

Consents, releases and undertakings

Dated

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

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; and
 - (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been agreed between the end user and NBN Co Entity to occur within 90 days after the Pull Through Exception Event is no longer in effect; or
 - (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 in favour of each NBN Co Person

Subject to clause 1.7 [Customer] absolutely releases each NBN Co 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 Pull Through Exception Event is no longer in effect 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; and
- (f) a failure by NBN Co Entity to perform or complete Cable Rectification if there is a Complete Migration Event.

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 Release in favour of each Telstra Person

Subject to clause 1.9, [Customer] absolutely releases each Telstra Person in relation to any Loss or Claim for or in relation to:

- (a) 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;
- (b) 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 Pull Through Exception Event is no longer in effect or a Temporary Cable was installed;
- (c) 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;
- (d) a failure by NBN Co Entity to perform or complete Cable Rectification if there is a Complete Migration Event; and
- (e) a failure by Telstra to notify [Customer] with the applicable details listed at clause 5.4 of "Required Measure 1(b) – Pull Through Exception Event and Installation of Temporary Cable Notifications" to the extent Telstra was not notified by NBN Co Entity of those details or to the extent Telstra was provided with incorrect details by NBN Co Entity.

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

The release in clause 1.8 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.

1.10 Explanatory note about Non-Removable Cables

The releases under clauses 1.6 and 1.8 of this deed poll do not apply if the Cable that is used or attempted to be used by NBN Co Entity for Pull Through Activities is a Non-Removable Cable.

1.11 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;
 - (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 1.11(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).

1.12 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 or clause 1.8.

1.13 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 1.12.

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 1.11(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 releases in clauses 1.6 and 1.8 apply (as applicable) 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)*.

Loss means any loss, damage, liability, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent, known or unknown.

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	