



Australian
Competition &
Consumer
Commission

Migration plan required measures relating to the pull through connection process

Discussion Paper

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www.accc.gov.au

List of acronyms and other terms

ACCC	Australian Competition and Consumer Commission
August 2011 Discussion Paper	<i>ACCC's Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan</i> , Discussion Paper, August 2011
CCA	<i>Competition and Consumer Act 2010</i>
DBCDE	The Department of Broadband, Communications and the Digital Economy
Definitive Agreements	Contractual arrangements between Telstra and NBN Co relating to the rollout of the NBN fibre network
(the) Determination	<i>Telecommunications (Migration Plan Principles) Determination 2011</i>
Final Decision Paper	<i>ACCC's Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan</i> , Final Decision Paper, February 2012
HFC	Hybrid Fibre Coaxial
NBN	National Broadband Network
NBN Co	NBN Co Limited
NTD	Network Termination Device
PCD	Premises Connection Device
RSP	Retail Service Provider
SSU	Structural Separation Undertaking
Telstra	Telstra Corporation Limited
WBA	Wholesale Broadband Agreement

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1. Introduction

1.1 Migration Plan Required Measures

On 27 February 2012, the ACCC accepted Telstra's structural separation undertaking (SSU) and approved the draft migration plan. The SSU came into force on 6 March 2012 and the migration plan on 7 March 2012. Further detail on the ACCC's assessment of Telstra's SSU and migration plan can be found in the ACCC's August 2011 discussion paper—*Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan*, and in its February 2012 Final Decision paper. Both papers are available at <http://www.accc.gov.au/content/index.phtml/itemId/1003999>.

Clause 5 of the migration plan provides that Telstra may develop certain disconnection measures or processes after the migration plan commences and submit them to the ACCC for approval.¹ These measures are referred to as 'required measures', and comprise specific disconnection processes needed to facilitate migration to the NBN and a plan setting out how Telstra will ensure that information sourced from NBN Co under the Definitive Agreements is secured from retail business units. There are six required measures:

- (1) Pull through processes, which Telstra has lodged separately as:
 - a. process for obtaining consents and releases from wholesale customers for NBN Co to use pull through during the connection process
 - b. process for notifying wholesale customers that pull through exception events have occurred.
- (2) Process for managed disconnection of copper services (which are not special services) on the disconnection date.
- (3) Process for managed disconnection of hybrid fibre coaxial (HFC) services.
- (4) Process for Telstra to build copper paths at premises which had previously been permanently disconnected, in order to supply special services and special service inputs to that premises.
- (5) Processes which will be used to manage and implement disconnection of copper services of each special service class.
- (6) The NBN information security plan.²

The migration plan sets out the process that Telstra must follow when developing and lodging draft required measures for ACCC approval. This process requires the development of a high level road map and individual work plans for each measure. These documents are available on the [Telstra Wholesale website](#).³

¹ Migration plan, clause 5.1(c).

² Migration plan, sch. 7.

³ www.telstrawholesale.com.au/nbn/migration-plan/index.htm.

On 22 November 2012, the ACCC released a discussion paper on Telstra's draft required measures 2, 3, 4 and 6. Submissions to that discussion paper were due with the ACCC by 14 December 2012.

This discussion paper relates to draft required measures 1(a) and 1(b) which relate to pull through activities.

Telstra lodged required measure 1(a) by the deadline of 7 September 2012. The ACCC granted Telstra an extension to lodge required measure 1(b) by 30 November 2012.

Copies of the draft required measures and supporting submissions are available on the ACCC website: <http://www.accc.gov.au/content/index.phtml/itemId/1082236>.

1.2 Decision making framework for Required Measures

The ACCC must approve a draft required measure if it is satisfied that it complies with the migration plan principles or, if it is not satisfied of this, direct Telstra to submit an amended draft measure to address the ACCC's concerns.⁴

In deciding whether to direct Telstra to make a particular amendment to a draft required measure, the ACCC must have regard to the costs to Telstra that would flow from the amended draft measure, the effectiveness of the draft measure and the relative costs and benefits relative to alternative measures that could be established.⁵

The migration plan provides further detail as to what certain required measures must include in order to constitute the required measure. However, the ACCC must ultimately be satisfied that the required measures comply with the migration plan principles in order to approve them (see discussion at section 1.2.2 on migration plan principles).

The ACCC has discretion to undertake public consultation on the draft required measures.⁶ The ACCC has 60 business days from the date of lodgement to approve a required measure, or otherwise direct Telstra to resubmit an amended draft. Telstra has 40 business days from receipt of such a direction to resubmit the draft required measure that addresses the concerns raised by the ACCC. These processes apply recursively.⁷ Once approved, a required measure forms part of the migration plan.⁸

If, through operational experience or otherwise, an approved required measure is found to not comply with the general migration plan principles (see below), then the ACCC may issue a direction to Telstra to rectify the required measure to ensure that it is compliant.⁹

⁴ Migration plan, clause 5.4(d).

⁵ Migration plan, clause 28.2(b).

⁶ Migration plan, clause 5.4(b).

⁷ Migration plan, clause 5.4(e).

⁸ Migration plan, clause 5.4(g).

⁹ Migration plan, clause 26(a).

1.2.1 The migration plan and pull through

The migration plan outlines the processes that Telstra will use to disconnect premises from its copper and HFC networks as the NBN is rolled out around Australia.

Section 24 of the *Telecommunications (Migration Plan Principles) Determination 2011*¹⁰ (the Determination) requires that the migration plan must specify the processes Telstra will use for communications services that are ‘disconnected’ during the pull through process.

One example of an existing commitment under the migration plan relating to pull through is the requirement for Telstra to maintain interim call diversion arrangements as a standard feature of wholesale line rental services so that they are available to the end users of a wholesale customer at premises where pull through is used.¹¹

Clause 10 of the migration plan sets out specific requirements that Telstra must provide for in required measures 1(a) and (b). These are outlined in sections 4 and 5 below. If the ACCC is satisfied that the draft required measures meet these requirements, the ACCC must then assess the draft required measures for compliance with the migration plan principles. The relevant principles are outlined below.

1.2.2 Migration plan principles

The migration plan principles define the objectives and scope of the migration plan and are found in the Determination. There are three different types of principles:

- General principles, which describe the overarching principles that must be met by the migration plan. These include equivalence and continuity of service objectives.
- Specific principles, which provide further specificity regarding how some of the general principles are to be given effect in the migration plan.
- Procedural principles, which set out the procedural provisions that must be included in the migration plan.¹²

In its assessment of Telstra’s draft migration plan, the ACCC considered each clause against the general, specific and procedural principles.¹³ The ACCC must assess the draft required measures in the same way.

The ACCC considers that the following migration plan principles will be most relevant to assessing both draft required measures 1(a) and 1(b):

- The general principles in subsections 8(1)(b) and (c), which require the migration plan to have processes that minimise disruption to the supply of carriage services and, to the greatest extent practicable, give wholesale customers autonomy over the sequencing of disconnection with connection to the NBN.

¹⁰ Available on the Department of Broadband, Communications and Digital Economy’s website at www.dbcde.gov.au.

¹¹ Migration plan, clause 10.3.

¹² *Telecommunications (Migration Plan Principles) Determination 2011*, s. 6(1).

¹³ *Telecommunications (Migration Plan Principles) Determination 2011*, s. 7(1).

- The general principle in section 8(3), which requires that policies and business practices relating to the above processes must provide for Telstra to facilitate the management by wholesale customers of the migration of their customers.
- The general principle in section 21, which requires that the migration plan must provide for equivalent treatment in the implementation of disconnection processes.
- The specific principle in section 9(2), which requires that the processes must be set out in sufficient detail to enable the ACCC to be satisfied that that the processes accord with the general principles in sections 8 and 21.
- The specific principle in section 11, which requires that the migration plan must set out how Telstra will give wholesale customers autonomy in relation to decisions (about disconnection) in order to minimise the period of any service outage.
- The specific principle in section 19, which requires that the migration plan must set out the reasonable steps that a wholesale customer may take in order to control the timing of disconnection and any known circumstances where the wholesale customer may not be able to take these steps.

In this regard, the ACCC considers that the principal objectives of the pull through required measures are:

- To the greatest extent practicable, provide wholesale customers with autonomy over the decisions about the timing of pull through to enable them to minimise the period of the service outage.
- To minimise disruption to the supply of fixed-line carriage services, to the extent that it is in Telstra's control.
- To provide for equivalent treatment of wholesale customers and Telstra's retail business units in the implementation of the relevant processes.

A detailed discussion of the ACCC's interpretation of the migration plan principles relating to pull through is provided in the ACCC's August 2011 Discussion Paper.¹⁴

¹⁴ August 2011 Discussion Paper, p.147-148.

2 Consultation

2.1 Overview

The ACCC is seeking feedback from interested parties on whether draft required measures 1(a) and 1(b) meet the requirements of the migration plan and comply with the migration plan principles. In addition, the ACCC seeks specific feedback on a number of issues relating to each required measure.

As part of the process for developing required measures 1(a) and 1(b) Telstra consulted wholesale customers and NBN Co. Further information on Telstra's consultation is available on the [Telstra Wholesale website](#).¹⁵

Telstra prepared a confidential summary of the feedback it received from wholesale customers as well as Telstra's response to each concern. Telstra provided this summary document to the ACCC on a confidential basis. The ACCC has considered this confidential summary document in the preparation of this consultation paper.

2.2 Making a Submission

Submissions in response to this discussion paper will be accepted until **5:00 pm on 1 February 2013**. Any submissions received after this time may not be considered.

All submissions will be considered public and posted on the ACCC's website. If stakeholders wish to submit commercial-in-confidence material to the ACCC they should submit a public and a commercial-in-confidence version of their submission. The public version of the submission should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or '[c-i-c]'.

The *ACCC-AER information policy: the collection, use and disclosure of information* sets out the general policy of the ACCC and the Australian Energy Regulator (AER) on the collection, use and disclosure of information. A copy of the guideline can be downloaded from the ACCC website at www.accc.gov.au.

The ACCC prefers to receive electronic copies of submissions in either Adobe PDF or Microsoft Word format that is text searchable. Please send submissions to the following email address: ssu-migration@acc.gov.au. The ACCC also accepts hard copies of submissions. Any hard copy should be sent to:

Sean Riordan
General Manager
Industry Structure and Compliance, Communications Group
Australian Competition and Consumer Commission
GPO Box 520, Melbourne VIC 3001

Any questions about this consultation process should be directed to Evan Marginson at evan.marginson@acc.gov.au or by calling: (03) 9658 6416.

¹⁵ www.telstrawholesale.com.au/nbn/migration-plan/index.htm.

3 Pull through activities

These draft required measures concern the practice of using an existing lead in cable to ‘pull through’ an NBN fibre optic cable from the street to the premise. In order to pull through a new fibre cable, the existing copper line or HFC cable is disconnected and attached to the fibre cable and used to draw it through the conduit.¹⁶ Once the fibre cable is in place, the copper or HFC line will be reinstated if it is still required.

The use of pull through will often be a step in a process that culminates in the disconnection of the existing service or services being supplied over the copper line. For instance, if the end user has agreed to switchover all of their existing services, the lead in cable used for pull through will not be reinstated and the existing services will be disconnected within Telstra’s systems at the conclusion of the NBN provisioning process without further action being required of the end user.

As discussed below, NBN Co has advised that it does not intend to use pull through activities unless a lead in cable cannot otherwise be installed in the existing conduit from the curb to a premise. Pull through activities will only be undertaken following an end user submitting an order to switchover existing services onto the NBN.

Pull through can be beneficial, in that it increases the extent to which existing conduits can be reused, rather than having to duplicate the underground conduits or use aerial deployments to the premise. However, its use does mean that there will be an interruption to existing services before NBN service(s) are provisioned.

As outages will likely pose some risk to end users—particularly for businesses or consumers with special needs—it will be necessary for end users to be advised of the potential for service interruption so that they can make an informed decision about the use of pull through and take any necessary steps to protect their interests, such as establishing a call diversion or having access to an alternative communications service.

Similarly, it will also be important for existing communications service provider(s) using the line to be informed of the use of pull through and any problems encountered so as to properly address end user enquiries regarding the service interruption and reinstatement process.

That said, these required measures relate to the role and responsibilities that Telstra will take on, in its capacity as access provider to the existing access network, when pull through is to be undertaken.

This role and these responsibilities will form an important piece in the overall arrangements that will be required to support pull through activities. End users, retail service providers, and NBN Co will also need to cooperate to make sure end user interests and competition are not put at risk as a consequence of pull through activities.

¹⁶ Definition of “pull through” in the *Migration Plan Principles Determination 2011*.

3.1 The NBN Rollout model

In its 2012-2015 Corporate Plan, NBN Co announced that it would be using a ‘build drop’ model for the NBN rollout. This entails NBN Co contractors connecting fibre to the premises at the time of the local fibre network construction where feasible to do so.

This is in contrast to a pure ‘demand drop’ approach, which required an end user to place an NBN connection order before fibre was run to the premises. Further information on the NBN rollout is available on the NBN Co website.¹⁷

At present, NBN Co intends to connect most premises within the fibre rollout region by pushing fibre through an existing underground conduit between an end user's premise and the property boundary. These conduits are referred to as a lead-in-conduit (LIC).

Where the fibre cannot be pushed through the LIC, NBN Co will need to connect the premises another way, including:

- by digging and installing a new LIC;
- by using an aerial fibre cable; or
- by use of pull through.

NBN Co has advised that it does not intend to use pull through during the build drop stage, and hence it will only be used following a retail service provider (RSP) submitting a connection order for an NBN service on behalf of the end user.

3.2 The steps in the pull through process

Attachment A to this discussion paper provides a high level overview of the pull through process. NBN Co has provided the ACCC with feedback on this document. The stages at which Telstra's required measures will come into operation have been highlighted to assist interested parties in preparing a submission.

The ACCC considers that the following aspects of the end-to-end process provide important context within which to consider the draft required measures:

- During the build drop, where an NBN Co contractor determines that the fibre cannot be pushed through the LIC, they will assess whether pull through can be used. If the NBN Co contractor considers that pull through cannot be used, the premises will then be connected either via the installation of a new LIC or by an aerial fibre cable.
- If the NBN Co contractor considers that pull through can be used, they will advise the end user that it was not possible to connect their premises at that time, and that the premises will instead be connected after the end user places an order with its RSP.¹⁸

¹⁷ See <http://www.nbnco.com.au>.

¹⁸ Effectively this means that pull through will only occur after NBN Co declares a region “ready for service” – as RSPs will only be able to place connection orders for Fibre Access Services after this date. Therefore, where an end user places a connection order at a premise that requires pull through, the premises will be fitted with a Network Termination Device (NTD) as well as a Premises Connection Device (PCD).

- Where pull through activities are to be undertaken, the NBN Co contractor will contact Telstra and rely on Telstra’s advice as to whether an existing cable can be used for pull through.
- Similarly, where problems are encountered during the pull through process, the NBN Co contractor will advise Telstra of this and Telstra will be responsible for communicating with affected Telstra retail and wholesale customers.
- The ACCC understands that NBN Co will, through the Wholesale Broadband Agreement (WBA), be seeking to require all NBN service providers to undertake ‘reasonable endeavours’ to obtain the consent of their end users for pull through to be used as well as information on priority assistance or medical alert services at the premises.
- The ACCC understands that NBN Co does not intend to use pull through where NBN Co has been made aware that priority assistance services are being acquired at the premises.

Consequently, and as reflected in the scope of the required measures, Telstra will have an important role to play as an intermediary between its wholesale customers and NBN Co and its contractors.

The end-to-end process will likely influence the end user experience when pull through activities are to be undertaken, as well as the ability of service providers to assist end users in that process.

The end-to-end process appears to provide opportunities for end users to be properly consulted and to take steps to protect their interests during their dealings with their RSP. For instance, the RSP could explain pull through and its benefits and detriments to end users and obtain an informed consent regarding its use when taking a connection order where pull through is likely to be required.

Similarly, it will also be important for end users to be advised on the day as to whether pull through will in fact be required. Keeping end users informed of when services have been reinstated will assist them to manage any potentially adverse consequences of pull through.

That said, at this stage there is a lack of clarity regarding the precise nature of the roles and responsibilities that all parties will take on in the end-to-end pull through process, or the extent to which all parties will in fact cooperate to ensure that pull through is undertaken in an appropriate manner. Submitting parties should bear this in mind when commenting on the detail of the required measures that have been proposed.

The ACCC considers that appropriate protections for vulnerable consumers, including those requiring medical priority assistance or medical alerts, should be provided throughout the pull through process. Telstra’s draft required measures are one regulatory mechanism by which the protection of these interests may be assured. The ACCC would be open to considering other potential regulatory arrangements to provide additional assurance that these consumers are protected should this be necessary.

4 Obtaining pull through consents and releases from wholesale customers (required measure 1(a))

4.1 Overview

In deciding whether to use pull through to connect a premise, the NBN Co contractor must confirm with Telstra the cables that they can use to pull through the fibre. The ACCC understands that on the day, the NBN Co contractor will contact Telstra to determine whether there are any copper lines or HFC cables that are ‘non-removable’.¹⁹

For example, if Telstra indicates that there are special services²⁰ on a particular line it will be considered non-removable and pull through will not proceed. A cable will also be considered non-removable if the RSP has not provided its consent for pull through to be used. Telstra must confirm whether a cable can be used for pull through within one hour of being contacted by an NBN Co contractor.

Under the Definitive Agreements, Telstra has consented to the use of pull through on all of its copper and HFC cables that it supplies retail services over that are otherwise removable. It has also provided NBN Co with a number of releases from liability as well as undertakings to provide information about the services on a particular line and to perform tests to determine that the existing communications services can continue to be supplied to that premises.

Migration plan requirements

The migration plan requires Telstra to develop a required measure that establishes a standardised process that enables it to use reasonable endeavours to obtain:

- Consent from wholesale customers for NBN Co to undertake pull through during the connection process.
- A release from wholesale customers in favour of an NBN Co benefited person for certain losses or claims relating to pull through.
- Consent from wholesale customers for NBN Co to use and disclose confidential information for the purpose of performing pull through.
- An undertaking by the wholesale customer to provide information directly to NBN Co on request about any priority assistance service, medical alert service or other alert service being supplied.²¹

Telstra is not required to seek or obtain the consent of an end user of a wholesale customer or to provide NBN Co with notice of priority assistance services, medical alert services or other alarm services that are supplied by a person other than Telstra.

¹⁹ A complete list of non-removable cables is provided in the definitions section of the draft Deed Poll attached to this discussion paper.

²⁰ Special services are specific types of copper services that may not have an appropriate NBN-based alternative for retail service providers to migrate their end users to. See migration plan, p. 30 (Explanatory Note: Disconnection of Direct Special Services).

²¹ Migration plan, clause 10.1.

Draft required measure 1(a)

Under draft required measure 1(a), Telstra proposes to obtain, on a once off and global basis, the consents, releases and undertakings from wholesale customers outlined above.

Telstra proposes to do this via a Deed Poll (**Attachment B**) which, if agreed to by the wholesale customer, can then be used by Telstra to confirm with NBN Co whether a cable can be used to perform pull through.

Telstra also seeks contact details for wholesale customers and a consent to disclose these details to NBN Co. This will allow NBN Co, should it wish to do so, to directly contact any wholesale customer that may not have provided consent for pull through.

Draft required measure 1(a) also seeks an undertaking from wholesale customers to perform certain tests to ensure the connectivity of reinstated or temporary lines to premises at which pull through has been used. ‘Reinstatement tests’ are to be used to ensure the connectivity of reinstated copper lines or HFC cables. ‘Remote tests’ will be used to ensure the connectivity of temporary lines. Telstra wholesale customers may expressly indicate that they do not require these tests to be performed.

4.2 Issues for Comment

The ACCC seeks feedback on whether draft required measure 1(a) complies with the migration plan and the migration plan principles.

1. Does the process for obtaining wholesale customer consents for pull through comply with the requirements of the migration plan and the migration plan principles?

In addition, the ACCC seeks feedback on a number of specific elements of the draft required measure.

The global nature of the consents and notice of pull through activities

The Determination requires that the migration plan must provide, to the greatest extent practicable, for disconnection processes that enable wholesale customers autonomy over decisions about sequencing disconnection with connection to the NBN in order to minimise disruption to the supply of communications services.²²

In its supporting submission, Telstra has stated that an “efficient and practical process is required (for obtaining wholesale customer consents) because Telstra must respond to NBN Co pull through inquiries within one hour”.²³ The ACCC agrees that it is likely to be more efficient for Telstra and NBN Co to obtain the consents in this manner. As Telstra notes, it may also remove an administrative burden for wholesale customers to respond to NBN Co inquiries for each line that may be subject to pull through.²⁴

²² *Telecommunications (Migration Plan Principles) Determination 2011*, s.8(1)(c).

²³ Telstra’s supporting submission to required measure 1(a), p.3.

²⁴ *Ibid*, p.3.

However, the ACCC notes that by providing the consents on a global basis, wholesale customers would appear to lose control over the timing of pull through and the capacity to minimise the period of any service outage and disruption to the supply of communication services to any individual consumers for whom pull through would not be appropriate.

The ACCC understands that in the course of Telstra's consultation, wholesale customers suggested a process by which they could better manage the consequences of pull through for their end users than under a global consent model. This involves a communication being provided to the wholesale customer ahead of the pull through being undertaken. This would allow the wholesale customer to contact the end user and assist them in establishing a call diversion service, or if necessary, to withdraw consent.

Telstra has acknowledged that RSPs will be responsible for the management of their own end users. In its supporting submission, Telstra has stated that "wholesale customers who agree to pull through are able to manage any outages with their end-users thorough the use of options such as call diversion features, the availability of mobile phones services etc".²⁵ This position relies on the wholesale customer being aware of the use of pull through.

However, it appears to the ACCC that a wholesale customer may not know if pull through will be used and therefore may not be able to make appropriate arrangements to assist their end-users with call diversion and other interim arrangements. This is because the decision to connect a premises by pull through will ultimately be made by the NBN Co contractor on the assigned connection date. Further, where an end user churns to another RSP during switchover, the existing copper based service provider will likely not be aware of the NBN connection date at all.

Telstra has also indicated that wholesale customers are not required to sign the Deed Poll and provide a global consent. However, the ACCC considers that this option may also be unattractive to wholesale customers, as it could result in their end user not having access to pull through and instead being connected through the installation of new underground infrastructure or by way of aerial deployment in all circumstances where NBN Co's attempt to push the NBN fibre cable through an existing LIC is unsuccessful.

Another means by which wholesale customers could be better able to manage the use of pull through might be to allow them to consent, or withhold consent, to pull through on a line by line basis. This would likely improve their autonomy to make decisions to minimise disruptions to the supply of communications services to those end users for whom pull through should not be undertaken. However, it may also introduce inefficiencies and an administrative burden on parties.

An alternative approach may be to allow wholesale customers to provide a global consent, but then identify certain categories of services, or individual lines upon which consent is not granted. The ACCC notes that ultimately, any benefits of allowing wholesale customers to undertake a more granular approach to providing consent for pull through must be balanced

²⁵ Ibid, p.7.

against any efficiency costs, including any potential limits to NBN Co's capacity to undertake pull through in a timely manner.

2. Does the global nature of the consents sought under the Deed Poll undermine wholesale customer capacity to minimise the period of any service outage and disruption to the supply of communication services to their end users?
3. What arrangements for providing consent to pull through would be most likely to benefit wholesale customer autonomy while also not unduly limiting the timeliness and efficiency of the pull through process?
4. Would the inclusion in the required measures of a notification process to wholesale customers ahead of the use of pull through assist wholesale customers manage service continuity for their end users?

The scope of the release sought under clause 1.6(c) of the draft Deed Poll

The draft Deed Poll includes a number of clauses that release NBN Co and Telstra from liability from any loss or claim relating to the operation or lack of operation of the existing copper services that may arise from pull through.

In its supporting submission, Telstra states that it has provided NBN Co with relevant consents to conduct pull through activities for its retail customers and that the draft required measure provides the same opportunity to wholesale customers.²⁶ Regardless, some of the releases under the draft Deed Poll are fairly wide in scope. For example, clause 1.6(c) of the draft Deed Poll provides that, subject to a negligent act or omission, the wholesale customer:

“absolutely releases each NBN Co Person and each Telstra Person in relation to any Loss or Claim for or in relation to...the operation, or lack of operation, of any carriage service on a Pull Through Cable (caused) by the Pull Through Activities, Cable Rectification or installation of a Temporary cable, for the period commencing on installation of a Temporary Cable until commencement of Cable Rectification”.²⁷

The ACCC understands that NBN Co intends to install temporary cables at premises where the copper line or HFC cable cannot be rectified. The effect of draft clause 1.6(c) would appear to be that neither NBN Co or Telstra is liable for the failure of the temporary cable to facilitate the supply of the existing services to the premises.

Consequently, in the event of an extended period of service outage, in circumstances where there is delayed commencement of the NBN fibre service, the wholesale customer would appear to have little capacity to ensure continuity of service for their end users.

5. Does the release under draft clause 1.6(c) of the Deed Poll undermine the capacity of wholesale customers to minimise the period of any service outage for their end users?

²⁶ Ibid, pp.7-8.

²⁷ Draft Deed Poll, clause 1.6(c).

Priority assistance and medical alert services

Telstra has up to 600,000 priority assistance customers, with other service providers supplying a smaller number of such services. The ACCC is aware that there are up to 300,000 medical alert service customers in Australia. It is likely that many of these consumers are Telstra customers. Some but not all would likely be priority assistance customers.

As noted previously, where NBN Co is made aware of the existence of priority assistance services, its intention is not to use pull through.

Clause 10.1(f) of the migration plan limits Telstra's responsibility for providing any information on the priority assistance and medical alert services status of a wholesale customer line. Rather, as reflected in clause 1.5 of the draft Deed Poll, wholesale customers are to provide this information to NBN Co *on request*.

In light of the potentially serious consequences for vulnerable customers that may arise from service outages occasioned by pull through, the ACCC is considering whether the arrangements proposed in the required measure are sufficient to ensure that, to the greatest extent practicable, information on priority assistance and medical alert services provided over a particular copper line is available to NBN Co when it is deciding on the use of pull through.

6. Do the required measures provide assurance that wholesale customers of Telstra obtain and supply information to NBN Co regarding the existence of priority assistance and medical alert services?
7. What information do wholesale customers currently provide to Telstra about priority assistance and medical alert services?

There is potential that these consumers may not always identify either to their own RSP (or to a NBN Co technician) that they acquire priority assistance or medical alert services. In this regard, it is likely that a RSP would have to take positive steps to ascertain whether a medical alert service is being provided over a line, as there would often be instances where the customer's current service provider will not know of the existence of such a service.

Further, if a customer is churning to a new service provider in the course of migration, the customer might not raise that need with the new service provider on the misunderstanding that the existing arrangements will be migrated to the NBN automatically.

The ACCC understands that NBN Co intends to seek an undertaking from RSPs to use 'reasonable endeavours' to provide NBN Co with information on the existence of any priority assistance or medical alert services at a premises on behalf of which they are lodging a connection order.

However, it is not clear what steps RSPs will take to fulfil this contractual obligation, or what the consequences would be for the RSP if they did not comply with that obligation.

8. Could the required measures be amended in any way to provide additional assurance that priority assistance and medical alert customers will be identified to NBN Co?
9. What other measures could be established to provide such additional assurance?

Tests to determine whether the service outage is over

As noted under section 4.1 of this discussion paper, the Deed Poll seeks an undertaking from wholesale customers to perform certain tests to ensure the connectivity of reinstated or temporary lines to premises at which pull through has been used. Draft clause 1.4 of the Deed Poll commits RSPs who sign the relevant box at the end of the Deed Poll to undertake ‘reasonable endeavours’ to carry out Reinstatement and Remote Tests within one hour of being requested to do so by NBN Co.²⁸

These tests will be important to ensuring that communications services can recommence for end users that do not migrate all their services over to the NBN on the connection date.²⁹

Telstra has indicated that wholesale customers may expressly opt out of having to perform these tests by not ‘ticking the box’ under the Deed Poll. The ACCC understands that in circumstances where wholesale customers opt out of undertaking these tests, NBN Co will still be required to undertake a basic test to determine whether there is a current on the cable. However, there does not appear to be any obligation to ensure that the existing communications services can recommence supply to the premises.

Given the scope of the releases under draft clause 1.5 of the Deed Poll, the ACCC considers that allowing wholesale customers to opt out from these tests may inappropriately undermine the migration plan’s continuity of service objectives.

10. In the absence of wholesale customer agreement to undertake Reinstatement or Remote Tests, is there sufficient assurance that existing communications services will be able to recommence after pull through?

²⁸ Draft clause 1.4 of the Deed Poll.

²⁹ As noted above, ‘Reinstatement tests’ are to be used to ensure the connectivity of reinstated copper lines or HFC cables. ‘Remote tests’ will be used to ensure the connectivity of temporary lines.

5 Notification of pull through exception events (required measure 1(b))

5.1 Overview

In some cases, difficulties will be encountered during the pull through process and it might not be able to be completed promptly. For example, if poor weather conditions or an occupational health and safety risk occurred, the NBN Co contractor might be prevented from completing pull through activities on the day. Such circumstances are known as ‘pull through exception events’.

If a pull through exception event occurs, or the copper or HFC cable cannot be reinstated, then the NBN Co contractor must install a temporary cable to enable the continued supply of the existing communications service(s) to the premises. This temporary cable will remain until NBN Co can reinstate the copper line or HFC cable permanently.

It is intended that each RSP will undertake tests to ensure that the communications service(s) can be supplied over the replacement lines. Ultimately, the reinstated service(s) will be disconnected in accordance with disconnection processes provided under the migration plan.³⁰

Clause 10.2 of the migration plan requires Telstra to develop a required measure outlining how it will give prompt notification to affected wholesale customer(s) if NBN Co advises Telstra that a pull through exception event has occurred or that NBN Co has installed a temporary cable (together referred to as ‘notification events’).

Pages 4-5 of draft required measure 1(b) outline how Telstra proposes to notify its wholesale customers in these circumstances.

5.2 Issues for Comment

The ACCC seeks feedback on whether draft required measure 1(b) complies with the migration plan and the migration plan principles.

11. Does the process for notifying wholesale customers that a notification event has occurred comply with the requirements of the migration plan and the migration plan principles?

In addition, the ACCC seeks feedback on a number of specific elements of the draft required measure.

Prompt notification

As noted above, the migration plan requires Telstra to promptly advise affected wholesale customer(s) of any ‘notification event’.

³⁰ Unless there is a complete migration event (where all copper services are migrated to the NBN at the time pull through is completed).

Prompt notification of the nature of the event and the steps being taken to address it will obviously be important to enable wholesale customers to respond to their end users' queries or concerns, as well as to determine whether an alternative communications product and/or service is required and if so, the most appropriate alternative.

In terms of Telstra's proposed timing, the process flow diagram on page 6 of the draft required measure states that "advice of an exception event is to be received [by a wholesale customer] as soon as practicable, no later than 2 business days after receiving the notice from NBN Co." However, on page 5 of the draft required measure, Telstra states that it expects that in 90 per cent of cases, wholesale customers will be advised that a notification event has occurred within four hours.

The draft required measure is silent on what information this notification to affected wholesale customers will include.

The draft required measure outlines that "Telstra Wholesale will make contact with the Wholesale Customer using at least one channel of communication (eg email), to advise of the Notification event."³¹ However, the mode of communication appears to be entirely at Telstra's discretion, as opposed to being a communication channel agreed between Telstra and the customer.

12. Within what time period would wholesale customers need to be provided with notification of a pull through exception event in order to take steps to minimise disruption of their end users' services?
13. What information do wholesale customers need to know regarding a 'notification event' in order to effectively manage the supply of services to their end users? In particular, in what ways would additional information benefit wholesale customers to do this? In responding to this question please consider information relating to:
- the type of exception event
 - the particulars of the exception event, including an anticipated timeframe for rectification.

In order to maintain transparency over the timeliness of Telstra's notifications to affected wholesale customers, the ACCC considers that required measure 1(b) should include an additional metric relating to the time taken by Telstra to advise wholesale customers of notification events.

Equivalent treatment of wholesale customers and Telstra Retail Business Units

Section 21 of the Determination requires that the migration plan must provide for the equivalent treatment of wholesale customers and retail business units in the implementation of disconnection processes.

Both the draft required measure and Telstra's supporting submission are silent on the process that Telstra will follow when alerting Telstra Retail Business Units to a notification event that

³¹ Draft required measure 1(b), p5.

affects a Telstra retail customer. For this reason, the ACCC is currently unable to assess whether draft required measure 1(b) complies with section 21 of the Determination.

However, on page 5 of draft required measure 1(b), Telstra states that “[t]he Telstra help desk is the primary point of contact for NBN Co to advise Telstra about the Notification Event. The help desk will be staffed by trained Telstra employees who will be experts in communication activities.” It is unclear whether the Telstra help desk will be situated in either a Telstra Retail, Telstra Wholesale or Telstra Network business unit.

This location could have important implications for equivalence. The ACCC considers that in order to provide for the equivalent treatment of wholesale customers and Telstra retail business units, the Telstra help desk should be situated outside both Telstra Retail and Telstra Wholesale. In addition, the Telstra help desk employees should follow a similar, if not identical, process when alerting retail business units to a notification event as is following when providing notification to a wholesale customer.

In addition, the draft required measure outlines that in addition to logging the notification event in the NBN Transition Tool (the computer system used by Telstra to manage migration of services to the NBN), Telstra help desk employees will also record the notification event in Telstra’s assurance system for recording customer faults (SIAM).³²

The ACCC understands that Telstra Retail call centres will have access to the SIAM record and hence be in a good position to respond to end user enquiries about notification events at the first contact with a Telstra Retail end user. It is unclear whether wholesale customers will have access to this SIAM record and hence be in the same position to answer questions from their end users that contact their call centres.

14. Can wholesale customers access SIAM records to check the fault status of a line without contacting Telstra Wholesale?

³² Draft required measure 1(b), p5.

Attachment A: Overview of steps in the pull through connection process

The following overview represents the ACCC's understanding of the pull through process at the time of publication of this discussion paper.

NBN rollout: build drop phase

NBN Co fibre and Premises Connection Device will be installed to the premises at the time of the local network construction. No pull through activities at this stage.

- Where it is apparent that the existing lead-in-conduit (LIC) cannot be used, even for pull through, the premises will be connected using aerial fibre or by installation of a new LIC.
- Where it is determined that the LIC *could* be used for pull through, the end user will receive a notice indicating that the NBN connection could not be completed on the day and that the NBN connection can still occur but at a later date when the end user submits an order for NBN service(s).



End user places order for NBN connection: demand drop phase

At its discretion, NBN Co may declare a region 'Ready for Service' after 90 percent of premises in the region are passed by NBN fibre. After this date, end users can contact a retail service provider (RSP) to order an NBN service. When contacted by an end user, the RSP will:

- Clarify whether the premises is NBN Serviceable by way of NBN service qualification.
- Be required to use reasonable endeavours to ask the end user to indicate whether they provide consent for NBN Co to perform pull through and so have a temporary outage of their current copper or HFC services.



Retail service provider places order with NBN Co

When the order is placed with NBN Co, the RSP will:

- Indicate whether the end user has consented to the performance of pull through/temporary outages on their existing copper and HFC services for the installation of NBN Co equipment.
- Select an available date for the installation from the NBN Co booking system.
- Communicate the installation date to the end user.
- Make arrangements for the provision of interim call diversion services if necessary.



NBN Co attends site to connect premise

The NBN Co installer:

- Undertakes an inspection of the LIC to determine whether they believe that pull through can be completed on the day.
- If the installer decides that pull through can be completed they will check *with Telstra* whether there are any cables that cannot be used for pull through.

It is at this point that Telstra will check whether a wholesale customer that provides services to the premises has signed the Deed Poll and therefore provided the necessary consents, releases and undertakings for pull through to occur (required measure 1(a)).

NBN Co has indicated that it:

- Does not intend to contact any Telstra wholesale customer at this time to confirm consent for pull through.
- Will not need to seek end user consent for pull through on the day (because this will have been provided at the time the connection order is placed).
- Will not perform pull through at any premises where information provided by the RSP at the time the connection order was placed indicates that there is a priority assistance, medical alert or other comparable service provided to the premises.



If pull through can be undertaken

NBN Co will:

- Inform the end-user/nominated representative when an outage starts and ends.
- Reinstate the copper or HFC line used for pull through and test whether it works.
- Contact Telstra or a wholesale customer to test whether the reinstated line works.



If pull through fails

The ACCC understands that NBN Co will:

- Seek to install a temporary cable.
- Notify the end-user that pull through has not been successful.
- Contact Telstra to inform it that a ‘pull through exception event’ has occurred.

It is at this point that Telstra will notify any affected wholesale customer that a “pull through exception event” has occurred. Telstra commits to notify wholesale customers within 4 hours of receipt of a notice from NBN Co in ninety percent of cases and in all other cases within two business days (required measure 1(b))

- Make arrangements to address service outage as soon as possible.

Consents, releases and undertakings

Dated

[Insert full customer name] ([insert customer's ABN]) ("**Customer**")

DRAFT

1 Consents, releases and undertakings

1.1 This deed poll

This deed poll consists of consents, releases and undertakings for the benefit of each NBN Co Person and each Telstra Person. This deed poll will apply in respect of each carriage service [Customer] acquires from Telstra that is supplied by Telstra to [Customer] via a Copper Line in a LIC.

1.2 Consents for Pull Through Activities

- (a) [Customer] consents to:
- (i) NBN Co Entity undertaking Pull Through Activities;
 - (ii) NBN Co Entity installing a Temporary Cable and Telstra Person supplying the carriage services over the Temporary Cable;
 - (iii) any outage of the carriage services on the Pull Through Cable:
 - (A) from the start of the Pull Through Activities until Cable Rectification; or
 - (B) in connection with the installation or replacement of any Temporary Cable;
 - (iv) NBN Co Entity suspending Pull Through Activities if there is a Pull Through Exception Event; or
 - (v) NBN Co Entity not performing or completing Cable Rectification (which may result in a Temporary Cable continuing to be used, NBN Co Entity not being able to install a Temporary Cable or a continuing outage of the carriage services) if:
 - (A) a Pull Through Exception Event has continued for more than 90 days;
 - (B) an appointment time to complete the relevant work has not been agreed between the end user and NBN Co Entity to occur within 90 days after the Pull Through Exception Event is no longer in effect;
 - (C) an appointment time to remove any Temporary Cable and perform permanent Cable Rectification has not been agreed with the end user and NBN Co Entity within 90 days after the date of installation of a Temporary Cable.
- (b) [Customer] consents to NBN Co Entity not performing Cable Rectification if there is a Complete Migration Event.

1.3 Consent for disclosure and use of confidential information

[Customer] consents to:

- (a) a Telstra Person disclosing [Customer]'s name to NBN Co Entity or its Personnel for the purposes of Pull Through Activities, installing any Temporary Cable and Cable Rectification;
- (b) NBN Co Person, using and disclosing confidential information of [Customer] which is provided to any of them by a Telstra Person or [Customer] for the purposes of Pull Through Activities, installing any Temporary Cable and Cable Rectification and related purposes;
- (c) Telstra disclosing to the ACCC in its quarterly reporting under the Migration Plan that [Customer] has signed this deed poll; and
- (d) in response to a request from the ACCC, a Telstra Person or a NBN Co Person disclosing to the ACCC confidential information of [Customer] in connection with Pull Through Activities, installing any Temporary Cable or Cable Rectification.

1.4 Reinstatement Tests and Remote Tests

If [Customer] marks the box at the end of this document that it will perform Reinstatement Tests and Remote Tests, then [Customer] undertakes to use reasonable endeavours to carry out Reinstatement Tests and Remote Tests within one hour after a request by NBN Co Entity.

1.5 [Customer] to provide information to NBN Co Entity on request

If:

- (a) there is one of the following types of services being supplied over the Copper Line (other than by Telstra):
 - (i) a priority assistance service;
 - (ii) a medical alert service;
 - (iii) an alarm service; or
 - (iv) a service with substantially similar service levels to the services listed in clauses 1.5(a)(i) to 1.5(a)(iii); and
- (b) NBN Co Entity requests information as to whether any of those services is being supplied over the Copper Line for the purposes of Pull Through Activities,

then:

- (c) [Customer] undertakes to provide that information under this clause 1.5 completely and accurately to NBN Co Entity directly and immediately on request; and
- (d) [Customer] indemnifies each Telstra Person and each NBN Co Entity for any Loss or Claim arising out of or in relation to a failure by [Customer] to provide that information under this clause 1.5 completely and accurately to NBN Co Entity immediately on request.

1.6 Release

Subject to clause 1.7 and 1.8 [Customer] absolutely releases each NBN Co Person and each Telstra Person in relation to any Loss or Claim for or in relation to the following:

- (a) the operation, or lack of operation, of any carriage service on a Pull Through Cable caused by the Pull Through Activities, Cable Rectification or installation or removal of a Temporary Cable after the Reinstatement Time;
- (b) the operation, or lack of operation, of any carriage service on the Pull Through Cable caused by the Pull Through Activities, Cable Rectification or installation of a Temporary Cable for the period of time between:
 - (i) when NBN Co Entity ceases or suspends the relevant work as a result of a Pull Through Exception Event; until
 - (ii) the completion by NBN Co Entity of that work after the Pull Through Exception Event is no longer in effect;
- (c) the operation, or lack of operation, of any carriage service on a Pull Through Cable by the Pull Through Activities, Cable Rectification or installation of a Temporary Cable, for the period commencing on installation of a Temporary Cable until commencement of Cable Rectification;
- (d) the use by NBN Co Entity of any Pull Through Cable for Pull Through Activities which are not required to be completed by NBN Co Entity if:
 - (i) a Pull Through Exception Event has continued for more than 90 days; or

- (ii) an appointment time to complete the relevant work has not been agreed between the end user and NBN Co Entity to occur within 90 days after the relevant work was ceased or suspended or a Temporary Cable was installed;
- (e) a failure by NBN Co Entity to remove a Temporary Cable, perform or complete Cable Rectification where an appointment time to remove any Temporary Cable and perform permanent Cable Rectification has not been agreed with the end user and NBN Co Entity within 90 days after the date of installation of a Temporary Cable;
- (f) a failure by NBN Co Entity to perform or complete Cable Rectification if there is a Complete Migration Event; and
- (g) a failure by Telstra to notify [Customer] completely and accurately of a Pull Through Exception Event or installation of a Temporary Cable to the extent Telstra was not notified by NBN Co Entity completely and accurately of a Pull Through Exception Event or installation of a Temporary Cable.

1.7 When the release does not apply in favour of a NBN Co Person

The release in clause 1.6 in favour of a NBN Co Person does not apply in respect of Loss or a Claim to the extent that the Loss or Claim is as a result of or in relation to:

- (a) any negligent act or omission of NBN Co or its Personnel; or
- (b) any act or omission of a Related Entity of NBN Co or its Personnel.

1.8 When the release does not apply in favour of a Telstra Person

The release in clause 1.6 in favour of a Telstra Person does not apply in respect of Loss or a Claim to the extent that the Loss or Claim is as a result of or in relation to any negligent act or omission of a Telstra Person.

1.9 Related Entities

- (a) [Customer] undertakes:
 - (i) that it has the authority to give the consents, releases and undertakings on the terms of this deed poll for or on behalf of each of its Related Entities listed at Schedule 1;
 - (ii) to procure that each of its other Related Entities gives the same consents, releases and undertakings as [Customer] under this deed poll; and
 - (iii) to notify Telstra as soon as practicable if an entity ceases to be a Related Entity of [Customer] or there is a new Related Entity of [Customer]; and
 - (iv) to list the former names of [Customer] and its Related Entities in Schedule 1 and notify Telstra of any new former names as soon as practicable after the name is changed.
- (b) [Customer] indemnifies each Telstra Person and NBN Co Entity for any Loss or a Claim arising out of or as a result of a failure of [Customer] to comply with clause 1.9(a) and clause 2.
- (c) [Customer] undertakes to notify Telstra if there is a new Related Entity of [Customer] which it wishes to add to the list of Related Entities in Schedule 1 (and hence be covered by the terms of this deed poll).

1.10 Covenant

[Customer] covenants that neither it nor any of its Related Entities, nor anyone acting in their names or on their behalf:

- (a) will bring; or

- (b) assist anyone else to bring,

any Claim against any NBN Co Person or any Telstra Person seeking relief in respect of the subject matter of the release in clause 1.6.

1.11 How this deed poll may be used

This deed poll operates as and may be pleaded as a full and complete defence by any person having the benefit of the releases given or covenants made by [Customer] in this deed poll to any Claim:

- (a) commenced, continued or taken or at any time to be commenced;
- (b) continued or taken by [Customer] or any of its Related Entities or any party or body claiming through; or
- (c) under or on behalf of [Customer] or any of its Related Entities,

in respect of any Claims released under this deed poll or that are the subject of the covenant in clause 1.10.

2 Termination

2.1 Termination by [Customer]

[Customer] may terminate this deed poll on notice to Telstra. A notice given by [Customer] to Telstra under clause 1.9(a)(iii) about an entity ceasing to be a Related Entity is taken to be a notice of termination under this clause 2.1 for that entity only. Telstra will action a notice of termination under this clause 2.1 within 10 Business Days after receipt of that notice and the termination will take effect from the time that the termination is actioned in Telstra's systems.

2.2 Pull Through Required Measure not approved

If the ACCC approves the Pull Through Required Measure under clause 5.4(d)(ii) of the Migration Plan in a form that is inconsistent with this deed poll, then Telstra may terminate this deed poll (in whole or in part) on notice to [Customer] at its discretion.

2.3 Rights and obligations

Termination of this deed poll does not:

- (a) affect any rights or obligations which by their nature survive termination;
- (b) waive any breach of this deed poll and is without prejudice to and does not limit any rights, remedies, liabilities or obligations that have accrued up to the date of termination; and
- (c) affect the consents, releases and undertakings previously given under this deed poll in respect of a particular Line, for example, termination does not affect the consents, releases and undertaking for a particular Line if any work has started for that Line and the termination takes effect after that work has commenced.

3 Notices

3.1 Operational notices

- (a) [Customer] undertakes to provide the applicable contact details in Schedule 2.
- (b) In addition to listing the applicable details in Schedule 2, [Customer] undertakes to promptly advise Telstra of an operational contact at [Customer] for matters in relation to the National Broadband Network ("**Operational Contact**") and to provide phone and email contact details for that Operational Contact in the manner and form requested by Telstra to [Customer] from time to time. [Customer] acknowledges that Telstra will send notices to the Operational Contact in relation to Pull Through Activities (including notices of Pull

Through Exception Events and installation of Temporary Cables) via phone or email (or both).

- (c) [Customer] acknowledges that Telstra is intending to develop a process for the notification by Telstra of Pull Through Exception Events and installation of Temporary Cables as part of the Pull Through Required Measure and the terms for such processes will be as set out in TWCP. [Customer] undertakes to comply with such processes as set out in TWCP to the extent there are any reasonable actions for [Customer] to follow.
- (d) [Customer] acknowledges that NBN Co may provide notices to [Customer] using the applicable details in Schedule 2 in relation to Pull Through Activities via phone or email (or both).

3.2 Notices of termination

- (a) All notices (other than those under clause 3.1) and other communications in connection with this deed poll (for example, a notice termination) must be:
 - (i) in writing;
 - (ii) signed by an authorised representative of [Customer];
 - (iii) marked for the attention of the relevant person as identified in Schedule 2; and
 - (iv) given by one of the following methods:
 - (A) left at the address set out or referred to in Schedule 2;
 - (B) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in Schedule 2; or
 - (C) sent by email to the address set out or referred to in Schedule 2.

3.3 Notice or communications requirements

For any notice or communications given under clause 3.1 or 3.2:

- (a) if the intended recipient has notified a changed person, phone number, address or email address, then the notice or communication must be to that person, phone number, address or email address;
- (b) notices or communications sent by email must state the first and last name of the sender and are taken to be signed by the named sender;
- (c) notices or communications take effect from the time they are received or taken to be received unless a later time is specified. Subject to clause 3.3(d), notices or communications are taken to be received:
 - (i) if sent by post, three days after posting (or seven days after posting if sent from one country to another); or
 - (ii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

- (d) If notices or communications are received or taken to be received in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

4 Interpretation

4.1 References to certain general terms

- (a) Unless the contrary intention appears, a reference in this deed poll to:
- (i) the singular includes the plural and vice versa;
 - (ii) the word “including” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
 - (iii) a document (including this deed poll) includes any variation or replacement of it; and
 - (iv) a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (b) The indemnities in this deed poll are continuing obligations, independent from the other obligations of [Customer] and continue after this deed poll is terminated. It is not necessary for a Telstra Person or a NBN Co Entity to incur expense or make payment before enforcing a right of indemnity under this deed poll.
- (c) The release in clause 1.6 applies to Claims which [Customer] or its Related Entity (or any person claiming through) may at that time have or in the future have had against the NBN Co Persons or Telstra Persons but for this deed poll.

4.2 Definitions

ACCC means the Australian Competition and Consumer Commission.

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

Cable Rectification means reinstating or replacing a Pull Through Cable which was removed by NBN Co Entity or its Personnel for the sole purpose of Pull Through Activities, which includes through the use of a Temporary Cable or a replacement cable.

Claim means any claim, allegation, cause of action, proceeding, suit or demand made however it arises and whether it is present or future, fixed or unascertained, actual or contingent, known or unknown and whether or not within the contemplation of [Customer] at the date of this deed poll.

Competent Contractor means any person who is appropriately accredited (if applicable) and otherwise competent having regard to the nature of the work or services to be undertaken by that person.

Complete Migration Event means where:

- (a) all the services over the Copper Line are migrating to services on NBN Co's network or being permanently disconnected; and
- (b) a process has been agreed between [Customer] and Telstra (and approved by NBN Co) for Telstra to notify NBN Co Entity of the circumstances described in (a).

Copper Line means a Line or series of Lines that is part of the Copper Network that, together with any customer wiring beyond the network boundary point (as determined under the Telecommunications Act 1997 (Cth)), forms a fixed line connection to the end user premises.

Copper Network means a copper access network in Australia over which Telstra is in a position to exercise control.

Copper Service means a carriage service provided using a Copper Line.

LIC (known as a “lead-in conduit”) means a Pipe that runs continuously between and is connected to:

- (a) (**downstream end**) a main distribution frame, optical distribution frame, Telstra copper cable terminating block or null node that serves the relevant end user premises or any other point on the relevant end user premises beyond which there is no more continuous Pipe; and
- (b) (**upstream end**) the first pit, manhole or pole (which is owned by Telstra or Telstra is in a position to control) that is upstream of the point referred to in paragraph (a).

LIC OH&S Risk means an occupational, health or safety risk to a person that cannot be appropriately dealt with by a Competent Contractor:

- (a) in accordance with law relating to work or occupational health and safety (or both); and
- (b) adopting appropriate occupational, health and safety procedures, having regard to the exposure or risk of which the relevant person is aware,

during the applicable appointment and without having to leave the end user premises.

LIC Property Damage Risk means risk of damage to property that cannot be addressed by a Competent Contractor:

- (a) adopting appropriate procedures, having regard to the exposure or risk of which the relevant person is aware;
- (b) during the applicable appointment and without having to leave the end user premises; and
- (c) whether or not the risk relates to a standard installation or a non-standard installation,

but excludes any damage which is consented to by the owner of the property (or a person authorised by them to give the consent).

Line has the meaning given in the *Telecommunications Act 1997 (Cth)*.

Migration Plan means the Migration Plan given by Telstra to the Australian Competition and Consumer Commission on 24 August 2011 under section 577BDA of the *Telecommunications Act 1997 (Cth)*.

NBN Co means NBN Co Limited (ABN 86 136 533 741).

NBN Co Entity means NBN Co or any of its wholly-owned subsidiaries.

NBN Co Person means NBN Co and its Related Entities, and each of their respective Personnel.

Non-Removable Cable means any of the following cables:

- (a) a 10 pair or greater copper lead-in cable;
- (b) a cable by which a Special Service is being provided;
- (c) a cable for which Telstra has not provided the relevant information (or insufficient information) to NBN Co Entity for the purposes of determining if NBN Co Entity can do Pull Through Activities;

- (d) a cable that a Competent Contractor at the LIC on the day of installation could not locate or identify the relevant cable that could be used for Pull Through Activities;
- (e) if there is more than one wholesale customer acquiring services from Telstra on the relevant cables in the LIC and Telstra does not have the consent of all the relevant wholesale customers for NBN Co Entity to carry out Pull Through Activities, then each of those cables is taken to be a Non-Removable Cable;
- (f) a cable that neither Telstra nor NBN Co Entity has the consent of the relevant wholesale customer for NBN Co Entity to carry out Pull Through Activities;
- (g) a cable that NBN Co Entity does not have consent from the end user for NBN Co Entity to carry out Pull Through Activities;
- (h) a cable that NBN Co Entity takes to be a Non-Removable Cable on the basis of the information that [Customer] has provided under clause 1.5 indicates that a priority assistance service, medical alert service or a service with substantially similar service levels is being supplied over that cable by a person other than Telstra; or
- (i) any other cable that Telstra may reasonably notify to NBN Co Entity as being the type of cable which should be a Non-Removable Cable.

Personnel, in relation to a person or any of its Related Entities, means:

- (a) all employees and officers of that person;
- (b) all agents, contractors and suppliers of that person in their capacity as agents, contractors or suppliers of that person; and
- (c) all subcontractors of a contractor referred to in paragraph (b) in their capacity as subcontractors of that person.

Pipe means a tubular structure used, installed, ready to use or intended to be used for housing cables, that is owned or leased by, or licensed to, Telstra or a Related Entity of Telstra.

Pull Through Activities means the use of a Pull Through Cable to enable NBN Co Entity, including by use of a draw wire, to install a lead-in fibre cable through the entire length of a LIC.

Pull Through Cable means a Copper Line that is:

- (a) installed in a LIC at the time NBN Co Entity intends to install its lead-in fibre cable in that LIC;
- (b) used or can be used by NBN Co Entity to undertake the Pull Through Activities); and
- (c) not a Non-Removable Cable.

Pull Through Exception Event means:

- (a) a cause outside the reasonable control of NBN Co Entity that could not have been prevented or avoided by NBN Co Entity taking all reasonable steps;
- (b) the withdrawal or termination of consent for the Pull Through Activities by [Customer] or the end user;
- (c) a LIC OH&S Risk;
- (d) a LIC Property Damage Risk; or
- (e) any other circumstance,

that would prevent a Competent Contractor from being able to complete the Pull Through Activities, installation of a Temporary Cable or Cable Rectification.

Pull Through Required Measure means the “Required Measure” listed in row 1 of Schedule 7 to the Migration Plan.

Reinstatement Test means, for each cable in a LIC that may be the Pull Through Cable, a remote off site test confirming that the cable has been reinstated and connected to the end user premises and the relevant network.

Reinstatement Time means (as applicable):

- (a) the time that the Reinstatement Test indicates that the Pull Through Cable is connected to the end user premises and the relevant network;
- (b) if [Customer] has not, does not or will not carry out a Reinstatement Test within one hour after a request by NBN Co Entity to do so, the time that NBN Co Entity started to carry out the Reinstatement Test;
- (c) if NBN Co Entity is unable to contact [Customer] to carry out a Reinstatement Test, the time that NBN Co Entity started to carry out the Reinstatement Test; or
- (d) if [Customer] does not mark the box at the end of this document that it will to perform Reinstatement Tests and Remote Tests, the time that NBN Co Entity satisfies itself that the Cable Rectification has been successful.

Related Entity means, for a person, each related body corporate of that person and any entity which is controlled by that person from time to time (where “control” has the meaning determined under section 50AA of the *Corporations Act 2001 (Cth)*).

Remote Test means a remote off site test confirming whether a Temporary Cable has been reinstated and connected to the end user premises and the relevant network.

Special Service is either a Direct Special Service as defined in the Migration Plan or a carriage service provided by a wholesale customer over a ULLS or SSS that the customer certifies is Service Equivalent to a Direct Special Service in a specified class.

Telstra means Telstra Corporation Limited (ABN 33 051 775 556).

Telstra Person means Telstra and its Related Entities, and each of their respective Personnel.

Temporary Cable means a cable which is installed by NBN Co Entity or their Personnel as a temporary replacement for a Pull Through Cable until NBN Co Entity performs permanent Cable Rectification.

TWCP means the web portal known as the Telstra Wholesale Customer Portal (or any replacement or variation of it) which provides Telstra Wholesale customers with an opportunity to access many of Telstra’s online applications from a single interface.

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

Reinstatement Tests and Remote Tests selection

- If [Customer] marks this box with either a or a , then [Customer] undertakes to use reasonable endeavours to carry out Reinstatement Tests and Remote Tests. If [Customer] leaves this box blank, [Customer] indicates that it does not require Reinstatement Tests and Remote Tests to be performed between [Customer] and NBN Co Entity.

EXECUTED as a deed poll.

Signed sealed and delivered by [Customer] by:

Director/
Secretary

Print Name

Date

Director/
Secretary

Print Name

Date

Schedule 1 – Related Entities and former names

Schedule 2 – Details for notices

[Customer]'s representative to receive notices or communications from Telstra or NBN Co (Operational Contact under clause 3.1)	Name	
	Address	
	Phone	
	Email	
[Customer]'s representative to receive notices or communications from Telstra (other than notices under clause 3.1)	Name	
	Address	
	Email	
Telstra	Name	
	Address	
	Email	