

1A. CONDITIONS PRECEDENT

1A.1 Except for Your and Our respective rights and obligations under this clause 1A, You and We acknowledge and agree that Your and Our respective rights and obligations under this Agreement (including without limitation Your entitlement to Funding) do not arise unless and until We notify You in writing that We consider (in Our absolute discretion) that all of the following conditions ("**Funding Conditions**") have been satisfied:

- (a) within 10 Business Days from the Date of this Agreement, You must provide to Us for Our approval under clause 1A.2, copies of:
 - (i) the proposed shareholders agreement between Elders Telecommunications Infrastructure Pty Limited and Optus Networks Pty Limited in respect of You;
 - (ii) Your constitution; and
 - (iii) any other information reasonably requested by Us in relation to Your corporate structure, Your shareholdings or Your board,(collectively referred to as "**Your Corporate Documentation**");
- (b) within 10 Business Days from the Date of this Agreement, You must provide to Us for Our approval under clause 1A.2, an irrevocable security which:
 - (i) is on terms and conditions, and for an amount, which is approved by Us;
 - (ii) secures the satisfaction of all Your current and future debts and liabilities that may arise under or in connection with this Agreement; and
 - (iii) is given by Your Partner Entities (or entities related to Your Partner Entities) which are acceptable to Us, or, where We agree, from a financial institution acceptable to Us (or both, as the case may be),("Security"); and

(c) noting that You and We consider that (subject to the provisions of this clause 1A) it would be prudent:

- (i) for more detailed testing and analysis to be conducted, in particular to confirm the number of Our Estimated Underserved Premises that will be able to receive retail broadband services in accordance with the Metro-Comparability Standard across the BWA Network; and
- (ii) for Us to determine, in the light of the results of that additional testing and analysis, whether or not We are prepared to proceed with this Agreement,

within 80 Business Days from the Date of this Agreement, We must be provided with, for Our approval under clause 1A.2, a copy of a mature and detailed plan produced by Your Partner Entities, as outlined in this paragraph (c) ("**Implementation Plan**"), which:

- (iii) in addition to the existing desktop-based data and analysis of the proposed BWA Network Coverage, is based on a program (to be conducted by Your Partner Entities) of comprehensive field-testing data and analysis;
- (iv) is fit for its purpose (which includes the purpose of demonstrating the matters referred to in subparagraph (v) below), and is of a nature and standard that a prudent and competent professional person in Your Partner Entities' position would produce;
- (v) contains details of, and any conditions in relation to, the proposed:
 - A. location of each BWA base station;
 - B. location and quantity of antennae;
 - C. technology protocols to be adopted for the BWA Network;
 - D. use of spectrum frequencies; and
 - E. such other matters as We may reasonably require;
- (vi) contains the Risk Management Plan and Milestone Service Areas Plan referred to in clauses 45.1 and 46.1 (despite the dates for the provision of those plans as contained in those clauses);
- (vii) contains detailed coverage maps for the BWA Network Coverage, based on the intended location of each BWA base station and the predicted coverage from each BWA base station:
 - A. which demonstrate that the Required Percentage of Our Estimated Underserved Premises within the BWA Network will be able to receive retail broadband services in accordance with the Metro-Comparability Standard; or
 - B. which:
 - 1) demonstrate that the Required Percentage of Your number (being 982,000 as outlined in Your proposals referred to in Recital C of this Agreement, which includes GNAFs unable to receive ADSL services but within the coverage area of wireless broadband and services unable to receive services due to pair gain, each assessed as at 30 June 2006) and location of Underserved Premises within the BWA Network will be able to receive retail broadband services in accordance with the Metro-Comparability Standard, by virtue of the BWA Network Coverage; and
 - 2) We determine, in Our absolute discretion:

- a) provides coverage of Underserved Premises reasonably equivalent to the Required Percentage of Our Estimated Underserved Premises;
- b) is consistent with Your proposals referred to in Recital C of this Agreement;
- c) is consistent with the Objectives and is otherwise acceptable to Us; and
- d) represents value for money to Us,

("Proposed Coverage Maps"), where the phrase "Required Percentage" means at least 90%, or - if We determine in Our absolute discretion that it would be consistent with Your proposals referred to in Recital C of this Agreement, and would nevertheless represent value for money to Us - a percentage which is less than, but which We determine in Our absolute discretion to be closely approximate to, 90%; and

- (viii) if considered necessary or prudent in the light of the matters referred to in subparagraphs (i) to (vi) above, proposes an extension to the Project Period (that extension being for a period of no longer than 6 calendar months), together with:
 - A. a master project schedule referred to in paragraph 1.1 of Annexure B; and
 - B. a list of proposed amendments to the dates specified in this Agreement (including its Schedules and Annexures) which You propose would be required as a result of the proposed extension to the Project Period.

1A.2 In order for the Funding Conditions to be satisfied:

- (a) the:
 - (i) terms and conditions of, and the matters provided for in, Your Corporate Documentation and the Security; and
 - (ii) Implementation Plan proposed under clause 1A.1(c), including its content and the Proposed Coverage Maps,

must be approved by Us within 20 Business Days of Us receiving that documentation, or such longer period as We may reasonably require; and

- (b) We must notify You in writing under clause 1A.1 that We consider (in Our absolute discretion) that all of the Funding Conditions have been satisfied.

1A.3 For the sake of clarity:

- (a) You and We agree that, for the purposes of clause 1A.1(c)(vii), (but subject to the provisions of this clause 1A), the Required Percentage of Underserved Premises may include premises identified in Our GNAF database of Underserved Premises which are other than the 526,474 that We estimated are covered by Your proposals referred to in Recital C of this Agreement;

- (b) You and We agree that references in this clause 1A to the Metro-Comparability Standard, are references to the Initial Metro-Comparability Standard applicable from 1 July 2008 to 30 June 2009 as measured in accordance with Annexure Q;
- (c) We agree not to waive the satisfaction of any of the Funding Conditions contained in clauses 1A.1(a) or 1A.1(b), (but We reserve the right to waive (in Our absolute discretion) the satisfaction of any aspect of the Funding Conditions contained in clause 1A.1(c)), without Your prior agreement; and
- (d) We will provide:
 - (i) reasonable assistance for the purpose of production of the Implementation Plan, by way of Us:
 - A. providing such information and data in Our possession that is reasonably required for that purpose; and
 - B. consulting and participating in such field-testing activities as Your Partner Entities may reasonably require for that Purpose; and
 - (ii) NOT USED,

and as fundamental conditions of this Agreement:

- (e) You and We acknowledge and agree that:
 - (i) any determination or exercise of a discretion by Us under this clause 1A, is a matter to be determined or exercised in Our absolute discretion;
 - (ii) any approval by Us under clause 1A.2, and any notice by Us under clause 1A.1, may be given or withheld by Us in Our absolute discretion, and may be given subject to such conditions as We think fit; and
 - (iii) if and when We approve Your Corporate Documentation and the Security, You must (within 2 Business Days of Our notice of that approval), provide to Us a duly executed version of that documentation that has been approved by Us (which, in the case of the Security, must be an original executed version);
- (f) You warrant that any:
 - (i) provision of assistance by Us under paragraph (d); or

- (ii) approval or conditional approval by Us of any documentation, arrangement or plan under clause 1A.1 (including Your Corporate Documentation, the Security and the Implementation Plan),

will not in any way limit or affect Our rights or Your obligations under this Agreement if We notify You that the Funding Conditions have been met; and

- (g) You and We acknowledge and agree that if We notify You under clause 1A.1 that the Funding Conditions have not been satisfied, then:
 - (i) this Agreement will be deemed to have been terminated without any liability on the part of:
 - A. Us to You or to any third person (subject to Your entitlements under subparagraph (b)(ii) above); or
 - B. You or Your Partner Entities to Us; and
 - (ii) to the extent permitted by law, You release Us from, and indemnify Us from and against, any claim, suit, demand, action or proceedings now or at any time in the future which You, or any third party (including any of Your Partner Entities or Project Contractors), might otherwise have been able to make or bring arising out of or in connection with any:
 - A. refusal by Us to approve any documentation, arrangement or plan provided by You under this clause 1A (including Your Corporate Documentation, the Security and the Implementation Plan); or
 - B. exercise of a discretion, consideration or determination by Us, or any notice to You, under this clause 1A, including any such exercise of a discretion, consideration or determination by Us, or any notice to You, to the effect that the Funding Conditions are not or have not been satisfied.