

**5.2 WHOLESALE PRICES, PRICE BENCHMARKING RULES AND WHOLESALE
PRODUCT BENCHMARKING RULES**

1 INTRODUCTION

1.1 NBPco acknowledges that:

- 1.1.1 a key objective of the Minister is to deliver High Speed Broadband products to IA End Users that are of comparable affordability to High Speed Broadband products in the Excluded Area and to support downstream retail competition in the Intervention Area; and
- 1.1.2 the Wholesale Pricing Rules and Retail Pricing Rules are key to achieving the Minister's policy objective outlined at Paragraph 1.1.1 (Introduction) above.

1.2 NBPco also acknowledges and agrees that:

- 1.2.1 another key objective of the Minister is to deliver High Speed Broadband products to IA End Users that are of broadly equivalent performance to High Speed Broadband products in the Excluded Area; and
- 1.2.2 the Wholesale Product Benchmarking Rules are key to achieving the Minister's policy objective outlined at Paragraph 1.2.1 (Introduction) above.

1.3 This Schedule is divided into four (4) additional Parts as follows:

- 1.3.1 Part 1 (Wholesale Pricing Rules) sets out the Wholesale Pricing Rules;
- 1.3.2 Part 2 (Retail Pricing Rules) sets out the Retail Pricing Rules;
- 1.3.3 Part 3 (Wholesale Product Benchmarking Rules) sets out the Wholesale Product Benchmarking Rules; and
- 1.3.4 Part 4 (Review and Compliance) sets out the Minister's right to carry out Five Year Reviews during the Contract Period and NBPco's obligations to carry out reviews demonstrating its compliance with its obligations under this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) and to furnish detailed written statements of compliance with its obligations under the provisions of this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules).

1.4 NBPco acknowledges and agrees that:

- 1.4.1 the operation of this Schedule;
- 1.4.2 the failure by the Minister to object or raise an issue with respect to a Wholesale Product or Wholesale Price or other element of the Wholesale Pricing Rules, Retail Pricing Rules or Wholesale Product Benchmarking Rules;
- 1.4.3 the approval by the Minister of any matter pursuant to the provisions of this Schedule; or
- 1.4.4 the issue of a Change Authorisation by the Minister in respect of the amendment, removal or introduction of a Wholesale Product or Wholesale Price,

is subject to Clause 1.2.20 (Definitions and Interpretation).

- 1.5 NBPco acknowledges and agrees that the Minister is entitled to refuse any Change Request in respect of a particular Wholesale Product or Wholesale Price (other than, and to the extent only that, Paragraph 4.2 (Minister's Evaluation and Right of Approval) of Part 2 (Change Procedure) of Schedule 6.2 (Change Control Procedure) applies) where there is an on-going breach of or non-compliance with the Wholesale Pricing Rules, Wholesale Product Benchmarking Rules and/or the Retail Pricing Rules in relation to that particular Wholesale Product or Wholesale Price or where, in the Minister's reasonable opinion, such breach or non-compliance will arise as a result of a Change to be made pursuant to such Change Request.
- 1.6 NBPco is solely responsible for ensuring that, and the onus and burden of proof is on NBPco to demonstrate to the Minister's reasonable satisfaction, (at any time and from time to time subject to a reasonable notice period) upon request that throughout the Contract Period the pricing and the performance and specifications of Minimum Required Wholesale Products, Additional Required Wholesale Products and Other Permitted Wholesale Products complies with the provisions of this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules).
- 1.7 In every notice, Change Request, Change Impact Assessment, NBPco Wholesale Pricing Rules Report, NBPco Retail Pricing Rules Report, NBPco Wholesale Product Benchmarking Rules Report and other submission made under or in connection with this Schedule, NBPco shall include an accurate and complete disclosure of all material facts relevant to the Minister's consideration under the relevant provisions of this Schedule.

2 THE REGULATOR AND AGENCY

- 2.1 NBPco acknowledges and agrees that:
- 2.1.1 the Minister may (but is not obliged to) work closely with and consult the Regulator and/or Agency in connection with this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules), including in connection with NBPco's compliance with its obligations under this Schedule and the application of the Wholesale Pricing Rules, Retail Pricing Rules and/or Wholesale Product Benchmarking Rules;
- 2.1.2 the Minister may designate the Regulator and/or Agency (individually or in combination) to act on its behalf in monitoring and reviewing NBPco's compliance with its obligations under this Schedule (in certain or all respects), including reviewing the Statement of Compliance and any Remedial Plans submitted by NBPco pursuant to its obligations under this Schedule; and
- 2.1.3 the Minister may refer any failure by NBPco to comply with one or more of its obligations under this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) to a relevant Competent Authority for consideration under their relevant statutory powers.
- 2.2 NBPco shall provide the Regulator and Agency with all such cooperation, access and assistance as is required by the Regulator or Agency, as applicable, in acting on the Minister's behalf pursuant to Paragraph 2.1.2 (The Regulator and Agency), including by providing information and documentation as requested, and in accordance with such terms as may be specified, by the Regulator or Agency.
- 2.3 NBPco acknowledges and agrees that the raising of objections, the failure to raise objections or any other matter undertaken by the Minister pursuant to this Agreement does not limit or affect or fetter any discretion of the Agency or Regulator under Law.

- 2.4 NBPco shall bear its own costs and expenses incurred in respect of compliance with its obligations under this Schedule.

PART 1 (WHOLESALE PRICING RULES)

1 WHOLESALE PRICING RULES

1.1 Without limiting or affecting the other provisions of this Schedule, NBPco shall comply, and shall procure that the Wholesale Prices applied by it shall comply, throughout the Contract Period, with the following requirements:

1.1.1 the rules and requirements in respect of Wholesale Prices as set out in the provisions of Paragraph 2 (Wholesale Prices) and Paragraph 5 (Other Permitted Wholesale Products);

1.1.2 the rules and requirements in respect of the Benchmark Reference Price as set out in the provisions of Paragraph 3 (Benchmark Reference Price and Changes to Benchmark Reference Product);

1.1.3 the rules and requirements in respect of a Wholesale Margin Squeeze set out in the provisions of Paragraph 4 (Wholesale Margin Squeeze Test);

1.1.4 the rules and requirements in respect of Initial Connection Charges and Other Connection Charges set out in the provisions of Paragraph 6 (Initial Connection Charges and Other Connection Charges);

1.1.5 the rules and requirements in respect of transparency and non-discrimination set out in the provisions of Paragraph 7 (Transparency and Non-Discrimination); and

1.1.6 the rules and requirements in respect of monitoring, review and compliance set out in Paragraphs 8 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) to Paragraph 10 (Consequences of Non-Compliance) (inclusive).

(together the “**Wholesale Pricing Rules**” and which term includes, as the context so admits or requires, any one, more or all of them and any one, more or all of the provisions in this Part of this Schedule).

1.2 Subject to Paragraph 1.3 (Wholesale Pricing Rules), references to the “**Wholesale Price**” in any of the Paragraphs in this Part 1 (Wholesale Pricing Rules) means the price actually charged by NBPco to Service Providers for Wholesale Products and includes each and all of the individual components making up the Wholesale Price such as connection charges and rental charges.

1.3 Save to the extent otherwise expressly provided in those Paragraphs, references to the “**Wholesale Price**” in Paragraphs 2.4 (Wholesale Prices) to 2.9 (Wholesale Prices) (inclusive) and Paragraph 3 (Benchmark Reference Price and Changes to Benchmark Reference Product) do not include the Initial Connection Charge (including, where applicable pursuant to Paragraph 6.2.2 (Initial Connection Charges and Other Connection Charges), the excess Initial Connection Charge for a Non-Standard Initial Connection) which, in respect of the matters addressed in those Paragraphs, is addressed separately in Paragraph 6 (Initial Connection Charges and Other Connection Charges) of this Part 1 (Wholesale Pricing Rules).

1.4 Without limiting or affecting NBPco’s obligations under this Schedule, NBPco shall change the Wholesale Prices upon direction in writing by the Minister (and as directed by the Minister) in order to bring the Wholesale Prices into compliance with the Wholesale

Pricing Rules (with such change being implemented subject to, and in accordance with, the Wholesale Price Control Procedure, but with no increase in the Subsidy Payments or diminishment in the performance of the Wholesale Products).

- 1.5 Without limiting or affecting NBPco's obligations under this Schedule, NBPco acknowledges and agrees that the Wholesale Prices (including any one off or recurring components of them) shall only be changed by NBPco from time to time subject to, and in accordance with, the Wholesale Price Control Procedure and provided and on condition that the proposed Wholesale Prices comply with the Wholesale Pricing Rules. Subject to Paragraph 7.1 (Transparency and Non-Discrimination) of Part 1 (Wholesale Pricing Rules) of this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules), NBPco may not otherwise change the Wholesale Prices (whether permanently, temporarily or by one-off direct or indirect (including through Associated Company or Associated Service Provider discounts or rebates) increase, decrease, update, indexation, inflation, discount, rebate, waiver, compromise or in any other way).

2 WHOLESALE PRICES

As at the Commencement Date

- 2.1 As at the Commencement Date, Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) to this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) sets out:

2.1.1 the Wholesale Price (exclusive of VAT) (including, as applicable, the port charge, the usage charge, the Initial Connection Charge and Other Connection Charge) for each Minimum Required Wholesale Product, Additional Required Wholesale Product and Other Permitted Wholesale Product throughout the Contract Period; and

2.1.2 the Benchmark Reference Price (exclusive of VAT) or the Adjusted Benchmark Reference Price (exclusive of VAT) (if any) for each Minimum Required Wholesale Product and Additional Required Wholesale Product as at the Commencement Date.

- 2.2 Each Party acknowledges and agrees that the prices referred to in Paragraph 2.1 (Wholesale Prices) of this Part 1 (Wholesale Pricing Rules) have been determined by applying the provisions of this Part 1 (Wholesale Pricing Rules) and may, subject to and in accordance with Paragraph 2.3 (Wholesale Prices) of this Part 1 (Wholesale Pricing Rules), change from time to time during the Contract Period by application of the provisions of this Part or Part 4 (Review and Compliance).

Change to the Wholesale Price during the Contract Period

- 2.3 If, and to the extent that, at any time during the Contract Period, NBPco is required by this Agreement (including pursuant to any of Paragraphs 2.7 (Wholesale Prices) to 2.9 (Wholesale Prices) (inclusive) of this Part 1 (Wholesale Pricing Rules)) or proposes to change the Wholesale Prices set out in Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) to this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) (as amended by Change Authorisation from time to time) or proposes to introduce a New Wholesale Product, any such change shall only be effected pursuant to the Wholesale Price Control Procedure and the new price shall comply with the requirements of this Part 1 (Wholesale Pricing Rules). NBPco is required to maintain an up to date copy of Appendix

1 of Schedule 5.2 throughout the Contract Period which reflects any changes to the Wholesale Prices and the introduction of new Wholesale Products in accordance with this Schedule 5.2 and this shall be made available to the Minister throughout the Contract Period within five (5) Working Days upon written request.

Wholesale Price – As at the Commencement Date

- 2.4 Subject to Paragraphs 3.2 (Benchmark Reference Price and Changes to Benchmark Reference Product) and 3.3 (Benchmark Reference Price and Changes to Benchmark Reference Product), as at the Commencement Date, the Wholesale Prices for the Minimum Required Wholesale Products and the Additional Required Wholesale Products shall not exceed the Benchmark Reference Price or, if there is no Benchmark Reference Price, the Adjusted Benchmark Reference Price as at the Commencement Date.

By way of illustration, the operation of this Paragraph 2.4 (Wholesale Prices) means that, in respect of the Minimum Bitstream Wholesale Product, the Wholesale Price as at the Commencement Date shall be no more than the Regulated Price for bitstream as set out in the Open Eir Reference Offer,¹ i.e. in aggregate (in respect of the bitstream port element and the usage element), no greater than the price set out in Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) as at the Commencement Date.

Wholesale Price - After the Commencement Date

- 2.5 Subject to Paragraphs 3.2 (Benchmark Reference Price and Changes to Benchmark Reference Product) and 3.3 (Benchmark Reference Price and Changes to Benchmark Reference Product), NBPco shall during the Contract Period ensure that:

2.5.1 the Wholesale Prices for the Minimum Required Wholesale Products and the Additional Required Wholesale Products do not exceed at any point in time (subject, in respect of timing, to Paragraph 2.9 (Wholesale Prices)), the Benchmark Reference Price (as it changes from time to time, whether as a result of any change by the provider of the Benchmark Reference Product to the price of a Benchmark Reference Product, change of the Benchmark Reference Product or the removal by the provider of the Benchmark Reference Product of the Benchmark Reference Product from the market or otherwise) except that if, at a given time, the Benchmark Reference Price for a particular Minimum Required Wholesale Product or Additional Required Wholesale Product is lower than the corresponding Base Benchmark Reference Price, NBPco is entitled to set the Wholesale Prices for the relevant Minimum Required Wholesale Product or Additional Required Wholesale Product at a price equal to (but no more than) the corresponding Base Benchmark Reference Price (provided, for clarity, that all components of the Wholesale Price are set at a price equal to or no more than the corresponding component of the Base Benchmark Reference Price); and

2.5.2 in any given year during the Contract Period, the Wholesale Price for a particular Minimum Required Wholesale Product or a particular Additional Required Wholesale Product does not increase by more than ten per cent (10%) unless the Benchmark Reference Price for such Wholesale Product in that Contract Year has increased by that amount.

¹ https://www.openeir.ie/Reference_Offers

Effect of Benchmark Reference Price

- 2.6 For the avoidance of doubt, provided that NBPCo charges the Wholesale Prices determined in accordance with Paragraphs 2.1 (Wholesale Prices) to 2.5 (Wholesale Prices) (inclusive) of this Part 1 (Wholesale Pricing Rules) and the other provisions of this Agreement, NBPCo is not required to set its Wholesale Prices at the Benchmark Reference Price. NBPCo may set its Wholesale Price at any level below or at the Benchmark Reference Price (subject to complying with the rules set out elsewhere in this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules), including Paragraph 3.2 (Benchmark Reference Price and Changes to Benchmark Reference Product), and the Agreement).

Monitoring and change

- 2.7 NBPCo shall monitor each Minimum Required Wholesale Product and Additional Required Wholesale Product to ensure that it complies with Paragraphs 2.1 (Wholesale Prices) to 2.5.2 (Wholesale Prices) (inclusive) of this Part 1 (Wholesale Pricing Rules).
- 2.8 Each Party acknowledges and agrees that the Benchmark Reference Products (and/or their prices) may change from time to time. NBPCo shall ensure that it uses the most appropriate Benchmark Reference Product in assessing the appropriate Benchmark Reference Price and Wholesale Price. To the extent that any change to the Benchmark Reference Products or Benchmark Reference Prices is required from time to time, NBPCo shall implement any such change subject to and in accordance with, as applicable, the Wholesale Price Control Procedure and the Wholesale Product Control Procedure.

Time at which a change must be effected

- 2.9 Where, at any time and from time to time during the Contract Period, there is or will be a change in the Benchmark Reference Price (whether as a result of any change to the price of a Benchmark Reference Product, change of the Benchmark Reference Product or the removal of the Benchmark Reference Product from the market or otherwise) which gives rise to an obligation on NBPCo to change its Wholesale Price under this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules), the following timelines shall apply:
- 2.9.1 NBPCo must, as soon as reasonably practicable and at the latest within thirty (30) Working Days of the date that the proposed change in the Benchmark Reference Price is notified to the market by or on behalf of the relevant provider of the particular Benchmark Reference Product or by the Regulator (whichever is earlier) or is otherwise made known to NBPCo (the “**BRP Change Notice Deadline**”), submit a notice in writing to the Minister in accordance with Paragraph 8.4.1 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) of this Part 1 (Wholesale Pricing Rules) to effect a change to its Wholesale Price; and
- 2.9.2 NBPCo must, comply with the requirements and timelines set out in Paragraph 8.4 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) of this Part 1 (Wholesale Pricing Rules) and Appendix 3 (Wholesale Price Control Procedure and Wholesale Product Control Procedure) of this Schedule with respect to the Wholesale Price Control Procedure and the dates for publication and implementation of the change to its Wholesale Price.

3 BENCHMARK REFERENCE PRICE AND CHANGES TO BENCHMARK REFERENCE PRODUCT

General rule

3.1 Subject to Paragraphs 3.2 (Benchmark Reference Price and Changes to Benchmark Reference Product) and 3.3 (Benchmark Reference Price and Changes to Benchmark Reference Product), the Benchmark Reference Price in respect of the Minimum Required Wholesale Products and the Additional Required Wholesale Products shall be, at a point in time:

3.1.1 the price (at that point in time) of the Benchmark Reference Product (at that point in time) for, as applicable, the relevant Minimum Required Wholesale Product or the Additional Required Wholesale Product in the Excluded Area; or

3.1.2 if, pursuant to Paragraph 3.4 (Benchmark Reference Price and Changes to Benchmark Reference Product) of this Part 1 (Wholesale Pricing Rules), the Parties have agreed in writing that the relevant Minimum Required Wholesale Product or Additional Required Wholesale Product does not have a Benchmark Reference Product, the Adjusted Benchmark Reference Price set pursuant to Paragraph 3.4 (Benchmark Reference Price and Changes to Benchmark Reference Product) of this Part 1 (Wholesale Pricing Rules).

VUA margin squeeze test

3.2 The Wholesale Price for VUA (whether a Minimum Required Wholesale Product or Additional Required Wholesale Product) shall be the price that does not cause a Wholesale Margin Squeeze between the corresponding Bitstream Product and the VUA product (whether a Minimum Required Wholesale Product or Additional Required Wholesale Product).

Usage charges

3.3 Where charges for usage in respect of the Minimum Bitstream Wholesale Product are:

3.3.1 variable:

(A) they shall not exceed the equivalent variable usage charge in respect of the relevant Benchmark Reference Product (which, for the avoidance of doubt, may change from time to time in accordance with this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) and pursuant to Law); and

3.3.2 fixed:

(A) they shall not exceed the equivalent fixed usage charge in respect of the relevant Benchmark Reference Product (which, for the avoidance of doubt, may change from time to time, including pursuant to Law); and

(B) the fixed usage charges shall be amended and applied in accordance with updates to the variable usage charges for the relevant Benchmark Reference Product such that, if a variable usage charge is updated, NBPco shall be required to have an amended

fixed usage charge approved by the Minister. NBPco shall notify the Minister of the proposed change to the variable usage charge and the impact on the fixed usage charge in the timeframe required in Appendix 3 (Wholesale Price Control Procedure and Wholesale Product Control Procedure) and the new price shall comply with the requirements of this Part 1 (Wholesale Pricing Rules).

Charges for usage in respect of the Additional Required Wholesale Products may be fixed, but if fixed, shall be approved in advance in writing by the Minister. In its written request for approval, NBPco shall set out full and adequate justification for its proposed fixed usage charge, including by reference to reasonable traffic assumptions. Where at any given time, a fixed usage charge does not stand approved, the usage charge specified by the Minister at his sole discretion shall apply.

Wholesale Products without a Benchmark Reference Product

3.4 If NBPco considers that there is no Benchmark Reference Product for a given Wholesale Product at a point in time, it shall promptly submit a report in writing to the Minister to this effect explaining why this is the case. Where the Minister agrees with NBPco's report, the Parties shall agree in writing:

3.4.1 that there shall be no Benchmark Reference Product for the relevant Wholesale Product; and

3.4.2 the Adjusted Benchmark Reference Price,

failing or pending which agreement by the Parties, the price as determined (from time to time) by the Minister at his sole discretion by applying the Minister's assessment of the components of the definition of Adjusted Benchmark Reference Price and notified in writing to NBPco shall apply.

3.5 If:

3.5.1 the Adjusted Benchmark Reference Price is determined pursuant to Paragraph 3.4 (Benchmark Reference Price and Changes to Benchmark Reference Product) or this Paragraph 3.5 (Benchmark Reference Price and Changes to Benchmark Reference Product);

3.5.2 either Party subsequently considers that, due to a change in circumstances since it was previously determined, the application of the components of the definition of the Adjustment Benchmark Reference Price would result in a different Adjustment Benchmark Reference Price; and

3.5.3 there continues to be no Benchmark Reference Product for the Wholesale Product concerned at the relevant point in time,

the Parties, upon request by either Party, shall review and agree the revised Adjusted Benchmark Reference Price, failing or pending which agreement by the Parties, the price as determined (from time to time) by the Minister at his sole discretion by applying the Minister's assessment of the components of the definition of Adjusted Benchmark Reference Price and notified in writing to NBPco shall apply (in which case the Parties shall document the revised Adjusted Benchmark Reference Price in an executed Change Authorisation).

4 WHOLESALE MARGIN SQUEEZE TEST

4.1 NBPco shall ensure that throughout the Contract Period, the difference between:

4.1.1 the Wholesale Price in respect of, as applicable:

- (A) the Minimum Bitstream Wholesale Product;
- (B) any Bitstream Products that are Additional Required Wholesale Products; or
- (C) any other Wholesale Products specified by the Minister pursuant to Paragraph 4.2 (Wholesale Margin Squeeze Test) from time to time,

charged by NBPco; and

4.1.2 Wholesale Price in respect of the corresponding VUA Wholesale Product,

shall be no less than the Average Variable Cost of a Similarly Efficient Operator building transmission capacity and turning a VUA product into a bitstream product (a "**Wholesale Margin Squeeze**"). For this purpose:

4.1.3 "**Average Variable Costs**" means the variable cost of producing an additional unit of output but does not include an allocation of fixed costs.

4.1.4 "**Similarly Efficient Operator**" means a hypothetical efficient WSP in the Intervention Area which shares the same basic cost function as NBPco but which does not enjoy the same economies of scale and scope as NBPco.

4.2 The Minister may, by notice in writing to NBPco (from time to time), amend or extend, Paragraph 4.1 (Wholesale Margin Squeeze Test) so that it applies to other Wholesale Products (whether in addition to the Minimum Bitstream Wholesale Products, any Bitstream Products that are Additional Required Wholesale Products, the Minimum VUA Wholesale Products and any VUA products of the Additional Required Wholesale Products or otherwise), with effect on and from the date specified in the notice. Upon receipt of a notice in writing of such requirement, NBPco shall effect all such changes as may be required by means of the Wholesale Price Control Procedure.

5 OTHER PERMITTED WHOLESALE PRODUCTS

5.1 NBPco shall ensure that its Wholesale Prices for the Other Permitted Wholesale Products shall be justified, fair and reasonable by reference to prices for equivalent products in the Excluded Area (including prices for equivalent products set pursuant to Regulation). Approval for any change to the prices of the Other Permitted Wholesale Products under the Wholesale Price Control Procedure shall only be provided by the Minister where the Wholesale Price after the proposed change complies with this Paragraph 5.1 (Other Permitted Wholesale Products).

5.2 If offering, or making available, an Other Permitted Wholesale Product which is a voice telephony wholesale product, NBPco shall comply with the Termination Rates Recommendation in respect of that product.

5.3 The Minister may at any time, during the Contract Period, conduct a review and require changes with regard to the level of prices charged, or the performance specification of, Other Permitted Wholesale Products, if and to the extent that the Minister (at his sole

discretion but having first consulted with the Regulator) considers that there are reasonably based consumer-protection or competition concerns in respect of those products in the Intervention Area. Any such intervention shall be carried out by means of the Wholesale Price Control Procedure or the Wholesale Product Control Procedure.

- 5.4 NBPco may amend Wholesale Prices and the specification of Other Permitted Wholesale Products (whether existing as at the Commencement Date or new Other Permitted Wholesale Products introduced in accordance with this Agreement from time to time) but only by using the Wholesale Price Control Procedure and Wholesale Product Control Procedure (as applicable). The Minister shall be entitled to refuse any such request in accordance with the Wholesale Price Control Procedure and Wholesale Product Control Procedure (as applicable).

6 INITIAL CONNECTION CHARGES AND OTHER CONNECTION CHARGES

- 6.1 Paragraphs 6.1 (Initial Connection Charges and Other Connection Charges) to 6.5 (Initial Connection Charges and Other Connection Charges) (inclusive) apply to:

- 6.1.1 the Minimum Bitstream Wholesale Product, the Minimum VUA Wholesale Product and the Alternative Bitstream Wholesale Product;
- 6.1.2 the following Additional Required Wholesale Products:
- (A) the Bitstream Product and any variations thereto; and
 - (B) VUA and any variations to it.

Connection charges - general

- 6.2 Subject to Paragraph 6.4 (Initial Connection Charges and Other Connection Charges), NBPco is only permitted to charge a Service Provider no more than:

- 6.2.1 the Initial Connection Charge for an Initial Standard Connection; and
- 6.2.2 the Initial Connection Charge and an excess Initial Connection Charge for an Initial Non-Standard Connection (which excess Initial Connection Charge shall be calculated in accordance with, as applicable, Paragraphs 6.2A(A)(2) (Initial Connection Charges and Other Connection Charges), 6.2A(B)(2) (Initial Connection Charges and Other Connection Charges) and 6.3.2(B) (Initial Connection Charges and Other Connection Charges) below).

The Initial Connection Charge and any excess Initial Connection Charge (if applicable pursuant to Paragraph 6.2.2 (Initial Connection Charges and Other Connection Charges)) shall only be levied once, such that only one Service Provider incurs such a charge in respect of the initial Connection. If another Service Provider subsequently provides a connection to the same Premises, a separate service connection or migration charge may apply provided that this service connection or migration charge shall be lower than the Initial Connection Charge and excess Initial Connection Charge (if applicable pursuant to Paragraph 6.2.2 (Initial Connection Charges and Other Connection Charges)) and reflect the lower costs of such subsequent connection.

Connection charges - where additional work is requested by the End User

- 6.2A NBPco is only permitted, pursuant to Paragraph 3.7 (Fulfilment, Supply Chain and Logistics, and Assurance Performance) of Part 1 (Performance Indicators and

Performance Level Requirements) of Appendix 1 (Performance Level Requirements) to Schedule 2.4 (Operational Performance), to charge a Service Provider (and so that only one single Service Provider incurs such a charge) an excess Initial Connection Charge pursuant to Paragraph 6.2.2 (Initial Connection Charges and Other Connection Charges), which shall be chargeable in addition to the Initial Connection Charge under Paragraph 6.2.1 (Initial Connection Charges and Other Connection Charges), if an IA End User has been offered an Initial Standard Connection at his Premises, but the IA End User requests and subsequently agrees to pay for a form of Connection that requires additional works to be deployed at the Premises of the IA End User. In such circumstances, subject to Paragraph 6.4 (Initial Connection Charges and Other Connection Charges), the charge for Connection shall be calculated by NBPCo as follows:

- (A) If there is an Initial Standard Connection available but has not been taken, the charge for the Connection shall be:
- (1) the Initial Connection Charge; plus
 - (2) an excess charge for Connection determined by deducting the cost of the Initial Standard Connection offered to the IA End User from the incremental efficient extra capital cost of specifically deploying infrastructure to the Premises concerned in order to Connect it, which charges are calculated using the charges for Connection Services set out in Appendix 1.

(but no more than that, whether directly or indirectly).

For example: If:

The Initial Standard Connection offered is €X

The incremental efficient extra capital cost is €Y

Then, the excess charge for Connection under (A)(2) above is
€Y - €X

- (B) If there is no Initial Standard Connection available to an IA End User, the charge for the Connection shall be:
- (1) the Initial Connection Charge; plus
 - (2) an excess charge for Connection determined by deducting the Connection Cost Threshold from the incremental efficient extra capital cost of specifically deploying infrastructure to the Premises concerned in order to Connect it, which charges are calculated using the charges for Connection Services set out in Appendix 1,

(but no more than that, whether directly or indirectly).

For example: If the incremental efficient extra capital cost is €Y

Then the excess charge under (B)(2) above is €Y –
Connection Cost Threshold

The product descriptions for Connection Services required for additional work is set out in Schedule 2.2 (Reference Offer Requirements) and the incremental efficient extra capital cost of specifically deploying infrastructure to Premises for these Connection Services are set out in Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) of this Schedule.

Connection charges - where no additional work is requested by the IA End User

6.3 Subject to Paragraph 6.4 (Initial Connection Charges and Other Connection Charges), where no additional works have been requested by an IA End User over those applicable for an Initial Standard Connection, NBPCo is only permitted to charge a Service Provider (and so that only one single Service Provider incurs such a charge) for New Premises and Existing Premises:

6.3.1 the Initial Connection Charge (but no more than that); or

6.3.2 if the costs of deploying infrastructure to the Premises concerned in order to Connect it is in excess of the Connection Cost Threshold:

(A) the Initial Connection Charge; plus

(B) an excess charge for Connection determined by deducting the Connection Cost Threshold from the incremental efficient extra capital cost of specifically deploying infrastructure to the Premises concerned in order to Connect it, which charges are calculated using the charges for Connection Services set out in Appendix 1,

(but no more than that, whether directly or indirectly).

6.4 *Initial Connection Charge*

6.4.1 If at a given time during the Contract Period the Initial Connection Charge is lower than the Adjusted Inflation Initial Connection Charge, NBPCo may instead charge up to the Adjusted Inflation Initial Connection Charge.

6.4.2 Any change to the Initial Connection Charge during the Contract Period shall be effected only in accordance with the Wholesale Price Control Procedure.

Other Connection Charges

6.5 The Wholesale Prices shall include Other Connection Charges for other connection circumstances provided that such charges shall not exceed analogous charges comprised in the Benchmark Reference Price in respect of the applicable Benchmark Reference Product or, where Paragraph 3.1.2 (Benchmark Reference Price and Changes to Benchmark Reference Product) of this Part 1 (Wholesale Pricing Rules) applies, the equivalent charges comprised in (and agreed or set as part of the process under Paragraph 3.4 (Benchmark Reference Price and Changes to Benchmark Reference Product)) of this Part 1 (Wholesale Pricing Rules) the Adjusted Benchmark Reference Price.

7 TRANSPARENCY AND NON-DISCRIMINATION

7.1 NBPCo shall charge all Service Providers the same Wholesale Prices in all circumstances provided that, subject always to complying with Clause 36.1.6 (Non-Discrimination and Transparency) and the Permitted Discount Requirements, NBPCo

may offer permanent, temporary or one-off direct or indirect decreases, discounts, rebates, waivers, compromises or similar reductions in the Wholesale Prices where these have been approved in advance by the Minister pursuant to the Wholesale Price Control Procedure.

7.2 NBPco shall ensure throughout the Contract Period that the Wholesale Price List, and all invoices and bundles, are sufficiently unbundled to ensure that a Service Provider is not required to order or pay for Wholesale Products, directly or indirectly, which are not necessary for the Wholesale Product actually required by the Service Provider.

7.3 NBPco shall ensure that throughout the Contract Period, the Wholesale Price in its Reference Offer and on the Public Portal and Secure Portal, at a minimum, sets out separately in a clear, easily accessible and logically structured and transparent manner for each Wholesale Product the current:

7.3.1 maximum charge of Connection;

7.3.2 process for setting and implementing the excess Connection charge pursuant to Paragraphs 6.2A(A)(2) (Initial Connection Charges and Other Connection Charges), 6.2A(B)(2) (Initial Connection Charges and Other Connection Charges) and 6.3.2 (Initial Connection Charges and Other Connection Charges) of Part 1 (Wholesale Pricing Rules);

7.3.3 maximum charge of disconnection;

7.3.4 recurring charges;

7.3.5 charge of migration (between Service Providers and Wholesale Products); and

7.3.6 any other one-off charges associated with the portfolio of Wholesale Products on offer,

and in a manner that enables readers to clearly identify and compare the differences in charges from one Wholesale Product to another by each constituent type of charge.

7.4 NBPco shall throughout the Contract Period publish in a clear, easily accessible, logically and chronologically structured and transparent manner on the Public Portal and Secure Portal continually updated information in relation to:

7.4.1 the current portfolio of Wholesale Products and, for each such Wholesale Product, the Wholesale Price broken down into all relevant charges including the types of charges set out in Paragraph 7.3 (Transparency and Non-Discrimination) of this Part 1 (Wholesale Pricing Rules);

7.4.2 the historic portfolio of Wholesale Products for the previous three (3) years and, for each such Wholesale Product, the Wholesale Price broken down into all relevant charges including the types of charges set out in Paragraph 7.3 (Transparency and Non-Discrimination) of this Part 1 (Wholesale Pricing Rules),

in each case in a manner that enables readers to clearly identify and compare the differences in charges from one Wholesale Product to another by each constituent type of charge from the Commencement Date until the then current date (clearly identifying the effective date for each charge, i.e. start date and end date).

7.5 NBPco shall throughout the Contract Period retain all information published pursuant to Paragraph 7.4 (Transparency and Non-Discrimination) of this Part 1 (Wholesale Pricing Rules) and make such information available to a Service Provider within a reasonable period following a written request by the Service Provider.

8 MONITORING THE BENCHMARK REFERENCE PRICE AND COMPLIANCE WITH THE WHOLESALE PRICING RULES

8.1 Without limiting or affecting NBPco's obligations under the provisions of this Schedule, NBPco is responsible for ensuring that any change to the Benchmark Reference Price or Benchmark Reference Products from that set out in Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) (as amended by Change Authorisation from time to time) is formally agreed in a Change Authorisation prior to any change in its Wholesale Price becoming effective or implemented.

Minister review

8.2 Where, at any time throughout the Contract Period, the Minister:

8.2.1 considers that the application of the definition, principles and methodology set out in the provisions of Paragraph 3 (Benchmark Reference Price and Changes to Benchmark Reference Product) may result in a different Benchmark Reference Price to the then current Benchmark Reference Price for any reason whatever (including upon receipt of an NBPco Wholesale Pricing Rules Report); or

8.2.2 considers that NBPco may no longer be in compliance with the Wholesale Pricing Rules for any reason whatever; or

8.2.3 wants a Wholesale Pricing Rules Review to be undertaken pursuant to the provisions of Part 4 (Review and Compliance)Part 4 (Review And Compliance),

the Minister:

8.2.4 may (but is not obliged to) undertake and complete; and/or

8.2.5 by notice in writing require NBPco to undertake and complete (in which case NBPco shall so undertake and complete within thirty (30) Working Days of issue of the notice),

a comprehensive review of:

8.2.6 the Benchmark Reference Price by application of the definition, principles and methodology set out in the provisions of Paragraph 3 (Benchmark Reference Price and Changes to Benchmark Reference Product); and/or

8.2.7 NBPco's compliance with any aspect of the Wholesale Pricing Rules by application of the provisions of this Part,

NBPco monitoring and review

8.3 NBPco shall continually monitor throughout the Contract Period its compliance with the Wholesale Pricing Rules and any change in circumstances in the Intervention Area or Excluded Area that may result in:

8.3.1 a change in the current Benchmark Reference Price (for any reason whatever) if the definition, principles and methodology set out in the provisions of Paragraph 3 (Benchmark Reference Price and Changes to Benchmark Reference Product) was applied; or

8.3.2 NBPco coming into non-compliance with any aspect of the Wholesale Pricing Rules for any reason whatever.

8.4 Where, on and from the Commencement Date, at any time throughout the Contract Period:

8.4.1 the application of the definition, principles and methodology set out in Paragraph 3 (Benchmark Reference Price and Changes to Benchmark Reference Product) may result in a different Benchmark Reference Price to the then current Benchmark Reference Price (for any reason whatever); or

8.4.2 NBPco has come into non-compliance with any aspect of the Wholesale Pricing Rules (for any reason whatever);

NBPco shall, without being requested to do so:

8.4.3 notify the Minister in writing:

(A) in respect of Paragraph 8.4.1 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules), by the BRP Change Notice Deadline; and

(B) in respect of Paragraph 8.4.2 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules), within twenty-five (25) Working Days of such first occurring; and

8.4.4 unless instructed not to so by the Minister in writing within ten (10) Working Days of the date of issue of the notice mentioned in Paragraph 8.4.3 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules), commence without delay and complete within twenty (20) Working Days of issue of the notice a Wholesale Pricing Rules Review.

NBPco Wholesale Pricing Rules Report

8.5 NBPco shall, upon completion of a Wholesale Pricing Rules Review, produce a comprehensive, well-structured and considered report setting out the analysis, findings and substantive reasoning behind NBPco's findings and, if applicable proposed Benchmark Reference Price or change in Wholesale Price (and, if applicable, specifically identifying any non-compliance by NBPco with the Wholesale Pricing Rules and proposed remedial action), together with all information, data and analysis underpinning the report so that the Minister can fully and properly interrogate, review and analyse the analysis and findings in the report (the "**NBPco Wholesale Pricing Rules Report**"). NBPco shall in all cases complete a Wholesale Pricing Rules Review that it has started and shall not delay the completion of any NBPco Wholesale Pricing Rules Report.

8.6 [Not used]

8.7 [Not used]

8.8 [Not used]

Minister satisfied

- 8.9 NBPco shall, within ten (10) Working Days of the completion of a Wholesale Pricing Rules Review, in all cases provide the Minister with the accurate and complete NBPco Wholesale Pricing Rules Report (even if NBPco decides not to make a Change Request or considers that the Benchmark Reference Price or Wholesale Price does not need to change or that it is compliant with the Wholesale Pricing Rules).
- 8.10 If the Minister is satisfied with the proposed Benchmark Reference Price or a proposed change to a Wholesale Price or any proposed remedial action or Change set out in an NBPco Wholesale Pricing Rules Report:
- 8.10.1 the Minister may notify NBPco accordingly in writing (to the extent to which the Minister is so satisfied) and shall endeavour to do so within twenty-five (25) Working Days of receipt of the NBPco Wholesale Pricing Rules Report (but shall not be liable where, having so endeavoured, he has not done so); and
- 8.10.2 in such case NBPco shall:
- (A) implement any such proposed remedial action approved by the Minister immediately; and
- (B) if a new or revised Benchmark Reference Price or Wholesale Price was approved by the Minister in principle, within ten (10) Working Days of receipt of notice from the Minister submit an executed Change Authorisation, reflecting the proposed Benchmark Reference Price or Wholesale Price Change set out in the NBPco Wholesale Pricing Rules Report or other Change, to the Minister for execution by the Minister. The Minister shall act promptly in returning an executed Change Authorisation to NBPco under this Paragraph and shall use reasonable endeavours to do so within twenty-five (25) Working Days (but shall not be liable where, having so reasonably endeavoured, he has not done so).

Disagreement on issues

- 8.11 The Minister may (but is not obliged to) following:
- 8.11.1 completion of a Wholesale Pricing Rules Review undertaken by it; or
- 8.11.2 receipt and review of an NBPco Wholesale Pricing Rules Report,
- notify NBPco in writing of the Minister's determination as to the correct Benchmark Reference Price or any required change to the Wholesale Prices or other remedial action or Change required to ensure compliance with the Wholesale Pricing Rules. NBPco shall, within thirty (30) Working Days of receipt of the Minister's determination, either:
- 8.11.3 notify the Minister that it disagrees with the Minister's determination (including where it considers that the determination cannot be implemented in accordance with Law); or
- 8.11.4 implement the relevant remedial action and, unless the Minister does not require a change to the Benchmark Reference Price or Wholesale Price or other Change, submit an executed Change Authorisation to the Minister, reflecting the Minister's determination as to the correct Benchmark Reference

Price or required change to the Wholesale Price or other Change, for execution by the Minister.

Co-operation

- 8.12 NBPco shall co-operate fully with the Minister (and any relevant person, including the Regulator and Agency) in connection with any review undertaken by NBPco or the Minister pursuant to the provisions of this Paragraph 8 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) (including a review by the Minister (or his nominee) of a report provided by NBPco pursuant to the provisions of this Paragraph 8 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules). This includes providing the Minister promptly with all collated, complete and up-to-date information, data and analysis as the Minister may request and providing the information, data and analysis in a logical, well-structured and easily navigable form.

9 DISAGREEMENT REGARDING THE BENCHMARK REFERENCE PRICE OR WHOLESALE PRICING RULES

NBPco Submission

- 9.1 If, in a given case (whether as a result of a review undertaken by the Minister or NBPco under this Part or Part 4 (Review and Compliance)), NBPco notifies the Minister that it disagrees with the Minister's determination pursuant to Paragraph 8.11 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) or the provisions of Part 4 (Review and Compliance) as to:

9.1.1 what is the correct Benchmark Reference Price by application of the definition, principles and methodology set out in the provisions of Paragraph 3 (Benchmark Reference Price and Changes to Benchmark Reference Product) of Part 1 (Wholesale Pricing Rules); or

9.1.2 what is the Wholesale Price and/or other remedial action or Change required to ensure compliance with the Wholesale Pricing Rules,

NBPco shall, within no more than ten (10) Working Days (or such other period agreed by NBPco with the Minister in writing) of the issue of its notice pursuant to Paragraph 8.11 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules), make a submission to the Minister setting out what NBPco considers is the correct Benchmark Reference Price and/or, as applicable, Wholesale Price and/or other remedial action or Change required to ensure compliance with the Wholesale Pricing Rules and the reasons why. The onus and burden of proof is on NBPco, and it is NBPco's responsibility in making a submission under this Paragraph 9 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules), to demonstrate to the Minister's satisfaction that any determination made by the Minister does not represent the correct Benchmark Reference Price or required Wholesale Price or other required remedial action or Change and as such, NBPco shall supply all supporting documentation, analysis, supporting information and data and reasoning necessary to substantively prove its case.

Minister's Response

- 9.2 The Minister shall consider NBPco's submission under Paragraph 9.1 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) and may, at its discretion, do any of the following, notifying NBPco in writing accordingly:

- 9.2.1 confirm that the Minister has no objection to NBPco's proposed Benchmark Reference Price, Wholesale Price and/or remedial action (in each such case in whole or in part) in which case NBPco shall implement the remedial action and (if there is to be a change to the Benchmark Reference Price or Wholesale Price or other Change) submit a Change Authorisation executed by NBPco, reflecting NBPco's proposed Benchmark Reference Price or Wholesale Price or other Change, to the Minister within ten (10) Working Days of receipt of that notice from the Minister;
- 9.2.2 object to NBPco's proposed Benchmark Reference Price, Wholesale Price, Change and/or remedial action (in each such case in whole or in part) and set out the Minister's determination as to the correct Benchmark Reference Price and/or required Wholesale Price, Change and/or remedial action;
- 9.2.3 request further information from NBPco;
- 9.2.4 undertake a further review of the Benchmark Reference Price or Wholesale Pricing Rules (in either case in whole or in part); and/or
- 9.2.5 instigate the Remedial Plan Process.

Minister's Decision Final and Binding

- 9.3 If the Minister objects (in whole or in part) to NBPco's proposed Benchmark Reference Price, Wholesale Price, Change and/or remedial action pursuant to Paragraph 9.2.2 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) then, except to the extent Paragraph 9.4 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) applies:
 - 9.3.1 the Minister's decision as to, as applicable, the required Benchmark Reference Price, Wholesale Price, Change and/or remedial action in such respect is final and binding upon NBPco; and
 - 9.3.2 NBPco shall (within ten (10) Working Days of that determination by the Minister):
 - (A) implement any remedial action required further to the Minister's determination; and
 - (B) if applicable, submit an executed Change Authorisation to the Minister, reflecting the Minister's determination as to the correct Benchmark Reference Price or required change to the Wholesale Price or other Change, for execution by the Minister; and
 - (C) accept the Minister's determination as final and binding upon NBPco.

Disputes re Manifest and Serious Error

- 9.4 If NBPco reasonably considers and provides a certificate from a director or other senior officer of NBPco to the Minister within five (5) Working Days of the date of the Minister's determination under Paragraph 9.2.2 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) (the "**NBPco Part 1 Certificate**") that:
 - 9.4.1 the Minister has made a manifest and serious error in the application of the definition, principles and methodology set out in the provisions of Paragraph 3

(Benchmark Reference Price and Changes to Benchmark Reference Product) or other provisions of this Part 1 (Wholesale Pricing Rules); and

9.4.2 the direct consequence of the manifest and serious error:

9.4.3 is likely to have a significant detrimental financial and commercial impact upon NBPco; or

9.4.4 would give rise to a breach of Law by NBPco,

NBPco shall, contemporaneously with the submission of its notice under this Paragraph, refer the matter to the Dispute Resolution Procedure to resolve any such Dispute. NBPco shall not be obliged to comply with Paragraph 9.3 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) to the extent only that such compliance is the subject of a Dispute pursuant to this Paragraph until, whichever is earlier (i) resolution of the Dispute in accordance with the Dispute Resolution Procedure, or (ii) if applicable, a determination, finding or opinion of the Regulator in respect of the matter (in each of which cases the Minister's finding under Paragraph 9.3 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) shall be adapted to take account of any such outcome and NBPco shall comply with the Minister's amended finding). The position in respect of the Benchmark Reference Price, Wholesale Price, remedial action or other matter as applied under this Part immediately prior to the Dispute shall apply until such time as the Dispute is resolved. The Expedited Dispute Resolution Procedure shall apply to any such Dispute.

9.5 If the outcome of any Dispute or determination, finding or opinion of the Regulator (if applicable) under Paragraph 9.4 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) is that the Minister has not made a manifest and serious error in the application of the definition, principles and methodology set out in the provisions of Paragraph 3 (Benchmark Reference Price and Changes to Benchmark Reference Product) or other provisions of this Part 1 (Wholesale Pricing Rules) and the result is that the price that NBPco has charged to Service Providers during the period starting on the date of the NBPco Part 1 Certificate was higher than that price which it should have been in accordance with Paragraph 9.3 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules), NBPco shall refund to all Service Providers affected by the overpricing an amount equal to the difference between the Wholesale Price that NBPco charged them following the date of the NBPco Part 1 Certificate and the Wholesale Price which it should have charged them in accordance with Paragraph 9.3 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) between the date of the NBPco Part 1 Certificate and the date on which NBPco implements the requirements of Paragraph 9.3 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) (the "**Part 1 Incorrect Overpayment**").

The Dispute Resolution Process shall in this respect consider and make a determination in respect of the Part 1 Incorrect Overpayment which shall be final and binding on both Parties. The amount of the Part 1 Incorrect Overpayment shall be repaid to Service Providers within thirty (30) Working Days of the date of a notice in writing by the Minister to NBPco that a Part 1 Incorrect Overpayment has arisen and that a refund in the amount specified under the Dispute Resolution Process is due under the provisions of this Paragraph 9.5 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules).

9.6 The Minister, the Regulator and/or the Agency (or any agent or representative, including any professional body, acting on any of their behalf) may monitor NBPco's compliance

with the Wholesale Pricing Rules at any time. In this respect, NBPco shall provide the Minister, Agency and Regulator (and/or any agent or representative, including professional body, acting on any of their behalf) with all such cooperation, information and assistance as is requested and on such terms as are specified by any of those parties in relation to such monitoring, including the gathering, collection, collation and provision of any information requested by the Minister, Regulator and/or Agency and/or any agent acting on their behalf.

10 CONSEQUENCES OF NON-COMPLIANCE

10.1 Without limiting or affecting the Minister’s other rights and remedies under or pursuant to this Agreement (including pursuant to Clause 27.11 (Subsidy Payments) and Schedule 6.7 (Performance Levels)) and to the Minister’s right to require rectification of any non-compliance pursuant to this Schedule, if and to the extent that, at any time and from time to time during the Contract Period, NBPco fails to comply with the Wholesale Pricing Rules such that:

10.1.1 NBPco fails to make a notification under Paragraph 8.4.3 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) by the timeline required by that Paragraph; or

10.1.2 NBPco submits a notice, NBPco Wholesale Pricing Rules Report, Change Request or Change Impact Assessment prepared under or in connection with Paragraph 8 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) which does not include an accurate and complete disclosure of all material facts relevant to the Minister’s consideration; or

10.1.3 NBPco fails to comply with any of its obligations under Appendix 3 (Wholesale Price Control Procedure and Wholesale Product Control Procedure),

and the effect of any of Paragraphs 10.1.1 (Consequences of Non-Compliance), 10.1.2 (Consequences of Non-Compliance) and 10.1.3 (Consequences of Non-Compliance) (as applicable) is that NBPco charges a Wholesale Price to Service Providers following the deadline for notification under Paragraph 8.4.3 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) which is greater than the Wholesale Price which it should have charged in accordance with the Wholesale Pricing Rules, NBPco shall refund to all Service Providers affected by the overpricing an amount equal to the difference between the Wholesale Price that NBPco charged them following that deadline and the Wholesale Price which it should have charged them in accordance with the Wholesale Pricing Rules over the total relevant period of non-compliance (the “**Part 1 Non-Compliance Overpayment**”). The amount of the Part 1 Non-Compliance Overpayment shall be repaid to Service Providers within thirty (30) Working Days of the date of a notice in writing by the Minister to NBPco (or the day of final determination of any Dispute under Paragraph 10.2 (Consequences of Non-Compliance)) that a Part 1 Non-Compliance Overpayment has arisen and that a refund is due under the provisions of this Paragraph 10.1 (Consequences of Non-Compliance).

10.2 In the event that there is any disagreement between the Parties as to the date on which any non-compliance (and consequent obligation to refund) referred to in Paragraph 10.1 (Consequences of Non-Compliance) arose or as to the amount of any Part 1 Non-Compliance Overpayment, the matter shall be referred to the Dispute Resolution Procedure and the Expedited Dispute Resolution Timetable shall apply. Where NBPco refers a matter to the Dispute Resolution Procedure under this Paragraph 10.2 (Consequences of Non-Compliance) and the finding of the Dispute Resolution Procedure is in favour of the Minister (whether as to the date of non-compliance, the amount of the

Part 1 Non-Compliance Overpayment or otherwise), NBPco shall be required to pay to relevant Service Providers interest at the rate specified in Clause 27.8 (Subsidy Payments) on the amount of the Part 1 Non-Compliance Overpayment for the period following the deadline for notification under Paragraph 8.4.3 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) to the date on which repayment is made following any final written determination under the Dispute Resolution Procedure (against which, as applicable, no appeal or further referral has been made within a relevant period under the Dispute Resolution Procedure).

- 10.3 NBPco shall include a provision in the Service Provider Terms which requires it to make a refund of a Part 1 Incorrect Overpayment and Part 1 Non-Compliance Overpayment to the Service Providers (together with interest, as applicable) in the manner provided for in Paragraphs 9.5 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules), 10.1 (Consequences of Non-Compliance) and 10.2 (Consequences of Non-Compliance) such that Service Providers shall have a right to enforce this obligation as between NBPco and the Service Providers.
- 10.4 The requirement for NBPco to make a Part 1 Non-Compliance Overpayment shall apply in respect of non-compliance by NBPco as described in Paragraph 10.1 (Consequences of Non-Compliance). This payment obligation shall supersede the provisions of Paragraph 9.5 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) in respect of a Part 1 Incorrect Overpayment where the circumstances of Paragraph 9.5 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) are originally triggered under Paragraph 8 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) in respect of one or more instances of non-compliance by NBPco as described in Paragraph 10.1 (Consequences of Non-Compliance).

PART 2 (RETAIL PRICING RULES)

1 RETAIL PRICING RULES

1.1 NBPco shall ensure that NBPco and relevant Service Providers comply with the following rules and requirements throughout the Contract Period:

1.1.1 the rules and requirements set out in the provisions of Paragraph 2 (Retail Margin Squeeze);

1.1.2 the rules and requirements set out in the provisions of Paragraph 3 (Retailer of Last Resort);

1.1.3 the rules and requirements set out in the provisions of Paragraph 4 (Obligation not to Unreasonably Bundle); and

1.1.4 the rules and requirements set out in Paragraphs 5 (Monitoring Compliance with the Retail Pricing Rules) to Paragraph 7 (Compliance),

(together the “**Retail Pricing Rules**” and which includes, as the context so admits or requires, any one, more or all of them and any one, more or all of the provisions in this Part of this Schedule).

2 RETAIL MARGIN SQUEEZE

2.1 NBPco shall throughout the Contract Period:

2.1.1 require (in the relevant RSP Terms) that, and do all that is necessary to ensure that, throughout the Contract Period, Associated RSPs do not set a Retail Price; and

2.1.2 where NBPco acts as the final retailer of last resort in accordance with Clause 19 (Wholesale Products), not set a Retail Price,

for a Retail Product that results in a Retail Margin Squeeze based upon the Retail Margin Squeeze Test.

2.2 For the purposes of Paragraph 2.1 (Retail Margin Squeeze), the Retail Margin Squeeze Test is, at a point in time, the Regulator’s then most current approach to retail margin squeeze tests (from time to time) for analogous products which shall be applied to NBPco or, as applicable, its Associated RSP in the Intervention Area (which, as at the Commencement Date, is set out in ComReg Document 13/11 Next Generation Access (‘NGA’): C, dated 31 January 2013). If, at a given time during the Contract Period, such Retail Margin Squeeze Test is disappplied in respect of analogous products, the Retail Margin Squeeze Test as applicable immediately prior to such disapplication shall apply until such time as the Retail Margin Squeeze Test for the purposes of this Part is amended by the Parties pursuant to the Change Control Procedure.

2.3 NBPco shall notify the Minister:

2.3.1 of all Retail Prices for Anchor Retail Products of any Associated RSP;

2.3.2 of all Retail Price amendments to existing Anchor Retail Products of any Associated RSP; and

2.3.3 of all Retail Prices for new Anchor Retail Products of any Associated RSP,

no later than five (5) Working Days prior to the date that the price is to become operative. NBPco shall include in the RSP Terms appropriate provisions to enable NBPco to comply with this obligation.

3 RETAILER OF LAST RESORT

3.1 NBPco shall, where NBPco acts as the final retailer of last resort in accordance with Clause 19 (Wholesale Products), charge all Named Unserved End Users the same retail prices in all circumstances and comply with its obligations in relation to pricing of RoLR End User Products under the provisions of Clause 19 (Wholesale Products).

4 OBLIGATION NOT TO UNREASONABLY BUNDLE

4.1 In order to ensure that throughout the Contract Period retail bundles offered by any Associated RSP is replicable by other RSPs, NBPco throughout the Contract Period shall require (in the relevant RSP Terms) and do all that is necessary to ensure that throughout the Contract Period any Associated RSPs do not unreasonably bundle retail High Speed Broadband products with other retail products provided to IA End Users.

4.2 NBPco shall throughout the Contract Period require (in the relevant RSP Terms) and do all that is necessary to ensure that throughout the Contract Period retail bundles offered by any Associated RSP pass, at a point in time, the Regulator's most current approach to the 'net revenue test' at the relevant time (which, as at the Commencement Date, is set out in ComReg Decision D12/18 (ComReg Document 18/96) and ComReg Decision D11/18 (ComReg Document 18/95)). If, at a given time during the Contract Period, such net revenue test is disapplied, the net revenue test as applicable immediately prior to such disapplication shall apply until such time as the net revenue test for the purposes of this Part is amended by the Parties pursuant to the Change Control Procedure.

5 MONITORING COMPLIANCE WITH THE RETAIL PRICING RULES

Minister review

5.1 Where, at any time throughout the Contract Period after the Commencement Date, the Minister considers that NBPco or an Associated RSP may no longer be in compliance with the Retail Pricing Rules, the Minister:

5.1.1 may (but is not obliged to) undertake and complete; and/or

5.1.2 may by notice in writing require NBPco to undertake and complete (in which case NBPco shall so undertake and complete within thirty (30) Working Days of issue of the notice),

for any reason whatever, a comprehensive review of NBPco's or an Associated RSP's compliance with any aspect of the Retail Pricing Rules by application of the provisions of this Part.

NBPco monitoring and review

5.2 NBPco shall monitor throughout the Contract Period its and its Associated RSP's compliance with the Retail Pricing Rules and any change in circumstances (including by monitoring prices for retail products and changes in efficient costs or bundles) in the Intervention Area that may result in NBPco or an Associated RSP coming into non-compliance with any aspect of the Retail Pricing Rules. NBPco shall discharge its monitoring obligation in respect of its Associated RSP for the purpose of this Paragraph

by assessing and considering the Associated RSP's statement of compliance submitted annually in accordance with Paragraph 3 (Associated RSP Compliance Statements) of Part 4 (Review and Compliance) of this Schedule.

5.3 Where, on and from the Commencement Date, at any time throughout the Contract Period, NBPco or an Associated RSP has come into non-compliance with any aspect of the Retail Pricing Rules (for any reason whatever), NBPco shall, without being requested to do so:

5.3.1 notify the Minister in writing of that fact (and of any other relevant facts, matters and circumstances) within twenty-five (25) Working Days of such occurring; and

5.3.2 unless instructed not to do so by the Minister in writing within ten (10) Working Days of the date of issue of the notice mentioned in Paragraph 5.3.1 (Monitoring Compliance with the Retail Pricing Rules), commence without delay and complete, within twenty (20) Working Days of issue of the notice, a Retail Pricing Rules Review.

Change in Wholesale Products or Wholesale Prices

5.4 Where at any time after the Commencement Date:

5.4.1 NBPco, in accordance with the Wholesale Product Control Procedure, proposes to, or is asked pursuant to a Change Request to, introduce a New Wholesale Product; or

5.4.2 NBPco, in accordance with the Wholesale Product Control Procedure or Wholesale Price Control Procedure, proposes to, or is asked pursuant to a Change Request to, change certain elements of an existing Wholesale Product or Wholesale Price,

NBPco shall, without being requested to do so, undertake and complete as soon as reasonably possible and without undue delay and complete within twenty (20) Working Days a Retail Pricing Rules Review.

NBPco Retail Pricing Rules Report

5.5 NBPco shall, upon completion of a Retail Pricing Rules Review, produce a comprehensive, well-structured and considered report setting out the analysis, findings and substantive reasoning behind NBPco's findings and, if applicable proposed changes to bundles or prices (and, if applicable, specifically identifying any non-compliance by NBPco or Associated RSPs with the Retail Pricing Rules and proposed remedial action), together with all information, data and analysis underpinning the report so that the Minister can fully and properly interrogate, review and analyse the analysis and findings in the report (the "**NBPco Retail Pricing Rules Report**"). NBPco shall in all cases complete a Retail Pricing Rules Review that it has started and shall not delay the completion of any NBPco Retail Pricing Rules Report.

5.6 NBPco shall include the NBPco Retail Pricing Rules Report with, as applicable, the Change Request or Change Impact Assessment submitted to the Minister.

Minister satisfied

- 5.7 NBPco shall, within ten (10) Working Days of the completion of any Retail Pricing Rules Review undertaken by NBPco, in all cases provide the Minister with the accurate and complete NBPco Retail Pricing Rules Report (even if NBPco decides not to make a Change Request or considers that it and its Associated RSP is compliant with the Retail Pricing Rules).
- 5.8 If the Minister is satisfied with any proposed remedial action or Change (including a Change to a Wholesale Price) set out in an NBPco Retail Pricing Rules Report:
- 5.8.1 the Minister may notify NBPco accordingly in writing (to the extent to which the Minister is so satisfied); and
- 5.8.2 in such case NBPco shall:
- (A) promptly implement (and use all reasonable endeavours to procure the implementation by Associated RSPs of) any such proposed remedial action approved by the Minister, which action may include, in respect of a failure by an Associated RSP to comply with the Retail Pricing Rules applicable in respect of it, an obligation on NBPco to change its Wholesale Prices to ensure that the ultimate effect of the Retail Pricing Rules is achieved (e.g. with a view to ensuring that no Retail Margin Squeeze applies); and
- (B) if a resulting Change (such as with respect to its Wholesale Price) was approved by the Minister in principle, within ten (10) Working Days of receipt of notice from the Minister submit an executed Change Authorisation, reflecting the proposed Change set out in the NBPco Retail Pricing Rules Report, to the Minister for execution by the Minister. The Minister shall act promptly in returning an executed Change Authorisation to NBPco under this Paragraph and shall use reasonable endeavours to do so within twenty-five (25) Working Days (but shall not be liable where, having so reasonably endeavoured, he has not done so).

Disagreement on issues

- 5.9 The Minister may (but is not obliged to) following:
- 5.9.1 completion of a Retail Pricing Rules Review undertaken by it; or
- 5.9.2 receipt and review of an NBPco Retail Pricing Rules Report,
- notify NBPco in writing of the Minister's determination as to the required remedial action (including a Change to a Wholesale Price or to use all reasonable endeavours to procure compliance in respect of an Associated RSP's price) required to ensure compliance with the Retail Pricing Rules. NBPco shall, within thirty (30) Working Days of receipt of the Minister's determination, either:
- 5.9.3 notify the Minister that it disagrees with the Minister's determination; or
- 5.9.4 implement (and use all reasonable endeavours to procure the implementation by Associated RSPs of) the relevant remedial action and, unless the Minister does not require a Change to ensure compliance with the Retail Pricing Rules, submit an executed Change Authorisation to the Minister, reflecting the

Minister's determination as to any Change required (such as with respect to its Wholesale Price), for execution by the Minister.

Co-operation

- 5.10 NBPco shall co-operate fully with the Minister (and any relevant person, including the Regulator and Agency) in connection with any review undertaken by NBPco or the Minister pursuant to the provisions of this Paragraph 5 (Monitoring Compliance with the Retail Pricing Rules) (including a review by the Minister (or his nominee) of a report provided by NBPco pursuant to the provisions of this Paragraph 5 (Monitoring Compliance with the Retail Pricing Rules)). This includes providing the Minister promptly with all collated, complete and up-to-date information, data and analysis as the Minister may request and providing the information, data and analysis in a logical, well-structured and easily navigable form.

6 DISAGREEMENT REGARDING THE RETAIL MARGIN SQUEEZE TEST OR RETAIL PRICING RULES

NBPco Submission

- 6.1 If, in a given case (whether as a result of a review undertaken by the Minister or NBPco under this Part or Part 4 (Review and Compliance)), NBPco notifies the Minister that it disagrees with the Minister's determination pursuant to Paragraph 5.9 (Monitoring Compliance with the Retail Pricing Rules) or the provisions of Part 4 (Review and Compliance) as to:

6.1.1 what is the correct outcome of the Retail Margin Squeeze Test by application of the definition, principles and methodology set out in the provisions of Paragraph 2 (Retail Margin Squeeze); or

6.1.2 what is the remedial action or Change (including as to its Wholesale Price or Associated RSP's price) required to ensure compliance with the Retail Pricing Rules (such as a change to its Wholesale Price),

NBPco shall, within no more than ten (10) Working Days (or such other period agreed by NBPco with the Minister in writing) of the issue of its notice pursuant to Paragraph 5.9.3 (Monitoring Compliance with the Retail Pricing Rules) make a submission to the Minister setting out what NBPco considers is the correct outcome of the Retail Margin Squeeze Test and/or other remedial action or Change (including as to its Wholesale Price) required to ensure compliance with the Retail Pricing Rules and the reasons why. The onus and burden of proof is on NBPco, and it is NBPco's responsibility in making a submission under this Paragraph 6.1 (Disagreement Regarding the Retail Margin Squeeze Test or Retail Pricing Rules), to demonstrate to the Minister's satisfaction that any determination made by the Minister does not represent the correct outcome of the Retail Margin Squeeze Test or required remedial action or Change (such as a change to its Wholesale Price or an Associated RSP's price) and as such, NBPco shall supply all supporting documentation, analysis, supporting information and data and reasoning necessary to substantively prove its case.

Minister's Response

- 6.2 The Minister shall consider NBPco's submission under Paragraph 6.1 (Disagreement Regarding the Retail Margin Squeeze Test or Retail Pricing Rules) and may, at its discretion, do any of the following, notifying NBPco in writing accordingly:

- 6.2.1 confirm that the Minister has no objection to NBPco's proposed test result or remedial action (in each such case in whole or in part) in which case NBPco shall implement the remedial action (and, procure in respect of an Associated RSP that remedial action is taken) and (if there is to be a Change) submit an executed Change Authorisation, reflecting NBPco's proposed Change (such as with respect to its Wholesale Price), to the Minister within ten (10) Working Days of receipt of that notice from the Minister;
- 6.2.2 object to NBPco's proposed outcome of the Retail Margin Squeeze Test, Change and/or remedial action (in each such case in whole or in part) and set out the Minister's determination as to the correct Margin Squeeze test result and/or required remedial action and/or Change (such as a change to its Wholesale Price);
- 6.2.3 request further information from NBPco;
- 6.2.4 undertake a further review of the Retail Margin Squeeze Test or Retail Pricing Rules (in either case in whole or in part); and/or
- 6.2.5 instigate the Remedial Plan Process.

Minister's Decision Final and Binding

- 6.3 If the Minister objects (in whole or in part) to NBPco's proposed outcome of the Retail Margin Squeeze Test, Change (including as to its Wholesale Price), Change and/or remedial action pursuant to Paragraph 6.2 (Disagreement Regarding the Retail Margin Squeeze Test or Retail Pricing Rules) then, except where Paragraph 6.4 (Disagreement Regarding the Retail Margin Squeeze Test or Retail Pricing Rules) applies:
 - 6.3.1 the Minister's decision as to, as applicable, the outcome of the Retail Margin Squeeze Test, remedial action and/or Change (such as a change to its Wholesale Price or an Associated RSP's price) in such respect is final and binding upon NBPco; and
 - 6.3.2 NBPco shall within ten (10) Working Days of that determination by the Minister:
 - (A) implement any remedial action required further to the Minister's determination (including any amendment to its Wholesale Price); and
 - (B) if applicable, submit an executed Change Authorisation to the Minister, reflecting the Minister's determination as to the required Change (such as with respect to its Wholesale Price), for execution by the Minister; and
 - (C) accept the Minister's determination as final and binding upon NBPco.

Disputes re Manifest and Serious Error

- 6.4 If NBPco reasonably considers and provides a certificate from a director or other senior officer of NBPco to the Minister within five (5) Working Days of the date of the Minister's determination under Paragraph 6.2.2 (Disagreement Regarding the Retail Margin Squeeze Test or Retail Pricing Rules) that:

- 6.4.1 the Minister has made a manifest and serious error in the application of the definition, principles and methodology set out in the provisions of Paragraph 2 (Retail Margin Squeeze) or other provisions of this Part 2; and
- 6.4.2 the direct consequence of the manifest and serious error:
 - 6.4.3 is likely to have a significant detrimental financial and commercial impact upon NBPco; or
 - 6.4.4 would give rise to a breach of Law by NBPco,

NBPco shall, contemporaneously with the submission of its notice under this Paragraph, refer the matter to the Dispute Resolution Procedure to resolve any such Dispute. NBPco shall not be obliged to comply with Paragraph 6.3 (Disagreement Regarding the Retail Margin Squeeze Test or Retail Pricing Rules) to the extent only that such compliance is the subject of a Dispute pursuant to this Paragraph until, whichever is earlier (i) resolution of the Dispute in accordance with the Dispute Resolution Procedure, or (ii) if applicable, a determination, finding or opinion of the Regulator in respect of the matter (in each of which cases the Minister's finding under Paragraph 6.3 (Disagreement Regarding the Retail Margin Squeeze Test or Retail Pricing Rules) shall be adapted to take account of any such outcome and NBPco shall comply with the Minister's amended finding). The position in respect of the Retail Pricing Rules, remedial action or other matter as applied under this Part immediately prior to the Dispute shall apply until such time as the Dispute is resolved. The Expedited Dispute Resolution Procedure shall apply to any such Dispute.

7 COMPLIANCE

- 7.1 NBPco shall, by means of the Service Provider Terms, require all Associated RSPs to do whatever is necessary to maintain compliance with the Retail Pricing Rules (notwithstanding that Associated RSPs are not a party to this Agreement).
- 7.2 Without limiting or affecting NBPco's obligations under this Schedule, NBPco shall, upon request by the Minister and within the period specified by the Minister, issue notice to any relevant Associated RSP requiring it to do whatever is necessary to maintain compliance with the Retail Pricing Rules within the period specified by the Minister.
- 7.3 If an Associated RSP, upon request by NBPco, does not do whatever is necessary to maintain compliance with the Retail Pricing Rules (notwithstanding that Associated RSPs are not a party to this Agreement) within the period specified in a written request by NBPco, NBPco shall notify the Minister in writing within no later than five (5) Working Days of the date NBPco becomes aware of such non-compliance within such specified period.
- 7.4 Without limiting or affecting NBPco's obligations under this Schedule, if an Associated RSP fails to comply with relevant obligations imposed on it by NBPco pursuant to Paragraphs 2 (Retail Margin Squeeze) and 4 (Obligation not to Unreasonably Bundle) of this Part 2 (Retail Pricing Rules), the Minister shall be entitled by notice in writing to NBPco:
 - 7.4.1 to direct that NBPco use all reasonable endeavours to procure that the Associated RSP complies with its relevant obligations, including by means of enforcement of the relevant provisions of the Service Provider Terms;

- 7.4.2 where NBPco has failed to procure compliance using all reasonable endeavours pursuant to Paragraph 7.4.1 (Compliance), following consultation with NBPco and the Regulator (which consultation shall have regard to ensuring that any negative impact on any End Users who will or may be affected by any such suspension is minimised and mitigated to the extent possible), to require NBPco within fifteen (15) Working Days of the date of the Minister's written direction to suspend (for such fixed or indefinite period as may be specified by the Minister) provision of any Wholesale Products to the relevant Associated RSP that has not complied with its relevant obligations. NBPco shall include appropriate provisions in the Service Provider Terms to facilitate NBPco's compliance with this Paragraph; and
- 7.4.3 where the relevant Associated RSP has not complied with relevant obligations imposed on it by NBPco pursuant to Paragraphs 2 (Retail Margin Squeeze) and 4 (Obligation not to Unreasonably Bundle) of this Part 2 (Retail Pricing Rules) within twenty (20) Working Days of the date of suspension under Paragraph 7.4.2 (Compliance), direct NBPco to terminate the provision of any Wholesale Products to and any associated agreement with the relevant Associated RSP within twenty (20) Working Days of the date of the Minister's written direction.
- 7.5 The Minister may (but is not obliged to), by notice to NBPco in writing, grant NBPco approval to resume provision of new and previously supplied Wholesale Products to an Associated RSP.
- 7.6 The Minister, the Regulator and/or the Agency (or any agent or representative, including professional body, acting on any of their behalf) may monitor NBPco's and Associated RSP's compliance with the Retail Pricing Rules at any time. In this respect, NBPco shall provide the Minister, Agency and Regulator (and/or any agent or representative, including professional body, acting on any of their behalf) with all such cooperation, information and assistance as is requested and on such terms as are specified by any of those parties in relation to such monitoring, including the collection, gathering, collation and provision of any information requested by the Minister, Regulator and/or Agency and/or any agent or representative, including professional body, acting on any of their behalf.
- 7.7 NBPco shall include within the Service Provider Terms all provisions as are sufficient to enable NBPco comply and procure compliance with the provisions of this Part.

PART 3 (WHOLESALE PRODUCT BENCHMARKING RULES)

1 WHOLESALE PRODUCT BENCHMARKING RULES

- 1.1 NBPco shall ensure throughout the Contract Period that NBPco, and the Minimum Required Wholesale Products and Additional Required Wholesale Products, comply with the rules and requirements set out in the provisions of Paragraph 2 (The Benchmark Reference Performance Specification Rules) to Paragraph 7 (Consequences of Non-Compliance) (inclusive) (together the “**Wholesale Product Benchmarking Rules**” and which includes, as the context so admits or requires, any one, more or all of them and any one, more or all of the provisions in this Part of this Schedule).
- 1.2 Without limiting or affecting NBPco’s obligations under this Schedule, NBPco shall change any or all of the published and actual product and service performance specifications, levels, characteristics and other aspects of the Minimum Required Wholesale Products and Additional Required Wholesale Products upon direction by the Minister (and as directed by the Minister) in order to bring the Wholesale Products into compliance with the Wholesale Product Benchmarking Rules (but with no increase in the Subsidy Payments or diminishment in performance of the Wholesale Products).
- 1.3 Without limiting or affecting NBPco’s obligations under this Schedule, NBPco acknowledges and agrees that the Wholesale Products, and any of their published and actual product and service performance specifications, levels, characteristics and other aspects, shall only be changed, removed or introduced by NBPco from time to time subject to and in accordance with the Wholesale Product Control Procedure and provided and on condition that the proposed Wholesale Products comply with the Wholesale Product Benchmarking Rules.

2 THE BENCHMARK REFERENCE PERFORMANCE SPECIFICATION RULES

- 2.1 NBPco shall ensure that, throughout the Contract Period, the Minimum Required Wholesale Products and Additional Required Wholesale Products meet or exceed the published and actual (by reference to the best available information at a relevant time) (whichever give rise to a better Wholesale Product, performance and outcome from an ultimate End User perspective) product and service performance specifications, levels, characteristics and other aspects of the Benchmark Reference Performance Specification (as it changes from time to time, whether as a result of any change by the provider of the Benchmark Reference Product to the performance levels, specification or other elements of the Benchmark Reference Product, change of the Benchmark Reference Product or the removal by the provider of the Benchmark Reference Product of the Benchmark Reference Product from the market or otherwise).
- 2.2 NBPco’s obligations under this Part 3 (Wholesale Product Benchmarking Rules) are without prejudice to NBPco’s obligations elsewhere in the Agreement, including under the Continuous Improvement and Future Proofing Obligations, to ensure that the Minimum Required Wholesale Products and Additional Required Wholesale Products evolve in line with the equivalent products in the Excluded Area.

3 THE BENCHMARK REFERENCE PERFORMANCE SPECIFICATION

- 3.1 The Benchmark Reference Performance Specification in respect of a Wholesale Product means the published and actual (by reference to the best available information at a relevant time) (whichever gives rise to a better Wholesale Product, performance and outcome from an ultimate End User perspective) product and service performance

specifications, levels, requirements and other characteristics at the relevant time of the Benchmark Reference Product at the relevant time.

3.2 Where, pursuant to Paragraph 3.4 (Benchmark Reference Price and Changes to Benchmark Reference Product) of Part 1 (Wholesale Pricing Rules), the Parties have agreed that there is no Benchmark Reference Product for a given Wholesale Product at a point in time, the Benchmark Reference Performance Specification shall be agreed by the Parties at the relevant time (failing or pending which agreement by the Parties, the Benchmark Reference Performance Specification as determined (from time to time) by the Minister at his sole discretion (but having first consulted with the Regulator) and notified in writing to NBPco shall apply.

3.3 If:

3.3.1 the Benchmark Reference Performance Specification is determined pursuant to Paragraph 3.2 (The Benchmark Reference Performance Specification) or this Paragraph 3.3 (The Benchmark Reference Performance Specification);

3.3.2 either Party subsequently considers that, due to a change in circumstances since it was previously determined, the Benchmark Reference Performance Specification ought to be revised; and

3.3.3 there continues to be no Benchmark Reference Product for the Wholesale Product concerned at the relevant point in time,

the Parties, upon request by either Party, shall review and agree the revised Benchmark Reference Performance Specification, failing or pending which agreement by the Parties, the Benchmark Reference Performance Specification as determined (from time to time) by the Minister at his sole discretion (but having first consulted with the Regulator) and notified in writing to NBPco shall apply (in which case the Parties shall document the revised Benchmark Reference Performance Specification in an executed Change Authorisation).

3.4 This Paragraph 3 (The Benchmark Reference Performance Specification) does not apply to Other Permitted Wholesale Products.

4 CHANGES TO THE BENCHMARK REFERENCE PRODUCT AND THE BENCHMARK REFERENCE PERFORMANCE SPECIFICATIONS

As at the Commencement Date

4.1 As at the Commencement Date, Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) to this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) sets out the Benchmark Reference Product and the Benchmark Reference Performance Specification in respect of the Minimum Required Wholesale Products and the Additional Required Wholesale Products and, where no Benchmark Reference Product exists in respect of a given Minimum Required Wholesale Product or Additional Required Wholesale Product, the Benchmark Reference Performance Specification as determined pursuant to Paragraph 3.2 (The Benchmark Reference Performance Specification).

Change to the Benchmark Reference Product and the Benchmark Reference Performance Specification during the Contract Period

- 4.2 Each Party acknowledges and agrees that the Benchmark Reference Product and the Benchmark Reference Performance Specification referred to in Paragraph 4.1 (Changes to the Benchmark Reference Product and the Benchmark Reference Performance Specifications) of this Part 3 (Wholesale Product Benchmarking Rules) have been determined by applying the provisions of this Part 3 (Wholesale Product Benchmarking Rules) as at the Commencement Date and either or both may change from time to time during the Contract Period by application of the provisions of this Part or Part 4 (Review and Compliance).
- 4.3 NBPco acknowledges and agrees that any change to the Wholesale Products from time to time during the Contract Period pursuant to the Wholesale Product Control Procedure (including as may be required pursuant to the Future Proofing and Continuous Improvement Obligations) may require a consequent change to the Benchmark Reference Product and the Benchmark Reference Performance Specification at the relevant time of, and as part of the process of approving, the change. For the avoidance of doubt, if and to the extent that NBPco is required to change the Wholesale Products from time to time under this Agreement, NBPco shall notify the Minister at the relevant time that a change in the Benchmark Reference Product and the Benchmark Reference Performance Specification may be required and the requirement for a change shall be assessed in accordance with Paragraph 5 (Monitoring Compliance with the Wholesale Product Benchmarking Rules) and the Wholesale Product Control Procedure.

5 MONITORING COMPLIANCE WITH THE WHOLESALE PRODUCT BENCHMARKING RULES

- 5.1 Without limiting or affecting NBPco's obligations under the provisions of this Schedule, NBPco is responsible for ensuring that any change to the Benchmark Reference Performance Specification (whether as a result of any change by the provider of the Benchmark Reference Product to the specification, performance levels or other elements of the Benchmark Reference Product, change of the Benchmark Reference Product or the removal by the provider of the Benchmark Reference Product of the Benchmark Reference Product from the market or otherwise) or Benchmark Reference Products from that set out in Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) (as amended by Change Authorisation from time to time) is formally agreed in a Change Authorisation prior to any change in its Wholesale Product (whether in terms of actual or published product or service specification, performance, performance levels, requirements and other characteristics becoming effective or implemented).

Minister review

- 5.2 Where, at any time throughout the Contract Period after the Commencement Date, the Minister:
- 5.2.1 considers that the application of the definition, principles and methodology set out in the provisions of Paragraph 3 (The Benchmark Reference Performance Specification) may result in a different Benchmark Reference Performance Specification to the then current Benchmark Reference Performance Specification for any reason whatever (including due to a change in circumstances, such as with respect to actual or published performance specification, performance levels or other matters of the Wholesale Product or Benchmark Reference Product or a change in the Wholesale Product),
- 5.2.2 considers that NBPco may no longer be in compliance with the Wholesale Product Benchmarking Rules for any reason whatever; or

5.2.3 wants a Wholesale Product Benchmarking Rules Review to be undertaken pursuant to the provisions of Part 4 (Review and Compliance);

the Minister:

5.2.4 may (but is not obliged to) undertake and complete; and/or

5.2.5 by notice in writing require NBPco to undertake and complete (in which case NBPco shall so undertake and complete within thirty (30) Working Days of issue of the notice),

a comprehensive review of:

5.2.6 the Benchmark Reference Product and the Benchmark Reference Performance Specification by application of the definition, principles and methodology set out in the provisions of Paragraph 3 (The Benchmark Reference Performance Specification); and/or

5.2.7 NBPco's compliance with any aspect of the Wholesale Product Benchmarking Rules by application of the provisions of this Part,

NBPco monitoring and review

5.3 NBPco shall continually monitor throughout the Contract Period its compliance with the Wholesale Product Benchmarking Rules and any change in circumstances in the Intervention Area or Excluded Area that may result in NBPco coming into non-compliance with any aspect of the Wholesale Product Benchmarking Rules (for any reason whatever, such as due to changes in actual or published performance specifications, performance levels or other matters of the Wholesale Product or Benchmark Reference Product or a change in the Wholesale Product or removal by the provider of the Benchmark Reference Product of the Benchmark Reference Product from the market or otherwise).

5.4 Where, on and from the Commencement Date, at any time throughout the Contract Period, NBPco has come into non-compliance with any aspect of the Wholesale Product Benchmarking Rules (for any reason whatever, such as due to changes in actual or published performance specifications, performance levels or other matters of the Wholesale Product or Benchmark Reference Product or a change in the Wholesale Product or removal by the provider of the Benchmark Reference Product of the Benchmark Reference Product from the market or otherwise), NBPco shall, without being requested to do so:

5.4.1 notify the Minister in writing of that fact (and of any other relevant facts, matters and circumstances) within twenty-five (25) Working Days of such first occurring (the "**Benchmark Product Change Notice Date**"); and

5.4.2 unless instructed not to so by the Minister in writing within ten (10) Working Days of the date of issue of the notice mentioned in Paragraph 5.4.1 (Monitoring Compliance with the Wholesale Product Benchmarking Rules), commence without delay and complete within twenty (20) Working Days of issue of the notice a Wholesale Product Benchmarking Rules Review.

Changes and New Wholesale Products

5.5 Where at any time after the Commencement Date:

5.5.1 NBPco, in accordance with the Wholesale Product Control Procedure, proposes to, or is asked pursuant to a Change Request or is required by the Regulator to introduce a New Wholesale Product; or

5.5.2 NBPco, in accordance with the Wholesale Product Control Procedure or Wholesale Price Control Procedure, proposes to, or is asked pursuant to a Change Request to change certain elements of an existing Wholesale Product,

NBPco shall, without being requested to do so, undertake and complete, within thirty (30) Working Days of the issue of the Change Request:

5.5.3 a Wholesale Product Benchmarking Rules Review; and

5.5.4 if a new Wholesale Price is to be introduced or an existing Wholesale Price is to be amended in respect of such Wholesale Product, a Wholesale Pricing Rules Review,

and shall produce and submit to the Minister in that period an NBPco Wholesale Product Benchmarking Rules Report (and if applicable, a Wholesale Pricing Rules Report).

NBPco Wholesale Product Benchmarking Rules Report

5.6 NBPco shall, upon completion of a Wholesale Product Benchmarking Rules Review, produce a comprehensive, well-structured and considered report setting out the analysis, findings and substantive reasoning behind NBPco's findings and, if applicable, proposed change in Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change (and, if applicable, specifically identifying any non-compliance by NBPco with the Wholesale Product Benchmarking Rules and proposed remedial action), together with all information, data and analysis underpinning the report so that the Minister can fully and properly interrogate, review and analyse the analysis and findings in the report (the "**NBPco Wholesale Product Benchmarking Rules Report**"). NBPco shall in all cases complete a Wholesale Product Benchmarking Rules Review that it has started and shall not delay the completion of any NBPco Wholesale Product Benchmarking Rules Report.

5.7 NBPco shall, within ten (10) Working Days of the completion of any Wholesale Product Benchmarking Rules Review, in all cases provide the Minister with the accurate and complete NBPco Wholesale Product Benchmarking Rules Report (even if NBPco decides not to make a Change Request or considers that the Benchmark Reference Performance Specification or Wholesale Product does not need to change or that it is compliant with the Wholesale Product Benchmarking Rules).

5.8 NBPco shall include the NBPco Wholesale Product Benchmarking Rules Report with, as applicable, the Change Request or Change Impact Assessment submitted to the Minister.

Minister satisfied

5.9 If the Minister is satisfied with the proposed change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change or any proposed remedial action set out in an NBPco Wholesale Product Benchmarking Rules Report:

5.9.1 the Minister may notify NBPco accordingly in writing (to the extent to which the Minister is so satisfied) and shall endeavour to do so within twenty-five (25)

Working Days of receipt of the NBPco Wholesale Product Benchmarking Rules Report (but shall not be liable where, having so endeavoured, he failed to do so); and

5.9.2 in such case NBPco shall:

(A) implement any such proposed remedial action approved by the Minister immediately; and

(B) if a change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change was approved by the Minister in principle, within ten (10) Working Days of receipt of notice from the Minister submit an executed Change Authorisation, reflecting the proposed Change set out in the NBPco Wholesale Product Benchmarking Rules Report, to the Minister for execution by the Minister. The Minister shall act promptly in returning an executed Change Authorisation to NBPco under this Paragraph and shall use reasonable endeavours to do so within twenty-five (25) Working Days (but shall not be liable where, having so reasonably endeavoured, it has not done so).

Disagreement on issues

5.10 The Minister may (but is not obliged to) following:

5.10.1 completion of a Wholesale Product Benchmarking Rules Review undertaken by it; or

5.10.2 receipt and review of an NBPco Wholesale Product Benchmarking Rules Report,

notify NBPco in writing of the Minister's determination as to any required change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change or remedial action required to ensure compliance with the Wholesale Product Benchmarking Rules.

5.11 NBPco shall, within thirty (30) Working Days of receipt of the Minister's determination under Paragraph 5.10 (Monitoring Compliance with the Wholesale Product Benchmarking Rules), either:

5.11.1 notify the Minister that it disagrees with the Minister's determination including where it considers that the determination cannot be implemented in accordance with Law); or

5.11.2 implement the relevant remedial action and, unless the Minister does not require a change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change, submit an executed Change Authorisation to the Minister, reflecting the Minister's determination, for execution by the Minister.

Co-operation

5.12 NBPco shall co-operate fully with the Minister (and any relevant person, including the Regulator and Agency) in connection with any review undertaken by NBPco or the Minister pursuant to the provisions of this Paragraph 5 (Monitoring Compliance with the

Wholesale Product Benchmarking Rules) (including a review by the Minister (or his nominee) of a report provided by NBPco pursuant to the provisions of this Paragraph 5 (Monitoring Compliance with the Wholesale Product Benchmarking Rules). This includes providing the Minister promptly with all collated, complete and up-to-date information, data and analysis as the Minister may request and providing the information, data and analysis in a logical, well-structured and easily navigable form.

5.13 This Paragraph 5 (Monitoring Compliance with the Wholesale Product Benchmarking Rules) does not apply to Other Permitted Wholesale Products.

6 DISAGREEMENT REGARDING THE BENCHMARK REFERENCE PERFORMANCE SPECIFICATION OR WHOLESALE PRODUCT BENCHMARKING RULES

NBPco Submission

6.1 If, in a given case (whether as a result of a review undertaken by the Minister or NBPco under this Part or Part 4 (Review and Compliance), NBPco notifies the Minister under Paragraph 5.11.1 (Monitoring Compliance with the Wholesale Product Benchmarking Rules) that it disagrees with the Minister's determination pursuant to Paragraph 5.10 (Monitoring Compliance with the Wholesale Product Benchmarking Rules) or the provisions of Part 4 (Review and Compliance), NBPco shall, within no more than ten (10) Working Days (or such other period agreed by NBPco with the Minister in writing) of the issue of its notice pursuant to Paragraph 5.11.1 (Monitoring Compliance with the Wholesale Product Benchmarking Rules), make a submission to the Minister setting out what NBPco considers is the correct required change to a Benchmark Reference Product, Benchmark Reference Performance Specification and/or, as applicable, Wholesale Product or other Change or remedial action required to ensure compliance with the Wholesale Product Benchmarking Rules and the reasons why. The onus and burden of proof is on NBPco, and it is NBPco's responsibility in making a submission under this Paragraph 6.1 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules), to demonstrate to the Minister's satisfaction that any determination made by the Minister does not represent the correct required change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change or remedial action required to ensure compliance with the Wholesale Product Benchmarking Rules and NBPco shall supply all supporting documentation, analysis, supporting information and data and reasoning necessary to substantively prove its case.

Minister's Response

6.2 The Minister shall consider NBPco's submission under Paragraph 6.1 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules) and may, at its discretion, do any of the following, notifying NBPco in writing accordingly:

6.2.1 confirm that the Minister has no objection to NBPco's proposed change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change or remedial action required to ensure compliance with the Wholesale Product Benchmarking Rules (in each such case in whole or in part) in which case NBPco shall implement the remedial action and (if there is to be a change to the Benchmark Reference Product, Benchmark Reference Performance Specification or Wholesale Product or other Change) submit an executed Change Authorisation, reflecting the relevant Change, to the Minister within ten (10) Working Days of receipt of that notice from the Minister;

- 6.2.2 object to NBPco's proposed change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change or remedial action required to ensure compliance with the Wholesale Product Benchmarking Rules (in each such case in whole or in part) and set out the Minister's determination as to the correct required change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change or remedial action required to ensure compliance with the Wholesale Product Benchmarking Rules;
- 6.2.3 request further information from NBPco;
- 6.2.4 undertake a further review of the proposed change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change or remedial action required to ensure compliance with the Wholesale Product Benchmarking Rules (in either case in whole or in part); and/or
- 6.2.5 instigate the Remedial Plan Process.

Minister's Decision Final and Binding

- 6.3 If the Minister objects to NBPco's proposed change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change or remedial action required to ensure compliance with the Wholesale Product Benchmarking Rules pursuant to Paragraph 6.2.2 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules) then, except where Paragraph 6.4 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules) applies:
 - 6.3.1 the Minister's decision as to, as applicable, the required change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change or remedial action required to ensure compliance with the Wholesale Product Benchmarking Rules is final and binding upon NBPco; and
 - 6.3.2 NBPco shall, within ten (10) Working Days of that determination by the Minister:
 - (A) implement any remedial action required further to the Minister's determination; and
 - (B) if applicable, submit an executed Change Authorisation to the Minister, reflecting the Minister's determination as to the correct change to a Wholesale Product, Benchmark Reference Product, Benchmark Reference Performance Specification or other Change or remedial action required to ensure compliance with the Wholesale Product Benchmarking Rules, for execution by the Minister; and
 - (C) accept the Minister's determination as final and binding upon NBPco.

Disputes re Manifest and Serious Error

- 6.4 If NBPco reasonably considers and provides a certificate from a director or other senior officer of NBPco to the Minister within five (5) Working Days of the date of the Minister's

determination under Paragraph 6.2.2 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules)(the “**NBPco Part 3 Certificate**”) that:

- 6.4.1 the Minister has made a manifest and serious error in the application of the definition, principles and methodology set out in the provisions of Paragraph 3 (The Benchmark Reference Performance Specification) or other provisions of this Part 3; and
- 6.4.2 the direct consequence of the manifest and serious error:
 - 6.4.3 is likely to have a significant detrimental financial and commercial impact upon NBPco; or
 - 6.4.4 would give rise to a breach of Law by NBPco,

NBPco shall, contemporaneously with the submission of its notice under this Paragraph, refer the matter to the Dispute Resolution Procedure to resolve any such Dispute. NBPco shall not be obliged to comply with Paragraph 6.3 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules) to the extent only that such compliance is the subject of a Dispute pursuant to this Paragraph until, whichever is earlier (i) resolution of the Dispute in accordance with the Dispute Resolution Procedure, or (ii) if applicable, a determination, finding or opinion of the Regulator in respect of the matter (in each of which cases the Minister’s finding under Paragraph 6.3 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules) shall be adapted to take account of any such outcome and NBPco shall comply with the Minister’s amended finding). The position in respect of the Benchmark Reference Price, Wholesale Price, remedial action or other matter as applied under this Part immediately prior to the Dispute shall apply until such time as the Dispute is resolved. The Expedited Dispute Resolution Procedure shall apply to any such Dispute.

- 6.5 If the outcome of any Dispute or determination, finding or opinion of the Regulator (if applicable) under Paragraph 6.3 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules) is that the Minister has not made a manifest and serious error in the application of the definition, principles and methodology set out in the provisions of Paragraph 3 (The Benchmark Reference Performance Specification) or other provisions of this Part 3 and the result is that the price that NBPco has charged to Service Providers during the period starting on the date of the NBPco Part 3 Certificate was higher than that price which it should have been in accordance with Paragraph 6.3 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules), NBPco shall refund to all Service Providers affected by the overpricing an amount equal to the difference between the Wholesale Price that NBPco charged them following the date of the NBPco Part 3 Certificate and the Wholesale Price which it should have charged them in accordance with Paragraph 6.3 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules) between the date of the NBPco Part 3 Certificate and the date on which NBPco implements the requirements of Paragraph 6.3 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules) (the “**Part 3 Incorrect Overpayment**”). The amount of the Part 3 Incorrect Overpayment shall be repaid to Service Providers within thirty (30) Working Days of the date of a notice in writing by the Minister to NBPco that a Part 3 Incorrect Overpayment has arisen and that a refund is due under the provisions of this Paragraph 6.5 (Disagreement Regarding the

Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules).

- 6.6 The Minister, the Regulator and/or the Agency (or any agent or representative, including any professional body, acting on any of their behalf) may monitor NBPco's compliance with the Wholesale Product Benchmarking Rules at any time. In this respect, NBPco shall provide the Minister, Agency and Regulator (and/or any agent or representative, including any professional body, acting on any of their behalf) with all such cooperation, information and assistance as is requested and on such terms as are specified by any of those parties in relation to such monitoring, including the collection, gathering, collation and provision of any information requested by the Minister, Regulator and/or Agency and/or any agent or representative, including any professional body, acting on any of their behalf.

7 CONSEQUENCES OF NON-COMPLIANCE

- 7.1 Without limiting or affecting the Minister's other rights and remedies under or pursuant to this Agreement (including pursuant to Clause 27.11 (Subsidy Payments) and Schedule 6.7 (Performance Levels)) and to the Minister's right to require rectification of any non-compliance pursuant to this Schedule, if and to the extent that, at any time and from time to time during the Contract Period, NBPco fails to comply with the Wholesale Product Benchmarking Rules such that:

- 7.1.1 NBPco fails to make a notification under Paragraph 5.4.1 (Monitoring Compliance with the Wholesale Product Benchmarking Rules) by the Benchmark Product Change Notice Date as required by that Paragraph; or
- 7.1.2 NBPco submits a notice, NBPco Wholesale Product Benchmarking Rules Report, Change Request or Change Impact Assessment prepared under or in connection with Paragraph 5 (Monitoring Compliance with the Wholesale Product Benchmarking Rules) which does not include an accurate and complete disclosure of all material facts relevant to the Minister's consideration; or
- 7.1.3 NBPco fails to comply with any of its obligations under Appendix 3 (Wholesale Price Control Procedure and Wholesale Product Control Procedure);

and the effect of any of Paragraphs 7.1.1 (Consequences of Non-Compliance) to 7.1.3 (Consequences of Non-Compliance) (as applicable) is that NBPco charges a Wholesale Price to Service Providers following the Benchmark Product Change Notice Date which is greater than the Wholesale Price which it should have charged had it complied with the Wholesale Product Benchmarking Rules, the provisions of Paragraphs 10.1 (Consequences of Non-Compliance) to 10.3 (Consequences of Non-Compliance) (inclusive) of Part 1 (Wholesale Pricing Rules) shall apply mutatis mutandis (including as if references therein to a "*Part 1 Non-Compliance Overpayment*" were instead to a "*Part 3 Non-Compliance Overpayment*") and NBPco shall refund to all Service Providers affected by the overpricing an amount equal to the difference between the Wholesale Price that NBPco charged them following the Benchmark Product Change Notice Date and the Wholesale Price which it should have charged them in accordance with Wholesale Product Benchmarking Rules over the total relevant period of non-compliance.

- 7.2 The requirement for NBPco to make a Part 3 Non-Compliance Overpayment shall apply in respect of non-compliance by NBPco as described in Paragraph 7.1 (Consequences of Non-Compliance). This payment obligation shall supersede the provisions of

Paragraph 6.5 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules) in respect of a Part 3 Incorrect Overpayment where the circumstances of Paragraph 7.1 (Consequences of Non-Compliance) are originally triggered under Paragraph 5 (Monitoring Compliance with the Wholesale Product Benchmarking Rules) in respect of one or more instances of non-compliance by NBPCo as described in Paragraph 7.1 (Consequences of Non-Compliance).

- 7.3 For the avoidance of doubt, there shall not be double recovery for Service Providers in respect of the operation of the repayment mechanisms in Paragraphs 9.5 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) and 10 (Consequences of Non-Compliance) of Part 1 (Wholesale Pricing Rules) and Paragraphs 6.5 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale Product Benchmarking Rules) and 7 (Consequences of Non-Compliance) of this Part 3 (Wholesale Product Benchmarking Rules) in circumstances arising from the same event.

PART 4 (REVIEW AND COMPLIANCE)

1 REVIEW

NBPco's obligation to review generally

- 1.1 Without limiting or affecting NBPco's obligations under the provisions of this Schedule, NBPco shall demonstrate with adequate written evidence its compliance (including by reference to compliance by its Associated Service Providers) with the provisions of this Schedule.

Annual review

- 1.2 Without limiting or affecting NBPco's obligations under the provisions of this Schedule, NBPco shall undertake, and complete within thirty (30) Working Days of the end of each and every Contract Year throughout the Contract Period, a comprehensive and full annual review of:

- 1.2.1 its compliance with the Wholesale Pricing Rules;
- 1.2.2 its and its Associated RSPs' compliance with the Retail Pricing Rules;
- 1.2.3 its compliance with the Wholesale Product Benchmarking Rules;
- 1.2.4 its compliance with the Continuous Improvement and Future Proofing Obligations;
- 1.2.5 the circumstances in which it has acted as a RoLR and its compliance with the Retail Pricing Rules in that respect; and
- 1.2.6 the circumstances in which NBPco has applied excess Connection charges under Paragraphs 6.2.2(A) (Initial Connection Charges and Other Connection Charges), 6.2.2(B) (Initial Connection Charges and Other Connection Charges) and 6.3.2(B) (Initial Connection Charges and Other Connection Charges) of Part 1 (Wholesale Pricing Rules).

Minister requests a review by NBPco

- 1.3 Without limiting or affecting NBPco's obligations under the provisions of this Schedule, NBPco shall, upon written request by the Minister (at any time and from time to time throughout the Contract Period), undertake, and complete within thirty (30) Working Days or such other period as the Minister may specify, a comprehensive and full review of:

- 1.3.1 NBPco's compliance with the Wholesale Pricing Rules;
- 1.3.2 NBPco's and its Associated RSPs' compliance with the Retail Pricing Rules;
- 1.3.3 NBPco's compliance with the Wholesale Product Benchmarking Rules;
- 1.3.4 NBPco's compliance with the Continuous Improvement and Future Proofing Obligations;
- 1.3.5 the circumstances in which NBPco has acted as a RoLR and its compliance with the Retail Pricing Rules in that respect; and

- 1.3.6 the circumstances in which NBPco has applied excess Connection charges under Paragraphs 6.2.2(A) (Initial Connection Charges and Other Connection Charges), 6.2.2(B) (Initial Connection Charges and Other Connection Charges) and 6.3.2(B) (Initial Connection Charges and Other Connection Charges) of Part 1 (Wholesale Pricing Rules),

to such extent as is requested by the Minister.

Review by Minister/Regulator/Agency

- 1.4 Without limiting or affecting NBPco's obligations under the provisions of this Schedule, the Minister may (whether itself or by getting a third party to do so, which third party may include the Regulator or Agency) (from time to time), undertake and complete a comprehensive and full review of:

- 1.4.1 NBPco 's compliance with the Wholesale Pricing Rules;
- 1.4.2 NBPco's compliance by NBPco and its Associated RSPs with the Retail Pricing Rules;
- 1.4.3 NBPco's compliance with the Wholesale Product Benchmarking Rules;
- 1.4.4 NBPco's compliance with the Continuous Improvement and Future Proofing Obligations;
- 1.4.5 the circumstances in which it has acted as a RoLR and its compliance with the Retail Pricing Rules in that respect; and
- 1.4.6 the circumstances in which NBPco has applied excess Connection charges under Paragraphs 6.2.2(A) (Initial Connection Charges and Other Connection Charges), 6.2.2(B) (Initial Connection Charges and Other Connection Charges) and 6.3.2(B) (Initial Connection Charges and Other Connection Charges) of Part 1 (Wholesale Pricing Rules).

The Minister shall endeavour to ensure that any such review is completed within thirty (30) Working Days of its commencement but, for the avoidance of doubt, the review shall not be required to be terminated and the Minister shall not be liable where, having so endeavoured, the review is not completed within that period.

General

- 1.5 The provisions of Part 1 (Wholesale Pricing Rules), Part 2 (Retail Pricing Rules) and Part 3 (Wholesale Product Benchmarking Rules) apply to such review under any of the provisions of this Paragraph 1 (Review) as if it was, respectively, a Wholesale Pricing Rules Review, a Retail Pricing Rules Review or Wholesale Product Benchmarking Rules Review undertaken pursuant to those provisions.

2 STATEMENT OF COMPLIANCE

- 2.1 NBPco shall within ten (10) Working Days of completion of a review referred to in Paragraphs 1.2 (Review) and 1.3 (Review) of Part 4 (Review and Compliance) Part 4 (Review and Compliance) of this Schedule, furnish to the Minister a Statement of Compliance.
- 2.2 NBPco shall:

2.2.1 when requesting any change pursuant to the Wholesale Price Control Procedure, the Wholesale Product Control Procedure or the Change Control Procedure; and

2.2.2 within thirty (30) Working Days of any request by the Minister from time to time (at his absolute discretion),

furnish to the Minister a detailed written statement of compliance in the form set out at Part 1 (Form of Statement of Compliance for NBPCo) of Appendix 2 (Statement of Compliance) confirming its compliance and, as applicable, proposed compliance (including, where applicable, by reference to compliance by its Associated RSPs) with the Wholesale Pricing Rules, Retail Pricing Rules and Wholesale Product Benchmarking Rules and including the following:

2.2.3 an accurate and complete disclosure of all material facts and all other relevant information that is necessary to demonstrate NBPCo's (and, as applicable, any Associated RSPs) full compliance with the Wholesale Pricing Rules, Retail Pricing Rules and the Wholesale Product Benchmarking Rules (including, in the case of a change, with respect to the proposed Wholesale Products and Wholesale Prices);

2.2.4 a description of the changes (if any) since the previous Statement of Compliance was submitted to the Minister, in relation to the following:

(A) bundles supplied by its Associated RSPs;

(B) pricing of Associated RSPs;

(C) the Wholesale Prices (and changes from any previous Wholesale Prices) and Wholesale Product Specifications (and changes from any previous Wholesale Product Specifications);

(D) the performance of the Minimum Required Wholesale Products and Additional Required Wholesale Products;

(E) the Benchmark Reference Prices;

(F) the Benchmark Reference Product and Benchmark Reference Performance Specifications; and

(G) such other matters as may be specified by the Minister from time to time;

2.2.5 NBPCo's proposed changes (if any) to the existing Wholesale Prices, Wholesale Products, Wholesale Product Specifications, Benchmark Reference Price, Benchmark Reference Product and/or Benchmark Reference Performance Specification; and

2.2.6 all relevant supporting documentation for the purpose of demonstrating compliance in accordance with its obligations under the provisions of this Schedule,

(the "**Statement of Compliance**").

2.3 The Minister is entitled pursuant to Paragraph 2.2.2 (Statement of Compliance) of this Part 4 (Review and Compliance) (for the avoidance of doubt, at no cost to the Minister) to require NBPco to submit the Statement of Compliance on an ad hoc basis at any time during the Contract Period (and from time to time) for any reason whatever including (but not limited to) where the Minister suspects or considers that there may be any non-compliance with any of the Wholesale Pricing Rules, Retail Pricing Rules and/or Wholesale Product Benchmarking Rules, including where any of the following may be taking place:

2.3.1 higher pricing relative to the Benchmark Reference Price;

2.3.2 lower performance relative to the Benchmark Reference Performance Specification;

2.3.3 a change in the market having a significant impact on the applicable Benchmark Reference Price; and/or

2.3.4 change in the market having a significant impact on the applicable Benchmark Reference Product or Benchmark Reference Performance Specification.

2.4 Upon receipt of the Statement of Compliance, the Minister shall review the same and the Minister may do one or more of the following things as it considers appropriate:

2.4.1 raise no objections;

2.4.2 inform NBPco of the Minister's view that:

(A) NBPco has failed to fully comply with the provisions of this Schedule, the nature of that non-compliance and its reasons for forming this view; or

(B) if a Change is being proposed, the Change if made operative will or could result in the issuing of a notification of non-compliance and its reasons for forming this view; and/or

2.4.3 request any further information from NBPco and set a reasonable deadline by which such information shall be provided and NBPco shall provide the requested information by the deadline and in such format and to the level of detail as stipulated by the Minister; and/or

2.4.4 require NBPco by notice in writing to undertake a Wholesale Pricing Rules Review, Retail Pricing Rules Review and/or Wholesale Product Benchmarking Review (in which case the provisions of Part 1 (Wholesale Pricing Rules), Part 2 (Retail Pricing Rules) and Part 3 (Wholesale Product Benchmarking Rules) apply to such review as if it was, respectively, a Wholesale Pricing Rules Review, a Retail Pricing Rules Review or Wholesale Product Benchmarking Rules undertaken pursuant to those provisions).

3 ASSOCIATED RSP COMPLIANCE STATEMENTS

3.1 NBPco shall require (in the Service Provider Terms) Associated RSPs to submit to the Minister (and copied to NBPco) an annual statement of compliance in the form set out in Appendix 2 (Statement of Compliance) of Part 2 (Form of Statement of Compliance for Associated RSPs) within no later than thirty (30) Working Days after the end of each Contract Year confirming and demonstrating that they have complied with any relevant

aspects of the Retail Pricing Rules throughout the Contract Year just completed. NBPco shall include appropriate provisions in the Service Provider Terms to facilitate and procure compliance with this Paragraph.

3.2 If an Associated RSP fails to comply with its obligation imposed on it by NBPco pursuant to Paragraph 3 (Associated RSP Compliance Statements) of this Part 4 (Review and Compliance), the Minister shall be entitled by notice in writing to NBPco:

3.2.1 to direct that NBPco use all reasonable endeavours to procure that the Associated RSP comply with its obligation to submit an annual statement of compliance, including by means of enforcement of the relevant provisions of the Service Provider Terms;

3.2.2 where NBPco has failed to procure compliance using all reasonable endeavours pursuant to Paragraph 3.2.1 (Associated RSP Compliance Statements), following consultation with NBPco and the Regulator (which consultation shall have regard to ensuring that any negative impact on any End Users who will or may be affected by any such suspension is minimised and mitigated to the extent possible), to require NBPco within five (5) Working Days of the date of the Minister's written direction to suspend (for such fixed or indefinite period as may be specified by the Minister) provision of any Wholesale Products to the relevant Associated RSP that has not submitted an annual statement of compliance; and

3.2.3 where the relevant Associated RSP has not submitted an annual statement of compliance within fifteen (15) Working Days of the date of suspension under Paragraph 3.2.2 (Associated RSP Compliance Statements), direct NBPco to terminate the provision of any Wholesale Products to and any associated agreement with the relevant Associated RSP within five (5) Working Days of the date of the Minister's written direction.

3.3 NBPco shall include appropriate provisions in the Service Provider Terms to facilitate NBPco's compliance with this Paragraph

4 PERIODIC REVIEW

4.1 Without limiting or affecting NBPco's obligations under this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules), the Minister shall be entitled, on the fifth anniversary of the Commencement Date and every five (5) years thereafter (the "**Five Year Review Date**"), to undertake a review (to be completed as soon as is practicable and in consultation with relevant stakeholders, such as the Regulator) of Part 1 (Wholesale Pricing Rules), Part 2 (Retail Pricing Rules) and Part 3 (Wholesale Product Benchmarking Rules) of this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) (the "**Five Year Review**"). The Minister will, amongst other things, assess the suitability and availability (as applicable) of Wholesale Products, Benchmark Reference Products, Benchmark Reference Prices, Benchmark Reference Performance Specifications and the Retail Pricing Rules, to ensure the attainment of the key objectives as set out in Paragraph 1 (Introduction) of the Introduction to this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) and adherence to the definitions, principles and methodologies set out in the provisions of this Schedule. The Parties agree that the Five Year Review may, in particular, result in a change in the Benchmark Reference Product for a particular Wholesale Product by application of the definition, principles and methodology set out in the provisions of this Schedule at the time of the Five Year Review.

- 4.2 Without limiting or affecting the Minister's rights and entitlements under this Agreement, the Minister shall be entitled, as part of the Five Year Review, to review and assess NBPco's and the Wholesale Products' compliance with and performance against:
- 4.2.1 Clause 26 (Service and Network Future Proofing and Continuous Improvement), Schedule 6.4 (Service, Network and Wholesale Product Compliance and Future Proofing) (including Paragraphs 5 (Future Proofing - Wholesale Network) and 8 (Committed Investment) of Part 1 of that Schedule, the Wholesale Product Roadmap and the Wholesale Products & Coverage Template; and
- 4.2.2 Paragraphs 3.5.1 (Product Requirements, Evolution and Roadmap) and 5.4.7 (Network Requirements For Wholesale Products) of Schedule 2.1 (Technical Solution Specification) and Paragraph 4.1.3 (Wholesale Product Specifications) of Schedule 2.2 (Reference Offer Requirements) and Paragraph 1.1 (Introduction) of Schedule 2.4 (Operational Performance),
- (together, the "**Continuous Improvement and Future Proofing Obligations**").
- 4.3 Without limiting or affecting the other provisions of this Schedule, any changes required by the Minister arising from the Five Year Review (including to Wholesale Products, Wholesale Prices, Wholesale Product Specifications, Benchmark Reference Products, Benchmark Reference Prices, Benchmark Reference Performance Specifications and the Retail Pricing Rules) shall be made in accordance with the Change Control Procedure (as supplemented, where applicable, by the Wholesale Price Control Procedure and the Wholesale Product Control Procedure).
- 4.4 NBPco shall provide the Minister with all such cooperation, information and assistance as is requested and on such terms as are specified by the Minister in relation to carrying out the Five Year Review.

Execution Version

Schedule 5.2 – Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules

APPENDIX 1 (BENCHMARK REFERENCE PRICE, BENCHMARK REFERENCE PRODUCT AND OTHERS)

Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) to this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) is set out in Schedule 5.3 (The Project Financial Model).

APPENDIX 2 (STATEMENT OF COMPLIANCE)

PART 1

FORM OF STATEMENT OF COMPLIANCE FOR NBPCO

To: Minister for Communications, Climate Action and the Environment (“**Minister**”) of 29-31 Adelaide Road, Saint Kevin's, Dublin, D02 X285.

Date: [•]

Re: NBPco’s Compliance with the Wholesale Pricing Rules, Retail Pricing Rules and Wholesale Product Benchmarking Rules under Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) of the Agreement

We, [•], a company incorporated and existing under the laws of Ireland with company registration number [•] and having its registered office at [•] (“**NBPco**”), HEREBY CONFIRM AND DECLARE THAT, having made due and careful enquiries:

1 CURRENT COMPLIANCE

1.1 Since the [[Effective Date]] / [[Previous Statement of Compliance]]:

1.1.1 NBPco has been and continues to be in full compliance with the Wholesale Pricing Rules, Retail Pricing Rules and Wholesale Product Benchmarking Rules except, if applicable, to the extent expressly and clearly stated otherwise in Appendix 1 (Non-Compliance) by reference to this Paragraph 1.1.1 (Current Compliance); and

1.1.2 each Associated RSP has been and continues to be in full compliance with the Retail Pricing Rules except, if applicable, to the extent expressly and clearly stated otherwise in Appendix 1 (Non-Compliance) by reference to this Paragraph 1.1.2 (Current Compliance).

2 CHANGES SINCE PREVIOUS STATEMENT OF COMPLIANCE

2.1 Appendix 2 (Changes Since Previous Statement of Compliance) sets out a detailed and exhaustive description of:

2.1.1 each bundle supplied or offered as at the date of this Statement of Compliance by each of NBPco’s Associated RSPs and the associated pricing as at the date of this Statement of Compliance of such bundles, together with any changes, since the [[Effective Date]] / [[Previous Statement of Compliance]], to any such bundle or its price;

2.1.2 the Benchmark Reference Product as at the date of this Statement of Compliance for each Wholesale Product, together with all changes, since the [[Effective Date]] / [[Previous Statement of Compliance]], in the Benchmark Reference Product for each Wholesale Product;

2.1.3 the Benchmark Reference Price as at the date of this Statement of Compliance for each Wholesale Product, together with all changes, since the [[Effective

Date]] / [[Previous Statement of Compliance]], in the Benchmark Reference Price for each Wholesale Product;

- 2.1.4 the Benchmark Reference Performance Specification as at the date of this Statement of Compliance for each Wholesale Product, together with all changes, since the [[Effective Date]] / [[Previous Statement of Compliance]], in the Benchmark Reference Performance Specification for each Wholesale Product;
- 2.1.5 the Wholesale Product Specification as at the date of this Statement of Compliance for each Wholesale Product, together with any changes to the Wholesale Product Specification for any such Wholesale Product since the [[Effective Date]] / [[Previous Statement of Compliance]];
- 2.1.6 the performance as at the date of this Statement of Compliance of each of the Minimum Required Wholesale Products and each of the Additional Required Wholesale Products, together with all changes, since the [[Effective Date]] / [[Previous Statement of Compliance]], in the performance of each of the Minimum Required Wholesale Products and each of the Additional Required Wholesale Products;
- 2.1.7 all components of the Wholesale Prices as at the date of this Statement of Compliance for each Wholesale Product, together with all changes, since the [[Effective Date]] / [[Previous Statement of Compliance]], to the pricing of any components of any such Wholesale Products; and
- 2.1.8 [insert details of such other matters as specified by the Minister from time to time as being required for inclusion in the Statement of Compliance].

2.2 All changes since the date of the Previous Statement of Compliance to anything referred to in Paragraph 2.1 (Changes Since Previous Statement of Compliance) and/or Appendix 2 (Changes Since Previous Statement of Compliance) have been implemented in accordance with, and have complied and continue to comply with, the Wholesale Pricing Rules, Retail Pricing Rules and Wholesale Product Benchmarking Rules (as applicable) except, if applicable, to the extent expressly and clearly stated otherwise in Appendix 1 (Non-Compliance) by reference to this Paragraph 2.2 (Changes Since Previous Statement of Compliance).

3 PROPOSED CHANGES

- 3.1 [[This Statement of Compliance is being submitted in conjunction with a request for Proposed Change.
- 3.2 The Proposed Change accords to, and is in full compliance with, the Wholesale Pricing Rules, Retail Pricing Rules and Wholesale Product Benchmarking Rules and the implementation of the Proposed Change will not result in any non-compliance with the provisions of the Agreement and, in particular:
 - 3.2.1 the Wholesale Products, Wholesale Prices, Benchmark Reference Prices, Benchmark Reference Product and Benchmark Reference Performance Specification will be and continue to be in full compliance with the Wholesale Pricing Rules, Retail Pricing Rules and Wholesale Product Benchmarking Rules following implementation of the Proposed Change; and

3.2.2 NBPco will be and continue to be in full compliance with the Wholesale Pricing Rules, Retail Pricing Rules and Wholesale Product Benchmarking Rules following implementation of the Proposed Change; and

3.2.3 each Associated RSP will be and continue to be in full compliance with the Retail Pricing Rules following implementation of the Proposed Change.]]

//

[[There are no proposed Changes as at the date of this Statement of Compliance (and, in particular, no proposed changes to any existing Wholesale Prices, Wholesale Products, Benchmark Reference Price, Benchmark Reference Product and/or Benchmark Reference Performance Specification or proposed New Wholesale Products.]]

4 MATERIAL FACTS AND OTHER RELEVANT INFORMATION

4.1 This Statement of Compliance, together with any supporting information and documents set out in or appended to the Appendices to this Statement of Compliance, is and comprises an accurate and complete disclosure of all material facts and all information and documents that are necessary to assess and demonstrate NBPco's (and, as applicable, each of its Associated RSP's) full compliance and/or non-compliance, as applicable, with the Wholesale Pricing Rules, Retail Pricing Rules and the Wholesale Product Benchmarking Rules (including, in the case of a Proposed Change, with respect to the subject matter of the Proposed Change including with respect to the proposed Wholesale Products and Wholesale Prices).

5 CAPITALISED TERMS

5.1 In this Statement of Compliance:

5.1.1 "**Agreement**" means the agreement dated [insert] between the Minister and NBPco and entitled "Agreement in respect of the National Broadband Intervention Project".

5.1.2 "**Previous Statement of Compliance**" means the Statement of Compliance from NBPco to the Minister substantially in the form of this Statement of Compliance and dated [insert].

5.1.3 "**Proposed Change**" means the Change more particularly described in the Change Request [insert details] and Change Impact Assessment [insert details].

5.1.4 Capitalised terms used in this Statement of Compliance have the meaning given to them in the Agreement except where expressly stated otherwise.

Signed:

[insert name of director]
Director
for and on behalf of NBPco

APPENDIX 1 (NON-COMPLIANCE) TO STATEMENT OF COMPLIANCE FOR NBPCO

[insert]

**APPENDIX 2 (CHANGES SINCE PREVIOUS STATEMENT OF COMPLIANCE) TO STATEMENT
OF COMPLIANCE FOR NBPCO**

[insert]

APPENDIX 3 (SUPPORTING INFORMATION AND DOCUMENTS) TO STATEMENT OF COMPLIANCE FOR NBPCO

[insert]

PART 2

FORM OF STATEMENT OF COMPLIANCE FOR ASSOCIATED RSPS

To: Minister for Communications, Climate Action and the Environment (“Minister”) of 29-31 Adelaide Road, Saint Kevin’s, Dublin, D02 X285.

CC: NBPco

Date: [•]

Re: [•]’s Compliance with the Retail Pricing Rules under Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) of the Agreement

We, [•], a company incorporated and existing under the laws of Ireland with company registration number [•] and having its registered office at [•] (“Associated RSP”), HEREBY CONFIRM AND DECLARE THAT, having made due and careful enquiries:

1 CURRENT COMPLIANCE

1.1 Since the [[Effective Date] / [[Previous Statement of Compliance]], the Associated RSP has been and continues to be in full compliance with the Retail Pricing Rules except, if applicable, to the extent expressly and clearly stated otherwise in Appendix 1 (Non-Compliance).

2 MATERIAL FACTS AND OTHER RELEVANT INFORMATION

2.1 This Statement of Compliance, together with any supporting information and documents set out in or appended to the Appendices to this Statement of Compliance, is and comprises an accurate and complete disclosure of all material facts and all information and documents that are necessary to assess and demonstrate the Associated RSP’s full compliance and/or non-compliance, as applicable, with the Retail Pricing Rules.

3 CAPITALISED TERMS

3.1 In this Statement of Compliance:

3.1.1 “**Agreement**” means the agreement dated [insert] between the Minister and NBPco and entitled “Agreement in respect of the National Broadband Intervention Project”.

3.1.2 “**Previous Statement of Compliance**” means the Statement of Compliance from the Associated RSP to the Minister substantially in the form of this Statement of Compliance and dated [insert].

3.1.3 Capitalised terms used in this Statement of Compliance have the meaning given to them in the Agreement except where expressly stated otherwise.

Signed:

[insert name of director]

Director
for and on behalf of the Associated RSP

APPENDIX 1 (NON-COMPLIANCE) TO ASSOCIATED RSPS STATEMENT OF COMPLIANCE

[insert]

**APPENDIX 2 (SUPPORTING INFORMATION AND DOCUMENTS) TO ASSOCIATED RSPS
STATEMENT OF COMPLIANCE**

[insert]

APPENDIX 3 (WHOLESALE PRICE CONTROL PROCEDURE AND WHOLESALE PRODUCT CONTROL PROCEDURE)

1 GENERAL PRINCIPLES

1.1 If any proposed Change under this Schedule involves:

- 1.1.1 an increase or decrease in a Wholesale Price (whether by indexation, inflation or permanent, temporary or one-off direct or indirect decrease, discount, rebate, waiver, compromise or similar reduction in Wholesale Prices (but then subject to the Permitted Discounts Requirements) or in any other way) or the introduction of a new price for a New Wholesale Product (a “**Wholesale Price Change**”); and/or
- 1.1.2 a change to a Wholesale Product (including by a change (whether by removal, amendment or otherwise) to its actual or published product and/or service performance specifications, levels, characteristics and other aspects), the discontinuation of a Wholesale Product, or the introduction of a New Wholesale Product (a “**Wholesale Product Change**”),

then a Change Request shall be issued and, in addition to complying with its obligations under the provisions of Schedule 6.2 (Change Control Procedure) (as modified by Paragraph 1.2 of this Appendix 3), NBPCo shall also comply with the provisions of this Appendix 3 (Wholesale Price Control Procedure and Wholesale Product Control Procedure).

1.2 The Change Control Procedure referred to in Paragraph 1.1 (General Principles) of this Appendix 3 shall be modified in the following circumstances in the following manner:

- 1.2.1 where a Wholesale Pricing Rules Review applies, the process set out in Paragraphs 8.5 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules) to 8.12 (Monitoring the Benchmark Reference Price and Compliance with the Wholesale Pricing Rules)(inclusive), Paragraph 9 (Disagreement Regarding the Benchmark Reference Price or Wholesale Pricing Rules) and Paragraph 10 (Consequences of Non-Compliance) of Part 1 (Wholesale Pricing Rules) of this Schedule shall apply in respect of that aspect of the proposed Change;
- 1.2.2 where a Retail Pricing Rules Review applies, the process set out in Paragraphs 5.5 (Monitoring Compliance with the Retail Pricing Rules) to 5.10 (Monitoring Compliance with the Retail Pricing Rules) (inclusive) of Part 2 (Retail Pricing Rules) of this Schedule and Paragraphs 6 (Disagreement Regarding the Retail Margin Squeeze Test or Retail Pricing Rules) of Part 2 (Retail Pricing Rules) of this Schedule and 7 (Compliance) of Part 2 (Retail Pricing Rules) of this Schedule shall apply in respect of that aspect of the proposed Change; and
- 1.2.3 where a Wholesale Product Benchmarking Rules Review applies, the process set out in Paragraphs 5.6 (Monitoring Compliance with the Wholesale Product Benchmarking Rules) to 5.13 (Monitoring Compliance with the Wholesale Product Benchmarking Rules) (inclusive) of Part 3 (Wholesale Product Benchmarking Rules) of this Schedule and Paragraphs 6 (Disagreement Regarding the Benchmark Reference Performance Specification or Wholesale

Product Benchmarking Rules) and 7 (Consequences of Non-Compliance Compliance) of Part 3 (Wholesale Product Benchmarking Rules) of this Schedule shall apply in respect of that aspect of the proposed Change,

and in each case, the Minister's approval shall be provided and the relevant Change Authorisation shall be effected in the manner provided in those provisions.

- 1.3 The Parties may, acting reasonably, vary the time periods referred to in this Appendix by agreement in writing between them.

Simplified process

- 1.4 If and to the extent that NBPco is permitted pursuant to Paragraph 6.4.1 (Initial Connection Charges and Other Connection Charges) of Part 1 (Wholesale Pricing Rules), and Appendix 1 of this Schedule 5.2 to change the Initial Connection Charges annually to reflect inflation (and provided always that such increases shall only occur in the manner provided for in Paragraph 6.4.1 (Initial Connection Charges and Other Connection Charges) of Part 1 (Wholesale Pricing Rules), and Appendix 1 of this Schedule 5.2) (a "**Pre-Approved Change**"), the following process shall apply:

1.4.1 NBPco shall notify the Minister in writing of a planned change in Initial Connection Charges constituting a Pre-Approved Change no later than thirty (30) Working Days prior to the date on which it intends to publish, in accordance with Paragraph 3.2 (Implementing Changes), details of the change in Initial Connection Charges; and

1.4.2 NBPco shall not be required to follow the process in Paragraphs 1.1 (General Principles) to 1.3 (General Principles) in respect of the Pre-Approved Change unless, within the thirty (30) Working Day period provided for in Paragraph 1.4.1 (General Principles), the Minister notifies NBPco in writing that it considers that the planned change in Initial Connection Charges does not constitute a Pre-Approved Change or otherwise does not comply with Paragraph 6.4.1 (Initial Connection Charges and Other Connection Charges) of Part 1 (Wholesale Pricing Rules) and Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) of this Schedule 5.2. If the Minister serves such a notice within the thirty (30) Working Day period, NBPco shall be obliged to follow the process set out in Paragraphs 1.1 (General Principles) to 1.3 (General Principles) in respect of the proposed change and the proposed change may not be effected until it is approved in writing in accordance with the process in Paragraphs 1.1 (General Principles) to 1.3 (General Principles).

- 1.5 Where NBPco is required to provide a Change Authorisation under this Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) or notifies the Minister of a Pre-Approved Change under Paragraph 1.4 (General Principles) of this Appendix 3, it shall, at the same time provide to the Minister an updated version of Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) incorporating the change to which the Change Authorisation or notification under Paragraph 1.4 (General Principles) of this Appendix 3 relates.

2 NBPCO SUBMISSION

- 2.1 Where this Appendix applies, along with NBPco's Change Request and any required Change Impact Assessment, NBPco shall furnish the Minister with:

- 2.1.1 an NBPco Wholesale Pricing Rules Report and/or NBPco Wholesale Product Benchmarking Rules Report (as applicable);
- 2.1.2 a Statement of Compliance;
- 2.1.3 an updated completed version of Appendix 1 (Benchmark Reference Price, Benchmark Reference Product and Others) showing all proposed changes; and
- 2.1.4 as applicable, a detailed written submission demonstrating that NBPco's proposed Wholesale Product Change complies with the provisions of Schedule 2.4 (Operational Performance),

(each an "**NBPco Submission**").

NBPco Submission Contents

- 2.2 NBPco shall include in each NBPco Submission an accurate and complete disclosure of all material facts for the purposes of NBPco demonstrating to the Minister that the proposed:
 - 2.2.1 Wholesale Price Change complies with the provisions of Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules); and
 - 2.2.2 Wholesale Product Change complies with the provisions of Schedule 5.2 (Wholesale Prices, Price Benchmarking Rules and Wholesale Product Benchmarking Rules) and Schedule 2.4 (Operational Performance).
- 2.3 [Not used]
- 2.4 [Not used]
- 2.5 [Not used]

MINISTER SEEKING FURTHER INFORMATION

- 2.6 In addition to the Minister's rights under Paragraph 3.9 (Further Information Required by Minister) of Part 2 (Change Procedure) of Schedule 6.2 (Change Control Procedure), the Minister may seek further specific information from NBPco to inform the Minister's evaluation of any Change Request under this Appendix.
- 2.7 If NBPco does not provide the requested further information within the timeline notified to it by the Minister in the Minister's request pursuant to Paragraph 2.7 (NBPco Submission), or to the standard required by the Minister, the Minister may withhold its approval to implement the Wholesale Price Change or Wholesale Product Change until NBPco makes the required information available to the Minister to the standard required by the Minister.

3 IMPLEMENTING CHANGES

NO CHANGE WITHOUT MINISTER APPROVAL

- 3.1 NBPco shall only implement a proposed Wholesale Price Change or Wholesale Product Change once it has received written approval from the Minister in accordance with this Appendix and the Minister has signed a Change Authorisation for that Wholesale Price

Change or Wholesale Product Change unless the proposed change is a Pre-Approved Change in which case the simplified process under Paragraph 1.4 (General Principles) shall apply.

TIMING OF PUBLIC NOTIFICATION AND IMPLEMENTATION

3.2 NBPco shall, within five (5) Working Days following either the expiration of the thirty (30) Working Day period specified in Paragraph 1.4.2 (General Principles) in the case of a Pre-Approved Change or the signing by both Parties of a Change Authorisation (as applicable), publish (subject, where applicable, to the right of the Parties to agree other timeframes pursuant to Paragraph 9 (Product Management) of Schedule 2.4 (Operational Performance)):

3.2.1 details of changes to the Reference Offer in respect of a Wholesale Price increase, which publication shall be at least three (3) months in advance of the Wholesale Price increase coming into effect; and

3.2.2 details of changes to the Reference Offer in respect of a Wholesale Price decrease, which publication shall be at least two (2) months in advance of the Wholesale Price decrease coming into effect; and

3.2.3 details of changes to the Reference Offer in respect of the Wholesale Price for the proposed introduction of a New Wholesale Product, which publication shall be at least six (6) months in advance of the proposed introduction of the New Wholesale Product;

3.2.4 details of changes to the Reference Offer in respect of a Wholesale Product Change, which publication shall be at least three (3) months in advance of the Wholesale Product Change coming into effect;

3.2.5 details of the introduction of a New Wholesale Product and a relevant Reference Offer, which publication shall be at least six (6) months in advance of the New Wholesale Product being introduced; or

3.2.6 details of discontinuance of a Wholesale Product, at least:

(A) in respect of a Wholesale Product which is In Use, twelve (12) months in advance of the discontinuance coming into effect; and

(B) in respect of a Wholesale Product which is Not in Use, three (3) months in advance of the discontinuance coming into effect.

3.3 Where a Change Authorisation is executed by the Minister, NBPco shall implement (subject, where applicable, to the right of the Parties to agree other timeframes pursuant to Paragraph 9 (Product Management) of Schedule 2.4 (Operational Performance)):

3.3.1 the increased Wholesale Price for a Wholesale Product within three (3) months of the date that the Reference Offer has been updated in accordance with Paragraph 3.2.1 (Implementing Changes);

3.3.2 the decreased Wholesale Price for a Wholesale Product within two (2) months of the date that the Reference Offer has been updated in accordance with Paragraph 3.2.2 (Implementing Changes);

- 3.3.3 the Wholesale Price for a New Wholesale Product within six (6) months of the date that the Reference Offer has been updated in accordance with Paragraph 3.2.3 (Implementing Changes);
- 3.3.4 the change to an existing Wholesale Product within three (3) months of the date that the Reference Offer has been updated in accordance with Paragraph 3.2.4 (Implementing Changes);
- 3.3.5 the introduction of a New Wholesale Product within six (6) months of the date that the Reference Offer has been updated in accordance with Paragraph 3.2.5 (Implementing Changes); and
- 3.3.6 the discontinuance of a Wholesale Product no less than:
 - (A) in respect of a Wholesale Product which is In Use, twelve (12) months from the date of publication of details of discontinuance in accordance with Paragraph 3.2.6 (Implementing Changes); and
 - (B) in respect of a Wholesale Product which is Not in Use, three (3) months from the date of publication of details of the discontinuance in accordance with Paragraph 3.2.6 (Implementing Changes).