasonably, that the installation of Connecting Equipment at the Premises does not properly constitute a “standard installation”, having regard to the following:

- (a) generally accepted industry practices and any applicable industry guidelines, policies, laws, regulations or directions;
- (b) the level of complexity and difficulty associated with the installation;
- (c) the uniqueness of the circumstances associated with the installation; and
- (d) the presence of obstacles, dangers or other safety concerns during the time of installation.



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## 3 Acknowledgements

### 3.1 Safety standards and procedures

NBN Co will conduct all installations in accordance with safety standards or procedures that apply from time to time.

### 3.2 Requirement for Connecting Equipment

NBN Co will determine when a separate Drop Fibre, Connecting Fibre or PCD is not required or is already installed and able to service the Premises.

---

## 4 Definitions

For the purpose of this Annexure 1 to Schedule 1C:

**Appointment** means the appointment period requested by an Access Seeker, and agreed to by NBN Co, in which NBN Co (or the Installer) will perform the installation and activation of Connecting Equipment at a Premises in connection with the supply of a Product Component or Product Feature, including:

- (a) any initial appointment for the installation of the Connecting Equipment at the Premises; and
- (b) any subsequent appointment required to perform or complete the installation of the Connecting Equipment at the Premises.

**Building** means a permanent structure, equipment or a building in respect of which an NTD is able to be installed.

**Connecting Equipment** means any or all (as the context requires) of:

- (a) a Drop Fibre;
- (b) a PCD;
- (c) a Connecting Fibre;
- (d) an NTD (and any installation and provision of an associated battery back-up unit and First Battery); and
- (e) any ancillary equipment, facilities, lines or network owned or controlled by, or operated by or on behalf of NBN Co between, and including, the NAP and the NTD.

**Standard Hours** means a period between 9:00 am and 5:00 pm, Monday to Friday, excluding public holidays in the state or territory in which the Premises is located.

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## Annexure 2 Standard NNAS Installation

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### 1 Standard NNAS Installation

An installation will be considered to be a **Standard NNAS Installation** in respect of a Premises where each of the following conditions is satisfied:

- (a) all Connecting Equipment in respect of that Premises is able to be installed during an Appointment in Standard Hours and activated during Standard Hours;
- (b) the installation requires no more than one NTD (which includes an indoor component and an outdoor component) to be installed at the Premises;
- (c) NBN Co (or the Installer):
  - (i) has been provided with necessary rights of access to the Premises, as required under an Access Agreement;
  - (ii) is given access to the Common Property, if required by NBN Co; and
  - (iii) is given access to the Premises, if required,at the time during the Appointment to perform and complete the installation of the Connecting Equipment at that Premises (including any necessary inspection or related works); and
- (d) in respect of the Connecting Equipment:
  - (i) the outdoor component of the NTD:
    - (A) is not required;
    - (B) is already installed and able to service the Premises; or
    - (C) is able to be installed in a location that is:
      - (I) no more than 30 metres in length, measured by reference to the cable run distance between the proposed location of the indoor component of the NTD and the proposed location of that outdoor component; or
      - (II) such longer length as may be reasonably determined by NBN Co in the circumstances; and
  - (ii) the indoor component of the NTD is able to be attached on the interior side of a wall of the Premises, at a location agreed between the End User and NBN Co (or the Installer), and:

- (A) that location has a 240 volt power source available for the supply of electricity to the NTD; and
- (B) that power source is located within approximately 3 metres of the location of the indoor component of the NTD.

---

## 2 Non Standard NWAS Installation

Notwithstanding anything in clause 1 of this Annexure 2 to Schedule 1C, an installation will be considered to be a **Non Standard NWAS Installation** in respect of a Premises if NBN Co (or the Installer) determines, acting reasonably, that the installation of Connecting Equipment at the Premises does not properly constitute a “standard installation”, having regard to the following:

- (a) generally accepted industry practices and any applicable industry guidelines, policies, laws, regulations or directions;
- (b) the level of complexity and difficulty associated with the installation;
- (c) the uniqueness of the circumstances associated with the installation; and
- (d) the presence of obstacles, dangers or other safety concerns during the time of installation.

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## 3 Acknowledgements

### 3.1 Safety standards and procedures

It is acknowledged that NBN Co will conduct all installations in accordance with safety standards or procedures that apply from time to time.

### 3.2 Requirement for Connecting Equipment

NBN Co will determine when a separate Connecting Cable or outdoor component of an NTD is not required or is already installed and able to service the Premises.

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## 4 Definitions

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

**Appointment** means the appointment period requested by an Access Seeker, and agreed to by NBN Co, in which NBN Co (or the Installer) will perform the installation and activation of Connecting Equipment at a Premises in connection with the supply of a Product Component or Product Feature, including:

- (a) any initial appointment for the installation of the Connecting Equipment at the Premises; and

- (b) any subsequent appointment required to perform or complete the installation of the Connecting Equipment at the Premises.

**Building** means a permanent structure, equipment or a building in respect of which an NTD is able to be installed.

**Connecting Cable** means the Line which connects from the outdoor unit of an NTD to the indoor unit of that NTD.

**Connecting Equipment** means any or all (as the context requires) of:

- (a) an outdoor NTD component;
- (b) a Connecting Cable;
- (c) an indoor NTD component; and
- (d) any ancillary equipment, facilities, lines or network owned or controlled by, or operated by or on behalf of NBN Co between and including the indoor component of the NTD and the outdoor component of the NTD.

**Standard Hours** means a period between 9:00 am and 5:00 pm, Monday to Friday, excluding public holidays in the state or territory in which the Premises is located.

## Schedule 1D Regulatory Asset Base

### 1D.1 General

#### 1D.1.1 Scope

~~Subject to clause 1D.1.1(b), t~~ This Schedule 1D applies for the Initial Regulatory Period.

~~(b) — Clauses 1D.8 to 1D.12 apply until the end of the Financial Year that is 5 years after the SAU Commencement Date.~~

#### 1D.1.2 Overview

- (a) Clause 1D.2 sets out how the ACCC will calculate the Regulatory Asset Base (or RAB) for the Relevant Assets.
- (b) Clauses 1D.3 to 1D.12 set out the conditions and circumstances for Capital Expenditure to be included in the RAB.

### 1D.2 Calculation of the Regulatory Asset Base

#### 1D.2.1 Calculation of Real RAB

The Real RAB will be:

- (a) as at the Cost Commencement Date, zero;
- (b) following the Cost Commencement Date, rolled forward to the start of Financial Year ( $t+1$ ) according to the following methodology:

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

where:

$t$  is the Financial Year being evaluated.

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

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

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

*Real Capex<sub>t</sub>* is the real value of the Capital Expenditure in connection with the design, engineering, construction, replacement and augmentation of the Relevant Assets during Financial Year (*t*) that is to be included in the RAB in accordance with clause 1D.3, where Capital Expenditure is recognised as being incurred at the time the Relevant Asset in connection with which the Capital Expenditure was incurred is Placed in Service. The conversion of real values from nominal values will be calculated in accordance with clause 1E.9.4.

*Real Disposals<sub>t</sub>* is the real value of the Relevant Assets that were actually disposed of during Financial Year (*t*). The conversion of real values from nominal values will be calculated in accordance with clause 1E.9.4.

*Real Straight Line Depreciation<sub>t</sub>* is the real value of the depreciation applicable to the Relevant Assets included in the RAB in Financial Year (*t*), determined in accordance with clause 1E.9.1.

## 1D.2.2 Calculation of Nominal RAB

The Nominal RAB will be:

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

and:

$$\begin{aligned} \text{Nominal RAB}_t^{\text{start}} &= \text{Nominal RAB}_{t-1}^{\text{end}} \\ &= \text{CIF}_{t-1} * \text{Real RAB}_{t-1}^{\text{end}} \\ &= \text{CIF}_{t-1} * \text{Real RAB}_t^{\text{start}} \end{aligned}$$

where:

*Nominal RAB<sub>t</sub><sup>start</sup>* is the Nominal RAB at the start of Financial Year (*t*).

*Nominal RAB<sub>t</sub><sup>end</sup>* is the Nominal RAB at the end of Financial Year (*t*).

*CIF<sub>t</sub>* is defined in clause 1E.9.4(b).

*Real RAB<sub>t</sub><sup>start</sup>* is the Real RAB at the start of Financial Year (*t*).

*Real RAB<sub>t</sub><sup>end</sup>* is the Real RAB at the end of the relevant Financial Year (*t*).

### **1D.2.3 Inclusion of initial Capital Expenditure**

Pursuant to clause 1D.3.2(a)(ii), all Capital Expenditure incurred between the Cost Commencement Date and the SAU Commencement Date is to be included within the RAB as described in this Schedule 1D.

### **1D.2.4 Treatment of Construction in Progress**

- (a) Capital Expenditure that has not yet been Placed in Service (**Construction in Progress** or **CIP**) will be accounted for separately. CIP will be consistent with the values in NBN Co's audited accounts and will not include any allowance for interest during construction.
- (b) An Annual Construction in Progress Allowance (**ACIPA**) will be calculated each year by the ACCC in accordance with clause 1E.10 and, to the extent that the ACCC has determined that CIP meets the requirements of clause 1D.2.4(c), included by the ACCC in the calculation of the Annual Building Block Revenue Requirement as described in clause 1E.4.
- (c) CIP will be included in the calculation of the ACIPA, to the extent the ACCC is satisfied that the Capital Expenditure incurred in connection with the Relevant Asset not yet Placed In Service meets the requirements of clause 1D.3 (with all references to Capital Expenditure in those clauses being read as references to CIP).

### **1D.2.5 Provision of Forecast Capital Expenditure**

Prior to the commencement of each Financial Year of the Initial Regulatory Period, NBN Co will provide to the ACCC, forecasts in respect of Capital Expenditure in accordance with clause 1F.1.2.

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## **1D.3 Capital Expenditure**

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

For the purposes of calculating the RAB for the Relevant Assets pursuant to clause 1D.2.1, Capital Expenditure incurred in a Financial Year may only be included in the RAB in accordance with this clause 1D.3.

### **1D.3.2 Pre-condition to the inclusion of Capital Expenditure in the RAB**

- (a) Capital Expenditure incurred in a Financial Year may only be included in the RAB to the extent that the ACCC is satisfied that the Capital Expenditure:
  - (i) meets:

- (A) the Prudent Cost Condition (in accordance with clause 1D.4); and
  - (B) the Prudent Design Condition (in accordance with clause 1D.6); or
- (ii) was incurred between the Cost Commencement Date and the SAU Commencement Date or was incurred in connection with any of the following matters:
  - (A) the NBN Co Interim Satellite Network;
  - (B) the Interim Transit Arrangements;
  - (C) the Telstra Arrangements;
  - (D) the Optus Arrangements;
  - (E) the Tasmania Tri-Area Service Arrangements;
  - (F) the First Release Trial Sites; or
  - (G) Third Party Funded Network Changes.
- (b) If, in respect of any part of the Capital Expenditure incurred in a Financial Year:
  - (i) the ACCC is not satisfied that the Capital Expenditure meets the Prudent Design Condition; and
  - (ii) the ACCC is not satisfied that the Capital Expenditure was incurred between the Cost Commencement Date and the SAU Commencement Date or was incurred in connection with any of the matters specified in clause 1D.3.2(a)(ii),that part (and only that part) of the Capital Expenditure must not be included in the RAB to the extent the ACCC is not satisfied of the matters described in clauses 1D.3.2(b)(i) and 1D.3.2(b)(ii).
- (c) If, in respect of any part of the Capital Expenditure incurred in a Financial Year:
  - (i) the ACCC is satisfied that the Capital Expenditure meets the Prudent Design Condition but the ACCC is not satisfied that the Capital Expenditure satisfies the Prudent Cost Condition; and
  - (ii) the ACCC is not satisfied that the Capital Expenditure was incurred between the Cost Commencement Date and the SAU



Commencement Date or was incurred in connection with any of the matters specified in clause 1D.3.2(a)(ii),

that part of the Capital Expenditure must not be included in the RAB and, in making an LTRCM Determination pursuant to clause 1E.1.2, the ACCC must determine an amount of Capital Expenditure that is to be included in the RAB in substitution for that part of the Capital Expenditure for that Financial Year in accordance with clause 1D.3.2(d).

- (d) A substitute amount of Capital Expenditure for a Financial Year under clause 1D.3.2(c) must be an amount of Capital Expenditure that the ACCC is satisfied:
  - (i) meets the Prudent Design Condition; and
  - (ii) is consistent with Capital Expenditure that has been included in the RAB in respect of any prior Financial Year, having regard to:
    - (A) the relative amounts of the Capital Expenditure incurred in those Financial Years;
    - (B) the relative cost of relevant goods or services in those Financial Years;
    - (C) any relevant differences in the scale and scope of the Relevant Assets in connection with which the Capital Expenditure was incurred in those Financial Years;
    - (D) the NBN Co Corporate Plan applicable at the time the Capital Expenditure was incurred; and
    - (E) any other matter the ACCC considers relevant.

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## 1D.4 Prudent Cost Condition

### 1D.4.1 Prudent Cost Condition for the Relevant Assets

- (a) Capital Expenditure incurred in a Financial Year will meet the Prudent Cost Condition for the purposes of clause 1D.3.2(a)(i)(A):
  - (i) to the extent that the ACCC is satisfied that:
    - (A) the Capital Expenditure was incurred in connection with the design, engineering and construction of the Relevant Assets pursuant to a Conforming Contract as initially entered into or as varied in accordance with

the process of contract variations set out in that contract; and

- (B) if a Material Change in Circumstances affecting the Conforming Contract occurred between the time that the Conforming Contract was initially entered into or last varied (as the case may be) and the time the Capital Expenditure was incurred, and the varied, changed or enhanced design, engineering and construction of the Relevant Assets falls outside the scope of that Conforming Contract, NBN Co had considered whether the Conforming Contract should be varied or further varied or whether a new Conforming Contract with the same Third Party or another Third Party should be entered into before incurring that Capital Expenditure; or
  - (ii) to the extent the ACCC is satisfied that the Capital Expenditure was incurred in respect of a good or service procured in an open and competitive market (e.g. a commodity market); or
  - (iii) to the extent that the ACCC is satisfied that the Capital Expenditure was not incurred pursuant to a contract entered into with a Third Party but was incurred in a manner that is likely to achieve value for money and the lowest Total Cost of Ownership.
- (b) In this clause 1D.4.1, a **Conforming Contract** is a contract entered into by NBN Co, or any Related Body Corporate of NBN Co, with a Third Party that:
- (i) was:
    - (A) let in accordance with a competitive tendering and procurement process;
    - (B) in respect of the procurement of a good or service for which there was only one potential supplier of a particular good or service because there were no reasonable alternatives or substitutes;
    - (C) entered into on arm's length terms in circumstances where it was reasonable to do so having regard to whether there were alternative or substitute suppliers and the terms and conditions (including price) available from those alternative or substitute suppliers; or

- (D) entered into in exceptional circumstances, because it was either not desirable or not practicable for NBN Co to enter into a contract of the kind referred to in clauses 1D.4.1(b)(i)(A), 1D.4.1(b)(i)(B) or 1D.4.1(b)(i)(C); and
- (ii) if the contract is of the kind referred to in clauses 1D.4.1(b)(i)(A), 1D.4.1(b)(i)(B) or 1D.4.1(b)(i)(C), includes a process for the management of the design, engineering and construction of the Relevant Assets through a process of contract variations which provides:
  - (A) that reasonable consideration be given to managing the risk of such contract variations;
  - (B) for the provision of clear documentary evidence regarding the nature and reasonableness of any such contract variations; and
  - (C) that the design, engineering and construction of the Relevant Assets falls within the scope of such a process.
- (c) For the purposes of this clause 1D.4.1, a **Material Change in Circumstances** occurs if:
  - (i) there is a variation, change or enhancement to the design, engineering and construction of the Relevant Assets; and
  - (ii) the estimated Capital Expenditure associated with the implementation of that variation, change or enhancement of the Relevant Assets exceeds or is expected to exceed the Minor Expenditure Limit.

#### **1D.4.2 Capital Expenditure factors**

- (a) In deciding whether Capital Expenditure incurred in a Financial Year meets the requirement specified in clause 1D.4.1(a)(i)(A), the ACCC must have regard to:
  - (i) whether the contract pursuant to which the Capital Expenditure was incurred was entered into in accordance with NBN Co's procurement processes, including in accordance with the Procurement Rules; and
  - (ii) any other factor the ACCC considers relevant.
- (b) In determining whether exceptional circumstances exist for the purposes of clause 1D.4.1(b)(i)(D), the ACCC must have regard to:

- (i) the extent to which the Capital Expenditure was incurred on exceptionally advantageous terms;
- (ii) the extent to which the Capital Expenditure was procured in a manner required or rendered desirable by a legal, policy, regulatory or administrative requirement, or a requirement of the Shareholder Ministers;
- (iii) the extent to which it was in the best interests of NBN Co, or any Related Body Corporate of NBN Co, to incur the Capital Expenditure with the particular supplier with which the Capital Expenditure was incurred or in the particular circumstances in which the Capital Expenditure was procured having regard to the lifetime cost of acquisition and operation of the Relevant Assets involved; and
- (iv) any other factor the ACCC considers relevant.

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## 1D.5 Procurement Rules

### 1D.5.1 Procurement Rules

NBN Co will develop and maintain procurement rules that contain a competitive tendering and procurement process which satisfies the following conditions:

- (a) the process must seek to generate an efficient and competitive outcome by encouraging a reasonable and proportionate amount of competitive tension between tender participants and minimising the possibility of anti-competitive conduct among tender participants in contravention of the CCA;
- (b) there must be a clear process for:
  - (i) the calling and conduct of tenders and the involvement of tender participants; and
  - (ii) the assessment and awarding of tenders to successful participants,

which meets reasonable requirements of procedural fairness, probity, fair dealing and good industry practice;

- (c) any decision to approve a tender that is not the lowest price tender must be appropriately justified and documented;
- (d) the basis for undertaking the works and services must be in accordance with good industry practice and the basis of payment for works and services must be clearly specified; and

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

(the **Procurement Rules**).

#### **1D.5.2 Provision of the Procurement Rules**

NBN Co will provide the ACCC with a copy of the Procurement Rules within 30 days after the SAU Commencement Date and otherwise within 30 days after NBN Co makes any material amendments to the Procurement Rules.

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### **1D.6 Prudent Design Condition**

Capital Expenditure in a Financial Year will satisfy the Prudent Design Condition for the purposes of clause 1D.3.2(a)(i)(B) to the extent the ACCC is satisfied that the Relevant Assets in connection with which the Capital Expenditure was incurred are materially consistent with or within the scope of:

- (a) the Network Design Rules, in accordance with clause 1D.7.1 and 1D.7.4;
- (b) a Permitted Variation, as described in clause 1D.7.2; or
- (c) an Endorsed Network Change, in accordance with the process described in clauses 1D.8 to 1D.12, or a Network Change as otherwise determined or permitted by the ACCC, including in any Regulatory Determination made by the ACCC.

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### **1D.7 Network Design Rules and Permitted Variations**

#### **1D.7.1 Scope of Network Design Rules**

Subject to clause 1D.7.4, NBN Co will ensure that, on and from the SAU Commencement Date, the Network Design Rules for the Relevant Assets satisfy the following design scope:

- (a) in respect of the NBN Co Fibre Network:
  - (i) the NBN Co Fibre Network is to have a network footprint that is consistent with the coverage obligations set out in the Statement of Expectations as at 17 December 2010;
  - (ii) the NBN Co Fibre Network is to be primarily designed and built using GPON architecture;

- (iii) the NBN Co Fibre Network is to be capable of delivering the speed requirements specified in the Statement of Expectations; and
  - (iv) NBN Co is to comply with the Statement of Expectations and the Australian Government's legislative and policy requirements in respect of the deployment of fibre in greenfield locations, including any alternative models contemplated for such deployments;
- (b) in respect of the NBN Co Wireless Network and the NBN Co Satellite Network:
  - (i) the NBN Co Wireless Network and the NBN Co Satellite Network are to have a total network footprint that is consistent with the coverage obligations set out in the Statement of Expectations as at 17 December 2010;
  - (ii) the NBN Co Wireless Network is to be capable of delivering the speed requirements specified in the Statement of Expectations and by the Australian Government;
  - (iii) the NBN Co Satellite Network is to be capable of delivering the speed requirements specified in the Statement of Expectations and by the Australian Government, including an interim satellite solution with a 6 Mbps PIR downlink Data Transfer Rate; and
- (c) in respect of the NBN Co Networks and the Relevant Assets generally:
  - (i) the Relevant Assets are to have a network availability that meets any applicable law;
  - (ii) the initial location of POIs within the NBN Co Network will be those identified in the POI List as at the SAU Commencement Date;
  - (iii) NBN Co is to use existing infrastructure for the NBN Co Network where it is economically and technically feasible to do so;
  - (iv) there is to be a path for technology upgrade of the Relevant Assets, to the extent possible; and
  - (v) other matters set out in the Statement of Expectations are to be addressed to the extent applicable.

### 1D.7.2 Permitted Variations from Network Design Rules

- (a) NBN Co may vary, change, augment or enhance the design, engineering or construction of the Relevant Assets from that specified in the Network Design Rules where such variation, change, augmentation or enhancement:
- (i) is contemplated by, or made pursuant to, the Network Design Rules; or
  - (ii) improves the performance or functionality of the Relevant Assets and results in the same or lower Total Cost of Ownership; or
  - (iii) achieves savings in the Total Cost of Ownership; or
  - (iv) is reasonably necessary to establish and maintain the quality, reliability and security of the Relevant Assets or the supply of the Product Components; or
  - (v) is required in connection with a Force Majeure Event; or
  - (vi) is required in order to comply with the Statement of Expectations, or a legal, policy, regulatory or administrative requirement, or any requirement of the Shareholder Ministers; or
  - (vii) relates to the maintenance, replacement or re-routing of assets that comprise the NBN Co Network that has a substantial primary purpose other than the augmentation or extension to such network (e.g. straight swap out of assets for assets as part of routine maintenance); or
  - (viii) subject to clause 1D.7.3(a), is the subject of an assessment by NBN Co (made at the time NBN Co becomes aware of the need for such variation, change, augmentation or enhancement) that the estimated Capital Expenditure incurred in connection with the relevant variation, change, augmentation or enhancement is likely to be less than the Minor Expenditure Limit; or
  - (ix) is required to address an urgent and unforeseen network issue where it is necessary that the variation, change, augmentation or enhancement is operational within 6 months of NBN Co becoming aware of the urgent and unforeseen network issue and:
    - (A) the event or circumstance causing the required variation, change, augmentation or enhancement was

not reasonably foreseeable by, and was beyond the reasonable control of, NBN Co; and

- (B) a failure to implement the variation, change, augmentation or enhancement is likely to materially adversely affect the safe and reliable operation of the NBN Co Network or the supply of the Product Components, Product Features, Ancillary Services or the Facilities Access Service,

(each a **Permitted Variation**).

- (b) NBN Co must ensure that each Permitted Variation is designed, engineered and constructed with the objective of achieving the lowest Total Cost of Ownership.

### **1D.7.3 Minor Expenditure Limit and notification of urgent and unforeseen network issues**

- (a) For the purposes of clause 1D.7.2(a)(viii):
  - (i) clause 1D.7.2(a)(viii) will be satisfied if the ACCC is satisfied that NBN Co has made an assessment in accordance with the requirements set out in that clause irrespective of whether the Capital Expenditure actually incurred in connection with the implementation of the relevant variation, change or enhancement actually exceeds the Minor Expenditure Limit; and
  - (ii) clause 1D.7.2(a)(viii) will not be satisfied to the extent that the ACCC is satisfied that NBN Co has made an assessment by dividing an integrated solution into distinct and separate parts merely for the purpose of satisfying the requirements of clause 1D.7.2(a)(viii).
- (b) On 1 July of each Financial Year (*t*) during the Initial Regulatory Period, the Minor Expenditure Limit will automatically increase in accordance with the following formula:

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

where:

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

**Old MEL** is the Minor Expenditure Limit that applied in the immediately preceding Financial Year (*t*-1).



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

- (c) If a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets is required to address an urgent and unforeseen network issue pursuant to clause 1D.7.2(a)(ix), NBN Co must make the following information available to the ACCC within 6 months of the date that NBN Co identifies the need for such a variation, change, augmentation or enhancement:
- (i) the date when the variation, change, augmentation or enhancement became or will become operational;
  - (ii) the purpose of the variation, change, augmentation or enhancement; and
  - (iii) the Capital Expenditure and Operating Expenditure associated with the variation, change, augmentation or enhancement.

#### **1D.7.4 Updates to the Network Design Rules**

- (a) NBN Co must update the Network Design Rules to reflect a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets in connection with:
- (i) a Permitted Variation;
  - (ii) an Endorsed Network Change;
  - (iii) any change to the Statement of Expectations; or
  - (iv) any legal, policy, regulatory or administrative requirement, or any requirement of the Shareholder Ministers, which has the effect of varying the design scope in clause 1D.7.1.
- (b) NBN Co must update the Network Design Rules in accordance with:
- (i) the terms of this Special Access Undertaking, including any variation to this Special Access Undertaking accepted by the ACCC in accordance with section 152CBG of the CCA; and
  - (ii) any Regulatory Determination made by the ACCC to the extent it is not inconsistent with the terms of this Special Access Undertaking.
- (c) If NBN Co updates the Network Design Rules pursuant to clauses 1D.7.4(a) or 1D.7.4(b), NBN Co will promptly provide a copy of the updated Network Design Rules to the ACCC. For the purposes of the remainder of this clause 1D.7.4, the date on which the updated

Network Design Rules are provided to the ACCC is the **Revised NDR Date**.

- (d) NBN Co may only update the Network Design Rules in accordance with this clause 1D.7.4.
- (e) For the purposes of clause 1D.6(a), the following approach will determine which version of the Network Design Rules is to apply to Capital Expenditure:
  - (i) the Network Design Rules which applied prior to the Revised NDR Date will continue to apply in respect of Capital Expenditure:
    - (A) incurred prior to the Revised NDR Date in connection with the design, engineering or construction of the Relevant Assets; or
    - (B) in connection with the design, engineering or construction of the Relevant Assets which is in progress (and not completed) as at the Revised NDR Date; and
  - (ii) the Network Design Rules which apply on and from the Revised NDR Date will only apply in respect of Capital Expenditure:
    - (A) incurred after the Revised NDR Date in connection with the design, construction or engineering of the Relevant Assets; and
    - (B) which is not otherwise part of the design, construction or engineering activities described in clause 1D.7.4(e)(i),

unless NBN Co, as part of its submission of updated Network Design Rules to the ACCC, proposes an alternative approach for determining which version of the Network Design Rules is to apply to Capital Expenditure, in which case the alternative approach will apply from the date specified by NBN Co in its submission, except where the ACCC issues a determination within 60 Business Days of the Revised NDR Date rejecting the adoption of the alternative approach, in which case the approach set out in clauses 1D.7.4(e)(i) and 1D.7.4(e)(ii) above will continue to apply.

## 1D.8 Network Changes: Selection and publication of Preferred Network Change Option

### 1D.8.1 Network Changes

- (a) NBN Co will ensure that any Network Change is made by NBN Co in accordance with clauses 1D.8 to 1D.12 (which set out the procedure for the identification, selection, consultation and endorsement of a Network Change).
- (b) Nothing in clauses 1D.8 to 1D.12 prevents NBN Co from:
  - (i) introducing, varying or enhancing Products, Product Components or Product Features that do not require a Network Change, or which fall within the scope of, are identified within, or are contemplated by, the Network Design Rules or a Permitted Variation; or
  - (ii) terminating the process specified in clauses 1D.8 to 1D.12 where NBN Co decides not to proceed with a Network Change (including where the product development process is terminated under Schedule 1I (Product Development and Withdrawal)).

### 1D.8.2 Procedure for selection and publication of the Preferred Network Change Option

If NBN Co wishes to make a Network Change, NBN Co will:

- (a) identify and assess options for the implementation of the Network Change in accordance with the criteria set out in clause 1D.12 (**Network Change Options**);
- (b) select the Preferred Network Change Option in accordance with clause 1D.8.3;
- (c) prepare and publish the NBN Prudency Implementation Paper in accordance with clause 1D.8.4; and
- (d) seek to have the Preferred Network Change Option endorsed in accordance with clauses 1D.9 to 1D.12.

### 1D.8.3 Selection of Preferred Network Change Option

NBN Co will select the Network Change Option that NBN Co considers:

- (a) will maximise the Net Economic Benefit (compared to circumstances where no Network Change Option is implemented); or

- (b) if the Preferred Network Change Option is not the Network Change Option that maximises the Net Economic Benefit, is reasonable in the circumstances,

having regard to the interests of NBN Co, any Related Body Corporate of NBN Co, Access Seekers and End Users that acquire Carriage Services and Content Services supplied by means of the NBN Co Network (**Preferred Network Change Option**).

#### **1D.8.4 Preparation and publication of NBN Prudency Implementation Paper**

On completion of its selection of the Preferred Network Change Option, NBN Co will prepare a written report (**NBN Prudency Implementation Paper**) that provides a summary of:

- (a) the Network Change Options;
- (b) the Market Benefits associated with each Network Change Option;
- (c) the Network Change Costs associated with each Network Change Option, described as an estimated range of amounts, if appropriate;
- (d) NBN Co's Preferred Network Change Option, including if, and the extent to which, NBN Co's Preferred Network Change Option will maximise the Net Economic Benefit;
- (e) any changes required to the Network Design Rules if the Preferred Network Change Option is implemented; and
- (f) to the extent the Preferred Network Change Option is not the Network Change Option that maximises the Net Economic Benefit:
  - (i) NBN Co's assessment of any material difference between the Net Economic Benefit in respect of the Preferred Network Change Option and the Network Change Option that would maximise the Net Economic Benefit; and
  - (ii) the reasons for the selection of the Preferred Network Change Option.

Once finalised, NBN Co will publish the NBN Prudency Implementation Paper on an area of NBN Co's Website accessible by Access Seekers and Consumer Advocacy Groups and NBN Co will also provide the NBN Prudency Implementation Paper to the ACCC.

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## 1D.9 Network Changes: engagement and endorsement process

### 1D.9.1 Endorsement of the Preferred Network Change Option

- (a) Following publication of the NBN Prudency Implementation Paper, NBN Co will seek the endorsement of Access Seekers and Consumer Advocacy Groups in accordance with the engagement and endorsement process described in this clause 1D.9.
- (b) While the engagement and endorsement process described in this clause 1D.9 is distinct and separate from the product development process specified in Schedule 1I (Product Development and Withdrawal), the two processes may occur in parallel.

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

- (a) Following publication of the NBN Prudency Implementation Paper, NBN Co will invite Access Seekers and Consumer Advocacy Groups to make submissions in relation to the NBN Prudency Implementation Paper in accordance with a published timetable which will provide a reasonable period of time for consultations, having regard to the nature of the proposed Network Change (**Consultation Period**).
- (b) NBN Co may consult with Access Seekers and Consumer Advocacy Groups through workshops, formal written submissions and such other means as are contemplated in the PDF Processes.

### 1D.9.3 Updating the NBN Prudency Implementation Paper

On or following the date of the expiry of the Consultation Period, NBN Co will:

- (a) make available on NBN Co's Website all formal written submissions made by Access Seekers and Consumer Advocacy Groups in response to the NBN Prudency Implementation Paper and also provide these written submissions to the ACCC, subject in both cases to any confidentiality restrictions;
- (b) publish an updated NBN Prudency Implementation Paper containing such amendments as NBN Co considers reasonable, taking reasonable account of the submissions and representations made by Access Seekers and Consumer Advocacy Groups in response to the NBN Prudency Implementation Paper; and
- (c) notify Access Seekers and Consumer Advocacy Groups of the period of time (which must be at least 20 Business Days from the date of publication of the updated NBN Prudency Implementation Paper)

within which an Access Seeker or Consumer Advocacy Group may notify NBN Co that it objects to the Preferred Network Change Option.

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## 1D.10 Network Changes: Dispute resolution mechanism

### 1D.10.1 Notification by Access Seekers and Consumer Advocacy Groups of objection to Preferred Network Change Option

- (a) An Access Seeker may only object to NBN Co's Preferred Network Change Option within the timeframe determined in accordance with clause 1D.9.3(c).
- (b) An Access Seeker may object to NBN Co's Preferred Network Change Option in accordance with, and provided that it complies with, the following conditions:
  - (i) the Access Seeker must have participated in consultations in relation to the Network Change in accordance with clause 1D.9.2;
  - (ii) the Access Seeker must, or is likely to, be materially affected by the resolution of the matters that are the subject of the objection; and
  - (iii) the Access Seeker must have a reasonable basis for such an objection based on a material error by NBN Co in the application of the criteria in clause 1D.12 with regard to NBN Co's Preferred Network Change Option,

(together, the **Network Change Dispute Conditions**). If the Access Seeker satisfies the Network Change Dispute Conditions and wishes to object, the Access Seeker must provide written notification to NBN Co and other Access Seekers of the objection within the period of time notified by NBN Co under clause 1D.9.3(c) and set out detailed reasons for its objection, including a description of the manner(s) in which NBN Co has erred in the application of the criteria in clause 1D.12.

### 1D.10.2 Formation of a Network Change Dispute

- (a) If NBN Co wishes to proceed with the Preferred Network Change Option and NBN Co:
  - (i) has received notification of objections from one or more Access Seekers regarding the Preferred Network Change Option then NBN Co must, within 60 Business Days after the date of receipt of the first notice of objection from an Access Seeker:

- (A) notify the ACCC of the objections lodged by the Access Seeker(s);
    - (B) provide to the ACCC copies of any documentation received from the Access Seeker(s) in connection with the objection; and
    - (C) provide the ACCC with NBN Co's response to those objections; or
  - (ii) has not received any notification of objections from Access Seekers regarding the Preferred Network Change Option, then the Preferred Network Change Option will be an Endorsed Network Change pursuant to clause 1D.11.1.
- (b) Within 5 Business Days after the date that the ACCC receives notification from NBN Co pursuant to clause 1D.10.2(a)(i)(A), the ACCC will determine, in respect of each Access Seeker referred to in such notification, whether:
- (i) the Network Change Dispute Conditions have been satisfied by the Access Seeker, in which case the subject matter of the objection(s) will be deemed to be in dispute (**Network Change Dispute**) and NBN Co, the Access Seeker and the ACCC will proceed in accordance with the remainder of these clauses 1D.10 and 1D.11; or
  - (ii) the Network Change Dispute Conditions have not been satisfied by the Access Seeker, in which case, provided that no other Access Seeker has satisfied the Network Change Dispute Conditions such that a Network Change Dispute has arisen pursuant to clause 1D.10.2(b)(i), the Preferred Network Change Option will be an Endorsed Network Change pursuant to clause 1D.11.1.

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

- (a) Within 5 Business Days after the date that a Network Change Dispute has arisen pursuant to clause 1D.10.2(b)(i), the ACCC will invite, by way of notice on the ACCC website, other Access Seekers to apply to join the Network Change Dispute (except for Access Seekers that the ACCC has already determined have not satisfied the Network Change Dispute Conditions pursuant to clause 1D.10.2(b)(ii)).
- (b) Within 10 Business Days after the date on which the ACCC invites Access Seekers to join the Network Change Dispute, the ACCC will:

- (i) make a decision to either accept or reject each application that the ACCC has received from an Access Seeker to join the Network Change Dispute, by reference to whether the ACCC considers that Access Seeker has satisfied the Network Change Dispute Conditions;
  - (ii) where the ACCC rejects an Access Seeker's application, provide that Access Seeker with reasons as to why the Access Seeker's application was rejected; and
  - (iii) publish on the ACCC website the details of the Access Seekers that it has determined may join the Network Change Dispute.
- (c) The scope of the Network Change Dispute will be determined by, and limited to, the specific issues in dispute between Access Seeker(s) and NBN Co, as determined by reference to the objections submitted by Access Seeker(s) who have joined the Network Change Dispute pursuant to clauses 1D.10.2(b) and 1D.10.3(b) (the **Network Change Dispute Participants**) and the relevant responses from NBN Co.
- (d) The ACCC may, by written notice to the relevant Network Change Dispute Participants and NBN Co:
- (i) join separate Network Change Disputes together so that they constitute a single Network Change Dispute; or
  - (ii) divide a single Network Change Dispute into multiple Network Change Disputes,
- for the purposes of the efficient administration and resolution of those Network Change Disputes.

#### **1D.10.4 Submissions regarding Network Change Dispute**

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

#### **1D.10.5 Decision making criteria for Network Change Dispute**

- (a) The ACCC must make a decision accepting or rejecting the Preferred Network Change Option (and thereby resolving the Network Change Dispute) by reference to the criteria referred to in clauses 1D.10.5(b) and 1D.10.5(c) and must notify NBN Co and the Network Change Dispute Participants of such decision within 50 Business Days after the final date on which submissions are provided to the ACCC under clause 1D.10.4.



(b) If NBN Co has selected the Preferred Network Change Option that maximises the Net Economic Benefit relative to other Network Change Options (in accordance with clause 1D.8.3(a)), the ACCC must accept the Preferred Network Change Option unless the ACCC reasonably considers that:

- (i) an alternative Network Change Option would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of the Preferred Network Change Option; or
- (ii) a network change option that has not been considered by NBN Co in the NBN Prudency Implementation Paper (including the option of no network change) would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of the Preferred Network Change Option and otherwise satisfies the criteria in clause 1D.12,

in which case, the ACCC may reject the Preferred Network Change Option.

(c) If NBN Co has selected the Preferred Network Change Option that does not maximise the Net Economic Benefit relative to other Network Change Options but is reasonable in the circumstances in accordance with clause 1D.8.3(b), or the ACCC reasonably considers that an alternative Network Change Option would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of the Preferred Network Change Option (in accordance with clause 1D.10.5(b)(i)), the ACCC will consider whether to accept or reject the Preferred Network Change Option having regard to whether:

- (i) the ACCC considers the Preferred Network Change Option satisfies the criteria in clause 1D.12; or
- (ii) there is a greater economic benefit associated with the Preferred Network Change Option compared with the situation where no network change is implemented; or
- (iii) the design scope of the Preferred Network Change Option is not materially different from that which a prudent operator in NBN Co's position would consider to be reasonable.

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## 1D.11 Endorsed Network Change

### 1D.11.1 Endorsement of the Preferred Network Change Option

- (a) The Preferred Network Change Option will be considered to be endorsed by the Access Seekers and Consumer Advocacy Groups and/or the ACCC (as applicable) where:
  - (i) a Network Change Dispute has arisen and the ACCC makes a decision accepting the Preferred Network Change Option in accordance with clause 1D.10.5; or
  - (ii) no Access Seeker has satisfied the Network Change Dispute Conditions under clause 1D.10.2(b)(i) in respect of the Preferred Network Change Option,(each, an **Endorsed Network Change**).
- (b) NBN Co will, within 20 Business Days from the date of the Endorsed Network Change, publish the final NBN Prudency Implementation Paper in respect of that Endorsed Network Change on NBN Co's Website and notify Access Seekers and the ACCC of such publication.

### 1D.11.2 No endorsement of the Preferred Network Change Option

If the ACCC rejects the Preferred Network Change Option under clause 1D.10.5, then the Preferred Network Change Option will not be considered to be endorsed by the ACCC (and will therefore not satisfy the Prudent Design Condition for the purposes of a Network Change pursuant to clause 1D.6(c)).

### 1D.11.3 Alternative options to resolve Network Change Dispute

- (a) NBN Co may, at its discretion and at any time after the formation and/or resolution of a Network Change Dispute, undertake one of the following options as an alternative to the Network Change Dispute in respect of the Preferred Network Change Option:
  - (i) recommence the process under clause 1D.8.2 in respect of the Network Change or an amended version of the Network Change; or
  - (ii) not pursue the Network Change.
- (b) If NBN Co undertakes one of the options identified in clause 1D.11.3(a) as an alternative to a Network Change Dispute:
  - (i) NBN Co will notify Access Seekers and the ACCC of that fact; and

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

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## 1D.12 Identification and assessment of Network Change Options

### 1D.12.1 Criteria for Network Change Options

- (a) Each Network Change Option must, in NBN Co's opinion:
  - (i) address the Identified Need;
  - (ii) be economically and technically feasible;
  - (iii) be implemented in sufficient time to meet the timelines identified by the PDF (if any) for the expected delivery of, and roadmap for, the new or varied Product, Product Component or Product Feature;
  - (iv) be a viable option to implement, having regard to:
    - (A) the Total Cost of Ownership associated with each of the Network Change Options;
    - (B) the economic life of the assets associated with each of the Network Change Options;
    - (C) the long term planning of the NBN Co Network, including the network upgrade pathway;
    - (D) the availability of infrastructure, capital (including both equity and debt) and scarce resources;
    - (E) investment practices of owners and operators of networks with similar characteristics to the NBN Co Network in international markets;
    - (F) the operational and technical complexity of each Network Change Option;
    - (G) operational and technical quality issues associated with each Network Change Option;
    - (H) the likely effect on demand of existing Products, Product Components or Product Features or the new or varied Products, Product Components or Product Features;

- (I) resource and security requirements;
  - (J) the legal, policy, regulatory or administrative requirements applicable to NBN Co, including NBN Co's Non-Discrimination Obligations; and
  - (K) any other factor that NBN Co reasonably considers should be taken into account.
- (b) When assessing a Network Change Option, NBN Co must:
- (i) consider and identify market benefits that could be delivered by each Network Change Option in respect of the Identified Need, including:
    - (A) the likely effect on demand and Prices for existing Products, Product Components or Product Features and/or new or varied Products, Product Components or Product Features;
    - (B) the likely effect on the performance, functionality or features of existing Products, Product Components or Product Features and/or new or varied Products, Product Components or Product Features;
    - (C) cost effects, including:
      - changes in costs for Access Seekers and End Users;
      - changes in Capital Expenditure and/or Operating Expenditure; and
      - cost savings due to differences in the timing of investment;
    - (D) the promotion of competition in relevant markets; and
    - (E) any other value gained or foregone from implementing the Network Change Option with respect to the likely future investment needs of Access Seekers (where this value has not already been included in the other classes of market benefits),  
  
(each a **Market Benefit**); and
  - (ii) consider and quantify, to the extent possible, the classes of Market Benefits, unless NBN Co can identify why:

- (A) a particular class of Market Benefit is likely not to materially affect the outcome of the assessment of the Network Change Options; or
  - (B) the estimated cost of undertaking the analysis to quantify the Market Benefits is likely to be disproportionate to the scale, size and potential benefits of each Network Change Option identified by NBN Co; and
- (iii) consider and estimate the following classes of costs associated with each Network Change Option:
  - (A) Capital Expenditure;
  - (B) Operating Expenditure; and
  - (C) cost of complying with legal, policy, regulatory or administrative requirements,

(each a **Network Change Cost**) by reference to the net present value of the direct costs of each Network Change Option (and the effect that these costs will have on NBN Co's Prices). In estimating the classes of cost pursuant to this clause, NBN Co is not required to separately quantify each class of cost.
- (c) When making an assessment under clause 1D.12.1(b), NBN Co must ensure that it:
  - (i) does not include any cost or benefit that cannot be considered to be measured as a Network Change Cost or Market Benefit to NBN Co or any Related Body Corporate of NBN Co, Access Seekers or End Users;
  - (ii) identifies the method or methods permitted for estimating the magnitude of the different classes of Market Benefits and Network Change Costs;
  - (iii) identifies the appropriate method and value for specific inputs, where relevant, for determining the discount rate or rates to be applied;
  - (iv) includes sensitivity analysis in respect of any modelling that forms part of the analysis, having regard to:
    - (A) the risks associated with any Market Benefits not being achieved, or being greater than estimated, or any costs being greater or less than quantified; and

- (B) the degree of certainty associated with the Market Benefits and Network Change Costs taken into account by NBN Co;
- (v) includes an assessment of reasonable scenarios of future supply and demand if each Network Change Option were implemented compared to the situation where no option is implemented; and
- (vi) does not, in calculating the Market Benefits associated with each Network Change Option:
  - (A) include the classes of Network Change Costs referred to in clause 1D.12.1(b)(iii); or
  - (B) include the benefits arising from the promotion of competition in relevant markets or any additional value where they have already been accounted for as Market Benefits.

In performing its assessment of the Network Change Options under this clause 1D.12.1, NBN Co will only be required to apply a level of analysis that is proportionate to the scope and size of the required Network Change.

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## Schedule 1E Long Term Revenue Constraint Methodology

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### 1E.1 General

#### 1E.1.1 Scope

This Schedule 1E applies for the Initial Regulatory Period.

#### 1E.1.2 LTRCM Determination

- (a) The ACCC will issue a determination (**LTRCM Determination**) in respect of:
- (i) for each Financial Year in the Initial Regulatory Period, the ABBRR and the RAB;
  - (ii) for each Financial Year of the Initial Regulatory Period in the Initial Cost Recovery Period (including the First Financial Year), the ICRA;
  - (iii) for each Financial Year of the Building Block Revenue Period, the Regulated Revenue and Revenue Variation,
- including the values of the inputs to each of those values, in accordance with Schedule 1D (Regulatory Asset Base) and this Schedule 1E.
- (b) The ACCC must issue an LTRCM Determination for each Financial Year in the Initial Regulatory Period (including the First Financial Year) no later than 12 months after the end of the Financial Year to which that LTRCM Determination relates.
- (c) In issuing an LTRCM Determination in respect of a Financial Year, the ACCC:
- (i) must have regard to the information supplied by NBN Co to the ACCC under Schedule 1F (Regulatory Information);
  - (ii) must consult with NBN Co if the ACCC intends, as part of an LTRCM Determination, to determine any values that are different to the values submitted by NBN Co to the ACCC under Schedule 1F (Regulatory Information), and must consider any submissions that are received from NBN Co within the time limit specified by the ACCC for the making of those submissions;
  - (iii) may consult with such other persons as the ACCC considers appropriate in relation to the LTRCM Determination and must

- consider any submissions that are received within the time limit specified by the ACCC for the making of those submissions;
- (iv) may determine values for the ABBRR, RAB, ICRA, Regulated Revenue, Revenue Variation and/or the values of the inputs to those values, that are different from the values submitted by NBN Co to the ACCC under Schedule 1F (Regulatory Information), provided those values are determined in accordance with Schedule 1D (Regulatory Asset Base) and this Schedule 1E;
  - (v) subject to clause 1E.1.2(e), must publish on its website the LTRCM Determination and its reasons for the LTRCM Determination, including:
    - (A) the values adopted by the ACCC for each of the input variables in any calculations and formulae;
    - (B) whether those values have been taken or derived from the information provided by NBN Co under Schedule 1F (Regulatory Information) and, if not, the rationale for the adoption of those values;
    - (C) the details of any assumptions made by the ACCC in undertaking any material qualitative or quantitative analysis for the purposes of the LTRCM Determination; and
    - (D) the reasons for making any decisions, or withholding any approvals, and the exercise of any discretion, as referred to in Schedule 1D (Regulatory Asset Base) and this Schedule 1E, for the purposes of the LTRCM Determination;
  - (vi) must, prior to publishing the LTRCM Determination under clause 1E.1.2(d)(v):
    - (A) publish on its website a draft LTRCM Determination and its reasons for the draft LTRCM Determination, including the matters specified in clause 1E.1.2(d)(v); and
    - (B) consult with NBN Co and other such persons as the ACCC considers appropriate on the draft LTRCM Determination and must consider any submissions that are received within the time limit specified by the ACCC; and



- (vii) must, within 40 Business Days of NBN Co submitting the Regulatory Information required under Schedule 1F (Regulatory Information), notify NBN Co of the ACCC's preliminary view of the extent to which, if any, the ACCC intends to determine a substitute amount of Capital Expenditure in accordance with clause 1D.3.2(d) or a substitute amount of Operating Expenditure in accordance with clause 1E.8.2(c), as the case may be; and
- (d) The ACCC must only disclose the confidential information of NBN Co in connection with an LTRCM Determination (and the processes contemplated under this clause 1E.1.2) in accordance with the ACCC's confidentiality procedures, or as otherwise required or permitted by law.

### **1E.1.3 Amendment or revocation of LTRCM Determination for wrong information or error**

- (a) The ACCC may (but is not required to) amend or revoke an LTRCM Determination no later than 12 months after the date of such a LTRCM Determination if the ACCC considers that there is a material error or deficiency in the LTRCM Determination of one or more of the following kinds:
  - (i) a clerical error or an accidental omission;
  - (ii) a miscalculation or a misdescription;
  - (iii) a defect in form; or
  - (iv) a deficiency resulting from the provision of false or materially misleading information to the ACCC.
- (b) If the ACCC revokes an LTRCM Determination under this clause 1E.1.3, the ACCC must make a new LTRCM Determination in substitution for the revoked LTRCM Determination to apply for the Financial Year in respect of which the revoked LTRCM Determination was to apply.
- (c) If the ACCC revokes and substitutes an LTRCM Determination under clauses 1E.1.3(a) and 1E.1.3(b), the substituted LTRCM Determination must only vary from the revoked LTRCM Determination to the extent necessary to correct the relevant error or deficiency.
- (d) The ACCC may only revoke and substitute an LTRCM Determination under this clause 1E.1.3 if the ACCC has first consulted with NBN Co and such other persons as the ACCC considers appropriate.

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## 1E.2 Initial Cost Recovery Period

### 1E.2.1 Initial Cost Recovery Period

- (a) The RAB will be determined by reference to Capital Expenditure in accordance with Schedule 1D (Regulatory Asset Base).
- (b) The ABBRR will be determined by the ACCC by reference to:
  - (i) the RAB, which determines:
    - (A) a return on capital; and
    - (B) a return of capital;
  - (ii) Operating Expenditure that meets the requirements of clause 1E.8;
  - (iii) tax allowances; and
  - (iv) the ACIPA,in accordance with Schedule 1D (Regulatory Asset Base) and this Schedule 1E.
- (c) Any shortfall in Revenues relative to the ABBRR in any given Financial Year will be capitalised in an ICRA and subsequently recovered in later Financial Years of the Initial Cost Recovery Period in accordance with this Schedule 1E.

### 1E.2.2 Inclusion of Initial Operating Expenditure and Revenue

NBN Co will include:

- (a) pursuant to clause 1E.8.2(a)(ii), all Operating Expenditure incurred; and
- (b) Revenue earned,

between the Cost Commencement Date and the SAU Commencement Date within the ABBRR and ICRA as described in this Schedule 1E.

### 1E.2.3 Transition from Initial Cost Recovery Period to Building Block Revenue Period when the ICRA is extinguished

- (a) If the Methodology Change Event occurs during the Initial Regulatory Period:
  - (i) the Initial Cost Recovery Period will cease at the end of the Financial Year in which the Methodology Change Event occurs; and

- (ii) the Building Block Revenue Period will commence at the beginning of the Financial Year immediately following the Financial Year in which the Methodology Change Event occurs.
- (b) In the last Financial Year of the Initial Cost Recovery Period, any Revenues earned in excess of that required to recover the ICRA will be deducted from Revenues able to be earned in the first Financial Year of the Building Block Revenue Period.

#### **1E.2.4 Methodology during Building Block Revenue Period**

If the Methodology Change Event occurs during the Initial Regulatory Period, then, in accordance with the transitional arrangements in clause 1E.2.3, NBN Co will determine the Prices for all existing and new NBN Offers and Other Charges supplied by NBN Co, in a manner that is consistent with the requirements of the Building Block Revenue Period, namely:

- (a) the RAB will be determined by reference to Capital Expenditure that meets the requirements of clause 1D.3;
- (b) the Regulated Revenue in any given Financial Year will be determined by reference to the ABBRR in that Financial Year in accordance with clause 1E.6.1;
- (c) subject to the requirements of Schedule 1C (NBN Offers and Other Charges), NBN Offers and Other Charges will be priced so that the forecast value of nominal Revenue in any given Financial Year in the Building Block Revenue Period does not exceed the forecast value of Regulated Revenue for that Financial Year; and
- (d) any variation between actual Revenues and Regulated Revenues in a Financial Year of the Building Block Revenue Period will be carried forward in the calculation of Regulated Revenue for subsequent Financial Years in accordance with clause 1E.6.

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

- (a) NBN Co will use reasonable endeavours to issue a Likely Methodology Change Event Notice to Access Seekers and the ACCC on or around 5 years prior to the date that NBN Co expects the Methodology Change Event will occur (irrespective of whether the date that NBN Co expects the Methodology Change Event to occur is in the Initial Regulatory Period).
- (b) NBN Co will issue an updated Likely Methodology Change Event Notice to Access Seekers and the ACCC each year following any previous Likely Methodology Change Event Notice until the Methodology Change Event has occurred.

### 1E.2.6 Pricing Intention Statement

- (a) NBN Co will use reasonable endeavours to issue a Pricing Intention Statement to Access Seekers and the ACCC on or around 3 years prior to the date that NBN Co expects the Methodology Change Event will occur (irrespective of whether the date that NBN Co expects the Methodology Change Event to occur is in the Initial Regulatory Period).
- (b) The Pricing Intention Statement will include the following:
  - (i) the forecast average Price change, averaged across all NBN Offers and Other Charges, in the Financial Year immediately following the Financial Year in which NBN Co expects the Methodology Change Event to occur;
  - (ii) NBN Co's estimate of how the forecast average Price change in clause 1E.2.6(b)(i) will impact on the individual Price of each NBN Offer and Other Charge;
  - (iii) any transitional arrangements that NBN Co intends to apply in relation to changes in individual Prices; and
  - (iv) a description, in qualitative terms, of how NBN Co has determined the estimated individual Prices and transitional arrangements.
- (c) NBN Co will issue an updated Pricing Intention Statement to Access Seekers and the ACCC each year following any previous Pricing Intention Statement until the Methodology Change Event has occurred.
- (d) NBN Co will publish each Pricing Intention Statement on NBN Co's Website for access by Access Seekers.

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## 1E.3 Designation of Financial Years

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

## 1E.4 Annual Building Block Revenue Requirement

### 1E.4.1 Calculation of ABBRR

The ABBRR is to be calculated according to the following methodology:

$$ABBRR_t = R_t^{nominal} * Nominal RAB_t^{start} + Nominal Regulatory Depreciation_t + Nominal Opex_t + Net Tax Allowance_t + Annual Construction in Progress Allowance_t$$

where:

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

$Nominal RAB_t^{start}$  is the nominal value of the RAB at the start of Financial Year (t).

$Nominal Regulatory Depreciation_t$  is the Nominal Regulatory Depreciation in Financial Year (t), calculated in accordance with clause 1E.9.1(c).

$Nominal Opex_t$  is the nominal value of the Operating Expenditure for Financial Year (t) that is to be included in the ABBRR in accordance with clause 1E.8.

$Net Tax Allowance_t$  is the net regulatory tax required to be paid by NBN Co in Financial Year (t), determined in accordance with clause 1E.9.3.

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

## 1E.5 Initial Cost Recovery Account

### 1E.5.1 Unrecovered Cost

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

$$Unrecovered Cost_t = ABBRR_t - Nominal Revenue_t$$

where:

$ABBRR_t$  is the nominal Annual Building Block Revenue Requirement calculated in accordance with clause 1E.4.

$Nominal Revenue_t$  is the Revenue earned in Financial Year (t). This Revenue is measured in the nominal dollar value of Financial Year (t).

- (b) The Unrecovered Cost can be either a positive value (when nominal Revenues are less than the ABBRR) or a negative value (when nominal Revenues exceed the ABBRR).

### 1E.5.2 Initial Cost Recovery Account

During the Initial Cost Recovery Period, the ICRA is:

- (a) as at the Cost Commencement Date, zero; and
- (b) for each Financial Year of the remainder of the Initial Cost Recovery Period:

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

where:

$ICRA_{t+1}^{start}$  is the ICRA at the start of Financial Year ( $t+1$ ).

$ICRA_t^{end}$  is the ICRA at the end of Financial Year ( $t$ ).

$ICRA_t^{start}$  is the ICRA at the start of Financial Year ( $t$ ).

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

$Unrecovered Cost_t$  is the Unrecovered Cost <sub>$t$</sub>  calculated in accordance with clause 1E.5.1.

### 1E.5.3 Carry Forward Revenue Adjustment

- (a) At the end of the final Financial Year of the Initial Cost Recovery Period ( $t$ ), the balance of the Unrecovered Cost that has not been applied to the ICRA in accordance with clause 1E.5.2 will be the Carry Forward Revenue Adjustment. That is:

$$Carry Forward Revenue Adjustment_t = Unrecovered Cost_t + ICRA_t^{start} * (1 + R_t^{nominal})$$

- (b) The Carry Forward Revenue Adjustment will be applied to the calculation of Regulated Revenue in the first Financial Year of the Building Block Revenue Period, as described in clause 1E.6.1.
- (c) For clarity, the Carry Forward Revenue Adjustment will have a negative or zero value.

## 1E.6 Building Block Revenue Period

### 1E.6.1 Calculation of Regulated Revenue

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

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

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

- (b) in all other Financial Years:

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

where:

$ABRR_t$  is the nominal ABBRR in the Financial Year (*t*), as determined in accordance with clause 1E.4.1.

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

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

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

### 1E.6.2 Revenue Variation

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

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

where:

$RR_t$  is the Regulated Revenue in Financial Year (*t*).

$Nominal\ Revenue_t$  is the Revenue earned in the Financial Year (*t*). This Revenue is measured in the nominal dollar value of Financial Year (*t*).

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

## 1E.7 Cost of Capital

### 1E.7.1 Rate of return calculation

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

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

where:

$r_f$  is the risk-free rate of interest determined for Financial Year (t) in accordance with clause 1E.7.1(b).

- (b) The risk free rate of interest ( $r_f$ ) applied to a Financial Year will be calculated on a moving average basis from the mean annualised yield on Commonwealth Government securities with a maturity of 10 years, averaged over the final 20 Business Days of the preceding Financial Year and using the indicative mid rates published by the Reserve Bank of Australia.
- (c) If there are no Commonwealth Government securities with a maturity of 10 years on a day in the period referred to in clause 1E.7.1(b), the annualised yield to be used for that day will be calculated by interpolating on a straight line basis from the two Commonwealth Government securities closest to the 10 year term and which also straddle the 10 year expiry date.
- (d) The real rate of return will be determined using the following formula:

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

where:

$R_t^{real}$  is the real rate of return for the current Financial Year (t).

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

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

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



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## 1E.8 Operating Expenditure

### 1E.8.1 Inclusion of Operating Expenditure in the ABBRR

For the purposes of calculating the ABBRR pursuant to clause 1E.4, Operating Expenditure incurred in a Financial Year may only be included in the ABBRR in accordance with this clause 1E.8.

### 1E.8.2 Conditions for including Operating Expenditure in the ABBRR

- (a) Operating Expenditure incurred in a Financial Year may be included in the ABBRR to the extent that the ACCC is satisfied:
  - (i) of one of the matters specified in clause 1E.8.3 in respect of that Operating Expenditure; or
  - (ii) that the Operating Expenditure was incurred between the Cost Commencement Date and the SAU Commencement Date or was incurred in connection with any of the following matters:
    - (A) the NBN Co Interim Satellite Network;
    - (B) the Interim Transit Arrangements;
    - (C) the Tasmania Tri-Area Service Arrangements;
    - (D) the First Release Trial Sites;
    - (E) the Telstra Arrangements;
    - (F) the Optus Arrangements;
    - (G) Third Party Funded Network Changes;
    - (H) the variation, change, augmentation or enhancement of the design, engineering or construction of the Relevant Assets that is required to address an urgent and unforeseen network issue as contemplated by clause 1D.7.2(a)(ix); or
    - (I) a Force Majeure Event.
- (b) If, in respect of any part of the Operating Expenditure incurred in a Financial Year, the ACCC is not satisfied of one of the matters specified in clause 1E.8.2(a), that part (and only that part) of the Operating Expenditure must not be included in the ABBRR and, in making an LTRCM Determination pursuant to clause 1E.1.2, the ACCC must determine an amount of Operating Expenditure that is to be included

in the ABBRR in substitution for that part of the Operating Expenditure for that Financial Year in accordance with clause 1E.8.2(c).

- (c) A substitute amount of Operating Expenditure for a Financial Year under clause 1E.8.2(b) must be an amount of Operating Expenditure that the ACCC is satisfied is consistent with Operating Expenditure that has been included in the ABBRR in respect of any prior Financial Year, having regard to:
- (i) the relative amounts of the Operating Expenditure incurred in those Financial Years;
  - (ii) the relative cost of relevant goods or services in those Financial Years;
  - (iii) any relevant differences in the scale and scope of the Relevant Assets and the scale and scope of the activities in connection with which the Operating Expenditure was incurred in those Financial Years;
  - (iv) the NBN Co Corporate Plan applicable at the time the Operating Expenditure was incurred; and
  - (v) any other matter the ACCC considers relevant.

### **1E.8.3 Matters concerning the inclusion of Operating Expenditure in the ABBRR**

- (a) Operating Expenditure incurred in a Financial Year will be included in the ABBRR for the purposes of clause 1E.8.2(a)(i):
- (i) to the extent that the ACCC is satisfied that:
    - (A) the Operating Expenditure was incurred pursuant to a Conforming Contract as initially entered into or as varied in accordance with the process of contract variations set out in that contract; and
    - (B) if the Operating Expenditure was incurred in connection with the design, engineering and construction of the Relevant Assets pursuant to a Conforming Contract and if a Material Change in Circumstances affecting the Conforming Contract occurred between the time that the Conforming Contract was initially entered into or last varied (as the case may be) and the time the Operating Expenditure was incurred, and the varied, changed or enhanced design, engineering and construction of the Relevant Assets falls outside the scope of that Conforming

Contract, NBN Co had considered whether the Conforming Contract should be varied or further varied or whether a new Conforming Contract with the same Third Party or another Third Party should be entered into before incurring that Operating Expenditure; or

- (ii) to the extent that the ACCC is satisfied that the Operating Expenditure was in respect of a good or service procured in an open and competitive market (e.g. a commodity market); or
  - (iii) to the extent that the ACCC is satisfied that the Operating Expenditure was not incurred pursuant to a contract entered into with a Third Party but was incurred in a manner that is likely to achieve value for money and the lowest Total Cost of Ownership.
- (b) In this clause 1E.8.3, a **Conforming Contract** is a contract entered into by NBN Co, or any Related Body Corporate of NBN Co, with a Third Party that:
- (i) was:
    - (A) let in accordance with a competitive tendering and procurement process;
    - (B) in respect of the procurement of a good or service for which there was only one potential supplier because there were no reasonable alternatives or substitutes;
    - (C) entered into on arm's length terms in circumstances where it was reasonable to do so having regard to whether there were alternative or substitute suppliers and the terms and conditions (including price) available from those alternative or substitute suppliers; or
    - (D) entered into in exceptional circumstances, because it was either not desirable or not practicable for NBN Co to enter into a contract of the kind referred to in clauses 1E.8.3(b)(i)(A), 1E.8.3(b)(i)(B) or 1E.8.3(b)(i)(C); and
  - (ii) if the contract is of the kind referred to in clauses 1E.8.3(b)(i)(A), 1E.8.3(b)(i)(B) or 1E.8.3(b)(i)(C), includes a process for the management of the Operating Expenditure through a process of contract variations which provides:

- (A) that reasonable consideration be given to managing the risk of such contract variations; and
  - (B) for the provision of clear documentary evidence regarding the nature and reasonableness of any such contract variations.
- (c) For the purposes of this clause 1E.8.3, a **Material Change in Circumstances** occurs if:
  - (i) there is a variation, change or enhancement to the design, engineering and construction of the Relevant Assets; and
  - (ii) the estimated Operating Expenditure associated with the implementation of that variation, change or enhancement of the Relevant Assets exceeds or is expected to exceed the Minor Expenditure Limit.

#### **1E.8.4 Operating Expenditure factors**

- (a) In deciding whether Operating Expenditure incurred in a Financial Year meets the requirement specified in clause 1E.8.3(b)(i)(A), the ACCC must have regard to:
  - (i) whether the contract pursuant to which the Operating Expenditure was incurred was entered into in accordance with NBN Co's procurement processes, including in accordance with the Procurement Rules; and
  - (ii) any other factor the ACCC considers relevant.
- (b) In determining whether exceptional circumstances exist for the purposes of clause 1E.8.3(b)(i)(D), the ACCC must have regard to:
  - (i) the extent to which the Operating Expenditure was incurred on exceptionally advantageous terms;
  - (ii) the extent to which the Operating Expenditure was procured in a manner required or rendered desirable by a legal, policy, regulatory or administrative requirement, or a requirement of the Shareholder Ministers;
  - (iii) the extent to which it was in the best interests of NBN Co, or any Related Body Corporate of NBN Co, to incur the Operating Expenditure with the particular supplier with which the Operating Expenditure was incurred or in the particular circumstances in which the Operating Expenditure was procured having regard to the lifetime cost of acquisition and operation of the Relevant Assets involved;

- (iv) the extent to which the Operating Expenditure was incurred in a manner that seeks to achieve value for money and the lowest Total Cost of Ownership; and
- (v) any other factor the ACCC considers relevant.

## 1E.9 Treatment of Taxation and Depreciation

### 1E.9.1 Regulatory Depreciation

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

- (a) The Real Straight Line Depreciation is the sum of the straight line depreciation of the real Capital Expenditure value of each Asset Type incurred prior to the relevant Financial Year, using asset lifetimes for each Asset Type determined in a manner consistent with NBN Co's audited accounts, to the extent the ACCC is satisfied this is reasonable. That is, for each Asset Type, the annual Asset Real Straight Line Depreciation in Financial Year ( $t$ ) is:

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

where:

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

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

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

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

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

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

where:

$i$  is the Asset Type.

$L_{i,t}$  is the asset lifetime of the Asset Type in Financial Year (t).

$$Net\ Real\ Capex_{i,k} = Real\ Capex_{i,k} - Real\ Disposals_{i,k}$$

where:

$Real\ Capex_{i,k}$  is the real value of actual Capital Expenditure that meets the requirements of clause 1D.3 incurred in connection with the design, engineering, construction, replacement and augmentation of Asset Type  $i$  in Financial Year ( $k$ ). Capital Expenditure is recognised at the time the Relevant Asset is Placed in Service.

$Real\ Disposals_{i,k}$  is the real value of Disposals of Asset Type  $i$  removed from service in Financial Year ( $k$ ).

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

$$Real\ Straight\ Line\ Depreciation_t = \sum_{i=1}^N Asset\ Real\ Straight\ Line\ Depreciation_{i,t}$$

where:

$N$  is the number of Asset Types.

$Asset\ Real\ Straight\ Line\ Depreciation_{i,t}$  is the real value of the straight line depreciation of the Asset Type  $i$  in Financial Year ( $t$ ).

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

That is:

$$Nominal\ Straight\ Line\ Depreciation_t = Real\ Straight\ Line\ Depreciation_t * CIF_t$$

where:

$CIF_t$  is the Cumulative Inflation Factor as defined in clause 1E.9.4(b).

- (c) The Nominal Regulatory Depreciation is the difference between the Nominal Straight Line Depreciation and the change in value of the nominal RAB due to inflation:

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

### 1E.9.2 Nominal Tax Depreciation

For the purposes of calculating the tax depreciation used in the calculation of the Net Tax Allowance in any Financial Year:

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

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

where:

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

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

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

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

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

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

where:

$i$  is the Asset Type.

$TL_{i,t}$  is the taxation asset lifetime of the Asset Type  $i$  in Financial Year ( $t$ ).

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

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

where:

*Nominal Capex*  $_{i,k}$  is the nominal value of actual Capital Expenditure incurred in connection with the design, engineering, construction, replacement and augmentation of Asset Type  $i$  in Financial Year ( $k$ ) that meets the requirements of clause 1D.3. Capital Expenditure is recognised at the time the asset is Placed in Service.

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

Hence, the Nominal Tax Depreciation for any Financial Year ( $t$ ) is the sum of all the Asset Nominal Tax Depreciation values for each Asset Type.

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

where:

$N$  is the number of Asset Types.

### 1E.9.3 Taxation Calculations

For the purposes of calculating the allowance for taxation expenses in the calculation of ABBRR and Unrecovered Cost, the Net Tax Allowance will be calculated as follows:

$$\text{Net Tax Allowance}_t = [\text{Max}(0, \text{Taxable Profit}_t + \text{Tax Loss Carried Forward}_{t-1})] * \tau(1 - \gamma)$$

where:

$\tau$  is the statutory company taxation rate that applies in Financial Year ( $t$ ), as determined in clause 1E.9.5(b).

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



*Taxable Profit<sub>t</sub>* is the calculated profit which is subject to taxation calculated as follows, but subject to, for the purposes of corporate taxation: (i) the inclusion of any capital gains; (ii) the inclusion of any capital losses (but only to the extent that they are offset by any capital gains); (iii) the exclusion of any items to the extent that they are not deductible; and (iv) the treatment of assets received by NBN Co for nil consideration:

$$\begin{aligned} \textit{Taxable Profit}_t &= [\textit{Nominal Revenue}_t - \textit{Nominal Opex}_t - \textit{Interest Expense}_t \\ &\quad - \textit{Nominal Tax Depreciation}_t] \end{aligned}$$

where:

*Nominal Revenue<sub>t</sub>* is the nominal Revenue in Financial Year (t).

*Nominal Opex<sub>t</sub>* is the nominal Operating Expenditure in Financial Year (t).

*Interest Expense<sub>t</sub>* is the actual interest expense recorded in NBN Co's statutory accounts in Financial Year (t).

*Nominal Tax Depreciation<sub>t</sub>* is the Nominal Tax Depreciation in Financial Year (t), calculated in accordance with clause 1E.9.2.

*Tax Loss Carried Forward<sub>t-1</sub>* is determined as follows:

if *t-1* refers to 2007/08,

$$\textit{Tax Loss Carried Forward}_{t-1} = 0$$

otherwise,

$$\begin{aligned} \textit{Tax Loss Carried Forward}_{t-1} &= \textit{Min}(0, \textit{Taxable Profit}_{t-1} \\ &\quad + \textit{Tax Loss Carried Forward}_{t-2}) \end{aligned}$$

#### 1E.9.4 Real Values

- (a) During the Initial Regulatory Period, when reference is made to real values, this refers to the cost or revenue of the relevant parameter in constant dollar terms of the First Financial Year. Except where a specific means of conversion is set out for a particular value, this will be calculated as follows:

$$\textit{Real Value}_t = \frac{(\textit{Nominal Value}_t)}{\textit{CIF}_t}$$

Likewise, in converting real values into nominal values, except where a specific means of conversion is set out for a particular value, the corresponding calculation is:

$$\text{Nominal Value}_t = \text{Real Value}_t * \text{CIF}_t$$

where:

$t=1$  corresponds to the First Financial Year.

- (b) The  $\text{CIF}_t$  is the Cumulative Inflation Factor which is the cumulative product of the June Quarter CPI published for each Financial Year from the SAU Commencement Date, relative to the First Financial Year, i.e.:

$$\text{CIF}_t = \left\{ \prod_{k=1}^t (1 + \text{CPI}_k^{\text{June}}) \right\} / (1 + \text{CPI}_1^{\text{June}})$$

where:

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

- (c) In this Schedule 1E, for Financial Years prior to the First Financial Year, the  $\text{CIF}_t$  is defined as:

$$\text{CIF}_t = (1 + \text{CPI}_1^{\text{June}}) / \left\{ \prod_{k=t}^1 (1 + \text{CPI}_k^{\text{June}}) \right\}$$

where:

$t$  is less than or equal to 0. For example, if the First Financial Year is 2011/12, then the 2010/11 Financial Year is year  $t = 0$ , and Financial Year 2009/10 would be year  $t = -1$ .

$\text{CPI}_k^{\text{June}}$  means the June Quarter CPI for Financial Year ( $k$ ).

### 1E.9.5 Tax parameters

For the purposes of this clause 1E.9:

- (a) impact of dividend imputation franking credits (“gamma”) in Financial Year ( $t$ ) will be :

- (i) if the value of the sum of *Taxable Profit<sub>t</sub>* and *Tax Losses Carried Forward<sub>t-1</sub>* is negative, unspecified; or
- (ii) if the value of the sum of *Taxable Profit<sub>t</sub>* and *Tax Losses Carried Forward<sub>t-1</sub>* is positive, determined by the ACCC in the LTRCM Determination made under clause 1E.1.2,

where *Taxable Profit<sub>t</sub>* and *Tax Loss Carried Forward<sub>t-1</sub>* are as defined in clause 1E.9.3.

- (b) Corporate Tax Rate ( $\tau$ ): In the event of a change in the statutory corporate taxation rate, there will be an immediate update of the Corporate Tax Rate to be equal to the statutory corporate taxation rate that applies for a given Financial Year. As at the SAU Commencement Date, the Corporate Tax Rate will be 30%.

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## 1E.10 Annual Construction in Progress Allowance

### 1E.10.1 ACIPA calculation

- (a) An ACIPA will be calculated each year and included in the calculation of the ABBRR as described in clause 1E.4.
- (b) The ACIPA for Financial Year (*t*) is calculated as follows:

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

where:

$CIP_t^{start}$  is the balance of CIP at the start of Financial Year (*t*).

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

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## Schedule 1F Regulatory Information

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### 1F.1 Compliance and forecasting during Initial Regulatory Period

#### 1F.1.1 Scope

This Schedule 1F applies for the Initial Regulatory Period.

#### 1F.1.2 Submission by NBN Co of Forecast Financial Information

No later than 30 June prior to the commencement of each Financial Year during the Initial Regulatory Period, NBN Co will submit to the ACCC NBN Co's forecasts or estimates of the following information in respect of that Financial Year (in this Schedule 1F, **Forecast Financial Information**):

- (a) Capital Expenditure, by Asset Type;
- (b) Operating Expenditure;
- (c) Disposals, by Asset Type; and
- (d) the opening value and closing value of CIP.

#### 1F.1.3 Provision of Actual Financial Information and variance reasons to ACCC

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

- (a) the actual financial information for the following matters in respect of that Financial Year (in this Schedule 1F, **Actual Financial Information**):
  - (i) June Quarter CPI;
  - (ii) Capital Expenditure, by Asset Type;
  - (iii) Revenue;
  - (iv) Operating Expenditure;
  - (v) Disposals, by Asset Type;
  - (vi) the Interest Expense;
  - (vii) accounting and tax asset lifetimes;
  - (viii) the risk free rate to be used in the calculation of the nominal rate of return under clause 1E.7.1(b); and

- (ix) the nominal rate of return to be calculated under clause 1E.7.1(a); and
- (b) information which sets out any material variance between the Forecast Financial Information and the Actual Financial Information, including reasons for the variances.

#### **1F.1.4 Provision of Proposed Financial Information**

By 31 October after the end of each Financial Year of the Initial Regulatory Period, NBN Co will provide to the ACCC its proposed values in respect of that Financial Year for (in this Schedule 1F, **Proposed Financial Information**):

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

#### **1F.1.5 First Financial Year**

The information provided to the ACCC pursuant to clauses 1F.1.3 and 1F.1.4 in respect of the First Financial Year is to include the Actual Financial Information or Proposed Financial Information (as relevant) for that Financial Year and each prior Financial Year (or part thereof) from the Cost Commencement Date.

#### **1F.1.6 Provision of additional information during Building Block Revenue Period**

During the Building Block Revenue Period, NBN Co will submit to the ACCC proposed values for:

- (a) by 31 October after the end of the first Financial Year of the Building Block Revenue Period, the Carry Forward Revenue Adjustment from the last Financial Year of the Initial Cost Recovery Period; and

- (b) by 31 October after the end of each Financial Year of the Building Block Revenue Period, the following additional proposed values in respect of that Financial Year:
  - (i) the Regulated Revenue; and
  - (ii) the Revenue Variation.

#### **1F.1.7 ACCC Enhanced Information Request**

At any time, the ACCC may request information from NBN Co that the ACCC considers reasonably necessary for it to determine the ABBRR, RAB, ICRA, Regulated Revenue, Carry Forward Revenue Adjustment and/or Revenue Variation, including the values of the inputs to each of those values, in accordance with Schedule 1D (Regulatory Asset Base) and Schedule 1E (Long Term Revenue Constraint Methodology) and NBN Co must comply with a request made by the ACCC under this clause 1F.1.7 within the timeframe specified by the ACCC.

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## **1F.2 Expenditure compliance and reporting**

### **1F.2.1 Expenditure Compliance Reports**

- (a) By 31 October after the end of each Financial Year during the Initial Regulatory Period, NBN Co will submit to the ACCC a report signed by the Chief Financial Officer of NBN Co (or his or her authorised delegate) which:
  - (i) certifies, as if the Chief Financial Officer (or his or her authorised delegate) were in the ACCC's position, that, in relation to that Financial Year, the Capital Expenditure proposed for inclusion in the RAB:
    - (A) was incurred in accordance with the Prudent Cost Condition and the Prudent Design Condition; or
    - (B) was incurred between the Cost Commencement Date and the SAU Commencement Date or in connection with one of the matters specified in clause 1D.3.2(a)(ii); and
  - (ii) certifies, as if the Chief Financial Officer (or his or her authorised delegate) were in the ACCC's position, that, in relation to that Financial Year, the Operating Expenditure proposed for inclusion in the ABBRR:
    - (A) was incurred in accordance with clause 1E.8.3; or

- (B) was incurred in between the Cost Commencement Date and the SAU Commencement Date or was incurred in connection with one of the matters specified in clause 1E.8.2(a)(ii).
- (b) If the Chief Financial Officer of NBN Co (or his or her authorised delegate) is unable to provide the certification under clause 1F.2.1(a) on the grounds that the Chief Financial Officer (or his or her authorised delegate) reasonably considers that:
  - (i) the Capital Expenditure proposed for inclusion in the RAB:
    - (A) was not incurred in accordance with the Prudent Cost Condition and the Prudent Design Condition; or
    - (B) was not incurred between the Cost Commencement Date and the SAU Commencement Date or in connection with one of the matters specified in clause 1D.3.2(a)(ii); or
  - (ii) the Operating Expenditure proposed for inclusion in the ABBRR:
    - (A) was not incurred in accordance with clause 1E.8.3; or
    - (B) was not incurred in between the Cost Commencement Date and the SAU Commencement Date or was incurred in connection with one of the matters specified in clause 1E.8.2(a)(ii),

then the Chief Financial Officer (or his or her authorised delegate) must identify in a report to the ACCC:

- (iii) the following information:
  - (A) the nature and extent of the non-compliance in relation to the Capital Expenditure or Operating Expenditure (as the case may be); and
  - (B) the associated aspect of clauses 1F.2.1(b)(i) or 1F.2.1(b)(ii) (as the case may be) in respect of which the non-compliance has arisen; and
- (iv) a substitute amount of Capital Expenditure or Operating Expenditure for consideration by the ACCC, which in that person's reasonable opinion, is consistent with clauses 1D.3.2(d) or 1E.8.2(c) (as the case may be).

- (c) Nothing in clause 1F.2.1(b) overrides the ACCC's power to make an LTRCM Determination under clause 1E.1, including to determine substitute amounts of Capital Expenditure and Operating Expenditure for the purposes of clauses 1D.3.2(d) or 1E.8.2(c) (as the case may be).

### **1F.2.2 Expenditure Compliance Information Request**

At any time, the ACCC may request information from NBN Co that is reasonably necessary for the ACCC to assess the matters contained in a report submitted in accordance with clause 1F.2.1 and NBN Co must comply with a request made by the ACCC under this clause 1F.2.2 within the timeframe specified by the ACCC.

### **1F.2.3 Procurement Rules compliance**

- (a) By 31 October after the end of each Financial Year during the Initial Regulatory Period, NBN Co will submit to the ACCC a report signed by the Chief Procurement Officer certifying that, in relation to that Financial Year, the Procurement Rules satisfied the requirements in clause 1D.5.1.
- (b) At any time, the ACCC may request information from NBN Co that is reasonably necessary for the ACCC to assess compliance of the Procurement Rules with clause 1D.5.1 and NBN Co must comply with a request made by the ACCC under this clause 1F.2.3(b) within the timeframe specified by the ACCC.

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## **1F.3 Price compliance and reporting**

- (a) By 31 October after the end of each Financial Year of the Initial Regulatory Period, NBN Co will submit to the ACCC a report signed by the Chief Financial Officer of NBN Co (or his or her authorised delegate) which certifies that, in respect of that Financial Year:
  - (i) the Price for the supply of each NBN Offer did not exceed, at any time during the Financial Year, the Maximum Regulated Price applicable to that NBN Offer at the relevant point in time;
  - (ii) the Price of each Other Charge imposed did not exceed, at any time during the Financial Year, the Maximum Regulated Price for that Other Charge at the relevant point in time; and
  - (iii) Prices complied with the requirements of Schedule 1C (NBN Offers and Other Charges),

and provide to the ACCC such other information that NBN Co considers is reasonably necessary for the ACCC to assess NBN Co's compliance with Schedule 1C (NBN Offers and Other Charges).



- (b) At any time, the ACCC may request information from NBN Co that is reasonably necessary for the ACCC to determine NBN Co's compliance with Schedule 1C (NBN Offers and Other Charges) and NBN Co must comply with a request made by the ACCC under this clause 1F.3(b) within the timeframe specified by the ACCC.

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## Schedule 1G Maximum Regulated Price Review Mechanisms

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### 1G.1 Introduction

#### 1G.1.1 Scope

This Schedule 1G applies for the Initial Regulatory Period.

#### 1G.1.2 Overview

This Schedule 1G confers functions and powers on the ACCC pursuant to section 152CBA(10A) of the CCA to undertake reviews of the Maximum Regulated Prices of:

- (a) NBN Offers; and
- (b) Other Charges.

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### 1G.2 Tax Change Events

#### 1G.2.1 Change to Maximum Regulated Price as a result of a Tax Change Event

If a Tax Change Event occurs during the Initial Regulatory Period, the Maximum Regulated Price of an NBN Offer and/or Other Charge may be changed in accordance with this clause 1G.2.

#### 1G.2.2 NBN Co issuing a proposal relating to Tax Change Events

- (a) During the Initial Regulatory Period, NBN Co may publish on its website, and provide Access Seekers and the ACCC with, a written statement (in this clause 1G.2, a **Tax Change Events Proposal**) in respect of one or more Tax Change Events that occurred within a period of 60 Business Days (or such other longer period as may be approved by the ACCC under clause 1G.2.3) prior to the statement that specifies:
  - (i) the details and the date or dates on which the Tax Change Event or Tax Change Events occurred;
  - (ii) the likely change in the costs incurred by NBN Co in the supply of NBN Offers and the performance of activities associated with Other Charges as a result of the Tax Change Event or Tax Change Events;
  - (iii) the proposed apportionment of that change in costs across each NBN Offer and/or Other Charge in respect of which NBN Co is proposing to change the Maximum Regulated Price, and the proposed change to the Maximum Regulated Price of each

such NBN Offer and/or Other Charge to reflect that change in costs; and

- (iv) the proposed date (in this clause 1G.2, **Proposed Change Effective Date**) on which the changes to the Maximum Regulated Prices proposed by NBN Co in the statement will take effect if no Access Seeker objects to the proposed changes, which date must be no earlier than 40 Business Days after the Tax Change Events Proposal is published on NBN Co's website and provided to each Access Seeker and the ACCC.
- (b) If NBN Co publishes on its website, and provides Access Seekers and the ACCC with, a Tax Change Events Proposal, an Access Seeker may, prior to the Proposed Change Effective Date, object to the Tax Change Events Proposal by giving NBN Co a written notice of its objection.
- (c) NBN Co must provide the ACCC with a copy of any notice received under clause 1G.2.2(b) within 5 Business Days of receiving the notice.
- (d) If no notice is given to NBN Co under clause 1G.2.2(b), the changes to the Maximum Regulated Price of each NBN Offer and/or Other Charge specified in the Tax Change Events Proposal will take effect from the Proposed Change Effective Date.
- (e) If a notice is given under clause 1G.2.2(b), the changes to the Maximum Regulated Prices specified in the Tax Change Events Proposal will not take effect.

### **1G.2.3 Request for longer period to issue Tax Change Events Proposal**

- (a) NBN Co may at any time within 60 Business Days of the occurrence of a Tax Change Event request a period longer than 60 Business Days from the occurrence of that Tax Change Event to issue a Tax Change Events Proposal in relation to that Tax Change Event under clause 1G.2.2(a), by giving a notice to the ACCC which states the date on which the Tax Change Event occurred, the period within which NBN Co proposes to issue a Tax Change Events Proposal in relation to that Tax Change Event, and the reasons for the request.
- (b) Prior to the expiry of 60 Business Day from the occurrence of the Tax Change Event, the ACCC may approve the proposal.

### **1G.2.4 Submission of statement by NBN Co to ACCC following a Tax Change Event**

If NBN Co issues a Tax Change Events Proposal in accordance with clause 1G.2.2(a), and under clause 1G.2.2(e) the changes to the Maximum Regulated Prices proposed in the Tax Change Events Proposal do not take effect, within 40

Business Days of the first objection notice given under clause 1G.2.2(b), NBN Co may submit to the ACCC a written statement that specifies the matters referred to in clauses 1G.2.2(a)(i) to 1G.2.2(a)(iv) in respect of one or more of the Tax Change Events to which the Tax Change Events Proposal relates.

#### **1G.2.5 Notification of a Negative Tax Change Event by the ACCC**

Where a Negative Tax Change Event has occurred and either:

- (a) NBN Co does not issue a Tax Change Events Proposal that relates to the Negative Tax Change Event within the period referred to in clause 1G.2.2(a); or
- (b) NBN Co issues a Tax Change Events Proposal that relates to the Negative Tax Change Event under clause 1G.2.2(a) and:
  - (i) under clause 1G.2.2(e) the proposal does not take effect; and
  - (ii) NBN Co has not submitted to the ACCC a statement in relation to the Negative Tax Change Event under clause 1G.2.4,

the ACCC may notify NBN Co of the occurrence of that Negative Tax Change Event.

#### **1G.2.6 ACCC's determination in relation to a Tax Change Event**

- (a) Within 40 Business Days (or such other longer period as may be determined by the ACCC and notified to NBN Co by the ACCC giving NBN Co a notice stating the extended period and the reasons for the extension) of NBN Co submitting a written statement under clause 1G.2.4 or the ACCC notifying NBN Co of the occurrence of a Negative Tax Change Event under clause 1G.2.5 (as the case may be), the ACCC may issue a determination to NBN Co that specifies:
  - (i) whether the ACCC is satisfied that one or more of the Tax Change Events have occurred; and
  - (ii) if the ACCC is satisfied that one or more of the Tax Change Events have occurred:
    - (A) the change, if any, in the costs incurred by NBN Co in the supply of NBN Offers and the performance of activities associated with Other Charges as a result of the Tax Change Event or Tax Change Events that the ACCC considers is likely to arise; and
    - (B) whether the ACCC is satisfied that the Maximum Regulated Price of one or more NBN Offers and/or

Other Charges should be changed as a result of the Tax Change Event or Tax Change Events; and

- (iii) if the ACCC is satisfied that the Maximum Regulated Price of one or more NBN Offers and/or Other Charges should be changed as a result of the Tax Change Event or Tax Change Events:
  - (A) the apportionment of any such change in costs across each NBN Offer and/or Other Charge in respect of which the ACCC is proposing to change the Maximum Regulated Price; and
  - (B) any change to the Maximum Regulated Price of each such NBN and/or Other Charge to reflect those changed costs,

that the ACCC is satisfied are reasonable.

- (b) Where the ACCC specifies a change to the Maximum Regulated Price of an NBN Offer or Other Charge in a determination under clause 1G.2.6(a), the Maximum Regulated Price of that NBN Offer or Other Charge changes by the amount specified in the determination with effect from the date of the determination.
- (c) If NBN Co submits a written statement under clause 1G.2.4 and the ACCC does not issue a determination in accordance with clause 1G.2.6(a) in respect of the Tax Change Event or Tax Change Events specified in NBN Co's statement within the period referred to in that clause:
  - (i) the ACCC is taken to be satisfied that the changes in the Maximum Regulated Price of each NBN Offer and/or Other Charge specified in the written statement submitted by NBN Co are reasonable; and
  - (ii) the Maximum Regulated Price of each NBN Offer and/or Other Charge changes by the amount proposed in the written statement submitted by NBN Co under clause 1G.2.4 with effect upon expiry of that period.
- (d) In deciding whether or not the ACCC is satisfied of the matters referred to in clauses 1G.2.6(a)(ii) and 1G.2.6(a)(iii), the ACCC must have regard to:
  - (i) any written statement submitted by NBN Co under clause 1G.2.4;

- (ii) whether any likely change in the costs incurred by NBN Co in the supply of NBN Offers and the performance of activities associated with Other Charges as a result of the Tax Change Event or Tax Change Events is material;
  - (iii) whether there have been or are likely to be any other Tax Change Events not subject of NBN Co's written statement under clause 1G.2.4 or the notification by the ACCC under clause 1G.2.5 (as the case may be) that are not reflected in the Maximum Regulated Prices of NBN Offers and/or Other Charges in effect immediately prior to the ACCC's determination;
  - (iv) the matters specified in section 152AH of the CCA; and
  - (v) any other matter the ACCC considers relevant.
- (e) Before issuing a determination in accordance with clause 1G.2.6(a), the ACCC may consult with NBN Co and such other persons as the ACCC considers appropriate, on any matters arising out of a Tax Change Event.

#### **1G.2.7 ACCC request for information regarding a Tax Change Event**

- (a) At any time, the ACCC may request information from NBN Co that the ACCC considers reasonably necessary for it to determine whether to notify NBN Co of a Negative Tax Change Event under clause 1G.2.5 or for the purposes of making a determination under clause 1G.2.6(a).
- (b) NBN Co must comply with a request made by the ACCC under clause 1G.2.7(a) within the timeframe specified by the ACCC.
- (c) The period between when the ACCC requests information under clause 1G.2.7(a) and when the ACCC is provided with that information is to be disregarded for the purposes of calculating the period of time elapsed for the purposes of clause 1G.2.6(a).

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## **1G.3 Price Review Arrangements**

### **1G.3.1 Initiation of Price Review**

- (a) Subject to clause 1G.3.1(c), no earlier than 1 July 2014, either the ACCC or NBN Co may issue a written notice (in this clause 1G.3, **Price Review Notice**) to the other stating that it wishes to commence a review of the Maximum Regulated Prices applicable to NBN Offers and/or Other Charges under this clause 1G.3 (in this clause 1G.3, **Price Review**).

- (b) The Price Review Notice must:
  - (i) identify one or more Maximum Regulated Prices that the notifying party considers should be reviewed; and
  - (ii) the reasons why the notifying party considers the Maximum Regulated Prices should be reviewed.
- (c) A Price Review Notice cannot be issued under clause 1G.3.1(a) if there are already two Price Review Arrangements that apply in the Initial Regulatory Period.

### **1G.3.2 NBN Co to develop Price Review Proposal**

- (a) NBN Co will, no later than 120 calendar days after a Price Review Notice is issued (or such other later date specified by the ACCC), provide the ACCC with a proposal in relation to the Maximum Regulated Prices the subject of the Price Review Notice (in this clause 1G.3, **Price Review Proposal**).
- (b) The Price Review Proposal must include the following information:
  - (i) a proposed Price Review Arrangement developed in accordance with the Price Review Criteria, which includes the matters referred to in clause 1G.3.7(a);
  - (ii) an explanation of the basis on which the proposed Price Review Arrangement satisfies the Price Review Criteria; and
  - (iii) the forecasts and estimates used by NBN Co to apply the Price Review Criteria to the proposed Price Review Arrangement, and an explanation of the basis on which those forecasts and estimates were prepared, including the methods used and assumptions made.

### **1G.3.3 ACCC response to Price Review Proposal**

- (a) The ACCC may either:
  - (i) accept the Price Review Proposal; or
  - (ii) reject the Price Review Proposal, in which case the ACCC may either:
    - (A) issue its own Price Review Arrangement (in this clause 1G.3, an **ACCC Determined Price Review Arrangement**); or

- (B) discontinue the Price Review without establishing a Price Review Arrangement, in which case the Price Review will terminate; or
  - (iii) where the ACCC issued the relevant Price Review Notice, discontinue the Price Review without rejecting the Price Review Proposal or establishing a Price Review Arrangement, in which case the Price Review will terminate.
- (b) The ACCC may request NBN Co to give to the ACCC further information that the ACCC considers reasonably necessary for making a decision under clause 1G.3.3(a) and NBN Co must comply with such a request within the period specified by the ACCC.
- (c) The ACCC must publish on its website a Price Review Proposal provided to it by NBN Co.
- (d) The ACCC must not make a decision under clause 1G.3.3(a) unless the ACCC has had regard to the information in the Price Review Proposal provided by NBN Co under clause 1G.3.2(b).
- (e) The ACCC may consult with NBN Co and such other persons as the ACCC considers appropriate on NBN Co's Price Review Proposal, and must consider any submissions that are received within the time limit specified by the ACCC.
- (f) The ACCC must publish on its website its decision under clause 1G.3.3(a), including the reasons for the decision and any resulting Price Review Arrangement.

#### **1G.3.4 Variation of Price Review Proposal**

- (a) The ACCC may issue a written notice to NBN Co stating that if NBN Co:
  - (i) makes such variations to the Price Review Proposal as are specified in the notice; and
  - (ii) gives the varied Price Review Proposal to the ACCC within the period specified in the notice,

the ACCC will consider the varied Price Review Proposal under clause 1G.3.3 as if the varied Price Review Proposal had been given instead of the original Price Review Proposal.

- (b) If NBN Co gives the ACCC a varied Price Review Proposal in response to a notice issued under clause 1G.3.4(a), the ACCC will consider the varied Price Review Proposal under clause 1G.3.3 as if the varied Price Review Proposal had been given instead of the original Price Review Proposal.



### **1G.3.5 Acceptance of Price Review Proposal**

If a Price Review Proposal is accepted by the ACCC under clause 1G.3.3(a), the proposed Price Review Arrangement included in that Price Review Proposal becomes a Price Review Arrangement.

### **1G.3.6 ACCC Determined Price Review Arrangement**

If the ACCC issues an ACCC Determined Price Review Arrangement under clause 1G.3.3(a), the ACCC Determined Price Review Arrangement becomes a Price Review Arrangement.

### **1G.3.7 Content and operation of Price Review Arrangement**

- (a) A Price Review Arrangement must specify:
- (i) the commencement date of the Price Review Arrangement which must:
    - (A) be the start of a Financial Year between 1 July 2016 and 30 June 2023;
    - (B) not be a date that precedes the date on which the Price Review Arrangement is accepted or issued by the ACCC;
    - (C) not be in a Financial Year in respect of which a previous Price Review Arrangement applies; and
    - (D) be no later than 12 months after the date on which the Price Review Arrangement is accepted or issued by the ACCC;
  - (ii) the end date of the Price Review Arrangement, which must be the end of a Financial Year between 1 and 5 Financial Years after the commencement date of the Price Review Arrangement;
  - (iii) the NBN Offers and/or Other Charges to which the Price Review Arrangement applies (in this clause 1G.3, each a **Reviewed Offer**); and
  - (iv) for each Reviewed Offer, the Maximum Regulated Price for one or more Financial Years within the period of the Price Review Arrangement.
- (b) The Maximum Regulated Price for a Reviewed Offer specified in a Price Review Arrangement may:

- (i) be specified in the form of an amount or as a formula for ascertaining the amount; and
  - (ii) be different for each Financial Year for which the Price Review Arrangement specifies a Maximum Regulated Price for the Reviewed Offer (including to establish a glide-path in relation to the Maximum Regulated Price for the Reviewed Offer).
- (c) If a Price Review Arrangement applies to a Reviewed Offer and a Financial Year within the Initial Regulatory Period, then the Maximum Regulated Price for that Reviewed Offer for that Financial Year will be the Maximum Regulated Price specified in that Price Review Arrangement for that Reviewed Offer for that Financial Year in accordance with clause 1C.5.1, subject to clause 1G.2.

### **1G.3.8 Price Review Requirements**

- (a) Subject to clause 1G.3.8(b), the ACCC must not accept a Price Review Proposal, or issue an ACCC Determined Price Review Arrangement, under clause 1G.3.3(a), unless the ACCC is satisfied that:
- (i) the Maximum Regulated Price of each Reviewed Offer for each Financial Year to which the Price Review Arrangement applies is reasonable, having regard to the matters specified in section 152AH of the CCA, the matters referred to in clause 1G.3.8(d) and any other matter the ACCC considers relevant; and
  - (ii) there is no material difference between:
    - (A) the present value of the difference between the expected Revenue and the sum of the expected ABBRR for each Financial Year, between the commencement of the Price Review Arrangement and the SAU Expiry Date, if the Price Review Arrangement were in operation; and
    - (B) the present value of the difference between the expected Revenue and the sum of the expected ABBRR for each Financial Year, between the commencement of the Price Review Arrangement and the SAU Expiry Date, if the Price Review Arrangement were not in operation,
- (in this clause 1G.3, **Price Review Criteria**).
- (b) Section 152CBD(5A) of the CCA applies to the ACCC's decision whether to accept or reject a Price Review Proposal under clause 1G.3.3(a) as if

the references to an undertaking in that section were references to a Price Review Proposal, except for section 152CBD(5A)(d) (which does not apply to the ACCC's decision).

- (c) Section 152BCB(3C) of the CCA applies to the ACCC's decision to issue an ACCC Determined Price Review Arrangement under clause 1G.3.3(a) as if the references in that section to making an access determination were references to issuing an ACCC Determined Price Review Arrangement.
- (d) In deciding whether to accept or reject a Price Review Proposal and in issuing an ACCC Determined Price Review Arrangement, the ACCC must have regard to:
  - (i) the legitimate business interests of NBN Co;
  - (ii) the characteristics of the NBN Offers and activities associated with Other Charges other than the Reviewed Offers (in this clause 1G.3.8(d), **Other Offers**);
  - (iii) the costs associated with Other Offers;
  - (iv) the impact of the ACCC's decision on the Revenue associated with Other Offers;
  - (v) the impact of the ACCC's decision on the demand for Other Offers; and
  - (vi) any other factor the ACCC considers relevant.

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## Schedule 1H Non-price terms and conditions

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### 1H.1 General

#### 1H.1.1 Scope

~~Subject to clause 1H.1.1(b), t~~This Schedule 1H applies for the Initial Regulatory Period.

~~(b) Clause 1H.5 and Annexure 1 to this Schedule 1H apply until the end of the Financial Year that is 5 years after the SAU Commencement Date.~~

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### 1H.2 Rollout progress information

#### 1H.2.1 3-year construction rollout plan

On or before 31 March of each year during the Initial Regulatory Period until the Rollout Built Date, NBN Co will publish a 3-year construction rollout plan that includes the following information:

- (a) a high level description of the geographic area in which NBN Co plans to deploy the NBN Co Fibre Network in the 36 months commencing from the 1 July following the publication;
- (b) the dates on which NBN Co expects to commence work on the NBN Co Fibre Network in that geographic area; and
- (c) the estimated number of Premises within that geographic area.

#### 1H.2.2 1-year construction rollout plan

On a quarterly basis during the Initial Regulatory Period until the Rollout Built Date, NBN Co will publish a 1-year construction rollout plan that includes the following information:

- (a) a high level graphical depiction of the geographic area in which NBN Co plans to deploy the NBN Co Fibre Network in the next 12-month period;
- (b) the dates on which NBN Co expects to commence work on the NBN Co Fibre Network in that geographic area; and
- (c) the estimated number of Premises within that geographic area.

#### 1H.2.3 Monthly ready for service rollout plan

On a monthly basis during the Initial Regulatory Period until the Rollout Built Date, NBN Co will publish a ready for service rollout plan that includes the following information:

- (a) the boundaries of the geographic areas of the NBN Co Fibre Network and the NBN Co Wireless Network that have entered the design and construction phase;
- (b) the expected ready for service date for that geographic area;
- (c) the estimated number of Premises within that geographic area; and
- (d) the proposed footprint list, being the Premises that are within the relevant geographic areas that NBN Co expects will be ready for service within the next 6-month period.

#### **1H.2.4 Historical footprint list and historical rollout region list**

On a weekly basis until the Rollout Built Date, NBN Co will publish a list that sets out the Premises within geographic areas, and the details of these geographic areas, covered by the NBN Co Fibre Network and the NBN Co Wireless Network.

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### **1H.3 POI rollout progress**

#### **1H.3.1 Points of Interconnect Plan**

- (a) On:
  - (i) a quarterly basis during the Initial Regulatory Period until the completion of the Established POIs (as at the SAU Commencement Date); and
  - (ii) an annual basis after the completion of the Established POIs (as at the SAU Commencement Date),

NBN Co will publish updates to the status of the Established POIs (**Points of Interconnect Plan**).

- (b) The Points of Interconnect Plan will include:
  - (i) POI name;
  - (ii) POI ID;
  - (iii) approximate number of Premises to be served by the POI (on completion);
  - (iv) forecast date for ODF availability; and
  - (v) forecast date for commissioning of the POI.

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## 1H.4 Closure, relocation and new Points of Interconnect

### 1H.4.1 Closures and Relocations of Established POIs

- (a) NBN Co will provide Access Seekers and the ACCC with at least 12 months' prior notice of a closure or relocation of an Established POI.
- (b) This clause 1H.4.1 does not apply to the relocation or closure of an Established POI in response to an Emergency.
- (c) This clause 1H.4.1 does not apply to the relocation or closure of a Temporary POI.

### 1H.4.2 New POIs

- (a) NBN Co will provide Access Seekers with no less than 12 months' prior notice of the establishment of a new POI.
- (b) This clause 1H.4.1(c) does not apply to the opening of a new Temporary POI.

### 1H.4.3 Commitment to close Temporary POIs

- (a) NBN Co will close a Temporary POI when NBN Co reasonably considers that the Temporary POI is no longer required having regard to:
  - (i) whether an Established POI is available and serves the Premises served by the Temporary POI;
  - (ii) the number of Access Seekers that need to migrate from the Temporary POI to the Established POI; and
  - (iii) the number of Premises served by the Temporary POI.
- (b) NBN Co will provide any affected Access Seeker and the ACCC with at least 12 months' prior notice of the migration of the Access Seeker's Downstream Customers from a Temporary POI to an Established POI or another Temporary POI where the migration is required by NBN Co.

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## 1H.5 Dispute Management

### 1H.5.1 Dispute resolution process in a SFAA

- (a) NBN Co must provide in any SFAA that, if the parties cannot resolve a Dispute commercially within a specified time period, the Dispute may be resolved by:
  - (i) expert determination by a single expert applying the Expert Determination Rules of the Institute of Arbitrators &

- Mediators Australia, where the single expert will be as agreed between the parties or, if they cannot agree, selected by a Resolution Advisor; or
- (ii) if the parties do not seek to resolve the Dispute through expert determination, a Panel Arbitration.
- (b) A SFAA must include Dispute Management Rules that cover the:
- (i) selection of an expert by a Resolution Advisor;
  - (ii) selection of a Panel by a Resolution Advisor; and
  - (iii) conduct of a Panel Arbitration, including a procedure for challenging a Panel Member.
- (c) A SFAA must include acknowledgments that:
- (i) a Resolution Advisor will perform his or her function in relation to a Dispute in accordance with his or her terms of appointment, including the requirements to comply with the Dispute Management Rules and to have regard to any Approved Dispute Guideline; and
  - (ii) a Panel Member will perform his or her function in relation to a Dispute in accordance with the Approved Pool Terms and the Approved Panel Terms, including the requirements to comply with the Dispute Management Rules and to have regard to any Approved Dispute Guideline.

### 1H.5.2 Definitions

In this clause 1H.5, the terms **Dispute**, **Dispute Management Rules**, **Panel**, **Panel Arbitration**, **Panel Member** and **Resolution Advisor** each have the meaning given in Annexure 1 (Dispute Resolution) to this Schedule 1H.

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## Annexure 1 Dispute Resolution

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### Part A Appointments

#### 1 Appointment of Resolution Advisor

##### 1.1 Approval of the Resolution Advisor and terms of appointment

- (a) Within 20 Business Days after the SAU Commencement Date, or in accordance with clause 5.3, NBN Co must:
  - (i) seek views from Customers and Access Seekers on:
    - (A) candidate(s) for the role of Resolution Advisor; and
    - (B) the terms of appointment of the Resolution Advisor(s); and
  - (ii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 15 Business Days after NBN Co requested views under clause 1.1(a)(i).
- (b) NBN Co must, having regard to submissions received from Customers and Access Seekers pursuant to clause 1.1(a), as soon as reasonably practicable and in any event within 20 Business Days following the deadline for submissions under clause 1.1(a) above:
  - (i) nominate one or more Proposed Resolution Advisor(s) to the ACCC by providing the ACCC with a notice in the form prescribed in Appendix 1 (**Resolution Advisor Nomination Notice**); and
  - (ii) attach the draft terms of appointment of the Resolution Advisor(s) to the Resolution Advisor Nomination Notice.
- (c) After receiving a Resolution Advisor Nomination Notice, the ACCC must decide whether to:
  - (i) approve the appointment of the Proposed Resolution Advisor(s) named in the Resolution Advisor Nomination Notice as a Resolution Advisor, which includes approving the terms of appointment attached to the Resolution Advisor Nomination Notice; or
  - (ii) not approve the Proposed Resolution Advisor(s) named in the Resolution Advisor Nomination Notice and, at the ACCC's absolute discretion after consultation with NBN Co, Customers and Access Seekers:



- (A) identify and approve one or more persons as a Resolution Advisor (which may be one or more of the Proposed Resolution Advisor(s)); and/or
  - (B) approve the proposed terms of appointment of the Resolution Advisor subject to any variations required by the ACCC.
- (d) Without limiting the ACCC's discretion, in making the decisions described in clause 1.1(c), the factors to which the ACCC may have regard include whether:
  - (i) the Proposed Resolution Advisor(s) or person identified by the ACCC pursuant to clause 1.1(c)(ii)(A) has the qualifications and experience necessary to carry out the functions of Resolution Advisor, including whether the person:
    - (A) is a Legal Practitioner or a Dispute Resolution Practitioner; and
    - (B) has an understanding of the Australian telecommunications industry or be able to acquire such an understanding quickly;
  - (ii) the Proposed Resolution Advisor(s) or person identified by the ACCC in clause 1.1(c)(ii)(A) is sufficiently independent of each of NBN Co and its Customers and Access Seekers;
  - (iii) the terms of appointment are consistent with, and give effect to, the provisions of this Annexure 1 to Schedule 1H; and
  - (iv) the terms of appointment are otherwise acceptable to the ACCC.
- (e) As soon as reasonably practicable, and in any event within 20 Business Days (or such longer period notified by the ACCC to NBN Co) after receiving a Resolution Advisor Nomination Notice, the ACCC must notify NBN Co in writing of its decisions made pursuant to clause 1.1(c).

## **1.2 Appointment of Resolution Advisor**

- (a) NBN Co must:
  - (i) within 10 Business Days after receiving notice from the ACCC under clause 1.1(e), appoint the person(s) approved by the ACCC pursuant to clauses 1.1(c)(i) or 1.1(c)(ii)(A) as a Resolution Advisor on the terms of appointment approved by the ACCC pursuant to clauses 1.1(c)(i) or 1.1(c)(ii)(B); and
  - (ii) forward to the ACCC a copy of the executed terms of appointment within 5 Business Days of its execution.

- (b) A Resolution Advisor will be appointed for a period not exceeding 5 years.
- (c) A Resolution Advisor may be re-appointed for one or more successive terms, provided that any re-appointment is undertaken in accordance with the process set out in this Annexure 1.

### **1.3 Obligations and powers of the Resolution Advisor**

- (a) NBN Co must procure that the terms of appointment of a Resolution Advisor include obligations on the Resolution Advisor to maintain his or her independence from each of NBN Co and Customers, including by not forming or, where an Access Seeker becomes a Customer, maintaining any relationship of the types described in clause 2(c) of Appendix 1 to this Annexure 1 (with the exception of relationships described in clause 2(d) of Appendix 1 to this Annexure 1) with either NBN Co or a Customer for the period of his or her appointment as Resolution Advisor.
- (b) NBN Co must include in the terms of appointment of a Resolution Advisor an obligation on the Resolution Advisor to:
  - (i) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Resolution Advisor in accordance with his or her terms of appointment and the Approved Dispute Guidelines under this Annexure 1 to Schedule 1H;
  - (ii) comply with any relevant Dispute Management Rules;
  - (iii) comply with the terms of his or her appointment;
  - (iv) have regard to any Approved Dispute Guidelines published in accordance with clause 6; and
  - (v) immediately report any issues that arise in relation to the performance of his or her functions as Resolution Advisor or in relation to compliance with this Annexure 1 to the ACCC and NBN Co.
- (c) NBN Co must:
  - (i) comply with the terms of appointment of the Resolution Advisor, including as to payment of the Resolution Advisor;
  - (ii) take all steps reasonably necessary to enforce any material non-compliance by a Resolution Advisor with the terms of his or her appointment;
  - (iii) not interfere with, or otherwise hinder, a Resolution Advisor's ability to carry out his or her functions as a Resolution Advisor;

- (iv) not appoint a Resolution Advisor, or have any agreements, understandings or arrangements with a Resolution Advisor, to utilise that Resolution Advisor's services for anything other than compliance with this Special Access Undertaking until at least 12 months after the Resolution Advisor ceases to act in the role of the Resolution Advisor; and
- (v) publish the approved terms of appointment of a Resolution Advisor on NBN Co's Website (redacting any personal or confidential information of a Resolution Advisor or NBN Co).

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## 2 Pool

### 2.1 Selection and approval of Pool Members

- (a) NBN Co will establish and maintain a pool of persons from which members of a Panel may be selected (each a **Pool Member**, together the **Pool**).
- (b) Within 20 Business Days of the SAU Commencement Date, NBN Co must:
  - (i) seek views from Customers and Access Seekers on the candidate(s) for appointment to the Pool; and
  - (ii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 15 Business Days after NBN Co requested views under clause 2.1(b)(i); and
- (c) NBN Co must, as soon as reasonably practicable and, in any event, within 10 Business Days following the deadline for submissions, nominate one or more candidates for appointment to the Pool to the ACCC by providing the ACCC with a written notice setting out the name, expertise and experience of the candidate(s).
- (d) In selecting a person for nomination under clause 2.1(c), NBN Co will have regard to the:
  - (i) submissions in response to NBN Co's request pursuant to clause 2.1(b)(i) received from Customers and Access Seekers prior to the deadline for submissions notified to the same by NBN Co;
  - (ii) need for the Pool to comprise members who have a reasonably diverse and balanced range of professional skills and experience, whether commercial, technical, operational or legal;
  - (iii) need for the Pool to comprise a sufficient number of members to enable Panel Arbitrations to proceed in the manner contemplated in Access Agreements;

- (iv) need for the Pool to contain a reasonable proportion of Legal Practitioners or Dispute Resolution Practitioners in its membership;
  - (v) need for Pool candidates to have an understanding of the Australian telecommunications industry (or be able to acquire such an understanding quickly); and
  - (vi) experience of Pool candidates in dispute resolution procedures, with more weight given to candidates with over 10 years' experience.
- (e) The ACCC must, as soon as reasonably practicable and in any event within 20 Business Days (or such longer period notified by the ACCC to NBN Co) following receipt of a notice of nomination under clause 2.1(c), approve or reject the selection of persons nominated by NBN Co in that notice to be members of the Pool.
- (f) NBN Co must appoint to the Pool the persons approved by the ACCC under clause 2.1(e) on the Approved Pool Terms.
- (g) A Pool Member may be appointed for a period not exceeding 5 years.
- (h) A Pool Member may be re-appointed for one or more successive terms provided that any re-appointment is undertaken in accordance with the process set out in this clause 2.

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

- (a) NBN Co must:
- (i) within 20 Business Days of the SAU Commencement Date, seek views from Customers and Access Seekers on the standard terms of appointment of Pool Members;
  - (ii) otherwise from time to time seek views from Customers and Access Seekers on any variations to any Approved Pool Terms published pursuant to clause 2.2(e); and
  - (iii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 15 Business Days after NBN Co requests their respective views under clause 2.2(a)(i) or 2.2(a)(ii).
- (b) NBN Co must:
- (i) have regard to submissions received from Customers and Access Seekers prior to the deadline for submissions notified to the same by NBN Co pursuant to clause 2.2(a)(iii);
  - (ii) as soon as reasonably practicable and in any event within 20 Business Days following the deadline for submissions, prepare and submit to the ACCC draft standard terms of appointment for Pool

Members or proposed variations to any published Approved Pool Terms (each the **Proposed Pool Terms**); and

- (iii) publish the Proposed Pool Terms on NBN Co's Website, subject to redacting any personal or confidential information.
- (c) After receiving the Proposed Pool Terms, the ACCC must as soon as reasonably practicable and in any event within 20 Business Days (or such longer period notified by the ACCC to NBN Co), decide whether the ACCC approves the Proposed Pool Terms in the form submitted to it or subject to variation in the form required by the ACCC (**Approved Pool Terms**) and notify NBN Co of its decision.
- (d) The Approved Pool Terms must:
  - (i) impose an obligation on each Pool Member to comply with his or her terms of appointment to the Pool;
  - (ii) impose an obligation to comply with any relevant Dispute Management Rules; and
  - (iii) provide for NBN Co to take all steps reasonably necessary to enforce any material non-compliance by a Pool Member with the terms of his or her appointment.
- (e) NBN Co must publish the current Approved Pool Terms on NBN Co's Website (subject to redacting any personal or confidential information).

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## 3 Panel

### 3.1 Standard Panel Terms of Appointment

- (a) NBN Co must:
  - (i) within 20 Business Days of the SAU Commencement Date, seek views from Customers and Access Seekers on the standard terms of appointment for members of a Panel (**Panel Members**);
  - (ii) otherwise from time to time seek views from Customers and Access Seekers on any variations to any Approved Panel Terms published pursuant to clause 3.1(f), save that this variation procedure shall not apply to variations made pursuant to clause 3.1(e); and
  - (iii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 15 Business Days after NBN Co requests their respective views under clause 3.1(a)(i) or 3.1(a)(ii).
- (b) NBN Co must:

- (i) have regard to submissions received from Customers and Access Seekers prior to the deadline for submissions notified to the same by NBN Co pursuant to clause 3.1(a);
  - (ii) as soon as reasonably practicable and in any event within 20 Business Days following the deadline for submissions, prepare and submit to the ACCC a draft standard terms of appointment for Panel Members or proposed variations to any published Approved Panel Terms (each the **Proposed Panel Terms**); and
  - (iii) publish the Proposed Panel Terms on NBN Co's Website, subject to redacting any confidential information.
- (c) After receiving the Proposed Panel Terms, the ACCC must as soon as reasonably practicable and in any event within 20 Business Days (or such longer period notified by the ACCC to NBN Co), decide whether the ACCC approves the Proposed Panel Terms in the form submitted to it or subject to variation in the form required by the ACCC (**Approved Panel Terms**) and notify NBN Co of its decision.
- (d) The Approved Panel Terms must include a requirement that the Panel Member:
  - (i) comply with his or her terms of appointment to the Panel;
  - (ii) comply with any Dispute Management Rules; and
  - (iii) have regard to any Approved Dispute Guidelines published in accordance with clause 6,and provide for NBN Co to take all steps reasonably necessary to enforce any material non-compliance by a Panel Member with the terms of his or her appointment.
- (e) The Approved Panel Terms may provide for the Resolution Advisor prior to engagement of the Panel Members by the parties to the Dispute, or for the Panel following confirmation of its composition, to:
  - (i) insert into the Approved Panel Terms the details of the Dispute; and
  - (ii) specify in the Approved Panel Terms any special procedural steps considered by the Resolution Advisor or the Panel in its reasonable belief to aid the efficient resolution of the Dispute; and/or
  - (iii) vary the Approved Panel Terms where the parties to the Dispute and Panel Members agree to the variation.
- (f) NBN Co must publish the current Approved Panel Terms on NBN Co's Website (subject to redacting any personal or confidential information).

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## 4 Costs of retaining the Resolution Advisor and Pool Members

- (a) NBN Co must:
  - (i) pay the Resolution Advisor and/or Pool Members; and
  - (ii) not charge Customers any fees or charges,for the costs associated with the appointment and retention of the Resolution Advisor or Pool Members (if any). The costs of the Resolution Advisor and the Panel in respect of a Dispute will be shared equally amongst all of the parties to that Dispute.
- (b) NBN Co will maintain records of any payments made by NBN Co to a Resolution Advisor and/or Pool Members in connection with the appointment of the Resolution Advisor or Pool Members.

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## Part B Termination of appointments

### 5 Termination of appointment of Resolution Advisor or Pool Member

#### 5.1 Resignation of a Resolution Advisor

NBN Co must notify the ACCC and Customers in the event that a Resolution Advisor resigns or otherwise stops acting as soon as reasonably practicable and in any event within 5 Business Days after that resignation or cessation.

#### 5.2 Termination of the Resolution Advisor or Pool Member

- (a) If NBN Co reasonably believes that an event or circumstance has occurred or arisen that is likely to provide grounds for the termination of the appointment of a Resolution Advisor or Pool Member under clause 5.2(d), NBN Co must make a proposal to the ACCC to terminate the appointment of that Resolution Advisor or Pool Member.
- (b) If a Customer reasonably believes that an event or circumstance has occurred or arisen that is likely to provide grounds for the termination of the appointment of a Resolution Advisor or Pool Member under clause 5.2(d), it may make a proposal to the ACCC to terminate the appointment of that Resolution Advisor or Pool Member.
- (c) Where NBN Co or a Customer submits a proposal to the ACCC under clause 5.2(a) or 5.2(b):

- (i) the proposal must describe the event or circumstance giving rise to the belief that grounds for termination exist; and
  - (ii) subject to any applicable confidentiality obligations, NBN Co or the Customer must provide the ACCC with any further information reasonably requested by the ACCC in relation to the proposal.
- (d) Subject to clause 5.2(e), the ACCC may:
- (i) approve any proposal by NBN Co under clause 5.2(a); or
  - (ii) direct NBN Co (on its own initiative or following a proposal submitted by a Customer under clause 5.2(b)),
- to terminate the appointment of a Resolution Advisor or a Pool Member:
- (iii) if, in the ACCC's opinion, the Resolution Advisor or Pool Member has acted inconsistently with the terms of his or her appointment in a material way and it is appropriate in all the circumstances to terminate his or her appointment (which circumstances may include any failure of the Resolution Advisor or Pool Member to cure his or her non-compliance within 5 Business Days following receipt of written notice to do so from NBN Co);
  - (iv) where the ACCC becomes aware that any information relating to a Resolution Advisor provided to it in the Resolution Advisor Nomination Notice, or relating to a Pool Member in the nomination notice provided under clause 2.1(c), was, or has become, incorrect, inaccurate or misleading; or
  - (v) if, in the ACCC's opinion, the Resolution Advisor or Pool Member is, or is likely to be, unable to continue to perform his or her responsibilities as a Resolution Advisor or Pool Member:
    - (A) due to there being a real danger of bias on the part of that Resolution Advisor or Pool Member (as the case may be) that cannot be avoided by delegation of the functions of that Resolution Advisor or Pool Member in respect to a Dispute; or
    - (B) for a period of more than 10 Business Days due to ill health or other incapacity.
- (e) The ACCC must not require or permit NBN Co to terminate the appointment of a Pool Member during a period in which the Pool Member is empanelled as a Panel Member for a Dispute.
- (f) The ACCC must, as soon as reasonably practicable following receipt of a proposal made pursuant to clause 5.2(a) or 5.2(b), consider that proposal



and notify the party making the proposal whether the ACCC will exercise its discretion under clause 5.2(d).

- (g) NBN Co must comply with any direction given by the ACCC pursuant to clause 5.2(d).

### **5.3 Replacement of a Resolution Advisor**

NBN Co must :

- (a) within 3 Business Days of receiving a:
  - (i) resignation notice from a Resolution Advisor; or
  - (ii) receiving a notice from the ACCC of the ACCC's approval under clause 5.2(d)(i) or a direction pursuant to clause 5.2(d)(ii); or
- (b) at least one calendar month prior to expiry of the term of appointment of a Resolution Advisor,

commence the procedure to appoint a new Resolution Advisor set out in this Annexure 1 to Schedule 1H.

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## **Part C Other approvals**

### **6 Dispute Guidelines**

- (a) Within 20 Business Days of the first appointment of a Resolution Advisor pursuant to clause 1.2(a)(i) and otherwise from time to time, NBN Co must seek views from:

- (i) Customers;
- (ii) Access Seekers;
- (iii) Resolution Advisor(s) (where appointed); and
- (iv) Pool Members (where appointed),

in relation to the guidelines to be applied by a Panel when considering a Dispute (including, but not limited to, decisions of the Panel relating to the joinder of parties to a Dispute) and advise each of them of the deadline for submissions, which must be at least 15 Business Days after NBN Co has requested their views.

- (b) NBN Co must:
  - (i) have regard to submissions received from Customers, Access Seekers, Resolution Advisor(s) and Pool Members (where applicable)

- prior to the deadline for submissions notified to the same by NBN Co under clause 6(a);
- (ii) as soon as reasonably practicable and in any event within 20 Business Days following the deadline for submissions notified by NBN Co under clause 6(a), prepare and submit to the ACCC a draft of the proposed guidelines to be applied to the consideration of Disputes (**Proposed Dispute Guideline**); and
  - (iii) publish the Proposed Dispute Guideline on NBN Co's Website, subject to redacting any personal or confidential information.
- (c) After receiving the Proposed Dispute Guideline, the ACCC must, as soon as practicable and in any event within 20 Business Days (or such longer period notified by the ACCC to NBN Co);
- (i) decide whether the ACCC approves the Proposed Dispute Guideline in the form submitted to it or requires NBN Co to incorporate variations to that Proposed Dispute Guideline specified by the ACCC (in either case, the **Approved Dispute Guideline**); and
  - (ii) notify NBN Co of its decision.
- (d) NBN Co must publish the Approved Dispute Guideline on NBN Co's Website, subject to redacting any personal or confidential information.

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## 7 Directions to Resolution Advisor

The ACCC may give directions to a Resolution Advisor from time to time in relation to the performance of his or her functions as a Resolution Advisor in accordance with his or her terms of appointment and the Approved Dispute Guidelines under this Annexure 1 to Schedule 1H.

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## Part D Notices

### 8 Giving Notices

- (a) Any notice or communication to the ACCC made pursuant to this Annexure 1 to Schedule 1H must be sent to:
- |                |                                 |
|----------------|---------------------------------|
| Email address: | michael.cosgrave@acc.gov.au     |
| Mail address:  | GPO Box 520, MELBOURNE VIC 3000 |
| Attention:     | Michael Cosgrave                |
- (b) Any notice or communication to NBN Co made pursuant to this Annexure 1 to Schedule 1H must be sent to:

	Mail Address	Fax Number	Email Address	Attention
<b>NBN Co</b>	Level 11 100 Arthur Street, North Sydney NSW 2060	+61 2 9927 4132	[            ]	Chief Legal Counsel  and  Head of Regulatory Affairs & Industry Analysis

- (c) NBN Co and the ACCC must notify each other of any change to its contact details within 3 Business Days of the change occurring.

## 9 Definitions and Interpretation

### 9.1 Definitions

**Approved Dispute Guideline** has the meaning given to that term in clause 6(c)(i) of this Annexure 1 to Schedule 1H.

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

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

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

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

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

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

**Dispute Resolution Practitioner** means a practising mediator, expert or arbitrator with at least 10 years dispute resolution experience.

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

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

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

**Panel Arbitration** means an arbitration conducted by the Panel.

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

**Pool** means the pool of persons constituted in accordance with clause 2 of this Annexure 1 to Schedule 1H.

**Pool Member** has the meaning given to that term in clause 2.1(a) of this Annexure 1 to Schedule 1H.

**Proposed Dispute Guideline** has the meaning given to that term in clause 6(b)(ii) of this Annexure 1 to Schedule 1H.

**Proposed Resolution Advisor** means a candidate nominated by NBN Co to the ACCC in a Resolution Advisor Nomination Notice for appointment as a Resolution Advisor.

**Related Entity** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Related Party** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Resolution Advisor** means the person or persons appointed as such in accordance with clause 1.2 of this Annexure 1 to Schedule 1H.

**Resolution Advisor Nomination Notice** has the meaning in clause 1.1(b)(i) of this Annexure 1 to Schedule 1H.

## 9.2 Interpretation

Unless the context otherwise requires, in this Annexure 1 to Schedule 1H:

- (a) reference to a clause is a reference to a clause of this Annexure 1 to Schedule 1H; and
- (b) capitalised terms:
  - (i) if defined in this clause 9, have the meaning set out in clause 9; or
  - (ii) if not defined in clause 9, have the same meaning as set out in Attachment C (Dictionary) of this Special Access Undertaking.

## Appendix 1 Resolution Advisor Nomination Notice

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

### Method of Delivery to the ACCC

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

[Attention: Group General Manager, Communications Group

GPO Box 520

MELBOURNE VIC 3000]

With email copies sent to: [ ]; and

Attention: [ ]

### Information Required

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

1. Proposed Resolution Advisor Details:
  - (a) the name of the Proposed Resolution Advisor; and
  - (b) the name of the Proposed Resolution Advisor's employer (if applicable) and contact details including:
    - Address;
    - Contact name;
    - Telephone number; and
    - Other contact details.
2. A submission containing the following information:
  - (a) Details of the Proposed Resolution Advisor's qualifications and experience relevant to his or her proposed role pursuant to this Special Access Undertaking.
  - (b) The names of the owner/s and/or the directors of the Proposed Resolution Advisor's employer (if applicable).
  - (c) Details of any of the following types of relationships between NBN Co or any Customer and the Proposed Resolution Advisor or the Proposed Resolution Advisor's employer (if applicable), or confirmation that no such relationship exists whether within Australia or outside of Australia:

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

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## Schedule 1I Product Development and Withdrawal

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### 1I.1 General

#### 1I.1.1 Scope

- (a) ~~Subject to clause 1I.1.1(b),~~ This Schedule 1I applies for the Initial Regulatory Period.
- ~~(b) Annexure 1 (PDF Processes) to this Schedule 1I applies until the end of the Financial Year that is 5 years after the SAU Commencement Date.~~
- ~~(c)~~(b) Notwithstanding any provision in this Schedule 1I, NBN Co must, during the period in which they apply, comply with clauses 1D.8 to 1D.12 in relation to the identification, selection, consultation and endorsement of any Network Change.

#### 1I.1.2 Product development principles

- (a) The following general principles apply to NBN Co's development of Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service (referred to collectively in this Schedule 1I as **Products**, unless the contrary intention appears):
- (i) NBN Co is committed to developing Products that Access Seekers want, that have sufficient demand to be commercially viable and from which Access Seekers gain value;
- (ii) NBN Co's obligations:
- (A) to implement Australian Government policy communicated to it (including in the Statement of Expectations) by the Shareholder Ministers; and
- (B) under the CCA and the NBN Companies Act, determine the permitted scope of its activities and the Products that it can develop and supply, including the requirement that all Products be available on a wholesale-only, open access, non-discriminatory basis, to all Access Seekers; and
- (iii) NBN Co wishes to encourage Access Seeker and Consumer Advocacy Group participation in the design of Products, and facilitate engagement and consultation in relation to Product Ideas, to enable NBN Co to fulfil the commitment described in clause 1I.1.2(a)(i) in a manner consistent with NBN Co's scope of permitted activities as described in clause 1I.1.2(a)(ii).

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

### **11.1.3 Application of this Schedule**

- (a) This Schedule 11 sets out the process that NBN Co will apply to the introduction, variation or withdrawal of Products.
- (b) This Schedule 11 does not apply in respect of any of the following:
  - (i) the introduction of a Product that is an Initial Product;
  - (ii) the introduction of a Product that NBN Co is obliged to offer as a result of a licence condition imposed under section 41(1) of the NBN Companies Act, but only to the extent that the specification of that Product is prescribed by that licence condition;
  - (iii) a minor variation or enhancement to a Product within the terms of clause 11.4; and
  - (iv) subject to clause 11.5.4(b), the withdrawal of a Product that NBN Co is required to withdraw for the reasons referred to in clause 11.5.4.

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## **11.2 Integrated Product Roadmap**

- (a) NBN Co will publish and maintain an integrated product roadmap.
- (b) On or around 1 July each year, NBN Co will publish an updated integrated product roadmap setting out the Products then offered by NBN Co and the new Products that NBN Co expects (as at the date the updated roadmap is published) to introduce in the 3 years following the date of publication.
- (c) The integrated product roadmap will also specify any developments in relation to NBN Co's IT and operational support systems that NBN Co expects (as at the date the updated integrated product roadmap is published) to implement in the 3 years following the date of publication and that will impact upon the Products set out on the integrated product roadmap.
- (d) The integrated product roadmap will be made available on NBN Co's Website.



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## 11.3 Development

### 11.3.1 Product Development Forum

- (a) NBN Co will implement a product development process through which NBN Co will engage with Access Seekers and Consumer Advocacy Groups in respect of Product development (**Product Development Forum**).
- (b) NBN Co will make the Product Development Forum open to participation by all Access Seekers and Consumer Advocacy Groups.
- (c) NBN Co will ensure that the Product Development Forum:
  - (i) identifies and records all Product Ideas;
  - (ii) is the primary forum through which:
    - (A) Product Ideas are developed, refined and disseminated; and
    - (B) NBN Co will undertake the engagement and endorsement processes under clause 1D.9;
  - (iii) facilitates an open and consultative dialogue with Access Seekers and Consumer Advocacy Groups in respect of Product Ideas for new Products and for enhancements and variations to existing Products, whilst respecting the confidential information and Intellectual Property Rights of Access Seekers and Consumer Advocacy Groups;
  - (iv) provides for the development of Product Ideas into Products to be offered to Access Seekers;
  - (v) provides for Access Seekers and Consumer Advocacy Groups to:
    - (A) obtain information about NBN Co's integrated product roadmap, including existing Products;
    - (B) assist NBN Co to determine whether there is sufficient demand for proposed Product Ideas; and
    - (C) provide information and input to assist NBN Co to determine which Product Ideas to develop and in which order of priority; and

- (vi) provides for NBN Co to discuss, and Access Seekers and Consumer Advocacy Groups to provide feedback in relation to, the withdrawal of Products and related issues.

### **11.3.2 Processes relating to the Product Development Forum**

- (a) NBN Co will comply with the PDF Processes during the period in which they apply in accordance with clause ~~11.1.1(b)~~ 11.1.1(a).
- (b) To participate in the Product Development Forum, Access Seekers and Consumer Advocacy Groups will be required to comply with the PDF Processes during the period in which they apply in accordance with clause ~~11.1.1(b)~~ 11.1.1(a).
- (c) NBN Co may require that an Access Seeker or Consumer Advocacy Group (as the case may be) enter into an agreement regarding the treatment of the confidential information and intellectual property that may be disclosed or created in connection with each party's participation in the Product Development Forum.
- (d) For the purposes of clause 11.3.2(c), an agreement regarding the treatment of confidential information and intellectual property will be on such terms and conditions:
  - (i) as agreed between NBN Co and the relevant Access Seeker or Consumer Advocacy Group; or
  - (ii) failing agreement, as may be determined by the ACCC, including in any Regulatory Determination made by the ACCC.

### **11.3.3 Assessment of Product Ideas**

NBN Co will consider, and may weigh as it considers appropriate, such criteria as it determines appropriate in selecting which Product Ideas to develop through the Product Development Forum. Consistent with the general principles set out in clause 11.1.2, those criteria may include the following:

- (a) whether the Product Idea is within NBN Co's permitted scope of activities;
- (b) whether there is sufficient demand or potential demand for the Product Idea;
- (c) whether the Product Idea will be commercially viable;
- (d) whether the Product Idea is technically and operationally viable;
- (e) whether expenditure on the Product Idea will, or is reasonably likely to, meet the requirements specified:

- (i) in the case of Capital Expenditure, clause 1D.3.2(a); or
- (ii) in the case of Operating Expenditure, clause 1E.8.2(a);
- (f) the Intellectual Property Rights that may be required to develop the Product Idea; and
- (g) any other factor that NBN Co reasonably considers should be taken into account.

#### **11.3.4 Pricing of new Products**

Prior to introducing a new Product which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with Access Seekers and Consumer Advocacy Groups through the Product Development Forum in relation to the Price or Prices at which such new Products will be introduced by NBN Co for all Customers.

#### **11.3.5 Technical attributes for new Products**

Prior to introducing a new Product which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with Access Seekers and Consumer Advocacy Groups through the Product Development Forum in relation to the technical attributes, including the network technology, network architecture, network dimensioning and congestion management, applicable to that new Product.

#### **11.3.6 Service levels for new Products**

Prior to introducing a new Product which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with Access Seekers and Consumer Advocacy Groups through the Product Development Forum in relation to:

- (a) the service levels applicable to such a new Product (including any remedies which may apply for breach of the service levels); or
- (b) if NBN Co is unable to offer service levels (including any applicable remedies) prior to the introduction of a new Product, the estimated timetable and process of consultation in relation to the introduction of such service levels (including any applicable remedies).

#### **11.3.7 Implementation of Product Developments**

Nothing in this Schedule 11 or Annexure 1 (PDF Processes) requires NBN Co to implement a Product Idea or provide a new Product which is, or requires, a Network Change, unless:

- (a) the Network Change:

- (i) is an Endorsed Network Change in accordance with the process described in clauses 1D.8 to 1D.12; or
  - (ii) is a Network Change as otherwise determined or permitted by the ACCC, including in any Regulatory Determination made by the ACCC; and
- (b) NBN Co decides to proceed with that Network Change.
- 

## 11.4 Minor Product Changes

- (a) Notwithstanding anything to the contrary in this Schedule 11, NBN Co may carry out minor product variations or enhancements which update or improve the functionality or performance of a Product and which will have no material adverse impact on Access Seekers (in this clause 11.4, **Minor Product Variation**), including where the Minor Product Variation is related to a Permitted Variation.
  - (b) For Minor Product Variations, NBN Co will use the Product Development Forum to notify Access Seekers and Consumer Advocacy Groups of the proposed change and implementation timeframe, including through the integrated product roadmap.
  - (c) NBN Co will ensure that the withdrawal of the supply of a Product is not treated as a Minor Product Variation.
- 

## 11.5 Withdrawal

### 11.5.1 Non-circumvention

- (a) NBN Co will not vary any Product in a manner that changes the functionality, performance or features of that Product to such an extent that results in the Product no longer being reasonably capable of delivering at least the same functionality, performance or features previously associated with the Product.
- (b) Subject to clause 11.4, if NBN Co wishes to vary a Product in a manner described in clause 11.5.1(a), NBN Co will seek to withdraw the Product under this clause 11.5 and to introduce a new Product in accordance with this Schedule 11.

### 11.5.2 Notice period for Withdrawals

- (a) Subject to clause 11.5.3, NBN Co may withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service and will provide the ACCC, Access Seekers and Consumer Advocacy Groups with no less than:

- (i) 24 months' written notice of its intention to withdraw a Product, Product Component, Ancillary Service or type of Facilities Access Service, other than the ISS in respect of which NBN Co will provide no less than 6 months' written notice;
  - (ii) subject to clause 11.5.2(a)(iii), 12 months' written notice of its intention to withdraw a Product Feature; and
  - (iii) 24 months' written notice of its intention to withdraw a Product Feature where withdrawal will have a material adverse effect on the functionality or performance of a Product or Product Component with which the Product Feature is associated.
- (b) NBN Co will have regard to the following factors when considering whether to withdraw a Product:
- (i) existing demand for the Product;
  - (ii) the avoidable cost to NBN Co of maintaining and continuing to supply the existing Product;
  - (iii) the functionality offered by an alternative Product compared to the relevant Product to be withdrawn;
  - (iv) the technical feasibility of an alternative Product;
  - (v) the commercial viability of an alternative Product; and
  - (vi) the Price of an alternative Product.
- (c) In the written notice provided pursuant to clause 11.5.2(a), NBN Co will also provide the ACCC, Access Seekers and Consumer Advocacy Groups with notice of:
- (i) the transitional arrangements that NBN Co may put in place (if any) to migrate Access Seekers from the relevant Product to an alternative Product, including:
    - (A) the proposed alternative Product;
    - (B) the proposed timeframe for migration to that alternative Product;
    - (C) the proposed testing arrangements for the alternative Product; and
    - (D) the details of any proposed trials or transition processes for the alternative Product, or

if NBN Co will not offer an alternative Product, NBN Co's reasons for not doing so; and

- (ii) NBN Co's assessment of the factors set out in clause 11.5.2(b).
- (d) NBN Co will discuss and consider in good faith any feedback received from the ACCC, Access Seekers and Consumer Advocacy Groups in relation to the impending withdrawal of a Product and related issues, such as those set out in clause 11.5.2(c)(i).

### **11.5.3 ACCC objection power**

- (a) If NBN Co seeks to withdraw a Product in accordance with clause 11.5.2(a), the ACCC may object to the withdrawal of that Product.
- (b) If the ACCC objects to the withdrawal of a Product, the ACCC must give NBN Co a written notice stating its objection and providing reasons for its objection and publish any notice (and reasons) issued under this clause 11.5.3(b) on the ACCC's website.
- (c) In making a decision to issue a notice under clause 11.5.3(b), the ACCC:
  - (i) will have regard to the long-term interests of end-users in accordance with section 152AB of the CCA;
  - (ii) will have regard to the factors listed in clause 11.5.2(b); and
  - (iii) may consult with NBN Co and such other persons as the ACCC considers appropriate.
- (d) Any notice issued by the ACCC under clause 11.5.3(b) must be issued within the period of 60 Business Days from the date on which NBN Co notified the ACCC of its intention to withdraw a Product in accordance with clause 11.5.2(a).
- (e) The ACCC may extend the period referred to in clause 11.5.3(d) by a period of not more than 40 Business Days by giving written notice to NBN Co and publishing that notice on the ACCC's website.
- (f) If the ACCC issues a notice under clause 11.5.3(b), NBN Co must:
  - (i) inform Access Seekers and Consumer Advocacy Groups in writing that the Product will not be withdrawn; and
  - (ii) not withdraw the Product the subject of the notice for the period specified by the ACCC in that notice which must not be more than 5 years (but may be less than 5 years, as specified by the ACCC).

- (g) If the ACCC gives a notice pursuant to clause 11.5.3(b), NBN Co may give a further notice pursuant to clause 11.5.2(a) in respect of the Product the subject of the ACCC's notice, provided that the withdrawal of that Product will not occur before the end of the period specified by the ACCC in its notice and, where NBN Co gives a further notice, the provisions of this clause 11.5.3 will apply in respect of that further notice.

#### **11.5.4 Product withdrawal required by law or directed by Shareholder Ministers**

- (a) Subject to clause 11.5.4(b), this clause 11.5 does not apply to the withdrawal of a Product that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.
- (b) In the event of a withdrawal of a Product on the grounds referred to in clause 11.5.4(a), NBN Co will, to the extent permitted by law and consistent with any temporal requirements for the withdrawal imposed on NBN Co by law or by the Shareholder Minister (as the case may be):
  - (i) provide Access Seekers, Consumer Advocacy Groups and the ACCC with written notice of the withdrawal within 20 Business Days of NBN Co being made aware of the requirement to withdraw the Product; and
  - (ii) consult with, and consider any feedback received from, Access Seekers, Consumer Advocacy Groups and the ACCC in relation to the impending withdrawal and related issues, such as those set out in clause 11.5.2(c)(i).

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## Annexure 1 PDF Processes

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### Background

- A NBN Co has established a Product Development Forum, through which NBN Co will:
- i. seek feedback from Access Seekers and Consumer Advocacy Groups on Product Ideas as required by Schedule 11 (Product Development and Withdrawal); and
  - ii. engage with Access Seekers and Consumer Advocacy Groups on future investments in network changes which are required to implement Product Ideas as required by the process specified in clauses 1D.8 to 1D.12 of this Special Access Undertaking.
- B These PDF Processes set out the basis on which NBN Co will engage with Access Seekers and Consumer Advocacy Groups through the Product Development Forum.

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### 1 Objectives of the PDF

- (a) NBN Co is committed to implementing Product Ideas that Access Seekers want, that have sufficient demand to be commercially viable, and from which Access Seekers gain value.
- (b) The Product Development Forum is designed to promote innovation in NBN Co's development of Product Ideas.

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### 2 Membership of the PDF

- (a) Each Access Seeker and Consumer Advocacy Group that wishes to participate in the Product Development Forum must register an authorised representative through NBN Co's Website who will liaise with NBN Co in relation to the Product Development Forum (the **PDF Representative**). NBN Co will send all correspondence regarding the Product Development Forum to that PDF Representative.
- (b) Each Access Seeker and Consumer Advocacy Group acknowledges that, as a condition of that entity's participation in the Product Development Forum, NBN Co requires agreement to the terms and conditions which are set out in these PDF Processes.
- (c) Each Access Seeker and Consumer Advocacy Group must ensure that NBN Co's Website contains up-to-date details of the name, mail address, email address and fax number for its PDF Representative.



- (d) Each Access Seeker and Consumer Advocacy Group must update the details of its PDF Representative on NBN Co's Website to ensure such details remain up-to-date.
- (e) NBN Co may implement security procedures for participation in the Product Development Forum from time to time (such as authentication of identity), details of which will be available to Access Seekers and Consumer Advocacy Groups on NBN Co's Website. Access Seekers and Consumer Advocacy Groups must comply with all such procedures.
- (f) In addition to any other right or remedy available to NBN Co, if an Access Seeker or Consumer Advocacy Group fails to comply with these PDF Processes in relation to the development of a particular Product Idea, NBN Co may, acting reasonably, suspend that entity's involvement in the Product Development Forum in relation to that Product Idea on a temporary or permanent basis.

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### 3 Specific information requests for development of ideas

- (a) Access Seekers and Consumer Advocacy Groups may request specific information regarding NBN Co Networks for the purpose of developing Product Ideas.
- (b) If information is requested by an Access Seeker or Consumer Advocacy Group under clause 3(a), NBN Co must consider that request in good faith.

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### 4 Submitting an idea to the PDF

#### 4.1 Idea submission

- (a) If an Access Seeker or Consumer Advocacy Group wants NBN Co to consider a Product Idea, that Access Seeker or Consumer Advocacy Group, as the case may be (**Submitting Party**), may submit details of the Product Idea using the features provided on NBN Co's Website for that purpose.
- (b) The Submitting Party may include the following details in relation to a Product Idea:
  - (i) a detailed description of the concept of the Product Idea;
  - (ii) a service and functionality description for the Product Idea;
  - (iii) the proposed commercial use for the Product Idea;
  - (iv) the proposed service levels (including any remedies which may apply for breach of the service levels) that are proposed to apply to the Product Idea;

- (v) any assessment of the technical feasibility of the Product Idea undertaken by, or available to, the Submitting Party;
  - (vi) any forecast data, demand analysis or modelling it has regarding the potential demand for the Product Idea (including the reliability of that data);
  - (vii) any Intellectual Property Rights which NBN Co may have to license, or acquire licences for, to develop and implement the Product Idea;
  - (viii) any information which is confidential; and
  - (ix) such other information as may be requested by NBN Co on NBN Co's Website from time to time.
- (c) To the extent possible, a Submitting Party should submit a Product Idea as a generic, Layer 2, wholesale only concept.

#### **4.2 Idea prioritisation**

- (a) NBN Co may at any time suspend or change the priority of the assessment and development of Product Ideas based on factors including:
- (i) the amount and detail of information available to NBN Co;
  - (ii) NBN Co's confidence regarding the commercial, technical or regulatory viability of the Product Idea;
  - (iii) the utility of the proposed Product Idea (by reference to the long-term interest of end-users or directions from its shareholders);
  - (iv) the demand for specific Product Ideas from Access Seekers;
  - (v) the demonstrated need for the Product Idea;
  - (vi) the level of engagement of the Submitting Party in the assessment and development of the Product Idea; and
  - (vii) government policy.
- (b) Prioritisation under clause 4.2(a) will affect both the schedule for assessment and development of a Product Idea and the resources committed by NBN Co to the development of that Product Idea.

#### **4.3 Publication of ideas**

- (a) As soon as possible after receiving a Product Idea from an Access Seeker or Consumer Advocacy Group, and such additional information listed in clause 4.1(b) as is available, NBN Co will inform all Access Seekers and Consumer Advocacy Groups that have registered to participate in the Product Development Forum of the Product Idea and any associated information

NBN Co has received, subject to the confidentiality and intellectual property requirements of the Submitting Party.

- (b) NBN Co will inform all Access Seekers and Consumer Advocacy Groups that have registered to participate in the Product Development Forum of any Product Idea that NBN Co proposes (**NBN Co Product Idea**) and information about that Product Idea including, but not limited to, information of the kind listed in clause 4.1(b).
- (c) NBN Co will maintain a register of Product Ideas (**Product Ideas Register**) submitted and under consideration and NBN Co Product Ideas on an area of NBN Co's Website which will only be made available to NBN Co and Access Seekers and Consumer Advocacy Groups that have registered to participate in the Product Development Forum.
- (d) NBN Co will:
  - (i) update the Product Ideas Register as soon as possible after:
    - (A) receiving a Product Idea pursuant to clause 4.1(a); and
    - (B) proposing a Product Idea pursuant to clause 4.3(b); and
  - (ii) make the following information available on the Product Ideas Register in respect of each Product Idea on that register:
    - (A) information of the type set out in clause 4.1(b), subject to applicable confidentiality and intellectual property requirements;
    - (B) the date that the Product Idea was received by NBN Co or was proposed by NBN Co;
    - (C) the date that the Product Idea was included on the register;
    - (D) the status of NBN Co's decision regarding whether to develop the Product Idea; and
    - (E) the status of the development of that Product Idea.
- (e) NBN Co will, from time to time, update the Product Ideas Register in respect of the information referred to in clauses 4.3(d)(ii)(D) and 4.3(d)(ii)(E) (including whether the Product Idea has been rejected).
- (f) NBN Co will:
  - (i) as soon as possible after receiving a Product Idea and such additional information listed in clause 4.1(b) as is available, provide the Submitting Party with an estimate for when NBN Co expects to conduct an initial review of the Product Idea; and

- (ii) update the Submitting Party if there are material changes to the estimate provided under clause 4.3(f)(i).
- (g) NBN Co will, when it informs Access Seekers and Consumer Advocacy Groups of a Product Idea under clause 4.3(a) or 4.3(b), invite submissions from Access Seekers and Consumer Advocacy Groups in respect of the Product Idea. NBN Co will consider any submissions received from Access Seekers and Consumer Advocacy Groups in assessing the Product Idea in accordance with clause 5.

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## 5 NBN Co's assessment of a Product Idea

### 5.1 Criteria for assessment

NBN Co will assess Product Ideas in accordance with Schedule 11 (Product Development and Withdrawal).

### 5.2 Assessment based on information provided

- (a) Upon receiving a Product Idea from an Access Seeker or Consumer Advocacy Group, NBN Co may seek and consider further information from the Submitting Party in assessing the Product Idea.
- (b) If NBN Co does not seek further information about a Product Idea under clause 5.2(a), NBN Co may rely solely upon the information provided by the Submitting Party to assess the Product Idea under this clause 5.

### 5.3 Initial assessment

- (a) In initially assessing a Product Idea using the criteria in Schedule 11 (Product Development and Withdrawal), NBN Co will take into consideration that the Product Idea is at an initial stage of development and is likely to be refined and amended through the Product Development Forum.
- (b) NBN Co will, in particular, make allowances in its initial assessment of a Product Idea for:
  - (i) information asymmetry between NBN Co and the Submitting Party; and
  - (ii) information available specifically to the Submitting Party regarding ascertainable demand for the Product Idea.

### 5.4 Output from NBN Co's initial assessment

- (a) Following its initial assessment of a Product Idea, if in its absolute discretion NBN Co decides to develop the Product Idea, it will, in addition to any other requirements under clauses 1D.8 to 1D.12 of this Special Access Undertaking, publish a summary of the Product Idea, including proposed

features, functionality, product specification, technical specification, price related terms and service levels (including any remedies which may apply for breach of the service levels) as refined by NBN Co (a **Product Construct Paper**).

- (b) To the extent practical, NBN Co will also include in the Product Construct Paper:
  - (i) pre-conditions for an Access Seeker using the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service proposed in the Product Idea (if any);
  - (ii) a summary of the criteria that NBN Co used to decide to develop the Product Idea;
  - (iii) without limiting clause 4.2, NBN Co's intentions, at the time of issuing the Product Construct Paper, as to the priority to be given to developing the Product Idea;
  - (iv) resources that may be required to use the Product, Product Component or Product Feature proposed in the Product Idea; and
  - (v) NBN Co's reasons for refining the Product Idea as reflected in the Product Construct Paper.
- (c) When NBN Co publishes a Product Construct Paper and documents under clause 5.4(a) and no exception from the Product Development Forum applies under the terms of Schedule 11 (Product Development and Withdrawal), NBN Co will also provide Access Seekers and Consumer Advocacy Groups with supplementary information regarding the Access Seeker and Consumer Advocacy Group Consultation processes that will be used to develop the Product Idea, as described in clauses 6 and 7 (together, the **Idea Development Plan**).
- (d) For the avoidance of doubt, the requirements in this clause 5.4 apply to an NBN Co Product Idea notified by NBN Co in accordance with clause 4.3(b).

## 5.5 Ongoing assessment

At any time between initial assessment of a Product Idea under clause 5.3 and NBN Co's offer of the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service proposed in the Product Idea to Access Seekers, NBN Co may in its absolute discretion decide to stop developing the Product Idea.

## 5.6 Rejection of Product Ideas

Following assessment of a Product Idea either under clauses 5.3 or 5.5, if NBN Co decides in its absolute discretion not to develop the Product Idea, it will publish a

notice to that effect to the Product Development Forum (a **Rejection Notice**) giving specific reasons for NBN Co deciding not to develop the Product Idea.

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## 6 Workshops

### 6.1 Form and structure of Workshops

- (a) As part of an Idea Development Plan for a Product Idea, NBN Co may, after considering the subject matter and nature of a Product Idea, arrange workshops which will be held with Access Seekers and Consumer Advocacy Groups to develop the Product Idea (**Workshops**). If NBN Co does not convene Workshops, it will seek the input of Access Seekers and Consumer Advocacy Groups through alternative means suited to the particular Product Idea (for example, by seeking written submissions).
- (b) Workshops convened under clause 6.1(a) will vary depending on requirements specific to the Product Idea but, as permitted by law, may include:
  - (i) commercial workshops;
  - (ii) technical and engineering workshops;
  - (iii) operational and support workshops; and
  - (iv) workshops regarding service levels (including any remedies which may apply for breach of the service levels).
- (c) As part of the Idea Development Plan for a Product Idea, NBN Co will set out the operational structure of the Workshops, which may vary depending on the Product Idea being developed but may include:
  - (i) online collaboration (for example using wikis or shared documents);
  - (ii) mailing list discussions;
  - (iii) teleconferences;
  - (iv) video conferences; and
  - (v) face-to-face meetings.
- (d) All Workshop discussions and contributions are without prejudice.

### 6.2 NBN Co will facilitate Workshops

- (a) If Workshops are convened under these PDF Processes, NBN Co will organise and chair (or moderate, if applicable) those Workshops. NBN Co will organise Workshops to conform to the Idea Development Plan to the extent practical and desirable (for example, by setting schedules for Workshop discussions

which ensure the Product Idea can be finalised within the time estimated in the Idea Development Plan). NBN Co will ensure that participants have reasonable prior notice of each Workshop.

- (b) NBN Co will co-ordinate communications between Workshops and may, if necessary or desirable, convene meetings or merge discussions of representatives from multiple Workshops for efficiency or to reconcile differences in Product Idea development.
- (c) As a Product Idea is developed through Workshops, NBN Co will from time to time issue updated:
  - (i) Product Construct Papers and associated documents to reflect refinements and changes proposed in the Workshops; and
  - (ii) Idea Development Plans to add, consolidate, change or remove Workshops, change the operational structure of existing Workshops or change the schedule and resources dedicated to the Product Idea.

### 6.3 Participation in Workshops

- (a) Subject to compliance with these PDF Processes including clause 2, Access Seekers and Consumer Advocacy Groups may participate in each Workshop. If an Access Seeker or Consumer Advocacy Group declines or fails to participate in a Workshop at any time, the Access Seeker or Consumer Advocacy Group may not subsequently amend or query the results or contributions achieved by that Workshop during the period in which the Access Seeker or Consumer Advocacy Group did not participate in the Workshop.
- (b) If an Access Seeker or Consumer Advocacy Group representative to a Workshop does not have sufficient authority, knowledge, experience or expertise to participate fully in a Workshop, NBN Co may raise the issue with that entity's PDF Representative or other appropriate relationship manager.

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## 7 Formal Submissions

### 7.1 NBN Co may invite Formal Submissions

- (a) From time to time after a Product Construct Paper and any associated papers have been released, NBN Co may request formal submissions from Access Seekers and Consumer Advocacy Groups in relation to a Product Idea described in those documents (each a **Formal Submission**).
- (b) NBN Co may notify Access Seekers and Consumer Advocacy Groups that Formal Submissions are required by a particular deadline, which NBN Co will ensure is reasonable in all the circumstances.

- (c) NBN Co may extend a deadline notified under clause 7.1(b). If NBN Co extends a deadline, it will extend the deadline for all Access Seekers and Consumer Advocacy Groups and notify all Access Seekers and Consumer Advocacy Groups of the extension to the deadline.
- (d) To the extent practicable, NBN Co will provide each Access Seeker and Consumer Advocacy Group an equivalent period of time to file a Formal Submission if the Access Seeker or Consumer Advocacy Group wishes to do so.

## **7.2 Publication of Formal Submissions**

Subject to any written notice that a Formal Submission or a part of a Formal Submission is confidential, NBN Co will publish each Formal Submission on NBN Co's Website, and each Formal Submission will be publicly available.

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# **8 Finalisation of Product, Product Component or Product Feature**

- (a) NBN Co will inform Access Seekers and Consumer Advocacy Groups when it determines that the Workshops, Formal Submissions and other contributions provided by Access Seekers and Consumer Advocacy Groups have provided sufficient input to allow NBN Co to finalise a Product Construct Paper such that it is satisfactory to NBN Co.
- (b) NBN Co will consider and have regard to views expressed in any Workshops, Formal Submissions and other contributions provided by Access Seekers when finalising a Product Construct Paper.
- (c) Following a notification under clause 8(a), NBN Co may further amend the Product Construct Paper to reflect:
  - (i) refinements to the Product Idea by the Product Development Forum generally, the Workshops, and by NBN Co; and
  - (ii) prudency considerations arising under clauses 1D.8 to 1D.12 of the Special Access Undertaking in relation to expenditure which may be incurred in connection with the implementation and supply of the Product Idea.
- (d) NBN Co will publish a final Product Construct Paper for the information of Access Seekers and Consumer Advocacy Groups.



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## 9 Communications

### 9.1 NBN Co communication

- (a) Any communication from NBN Co to a single Access Seeker or Consumer Advocacy Group in relation to the PDF may be given by:
  - (i) e-mail to that entity's PDF Representative;
  - (ii) letter to that entity's PDF Representative; or
  - (iii) any one-to-one messaging application made available on NBN Co's Website.
- (b) Any communication from NBN Co to more than one Access Seeker or Consumer Advocacy Group may be given by:
  - (i) e-mail to each relevant entity's PDF Representative;
  - (ii) letter to each relevant entity's PDF Representative;
  - (iii) notice on NBN Co's Website; or
  - (iv) other communication technology which NBN Co may notify to Access Seekers and Consumer Advocacy Groups from time to time.
- (c) If a communication relates to a particular Workshop topic or discussion, it may be given to the nominated Workshop representative of the Access Seekers and Consumer Advocacy Groups who participated in that Workshop instead of its PDF Representative. If a Access Seeker or Consumer Advocacy Group does not nominate a Workshop representative in relation to a specific Workshop, NBN Co is not required to send notifications regarding that Workshop to that entity.
- (d) If NBN Co proposes to consult Access Seekers and Consumer Advocacy Groups on matters relating to the Product Development Forum generally, it may provide notice of such consultation in accordance with clause 9.1(b) and such consultation may take place in any way in which a Workshop may take place under clauses 6.1(c) and 6.1(d).

### 9.2 Communications to NBN Co

Any communication from an Access Seeker or Consumer Advocacy Group to NBN Co in relation to the Product Development Forum may be given:

- (a) if a contact form or other communication mechanism exists on NBN Co's Website for the particular topic of the communication, by submitting that form or using that other communication mechanism;

- (b) otherwise, if related to a particular Workshop topic or discussion, by e-mail to the NBN Co facilitator for that Workshop; and
- (c) otherwise by e-mail to the NBN Co PDF Representative.

### 9.3 Availability for regular updates

If no Workshops are scheduled in a given 6-month period, NBN Co will make available updates in relation to its product development activities in that time and make its representatives available to discuss such updates with Access Seekers and Consumer Advocacy Groups.

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## 10 Definitions and Interpretation

### 10.1 Definitions

**Access Seeker and Consumer Advocacy Group Consultation** means the processes set out in clause 6 and (where applicable) clause 7.

**Formal Submission** has the meaning given to that term in clause 7.1(a).

**Idea Development Plan** has the meaning given to that term in clause 5.4(c).

**NBN Co Product Idea** has the meaning given to that term in clause 4.3(b).

**PDF Representative** has the meaning given to that term in clause 2(a).

**Product Ideas Register** has the meaning given to that term in clause 4.3(c).

**Product Construct Paper** has the meaning given to that term in clause 5.4(a).

**Rejection Notice** has the meaning given to that term in clause 5.6.

**Submitting Party** has the meaning given to that term in clause 4.1(a).

**Workshop** has the meaning given to that term in clause 6.1(a).

### 10.2 Interpretation

Unless the context otherwise requires, in these PDF Processes:

- (a) a reference to a clause is a reference to a clause of these PDF Processes; and
- (b) capitalised terms:
  - (i) if defined in clause 10.1, have the meaning set out in clause 10.1; or
  - (ii) if not defined in clause 10.1, have the same meaning as set out in Attachment C (Dictionary) of this Special Access Undertaking.

# Module 2

## Subsequent Regulatory Period



**NBNCo**  
Bringing broadband to life



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## Schedule 2A Implementation

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### 2A.1 Implementation of NBN Access Service, Ancillary Services and the Facilities Access Service

#### 2A.1.1 Scope

This Schedule 2A applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or ACCC Replacement Module Determination is in effect.

#### 2A.1.2 Supply of Product Components and Product Features

Subject to clause 2A.2, NBN Co will implement its obligations under this Special Access Undertaking in connection with the NBN Access Service by the supply of the Product Components and Product Features on each NBN Co Network.

#### 2A.1.3 Supply of Ancillary Services

Subject to clause 2A.2, NBN Co will implement its obligations under this Special Access Undertaking in connection with the Ancillary Services by the supply of the Ancillary Services.

#### 2A.1.4 Supply of the Facilities Access Service

Subject to clause 2A.2, NBN Co will implement its obligations under this Special Access Undertaking in connection with the Facilities Access Service by the supply of the Facilities Access Service.

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### 2A.2 Service declared by the ACCC

- (a) NBN Co acknowledges that this Special Access Undertaking does not affect the ACCC's ability to declare a service under section 152AL(8A) of the CCA (in this clause 2A.2, **ACCC-Declared Service**), even if the service falls, to any extent, within the scope of the services that are declared services under section 152AL(8E) of the CCA as a consequence of the operation of this Special Access Undertaking.
- (b) For the avoidance of doubt, this Special Access Undertaking does not affect NBN Co's obligations under section 152AXB of the CCA in respect of any ACCC-Declared Service, including the obligation to supply that ACCC-Declared Service in accordance with the CCA.

## **2A.3 NBN Co may make supply of AVC conditional on acquisition of other Product Components**

NBN Co may require that the supply of an AVC to an Access Seeker be on the condition that the Access Seeker also acquire:

- (a) a UNI, CVC and NNI; or
- (b) an AVC of a different traffic class,

in conjunction with the first-mentioned AVC, if, for technical reasons, the first-mentioned AVC could not otherwise be supplied to the Access Seeker.

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## Schedule 2B Pricing Commitments

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### 2B.1 General

#### 2B.1.1 Scope

This Schedule 2B applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or ACCC Replacement Module Determination is in effect.

#### 2B.1.2 Supply of NBN Offers

- (a) NBN Co will:
  - (i) supply each of the NBN Offers it supplies at the end of the Initial Regulatory Period, from the commencement of the Subsequent Regulatory Period; and
  - (ii) supply each of the following NBN Offers, from the date that NBN Co first supplies the NBN Offer:
    - (A) NBN Offers introduced by NBN Co in the Subsequent Regulatory Period that are set out in clause 1C.2;
    - (B) NBN Offers introduced by NBN Co in accordance with Schedule 2D (Product Development and Withdrawal); and
    - (C) NBN Offers introduced by NBN Co in the Subsequent Regulatory Period that are Initial Products or Licence Condition Products,

and to only withdraw the NBN Offer in accordance with Schedule 2D (Product Development and Withdrawal).

- (b) Clause 2B.1.2(a) does not apply to the withdrawal of an NBN Offer that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.

#### 2B.1.3 Other Charges

- (a) Other Charges may only be applied to the supply of NBN Offers in accordance with this Schedule 2B.
- (b) NBN Co may withdraw any Other Charge that applies to an NBN Offer.

#### **2B.1.4 Prices to be determined**

NBN Co will determine the Prices for NBN Offers and Other Charges that NBN Co supplies or applies during the Subsequent Regulatory Period, subject to this Schedule 2B and Schedule 2C (Long Term Revenue Constraint Methodology and Regulatory Asset Base).

#### **2B.1.5 Overview**

This Schedule 2B sets out the key principles in relation to:

- (a) how the Maximum Regulated Price of each NBN Offer and Other Charge is to be determined; and
- (b) the treatment of Zero-Priced NBN Offers and Zero-Priced Other Charges,

during the Subsequent Regulatory Period.

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## **2B.2 Maximum Regulated Prices for NBN Offers and Other Charges**

### **2B.2.1 General**

- (a) The Price for the supply of an NBN Offer at any point in time during a Financial Year must not be higher than the Maximum Regulated Price applicable to that NBN Offer at that point in time.
- (b) The Price of an Other Charge at any point in time during a Financial Year must not be higher than the Maximum Regulated Price applicable to that Other Charge at that point in time.

### **2B.2.2 Maximum Regulated Prices for NBN Offers and Other Charges**

Subject to the provisions of the relevant Replacement Module or the relevant ACCC Replacement Module Determination addressing the matters referred to in clause 4.6(g)(i), at any point in time during a Financial Year (in this clause 2B.2.2, **Relevant Financial Year**), the Maximum Regulated Price of an NBN Offer or Other Charge is:

- (a) if a Price Review Arrangement applies to the NBN Offer or Other Charge in the Relevant Financial Year, determined in accordance with that Price Review Arrangement; or
- (b) if:
  - (i) paragraph (a) does not apply;

- (ii) the NBN Offer or Other Charge ceased to be Zero-Priced in the Relevant Financial Year in accordance with clause 2B.3 or ceased to be Zero-Priced in any prior Financial Year in accordance with clause 1C.5.4 or 2B.3;
- (iii) the ACCC has made a Resetting Regulatory Determination within the Relevant Financial Year in respect of the NBN Offer or Other Charge; and
- (iv) that Resetting Regulatory Determination is the most recent Resetting Regulatory Determination in respect of the NBN Offer or Other Charge as at that point in time,

the maximum price specified in the Resetting Regulatory Determination (which may be a maximum price of \$0.00); or

- (c) if:
  - (i) neither paragraphs (a) nor (b) apply; and
  - (ii) the NBN Offer or Other Charge ceased to be Zero-Priced in the Relevant Financial Year in accordance with clause 2B.3,

the Price for that NBN Offer or Other Charge specified by NBN Co in the notice provided under clause 2B.3(b)(i); or

- (d) if:
  - (i) none of the above paragraphs (a), (b) or (c) apply;
  - (ii) the NBN Offer or Other Charge is a new NBN Offer or a new Other Charge introduced in the Relevant Financial Year or a prior Financial Year;
  - (iii) the ACCC has made a Resetting Regulatory Determination within the Relevant Financial Year in respect of the NBN Offer or Other Charge for the purposes of which the ACCC has taken into account (except where the Resetting Regulatory Determination is a Binding Rule of Conduct and the ACCC considers, having regard to the urgent need to make the Binding Rule of Conduct, that it is not practicable to do so):
    - (A) the characteristics of other NBN Offers and activities associated with other Other Charges;
    - (B) the costs associated with other NBN Offers and Other Charges;



- (C) the impact of the Resetting Regulatory Determination on the Revenue associated with other NBN Offers and Other Charges; and
- (D) the impact of the Resetting Regulatory Determination on the demand for other NBN Offers and activities associated with Other Charges; and
- (iv) that Resetting Regulatory Determination is the most recent Resetting Regulatory Determination in respect of the NBN Offer or Other Charge that meets the conditions in clause 2B.2.2(d)(iii) as at that point in time,
  - the maximum price specified in that Resetting Regulatory Determination (which may be a maximum price of \$0.00); or
- (e) if:
  - (i) none of paragraphs (a), (b), (c) or (d) apply; and
  - (ii) the NBN Offer or Other Charge is a new NBN Offer or a new Other Charge introduced in the Relevant Financial Year,
    - the initial Price for that NBN Offer or Other Charge introduced by NBN Co; or
- (f) if none of the above paragraphs apply, the greater of:
  - (i) the sum of its Previous Year's Price and its Individual Price Increase Limit for the Relevant Financial Year; and
  - (ii) the Price on the last day of the immediately preceding Financial Year.

### 2B.2.3 Individual Price Increase Limit for NBN Offers and Other Charges

- (a) The Individual Price Increase Limit of an NBN Offer or Other Charge for Financial Year ( $t$ ) is the greater of:
  - (i) \$0; and
  - (ii)  $Price_{t-1} * [(1 + CPI_{t-1}^{March}) * (1 - 1.5\%) - 1]$ ,

where:

- (iii)  $Price_{t-1}$  is the average Price of the NBN Offer or Other Charge over the immediately preceding Financial Year, calculated as the arithmetic average Price at which the NBN Offer was supplied on the last day of each month of that Financial Year or the arithmetic average of the Price of the

Other Charge imposed on the last day of each month of that Financial Year (whichever is relevant) (in this clause 2B.2, **Previous Year's Price**), disregarding any months occurring prior to the introduction of the NBN Offer or Other Charge. If the ACCC made one or more Resetting Regulatory Determinations as referred to in clause 2B.2.2(b)(iii) or 2B.2.2(d)(iii) in the immediately preceding Financial Year and the last such Resetting Regulatory Determination took effect part way through that Financial Year, the Prices for the NBN Offer or Other Charge on the last day of each month prior to the last such Resetting Regulatory Determination taking effect are to be excluded from the determination of  $Price_{t-1}$ .

- (iv)  $CPI_{t-1}^{March}$  is the March Quarter CPI published in the Financial Year immediately preceding the Financial Year to which the Individual Price Increase Limit relates.
- (b) The Individual Price Increase Limit is rounded to the nearest whole cent.
- (c) For clarity, the Individual Price Increase Limit will always be a positive or zero value.

#### **2B.2.4 Discounts, Hourly Labour Rates and Maximum Regulated Prices for NBN Offers and Other Charges**

- (a) For the avoidance of doubt, for the purpose of determining NBN Co's compliance with the Maximum Regulated Price applicable to an NBN Offer or Other Charge, the removal, reduction or cessation of any Discount applicable to that NBN Offer or Other Charge in accordance with its terms specified at the time of initial introduction of the Discount will not constitute a breach of the Maximum Regulated Price applicable to that NBN Offer or Other Charge.
- (b) The following applies to any Other Charge that is provided on a "hourly labour rate" or "hourly labour rate plus cost of materials basis":
  - (i) an hourly labour rate may only be changed by indexing it to the ABS Labour Price Index for Private Sector Construction or by periodically resetting it with reference to the relevant rates charged to NBN Co by its contractors; and
  - (ii) materials will be charged at cost.

### 2B.2.5 Non-circumvention

For the purpose of ensuring that the Maximum Regulated Price is not subject to circumvention through the arbitrary reduction, removal or cessation of a Discount that may apply to the Price of an NBN Offer or Other Charge, any reduction, removal or cessation of a Discount applicable to an NBN Offer or Other Charge may only occur in accordance with the terms for the reduction, removal or cessation of that Discount specified at the time of initial introduction.

### 2B.2.6 Treatment of Bundles

If:

- (a) an NBN Offer comprises a bundle of one or more Products, Product Components, Product Features, Ancillary Services or types of Facilities Access Service (in this clause 2B.2.6, together a **Bundle**); and
- (b) NBN Co offers that Bundle for a single Price,

then that Bundle will be subject to the Maximum Regulated Price as though it were an individual item.

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## 2B.3 Treatment of Zero-Priced NBN Offers and Other Charges

- (a) If an NBN Offer or Other Charge is Zero-Priced, then that NBN Offer or Other Charge will remain Zero-Priced, unless the NBN Offer or Other Charge ceases to be Zero-Priced in accordance with clauses 2B.3(b) and 2B.3(c).
- (b) NBN Co may propose that an NBN Offer or Other Charge cease to be Zero-Priced by:
  - (i) providing no less than 6 months' notice to Access Seekers and the ACCC of its intention that the NBN Offer or Other Charge cease to be Zero-Priced, which notice must include the reasons why NBN Co considers the NBN Offer or Other Charge should cease to be Zero-Priced and specify NBN Co's proposed Price for the NBN Offer or Other Charge and the expiry date of the notice; and
  - (ii) consulting with Access Seekers in relation to the proposal.
- (c) Unless NBN Co issues a notice to Access Seekers and the ACCC withdrawing its proposal under clause 2B.3(b), upon the expiry of the period of notice given by NBN Co under clause 2B.3(b), the NBN Offer or Other Charge specified in the notice will cease to be Zero-Priced and, subject to clause 2B.2.2, the proposed Price specified in the

notice will become the Maximum Regulated Price for the NBN Offer or Other Charge from the expiry date of the notice period.

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## Schedule 2C Long Term Revenue Constraint Methodology and Regulatory Asset Base

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### 2C.1 Introduction

#### 2C.1.1 Scope

This Schedule 2C applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or an ACCC Replacement Module Determination is in effect.

#### 2C.1.2 General

This Schedule 2C:

- (a) sets out principles for the application of the Long Term Revenue Constraint Methodology in the Subsequent Regulatory Period;
- (b) sets out how the ICRA will be calculated and maintained through the Subsequent Regulatory Period (if the Methodology Change Event did not occur in the Initial Regulatory Period);
- (c) provides that following the Methodology Change Event:
  - (i) the Building Block Revenue Period will commence; and
  - (ii) actual revenues over a multi-year period will be no greater than the total ABBRR attributable to the same period; and
- (d) sets out how the Regulatory Asset Base (**RAB**) for the Relevant Assets will be calculated and updated during the Subsequent Regulatory Period.

#### 2C.1.3 Designation of Financial Years

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

#### 2C.1.4 Calculation of Cumulative Inflation Factor

- (a) The  $CIF_t$  is the Cumulative Inflation Factor which is the cumulative product of the June Quarter CPI published for each Financial Year from the SAU Commencement Date, relative to the First Financial Year, that is:

$$CIF_t = \left\{ \prod_{k=1}^t (1 + CPI_k^{June}) \right\} / (1 + CPI_1^{June})$$

where:

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

- (b) For Financial Years prior to the First Financial Year, the  $CIF_t$  is defined as:

$$CIF_t = (1 + CPI_1^{June}) / \left\{ \prod_{k=t}^1 (1 + CPI_k^{June}) \right\}$$

where:

$t$  is less than or equal to 0. For example, if the First Financial Year is 2011/12, then the 2010/11 Financial Year is year  $t = 0$ , and Financial Year 2009/10 would be year  $t = -1$ .

$CPI_k^{June}$  means the June Quarter CPI for Financial Year ( $k$ ).

### 2C.1.5 Calculation of Real Values

During the Subsequent Regulatory Period, when reference is made to real values, this refers to the cost or revenue of the relevant parameter in constant dollar terms of the First Financial Year. Except where a specific means of conversion is set out for a particular value, this will be calculated as follows:

$$Real Value_t = \frac{(Nominal Value_t)}{CIF_t}$$

Likewise, in converting real values into nominal values, except where a specific means of conversion is set out for a particular value, the corresponding calculation is:

$$Nominal Value_t = Real Value_t * CIF_t$$

where  $t=1$  corresponds to the First Financial Year.

## 2C.2 Annual Building Block Revenue Requirement

### 2C.2.1 Forecast ABBRR Requirements

- (a) For a given Financial Year ( $t$ ) within a Regulatory Cycle, the Forecast Nominal ABBRR must specify and include, at the minimum, the following elements:
- (i) forecast Operating Expenditure for Financial Year ( $t$ ), which is to include any Operating Expenditure to be incurred pursuant to the Telstra Arrangements or the Optus Arrangements;
  - (ii) forecast nominal regulatory depreciation for Financial Year ( $t$ );
  - (iii) a return on capital for Financial Year ( $t$ ), calculated by reference to a rate of return and the forecast nominal RAB at the start of Financial Year ( $t$ ); and
  - (iv) a forecast tax allowance for Financial Year ( $t$ ).
- (b) For the purposes of clause 2C.2.1(a), forecast nominal regulatory depreciation for Financial Year ( $t$ ) will be calculated as the Real Forecast Depreciation for Financial Year ( $t$ ), determined in accordance with clause 2C.7.7, adjusted to nominal terms consistent with clause 2C.1.5 less CPI indexation of the opening value of the nominal RAB for Financial Year ( $t$ ).
- (c) The Forecast Nominal ABBRR may include elements other than those specified in clauses 2C.2.1(a)(i) to 2C.2.1(a)(iv).
- (d) For the purposes of clause 2C.2.1(a)(iii), the rate of return will be determined by estimating a nominal vanilla WACC for Financial Year ( $t$ ) having regard to efficient financing practices and the risks involved in providing the NBN Access Service, Ancillary Services and the Facilities Access Service.
- (e) The Forecast Nominal ABBRR must be calculated in such a way as to satisfy the NPV=0 expectation during the Regulatory Cycle that the expected net present value of the relevant future cash flow inputs (e.g. relating to Operating Expenditure, Capital Expenditure, tax and Revenue) and initial and terminal values of relevant stock inputs (e.g. RAB and ICRA) during the Regulatory Cycle must be zero when evaluated using the forecast nominal vanilla WACC.
- (f) The Forecast Real ABBRR for Financial Year ( $t$ ) will be calculated as:

$$Real\ ABBRR_t^F = \frac{Nominal\ ABBRR_t^F}{CIF_t^F}$$

where:

*Real ABBRR<sub>t</sub><sup>F</sup>* is the Forecast Real ABBRR for Financial Year (*t*).

*Nominal ABBRR<sub>t</sub><sup>F</sup>* is the Forecast Nominal ABBRR for Financial Year (*t*).

*CIF<sub>t</sub><sup>F</sup>* is the Forecast CIF for Financial Year (*t*), estimated consistently with all other forecasts used in the Forecast Nominal ABBRR.

- (g) All forecasts used in this clause 2C.2.1 must use consistent base assumptions with respect to demand, economic conditions, unit costs and asset management.

---

## 2C.3 Forecast Revenue

### 2C.3.1 Forecast Revenue during Initial Cost Recovery Period

- (a) For a Financial Year within a Regulatory Cycle that is anticipated to be in the Initial Cost Recovery Period, the Annual Forecast Revenue for that Financial Year will be the expected value of the amount of such revenue that is expected to be earned in that Financial Year.
- (b) For clarity, for a Financial Year during the Regulatory Cycle that is anticipated to be in the Initial Cost Recovery Period, the Annual Forecast Revenue for that Financial Year may be above or below the Forecast Nominal ABBRR.

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## 2C.4 Adjustments to ABBRR

### 2C.4.1 Adjustments arising from operation of a Price Review Arrangement or Regulatory Determinations

- (a) The Forecast Nominal ABBRR, the Forecast Real ABBRR and, if relevant, the Annual Forecast Revenue and the Adjusted Forecast ABBRR, will be adjusted to the extent the ACCC considers necessary to account for any effects on those forecast amounts from the Financial Year in the Regulatory Cycle in which:
- (i) a Price Review Arrangement comes into effect; or
- (ii) a Resetting Regulatory Determination comes into effect that sets the Maximum Regulated Price for a new NBN Offer, new Other Charge or new Price for a Zero-Priced NBN Offer or Other Charge in that Financial Year,



as the case may be, until the last Financial Year in that Regulatory Cycle.

- (b) Any adjustments for the purposes of clause 2C.4.1(a) will be:
  - (i) in respect of a Price Review Arrangement, as specified, if at all, in that Price Review Arrangement; or
  - (ii) in respect of a relevant Resetting Regulatory Determination, as specified, if at all, in that Resetting Regulatory Determination.

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## 2C.5 Initial Cost Recovery Account

### 2C.5.1 Introduction

If the Methodology Change Event:

- (a) occurred in the Initial Regulatory Period, then each Financial Year of the Subsequent Regulatory Period will be in the Building Block Revenue Period; or
- (b) did not occur in the Initial Regulatory Period, then:
  - (i) the Subsequent Regulatory Period will start and continue in the Initial Cost Recovery Period until the Methodology Change Event occurs; and
  - (ii) the ICRA that was established in the Initial Regulatory Period will be rolled forward into the Subsequent Regulatory Period in accordance with clause 2C.5.4 and will continue to be calculated in accordance with clause 2C.5.4 for the purposes of assessing whether and when NBN Co has achieved full recovery of its ICRA and whether and when the Initial Cost Recovery Period ends.

### 2C.5.2 Transition from Initial Cost Recovery Period to Building Block Revenue Period when the ICRA is extinguished

If the Methodology Change Event occurs during the Subsequent Regulatory Period:

- (a) the Initial Cost Recovery Period will cease at the end of the Financial Year in which the Methodology Change Event occurs; and
- (b) the Building Block Revenue Period will commence at the beginning of the Financial Year immediately following the Financial Year in which the Methodology Change Event occurs.

### 2C.5.3 Unrecovered Cost

- (a) If the Subsequent Regulatory Period starts within the Initial Cost Recovery Period, then the Unrecovered Cost for each Financial Year ( $t$ ) of the Initial Cost Recovery Period is:

$$\text{Unrecovered Cost}_t = \text{Real ABBRR}_t^F * \text{CIF}_t - \text{Annual Revenue}_t$$

where:

*Annual Revenue* <sub>$t$</sub>  is either:

- (i) actual Revenue in Financial Year ( $t$ ); or
- (ii)  $\left( \frac{\text{Annual Forecast Revenue}_t}{\text{CIF}_t^F} \right) * \text{CIF}_t$ .

The same basis (actual or forecast Revenue) must be used in each Financial Year in a Regulatory Cycle.

*Real ABBRR* <sub>$t$</sub> <sup>F</sup> is the Forecast Real ABBRR for the relevant Financial Year ( $t$ ), calculated in accordance with clause 2C.2.1(f).

*Annual Forecast Revenue* <sub>$t$</sub>  is the Annual Forecast Revenue for the relevant Financial Year ( $t$ ).

- (b) The Unrecovered Cost can be either a positive value (when Annual Revenue is less than the ABBRR) or a negative value (when Annual Revenue is more than the ABBRR).

### 2C.5.4 Initial Cost Recovery Account

- (a) If the Subsequent Regulatory Period starts within the Initial Cost Recovery Period, then:
- (i) the ICRA at the start of the Subsequent Regulatory Period is equal to the ICRA at the end of the Initial Regulatory Period, determined in accordance with clause 1E.5; and
- (ii) the ICRA at the start of each Financial Year of the remainder of the Initial Cost Recovery Period will be equal to the ICRA at the end of the immediately preceding Financial Year, calculated by rolling forward the ICRA at the start of the immediately preceding Financial Year.
- (b) For the purposes of clause 2C.5.4(a)(ii), the rolling forward of the ICRA from the start of Financial Year ( $t$ ) to the start of Financial Year ( $t+1$ ) is determined using the following methodology:

$$\text{ICRA}_{t+1}^{\text{start}} = \text{ICRA}_t^{\text{end}}$$

$$= ICRA_t^{start} * (1 + R_{real,t}^F)(1 + CPI_t^{June}) + Unrecovered Cost_t$$

where:

$ICRA_{t+1}^{start}$  is the ICRA at the start of the next Financial Year (t+1).

$ICRA_t^{end}$  is the ICRA at the end of the current Financial Year (t).

$ICRA_t^{start}$  is the ICRA at the start of the current Financial Year (t).

$R_{real,t}^F$  is the forecast real rate of return for the current Financial Year (t).

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

$Unrecovered Cost_t$  is the Unrecovered Cost for the current Financial Year (t).

### 2C.5.5 Likely Methodology Change Event Notice

- (a) NBN Co will use reasonable endeavours to issue a Likely Methodology Change Event Notice to Access Seekers and the ACCC on or around 5 years prior to the date that NBN Co expects the Methodology Change Event will occur. This clause 2C.5.5(a) will not apply if NBN Co has previously issued a Likely Methodology Change Event Notice during the Initial Regulatory Period.
- (b) NBN Co will issue an updated Likely Methodology Change Event Notice to Access Seekers and the ACCC each year following any previous Likely Methodology Change Event Notice (whether issued during the Initial Regulatory Period or the Subsequent Regulatory Period) until the Methodology Change Event has occurred. This clause 2C.5.5(b) will not apply if the Methodology Change Event has already occurred.

### 2C.5.6 Pricing Intention Statement

- (a) NBN Co will use reasonable endeavours to issue a Pricing Intention Statement to Access Seekers and the ACCC on or around 3 years prior to the date that NBN Co expects the Methodology Change Event will occur. This clause 2C.5.6(a) will not apply if NBN Co has previously issued a Pricing Intention Statement during the Initial Regulatory Period.
- (b) The Pricing Intention Statement will include the following:
  - (i) the forecast average Price change, averaged across all NBN Offers and Other Charges, in the Financial Year immediately

- following the Financial Year in which NBN Co expects the Methodology Change Event to occur;
- (ii) NBN Co's estimate of how the forecast average Price change referred to in clause 2C.5.6(b)(i) will impact on the individual Price of each NBN Offer and Other Charge;
  - (iii) any transitional arrangements that NBN Co intends to apply in relation to changes in individual Prices; and
  - (iv) a description, in qualitative terms, of how NBN Co has determined the estimated individual Prices and transitional arrangements.
- (c) NBN Co will issue an updated Pricing Intention Statement to Access Seekers and the ACCC each year following any previous Pricing Intention Statement (whether issued during the Initial Regulatory Period or the Subsequent Regulatory Period) until the Methodology Change Event has occurred. This clause 2C.5.6(c) will not apply if the Methodology Change Event has already occurred.
  - (d) NBN Co will publish each Pricing Intention Statement on NBN Co's Website for access by Access Seekers.

### 2C.5.7 Carry Forward Revenue Adjustment

- (a) At the end of the last Financial Year of the Initial Cost Recovery Period ( $t$ ), the balance of the Unrecovered Cost that has not been applied to the ICRA in accordance with clause 2C.5.4 will be the Carry Forward Revenue Adjustment. That is:

$$\text{Carry Forward Revenue Adjustment}_t = \text{Unrecovered Cost}_t + \text{ICRA}_t^{\text{start}} * (1 + R_{real,t}^F)(1 + \text{CPI}_t^{\text{June}})$$

where:

$\text{Unrecovered Cost}_t$  is the Unrecovered Cost for the current Financial Year ( $t$ ).

$\text{ICRA}_t^{\text{start}}$  is the ICRA at the start of the current Financial Year ( $t$ ).

$R_{real,t}^F$  is the forecast real rate of return for the current Financial Year ( $t$ ).

$\text{CPI}_t^{\text{June}}$  means the June Quarter CPI for Financial Year ( $t$ ).

- (b) For clarity, the Carry Forward Revenue Adjustment will have a negative or zero value.

## 2C.6 Building Block Revenue Period

### 2C.6.1 ABBRR Revenue constraint in Building Block Revenue Period

- (a) For those Financial Years in a Regulatory Cycle that are in the Building Block Revenue Period (including those remaining Financial Years of a Regulatory Cycle following the Methodology Change Event occurring in that Regulatory Cycle), subject to clauses 2B.2 and 2C.6.1(b), Revenue earned in those Financial Years may be up to the sum of the Forecast Real ABBRR for those same Financial Years as set out in the Replacement Module or ACCC Replacement Module Determination, adjusted in accordance with clauses 2C.6.1(c) to 2C.6.1(e) (**Adjusted Forecast ABBRR**).
- (b) For the purposes of clause 2C.6.1(a):
  - (i) forecast Revenue is adjusted to nominal terms using actual CPI; and
  - (ii) forecast Revenue and actual Revenue earned are evaluated in present value terms using the forecast real rate of return on capital calculated for the purposes of clause 2C.2.1(a)(iii), adjusted to nominal terms using actual CPI.
- (c) The Revenue that may be earned will be adjusted from the amount that otherwise may be earned pursuant to clause 2C.6.1(a) by:
  - (i) any change as a result of a change in tax determined in accordance with the provisions of the relevant Replacement Module or the relevant ACCC Replacement Module Determination addressing the matters referred to in clause 4.6(g);
  - (ii) if the Methodology Change Event occurred prior to the last Financial Year of the Initial Regulatory Period and the Regulatory Cycle being evaluated is the first Regulatory Cycle, the present value of Revenue Variation, evaluated consistently with clause 2C.6.1(b)(ii), calculated under clause 1E.6.2 for the last Financial Year of the Initial Regulatory Period;
  - (iii) if the Methodology Change Event occurred in the Financial Year immediately prior to first of those Financial Years being evaluated and:
    - (A) if that previous Financial Year was in the Initial Regulatory Period, the present value of the Carry Forward Revenue Adjustment, evaluated consistently

with clause 2C.6.1(b)(ii), calculated under clause 1E.5.3; or

- (B) if that previous Financial Year was in the Subsequent Regulatory Period, the present value of the Carry Forward Revenue Adjustment, evaluated consistently with clause 2C.6.1(b)(ii), calculated under clause 2C.5.7;
  - (iv) if, in the previous Regulatory Cycle, in those Financial Years that are in the Building Block Revenue Period (if any) the Revenue earned was less than the Adjusted Forecast ABBRR for those Financial Years (in this clause 2C.6.1, such difference being the **Under-recovered Amount**), an increase of the amount of the present value of the Under-recovered Amount, evaluated consistently with clause 2C.6.1(b)(ii); and
  - (v) if, in the previous Regulatory Cycle, in those Financial Years that are in the Building Block Revenue Period (if any) the Revenue earned was more than the Adjusted Forecast ABBRR for those Financial Years (in this clause 2C.6.1, such difference being the **Over-recovered Amount**), a decrease of the amount of the present value of the Over-recovered Amount, evaluated consistently with clause 2C.6.1(b)(ii).
- (d) An amount referred to in clauses 2C.6.1(c)(i) to 2C.6.1(c)(iv) may be estimated if the actual amount is not available.
  - (e) The Revenue that may be earned must also be adjusted from the amount that may be earned pursuant to clause 2C.6.1(a) by removing the effect of any difference between any estimated amounts that were used in determining the Adjusted Forecast ABBRR applicable to the immediately preceding Regulatory Cycle and the corresponding actual amounts.

### **2C.6.2 Forecast Revenue not to exceed Adjusted Forecast ABBRR**

Subject to the requirements of Schedule 2B, for each Financial Year within the Building Block Revenue Period, NBN Offers and Other Charges will be priced so that the forecast sum of the Revenue in all of the Financial Years in a Regulatory Cycle that are in the Building Block Revenue Period do not exceed the Adjusted Forecast ABBRR for those Financial Years, evaluated consistently with clause 2C.6.1.

### **2C.6.3 Last Regulatory Cycle of SAU Term**

If the last Regulatory Cycle of the SAU Term is in the Building Block Revenue Period, Revenue earned or retained may be no more than the amount of

Revenue calculated under clause 2C.6.1 (together with any adjustments under clauses 2C.6.1(c) to 2C.6.1(e)) in that Regulatory Cycle.

## 2C.7 Calculation of the Regulatory Asset Base

### 2C.7.1 RAB Roll Forward Arrangements

In this clause 2C.7, RAB Roll Forward Arrangements means, in relation to a Regulatory Cycle, the terms of the Replacement Module or the ACCC Replacement Module Determination for the Regulatory Cycle that pertain to the matters referred to in clause 4.7.

### 2C.7.2 Real RAB at the commencement of the Subsequent Regulatory Period

The Real RAB at the commencement of the Subsequent Regulatory Period will be equal to the Real RAB at the end of the Initial Regulatory Period, determined in accordance with clause 1D.2.

### 2C.7.3 Real RAB in respect of a Regulatory Cycle

- (a) The Real RAB at the commencement of a Regulatory Cycle, other than the first Regulatory Cycle, will be equal to the Real RAB at the end of the immediately preceding Regulatory Cycle, calculated by rolling forward the Real RAB at the commencement of that immediately preceding Regulatory Cycle for each Financial Year ( $t$ ) within the Regulatory Cycle using the following methodology:

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

where:

$t$  is the Financial Year for which the Real RAB is being calculated.

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

$\text{Real RAB}_{t-1}^{\text{end}}$  is the Real RAB at the end of the immediately preceding Financial Year ( $t-1$ ).

$\text{Real Capex}_{t-1}$  is the real Capital Expenditure during the immediately preceding Financial Year ( $t-1$ ).

$\text{Real Disposals}_{t-1}$  is the real value of any Disposals of Relevant Assets during the immediately preceding Financial Year ( $t-1$ ).

$\text{Real Depreciation}_{t-1}$  is the real value of the depreciation applicable to the opening value of the Relevant Assets included

in the RAB at the start of the immediately preceding Financial Year ( $t-1$ ).

- (b) For the purposes of clause 2C.7.3(a), the real value of Capital Expenditure and the real value of depreciation for each Financial Year in a particular Regulatory Cycle will be determined in accordance with the RAB Roll Forward Arrangements applicable to that Regulatory Cycle.

#### **2C.7.4 Treatment of Capital Expenditure in RAB roll forward**

In respect of each Regulatory Cycle, for the purposes of determining the Real RAB at the end of each Financial Year within the Regulatory Cycle under clause 2C.7.3, the method for determining the amount of Capital Expenditure to be included in the Real RAB at the end of each Financial Year within the Regulatory Cycle will be:

- (a) in accordance with the following rules:
  - (i) where the sum of the actual Capital Expenditure incurred in connection with the design, engineering, construction, replacement and augmentation of the Relevant Assets in each Financial Year within the Regulatory Cycle (in this clause 2C.7.4, **Total Actual Capital Expenditure**) is less than or equal to the sum of the forecast Capital Expenditure used to set the Forecast Nominal ABBRR for each Financial Year within the Regulatory Cycle under clause 2C.7.7 (after accounting for the difference between forecast and actual CPI) (in this clause 2C.7.4, **Total Forecast Capital Expenditure**), all of the Capital Expenditure incurred in each Financial Year within the Regulatory Cycle is to be included in the Real RAB at the end of that Financial Year; and
  - (ii) where the Total Actual Capital Expenditure for the Regulatory Cycle exceeds the Total Forecast Capital Expenditure for the Regulatory Cycle, for each Financial Year within the Regulatory Cycle, an amount of Capital Expenditure determined by the ACCC pursuant to any power conferred on the ACCC under the RAB Roll Forward Arrangements applicable to that Regulatory Cycle is to be included in the Real RAB at the end of that Financial Year, subject to the condition that the sum of the Capital Expenditure included in the Real RAB at the end of each Financial Year within the Regulatory Cycle is no less than the Total Forecast Capital Expenditure for the Regulatory Cycle and is no more than the Total Actual Capital Expenditure for the Regulatory Cycle; or



- (b) in accordance with another method for the treatment of capital expenditure for establishing regulatory asset base values that promotes the long-term interests of end-users of Carriage Services or of services provided by means of Carriage Services and that is consistent with NBN Co achieving a reasonable likelihood of long term recovery of prudently and efficiently incurred costs.

#### **2C.7.5 Depreciation for RAB roll forward**

In respect of each Regulatory Cycle, for the purposes of determining the Real RAB at the end of each Financial Year within the Regulatory Cycle under clause 2C.7.3, the method for determining the depreciation applicable to the opening value of the Relevant Assets included in the Real RAB at the start of that Financial Year will be based on:

- (a) real straight line depreciation and either:
  - (i) the value of the Capital Expenditure rolled into the RAB; or
  - (ii) the value of the Forecast Capital Expenditure as used to set the Forecast Nominal ABBRR; or
- (b) another method for the accounting of depreciation in establishing regulatory asset base values that promotes the long-term interests of end-users of Carriage Services or of services provided by means of Carriage Services and that is consistent with NBN Co achieving a reasonable likelihood of long term recovery of prudently and efficiently incurred costs.

#### **2C.7.6 Role of ACCC in RAB roll forward**

The ACCC may perform such functions or exercise such powers in the determination of the value of the RAB at the start of a Regulatory Cycle as are conferred on it by the RAB Roll Forward Arrangements applicable to the immediately preceding Regulatory Cycle.

#### **2C.7.7 Forecast Real RAB for calculating Forecast Nominal ABBRR**

For the purposes of calculating the Forecast Nominal ABBRR pursuant to clause 2C.2.1(a), the Real RAB at the start of each Financial Year will be:

- (a) in respect of the first Financial Year of a Regulatory Cycle:
  - (i) if the Regulatory Cycle is the first Regulatory Cycle, determined in accordance with clause 2C.7.2, calculated on the basis that an amount of Capital Expenditure, Disposals or depreciation may be estimated for any part of the Initial Regulatory Period for which actual values are not available; or

- (ii) otherwise, the value of the Real RAB at the end of the last Financial Year in the immediately preceding Regulatory Cycle, determined in accordance with clause 2C.7.3:
- (A) calculated on the basis that an amount of Capital Expenditure, Disposals or depreciation may be estimated for any part of the immediately preceding Regulatory Cycle for which actual values are not available; and
- (B) adjusted to remove the effect of any difference between the Real RAB at the start of the first Financial Year of the immediately preceding Regulatory Cycle that was determined using any estimated amounts under this clause 2C.7.7 and the Real RAB at the start of the first Financial Year of the immediately preceding Regulatory Cycle as determined using the corresponding actual amounts under clause 2C.7.3; and
- (b) in respect of a Financial Year ( $t$ ) in a Regulatory Cycle other than the first Financial Year of the Regulatory Cycle, forecast according to the following methodology:

$$\begin{aligned}
 \text{Real Forecast } RAB_t^{\text{start}} &= \text{Real Forecast } RAB_{t-1}^{\text{end}} \\
 &= \text{Real Forecast } RAB_{t-1}^{\text{start}} + \text{Real Forecast } Capex_{t-1} \\
 &\quad - \text{Real Forecast } Disposals_{t-1} \\
 &\quad - \text{Real Forecast } Depreciation_{t-1}
 \end{aligned}$$

where:

$t$  is the Financial Year for which a forecast of the Real RAB at the start of the Financial Year is being calculated.

*Real Forecast*  $RAB_t^{\text{start}}$  is the forecast Real RAB at the start of the Financial Year ( $t$ ).

*Real Forecast*  $RAB_{t-1}^{\text{end}}$  is the forecast of the Real RAB at the end of the immediately prior Financial Year ( $t-1$ ).

*Real Forecast*  $RAB_{t-1}^{\text{start}}$  is the forecast of the Real RAB at the start of the immediately prior Financial Year ( $t-1$ ).

*Real Forecast*  $Capex_{t-1}$  is the forecast of prudent and efficient real Capital Expenditure in connection with the design, engineering, construction, replacement and augmentation of the Relevant Assets for the relevant Financial Year ( $t-1$ ), including any Capital Expenditure

to be incurred pursuant to the Telstra Arrangements or the Optus Arrangements.

*Real Forecast Disposals<sub>t</sub>* is the forecast of the real value of any Disposals of Relevant Assets during the immediately prior Financial Year (*t-1*).

*Real Forecast Depreciation<sub>t-1</sub>* is the forecast of the real value of the depreciation applicable to the opening real value of the Relevant Assets included in the forecast Real RAB in the immediately prior Financial Year (*t-1*).

### 2C.7.8 Calculation of Nominal RAB

(a) The Nominal RAB will be:

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

and:

$$\begin{aligned} \text{Nominal RAB}_t^{\text{start}} &= \text{Nominal RAB}_{t-1}^{\text{end}} \\ &= \text{CIF}_{t-1} * \text{Real RAB}_{t-1}^{\text{end}} \\ &= \text{CIF}_{t-1} * \text{Real RAB}_t^{\text{start}} \end{aligned}$$

where:

*Nominal RAB<sub>t</sub><sup>start</sup>* is the Nominal RAB at the start of the relevant Financial Year (*t*).

*Nominal RAB<sub>t</sub><sup>end</sup>* is the Nominal RAB at the end of the relevant Financial Year (*t*).

*Real RAB<sub>t</sub><sup>start</sup>* is the Real RAB at the start of the relevant Financial Year (*t*).

*Real RAB<sub>t</sub><sup>end</sup>* is the Real RAB at the end of the relevant Financial Year (*t*).

(b) The Nominal Forecast RAB will be:

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

and:

$$\begin{aligned} \text{Nominal Forecast RAB}_t^{\text{start}} &= \text{Nominal Forecast RAB}_{t-1}^{\text{end}} \\ &= \text{CIF}_{t-1} * \text{Real Forecast RAB}_{t-1}^{\text{end}} \\ &= \text{CIF}_{t-1} * \text{Real Forecast RAB}_t^{\text{start}} \end{aligned}$$

where:

*Nominal Forecast  $RAB_t^{start}$*  is the Nominal Forecast RAB at the start of the relevant Financial Year ( $t$ ).

*Nominal Forecast  $RAB_t^{end}$*  is the Nominal Forecast RAB at the end of the relevant Financial Year ( $t$ ).

*Real Forecast  $RAB_t^{start}$*  is the Real Forecast RAB at the start of the relevant Financial Year ( $t$ ).

*Real Forecast  $RAB_t^{end}$*  is the Real Forecast RAB at the end of the relevant Financial Year ( $t$ ).

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## Schedule 2D Product Development and Withdrawal

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### 2D.1 General

#### 2D.1.1 Scope

This Schedule 2D applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or ACCC Replacement Module Determination is in effect.

#### 2D.1.2 Product development principles

- (a) The following general principles apply to NBN Co's development of Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service (referred to collectively in this Schedule 2D as **Products**, unless the contrary intention appears):
- (i) NBN Co is committed to developing Products that Access Seekers want, that have sufficient demand to be commercially viable and from which Access Seekers gain value;
  - (ii) NBN Co's obligations:
    - (A) to implement Australian Government policy communicated to it (including in the Statement of Expectations) by the Shareholder Ministers; and
    - (B) under the CCA and the NBN Companies Act, determine the permitted scope of its activities and the Products that it can develop and supply, including the requirement that all Products be available on a wholesale-only, open access, non-discriminatory basis, to all Access Seekers; and
  - (iii) NBN Co wishes to encourage Access Seeker and Consumer Advocacy Group participation in the design of Products, and facilitate engagement and consultation in relation to Product Ideas, to enable NBN Co to fulfil the commitment described in clause 2D.1.2(a)(i) in a manner consistent with NBN Co's scope of permitted activities as described in clause 2D.1.2(a)(ii).
- (b) Accordingly, NBN Co will utilise a product development process which seeks Access Seeker and Consumer Advocacy Group input as part of the process of developing detailed design requirements.

### **2D.1.3 Application of this Schedule**

- (a) This Schedule 2D sets out the process that NBN Co will apply to the introduction, variation or withdrawal of Products.
- (b) This Schedule 2D does not apply in respect of any of the following:
  - (i) the introduction of a Product that is an Initial Product;
  - (ii) the introduction of a Product that NBN Co is obliged to offer as a result of a licence condition imposed under section 41(1) of the NBN Companies Act, but only to the extent that the specification of that Product is prescribed by that licence condition;
  - (iii) a minor variation or enhancement to a Product within the terms of clause 2D.5; and
  - (iv) subject to clause 2D.6.4(b), the withdrawal of a Product that NBN Co is required to withdraw for the reasons referred to in clause 2D.6.4.

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## **2D.2 Withdrawal – Access Seeker Focussed Approach**

- (a) Subject to this clause 2D.2 and to clause 2D.6, NBN Co may withdraw Products subject to NBN Co meeting its commitments set out in clauses 2D.3 and 2D.4 of this Schedule 2D.
- (b) Any withdrawal of a Product must be focussed on Access Seekers and NBN Co will first encourage Access Seeker and Consumer Advocacy Group feedback on NBN Co proposals to withdraw a Product and be responsive to any suggestions in relation to that withdrawal.

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## **2D.3 Integrated Product Roadmap**

- (a) NBN Co will publish and maintain an integrated product roadmap in respect of Products.
- (b) The integrated product roadmap will be made available on NBN Co's Website.

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## **2D.4 Development**

### **2D.4.1 Product Development Forum**

- (a) NBN Co will implement a product development process through which NBN Co will engage with Access Seekers and Consumer Advocacy

Groups in respect of Product development (**Product Development Forum**).

- (b) NBN Co will make the Product Development Forum open to participation by all Access Seekers and Consumer Advocacy Groups.
- (c) NBN Co will ensure that the Product Development Forum:
  - (i) identifies and records all Product Ideas;
  - (ii) is the primary forum through which Product Ideas are developed, refined and disseminated;
  - (iii) facilitates an open and consultative dialogue with Access Seekers and Consumer Advocacy Groups in respect of Product Ideas for new Products and for enhancements and variations to existing Products, whilst respecting the confidential information and Intellectual Property Rights of Access Seekers and Consumer Advocacy Groups;
  - (iv) provides for the development of Product Ideas into Products to be offered to Access Seekers;
  - (v) provides for Access Seekers and Consumer Advocacy Groups to:
    - (A) obtain information about NBN Co's integrated product roadmap, including existing Products;
    - (B) assist NBN Co to determine whether there is sufficient demand for proposed Product Ideas; and
    - (C) provide information and input to assist NBN Co to determine which Product Ideas to develop and in which order of priority; and
  - (vi) provides for NBN Co to discuss, and Access Seekers and Consumer Advocacy Groups to provide feedback in relation to, the withdrawal of Products and related issues.

#### **2D.4.2 Processes relating to Product Development Forum**

- (a) NBN Co may require that an Access Seeker or Consumer Advocacy Group (as the case may be) enter into an agreement regarding the treatment of the confidential information and intellectual property that may be disclosed or created in connection with each party's participation in the Product Development Forum.

- (b) For the purposes of 2D.4.2(a), an agreement regarding the treatment of confidential information and intellectual property will be on such terms and conditions:
  - (i) as agreed between NBN Co and the relevant Access Seeker or Consumer Advocacy Group; or
  - (ii) failing agreement, as may be determined by the ACCC, including in any Regulatory Determination made by the ACCC.

### **2D.4.3 Assessment of Product Ideas**

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

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

### **2D.4.4 Pricing of new Products**

Prior to introducing a new Product which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with Access Seekers and Consumer Advocacy Groups through the Product Development Forum in relation to the Price or Prices at which such new Products will be introduced by NBN Co for all Access Seekers.

### **2D.4.5 Technical attributes for new Products**

Prior to introducing a new Product which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with Access Seekers and Consumer Advocacy Groups through the Product Development Forum in relation to the technical attributes, including the



network technology, network architecture, network dimensioning and congestion management, applicable to that new Product.

#### **2D.4.6 Service levels for new Products**

Prior to introducing a new Product which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with Access Seekers and Consumer Advocacy Groups through the Product Development Forum in relation to:

- (a) the service levels applicable to such a new Product (including any remedies which may apply for breach of the service levels); or
- (b) if NBN Co is unable to offer service levels (including any applicable remedies) prior to the introduction of a new Product, the estimated timetable and process of consultation in relation to the introduction of such service levels (including any applicable remedies).

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## **2D.5 Minor Product Changes**

- (a) NBN Co may carry out minor product variations or enhancements which update or improve the functionality or performance of a Product and which will have no material adverse impact on Access Seekers (in this clause 2D.5, **Minor Product Variation**).
- (b) For Minor Product Variations, NBN Co will use the Product Development Forum to notify Access Seekers and Consumer Advocacy Groups of the proposed change and implementation timeframe, including through the integrated product roadmap.
- (c) NBN Co will ensure that the withdrawal of the supply of a Product is not treated as a Minor Product Variation.

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## **2D.6 Withdrawal**

### **2D.6.1 Non-circumvention**

- (a) NBN Co will not vary any Product in a manner that changes the functionality, performance or features of that Product to such an extent that results in the Product no longer being reasonably capable of delivering at least the same functionality, performance or features previously associated with the Product.
- (b) Subject to clause 2D.5, if NBN Co wishes to vary a Product in a manner described in clause 2D.6.1(a), NBN Co will seek to withdraw the Product under this clause 2D.6 and to introduce a new Product in accordance with this Schedule 2D.

## 2D.6.2 Notice period for Withdrawals

- (a) Subject to clause 2D.6.3, NBN Co may withdraw a Product, Product Component, Product Feature, Ancillary Service and type of Facilities Access Service and will provide the ACCC, Access Seekers and Consumer Advocacy Groups with no less than:
  - (i) 24 months' written notice of its intention to withdraw a Product, Product Component, Ancillary Service or type of Facilities Access Service;
  - (ii) subject to clause 2D.6.2(a)(iii), 12 months' written notice of its intention to withdraw a Product Feature; and
  - (iii) 24 months' written notice of its intention to withdraw a Product Feature where withdrawal will have a material adverse effect on the functionality or performance of a Product or Product Component with which the Product Feature is associated.
- (b) NBN Co will have regard to the following factors when considering whether to withdraw a Product:
  - (i) existing demand for the Product;
  - (ii) the avoidable cost to NBN Co of maintaining and continuing to supply the existing Product;
  - (iii) the functionality offered by an alternative Product compared to the relevant Product to be withdrawn;
  - (iv) the technical feasibility of an alternative Product;
  - (v) the commercial viability of an alternative Product; and
  - (vi) the Price of an alternative Product.
- (c) In the written notice provided pursuant to clause 2D.6.2(a), NBN Co will also provide the ACCC, Access Seekers and Consumer Advocacy Groups with notice of:
  - (i) the transitional arrangements that NBN Co may put in place (if any) to migrate Access Seekers from the relevant Product to an alternative Product, including:
    - (A) the proposed alternative Product;
    - (B) the proposed timeframe for migration to that alternative Product;

- (C) the proposed testing arrangements for the alternative Product; and
  - (D) the details of any proposed trials or transition processes for the alternative Product, or  
if NBN Co will not offer an alternative Product, NBN Co's reasons for not doing so; and
- (ii) NBN Co's assessment of the factors set out in clause 2D.6.2(b).
- (d) NBN Co will discuss and consider in good faith any feedback received from the ACCC, Access Seekers and Consumer Advocacy Groups in relation to the impending withdrawal of a Product and related issues, such as those set out in clause 2D.6.2(c)(i).

### **2D.6.3 ACCC objection power**

- (a) If NBN Co seeks to withdraw a Product in accordance with clause 2D.6.2(a), the ACCC may object to the withdrawal of that Product.
- (b) If the ACCC objects to the withdrawal of a Product, the ACCC must give NBN Co a written notice stating its objection and providing reasons for its objection and publish any notice (and reasons) issued under this clause 2D.6.3(b) on the ACCC's website.
- (c) In making a decision to issue a notice under clause 2D.6.3(b) the ACCC:
  - (i) will have regard to the long-term interests of end-users in accordance with section 152AB of the CCA;
  - (ii) will have regard to the factors listed in clause 2D.6.2(b); and
  - (iii) may consult with NBN Co and such other persons as the ACCC considers appropriate.
- (d) Any notice issued by the ACCC under clause 2D.6.3(b) must be issued within the period of 60 Business Days from the date on which NBN Co notified the ACCC of its intention to withdraw a Product in accordance with clause 2D.6.2(a).
- (e) The ACCC may extend the period referred to in clause 2D.6.3(d) by a period of not more than 40 Business Days by giving written notice to NBN Co and publishing that notice on the ACCC's website.
- (f) If the ACCC issues a notice under clause 2D.6.3(b), NBN Co must:
  - (i) inform Access Seekers and Consumer Advocacy Groups in writing that the Product will not be withdrawn; and

- (ii) not withdraw the Product the subject of the notice for the period specified by the ACCC in that notice which must not be more than 5 years (but may be less than 5 years, as specified by the ACCC).
- (g) If the ACCC gives a notice pursuant to clause 2D.6.3(b), NBN Co may give a further notice pursuant to clause 2D.6.2(a) in respect of the Product the subject of the ACCC's notice, provided that the withdrawal of that Product will not occur before the end of the period specified by the ACCC in its notice and, where NBN Co gives a further notice, the provisions of this clause 2D.6.3 will apply in respect of that further notice.

#### **2D.6.4 Product withdrawal required by law or directed by Shareholder Ministers**

- (a) Subject to clause 2D.6.4(b), this clause 2D.6 does not apply to the withdrawal of a Product that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.
- (b) In the event of a withdrawal of a Product on the grounds referred to in clause 2D.6.4(a), NBN Co will, to the extent permitted by law and consistent with any temporal requirements for the withdrawal imposed on NBN Co by law or by the Shareholder Minister (as the case may be):
  - (i) provide Access Seekers, Consumer Advocacy Groups and the ACCC with written notice of the withdrawal within 20 Business Days of NBN Co being made aware of the requirement to withdraw the Product; and
  - (ii) consult with, and consider any feedback received from, Access Seekers, Consumer Advocacy Groups and the ACCC in relation to the impending withdrawal and related issues, such as those set out in clause 2D.6.2(c)(i).

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## Schedule 2E Maximum Regulated Price Review Mechanisms

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### 2E.1 Introduction

#### 2E.1.1 Scope

- (a) Subject to clause 2E.1.1(b), this Schedule 2E applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module or ACCC Replacement Module Determination is in effect.
- (b) To avoid doubt, nothing in this Schedule 2E is to be taken as preventing the ACCC before the commencement of the Subsequent Regulatory Period, performing a function or exercising a power, for the purposes of clause 2E.2.

#### 2E.1.2 Overview

This Schedule 2E confers functions and powers on the ACCC pursuant to section 152CBA(10A) of the CCA to undertake a review of the Maximum Regulated Prices of:

- (a) NBN Offers; and
- (b) Other Charges.

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### 2E.2 Price Review Arrangements

#### 2E.2.1 Initiation of Price Review

- (a) Subject to clause 2E.2.1(c), either the ACCC or NBN Co may issue a written notice (in this clause 2E.2, **Price Review Notice**) to the other stating that it wishes to commence a review of the Maximum Regulated Prices applicable to NBN Offers and/or Other Charges under this clause 2E.2 (in this clause 2E.2, **Price Review**).
- (b) The Price Review Notice must:
  - (i) identify one or more Maximum Regulated Prices that the notifying party considers should be reviewed; and
  - (ii) the reasons why the notifying party considers the Maximum Regulated Prices should be reviewed.
- (c) A Price Review Notice may be issued under clause 2E.2.1(a):
  - (i) before the commencement of the Subsequent Regulatory Period, provided that the Price Review Notice is not issued

more than 2 years prior to the commencement of the Subsequent Regulatory Period; and/or

- (ii) during the Subsequent Regulatory Period.

### **2E.2.2 NBN Co to develop Price Review Proposal**

- (a) NBN Co will, no later than 120 calendar days after a Price Review Notice is issued (or such other later date specified by the ACCC), provide the ACCC with a proposal in relation to the Maximum Regulated Prices the subject of the Price Review Notice (in this clause 2E.2, **Price Review Proposal**).
- (b) The Price Review Proposal must include the following information:
  - (i) a proposed Price Review Arrangement developed in accordance with the Price Review Criteria, which includes the matters referred to in clause 2E.2.7(a);
  - (ii) an explanation of the basis on which the proposed Price Review Arrangement satisfies the Price Review Criteria; and
  - (iii) the forecasts and estimates used by NBN Co to apply the Price Review Criteria to the proposed Price Review Arrangement, and an explanation of the basis on which those forecasts and estimates were prepared, including the methods used and assumptions made.

### **2E.2.3 ACCC response to Price Review Proposal**

- (a) The ACCC may either:
  - (i) accept the Price Review Proposal;
  - (ii) reject the Price Review Proposal, in which case the ACCC may either:
    - (A) issue its own Price Review Arrangement (in this clause 2E.2, an **ACCC Determined Price Review Arrangement**); or
    - (B) discontinue the Price Review without establishing a Price Review Arrangement, in which case the Price Review will terminate; or
  - (iii) where the ACCC issued the relevant Price Review Notice, discontinue the Price Review without rejecting the Price Review Proposal or establishing a Price Review Arrangement, in which case the Price Review will terminate.

- (b) The ACCC may request NBN Co to give to the ACCC further information that the ACCC considers reasonably necessary for making a decision under clause 2E.2.3(a) and NBN Co must comply with such a request within the period specified by the ACCC.
- (c) The ACCC must not make a decision under clause 2E.2.3(a) unless the ACCC has had regard to the information in the Price Review Proposal provided by NBN Co under clause 2E.2.2.
- (d) The ACCC must publish on its website a Price Review Proposal provided to it by NBN Co.
- (e) The ACCC may consult with NBN Co and such other persons as the ACCC considers appropriate on NBN Co's Price Review Proposal, and must consider any submissions that are received within the time limit specified by the ACCC.
- (f) The ACCC must publish on its website its decision under clause 2E.2.3(a), including the reasons for the decision and any resulting Price Review Arrangement.

#### **2E.2.4 Variation of Price Review Proposal**

- (a) The ACCC may issue a written notice to NBN Co stating that if NBN Co:
  - (i) makes such variations to the Price Review Proposal as are specified in the notice; and
  - (ii) gives the varied Price Review Proposal to the ACCC within the period specified in the notice,the ACCC will consider the varied Price Review Proposal under clause 2E.2.3 as if the varied Price Review Proposal had been given instead of the original Price Review Proposal.
- (b) If NBN Co gives the ACCC a varied Price Review Proposal in response to the notice issued under clause 2E.2.4(a), the ACCC will consider the varied Price Review Proposal under clause 2E.2.3 as if the varied Price Review Proposal had been given instead of the original Price Review Proposal.

#### **2E.2.5 Acceptance of Price Review Proposal**

If a Price Review Proposal is accepted by the ACCC under clause 2E.2.3(a), the proposed Price Review Arrangement included in that Price Review Proposal becomes a Price Review Arrangement.

## 2E.2.6 ACCC Determined Price Review Arrangement

If the ACCC issues an ACCC Determined Price Review Arrangement under clause 2E.2.3(a), the ACCC Determined Price Review Arrangement becomes a Price Review Arrangement.

## 2E.2.7 Content and operation of Price Review Arrangement

- (a) A Price Review Arrangement must specify:
- (i) the commencement date of the Price Review Arrangement which must:
    - (A) be the start of a Financial Year within the Subsequent Regulatory Period;
    - (B) not be a date that precedes the date on which the Price Review Arrangement is accepted or issued by the ACCC;
    - (C) not be in a Financial Year in respect of which a previous Price Review Arrangement applies; and
    - (D) be no later than 12 months after the date on which the Price Review Arrangement is accepted or issued by the ACCC;
  - (ii) the end date of the Price Review Arrangement, which must be the end of a Financial Year between 1 and 5 Financial Years after the commencement date of the Price Review Arrangement;
  - (iii) the NBN Offers and/or Other Charges to which the Price Review Arrangement applies (in this clause 2E.2, each a **Reviewed Offer**);
  - (iv) for each Reviewed Offer, the Maximum Regulated Price for one or more Financial Years within the period of the Price Review Arrangement; and
  - (v) any changes required to the Forecast Nominal ABBRR and Forecast Real ABBRR under clause 2C.2.1 and, if relevant, the Annual Revenue Forecast under clause 2C.3 and the Adjusted Forecast ABBRR under clause 2C.6.1, to account for the matters set out in clause 2C.4.1.
- (b) The Maximum Regulated Price for a Reviewed Offer specified in a Price Review Arrangement may:



- (i) be specified in the form of an amount or as a formula for ascertaining the amount; and
  - (ii) be different for each Financial Year for which the Price Review Arrangement specifies a Maximum Regulated Price for the Reviewed Offer (including to establish a glide-path in relation to the Maximum Regulated Price for the Reviewed Offer).
- (c) If a Price Review Arrangement applies to a Reviewed Offer and a Financial Year within the Subsequent Regulatory Period, then the Maximum Regulated Price for that Reviewed Offer for that Financial Year will be the Maximum Regulated Price specified in that Price Review Arrangement for that Reviewed Offer for that Financial Year in accordance with clause 2B.2.2, subject to the provisions of the relevant Replacement Module or the relevant ACCC Replacement Module Determination addressing the matters referred to in clause 4.6(g)(i).

#### **2E.2.8 Price Review Requirements**

- (a) Subject to clause 2E.2.8(b), the ACCC must not accept a Price Review Proposal, or issue an ACCC Determined Price Review Arrangement, under clause 2E.2.3(a), unless the ACCC is satisfied that:
- (i) the Maximum Regulated Price of each Reviewed Offer for each Financial Year to which the Price Review Arrangement applies is reasonable, having regard to the matters specified in section 152AH of the CCA, the matters referred to in clause 2E.2.8(d) and any other matter the ACCC considers relevant; and
  - (ii) there is no material difference between:
    - (A) the present value of the difference between the expected Revenue and the sum of the expected ABBRR for each Financial Year, between the commencement of the Price Review Arrangement and the SAU Expiry Date, if the Price Review Arrangement were in operation; and
    - (B) the present value of the difference between the expected Revenue and the sum of the expected ABBRR for each Financial Year, between the commencement of the Price Review Arrangement and the SAU Expiry Date, if the Price Review Arrangement were not in operation,

(in this clause 2E.2, **Price Review Criteria**).

- (b) Section 152CBD(5A) of the CCA applies to the ACCC's decision whether to accept or reject a Price Review Proposal under clause 2E.2.3(a) as if the references to an undertaking in that section were references to a Price Review Proposal, except for section 152CBD(5A)(d) (which does not apply to the ACCC's decision).
- (c) Section 152BCB(3C) of the CCA applies to the ACCC's decision to issue an ACCC Determined Price Review Arrangement under clause 2E.2.3(a) as if the references in that section to making an access determination were references to issuing an ACCC Determined Price Review Arrangement.
- (d) In deciding whether to accept or reject a Price Review Proposal and in issuing an ACCC Determined Price Review Arrangement, the ACCC must have regard to:
  - (i) the legitimate business interests of NBN Co;
  - (ii) the characteristics of the NBN Offers and activities associated with Other Charges other than the Reviewed Offers (in this clause 2E.2.8(d), **Other Offers**);
  - (iii) the costs associated with Other Offers;
  - (iv) the impact of the ACCC's decision on the Revenue associated with Other Offers;
  - (v) the impact of the ACCC's decision on the demand for Other Offers; and
  - (vi) any other factor the ACCC considers relevant.

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## Execution page

### Executed on

For and on behalf of **NBN Co Limited**:

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**Dr. Ziggy Switkowski**  
Executive Chairman

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**Witness**

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**Caroline Lovell**  
Head of Regulatory Affairs & Industry Analysis

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**Witness**