

# nbn™ Technology Extension Contract - Customer

**NBN Co Limited ABN 86 136 533 741**

nbn

**[insert customer name] ABN [insert ABN]**

Customer

The **nbn™** Activities described in this document are not a listed carriage service or a service that facilitates the supply of a listed carriage service for the purposes of section 152AL of the Competition and Consumer Act. The supply of **nbn™** Activities under this Agreement does not have the effect of making the **nbn™** Activities a declared service for the purposes of Part XIC of the Competition and Consumer Act. This document is not executable and is not a Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act.

# nbn™ Technology Extension Contract - Customer

Version	Description	Effective Date
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2.0	Second issued version of nbn™ Technology Extension Contract - Customer	02 July 2018
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# nbn™ Technology Extension Contract - Customer

## Parties

**NBN Co Limited** ABN 86 136 533 741 of Level 40, 360 Elizabeth Street, Melbourne, Vic, 3000 (**nbn**)

**[insert customer name]** ABN **[insert ABN number]** of **[insert registered address]** (**Customer**)

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## Background

- A The **nbn™** network is being rolled out across Australia using a mix of different technologies as determined by **nbn**.
- B **nbn** and the Customer are parties to a Wholesale Broadband Agreement which sets out the terms on which the Customer may order products from **nbn** and **nbn** will supply those products to the Customer over the **nbn™** Network.
- C The parties are entering this master agreement under which, from time to time, **nbn** and Customer may agree the terms of a Deal Module, governing the design and installation of certain infrastructure required for the **nbn™** Network to be made available to **nbn's** customers at certain Premises by means of an alternative access technology to the access technology that **nbn** had originally proposed to use to service that Premises. This Agreement does not govern the supply of any Products (as that term is defined in the Wholesale Broadband Agreement) to the Customer by **nbn**.
- D **nbn** and the Customer promise to carry out and complete their respective obligations in accordance with this Agreement.

# Execution

**Executed as an agreement.**

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Signed for **nbn co limited** by its authorised representatives:

---

Signature of authorised representative

---

Signature of authorised representative

---

Name of authorised representative

---

Name of authorised representative

---

Date of signature

---

Date of signature

---

Executed by **[insert customer name]** by its authorised representatives:

---

Signature of authorised representative

---

Signature of authorised representative

---

Name of authorised representative

---

Name of authorised representative

---

Date of signature

---

Date of signature

## Section A: Master Agreement Framework

### 1. Term

#### 1.1 Agreement Term

This Agreement commences on the Commencement Date and continues until the later of:

- (a) the third anniversary of the Commencement Date; and
- (b) the last Module Expiry Date, unless terminated earlier or extended in accordance with its terms (**Term**).

#### 1.2 Build-only Agreement

This Agreement does not contain any terms under which the Customer may order Products from **nbn** or the terms on which **nbn** will supply Products to the Customer. Any such order or supply will occur on the terms of the Wholesale Broadband Agreement.

### 2. Deal Modules

#### 2.1 Proposed Deal Module

- (a) **nbn** may at any time and from time to time issue to the Customer a proposed Deal Module in the form set out in Section F or in such other form agreed between the parties in writing (**Proposed Deal Module**).
- (b) Customer may at any time request **nbn** to issue a Proposed Deal Module in respect of premises specified by the Customer, and **nbn** must:
  - (i) consider that request; and
  - (ii) notify the Customer within 10 Business Days of **nbn** receiving the Customer's request, in the event that **nbn** does not intend to issue a Proposed Deal Module in relation to the request and provide the Customer with the reason **nbn** does not intend to issue a Proposed Deal Module, unless **nbn** considers that it is unable to, or it would be adverse to **nbn**'s interests to, disclose that reason to the Customer (including because the reason is confidential, commercially sensitive, or of such a nature that disclosure to the Customer would be inconsistent with **nbn** company policy).

#### 2.2 Formation of Deal Modules

- (a) A Proposed Deal Module issued by **nbn** constitutes a legally binding offer by **nbn** in accordance with this Agreement.
- (b) The Customer may accept a Proposed Deal Module by executing it in the manner provided, and within the timeframe specified, in the Proposed Deal Module.
- (c) If the Customer notifies **nbn** that it wishes to discuss any aspect of a Proposed Deal Module, **nbn** must meet with the Customer within 10 Business Days of the Customer's notice to discuss and negotiate in good faith to resolve any issues the Customer raises in respect of the Proposed Deal Module.
- (d) Each Deal Module constitutes a separate legally binding contract between **nbn** and the Customer on the following terms:
  - (i) the terms and conditions of this Agreement; and
  - (ii) the terms and conditions of the relevant Deal Module.
- (e) In the event of any inconsistency between the terms and conditions of this Agreement and a Deal Module, the terms of the Deal Module will prevail to the extent of the inconsistency.

#### 2.3 Term of Deal Modules

The term of a Deal Module:

- (a) commences on the Module Commencement Date; and
- (b) continues until the Module Expiry Date set out in the relevant Deal Module, unless terminated earlier or extended in accordance with its terms.

#### 2.4 Variation of Deal Module

- (a) Either party may notify the other in writing that it wishes to vary the Premises or the Chosen Technology in respect of a Premises that are the subject of a Deal Module and reasonable supporting details for the request.
- (b) The party receiving the variation request will use reasonable endeavours to respond within 10 Business Days of receiving the request (or such other

period agreed by the parties), which response may be a request for further information or time to consider the request.

- (c) Each party will consider any such request from the other party, and the parties will negotiate in good faith to resolve the matter (which may include adjustments to any fees or charges payable under this Agreement) within 10 Business Days following the date of the response to the request described in clause 2.4(a) (or such other period agreed by the parties).

### 2.5 Variation of Deal Module for regulatory reasons

- (a) Without limiting clause 3.2, if **nbn** reasonably believes that a variation to a Deal Module is required:

- (i) as a result of a Regulatory Event;
- (ii) as a result of a direction by a Shareholder Minister; or
- (iii) to comply with the requirements or consequences of its Non-Discrimination Obligations,

**nbn** may notify the Customer of the terms of the proposed variation to that Deal Module (**Proposed Regulatory Variation Notice**). Nothing in this clause requires **nbn** to provide the Customer with a Proposed Regulatory Variation Notice.

- (b) The parties must meet as soon as practicable after the Customer's receipt of the Proposed Regulatory Variation Notice and discuss in good faith the terms of any variation to the Deal Module.
- (c) If the parties are unable to agree a variation to the Deal Module within 20 Business Days of the Customer's receipt of a Proposed Regulatory Variation Notice (or such other period agreed between the parties):
  - (i) **nbn** may provide a notice to the Customer setting out the terms of the variation to the Deal Module terms which it reasonably believes are required for the reasons in clause 2.5(a) and, if the Customer does not exercise its rights under

clause 2.5(c)(ii) within 10 Business Days of receipt of such notice, the Deal Module will be varied as set out in **nbn's** notice; and

- (ii) within 10 Business Days of receiving the notice in clause 2.5(c)(i), the Customer may terminate the Deal Module by notice in writing to **nbn**.
- (d) On and from the date of termination under clause 2.5(c)(ii):
  - (i) the Customer is not required under that Deal Module or this Agreement to make any further payments to **nbn** under clause 7.1, regardless of whether or not an invoice has been issued in relation to that Deal Module and is unpaid as at the relevant termination date;
  - (ii) **nbn** will refund the Deposit and any Instalments paid by the Customer under that Deal Module; and
  - (iii) for the avoidance of doubt, this clause 2.5(d) does not affect any Deferred Charge Payments which relate to another Deal Module under this Agreement or other charges which relate to another Deal Module under this Agreement.

## 3. Termination

### 3.1 Termination by **nbn** for Material Default of the Customer

- (a) **nbn** may terminate this Agreement or any Deal Module upon notice to the Customer:
  - (i) if the Customer commits a Material Default under this Agreement or any Deal Module (including not making payments under clause 8.3) and:
    - A. that Material Default is not capable of remedy; or
    - B. if the Material Default is able to be remedied, the Customer fails to remedy the Material Default within 30 days of a notice by **nbn**



requiring the Customer to do so;

- (ii) if an Insolvency Event occurs in respect of the Customer.
- (b) If this Agreement or any Deal Module is terminated by **nbn** under this clause 3.1:
- (i) the Customer must pay the relevant Break Amount to **nbn** for each Premises affected by that termination or cancellation; and
  - (ii) the Deferred Charge will be reduced by the Premises Amount for each Premises affected by that termination or cancellation.

### 3.2 Termination by **nbn** for Regulatory Event or Shareholder Minister Requirement

**nbn** may terminate this Agreement or a Deal Module, or cancel a Technology Change at a Premises, at any time upon notice to the Customer if:

- (a) a Regulatory Event has occurred which makes **nbn**'s continued performance of any **nbn** Activities on the terms of this Agreement unlawful or potentially unlawful (as determined by **nbn**), or has a material adverse effect on **nbn**'s expected commercial return in relation to the **nbn** Activities; or
- (b) required as a result of a direction by a Shareholder Minister,

in which case:

- (c) **nbn** will not have any further obligation to perform the **nbn** Activities affected by such a termination;
- (d) **nbn** will not be liable to the Customer in respect of any such termination; and
- (e) unless stated otherwise in a Deal Module, if a Deal Module is terminated under this clause 3.2, then on and from the date of such termination no further Deferred Charge Payments will be payable by the Customer under that Deal Module. For the avoidance of doubt, this does not affect any Deferred Charge Payments which relate to any other Deal Module under this Agreement; and
- (f) if this Agreement is terminated under this clause 3.2, then on and from the

date of termination the Customer will not be required to make any further payments to **nbn** under clause 7.1, regardless of whether or not an invoice has been issued in relation to a Deal Module and is unpaid as at the relevant termination date.

- (g) If **nbn** terminates this Agreement or a Deal Module under this clause 3.2, **nbn** will refund the Deposit and all Instalments paid to **nbn** under the terminated Deal Modules.
- (h) If **nbn** cancels a Technology Change at a Premises under this clause 3.2:
  - (i) In respect of each Premises where a Technology Change has been cancelled, **nbn** will pay to the Customer the Refund Amount;
  - (ii) the Deferred Charge will be reduced by the Premises Amount for any Premises affected by cancellation under this clause 3.2; and
  - (iii) the Customer's obligations to pay the remainder of the Deferred Charge pursuant to clauses 7 and 8 will survive cancellation of the Technology Change.

### 3.3 Termination by the Customer for Material Default of **nbn**

- (a) The Customer may terminate this Agreement or a Deal Module upon notice to **nbn**:
  - (i) if **nbn** commits a Material Default under the Deal Module and:
    - A. that Material Default is not capable of remedy; or
    - B. if the Material Default is able to be remedied, **nbn** fails to remedy the Material Default within 30 days of a notice by the Customer requiring **nbn** to do so;
  - (ii) if an Insolvency Event occurs in respect of **nbn**.
- (b) For the purposes of clause 3.3(a)(i), **nbn** will commit a Material Default under a Deal Module if the Dates of Practical Completion for 50% or more of the Premises (excluding those Premises

where the Technology Change has been cancelled) the subject of a Deal Module occur or will occur more than 6 months after the Target RTC Dates for those Premises.

- (c) If a Deal Module is terminated by the Customer under clause 3.3(a), unless the Deal Module provides otherwise:
  - (i) no Break Amount is payable; and
  - (ii) **nbn** will pay the Refund Amount in respect of any Premises the subject of that Deal Module that have not reached the Date of Practical Completion before termination; and
  - (iii) the Deferred Charge in respect of any Premises the subject of that Deal Module will be reduced by the Premises Amount for each of the Premises that have not reached the Date of Practical Completion before termination; and
  - (iv) any obligation to pay the Deferred Charge (as reduced under clause 3.3(c)(iii)) will survive termination of that Deal Module and remain payable in accordance with the Deal Module.

### 3.4 Termination by either party for convenience

- (a) **nbn** or the Customer may terminate this Agreement for convenience by giving 4 months' notice to the other party.
- (b) Termination of this Agreement in accordance with clause 3.4(a) will not terminate or otherwise affect any rights or obligations of a party under any Deal Module in effect at the time of such termination.

### 3.5 Notification of Break Amount

- (a) **nbn** will, within 21 days of receipt of a request from Customer, notify Customer of the total of all Break Amounts payable by Customer if Customer cancels a Technology Change in respect of any Premises.
- (b) The parties acknowledge and agree that the relevant Break Amount and Refund Amount are reasonable pre-estimates of loss resulting from a termination or cancellation of this Agreement, any Deal

Module or any Technology Change (as the case may be).

### 3.6 Other consequences of termination

If this Agreement or any Deal Module is terminated other than in accordance with clause 3.4 or a Technology Change is cancelled for any reason:

- (a) on and from the time of such termination or cancellation, **nbn** does not have any obligation to perform the **nbn** Activities or complete the Technology Change or make the Technology Change available to the Customer;
- (b) to the extent permitted by law and subject to clauses 3.2, 3.3 and 4.5, **nbn** will not have any liability to the Customer whether under this Agreement or any Deal Module or otherwise in connection with the Technology Change not being completed; and
- (c) each party must comply with the transition out provisions specified in a Deal Module, if any.

## Section B: Technology Change Activities

### 4. Performing the Technology Change

#### 4.1 nbn Activities

- (a) In the absence of this Agreement, the Original Technology identified in the Module Particulars served (or was planned to serve) the Premises.
- (b) **nbn** will carry out the **nbn** Activities to perform the Technology Change on the terms of this Agreement. The Technology Change will not entitle the Customer to order an End User Connection in respect of a Premises unless and until it is able to do so under the Wholesale Broadband Agreement.

#### 4.2 Time

- (a) **nbn** will complete the **nbn** Activities in respect of the Technology Change in respect of each Premises by the Target RTC Dates identified in the Site List. The Customer's sole remedies for **nbn** failing to complete a Technology Change for a Premises by the Target RTC Date are as set out in clauses 4.4 and 4.5.
- (b) Each Target RTC Date will be extended by a period of time equal to the period of any delay to the Technology Change caused or contributed to by:
  - (i) an act or omission of the Customer or its Downstream Customer, including a failure of the Customer to comply with any requirement under this Agreement;
  - (ii) a Force Majeure Event; and
  - (iii) an act or omission of a third party which is outside of **nbn**'s reasonable control, including (but not limited to), a failure of that third party to grant **nbn** timely access to a site.
- (c) If there are:
  - (i) any extensions of a Target RTC Date under clause 4.2(b); or
  - (ii) any other delay that **nbn** anticipates may affect a Target RTC Date in that Site List,

**nbn** will, as soon as reasonably practicable, provide the Customer with an updated Site List to reflect those changes.

### 4.3 Completion

- (a) A Technology Change will be complete in respect of a Premises when that Premises is Ready to Connect for the purposes of the Chosen Technology (the **Date of Practical Completion**).
- (b) **nbn** will notify the Customer in writing that the Technology Change is complete in respect of a Premises within 5 Business Days of the Date of Practical Completion.

### 4.4 Delay

- (a) If at any time **nbn** reasonably believes that a Premises will not be Ready to Connect on or before the relevant Target RTC Date, it must notify the Customer of the expected delay at least 60 days before the Target RTC Date (if **nbn** has formed the relevant belief at that time) and in any event as soon as reasonably practicable.
- (b) If the Date of Practical Completion for a Premises occurs more than one month after the Target RTC Date for that Premises, then the Deferred Charge will be reduced by the Delay Amount, multiplied by the number of calendar days between the Target RTC Date for a Premises and the Date of Practical Completion for that Premises. On the Invoice Event for the Deferred Charge Payment, the Deferred Charge Payment will be adjusted to reflect the reduction of the Deferred Charge.

### 4.5 Cancellation of a Technology Change for delay

- (a) If a Date of Practical Completion for a Premises has not occurred 6 months or more after the Target RTC Date for that Premises, then:
  - (i) at any time after the date that is 6 months after the Target RTC Date, but prior to the Date of Practical Completion for that Premises, the Customer may cancel the Technology Change for that Premises by providing notice to **nbn**; and
  - (ii) if the Customer cancels the Technology Change for that Premises in accordance with clause 4.5(a)(i):
    - A. the Deferred Charge will, from the date of cancellation, be reduced by the Premises Amount for each of the

Premises that have not reached the Date of Practical Completion before that cancellation; and

- B. **nbn** will pay the Customer the Refund Amount for each Premises the subject of the cancellation.

#### 4.6 Cancellation of Technology Change by the Customer for convenience

- (a) Subject to clause 4.6(c), the Customer may cancel a Technology Change in respect of any Premises for convenience by providing not less than 10 Business Days' notice to **nbn** in writing specifying the relevant Premises.
- (b) The Customer must exercise its rights pursuant to clause 4.6(a) if there is no reasonable prospect of it placing an order under the WBA for a Product which uses the Chosen Technology at the Premises within 60 Business Days of the date on which the Premises is Serviceable.
- (c) If the Customer cancels a Technology Change in respect of any Premises pursuant to this clause 4.6 (including where no **nbn** Activities have commenced at the date of that cancellation):
- (i) the Customer must pay the relevant Break Amount to **nbn** for each Premises affected by that termination or cancellation; and
  - (ii) the Deferred Charge will be reduced by the Premises Amount for each Premises affected by that termination or cancellation.

#### 5. Ownership of infrastructure

##### 5.1 **nbn** owns the infrastructure and equipment

Except for any rights expressly granted under this Agreement, the Customer (and any Downstream Customer) does not obtain any right, title or interest (whether legal, equitable or statutory) in any part of the infrastructure, cable and associated equipment installed or used by **nbn** in connection with the Technology Change under or in accordance with this Agreement.

##### 5.2 Customer's obligations in relation to **nbn** infrastructure and equipment

The Customer must not (and must use reasonable endeavours to ensure that each

Downstream Customer does not) damage, interfere with or remove any cable, infrastructure or associated equipment that is used or installed in connection with the Technology Change.

#### 6. Access

##### 6.1 Access to premises

- (a) Where access is required by **nbn** or its Personnel for a purpose described in clause 6.1(b), the Customer must:
- (i) provide **nbn** and its Personnel with safe and timely access to any premises owned, controlled or occupied by the Customer or any of its Related Bodies Corporate;
  - (ii) ensure that **nbn** and its Personnel are provided with safe and timely access to the premises of Downstream Customers for so long as:
    - A. the relevant premises are owned, controlled or occupied by Downstream Customers, or any of their Related Bodies Corporate; and
    - B. those persons have a contract with Customer for the supply of a product or service which relies on a Product as an input;
  - (iii) pay **nbn** any Third Party Access Charges which **nbn** may incur in accessing the relevant Premises in accordance with clause 7.1.
- (b) The purposes for which access is required under clause 6.1(a) are to:
- (i) perform the **nbn** Activities; and
  - (ii) exercise any of its rights or perform any of its obligations under and in accordance with this Agreement.
- (c) Each party will procure access for itself and its Personnel to Common Property.
- (d) The Customer must notify **nbn** as promptly as feasible in the circumstances where the Customer elects to procure or procures access to Common Property for **nbn** and Personnel of **nbn** either by obtaining the consent of the relevant person or body authorised to give such consent or pursuant to Schedule 3 of the Telecommunications Act.

- (e) Each party will provide reasonable assistance to the other in relation to access to premises for the purposes described in this clause 6.1.
- (f) **nbn** must ensure that any Personnel of **nbn** visiting any premises owned, controlled or operated or used by the Customer or Downstream Customer:
  - (i) comply with any policies that are notified by Customer or Downstream Customer (as applicable) to **nbn** from time to time (provided that as much notice as feasible in the circumstances is given to **nbn** by Customer or Downstream Customer), any reasonable directions that may be given by Customer or Downstream Customer (as applicable) to **nbn** from time to time, and all OH&S Laws; and
  - (ii) do not at any time cause Customer to be in contravention of an OH&S Law.
- (g) If **nbn** or the Customer becomes aware that Third Party Access Charges may be imposed upon **nbn** to access the relevant Premises:
  - (i) that party must notify the other party as soon as is reasonably practicable, and in any event within 10 Business Days of becoming so aware;
  - (ii) the Customer must inform **nbn** within 5 Business Days of the notification in clause 6.1(g)(i) whether or not the Customer approves **nbn** incurring those Third Party Access Charges to access the Premises; and
  - (iii) **nbn** will not charge the Customer any Third Party Access Charges the subject of the notification in clause 6.1(g)(i) unless the Customer provides its approval under clause 6.1(g)(ii).
- (h) If the Customer does not provide approval in accordance with clause 6.1(g)(ii), **nbn** will have no obligation under this Agreement or a Deal Module to:
  - (i) perform any **nbn** Activities which require access to that Premises; or
  - (ii) incur liability for, or pay, the Third Party Access Charges.

## Section C: Charges and Payment Terms

### 7. Customer's Deferred Charge and Deferred Charge Payments

#### 7.1 Charges for the Technology Change

- (a) The Customer must pay **nbn**:
  - (i) any Upfront Build Charge by means of the Deposit and Instalments;
  - (ii) any Deferred Charge by means of the Deferred Charge Payments; and
  - (iii) any Break Amount,

which amounts are calculated by reference to the costs incurred by **nbn** performing the **nbn** Activities at the Premises for the Technology Change.

- (b) The Customer must also pay **nbn**:
  - (i) any Third Party Access Charges approved by the Customer under clause 6.1(g)(ii); and
  - (ii) any Failed Appointment Charges.
- (c) The Customer acknowledges that the Customer and not the Downstream Customer is responsible for all payments required to be made under this Agreement to **nbn** (including any Deferred Charge Payments or Break Amount) even if a Downstream Customer:
  - (i) ceases to own or occupy the relevant Premises after the Customer's acceptance of the relevant Deal Module;
  - (ii) decides that it no longer wishes to proceed with the acquisition of products or services which require the Technology Change in respect of its Premises; or
  - (iii) terminates or breaches any contract, arrangement or understanding it may have with the Customer.

#### 7.2 Deposit & Instalments

- (a) **nbn** will not commence any **nbn** Activities in respect of the Technology Change until the Deposit (if any) has been paid.
- (b) The parties acknowledge that the Deposit and Instalments are non-refundable unless otherwise specified in this Agreement.

## 8. Invoicing, Payment and Credit Policy

### 8.1 Estimate of amount owed by Customer

- (a) At least 20 Business Days prior to the Invoice Event for the Deferred Charge Payment, **nbn** must notify the Customer of the amount of the Deferred Charge Payment (if any) that **nbn** estimates will be payable by the Customer at that Invoice Event (**Rollover Notice**).
- (b) Within 10 Business Days of receiving the notice referred to in clause 8.1(a) the Customer must elect by notification to **nbn** to either:
  - (i) not delay the Invoice Event for the Deferred Charge Payment; or
  - (ii) delay the Invoice Event for the Deferred Charge Payment by the period specified by **nbn** in the notice (which will be a period not less than 3 months and not more than 12 months after the date of the original Invoice Event), in which case the Deal Module will be varied, with effect from the date of **nbn**'s receipt of the Customer's election notice, to:
    - A. change the Invoice Event to the date stated in the Rollover Notice; and
    - B. extend the term of the Deal Module to the date stated in the Rollover Notice.
- (c) If no election is made by the Customer in accordance with clause 8.1(b), there will be no delay of the Invoice Event for the Deferred Payment.

### 8.2 Invoices

- (a) Following an Invoice Event, **nbn** will invoice the Customer for the relevant Deposit, Instalments, Deferred Charge Payment, Break Amounts, Third Party Access Charges and Failed Appointment Charges payable at that Invoice Event.
- (b) **nbn** will use reasonable endeavours to issue each invoice within 10 Business Days of the Invoice Event.
- (c) The Customer must pay **nbn** the full amount set out in an invoice on the later of the due date specified in an invoice and the date which is 30 calendar days after

the date the invoice was issued (**Due Date**).

- (d) Each invoice issued by **nbn** will:
  - (i) set out the amount payable by the Customer in Australian dollars;
  - (ii) contain sufficient information to reasonably enable the Customer to identify the payment to which the invoice relates; and
  - (iii) comply with all of the requirements of a Tax Invoice under the GST Law.

### 8.3 Payment

- (a) Each payment of an invoice by the Customer must be:
  - (i) paid by electronic funds transfer directly to **nbn**'s nominated bank account or by such other means as stipulated by **nbn** in either the invoice or the relevant Deal Module;
  - (ii) paid without any set-off, counterclaim, withholding or deduction, including on account of any amounts owed to the Customer by **nbn** or any third party; and
  - (iii) accompanied by sufficient information for **nbn** to identify, process and properly allocate those invoice payments.
- (b) Each invoice payment made by the Customer will be treated as being received by **nbn** when that payment is credited to **nbn**'s nominated bank account in cleared funds. If an invoice payment made by the Customer is dishonoured, then that payment will be treated as not having been received by **nbn** until it is credited to **nbn**'s nominated account in cleared funds, together with a reimbursement of any dishonour fees and charges that have been paid, or may be payable, by **nbn** in respect of that dishonoured payment.

### 8.4 GST and Tax

- (a) The Upfront Build Charge, Deferred Charge and any other amounts payable under this Agreement or any Deal Module exclude GST (where applicable).
- (b) If GST is or becomes payable on a Supply made in connection with this Agreement or any Deal Module, the party providing consideration for the Supply (in this clause

8.4, the **recipient**) is responsible for paying an additional amount (in this clause 8.4, the **additional amount**) to the party making that Supply (in this clause 8.4, the **supplier**).

- (c) The payment of the additional amount is conditional on receipt of a valid Tax Invoice by the recipient.
- (d) The additional amount is equal to the amount of GST payable on that Supply, as calculated by the supplier in accordance with the GST Law.
- (e) The additional amount is payable by the recipient without set off, demand or deduction at the same time and in the same manner as the consideration for the Supply.
- (f) If an amount payable in connection with this Agreement is calculated by reference to an amount incurred by a party (in this clause 8.4, **the amount incurred**), the amount payable will be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that amount incurred.
- (g) If an Adjustment Event occurs, the parties must do all things necessary to make sure that the Adjustment Event is appropriately recognised.

### 8.5 Billing errors and Billing Disputes

- (a) If an invoice omits or miscalculates any amounts payable under this Agreement, **nbn** may issue an additional invoice to the Customer, adjust an invoice submitted to the Customer or issue a credit to the Customer to recover or refund the omitted or miscalculated amounts if **nbn** does so no later than 6 months after the date of the original invoice.
- (b) If the Customer, acting reasonably, considers there is an error in the amount set out in an invoice payable by the Customer under this Agreement (**Billing Dispute**), the Customer must notify **nbn** in writing within six months of receipt of the invoice to which the Billing Dispute relates (**Billing Dispute Notice**).
- (c) If the parties cannot resolve the Billing Dispute within 20 Business Days after **nbn** has received the Billing Dispute Notice, either party may escalate a Billing Dispute

by having its Relationship Point of Contact give a copy of the Billing Dispute Notice to the other party's Relationship Point of Contact.

- (d) The parties' respective Relationship Points of Contact must attempt to resolve the Billing Dispute within 10 Business Days after a party's Relationship Point of Contact receives a copy of the Billing Dispute Notice.
- (e) If the Billing Dispute remains unresolved after the conclusion of the timeframe in clause 8.5(d), either party may escalate an unresolved Billing Dispute for determination by a Billing Expert in accordance with, and subject to, the Resolution Institute Expert Determination Rules, by giving notice to the other party.
- (f) The parties must use reasonable endeavours to agree on a Billing Expert within 10 Business Days after a party receiving notice under clause 8.5(e).
- (g) If the parties cannot agree on a Billing Expert under clause 8.5(f) within the timeframe specified, either party may request that the Chair of the Resolution Institute (or their nominee) appoint a Billing Expert from one of the following firms:
  - (i) PricewaterhouseCoopers Australia;
  - (ii) Ernst & Young Australia;
  - (iii) KPMG Australia; or
  - (iv) Deloitte Touche Tohmatsu Australia.
- (h) If none of the firms specified in clause 8.5(g) can provide a Billing Expert, the Chair of the Resolution Institute (or their nominee) may appoint a different Billing Expert.
- (i) **nbn** and Customer must, within 10 Business Days of the Billing Expert being agreed or determined, appoint the Billing Expert on the terms of the Resolution Institute Expert Determination Rules (subject to the terms of this Agreement or as otherwise agreed by the parties and the Billing Expert).
- (j) The costs of the Billing Expert will be borne equally by **nbn** and the Customer.
- (k) Both parties must continue to perform their respective obligations in accordance

with this Agreement in the event of a Billing Dispute.

## 8.6 **nbn's remedies for non-payment**

- (a) **nbn's** rights under this clause 8.6 are in addition to, and do not exclude or limit, its other rights under this Agreement or by law. Any exercise of **nbn's** rights under this clause 8.6 will not waive or prevent the exercise of **nbn's** other rights or remedies under this Agreement or by law.
- (b) If the Customer does not pay any undisputed amount in an invoice under this Agreement by the Due Date (**Overdue Amount**) and that amount remains unpaid for 15 calendar days, the Customer will be in Material Default and **nbn** may do one or more of the following:
  - (i) suspend any **nbn** Activities under any Deal Module until the Overdue Amount is paid;
  - (ii) recover any Overdue Amount, plus the reasonable costs of recovery, as a debt due and payable immediately to **nbn**;
  - (iii) notify and exchange information regarding the Customer with **nbn's** debt collection and credit reporting bodies concerning overdue amounts;
  - (iv) immediately demand payment of the balance of any Deferred Charge under this Agreement in a single Instalment and invoice the Customer for that amount in accordance with clause 8;
  - (v) charge the Customer interest on any Overdue Amount of an invoice applied for each day from (but excluding) the Due Date until (and including) the date that **nbn** receives payment in full at an annual percentage rate equal to the aggregate of the 90 Day Bank Bill Swap Rate plus 2.5 per cent. The payment of any Overdue Amount under this Agreement does not relieve the Customer from the obligation to pay the interest accrued on that Overdue Amount under this clause 8.6;
  - (vi) enforce, call on, use or otherwise take action to exercise or obtain the



- benefit of any Financial Security to recover any overdue amount in accordance with the Credit Policy;
- (vii) review and assess the Credit Risk posed by the Customer in accordance with the Credit Policy;
- (viii) require the Customer to provide a new, or adjust the amount of an existing, Financial Security in accordance with the Credit Policy; and
- (ix) terminate this Agreement in accordance with clause 3.1(a)(i) and invoice the Customer for the Break Amount.

## 8.7 Credit Policy

- (a) The Customer warrants to **nbn** that throughout the Term it complies and will continue to comply with the Credit Policy, including providing a Financial Security where required under the Credit Policy.
- (b) **nbn** is not obliged to perform or continue to perform any **nbn** Activities unless Customer fully complies with the Credit Policy.
- (c) The Customer must notify **nbn** within 2 Business Days after the time Customer no longer fully complies with the Credit Policy.

## Section D: Liability, confidentiality, intellectual property, data security and Disputes (excluding Billing Disputes)

### 9. Liability

- (a) To the maximum extent permitted by law:
- (i) **nbn** is not liable to the Customer, and the Customer is not liable to **nbn**, in respect of any Consequential Loss which may be suffered or incurred arising out of or in connection with the **nbn** Activities or this Agreement; and
- (ii) each of:
- A. **nbn**'s liability to the Customer; and
- B. the Customer's liability to **nbn**,
- whether under this Agreement, in tort (including negligence or otherwise), under any statute (to the extent that it is possible to exclude such liability) or otherwise at law or in equity, arising out of or in connection with the performance of **nbn**'s or the Customer's obligations under this Agreement (as the case may be) is limited to the Liability Cap, other than in relation to:
- C. liability for personal injury including death; or
- D. liability for damage to Tangible Property.
- (b) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by the Competition and Consumer Act which cannot be lawfully excluded or restricted.
- (c) This clause 9 does not limit the Customer's liability for any fees or charges payable under this Agreement, including any Deferred Charge, or Break Amount.
- (d) Claims must be managed by the Customer and **nbn** as set out in **Appendix A**.

### 10. Confidentiality

#### 10.1 Disclosure of Confidential Information

Each party (**Recipient**) acknowledges and agrees that:

- (a) the Confidential Information of the other party (**Discloser**) is confidential, and that it will not:
- (i) use or copy Confidential Information of the Discloser; or
- (i) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any person,
- except as set out in this Agreement;
- (b) Confidential Information of the Customer may be used by **nbn**:
- (i) for the purposes of undertaking planning, maintenance, construction, provisioning, testing, operations or reconfiguration of the **nbn** infrastructure and equipment;
- (ii) for the purposes of undertaking the **nbn** Activities;
- (iii) for the purpose of billing the Customer;
- (iv) to exercise its rights or perform its obligations under this Agreement, the Wholesale Broadband Agreement or any Deal Module; or
- (v) for another purpose agreed to by the Customer.
- (c) Confidential Information of **nbn** may be used by the Customer:
- (i) where it has been received in relation to a Deal Module, in order to prepare for supplying Customer Products to Downstream Customers at the Premises the subject of that Deal Module;
- (ii) to enable the proposed use of Customer Products by Downstream Customers;
- (iii) to exercise its rights or perform its obligations under this Agreement; or
- (iv) for another purpose agreed to by **nbn**;
- (d) Confidential Information of the Discloser may be used and/or disclosed (as the case may be) by the Recipient:
- (i) to those of its Related Bodies Corporate and its and their

- Personnel to whom the Confidential Information is reasonably required to be disclosed for the purposes of this Agreement provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;
- (ii) to Downstream Customers to whom the Confidential Information is reasonably required to be disclosed for the purposes of this Agreement or Deal Module provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;
  - (iii) to any professional person for the purpose of obtaining advice in relation to matters arising out of or in connection with this Agreement, provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;
  - (iv) to an auditor acting for the Recipient to the extent necessary to permit that auditor to perform its audit functions, provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;
  - (v) in connection with legal proceedings, arbitration, expert determination and other dispute resolution mechanisms set out in this Agreement, provided that the Recipient has first given as much notice (in writing) as is reasonably practicable to the Discloser so that the Discloser has an opportunity to protect the confidentiality of its Confidential Information;
  - (vi) as required by law provided that the Recipient has first given as much notice as is reasonably practicable to the Discloser, that the Recipient is required to disclose the Confidential Information so that the Discloser has an opportunity to protect the confidentiality of its Confidential Information;
  - (vii) with the written consent of the Discloser provided that prior to disclosing the Confidential Information of the Discloser:
    - A. the Recipient informs the relevant person or persons to whom disclosure is to be made that the information is the Confidential Information of the Discloser; and
    - B. if required by the Discloser as a condition of giving its consent, the Recipient must provide the Discloser with a confidentiality undertaking (which is in a form approved by the Discloser) signed by the person or persons to whom disclosure is to be made;
- (viii) in accordance with a lawful and binding directive issued by, or where otherwise required by law to, a Regulator or Government Agency, provided that any Confidential Information originally marked by the Discloser as commercial-in-confidence is also marked commercial-in-confidence by the Recipient when making a disclosure under this clause 10.1;
  - (ix) if reasonably required to protect the safety of persons or property or the integrity of a telecommunications network or in connection with an emergency;
  - (x) as required by the listing rules of any stock exchange where the Recipient's securities are listed or quoted;
  - (xi) where **nbn** is the Recipient, where required by law, to any Shareholder Minister and their respective government departments; and
  - (xii) where **nbn** is the Recipient and the Confidential Information is provided pursuant to the Credit Policy, to any third party provided that Customer may require a confidentiality undertaking to be given by that third party (on terms to be approved by Customer, such approval not to be unreasonably withheld) prior to such Confidential Information being provided to that third party.

- (e) On demand by the Discloser, the Recipient must return, destroy or delete the Discloser's Confidential Information except to the extent it is impracticable to do so, or necessary to comply with the Recipient's internal governance processes, or any applicable law.
- (f) Notwithstanding the above, Confidential Information that is also "Confidential Information" as defined in the WBA, may be used and disclosed by the Recipient in accordance with the terms of the WBA.
- (g) A Deal Module may set out additional confidentiality requirements and, to the extent of any conflict, the Deal Module prevails over this Agreement.

## 10.2 Co-operation

- (a) Subject to clause 10.1, each party must co-operate in any action taken by the other party to:
  - (i) protect the confidentiality of the other party's Confidential Information; or
  - (ii) enforce its rights in relation to its Confidential Information.

## 10.3 No disclosure to Other Customers

Except where expressly contemplated by this Agreement, **nbn** may not disclose Confidential Information of Customer to an Other Customer.

## 10.4 No warranty

Confidential Information provided by one party to the other party is provided for the benefit of that other party only. Each party acknowledges that no warranty is given by the Discloser that the Confidential Information is or will be correct.

## 10.5 Injunctive relief

Each party acknowledges that a breach of this clause 10 by one party may cause the other party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a party may seek injunctive relief against such a breach or threatened breach of clause 10.

## 10.6 Disclosure by nbn for debt collection

- (a) If:
  - (i) **nbn** has the right to suspend or terminate any **nbn** Activities in respect of:

- A. Customer failing to pay an amount due or owing to **nbn** under this Agreement by the due date for payment; or
- B. an Insolvency Event in respect of Customer; or

- (ii) after suspension of supply of **nbn** Activities under this Agreement, Customer fails to pay amounts due or owing to **nbn** by the due date for payment,

then, notwithstanding clause 10.1 **nbn** may do one or both of the following:

- (iii) notify and exchange information about Customer (including Customer's Confidential Information) with any credit reporting agency or **nbn's** collection agent to the extent necessary for the credit reporting agency or **nbn's** collection agent to carry out their respective functions; and
- (iv) without limiting clause 10.6(a)(iii), disclose to a credit reporting agency:
  - A. the defaults made by Customer to **nbn**; and
  - B. the exercise by **nbn** of any right to suspend **nbn** Activities under this Agreement.

## 10.7 Confidentiality under the PDF Terms

Each party agrees that their rights and obligations in relation to use and disclosure of confidential information under the PDF Terms are subject to separate confidentiality provisions set out in the PDF Terms.

## 11. Intellectual Property

- (a) Nothing in this Agreement operates to transfer or assign ownership of Intellectual Property Rights and, except as expressly provided under this clause 11, nothing in this Agreement confers on either party any right, title or interest in or to, any of the other party's Intellectual Property Rights or Third Party IPR.
- (b) Except as otherwise agreed, each party grants to the other an irrevocable, non-exclusive, royalty-free, non-transferable, worldwide licence for the Term to use, reproduce and communicate its Intellectual Property Rights embodied in any of its

Material, to the extent required by the other party (directly or through its Personnel) to perform its obligations and exercise its rights under this Agreement.

## 12. Data Security

- (a) Each party must apply reasonable security standards in respect of any data or information (including Confidential Information) of the other party (having regard to the nature of the data or information and the party's obligations under applicable law) that the party collects, stores, uses or discloses to third parties by any means inside or outside Australia and must not allow any person inside or outside of Australia to access any such data or information except in compliance with those data security standards.
- (b) Each party (the **first party**) must promptly notify the other party if the first party becomes aware that:
  - (i) the first party's security standards, as referred to in clause 12(a) have been compromised; and
  - (ii) the compromise of the first party's security standards results, in the reasonable opinion of the first party, in a risk that there has been, or will imminently be, unauthorised access by any person to:
    - A. Personal Information disclosed or transferred to the first party by the other party in connection with this Agreement; or
    - B. the information systems or interfaces of the other party that contain such Personal Information.

## 13. Disputes

### 13.1 Notice of Dispute

- (a) Any dispute or difference, other than a Billing Dispute, which arises between **nbn** and the Customer in respect of any fact, matter or thing arising out of, or in any way in connection with this Agreement (**Dispute**) must be resolved in accordance with this clause 13.
- (b) Where such Dispute arises, either party may give a notice in writing to the other

party specifying the Dispute and the position which the party believes is correct (**Notice of Dispute**).

- (c) If a Notice of Dispute is served, persons authorised by the Chief Customer Officer, Business (or equivalent) of each party must meet and negotiate with a view to resolving the Dispute.

### 13.2 Arbitration

- (a) If the Dispute is not resolved within 15 Business Days of service of the Notice of Dispute (or such other period agreed by the parties in writing), then, subject to the parties' right to seek injunctive or urgent declaratory relief, either party may refer the Dispute to arbitration conducted in accordance with the Resolution Institute Arbitration Rules by notice to the other party.
- (b) Any Dispute which is referred to arbitration will be conducted before a person to be:
  - (i) agreed between the parties; or
  - (ii) failing agreement within 10 Business Days after the referral of the Dispute to arbitration, a person nominated by the Resolution Institute.
- (c) Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a Dispute.

### 13.3 Court Proceedings

**nbn** or the Customer may not commence any court proceedings in relation to a Dispute or Billing Dispute, except where:

- (a) expressly permitted under this Agreement;
- (b) an Insolvency Event affects, or is reasonably likely to affect imminently, either **nbn** or the Customer, and the other party reasonably considers it necessary to commence court proceedings in relation to a Dispute or Billing Dispute to preserve its position with respect to creditors of the other party;
- (c) **nbn** or the Customer is seeking to enforce unpaid debts;
- (d) **nbn** or the Customer is seeking urgent interlocutory relief; or
- (e) the relevant Dispute or Billing Dispute relates to a failure by **nbn** or the Customer to comply with clause 8.5 in relation to the

Billing Dispute or this clause 13, which is not trivial or immaterial.

## Section E: General Terms

### 14. Notices and contacts

#### 14.1 Contacting the Customer

- (a) **nbn** may give notices to the Customer by sending a letter to the Customer's address (by post, fax or email) in the Module Particulars.
- (b) The contact person nominated in the Module Particulars (or as otherwise notified in writing to **nbn**) must be authorised to send and receive notices on behalf of each Downstream Customer represented by the Customer for the purposes of a Technology Change.

#### 14.2 Contacting nbn

- (a) Customer may give notices to **nbn** by sending a letter to **nbn**'s address (by post or email) in the Module Particulars.
- (b) Any notice sent to **nbn** by the Customer under clause 13.1(b) must be given to **nbn**'s Chief Legal Counsel as specified below (or such other person notified by **nbn** to the Customer from time to time):

Name: Jane Van Beelen  
Chief Legal and Regulatory Officer

Address: Level 13, 100 Mount Street,  
North Sydney NSW 2060

Email: janevanbeelen@nbnco.com.au

#### 14.3 When a notice is received

- (a) Each notice in connection with this Agreement is taken to be received by the addressee:
  - (i) (in the case of delivery by hand) on delivery;
  - (ii) (in the case of prepaid post) on the fifth Business Day after the day of posting;
  - (iii) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address in the contact details, when the email was sent;

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5:00pm, it is

deemed to be received at 9:00am on the next Business Day.

#### 14.4 Contact details

- (a) Each party must ensure that its contact details are up-to-date details of the name, postal address, email address and fax number for each party's:
  - (i) contact person for the purposes of notices under this Agreement;
  - (ii) Relationship Point of Contact; and
  - (iii) other relevant contacts, as may be agreed.

### 15. Relationships

#### 15.1 Relationship between the parties

- (a) This Agreement does not create a fiduciary relationship between the parties or any agency, partnership or trust.
- (b) The only relationship created under this Agreement between the parties is of supplier and customer. Neither party has the power to bind the other party.

#### 15.2 Relationships with third parties

- (a) This Agreement does not create any obligation or legal relationship between **nbn** and any Downstream Customer or any other third party (in this clause 15.2, **Third Parties**).
- (b) The parties have entered into this Agreement in their own legal capacity and not as agent or trustee for, or a partner of, any other person and this Agreement does not grant any right or benefit to Third Parties.
- (c) If either party subcontracts any of its obligations under this Agreement or any Deal Module, that party is responsible for all acts and omissions of its subcontractors as if they were those of the party and that party remains liable to the other party for all of its obligations under this Agreement and all acts, defaults, and negligence of any subcontractors as if the acts, defaults and negligence were the party's own.

### 16. Warranties

- (a) Each party represents and warrants that, as at the Commencement Date and on each day of the Term:
  - (i) it is a corporation duly incorporated and validly existing under the laws of

- the state or territory in which it is incorporated;
- (ii) it has all necessary corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (iii) it has taken all necessary action to authorise the execution and performance of this Agreement;
- (iv) this Agreement constitutes a legal, valid and binding obligation on it, and is enforceable against it, in accordance with its terms; and
- (v) it is not suffering an Insolvency Event.

### 17. Assignment, novation and other dealings

- (a) If either party proposes to assign, novate or otherwise transfer or deal in any of its rights or benefits under this Agreement, then it must provide the other party at least 20 Business Days' prior written notice. For the purposes of this clause 17(a), a Change in Control of a party is deemed to be a transfer of that party's rights under this Agreement and that party must notify the other party to that deemed transfer in accordance with this clause 17.
- (b) Any assignment or novation of this Agreement, or any transfer or dealing in any of the rights or benefits under this Agreement (including any deemed transfer of rights):
  - (i) by **nbn**:
    - A. to effect, or as a result of, any sale of the Commonwealth's ownership of **nbn** (in whole or in part);
    - B. to effect, or as a result of, any corporate restructure of **nbn** or any Related Body Corporate of **nbn**; or
    - C. to charge or otherwise encumber any of **nbn**'s assets in the ordinary course of business, including any securitisation of **nbn**'s receivables; or
  - (ii) by Customer:
    - A. to effect, or as a result of, any corporate restructure of

Customer or any Related Body Corporate of Customer that does not change the "ultimate holding company" (as that term is defined in section 9 of the Corporations Act) of Customer;

- B. as a result of a transfer or issue of any securities listed on any recognised stock or securities exchange; or
- C. to charge or otherwise encumber any of Customer's assets in the ordinary course of business, including any securitisation of Customer's receivables (provided Customer gives prior notice to **nbn** in writing of the relevant proposed encumbrance),

will not be an assignment, novation, transfer or dealing (or deemed transfer) to which clause 17(a) applies.

### 18. Costs, expenses and duties

- (a) Except where this Agreement provides otherwise, each party is responsible for its own costs and expenses of negotiating, preparing and executing this Agreement and any other instrument executed under this Agreement and complying with its obligations under this Agreement.
- (b) Customer must pay all stamp duty (including interest, fines and penalties) assessed to be payable on this Agreement, the performance of this Agreement (including the transfer of any property) and any transaction contemplated by it.

### 19. Electronic execution and counterparts

- (a) This Agreement is entered into on the date that the last party executes this Agreement.
- (b) This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement and all together constitute one agreement.
- (c) Any document which must, under this Agreement, be executed or signed by a party may be:
  - (i) executed electronically; and



- (ii) communicated electronically in any manner permitted under clause 14.

## 20. Variation

Except as otherwise specified in this Agreement, this Agreement may only be varied, supplemented or replaced by a document signed by both parties.

## 21. Waiver

- (a) A party will only be deemed to have waived a right or remedy under this Agreement if that waiver is in writing and signed by that party.
- (b) Any failure or delay in exercising or a single or partial exercise of a right or remedy under this Agreement will not operate as a waiver and will not prevent further exercise of that, or of any other, right or remedy.

## 22. Accrued rights

Expiry or termination of this Agreement by either party does not affect the right of either party to enforce its accrued rights against the other party.

## 23. Interpretation

- (a) This Agreement is to be construed in accordance with the laws applicable in New South Wales.
- (b) If part of this Agreement is not legally enforceable, that part will be cut from this Agreement. All other parts of the Agreement will continue.
- (c) A reference to **nbn** includes its successors, permitted substitutes and permitted assignees.
- (d) A reference to law or to a provision of a law includes a change to it or a re-enactment of it, a provision substituted for it and a regulation or statutory instrument issued under it.
- (e) A reference to "includes" or "including" means without limitation.
- (f) A Contracted End User or End User includes a reference to a prospective Contracted End User or prospective End User (respectively), where the context requires.
- (g) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or a Deal Module, or any part of this Agreement or a Deal Module.

## 24. Definitions

**90 Day Bank Bill Swap Rate** for any period means:

- (a) the rate which is the average of the bid rates shown at or about 10.30 am (Sydney time) on page "BBSY" on the Reuters Monitor System on the first day of that period for a term equal to 90 days; and
- (b) if:
  - (i) the rate referred to in paragraph (a) of this definition is replaced or the service referred to in paragraph (a) of this definition ceases to be available; or
  - (ii) the basis on which the rate referred to in paragraph (a) of this definition is calculated or displayed changes after the date of this Agreement and **nbn** determines that the rate ceases to reflect **nbn**'s cost of funding to the same extent as at the date of this Agreement,

the rate determined by **nbn**, acting reasonably, to be the appropriate equivalent rate having regard to prevailing market conditions.

Rates will be expressed as a yield percent per annum to maturity and if necessary will be rounded up to the nearest fourth decimal place.

**ACMA** means the Australian Communications and Media Authority.

**Adjustment Event** has the meaning given to that term in the GST Law.

**Advisory Notice** has the meaning given to that term in section 151AQB of the Competition and Consumer Act.

**After Hours Installation Appointment** an Appointment set for a period between:

- (a) 5:00pm to 9:00pm on a Business Day;
- (b) 8:00am to 12:00pm on a Saturday or Sunday; or
- (c) 1:00pm to 5:00pm on a Saturday or Sunday.

**Appointment** means an appointment period in which **nbn** performs **nbn** Activities in respect of a Premises.

**Billing Dispute** has the meaning given in clause 8.5(b).

**Billing Dispute Notice** has the meaning given in clause 8.5(b).

**Billing Expert** means a person who is an auditor qualified under Australian law and appointed under clause 8.5.

**Break Amount** means, for a Premises, the amount calculated as follows:

- (i) if the Technology Change in respect of that Premises is in the planning phase at the time of the relevant cancellation or termination (as determined by **nbn**, acting reasonably), 10% of the Premises Amount;
- (ii) if the Technology Change in respect of that Premises is in the design phase at the time of the relevant cancellation or termination (as determined by **nbn**, acting reasonably), 30% of the Premises Amount;
- (iii) if the Technology Change in respect of that Premises is in the build phase at the time of the relevant cancellation or termination (as determined by **nbn**, acting reasonably), 85% of the Premises Amount; and
- (iv) if the Date of Practical Completion has occurred at the time of the relevant cancellation or termination, the Premises Amount less the total of all Revenue Credit Amounts attributable to that Premises (calculated as at the time of the relevant cancellation or termination).

**Business Day** means a day which is not a Saturday, Sunday, bank holiday or public holiday in the States or Territories where the relevant works or tasks are being carried out.

**Carriage Service Provider** has the meaning given to that term in Section 87 of the Telecommunications Act.

**Carrier** has the meaning given to that term in section 7 of the Telecommunications Act.

**Change in Control** has the meaning given in the WBA.

**Chosen Technology** means, in respect of a Deal Module, the chosen access technology for a Premises as set out in the Module Particulars.

**Claim** means any claim, allegation, cause of action, proceeding, suit or demand made however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Commencement Date** means the date that this Agreement is executed.

**Common Property** means any real property or part thereof which is owned or managed by a third party strata body, managing corporation or other similar entity, or which is otherwise common to, accessible by, or shared between, two or more separately owned or occupied Premises to which **nbn** may require access.

**Commonwealth** means the Commonwealth of Australia.

**CommsAlliance** means Communications Alliance Ltd.

**Competition and Consumer Act** means the *Competition and Consumer Act 2010 (Cth)*.

**Competition Notice** has the meaning given to that term in section 151AB of the Competition and Consumer Act.

**Confidential Information** means this Agreement and all:

- (a) information of a party or any of its Related Bodies Corporate relating to or arising from this Agreement;
- (b) information, which, either orally or in writing, is designated or indicated as being proprietary or confidential information, or is by its nature confidential, or that the party receiving the information knows, or ought to know, is confidential;
- (c) trade secrets or other types of information of a party or any of its Related Bodies Corporate which are capable of protection at law or equity as confidential information;
- (d) information from a third party, where a party is advised by the other party that such information is confidential; and
- (e) information derived or produced, partly or wholly, from the information referred to above,

whether the information was disclosed:

- (f) orally, in writing or in electronic or machine readable form;

- (g) before on or after the Commencement Date; or
- (h) in the course of discussions between the parties,

in each case which is not in the public domain.

**Consequential Loss** means Loss which:

- (a) does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question; or
- (b) constitutes loss of profit, loss of anticipated profit, loss of opportunity or anticipated savings, loss of revenue, loss or impairment of credit rating, loss of data, loss of business opportunities and loss of or damage to reputation or goodwill even if such loss arises directly or naturally in the usual course of things from that breach, action or inaction,

but does not include the following Losses to the extent that they arise directly, or naturally in the usual course of things, from the breach, action or inaction in question:

- (c) reasonable costs incurred in remedying the impact of the breach, action or inaction in question;
- (d) reasonable overtime and related expenses (including travel, lodging and wages); and
- (e) payments or penalties imposed by any Government Agency.

**Content Service Provider** has the meaning given to that term in section 97 of the Telecommunications Act.

**Contracted End User** has the meaning given in the WBA.

**Corporations Act** means the *Corporations Act 2001(Cth)*.

**Credit Policy** means the Credit Policy applicable to the **nbn**<sup>TM</sup> Technology Extension Contract which forms part of this Agreement, a copy of which was provided to Customer prior to entry into this Agreement.

**Credit Risk** has the meaning given in the Credit Policy.

**Customer Product** has the meaning given in the WBA.

**Date of Practical Completion** has the meaning given in clause 4.3(a).

**Deal Module** means each Deal Module entered into in accordance with clause 2.

**Default** means a failure, inability to or refusal by a party to comply with the terms of this Agreement.

**Deferred Charge** means, in respect of a Deal Module, the amount calculated in accordance with the Module Particulars.

**Deferred Charge Payments** means in respect of a Deal Module, the amounts calculated and payable in accordance with the Module Particulars.

**Delay Amount** means an amount equal to the Premises Amount divided by the number of calendar days in the term of the relevant Deal Module.

**Deposit** means, in respect of a Deal Module, the amount (if any) identified as the "deposit" in the Module Particulars.

**Dispute** has the meaning given in clause 13.1(a).

**Downstream Claim** means a Claim against **nbn**, any of its Related Bodies Corporate or any of their respective Personnel by a Downstream Customer or any of their respective Related Bodies Corporate in connection with this Agreement.

**Downstream Claimant** means a person who makes a Downstream Claim.

**Downstream Contract** means an agreement pursuant to which a Downstream Service Provider or Contracted End User acquires or has agreed to acquire (or another End User is the ultimate recipient of) a Customer Product or Downstream Product.

**Downstream Customer** means any actual or prospective Downstream Service Provider or End User of the Customer, as those terms are defined in the WBA.

**Downstream Product** has the meaning given in the WBA.

**Downstream Service Provider** has the meaning given in the WBA.

**Due Date** has the meaning in clause 8.2(c).

**End User** has the meaning given in the WBA.

**End User Connection** means the connection and activation of a Product or service to be supplied by **nbn** in respect of a Premises.

**Failed Appointment** charges means:

(a) \$75 for:

- (i) a Late Cancellation (Site Visit Required); or
- (ii) a Missed Appointment; or

(b) \$150 for:

- (i) a Late Cancellation (After Hours Installation Appointment); or
- (ii) a Missed Appointment (After Hours Installation Appointment).

**Financial Security** has the meaning given in the Credit Policy.

**Force Majeure Event** has the meaning given in the WBA, save that any references to 'this Agreement' are references to this Agreement.

**Government Agency** means any court or tribunal of competent jurisdiction or any agency, authority, board, department, government, instrumentality, ministry, official or public or statutory person of the Commonwealth or of any State or Territory of Australia, and any local or municipal government or governmental bodies.

**GST** has the meaning given in the GST Law.

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, as amended from time to time.

**Industry Code** means an industry code developed and registered with the ACMA under Part 6 of the Telecommunications Act.

**Industry Standard** means an industry standard determined by the ACMA under Part 6 of the Telecommunications Act.

**Input Tax Credit** has the meaning given to that term in the GST Law.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to a party:

- (a) an order is made that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;

- (d) a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) it enters into an arrangement or composition with one or more of its creditors (in their capacities as creditors) and that arrangement or composition is not terminated within 10 Business Days, or an assignment for the benefit of one or more of its creditors (in their capacities as creditors), in each case other than to carry out a reconstruction or amalgamation while solvent;
- (f) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors (in their capacities as creditors), or it proposes a standstill arrangement or composition with one or more of its creditors (in their capacities as creditors) and that standstill, arrangement or composition is not terminated within 10 Business Days;
- (g) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under sections 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (h) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (i) a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 days;
- (j) a writ of execution is levied against it or a material part of its property which is not dismissed within 21 days;
- (k) it ceases to carry on business or threatens to do so; or
- (l) anything occurs under the law of the Commonwealth or any Australian State or Territory which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

**Instalments** means, subject to clause 8.6(b)(iv), each instalment identified in the relevant Deal Module.

**Intellectual Property Rights** has the meaning given to it in the WBA.

**Invoice Event** means for:

- (a) the Deposit, the Module Commencement Date;
- (b) each Instalment, the dates identified in the relevant Deal Module, subject to clause 8.6(b)(iv);
- (c) the Deferred Charge (and Deferred Charge Payment), the date identified in the relevant Deal Module;
- (d) a Break Amount, the date identified in the relevant Deal Module; and
- (e) any Third Party Access Charges and Failed Appointment Charges, the last day of the calendar month during which the Customer's obligation under this Agreement to pay that Third Party Access Charge or Failed Appointment Charge (as applicable) first arises.

**Late Cancellation (After Hours Installation Appointment)** means the cancellation of an After Hours Installation Appointment where **nbn** receives the request to cancel the activity less than 24 hours prior to the scheduled Appointment start time.

**Late Cancellation (Site Visit Required)** means the cancellation of an Appointment where **nbn** receives the request to cancel the activity less than 1 Business Day prior to the scheduled Appointment start time.

**Liability Cap** means in respect of this Agreement and in aggregate in respect of all Deal Modules:

- (a) in the case of **nbn**, \$5,000,000; and
- (b) in the case of the Customer, \$5,000,000.

**Loss** means losses, damages, liabilities, charges, expenses, compensation, fine, penalty, payment outgoings or costs and all related costs and expenses (including reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) of any nature or kind, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Material** means any material (including technical and marketing material) provided or otherwise made available by or on behalf of a party under this Agreement.

**Material Default** means, a Default which:

- (a) itself, or when combined with other Defaults, is a material breach of this Agreement of the relevant Deal Module; or
- (b) is expressly specified to be a Material Default in this Agreement or the Deal Module.

**Missed Appointment** means the failure of the Customer or the Downstream Customer (or their authorised representatives) to be present from the beginning of a scheduled appointment window agreed between **nbn** and the Customer or the Downstream Customer during the attendance by Personnel of **nbn** at a Premises.

**Missed Appointment (After Hours Installation Appointment)** means the failure of the Customer or the Downstream Customer (or their authorised representatives) to be present from the beginning of a scheduled window agreed between **nbn** and the Customer or the Downstream Customer during the attendance by Personnel of **nbn** at a Premises for an After Hours Installation Appointment.

**Module Commencement Date** means, in respect of a Deal Module, the commencement date set out in the Module Particulars.

**Module Expiry Date** means, in respect of a Deal Module, the later of:

- (a) the expiry date set out in the Module Particulars; and
- (b) the date by which both parties have completed all of their obligations under this Agreement and the relevant Deal Module.

**Module Particulars** means, in respect of a Deal Module the particulars set out in the table of that name in that Deal Module.

**nbn Activities** means, in respect of a Deal Module:

- (a) the design and installation of certain infrastructure required for the **nbn**<sup>TM</sup> Network to be made available to **nbn**'s customers by means of the Chosen Technology at the Premises; and
- (a) any other activities specified as **nbn** Activities in a Deal Module,

but does not include any End User Connections or the supply of any Ordered Products.

**NBN Companies Act** means the *National Broadband Network Companies Act 2011* (Cth).

**nbn™ Network** has the meaning given in the WBA.

**Non-Discrimination Obligations** means the obligations imposed on **nbn** pursuant to sections 152AXC and 152 AXD of the Competition and Consumer Act.

**OH&S Law** means all laws and legislative requirements relating to occupational health & safety.

**Other Customer** has the meaning given in the WBA.

**Ordered Product** has the meaning given in the WBA.

**Original Technology** means, in respect of a Deal Module, the access technology **nbn** deployed or planned to deploy to serve the Premises prior to the parties entering into this Agreement, as set out in the Module Particulars.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

**PDF Terms** means the document entitled "Product Development Forum Terms" as entered into by the parties.

**Personnel** means, in relation to a party or third party, that party's officers, employees, agents, contractors, subcontractors and consultants.

**Premises** means, in respect of a Deal Module, the premises which are the subject of the Technology Change as specified in the Module Particulars and varied in accordance with this Agreement.

**Premises Amount** means, in respect of a Deal Module, the amount identified in the Module Particulars.

**Product** has the meaning given in the Wholesale Broadband Agreement.

**Proposed Deal Module** has the meaning given in clause 2.1.

**Ready to Connect** in respect of a Premises means:

- (a) that Premises is Serviceable by means of the Chosen Technology; or
- (b) that Premises would be Serviceable if the relevant Premises was located in a region that had been determined by **nbn** as being ready for service by the **nbn™** network.

**Refund Amount** means an amount calculated as follows:

- (a) the Deposit paid under the relevant Deal Module;
- (b) plus any Instalments paid under that Deal Module;
- (c) divided by the number of Premises in that Deal Module.

**Regulator** means, as the context requires:

- (a) the Commonwealth government minister responsible for administering Part XIB and/or Part XIC of the Competition and Consumer Act;
- (b) the Commonwealth government minister responsible for administering the Telecommunications Act;
- (c) the Australian Competition and Consumer Commission;
- (d) the Australian Communications and Media Authority;
- (e) the Telecommunications Industry Ombudsman;
- (f) any other Commonwealth government minister, Government Agency or parliamentary committee or parliamentary body whose activities impact on **nbn's** business.

**Regulatory Event** means:

- (a) any enactment, amendment, replacement or repeal of any law;
- (b) the lawful making; amendment or withdrawal of any determination, order, directive, consent or finding by a Regulator, Commonwealth government minister, Government Agency or a court of competent jurisdiction;
- (c) any investigation, action or proceeding by a Regulator;
- (d) the making of any code by CommsAlliance (or any replacement or successor to CommsAlliance) to which **nbn** is a code signatory, the registration of any Industry Code, the determination of an Industry Standard or the making of any Technical Standard (or any amendment or withdrawal of such codes or standards);
- (e) any declaration, amendment, or removal of a condition applying to a party's carrier licence (if applicable), including **nbn** being required to comply with section 152CJB of the Competition and Consumer Act in

relation to a specific eligible service and **nbn** being prohibited from supplying a specified carriage service to Carriers, Carriage Service Providers or Content Service Providers under section 41(3) of the NBN Companies Act;

- (f) any determination, amendment or removal of a Service Provider Rule applicable to a party;
- (g) any amendment to the WBA necessary to comply with any applicable law or required by a "Regulatory Event" (as defined in the WBA);
- (h) the issuing of an Advisory Notice or Competition Notice by the ACCC in respect of **nbn**; or
- (i) the issuing of an injunction against a party in relation to a breach or contravention (alleged or otherwise) of the Competition and Consumer Act.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Relationship Point of Contact** means, in respect of a Deal Module, the persons identified in the Module Particulars.

**Revenue Credit Amount** means, in respect of a Deal Module, the amount set out in the Module Particulars.

**Service Provider Rule** has the meaning given to that term in section 98 of the Telecommunications Act.

**Serviceable** has the meaning given in the WBA.

**Shareholder Ministers** means collectively the Communications Minister (which has the meaning given to that term in the NBN Companies Act) and the Finance Minister (which has the meaning given to that term in section 7 of the Telecommunications Act).

**Site List** means the annexure to a Deal Module which sets out the Target RTC Dates for each Premises the subject of that Deal Module.

**Supply** has the meaning given to that term in the GST Law.

**Tangible Property** means physical property, including real property, but does not include non-physical property such as incorporeal property or intellectual property rights.

**Target RTC Date** means, in respect of a Premises, the date set out in a Site List as extended by clause 4.2(b).

**Tax Invoice** has the meaning given in the GST Law.

**Technical Standard** means any technical standard made by the ACMA under Part 21 of the Telecommunications Act.

**Technology Change** means, in respect of a Deal Module, the change in access technology at the Premises from the Original Technology to the Chosen Technology.

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth).

**Term** has the meaning given in clause 1.1.

**Third Party Access Charge** means any cost incurred or which will be incurred by **nbn** relating to a charge imposed by an End User or a third party on **nbn** accessing any Premises owned, controlled or occupied by an End User for the purpose of performing **nbn** Activities under this Agreement.

**Third Party IPR** has the meaning given in the WBA.

**Upfront Build Charge** means, in respect of a Deal Module, the Upfront Build Charge identified in the Module Particulars.

**Wholesale Broadband Agreement** or **WBA** means the Wholesale Broadband Agreement between the parties in force at the date of this Agreement or any new wholesale broadband agreement between the parties which governs the supply of products and services from **nbn** to the Customer.

## Section F: Form of Proposed Deal Module

(Clause 2.2 of Section A)

# nbn™ Deal Module for nbn™ Technology Extension Contract – Customer

[Date]

[To Customer]

This is a proposed Deal Module issued pursuant to clause 2.2 of the **nbn™** Technology Extension Contract between NBN Co Limited ABN 86 136 533 741 (**nbn**) and [insert Customer] ACN [insert number] (**Customer**) dated [insert date] (**Agreement**).

The particulars of **nbn**'s proposed Deal Module are set out below. Capitalised terms used in this proposed Deal Module have the same meaning as in the Agreement, unless stated otherwise. References to clauses are references to clauses in the Agreement.

### Module Particulars

#### 1. Module No.

#### 2. Customer Details

Contact Person:

Telephone:

Email:

Relationship Point of Contact:

Telephone:

Email:

#### 3. nbn Details

Contact Person:

Telephone:

Email:

Relationship Point of Contact:

Telephone:

Email:

#### 4. Original Technology

#### 5. Chosen Technology

#### 6. Premises

Technology Change Addresses: As set out in Annexure A

#### 7. Upfront Build Charge

**Amount Invoice Trigger Dates**

**Deposit**      [ \$ # ]      #



<b>Instalments</b>	[\$#]	#
	[\$#]	#
<hr/>		
<b>Total (Inc GST)</b>	[\$#]	
<hr/>		

- 8. Invoice Event** *[#Invoice Event dates to be inserted]*
- 9. Deferred Charge** *[#Deferred Charge to be inserted]*
- 10. Module Commencement Date** The date on which this Deal Module is accepted by the Customer.
- 11. Module Expiry Date** *[#Date of Module Expiry Date to be inserted]*
- 12. Deferred Charge Payments** *[#Frequency and amount to be inserted]*
- 13. Transition Out** *[Any transition obligations to be included]*
- 14. Confidentiality** *[Any special confidentiality arrangements that are in addition or which differ from the head terms to be included]*
- 15. Liability Cap** *[Insert any change to the Liability Cap applicable for a Deal Module]*
- 16. Special Conditions** As set out in Annexure B

This proposed Deal Module constitutes a legally binding offer by **nbn** in accordance with the terms of the Agreement. This offer is open for acceptance until 5:00pm on **[insert date]** following which it will expire and be incapable of acceptance by the Customer.

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Signed for **nbn co limited** by its authorised representatives:

---

Signature of authorised representative

---

Signature of authorised representative

---

Name of authorised representative

---

Name of authorised representative

---

Date of signature

---

Date of signature

## Deal Module Acceptance by Customer

By executing below the Customer accepts the terms of the proposed Deal Module dated [**insert date**]

---

Executed by [**insert full name of Customer**] by its authorised representatives:

---

Signature of authorised representative

---

Signature of authorised representative

---

Name of authorised representative

---

Name of authorised representative

---

Date of signature

---

Date of signature

## Annexure A to the Proposed Deal Module

<b>Technology Change Addresses and location identifiers</b>	<b>Original Technology</b>	<b>Chosen Technology</b>	<b>Target RTC Date</b>	<b>Premises Amount</b>
[#insert]	[#insert]	[#insert]	[#insert]	[#insert]

## Annexure B to the Proposed Deal Module

### Special Conditions

[#Insert if applicable]

## Appendix A - nbn™ Technology Extension Contract - Customer

### A1 Downstream Claims against nbn

- (a) If **nbn** notifies Customer of a Downstream Claim, Customer may, within 20 Business Days after such notice, deliver to **nbn** a duly executed, binding and unconditional offer of assignment (in the form set out in Schedule A to the WBA or as otherwise notified by **nbn** to Customer from time to time) of Customer's, Downstream Service Provider's or Contracted End User's rights (as applicable) against the Downstream Claimant(s) under a Model Undertaking (in this clause A1, an **Assignment**).
- (b) For the purposes of clause A1(a), a **Model Undertaking** is an undertaking in a Downstream Contract which is, subject to clause A1(d), binding on the relevant Downstream Claimant in accordance with the following terms, or on such other terms that **nbn** (acting reasonably) agrees in writing are no less effective in protecting **nbn**'s interests:

"X *Notwithstanding anything else in [this agreement]:*

X.1 *to the extent permitted by law and without excluding, restricting or modifying any rights or remedies to which [the relevant Downstream Service Provider / Contracted End User] may be entitled to under the consumer guarantee provisions in Parts 3-2 and 5-4 of the Australian Consumer Law [the relevant Downstream Service Provider / End User] must not bring any claim (including any action, suit or proceedings of any nature or kind, whether in contract, tort (including negligence) at common law, in equity, under statute or otherwise however arising) against NBN Co Limited ACN 136 533 741 (**nbn**), its Related Bodies Corporate or any of their respective Personnel in connection with the design and installation of any infrastructure required for the **nbn** network to be made available to **nbn**'s customers at the premises which are the subject of [this agreement];*

X.2 *clause X.1 does not apply to a claim by [relevant Downstream Service Provider / End User] for loss or damage suffered or incurred by [relevant Downstream Service Provider / End User] arising from or in connection with:*

X.2.1 *any damage to, or loss of, tangible property to the extent that such losses are caused or contributed to by **nbn**, its Related Bodies Corporate or any of their respective Personnel or third party suppliers; or*

X.2.2 *the death or personal injury of any person to the extent caused or contributed to by:*

X2.2.1 *negligent or wilful acts or omissions of **nbn**, its Related Bodies Corporate or any of their respective Personnel or third party suppliers; or*

X2.2.2 *any equipment or network owned, operated or controlled by **nbn**.*

X.3 *The supplier of the products and services which are the subject of this agreement may assign the benefit of this clause X to **nbn** or its nominee without consent or, to the extent that consent is required, [the relevant Downstream Service Provider / End User] hereby gives that consent.*

X.4 *This clause X survives expiry or termination of [this agreement].*

X.5 *In this clause X:*

**Personnel** *means, in relation to a party or third party, that party's officers, employees, agents, contractors, subcontractors and consultants.*

**Related Body Corporate** *has the meaning given to that term in section 50 of the Corporations Act 2001 (Cth)."*

- (c) The Customer must pay to **nbn** on demand an amount equal to all Losses suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, or their respective Personnel (each an **nbn Indemnified Party**) arising from or in connection with any Downstream Claim if:

- (i) **nbn** has given notice to Customer of the Downstream Claim and Customer has not either:
  - A. delivered to **nbn** an Assignment of a Model Undertaking that is, subject to clause A1(d) , binding on the relevant Downstream Claimant in respect of the Downstream Claim in accordance with clauses A1(a)and A1(b); or
  - B. taken any other steps which have the effect of placing **nbn**, any Related Body Corporate of **nbn**, and their respective Personnel in a position in respect of such Losses that is no worse than the position they would have been in had Customer delivered to **nbn** a binding Assignment in accordance with this clause A1; and
- (ii) Customer could lawfully have excluded or limited such Losses in its arrangements with Downstream Service Providers, Contracted End Users or third parties.
- (d) An undertaking does not cease to be a Model Undertaking for the purposes of this clause A1 solely by reason of it not being binding on the relevant Downstream Claimant by operation of Part 2-3 of the Australian Consumer Law.
- (e) If Customer has delivered to **nbn** an Assignment pursuant to clause A1(a)or has otherwise excluded or limited Losses suffered or incurred by **nbn** in accordance with clause A124(c)(i)B, Customer must:
  - (i) promptly provide, and, where applicable, ensure that any Downstream Service Provider or Contracted End User other than the Downstream Claimant promptly provides, all assistance reasonably requested by **nbn** in responding to and conducting the defence of a Downstream Claim to ensure that **nbn** obtains the full benefit of the Assignment or such other exclusion or limitation of liability (as applicable) (and **nbn** will pay the reasonable costs of such assistance); and
  - (ii) not do anything, and, where applicable, ensure that any Downstream Service Provider or Contracted End User other than the Downstream Claimant does not do anything, including during the course of any defence, settlement or compromise of a Claim which is related to a Downstream Claim, which prejudices **nbn**'s ability to obtain the full benefit of the Assignment or such other exclusion or limitation of liability (as applicable).
- (f) The Customer must pay to **nbn** on demand an amount equal to all Losses suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, or their respective Personnel arising from or in connection with any Claim (including any Downstream Claim) by a third party against **nbn** to the extent that the Claim arises from or in connection with any:
  - (i) breach of this Agreement by Customer; or
  - (ii) negligent act or omission of Customer, its Related Bodies Corporate, any of their respective Personnel or third party suppliers arising directly from or in connection with this Agreement, including the supply of any Customer Product by Customer to any Downstream Service Provider or Contracted End User.
- (g) Clause A1(c)and clause A1(f) do not apply to any Claim (including a Downstream Claim) arising from or in connection with:
  - (i) the death or personal injury of any person;
  - (ii) damage to, or loss of any Tangible Property,
  - (iii) to the extent caused or contributed by:
  - (iv) the negligent or wilful acts or omissions of any **nbn** Indemnified Party; or
  - (v) any network or equipment owned or controlled by **nbn**.
- (h) The liability exclusions in clause 9(a) of this Agreement do not apply to any liability of the Customer arising under clause A1(c) or clause A1(f).