

6.10 INDEPENDENT ASSURANCE

1 INTRODUCTION

- 1.1 The objective of the Independent Assurance Review process is to provide insight and assurance to the Minister as to the efficient use of public funds in respect of the Project and NBPco's performance of and compliance with this Agreement.

2 FREQUENCY AND SCOPE OF INDEPENDENT ASSURANCE REVIEW

- 2.1 Subject to the frequency limits in Paragraph 2.2 (Frequency and Scope of Independent Assurance Review), the Minister may, by written notice to NBPco at any time (and from time to time) during the Contract Period, require an Independent Assurance Review in relation to the following:

- 2.1.1 Network Deployment, in terms of planning, managing, costs and timescales;
- 2.1.2 NBPco reporting, for example in terms of quality, accuracy, transparency and timeliness;
- 2.1.3 effectiveness of Demand Stimulation measures;
- 2.1.4 safeguarding competition, transparency and non-discrimination;
- 2.1.5 Wholesale Products and Wholesale Prices;
- 2.1.6 compliance by NBPco (and Wholesale Products) with the Wholesale Product Benchmarking Rules;
- 2.1.7 compliance by NBPco (and Wholesale Prices) with the Wholesale Pricing Rules;
- 2.1.8 compliance by NBPco (and Associated RSPs) with the Retail Pricing Rules;
- 2.1.9 ongoing investment in the Network, including complying with commitments and obligations on future proofing and improvements;
- 2.1.10 a Change pursuant to Schedule 6.2 (Change Control Procedure) including with respect to a change to the Intervention Area and any Change in connection with the operation and/or assessment of any Contract Assumption;
- 2.1.11 any matter which is stated to be subject to an Independent Assurance Review; and/or
- 2.1.12 compliance by NBPco with any of its other obligations under this Agreement.

- 2.2 Without prejudice to Clause 47 (Audit) or any other Audit Right, the Minister shall undertake no more than one (1) Independent Assurance Review in each Contract Year except:

- 2.2.1 where the Minister is obliged under Law to conduct an Independent Assurance Review (including a review of the character of an Independent Assurance Review, whether or not so described);
- 2.2.2 to obtain such information as is necessary to fulfil the Minister's obligations to supply information for parliamentary, ministerial, judicial or administrative

purposes including the supply of information to the Comptroller and Auditor General;

- 2.2.3 where an Independent Assurance Review is in respect of a matter covered by Paragraph 2.1.10 (Frequency and Scope of Independent Assurance Review);
- 2.2.4 where there has been a non-trivial breach of this Agreement or the Minister reasonably suspects a non-trivial breach of this Agreement; or
- 2.2.5 in respect of any matter stated to be subject to the Independent Assurance Review,

in each of which above cases, the frequency limits in this Paragraph shall not apply.

- 2.3 Subject to Paragraph 2.2 (Frequency and Scope of Independent Assurance Review), the Minister shall, acting reasonably, determine the specific timing of each Independent Assurance Review and the subject matter of each Independent Assurance Review.
- 2.4 NBPco shall use all reasonable endeavours to procure that Buildco, and Critical Key Subcontractors provide NBPco with all necessary information in order for NBPco to comply with its obligations under this Schedule.

3 APPOINTMENT OF INDEPENDENT ASSURANCE REVIEWER

- 3.1 The Minister shall appoint the Independent Assurance Reviewer who shall have appropriate, in the Minister's opinion, skills and expertise necessary to carry out an Independent Assurance Review.
- 3.2 The Minister shall, at the written request of NBPco, require the Independent Assurance Reviewer to enter into a confidentiality agreement with NBPco on terms as protective as Clause 60 (Confidentiality).
- 3.3 The costs and expenses of the Independent Assurance Reviewer shall be paid by the Minister and each Party shall bear its own internal costs of the Independent Assurance Review.

4 INDEPENDENT ASSURANCE REVIEW

- 4.1 The Minister shall require the Independent Assurance Reviewer:
 - 4.1.1 to produce and send to each Party the terms of reference for the Independent Assurance Review in light of the Minister's instructions; and
 - 4.1.2 to produce and send to each Party for approval (such approval not to be unreasonably withheld, conditioned or delayed by NBPco) a draft plan for the Independent Assurance Review ("**Draft Independent Assurance Review Plan**"),

within ten (10) Working Days after the date of the appointment of the Independent Assurance Reviewer or such longer period as the Independent Assurance Reviewer shall reasonably request and agree with the Minister ("**Draft Plan Date**").

- 4.2 The Minister shall require the Independent Assurance Reviewer to include in the Draft Independent Assurance Review Plan:

- 4.2.1 a proposed timetable for the Independent Assurance Review;
- 4.2.2 a description of the methodology to be used by the Independent Assurance Reviewer;
- 4.2.3 the specific data sets, which shall be at a sufficient level of detail to allow meaningful comparisons and conclusions to be drawn, on which the Independent Assurance Review shall be based;
- 4.2.4 a description of the information that the Independent Assurance Reviewer requires each Party to provide including supporting context and relevant considerations for the data referred to in Paragraph 4.6 (Independent Assurance Review);
- 4.2.5 an estimate of the resources required from each Party to underpin the delivery of the Independent Assurance Review;
- 4.2.6 the subject matter of the Independent Assurance Review; and
- 4.2.7 such other elements as the Minister may specify.

For the purposes of this Schedule, the term “**Agreed Independent Assurance Review Plan**” means the final form of the Draft Independent Assurance Review Plan as approved by each Party or deemed approved by each Party or prescribed by the Independent Assurance Reviewer, in each case in accordance with the provisions of this Paragraph 4 (Independent Assurance Review).

- 4.3 Each Party shall give notice in writing to the Independent Assurance Reviewer and to the other Party within ten (10) Working Days after receiving the Draft Independent Assurance Review Plan (“**Draft Plan Response Date**”) either:
 - 4.3.1 approving the Draft Independent Assurance Review Plan; or
 - 4.3.2 suggesting amendments to the Draft Independent Assurance Review Plan which must be reasonable.

Where a Party suggests amendments to the Draft Independent Assurance Review Plan pursuant to this Paragraph 4 (Independent Assurance Review), the Independent Assurance Reviewer shall, if it believes the amendments are reasonable, produce within ten (10) Working Days of the Draft Plan Response Date or such longer period as the Independent Assurance Reviewer shall reasonably request and have agreed with the Minister, an amended Draft Independent Assurance Review Plan. Paragraph 4.2 (Independent Assurance Review) to Paragraph 4.3.2 (Independent Assurance Review) (inclusive) shall apply to any amended Draft Independent Assurance Review Plan.

- 4.4 Failure by a Party to give notice under Paragraph 4.3 (Independent Assurance Review) shall be treated as approval of the Draft Independent Assurance Review Plan by that Party.
- 4.5 If the Independent Assurance Reviewer produces an amended Draft Independent Assurance Review Plan pursuant to Paragraph 4.3 (Independent Assurance Review) and the Parties fail to approve the amended Draft Independent Assurance Review Plan within thirty (30) Working Days of the Draft Plan Date, then the Independent Assurance Reviewer shall prescribe the Agreed Independent Assurance Review Plan and provide a

copy of it to each Party no later than thirty five (35) Working Days from the Draft Plan Date and such Agreed Independent Assurance Review Plan shall be deemed approved by each Party.

- 4.6 Once the Draft Independent Assurance Review Plan is approved by both Parties or prescribed by the Independent Assurance Reviewer pursuant to the provisions of this Paragraph 4 (Independent Assurance Review), the Independent Assurance Reviewer shall carry out the Independent Assurance Review in accordance with the Agreed Independent Assurance Review Plan. NBPco shall procure that all of the documentation and information described in the Agreed Independent Assurance Review Plan, together with any additional information and documentation reasonably required by the Independent Assurance Reviewer, is provided to the Independent Assurance Reviewer as soon as reasonably practicable. If NBPco unreasonably declines to provide the relevant information and documentation requested from it by the Independent Assurance Reviewer and described in the Agreed Independent Assurance Review Plan, such failure shall constitute a material Default for the purposes of Clause 72 (Persistent Defaults and Remedial Plan Process) and the Remedial Plan Process.
- 4.7 NBPco shall co-operate fully with the Independent Assurance Reviewer and provide all rights of access as the Independent Assurance Reviewer may reasonably require (including access to data and NBPco's business premises), all permissions and all other rights set out in Schedule 6.11 (Audits) on the same basis as if it were an Audit or spot check by the Minister or its Audit Agents under the provisions of Schedule 6.11 (Audits), including by providing access to records, technical documentation, premises, equipment, systems, Network, Services and personnel reasonably requested by the Independent Assurance Reviewer (and at the times reasonably requested by the Independent Assurance Reviewer), provided that the Minister shall procure that the Independent Assurance Reviewer shall be instructed to minimise any disruption to the Services and Network, to the extent reasonably practicable, without interrupting the progress and robustness of the Independent Assurance Review.

5 INDEPENDENT ASSURANCE REVIEW REPORT

- 5.1 Subject to Paragraph 5.5 (Independent Assurance Review Report), the Independent Assurance Reviewer shall be required to prepare an Independent Assurance Review Report and deliver it simultaneously to both Parties at the time specified in the Agreed Independent Assurance Review Plan or such longer period as the Independent Assurance Reviewer shall reasonably request and agree with the Minister.
- 5.2 The Independent Assurance Review Report shall comprise a format and level of detail which can meaningfully inform the Minister as to the specified subject matter of the Independent Assurance Review as set out in Paragraph 2.1 (Frequency and Scope of Independent Assurance Review), and the Agreed Independent Assurance Review Plan, taking into account the objective of the Independent Assurance Review process set out in Paragraph 1 (Introduction) and Paragraph 2 (Frequency and Scope of Independent Assurance Review).
- 5.3 The Independent Assurance Review Report shall contain:
- 5.3.1 a detailed analysis and conclusions (including an opinion as to whether the Parties are in compliance or non-compliance with this Agreement in relation to the subject matter of the Independent Assurance Review); and
 - 5.3.2 a summary view of its conclusions,

which may be shared in accordance with Clause 60 (Confidentiality).

- 5.4 Where the opinion of the Independent Assurance Reviewer is that there is non-compliance and/or a failure to achieve objectives, it may make recommendations as to how any such issue could be remedied.
- 5.5 Prior to finalisation of the Independent Assurance Review Report, the Independent Assurance Reviewer shall:
- 5.5.1 make a draft version of the Independent Assurance Review Report available to the Parties and invite comments from both Parties; and
 - 5.5.2 meet with both Parties to discuss the draft Independent Assurance Review Report and comments provided.
- 5.6 The Independent Assurance Reviewer shall give reasonable consideration to comments received from the Parties prior to finalisation of the Independent Assurance Review Report.
- 5.7 If a Party has not responded or provided comments on the draft Independent Assurance Review Report within fifteen (15) Working Days of receiving the draft report, that Party is deemed to have no comments.

6 USE OF INDEPENDENT ASSURANCE REVIEW REPORT

- 6.1 The Independent Assurance Review Report may be used by the Minister to make an informed assessment of:
- 6.1.1 the cost effectiveness of:
 - (A) the Project Financial Model;
 - (B) the NBPCo Solution; and/or
 - (C) managing the Services;
 - 6.1.2 compliance by NBPCo with its obligations under the Agreement;
 - 6.1.3 requirements to enforce any of his rights under the Agreement; and/or
 - 6.1.4 such other purposes as considered appropriate or useful by the Minister.
- 6.2 NBPCo acknowledges and agrees that Independent Assurance Reviews shall, in particular, not result in any increase to the Subsidy Payments, disapplication of the Performance Indicators or any reduction in the Performance Levels.