

# nbn<sup>™</sup> Technology Extension Contract - RSP

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

nbn

**[insert RSP name] ABN [insert ABN]**

**RSP**

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

# nbn™ Technology Extension Contract - RSP

Version	Description	Effective Date
1.0	First issued version of nbn™ Technology Extension Contract - Customer	28 April 2018
2.0	Second issued version of nbn™ Technology Extension Contract - Customer	02 July 2018
3.0	Third issued version of nbn™ Technology Extension Contract – Customer	31 August 2018
4.0	Fourth issued version of nbn™ Technology Extension Contract - Customer	-
5.0	Fifth issued version of nbn™ Technology Extension Contract - Customer	-
6.0	Sixth issued version of nbn™ Technology Extension Contract - Customer	11 October 2018
6.1	Updated version of nbn™ Technology Extension Contract - Customer	29 November 2018
6.2	Updated version of nbn™ Technology Extension Contract - Customer	10 March 2021
7.0	Seventh issued version of nbn™ Technology Extension Contract – RSP	1 July 2022

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# nbn™ Technology Extension Contract - RSP

## Parties

**NBN Co Limited** ABN 86 136 533 741 of Tower 5, Level 14, 727 Collins Street, Docklands, VIC, 3008 (**nbn**)

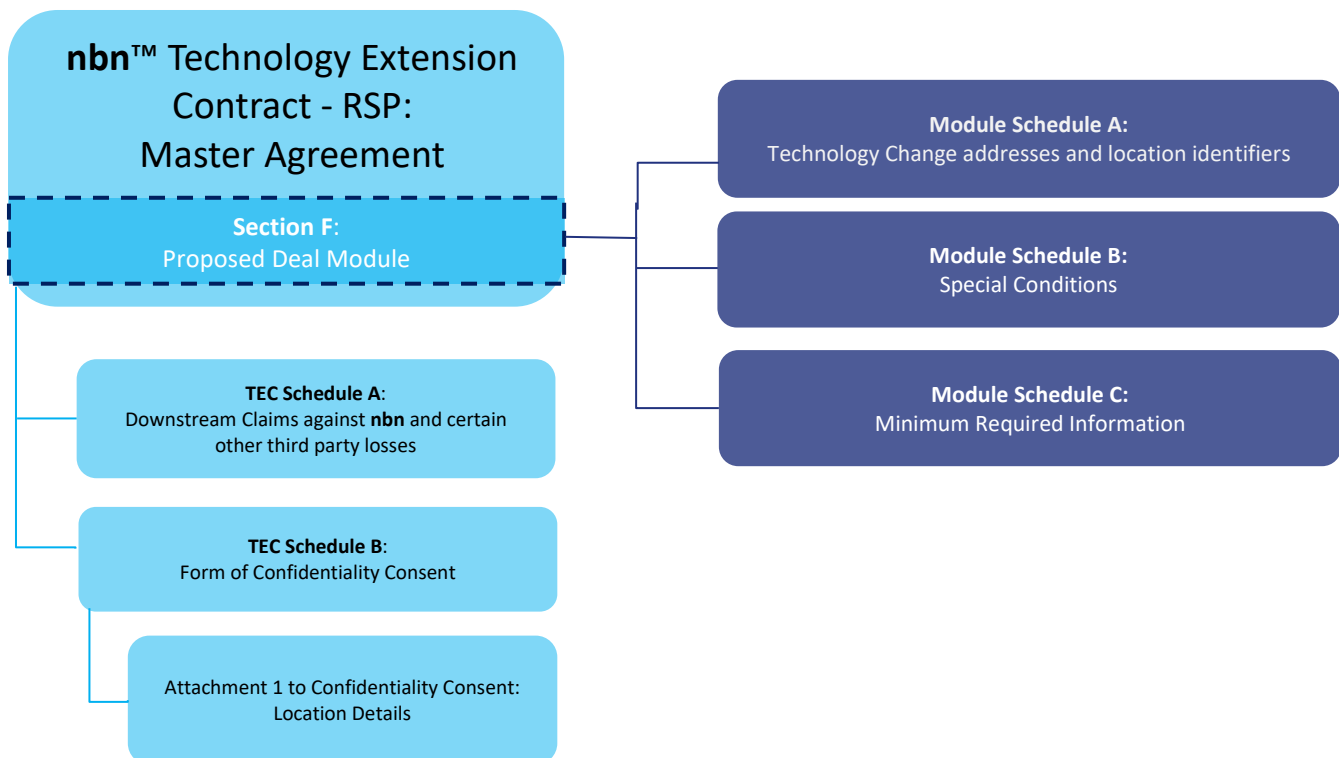
**[insert RSP name]** ABN **[insert ABN number]** of **[insert registered address]** (**RSP**)

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## Background

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

## Document structure



# Execution

**Executed as an agreement.**

---

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

---

Signature of authorised representative

---

Signature of authorised representative

---

Name of authorised representative

---

Name of authorised representative

---

Date of signature

---

Date of signature

---

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

---

Signature of authorised representative

---

Signature of authorised representative

---

Name of authorised representative

---

Name of authorised representative

---

Date of signature

---

Date of signature

[#Repeat the RSP execution block above for each Related Body Corporate of the RSP that signs this Agreement pursuant to clause 23.#]

## Section A: Master Agreement Framework

### 1. Term

#### 1.1 Agreement Term

This Agreement commences on the Commencement Date and continues until:

- (a) if the RSP has not provided a Transition Opt-Out Notice in accordance with clause 1.4, the earlier of:
  - (i) the TEC Transition Date; and
  - (ii) the last Module Expiry Date; or
- (b) if the RSP has provided a Transition Opt-Out Notice in accordance with clause 1.4, the last Module Expiry Date,

unless terminated earlier or extended in accordance with its terms (**Term**).

#### 1.2 Build-only Agreement

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

#### 1.3 Acceptance of New TEC

If **nbn** makes available a New TEC, the RSP may accept that New TEC:

- (a) if the RSP has not provided a Transition Opt-Out Notice in accordance with clause 1.4, by either:
  - (i) agreement in writing; or
  - (ii) accepting a Proposed Deal Module after the date on which **nbn** makes available the New TEC (or such other date as notified by **nbn**); or
- (b) if the RSP has provided a Transition Opt-Out Notice in accordance with clause 1.4, by agreement in writing.

#### 1.4 Transition Opt-Out Notice

The RSP may, at any time before the date that is 6 months after the Commencement Date, provide notice to **nbn** electing to accept any New TEC offered by **nbn** solely by means of agreement in writing (**Transition Opt-Out Notice**).

## 2. Deal Modules

### 2.1 Proposed Deal Module

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

### 2.2 Formation of Deal Modules

- (a) A Proposed Deal Module issued by **nbn** constitutes a legally binding offer by **nbn** in accordance with this Agreement.
- (b) The RSP may accept a Proposed Deal Module by executing it in the manner provided, and within the timeframe specified, in the Proposed Deal Module.
- (c) If the RSP notifies **nbn** that the RSP wishes to discuss any aspect of a Proposed Deal Module, **nbn** must meet with the RSP within 10 Business Days of the RSP's notice to discuss and negotiate in good faith to resolve any issues the RSP raises in respect of the Proposed Deal Module.
- (d) Each Proposed Deal Module executed by **nbn** and the RSP in accordance with clause 2.2(b) constitutes a **Deal**

**Module.** Each Deal Module is a separate legally binding agreement between **nbn** and the RSP on the following terms:

- (i) the terms and conditions of this Agreement; and
  - (ii) the terms and conditions of the relevant Deal Module.
- (e) In the event of any inconsistency between the terms and conditions of this Agreement and a Deal Module, the terms of the Deal Module will prevail to the extent of the inconsistency.

### 2.3 Term of Deal Modules

The term of a Deal Module:

- (a) commences on the Module Commencement Date; and
- (b) continues until the Module Expiry Date set out in the relevant Deal Module,

unless terminated earlier or extended in accordance with its terms.

### 2.4 Variation of Deal Module

- (a) Without limiting any other provisions of this Agreement which provide for variations to a Deal Module, either party may notify the other in writing (in a form and using a process as determined by **nbn** from time to time, or as otherwise agreed between the parties) that it wishes to vary in a Deal Module:
  - (i) the Premises (including by adding or removing Premises;
  - (ii) the Chosen Technology in respect of a Premises; or
  - (iii) the timing of any **nbn** Activities (including any Target RTC Dates),and must provide reasonable supporting details for the request.
- (b) The party receiving the variation request will use reasonable endeavours to respond within 10 Business Days of receiving the request (or such other period agreed by the parties), which response may be a request for further information or time to consider the request.
- (c) Each party will consider any such request from the other party, and the parties will negotiate in good faith to

resolve the matter (which may include adjustments to any fees or charges payable under this Agreement) within 10 Business Days following the date of the response to the request described in clause 2.4(a) (or such other period agreed by the parties).

- (d) If the matter is resolved under clause 2.4(c), the parties will agree to the variation in the manner determined by **nbn** from time to time.

### 2.5 Variation of Deal Module for regulatory reasons

- (a) Without limiting clause 3.2, if **nbn** reasonably believes that a variation to a Deal Module is required:
  - (i) as a result of a Regulatory Event;
  - (ii) as a result of a direction by a Shareholder Minister; or
  - (iii) to comply with the requirements or consequences of its Non-Discrimination Obligations,

**nbn** may notify the RSP of the terms of the proposed variation to that Deal Module (**Proposed Regulatory Variation Notice**). Nothing in this clause 2.5 requires **nbn** to provide the RSP with a Proposed Regulatory Variation Notice.

- (b) The parties must meet as soon as practicable after the RSP's receipt of the Proposed Regulatory Variation Notice and discuss in good faith the terms of any variation to the Deal Module.
- (c) If the parties are unable to agree a variation to the Deal Module within 20 Business Days of the RSP's receipt of a Proposed Regulatory Variation Notice (or such other period agreed between the parties):
  - (i) **nbn** may provide a notice to the RSP setting out the terms of the variation to the Deal Module terms which **nbn** reasonably believes are required for the reasons in clause 2.5(a) and, if the RSP does not exercise its rights under clause 2.5(c)(ii) within 10 Business Days of receipt of such notice, the Deal



Module will be varied as set out in **nbn's** notice; and

- (ii) within 10 Business Days of receiving the notice in clause 2.5(c)(i), the RSP may terminate the Deal Module by notice in writing to **nbn**, in which case clauses 3.2(c) to 3.2(e) will apply as if the Deal Module had been terminated by **nbn** under clause 3.2(a) or 3.2(b).

### 2.6 Deal Modules to continue if New TEC not accepted

If **nbn** makes available a New TEC, then until the TEC Transition Date, the parties will continue to perform their respective obligations under this Agreement and each existing Deal Module, unless this Agreement or that Deal Module expires or is terminated in accordance with its terms.

### 2.7 Variation of Agreement and Deal Module if New TEC accepted

If the RSP accepts a New TEC, then on and from the TEC Transition Date:

- (a) subject to clause 2.7(b), the terms and conditions that are set out in this Agreement and incorporated into an existing Deal Module in accordance with clause 2.2(d)(i) will be replaced by the terms and conditions set out in the New TEC;
- (b) the terms and conditions that are set out in an existing Deal Module as referred to in clause 2.2(d)(ii) will continue in force and will take precedence over any corresponding term or condition set out in the New TEC unless the New TEC or any associated variation agreement expressly states otherwise; and
- (c) each Proposed Deal Module which has been issued by **nbn** under this Agreement but not executed by the RSP on or before the TEC Transition Date will become a Proposed Deal Module under the terms and conditions of the New TEC.

This clause 2.7 survives expiry or termination of this Agreement.

## 3. Termination

### 3.1 Termination by nbn for Material Default of the RSP

- (a) **nbn** may terminate this Agreement or any Deal Module upon notice to the RSP:
  - (i) if the RSP commits a Material Default under this Agreement or any Deal Module (including not making payments under clause 8.3) and:
    - A. that Material Default is not capable of remedy; or
    - B. if the Material Default is able to be remedied, the RSP fails to remedy the Material Default within 20 Business Days of a notice by **nbn** requiring the RSP to do so; or
  - (ii) if an Insolvency Event occurs in respect of the RSP.
- (b) If this Agreement or any Deal Module is terminated by **nbn** under this clause 3.1, the consequences in clause 4.10(b) will apply.

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

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

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

in which case:

- (c) **nbn** will not have any further obligation to perform the **nbn** Activities affected by such termination or cancellation;
- (d) **nbn** will not be liable to the RSP in respect of such termination or cancellation; and

- (e) the consequences in clause 4.10(a) will apply.

### 3.3 Termination by the RSP for Material Default of nbn

- (a) The RSP may terminate this Agreement or a Deal Module upon notice to **nbn** if:
  - (i) **nbn** commits a Material Default under a Deal Module and:
    - A. that Material Default is not capable of remedy; or
    - B. if the Material Default is able to be remedied, **nbn** fails to remedy the Material Default within 20 Business Days of a notice by the RSP requiring **nbn** to do so; or
  - (ii) an Insolvency Event occurs in respect of **nbn**.
- (b) For the purposes of clause 3.3(a)(i), **nbn** will commit a Material Default under a Deal Module if there are delays in the Date of Practical Completion of more than 6 months after the Target RTC Date for 50% or more of the Premises under the Deal Module (excluding Premises for which the Technology Change has been cancelled).
- (c) If a Deal Module is terminated by the RSP under clause 3.3(a), unless the Deal Module provides otherwise, the consequences in clause 4.10(a) will apply.

### 3.4 Termination by either party for convenience

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

### 3.5 Notification of Break Amount

- (a) If the RSP requests that **nbn** notify the RSP of a Break Amount payable in respect of any Premises under a Deal Module, **nbn** will use reasonable endeavours to provide such notice within

15 Business Days, and in any event will provide such notice within a reasonable period.

- (b) Any Break Amount requested by the RSP and notified by **nbn** to the RSP under clause 3.5(a) will be:
  - (i) an estimate of that Break Amount calculated as at the date of such request; and
  - (ii) subject to adjustment as at the date of **nbn**'s invoice for such Break Amount.
- (c) The parties acknowledge and agree that the relevant Break Amount and Refund Amount are each reasonable pre-estimates of loss resulting from a termination or cancellation of this Agreement, any Deal Module or any Technology Change (as the case may be).

### 3.6 Other consequences of termination

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

- (a) on and from the time of such termination or cancellation, **nbn** does not have any obligation to perform the **nbn** Activities or complete the affected Technology Changes or make the Technology Changes available to the RSP;
- (b) to the extent permitted by law and subject to clauses 3.2, 3.3 and 4.6, **nbn** will not have any liability to the RSP whether under this Agreement or any Deal Module or otherwise in connection with the affected Technology Changes not being completed;
- (c) each party must comply with the transition out provisions specified in a Deal Module, if any;
- (d) termination of this Agreement will not terminate or otherwise affect any rights or obligations of a party under any Deal Module in effect at the time of such termination (unless the Deal Module is also terminated); and
- (e) termination of a Deal Module will not terminate or otherwise affect any rights

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or obligations of a party under any other Deal Module in effect at the time of such termination (unless that other Deal Module is also terminated).

## Section B: Technology Change Activities

### 4. Performing the Technology Change

#### 4.1 nbn Activities

- (a) In the absence of this Agreement, the Original Technology identified in the Deal Module served (or was planned to serve) the Premises.
- (b) **nbn** will carry out the **nbn** Activities to perform the Technology Change on the terms of this Agreement. The Technology Change will not entitle the RSP or any other person to order an End User Connection under this Agreement. End User Connections can only be ordered under, and subject to the terms of, the Wholesale Broadband Agreement.

#### 4.2 Time

- (a) **nbn** will complete the **nbn** Activities for the Technology Change in respect of each Premises by the Target RTC Date for that Premises. The RSP's sole remedies for **nbn** failing to complete a Technology Change for a Premises by the Target RTC Date are as set out in clauses 4.5 and 4.6.
- (b) Each Target RTC Date will be automatically extended by a period of time equal to the period of any delay to the Technology Change caused or contributed to by any of the following:
  - (i) an act or omission of the RSP, its Downstream Customer or their respective Personnel, including a failure of the RSP to comply with any requirement under this Agreement;
  - (ii) a Force Majeure Event; or
  - (iii) an act or omission of a third party which is outside of **nbn**'s reasonable control, including (but not limited to), a failure of that third party to grant **nbn** timely access to a site or facility.
- (c) If there are:
  - (i) any extensions of, or changes to, a Target RTC Date under clauses 4.2(b), 4.3(c), 4.3(f) or 7.2(b); or
  - (ii) any other delay that **nbn** anticipates may affect a Target RTC Date,

**nbn** will, as soon as reasonably practicable, provide the RSP with updated Target RTC Dates to reflect those changes.

- (d) The Indicative Delivery Window specified for each Premises in a Deal Module does not constitute or amend the Target RTC Date for the Premises and must not be relied upon by the RSP, including for the purpose of making representations to Downstream Customers.
- (e) **nbn** must notify the RSP of a Target RTC Date for each Premises within 15 Business Days of the later of:
  - (i) the Module Commencement Date; and
  - (ii) the date that all the Minimum Required Information for that Premises is provided by the RSP to **nbn**.

The Target RTC Date notified to the RSP for a Premises is binding for the purposes of clause 4.2(a) (subject to any extension or change as permitted under this Agreement).

- (f) If **nbn** fails or delays in providing the RSP with a Target RTC Date for a Premises as required under clause 4.2(e), the Deferred Charge will be reduced by the Delay Amount multiplied by the number of calendar days between the date **nbn** was obliged to provide the Target RTC Date for that Premises and the date **nbn** notifies the RSP of the Target RTC Date for that Premises.

#### 4.3 Minimum Required Information

- (a) The RSP must provide to **nbn** the Minimum Required Information in relation to each Premises, as specified in the Deal Module, to **nbn**'s reasonable satisfaction, within 30 Business Days of:
  - (i) the Module Commencement Date, if that Premises is specified in the Deal Module on that date; or
  - (ii) the date on which the Deal Module is varied to add that Premises,(in this clause 4.3, the **Information Due Date**).
- (b) **nbn** will have regard to the Minimum Required Information for the purposes of

determining the Target RTC Date but such Minimum Required Information will not impose any obligation on **nbn** or otherwise affect **nbn**'s rights under this Agreement. **nbn** will not be taken to have endorsed or accepted any Minimum Required Information for a Premises by virtue of **nbn** determining a Target RTC Date for that Premises.

- (c) Without limiting clause 4.2, the Target RTC Date for a Premises will be automatically extended by a period of time equal to each complete Business Day between the Information Due Date and the date that all the Minimum Required Information for that Premises is provided by the RSP to **nbn**.
- (d) If the RSP has not provided **nbn** all the Minimum Required Information for a Premises by the first anniversary of the relevant Information Due Date, unless otherwise agreed by the parties, the RSP will be deemed to have cancelled the Technology Change for that Premises and clause 4.10(b) will apply. Without limiting the application of this clause 4.3(d), **nbn** will endeavour to give at least 30 Business Days' prior notice to the RSP where **nbn** is aware that the deemed cancellation of a Technology Change under this clause 4.3(d) is imminent.
- (e) If, before the Date of Practical Completion for a Premises, the RSP or **nbn** becomes aware of any errors or omissions in, or changes to, the Minimum Required Information provided to **nbn** for that Premises, the RSP or **nbn** (as the case may be) must notify the other party and the RSP must provide corrected and updated Minimum Required Information as soon as reasonably practicable.
- (f) If the Minimum Required Information for a Premises has been provided to **nbn**, **nbn** has notified a Target RTC Date for that Premises, and then there are changes to the Minimum Required Information as provided to **nbn**, then within 15 Business Days of **nbn** receiving the changes to the Minimum Required Information, **nbn** may change the Target RTC Date by notice to the RSP.
- (g) The RSP must, as soon as feasible, provide any additional information in relation to a

Premises that is reasonably requested by **nbn** for the purpose of completing the Technology Change at that Premises.

#### 4.4 Completion

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

#### 4.5 Delay

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

#### 4.6 Cancellation of a Technology Change for delay

Without limiting clauses 4.2, 4.3 and 4.5, if a Date of Practical Completion for a Premises specified in a Deal Module has not occurred 3 months after the Target RTC Date for that Premises (having taken into account any extension of the Target RTC Date in accordance with this Agreement), then:

- (a) RSP may notify **nbn** of the delay, and if the Date of Practical Completion does not occur within 10 calendar days of that notice, the RSP may cancel the Technology

Change for that Premises by providing notice to **nbn**; and

- (b) if the RSP cancels the Technology Change for that Premises in accordance with clause 4.6(a), the consequences in clause 4.10(a) will apply.

#### 4.7 Cancellation of Technology Change by the RSP for convenience

- (a) Subject to clause 4.7(d), the RSP may cancel a Technology Change in respect of any Premises for convenience by providing not less than 10 Business Days' notice to **nbn** in writing specifying the relevant Premises.
- (b) Within 60 Business Days of the Specified Date for a Premises, the RSP must provide written notice to **nbn** if the RSP or Consenting Provider intends to place an order under the WBA for a Product which uses the Chosen Technology at that Premises, before the date that is 90 Business Days from the Specified Date, but has not yet placed such an order.
- (c) On the date that is 90 Business Days from the Specified Date, if the RSP has not:
  - (i) placed an order under the WBA for a Product which uses the Chosen Technology at that Premises; or
  - (ii) delivered to **nbn** a Confidentiality Consent in respect of that Premises under clause 4.9, for which the Consenting Provider has placed an order under its wholesale broadband agreement for a product which uses the Chosen Technology at that Premises,

the Technology Change will be deemed to have been cancelled by the RSP and clause 4.7(d) will apply. Without limiting the application of this clause 4.7(c), **nbn** will endeavour to give at least 30 Business Days' prior notice to the RSP where **nbn** is aware that the deemed cancellation of a Technology Change under this clause 4.7(c) is imminent.

- (d) If the RSP cancels a Technology Change in respect of any Premises pursuant to this clause 4.7 then the consequences in clause 4.10(b) will apply.

#### 4.8 Change or cancellation of Chosen Technology by nbn

- (a) If **nbn** is unable to deliver a Technology Change to the Chosen Technology for a Premises due to:
  - (i) circumstances or third party acts or omissions that are out of **nbn**'s control and which **nbn** is not able to avoid or mitigate by taking steps that are reasonable in the circumstances;
  - (ii) any mistake of fact made by the parties in agreeing the contents of a Site List, including a site address for a Premises being incorrect (as determined by **nbn** following consultation with the RSP); or
  - (iii) **nbn** being unable to access, or materially impeded in accessing, the site in order to undertake **nbn** Activities, including where the Premises is located on a heritage site or a local council or other third party impedes access to the site or any facility,

and after following the process set out in clauses 2.4(a) to 2.4(c) the parties have not agreed to amend a Deal Module within the timeframe specified in clause 2.4(c), **nbn** may cancel the Technology Change in respect of that Premises by providing notice to the RSP in writing as soon as reasonably practicable after the expiry of the timeframe specified in clause 2.4(c) (**Cancellation Notice**).

- (b) On receipt of a Cancellation Notice from **nbn**:
  - (i) the Technology Change at the relevant Premises will be cancelled; and
  - (ii) the consequences in clause 4.10(a) will apply.

#### 4.9 Expanded Revenue Pool option

- (a) This clause 4.9 applies to a Deal Module only if the Deal Module specifies that the Expanded Revenue Pool option applies to that Deal Module.
- (b) The RSP may deliver to **nbn** a Confidentiality Consent with respect to any

- or all Premises subject to a Deal Module (**Expanded Revenue Premises**).
- (c) A **Confidentiality Consent** is an executed consent:
- (i) from a retail service provider that is not the RSP (**Consenting Provider**) to **nbn**, permitting **nbn** to disclose to the RSP the total Expanded Wholesale Charges paid by that Consenting Provider in respect of the Expanded Revenue Premises; and
  - (ii) in the form set out at **TEC Schedule B** to this Agreement or such other form as may be designated by **nbn** as a “Confidentiality Consent” from time to time.
- (d) If the RSP delivers a properly executed Confidentiality Consent to **nbn** in accordance with this clause 4.9, then Expanded Wholesale Charges from the Consenting Provider in respect of the relevant Expanded Revenue Premises will contribute to the Revenue Credit Amount for the relevant Deal Module (**Expanded Revenue Pool**).
- (e) **Expanded Wholesale Charge** means any recurring charge amount or early termination payment amount that **nbn** has determined is attributable to the supply by **nbn** to a retail service provider of a wholesale **nbn**<sup>TM</sup> product or service:
- (i) between the date that the relevant Confidentiality Consent is provided to **nbn** and the Module Expiry Date;
  - (ii) under any “Wholesale Broadband Agreement” between **nbn** and the retail service provider;
  - (iii) to one of the Expanded Revenue Premises using the Chosen Technology for that Premises; and
  - (iv) which is an input to either:
    - A. a retail product or service supplied to an End User at the Expanded Revenue Premises; or
    - B. a wholesale product or service supplied by a retail service provider to another retail service provider, which is an

input to a retail product or service supplied to an End User at the Expanded Revenue Premises.

#### 4.10 Charging consequences

- (a) The following consequences will apply where **nbn** terminates this Agreement or a Deal Module, or cancels a Technology Change, under clauses 3.2(a) or 3.2(b), the RSP terminates a Deal Module under clause 3.3(a), the RSP cancels a Technology Change under clause 4.6(a) or **nbn** cancels a Technology Change under clause 4.8(a):
- (i) no Break Amount will be payable by the RSP to **nbn** for any Premises affected by the cancellation or termination;
  - (ii) if the Premises has a Deferred Premises Amount and has not reached the Date of Practical Completion as at the date of cancellation or termination, the Deferred Charge will, from the date of cancellation or termination, be reduced by the Deferred Premises Amount for the affected Premises;
  - (iii) if the Premises has an Upfront Premises Amount and has not reached the Date of Practical Completion as at the date of cancellation or termination:
    - A. **nbn** will pay the RSP the Refund Amount for that Premises; and
    - B. the Upfront Premises Amount for that Premises will, on that date, be reduced by the unpaid Upfront Premises Amount at that date, such that the RSP is not required to make any further payment of an Upfront Charge in respect of that Premises;
  - (iv) **nbn** will refund any Early Charge Payment paid by the RSP in respect of Premises affected by the cancellation or termination which have not reached the Date of Practical Completion; and

- (v) the RSP's obligation to pay any remaining Deferred Charge and/or Upfront Charge (as reduced under clauses 4.10(a)(ii) and 4.10(a)(iii)B) will survive and remain payable.
- (b) Irrespective of whether any **nbn** Activities have commenced at the date of cancellation or termination, the following consequences will apply where **nbn** terminates a Deal Module or this Agreement under clause 3.1(a), the RSP cancels a Technology Change under clause 4.7(a) or a Technology Change is deemed cancelled by the RSP under clauses 4.3(d), 4.7(c), 6.1(h) or 7.2(c):
  - (i) for each Premises affected by the cancellation or termination, the RSP must pay to **nbn** an amount equal to the relevant Break Amount;
  - (ii) the Deferred Charge will, from the date of cancellation or termination, be reduced by the Deferred Premises Amount for each Premises affected by the cancellation or termination;
  - (iii) if the Premises has an Upfront Premises Amount:
    - A. **nbn** will pay the RSP the Refund Amount for that Premises; and
    - B. the Upfront Premises Amount for that Premises will, on that date, be reduced by the unpaid Upfront Premises Amount at that date, such that the RSP is not required to make any further payment of an Upfront Charge in respect of that Premises;
  - (iv) **nbn** will refund any Early Charge Payment paid by the RSP in respect of each Premises affected by the cancellation or termination;
  - (v) the RSP's obligation to pay any remaining Deferred Charge and/or Upfront Charge (as reduced under clauses 4.10(b)(ii) and 4.10(b)(iii)B) will survive and remain payable; and
  - (vi) **nbn** may, at its discretion and notwithstanding clause 8.3(c), set off any payment under clauses

4.10(b)(iii)A and 4.10(b)(iv) against the payment to be made by the RSP under clause 4.10(b)(i).

## 5. Ownership of infrastructure

### 5.1 nbn owns the infrastructure and equipment

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

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

The RSP must not (and must use reasonable endeavours to ensure that each Downstream Customer does not) damage, interfere with or remove any cable, infrastructure or associated equipment that is used or installed in connection with the Technology Change.

## 6. Access

### 6.1 Access to premises

- (a) Where access is required by **nbn** or its Personnel for a purpose described in clause 6.1(b), the RSP must:
  - (i) provide **nbn** and its Personnel with safe and timely access to any premises owned, controlled or occupied by the RSP or any of its Related Bodies Corporate;
  - (ii) ensure that **nbn** and its Personnel are provided with safe and timely access to the premises of Downstream Customers for so long as:
    - A. the relevant premises are owned, controlled or occupied by Downstream Customers, or any of their Related Bodies Corporate; and
    - B. those persons have a contract with the RSP for the supply of a product or service which relies on a Product as an input; and
  - (iii) pay **nbn** any Third Party Access Charges which **nbn** may incur in



- accessing the relevant Premises in accordance with clause 7.1.
- (b) The purposes for which access is required under clause 6.1(a) are for **nbn** or its Personnel to:
- (i) perform the **nbn** Activities; and
  - (ii) exercise any of their rights or perform any of their obligations under and in accordance with this Agreement.
- (c) Each party will procure access for itself and its Personnel to Common Property.
- (d) The RSP must notify **nbn** as promptly as feasible in the circumstances where the 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 6.1.
- (f) **nbn** must ensure that any Personnel of **nbn** visiting any premises owned, controlled or operated or used by the RSP or Downstream Customer:
- (i) comply with any policies that are notified by the RSP or Downstream Customer (as applicable) to **nbn** from time to time (provided that as much notice as feasible in the circumstances is given to **nbn** by the RSP or Downstream Customer), any reasonable directions that may be given by the RSP or Downstream Customer (as applicable) to **nbn** from time to time, and all OH&S Laws; and
  - (ii) do not at any time cause the RSP to be in contravention of an OH&S Law.
- (g) If **nbn** or the RSP becomes aware that Third Party Access Charges may be imposed upon **nbn** to access the relevant Premises:
- (i) that party must notify the other party as soon as is reasonably practicable, and in any event within 10 Business Days of becoming so aware;
- (ii) the RSP must inform **nbn** within 5 Business Days of the notification in clause 6.1(g)(i) whether or not the RSP approves **nbn** incurring those Third Party Access Charges to access the Premises; and
- (iii) **nbn** will not charge the RSP any Third Party Access Charges the subject of the notification in clause 6.1(g)(i) unless the RSP provides its approval under clause 6.1(g)(ii).
- (h) If the RSP does not provide approval in accordance with clause 6.1(g)(ii):
- (i) **nbn** will have no obligation under this Agreement or a Deal Module to:
    - A. perform any **nbn** Activities which require access to that Premises; or
    - B. incur liability for, or pay, the Third Party Access Charges; and
  - (ii) on the date that is 12 months after the notification in clause 6.1(g)(i), the Technology Change will be deemed to have been cancelled by the RSP, and clause 4.10(b) will apply. Without limiting the application of this clause 6.1(h), **nbn** will endeavour to give at least 30 Business Days' prior notice to the RSP where **nbn** is aware that the deemed cancellation of a Technology Change under this clause 6.1(h) is imminent.

## Section C: Charges and Payment Terms

### 7. RSP Payments

#### 7.1 Charges for the Technology Change

- (a) The RSP must pay **nbn**:
  - (i) any Upfront Charge by means of the Instalments;
  - (ii) any Deferred Charge by means of the Deferred Charge Payment; and
  - (iii) any Break Amount,which amounts are calculated by reference to the costs incurred by **nbn** performing the **nbn** Activities at the Premises for the Technology Change.
- (b) The RSP must also pay **nbn**:
  - (i) any Third Party Access Charges approved by the RSP under clause 6.1(g)(ii); and
  - (ii) any Failed Appointment Charges.
- (c) Unless agreed otherwise, the RSP acknowledges that the RSP and not the Downstream Customer is responsible for all payments required to be made under this Agreement to **nbn** (including any Deferred Charge Payment or Break Amount) even if a Downstream Customer:
  - (i) ceases to own or occupy the relevant Premises after the RSP's acceptance of the relevant Deal Module;
  - (ii) decides that it no longer wishes to proceed with the acquisition of products or services, whether from the RSP or any other retail service provider, which require the Technology Change in respect of its Premises; or
  - (iii) terminates or breaches any contract, arrangement or understanding it may have with the RSP.

#### 7.2 Instalments

- (a) Where a Technology Change is subject to an Upfront (Pre-Build) Charge, **nbn** will not commence any **nbn** Activities in respect of the Technology Change until the first Instalment has been paid. Where a Technology Change is subject to an Upfront (Post-Completion) Charge or Upfront (Staggered) Charge, **nbn** may commence

the **nbn** Activities prior to payment of any outstanding Instalments.

- (b) If the RSP does not pay an Instalment by its Due Date then, without limiting clause 4.2, the Target RTC Date for a Premises will be automatically extended by a period of time equal to each complete Business Day between the Due Date of that Instalment and the date that the Instalment is paid by the RSP to **nbn**.
- (c) If an Instalment remains outstanding on the date that is 12 months from the applicable Due Date of that Instalment, the Technology Change will be deemed to have been cancelled by the RSP, and clause 4.10(b) will apply. Without limiting the application of this clause 7.2(c), **nbn** will endeavour to give at least 30 Business Days' prior notice to the RSP where **nbn** is aware that the deemed cancellation of a Technology Change under this clause 7.2(c) is imminent.
- (d) The parties acknowledge that the Instalments are non-refundable unless otherwise specified in this Agreement.

#### 7.3 Early Charge Payment

- (a) The RSP may, at any time during the Term, request that **nbn** provide an estimate of the amount (if any) that would be payable by the RSP as a Deferred Charge Payment and/or Upfront Charge under a Deal Module if the Invoice Event for the Deferred Charge Payment and/or any unpaid Upfront Charge were to occur on the date of the RSP's request (**Early Charge Estimate**).
- (b) Subject to clause 7.3(c), within 20 Business Days of receiving an RSP request under clause 7.3(a), **nbn** must notify the RSP of the Early Charge Estimate (if any).
- (c) If **nbn** has already issued 2 Early Charge Estimates in respect of a Deal Module, for which the RSP has not made an Early Charge Payment, then **nbn** may decline to provide any further Early Charge Estimate for that Deal Module.
- (d) Within 10 Business Days of receiving **nbn**'s notice of an Early Charge Estimate under clause 7.3(b), the RSP may request that **nbn** issue an invoice for an amount equal to the Early Charge Estimate which will be

adjusted to calculate the Deferred Charge Payment and/or any unpaid Upfront Charge as at the date of **nbn**'s invoice (**Early Charge Payment**).

- (e) If the RSP makes a request under clause 7.3(d):
  - (i) **nbn** will issue an invoice under clause 8 for the Early Charge Payment; and
  - (ii) subject to clause 7.3(f), the Deferred Charge Payment and/or Upfront Charge (as applicable) payable by the RSP under the Deal Module will be adjusted to deduct the amount of the Early Charge Payment paid by the RSP.
- (f) The RSP must make the Deferred Charge Payment and/or pay the Upfront Charge as set out in the relevant Deal Module, and clause 8.7 will not apply to the unpaid Early Charge Payment, if the RSP does not:
  - (i) request an invoice under clause 7.3(d); or
  - (ii) make payment of an invoice requested under clause 7.3(d).

## 8. Invoicing, Payment and Credit Policy

### 8.1 Estimate of amount owed by RSP

- (a) At least 20 Business Days prior to the first scheduled Invoice Event for the Deferred Charge Payment in a Deal Module, **nbn** must notify the RSP of the amount of the Deferred Charge Payment (if any) that **nbn** estimates will be payable by the RSP at that Invoice Event (**Rollover Notice**).
- (b) Within 10 Business Days of receiving a Rollover Notice, the RSP must elect by notification to **nbn** to either:
  - (i) not delay the Invoice Event for the Deferred Charge Payment; or
  - (ii) delay the Invoice Event for the Deferred Charge Payment by 12 months, in which case the Deal Module will be varied, with effect from the date of **nbn**'s receipt of the RSP's election notice, to:
    - A. change the Invoice Event to the date that is 12 months

after the date of the original Invoice Event; and

- B. extend the term of the Deal Module by 12 months.

- (c) If no election is made by the RSP in accordance with clause 8.1(b), there will be no delay of the Invoice Event for the Deferred Charge Payment.
- (d) **nbn** will not issue more than one Rollover Notice under clause 8.1(a) and the Invoice Event may only be changed a maximum of one time under clause 8.1(b)(ii).

### 8.2 Invoices

- (a) Following an Invoice Event, **nbn** will invoice the RSP for the relevant Instalments, Deferred Charge Payment, Break Amounts, Third Party Access Charges, Failed Appointment Charges, Early Charge Payment, any interest payable under clause 8.7(c)(v), and any other amount payable under this Agreement or any Deal Module at that Invoice Event.
- (b) **nbn** will use reasonable endeavours to issue each invoice within 20 Business Days of the Invoice Event.
- (c) Each invoice issued by **nbn** will:
  - (i) set out the amount payable by the RSP in Australian dollars;
  - (ii) contain sufficient information to reasonably enable the RSP to identify the payment to which the invoice relates; and
  - (iii) comply with all of the requirements of a Tax Invoice under the GST Law.

### 8.3 Payment

- (a) Subject to clauses 8.1(b)(ii) and 8.3(b), the RSP must pay **nbn** the full amount set out in an invoice on the later of the due date specified in an invoice and the date which is 30 calendar days after the date the invoice was issued (**Due Date**).
- (b) Without limiting clause 8.7, if the RSP raises a Billing Dispute prior to the Due Date in accordance with the relevant processes set out in clause 8.5, then the RSP:

- (i) may withhold payment of the disputed amount identified in the Billing Dispute Notice until that Billing Dispute is resolved; and
  - (ii) must pay by the Due Date the undisputed amount set out in the invoice.
- (c) Each payment of an invoice by the RSP must be:
- (i) paid by electronic funds transfer directly to **nbn**'s nominated bank account or by such other means as stipulated by **nbn** in either the invoice or the relevant Deal Module;
  - (ii) subject to clause 8.3(b)(i), paid without any set-off, counterclaim, withholding or deduction, including on account of any amounts owed to the RSP by **nbn** or any third party; and
  - (iii) accompanied by sufficient information for **nbn** to identify, process and properly allocate those invoice payments.
- (d) Each invoice payment made by the RSP will be treated as being received by **nbn** when that payment is credited to **nbn**'s nominated bank account in cleared funds. If an invoice payment made by the 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.
- (e) The RSP must immediately notify **nbn** in writing if the 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.

### 8.4 GST and Tax

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

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

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

### 8.5 Billing errors and Billing Disputes

- (a) If an invoice omits or miscalculates any amounts payable under this Agreement, **nbn** may issue an additional invoice to the RSP, adjust an invoice issued to the RSP or issue a credit to the RSP to recover or refund the omitted or miscalculated amounts if **nbn** does so no later than 6 months after the date of the original invoice.
- (b) If the RSP, acting reasonably, considers there is an error in the amount set out in an invoice payable by the RSP under this Agreement (**Billing Dispute**), the RSP must notify **nbn** in writing within 6 months of receipt of the invoice to which the Billing Dispute relates (**Billing Dispute Notice**). **nbn** will acknowledge receipt of the Billing Dispute Notice by contacting the RSP.

- (c) If the parties cannot resolve the Billing Dispute within 20 Business Days after **nbn** has received the Billing Dispute Notice, either party may escalate a Billing Dispute by having its Contact Person give a copy of the Billing Dispute Notice to the other party's Contact Person.
- (d) The parties' respective Contact Persons must attempt to resolve the Billing Dispute within 10 Business Days after a party's Contact Person receives a copy of the Billing Dispute Notice.
- (e) If the Billing Dispute remains unresolved after the conclusion of the timeframe in clause 8.5(d), either party may escalate an unresolved Billing Dispute for determination by a Billing Expert in accordance with, and subject to, the Resolution Institute Expert Determination Rules, by giving notice to the other party.
- (f) The parties must use reasonable endeavours to agree on a Billing Expert within 10 Business Days after a party receiving notice under clause 8.5(e).
- (g) If the parties cannot agree on a Billing Expert under clause 8.5(f) within the timeframe specified, either party may request that the Chair of the Resolution Institute (or their nominee) appoint a Billing Expert from one of the following firms:
  - (i) PricewaterhouseCoopers Australia;
  - (ii) Ernst & Young Australia;
  - (iii) KPMG Australia; or
  - (iv) Deloitte Touche Tohmatsu Australia.
- (h) If none of the firms specified in clause 8.5(g) can provide a Billing Expert, the Chair of the Resolution Institute (or their nominee) may appoint a different Billing Expert.
- (i) If:
  - (i) the RSP fails to respond to a notice from **nbn** under clause 8.5(c) or 8.5(e) in the timeframes specified in clause 8.5(d) or 8.5(f) respectively; or
  - (ii) **nbn** has proposed in writing a resolution to a Billing Dispute in the course of discussions under clause 8.5(c) or 8.5(d), and the RSP has not escalated the Billing Dispute by the later of the timeframe specified in that proposed resolution and the timeframe in clause 8.5(c) or 8.5(d) (as applicable),
 the RSP will be deemed to have accepted **nbn's** proposed resolution to the Billing Dispute and the Billing Dispute shall be finally resolved.
- (j) Clause 13.4 will apply to any Billing Dispute referred to a Billing Expert under this clause 8.5.

### 8.6 Unreasonable use of the Billing Dispute process

- (a) If **nbn** considers, acting reasonably, that the RSP has raised, or is raising, Billing Disputes unreasonably or in bad faith, then **nbn's** Contact Person will consult with the RSP's Contact Person regarding **nbn's** concerns with a view to resolving those concerns.
- (b) Subject to **nbn** having complied with clause 8.6(a), if:
  - (i) the 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 any amounts payable which were the subject of those Billing Disputes,**nbn** may suspend the RSP's rights under clause 8.3(b) to withhold payment of disputed amounts for a period of 6 months.
- (c) If **nbn** exercises its rights under clause 8.6(b), the RSP may continue to raise Billing Disputes under clause 8.5.

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

- (a) **nbn's** rights under this clause 8.7 are in addition to, and do not exclude or limit, its other rights under this Agreement or by law. Any exercise of **nbn's** rights under this clause 8.7 will not waive or prevent the exercise of **nbn's** other rights or remedies under this Agreement or by law.
- (b) Any:

- (i) unpaid and undisputed amount set out in a valid invoice under this Agreement by the Due Date; or
- (ii) disputed amount withheld that is agreed or determined to be due and payable,

will be deemed to be an **Overdue Amount** with effect from the day after the Due Date.

- (c) If an Overdue Amount remains unpaid for 10 Business Days, the RSP will be in Material Default and **nbn** may do one or more of the following:
  - (i) suspend any **nbn** Activities under any Deal Module until the Overdue Amount is paid;
  - (ii) recover any Overdue Amount, plus the reasonable costs of recovery, as a debt due and payable immediately to **nbn**;
  - (iii) notify and exchange information regarding the RSP with **nbn**'s debt collection and credit reporting bodies concerning overdue amounts;
  - (iv) immediately demand payment of the balance of any Deferred Charge and Upfront Charge and invoice the RSP for that amount in accordance with clause 8.2(c);
  - (v) charge the RSP interest on any Overdue Amount of an invoice applied for each day from (but excluding) the Due Date until (and including) the date that **nbn** receives payment in full at an annual percentage rate equal to the aggregate of the 90 Day Bank Bill Swap Rate plus 2.5 per cent, and the RSP must pay that interest on the Overdue Amount. The payment of any Overdue Amount under this Agreement does not relieve the RSP from the obligation to pay the interest accrued on that Overdue Amount under this clause 8.7;
  - (vi) enforce, call on, use or otherwise take action to exercise or obtain the benefit of any Financial Security to recover any Overdue Amount in accordance with the Credit Policy;

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

### 8.8 Credit Policy

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

### 8.9 Survival

Clause 8 (other than clause 8.8) will survive expiry or termination of this Agreement or any Deal Module.

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

**9. Liability**

**9.1 Liability**

- (a) To the extent permitted by law and except as expressly set out in this Agreement:
  - (i) this Agreement exhaustively governs (including by way of exclusion, restriction or limitation) all liabilities that a party owes to the other party arising from, or in connection with this Agreement and any Previous TEC;
  - (ii) each party excludes all express or implied representations, conditions, warranties and guarantees arising from or in connection with this Agreement and any Previous TEC, whether based in statute, regulation, common law or otherwise; and
  - (iii) this clause 9.1 survives expiry or termination of this Agreement or any applicable Deal Module.
- (b) To the maximum extent permitted by law:
  - (i) **nbn** is not liable to the RSP, and the RSP is not liable to **nbn**, in respect of any Consequential Loss which may be suffered or incurred arising out of or in connection with the **nbn** Activities or this Agreement or any Previous TEC;
  - (ii) a party is not liable to the other party to the extent that:
    - A. the Loss or Claim suffered by the other party is caused or contributed to by any act or omission of the other party or its Relevant Persons; or
    - B. the other party has not taken all reasonable steps to minimise and mitigate its own Losses in relation to the act, omission, event or circumstances giving rise to the Loss or Claim; and
  - (iii) except in relation to the liability of a party under the indemnities given by

the parties in clause 9.2 and **TEC Schedule A**, each of:

- A. **nbn**'s liability to the RSP; and
- B. the RSP's liability to **nbn**,

whether under this Agreement or a Previous TEC, in tort (including negligence or otherwise), under any statute (to the extent that it is possible to exclude or limit such liability) or otherwise at law or in equity, arising out of or in connection with the performance of **nbn**'s or the RSP's obligations under this Agreement or a Previous TEC (as the case may be) is limited to the Liability Cap.

- (iv) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by the Competition and Consumer Act or any other law, which cannot be lawfully excluded or restricted.
- (c) This clause 9 does not limit the RSP's liability for any amounts payable under this Agreement, including any Upfront Charge, Deferred Charge, or Break Amount.
- (d) Claims between the RSP and **nbn**:
  - (i) that relate to a third party Claim, must be managed in accordance with the process set out in **TEC Schedule A**; and
  - (ii) that relate to any other Claim arising from or in connection with this Agreement, must be managed in accordance with clause 13.

**9.2 Indemnity**

- (a) Each party (**Indemnifying Party**) must indemnify the other party (**Indemnified Party**) against, and must pay the Indemnified Party on demand the amount of, all Losses incurred by the Indemnified Party or its Relevant Persons arising from or in connection with the:
  - (i) personal injury to or death of any person; and
  - (ii) loss or damage to Tangible Property,

to the extent caused or contributed to by negligent or wilful acts or omissions of the Indemnifying Party or its Relevant Persons or third party suppliers in connection with the performance of obligations and the exercise of rights under this Agreement.

- (b) Unless agreed otherwise between the parties, clause 9.2(a) does not survive expiry or termination of this Agreement or any applicable Deal Module except to the extent that the relevant Loss was incurred during the Term or the relevant act or omission of the Indemnifying Party, Relevant Person or third party supplier occurred during the Term.
- (c) The liability of an Indemnifying Party to pay on demand an amount under this clause 9.2 to an Indemnified Party will be the sole and exclusive financial remedy in respect of the liability the subject of the indemnity.

## 10. Confidentiality

### 10.1 Disclosure of Confidential Information

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

- (a) the Confidential Information of the other party (**Discloser**) is confidential, and that it will not:
  - (i) use or copy Confidential Information of the Discloser; or
  - (ii) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any person,except as set out in this Agreement;
- (b) Confidential Information of the RSP may be used by **nbn**:
  - (i) for the purposes of undertaking planning, maintenance, construction, provisioning, testing, operations or reconfiguration of the **nbn** infrastructure and equipment;
  - (ii) for the purposes of undertaking the **nbn** Activities;
  - (iii) for the purpose of billing the RSP;
  - (iv) to exercise its rights or perform its obligations under this Agreement,

the Wholesale Broadband Agreement with RSP or Consenting Provider or any Deal Module;

- (v) for the purposes of developing, supplying, marketing or promoting network build activities to the RSP; or
  - (vi) for another purpose agreed to by the RSP.
- (c) Confidential Information of **nbn** may be used by the RSP:
    - (i) where it has been received in relation to a Deal Module, in order to prepare for supplying RSP Products or Downstream Products to Downstream Customers at the Premises the subject of that Deal Module;
    - (ii) to enable the proposed use of RSP Products or Downstream Products by Downstream Customers;
    - (iii) to exercise its rights or perform its obligations under this Agreement; or
    - (iv) for another purpose agreed to by **nbn**.
  - (d) Confidential Information of the Discloser may be used and/or disclosed (as the case may be) by the Recipient:
    - (i) to those of its Related Bodies Corporate and its and their Personnel, and in the case of **nbn** to any third party suppliers (including suppliers of third party network facilities) to whom the Confidential Information is reasonably required to be disclosed for the purposes of this Agreement provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;
    - (ii) to Downstream Customers and Consenting Provider to whom the Confidential Information is reasonably required to be disclosed for the purposes of this Agreement or Deal Module provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;



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

Recipient in accordance with the terms of the WBA.

- (g) A Deal Module may set out additional confidentiality requirements and, to the extent of any conflict, the Deal Module prevails over this Agreement.

## 10.2 Co-operation

Subject to clause 10.1, 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.

## 10.3 No disclosure to Other RSPs

Except where expressly contemplated by this Agreement or otherwise agreed between the parties, **nbn** may not disclose Confidential Information of the RSP to an Other RSP.

## 10.4 No warranty

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

## 10.5 Injunctive relief

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

## 10.6 Disclosure by nbn for debt collection

If:

- (a) **nbn** has the right to suspend or terminate any **nbn** Activities in respect of:
- (i) the RSP failing to pay an amount due or owing to **nbn** under this Agreement or a Deal Module by the due date for payment; or
- (ii) an Insolvency Event in respect of the RSP; or
- (b) after suspension or termination of supply of **nbn** Activities under this Agreement, the

RSP fails to pay amounts due or owing to **nbn** by the due date for payment,

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

- (c) notify and exchange information about the RSP (including the 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 10.6(c), disclose to a credit reporting agency:
- (i) the defaults made by the RSP to **nbn**; and
- (ii) the exercise by **nbn** of any right to suspend or terminate **nbn** Activities under this Agreement.

## 10.7 Confidentiality under the PDF Terms

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

## 11. Intellectual Property

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

## 12. Data Security and Personal Information

### 12.1 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 12.1(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.

## 12.2 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 12.2(c) and 12.2(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 12.2(d), if:
- (i) a relevant Eligible Data Breach or suspected Eligible Data Breach described in clause 12.2(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 12.2(b) or 12.2(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.

### 13. Disputes

#### 13.1 Notice of Dispute

- (a) During the Term, any dispute or difference, other than a Billing Dispute, which arises between **nbn** and the RSP in respect of any fact, matter or thing arising out of, or in any way in connection with this Agreement (**Dispute**) must be resolved in accordance with this clause 13.
- (b) Where such Dispute arises, either party may give a notice in writing to the other party specifying the Dispute and the position which the party believes is correct (**Notice of Dispute**).
- (c) If a Notice of Dispute is served, persons authorised by the Chief Customer Officer (or equivalent) of each party must meet and negotiate with a view to resolving the Dispute.

#### 13.2 Arbitration

- (a) If the Dispute is not resolved within 15 Business Days of service of the Notice of Dispute (or such other period agreed by the parties in writing), then, subject to the parties' right to seek injunctive or urgent declaratory relief, either party may refer the Dispute to arbitration conducted in accordance with the Resolution Institute Arbitration Rules by notice to the other party.
- (b) Any Dispute which is referred to arbitration will be conducted before a person (the **Arbitrator**) to be:
  - (i) agreed between the parties; or
  - (ii) failing agreement within 10 Business Days after the referral of the Dispute to arbitration, a person nominated by the Resolution Institute.
- (c) Clause 13.4 will apply to any Dispute referred to an Arbitrator under this clause 13.2.

#### 13.3 Court Proceedings

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

- (a) expressly permitted under this Agreement;
- (b) an Insolvency Event affects, or is reasonably likely to affect imminently,

either **nbn** or the RSP, and the other party reasonably considers it necessary to commence court proceedings in relation to a Dispute or Billing Dispute to preserve its position with respect to creditors of the other party;

- (c) **nbn** or the RSP is seeking to enforce unpaid debts comprising undisputed amounts or any disputed amount withheld in accordance with clause 8.3(b) that has been agreed or determined to be due and payable;
- (d) **nbn** or the RSP is seeking urgent interlocutory relief; or
- (e) the relevant Dispute or Billing Dispute relates to a failure by **nbn** or the RSP to comply with clause 8.5 in relation to the Billing Dispute or this clause 13, which is not trivial or immaterial.

#### 13.4 General rights and obligations

- (a) Unless otherwise agreed between the parties, the terms of this clause 13 and clause 8.5 (respectively) of this Agreement will be substituted for the corresponding terms of the Previous TEC and apply to any dispute or billing dispute that is or would have been a "Dispute" or "Billing Dispute" (as the case may be) in the Previous TEC and the terms of the Previous TEC will be read so as to give effect to this clause 13.4(a).
- (b) **nbn** and the RSP must, within 10 Business Days of the Billing Expert or Arbitrator (as applicable) being agreed or determined, appoint the:
  - (i) Billing Expert on the terms of the Resolution Institute Expert Determination Rules; or
  - (ii) Arbitrator on the terms of the Resolution Institute Arbitration Rules,as applicable (subject to the terms of this Agreement or as otherwise agreed by the parties and the Billing Expert or Arbitrator).
- (c) The costs of the Billing Expert or Arbitrator (as applicable) will be borne equally by **nbn** and the RSP.

## NBN Classification – Commercial

- (d) Prior to any final decision being made, the Billing Expert or Arbitrator (as applicable) must:
  - (i) provide **nbn** and the RSP with a draft decision, including draft reasons, regarding resolution of the Billing Dispute or Dispute (as applicable); and
  - (ii) provide **nbn** and the 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.
- (e) **nbn** and the RSP agree that the final decision of the Billing Expert or Arbitrator (as applicable) is final and binding on them, except where **nbn** or the RSP considers the decision contains any manifest error or the Billing Expert or Arbitrator acted in bad faith (in which case either **nbn** or the RSP may commence proceedings in a court of competent jurisdiction within 3 months of the date of the decision).
- (f) Both **nbn** and the RSP must:
  - (i) use reasonable endeavours to resolve Billing Disputes and Disputes as promptly and efficiently as possible;
  - (ii) provide any information and/or assistance as may be reasonably required by the Billing Expert or Arbitrator to determine a Billing Dispute or Dispute (as applicable); and
  - (iii) continue to perform their respective obligations in accordance with this Agreement in the event of, and pending the resolution of, a Billing Dispute or Dispute (except where this Agreement permits the non-performance of such obligations).

## Section E: General Terms

### 14. Notices and contacts

#### 14.1 Contacting the RSP

- (a) **nbn** may only give notices to the RSP by sending a letter (by email) to the RSP's Contact Person (or such other email address that has been notified by the RSP to **nbn** for the purpose of receiving notices on behalf of the RSP).
- (b) The RSP's Contact Person must be authorised to send and receive notices on behalf of the RSP and each Downstream Customer represented by the RSP for the purposes of a Technology Change.

#### 14.2 Contacting nbn

- (a) Subject to clause 14.2(b), the RSP may only give notices to **nbn** by sending a letter (by email) to **nbn**'s Contact Person (or such other email address that has been notified by **nbn** to the RSP for the purpose of receiving notices on behalf of **nbn**).
- (b) Any notice sent to **nbn** by the RSP under clause 13.1(b) must be given to **nbn**'s Chief Legal & Regulatory Officer as specified below (or such other person notified by **nbn** to the RSP from time to time):

Name: Jane Van Beelen

Chief Legal and Regulatory Officer

Email: janevanbeelen@nbnco.com.au

#### 14.3 When a notice is received

Each notice in connection with this Agreement is taken to be received by the addressee when the email was sent, unless:

- (a) the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address in the contact details; or
- (b) the communication would otherwise be taken to be received on a day that is not a Business Day or after 5:00pm, in which case it is deemed to be received at 9:00am on the next Business Day.

#### 14.4 Contact details

Each party must ensure that it updates the other party with any changes to the contact details (name and email address) of its:

- (a) Contact Person;
- (b) nominated recipient for the purposes of receiving notices under this Agreement (where this is not the Contact Person); and
- (c) other relevant contacts, as may be agreed.

### 15. Relationships

#### 15.1 Relationship between the parties

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

#### 15.2 Relationships with third parties

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

### 16. Warranties

Each party represents and warrants that, as at the Commencement 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.

**17. Assignment, novation and other dealings**

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

not change the "ultimate holding company" (as that term is defined in section 9 of the Corporations Act) of the 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 the RSP's assets in the ordinary course of business, including any securitisation of the RSP's receivables (provided the 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 17(a) applies.

**18. Costs, expenses and duties**

- (a) Except where this Agreement provides otherwise, each party is responsible for its own costs and expenses of negotiating, preparing and executing this Agreement and any other instrument executed under this Agreement and complying with its obligations under this Agreement.
- (b) The 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.

**19. Electronic execution and counterparts**

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

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

## 20. Variation

Except as otherwise specified in this Agreement, this Agreement may only be varied, supplemented or replaced by a document signed by **nbn** and the RSP.

## 21. Waiver

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

## 22. Accrued rights

Expiry or termination of this Agreement by either party does not affect the right of either party to enforce its accrued rights against the other party, except to the extent this Agreement expressly provides otherwise, including as provided in clauses 8.5, 9 and 13 and **TEC Module A**.

## 23. Related Bodies Corporate

Where 2 or more Related Bodies Corporate enter into this Agreement as the RSP:

- (a) the term "RSP" means all such Related Bodies Corporate collectively;
- (b) any acceptance of a Proposed Deal Module by the RSP under clause 2.2(b) will only be effective if accepted by all such Related Bodies Corporate collectively;
- (c) each reference to the "Wholesale Broadband Agreement" or "WBA" in this Agreement and any Deal Module is a reference to each Wholesale Broadband Agreement entered into between **nbn** and any one or more of those Related Bodies Corporate; and
- (d) despite clause 10.3, **nbn** may disclose Confidential Information of each Related Body Corporate which is party to this Agreement, and the "Confidential Information" of that Related Body Corporate under that Related Body Corporate's WBA, to each other Related

Body Corporate which is party to this Agreement.

## 24. 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 24(b)(i).

## 25. Entire Agreement

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.

## 26. Interpretation

- (a) The rules of interpretation in this clause 26 and the definitions in clause 27 must be applied in this Agreement unless otherwise specified.
- (b) If part of this Agreement is not legally enforceable, that part will be severed from this Agreement. All other parts of the Agreement will continue with full effect.
- (c) The words "such as", "particularly", "principally", "includes", "including" and similar expressions are not used as, nor are they intended to be, interpreted as words of limitation.
- (d) A law includes a constitutional provision, treaty, decree, convention, statute, regulation, legislative instrument, 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, 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.
- (e) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or a Deal Module, or any part of this Agreement or a Deal Module.
- (f) Headings are for convenience only and do not affect the interpretation of this Agreement.
- (g) The singular includes the plural and vice versa.
- (h) Words that are gender neutral or gender specific include each gender.
- (i) 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.
- (j) 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.
- (k) "Reasonable endeavours" or any similar expression does not require the payment of money or the provision of any financial benefit.
- (l) "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.
- (m) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (n) A reference to:
- (i) obligations, liabilities, representations, undertakings or agreements of the 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;
  - (ii) a person includes an individual, partnership, joint venture, governmental agency or authority, association, trust, corporation or other body corporate;
  - (iii) a person includes its agents, successors and permitted assigns;
  - (iv) Contracted End User or End User includes a reference to a prospective Contracted End User or prospective End User (respectively), where the context requires;
  - (v) a document 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) 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
  - (viii) a monetary amount is to that amount in Australian dollars and all amounts payable in connection with this Agreement are payable in Australian dollars.

## 27. Definitions

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

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

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

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

**ACCC** means the Australian Competition and Consumer Commission.

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

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

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

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

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

**Agreement** means this agreement as amended from time to time in accordance with its terms, including any appendices, annexures, schedules, exhibits or attachments to it, and the Credit Policy.

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

**Arbitrator** has the meaning given in clause 13.2(b).

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

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

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

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

- (a) if the Technology Change in respect of that Premises is in the planning phase at the time of the relevant cancellation or termination (as determined by **nbn**, acting reasonably), \$750;
- (b) if the Technology Change in respect of that Premises is in the design phase at the time of the relevant cancellation or termination (as determined by **nbn**, acting reasonably), \$2,050;
- (c) if the Technology Change in respect of that Premises is in the build phase at the time of the relevant cancellation or termination (as determined by **nbn**, acting reasonably), 85% of the Premises Amount; and
- (d) if the Date of Practical Completion has occurred at the time of the relevant cancellation or termination, the Premises Amount less the total of all Revenue Credit Amounts attributable to that Premises (calculated as at the time of the relevant cancellation or termination).

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

**Carriage Service Provider** has the meaning given in section 87 of the Telecommunications Act.

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

**Centralised Deployment** has the meaning given in the WBA.

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

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

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

**Commencement Date** means the later of:

- (a) the TECv7 Transition Date;
- (b) the date on which **nbn** signs a variation to the section 87B undertaking that was originally accepted by the ACCC on 8 October 2019; and
- (c) the date that this Agreement is executed.

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

**Commonwealth** means the Commonwealth of Australia.

**CommsAlliance** means Communications Alliance Ltd.

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

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

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

- (a) information of a party or any of its Related Bodies Corporate relating to or arising from this Agreement;
- (b) information, which, either orally or in writing, is designated or indicated as being proprietary or confidential information, or is by its nature confidential, or that the party receiving the information knows, or ought to know, is confidential;
- (c) trade secrets or other types of information of a party or any of its Related Bodies Corporate which are capable of protection

at law or equity as confidential information;

- (d) information from a third party, where a party is advised by the other party that such information is confidential or the party has knowledge that the information disclosed by the third party is subject to a duty of confidence to the other party; and
- (e) information derived or produced, partly or wholly, from the information referred to above (except where **nbn** aggregates the information with other information of a similar or related nature, such that the RSP and End Users cannot be identified by the aggregated information or any part of it), whether the information was disclosed:
  - (f) orally, in writing or in electronic or machine readable form;
  - (g) before on or after the Commencement Date; or
  - (h) in the course of discussions between the parties,

in each case which is not in the public domain (except where the information is public as a result of any breach of this Agreement).

**Confidentiality Consent** has the meaning given in clause 4.9(c).

**Consenting Provider** has the meaning given in clause 4.9(c)(i).

**Consequential Loss** means Loss which:

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

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

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

**Contact Person** means, for each party in respect of a Deal Module, the contact person nominated by that party in that Deal Module (or as otherwise notified in writing to the other party).

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

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

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

**Credit Policy** means the Credit Policy applicable to the **nbn**<sup>™</sup> Technology Extension Contract which forms part of this Agreement, as provided by **nbn** to the RSP from time to time.

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

**Date of Practical Completion** has the meaning given in clause 4.4(a).

**Deal Module** has the meaning given in clause 2.2(d).

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

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

**Deferred Charge Payment** means in respect of a Deal Module, the amount calculated as such and payable in accordance with that Deal Module.

**Deferred Premises Amount** means, in respect of a Premises, the deferred premises amount specified for that Premises in the applicable Deal Module.

**Delay Amount** means, in respect of a Premises, an amount equal to the Deferred Premises Amount for that Premises divided by the number of calendar days in the term of the relevant Deal Module each as at the relevant date on which this

Agreement requires calculation of the Delay Amount.

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

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

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

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

**Downstream Customer** means any actual or prospective Downstream Service Provider or End User of the RSP.

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

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

**Due Date** has the meaning given in clause 8.3(a).

**Eligible Data Breach** has the meaning given in the *Privacy Act 1988* (Cth).

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

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

**Early Charge Payment** has the meaning given in clause 7.3(d).

**Expanded Revenue Pool** has the meaning given in clause 4.9(d).

**Expanded Revenue Premises** has the meaning given in clause 4.9(b).

**Failed Appointment Charges** means:

- (a) \$75 for:
  - (i) a Late Cancellation (Site Visit Required); or
  - (ii) a Missed Appointment; or
- (b) \$150 for:

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

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

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

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

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

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

**Indicative Delivery Window** means, for a Premises, an estimate of the number of Business Days expected to complete the **nbn** Activities after receipt by **nbn** of the Minimum Required Information.

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

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

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

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

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

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

**Instalment** means each instalment identified in the relevant Deal Module in respect of Upfront Charges.

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

**Invoice Event** means for:

- (a) each Instalment, subject to clause 8.7(c)(iv):
  - (i) for an Upfront (Pre-Build) Charge, the date identified in the relevant Deal Module;
  - (ii) for each Premises with an Upfront (Post-Completion) Charge, the earliest date identified in the relevant Deal Module following the Date of Practical Completion for that Premises; or
  - (iii) for an Upfront (Staggered) Charge, the dates identified in the relevant Deal Module;
- (b) the Deferred Charge (and Deferred Charge Payment), the date identified in the relevant Deal Module, subject to clause 8.7(c)(iv);
- (c) a Break Amount, the anniversary of the Module Commencement Date immediately following the incurring of the Break Amount (or such other dates agreed by the parties);
- (d) any Third Party Access Charges, the anniversary of the Module Commencement Date immediately following the incurring of the Third Party Access Charge (or such other dates agreed by the parties);
- (e) Failed Appointment Charges, the last day of the calendar month during which the RSP's obligation under this Agreement to pay that Failed Appointment Charge first arises;
- (f) an Early Charge Payment, the date on which the RSP requests under clause 7.3(d) for **nbn** to issue an invoice for the Early Charge Payment;
- (g) any interest payable under clause 8.7(c)(v), the last day of each calendar month for which the relevant Overdue Amount remains unpaid; and

- (h) for any of the above payment obligations, immediately upon expiry or termination of this Agreement.

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

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

**Liability Cap** means in aggregate in respect of this Agreement, any Previous TEC and all Deal Modules:

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

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

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

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

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

**Minimum Required Information** means the information identified as such in the Deal Module.

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

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

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

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

- (a) the expiry date set out in that Deal Module; and
- (b) the date by which **nbn** and the RSP have completed all of their respective obligations under the relevant Deal Module (and under this Agreement in respect of that Deal Module).

**Multi-Premises Site** has the meaning given in the WBA.

**nbn Activities** means, in respect of a Deal Module, the activities required of **nbn** to perform the Technology Change, including:

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

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

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

**nbn**<sup>TM</sup> **Deals Manual** means the document developed and made available by **nbn** to retail service providers from time to time detailing specified business rules in relation to this Agreement (including where referred to by such other name that **nbn** gives that document from time to time).

**nbn**<sup>TM</sup> **Network** has the meaning given in the WBA.

**New TEC** means a new agreement that **nbn** offers as a replacement for, or successor to, this Agreement.

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

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

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

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

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

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

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

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

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

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

**Premises Amount** means, in respect of a Premises, the sum of the Deferred Premises Amount and Upfront Premises Amount.

**Previous TEC** means any prior version of an **nbn**<sup>TM</sup> Technology Extension Contract executed by the parties that is not this agreement, including any deal modules formed under any such agreement other than deal modules that the parties agree will be treated as Deal Modules for the purpose of this Agreement.

**Privacy Laws** means all laws pertaining to privacy, protection for personal information and protection of information contained in communications, applicable in Australia including:

- (a) the *Privacy Act 1988* (Cth); and

(b) Part 13 of the Telecommunications Act.

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

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

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

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

**Refund Amount** means, in respect of a Premises, an amount calculated as follows:

- (a) where that Premises is subject to an Upfront (Pre-Build) Charge or Upfront (Post-Completion) Charge, an amount equal to the Upfront Premises Amount (excluding any Early Charge Payment) paid in respect of that Premises;
- (b) where that Premises is subject to an Upfront (Staggered) Charge, an amount equal to:
  - (i) any Instalments (excluding any Early Charge Payment) paid under that Deal Module; multiplied by
  - (ii) the proportion of the affected Premises' Upfront Premises Amount (excluding any adjustments from an Early Charge Payment) as against the total Upfront (Staggered) Charge.

*By way of example only, consider the cancelled Premises has an Upfront Premises Amount of \$30,000 and the total Upfront (Staggered) Charge is \$300,000. If at the date of cancellation, the RSP has paid Instalments totalling \$100,000, then the Refund Amount for the cancelled Premises would be \$10,000 (being  $\$100,000 \times (\$30,000 \div \$300,000)$ ).*

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

- (a) the Commonwealth Government minister responsible for administering Part XIB and/or Part XIC of the Competition and Consumer Act;

- (b) the Commonwealth Government minister responsible for administering the Telecommunications Act;
- (c) the ACCC;
- (d) the ACMA;
- (e) the Telecommunications Industry Ombudsman; and
- (f) any other Commonwealth Government minister, Government Agency or parliamentary committee or parliamentary body whose activities impact on **nbn**'s business.

**Regulatory Event** means:

- (a) any enactment, amendment, replacement or repeal of any law;
- (b) the lawful making, amendment or withdrawal of, any determination, order, directive, rule, standard, benchmark, consent or finding by a Regulator, Commonwealth Government minister, Government Agency or a court of competent jurisdiction;
- (c) any investigation, action or proceeding by a Regulator;
- (d) the making of any code by CommsAlliance (or any replacement or successor to CommsAlliance) to which **nbn** is a code signatory, the registration of any Industry Code, the determination of an Industry Standard or the making of any Technical Standard (or any amendment or withdrawal of such codes or standards);
- (e) any declaration, amendment, or removal of a condition applying to a party's carrier licence (if applicable), including **nbn** being required to comply with section 152CJB of the Competition and Consumer Act in relation to a specific eligible service and **nbn** being prohibited from supplying a specified carriage service to Carriers, Carriage Service Providers or Content Service Providers under section 41(3) of the NBN Companies Act;
- (f) any determination, amendment or removal of a Service Provider Rule applicable to a party;
- (g) any amendment to the WBA necessary to comply with any applicable law or required



by a "Regulatory Event" (as defined in the WBA);

- (h) the issuing of an Advisory Notice or Competition Notice by the ACCC in respect of **nbn**; or
- (i) the issuing of an injunction against a party in relation to a breach or contravention (alleged or otherwise) of the Competition and Consumer Act.

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

**Relevant Persons** means, in relation to a party, the party's Related Bodies Corporate, and the Personnel of the party and the party's Related Bodies Corporate.

**Revenue Credit Amount** has the meaning, in respect of a Deal Module, given in that Deal Module.

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

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

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

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

**Site Information Form** means the template form of that name that **nbn** provides via email to the RSP on request by the RSP or publishes in the **nbn**<sup>TM</sup> Deals Manual, as amended by **nbn** from time to time.

**Site List** means the schedule to a Deal Module that provides for a Deferred Charge, which sets out the Indicative Delivery Window for each Premises the subject of that Deal Module.

**Specified Date** means the date that is the later of:

- (a) the date on which a Premises is Serviceable; and
- (b) the Target RTC Date for that Premises.

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

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

**Target RTC Date** means, in respect of a Premises, the date notified by **nbn** under clause 4.2(e), as extended or changed by clauses 4.2(b), 4.3(c), 4.3(f) or 7.2(b).

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

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

**Technology Change** means, in respect of a Deal Module:

- (a) the change in access technology from the Original Technology to the Chosen Technology, or addition of the Chosen Technology, at the Premises; or
- (b) where a Premises is part of a Multi-Premises Site, reconfiguring the **nbn**<sup>TM</sup> Network used at the Premises from an NTD deployed in a Centralised Deployment location to an NTD located within that Premises (regardless of whether this involves a change in the Original Technology).

**TEC Transition Date** means, in respect of a New TEC, the date on which the RSP accepts the New TEC in accordance with clause 1.3.

**TECv7 Transition Date** means 1 July 2022 or such other date as notified by **nbn** to the RSP.

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

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

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

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

**Transition Opt-Out Notice** has the meaning given in clause 1.4.

**Upfront Charge** means, in respect of a Deal Module, the:

- (a) Upfront (Pre-Build) Charge;
- (b) Upfront (Post-Completion) Charge; or
- (c) Upfront (Staggered) Charge,

as identified in that Deal Module.

**Upfront Premises Amount** means, in respect of a Premises, the upfront premises amount specified for that Premises in the applicable Deal Module.

**Wholesale Broadband Agreement** or **WBA** means:

- (a) the Wholesale Broadband Agreement between **nbn** and the RSP in force at the date of this Agreement or any new wholesale broadband agreement between **nbn** and the RSP which governs the supply of products and services from **nbn** to the RSP; or
- (b) if there is no such agreement as referred to in paragraph (a), the Wholesale Broadband Agreement between **nbn** and the Consenting Provider in force at the date of this Agreement or any new wholesale broadband agreement between **nbn** and the Consenting Provider which governs the supply of products and services from **nbn** to the Consenting Provider.

**Section F: Form of Proposed Deal Module**

(Clause 2.2 of Section A)

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

**NBN Co Limited (ABN [nbn ABN])**

**nbn**

**[RSP Name] (ABN [RSP ABN])**

**RSP**

[Date]

[To RSP / Address]

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

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

**1. Module No.**

**2. RSP Details**

Contact Person:

Telephone:

Email:

**3. nbn Details**

Contact Person:

Telephone:

Email:

**4. Original Technology** For each Premises, the technology set out in the column marked 'Original Technology' in Module Schedule A of this Deal Module.

**5. Chosen Technology** For each Premises, the technology set out in the column marked 'Chosen Technology' in Module Schedule A of this Deal Module.

**6. Number of Premises** *[Insert # of Premises]*

**7. Premises** Each Premises set out in Module Schedule A of this Deal Module.

**8. Upfront Charge**

*[#Only one of the three following tables should be retained, depending on the type of Upfront Charge applicable. If no Upfront Charge, delete all three tables and state "N/A".]*

**Upfront (Pre-Build) Charge:**

	<b>Amount</b>	<b>Invoice Event</b>
<b>Instalment</b>	[\$#]	Module Commencement Date
<b>Total (ex. GST)</b>	[\$#]	

**Upfront (Post-Completion) Charge:**

<b>Instalments</b>	<b>Amount</b>	<b>Invoice Event</b>
	The sum of the Upfront Premises Amounts for all Premises with a Date of Practical Completion in the six months prior to (but not including) the Invoice Event	The first Invoice Event will be the first 1 May or 1 November after any of the Premises reach the Date of Practical Completion, and the Invoice Event will be each 1 May and 1 November until all Premises have reached the Date of Practical Completion
<b>Total (ex. GST)</b>	[\$#]	

**Upfront (Staggered) Charge:**

	<b>Amount</b>	<b>Invoice Event</b>
<b>Instalments</b>	[\$#]	First anniversary of the Module Commencement Date <i>[# Note where the Upfront (Staggered) Charge applies, there will be annual instalments over the term of the Deal Module, invoiced on each anniversary of the Module Commencement Date.  If additional Premises are added to the Deal Module, this table must be updated to allocate the Upfront (Staggered) Charge for that additional Premises over the remaining payable instalments.]</i>
	[\$#]	Second anniversary of the Module Commencement Date
	[\$#]	Third anniversary of the Module Commencement Date
<b>Total (ex. GST)</b>	[\$#]	

**9. Invoice Event for Deferred Charge**

The third anniversary of the Module Commencement Date

**10. Deferred Charge (ex. GST)**

*[#If no Deferred Charge is payable, delete the below and state "N/A".]*

[\$[Insert amount] (ex. GST), as updated from time to time in accordance with this Agreement.

- 11. Module Commencement Date** The date on which this Deal Module is executed by the last party.
- 12. Module Expiry Date** *[#Insert for a Deal Module with a Deferred Charge (including a combination of Deferred Charge and Upfront Charge)]*  
The date that is the earlier of:
- the third anniversary of the Module Commencement Date; and
  - the Repayment Date.
- Repayment Date** means the first date on which all of the following events have occurred in respect of this Deal Module:
- (i) where this Deal Module provides for a Deferred Charge, the sum of the following amounts is equal to or exceeds the total Deferred Charge:
    - A. all Revenue Credit Amounts; plus
    - B. the Deferred Charge Payment paid to **nbn**; plus
    - C. any Early Charge Payment paid to **nbn**;
  - (ii) where this Deal Module provides for an Upfront Charge, the RSP has paid all Instalments; and
  - (iii) the Date of Practical Completion has occurred for all Premises under this Deal Module (other than those Premises for which the Technology Change has been cancelled).
- For example: if the Module Commencement Date is 1 September 2022, the latest possible Module Expiry Date will be 1 September 2025.
- [#Insert for a Deal Module with only an Upfront Charge]*  
The date that is the later of the:
- (i) last Date of Practical Completion for all the Premises; and
  - (ii) date the Upfront Charge is fully paid to **nbn**.
- 13. Deferred Charge Payment** The Deferred Charge Payment is [the amount of the Deferred Charge as calculated under item 10], less the Revenue Credit Amount.  
If the Deferred Charge Payment is a positive number, then **nbn** may invoice the RSP for that amount, which will be payable in accordance with the Agreement. If the Deferred Charge Payment is a negative number, no Deferred Charge Payment is payable by the RSP to **nbn**.
- 14. Revenue Credit Amount** *[#Details of all recurring charge and early termination payment amounts that contribute to Revenue Credit Amount to be inserted as applicable]*
- 15. Transition Out** *[#Any transition obligations to be included]*
- 16. Confidentiality** *[#Any special confidentiality arrangements that are in addition or which differ from the head terms to be included]*
- 17. Liability Cap** *[#Insert any change to the Liability Cap applicable for a Deal Module]*
- 18. Minimum Required Information** means, in respect of each Premises, the information set out in Module Schedule C.

- 19. Expanded Revenue Pool option**      *[#If Expanded Revenue Pool is not allowed, insert: "N/A"]*  
*[#If Expanded Revenue Pool is allowed, insert: "Expanded Revenue Pool option available"]*
- 20. Special Conditions**      *[#Insert any Special Conditions//As set out in Module Schedule B]*

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

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

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Date of signature

\_\_\_\_\_  
Date of signature

## Deal Module Acceptance by RSP

By executing below the RSP accepts the terms of the Proposed Deal Module dated [**DD MM YYYY**]

---

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

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Date of signature

\_\_\_\_\_  
Date of signature

[#The below single execution block can be used where two or more Related Bodies Corporate sign this Deal Module under clause 23 as the RSP AND the authorised representatives are the same persons for each of the Related Bodies Corporate. If the authorised representatives are not the same persons for each of the Related Bodies Corporate, separate execution blocks will need to be used for each Related Body Corporate signing this Deal Module#]

Executed by [**insert full name of TEC RSP, insert full name of RBC 1, insert full name of RBC 2, etc**] by their authorised representatives:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Name of authorised representative

---

Date of signature

---

Date of signature



**Module Schedule A**

Location Details

Technology Change addresses and location identifiers							
Location Identifier	Site Address (RSP provided)	Site Address (nbn matched)	Original Technology	Chosen Technology	Indicative Delivery Window	Deferred Premises Amount	Upfront Premises Amount
[#insert]	[#insert]	[#insert]	[#insert]	[#insert]	[#insert]	[#insert]	[#insert]

## **Module Schedule B**

### **Special Conditions**

*[#Insert if applicable]*

## Module Schedule C

### Minimum Required Information

“Minimum Required Information” means:

- i. the contact details of:
  - A. a representative for the Premises with whom **nbn** can engage to manage site access, and an escalation contact in respect to the same; and
  - B. an RSP representative and an RSP escalation contact;
- ii. in relation to the Premises:
  - A. whether or not that Premises is a priority for delivery;
  - B. any requirements for access to third party premises or approvals from third parties which are necessary for the **nbn** Activities to occur;
  - C. any requirements to undertake survey, construction or installation activities at the Premises outside of business hours (being 8am to 5pm local time);
  - D. any embargo periods when survey, construction or installation activities are to be avoided;
  - E. if the Premises is in a complex site (being a shopping centre, heritage site, data centre, airport, university campus, railways station, wharf, or other site with special access considerations);
  - F. any security measures to be complied with prior to access to the Premises;
  - G. the desired placement position of the NTD/B-NTD (as applicable) (e.g. wall mount/rack mount (and if rack mount confirmation that there is space for three (3) rack units in the rack));
  - H. if the Chosen Technology is FTTP, if Battery Backup is required at the Premises;
  - I. if the Chosen Technology is EE, if dual power supply is required at the Premises, and the Interface type for the B-NTD; and
  - J. if the Premises has AC or DC power;
- iii. in relation to health and safety:
  - A. policies (including any information regarding any induction requirements in accordance with clause 6.1(f)(i) of the Agreement);
  - B. any HSE induction requirements or training or accreditation requirements to be completed prior to access to the Premises;
  - C. any other HSE standards, work practices, or approvals that must be complied with, or HSE documentation that must be provided by **nbn** prior to access to the Premises;
  - D. any prohibited installation tools, equipment or plant that cannot be utilised on the Premises; and
  - E. if the survey, construction, or installation activities will involve work in hazardous or restricted location (such as, but not limited to, facilities in relation to the storage or handling of dangerous goods, defence or mining sites, schools, childcare or correctional facilities, high security facilities, remote/isolated locations);
- iv. any other special instructions in relation to the **nbn** Activities (if relevant); and
- v. any other information notified by **nbn** as Minimum Required Information from time to time.

## TEC Schedule A - nbn™ Technology Extension Contract - RSP

### A1 Downstream Claims against nbn and certain other third party losses

- (a) If **nbn** notifies the 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 the WBA or as otherwise notified by **nbn** to the RSP from time to time) of the 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 A1, an **Assignment**).
- (b) For the purposes of clause A1(a), a **Model Undertaking** is an undertaking in a Downstream Contract which is, subject to clause A1(d), binding on the relevant Downstream Claimant in accordance with the following terms, or on such other terms that **nbn** (acting reasonably) agrees in writing are no less effective in protecting **nbn**'s interests:

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

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

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

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

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

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

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

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

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

X.5 *In this clause X:*

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

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

- (c) The 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 (each an **nbn Indemnified Party**) arising from or in connection with any Downstream Claim if:

- (iii) **nbn** has given notice to the RSP of the Downstream Claim and the RSP has not either:
  - A. delivered to **nbn** an Assignment of a Model Undertaking that is, subject to clause A1(d), binding on the relevant Downstream Claimant in respect of the Downstream Claim in accordance with clauses A1(a) and A1(b); or
  - B. taken any other steps which have the effect of placing an **nbn** Indemnified Party in a position in respect of such Losses that is no worse than the position they would have been in had the RSP delivered to **nbn** a binding Assignment in accordance with this clause A1; and
- (iv) the 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 A1 solely by reason of it not being binding on the relevant Downstream Claimant by operation of Part 2-3 of the Australian Consumer Law.
- (e) If the RSP has delivered to **nbn** an Assignment pursuant to clauses A1(a) and A1(b) or has otherwise excluded or limited Losses suffered or incurred by **nbn** in accordance with clause A1(c)(i)B, the RSP must, without limiting clause A1(i):
  - (i) promptly provide, and, where applicable, ensure that any Downstream Service Provider or Contracted End User other than the Downstream Claimant promptly provides, all assistance reasonably requested by **nbn** in responding to and conducting the defence of a Downstream Claim to ensure that **nbn** obtains the full benefit of the Assignment or such other exclusion or limitation of liability (as applicable) (and **nbn** will pay the reasonable costs of such assistance); and
  - (ii) not do anything, and, where applicable, ensure that any Downstream Service Provider or Contracted End User other than the Downstream Claimant does not do anything, including during the course of any defence, settlement or compromise of a Claim which is related to a Downstream Claim, which prejudices **nbn**'s ability to obtain the full benefit of the Assignment or such other exclusion or limitation of liability (as applicable).
- (f) The RSP must pay to **nbn** on demand an amount equal to all Losses suffered or incurred by an **nbn** Indemnified Party arising from or in connection with any Claim (including any Downstream Claim) by a third party against an **nbn** Indemnified Party to the extent that the Claim arises from or in connection with any:
  - (i) breach of this Agreement or a Previous TEC by the RSP; or
  - (ii) negligent act or omission of the RSP or its Related Bodies Corporate, any of their respective Personnel or third party suppliers arising directly from or in connection with this Agreement or a Previous TEC, including the supply of any product by the RSP to any Downstream Service Provider or Contracted End User.
- (g) Clause A1(c) and clause A1(f) do not apply to any Claim (including a Downstream Claim) arising from or in connection with:
  - (i) the death or personal injury of any person; or
  - (ii) damage to, or loss of any Tangible Property,to the extent caused or contributed by:
  - (iii) the negligent or wilful acts or omissions of any **nbn** Indemnified Party; or
  - (iv) any network or equipment owned or controlled by **nbn**.
- (h) The liability exclusions in clause 9.1 of this Agreement do not apply to any liability of the RSP arising under clause A1(c) or clause A1(f).
- (i) In relation to any Claim (including Downstream Claims) against which the RSP indemnifies **nbn** under clause A1(c) or clause A1(f), **nbn** must notify the RSP as soon as is reasonably practicable of the

relevant Claim, and (where the RSP can demonstrate to the reasonable satisfaction of **nbn** that the RSP has the resources to pay all Losses which are reasonably likely to arise in the event the Claim is successful):

- (i) give the RSP the option to conduct the defence of the Claim, including negotiations for settlement or compromise. If the RSP exercises this option, the RSP must:
  - A. not do anything during the course of any defence, settlement or compromise which adversely affects **nbn**'s business or reputation;
  - B. consider in good faith any submissions made by **nbn** with respect to the defence, settlement or compromise of the Claim; and
  - C. first obtain the consent of **nbn** (which must not be unreasonably withheld) to the terms of any settlement or compromise of the relevant Claim, 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 RSP (at the cost of the RSP) 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 RSP.

## TEC Schedule B – nbn™ Technology Extension Contract - RSP

### B1 Form of Confidentiality Consent

[Insert Date]

[Insert **nbn** address details]

Dear [insert **nbn** representative]

#### Consent to use and disclosure of Confidential Information

- (a) [Insert details of the Consenting Provider] (the **Consenting Provider**):
- (i) acknowledges that [Insert details of the RSP seeking the consent] (the **TEC RSP**) has entered into a contract (**Build Agreement**) for NBN Co Limited ACN 136 533 741 (**nbn**) to design and install certain infrastructure required for the **nbn**™ network to be made available to retail service providers at the premises set out in Attachment 1 (**Premises**);
  - (ii) confirms that the Consenting Provider is supplying, or intends to supply, Eligible Telecommunications Services at the Premises; and
  - (iii) confirms that the Consenting Provider is party to a “Wholesale Broadband Agreement” with **nbn** under which the Consenting Provider procures inputs to the Eligible Telecommunications Services described in clause (a)(ii) (**WBA**).
- (b) The Consenting Provider consents to **nbn** using, and disclosing to the TEC RSP, any Confidential WBA Billing Information of the Consenting Provider solely to the extent necessary or desirable for the TEC RSP or **nbn** exercising their respective rights, or giving effect to their respective obligations, under the Build Agreement.
- (c) The Consenting Provider consents to **nbn** using, and disclosing to the TEC RSP, the terms of the WBA to which **nbn** and the Consenting Provider are parties, solely to the extent necessary or desirable for the TEC RSP or **nbn** exercising their respective rights, or giving effect to their respective obligations, under the Build Agreement.
- (d) In this Confidentiality Consent:
- (i) **Confidential WBA Billing Information** means any information about recurring charge amounts or early termination payment amounts that **nbn** may determine are attributable to the supply, by **nbn** to the Consenting Provider, of a wholesale **nbn**™ product or service:
    - (A) on or after the date that this Confidentiality Consent is provided to **nbn**;
    - (B) under the WBA; and
    - (C) to the Premises using the Chosen Technology for that Premises.
  - (ii) **Eligible Telecommunications Service** means a product or service:
    - (A) to which an **nbn**™ product or service is an input; and
    - (B) which is:
      - (1) a retail product or service supplied to an End User at the Premises; or
      - (2) a wholesale product or service supplied to the TEC RSP, or any Related Body Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) or agent of the TEC RSP.
  - (iii) **Chosen Technology** means, in respect of each Premises, the “Chosen Technology” listed in Attachment 1 for that Premises.

*[This form is to be signed by the Consenting Provider's "Relationship Point of Contact" under the WBA.]*

Signed for **[Consenting Provider]** by its authorised representative:

---

Signature of authorised representative

---

Name of authorised representative

---

Date of signature



## Attachment 1 to the Confidentiality Consent

{TEC Schedule B}

### Location Details

<b>Location Identifier</b>	<b>Site Address (RSP provided)</b>	<b>Site Address (nbn matched)</b>	<b>Original Technology</b>	<b>Chosen Technology</b>
<i>[#insert]</i>	<i>[#insert]</i>	<i>[#insert]</i>	<i>[#insert]</i>	<i>[#insert]</i>