

Head Terms

Wholesale Broadband Agreement



This document forms part of NBN Co's Wholesale Broadband Agreement, which is a Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act 2010 and constitutes nbn's Latest Standard Offer.

Head Terms

Wholesale Broadband Agreement

Version	Description	Effective Date
4.0	First issued version of WBA 4	1 December 2020

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Environment

nbn asks that you consider the environment before printing this document.

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Module A Product Supply

A1 Ordering Products

A1.1 Ordering process

- (a) RSP may place an order for a Product by completing and submitting the Product Order Form for that Product through the **nbn**[™] Platform or in accordance with such other processes as specified in the [WBA Operations Manual](#).
- (b) Submission by RSP to **nbn** of a completed Product Order Form for a Product constitutes an offer from RSP to acquire the Product that is capable of acceptance by **nbn**.

A2 Supply of Ordered Products

A2.1 **nbn**'s obligation to supply

- (a) **nbn** may accept or reject any Product Order Form in accordance with the [WBA Operations Manual](#).
- (b) If **nbn** accepts a Product Order Form in accordance with the [WBA Operations Manual](#), then **nbn** will supply the relevant Ordered Product to RSP in accordance with the terms of this Agreement.

A2.2 Pre-conditions to **nbn** supply

- (a) RSP warrants to **nbn** that throughout the period in which **nbn** supplies an Ordered Product to RSP:
 - (i) RSP is and will remain a Carrier, Carriage Service Provider or Content Service Provider; and
 - (ii) RSP complies and will continue to comply with the [Credit Policy](#) including providing a Financial Security where required under the [Credit Policy](#),(the **Supply Conditions** in respect of that Ordered Product).
- (b) **nbn** is not obliged to supply or continue to supply any Product to RSP unless RSP complies with the Supply Conditions.
- (c) RSP must notify **nbn** within 2 Business Days after the time RSP no longer fully complies with any of the Supply Conditions.

Module B Financial Management

B1 Charges

B1.1 Charges

The Charges that apply in respect of this Agreement are set out in the Price Lists.

B1.2 Commencement of recurring Charges

For each Ordered Product, the recurring Charges commence from the Ready for Use Date (whether or not RSP has used the Ordered Product by that date).

B1.3 Cessation of recurring Charges

For each Ordered Product, the recurring Charges apply until the Effective Disconnection Date (if any).

B1.4 Adjustment of Charges

- (a) If **nbn** supplies an Ordered Product for part of a Billing Period, **nbn** will ensure that the recurring Charges for, or any Credit, Rebate, Discount or Waiver applicable to, that Ordered Product are adjusted on a pro rata daily basis in the invoice for the relevant Billing Period (or, where such recurring Charges or any Credit, Rebate, Discount or Waiver have been paid in advance, adjusted on a pro rata daily basis in the invoice for the next Billing Period) to reflect the period of supply of the relevant Ordered Product.
- (b) If **nbn** accepts, or it is determined through the resolution of a Billing Dispute or Dispute, that RSP has paid Charges to **nbn** which should not have been paid, then **nbn** will ensure that the Charges for those goods or services are credited to RSP on a pro rata daily basis in the invoice for the Billing Period after that acceptance or resolution.

B1.5 Charges are exclusive of GST

- (a) The Charges and other amounts payable under this Agreement (in this clause B1.5, the **consideration**) are exclusive of GST (unless expressly stated otherwise).
- (b) If GST is or becomes payable on a Supply made in connection with this Agreement, the party providing consideration for the Supply (in this clause B1.5, the **recipient**) is responsible for paying an additional amount (in this clause B1.5, the **additional amount**) to the party making that Supply (in this clause B1.5, 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 B1.5, 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.

B2 Invoices

B2.1 Issuing of invoices

nbn will issue RSP with an invoice for amounts payable by RSP under this Agreement in respect of each Billing Period in accordance with the processes set out in the [WBA Operations Manual](#).

B2.2 Billing Period Options

- (a) RSP may select the date of the month on which RSP's Billing Period will commence from among the dates notified to RSP by **nbn** from time to time in accordance with the [WBA Operations Manual](#) (the **Billing Period Options**).
- (b) If RSP fails to select a date, **nbn** will nominate a date on which RSP's Billing Period will commence from one of the then-current Billing Period Options.

B2.3 Contents of invoices

- (a) After the start of each Billing Period (in this clause B2.3, the "**Relevant Billing Period**"), **nbn** will invoice RSP for:
 - (i) any recurring Charges that will be incurred by RSP during the Relevant Billing Period; plus
 - (ii) any recurring Charges that were incurred by RSP during a Billing Period prior to the Relevant Billing Period (in this clause B2.3, a "**Prior Billing Period**") that were not invoiced by **nbn** in respect of that prior Billing Period; plus
 - (iii) any non-recurring Charges that were incurred by RSP during:
 - (A) the Billing Period prior to the Relevant Billing Period; or
 - (B) any other Prior Billing Period that were not invoiced by **nbn** in respect of that other Prior Billing Period; plus
 - (iv) any amounts payable by RSP under clause B2.5; plus
 - (v) any other amounts (such as interest) payable by RSP under this Agreement that were incurred by RSP during a Prior Billing Period; less
 - (vi) any deductions for Commercial Rebates, CSG Compensation or other Discounts, Credits, Rebates or Waivers specified in this Agreement due during a Prior Billing Period; less
 - (vii) any pro rata adjustments required in accordance with clause B1.4.
- (b) **nbn** will use reasonable endeavours to issue the invoice for each Billing Period within 10 calendar days after the start of the Billing Period.
- (c) The amounts payable by RSP under this Agreement that are set out in each invoice will be calculated by reference to data recorded by or on behalf of **nbn**. Such data is deemed to be accurate evidence of RSP's obligation to pay such amounts, unless that data is found to be inaccurate in the determination of a Dispute or Billing Dispute.
- (d) Where it is not possible for RSP to on-bill the amount of a Charge to a Downstream Service Provider or Contracted End User until it receives an invoice from **nbn**, then **nbn** may not invoice RSP for that Charge more than 95 calendar days after the date that the relevant work was performed.
- (e) **nbn** will use reasonable endeavours to ensure that an invoice is issued in respect of a Charge incurred by RSP within 95 calendar days after the Charge being incurred.

B2.4 Requirements for invoices

nbn will ensure that each invoice:

- (a) sets out the amounts payable by RSP in Australian dollars;
- (b) contains sufficient information to reasonably enable RSP to identify the Ordered Product (if any) to which the Charges and other amounts relate; and
- (c) complies with all of the requirements of a Tax Invoice under the GST Law.

B2.5 Omitted, miscalculated or wrongly paid or credited amounts

- (a) **nbn** may only issue an additional invoice to RSP, adjust a later invoice submitted to RSP or issue a credit to RSP to:
 - (i) recover or refund an amount paid or payable under this Agreement (including any Discount, Credit, Rebate, Waiver, or CSG Compensation or other amount due from **nbn** under this Agreement) that has been omitted or miscalculated in an invoice; or
 - (ii) recover a Discount, Credit, Rebate, Waiver, CSG Compensation or other payment paid or credited by **nbn** that **nbn** subsequently determines, acting reasonably, RSP was not entitled to,if **nbn** does so no later than 6 months after the date of the original invoice.
- (b) **nbn**'s right to recover amounts under clause B2.5(a)(i) is also subject to the time limitation in clause B2.3(d) (as applicable). Clause B2.3(d) does not apply in respect of **nbn**'s right to recover amounts under clause B2.5(a)(ii).

B2.6 Deductions for Discounts, Credits, Rebates and Waivers

If the total value of any Discounts, Credits, Rebates and Waivers due to RSP in respect of a Billing Period exceeds the amount payable in the invoice issued by **nbn** for that Billing Period, **nbn** will deduct the excess from the amounts due in any subsequent invoices until the total value of those Discounts, Credits, Rebates or Waivers has been provided to RSP.

B3 Payment

B3.1 RSP to pay invoices

- (a) Subject to clause B3.1(b)(i), RSP must pay **nbn** the full amount set out in each invoice on the later of the due date specified in the invoice and the date that is 30 calendar days after the date the invoice was issued (**Due Date**).
- (b) Subject to clause B5.11, if RSP raises a Billing Dispute prior to the Due Date in accordance with the relevant processes set out in clause B5, then:
 - (i) RSP may withhold payment of the disputed amount identified in the Billing Dispute Form until that Billing Dispute is resolved; and
 - (ii) RSP must pay the undisputed amount set out in the invoice by the Due Date.
- (c) RSP must not withhold payment under clause B3.1(b)(i) where a Billing Dispute relates to the amount of:
 - (i) any Discounts, Credits, Rebates or Waivers to be deducted from the amount payable in an invoice; or
 - (ii) any amounts payable under clause B2.5.

- (d) Each payment of an invoice by RSP must be:
- (i) paid by electronic funds transfer directly to **nbn**'s nominated bank account or by such other means agreed between the parties;
 - (ii) paid without any set-off, counter-claim, withholding (except under clause B3.1(b)(i)) or deduction including on account of any non-payment of amounts owed to RSP by **nbn** or any third party; and
 - (iii) accompanied by sufficient information for **nbn** to identify, process and properly allocate those invoice payments (in this clause B3, a **remittance advice**).

B3.2 Receipt of invoice payments

- (a) Each invoice payment made by RSP will be treated as being received by **nbn** when:
- (i) that payment is credited to **nbn**'s nominated bank account; and
 - (ii) in the case of a payment that is part payment of an invoice, **nbn** receives a remittance advice from RSP in accordance with the [WBA Operations Manual](#) that specifies the invoice or invoices in respect of which the part payment has been made.
- (b) If an invoice payment made by RSP 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.

B3.3 RSP to notify **nbn** if RSP cannot pay invoice

RSP must immediately notify **nbn** in writing if RSP anticipates that it will not be able to pay **nbn** any undisputed amount set out in an invoice on or before the Due Date.

B4 Non-payment

B4.1 Consequences of non-payment

- (a) If RSP does not pay the full amount set out in an invoice by the Due Date and that amount remains unpaid for 15 calendar days, RSP will be in Material Default.
- (b) Without limiting clause B4.1(a), if in any rolling 6 month period, 50 per cent or more of invoices issued by **nbn** to RSP are not paid in full by the relevant Due Dates (without the written consent of **nbn**):
- (i) **nbn** may give notice in writing to RSP of this event; and
 - (ii) from the date of that notice until such time as all invoices issued to RSP are paid in full, RSP will be in Material Default.
- (c) In determining whether the full amount set out in an invoice has been paid in full, any amounts validly withheld pursuant to clause B3.1(b)(i) are to be excluded.
- (d) Any undisputed amount set out in an invoice that is not paid in full by the Due Date, or any disputed amount withheld in accordance with clause B3.1(b)(i) agreed or determined to be due and payable, will be an **Overdue Amount** with effect from (but excluding) the Due Date.
- (e) Each of **nbn**'s rights under this clause B4 are in addition to, and do not exclude or limit, its other rights or remedies under this clause B4, this Agreement or at law.
- (f) Any exercise of **nbn**'s rights under this clause B4 will not waive or prevent the exercise of **nbn**'s other rights or remedies under this clause B4, this Agreement or at law.

B4.2 Interest on Overdue Amounts

RSP must, if required by **nbn**, pay **nbn** interest on any Overdue Amount 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.

B4.3 Enforcement of Financial Security

nbn may 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](#).

B4.4 Review of Financial Security requirement

If any amount due under this Agreement becomes an Overdue Amount, **nbn** may review and assess the credit risk posed by RSP and require RSP to provide, or adjust the amount of, a Financial Security in accordance with the [Credit Policy](#).

B4.5 Recovering Overdue Amounts as a debt

nbn may recover any Overdue Amount as a debt due and payable immediately to **nbn** and may, in accordance with [Module D \(Information & Rights Management\)](#), notify and exchange information regarding RSP with **nbn**'s debt collection and credit reporting agencies concerning Overdue Amounts.

B5 Billing Enquiries and Billing Disputes

B5.1 Billing Enquiries

RSP may make a Billing Enquiry in accordance with the processes and requirements set out in the [WBA Operations Manual](#).

B5.2 Billing Disputes

A **Billing Dispute** is a dispute between the parties which arises because RSP, acting reasonably, considers there is an error in:

- (a) the amount of an invoice payable by RSP under this Agreement; or
- (b) the amount of any Discount, Credit, Rebate or Waiver provided by **nbn** under this Agreement.

B5.3 Raising Billing Disputes

- (a) RSP may, acting reasonably, raise a Billing Dispute by submitting a Billing Dispute Form in accordance with the [WBA Operations Manual](#) within 6 months after the date of the invoice to which the Billing Dispute relates.
- (b) **nbn** will acknowledge receipt of a Billing Dispute Form, and will endeavour to do so within 2 Business Days after receipt, by contacting RSP's Authorised Contact or the person specified as RSP's nominated contact person in the Billing Dispute Form (as applicable).

B5.4 Proposed resolution of a Billing Dispute

- (a) **nbn** will give to RSP a Billing Dispute Resolution Notice within 30 Business Days after receiving a Billing Dispute Form from RSP, or such longer period as may be agreed between the parties.
- (b) RSP must, within 30 Business Days after receiving a Billing Dispute Resolution Notice:
 - (i) accept that Billing Dispute Resolution Notice; or
 - (ii) reject that Billing Dispute Resolution Notice and escalate the Billing Dispute under clause B5.5.

B5.5 Escalation to **nbn** Billing Escalation Contact

- (a) RSP may escalate a Billing Dispute to the **nbn**TM Billing Escalation Contact where:
 - (i) **nbn** has not provided a Billing Dispute Resolution Notice to RSP within the timeframe specified in clause B5.4(a); or
 - (ii) RSP has rejected a Billing Dispute Resolution Notice in accordance with clause B5.4(b), by giving a Billing Dispute Escalation Notice to the **nbn**TM Billing Escalation Contact.
- (b) The **nbn**TM Billing Escalation Contact will work with RSP to attempt to resolve the Billing Dispute within 5 Business Days after receiving a Billing Dispute Escalation Notice.

B5.6 Escalation to Relationship Points of Contact

- (a) If a Billing Dispute is not resolved under clause B5.5 within the timeframe specified, either party may further escalate a Billing Dispute by having its Relationship Point of Contact give a copy of the Billing Dispute Escalation Notice to the other party's Relationship Point of Contact.
- (b) The parties' respective Relationship Points of Contact will attempt to resolve the Billing Dispute within 5 Business Days after a party's Relationship Point of Contact receiving a copy of the Billing Dispute Escalation Notice.

B5.7 Escalation to a Billing Expert

- (a) Either party may escalate an unresolved Billing Dispute for determination by a Billing Expert by giving notice to the other party within 15 Business Days after the conclusion of the timeframe in clause B5.5(b).
- (b) The parties must use reasonable endeavours to agree upon a Billing Expert within 10 Business Days after a party receiving notice under clause B5.7(a).
- (c) If the parties cannot agree on a Billing Expert under clause B5.7(b) 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.
- (d) If none of the firms specified in clause B5.7(c) can provide a Billing Expert, the Chair of the Resolution Institute (or their nominee) may appoint a different Billing Expert.

B5.8 Determination by a Billing Expert

- (a) Expert determination of a Billing Dispute must be conducted in accordance with, and each party must comply with, clauses G3.3 to G3.5 and G11.4, except that:
 - (i) references to "Dispute" will be read as "Billing Dispute" and "expert" as "Billing Expert"; and
 - (ii) any reference in clause G3.5 to the Resolution Advisor shall be ignored and clause G3.5(c)(ii) will not apply.
- (b) Each party must provide any information and/or assistance as may be reasonably required by the Billing Expert to determine a Billing Dispute.

- (c) Neither **nbn** nor RSP may commence any court proceedings in relation to a Billing Dispute, except where:
- (i) an Insolvency Event affects, or is reasonably likely to affect imminently, either **nbn** or RSP, and the other party reasonably considers it necessary to commence court proceedings in relation to that Billing Dispute to preserve its position with respect to creditors of the affected party;
 - (ii) **nbn** or RSP is seeking to enforce unpaid debts comprising undisputed amounts or any disputed amount withheld in accordance with clause B3.1(b)(i) agreed or determined to be due and payable; or
 - (iii) **nbn** or RSP is seeking urgent interlocutory relief.

B5.9 Resolution of Billing Disputes

- (a) Each party must use reasonable endeavours to resolve Billing Disputes as promptly and efficiently as possible.
- (b) Subject to RSP's right to withhold payment of a disputed amount in accordance with clause B3.1(b), each party must continue to perform all its obligations under this Agreement despite the existence of a Billing Dispute.
- (c) RSP will be deemed to have accepted a Billing Dispute Resolution Notice and the Billing Dispute shall be finally resolved if:
 - (i) RSP fails to respond to a Billing Dispute Resolution Notice in the timeframe specified in clause B5.4(b); or
 - (ii) a party escalates a Billing Dispute under clauses B5.5 or B5.6 and, unless otherwise agreed between the parties, that Billing Dispute is not resolved or escalated to a Billing Expert within 45 Business Days after the date of the Billing Dispute Escalation Notice.

B5.10 Settling Billing Disputes

- (a) If a Billing Dispute is resolved and it is agreed or determined that:
 - (i) RSP overpaid **nbn** in respect of the relevant invoice, then **nbn** will, within 20 Business Days after that resolution, credit the overpaid amount to RSP, together with interest on that overpaid amount (applied for each day from (but excluding) the day on which that overpaid amount was paid until (and including) the date that the overpaid amount is credited to RSP); or
 - (ii) RSP has underpaid **nbn** in respect of the relevant invoice, then RSP will, within 20 Business Days after that resolution, pay that underpaid amount to **nbn**, together with interest on that underpaid amount (applied for each day from (but excluding) the relevant Due Date until (and including) the date that the underpaid amount is paid to **nbn**).
- (b) The rate of interest on any overpaid or underpaid amount will be equal to the aggregate of the 90 Day Bank Bill Swap Rate plus 2.5 per cent.

B5.11 Unreasonable use of the Billing Dispute process

- (a) If **nbn** considers, acting reasonably, that RSP has raised, or is raising, Billing Disputes unreasonably or in bad faith, then **nbn**'s Relationship Point of Contact will consult with RSP's Relationship Point of Contact regarding **nbn**'s concerns with a view to resolving those concerns.
- (b) Subject to **nbn** having complied with clause B5.11(a), if:

- (i) RSP raises 4 or more Billing Disputes in any rolling 12 month period; and
- (ii) it is resolved that there was no error in respect of 75 per cent or more of the total of the Charges and other amounts which were the subject of those Billing Disputes,

nbn may suspend RSP's rights under clause B3.1(b)(i) to withhold payment of disputed amounts for a period of 6 months.

- (c) If **nbn** exercises its rights under clause B5.11(b), RSP may continue to raise Billing Disputes under clause B5.3.

B6 Discounts, Credits, Rebates and Waivers

- (a) Charges in the Price Lists are subject to any applicable Discounts, Credits, Rebates and Waivers made available by **nbn** in accordance with this clause B6.
- (b) **nbn** may make available, and give, a Discount, Credit, Rebate or Waiver to RSP in accordance with any relevant terms and conditions in this Agreement, including as to:
 - (i) the processes that RSP must follow to claim the Discount, Credit, Rebate or Waiver; and
 - (ii) the period within which RSP must submit a claim for the Discount, Credit, Rebate or Waiver.
- (c) If **nbn** requires RSP to submit a claim to obtain a Discount, Credit, Rebate or Waiver (other than for CSG Compensation), RSP must ensure that:
 - (i) RSP's Authorised Contact completes a Credit/Rebate Claim Form and either:
 - (A) sends it to the **nbn**TM Billing Contact, using the email address specified in the Contact Matrix; or
 - (B) submits it via the **nbn**TM RSP Centre; and
 - (ii) the Credit/Rebate Claim Form is sent or submitted (as applicable):
 - (A) within such period as may be specified in the terms of the relevant Discount, Credit, Rebate or Waiver; or
 - (B) if the terms of the relevant Discount, Credit, Rebate or Waiver do not specify such a period, within 6 months from the last day of the month in which the entitlement to claim the Discount, Credit, Rebate or Waiver arises.
- (d) **nbn** is not obliged to pay any Discount, Credit, Rebate or Waiver to RSP unless RSP complies with all terms and conditions relating to that Discount, Credit, Rebate or Waiver, including as set out in clause B6(c).
- (e) Unless specified otherwise in this Agreement, each Discount, Credit, Rebate or Waiver will cease to apply on the Expiry Date.

Module C Operational Management

C1 On-boarding

- (a) As a pre-condition to **nbn** supplying any Product to RSP and as reasonably required by **nbn** from time to time, RSP must participate in and successfully complete all of the On-boarding.
 - (b) The Charges applicable to the On-boarding, if any, are set out in the Price Lists.
-

C2 National Test Facility

C2.1 Use of the National Test Facility

- (a) RSP may use the National Test Facility to perform the activities for which use of the National Test Facility is required to complete On-boarding and for no other purpose (including any product development purpose), unless specifically authorised by **nbn**.
- (b) RSP may only use the National Test Facility in accordance with the usage timetable and conditions that may reasonably be determined by **nbn** and notified to RSP from time to time.

C2.2 Suspension of use of the National Test Facility

- (a) **nbn** may suspend RSP's use of the National Test Facility if **nbn** reasonably considers that RSP has materially breached any term regarding RSP's use of the National Test Facility. Prior to suspending RSP's use of the National Test Facility, **nbn** will, where reasonably practicable, discuss the circumstances regarding RSP's material breach with RSP.
 - (b) If RSP remedies the breach, RSP may reapply for any further use of the National Test Facility and, where the breach has been remedied to **nbn**'s reasonable satisfaction, **nbn** must lift the suspension as soon as practicable.
-

C3 Use of **nbn**TM Network and Ordered Products

C3.1 Lawful use

- (a) **nbn** must ensure that any use by **nbn** and its Personnel of the **nbn**TM Infrastructure and supply by **nbn** of any Ordered Product is lawful and is in accordance with this Agreement.
- (b) RSP must ensure that any use by RSP (and its Personnel), or any of its Related Bodies Corporate (and their Personnel), of the **nbn**TM Infrastructure and any Ordered Product is lawful and is in accordance with this Agreement.

C3.2 No prejudice to rights of Other RSPs

When exercising its rights or performing its obligations under this Agreement, RSP must not knowingly materially prejudice the ability of any Other RSP to exercise its rights under the Other Wholesale Broadband Agreement between **nbn** and that Other RSP.

C3.3 Unsupported Attributes

RSP:

- (a) acknowledges that the operation of, and changes to, Unsupported Attributes of the **nbn**TM Network may be outside of **nbn**'s reasonable control;
- (b) acknowledges that **nbn** makes no representation regarding the continued accuracy of the description or values of Unsupported Attributes after the date on which **nbn** includes such descriptions or values in the Network Interface Specifications; and

- (c) must not rely on:
 - (i) the description or values of Unsupported Attributes in any Network Interface Specifications; or
 - (ii) any Unsupported Attribute of the **nbn**TM Network in connection with RSP's:
 - (A) use of any Ordered Product; or
 - (B) use of or connection to any **nbn**TM Infrastructure.

C4 Network protection and safety

C4.1 Operation of networks, systems, equipment and facilities

- (a) Each party is responsible for the safe operation of its network, systems, equipment and facilities.
- (b) Each party must not, and must ensure that:
 - (i) acts or omissions of its Personnel, and each of its Related Bodies Corporate (and their Personnel) do not;
 - (ii) its networks, systems, equipment and facilities and those of its Personnel and its Related Bodies Corporate (and their Personnel) do not; and
 - (iii) in the case of RSP, any RSP Equipment does not,give rise to an Adverse Network Impact in the carrying out of any activities or the exercise of rights or the performance of obligations under this Agreement.
- (c) Any deterioration of the performance of the **nbn**TM Infrastructure arising out of the use by RSP, Downstream Service Provider or Contracted End User of the **nbn**TM Infrastructure in accordance with, or as contemplated by, this Agreement will not amount to a breach of this clause C4.1.

C4.2 Compliance with instructions, policies and procedures

- (a) RSP must comply with any policies, procedures or reasonable instructions given by **nbn** to RSP or any of its Personnel that relate to:
 - (i) protecting the integrity of the **nbn**TM Infrastructure;
 - (ii) protecting the integrity of any Other RSP's network, systems, equipment or facilities used in connection with the **nbn**TM Network or at the National Test Facility;
 - (iii) ensuring the quality of any product or service supplied by **nbn** to RSP or any Other RSP; or
 - (iv) protecting the health or safety of any person.
- (b) **nbn** will provide RSP with reasonable prior notice of a policy, procedure or instruction issued under clause C4.2(a) where feasible in the circumstances.

C4.3 Authorisations to Alter

- (a) RSP must, and must ensure that its Related Bodies Corporate, and their respective Personnel, only move, remove or alter any part of the **nbn**TM Network in accordance with:
 - (i) this Agreement;
 - (ii) the terms of an applicable Authorisation to Alter Document; and

- (iii) any other reasonable directions of **nbn**.
- (b) If there is any inconsistency between any of the different terms referred to in clause C4.3(a), that inconsistency will be resolved by giving precedence to them in the order set out in C4.3(a).

C5 Network compatibility, connections and capabilities

C5.1 Compatibility

- (a) **nbn** will notify RSP of the compatibility requirements for the **nbn**TM Infrastructure during On-boarding.
- (b) RSP must, to the extent any of the following may affect the **nbn**TM Infrastructure, ensure that the RSP Network, RSP Platform and any other RSP networks, systems, equipment or facilities used in connection with the **nbn**TM Network are Compatible.

C5.2 Connections to the **nbn**TM Network

RSP must ensure that any connection made and maintained by or on behalf of RSP from the RSP Network to the **nbn**TM Network or the National Test Facility is made and maintained in accordance with this Agreement and all applicable laws.

C5.3 Disconnections from the **nbn**TM Network

- (a) RSP must immediately, upon becoming aware of an occurrence described in this clause C5.3(a), disconnect or deactivate:
 - (i) any RSP Equipment that is damaging, interfering with, or degrading or causing the deterioration of the operation or performance of the **nbn**TM Infrastructure or the supply of products or services by **nbn** to RSP or any Other RSP (including in breach of any Business Rules applicable to the supply of a Product);
 - (ii) any RSP Equipment that is not Compatible with the **nbn**TM Infrastructure or which must be disconnected or deactivated for **nbn** to comply with the terms of supply to **nbn** by a Third Party Supplier; and
 - (iii) any connections referred to in clause C5.2 that are not made and maintained in accordance with this Agreement and all applicable laws.
- (b) The RSP Disconnection Obligations in clause C5.3(a) do not apply where any deterioration of the performance of the **nbn**TM Infrastructure arises out of the use by RSP, any Downstream Service Provider or any Contracted End User of the **nbn**TM Infrastructure in accordance with, or as contemplated by, this Agreement.

C5.4 Back-up and redundancy

Except where **nbn** has agreed to supply redundancy or similar features as part of an Ordered Product, a party may, but is not obliged to, implement or operate any systems and processes that may be necessary or desirable to support the continuity of the operation of its network, systems, equipment and facilities.

C6 RSP Equipment

RSP must ensure that RSP Equipment has all necessary regulatory approvals, the uses to which RSP Equipment is put are not prohibited by any Regulator and comply with this Agreement and all applicable laws, and RSP Equipment is maintained in good repair and working condition.

C7 nbn™ Equipment

C7.1 nbn's obligations in respect of nbn™ Equipment

nbn must ensure that the **nbn™** Equipment has all necessary regulatory approvals, the uses to which the **nbn™** Equipment is put are not prohibited by any Regulator and comply with this Agreement and all applicable laws, and the **nbn™** Equipment is maintained in good repair and working condition.

C7.2 RSP's obligations in respect of nbn™ Equipment

- (a) RSP must comply, and ensure its Personnel comply with the terms of use of any **nbn™** Equipment notified by **nbn** to RSP from time to time.
- (b) **nbn** will provide RSP with at least 30 Business Days' notice of any terms of use issued under clause C7.2(a) where practicable in the circumstances.
- (c) RSP will notify **nbn** of any **nbn™** Equipment which RSP is aware, or ought reasonably to be aware, requires removal upon disconnection of that **nbn™** Equipment.

C7.3 Lost, stolen or damaged nbn™ Equipment

- (a) **nbn** may, in its discretion, replace or repair any lost, stolen or damaged **nbn™** Equipment at **nbn**'s cost.
- (b) If an act or omission of RSP (or any Downstream Service Provider or any End User) causes or contributes to the loss or theft of, or damage to, any **nbn™** Equipment, then RSP must pay to **nbn** the proportion of Losses incurred by **nbn** in replacing or repairing the **nbn™** Equipment to the extent to which RSP (or any Downstream Service Provider or any End User) has caused or contributed to that loss, theft or damage less the amount of any Charges for Equipment Repair that may be incurred by RSP in respect of that loss, theft or damage.

C8 Downstream parties

- (a) To the extent that clauses C3.1 and C4 to C7 impose an obligation on RSP, RSP must use reasonable endeavours to ensure that Downstream Service Providers, End Users, and their respective Personnel comply with the obligation as if it were an obligation imposed on Downstream Service Providers, End Users, and their respective Personnel.
- (b) For the purpose of clause C8(a), any reference in clauses C3.1 and C4 to C7 to:
 - (i) "RSP Network", "RSP Equipment" or "RSP's network, systems, equipment and facilities and those of its Personnel and its Related Bodies Corporate (and their Personnel)", will be read as a reference to:
 - (A) "the network, systems, equipment and facilities of each Downstream Service Provider and those of its Personnel and its Related Bodies Corporate (and their Personnel)"; and
 - (B) "the network, systems, equipment and facilities of each End User and those of its Personnel and its Related Bodies Corporate (and their Personnel)",as applicable; and
 - (ii) "Ordered Products" will be read as a reference to "RSP Products or Downstream Products".

C9 Property rights and beneficial interest

Except for any rights expressly granted under this Agreement, RSP (or any Downstream Service Provider or any End User) does not obtain any right, title or interest (whether legal, equitable or

statutory) in any part of the **nbn**[™] Infrastructure, **nbn**[™] Equipment or other platforms, software and systems supplied, made available by **nbn** to RSP or used by **nbn** to supply Products under or in accordance with this Agreement.

C10 Removals and disconnections

If RSP fails to comply with an RSP Disconnection Obligation or **nbn** has a Disconnection Right then:

- (a) **nbn** will, where it is reasonably practicable to do so, notify RSP of the date on which it intends to disconnect and/or remove that RSP Equipment, **nbn**[™] Equipment or other items or connections;
- (b) **nbn** (or any of its Personnel) may disconnect and/or remove that RSP Equipment, **nbn**[™] Equipment or other items or connections, but must act reasonably in undertaking any removal activity; and
- (c) RSP consents to and approves of **nbn** (or its Personnel, as the case may be) disconnecting and/or removing that RSP Equipment, **nbn**[™] Equipment or other items or connections.

C11 Access to premises

- (a) Where access is required by **nbn** or its Personnel for a purpose described in clause C11(b), RSP must:
 - (i) provide **nbn** and its Personnel with safe and timely access to any premises owned, controlled or occupied by RSP or any of its Related Bodies Corporate; and
 - (ii) ensure that **nbn** and its Personnel are provided with safe and timely access to the premises of Downstream Service Providers and End Users for so long as:
 - (A) the relevant premises are owned, controlled or occupied by Downstream Service Providers, End Users, or any of their Related Bodies Corporate; and
 - (B) those persons have a contract for the supply of an RSP Product or Downstream Product.
- (b) The purposes for which access is required under clause C11(a) are to:
 - (i) supply any Ordered Product;
 - (ii) perform any work required in relation to the supply of any Ordered Product, including to install, maintain, upgrade, repair, reinstate or remove:
 - (A) all or part of the **nbn**[™] Network or any other item that is licensed, owned or controlled by **nbn** that is or will be located at a premises; and
 - (B) where lawful, any third party network; or
 - (iii) 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) RSP must notify **nbn** as promptly as feasible in the circumstances where RSP 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 C11.

C12 Visiting sites and premises

- (a) RSP must ensure that any Personnel of RSP visiting any premises or facilities owned, controlled, operated or used by **nbn**:
 - (i) comply with any policies that are notified by **nbn** to RSP from time to time (provided that as much notice as is feasible in the circumstances is given by **nbn** to RSP), any reasonable directions that may be given by **nbn** to RSP from time to time and all OH&S Laws; and
 - (ii) do not at any time cause **nbn** to be in contravention of an OH&S Law.
- (b) **nbn** must ensure that any Personnel of **nbn** visiting any premises owned, controlled or operated or used by RSP, Downstream Service Provider or End User:
 - (i) comply with any policies that are notified by RSP, Downstream Service Provider or End User (as applicable) to **nbn** from time to time (provided that as much notice as is feasible in the circumstances is given to **nbn** by RSP, Downstream Service Provider or End User), any reasonable directions that may be given by RSP, Downstream Service Provider or End User (as applicable) to **nbn** from time to time, and all OH&S Laws; and
 - (ii) do not at any time cause RSP to be in contravention of an OH&S Law.

C13 Upgrades

C13.1 Major Upgrades

- (a) If **nbn** wishes to implement a Major Upgrade that affects the **nbn**TM Network (other than in respect of the Sandpit or the **nbn**TM Platform Interfacing Service), **nbn** must provide to RSP:
 - (i) a notice informing RSP of **nbn**'s intention to implement the Major Upgrade and identifying each Supported Attribute that **nbn** expects will be affected by that Major Upgrade, at least 8 months before implementing that Major Upgrade; and
 - (ii) the following information as promptly as feasible in the circumstances after the finalisation of **nbn**'s planning for that Major Upgrade, and in any event at least 6 months before implementing that Major Upgrade:
 - (A) a Major Upgrade Plan; and
 - (B) relevant Network Interface Specifications with updated descriptions of each affected Supported Attribute.
- (b) Following the supply of a Major Upgrade Plan and each relevant Network Interface Specification to RSP, **nbn** will:
 - (i) consult reasonably with RSP in relation to the Major Upgrade, the Major Upgrade Plan and each relevant Network Interface Specification, either directly or through a multi-party forum that may be established by **nbn** for this purpose; and
 - (ii) reasonably consider any feedback received from RSP, including with regard to the timing of the Major Upgrade, RSP's capability to adapt to the Major Upgrade and the costs that will be incurred by RSP in connection with the Major Upgrade. If any change to the Major Upgrade is requested in writing by RSP and **nbn** does not implement the change, **nbn** will provide a written explanation of the basis for **nbn**'s decision.
- (c) **nbn** must use reasonable endeavours to ensure that, at the time of notification, its Major Upgrade Plan and each relevant Network Interface Specification is accurate. If prior to the completion of the Major Upgrade **nbn** determines that a Major Upgrade Plan or relevant

Network Interface Specification is not accurate, it will notify RSP and provide a rectified Major Upgrade Plan (including any updated timeframe for implementation, where applicable) and Network Interface Specification (as applicable). However, any such inaccuracy will not prevent **nbn** from undertaking or completing the relevant Major Upgrade.

- (d) If **nbn** wishes to change, or rectify an inaccuracy in, a Major Upgrade Plan or relevant Network Interface Specification, **nbn** must:
- (i) as promptly as feasible in the circumstances, provide a copy of that changed or rectified Major Upgrade Plan or Network Interface Specification to RSP;
 - (ii) consult reasonably with RSP in relation to that changed or rectified Major Upgrade Plan or Network Interface Specification, either directly or through a multi-party forum that may be established by **nbn** for this purpose; and
 - (iii) reasonably consider any feedback received from RSP with regard to the changes or rectification. If any change to the Major Upgrade Plan or Network Interface Specification is requested in writing by RSP and **nbn** does not implement the change, **nbn** will use reasonable endeavours to provide a written explanation of the basis for **nbn**'s decision.
- (e) **nbn** must, as promptly as feasible in the circumstances, provide a finalised copy of any changes to a Major Upgrade Plan and Network Interface Specification for RSP's internal planning purposes.
- (f) At least 2 months prior to implementing a Major Upgrade that affects the **nbn**TM Network (other than in respect of the Sandpit or the **nbn**TM Platform Interfacing Service), **nbn** will make available each Supported Attribute which is affected by that Major Upgrade, as an Upgraded Attribute in the Sandpit.

C13.2 Minor Upgrades

If **nbn** wishes to implement a Minor Upgrade that affects the **nbn**TM Network (other than in respect of the Sandpit or the **nbn**TM Platform Interfacing Service), **nbn** must give RSP prior notice and an updated version of each relevant Network Interface Specification at least 1 month before implementing that Minor Upgrade.

C13.3 No effect on Product change management or Outages

- (a) Nothing in clauses C13.1 or C13.2 limits **nbn**'s obligations pursuant to clause F4.6(a)(ii) or any SAU in relation to the withdrawal of any Product, Product Component or Product Feature.
- (b) Nothing in this clause C13 limits **nbn**'s obligations pursuant to clause C15 in relation to any Outage associated with an Upgrade.

C13.4 Emergency Upgrades

- (a) If **nbn** wishes to implement an Emergency Upgrade that affects the **nbn**TM Network (other than in respect of the Sandpit or the **nbn**TM Platform Interfacing Service), **nbn** must give an Emergency Upgrade Notice to RSP and update each affected Network Interface Specification as soon as is feasible in the circumstances, and, if feasible, before implementing that Emergency Upgrade.
- (b) The parties must cooperate and work together reasonably in relation to an Emergency Upgrade.

C13.5 Classification of attributes of the **nbn**TM Network

- (a) **nbn** may identify or re-classify, in any new or existing Network Interface Specification, any attribute of the **nbn**TM Network at any time.

- (b) If **nbn** identifies or re-classifies any attribute of the **nbn**TM Network under clause C13.5(a), it must give at least the following period of notice:
 - (i) if the attribute previously was identified as, or is proposed to be identified as, a Major Attribute, the same period of notice as **nbn** must give of a Major Upgrade under clause C13.1(a); and
 - (ii) if clause C13.5(b)(i) does not apply and the attribute previously was identified as, or is proposed to be identified as, a Minor Attribute, the same period of notice as **nbn** must give of a Minor Upgrade under clause C13.2.
- (c) Any new classification of an attribute notified under clause C13.5(b) will only apply on and from the effective date of such notice (in this clause C13.5, the **re-classification date**) including for the purpose of any Major Upgrade or Minor Upgrade notified on or after the re-classification date.

C13.6 Excluded Circumstances

The following circumstances are not Upgrades:

- (a) relocation, closure or replacement of POIs, or the establishment of new POIs (which are dealt with in clause C14); or
- (b) routine maintenance, Service Fault rectification, Performance Incident rectification, Network Activities or Interference Mitigation activities in relation:
 - (i) any **nbn**TM Infrastructure;
 - (ii) any other matter or thing for which **nbn** is responsible and which affects, or can affect, the supply of products by **nbn** to RSP or any Other RSPs; or
 - (iii) any facilities at, on or under which the **nbn**TM Network is attached, located or installed; or
- (c) rollout or expansion of the **nbn**TM Network.

C14 Points of Interconnection

C14.1 Locations of POIs

nbn will make details of the POIs available to RSP from time to time on **nbn**'s Website or in a manner set out in the [WBA Operations Manual](#).

C14.2 Closures and relocations of Established POIs

- (a) **nbn** may:
 - (i) close an Established POI; or
 - (ii) relocate an Established POI.
- (b) If **nbn** closes or relocates an Established POI under this clause C14.2, **nbn** must ensure that all Premises served by that Established POI are able to be served by another POI or POIs.
- (c) This clause C14.2 does not apply to the relocation or closure of an Established POI in response to an Emergency or where an Established POI becomes unavailable for any reason beyond the reasonable control of **nbn**.
- (d) At least 12 months prior to commencement of the closure or relocation of an Established POI, **nbn** must:

- (i) notify RSP of the closure or relocation of that Established POI; and
 - (ii) prepare, and make available to RSP a POI Relocation/Closure Plan on **nbn**'s Website or in a manner set out in the [WBA Operations Manual](#).
- (e) **nbn** will use reasonable care when preparing POI Relocation/Closure Plans to ensure that those plans are accurate. If, prior to the relocation or closure of the POI, **nbn** determines that the information in the POI Relocation/Closure Plan is not accurate, **nbn** will notify RSP and provide a rectified plan. Any such inaccuracy will not prevent **nbn** from implementing the relocation or closure of any POI.
- (f) If **nbn** wishes to change or rectify any inaccuracy in a POI Relocation/Closure Plan, **nbn** must:
- (i) as promptly as feasible in the circumstances, provide a copy of that changed or rectified plan to RSP;
 - (ii) consult reasonably with RSP in relation to that changed or rectified plan, either directly or through a multi-party forum that may be established by **nbn** for this purpose; and
 - (iii) consider reasonably any feedback received from RSP with regard to the changes or rectification. If any change to the POI Relocation/Closure Plan is requested in writing by RSP and **nbn** does not implement the change, **nbn** will use reasonable endeavours to provide a written explanation of the basis for **nbn**'s decision.

C14.3 Closure or relocation of POIs in an Emergency

- (a) Notwithstanding clause C14.2, **nbn** may change the location of, or close, any POI in accordance with the procedures set out in this clause C14.3:
- (i) in an Emergency; or
 - (ii) where that POI becomes unavailable for any reason beyond the reasonable control of **nbn**.
- (b) If **nbn** wishes to relocate or close a POI under this clause C14.3, **nbn** must give an Emergency POI Notice to RSP as soon as feasible in the circumstances, and, if feasible, before **nbn** starts to implement the Emergency POI Relocation/Closure.
- (c) The parties must cooperate and work together reasonably in connection with any Emergency POI Relocation/Closure.

C14.4 Decommissioning and replacement of Temporary POIs

- (a) **nbn** may decommission a Temporary POI and replace it with one or more Established POIs in accordance with an SAU. In doing so, **nbn** must ensure that all Premises served by the Temporary POI are able to be served by the Established POI or Established POIs.
- (b) **nbn** must give a Temporary POI Decommissioning Notice to RSP at least 12 months before the date on which migration of all Premises to which RSP provides RSP Products from that Temporary POI is to have commenced. RSP must provide **nbn** with all assistance reasonably requested by **nbn** to achieve this migration.

C14.5 New POIs

- (a) **nbn** may, with the ACCC's prior approval, open a new Established POI at any time. This clause C14.5(a) does not apply in respect of Temporary POIs.
- (b) **nbn** will provide RSP with at least 12 months' prior written notice of the establishment of a proposed POI under this clause C14.5.

- (c) **nbn** will not, and will not be required to, open a new Established POI other than in accordance with this clause C14.5.

C14.6 Re-establishing connections to relocated or replacement POIs

RSP is responsible, at its own cost and expense, for re-establishing connections between the **nbn**TM Network and the RSP Network at any:

- (a) new, relocated or relevant POI notified to RSP under clause C14.2, within the specified notice period or such other period agreed between the parties;
- (b) new, relocated or alternative POI notified to RSP under clause C14.3, as soon as is reasonably practicable in the circumstances after receiving notice from **nbn** of the Emergency POI Relocation/Closure; and
- (c) Established POI notified to RSP under clause C14.4 or C14.5, within the specified notice period or such other period agreed between the parties.

C15 Outages

C15.1 Planned Outages

- (a) **nbn** may interrupt the supply of Ordered Products during a Planned Outage, which will be conducted in accordance with the processes set out in the [WBA Operations Manual](#).
- (b) **nbn** will:
 - (i) whenever practicable, schedule a Planned Outage within a Planned Outage Window; and
 - (ii) use reasonable endeavours not to schedule a Planned Outage within an Embargo Period.
- (c) Except where expressly specified otherwise in this Agreement, if a Planned Outage will, or is likely to, have a material adverse impact on RSP, **nbn** must:
 - (i) consult reasonably with RSP; and
 - (ii) consider any feedback received from RSP, and consult reasonably with RSP in relation to the feedback. If any change to the Planned Outage is requested in writing by RSP and **nbn** does not implement the change, **nbn** will use reasonable endeavours to provide a written explanation of the basis for **nbn**'s decision.
- (d) Notice periods, Planned Outage Windows and Embargo Periods set out in this clause C15.1 may not apply if a Planned Outage concerns part of the **nbn**TM Network which is owned, operated or controlled by a third party, including a Type 2 Facility, in which case:
 - (i) **nbn** will give RSP as much notice of the timing, duration and essential details of that Planned Outage as is practicable in the circumstances having regard to **nbn**'s dependence on such third party; and
 - (ii) **nbn** will notify RSP that the Planned Outage Notice is being given under this clause C15.1(d).

C15.2 Emergency Outage

- (a) **nbn** may interrupt the supply of Ordered Products during an Emergency Outage. **nbn** must give RSP notice of the Emergency Outage as soon as is feasible in the circumstances and, if feasible, before the start of the Emergency Outage.

- (b) **nbn** will schedule Emergency Outages during a Planned Outage Window where **nbn** considers it is reasonably practicable to do so.

C15.3 Interruptions to facilitate supply

- (a) **nbn** may interrupt the supply of Ordered Products to enable, or as a consequence of, works to supply or assure Fibre TV to RSP or Other RSPs.
- (b) **nbn** must use reasonable endeavours where practicable to minimise any interruption to the supply of Ordered Products under clause C15.3(a).

C15.4 Concurrent Outage rights

Each interruption right in clauses C15.1 to C15.3 is a separate right that may be exercised independently of any other interruption right. An interruption right of a specific nature will not be read or interpreted as limiting any other general interruption right.

C15.5 No effect on Upgrades

Nothing in this clause C15 limits **nbn**'s obligations under clause C13 in relation to any Upgrade.

C16 Service Faults and Performance Incidents

C16.1 Service Fault and Performance Incident diagnosis, reporting, investigation and repair

- (a) **nbn** must investigate and repair:
 - (i) Service Faults; and
 - (ii) except where expressly specified otherwise in this Agreement, Performance Incidents, which RSP has validly reported to **nbn**, or of which **nbn** becomes aware, in accordance with the relevant processes set out in the [WBA Operations Manual](#).
- (b) **nbn** may, but is not obliged to, investigate and repair any other faults or incidents.

C16.2 Minimising disruptions caused by investigating and repairing Service Faults and Performance Incidents

- (a) **nbn** may temporarily interrupt the supply of Ordered Products using the processes that apply for Emergency Outages under clause C15.2 in order for **nbn** (or any of its Personnel) to:
 - (i) investigate and/or repair any Service Faults, Performance Incidents, service faults or performance incidents under an Other Wholesale Broadband Agreement or faults or incidents under any other agreement pursuant to which **nbn** supplies products or services by means of, or grants rights to use, the **nbn**[™] Copper Network, HFC Network or an Other **nbn**[™] Network; or
 - (ii) perform Network Activities or Interference Mitigation.
- (b) RSP agrees to work collaboratively with **nbn** to minimise, to the greatest extent practicable, the number of External Faults reported to **nbn**.
- (c) **nbn** will use reasonable endeavours where practicable in the circumstances, including where **nbn** is dependent on a third party which owns, operates or controls any part of the **nbn**[™] Network, to:
 - (i) without limiting clause C15.2, minimise any disruption caused by the investigation and/or repair of any Service Fault or Performance Incident to RSP and RSP Products; and

- (ii) provide information in the possession of **nbn** to assist RSP to locate and diagnose any faults or incidents which are causing a failure of an RSP Product or a Downstream Product which are not Service Faults or Performance Incidents nor contributed to by an Outage.

C17 Operational management

C17.1 Minimising disruptions caused by Upgrades, POI changes and Outages

nbn will use reasonable endeavours where practicable in the circumstances, including where **nbn** is dependent on a third party which owns, operates or controls any part of the **nbn**TM Network, when performing an Upgrade, Outage or POI relocation, closure or replacement, to:

- (a) minimise any disruption caused to RSP and RSP Products by the relevant activity;
- (b) minimise the frequency of the relevant activity in the same geographic area; and
- (c) in the case of Outages, notify RSP of the likely duration of any Outage where it is reasonably practicable for **nbn** to do so.

C17.2 Disputes regarding Upgrades, POI changes and Outages

A decision by **nbn** to initiate an Upgrade, Outage or POI relocation, closure or replacement in accordance with this Agreement cannot be disputed by RSP and **nbn** is entitled to perform that Upgrade, Outage or POI relocation, closure or replacement despite the existence of a Dispute.

C17.3 Charges during Upgrades, POI changes and Outages

RSP must continue to pay all Charges and other amounts payable under this Agreement for the duration of any Upgrade, Outage or POI relocation, closure or replacement performed in accordance with this Agreement, unless otherwise agreed between the parties.

Module D Information & Rights Management

D1 Confidential Information

D1.1 Maintaining confidentiality

- (a) Subject to clauses D1.2 and D1.7 and any applicable statutory duty, Recipient must keep confidential all Confidential Information of Discloser and must not:
- (i) use or copy such Confidential Information except as set out in this Agreement; or
 - (ii) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any person.
- (b) Information generated within the **nbn**TM Infrastructure as a result of or in connection with the supply of a Product to RSP or the interconnection of the **nbn**TM Infrastructure with the RSP Network (other than information that falls within paragraph (e) of the definition of Confidential Information) is the Confidential Information of RSP.

D1.2 Use and disclosure of Confidential Information

- (a) Subject to clause D1.2(f), Confidential Information of RSP may be:
- (i) used by **nbn**:
 - (A) for the purposes of undertaking planning, maintenance, construction, provisioning, testing, operations or reconfiguration of the **nbn**TM Infrastructure;
 - (B) for the purpose of understanding the needs or expectations of End Users;
 - (C) for the purpose of improving the experience of End Users;
 - (D) for the purposes of developing, supplying, marketing or promoting Products to RSP;
 - (E) for the purpose of billing RSP;
 - (F) to exercise its rights or perform its obligations under this Agreement or under an SAU; or
 - (G) for another purpose agreed to by RSP; and
 - (ii) disclosed by **nbn** only to persons who, in **nbn**'s reasonable opinion require the information to carry out or otherwise give effect to the purposes referred to in clause D1.2(a)(i), provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential.
- (b) Except where expressly specified otherwise in this Agreement and subject to clauses D1.2(e) and D1.2(f), Confidential Information of **nbn** may be:
- (i) used by RSP:
 - (A) to use the Products supplied under this Agreement;
 - (B) to supply RSP Products to Downstream Service Providers and Contracted End Users;

- (C) to enable the use of RSP Products by Downstream Service Providers and Contracted End Users;
 - (D) to exercise its rights or perform its obligations under this Agreement; or
 - (E) for another purpose agreed to by **nbn**; and
- (ii) disclosed by RSP only to persons who, in RSP's reasonable opinion, require the information to carry out or otherwise give effect to the purposes referred to in clause D1.2(b)(i), provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential.
- (c) Except where expressly specified otherwise in this Agreement and subject to clause D1.2(e), RSP may:
- (i) use **nbn**'s Confidential Marketing Information to:
 - (A) supply, market and promote RSP Products to Downstream Service Providers; and
 - (B) enable the supply, marketing and promotion of Downstream Products by any Downstream Service Providers in accordance with this clause D1.2;
 - (ii) disclose **nbn**'s Confidential Marketing Information to:
 - (A) its Related Bodies Corporate and its and their Personnel who reasonably require the Confidential Marketing Information for the purposes of this Agreement or an SAU (including to enable RSP or its Related Body Corporate to use the Confidential Marketing Information to supply, market and promote RSP Products); and
 - (B) any Downstream Service Providers who reasonably require the Confidential Marketing Information for the purposes of this Agreement or an SAU (including to enable RSP or any Downstream Service Provider to use the Confidential Marketing Information to supply, market and promote Downstream Products),provided that in each case the person to whom the disclosure is made is subject to an obligation to keep the information confidential; and
 - (iii) permit any Downstream Service Provider to whom **nbn**'s Confidential Marketing Information is disclosed under clause D1.2(c)(ii)(B) to further disclose such information for the purposes set out in, and subject to the conditions in, clause D1.2(c)(ii)(B).
- (d) Except where expressly specified otherwise in this Agreement, the Recipient may, to the extent necessary, use and/or disclose (as the case may be) Confidential Information of the Discloser:
- (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 or an SAU provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;
 - (ii) to Downstream Service Providers to whom the Confidential Information is reasonably required to be disclosed for the purposes of this Agreement or an SAU (including for the purposes of supplying Downstream Products), 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 the supply of a Product under this Agreement or an

- SAU, 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;
 - (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; and
 - (C) if required by the other party as a condition of giving its consent, the Recipient must comply with clause D1.3;
 - (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 D1.2(d)(viii);
 - (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, subject to **nbn** ensuring that the person to whom the proposed disclosure is made (which may be an Other RSP) is subject to an obligation to keep the information confidential and only use the information for the following purposes, to the extent necessary:
 - (A) to enable facilities access by RSP necessary for the supply of Ordered Products; or
 - (B) for purposes of:
 - (1) the disconnection of premises from the network of a third party (including for calculating any payments from **nbn** to a third party); or
 - (2) the provision by a third party to **nbn** of access to or ownership of parts of a network of a third party;

- (xii) where **nbn** is the Recipient, where required by law, to any Shareholder Minister and their respective government departments; and
 - (xiii) where **nbn** is the Recipient and the Confidential Information is provided pursuant to the [Credit Policy](#), to any third party provided that RSP may require a confidentiality undertaking to be given by that third party (on terms to be approved by RSP, such approval not to be unreasonably withheld) prior to such Confidential Information being provided to that third party.
- (e) Notwithstanding anything else in this Agreement, RSP must:
- (i) only use or disclose information in or derived from **nbn**'s Medical Alarm Register or **nbn**'s Fire Alarms and Lift Phones Register if approved by **nbn** in writing and subject to any conditions specified in such written approval; and
 - (ii) not, and must use reasonable endeavours to ensure that each person to whom RSP discloses Confidential Information under clauses D1.2(d)(i), D1.2(d)(ii) or D1.2(d)(vii) does not, use Confidential Information of **nbn** to develop, enhance, market or promote products and services that compete with Products.
- (f) The Recipient must comply with clause D1.2(d) and need not comply with either of clauses D1.2(a) or D1.2(b) in respect of any actual or proposed use or disclosure of Confidential Information if:
- (i) clause D1.2(d) applies to such use or disclosure; and
 - (ii) one of clause D1.2(a) or D1.2(b) also applies to such use or disclosure.

D1.3 Co-operation

Subject to clause D1.2, each party must co-operate in any action taken by the other party to:

- (a) protect the confidentiality of the other party's Confidential Information; or
- (b) enforce its rights in relation to its Confidential Information.

D1.4 No disclosure to Other RSPs

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

D1.5 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.

D1.6 Injunctive relief

Each party acknowledges that a breach of this clause D1 by one party may cause another 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 this clause D1.

D1.7 Disclosure by **nbn** for debt collection

If:

- (a) **nbn** has the right to suspend or cease the supply of an Ordered Product in respect of:

- (i) RSP failing to pay an amount due or owing to **nbn** under this Agreement by the due date for payment; or
 - (ii) an Insolvency Event in respect of RSP; or
- (b) after suspension or cessation of supply of an Ordered Product under this Agreement, RSP fails to pay amounts due or owing to **nbn** by the due date for payment,

then, notwithstanding clause D1.2, **nbn** may do one or both of the following:

- (c) notify and exchange information about RSP (including RSP'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
- (d) without limiting clause D1.7(c), disclose to a credit reporting agency:
 - (i) the defaults made by RSP to **nbn**; and
 - (ii) the exercise by **nbn** of any right to suspend or cease supply of an Ordered Product under this Agreement.

D1.8 Confidentiality under the PDF Terms

Each party agrees that their rights and obligations in relation to use and disclosure of Product Development Confidential Information are subject to separate confidentiality provisions set out in the PDF Terms.

D1.9 Return of Confidential Information on demand

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.

D1.10 Anonymising Confidential Information

- (a) **nbn** may, acting reasonably, determine that applying a particular process to information about Products supplied by **nbn** means that RSP, Downstream Service Providers or End Users cannot be identified by that information provided that **nbn** has first complied with clauses D1.10(b) to D1.10(c) in respect of that process.
- (b) **nbn** must notify RSP of **nbn**'s intention to make a determination under clause D1.10(a), providing:
 - (i) an indicative example of the relevant information and a description of the particular process for de-identifying the information; and
 - (ii) a date by which RSP must provide any feedback to **nbn** if RSP considers that RSP or any Downstream Service Provider or End User can be identified by the information after the application of that process, such date being no less than 10 Business Days after the date of the notice.
- (c) If RSP provides any feedback to **nbn** on or before the date specified by **nbn** under clause D1.10(b)(ii), **nbn** must:
 - (i) consider and respond to that feedback; and
 - (ii) notify RSP of **nbn**'s final determination under clause D1.10(a).
- (d) If RSP receives a notice from **nbn** under clause D1.10(c)(ii), and disagrees with **nbn**'s determination, RSP may refer the Dispute for resolution under the Dispute Management Rules

in [Module G \(Dispute Management\)](#), provided that RSP must not make any such referral more than 10 Business Days after the date of the notice from **nbn** under clause D1.10(c)(ii).

- (e) A process will be an **Approved De-identification Process** if **nbn** has made a determination in respect of that process in accordance with clause D1.10(a) and either:
 - (i) at least 10 Business Days have passed since the date of that determination and there has been no Dispute referral under clause D1.10(d) in respect of that process; or
 - (ii) any Dispute referral under clause D1.10(d) in respect of that process is resolved in **nbn**'s favour.

D2 Data security and Personal Information

D2.1 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 D2.1(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.

D2.2 Personal Information

- (a) If either party collects, holds, uses, discloses, transfers or otherwise handles Personal Information in connection with this Agreement, it must comply with, and ensure that its Related Bodies Corporate and Personnel (and the Personnel of its Related Bodies Corporate) comply with, all Privacy Laws as if it was an "organisation" for the purposes of the *Privacy Act 1988* (Cth).
- (b) Subject to clauses D2.2(c) and D2.2(d), if a party (the **first party**) becomes aware or suspects that the other party may be required under the *Privacy Act 1988* (Cth) to prepare a statement regarding an Eligible Data Breach, or to assess a suspected Eligible Data Breach, in respect of Personal Information that the other party collects, holds, uses, discloses, transfers or otherwise handles in connection with this Agreement, the first party must (as applicable):
 - (i) promptly notify the other party of the Eligible Data Breach or suspected Eligible Data Breach;
 - (ii) promptly provide the other party with any reasonable assistance requested by the other party, at the other party's cost:

- (A) in connection with the other party's investigation of; or
 - (B) to manage any consequences for the other party of,
that Eligible Data Breach or suspected Eligible Data Breach; and
 - (iii) to the extent permitted by law, not notify any third party of the Eligible Data Breach or suspected Eligible Data Breach without the other party's consent (except that the first party need not obtain the other party's consent if that Eligible Data Breach or suspected Eligible Data Breach is also an Eligible Data Breach or suspected Eligible Data Breach of the first party).
- (c) Subject to clause D2.2(d), if:
- (i) a relevant Eligible Data Breach or suspected Eligible Data Breach described in clause D2.2(b) is also an Eligible Data Breach or suspected Eligible Data Breach of the first party; and
 - (ii) sections 26WK and 26WL of the *Privacy Act 1988* (Cth) apply in relation to that Eligible Data Breach,
- then each party will, in good faith, discuss which of those parties will comply with the requirements under sections 26WK and 26WL of the *Privacy Act 1988* (Cth) in respect of that Eligible Data Breach.
- (d) Nothing in clauses D2.2(b) or D2.2(c) requires a party to take any action, or refrain from taking any action, that would result in that party breaching its obligations under the *Privacy Act 1988* (Cth) or breaching any obligation of confidence to a third party.

D3 Downstream Service Providers

D3.1 Downstream Service Providers' activities

RSP may supply RSP Products to any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale RSP Product under a contract with RSP for the purposes of that person supplying Downstream Products.

D3.2 Obligations in respect of Downstream Service Provider Details and Contracted End User Details

- (a) If RSP has an obligation to provide Downstream Service Provider Details or Contracted End User Details to **nbn** under this Agreement, RSP must ensure that **nbn** is able to use and process those Downstream Service Provider Details and Contracted End User Details for each of the following purposes:
- (i) to supply any Ordered Product to RSP;
 - (ii) to perform any work required in relation to the supply of any Ordered Product to RSP, including to install, maintain, upgrade, repair, reinstate or remove:
 - (A) all or part of the **nbn**TM Network or any other item that is licensed, owned or controlled by **nbn** that is or will be located at the relevant premises; and
 - (B) where lawful, any third party network; or
 - (iii) subject to clause D3.2(g), for any other purpose, where necessary for **nbn** to exercise its rights or perform its obligations under this Agreement,
- (together, the **Approved Purposes**).

- (b) **nbn** may request that RSP provide **nbn** with Downstream Service Provider Details and Contracted End User Details for the Approved Purposes if **nbn** does not have access to, and cannot otherwise obtain within a reasonable period of time, those Downstream Service Provider Details and Contracted End User Details.
- (c) If RSP receives a request under clause D3.2(b), it must, as soon as is reasonably practicable, provide such Downstream Service Provider Details and Contracted End User Details to **nbn**.
- (d) **nbn** may only use and process (including by collecting, storing, using, processing, reproducing and disclosing) any Downstream Service Provider Details, Contracted End User Details and any information relating to Downstream Service Provider Details and Contracted End User Details for the Approved Purposes.
- (e) RSP must use reasonable endeavours to ensure that any Downstream Service Provider Details and Contracted End User Details provided by it to **nbn** are complete, accurate and up-to-date.
- (f) **nbn** and RSP each agree to comply with all Privacy Laws with respect to Downstream Service Provider Details and Contracted End User Details.
- (g) Without limiting any other right that **nbn** may have to contact a Downstream Service Provider or Contracted End User, clauses D1.2(a)(i)(B) and D1.2(a)(i)(C) do not permit **nbn** to use RSP-provided Downstream Service Provider Details or Contracted End User Details to contact that Downstream Service Provider or Contracted End User.

D4 Supply works communications

RSP must include in timely communications specifically targeted at Downstream Service Providers, End Users and other third parties any information reasonably specified by **nbn** to RSP as necessary to perform any work required in order to supply, or for the supply of, any Ordered Product.

D5 Intellectual Property Rights

D5.1 General principles

- (a) Nothing in this Agreement operates to transfer or assign ownership of Intellectual Property Rights and, except as expressly provided under this clause D5, nothing in this clause D5 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) Each party agrees that their rights and obligations in relation to Intellectual Property Rights provided as part of the Product Development Forum are subject to the separate provisions set out in the PDF Terms.

D5.2 Product licence

- (a) Except as otherwise agreed, **nbn** grants RSP an irrevocable, non-exclusive, royalty-free, non-transferable, worldwide licence for the Term to:
 - (i) use, reproduce, communicate, adapt or exploit in or through any media **nbn**TM IPRs embodied in any Ordered Product or any Product that RSP proposes to order; and
 - (ii) use, reproduce, communicate and, with **nbn**'s approval, adapt in or through any media **nbn**TM IPRs embodied in any **nbn**TM Material,

to the extent required for RSP (directly or through its Personnel) to perform its obligations and exercise its rights under this Agreement, including to supply, market and promote RSP Products.

- (b) Except as otherwise agreed, **nbn** grants RSP a non-exclusive, royalty-free, non-transferable licence for the Term to:
- (i) use, reproduce, communicate, adapt or exploit in or through any media any Third Party IPR that may become embodied in any Ordered Product or any Product that RSP proposes to order; and
 - (ii) use, reproduce, communicate and, with **nbn**'s approval, adapt in or through any media any Third Party IPRs embodied in any **nbn**TM Material,

to which **nbn** has obtained a licence pursuant to the PDF Terms, where such licence includes the right to sub-license to RSP on the terms of this clause D5.2, to the extent required for RSP (directly or through its Personnel) to perform its obligations and exercise its rights under this Agreement, including to supply, market and promote RSP Products.

- (c) RSP may sub-license any of the rights granted to it under clauses D5.2(a) and D5.2(b) to any of its Related Bodies Corporate, Downstream Service Providers or Contracted End Users, provided that:
- (i) any sub-license to Downstream Service Providers and Contracted End Users is limited solely to the extent required for such Downstream Service Providers and Contracted End Users to use, reproduce, communicate, adapt or exploit in or through any media any RSP Product, any Downstream Product, or any **nbn**TM Material, as the case may be (with the right to further sub-license solely to the extent necessary to enable any further Downstream Service Providers and Contracted End Users to use, reproduce, communicate, adapt or exploit in or through any media any RSP Product, any Downstream Product or any **nbn**TM Material);
 - (ii) any sub-license to Related Bodies Corporate is limited solely to the extent required to enable that Related Body Corporate to use, reproduce, communicate, adapt or exploit in or through any media any Ordered Product or any **nbn**TM Material, as the case may be; and
 - (iii) RSP remains liable for each act and/or omission of all such sub-licensees in connection with the exercise of such sub-license as though it were an act and/or omission of RSP.

- (d) **nbn** represents and warrants to RSP that:
- (i) as at the date of and during supply of an Ordered Product, the supply and use of that Ordered Product;
 - (ii) during the Term, the use, reproduction, communication, adaptation or exploitation in or through any media of any Intellectual Property Rights embodied in any Ordered Product or Product that RSP proposes to order; and
 - (iii) during the Term, the use, reproduction, communication and any approved adaptation in or through any media of any Intellectual Property Rights embodied in any **nbn**TM Material,

in accordance with the terms of this Agreement will not infringe Third Party IPR embodied in that Ordered Product, Product that RSP proposes to order or **nbn**TM Material, as applicable.

- (e) RSP must not, and must ensure its Personnel and sub-licensees do not, use any Intellectual Property Rights licensed to it pursuant to this clause D5.2:
- (i) for any purpose other than that expressly licensed;
 - (ii) at any time other than that expressly licensed; or
 - (iii) otherwise than in accordance with this Agreement.

- (f) Without limiting clauses E2.2 and E2.8, if a third party makes an infringement claim against RSP in relation to the use of an Ordered Product or any **nbn**TM Material in connection with this Agreement, then **nbn** will use reasonable endeavours, if requested by RSP (at no additional cost to RSP), to:
- (i) procure the right for RSP to continue using the Ordered Product or the **nbn**TM Material, as applicable;
 - (ii) modify the Ordered Product or the **nbn**TM Material, as applicable, so that it becomes non-infringing; or
 - (iii) replace the Ordered Product or the **nbn**TM Material with a non-infringing Product or non-infringing **nbn**TM Material, as applicable,

except where the infringement claim arises as a result of an RSP Event.

D5.3 **nbn** internal use of RSP IPRs

- (a) RSP grants to **nbn** (acting through its Personnel) an irrevocable, non-exclusive, royalty-free, non-transferable licence to reproduce, communicate and adapt RSP IPRs embodied in RSP Material internally within **nbn** to the extent necessary for **nbn** to supply Ordered Products to RSP (including to undertake activities preparatory to, or ancillary to, the supply of Ordered Products to RSP) (**Permitted Use**).
- (b) The licence in clause D5.3(a) does not extend to any action or purpose other than the Permitted Use and RSP Material remains the property of RSP (or any licensor or supplier to RSP, as the case may be).
- (c) **nbn** must not, and must ensure its Personnel do not, use any RSP IPRs licensed to it pursuant to this clause D5.3:
- (i) for any purpose other than that expressly licensed;
 - (ii) at any time other than expressly licensed; or
 - (iii) otherwise than in accordance with this Agreement.

D5.4 RSP IPRs in Proposed Use Materials

- (a) If **nbn** wishes to use RSP Materials in connection with this Agreement in any manner or for any purpose other than the Permitted Use, **nbn** will give written notice to RSP identifying:
- (i) the RSP Materials which **nbn** wishes to use (**Proposed Use Materials**); and
 - (ii) the use which **nbn** wishes to make of those Proposed Use Materials.
- (b) RSP will use reasonable endeavours to give written notice to **nbn** no later than 6 weeks after receiving a notice under clause D5.4(a), stating whether or not:
- (i) RSP IPR subsist in the Proposed Use Materials and the nature of those rights;
 - (ii) Third Party IPR subsist in the Proposed Use Materials and the nature of those rights; and
 - (iii) RSP is prepared to enter into negotiations with **nbn** for use of RSP IPR or Third Party IPR subsisting in the Proposed Use Materials for the purpose specified by **nbn** under clause D5.4(a).
- (c) If RSP does not provide a response under clause D5.4(b) within the timeframe specified, **nbn** may further request that RSP provide it within a further 2 weeks, and upon the expiry of that further 2 week period, unless the parties have agreed otherwise in the manner contemplated

by clause D5.4(d), **nbn** will assume that RSP is not in a position to authorise **nbn** to use the Proposed Use Materials.

- (d) Notwithstanding the commitments and timeframes referred to in clauses D5.4(b) and D5.4(c):
- (i) **nbn** and RSP may, at any time, elect to negotiate a licence or assignment of a right to use the Intellectual Property Rights in the Proposed Use Materials; and
 - (ii) unless the parties agree in writing to the terms of a licence or assignment, no licence or assignment of the Intellectual Property Rights in the Proposed Use Materials will occur, and **nbn** will not be permitted to use the Proposed Use Materials for the purpose referred to in clause D5.4(a)(ii) or for any purpose other than a Permitted Use.
- (e) Unless otherwise agreed by the parties, the following conditions will apply to any licence pursuant to clause D5.4(d):
- (i) the licence will be made before the RSP IPRs are used by **nbn** for any purpose other than the Permitted Use;
 - (ii) **nbn** will pay a commercially agreed price for the use of the RSP IPRs; and
 - (iii) the licence will be on terms that enable **nbn** to use the RSP IPRs for the benefit of RSP and all Other RSPs and to meet its Non-Discrimination Obligations.

D5.5 Responsibility for procuring third party Intellectual Property Rights

Unless otherwise agreed in writing by the parties (and without limiting **nbn**'s obligations in clause D5.2(b)), each party must procure, at its own cost and expense, licences of Third Party IPR to the extent reasonably required for that party or its Personnel to perform its obligations pursuant to this Agreement including, in the case of **nbn**, to the extent reasonably required to supply Ordered Products to enable RSP to supply RSP Products in accordance with the terms of this Agreement.

D5.6 Scope of grant of rights

Nothing in this clause D5:

- (a) limits a party's obligations under clause D1 and any exercise by a party of a right under this clause D5 is subject to that party's obligations under clause D1; or
- (b) confers a right to use a party's trade marks, service marks, logos or branding.

Module E Risk Management

E1 Liability

E1.1 Liabilities of each party

- (a) This Agreement, to the extent permitted by law, exhaustively governs all of the Liabilities that a party owes to the other party arising from, or in connection with, this Agreement.
- (b) To the extent permitted by law, a party is not liable to the other for any Liability (including for negligence) arising from, or in connection with, this Agreement, to the extent that the first party has excluded, restricted or limited its Liability under this Agreement.
- (c) Every exclusion, restriction, limitation and indemnity in this Agreement survives expiry or termination of this Agreement.

E1.2 Liability for service failures

- (a) To the extent permitted by law, **nbn**'s sole and exclusive Liability to RSP in respect of any Loss arising by reason of a failure of **nbn** to achieve a Service Level or any delay in supplying, failure to supply or an error or defect in the supply of an Ordered Product will be the applicable Commercial Rebate or CSG Compensation (if any).
- (b) The parties agree that:
 - (i) clause E1.2(a) does not limit **nbn**'s liability:
 - (A) for Losses to which the liability limit in clause E1.3(a) applies;
 - (B) under the indemnities given by **nbn** in clauses E2.1 to E2.4; or
 - (C) to the extent that a matter is described in clauses E1.4(g)(i) to E1.4(g)(vii);
 - (ii) the amount of any Commercial Rebate is reflective of the diminution in value of the Ordered Products actually provided;
 - (iii) Commercial Rebates do not represent agreed damages or liquidated damages and do not amount to a penalty; and
 - (iv) clause E1.2(a) does not limit RSP's rights under section 118A of the TCPSS Act.

E1.3 Liability for Material Service Failures

- (a) To the extent permitted by law and subject to clause E1.3(b), if an Eligible Ordered Product is affected by a Material Service Failure that is defined in the Product Terms for that Eligible Ordered Product, **nbn**'s Liability for any and all Losses resulting from the event that constituted the Material Service Failure will be limited to the amount of the relevant Eligible Charges paid by RSP (pro-rated daily) in respect of the period between the occurrence of the event which gives rise to the Material Service Failure until the resolution of the Material Service Failure (as determined by reference to the relevant Product Terms) during which **nbn** determines, acting reasonably, that that Eligible Ordered Product was subject to a Service Fault.
- (b) To the extent permitted by law, and without limiting clause E1.4, **nbn**'s aggregate Liability to RSP in any Year in respect of any and all Losses to which the liability cap in clause E1.3(a) applies is limited to the Material Service Failure Cap.

- (c) For the purposes of the application of the liability caps in this clause E1.3, the amount of **nbn's** Liability does not include CSG Compensation or any amounts paid by **nbn** to RSP pursuant to section 118A of the TCPSS Act.

E1.4 Liability caps

Annual cap on liability for Losses

- (a) To the extent permitted by law, and subject to clause E1.4(g), each party's aggregate Liability to the other party in any Year in respect of any and all Losses arising from or in connection with this Agreement in that Year is limited to the following amounts:
- (i) if $X \geq \$200$ million: \$200 million;
 - (ii) if $\$5$ million $< X < \$200$ million: X; or
 - (iii) if $X \leq \$5$ million: \$5 million,

where X = Nominated Billings Amount.

- (b) Subject to clause E1.4(c), if any Claim arises and is determined in a Year, the date of the determination will be deemed to be the last day of the Year for the purpose of determining the Nominated Billings Amount for that Year.
- (c) If multiple Claims arise and are determined in a Year, clause E1.4(b) will apply, and the Nominated Billings Amount will be separately calculated, in respect of each Claim.
- (d) If multiple Claims arise in a Year, whether or not they are determined in the same Year, the annual liability limit applicable under clause E1.4(a) in respect of each Claim will be reduced by any amounts paid or payable in respect of all earlier Claims arising in that Year.
- (e) In no event will a party's liability for an already determined Claim or the liability limit applicable to such a Claim, be recalculated as a result of any recalculation of a liability limit for the purpose of a subsequent Claim under clauses E1.4(c) or E1.4(d).

*Additional rules for determining amount of **nbn's** Liability*

- (f) For the purposes of the application of the liability caps in clauses E1.4(a) to E1.4(e), the amount of **nbn's** Liability:
- (i) includes the amount of any Liability **nbn** has to RSP to which the liability cap in clause E1.3(a) applies; but
 - (ii) does not include CSG Compensation, Commercial Rebates or any amounts paid by **nbn** to RSP pursuant to section 118A of the TCPSS Act.

Uncapped liability

- (g) The limitations of liability imposed by this clause E1.4 do not apply to each party's liability:
- (i) for any negligent or wilful acts or omissions of that party that cause or contribute to death or personal injury;
 - (ii) for any negligent or wilful acts or omissions of that party that cause or contribute to damage to Tangible Property;
 - (iii) for any acts or omissions of that party constituting fraud;
 - (iv) under the indemnities given by that party under clause E2 (Indemnities) (other than clause E2.4 (Damage to property and networks));

- (v) under the indemnity given by that party under clause E2.4 (Damage to property and networks) to the extent the liability giving rise to that indemnity was caused or contributed to by a negligent or wilful act or omission of that party;
- (vi) in the case of RSP's liability, to pay Charges or Overdue Amounts to **nbn**;
- (vii) in the case of **nbn**'s liability, under section 118A of the TCPSS Act; or
- (viii) in the case of **nbn**'s liability, to pay CSG Compensation or Commercial Rebates.

E1.5 RSP group aggregated liability caps

- (a) This clause E1.5 sets out rules for adjusting the liability caps in this clause E1 to take into account:
 - (i) any Claims by **nbn** against any RSP Group Member; or
 - (ii) any Claims by any RSP Group Member against **nbn**.
- (b) Without limiting clause E1.4(d):
 - (i) in respect of any Claim by RSP, the liability limit applicable under:
 - (A) **(Material Service Failure cap adjustments)** clause E1.3(b) will be reduced by the monetary value of any remedies provided, or required to be provided, by **nbn** in respect of all earlier Claims arising in that Year by any RSP Group Member under any clause in an RSP Group WBA that is the same as, or substantially in the same form as, clause E1.3; and
 - (B) **(annual cap adjustments)** clause E1.4(a) will be reduced by the monetary value of any remedies provided, or required to be provided, by **nbn** in respect of all earlier Claims arising in that Year by any RSP Group Member other than Claims for CSG Compensation or Claims under section 118A of the TCPSS Act (**RSP Group Member Claim Amounts**); and
 - (ii) in respect of any Claim by **nbn**, the liability limit applicable under clause E1.4(a) will be reduced by the monetary value of any remedies provided, or required to be provided, by all RSP Group Members in respect of all earlier Claims arising in that Year by **nbn** (**nbn Claim Amounts**).

E1.6 Exclusion of Liability for Indirect Loss

- (a) No party is liable to make any payment to the other party for any and all Losses of that other party arising from or in connection with this Agreement, regardless of how that Liability arises, to the extent such Liability is Indirect Loss.
- (b) The exclusion of liability in clause E1.6(a) does not apply in respect of the indemnity set out in clause E2.5(c).

E1.7 Exclusion or limitation of certain representations, conditions, warranties and guarantees

- (a) Each party agrees that:
 - (i) other than as expressly set out in this Agreement or as expressly set out in another written agreement between the parties existing at the Execution Date, no representation is or has been expressly or impliedly made and no warranty is or has been expressly or impliedly given by or on behalf of a party in respect of any matter relating to this Agreement whether before or on the Execution Date; and

- (ii) it has not relied on any representation or warranty other than the express representations and warranties given by the other party in this Agreement.
- (b) To the extent permitted by law, except as expressly set out in this Agreement, each party excludes all express or implied representations, conditions, warranties and guarantees arising from or in connection with this Agreement, whether based in statute, regulation, common law or otherwise.
- (c) If a party breaches any condition, warranty or guarantee under or implied by law which cannot be lawfully excluded, to the extent permitted by law, the liability of that party is limited, at that party's option, to one or more of the following:
 - (i) in the case of goods, to the replacement of the goods, the supply of equivalent goods or the repair of the goods; and
 - (ii) in the case of services, to the supply of the services again.

E1.8 Other exclusions of liability

To the extent permitted by law, **nbn** excludes all liability for any and all Losses suffered or incurred by RSP to the extent such Losses are caused or contributed to by:

- (a) any act or omission of any Downstream Service Provider or End User that is not in accordance with this Agreement or that is otherwise unlawful; or
- (b) the network, systems, equipment or facilities of any Downstream Service Providers or any End Users.

E1.9 Apportionment and mitigation

- (a) The liability of a party (the **first party**) to the other party in respect of any and all Claims and Losses arising from or in connection with this Agreement (regardless of whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) is reduced proportionally to the extent that:
 - (i) the other party has not taken all reasonable steps to minimise and mitigate its own Losses in relation to the act, omission, event or circumstance giving rise to such Claim or Loss (where such costs are recoverable from the first party); or
 - (ii) any Losses of the other party are caused, or contributed to, by:
 - (A) any act or omission of the other party, its Related Bodies Corporate or their respective Personnel; or
 - (B) the networks, systems, equipment or facilities of the other party, its Related Bodies Corporate or their respective Personnel.
- (b) The reduction of liability in clause E1.9(a)(ii) does not apply in respect of the indemnity set out in clause E2.5(c).

E2 Indemnities

E2.1 Confidentiality

Each party (**Indemnifying Party**) must pay to the other party (**Indemnified Party**) on demand an amount equal to all Losses suffered or incurred by the Indemnified Party, any Related Body Corporate of the Indemnified Party, or their respective Personnel, arising from or in connection with any breach of clause D1 (Confidential Information) by the Indemnifying Party.

E2.2 Intellectual property

Each party (**Indemnifying Party**) must pay to the other party (**Indemnified Party**) on demand an amount equal to all Losses suffered or incurred by the Indemnified Party, any Related Body Corporate of the Indemnified Party, or their respective Personnel, arising from or in connection with any Claim brought by any third party alleging that:

- (a) the exercise by the Indemnified Party of any rights assigned, transferred or granted, or purportedly assigned, transferred or granted, by or on behalf of the Indemnifying Party in connection with this Agreement infringes any Third Party IPRs;
- (b) where RSP is the Indemnified Party, the use of any Ordered Product or **nbn**TM Material by RSP in accordance with the terms of this Agreement infringes any Third Party IPRs embodied in the Ordered Product or **nbn**TM Material, including in breach of the warranty given by **nbn** in clause D5.2(d); or
- (c) where **nbn** is the Indemnified Party:
 - (i) the use of any Ordered Product by RSP other than in accordance with the terms of this Agreement; or
 - (ii) the use by any Downstream Service Provider or Contracted End User of an RSP Product or Downstream Product (other than where the Claim is in respect of use in accordance with the terms of this Agreement of the Ordered Product upon which the RSP Product or Downstream Product relies),

infringes any Third Party IPRs.

E2.3 Death and personal injury

Each party (**Indemnifying Party**) must pay to the other party (**Indemnified Party**) on demand an amount equal to all Losses suffered or incurred by the Indemnified Party, any Related Body Corporate of the Indemnified Party, or their respective Personnel, arising from or in connection with the death or personal injury of any person to the extent that death or personal injury is caused or contributed to by:

- (a) negligent or wilful acts or omissions of the Indemnifying Party, its Related Bodies Corporate or any of their respective Personnel or third party suppliers in connection with the performance of obligations and the exercise of rights under this Agreement;
- (b) where RSP is the Indemnifying Party, the RSP Network, RSP Platform, or any RSP Equipment, in connection with the performance of obligations and the exercise of rights under this Agreement; or
- (c) where **nbn** is the Indemnifying Party, the **nbn**TM Network, the **nbn**TM Platform, or any **nbn**TM Equipment, in connection with the performance of obligations and the exercise of rights under this Agreement.

E2.4 Damage to property and networks

- (a) RSP 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:
 - (i) damage to the Tangible Property of **nbn** and/or any third party, including damage to sites or any third party equipment sites at which any POI is located and sites at which facilities access services are supplied to RSP;
 - (ii) damage to, or loss of, the whole or any part of the **nbn**TM Network, the National Test Facility and/or the **nbn**TM Platform; or

- (iii) interruption of access to or use of Products by RSP or of access to or use of products or services by any Other RSP,

to the extent that such Losses are caused, or contributed to, by RSP, its Related Bodies Corporate, any of their respective Personnel or third party suppliers, or by any Downstream Service Provider or Contracted End User in connection with this Agreement.

- (b) **nbn** must pay to RSP on demand an amount equal to all Losses suffered or incurred by RSP, any Related Body Corporate of RSP, or their respective Personnel arising from or in connection with any:

- (i) damage to, or loss of, the Tangible Property of RSP and/or any third party; or
- (ii) damage to, or loss of the whole or any part of the RSP Network and/or RSP Platform,

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 in connection with this Agreement.

E2.5 Claims against **nbn**

- (a) If **nbn** notifies RSP of a Downstream Claim, RSP 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 this document or as otherwise notified by **nbn** to RSP from time to time) of RSP'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 E2.5, an **Assignment**).
- (b) For the purposes of clause E2.5(a), a **Model Undertaking** is an undertaking in a Downstream Contract which is, subject to clause E2.5(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 supply (or any delay, failure to or defect in relation to the supply) of any products or services which are direct or indirect inputs to any products or services 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) Without limiting **nbn**'s obligations to indemnify RSP under clauses E2.1, E2.2, E2.3 or E2.4(b), RSP 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 Downstream Claim if:

(i) **nbn** has given notice to RSP of the Downstream Claim and RSP has not either:

(A) delivered to **nbn** an Assignment of a Model Undertaking that is, subject to clause E2.5(d), binding on the relevant Downstream Claimant in respect of the Downstream Claim in accordance with clauses E2.5(a) and E2.5(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 RSP delivered to **nbn** a binding Assignment in accordance with this clause E2.5; and

(ii) RSP 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 E2.5 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 RSP has delivered to **nbn** an Assignment pursuant to clause E2.5(a) or has otherwise excluded or limited Losses suffered or incurred by **nbn** in accordance with clause E2.5(c)(i)(B), RSP 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) Without limiting **nbn's** obligations to indemnify RSP under clauses E2.1, E2.2, E2.3 or E2.4(b), RSP 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 RSP; or
 - (ii) negligent act or omission of RSP, 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 RSP Product by RSP to any Downstream Service Provider or Contracted End User.

E2.6 Data transmission

RSP must pay to **nbn** on demand an amount equal to all Losses suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, and their respective Personnel arising from or in connection with the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort), including the defamation of a person, by RSP or any of its Related Bodies Corporate, any Downstream Service Provider or End User using a Product, RSP Product or Downstream Product.

E2.7 General rules for all indemnities

- (a) The liability of an Indemnifying Party to pay on demand an amount under this clause E2 to an Indemnified Party will be the sole and exclusive financial remedy in respect of the liability the subject of the indemnity.
- (b) It is not necessary for either party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- (c) Where an indemnity applies in favour of an Indemnified Party related to the act or omission of a third party supplier of the Indemnifying Party, the Indemnified Party will not receive the benefit of the indemnity where that third party supplier is the Indemnified Party, any Related Body Corporate of that Indemnified Party or their respective Personnel.

E2.8 Step-in rights

In relation to any third party Claim against which an Indemnifying Party indemnifies an Indemnified Party under this clause E2, the Indemnified Party must:

- (a) notify the Indemnifying Party as soon as is reasonably practicable of the relevant Claim; and
- (b) where the Indemnifying Party can demonstrate to the reasonable satisfaction of the Indemnified Party that it has the resources to pay all Losses which are reasonably likely to arise in the event the Claim is successful:
 - (i) give the Indemnifying Party the option to conduct the defence of the Claim, including negotiations for settlement or compromise. If the Indemnifying Party exercises this option, the Indemnifying Party must not do anything during the course of any defence, settlement or compromise which adversely affects the Indemnified Party's business or reputation, must consider in good faith any submissions made by the Indemnified Party with respect to the defence, settlement or compromise of the Claim and must first obtain the consent of the Indemnified Party (which must not be unreasonably

withheld) to the terms of any settlement or compromise of the relevant Claim, and provided that no consent is required where the terms of any such settlement or compromise involve only the payment of money;

- (ii) promptly provide all assistance reasonably requested by the Indemnifying Party (at the cost of the Indemnifying Party) in conducting the defence of the Claim; and
- (iii) not make any admissions in relation to the Claim without the prior written consent of the Indemnifying Party.

E3 No claims against certain persons

(a) Each party agrees that it will not make any Claims against:

- (i) the Personnel of the other party; or
- (ii) the Personnel of any Related Body Corporate of the other party which is not a party to this Agreement,

arising from or in connection with the performance of obligations and the exercise of rights under this Agreement.

(b) RSP must not make any Claims against:

- (i) any Third Party Supplier; or
- (ii) any tenant of any data centre in respect of which a Third Party Supplier supplies data centre facilities or services to **nbn**,

arising from or in connection with:

- (iii) any failure of a Third Party Supplier to supply goods, services or facilities to **nbn** under a contract between **nbn** and such a Third Party Supplier; or
- (iv) any act or omission of a tenant referred to in clause E3(b)(ii) in connection with any contract referred to in clause E3(b)(iii).

(c) RSP must not make any Claims against **nbn** arising from or in connection with:

- (i) any event that falls within paragraph (d) of the definition of Excluded Event; or
- (ii) any act or omission of a tenant referred to in clause E3(b)(ii) in connection with that person's tenancy of that data centre.

E4 **nbn**TM Network Boundaries

Without limiting **nbn**'s obligations under this Agreement, RSP is responsible for (and assumes all liabilities and obligations in respect of) all activities required for:

- (a) the supply of RSP Products and Downstream Products beyond the **nbn**TM Network Boundaries including all services, systems, equipment or facilities associated with the supply of RSP Products and Downstream Products (other than Common MDU Site Equipment); and
- (b) the proper operation and interface of the RSP Platform and any Central Splitter.

E5 Insurance

E5.1 Insurance Policies

Each party must effect and maintain, with an Acceptable Insurer:

- (a) workers compensation insurance in accordance with applicable law and awards, and insurance against common law liability to a party's Personnel engaged in connection with this Agreement which must, where permitted by law, include an indemnity in favour of the other party in respect of statutory liability to that party's Personnel;
 - (b) public liability and product liability insurance:
 - (i) each for an amount not less than \$20 million per occurrence (except for product liability insurance, which will be for not less than \$20 million in the annual aggregate); and
 - (ii) insuring legal liability for:
 - (A) loss of, destruction of or damage to Tangible Property;
 - (B) personal injury, sickness, disease or death of any person; and
 - (C) Indirect Loss resulting from any of the above circumstances, arising from or in connection with this Agreement;
 - (c) professional indemnity insurance for an amount not less than \$10 million per claim and in annual aggregate;
 - (d) motor vehicle third party property damage insurance for not less than \$20 million in respect of motor vehicles used in connection with this Agreement; and
 - (e) any other insurance required by law,
- (together, the **Insurance Policies**), and ensure, save in respect of the Insurance Policy specified in clause E5.1(c), that the Insurance Policies include terms whereby the insurer's indemnity applies on an occurrence basis (not on a claims-made basis).

E5.2 Other requirements

- (a) Each party must:
 - (i) effect the relevant Insurance Policies within 5 Business Days after the Start Date and maintain them until this Agreement has terminated or expired, or as otherwise agreed between the parties;
 - (ii) provide evidence of the relevant Insurance Policies to **nbn** in the form of certificates of currency on request and in a form acceptable to the other party;
 - (iii) not do, permit or fail to do anything which prejudices any of its Insurance Policies or insurance claims or recovery under its Insurance Policies;
 - (iv) immediately reinstate any of its Insurance Policies that lapse; and
 - (v) immediately notify the relevant insurer of any fact, circumstance or change in circumstances which may prejudice the validity of any of its Insurance Policies or insurance claims or recovery under its Insurance Policies.
- (b) RSP must, in respect of any Insurance Policies for public liability insurance, ensure that **nbn** is named as an additional insured and indemnified with regard to any vicarious or contingent liability incurred as a result of the activity of RSP's Personnel.

E5.3 Review of Insurance Policies amounts

- (a) **nbn** may change the minimum amount of cover required in respect of the Insurance Policies specified in clause E5.1 no more than once every 3 years by notifying RSP of those changes, subject to this clause E5.3.
- (b) In determining whether, and by how much, to increase the minimum amount of cover required in respect of the Insurance Policies, **nbn** must have regard to what is reasonable and obtainable in the insurance market at the time that it makes its determination.
- (c) Before providing notice to RSP in accordance with clause E5.3(a), **nbn** must consult with RSP by:
 - (i) notifying RSP of a consultation period, which must be for no less than 10 Business Days; and
 - (ii) considering and having regard to any submissions or feedback given by RSP during the consultation period in relation to a proposed change under clause E5.3(a).
- (d) **nbn** may, in its discretion, vary the proposed change under clause E5.3(a) to address RSP's or Other RSPs' feedback or extend the applicable notice period.
- (e) Subject to any extension of the applicable notice period under clause E5.3(d), a change to the minimum amount of cover required in respect of the Insurance Policies will be effective on the date that is 40 Business Days after the date of the notice referred to in clause E5.3(a) and will not apply retrospectively.

E5.4 Consequences of failure to procure or maintain Insurance Policies

- (a) If RSP fails to procure or maintain the Insurance Policies within 10 Business Days after being required to do so under this Agreement without **nbn**'s written consent, which may not be unreasonably withheld where self-insurance arrangements are in place consistent with the requirements described in clause E5.1, **nbn** may on 5 Business Days' notice (but is not obliged to) procure the Insurance Policies on RSP's behalf. If **nbn** does so, RSP must pay **nbn** the cost of arranging such insurance on demand.
- (b) RSP is not obliged to effect and maintain some or all of the Insurance Policies to the extent that **nbn** has provided written consent to RSP to that effect (and such consent may not be unreasonably withheld) where RSP has self-insurance arrangements in place that are effective with respect to the quantum of risk to which the Insurance Policies are intended to respond.

E5.5 RSP's responsibility for insurance or liability not affected

- (a) Notwithstanding the provisions of this clause E5, RSP is responsible for assessing the risks and scope of its own insurance requirements.
- (b) Nothing in this clause E5 will limit RSP's liability or relieve RSP from any obligation arising from or in connection with this Agreement.

E6 Force Majeure Events

E6.1 Dealing with Force Majeure Events

- (a) To the extent the Force Majeure Event prevents an Affected Party from performing an obligation under this Agreement (including where **nbn** is unable to perform its obligations as a result of a Force Majeure Event affecting a third party supplier to **nbn**):
 - (i) the Affected Party will be excused from performing that obligation; and

- (ii) the Affected Party will not be liable for any Losses arising from or in connection with the non-performance of that obligation for the duration of the Force Majeure Event.
- (b) Without limiting any other part of this Agreement, where **nbn** is excused from supplying all or part of a service or Ordered Product pursuant to clause E6.1(a) then to the equivalent extent **nbn** is excused from paying Commercial Rebates, CSG Compensation or other Discounts, Credits, Rebates or Waivers under this Agreement for that service and/or Ordered Product.
- (c) The Affected Party must:
 - (i) to the extent it seeks to rely on clause E6.1(a), as soon as reasonably practicable, provide a Force Majeure Event Notice to the other party after that Force Majeure Event arises; and
 - (ii) use reasonable endeavours to minimise and overcome the impact of, and mitigate any Losses that may arise as a result of, that Force Majeure Event.
- (d) In the case of **nbn**, provided **nbn** complies with an **nbn**TM Power Resiliency Policy in respect of a Force Majeure Event that is a Power Outage, **nbn** will be deemed to have complied with clause E6.1(c)(ii) in respect of that Force Majeure Event.
- (e) For the duration of a Force Majeure Event, each party must continue to perform all obligations that they are able to perform despite the Force Majeure Event.
- (f) If the Force Majeure Event has prevented the Affected Party from performing a material obligation under this Agreement, and the Force Majeure Event lasts for a continuous period of 40 Business Days or more from the date of the Force Majeure Event Notice, then the other party can elect to terminate this Agreement on 20 Business Days' prior notice.

E6.2 Recovering from Force Majeure Events

As soon as is reasonably practicable after the Force Majeure Event no longer prevents the Affected Party from performing an obligation, the Affected Party must:

- (a) notify the other party;
- (b) where practicable, provide an estimated date by when the Affected Party considers that it will be able to recommence performance of the obligation;
- (c) recommence performing the obligation as soon as is reasonably practicable after the Force Majeure Event no longer prevents the Affected Party from performing that obligation; and
- (d) fulfil any of its outstanding obligations, except to the extent that it is no longer possible to do so or it is not required to do so by the other party.

E6.3 No obligation to settle strikes, etc.

- (a) Nothing in this clause E6 requires the Affected Party to settle an industrial dispute, strike, lockout, boycott, work ban or other labour dispute or difficulty, civil disobedience or native title claim.
- (b) The parties agree that the settlement of any such industrial dispute, strike, lockout, boycott, work ban or other labour dispute or difficulty, civil disobedience or native title claim will be determined by the Affected Party in its discretion.

Module F Agreement Management

F1 Relationship and Operational Points of Contact

F1.1 Relationship and Operational Points of Contact

- (a) As soon as is reasonably practicable after the Execution Date, each party must notify the other party of:
 - (i) one point of contact within its organisation whose role requires them to use their reasonable endeavours to facilitate the resolution of Relationship Issues (the **Relationship Point of Contact**); and
 - (ii) one point of contact within its organisation whose role requires them to use their reasonable endeavours to facilitate the resolution of Operational Issues (the **Operational Point of Contact**).
- (b) The parties may agree that more than one Relationship Point of Contact and/or Operational Point of Contact be appointed.
- (c) Each party is responsible for ensuring that its Relationship Points of Contact and Operational Points of Contact comply with the provisions of this clause F1.
- (d) If a party's Relationship Points of Contact and Operational Points of Contact fail to comply with this clause F1, then that failure is deemed to be a failure of that party.

F1.2 Responsibilities of Relationship and Operational Points of Contact

- (a) If a Relationship Issue or an Operational Issue arises, the parties must first use their respective Relationship Points of Contact or Operational Points of Contact (as the case may be) to facilitate the resolution of that issue in the first instance.
- (b) If there is any disagreement between the parties as to whether an issue is properly characterised as a Relationship Issue or an Operational Issue, that issue is deemed to be a Relationship Issue and will be treated accordingly.
- (c) If an Operational Issue cannot be resolved between the Operational Points of Contact of each party within 20 Business Days after the Operational Points of Contact first attempting to resolve that issue (or such other period agreed between the Operational Points of Contact), then that issue will thereafter be treated as a Relationship Issue.
- (d) Neither party may refer a Relationship Issue or an Operational Issue that becomes a Dispute directly to a Resolution Advisor in accordance with [Module G \(Dispute Management\)](#) without first satisfying itself that the Dispute cannot be satisfactorily resolved through their respective Relationship Points of Contact.
- (e) If a Relationship Issue (including an Operational Issue that is to be treated as a Relationship Issue in accordance with clause F1.2(b)) becomes a Dispute and is referred to a Resolution Advisor in accordance with [Module G \(Dispute Management\)](#), unless and until the Dispute is classified as an Industry Relevant Dispute, the Relationship Points of Contact may continue to work to resolve that Dispute, but any discussions or correspondence that takes place will be on a without prejudice basis and will not affect or modify the operation of the processes set out in [Module G \(Dispute Management\)](#).

F2 Term

F2.1 Term

Subject to and without limiting clause F11, this Agreement starts on the later of the:

- (a) Start Date; and
- (b) Execution Date,

and expires on the Expiry Date, unless extended in accordance with clause F2.2, otherwise agreed, or terminated earlier in accordance with this Agreement.

F2.2 Extension of Term

- (a) If RSP wants to extend the Term beyond the then current Expiry Date, RSP must give **nbn** a notice specifying the proposed new Expiry Date by no later than 20 Business Days prior to the Expiry Date (**Extension Notice**).
- (b) **nbn** must accept or reject an Extension Notice by notice to RSP within 10 Business Days after the date of the notice.
- (c) If **nbn** accepts an Extension Notice, this Agreement will continue on its then current terms until the new Expiry Date specified in the Extension Notice (or such other date as the parties may agree in writing).
- (d) If **nbn** rejects an Extension Notice, this Agreement will expire on the Expiry Date. On and from the Expiry Date RSP may only place, and **nbn** will only be obliged to accept, orders for Products under terms of supply which apply under clauses F12 or F13 as applicable.

F3 Multiparty forums and RSP changes

F3.1 Multiparty forums

- (a) **nbn** will operate the following multiparty forums using what **nbn** considers to be appropriate tools and media for the purposes of consultation (including under clause F4.12) and collaboration among participants:
 - (i) B2B Forum; and
 - (ii) any other multiparty forum as **nbn** sees fit.
- (b) RSP may participate in each forum referred to in clause F3.1(a) and the Multilateral SFAA Forum in accordance with the terms of reference that apply to the relevant forum, as notified by **nbn** to RSP from time to time. Any such terms of reference do not form part of this Agreement and bind the parties in accordance with and to the extent expressed in those terms.

F3.2 RSP requested changes

- (a) In addition to participating in any of the multiparty forums listed in clause F3.1, RSP may, from time to time, by giving **nbn** notice in writing:
 - (i) propose changes to this Agreement; or
 - (ii) request **nbn** to identify or re-classify any attribute of the **nbn**[™] Network under clause C13.5.
- (b) **nbn** will:

- (i) consider any proposal made by RSP under clause F3.2(a); and
 - (ii) consult with RSP about the purpose of the change requested by RSP under clause F3.2(a) and whether **nbn** considers:
 - (A) that the circumstances in clause F3.2(c) apply; and
 - (B) that such a change should be made,
including, on request, either:
 - (C) making itself available to meet with RSP to discuss the proposed changes requested by RSP, or whether the circumstances in clause F3.2(c) apply; or
 - (D) providing to RSP a written response in relation to the proposed changes requested by RSP or whether the circumstances in clause F3.2(c) apply.
- (c) **nbn** will perform the consultation under clause F3.2(b)(ii) in accordance with clause F4.12 if each of the following circumstances apply:
- (i) the proposed change to this Agreement relates to a Regulatory Event which has occurred within 6 months before RSP's proposed change; and
 - (ii) RSP has notified **nbn** that RSP considers, acting reasonably, that it will be unable or that it is impracticable to comply with an obligation imposed under an applicable law as a result of that Regulatory Event and comply with this Agreement, unless this Agreement is changed.
- (d) As soon as reasonably practicable after receiving a request from RSP to do so, **nbn** will, if possible, including to the extent permitted by law, publish and make available to all Other RSPs who are party to an Other Wholesale Broadband Agreement a copy of the changes requested by RSP under clause F3.2(a).

F4 Changes to this Agreement and other documents

F4.1 Changes to Head Terms

nbn may only change the Head Terms:

- (a) if that change is agreed in writing executed by both parties; or
- (b) under clause F4.8 (Changes required by law).

F4.2 Changes to Special Terms

nbn may only introduce or change Special Terms that apply in respect of a Product (including where such an introduction or change has the effect of amending the operation of the Head Terms in respect of that Product):

- (a) if that change is agreed in writing executed by both parties; or
- (b) under clauses F4.3(h) (Product Module Introduction) or F4.8 (Changes required by law).

F4.3 Product Module Introduction

- (a) **nbn** may make the supply of a new or updated Product available to RSP by:
 - (i) providing RSP with a proposed new or updated Product Module;
 - (ii) nominating a period, acting reasonably, during which **nbn** will negotiate the proposed new or updated Product Module with RSP; and

- (iii) notifying RSP, after the nominated negotiation period, of the final Product Module offered by **nbn**, including any updates to **nbn**'s previously proposed Product Module as a result of negotiations with RSP and Other RSPs.
- (b) Subject to clause F4.3(e), RSP may accept, as an amendment to this Agreement, any Product Module offered by **nbn** under clause F4.3(a)(iii) or offered by **nbn** at the Execution Date but not forming part of this Agreement:
 - (i) by agreement in writing; or
 - (ii) as otherwise set out in the Product Module offered by **nbn**.
- (c) If RSP accepts a Product Module under clause F4.3(b), then this Agreement is amended to incorporate that Product Module (as a new Product Module or in substitution for an existing Product Module, as relevant) on and from the following date (as applicable):
 - (i) the date that the last party executes an agreement under clause F4.3(b)(i); or
 - (ii) the date of acceptance under clause F4.3(b)(ii).
- (d) **nbn** will notify RSP of any amendment date under clause F4.3(c)(ii).
- (e) RSP may elect to accept any Product Module offered by **nbn** solely by means of agreement in writing by selecting that option in the Agreement Execution Document on or before the Execution Date, in which case:
 - (i) clauses F4.3(b)(ii) and F4.3(c)(ii) will have no force or effect; and
 - (ii) RSP must not communicate its acceptance of a Product Module in any manner set out in a Product Module offered by **nbn** other than by agreement in writing.
- (f) If a Product Module offered by **nbn** does not form part of this Agreement, subject to clause F4.3(g):
 - (i) RSP must not submit a Product Order Form for a Product, Product Component or Product Feature offered only under that Product Module; and
 - (ii) **nbn** may treat any Product Order Form submitted contrary to clause F4.3(f)(i) as void and immediately disconnect any Ordered Product, Ordered Product Component or Product Feature supplied pursuant to such a Product Order Form.
- (g) Clause F4.3(f) does not apply if:
 - (i) a relevant Product Module specifies that it may be incorporated into this Agreement by RSP submitting a Product Order Form for a Product, Product Component or Product Feature (as applicable) offered under that Product Module; and
 - (ii) RSP has not elected, pursuant to clause F4.3(e), to accept solely by means of agreement in writing, a Product Module offered by **nbn**.
- (h) A Product Module accepted under clause F4.3(b) may include the introduction of, or a change to, Special Terms that relate to the Product to which the Product Module relates.

F4.4 Product Module Enhancement

nbn may change a Product Module (other than the Special Terms):

- (a) to introduce an Enhancement to a Product (including by introducing or Enhancing a Product Component or Product Feature) by giving RSP at least 30 Business Days' notice of that change provided that, before giving any notice, **nbn** consults with RSP in accordance with:

- (i) the PDF Terms (if required by the terms of an SAU); or
 - (ii) clause F4.12; or
- (b) subject to the terms of any applicable SAU, to carry out a minor variation or enhancement which updates or improves the functionality or performance of a Product, by giving RSP notice of that change where that change will have no material adverse impact on RSP.

F4.5 Changes to Product Technical Specifications

- (a) If **nbn** identifies an error or defect in any proposed change to a Product Technical Specification notified under clauses F4.3 or F4.4 which may require further changes to the Product Technical Specification prior to the effective date of the change, **nbn** must, as soon as is reasonably practicable, give RSP a notice which includes:
- (i) details of the error or defect; and
 - (ii) details of **nbn**'s proposed course of action, which may include further changes to the relevant Product Technical Specification to address the error or defect.
- (b) **nbn**:
- (i) must consider any feedback from RSP or any Other RSP which provides feedback on the notice, including the effect on RSP of the proposed change and the effective date of the proposed change; and
 - (ii) must, acting reasonably, consider withdrawing or varying, or delaying the effective date of, a change notified under clause F4.5(a) to address feedback from RSP or an Other RSP.
- (c) Provided that **nbn** complies with this clause F4.5, any changes notified by **nbn** under clause F4.5(a) will be deemed to have been:
- (i) included in the notice, and validly notified, under clause F4.3 or F4.4 (as applicable) notwithstanding any negotiation, consultation or notice periods specified in those clauses; and
 - (ii) if applicable, accepted by RSP under clause F4.3.
- (d) **nbn** must, on request by RSP:
- (i) perform a post-implementation review in relation to any error or defect notified under clause F4.5(a); and
 - (ii) provide RSP with a written report which identifies the cause of the error or defect and the steps that **nbn** has taken, or proposes to take, to address it (if any).
- (e) For the purposes of this clause F4.5, the effective date of a change notified under either of clauses F4.3 or F4.4 is the later of:
- (i) the associated Commercial Launch Date; and
 - (ii) the date specified by **nbn** as the effective date in accordance with clause F4.3 or F4.4, as applicable.

F4.6 Product withdrawal and other changes to Products

- (a) **nbn** may change a Product Module to withdraw from supply any Product, Product Component, Product Feature or access technology:

- (i) to the extent that there are any applicable Product Terms, by consulting with RSP and giving notice subject to and in accordance with those Product Terms;
 - (ii) to the extent that clause F4.6(a)(i) does not apply to that Product, Product Component, Product Feature or access technology, by giving notice to RSP, subject to and in accordance with **nbn**'s obligations under any applicable SAU or applicable law; or
 - (iii) to the extent that clauses F4.6(a)(i) and F4.6(a)(ii) do not apply to that Product, Product Component, Product Feature or access technology, by consulting with RSP in accordance with clause F4.12 and giving written notice of its intention to withdraw the Product, Product Component, Product Feature or access technology at least 18 months before such withdrawal.
- (b) Subject to any applicable SAU, **nbn** may make any change to a Product Description or Product Technical Specification of a Product Module by:
- (i) consulting with RSP:
 - (A) in accordance with any applicable SAU to the extent that change constitutes the withdrawal of the Product, Product Component or Product Feature for the purposes of that SAU; and
 - (B) otherwise, in accordance with clause F4.12; and
 - (ii) giving notice to RSP as follows:
 - (A) if the change will have a material adverse effect on the functionality or performance of a Product, Product Component, Product Feature or access technology, by giving notice that is at least equal to the minimum notice period required to withdraw that Product, Product Component, Product Feature or access technology (as applicable); and
 - (B) to the extent that clause F4.6(b)(ii)(A) does not apply, by giving notice that is at least equal to the minimum notice period required to withdraw a Non-Material Product Feature of the relevant Product.
- (c) **nbn** may, by providing notice to RSP, make any amendment to a notice given under this clause F4.6 (including withdrawing the notice) that **nbn** considers is necessary or desirable for the purposes of complying with any applicable SAU or applicable law.

F4.7 Standard process changes

After consulting with RSP in accordance with clause F4.12, **nbn** may change:

- (a) an Operational Term to implement or reflect a change to its standard processes by giving at least 30 Business Days' notice of that change to RSP; or
- (b) the Credit Policy, by giving at least 60 Business Days' notice of that change to RSP.

F4.8 Changes required by law

nbn may:

- (a) change this Agreement, other than the TC-4 Bundles Discount or any Service Level Improvement Provision, where that change is necessary to comply with any applicable law or reasonably necessary or desirable to comply with, respond to, or is otherwise required by, a Regulatory Event, by giving as much notice as is reasonably practicable of that change to RSP; or

- (b) change the TC-4 Bundles Discount or a Service Level Improvement Provision (including, in each case, by withdrawing it) if that change is:
 - (i) necessary to comply with any applicable law;
 - (ii) reasonably necessary to comply with, or is otherwise required by, a Regulatory Event; or
 - (iii) in response to the acceptance or variation of an SAU relating to AVC pricing, CVC pricing, or both.

F4.9 Pricing changes

- (a) **nbn** may change a Price List, any other amount payable under this Agreement or any TC-4 Bundles Discount Roadmap:
 - (i) where reasonably necessary for **nbn** to comply with the requirements or consequences of its Non-Discrimination Obligations, on a date specified by **nbn**; or
 - (ii) in connection with a Tax Change Event (other than in connection with a Tax imposed on **nbn** pursuant to the *Telecommunications (Regional Broadband Scheme) Charge Act 2020* (Cth)) by giving no less than 40 Business Days' prior notice to RSP.
- (b) If **nbn** issues a notice under clause F4.9(a)(ii), then any change to a Charge in a Price List, any other amount payable under this Agreement or any TC-4 Bundles Discount Roadmap:
 - (i) will be an amount estimated by **nbn** to be a reasonably apportioned equivalent to that imposed or increased Tax or third party charge; and
 - (ii) may include any material prior over or under recovery that may have occurred in relation to any such imposed or increased Tax or third party charge.
- (c) Other than the TC-4 Bundles Discount, **nbn** may change a Price List or any other amount payable under this Agreement to the extent that the terms of any SAU permit the change, by notice subject to **nbn** complying with the applicable terms of that SAU.
- (d) If clause F4.9(c) does not apply, **nbn** may change a Price List or any other amount payable under this Agreement by consulting with RSP in accordance with clause F4.12 and then giving 3 months' notice, provided that the change does not amend the terms of the TC-4 Bundles Discount or any Discounts, Credits and Rebates Annexure.
- (e) Subject to clause F4.9(f), **nbn** may change the TC-4 Bundles Discount by consulting with RSP in accordance with clause F4.12 and then giving:
 - (i) 1 month's notice to make RSP Favourable Changes;
 - (ii) 3 months' notice to make operational process changes;
 - (iii) 3 months' notice to introduce any new bandwidth profile;
 - (iv) 12 months' notice to withdraw one or more bandwidth profiles from the TC-4 Bundles Discount, provided that **nbn** makes available an Equivalent Replacement Proposition; and
 - (v) 6 months' notice to make any change to the TC-4 Bundles Discount other than a change described in clauses F4.9(e)(i) to F4.9(e)(iv), provided that **nbn** must not:
 - (A) increase any effective recurring Charge in excess of the effective recurring Charge specified for a Protected Bundle Element in the then-current TC-4 Bundles Discount Roadmap; or

- (B) decrease any CVC Inclusion below the CVC Inclusion specified for a Protected Bundle Element in the then-current TC-4 Bundles Discount Roadmap.
- (f) **nbn** must not withdraw any Entry Level Bundles Element other than in accordance with clause F4.8(b) or make any of the following changes as applied to an Entry Level Bundles Element:
 - (i) increase the effective recurring Charge or Overage Amount above the effective recurring Charge or Overage Amount (respectively) that applies in any given period, as specified in this Agreement at the Start Date;
 - (ii) increase the ELB Additional Amount that applies between the Start Date and 30 April 2021 above the ELB Additional Amount that is specified in this Agreement, as at the Start Date, to apply for that period;
 - (iii) increase the ELB Additional Amount that applies between 1 May 2021 and the Expiry Date above the ELB Additional Amount that is specified, in this Agreement, as at the Start Date, to apply for that period; or
 - (iv) decrease the CVC Inclusion below the CVC Inclusion that applies in any given period, as specified in this Agreement at the Start Date.
- (g) Subject to clause F4.9(h), **nbn** may change or introduce a Discounts, Credits and Rebates Annexure:
 - (i) to introduce a new Discount, Credit, Rebate or Waiver, by giving notice to RSP;
 - (ii) in respect of an existing Short-term Discount, Credit, Rebate or Waiver:
 - (A) to extend that Discount, Credit, Rebate or Waiver, by giving 10 Business Days' notice to RSP; or
 - (B) to withdraw, suspend or otherwise amend that Discount, Credit, Rebate or Waiver, by giving 1 month's notice to RSP;
 - (iii) in respect of an existing Long-term Discount, Credit, Rebate or Waiver:
 - (A) to make an RSP Favourable Change to that Discount, Credit, Rebate or Waiver, by giving 1 month's notice to RSP;
 - (B) to extend that Discount, Credit, Rebate or Waiver, by giving 2 months' notice to RSP; or
 - (C) to withdraw, suspend or otherwise amend that Discount, Credit, Rebate or Waiver, by giving 3 months' notice to RSP; or
 - (iv) to withdraw an existing Discount, Credit, Rebate or Waiver that has expired in accordance with its terms, without giving notice to RSP.
- (h) To the extent that the terms of a Discount, Credit, Rebate or Waiver require **nbn** to provide a longer notice period than set out in clause F4.9(g), **nbn** must comply with that longer notice period requirement.

F4.10 TC-4 Bundles Discount Roadmap

- (a) **nbn** will provide RSP with roadmaps for the TC-4 Bundles Discount in accordance with this clause F4.10, which will contain at least the following information throughout the period covered by the roadmap (each, a **TC-4 Bundles Discount Roadmap**):
 - (i) the maximum effective recurring Charges that will apply for each set of Bundled Components;

- (ii) the minimum CVC Inclusion capacity that will apply for each set of Bundled Components; and
 - (iii) the maximum Overage Amount that will apply in respect of CVC TC-4 bandwidth capacity (in Mbps),

(each such item, a **Protected Bundle Element**).
- (b) Each TC-4 Bundles Discount Roadmap other than the Initial TC-4 Bundles Discount Roadmap will include information for the Protected Bundle Elements for a period of at least 24 months from the date that **nbn** first provides the TC-4 Bundles Discount Roadmap to RSP.
- (c) **nbn** may update a current TC-4 Bundles Discount Roadmap from time to time:
 - (i) to add into the TC-4 Bundles Discount Roadmap a new bandwidth profile to be introduced in accordance with this Agreement;
 - (ii) to remove from the TC-4 Bundles Discount Roadmap an existing bandwidth profile that is to be withdrawn in accordance with this Agreement; or
 - (iii) to make any other change to the TC-4 Bundles Roadmap if it does not affect a Protected Bundle Element.
- (d) A new TC-4 Bundles Discount Roadmap:
 - (i) will be provided at least 12 months in advance of the expiry of each then-current TC-4 Bundles Discount Roadmap, unless the TC-4 Bundles Discount Roadmap has been withdrawn under clause F4.10(e). Before providing a new TC-4 Bundles Discount Roadmap, **nbn** must:
 - (A) consult with RSP regarding the new TC-4 Bundles Discount Roadmap; and
 - (B) have regard to any submissions or feedback provided by RSP during the consultation period; and
 - (ii) may only specify an increase of the maximum effective recurring Charge or Overage Amount for a Protected Bundle Element, or a decrease of the minimum CVC Inclusion for a Protected Bundle Element, if that change has effect after any period covered by the then-current TC-4 Bundles Discount Roadmap.
- (e) **nbn** may change or withdraw the then-current TC-4 Bundles Discount Roadmap in any circumstance in which **nbn** may change the TC-4 Bundles Discount under clause F4.8(b) or by agreement with RSP.
- (f) Unless the TC-4 Bundles Discount Roadmap is withdrawn under clause F4.10(e), **nbn** will at all times during the Term make the current TC-4 Bundles Discount Roadmap available on **nbn**'s Website.

F4.11 Consequential changes to Dictionary

- (a) In addition to **nbn**'s rights to change the Dictionary under clauses F4.1 to F4.8 and F4.13(a), **nbn** may also change the Dictionary by giving 30 Business Days' notice to RSP provided that:
 - (i) the change to the Dictionary relates to a Product Module offered under clause F4.3(a)(iii); and
 - (ii) the notice is provided to RSP on or before the date on which the relevant Product Module is offered by **nbn** under clause F4.3(a)(iii).
- (b) RSP may, within 5 Business Days of **nbn** issuing a notice under clause F4.11(a), notify **nbn** that RSP considers the proposed change will have an adverse effect on RSP.

- (c) If **nbn** receives feedback from either RSP or an Other RSP that a proposed change under clause F4.11(a) will have an adverse effect on RSP or Other RSP (respectively), **nbn** may in its discretion withdraw or vary the notice provided to RSP under clause F4.11(a).
- (d) Without limiting clause F4.11(c), if **nbn** receives feedback from RSP under clause F4.11(b) that a change under clause F4.11(a) will have an adverse effect on RSP:
 - (i) **nbn**'s Relationship Point of Contact must use reasonable endeavours to discuss that feedback with RSP within 5 Business Days of receiving that feedback;
 - (ii) if RSP does not consider that its concerns have been addressed within 5 Business Days of providing feedback to **nbn**, RSP may escalate the issue to the relevant **nbn** representative in the Contact Matrix, or their delegate, for discussion; and
 - (iii) if **nbn** considers, acting reasonably based on the feedback provided by RSP, that the proposed change under clause F4.11(a) will have a material adverse effect on RSP, **nbn** will withdraw or vary the notice issued under clause F4.11(a).

F4.12 Consultation obligations

- (a) If this Agreement requires **nbn** to consult with RSP under this clause F4.12, **nbn** will consult with RSP before issuing any notice under any of clauses F4.4(a), F4.6(a)(i), F4.6(a)(iii), F4.6(b), F4.7(a), F4.7(b), F4.9(d) or F4.9(e).
- (b) At the commencement of the consultation period, **nbn** must inform RSP:
 - (i) that **nbn** is holding a consultation and of the purpose of the consultation;
 - (ii) of the reasons for the proposed change and the manner in which submissions or feedback can be made; and
 - (iii) of the length of the consultation period, whether the consultation relates to an expedited change under clause F4.12(f), and of the various deadlines within the consultation period.
- (c) **nbn** must:
 - (i) during the consultation period, provide RSP with an initial draft of the proposed change, unless the proposed change is to withdraw from supply any Product, Product Component, Product Feature or access technology;
 - (ii) give RSP an opportunity to provide feedback to **nbn** on the proposed change including whether RSP considers that the proposed change will have a material adverse effect on RSP and whether a longer period of prior notice should apply;
 - (iii) consider and have regard to any submissions or feedback given by RSP during the consultation period; and
 - (iv) on request, either:
 - (A) make itself available to meet with RSP to discuss any submissions or feedback given by RSP during the consultation period; or
 - (B) provide to RSP a written response in relation to the submissions or feedback given by RSP during the consultation period,either during the consultation period or within a reasonable period after the consultation period has ended.
- (d) If RSP notifies **nbn** during the consultation period that RSP considers that a proposed change to be made under clause F4.7 will have a material adverse effect on RSP, RSP may refer the

issue to the relevant **nbn** representative in the Contact Matrix, or their delegate, who must use reasonable endeavours to discuss the change with RSP within 5 Business Days of the referral.

- (e) For the purposes of clauses F4.12(b) to F4.12(d), “**consultation period**” in respect of a change means a period of no less than four weeks unless the change is introduced as an expedited change in accordance with clause F4.12(f).
- (f) Subject to clause F4.12(g), on up to 2 separate occasions each calendar year, **nbn** may notify RSP of a change, or set of changes (provided all changes in a single set are notified to RSP at the same time), to the Agreement (“**expedited changes**”) in respect of which the consultation period for the purposes of clauses F4.12(b) to F4.12(d) may be 2 weeks.
- (g) **nbn** will extend the consultation period for an expedited change to a period of 4 weeks or longer if, within 5 Business Days of **nbn**’s notice of an expedited change, RSP, acting reasonably, notifies **nbn** that:
 - (i) the size or significance of the expedited change is such that RSP is unable to reasonably consider the change within 2 weeks; or
 - (ii) the expedited change is likely to have a material adverse effect on RSP.
- (h) If **nbn** extends the consultation period for an expedited change to a period of 4 weeks or longer, that change will not constitute an expedited change for the purposes of clause F4.12(f).
- (i) If RSP, acting reasonably, considers that it is appropriate for a specific consultation period to be longer or shorter than the period notified by **nbn** under clause F4.12(b), RSP may, within 5 Business Days of **nbn**’s notice of the consultation period, refer the issue to the relevant **nbn** representative in the Contact Matrix, or their delegate, who must use reasonable endeavours to discuss the consultation period with RSP within 5 Business Days of the referral.
- (j) **nbn** may, in its discretion, vary the proposed change to address RSP’s or Other RSPs’ feedback or extend the applicable notice period.
- (k) Without limiting this clause F4.12, **nbn** may also consult with RSP through any multiparty forum or otherwise in a manner that **nbn** considers acting reasonably to be most relevant and suitable for the subject matter of the relevant change, provided that any such consultation is consistent with the principles set out in clause F4.12(c).
- (l) **nbn** will not be required to separately consult with RSP about a proposed change if RSP:
 - (i) does not participate in the consultation process nominated under this clause F4.12; or
 - (ii) has been excluded from a multiparty forum used for consultation under this clause F4.12 in accordance with the conditions of participation applicable to that multiparty forum.

F4.13 Supporting rights and obligations

- (a) **nbn** may change this Agreement (other than the Head Terms or Special Terms) where that change is consequential upon, or so as to give effect to, any change made under clauses F4.2 to F4.4 or F4.6 to F4.9, by including the consequential change in the same notice as is required for the original change.
- (b) Each change right in this clause F4 is a separate right that may be exercised independently of any other change right. A change right of a specific nature will not be read or interpreted as limiting any other general change right.

- (c) Following the consultation period for a change to withdraw from supply any Product, Product Component, Product Feature or access technology, **nbn** will notify RSP of the date by which **nbn** will provide details of the change(s) to be made to this Agreement to give effect to the withdrawal.
- (d) By the date notified under clause F4.13(c) or as part of any notice of any other change this Agreement issued under this clause F4 (as applicable), where reasonably practicable, **nbn** will include a comparison document showing in mark-up the change(s) being made to the relevant part or parts of this Agreement or the corresponding part or parts of any published Standard Form of Access Agreement.
- (e) **nbn** will endeavour to minimise the number of change notices given to RSP under this clause F4, including by bundling changes to the [WBA Operations Manual](#) to the extent reasonably practicable.
- (f) Any change to this Agreement made under this clause F4 must be consistent with any applicable terms of an SAU.

F5 Immediate remedies

F5.1 Immediate Ordering Freeze, Service Reduction or Suspension

nbn may immediately impose an Ordering Freeze, Service Reduction or Suspend an Ordered Product or the relevant part of an Ordered Product (including any processes in or activities contemplated by the [WBA Operations Manual](#) associated with the supply or proposed supply of an Ordered Product) in the following circumstances:

- (a) to avoid or mitigate the effect of an Emergency;
- (b) in order to comply with a lawful order, instruction or request of a Regulator, an emergency services organisation or any other competent authority;
- (c) where reasonably necessary to help officers and authorities of the Commonwealth and of the States and Territories to enforce criminal law and laws imposing pecuniary penalties, protect the public revenue or safeguard national security;
- (d) if **nbn** reasonably considers that the continued supply of an Ordered Product and/or the acquisition or use of that Ordered Product by RSP or the relevant processes in, or activities contemplated by, the [WBA Operations Manual](#) is likely to:
 - (i) endanger the health or safety of any person;
 - (ii) damage, interfere with or threaten the **nbn**TM Infrastructure; or
 - (iii) damage, interfere with or threaten any Other RSP's network, systems, equipment or facilities used in connection with any **nbn**TM Infrastructure;
- (e) if RSP no longer fully complies with the Supply Conditions;
- (f) where RSP no longer fully complies with any Fair Use Policy, and:
 - (i) **nbn** determines that RSP's non-compliance adversely affects or may adversely affect the quality of any product or service supplied by **nbn** to RSP or any Other RSP; or
 - (ii) a Default Notice has been issued by **nbn** to RSP under clause F6.1(a) for RSP's non-compliance with the relevant Fair Use Policy which remains unremedied by the deadline set out in that Default Notice;
- (g) if RSP suffers an Insolvency Event or **nbn** otherwise has reasonable grounds to believe that RSP will not be able to meet its payment obligations under this Agreement; or

- (h) where specified in any applicable Product Terms.

F5.2 Notice, duration and cessation

- (a) **nbn** will:
 - (i) use reasonable endeavours to provide RSP with at least 5 Business Days' notice of **nbn**'s exercise of its rights under clause F5.1 where reasonably practicable in the circumstances; and
 - (ii) notify RSP as soon as is reasonably practicable after **nbn** exercises its rights under clause F5.1.
- (b) **nbn** may continue to impose a remedy under clause F5.1 until the relevant circumstances in clause F5.1 giving rise to the imposition of such remedy have ceased to apply or have been remedied (as applicable) and it is reasonably practicable for **nbn** to discontinue the imposition of the relevant remedy.

F6 Default Notices

F6.1 Issuing a Default Notice

- (a) A party (in this clause F6, the **notifying party**) may issue a notice to the other party (in this clause F6, the **receiving party**) if the notifying party reasonably considers that the receiving party is in Default (**Default Notice**).
- (b) A Default Notice must be issued within 6 months after the date a Default becomes apparent to the notifying party and must contain:
 - (i) a description of the Default;
 - (ii) if the notifying party reasonably considers the Default is capable of remedy, a deadline by which the Default must be remedied in accordance with clause F6.1(c); and
 - (iii) whether the Default (individually or together with other Defaults identified in the Default Notice) is a Material Default.
- (c) The deadline set out in a Default Notice must be:
 - (i) at least 5 Business Days after the Default Notice is issued for Defaults that the notifying party reasonably considers:
 - (A) can be remedied within that period; or
 - (B) will have, or are likely to have, a material adverse effect on the supply of a product or service to RSP or any Other RSP; or
 - (ii) at least 20 Business Days after the Default Notice is issued for all other Defaults.

F6.2 Procedure after a Default Notice is issued

- (a) As soon as is reasonably practicable after the Default Notice is issued:
 - (i) the parties must make their Relationship Points of Contact available at reasonable times for consultation with a view to resolving the subject matter of that Default Notice (including discussion of the seriousness of the relevant Default and its impact on the notifying party); and
 - (ii) where the Default is capable of remedy, the receiving party must remedy the Default described in that Default Notice by the deadline in the Default Notice.

- (b) A Default Notice is of no further force or effect once the receiving party has remedied the Default described in the Default Notice.
- (c) A notifying party may withdraw a Default Notice at any time by notice to the receiving party.

F6.3 Procedure where Material Default

If the receiving party is in Material Default, the notifying party may exercise its rights under clauses F7 or F8 no later than 6 months after the date of issue of the relevant Default Notice (or, in the case of multiple Defaults which together give rise to a Material Default, the latest in time of those Default Notices) provided that:

- (a) the notifying party has not withdrawn the Default Notice;
- (b) the notifying party has made its Relationship Point of Contact reasonably available for consultation under clause F6.2(a) until the expiry of the deadline of the relevant Default Notice; and
- (c) in the case of **nbn**, the exercise of its rights would not cause **nbn** to breach any applicable law, including section 152AXB of the Competition and Consumer Act.

F7 Default by **nbn**

F7.1 RSP rights where **nbn** fails to remedy a Material Default

- (a) Subject to clause F6.3, where RSP has issued a Default Notice to **nbn** and a Material Default remains unremedied by the deadline in a Default Notice, or is incapable of being remedied, RSP may:
 - (i) escalate a Material Default by **nbn** to **nbn**'s Chief RSP Officer, or their delegate;
 - (ii) further escalate a Material Default by **nbn** to **nbn**'s Chief Executive Officer where:
 - (A) the subject matter of a Default Notice has not been resolved more than 20 Business Days (or such longer period as is agreed) after RSP escalated the relevant Material Default under clause F7.1(a)(i); and
 - (B) RSP has used reasonable endeavours to resolve the Material Default under clause F7.1(a)(i); or
 - (iii) terminate this Agreement by giving written notice to **nbn**.
- (b) RSP must not escalate a Material Default under clauses F7.1(a)(i) or F7.1(a)(ii) which is, or becomes the subject of, a Dispute under [Module G \(Dispute Management\)](#).

F8 Defaults by RSP

F8.1 **nbn** rights for unremedied RSP Defaults

- (a) Subject to clause F6.3, **nbn** may, by notice to RSP, immediately:
 - (i) impose an Ordering Freeze;
 - (ii) impose a Service Reduction, where it is commercially and technically feasible for **nbn** to do so;
 - (iii) Suspend the supply of an Ordered Product, or the relevant part of an Ordered Product;
 - (iv) disconnect or discontinue supply of any Ordered Product (in whole or in part) or services supplied under this Agreement; or

(v) terminate this Agreement,

where **nbn** has issued:

- (vi) a Default Notice to RSP in respect of a Material Default which remains unremedied by the deadline in the Default Notice, or is incapable of being remedied; or
- (vii) 3 or more Default Notices within a 12 month period in respect of the same or different Defaults, each of which remains unremedied at the expiry of that period, save that any Default Notice resolved in RSP's favour shall be disregarded for these purposes.

(b) **nbn** must give a notice to RSP under clause F8.1(a) no later than 20 Business Days after the expiry of the deadline in the relevant Default Notice.

F8.2 Duration and cessation of Ordering Freeze, Service Reduction or Suspension

(a) An Ordering Freeze, Service Reduction or Suspension imposed under clause F8.1 will continue until the earlier to occur of:

- (i) RSP having remedied the event giving rise to that Ordering Freeze, Service Reduction or Suspension (as applicable) to **nbn**'s reasonable satisfaction; or
- (ii) **nbn** determines in its discretion to discontinue the Ordering Freeze, Service Reduction or Suspension (as applicable).

(b) As soon as reasonably practicable after satisfaction of either of the conditions in clause F8.2(a), **nbn** will:

- (i) in the case of an Ordering Freeze, resume processing the orders for any Products current at the time the Ordering Freeze was imposed (unless advised otherwise by RSP) and process any further orders for Products that may be made by RSP; and
- (ii) in the case of a Service Reduction or Suspension, cease imposing that Service Reduction or Suspension on the relevant Ordered Products and restore supply of those Ordered Products as soon as is reasonably practicable.

(c) Nothing in clause F8.1 allows **nbn** to cease processing or refuse to accept a disconnection order submitted by RSP during an Ordering Freeze, Service Reduction or Suspension.

F9 Disconnection and termination

F9.1 Disconnection of Ordered Products and termination by RSP

(a) Subject to any relevant provisions of the Product Description for an Ordered Product, RSP may, by giving notice through the **nbn**TM Platform or through the processes set out in the [WBA Operations Manual](#), at any time immediately place a disconnection order or undertake such other procedure specified for discontinuation in respect of any Ordered Product or service supplied under this Agreement in accordance with the [WBA Operations Manual](#).

(b) RSP may, by giving written notice to **nbn**, terminate this Agreement if:

- (i) RSP has issued 3 or more Default Notices within a 12 month period in respect of the same or different Defaults, each of which remains unremedied at the expiry of that period, save that any Default Notice resolved in **nbn**'s favour shall be disregarded for these purposes;
- (ii) **nbn** ceases to hold a valid Carrier licence;
- (iii) **nbn** suffers an Insolvency Event; or

- (iv) RSP is expressly entitled to exercise a right of termination in any other provision of this Agreement.

F9.2 Disconnection and termination by **nbn**

- (a) **nbn** may, by giving written notice to RSP, immediately disconnect or discontinue (in whole or in part) any Ordered Product and/or terminate this Agreement if:
 - (i) RSP:
 - (A) does not complete On-boarding for at least one Product for which a Charge applies within 6 months after the Execution Date;
 - (B) satisfies clause F9.2(a)(i)(A) but does not receive supply of at least one Product for which a Charge applies within 6 months after completing such On-boarding; or
 - (C) satisfies clause F9.2(a)(i)(B) but at any time subsequently, does not receive supply of at least one Product for which a Charge applies for a continuous period of 6 months,subject to **nbn** complying with clause F9.2(b);
 - (ii) a Suspension by reason of an event or for a reason caused or contributed to by any act or omission of RSP has subsisted for more than 20 Business Days and continues to subsist at the date on which **nbn** gives that notice to RSP;
 - (iii) RSP ceases to be a Carrier, Carriage Service Provider or Content Service Provider;
 - (iv) RSP suffers an Insolvency Event; or
 - (v) **nbn** is expressly entitled to exercise a right of disconnection or termination pursuant to any other provision of this Agreement.
- (b) Before terminating this Agreement under clause F9.2(a)(i), **nbn** must:
 - (i) provide RSP with at least 20 Business Days' notice of **nbn**'s intention to terminate this Agreement under that clause;
 - (ii) offer to enter into an Information Agreement with RSP (and enter into the Information Agreement if RSP accepts **nbn**'s offer) provided that **nbn** considers that RSP is eligible to enter into, and will comply with the terms and conditions of, the Information Agreement; and
 - (iii) make its Relationship Point of Contact reasonably available for consultation with RSP for the purpose of discussing any concerns which RSP has with the termination of this Agreement or entry into an Information Agreement (if applicable).
- (c) Nothing in clause F9.2(a)(i) limits RSP's rights under Part XIC of the Competition and Consumer Act to seek the supply of products and services from **nbn** under any available terms of supply for those products and services.

F9.3 Other termination rights

- (a) This [Module F \(Agreement Management\)](#) sets out the only grounds on which the parties are entitled to terminate this Agreement, and neither party shall have any other right to terminate this Agreement at common law or otherwise.
- (b) A party may terminate this Agreement on 20 Business Days' notice if the other party evinces an intention no longer to be bound by this Agreement or an intention to fulfil its obligations

under this Agreement only in a manner inconsistent with that other party's obligations under this Agreement.

F10 Exercise of remedies

F10.1 Choice of remedy

- (a) A party may exercise any of its rights under this [Module F \(Agreement Management\)](#) concurrently.
- (b) If **nbn** proposes to exercise any rights under clauses F5, F8 or F9.2, **nbn** must:
 - (i) choose to exercise the right or rights that **nbn** reasonably considers to be proportionate to the event or circumstances giving rise to that right or those rights; and
 - (ii) exercise that right or those rights in a manner that **nbn** considers to be proportionate to the event or circumstances giving rise to those rights.
- (c) In addition to **nbn**'s rights under clauses F5 to F10, **nbn** may immediately exercise any right available to **nbn** under any Fair Use Policy to respond to a breach of the relevant Fair Use Policy.

F10.2 No waiver

The making of payments or the continued acquisition of Ordered Products by RSP, or the acceptance of payments or the continued supply of any Ordered Products by **nbn**, does not constitute a waiver of a party's respective rights under clauses F5 or F7 to F9, or elsewhere in this Agreement.

F10.3 Charges during and following Ordering Freeze, Service Reduction or Suspension

- (a) During the period of an Ordering Freeze, Service Reduction or Suspension imposed under clauses F5 or F8, RSP is required to pay Charges only for the services actually supplied by **nbn**.
- (b) RSP must pay any applicable restoration fees or charges set out in a Price List on cessation of an Ordering Freeze, Service Reduction or Suspension imposed under clauses F5 or F8, unless the event or reason giving rise to that Ordering Freeze, Service Reduction or Suspension was not contributed to by any act or omission of RSP.

F10.4 Disputes

- (a) The issue by a party of a Default Notice does not limit or prejudice that party's rights to raise all or part of the subject matter of that notice as a Dispute in accordance with [Module G \(Dispute Management\)](#).
- (b) A party must, as soon as is reasonably practicable, cease to exercise its rights under clauses F7 or F8 in respect of a Default, following a determination by a Panel or an expert (in accordance with [Module G \(Dispute Management\)](#)) that the other party is not or is no longer in Material Default.

F11 WBA transition

F11.1 Extension and variation of Prior WBA

- (a) If RSP and **nbn** are parties to a Prior WBA then with effect on and from the Execution Date:
 - (i) the "Expiry Date" of the Prior WBA will be the day immediately before the Start Date;

- (ii) subject to clause F11.1(a)(iii), the terms of [Module G \(Dispute Management\)](#) of this Agreement will be substituted for the terms of [Module G \(Dispute Management\)](#) in the Prior WBA and apply to any dispute that is or would have been a "Dispute" (as defined in the Prior WBA) and the terms of the Prior WBA will be read so as to give effect to this clause F11.1(a)(ii); and
 - (iii) clause F11.1(a)(ii) does not apply to any "Billing Dispute" (as defined in the Prior WBA).
- (b) Subject to clause F11.1(c), each Prior WBA Inflight Change is taken to have been validly notified under the corresponding provisions of this Agreement and will, without further action by either party, take effect in the form that the Prior WBA Inflight Change is incorporated into the Standard Offer on the later of:
 - (i) the Start Date; and
 - (ii) the effective date of the Prior WBA Inflight Change.
- (c) Clause F11.1(b) does not apply in respect of changes or pending changes to the extent that:
 - (i) the relevant change has already been incorporated into the terms of this Agreement; or
 - (ii) the notice of the change expressly states, or **nbn** otherwise notifies RSP on or before the Execution Date, that the relevant change is not intended to take effect under this Agreement pursuant to clause F11.1(b).

F11.2 Transition Period - Execution Date before the Start Date

If the Execution Date is before the Start Date, with effect on and from the Execution Date:

- (a) **nbn** may make changes to the documents to which clause F4 is expressed to apply in accordance with the terms of clause F4;
- (b) the terms of [Module G \(Dispute Management\)](#) will apply to any Dispute arising in relation to changes made (or purported to be made) pursuant to clause F4;
- (c) the terms of [Module E \(Risk Management\)](#) will apply to any Liabilities that a party owes to the other party arising from or in connection with this clause F11.2; and
- (d) the terms of [Module H \(General Terms\)](#) and the Dictionary will apply to the extent necessary to give effect to the provisions of this Agreement referred to in this clause F11.2,

and the terms of this Agreement will be read so as to give effect to this clause F11.2.

F11.3 Transition from a Prior WBA

If RSP and **nbn** are parties to a Prior WBA, with effect on and from the Start Date:

- (a) any products or services being supplied by **nbn** to RSP and any processes or activities undertaken under the Prior WBA will, on and from the Start Date, be supplied or will continue pursuant to, and be subject to the provisions of, this Agreement without further action by either party;
- (b) any invoices issued under the Prior WBA will be payable in accordance with their terms as specified under the Prior WBA;
- (c) any products or services supplied by **nbn** to RSP under the Prior WBA, but not invoiced before the Start Date, will be calculated in accordance with the Prior WBA but invoiced and payable under this Agreement;

- (d) any dispute that would have been a "Billing Dispute" (as defined in the Prior WBA) but was not raised in accordance with the Prior WBA before the Start Date, may only be raised under clause B5 and clause B5 will apply to that dispute;
- (e) a party may, under this Agreement, continue to exercise rights accrued under a Prior WBA to the extent that the exercise of those accrued rights is required to give effect to this Agreement as contemplated by the parties, including in relation to access to premises, disclosure of confidential information and the grant of intellectual property rights under a Prior WBA; and
- (f) RSP is not required to undertake On-boarding under this Agreement to the extent it has satisfactorily completed the on-boarding requirements necessary to acquire an equivalent product or service under a Prior WBA,

and the terms of this Agreement and the Prior WBA will be read so as to give effect to this clause F11.3.

F12 Continued supply after expiry of this Agreement

F12.1 Continued supply under Latest Commercial Offer

If, on or before the Expiry Date, the parties execute the Latest Commercial Offer, then on and from the day after the Expiry Date:

- (a) **nbn** will continue supplying each Ordered Product under the terms and conditions of the Latest Commercial Offer as executed by the parties; and
- (b) each order in respect of a Product, Product Component or Product Feature which has been submitted by RSP under this Agreement but not Completed or Rejected by **nbn** on or before the Expiry Date will become an order under the terms and conditions of the Latest Commercial Offer as executed by the parties.

F12.2 Continued supply under Latest Standard Offer

If RSP does not accept the Latest Commercial Offer made by **nbn** and the parties do not execute the Latest Commercial Offer on or before the Expiry Date, then on and from the day after the Expiry Date:

- (a) **nbn** will supply each Ordered Product under the terms and conditions of the Latest Standard Offer unless RSP terminates the Ordered Product on or before the Expiry Date;
- (b) each order in respect of a Product, Product Component or Product Feature which has been submitted by RSP under this Agreement but not Completed or Rejected by **nbn** on or before the Expiry Date will become an order under the terms and conditions of the Latest Standard Offer;
- (c) **nbn** may amend the terms and conditions of the Latest Standard Offer from time to time by making a new or updated Standard Offer available; and
- (d) the parties agree to comply with the terms and conditions of the Latest Standard Offer, including as amended under clause F12.2(c).

F12.3 Obligations under Part XIC unaffected

nbn acknowledges that:

- (a) on or before the Expiry Date, RSP may notify **nbn** that RSP does not accept any Latest Commercial Offer by **nbn** or the Latest Standard Offer; and
- (b) nothing in **nbn**'s offer to supply products and services to RSP under either clauses F12.1 or F12.2 limits RSP's rights to seek the supply of products and services from **nbn** under any

alternative terms and conditions of supply under Part XIC of the Competition and Consumer Act.

F12.4 Accrued rights

Expiry of this Agreement in any of the circumstances set out in clauses F12.1 to F12.3 does not affect the right of either party to enforce its accrued rights against the other party after the Expiry Date except as agreed between the parties (including under any terms which may apply pursuant to clauses F12.1 or F12.2).

F13 Disengagement after expiry or termination of this Agreement

F13.1 Application of this clause

This clause F13 applies if:

- (a) either party terminates this Agreement; or
- (b) this Agreement expires without any agreed or other terms applying to the continued supply of products and services by **nbn** after the Expiry Date as contemplated under any of clauses F12.1 to F12.3.

F13.2 Fulfilment of orders and supply of Products

Subject to clause F13.3, **nbn** may immediately:

- (a) cease supplying Ordered Products;
- (b) refuse to accept any further orders for Products from RSP; and
- (c) cease fulfilling any then-current orders for Products from RSP,

under this Agreement and RSP's rights to use Ordered Products under this Agreement (including as an input to the supply of RSP Products) immediately cease.

F13.3 **nbn** to consider further supply for a limited period

nbn will consider, and may in its absolute discretion and on specified conditions (which may include RSP agreeing to changes to disconnection and equipment removal timeframes) grant, a request by RSP to continue to provide Ordered Products to RSP on the terms agreed by **nbn** from time to time for a further period (not exceeding 6 months) requested by RSP following the expiry or termination of this Agreement, in order to ensure an orderly disengagement process.

F13.4 Charges

- (a) RSP remains liable to pay to **nbn** all Charges incurred by RSP up to and including the earlier to occur of:
 - (i) the Effective Disconnection Date; and
 - (ii) the date of cessation of supply of Ordered Products.
- (b) Subject to the terms of the resolution of any subsisting Billing Dispute, all Charges and other amounts payable by RSP under this Agreement incurred by RSP:
 - (i) that have been invoiced by **nbn** and are due and payable, will become immediately due and payable as a debt on the effective date of expiry or termination of this Agreement;

- (ii) that have been invoiced by **nbn** but are not yet due and payable, will become immediately due and payable as a debt on the relevant Due Date; and
 - (iii) that have not yet been invoiced by **nbn**, will be invoiced by **nbn** as soon as is reasonably practicable after the effective date of expiry or termination of this Agreement and will be immediately due and payable as a debt on the relevant Due Date.
- (c) Within 20 Business Days after the effective date of expiry or termination of this Agreement, **nbn** will refund or credit to RSP a proportion of any Charges and other amounts payable by RSP under this Agreement calculated on a pro rata daily basis which may have been paid in advance by RSP for the period after the effective date of expiry or termination, or **nbn** may set off that amount against any other amount which RSP must pay to **nbn** in connection with this Agreement.

F13.5 Discounts, Credits, Rebates and Waivers

Within 20 Business Days after the effective date of expiry or termination of this Agreement, **nbn** will pay to RSP an amount equal to the value of any Discounts, Credits, Rebates and Waivers that were due to RSP during the Term, but were not deducted from amounts due in invoices issued by **nbn** to RSP under this Agreement during the Term, or **nbn** may set off that amount (or part of that amount) against any other amount which RSP must pay to **nbn** in connection with this Agreement.

F13.6 Confidential Information

- (a) Within 20 Business Days after the effective date of expiry or termination of this Agreement, each party must return, destroy or delete any of the other party's Confidential Information disclosed to it in connection with this Agreement, except to the extent it is impracticable to do so, or impermissible under applicable law.
- (b) Each party may retain one copy of and use the other party's Confidential Information after the effective date of expiry or termination of this Agreement for the purpose of enforcing its rights under this Agreement, discharging its obligations under applicable law or its own record-keeping purposes and no other purpose.

F13.7 Formation of a Project Team upon expiry or termination

- (a) The parties must, as soon as is reasonably practicable prior to expiry or termination of this Agreement (or where it is not possible to do so, after such expiry or termination), meet to create a project team, which is to be responsible for the disengagement of RSP from the **nbn**TM Network and **nbn**TM Platform (**Project Team**).
- (b) The Project Team:
 - (i) must be comprised of not less than 2 suitable persons from each of **nbn** and RSP (including each party's Relationship Point of Contact); and
 - (ii) must meet in locations and with a frequency as may be agreed by the Project Team having regard to the disengagement circumstances (including the scale of the disconnection activities to be undertaken), until such time as RSP has disengaged from the **nbn**TM Network and the **nbn**TM Platform in accordance with the terms agreed by **nbn** from time to time.
- (c) RSP must, through its Project Team representatives, as soon as reasonably practicable after a Project Team is created, provide a disengagement plan to **nbn**'s Project Team representatives for **nbn**'s consideration and, if thought fit, approval.
- (d) If **nbn** approves a disengagement plan provided by RSP, RSP must implement that plan as soon as reasonably practicable following such approval.

F13.8 Network disconnections and equipment removal

- (a) Within 90 Business Days after the effective date of expiry or termination of this Agreement (or such other period as **nbn** may consent to, such consent not to be unreasonably withheld, taking into account the scale of the necessary disconnection activities to be undertaken), RSP must:
- (i) disconnect any connections made by or on behalf of RSP from the RSP Network to the **nbn**TM Network and the **nbn**TM Platform;
 - (ii) use reasonable endeavours to ensure that any connections made by or on behalf of any Downstream Service Provider or any End User to the **nbn**TM Network in connection with RSP's supply of RSP Products are disconnected;
 - (iii) remove all RSP Equipment and other items owned or controlled by RSP or any of its Related Bodies Corporate from the National Test Facility and any other property, facilities or sites owned or controlled by **nbn**; and
 - (iv) remove (or ensure the removal of) all equipment and other items owned or controlled by any Downstream Service Providers or Contracted End Users from the National Test Facility and any other property, facilities or sites owned or controlled by **nbn**.
- (b) RSP must comply, and must use reasonable endeavours to ensure that Downstream Service Providers and End Users comply, with any reasonable instructions given by **nbn** in connection with any work conducted under clause F13.8(a).
- (c) **nbn** will grant RSP reasonable access to **nbn** sites for the purposes of performing its obligations under clauses F13.8(a)(iii) and F13.8(a)(iv) provided that RSP complies with any reasonable instructions given by **nbn** in connection with such access.
- (d) If RSP fails to remove any equipment or other items from the National Test Facility and other property, facilities or sites owned or controlled by **nbn** under clause F13.8(a)(iii) and F13.8(a)(iv):
- (i) **nbn** (or any of its Personnel) may remove such equipment and other items by giving RSP at least 5 Business Days' notice of its intention to do so; and
 - (ii) RSP must reimburse **nbn** for all costs and expenses reasonably incurred by **nbn** in removing such equipment and other items.

F13.9 Removal of equipment from third party property

- (a) If RSP Equipment and other items or equipment owned or controlled by RSP or any of its Related Bodies Corporate is located on any third party property, facility or site and **nbn** no longer has a right to occupy, access or use that third party property, facility or site (or relevant part thereof), then **nbn** will provide as much notice as is reasonably practicable to RSP to remove the RSP Equipment and other items or equipment owned or controlled by RSP or any of its Related Bodies Corporate from that third party property, facility or site.
- (b) Subject to any other rights that RSP may have to continue to occupy, access or use third party property identified by **nbn** in a notice under clause F13.9(a), RSP must stop using and remove the RSP Equipment and other items or equipment owned or controlled by RSP or any of its Related Bodies Corporate and make good that property, facility or site, fair wear and tear excepted, as soon as reasonably practicable and in any event within the timeframe specified by **nbn** in that notice.
- (c) If RSP fails to remove the RSP Equipment and any other items or equipment owned or controlled by RSP or any of its Related Bodies Corporate from any third party property, facility or site in accordance with the timeframe given under clause F13.9(a), then RSP agrees that

nbn or a third party may remove the RSP Equipment or any other items or equipment owned or controlled by RSP or any of its Related Bodies Corporate from the third party property, facility or site.

- (d) If **nbn** removes any such equipment and other items pursuant to clause F13.9(a), then RSP must reimburse **nbn** for all costs and expenses reasonably incurred by **nbn** in removing such equipment and other items.

F13.10 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.

Module G Dispute Management

Part A: Application of Dispute Management Rules

G1 Application of Dispute Management Rules

- (a) These Dispute Management Rules apply to any Dispute other than a Billing Dispute.
 - (b) Where a Dispute is a Billing Dispute, then unless **nbn** otherwise determines, that Billing Dispute must be resolved in accordance with the Billing Dispute procedures in clause B5.
-

G2 Manner of Dispute resolution

G2.1 Resolution between the parties to the Dispute

- (a) If a Dispute arises, **nbn** or RSP may, by written notice to the other, refer the Dispute for resolution under these Dispute Management Rules.
- (b) Any Dispute notified under clause G2.1(a) must be referred initially to the other party's Relationship Point of Contact, who must, subject to clause G2.1(d), endeavour to resolve the Dispute within 10 Business Days after the giving of notice under clause G2.1(a) or such other time agreed by **nbn** and RSP.
- (c) If the Dispute is not resolved within the time specified or agreed under clause G2.1(b), then:
 - (i) **nbn** and RSP may agree to use mediation to resolve the Dispute in accordance with clause G8.1;
 - (ii) **nbn** and RSP may agree to refer the Dispute to expert determination in accordance with clause G3, except where any circumstances detailed in clause G3.1 exist; or
 - (iii) either **nbn** or RSP may refer the Dispute to a Resolution Advisor to arrange for Panel Arbitration in accordance with clause G4 (**Referral**).
- (d) If either **nbn** or RSP believes that a Dispute may be an Industry Relevant Dispute, it may refer the Dispute to the Resolution Advisor under clause G2.1(c)(iii) prior to the expiry of the time period in clause G2.1(b).

Part B: Expert Determination of Bilateral Disputes

G3 Expert Determination Rules

G3.1 No expert determination of Industry Relevant Disputes

A party may not refer a Dispute to expert determination where that party believes that a Dispute would be likely to be classified as an Industry Relevant Dispute.

G3.2 Selection of an Expert

- (a) Within 10 Business Days after **nbn** and RSP agreeing to refer a Dispute to expert determination pursuant to clause G2.1(c)(ii), **nbn** and RSP must:
 - (i) agree on the person to be appointed as the expert and provide the Resolution Advisor with notice of that agreement; or

- (ii) if **nbn** and RSP are unable to agree on the person to be appointed as the expert, notify the Resolution Advisor of the parties' agreement to refer the Dispute to expert determination.
- (b) Within 5 Business Days after the date of a notice under clause G3.2(a)(ii), or as soon as reasonably practicable where clause G3.2(f)(i) applies, the Resolution Advisor will nominate 3 persons who are suitable and available to determine the Dispute as an expert and notify **nbn** and RSP in writing of the names, qualifications and relevant experience of those 3 persons (the **Expert Shortlist**).
- (c) The Resolution Advisor will ensure that any person nominated to the Expert Shortlist:
 - (i) has experience or expertise that is relevant to the nature of the Dispute;
 - (ii) is experienced in expert determination procedures; and
 - (iii) is independent of the parties to the Dispute, such that no circumstances exist that are likely to give rise to any real danger of bias in the performance of his or her duties in determining the Dispute as an expert, if appointed.
- (d) **nbn** and RSP may select a person to act as the Expert from the Expert Shortlist by agreement within 5 Business Days after receiving a copy of the Expert Shortlist.
- (e) Where an expert is agreed, **nbn** and RSP must, within 10 Business Days after the date of the notice under clause G3.2(a)(i) or the expiry of the period in clause G3.2(d):
 - (i) use reasonable endeavours to appoint the agreed person as Expert on the terms of the Expert Determination Rules of the Resolution Institute (subject to the terms of this Agreement or as otherwise agreed by **nbn** and RSP and the Expert); and
 - (ii) provide the Resolution Advisor with a notice of the appointment of the Expert.
- (f) If **nbn** and RSP have not appointed the Expert within the time period specified in clause G3.2(e), then:
 - (i) where no Expert Shortlist has been provided to the parties, clauses G3.2(b), G3.2(c), G3.2(d) and G3.2(e) will apply in respect to selection of an alternative expert from the Expert Shortlist; or
 - (ii) where an Expert Shortlist has been provided to the parties, the Resolution Advisor will, as soon as practicable, select an alternative expert from the Expert Shortlist and notify **nbn** and RSP of that selection.
- (g) **nbn** and RSP must, within 10 Business Days after the date of notice under clause G3.2(f)(ii) appoint the Expert detailed in that notice on the terms of the Expert Determination Rules of the Resolution Institute (subject to the terms of this Agreement or as otherwise agreed by the parties and the Expert).

G3.3 Conduct of the Expert Determination

- (a) Any Expert Determination must be conducted in accordance with the Resolution Institute Expert Determination Rules, unless otherwise agreed by **nbn** and RSP with the Expert in the terms of appointment of the Expert.
- (b) If there is any inconsistency between this clause G3 and the Resolution Institute Expert Determination Rules, this clause G3 will prevail to the extent of any inconsistency.
- (c) The Expert will determine and adopt a procedure which, in the Expert's opinion, is the most efficient procedure practicable in the circumstances.

- (d) The place of any Expert Determination hearing will be Sydney, Australia, unless otherwise agreed by **nbn** and RSP, except that this will not prohibit the Expert Determination from convening at any other place to attend any inspection.
- (e) The Expert may seek independent advice regarding any aspect of the Dispute if in the Expert's opinion it would assist in the efficient resolution of the Dispute.
- (f) **nbn** and RSP must each provide the Expert with any information that the Expert reasonably requires within a timeframe reasonably determined by the Expert.
- (g) Where **nbn** or RSP fails to comply with a requirement pursuant to clause G3.3(f) the Expert is entitled to:
 - (i) make a decision in the absence of provision of any requested information; and
 - (ii) make adverse inferences from the failure of **nbn** or RSP to provide any requested information.
- (h) The Expert will act as an expert and not as an arbitrator. The parties acknowledge that the Expert is not an arbitrator for the purpose of the CAA.
- (i) The Expert is entitled to rely on the Expert's own independent judgement and opinion, but must follow any code by CommsAlliance (or any replacement or successor to CommsAlliance) to which **nbn** is a code signatory, any Industry Code, any Industry Standard and any Technical Standard.

G3.4 Determination by the Expert

- (a) Prior to making a final decision, the Expert must provide **nbn** and RSP with a draft decision, including draft reasons, regarding resolution of the Dispute.
- (b) The Expert must provide **nbn** and RSP with a reasonable period of not less than 5 Business Days in which to comment on the draft decision and must take any comments received during that period into account in reaching a final decision.
- (c) The Expert must make its decision in respect of the Dispute as soon as is reasonably practicable, and in any case will provide the parties with a signed copy of its final decision and reasons for that decision by no later than:
 - (i) 40 Business Days after its appointment; or
 - (ii) such other date agreed by **nbn** and RSP or determined by the Expert,subject to any extensions agreed between the parties to the Dispute or determined by the Expert.
- (d) Subject to clause G3.5, **nbn** and RSP agree that the final decision by the Expert is final and binding on them.
- (e) Before making any orders, decisions, determinations or Awards, the Expert must, as part of his or her decision-making process, have regard to whether:
 - (i) the order, decision, determination or Award; and
 - (ii) the implementation of the order, decision, determination or Award by the parties,will or is likely to require **nbn** to treat RSP, any Other RSP or any Access Seeker in a manner that does not comply with the Non-Discrimination Obligations.

G3.5 Reviewing the decision of the Expert

- (a) Either **nbn** or RSP may, in accordance with this clause G3.5, commence proceedings in a court of competent jurisdiction if it considers that:
 - (i) the final decision of the Expert contains a manifest error; or
 - (ii) the Expert has acted in bad faith.
- (b) The decision of the Expert is deemed to be final and binding pending the adjudication of the appeal by the relevant court of competent jurisdiction.
- (c) Each participant may:
 - (i) within 20 Business Days after receipt of the final decision, notify the Resolution Advisor and the other party that it intends to pursue its review rights under clause G3.5(a) in a court of competent jurisdiction; or
 - (ii) within 15 Business Days after receipt of the final decision, request that the Resolution Advisor approve an extension to the period in clause G3.5(c)(i), where the party believes that there are justifiable reasons for an extension. If the Resolution Advisor considers an extension is reasonable in all the circumstances, the Resolution Advisor must, within 2 Business Days after receipt of such a notice, notify the parties to the Dispute of the period of extension and the period in clause G3.5(c)(i) will be extended in accordance with the notification.
- (d) If neither **nbn** nor RSP provides notice to the Resolution Advisor and the other party in accordance with clause G3.5(c), then each party is deemed to have waived its rights under this clause G3.5 and the final decision of the Expert will be final and binding.

Part C: Panel Arbitration

G4 Commencing arbitration process

G4.1 Referral of Disputes to a Resolution Advisor

- (a) A Referral under clause G2.1(c)(iii) must be in writing and in accordance with any procedural requirements notified by the Resolution Advisor to **nbn** from time to time which **nbn** will publish on **nbn**'s Website (**Referral Notice**).
- (b) Where a party fails to comply with such procedural requirements, the Resolution Advisor may require the referring party to submit such further information as the Resolution Advisor considers necessary for the Resolution Advisor to assess the nature of the Dispute and the Resolution Advisor may suspend the time in clause G4.1(d) until he or she has received the information requested from the party making the Referral.
- (c) Where the Resolution Advisor receives a Referral Notice, the Resolution Advisor will notify each party to the Dispute of that fact within 1 Business Day after receipt of the Referral Notice.
- (d) Each party must, within 5 Business Days (or such other period as may be agreed) after the date of service of the notice referred to in clause G4.1(c), provide to the Resolution Advisor a statement setting out:
 - (i) a brief history of the Dispute and the circumstances giving rise to it;
 - (ii) a brief statement of its position in relation to that Dispute;

- (iii) its submissions in respect to classification of the Dispute as a Bilateral Dispute or Industry Relevant Dispute;
- (iv) any preference the party has for members of the Pool to be appointed to a Panel; and
- (v) any other information or documentation requested by the Resolution Advisor.

G4.2 Constitution of the Panel

- (a) The Resolution Advisor will, prior to the expiry of 10 Business Days after the date of service of the notice referred to in clause G4.1(c):
 - (i) consult with the parties to the Dispute on the composition of the Panel, except that such consultation on the composition of the Panel will not apply in respect to a party that is later joined as a party to an Industry Relevant Dispute;
 - (ii) in accordance with clause G4.2(b) and subject to clause G4.2(c), select 3 current and available members of the Pool for appointment to a panel; and
 - (iii) notify the parties in writing of the identity of the Panel Members.
- (b) In selecting members of the Pool to be appointed to the Panel, the Resolution Advisor will take into account:
 - (i) the preferences of the parties to the Dispute in respect to Pool Members;
 - (ii) any circumstances likely to give rise to any real danger of bias on the part of any member of the Pool in the performance of his or her duties as a Panel Member, if appointed;
 - (iii) the expertise required to assess the nature of the Dispute; and
 - (iv) the need for the Panel to include a Legal Practitioner or a Dispute Resolution Practitioner as its chair.
- (c) The Resolution Advisor may, if in his or her reasonable opinion no member of the Pool is:
 - (i) eligible for appointment to the Panel; or
 - (ii) sufficiently skilled and experienced to classify and resolve the Dispute,select for appointment to the Panel another person whom he or she reasonably considers to be eligible and sufficiently skilled and experienced, but who is not a member of the Pool, and notify the ACCC of such selection.
- (d) Provided the person notified to the ACCC under clause G4.2(c) is approved by the ACCC:
 - (i) **nbn** must appoint the person to be a Pool Member; and
 - (ii) the parties must appoint that person to the Panel under clause G4.2(g).
- (e) Subject to the provisions of the CAA, the decision of the Resolution Advisor as to the selection of the Panel is final and binding upon all parties to the Dispute.
- (f) Where a party wishes to exercise its rights under the CAA to challenge the appointment of a Panel Member, it must exercise those rights as soon as reasonably practicable.
- (g) The parties must, within 2 Business Days after receiving the notice referred to in clause G4.2(a)(iii), appoint the Panel Members on the Approved Panel Terms, subject to any variation of the Approved Panel Terms permitted to be made by the Resolution Advisor under an SAU.

- (h) The Resolution Advisor will promptly, and within 2 Business Days following appointment of the Panel, provide the Panel with the information provided to it by the parties pursuant to clause G4.1(d) and such other information he or she received in respect to the Dispute.

G4.3 Classification of Dispute

- (a) Prior to the expiry of 7 Business Days after the date on which the Panel are provided with the information pursuant to clause G4.2(h), the Panel must classify the Dispute.
- (b) In classifying the Dispute, the Panel must:
 - (i) determine the real questions in controversy between the parties (and is not bound by the parties' formulation of the questions); and
 - (ii) have regard to any Approved Dispute Guidelines which address classification.
- (c) The Panel may invite further submissions on classification from the parties to the Dispute prior to making its decision on classification.
- (d) The Panel must classify the Dispute as an Industry Relevant Dispute only if the Panel considers, based on the materials before it and the facts, matters and circumstances of the Dispute in question, that the resolution of the Dispute will, or is likely to, materially affect Other RSPs, including by reason of the Non-Discrimination Obligations.
- (e) A classification decision of the Panel is made by a majority of the Panel Members.
- (f) Any classification by the Panel under clause G4.3(d) will be made:
 - (i) irrespective of whether **nbn** and any potentially affected Other RSP are currently in dispute; and
 - (ii) subject to reclassification as a Bilateral Dispute in accordance with clause G6.2(e).
- (g) If the Panel does not classify a Dispute as an Industry Relevant Dispute under clause G4.3(d), then the Dispute is classified as a Bilateral Dispute.
- (h) Within 2 Business Days following classification of the Dispute under clauses G4.3(d) or G4.3(g), or a reclassification of a Dispute under clause G6.2(e), the Resolution Advisor must notify **nbn** and RSP in writing of the decision of the Panel in respect to classification.

G5 Resolution of Bilateral Disputes

- (a) Following a Referral to the Resolution Advisor and classification of a Dispute as a Bilateral Dispute by the Panel in accordance with the Approved Dispute Guidelines, a Bilateral Dispute will be resolved through Panel Arbitration in accordance with clause G7.
- (b) Nothing in this Part C is intended to prevent the parties from referring a Bilateral Dispute to mediation by agreement in accordance with clause G2.1(c)(i) or Expert Determination by agreement in accordance with clause G2.1(c)(ii).

G6 Resolution of Industry Relevant Disputes

G6.1 Panel Arbitration

Following a Referral to the Resolution Advisor and classification of a Dispute as an Industry Relevant Dispute by the Panel in accordance with the Approved Dispute Guidelines, an Industry Relevant Dispute will be resolved through Panel Arbitration in accordance with clauses G6 and G7.

G6.2 Invitation to Other RSPs to apply to be joined to the Panel Arbitration for an Industry Relevant Dispute

- (a) In accordance with this clause G6.2, the parties to the Panel Arbitration for an Industry Relevant Dispute are **nbn**, RSP and any Accepted Invitee.
- (b) Within 5 Business Days after the Dispute being classified as an Industry Relevant Dispute, the Resolution Advisor will, in accordance with the Approved Dispute Guidelines, issue an Invitation in writing to all potentially affected Other RSPs. An Invitation must inform each Invitee of the commencement of the Industry Relevant Dispute and of their right to make an application to become a party to the Panel Arbitration for that Industry Relevant Dispute.
- (c) An Invitation will be in the form detailed in the Approved Dispute Guidelines and will set out:
 - (i) a brief history of the Industry Relevant Dispute (subject to the preservation of the confidentiality of **nbn**'s and RSP's confidential information);
 - (ii) the process which the Invitee must comply with in order to make a valid application to become a party to the Panel Arbitration for the Industry Relevant Dispute, including the making of submissions in support of the Invitee's application to be joined as a party to that Panel Arbitration;
 - (iii) the conditions and/or criteria that the Invitee must meet, to the Panel's satisfaction, to become a party to the Panel Arbitration for the Industry Relevant Dispute;
 - (iv) the terms on which the Panel Arbitration will be conducted;
 - (v) the deadline for responses to the Invitation; and
 - (vi) any other information the Resolution Advisor considers relevant to the Invitation.
- (d) In considering any application made by an Invitee to become a party to the Panel Arbitration for the Industry Relevant Dispute arising under this Agreement, the Panel must consider:
 - (i) if the Invitee has, or is likely to have, a sufficient interest in the subject matter of that Industry Relevant Dispute that is likely to be materially affected by the resolution of that Industry Relevant Dispute (a **sufficient interest**);
 - (ii) whether the Invitee becoming a party to the Panel Arbitration might unreasonably interfere with the ability of the then current parties to the Panel Arbitration to conduct the proceeding as they wish;
 - (iii) the effect of any applicable Non-Discrimination Obligations; and
 - (iv) any Approved Dispute Guidelines addressing the criteria and conditions to be applied in determining whether Other RSPs should become a party to a Panel Arbitration for an Industry Relevant Dispute.
- (e) If no Invitees have submitted an application in response to an Invitation prior to the deadline for responses detailed in the Invitation, or the Panel determines that no Invitee that has submitted an application in response to an Invitation prior to that deadline should, in the Panel's reasonable opinion having regard to the matters in clause G6.2(d) and the Approved Dispute Guidelines, be joined to the Panel Arbitration on this Dispute, then the Dispute will then be classified, managed and resolved as a Bilateral Dispute.
- (f) The Panel will, within 10 Business Days following the deadline for responses detailed in the Invitation, conclusively determine the parties to that Panel Arbitration in accordance with the Approved Dispute Guidelines and notify the Resolution Advisor of its decision.

- (g) The Resolution Advisor will notify in writing, within 2 Business Days after the Panel's decision referred to in clause G6.2(f):
 - (i) each Invitee of the Panel's decision on the Invitee's application; and
 - (ii) each party to the Panel Arbitration for the Industry Relevant Dispute of the identity of each of the other parties to that Panel Arbitration.

G6.3 Invitation to RSP to apply to be joined to a panel arbitration for an industry relevant dispute under an Other Wholesale Broadband Agreement

- (a) Where RSP is an Accepted Invitee to a panel arbitration under an Other Wholesale Broadband Agreement, RSP agrees that:
 - (i) the terms on which that panel arbitration will be conducted are those terms that are set out in the Invitation issued to it under the Other Wholesale Broadband Agreement; and
 - (ii) those terms will constitute an arbitration agreement between it, **nbn**, RSP and each Other RSP that becomes a party to that panel arbitration for the purpose of the CAA.
- (b) Where RSP is an Invitee in relation to an Industry Relevant Dispute arising under an Other Wholesale Broadband Agreement and RSP does not make an application to become a party to the panel arbitration for that Industry Relevant Dispute in accordance with the requirements set out in the Invitation prior to the deadline for applications detailed in the Invitation, then RSP is deemed to have waived its right to apply to become a party to that panel arbitration.
- (c) Where RSP is an Invitee in relation to an Industry Relevant Dispute arising under an Other Wholesale Broadband Agreement and makes an application to become a party to the panel arbitration for that Industry Relevant Dispute, RSP may make submissions in support of that application, but is not entitled to make submissions in response to applications or submissions made by other Invitees and any such submissions shall be disregarded by the panel for that Industry Relevant Dispute.
- (d) RSP acknowledges that the Panel for that Industry Relevant Dispute may reject RSP's application to become a party to a panel arbitration for that Industry Relevant Dispute where that Panel is satisfied that, in accordance with the terms of its appointment and the Other Wholesale Broadband Agreement, RSP does not meet the conditions and/or criteria to become a party to the panel arbitration for the Industry Relevant Dispute.

G7 Panel Arbitration

G7.1 Panel Arbitration governed by the Commercial Arbitration Act 2010 (NSW)

- (a) The provisions of the CAA will apply to the conduct of any Dispute to be resolved by Panel Arbitration, except where (in accordance with the CAA) the parties have agreed otherwise in these Dispute Management Rules.
- (b) For the purpose of the CAA, the proceedings in respect of a Panel Arbitration commence on:
 - (i) for Bilateral Disputes:
 - (A) the date of appointment of the Panel under clause G4.2(g); or
 - (B) where clause G6.2(g) applies, the date of the notice given by the Resolution Advisor to **nbn** and RSP under clause G4.3(h);
 - (ii) for Industry Relevant Disputes, the date of receipt of the last notice from the Resolution Advisor to all the persons accepted as parties to the Industry Relevant

Dispute identifying all of the parties to the Dispute in accordance with clause G6.2(g)(ii); or

- (iii) in either case, such other date agreed between the parties to the Dispute and the Panel.
- (c) Panel Arbitrations will be conducted in English in Sydney, Australia under the law of New South Wales. The Panel may meet at any other place for consultation among the Panel Members, to attend any inspection, or engage in consultation by any electronic medium, but may not hold any hearing at any place other than Sydney, unless otherwise agreed by all parties to the Dispute.

G7.2 Arbitration Award

- (a) Before making any orders, decisions, determinations or Awards, the Panel must, as part of their decision-making process, have regard to whether the:
 - (i) order, decision, determination or Award; and
 - (ii) implementation of the order, decision, determination or Award by the parties, will or is likely to require **nbn** to treat RSP, any Other RSP or any Access Seeker in a manner that does not comply with the Non-Discrimination Obligations.
- (b) The Panel must have regard to, but is not bound to follow, any award previously made by an arbitration panel in respect of a dispute under an Other Wholesale Broadband Agreement, to the extent relevant to the Dispute.
- (c) Where the Panel has regard to any award previously made by an arbitration panel in respect of a dispute under an Other Wholesale Broadband Agreement, the Panel must ensure that the confidentiality of any commercially sensitive information of a party to that previous award is preserved.
- (d) The Panel will make its Award in respect of the Dispute as soon as is reasonably practicable, and:
 - (i) in the case of a Bilateral Dispute, will provide the parties with a signed copy of its Award by no later than 30 Business Days after a notice is given under clause G4.3(h) of a classification under clauses G4.3(g) or G6.2(e), as the case may be, or such other date agreed by the parties to the Dispute or determined by the Panel after consultation with the parties; or
 - (ii) in the case of an Industry Relevant Dispute, will provide the parties with a signed copy of its Award by no later than 50 Business Days following the date on which the last of the notices in clause G6.2(g)(ii) have been given, or such other date agreed by all of the parties to the Industry Relevant Dispute or determined by the Panel after consultation with all of the parties to the Industry Relevant Dispute.
- (e) Each party has 20 Business Days after receipt of notice of the Panel's Award to exercise its rights to:
 - (i) apply to the Panel for correction or interpretation of the Award under section 33(1) of the CAA; or
 - (ii) apply to the Panel for an additional award pursuant to section 33(5) of the CAA.
- (f) The parties acknowledge that:
 - (i) an Award may be set aside by a court, pursuant to section 34 of the CAA; and

- (ii) an appeal may be made to the court against an Award on a point of law, under section 34A of the CAA.

G7.3 Publication of the Award

- (a) Notwithstanding section 27E of the CAA, **nbn** and RSP agree and consent to the publication of Awards and access to published Awards by Other RSPs and access seekers.
- (b) Within 5 Business Days after:
 - (i) the expiry of the period in which a party can exercise its rights under sections 33 (to amend or interpret the Award or make an additional award), 34 (to set aside the Award), or 34A (to appeal a question of law arising out of an Award) of the CAA; or
 - (ii) where a party has exercised its rights under sections 33, 34 or 34A of the CAA, the Award is confirmed or varied by the court, or a correction or interpretation of the Award or an additional award is made,

the Panel will give each party to the Panel Arbitration a notice:

- (iii) advising that **nbn** will publish a copy of the Award (as confirmed, varied, corrected, together with any interpretation or additional award) (the **Confirmed Award**) on **nbn**'s Website (subject to the confidentiality provisions set out below) for access by Other RSPs and Access Seekers; and
 - (iv) inviting the party to make a written submission to the Panel within 5 Business Days after the date of that notice identifying and justifying any part of the Confirmed Award that the party considers is confidential to them and should not, therefore, be published.
- (c) Within 15 Business Days after issuing a notice under clause G7.3(b), the Panel will:
 - (i) have regard to any written submissions that have been made to the Panel in accordance with the notice in clause G7.3(b); and
 - (ii) notify **nbn** whether and which parts of the Confirmed Award need to be redacted to protect confidentiality (if any).
 - (d) When preparing a copy of the Confirmed Award for publication, **nbn** must redact those parts of that Confirmed Award that the Panel has required **nbn** to redact in accordance with clause G7.3(c)(ii).
 - (e) **nbn** must publish on **nbn**'s Website a copy of the Confirmed Award, subject to any redaction in accordance with clause G7.3(c), for access by Other RSPs and Access Seekers.

Part D: Common processes and principles

G8 Rights to use dispute resolution processes outside of the Dispute Management Rules

G8.1 Mediation

- (a) Where the parties agree to resolve the dispute by mediation under clause G2.1(c)(i), these Dispute Management Rules will be suspended for the period of appointment of the mediator.
- (b) The parties agree to undertake the mediation in accordance with, and subject to, the Resolution Institute Mediation Rules.

- (c) **nbn** and RSP must endeavour, with the assistance of the mediator, to resolve the Dispute within 30 Business Days after the appointment of the mediator, or such longer period as agreed by the parties.
- (d) If the Dispute is not resolved within the time detailed in clause G8.1(c), the parties may agree to refer the Dispute to an Expert under clause G2.1(c)(ii) or a party may make a Referral under clause G2.1(c)(iii).

G8.2 Court proceedings

- (a) **nbn** or RSP may not commence any court proceedings in relation to a Dispute, except where:
 - (i) expressly permitted under these Dispute Management Rules;
 - (ii) an Insolvency Event affects, or is reasonably likely to affect imminently, either **nbn** or RSP, and the other party reasonably considers it necessary to commence court proceedings in relation to a Dispute to preserve its position with respect to creditors of the other party;
 - (iii) **nbn** or RSP is seeking to enforce unpaid debts;
 - (iv) **nbn** or RSP is seeking urgent interlocutory relief; or
 - (v) the relevant Dispute relates to a failure by **nbn** or RSP to comply with these Dispute Management Rules which is not trivial or immaterial.
- (b) Neither **nbn** nor RSP may commence any court proceedings in relation to:
 - (i) any decision or conduct of a Resolution Advisor under these Dispute Management Rules or an SAU; or
 - (ii) any decision of a Panel, to classify a Dispute in accordance with an SAU or to accept or reject a person as a party to an Industry Relevant Dispute in accordance with an SAU.

G9 General rights and obligations

G9.1 Continuation of performance

- (a) Except in the exercise of a right under this Agreement by:
 - (i) **nbn** to impose an Ordering Freeze, Service Reduction or Suspension;
 - (ii) RSP to withhold payment of a disputed amount;
 - (iii) **nbn** to disconnect, or RSP to place a disconnect order in respect of, an Ordered Product or for **nbn** to exercise Disconnection Rights;
 - (iv) **nbn** or RSP to terminate this Agreement; or
 - (v) **nbn** or RSP under the Force Majeure provisions of [Module E \(Risk Management\)](#) of this Agreement,

nbn and RSP must each continue to perform their obligations in accordance with the terms of this Agreement in the event of, and pending the resolution of, any Dispute or Other RSP Dispute.

- (b) If a Dispute involves or relates to the exercise by:
 - (i) **nbn** of its rights to impose an Ordering Freeze, Service Reduction or Suspension;
 - (ii) RSP of its rights to withhold payment of a disputed amount;

- (iii) **nbn** of its rights to disconnect, or RSP's exercise of its rights to place a disconnect order in respect of, an Ordered Product;
 - (iv) **nbn** or RSP of its rights to terminate this Agreement; or
 - (v) **nbn** or RSP of its rights under clause E6 (Force Majeure Events),
- a party may exercise those rights pending the resolution of that Dispute.

G9.2 Further assurances

nbn and RSP must do all things that are reasonably necessary for the proper and expeditious conduct of the processes set out in these Dispute Management Rules and to give full effect to the matters contemplated by them.

G9.3 Procedural fairness

- (a) A party to a Dispute may request that the Resolution Advisor, Panel or Expert (as applicable) make a direction, provided that direction is not inconsistent with an SAU, to extend any timeframes, or vary any procedures, detailed in these Dispute Management Rules (including those determined by the Resolution Advisor, Panel or Expert (as applicable)). Nothing in these Dispute Management Rules prevents the parties agreeing to vary any of the timeframes or procedures detailed in these Dispute Management Rules.
- (b) These Dispute Management Rules and any rule or obligation of procedural fairness specified in the CAA (including section 18 of the CAA) exhaustively set out the principles of procedural fairness to be afforded to the parties to a Dispute governed by these Dispute Management Rules.

G9.4 Variation of timeframes or procedures in Dispute Management Rules

- (a) The parties to a Dispute may at any time agree to vary any timeframes, or vary any procedures, detailed in these Dispute Management Rules, and if the parties agree to vary any timeframes, the Resolution Advisor, and Panel Members or Expert (as applicable) will comply with the timeframes that the parties have agreed.
- (b) Where the parties are unable to agree under clause G9.4(a), a party to a Dispute may request the Resolution Advisor, Panel or Expert (as applicable) to vary any timeframes, or vary any procedures, detailed in these Dispute Management Rules. The Resolution Advisor, Panel or Expert (as applicable) may make such a direction where it reasonably believes that the making of such a direction is fair in all the circumstances. The Resolution Advisor may only make such a direction in relation to a Dispute prior to appointment of the Panel or Expert.

G10 Resolution Advisor and Pool Members

G10.1 Appointment

The parties acknowledge that the appointment of a Resolution Advisor and Pool Members will be in accordance with an SAU.

G10.2 Termination

The parties acknowledge that the termination of the appointment of a Resolution Advisor and Pool Members:

- (a) will be in accordance with an SAU; and
- (b) either **nbn** or RSP may make a proposal to the ACCC for the termination of the Resolution Advisor's or Pool Members' appointment.

G10.3 Functions of Resolution Advisor

- (a) The parties agree that the Resolution Advisor is not, and will not act as, an arbitrator for the purpose of the CAA in respect of any Dispute.
- (b) Subject to the further detail included in these Dispute Management Rules, the parties acknowledge that the functions of the Resolution Advisor include:
 - (i) where there is no Dispute, administrative functions to establish and maintain the arrangements set out in these Dispute Management Rules and in the SAU;
 - (ii) in respect to a Dispute:
 - (A) the selection of the expert where the parties are unable to appoint an expert within a specified time; and
 - (B) selection of the Panel Members for a Panel Arbitration; and
 - (iii) administrative functions on behalf of the Panel Members (but not as delegate of the Panel for the performance of the decision making functions of the Panel in relation to a Dispute).
- (c) The Resolution Advisor to whom a Dispute is referred will be the Resolution Advisor for all aspects of that Dispute under the Dispute Management Rules, except where he or she is replaced, or delegates his or her functions to another Resolution Advisor, in accordance with clause G10.4.

G10.4 Delegation of functions

- (a) The parties acknowledge that:
 - (i) the Resolution Advisor to whom a Dispute is referred may delegate his or her responsibilities to any other Resolution Advisor where necessary for the purpose of performing his or her responsibilities under the Dispute Management Rules (for example, in the event of temporary illness or holiday absence); and
 - (ii) each Resolution Advisor to whom the Dispute is referred or delegated will be fully responsible for the performance of all of his or her responsibilities under the Dispute Management Rules whilst he or she acts as Resolution Advisor in respect to that Dispute.
- (b) If for any reason the Resolution Advisor is unable to continue his or her duties in relation to a Dispute, **nbn** must:
 - (i) whether or not it requires a new Resolution Advisor to be appointed in accordance with the SAU, replace that Resolution Advisor with another Resolution Advisor for that Dispute; and
 - (ii) ensure that the replacement Resolution Advisor for that Dispute is independent of the parties to the Dispute.

G10.5 Compliance of Resolution Advisor or Pool Members

If RSP reasonably believes that a Resolution Advisor or Pool Member has failed to comply with these Dispute Management Rules or his or her terms of appointment in a material way:

- (a) RSP may provide written notice to **nbn** setting out particulars of that belief and requesting that **nbn** take reasonable steps to enforce the Resolution Advisor or Pool Member's compliance with these Dispute Management Rules or his or her terms of appointment (as applicable); and

- (b) if **nbn**, acting reasonably, agrees that the Resolution Advisor or Pool Member has failed to comply with these Dispute Management Rules or his or her terms of appointment in a material way, **nbn** must take reasonable steps to enforce the Resolution Advisor or Pool Member's compliance with these Dispute Management Rules or those terms.

G10.6 Resolution Advisor's decisions not subject of a Dispute

The decisions or conduct of the Resolution Advisor under these Dispute Management Rules will not be matters that may be the subject of a Dispute. Except where otherwise provided in these Dispute Management Rules or the CAA, any decision of the Resolution Advisor in relation to a Dispute is final, and each party must abide by that decision and comply with the provisions of these Dispute Management Rules which apply as a consequence, regardless of any objection to that decision which that party may have.

G11 Costs

G11.1 Other party costs

Except as otherwise provided in these Dispute Management Rules or determined in accordance with the CAA, neither **nbn** nor RSP will be required to pay the other for any of the other party's costs and expenses in the conduct of Disputes and Other RSP Disputes.

G11.2 Costs of Panel

- (a) Subject to clause G11.3 or any agreement between the parties to the Dispute, where a Panel is appointed in respect to a Dispute the costs of the Resolution Advisor and the Panel will be shared equally amongst all of the parties to the Bilateral Dispute or Industry Relevant Dispute.
- (b) The Panel must detail its costs and the costs of the Resolution Advisor in its final decision and the costs payable by each party to the Dispute.
- (c) The costs of the Panel and the Resolution Advisor in an Industry Relevant Dispute in clause G11.2(a) include the costs relating to the Panel's classification of the Dispute.

G11.3 Costs decision

The Panel may include in the Award a decision in respect to costs that differs from the presumption in clause G11.2(a). In deciding to allocate costs against one or more parties to a Dispute, the Panel may have regard to any relevant matters, including whether the conduct of that party or those parties unreasonably prolonged or escalated the Dispute or otherwise increased the costs of the Panel proceedings.

G11.4 Costs of Expert

- (a) Subject to G11.4(b):
 - (i) the costs of the Expert, including any costs incurred by the Expert in obtaining independent advice in accordance with clause G3.3(e), will be borne equally by **nbn** and RSP and **nbn** and RSP must pay the Expert in accordance with the Expert Determination Agreement; and
 - (ii) **nbn** and RSP will each bear their own costs and expenses in relation to the Expert Determination.
- (b) Where **nbn** or RSP appeals the final decision of the Expert under clause G3.5 and that assertion or appeal is not upheld by the relevant court of competent jurisdiction, then that court will determine which party will bear the reasonable costs and expenses of both **nbn** and RSP in relation to:

- (i) the Expert Determination; and
- (ii) the adjudication of its assertion or appeal by the relevant court of competent jurisdiction.

Module H General Terms

H1 Notices and contacts

H1.1 How to give a Notice

- (a) Each communication (including each notice, consent, approval, request and demand) that a party is required to give to the other party under this Agreement, must be given in writing, in English, in full and legible form and, subject to clause H1.1(f), signed by the party making it or on that party's behalf by its solicitor, attorney, director, secretary or authorised representative or agent and:
- (i) delivered by hand to the addressee's delivery address (as notified in the Contact Matrix);
 - (ii) sent by prepaid post to the addressee's postal address (as notified in the Contact Matrix);
 - (iii) subject to clause H1.1(e), sent by email which includes a prominent statement that the email constitutes a notice under this clause H1.1, to the addressee's email address (as notified in the Contact Matrix); or
 - (iv) subject to clause H1.1(e) and provided the communication is an Electronic Notice Platform Communication, made available to RSP electronically through the Electronic Notice Platform.
- (b) A communication by **nbn** under this clause H1.1 may (in part) incorporate by reference material which is set out in full and legible form on **nbn**'s Website.
- (c) Other than for communications described in clause H1.1(e), this clause H1.1 does not apply to communications provided or made available under the [WBA Operations Manual](#) (which are governed by the provisions of the [WBA Operations Manual](#)).
- (d) Notwithstanding any other limitation in this clause H1.1, **nbn** may issue an invoice to RSP electronically through the **nbn**TM Platform.
- (e) Any communication relating to:
- (i) actual or potential litigation, administrative or arbitral proceedings;
 - (ii) an actual or potential Dispute, Claim or complaint;
 - (iii) escalation of a Billing Dispute to a Billing Expert for determination;
 - (iv) any other aspect of [Module F \(Agreement Management\)](#), except:
 - (A) communications under clause F4;
 - (B) payment-related communications in connection with clauses F12 and F13; and
 - (C) termination communications under clause F9.2 or F9.3 that do not relate to a Billing Dispute; or
 - (v) any other aspect of [Module G \(Dispute Management\)](#),
- served by email or through the Electronic Notice Platform must also be delivered by hand or sent by prepaid post in accordance with this clause H1.1. RSP must send an additional copy of any notice given to **nbn** under this clause H1.1(e) to **nbn**'s Chief Legal and Regulatory Officer (or such other person notified by **nbn** to RSP 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

- (f) **nbn** is not required to include a signature in communications to RSP in relation to payments, except for communications referred to in clause H1.1(e).

H1.2 When a Notice is received

Each communication (including each notice, consent, approval, request and demand) in connection with this Agreement is taken to be received by the addressee:

- (a) (in the case of delivery by hand) on delivery;
- (b) (in the case of prepaid post) on the fifth Business Day after the day of posting;
- (c) (in the case of an Electronic Notice Platform Communication) at the latter of when **nbn** has:
 - (i) made the communication available on the Electronic Notice Platform; and
 - (ii) sent an email, SMS or other electronic message to RSP's details as specified in the Contact Matrix, which:
 - (A) states the type of Electronic Notice Platform Communication that **nbn** has made available on the Electronic Notice Platform and
 - (B) includes a valid hyperlink to the Electronic Notice Platform Communication,

unless **nbn** knows or reasonably ought to suspect that:

- (iii) the Electronic Notice Platform is inaccessible to RSP at the time that **nbn** sends the email, SMS or other electronic message; or
- (iv) the email, SMS or other electronic message was not delivered to the addressee's domain or service provider (as applicable) specified in the details in the Contact Matrix,

in which case **nbn** must send a subsequent email, SMS or other electronic message to RSP that complies with clause H1.2(c)(ii), and this clause H1.2(c) will apply again;

- (d) (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 Matrix, when the email was sent;
- (e) (in the case of a communication under [WBA Operations Manual](#)) as set out in the [WBA Operations Manual](#), which may specify that a communication is taken to have been provided to RSP if the communication has been made available by **nbn** in a specified manner;
- (f) (in the case of a communication specified in clause H1.1(d)) on the date on which **nbn** receives confirmation from the **nbn**TM Platform that the invoice has been sent to RSP; and
- (g) (in the case of a communication specified in clause H1.1(e)) at the earliest of the times applicable to the means of service utilised in accordance with clause H1.1 other than by email or through the Electronic Notice Platform,

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.

H1.3 Contact Matrix

Each party must ensure that the Contact Matrix contains up-to-date details of the name, postal address and email address for each party's:

- (a) contact person for the purposes of notices under this Agreement;
- (b) Relationship Point of Contact and Operational Point of Contact; and
- (c) other relevant contacts, as may be agreed,

(in respect of each party, the **Contact Details**).

H2 Relationships

H2.1 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.

H2.2 Relationships with third parties

- (a) This Agreement does not create any obligation or legal relationship between **nbn** and any Downstream Service Provider, End User, or any other third party (in this clause H2.2, **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.
-

H3 Warranties

Each party represents and warrants that, as at the Execution Date and on each day of the Term:

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

H4 Other general terms

H4.1 Agreement is not a standard form of agreement

The parties agree that Part 23 of the Telecommunications Act is inapplicable to this Agreement.

H4.2 Applicable laws

- (a) Each party agrees to comply with all applicable laws in connection with the exercise of its rights and the performance of its obligations under this Agreement.
- (b) Without limiting clause H4.2(a), RSP agrees that it must comply with the interception capability obligations imposed under Chapter 5, Part 5-3, Division 1 of the Interception Act in relation to the Ordered Products.
- (c) Each party will provide such assistance as the other party reasonably requires to comply with applicable laws in connection with the exercise of its rights and the performance of its obligations under this Agreement, including assistance required in relation to obligations relating to or arising under:
 - (i) Directory Assistance Services;
 - (ii) Operator Services;
 - (iii) the Integrated Public Number Database;
 - (iv) Emergency Call Services;
 - (v) Part 13 or Part 14 of the Telecommunications Act; and
 - (vi) the Interception Act.

Each party may impose reasonable charges on the other party for any such assistance that it provides to the other party under this clause H4.2(c) having regard, among other things, to the underlying costs of providing that assistance.

H4.3 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 H4.3(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 H4.3.
- (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 RSP:
 - (A) to effect, or as a result of, any corporate restructure of RSP or any Related Body Corporate of RSP that does not change the "ultimate holding company" (as that term is defined in section 9 of the Corporations Act) of RSP;
 - (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 RSP's assets in the ordinary course of business, including any securitisation of RSP's receivables (provided RSP 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 H4.3(a) applies.

H4.4 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) RSP 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.

H4.5 Electronic execution and counterparts

- (a) This Agreement is entered into as follows:
 - (i) if executed electronically, when the Electronic Notice Platform records that both **nbn** and RSP have executed the Agreement Execution Document electronically through the Electronic Notice Platform; and
 - (ii) if executed manually, on the date that the last party executes the Agreement Execution Document.
- (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 H1.1.

H4.6 Cumulative rights

The rights of each party under this Agreement are in addition to, and do not exclude or limit, any other rights or remedies provided by law (except where this Agreement provides otherwise).

H4.7 Entire agreement

- (a) This Agreement is the entire agreement between the parties about the matters dealt with in this Agreement and supersedes any prior agreement or understandings between the parties and any prior representation or warranty given or made by a party.
- (b) If the Execution Date is after the Start Date, any pending changes to the provisions of Other Wholesale Broadband Agreements which have been notified by **nbn** to Other RSPs under clause F4 of Other Wholesale Broadband Agreements as at the Execution Date and:
 - (i) are available on **nbn's** Website; or
 - (ii) have otherwise been made available by **nbn** to Other RSPs, and **nbn** has notified RSP of the relevant changes in those Other Wholesale Broadband Agreements (insofar as they apply to this Agreement),

will be taken to have been notified under this Agreement in accordance with its terms and will take effect and form part of this Agreement in accordance with the terms of such notice without further action by either party.

- (c) Unless otherwise agreed, any change to this Agreement notified pursuant to clause F4 will be effective in accordance with its terms, notwithstanding any agreement to vary this Agreement entered into during the relevant notice period.

H4.8 Further assurances

Except whether otherwise provided in this Agreement, each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this Agreement.

H4.9 Good faith

A party must act in good faith when exercising its rights and/or performing its obligations under this Agreement. The words "in good faith" mean promptly, honestly and not perversely, capriciously or irrationally, but do not mean that a person:

- (a) is under an obligation that is fiduciary in nature;
- (b) is required to act in the interests of the other party;
- (c) is prevented from acting in accordance with shareholder requirements and directions; or
- (d) is required to disclose information:
 - (i) that is subject to legal professional privilege or public interest immunity; or
 - (ii) if the provision of such information would breach an obligation of confidence owed by that party to any person other than a Related Body Corporate of that party and such breach would be actionable at the suit of that person.

H4.10 Governing law and jurisdiction

- (a) This Agreement is governed by the laws in force in New South Wales.
- (b) Each party irrevocably and unconditionally:
 - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
 - (ii) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause H4.10(b)(i).

H4.11 Reasonable endeavours obligations

- (a) Subject to clause H4.11(b), for the purpose of the clauses of this Agreement which impose an obligation on RSP to use reasonable endeavours with respect to the acts or omissions of Downstream Service Providers or End Users, that obligation means that RSP must do all things reasonable in the circumstances to procure the performance by Downstream Service Providers or End Users.
- (b) For the purposes of the clauses of this Agreement which impose an obligation on RSP to:
 - (i) use reasonable endeavours to obtain the consent of an End User; or

- (ii) ensure that Downstream Service Providers use reasonable endeavours to obtain the consent of an End User,

that obligation means that RSP or Downstream Service Provider (as applicable) must do all things reasonable in the circumstances to obtain that consent.

- (c) For the purposes of clause H4.11(a), actions which are reasonable in the circumstances may include:
 - (i) ensuring that each contract between RSP and each Downstream Service Provider or Contracted End User, as the case may be, for the supply of RSP Products contains provisions requiring each Downstream Service Provider or End User, as the case may be, to comply with the relevant clause of this Agreement; and
 - (ii) using reasonable endeavours to ensure the compliance of each Downstream Service Provider or End User, as the case may be with the provisions of the relevant clause of this Agreement, including enforcing those provisions, where necessary.

H4.12 Related Bodies Corporate

- (a) Where two or more Related Bodies Corporate execute this Agreement as retail service providers, the term "RSP" means all such related bodies corporate collectively.
- (b) If a Downstream Service Provider or End User is a Related Body Corporate of RSP and RSP is required under a clause of this Agreement to use "reasonable endeavours" to ensure that Downstream Service Provider or End User does (or does not do) those things required (or prohibited) by this Agreement, then RSP must ensure that such Downstream Service Provider or End User does (or does not do those things) and the "reasonable endeavours" qualification of RSP's obligations in those clauses will not apply with respect to the Related Body Corporate. The clauses to which this clause H4.12(b) applies include clauses C8(a) (Downstream parties), D3.2(e) (Obligations in respect of Downstream Service Provider Details and Contracted End User Details) and F13.8 (Network disconnections and equipment removal).

H4.13 Severability

Any term of this Agreement which is wholly or partially void or unenforceable will be severed to the extent that it is void or unenforceable and the remainder of this Agreement continues unaffected.

H4.14 Subcontractors and agents

A party may use subcontractors or other agents to meet any of its obligations under this Agreement. Notwithstanding that a party may do so, that party remains liable in respect of the performance of those obligations.

H4.15 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.

H5 Interpretation of this Agreement

H5.1 Defined terms

The rules of interpretation and definitions in the [Dictionary](#) must be applied in this Agreement unless otherwise specified.

H5.2 Mandatory language

References in a provision of this Agreement to “must”, “will”, “shall”, “agrees to”, “is responsible for” and other similar expressions contractually oblige the relevant party to comply with or perform in accordance with that provision.

H5.3 Resolving inconsistencies between parts of this Agreement

This Agreement comprises terms that are set out in a number of different documents. If there is any inconsistency between any of these different terms, then that inconsistency will be resolved by giving precedence to them in the following order:

- (a) terms set out in the [Agreement Execution Document](#) and Special Terms;
- (b) terms set out in the Head Terms and the [Dictionary](#);
- (c) terms other than Special Terms set out in Product Terms;
- (d) terms set out in Product Descriptions and Service Descriptions;
- (e) terms set out in Discounts, Credits and Rebates Annexures;
- (f) terms set out in Price Lists other than in any Discounts, Credits and Rebates Annexures;
- (g) terms set out in Product Technical Specifications;
- (h) terms set out in Service Levels Schedules;
- (i) terms set out in any Operations Manual other than the [WBA Operations Manual](#);
- (j) terms set out in the [WBA Operations Manual](#);
- (k) terms set out in the [Credit Policy](#); and
- (l) terms set out in Fair Use Policies.

H5.4 Other rules of interpretation

The following rules of interpretation apply to this Agreement unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) a reference to:
 - (i) a person includes an individual, partnership, joint venture, governmental agency or authority, association, trust, corporation or other body corporate;
 - (ii) a person includes its agents, successors and permitted assigns;
 - (iii) a Contracted End User or End User includes a reference to a prospective Contracted End User or prospective End User (respectively), where the context so requires;
 - (iv) obligations, liabilities, representations, undertakings or agreements of RSP that are assumed or made by more than one person, those obligations, liabilities or representations assumed or made on their part and the undertakings and agreements

on their part contained or implied in this agreement bind them jointly and each of them severally and any right conferred on more than one person benefits them jointly and severally;

- (v) a document (including any technical manual or user guide) includes all amendments to that document;
- (vi) a clause, term, party, module, schedule or attachment in a part of this Agreement is a reference to a clause, term, party, module, schedule or attachment to the relevant part of this Agreement;
- (vii) this Agreement includes all schedules and attachments to it except Schedule A to these Head Terms;
- (viii) an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body; and
- (ix) a monetary amount is to that amount in Australian dollars and all amounts payable in connection with this Agreement are payable in Australian dollars;
- (f) the words "such as", "including", "particularly", "principally" and similar expressions are not used as, nor are they intended to be, interpreted as words of limitation;
- (g) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, legislative instrument, ordinance, by-law, mandatory code, mandatory standard, mandatory guideline, mandatory directive, order, ordinance, rule, determination, ministerial direction, binding restriction of or determination by any Government Agency, statutory rule, judgment, writ, order, injunction, declaration, rule of common law or equity, or rule of any stock or securities exchange where the relevant party's stocks or securities are listed or quoted and is a reference to that law as amended, consolidated or replaced and includes any regulations and other subordinate instruments made under or in accordance with those laws;
- (h) "reasonable endeavours" or any similar expressions does not require the payment of money or the provision of any financial benefit;
- (i) "reasonably practicable" or any similar expression does not require a party to take action if the cost of taking that action is, on balance, unreasonable in the prevailing circumstances;
- (j) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;
- (l) any reference to equipment belonging to or being "of" a Downstream Service Provider or an End User includes any Central Splitter used by that Downstream Service Provider or End User; and
- (m) references to units of data have the following meanings:
 - (i) Kilobit or Kb means 1,000 bits;
 - (ii) Megabit or Mb means 1,000 Kilobits;
 - (iii) Gigabit or Gb means 1,000 Megabits;
 - (iv) Kilobyte or KB means 1,000 bytes;
 - (v) Megabyte or MB means 1,000 Kilobytes;

- (vi) Gigabyte or GB means 1,000 Megabytes; and
- (vii) Kilobits per second (Kbps), Megabits per second (Mbps), Gigabits per second (Gbps), Kilobytes per second (KBps), Megabytes per second (MBps) and Gigabytes per second (GBps) have corresponding meanings.

SCHEDULE A – Model Deed of Assignment

Date

Parties This deed is entered into between:

- The party identified as the assignor in Schedule 1 to this deed (**Assignor**); and
- nbn co limited (ABN 86 136 533 741) of Tower 5, Level 14, 727 Collins Street, Docklands, VIC, 3008 (**Assignee**).

A1 Background

- (a) The Assignor is a party to the agreement identified in Schedule 1 to this deed and attached as Annexure A (**Agreement**).
- (b) The Assignor has undertaken to irrevocably and unconditionally assign to the Assignee, with effect on and from the date of this deed (**Effective Date**) its rights against the downstream claimant identified in Schedule 1 to this deed (**Downstream Claimant**) under the clause identified in Schedule 1 (**Model Undertaking**) in respect of any claim, action, suit or proceeding to which the Model Undertaking applies (**Downstream Claim**).

A2 Assignment

- (a) The Assignor irrevocably and unconditionally assigns to the Assignee, and the Assignee accepts, with effect on and from the Effective Date all of the Assignor's rights against the Downstream Claimant under the Model Undertaking.
- (b) The Assignee will enjoy all the rights of the Assignor under the Model Undertaking and may enforce, hold and deal with those rights without any interruption or disturbance from the Assignor.
- (c) The parties must do all things necessary to complete the assignment by the Assignor to the Assignee.

A3 Defence of Claim

- (a) The Assignor must promptly provide all assistance reasonably requested by the Assignee (and the Assignee will pay the reasonable costs of such assistance) in responding to and conducting the defence of a Downstream Claim brought against the Assignee by the Downstream Claimant to ensure that the Assignee obtains the full benefit of the assignment in clause 2.
- (b) The Assignor must not do anything, including during the course of any defence, settlement or compromise of a Downstream Claim brought against the Assignee by the Downstream Claimant, which prejudices the Assignee's ability to obtain the full benefit of the assignment in clause 2.

A4 General

A4.1 Amendments

This deed may only be varied by a deed executed by or on behalf of each party.

A4.2 Assignment

A party cannot assign or otherwise transfer any of its rights under this deed without the prior consent of the other party.

A4.3 Consents

Unless this deed expressly provides otherwise, a consent under this deed may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

A4.4 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

A4.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

A4.6 Entire Understanding

To the extent permitted by law, this deed constitutes the entire understanding between the parties in relation to its subject matter and supersedes all previous agreements and understandings between the parties in relation to its subject matter.

A4.7 Severance

If any provision or part of a provision of this deed is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

A4.8 Waiver

Without limiting any other provision of this deed, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed;
- (b) a waiver given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

A4.9 Governing Law and Jurisdiction

This deed is governed by the laws of New South Wales and the Commonwealth of Australia. Each party submits to the non-exclusive jurisdiction of the court of New South Wales, the Commonwealth courts having jurisdiction in New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought in relation to this deed.

Schedule 1 - Assignor and Agreement

1. Assignor

Name	ABN/ACN (where relevant)	Address	Email address	Phone number
[Insert full legal name of RSP, Downstream Service Provider or Contracted End User]	[insert ABN/ACN (where relevant)]	[insert address]	[insert email address]	[insert phone number]

2. Agreement

Name	Date	Annexure
[Insert name of Agreement]	[insert date of Agreement]	Attached as Annexure A

3. Model Undertaking

Clause number
[insert model undertaking clause number]

4. Downstream Claimant

Name	ABN/ACN (where relevant)	Address
[Insert full legal name of Downstream Claimant]	[insert ABN/ACN (where relevant)]	[insert address]

Execution

Executed as a deed

Signed, sealed and delivered for and on behalf of **nbn co limited** by its attorney under a power of attorney dated [insert date] in the presence of:

Signature of witness

Signature of attorney

Full name of witness

Full name of attorney

OR

Executed by nbn co limited in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of director / company secretary

Full name of director

Full name of director / company secretary

Executed by [insert full details of Assignor] in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director / company secretary

Full name of director

Full name of director / company secretary

Date of signature

Date of signature

[Insert execution blocks for any further related bodies corporate also acquiring services as parties in their own right]

Annexure A - Agreement