

## PART A - ACCESS AGREEMENT

### PARTIES

This document and its schedules form an agreement between:

- (a) NBN Co Limited (ABN 86 136 533 741) of Level 11, 100 Arthur Street, North Sydney NSW 2060 (**nbn**); and
- (b) The **Access Seeker** or [**insert Supplier abbreviated name**], whose details are:

Legal name of the Access Seeker:	
ABN/ACN:	
Address:	
Fax number:	
Notices marked for the attention of:	
Notices to be copied to:	
Confirmation that the Access Seeker is not a Carrier or a Carriage Service Provider	[Yes / No]

### BACKGROUND

- (a) **nbn** owns, leases or otherwise has rights to occupy the Site.
- (b) **nbn** offers these terms and conditions to Eligible Persons in accordance with its obligations under section 19A and 19B of the NBN Companies Act.
- (c) This Agreement is in two parts:
  - a. this Part A - Access Agreement sets out the terms on which **nbn** offers the Access Seeker access to the Site including the process by which the Access Seeker may apply for access and **nbn** will consider an Access Application at the Site; and
  - b. Part B – Licence sets out the terms and conditions that apply in respect of the Licence issued under this Agreement.
- (d) Upon approval of an Access Application by **nbn** and the parties entering into the Licence, the Access Seeker may install, operate and maintain the Permitted Equipment.

### TERMS AND CONDITIONS

- 1. **Term**
  - 1.1 Agreement

This Agreement will commence on the Commencement Date and continues until the expiry of the Licence, unless terminated earlier in accordance with its terms.
  - 1.2 Licence Term

The term for the Licence is set out in the relevant Cover Page of the Licence and continues for a period in accordance with the terms of the Cover Page unless terminated earlier in accordance with the terms of this Agreement or the Licence.
- 2. **Code, Timeframes and Forecasts**
  - 2.1 Subject to clause 2.2 the Access Seeker must use reasonable endeavours to comply with the Facilities Access Code when seeking access to, and accessing, the Site and Facility.
  - 2.2 Nothing in clause 2.1 will require the Access Seeker to do anything that contravenes, or would cause **nbn** to contravene, any applicable Law (including any provision of the NBN Companies Act).
  - 2.3 Where it is not reasonably practicable for **nbn** to comply with the timeframes for particular processes associated with the provision of access as set out in this Agreement, for example, because of the receipt of a large number of Access Applications within a short period of time, the parties must endeavour to agree to extended timeframes, as reasonably required. For the avoidance of doubt, any failure by the Parties to agree extended timeframes under this clause 2.1 may be referred by either party for Dispute Resolution under clause 16 of this Agreement.
- 2.4 On 1 December and 1 June each year, the Access Seeker must provide **nbn** with a non-binding forecast of the number of Access Applications it proposes to lodge with **nbn** in the forthcoming two Quarters.
- 3. **Access to the Site**
  - 3.1 Level 1: Preliminary Information
    - (a) Before the Licence for the Site can be granted, the Access Seeker may request **nbn** to provide Preliminary Information relating to the Site.
    - (b) **nbn** will use reasonable efforts to undertake a desktop study of available plans and records and provide the Access Seeker with the Preliminary Information within a reasonable timeframe of receiving a request under clause 3.1(a). **nbn** will charge, and the Access Seeker must pay, the Preliminary Study Fee in accordance with the Pricing Schedule, such fee is for labour and administration costs incurred by **nbn** in gathering and providing the Access Seeker with the Preliminary Information.
    - (c) Any Preliminary Information provided by **nbn** will be prepared in good faith by, but will not be binding upon, **nbn**.
  - 3.2 Level 2: Approval in Principle

- (a) Following **nbn's** provision of Preliminary Information in accordance with clause 3.1 or where the Access Seeker wishes to bypass the procedure in clause 3.1, the Access Seeker may submit the following information to **nbn** including:
- (i) a description of the Site;
  - (ii) a description of the Equipment which the Access Seeker wishes to install;
  - (iii) details of any Access Seeker Equipment that it wishes to house on the Site;
  - (iv) the licence term and nature of access sought, and the preferred commencement of that term;
  - (v) if there is an Other Site, all documentary and other evidence that **nbn** could reasonably rely upon to determine whether it would be reasonable for the Access Seeker to install the Equipment on that Other Site;
  - (vi) site plans/drawings marked up with the Access Seeker's proposed Equipment; and
  - (vii) the work schedule proposed by the Access Seeker,
- (Request for Approval In Principle).**
- (b) The type of documentation to be submitted to **nbn** under clause 2.2(a)(v) (if appropriate) may include (but is not limited to):
- (i) a statement from the Access Seeker that pricing at the Other Site is not reasonable or that the pricing would be in excess of the pricing in this Agreement;
  - (ii) a statement from the Access Seeker that there is insufficient space at the Other Site, or that space is not available at an appropriate height;
  - (iii) a statement from that Access Seeker that they would need to pay to extend or support the Other Site in order to install Equipment, and that this payment would be in excess of the pricing in the Agreement;
  - (iv) documentary evidence outlining the attempts made by the Access Seeker to enquire about accessing the Other Sites for the purpose of installing Equipment; and
  - (v) any other evidence the Access Seeker deems appropriate for the purposes of assessing whether it would be reasonable for the Access Seeker to install the Equipment at the Other Site.
- (c) Within 15 Business Days of the Request for Approval In Principle, **nbn** will undertake a desktop analysis to consider the Access Seeker's request.
- (d) **nbn** will reject a Request for Approval In Principle for the following in exhaustive reasons, if:
- (i) the Access Seeker is not an Eligible Person;
  - (ii) **nbn** is not legally authorised to supply the services or access that the Access Seeker is seeking;
  - (iii) **nbn** is not satisfied that it is Technically Feasible for the Equipment to be installed at the Site or Facility (as appropriate);
  - (iv) **nbn** is reasonably satisfied that it would be reasonable for the Access Seeker to install the Equipment at the Other Site;
  - (v) **nbn** is not satisfied that the access is being sought for the sole purpose of enabling the Access Seeker to install Equipment or to maintain, operate or remove Equipment at the Site;
  - (vi) the giving of access to the Site or the Facility would be inconsistent with any provision of the NBN Companies Act, including a determination by the Minister by legislative instrument in accordance with the provisions of the NBN Companies Act;
  - (vii) the giving of access to the Site or the Facility would interfere with any person's protected contractual right; or
  - (viii) **nbn** is permitted to do so otherwise under the **NBN** Companies Act,
- (e) In responding to the Access Seeker, **nbn** must notify the Access Seeker whether its request for access is to be:
- (i) approved or approved subject to certain conditions being met by the Access Seeker **(Approval In Principle)**; or
  - (ii) rejected, and the reasons for the rejection; and
  - (iii) if clause 3.2(e)(i) applies, provide any information that is readily available to **nbn** and which is reasonably necessary for the Access Seeker to undertake the investigations required in preparing a Design and Construction Plan relating to the requested access.
- (f) Approval In Principle is subject to space being available at the Site and Facility, including space currently available with regard to structural capacity reservations and the reasonably anticipated future requirements of **nbn** and other parties who, at the date of commencement of the Term of this Agreement have Equipment installed at the Site and Facility.
- 3.3 The Access Seeker acknowledges that an Approval In Principle notified under clause 3.2(e)(i) does not conclusively demonstrate or guarantee that a request for access will be accepted. Approval In Principle demonstrates that the request is reasonably anticipated to be accepted, subject to a successful structural analysis and an approved Design and Construction Plan.
- 3.4 Level 3: Design and Construction Plan
- (a) In response to an Approval In Principle, the Access Seeker may prepare and submit to **nbn**, in

the format specified by **nbn**, a Design and Construction Plan.

- (b) The Design and Construction Plan submitted to **nbn** must be consistent with the Approval In Principle.
- (c) The Access Seeker must give **nbn** all assistance and information reasonably required by **nbn** to assess the Design and Construction Plan. **nbn** reserves the right to charge the Access Seeker the Application Fee for the labour and administration costs incurred by **nbn** in assessing a Design and Construction Plan,
- (d) **nbn** will use reasonable efforts to review the Design and Construction Plan within 20 Business Days of receipt and respond to the Access Seeker stating that:
  - (i) the Design and Construction Plan is approved; or
  - (ii) the Design and Construction Plan is conditionally approved, subject to certain conditions being met by the Access Seeker; or
  - (iii) **nbn** requires further information in relation to the Design and Construction Plan before **nbn** is able to approve or reject the Design and Construction Plan; or
  - (iv) the Design and Construction Plan is rejected and advise the Access Seeker of the technical and other reasons for rejection and any additional proposals for Make Ready Work that would be required for **nbn** to re-consider the Design and Construction Plan.

3.5 The Access Seeker acknowledges that **nbn** may impose a condition on the Access Seeker in accordance with clause 3.4(d)(ii) including requiring that the Access Seeker provide its Financial Information, undergo credit assessment checks and/or provide financial security so that **nbn** can be assured of the Access Seeker's ability to meet the financial obligations incurred under the Licence, and to pay any legal costs incurred by **nbn** or its landlord in the event **nbn**'s Superior Tenure of the Site requires a variation or re-grant due to any change in the area, location, or **nbn**'s Facility on the Site.

#### 3.6 Level 4: Access Orders

- (a) If **nbn** approves the Design and Construction Plan and has granted Approval in Principal in accordance with clause 3.2(e)(i), subject to clauses 5.1 and 5.3 **nbn** will grant the Access Seeker with the Licence in relation to the Site and the Facility in the same form as set out in Part B - Licence (subject to any amendments or variations agreed between the parties or required due to Site specific requirements) and which is to be completed in accordance with the approved Design and Construction Plan.
- (b) The Access Seeker may, within 20 Business Days of receiving the completed Licence from **nbn**, accept the offer to enter into the Licence by signing it and returning a copy to **nbn**. If the Access Seeker does not respond to the offer to

enter into the Licence within this period, the offer will lapse.

- (c) Subject to clause 6.1, the Licence will only come into effect when it is signed by both parties.
- (d) The Licence is a separate contract incorporating all the terms of this Agreement.
- (e) The Access Seeker must not access the Site, including in respect of conducting the Make Ready Works (if applicable), until the Licence has been completed and executed by both parties.

#### 3.7 Level 5: Installation

- (a) After completion of any Make Ready Works in accordance with the Licence and before installing the Permitted Equipment on the Site, the Access Seeker must:
  - (i) give **nbn** detailed plans and specifications and any other information reasonably requested by **nbn** in respect of the installation of the Permitted Equipment (including a method procedure) (**Installation Plan**) and obtain **nbn**'s prior written approval of the Installation Plan;
  - (ii) obtain **nbn**'s approval to the proposed time and date for installation of the Permitted Equipment; and
  - (iii) obtain and, if requested, make available to **nbn**, all necessary Government Approvals and Land Consents.
- (b) **nbn** may, at its sole discretion and by giving notice to the Access Seeker inspect and approve any Make Ready Works.
- (c) The Access Seeker must, at its cost, install the Permitted Equipment:
  - (i) within 30 Business Days from **nbn**'s approval of the Installation Plan;
  - (ii) in accordance with the Installation Plan and the Design and Construction Plan (as relevant);
  - (iii) in accordance with the terms of the Licence;
  - (iv) at the time and date approved by **nbn**;
  - (v) using Approved Contractors;
  - (vi) in a good and workmanlike manner;
  - (vii) without interfering with, causing a public nuisance, or disturbing other occupiers of the Site;
  - (viii) without causing any damage to the Facility, Site or Equipment;
  - (ix) with sufficient labelling to identify the Access Seeker as the owner of the Permitted Equipment and provide the Access Seeker's contact point for operational issues;
  - (x) in accordance with any applicable Government Approvals and Land Consents;

- (xi) in accordance with all Laws;
- (xii) in liaison with and/or under the supervision of **nbn** or any consultant engaged by **nbn**; and
- (xiii) in accordance with **nbn's** other requirements and directions.

### 3.8 Level 6: As-Built and Quality Assurance

- (a) The Access Seeker must promptly notify **nbn** of completion of installation of the Permitted Equipment.
- (b) Within 15 Business Days of completion of the installation of the Permitted Equipment, the Access Seeker must provide to **nbn** all documentation in relation to the installation of the Permitted Equipment including:
  - (i) all documentation that enables **nbn** to comply with its EME reporting obligations;
  - (ii) As-Built Drawings; and
  - (iii) written certification that the installation is compliant with the approved Installation Plan and Design and Construction Plan (as relevant).
- (c) Within 20 Business Days from **nbn** being notified that the installation of Permitted Equipment has been completed, **nbn** may undertake an inspection of the installed Permitted Equipment to confirm compliance with the approved Installation Plan and Design and Construction Plan (as relevant). The Access Seeker must provide **nbn** with all reasonable assistance to carry out an inspection under this clause.
- (d) Within 15 Business Days of the later of the documentation being provided under clause 3.8(b) and **nbn's** inspection of the installed Permitted Equipment, **nbn** will notify the Access Seeker that either:
  - (i) the Permitted Equipment is installed in accordance with the approved Installation Plan and Design and Construction Plan (as relevant); or
  - (ii) the Access Seeker is required to undertake further necessary remedial/rectification activity.
- (e) If **nbn** gives the Access Seeker a notice under clause 3.8(d)(ii), the Access Seeker must promptly undertake the further required remedial/rectification activity and notify **nbn** when it is complete to initiate a further inspection.
- (f) The Access Seeker is not entitled to operate any Permitted Equipment installed on a Facility or Site until such time as **nbn** notifies the Access Seeker that the Permitted Equipment is installed in accordance with the approved Installation Plan and Design and Construction Plan (as relevant), or **nbn** otherwise gives the Access Seeker written permission to bring the Permitted Equipment into operation.
- (g) The ownership of any Permitted Equipment installed on the Facility or on the Site will not be transferred or otherwise affected notwithstanding

that it becomes attached or affixed to the Facility or Site.

- (h) **nbn** may terminate the Licence if the Access Seeker has failed to install its Permitted Equipment on the Site and that failure has continued for a period of at least 60 Business Days from the time of approval of the Installation Plan.
- (i) A notification provided by **nbn** under this clause or otherwise provided under this Agreement following an installation or otherwise in relation to the Permitted Equipment shall, to the extent permitted by Law, not constitute a warranty or representation by **nbn** that the Permitted Equipment or its installation has complied with any particular standard, is fit for purpose or compliant with any Laws or approvals of any Government Agency and, to the fullest extent permitted at Law, the Licensee releases **nbn** from any Claims arising in this respect.

## 4. Defects

- (a) The Access Seeker must rectify, as its own cost, all defects in the Make Ready Work or in the installation of Permitted Equipment:
  - (i) within 20 Business Days of receiving a notice from **nbn** to do so; or
  - (ii) immediately on becoming aware of the defect, if the defect is a threat to health and safety, property or continuity of service of **nbn's** Equipment or the Facility or other parties Equipment (including Interference).
- (b) On completing the rectification works referred to in clause 4(a), the Access Seeker must promptly provide a report to **nbn** that provides evidence of the works done in order to rectify the defect.
- (c) If the Access Seeker fails to rectify the defect within the time frame specified in clause 4(a), then **nbn** may do so at the Access Seeker's risk and cost and the Access Seeker will reimburse **nbn** the costs incurred to rectify any defect on demand.
- (d) For the purposes of this clause, "defect" includes any non-compliance with the Design and Construction Plan and the Installation Plan (as relevant).

## 5. Licences

### 5.1 Government Approvals and Land Consents

Notwithstanding any other provision of this Agreement, the Licence granted under clause 3.6 is conditional on the Access Seeker obtaining all necessary third party consents and approvals, including all Government Approvals and Land Consents. The Access Seeker is responsible, at its own cost, for obtaining such consents and approvals.

### 5.2 Non-compliance with Licence

If, for any reason, the actual use by the Access Seeker of a Facility or Site is not in accordance with the Licence, **nbn** may, without prejudice to any other rights it may have require the Access Seeker to take such

action as is necessary and as soon as possible to ensure that the Access Seeker's use of the Facility or Site is in accordance with the Licence.

### 5.3 Adjoining land

- (a) If the Access Seeker's Permitted Equipment (including Equipment shelter) is located or is to be located on an Adjoining Site, the Access Seeker is solely responsible for securing a lease or other right of occupancy at that Adjoining Site.
- (b) Any negotiations as to the Adjoining Site with the relevant landlord will be conducted by the Access Seeker in consultation with **nbn** and so far as is reasonable.
- (c) The Access Seeker must ensure that its arrangements with the relevant landlord do not jeopardise or adversely affect **nbn's** lease or occupancy rights at the Site (if any).
- (d) Notwithstanding any other provision of this Agreement, the Licence granted under clause 3.6 is conditional on the Access Seeker obtaining a lease or other right of occupancy at the Adjoining Site.

## 6. Payment

### 6.1 Licence Fees

The Licensee must pay to **nbn** the Licence Fee in accordance with the provisions of the Licence.

## 7. Warranties

### 7.1 General

The Access Seeker represents and warrants to **nbn** at the date of this Agreement and the date that the Licence is executed by the Access Seeker that:

- (a) the Access Seeker is duly incorporated and validly exists under the Laws of the place of its incorporation;
- (b) the Access Seeker has full legal capacity and power to own its property and to carry on its business;
- (c) the Access Seeker is not affected by an Insolvency Event; and
- (d) the Access Seeker is not a Carrier or Carriage Service Provider.

## 8. Indemnity

- (a) Subject to clause 8(b), the Access Seeker must indemnify and keep indemnified **nbn** from and against all:
  - (i) Claims against **nbn**; and
  - (ii) losses, damages, costs and expenses suffered or incurred by **nbn**,

that is caused or contributed to by an act, omission or default of the Agreement or a Licence by the Access Seeker or the Access Seeker's Personnel or Approved Contractors or the Permitted Equipment or its operation or any transmission to or from the Permitted Equipment.

- (b) **nbn** must take all reasonable steps to minimise the loss, damage, cost and expense it has

suffered or incurred or is likely to suffer or incur as a result of any event giving rise to an indemnity under clause 8(a).

## 9. Liability

### 9.1 Indirect Loss exclusion

Neither party will be liable to the other party for any Indirect Loss.

### 9.2 **nbn's** limitation of liability

- (a) To the maximum extent permitted by Law:
  - (i) the aggregate liability of **nbn** arising under or in connection with this Agreement, but not under or in connection with a Licence, whether in contract, tort (including negligence), statute or equity or otherwise is limited to \$1; and
  - (ii) the aggregate liability of **nbn** arising under or in connection with the Licence, whether in contract, tort (including negligence), statute or equity or otherwise is limited to the sum of all Licence Fees paid by the Licensee under the Licence up to the date of the event giving rise to the liability subject to a liability cap of the total Licence Fees payable during the Initial Term.

### 9.3 Access Seeker's limitation of liability

Subject to clause 9.4, the maximum aggregate liability of the Access Seeker for all Claims brought by **nbn** arising out of or in connection with this Agreement or the Licence is limited to \$10,000,000.

### 9.4 Access Seeker's unlimited liabilities

The Access Seeker's liability:

- (a) for:
  - (i) any wilful breach of this Agreement or the Licence by the Access Seeker or its Personnel or Approved Contractors; or
  - (ii) without limiting clause 9.4(a)(i), any breach of this Agreement or the Licence by the Access Seeker or its Personnel or Approved Contractors which is of such a nature that would convey to a reasonable person an intention on the part of the Access Seeker to no longer comply with its obligations under this Agreement or Licence;
- (b) for any physical loss of, or damage or destruction to, any real or tangible personal property (including economic loss as a direct consequence of such loss, damage or destruction) arising from any act or omission of the Access Seeker or any of its Personnel or Approved Contractor including negligence, a breach of contract, or a breach of Law or otherwise;
- (c) for loss or damage arising from any act or omission of fraud, dishonesty or misrepresentation by the Access Seeker or any of its Personnel or Approved Contractors;
- (d) for personal injury, disease or death (including economic loss as a direct consequence of such event) arising from any act or omission of the

Access Seeker or its Personnel or Approved Contractors including negligence, a breach of contract, or a breach of law or otherwise; and

- (e) for **nbn** Claims under indemnities provided under this Agreement or the Licence,

is unlimited and accordingly the limitations and exclusions in clauses 9.1 and 9.3 do not apply in respect of such liability in this clause 9.4.

## 9.5 Release

- (a) Except as provided in this Agreement or the Licence, the Access Seeker releases **nbn** from all Claims, of any kind or at any time arising out of or in connection with this Agreement or the Licence and all acts or omissions which the Access Seeker may otherwise have against **nbn**.
- (b) Clause 9.5(a) does not apply to limit **nbn's** liability to the extent that the liability:
- (i) cannot be excluded at law;
  - (ii) is caused by the wilful misconduct or fraudulent or criminal conduct of **nbn** or its employees, officers, agents or individual contractors; or
  - (iii) is caused by a breach of this Agreement or the Licence by **nbn**.

## 9.6 Statutory liability

- (a) The Access Seeker agrees that other than for any express representations and warranties provided by **nbn** in this Agreement or Licence, to the extent permitted by Law, no representation has been made and no warranty is or has been expressly or impliedly given by or on behalf of **nbn** in respect of any matter relating to this Agreement or Licence.
- (b) Nothing in this Agreement excludes or limits the application of any provision of any Law where to do so would:
- (i) contravene that Law; or
  - (ii) cause any part of this Agreement or the Licence to be void.

## 10. Insurance

### 10.1 Obligation to insure

- (a) The Access Seeker must have in force and maintain with a Reputable Insurer at all times during the term of this Agreement and the Licence, valid and enforceable insurance policies for the Required Insurances, noting **nbn** as an insured party, where relevant and any other insurance policies which a prudent person engaged in a similar business or undertaking to that of the Access Seeker would effect.
- (b) The Access Seeker must inform its insurer(s) of this Agreement and the Licence and do all things necessary to ensure that the insurance policies referred to in clause 10.1(a) cover the Access Seeker with respect to the activities contemplated within this Agreement and the Licence.
- (c) The Access Seeker must:

- (i) not do, permit or fail to do anything which prejudices any of its Required Insurances or insurance claims or recovery under its Required Insurances;
- (ii) immediately reinstate any of its Required Insurances that lapse; and
- (iii) immediately notify the relevant insurer of any fact, circumstance or change in circumstances which may prejudice the validity of any of its Required Insurances or insurance claims or recovery under its Required Insurances.

### 10.2 Evidence of Insurance

Prior to the Licence Start Date for the Licence and on request (and on no more than two occasions per year) by **nbn**, the Access Seeker will produce to **nbn** satisfactory evidence, including certificates of currency of the insurance policies required under clause 10.1(a).

## 11. Security Bonds

- (a) On execution of the Licence by the Access Seeker, and in addition to payment of the Licence Fee, the Access Seeker must provide to **nbn**, at **nbn's** discretion, a security bond or provide an unconditional bank guarantee from a registered trading bank in Australia, in the amount of \$50,000 ("**Security Bond**") to secure performance of the Access Seeker's obligations under this Agreement and the Licence.
- (b) If the Access Seeker does not pay any amounts payable to **nbn** within 10 Business Days of receipt of the demand, **nbn** may, without limitation to any other right **nbn** has, deduct the amount it has demanded from the Security Bond.
- (c) If **nbn** calls on the Security Bond in accordance with clause 11(b), then the Access Seeker must top up the Security Bond within 10 Business Days of written notice from **nbn** so that the amount required in clause 11(a) is maintained.
- (d) Subject to **nbn's** right to deal with the Security Bond under clause 11(b), **nbn** will refund the Security Bond or balance of the Security Bond then held within reasonable time following termination or expiry of the Licence and compliance by the Access Seeker of all obligations under the Licence up to the termination or expiry date.

## 12. Termination

### 12.1 Termination of Agreement by **nbn**

- (a) **nbn** may terminate this Agreement:
- (i) for convenience, without having to give reason, on 30 days written notice to the Access Seeker;
  - (ii) if the Access Seeker commits a material breach of this Agreement or the Licence and fails to remedy the breach within the time period specified in the breach notice given by **nbn**;
  - (iii) immediately if:

- (A) an Insolvency Event occurs in relation to the Access Seeker;
  - (B) it becomes unlawful for either party to perform or comply with its obligations or exercise its rights under this Agreement or the Licence;
  - (C) the Access Seeker ceases to be an Eligible Person;
  - (D) if the offer lapses under clause 3.6(b) or otherwise;
  - (E) the giving of access to the Site or Facility would be inconsistent with a limitation or restriction imposed under section 19H(2) of the NBN Companies Act; or
  - (F) **nbn**'s right to occupy the Site or the Land under its Superior Tenure is terminated or otherwise determined.
- (b) Each party must only use Confidential Information of the other party for the purpose for which it was disclosed in connection with this Agreement or the Licence.
  - (c) **nbn** may disclose Confidential information of the Access Seeker to any Minister, Department or officer of the Commonwealth Government of Australia or any Government Agency (including the Australian Competition and Consumer Commission).
  - (d) Notwithstanding clauses 13(a), 13(b) and 13(c), **nbn** may, on the direction of any Minister, Department, or office of the Commonwealth Government Australia or any Government Agency, disclose and make public key information in respect of this Agreement and any variation to it or the Licence, including but not limited to the Access Seeker's name, subject matter, term, Licence Fee and value of this Agreement or the Licence. The Access Seeker authorises and provides permission to the disclosure and publication of such information by **nbn**.
  - (e) The Access Seeker must not make any public statement or issue any press release concerning or relating to this Agreement, the Licence or its relationship with **nbn** unless it has first obtained the written consent of **nbn**.

## 12.2 Termination of Licence

A party may terminate the Licence in accordance with the terms of the Licence.

## 12.3 Consequences of termination or expiry

- (a) Termination or expiry of this Agreement or the Licence will have the effect of terminating the Agreement or the Licence (as relevant).
- (b) Termination or expiry of this Agreement or the Licence will not affect any other licences which may have been issued to the Access Seeker under a separate agreement, unless expressly provided otherwise within the Licence which will continue to operate in accordance with its terms.

## 13. Confidentiality

- (a) Each party (**receiving party**) must keep confidential, and not disclose, any Confidential Information of the other party (**disclosing party**) except:
  - (i) as permitted under this Agreement or the Licence;
  - (ii) where the receiving party has obtained the prior written consent of the disclosing party;
  - (iii) to the receiving party's officers, agents, professional advisers, employees, contractors, subcontractors and insurers solely for the purpose of complying with its obligations under this Agreement or the Licence;
  - (iv) to the receiving party's Related Bodies Corporate;
  - (v) to the receiving party's auditors; or
  - (vi) where the receiving party is compelled to do so by Law, provided that it gives the

## 14. Intellectual Property Rights

Each party retains all rights, title and interest in and to any Intellectual Property Rights subsisting in material created by or on behalf of that party, subject to the following exceptions:

- (a) any Intellectual Property Rights in material created by or on behalf of the Access Seeker relating to Make Ready Work or Equipment installation will be assigned or, where assignment is not possible, irrevocably and unconditionally licensed to **nbn** (including the right for **nbn** to sub-license any such Intellectual Property Rights to a third party); and
- (b) any Intellectual Property Rights in As-Built Drawings created by or on behalf of the Access Seeker relating to the Site will be assigned or, where assignment is not possible, irrevocably and unconditionally licensed to the **nbn** (including the right for **nbn** to sub-license any such Intellectual Property Rights to a third party).

## 15. Privacy

- (a) The Access Seeker must ensure that any collection, processing, use, disclosure and transfer by the Access Seeker, or Access Seeker Personnel, of Personal Information in connection with the performance of its obligations under this Agreement or the Licence complies with all applicable Laws.
- (b) Without limiting clause 15, the Access Seeker must:
  - (i) not disclose Personal Information provided under this Agreement or the Licence without

- the written authority of **nbn** or as required by Law;
- (ii) take all necessary steps to ensure that the Personal Information held in connection with this Agreement and the Licence is protected against misuse and loss, and from unauthorised access, modification and disclosure;
- (iii) ensure that Access Seeker Personnel or Approved Contractors who have an access level which enables access to any Personal Information provided under this Agreement or the Licence will not access, use, disclose or retain such Personal Information, except in performing their duties of engagement under this Agreement and the Licence;
- (iv) immediately notify **nbn** in writing of any unauthorised access or disclosure or Personal Information, or other breach, or suspected breach of Laws relating to privacy;
- (v) co-operate with any requests or directions of **nbn** relating to the security, use, disclosure, transfer and erasure of Personal information, or the rights of individuals to access and correct Personal Information or any actual or suspected unauthorised access or disclosure of Personal Information;
- (vi) as soon as reasonably practicable, notify **nbn** if it becomes aware that a disclosure of Personal Information by the Access Seeker may be required by Law or a breach of this clause 15 has occurred; and
- (vii) upon **nbn's** request, produce to **nbn**, or its nominee, evidence of the Access Seeker's compliance with its obligations under this clause 15.

- (c) Nothing in this clause 16 prevents a party from issuing proceedings in court where the relief sought is urgent injunctive relief.

## 17. Notices

### 17.1 Method of service

A notice, consent or other communication under this Agreement and the Licence is only effective if it is:

- (a) in writing, signed by or on behalf of the party giving it;
- (b) addressed to the party to whom it is to be given; and
- (c) either:
  - (i) delivered or sent by pre paid mail (by airmail, if the addressee is overseas) to that party's address; or
  - (ii) sent by fax to that party's fax number and the machine from which it is sent produces a report that states that it was sent in full.

### 17.2 Time of service

A notice, consent or other communication that complies with this clause 17 is regarded as given and received:

- (a) if it is delivered or sent by fax:
  - (i) by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (b) it is sent by mail:
  - (i) within Australia – 3 Business Days after posting;
  - (ii) to or from a place outside Australia – 7 Business Days after posting.

### 17.3 Address for notices

A party's mail address and fax number for receiving legal notices are:

- (a) in respect of this Agreement :
 

**nbn**

Title: **[insert]**

Address: **[insert]**

Facsimile: **[insert]**

**Access Seeker**

Title: **[insert]**

Address: **[insert]**

Facsimile: **[insert]**; and
  - (b) in respect of a Licence, those specified on the Cover Page of the Licence,
- or as a party otherwise notifies the other party in writing from time to time.

## 16. Disputes

- (a) Subject to clause 16(c), if a Dispute under this Agreement or the Licence arises, the parties agree to following the below dispute resolution procedure:
  - (i) the party claiming that a Dispute has arisen is to give notice to the other party indicating the nature of the Dispute (**Notice of Dispute**);
  - (ii) a senior representative of each party must meet and attempt to resolve the Dispute within 10 Business Days of receipt of the Notice of Dispute; and
  - (iii) if the senior representatives fail to resolve the Dispute, then the Dispute shall be determined by an expert nominated by the parties in agreement. The expert's determination shall be final and binding except in the case of manifest error and each party shall equally meet the expert's costs.
- (b) The parties must continue to perform their obligations under this Agreement and the Licence while any Dispute is being resolved.



## 18. General

### 18.1 Costs

Each party is responsible for its own legal and other costs, charges and expenses in relation to the preparation, negotiation and completion of this Agreement.

### 18.2 Governing law

- (a) This Agreement and the Licence are governed by the laws of the Commonwealth and the Jurisdiction and **nbn** and the Access Seeker submit to the non-exclusive jurisdiction of the courts of Jurisdiction.

### 18.3 Operation of this Agreement

- (a) This Agreement contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.
- (b) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

### 18.4 Amendment

This Agreement and the Licence can only be amended or replaced by another document signed by the parties.

### 18.5 No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement or the Licence will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. A power or right may only be waived in writing, signed by the party bound by the waiver.

### 18.6 No Merger

The rights and obligations of the parties will not merge on completion of any transaction under this Agreement.

### 18.7 Counterparts

If this Agreement consists of signed counterparts, each is an original and all of the counterparts together constitute the same Agreement.

### 18.8 Assignment or novation of this Agreement

The Access Seeker must not assign its interest in or novate this Agreement without obtaining **nbn**'s prior written consent which may be granted or withheld at **nbn**'s absolute discretion.

## 19. Definitions

In this Agreement:

**Access Application** means the Request for Approval In Principle and includes the Design and Construction Plan.

**Adjoining Site** means a site that is immediately adjacent to, or within close proximity to, the Site.

**Agreement** means this agreement comprising the terms and conditions and any schedules or annexures to this Agreement.

**Application Fee** means the fee specified in the Pricing Schedule.

**Approved Contractors** means the Personnel of the Access Seeker or its third party contractors that **nbn** approves in writing for the purpose of conducting any works at the Site, including any access to the Site for the purpose of inspection, Make Ready Works, installation works, maintenance works, or other works to remove, replace, relocate, maintain or repair any Permitted Equipment.

**APRA** means Australian Prudential Regulation Authority (or where APRA's powers or functions are transferred to any other renamed or reconstituted entity or body, that entity or body).

**Approval in Principle** is conditional approval of an Access Seeker's application for access to the Site given under clause 3.2(e)(i).

**As-Built Drawings** means final drawings showing the Make Ready Works performed and location and type of Permitted Equipment installed on the Site and the results of any alterations to the Site carried out during the Make Ready Work or installation of Permitted Equipment.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in the state of New South Wales.

**Carriage Service Provider** has the meaning given in the *Telecommunications Act 1997 (Cth)*.

**Carrier** has the meaning given in the *Telecommunications Act 1997 (Cth)*.

**Claim** means any claim, damage, cause of action, proceeding, liability, remedy, injury, suit, demand or claim for compensation, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**CPI** means the consumer price index, all groups (weighted average for eight capital cities) published by the Australian Bureau of Statistics.

**Commencement Date** means the date of execution of this Agreement by both parties.

**Confidential Information** in relation to a party means information of a confidential nature including information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

**Cover Page** means the cover page(s) attached to the Part B - Licence.

**Default Rate** means the percentage rate equal to the aggregate of the 90 day bank bill swap rate plus 2.5%.

**Design and Construction Plan** means in relation to the Site, a proposal for the installation of Equipment on a Facility at the Site, which specifies:

- (a) dimensions and technical specifications for the relevant Facility and the location of the Site, to which access is sought;

- (b) the location on the Site of all existing Equipment of **nbn** and all other existing third party equipment;
- (c) whether or not the Facility on that Site is to be replaced;
- (d) details of the Equipment which the Access Seeker seeks to place on the Facility and Site, including the weight, wind loading, radio frequency and electromagnetic characteristics of the Equipment;
- (e) the proposed design for the Facility and Site, including, without limitation, draft plans, layouts and structural analyses;
- (f) the Make Ready Work to be carried out by the Access Seeker, including a construction timetable for the performance of that Make Ready Work; and
- (g) any other matters which may be reasonably necessary or appropriate having regard to the circumstances or as required by **nbn**.

**Dispute** means any dispute or difference between the parties concerning or relating to this Agreement or a Licence.

**Eligible Person** has the meaning given to that term in section 19H of the NBN Companies Act.

**EME** means electromagnetic emissions.

**Equipment** means transmitters, antennas, microwave or satellite dishes, associated transmission equipment, power plant, air conditioning plant, feeders, waveguides and waveguide pressuring equipment, associated radio base stations, associated environmental alarms, cabling, network electronics, hardware and other equipment and devices (including any modules, risers or other structures housing the above equipment) used as part of a telecommunications network or in providing, supporting, servicing and enhancing a telecommunications network.

**Facility** means:

- (a) a tower, mast, pole, antenna mounting bracket or other similar structure which bears or is capable of bearing Equipment and which is used or designed primarily for mobile telecommunications or broadcasting purposes;
- (b) cable gantries;
- (c) such other infrastructure as may be agreed by the Parties from time to time; and

as more particularly described in the Cover Page.

**Facility Access Code** means any code of access to telecommunications transmission towers and site of towers made by the Australian Competition and Consumer Commission from time to time under clause 37, Part 5, Schedule 1 of the *Telecommunications Act 1997* (Cth).

**Financial Information** means:

- (a) a credit report from a reputable credit reporting organisation;

- (b) copies of most recent audited financial statements including balance sheets and loss statements; confirmation of solvency;
- (c) copies of relevant company information such as ASIC searches, band and trade references and CRAA reports on directors.

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a Law.

**Government Approval** means all necessary consents, licences, authorisations, permits, certificates, permissions, approvals, directions, declarations, authorities or exemptions (including any associated conditions) required from, by or with any Governmental Agency in relation to any construction work or the installation or operation of Equipment on the Site.

**Government Charge** means any tax, levy, duty, charge or fee, however it is described, that is imposed by Law or by a Government Agency.

**Indirect 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.

**Insolvency Event** means, for a party to this Agreement:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or otherwise insolvent;

- (e) taking of any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act);
- (f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (g) dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason;
- (h) presenting a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth);
- (i) presentation of a petition for the making of a sequestration order against the estate of the person where the petition is not stayed, withdrawn or dismissed within 7 days or the person presents the petition against him or herself; or
- (j) any analogous event to those set out in (a)-(i) under the laws of any applicable jurisdiction.

**Installation Plan** has the meaning given in clause 3.7(a)(i).

**Intellectual Property Rights** means any industrial and intellectual property rights throughout the world and for the duration of the rights including:

- (a) any patents, copyright including future copyright, registered or unregistered trade marks or service marks, trade names, brand names, registered or unregistered designs, commercial names, circuit layouts, database rights;
- (b) any inventions, discoveries, processes, methods, trade secrets, know-how, computer software, confidential information and scientific, technical and product information;
- (c) the right to apply for any industrial and intellectual property rights; and
- (d) any other similar or analogous rights and any intellectual property or industrial rights whether now existing or which come into existence in the future.

**Jurisdiction** means the state or territory of the Commonwealth of Australia in which the Site is situated.

**Land Consents** means all authorisations, licences, permits, or approvals required from any person who owns the Site or who has the power or right to grant a right of occupation and use of the Site. For the avoidance of doubt, where the Permitted Equipment is to be located in an Adjoining Site, this includes any arrangements for the lease or other occupancy right with the landlord of the Adjoining Sites.

**Law** means any statute, regulation, proclamation, ordinance, by-law, code or determination of the Commonwealth of Australia or the Jurisdiction, and any local law and includes all statutes, regulations, proclamations, ordinances, by-laws, codes or determinations varying, consolidating or replacing them and all regulations, proclamations, ordinances, by-laws, codes and determinations issued under that statute.

**Licence** means a licence granted to the Access Seeker under clause 3.6(a) which is subject to the terms of clause 5 and in substantially the same form set out in Part B - Licence.

**Licence Fees** has the meaning given in the Licence.

**Licence Start Date** has the meaning given in the Licence.

**Make Ready Work** has the meaning given to that term in the Licence.

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

**Nominated Account** has the meaning given in the Licence.

**Other Site** means a telecommunications site (or telecommunications sites) similar in capacity, status and location to the Site.

**Permitted Equipment** has the meaning given in the Licence.

**Permitted Use** has the meaning given in the Licence.

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

**Personnel** means, in respect of a party, the employees, officers, agents, contractors and subcontractors of that party.

**Preliminary Information** means:

- (a) the name and address of the Site and the types of structures located on the Site;
- (b) the name of the owner of the Site;
- (c) information regarding any requests for access to the Site that **nbn** has received from third parties, any rights in respect of the Site that have been granted to third parties, and whether **nbn** has any specific plans to locate its Equipment on the Site; and
- (d) any other requirements of **nbn** relating to the Site that may be reasonably expected to affect a request by the Access Seeker to access the Site.

**Preliminary Information Study Fee** means the fee specified in the Pricing Schedule.

**Pricing Schedule** means the pricing table published on the **nbn** website applicable to this Agreement and the Licence.

**Quarter** means a 3 month period commencing on either 1 January, 1 April, 1 July or 1 October.

**Related Body Corporate** has the meaning given to the term "related body corporate" in the *Corporations Act 2000* (Cth).

**Reputable Insurer** means an insurer who is:

- (a) an APRA authorised insurer or, where the Licensee is exempt from the legal obligation to obtain insurance from an APRA authorised insurer, an insurer who maintains a Standard & Poor's rating of A minus or higher (or equivalent rating agency rating); and
- (b) in respect of workers compensation insurance only, includes an authorised self insurer, specialist insurer and scheme agent.

**Request for Approval In Principle** has the meaning given in clause 3.2(a).

**Required insurances** means:

- (a) Public liability insurance: not less than \$20,000,000 for any one claim (covering personal injury and property damage);
- (b) Contract works insurance in respect of the loss or destruction of or damage to any works (including Make Ready Works) executed in connection with this Agreement or Licence, including all materials, supplies and equipment, to an amount that is equal to 120% of the total value of the works; and
- (c) Workers compensation: As required by Law.

**Sites** means a site or part of a site currently owned, leased, licensed by **nbn** in respect of which **nbn** has obtained all necessary Government Approvals and Land Consents for **nbn** to locate a Facility on it, and on which a Facility is located currently or is under construction and which is more particularly identified in the Cover Page.

**Technically Feasible** has the meaning given to that concept in section 19A(7) of the **NBN** Companies Act.

## 20. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, corporation or other body corporate and any Government Agency;
- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit, cover page or schedule is a reference to a

part and clause of and a party, annexure, exhibit, cover page and schedule to this Agreement;

- (g) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding day which is a Business Day;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;
- (i) month means a calendar month;
- (j) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (k) "includes" in any form is not a word of limitation;
- (l) any parties, persons, facts, events or documents alternatively or collectively shall be construed as a reference to all of them and to each and any one or more of them; and
- (m) the expression "this Agreement" includes the agreement, arrangement, understanding or transaction recorded in this document, including each of the schedules.

Executed as an agreement.

**Executed** by NBN Co Limited ABN 86 136 533 741  
by its authorised representatives in the presence of:

)  
)

.....  
Witness

.....  
Name of Witness (print)

.....  
Authorised representative

.....  
Name of authorised representative (print)

.....  
Title of authorised representative (print)

.....  
Date:

**Executed** by the Access Seeker by its authorised  
representative in the presence of:

)  
)

.....  
Witness

.....  
Name of Witness (print)

.....  
Authorised representative

.....  
Name of authorised representative (print)

.....  
Title of authorised representative (print)

.....  
Date:

**Part B - Licence**

**Note:** terms and conditions of the Licence may require amendment or variation to ensure consistency with the terms and conditions of any Superior Tenure for the Site, or special conditions imposed by any other party to the Superior Tenure. The term of the Licence must expire 1 day prior to the expiry date of nbn's Superior Tenure for the Site.

**PRO FORMA FIXED WIRELESS TOWER ACCESS LICENCE AGREEMENT  
COVER PAGE**

<b>Licensee</b>	[Insert company name, ABN and registered business address of Licensee].
<b>Site</b>	<b>Site name:</b> [insert site name, e.g. Mole Creek] <b>Site number:</b> [insert site number, e.g. NBN-7LAZ-7DEL-5105] <b>Site address:</b> [insert address of Site, e.g. 528 Mersey Hill Road, Mole Creek, TAS 7304]
<b>Land</b>	The land on which the Site is situated identified as Lot [insert] in Deposited Plan [insert], being folio identifier/title reference [insert].
<b>Term</b>	<b>Licence Start Date:</b> [Insert date agreed by the parties.] <b>Initial Term:</b> Minimum Term of 10 years <b>Renewal Term(s):</b> The Term will be extended in accordance with clause 3.2. <b>Superior Tenure term:</b> [Insert expiry date and renewal terms.]
<b>Facility information</b>	[Insert specific details about the Facility that access is being sought on e.g. , description of physical facility height, area covered etc.]
<b>Licence Fee</b>	\$[insert] per annum, as adjusted in accordance with clause 5.2 [Licence Fee to be calculated in accordance with the Pricing Schedule published on the nbn website]
<b>Nominated Account</b>	Bank: [insert] Branch: [insert] Account Name: [insert] BSB No: [insert] Account No: [insert]
<b>nbn contact details</b>	<b>Non-legal matters relating to access and equipment (clause 7.4)</b> Title: [Project Planner Wireless] Address: [insert] Telephone: 1800 453 966 [TBC] Facsimile: [insert] Email (Operational Matters): Email (Payment Matters): <b>Legal (clause 20.3 of the Agreement)</b> Title: Chief Legal Counsel Address: Level 11, 100 Arthur Street, North Sydney NSW 2060 Facsimile: (02) 9926 1901

<b>Licensee contact details</b>	<p><b>Access and Permitted Equipment (clause 7.4)</b></p> <p>Title: [insert]</p> <p>Address: [insert]</p> <p>Telephone: [insert]</p> <p>Facsimile: [insert]</p> <p><b>Legal (clause 20.3 of the Agreement)</b></p> <p>Title: [insert]</p> <p>Address: [insert]</p> <p>Facsimile: [insert]</p>
<b>Site Specific Special Conditions</b> including special conditions specified in the Level 3 Approval granted to the Licensee	<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> </ol>

1. **GENERAL**
- 1.1 **nbn** owns, leases, or otherwise has rights to occupy the Site.
- 1.2 Pursuant to the Agreement, the Licensee has requested, and **nbn** has agreed to grant, a Licence to access the Site to install, operate and maintain the Permitted Equipment on the terms and conditions of this Licence.
- 1.3 The terms and conditions of the Agreement are incorporated into this Licence, and form part of, and remain in full force for the duration of this Licence.

## GENERAL CONDITIONS

### 2. INTERPRETATION

#### 2.1 Defined terms

In this Licence:

**Agreement** means, in respect of the Site, the Part A - Access Agreement between the parties dated **[insert]**.

**Approved Contractor** means the Personnel of the Licensee or its third party contractors that **nbn** approves in writing for the purpose of conducting any works at the Site, including any access to the Site for the purpose of site inspection, make-ready works, installation works, maintenance works, or other works to remove, replace, relocate, maintain or repair any Permitted Equipment.

**Cover Page** means the cover page(s) attached to this Part B - Licence.

**Design** means the design submitted by the Licensee for the installation of the Permitted Equipment on the Site. For the avoidance of doubt, this includes any approved Design and Construction Plan or Installation Plan (as those terms are defined under the Agreement).

**Design and Construction Plan** is the plan specified in the Agreement.

**EME** means electromagnetic emissions.

**Environmental Laws** means any Laws concerning the environment, including Laws concerning:

- (a) emissions of chemical substances into the atmosphere, waters and land;
- (b) pollution, use, handling, storage, transportation and disposal of or by the things referred to in paragraphs (c) - (f) of this definition;
- (c) waste, including packaging, recycling, waste minimisation and waste management and the National Packaging Covenant;
- (d) hazardous materials;
- (e) dangerous goods; and
- (f) chemical substances;
- (g) renewable energy, greenhouse gases and the reduction of emissions;
- (h) conservation, heritage and natural resources;

- (i) threatened, endangered and other flora and fauna species;
- (j) town planning;
- (k) development;
- (l) construction of structures and improvements on land; and
- (m) use and occupation of land and improvements on land.

**Facility** means the tower, monopole, mast and/or antenna support structure erected at the Site and as more particularly described in the Cover Page.

**General Conditions** means the part of this Licence described as General Conditions.

**HSE Policies** means **nbn**'s health, safety and environment policies, as notified by **nbn** from time to time.

**Initial Term** means:

- (a) the Initial Term specified on the Cover Page; or
- (b) if no Initial Term is specified on the Cover Page, ten (10) years from the earlier of the date that:
  - (i) **nbn** grants the Access Seeker a Licence in relation to the Site and the Facility in accordance with clause 3.6(a) of the Agreement and the date on which this Licence is counter-signed by **nbn**; or
  - (ii) the Licence Start Date specified on the Cover Page.

**Interference** means any physical, electrical, electromagnetic, radio or other obstruction, impediment or interruption to the use or operation of **nbn**'s or any third party's telecommunications facility, network or service.

**Land** means the land specified on the Cover Page.

**Licence** means the attached Cover Page and these General Conditions, including the attached schedules and annexures.

**Licence Fee** means the amount specified on the Cover Page, as adjusted in accordance with clause 5 of this Licence.

**Licence Start Date** means the date specified on the Cover Page (if any) as being the date from which this Licence takes effect, or if no such date is specified, the date the Initial Term commences.

**Licensee** means the Licensee specified on the Cover Page and, subject to clause 16.2, includes its permitted assigns. For the avoidance of doubt, Licensee has the same meaning as "**Access Seeker**" (as that term is defined under the Agreement).

**Make Ready Work** has the meaning given to that term in clause 8.1.

**nbn** means NBN Co Limited ABN 86 136 533 741.

**nbn Entity** means **nbn** or any of its Related Bodies Corporate.



**nbn Beneficiary** means each **nbn Entity** and any other company which **nbn** designates from time to time, for the purpose of its internal business operations or implementing, operating or maintaining the whole or any part of **nbn's** telecommunications network.

**nbn Operational Procedures** means the operational procedures notified in writing by **nbn** to the Licensee from time to time, which may include provisions relating to:

- (a) installation, maintenance and operation of the Permitted Equipment;
- (b) access to the Site and the Permitted Equipment; 2.2
- (c) cabling at the Site;
- (d) power supply at the Site; 2.3
- (e) maintenance, repair and alteration of the Site;
- (f) emergency procedures for the Site;
- (g) addition, reconfiguration and replacement of Permitted Equipment;
- (h) substitution of Permitted Equipment; 3.
- (i) Site induction training for the Licensee's Personnel and Approved Contractor Personnel; and 3.1
- (j) any other matter that **nbn**, in its absolute discretion, deems necessary. 3.2

**Nominated Account** means the bank account nominated by **nbn** as specified on the Cover Page.

**Personnel** means, in respect of a party, the employees, officers, agents, contractors and subcontractors of that party.

**Permitted Equipment** means:

- (a) the Equipment that the Licensee is permitted to install at the Site as listed in Schedule 1; and 4.
- (b) any additional Equipment or any replacement or substituted Equipment that **nbn** may, in its absolute discretion, expressly permit the Licensee to install at the Site in writing. 4.1

**Position** means the position(s) on the Site at which the Permitted Equipment may be installed as:

- (a) specified in Schedule 2;
- (b) notified by **nbn** under clauses 9.1(c) or 9.2(b); or
- (c) otherwise expressly agreed by **nbn** in writing.

**Renewal Term** means an extension of the Term in accordance with clause 3.2 for an additional 12 month period commencing on an anniversary of the Licence Start Date after the expiry of the Initial Term and terminating on the day prior to the subsequent anniversary of the Licence Start Date. 4.2

**Security Requirements and Policies** means **nbn's** security requirements and policies, as notified by **nbn** from time to time.

**Site** means the site specified on the Cover Page, and includes the Facility.

**Superior Tenure** means, if **nbn's** right to occupy or use the Site arises other than as a freehold owner of the Land, the head lease, licence or other agreement under which **nbn's** rights arise.

**Term** means the duration of the arrangements under this Licence, being the Initial Term and any Renewal Term(s).

**WHS Laws** means all Laws relating to work health and safety and all codes of practice pertaining to the Licensee's activities.

## Other

Terms used but not defined in this Licence have the meaning given to them in the Agreement.

## Third parties

Any covenant (whether express or implied) by a party to this Licence not to do or omit any act or thing shall be deemed to extend to an obligation not to permit any third party to do or to omit the same.

## TERM

This Licence will commence on the Licence Start Date and will continue for the Term unless terminated earlier under clauses 14.1, 14.2 or 14.3.

Unless **nbn** or the Licensee notifies the other party at least 6 months prior to an anniversary of the Licence Start Date that it does not want the Term to extend for a first or any further Renewal Term, the Term will automatically be extended on each anniversary of the Licence Start Date for a Renewal Term, provided that the Term may not extend beyond the day prior to the date of expiry of the term of any Superior Tenure.

## LICENCE

### Grant of Licence

Subject to the Licensee's entry into a lease or other right of occupancy of adjoining land (if required), **nbn** grants to the Licensee a non-exclusive licence for the Term to:

- (a) carry out the Make Ready Work;
- (b) install the Permitted Equipment at the Position(s);
- (c) maintain, operate or remove any Permitted Equipment located at the Site; and
- (d) subject to clause 7.1, access the Site and Facility for any of the purposes outlined in this clause 4.1,

for the sole purpose of facilitating the emergency services related operations and activities of the Licensee or such other activities permitted by the Minister under section 19H(2) of the NBN Companies Act, subject to the terms and conditions of this Licence.

### Nature of Licence

**nbn** reserves all rights relating to the Site and Facility including the right to:

- (a) permit the installation, operation, maintenance, repair and replacement of Equipment anywhere on the Site;
- (b) pass and repass with or without plant and equipment; and
- (c) install, operate, maintain, repair and replace cabling of all descriptions,

in on or through the Site at all times for the purpose of maintaining the Site or allowing **nbn** or third parties to utilise the Site.

#### 4.3 No interest in the Land or the Site

The rights granted to the Licensee under this Licence:

- (a) are contractual only and are personal to the Licensee;
- (b) do not create any estate or interest in the Land, the Site, the Facility or any Equipment owned by **nbn** or any third party;
- (c) do not create any relationship of landlord and tenant between **nbn** and the Licensee.

#### 4.4 Compliance with Superior Tenure

Where **nbn** has provided the Licensee with a copy of the Superior Tenure or the Licensee has access to the terms of the Superior Tenure as a public record, the Licensee:

- (a) must ensure that it does not cause **nbn** to be in breach of the Superior Tenure terms; and
- (b) must not cause, by act or omission, anything which would result in **nbn** being in breach of the terms of the Superior Tenure and indemnifies **nbn** in respect of any liability incurred by **nbn** as a result of such act or omission or in connection with a breach of its covenant to the Superior Tenure counter-party, its successor or assignee or obligations including to any third party.

### 5. LICENCE FEE

#### 5.1 Licence Fees

- (a) The Licensee must pay to **nbn** the Licence Fees (in full and without any set-off, withholding or deduction) payable under this Licence.
- (b) The Licence Fees for the Licence, as adjusted under clause 5.2, must be paid annually in advance commencing on the Licence Start Date and thereafter on each anniversary of the Licence Start Date during the Term.
- (c) If the parties agree in writing that an instalment of the Licence Fee will be for a period of less than one year, the amount payable by the Licensee for that period will be calculated on a pro rata basis.

#### 5.2 Licence Fee Review

- (a) The Licence Fee will be adjusted by **nbn** annually on each 1 July ("**Review Date**") during the Term in accordance with the following formula:

**Adjusted Licence Fee** = PLF x Applicable Percentage

Where:

"**Applicable Percentage**" is the percentage equal to the greater of:

- (i) 103% per annum; and
- (ii) the CPI Percentage,

"**CPI**" means the All Groups consumer price index published by the Australian Bureau of Statistics for the capital of the jurisdiction that the Site is situated, or if the Australian Bureau of Statistics stops publishing the CPI, then CPI means the index recommended by the Property Council of Australia as the index that most appropriately replaces the CPI;

"**CPI Percentage**" means the figure, expressed as a percentage, which results when CPI 1 is divided by CPI 2 (e.g. if CPI 1 is 1.04 and CPI 2 is 1.00, the CPI Percentage will be 104%);

"**CPI 1**" means the CPI number for the Quarter ending immediately before the relevant Review Date; and

"**CPI 2**" means the CPI number for the Quarter ending immediately before the last relevant Review Date or if there has not been one, the Licence Start Date.

"**PLF**" means the Licence Fee applying immediately before the Review Date.

- (b) The parties agree that the Adjusted Licence Fee will not be less than the Licence Fee payable under this Licence immediately before the relevant Review Date.

#### 5.3 Government Charges

- (a) If after the Licence Start Date:
  - (i) any Government Charge that is imposed on **nbn** or its Related Bodies Corporate in connection with the Facility or Site as at Licence Start Date is increased; or
  - (ii) a new Government Charge is imposed on **nbn** or its Related Bodies Corporate in connection with the Facility or Site,

**nbn** may issue a tax invoice, together with relevant supporting documentation, to the Licensee for an amount equal to the proportion of that increased or new Government Charge that **nbn** (acting reasonably) believes is proportional to the Licensee's use and occupation of the Facility or Site.

- (b) The Licensee must pay the amount stated in a tax invoice invoiced by **nbn** under clause 5.3(b) within 30 Business Days of receipt of the tax invoice.

#### 5.4 GST

- (a) Capitalised expressions which are not defined in this clause but which have a defined meaning in GST Law have the same meaning in this clause.

- (b) In this Agreement:

**GST Amount** means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the appropriate rate of GST.

**GST Law** means has the meaning given to that term in *New Tax System (Goods & Services Tax) Act 1999* (Cth), or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Payment** means:

- (i) the amount of any monetary consideration (other than a GST Amount payable under this clause); and
- (ii) the GST Exclusive Market Value of any non-monetary consideration,

payable or provided by the Licensee for any Supply made under or in connection with this Licence and includes the Licence Fee or any Government Charges.

- (c) The parties agree that:

- (i) unless stated to the contrary, all Payments expressed as an amount in this Agreement or the Licence are exclusive of GST;

- (ii) if the whole or any part of a Payment is the consideration for a Taxable Supply, for which the supplier is liable to GST, the GST Amount in respect of the Payment must be paid to the supplier as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and

- (iii) the supplier must provide to the receipt a Tax Invoice for the Taxable Supply prior to the due date for payment.

- (d) Despite any other provision of this Licence, if a Payment due under this Licence is a reimbursement of or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other Party, the Payment shall exclude any GST forming part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.

#### 5.5 Method of payment

All Payments (including any GST Amount) that the Licensee must make to **nbn** under this Licence (including but not limited to Licence Fee) must be paid by direct credit or electronic funds transfer of immediately available funds to the Nominated Account (or such other bank account notified in writing by **nbn** to the Licensee from time to time) by no later than 11.00am on the due date for Payment.

#### 5.6 Interest

If the Licensee does not make any Payment that it must make to **nbn** under this Licence (including but not limited to Licence Fee) in full on or before the due date for payment, the Licensee must pay to **nbn**, in addition to the outstanding amount, interest on any outstanding amount at a rate which is equal to the Default Rate + 2% per annum calculated on a daily basis from and including the due date for payment until but excluding the date of payment in full is made by the Licensee.

### 6. LICENSEE'S OBLIGATIONS

#### 6.1 Non Interference

- (a) Subject to clause 6.1(b), the Licensee must not do or permit any third party to do anything on the Site which is likely to cause Interference.

- (b) Where **nbn**, acting reasonably, advises the Licensee that Interference is occurring or is likely to occur, the Licensee must, at its cost, within 2 Business Days of such notice being provided, remove the cause of the Interference or otherwise ensure that it does not occur (including, if necessary, switching off the Permitted Equipment) or continue to occur and if the Licensee fails to do so, **nbn** may exercise its rights under clauses 10.1 and 14.3(c).

#### 6.2 Site access and works

- (a) The Licensee may not install any Equipment at the Site other than Permitted Equipment at the Positions and in accordance with the relevant approved Design and Construction Plan by **nbn**.

- (b) Any works including Make Ready Works conducted on the Land or Site by the Licensee must be performed:

- (i) by Approved Contractors that are suitably qualified and experienced to conduct the relevant works;

- (ii) without interference to **nbn**'s or any third party's use of the Site or Facility;

- (iii) if required by **nbn** and at the Licensee's cost, in liaison with and under the supervision of **nbn** or its nominated contractor;

- (iv) with due care and skill; and

- (v) in accordance with all Laws and the requirements of any Government Agency.

- (c) The Licensee must comply, and must ensure any Personnel of the Licensee and any Approved Contractor, that access the Site or Land comply with:
- (i) any technical codes or standards relating to the installation or operation of Permitted Equipment that may be notified by **nbn** to the Licensee from time to time;
  - (ii) all HSE Policies and Security Requirements and Policies of **nbn**;
  - (iii) any Superior Tenure relating to the Site or Land notified by **nbn**, and the Licensee must not, through any act or omission, by it or its Personnel or Approved Contractors cause **nbn** to breach such Superior Tenure;
  - (iv) all Laws and Government Agency approvals applicable to the Licensee's access to and use of the Site, including all WHS Laws;
  - (v) **nbn**'s Operational Procedures; and
  - (vi) such other engineering codes, policies and procedures or standards as notified by **nbn** from time to time.
- (d) The Licensee must ensure that its Personnel and any relevant Approved Contractor and any Personnel of an Approved Contractor that access the Site or Land:
- (i) are fit and proper to perform their proposed role (having regard to nature, location, and inherent requirements of that role) and will not present a risk to:
    - (A) the health and safety of any person; or
    - (B) property of **nbn** or any person; and
  - (ii) participate in and complete, to **nbn**'s satisfaction, any Site induction courses or training that **nbn** requires from time to time.
- (e) The Licensee must:
- (i) develop, maintain and implement a health, safety and environment management system and a written plan outlining the health, safety and environment practices to be adopted, that (as a minimum) complies with all Laws, including all WHS Laws and Environmental Laws applicable to the works conducted on the Land or Site by and on behalf of the Licensee; and
  - (ii) provide copies of documents recording the system and plan referred to in clause 6.2(e)(i) above to **nbn** if requested.
- (f) **nbn** may, at its sole discretion, authorise the Licensee to link its own padlock to the entry gate chain at the Site provided that:
- (i) the Licensee ensures that the use of such padlock does not prevent **nbn** and any other occupier of the Site from entering the Site;
  - (ii) any such padlock authorised by **nbn** will be of the same or better standard as used by **nbn** at the Site; and
  - (iii) the Licensee is responsible for the provision and maintenance of any such padlock and associated keys.
- (g) **nbn** may withdraw any authorisation given under clause 6.2(f) at any time with immediate effect on providing notice to Licensee.

### 6.3 Maintenance and repair

- (a) The Licensee must during the Term, at its own cost, use, maintain and repair the Permitted Equipment in a safe and operable condition in accordance with all applicable Laws, industry codes, Australian standards, good industry practice, the **nbn** Operational Procedures and any reasonable directions provided by **nbn** from time to time.
- (b) If **nbn** considers that the Licensee has failed to comply with clause 6.3(a):
- (i) **nbn** may give a notice to the Licensee directing the Licensee to complete specific maintenance or repair work in respect of the Permitted Equipment within 10 Business Days (or such lesser period as specified in the notice that **nbn** determines is reasonably necessary in the circumstances); and
  - (ii) without limiting **nbn**'s rights under clauses 8 and 10, if the Licensee does not substantially comply with any requirement specified in a notice given by **nbn** under clause 6.3(b)(i) within the required time period, **nbn** may undertake any maintenance and repairs (at the Licensee's cost) it deems reasonably necessary to protect persons or property or the integrity of the Facility or Site or to ensure continuity of service, or otherwise to comply with the Licensee's obligations under this Licence.
- (c) The Licensee must:
- (i) on demand, reimburse **nbn** for all reasonable costs incurred by **nbn** in connection with any maintenance or repairs of the Permitted Equipment which **nbn** undertakes in accordance with clause 6.3(b)(ii); and

- (ii) indemnify and release **nbn** from any Claim by the Licensee (or a third party) against **nbn** in connection with the exercise of **nbn**'s rights under clause 6.3(b)(ii).

#### 6.4 Replacement of Permitted Equipment

The Licensee may replace the Permitted Equipment with Permitted Equipment of the same type with identical electrical, EME and physical characteristics, or if no direct replacement is available, with newer Equipment with substantially the same electrical and physical characteristics provided that:

- (a) the Licensee provides **nbn** with 15 Business Days' notice of its intention to do so;
- (b) **nbn** approves the Design for the relevant replacement Permitted Equipment prior to its installation;
- (c) the replacement Permitted Equipment will not cause or contribute to any Interference in excess of that associated with or arising from the Permitted Equipment being replaced;
- (d) the replacement Permitted Equipment is not materially different to, and would result in the same or lesser loading on the Facility compared to, the existing Permitted Equipment;
- (e) the work to install the replacement Permitted Equipment is completed within a time agreed to by **nbn** and occurs in accordance with the Licensee's obligations in clause 6.2; and
- (f) the replacement Permitted Equipment does not interfere with any other Equipment installed on the Facility.

#### 6.5 Additional Equipment

The Licensee may not install Equipment in addition to the Permitted Equipment listed in Schedule 1 without the prior written approval of **nbn**, which may be given or withheld in **nbn**'s sole discretion, and which may be given subject to conditions, including changes to this Licence and payment of additional Licence Fees.

#### 6.6 Consents

The Licensee must obtain (at the Licensee's cost) any consent or approval required by:

- (a) Law or any Government Agency; or
- (b) any third party;

in order for the Licensee to access and use the Site or Land in accordance with this Licence, or to access or use any land adjoining the Site or Land.

#### 6.7 Environment

In accessing or using the Site or Land, or performing any other activities under this Licence, the Licensee must, and in respect of the obligations in clause 6.7 (a) and (b) must ensure that the Permitted Equipment must:

- (a) comply with all Environmental Laws and the HSE Policies;

- (b) not pollute, contaminate or otherwise damage the environment;
- (c) clean-up any pollution, contamination or damage to the environment arising out of, or in any way in connection with, the Licensee's activities;
- (d) ensure that its Personnel and any Approved Contractor comply with the requirements referred to in this clause 6.7; and
- (e) not damage the Land, the Site, the Facility or any property, improvement or equipment thereon and must promptly repair any damage caused at its own cost

#### 6.8 Compliance with law

The Licensee must, and must ensure that its Personnel and any Approved Contractor working on its behalf, comply with the terms of this Licence, all Laws, all requirements of any Government Agencies and all applicable standards when exercising its rights to:

- (a) access and use the Land, Site and Facility; and
- (b) install, access, use, maintain and operate the Permitted Equipment,

under this Licence.

#### 7. ACCESS TO THE SITE

##### 7.1 Notice to **nbn**

Prior to accessing the Site, the Licensee must provide to **nbn**:

- (a) as much prior notice as is practicable in the circumstances of the proposed access to the Site and in no circumstance less than 2 Business Days' notice, except in the case of an emergency, and
- (b) details of the reason for the proposed Site access and the activities that the Licensee (or its Personnel or Approved Contractor) propose to undertake while on Site.

##### 7.2 **nbn** Operational Procedures

The Licensee must, at its cost, comply with **nbn** Operational Procedures during the Term of this Licence.

##### 7.3 **nbn** directions

The Licensee must, at its own cost, comply with all reasonable directions given by **nbn** in relation to this Licence.

##### 7.4 Contact person

- (a) **nbn** and the Licensee must each nominate a contact person for matters relating to access to the Site and technical matters relating to the Permitted Equipment, Facility or Site. The relevant contact persons, as at the Licence Start Date, are specified on the Cover Page.
- (b) A party may, at any time, change its contact person by giving written notice to the other party.

## 8. MAKE READY WORKS

### 8.1 General

- (a) Unless otherwise agreed, the Licensee will be responsible for undertaking all Make Ready Work at its costs, including:
- (i) the doing of all things required by any applicable Laws;
  - (ii) any necessary structural analysis and structural modification of a Facility required for the Licensee to install any Permitted Equipment on the Facility or Site; and
  - (iii) having received the prior written approval of **nbn**, to construct additional facilities if required, (each, and together, the **Make Ready Work**).
- (b) **nbn** will co-operate and provide assistance reasonably requested by the Licensee to enable it to undertake Make Ready Work or to do anything required by applicable Laws in respect of Make Ready Work.
- (c) In carrying out Make Ready Work, the Licensee must:
- (i) ensure that the work is carried out in accordance with the approved Design and Construction Plan including, so far as practicable, the construction timetable forming part of the Design and Construction Plan;
  - (ii) co-ordinate with **nbn** and any third party which has Equipment installed at the Site to ensure that the work is carried out at times which cause the least disruption to those parties;
  - (iii) notify **nbn** of any delays which the Licensee anticipates as soon as practicable after becoming aware that such delays will occur;
  - (iv) comply with Site requirements notified by **nbn** including without limit under clause 6.2; and
  - (v) notify **nbn** as soon as practicable of completion of the Make Ready Work.
- (d) Make Ready Work may only be undertaken by the Licensee's Personnel or Approved Contractors who are suitably qualified and suitably insured to perform that Make Ready Work.
- (e) If **nbn**, acting reasonably, requests the Licensee to cease using the Licensee's Personnel or an Approved Contractor, the Licensee must cease using that Personnel or Approved Contractor immediately. For the avoidance of doubt, it will be reasonable for **nbn** to make such a request if **nbn** believes, or suspects, that the Licensee's Personnel or an Approved Contractor has failed to comply with **nbn**'s standards, policies and procedures including the

Security Requirements and Policies or best practice requirements in respect of work, health and safety.

- (f) Within 15 Business Days of completion of the Make Ready Work, the Licensee must provide to **nbn** all documentation in relation to the Make Ready Work, including:
- (i) all documentation that enables **nbn** to comply with its EME reporting obligations; and
  - (ii) all As-Built Drawings.

### 8.2 Ownership of Make Ready Work

Unless the parties agree otherwise, **nbn** will retain ownership of the Facility and will own any Make Ready Work undertaken at the Site.

## 9. REMOVAL AND RELOCATION OF PERMITTED EQUIPMENT

### 9.1 Emergencies

- (a) In the case of an emergency involving a threat to, or actual impact on, health, safety, property or continuity of service (including Interference), requiring the movement, removal or disconnection of the Permitted Equipment from the Facility or Site, **nbn** may make the Site safe and move, remove or disconnect the Permitted Equipment to the extent necessary (at **nbn**'s sole discretion) to address the threat or impact.
- (b) Where **nbn** moves, removes or disconnects the Permitted Equipment in accordance with clause 9.1(a):
- (i) **nbn** will notify the Licensee as soon as reasonably practicable of the emergency and the action taken by **nbn**; and
  - (ii) if the threat or impact has been caused by an act or omission of the Licensee, its Personnel or any Approved Contractor, the Licensee must, on demand, reimburse **nbn** for all costs incurred by **nbn** in making the Site safe and moving, removing or disconnecting the Permitted Equipment.
- (c) When **nbn** notifies the Licensee that the emergency no longer prevails, the Licensee may, at its cost, reconnect the Permitted Equipment at the Position(s) or such other position(s) on the Site as otherwise directed by **nbn**.

### 9.2 Site use maximisation

- (a) **nbn** may, on 30 Business Days' written notice, require the Licensee to relocate the Permitted Equipment to an alternative position (or positions) on the Site that (in **nbn**'s opinion) offer the Licensee comparable performance, suitability and safety as the Position.
- (b) Within 10 Business Days of receipt of a notice by **nbn** under clause 9.2(a), the

Licensee must advise **nbn** in writing whether it will

relocate the Permitted Equipment in accordance with the notice at its own cost.

- (c) If the Licensee does not comply with clause 9.2(b), the Licensee will be deemed to have consented to **nbn** relocating the Permitted Equipment in accordance with **nbn**'s notice under clause 9.2(a) at the Licensee's cost and on demand, reimburse **nbn** for all reasonable costs incurred by **nbn** in connection with the relocation of the Permitted Equipment in accordance with the notice given under clause 9.2(a).

## 10. SWITCHING OFF PERMITTED EQUIPMENT

### 10.1 Emergencies

- (a) Where:
- (i) there is an emergency involving a threat to, or actual impact on, health, safety, property or continuity of service (including Interference); or
- (ii) the Licensee fails to comply with clause 6.1(b),
- nbn** may switch off the Permitted Equipment where necessary (in **nbn**'s sole discretion) to address the threat or impact.
- (b) Where **nbn** switches off the Permitted Equipment in accordance with clause 10.1(a):
- (i) **nbn** will notify the Licensee as soon as reasonably practicable and use its reasonable endeavours to switch on the Permitted Equipment as soon as it is safe to do so; and
- (ii) where clause 10.1(a)(i) applies, if the threat or impact has been caused by an act, omission or default of the Licensee, its Personnel or any Approved Contractor, the Licensee must, on demand, reimburse **nbn** for any costs incurred by **nbn** in switching off and switching on the Permitted Equipment.

### 10.2 Non-emergencies

**nbn** may require the Permitted Equipment to be switched off:

- (a) to undertake work on the Facility or the Site; or
- (b) to allow another person to access the Facility or the Site for the purpose of installing or maintaining Equipment on the Facility or Site; or
- (c) if the Licensee fails to comply with its obligations under this Licence.

In such cases, **nbn** will, to the extent practicable having regard to the nature of the relevant work or access required, provide the Licensee with reasonable prior notice of such work being

undertaken, including an estimate of when **nbn** proposes to switch on the Permitted Equipment. **nbn** will use all reasonable endeavours to minimise the duration of any such switch off. The Licensee agrees to comply with **nbn**'s notice in this clause 10.2 and switch off the Permitted Equipment during the relevant period required by **nbn**.

## 11. POST INSTALLATION

### 11.1 Post Installation Inspection

- (a) The Licensee must notify **nbn** of completion of the installation of the Permitted Equipment as soon as practicable, but in any event, no later than 2 Business Days after completion of the installation.
- (b) **nbn** may, at its sole discretion, undertake an inspection ("**Installation Inspection**") of the installed Permitted Equipment to confirm it and the Permitted Equipment complies with this Licence.
- (c) The Licensee must provide **nbn** with all reasonable assistance to carry out an Installation Inspection.
- (d) On completion of an Installation Inspection, **nbn** will notify the Licensee that either:
- (i) the Licensee is permitted to switch on the Permitted Equipment; or
- (ii) the Licensee must take further action so that the installation of the Permitted Equipment or the Permitted Equipment itself complies with this Licence.
- (e) If **nbn** gives the Licensee a notice under clause 11.1(d)(ii), the Licensee must promptly undertake the further action required and notify **nbn** when it is complete so that **nbn** may conduct a further Installation Inspection.
- (f) The Licensee is not entitled to operate or switch on any Permitted Equipment installed on the Site until such time **nbn** notifies the Licensee in accordance with clause 11.1(d)(i).
- (g) A notification provided by **nbn** under this clause 11 or otherwise provided under this Licence following an Installation Inspection or otherwise in relation to the Permitted Equipment shall, to the extent permitted by Law, not constitute a warranty or representation by **nbn** that the Permitted Equipment or its installation has complied with any particular standard, is fit for purpose or compliant with any Laws or approvals of any Government Agency and, to the fullest extent permitted at law, the Licensee releases **nbn** from any Claims arising in this respect.

## 12. LICENSEE PROPERTY

- (a) Despite the extent of any affixation but subject to clause 8.2, the Permitted Equipment and all other fixtures, fittings, plant and other items brought onto or erected on the Land by or on behalf of the

Licensee, at all times remain the absolute property of the Licensee.

- (b) The Licensee must properly ensure that any Permitted Equipment is protected against lightning.

### 13. ELECTRICITY SUPPLY

- (a) Unless otherwise agreed by the parties in writing, the Licensee must make its own arrangements for electricity supply at its own cost, including, but not limited to, its own electricity feed, electricity meter(s) and associated electricity infrastructure.
- (b) Where **nbn** determines (in its absolute discretion) that the electricity arrangements provided for by the Licensee are inadequate, **nbn** may require the Licensee to make such changes to its electricity arrangements (including upgrading its power supply), and the Licensee must comply with such requirement at its own cost.

### 14. TERMINATION

#### 14.1 Termination for convenience

Either party may at any time terminate this Licence for convenience during the Term by giving the other party at least 12 months written notice. If **nbn** terminates this Licence pursuant to this clause 14.1, **nbn's** sole liability will be to refund any Licence Fee paid by the Licensee in respect of, and prorated for, the period from the date of termination to the next anniversary of the Licence Start Date.

#### 14.2 Insolvency Events

Notwithstanding any other provision in this Licence, either party may immediately terminate this Licence by giving written notice to the other party where an Insolvency Event occurs in respect of the other party.

#### 14.3 **nbn** additional rights to terminate

Without limiting **nbn's** rights under clauses 14.1 or 14.2, **nbn** may immediately terminate this Licence by written notice to the Licensee:

- (a) if the Licensee does not pay the Licence Fee or any other money payable under this Licence within 7 days of the due date, whether demanded or not by **nbn**;
- (b) if the Licensee breaches any obligation under this Licence which is capable of remedy and does not remedy that breach within 14 days of receipt of a written notice from **nbn** specifying the breach and requiring it to be remedied;
- (c) if **nbn** notifies the Licensee in accordance with clause 6.1(b) that Interference is being caused by the Licensee and the Licensee does not remedy that Interference within 2 Business Days of receiving that notice;
- (d) if the Licensee commits a breach of this Licence which is incapable of remedy;
- (e) if termination is required by Law;
- (f) the Licensee exercises its rights or obligations under the Licence in contravention of the purpose for which the

Licence is granted as specified in clause 4.1;

- (g) if the Licensee ceases to be an Eligible Person;
- (h) the giving of access to the Site or Facility would be inconsistent with a limitation or restriction imposed under section 19H(2) of the **NBN** Companies Act; or
- (i) it becomes unlawful for either party to perform or comply with its obligations or exercise its rights under this Licence.

#### 14.4 Superior Tenure

Where there is a Superior Tenure, this Licence will automatically terminate where:

- (a) **nbn's** right to occupy or use the Site or the Land under its Superior Tenure is terminated; or
- (b) the Superior Tenure expires at the end of the Superior Tenure term and is not extended or **nbn** does not obtain equivalent tenure rights to the Site or Land.

#### 14.5 Effect on rights or liabilities

Termination of this Licence does not affect the rights or liabilities of the parties in relation to any cause of action accruing prior to termination.

#### 14.6 Licensee's obligations on termination or expiry

- (a) The Licensee must:
  - (i) prior to the expiry of the Term of this Licence;
  - (ii) prior to the termination date of this Licence in accordance with clause 14.1 (or such other date as **nbn** and the Licensee agree in writing); or
  - (iii) immediately (and in accordance with any timeframes notified by **nbn**) where this Licence is terminated under clause 14.2 or 14.3,

at its cost:

- (iv) remove the Permitted Equipment from the Site and all loose material and debris and:
  - (A) disconnect the electricity supply and make safe those connections; and
  - (B) make good any damage caused by the removal of the Permitted Equipment from the Site.
- (v) reinstate the Site to the same standard, style and condition which existed prior to the installation of the Permitted Equipment (fair wear and tear excepted). For the avoidance of doubt, the Licensee is not required to remove any Make Ready Works except where directed by **nbn** in writing to do so; and



- (vi) leave the Site in a clean and safe condition.
- (b) If this Licence terminates in accordance with clauses 14.1, 14.2 or 14.3 or expires, and the Licensee's Permitted Equipment or any part thereof remains on Site or the Land after the termination or expiry date, the Licensee must continue paying **nbn**, on a pro-rata daily basis, the Licence Fee payable under this Licence immediately prior to such termination or expiration, until the date **nbn** reasonably considers that the requirements of clause 14.6(a)(iv)-(vi) have been satisfied.
- (c) For the avoidance of doubt, clause 14.6(c) is without limitation to **nbn**'s rights under clause 14.6(d) or under any applicable Laws.
- (d) In the event that **nbn** considers that the Licensee has failed to comply with clause 14.6(a), **nbn** may perform all works and do all things that it considers to be reasonably necessary to ensure that the requirements of clauses 14.6(a)(iii)-(v) are satisfied.
- (e) The Licensee must:
  - (i) on demand, reimburse **nbn** for all reasonable costs incurred by **nbn**; and
  - (ii) indemnify **nbn** from any Claim by the Licensee (or a third party) against **nbn**,
 in connection with the exercise of **nbn**'s rights under clause 14.6(c).
- (f) This clause 14.6 survives termination of this Licence. For the purposes of clause 14.6(b), such other clauses in this Licence intended to continue during the period referred in that clause will continue to apply despite the termination of this Licence.

#### 14.7 Licence Fee abatement

- (a) If the Site is damaged or destroyed or if there is interruption to access to the Site so as to render the Site or any part of the Site wholly or substantially unfit for the occupation or use of the Licensee or inaccessible by any means of access, then except to the extent that such damage or destruction is caused by any act or omission or default of the Licensee or its Personnel or Approved Contractors, the Licence Fee will abate in proportion to the extent to which the Licensee is inhibited from carrying on the use permitted by this Licence from the date upon which the destruction or damage occurs until the earlier of the date upon which it is repaired and the date of termination of this Licence pursuant to this clause 14.
- (b) If there is a dispute between the parties as to the proportion of the Licence Fee to be abated pursuant to clause 14.7(a) which is not resolved within 15 Business Days after notice by one party to the other of the nature of the dispute then:

- (i) the dispute may be referred by either party for determination by an expert who is an appropriate practising professional appointed at the request of either party ("**Expert**"), by:
  - (A) the President of the professional body most appropriate to determine the dispute or, if the parties are unable to agree on the appropriate body, the President for the time being of the Law Society of the Jurisdiction; or
  - (B) if there is no such body in existence at the time of the request, the President for the time being of an equivalent body;
- (ii) each party may make a submission either orally or in writing to the Expert within 15 Business Days after that appointment;
- (iii) the Expert must, in making a determination:
  - (A) act as an expert and not as an arbitrator;
  - (B) consider any submission made to it by a party; and
  - (C) provide the parties with a written statement of reasons for the determination.
- (iv) in the absence of manifest error the determination of the Expert is conclusive and binding on the parties;
- (v) the costs of the Expert will be shared equally between the parties unless otherwise determined by the Expert; and
- (vi) if the Expert fails to deliver a determination within 15 Business Days after the last day on which the parties are entitled to make submissions, either party may require the appointment of a further Expert under clause 14.7(b)(i) to determine the dispute.

#### 15. Indemnity

- (a) Subject to clause 15(b), the Licensee must indemnify and keep indemnified **nbn** from and against all:
  - (i) Claims against **nbn**; and
  - (ii) losses, damages, costs and expenses suffered or incurred by **nbn**,

that is caused or contributed to by an act, omission or default of this Licence by the Licensee or its Personnel or Approved

Contractors or the Permitted Equipment or its operation or any transmission to or from the Permitted Equipment.

- (b) **nbn** must take all reasonable steps to minimise the loss, damage, cost and expense it has suffered or incurred or is likely to suffer or incur as a result of any event giving rise to an indemnity under clause 15(a).

## 16. AMENDMENT AND ASSIGNMENT

### 16.1 Amendment

This Licence can only be amended or replaced by another document signed by the parties.

### 16.2 Assignment

- (a) The Licensee must not assign, novate, sublicense or otherwise deal with any of its rights or obligations under this Licence or permit any third party to use or occupy all or any part of the Positions without the prior written consent of **nbn**, which may be given or withheld or given subject to conditions at **nbn**'s absolute discretion.
- (b) The Licensee agrees that:
  - (i) **nbn** may assign, novate or transfer the whole or part of this Licence and its related rights and obligations under this Licence to any other **nbn** Beneficiary, or to any Government Agency, or a Carrier or to the holder of a Nominated Carrier Declaration (as those terms are defined in the *Telecommunications Act 1997* (Cth)) or to a party in conjunction with the sale of the whole or part of **nbn**'s telecommunications network, without the Licensee's consent;
  - (ii) the Licensee will do all things necessary, including completing and executing documents, to give effect to any assignment, novation or transfer; and
  - (iii) **nbn** will cease to be liable to perform its obligations under this Licence which arise, or are liable to be performed, on or after the date of any such assignment, novation or transfer, and the Licensee will release **nbn** from all such obligations.

## 17. MISCELLANEOUS

### 17.1 Risk

The Licensee and its Personnel and Approved Contractors access and use the Site, Facility and the Permitted Equipment at their own risk.

### 17.2 Costs

Each party is responsible for its own legal and other costs, charges and expenses in relation to the preparation, negotiation and completion of this Licence.

### 17.3 Governing law

This Licence is governed by the laws of the Jurisdiction and the Commonwealth of Australia and **nbn** and the Licensee submit to the non-exclusive jurisdiction of the Courts of the Jurisdiction.

### 17.4 Operation of this Licence

- (a) This Licence (including the Agreement) contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.
- (b) Any provision of this Licence which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Licence enforceable, unless this would materially change the intended effect of this Licence.

### 17.5 No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Licence will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. A power or right may only be waived in writing, signed by the party bound by the waiver.

### 17.6 No Merger

The rights and obligations of the parties will not merge on completion of any transaction under this Licence.

### 17.7 Counterparts

If this Licence consists of signed counterparts, each is an original and all of the counterparts together constitute the same Licence.

**Schedule 1**  
**Permitted Equipment**

<b>Equipment</b>	<b>Antenna 1</b>	<b>Antenna 2</b>	<b>Antenna 3</b>	<b>Other 1</b>	<b>Other 2</b>	<b>Other 3</b>
<b>Antenna Type</b>						
<b>Antenna Size</b>						
<b>Antenna Quantity</b>						
<b>Antenna Manufacturer</b>						
<b>Antenna model</b>						
<b>Additional tower mounted equipment (i.e. Radio Units/Amplifiers)</b>						
<b>Azimuth</b>		°	°	°	°	°
<b>Height at antenna centre</b>	m	m	m	m	m	m
<b>Service Type</b>						
<b>Frequency Band</b>						
<b>Total Transmit power (EIRP)</b>						
<b>Number of Feeder cables</b>						
<b>Feeder type and size</b>						
<b>Position</b>						

**Schedule 2**

**Site Plan and Positions**

**EXECUTED** as an agreement.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**Executed** by **NBN Co Limited** ABN 86 136 533 741 by )  
its authorised representatives in the presence of: )

.....  
Authorised representative

.....  
Authorised representative

.....  
Name of authorised representative (print)

.....  
Name of authorised representative (print)

.....  
Title of authorised representative (print)

.....  
Title of authorised representative (print)

.....  
Date:

or

**Signed** for and on behalf of **NBN Co Limited** )  
**ACN 136 533 741** by its attorney under power of )  
attorney dated 19 May 2015 in the presence )  
of: )

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
(Print) Name of Witness

.....  
(Print) Full Name of Attorney

.....  
Position and Tier of Attorney

**EXECUTED** by **[Insert Licensee Name and ABN/ACN/ARBN]** under section 127 of the *Corporations Act 2001* by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Name of Director/Company Secretary

\_\_\_\_\_  
Date

OR

**Signed** for and on behalf of **[Insert Licensee Name and ABN/ACN/ARBN]** by its attorney under power of attorney dated \_\_\_\_\_ )  
in presence of \_\_\_\_\_ )

.....  
Signature of Witness

.....  
(Print) Name of Witness

.....  
Signature of Attorney

.....  
(Print) Full Name of Attorney

.....  
Position and Tier of Attorney