



## Terms and Conditions

**Parties** **NBN Co Limited** ABN 86 136 533 741 ("**nbn**")

The carriage service provider that has made an application using a Service Request that is received by **nbn** in the **nbn**<sup>TM</sup> Service Portal, on behalf of an end-user at a premises in the service area, to connect the premises to a qualifying telecommunications network in order that the carriage service provider can provide qualifying fixed-line carriage services to the end-user at the premises ("**Applicant**")

### Recitals

- A. **nbn** and the Applicant are parties to a Wholesale Broadband Agreement which sets out the terms on which the Applicant may order products from **nbn** and **nbn** will supply those products to the Applicant over the **nbn**<sup>TM</sup> Network.
- B. This Agreement sets out the terms and conditions on which **nbn** will, if it agrees to a relevant request by the Applicant, undertake certain build activities in respect of a premises, in order to enable the provision of eligible services under the WBA at that premises using an **nbn** qualifying fixed line network, in accordance with **nbn**'s obligations as the Statutory Infrastructure Provider for the Service Area in which the premises is located.

### 1. **nbn**'s obligations conditional

- (a) By making an application for **nbn** to connect a Site to the **nbn**<sup>TM</sup> Network that is subsequently accepted by **nbn**, the Applicant agrees to comply with the terms and conditions in this Agreement in relation to that Site.
- (b) Notwithstanding anything else in this Agreement, **nbn** is not required to comply with the terms and conditions in this Agreement if the Applicant fails to comply with any of its obligations under this Agreement.

## 2. **Term**

### 2.1 **Term of this Agreement**

This Agreement commences on the Effective Date and continues until terminated in accordance with its terms (**Term**).

### 3. **Provision of response to the Applicant**

Within 20 Business Days of the Effective Date, **nbn** will notify the Applicant through the **nbn**<sup>TM</sup> Service Portal of the Qualifying Technology **nbn** has determined will be used to connect the Site (subject to section 4.1(c)).

## 4. **Build activities**

### 4.1 **Performing the build**

- (a) **nbn** may conduct a Site Study in respect of the Site.
- (b) **nbn** will perform the **nbn** Activities for the Site in accordance with this Agreement.
- (c) **nbn** may change the Qualifying Technology being used to connect the Site at any time by giving notice to the Applicant through the **nbn**<sup>TM</sup> Service Portal.

### 4.2 **Time**

- (a) **nbn** will, no later than twelve (12) months after the Effective Date, ensure the **nbn** Activities are completed for the Site (**Estimated Completion Date**).
- (b) The Estimated Completion Date for the Site will be extended by a period of time equal to the period of any delay to the **nbn** Activities caused or contributed to by:
  - (i) an act or omission of the Applicant, including a failure of the Applicant to comply with any of its obligations under this Agreement;
  - (ii) a Force Majeure Event; and
  - (iii) an act or omission of a third party (including an act or omission of and Authority or the relevant End User) which is outside of **nbn**'s reasonable control, including (but not limited to), a failure of that third party to grant **nbn** timely access required by **nbn**.
- (c) If there are:
  - (i) any extensions of the Estimated Completion Date for the Site under clause 4.2(b) **nbn** will, as soon as reasonably



practicable, provide the Applicant with an updated Estimated Completion Date for that Site through the **nbn**<sup>TM</sup> Service Portal; or

- (ii) any other delay that **nbn** anticipates may affect the Estimated Completion Date for that Site **nbn** will, as soon as reasonably practicable, notify the Applicant of that delay through the **nbn**<sup>TM</sup> Service Portal.

#### 4.3 Applicant's obligations

The Applicant must:

- (a) provide or procure access for **nbn** to the Site; and
- (b) provide **nbn** with reasonable assistance to carry out the **nbn** Activities; and
- (c) remain a party to a Wholesale Broadband Agreement with **nbn** at all times during the Term.

#### 5. Property Owner / Property Occupier Authority

- (a) **nbn** may request the Applicant to provide a copy of an Owner Authority and / or Occupier Authority (as the case may be).
- (b) The Applicant must within 5 Business Days of a request made under clause 5(a), provide **nbn** a copy of the Owner Authority and / or Occupier Authority (as the case may be).
- (c) If the Applicant fails to provide an Owner Authority and / or an Occupier Authority (as the case may be) in accordance with clause 5(b), **nbn** will not be obliged to proceed with any **nbn** Activities.
- (d) The Applicant indemnifies **nbn** against any loss or claim arising as a result of a failure to obtain an Owner Authority and / or Occupier Authority (as the case may be) or otherwise in relation to a breach by the Applicant of this clause 5.

#### 6. Applicant's Acknowledgements

The Applicant acknowledges:

- (a) **nbn** owns the infrastructure, cables and associated equipment installed (including in or on any part of the Site) in connection with the **nbn** Activities;
- (b) the **nbn** Activities consist only of the design and installation of certain infrastructure required to enable carriage services over the **nbn**<sup>TM</sup>

network to be made available by the Qualifying Technology at the Site through retail service providers; and

- (c) the **nbn** Activities do not include the Connection Processes which are to be conducted for the Site in accordance with the Wholesale Broadband Agreement.

#### 7. Payment

##### 7.1 Payment of Prescribed Fee

In consideration of **nbn** performing the **nbn** Activities, the Applicant must pay the Prescribed Fee in accordance with clause 7

##### 7.2 Method of Payment

- (a) **nbn** may, within 30 Business Days of the date of Completion for that Site, submit to the Applicant through the **nbn**<sup>TM</sup> Service Portal an invoice for payment of the relevant Prescribed Fee payable by the Applicant under this Agreement.
- (b) Each invoice must:
  - (i) contain sufficient information to enable the Applicant to determine the amount payable to **nbn**; and
  - (ii) be in the form of a Tax Invoice which specifies the GST component included and comply with the requirements of the GST Act.
- (c) The Applicant must pay the amount specified in each Tax Invoice by the Due Date.
- (d) The payment of a Tax Invoice by the Applicant must be:
  - (i) paid in accordance with a method identified in the Tax Invoice;
  - (ii) paid without any set-off, counterclaim, withholding or deduction, including on account of any amounts owed to the Applicant by **nbn** or any third party; and
  - (iii) accompanied by sufficient information for **nbn** to identify, process and properly allocate those invoice payments.

##### 7.3 Billing errors and Billing Disputes

- (a) If an invoice omits or miscalculates any amounts payable under this Agreement, **nbn** may issue an additional invoice to the Applicant, adjust an invoice submitted to the



Applicant or issue a credit to the Applicant to recover or refund the omitted or miscalculated amounts if **nbn** does so no later than 6 months after the date of the original invoice.

- (b) If the Applicant, acting reasonably, considers there is an error in the amount set out in an invoice payable by the Applicant under this Agreement, the Applicant must notify **nbn** in writing within 6 months of receipt of the invoice to which the error relates. If the parties cannot resolve the error within 20 Business Days, either party may raise a Dispute.

#### 7.4 GST

- (a) The Prescribed Fee includes GST (where applicable). **nbn** may provide a Tax Invoice to the Applicant no later than 14 days after the date of Completion per clause 9.
- (b) The Applicant must pay all stamp duties, other duties and similar taxes including GST where payable together with any related fees, penalties, fines, interest or statutory charges, in respect of this agreement.

#### 7.5 No Merger

This clause does not merge on completion, expiration or termination of this Agreement.

### 8. Access

#### 8.1 Access to Sites

- (a) Where access is required by **nbn** or its Personnel for a purpose described in clause 8.1(b), the Applicant must:
  - (i) provide **nbn** and its Personnel with safe and timely access to any premises owned, controlled or occupied by the Applicant or any of its Related Bodies Corporate;
  - (ii) ensure that **nbn** and its Personnel are provided with safe and timely access to the premises of relevant Downstream Customers for so long as:
    - A. the relevant premises are owned, controlled or occupied by Downstream Customers, or any of their Related Bodies Corporate; and
    - B. those persons have a contract with Applicant for the supply of a product or service which relies on a Downstream Product as an input.

- (b) The purposes for which access is required under clause 8.1(a) are to:
  - (i) perform the **nbn** Activities; and
  - (ii) exercise any of its rights or perform any of its obligations under and in accordance with this Agreement.
- (c) Each party will procure access for itself and its Personnel to Common Property.
- (d) The Applicant must notify **nbn** as promptly as feasible in the circumstances where the Applicant elects to procure or procures access to Common Property for **nbn** and Personnel of **nbn** either by obtaining the consent of the relevant person or body authorised to give such consent or pursuant to Schedule 3 of the Telecommunications Act.
- (e) Each party will provide reasonable assistance to the other in relation to access to premises for the purposes described in this clause 8.1.

#### 8.2 Other access requirements

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

#### 8.3 Third Party Access Charges

- (a) **nbn** will pay any Third Party Access Charges which **nbn** may incur in accessing the Site in accordance with this clause 8.
- (b) If the Applicant becomes aware that Third Party Access Charges may be imposed upon **nbn** to access the Site:
  - (i) the Applicant must notify the other party as soon as is reasonably practicable, and in any event within 10 Business Days of becoming so aware;



- (ii) **nbn** will not charge the Applicant any Third Party Access Charges the subject of the notification in clause 8.3(a) (b)(i).

## 9. Completion

When **nbn** considers that Completion has been achieved, it will issue a notice to the Applicant evidencing the date of Completion (**Notice of Completion**).

## 10. Intellectual Property

**nbn** will at all times own and retain all rights, title and interest (including Intellectual Property Rights) in and to all **nbn** Material (including modifications of or to it) regardless of whether it is created before, during or after the Effective Date of this Agreement.

## 11. Telecommunications Services

- (a) This Agreement does not constrain **nbn** from offering or supplying telecommunications services over the deployed infrastructure at the Site to any access seekers (as defined in section 152AG of the Competition and Consumer Act 2010 (Cth)) under the terms of supply which **nbn** enters into with those access seekers.
- (b) The End User must enter into separate arrangements with its retail telecommunications service providers in connection with telecommunications services supplied to the End User or other persons at the Sites (including over **nbn**'s telecommunications infrastructure).

## 12. Confidential Information and Data

### 12.1 Disclosure of Confidential Information

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

- (a) the Confidential Information of the other party (**Discloser**) is confidential, and that it will not:
  - (i) use or copy Confidential Information of the Discloser; or
  - (ii) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any person, except as set out in this Agreement;
- (b) Confidential Information of the Applicant may be used by **nbn**:

- (i) for the purposes of undertaking planning, maintenance, construction, provisioning, testing, operations or reconfiguration of the **nbn** infrastructure and equipment;
  - (ii) for the purposes of undertaking the **nbn** Activities;
  - (iii) for the purpose of billing the Applicant;
  - (iv) to exercise its rights or perform its obligations under this Agreement or the Wholesale Broadband Agreement; or
  - (v) for another purpose agreed to by the Applicant;
- (c) Confidential Information of **nbn** may be used by the Applicant:
    - (i) to exercise its rights or perform its obligations under this Agreement;
    - (ii) in order to prepare for supplying Customer Products to Downstream Customers at the Site;
    - (iii) to enable the proposed use of Customer Products by Downstream Customers; or
    - (iv) for another purpose agreed to by **nbn**.
  - (d) Confidential Information of the Discloser may be used and/or disclosed (as the case may be) by the Recipient:
    - (i) to those of its Related Bodies Corporate and its and their Personnel to whom the Confidential Information is reasonably required to be disclosed for the purposes of this Agreement provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential; to any professional person for the purpose of obtaining advice in relation to matters arising out of or in connection with this Agreement, provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;
    - (ii) to an auditor acting for the Recipient to the extent necessary to permit that auditor to perform its audit functions, provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;



- (iii) in connection with legal proceedings, arbitration, expert determination and other dispute resolution mechanisms set out in this Agreement, provided that the Recipient has first given as much notice (in writing) as is reasonably practicable to the Discloser so that the Discloser has an opportunity to protect the confidentiality of its Confidential Information;
  - (iv) as required by law provided that the Recipient has first given as much notice as is reasonably practicable to the Discloser, that the Recipient is required to disclose the Confidential Information so that the Discloser has an opportunity to protect the confidentiality of its Confidential Information;
  - (v) with the written consent of the Discloser provided that prior to disclosing the Confidential Information of the Discloser:
    - A. the Recipient informs the relevant person or persons to whom disclosure is to be made that the information is the Confidential Information of the Discloser; and
    - B. if required by the Discloser as a condition of giving its consent, the Recipient must provide the Discloser with a confidentiality undertaking (which is in a form approved by the Discloser) signed by the person or persons to whom disclosure is to be made;
  - (vi) in accordance with a lawful and binding directive issued by, or where otherwise required by law to, a Regulator or Government Agency, provided that any Confidential Information originally marked by the Discloser as commercial-in-confidence is also marked commercial-in-confidence by the Recipient when making a disclosure under this clause;
  - (vii) if reasonably required to protect the safety of persons or property or the integrity of a telecommunications network or in connection with an emergency;
  - (viii) as required by the listing rules of any stock exchange where the Recipient's securities are listed or quoted;
  - (ix) where **nbn** is the Recipient, to any Shareholder Minister and their respective government departments.
- (e) On demand by the Discloser, the Recipient must return, destroy or delete the Discloser's Confidential Information except to the extent it is impracticable to do so, or necessary to comply with the Recipient's internal governance processes, or any applicable law.

## 12.2 Competing products and services

Notwithstanding anything else in this Agreement, the Applicant must not, and must use reasonable endeavours to ensure that each person to whom it discloses **nbn**'s Confidential Information (where permitted by this Agreement) does not use Confidential Information of **nbn** to order, receive, develop, enhance, market or promote products and services that compete with **nbn**'s products and services.

## 12.3 Data Security

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





- A. Personal Information disclosed or transferred to the first party by the other party in connection with this Agreement; or
- B. the information systems or interfaces of the other party that contain such Personal Information.

- (i) issued by **nbn** to the Applicant, be issued in the **nbn**<sup>TM</sup> Service Portal; and
- (ii) issued by the Applicant to **nbn**, be issued in the **nbn**<sup>TM</sup> Service Portal, except where this Agreement expressly requires the Applicant to provide a notice to **nbn**, including but not limited to the notices referred to in clauses 5(b), 7.3(b), 8.2(a)(i), 12.3(b), 15.3(b), 15.5, 15.6, 16.1(b) and 16.2(a), which must be issued by email to the following email address:

[SIP\\_Team@nbnco.com.au](mailto:SIP_Team@nbnco.com.au)

### 13. Limitation of Liability

- (a) This Agreement, to the extent permitted by law, exhaustively governs all of the liabilities that a party owes to the other party arising from, or in connection with, this Agreement.
- (b) Subject to clause 13(c), the total liability of each Party arising in connection with the subject matter of this Agreement, including a claim:
  - (i) in contract;
  - (ii) in tort (including for negligence);
  - (iii) at common law;
  - (iv) in equity;
  - (v) under statute; or
  - (vi) for rectification or frustration,or otherwise available under the law governing the Agreement, is limited to the Liability Cap.
- (c) The limitation of liability under clause 13(b) shall not apply to:
  - (i) fraud or theft;
  - (ii) any unlawful or wilfully wrongful act, omission or breach of contract of a Party; and
  - (iii) liability out of which by Law the Party liable cannot contract.
- (d) Neither Party is liable to the other Party for Consequential Loss.

### 14. Notices

#### 14.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement must be:

- (a) in writing, in English and duly authorised by the sender;
- (b) in respect of communications:

#### 14.2 When notice taken to be received

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

- (a) if issued through the **nbn**<sup>TM</sup> Service Portal, upon time-stamped update to the relevant Service Request in the **nbn**<sup>TM</sup> Service Portal
- (b) if sent by the Applicant by email as described in clause 14.1(b)(ii), service of the notice is taken to be effected when the sender receives a confirmation of delivery from the recipient,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

### 15. Termination

#### 15.1 nbn's termination rights

**nbn** may terminate this Agreement upon notice to the Applicant:

- (a) if, during the conduct of **nbn** Activities, **nbn** determines that:
  - (i) the Applicant's request for **nbn** to connect the Site does not meet the requirements of section 360P of the Telecommunications Act; or
  - (ii) **nbn** is otherwise not required to connect the relevant premises under section 360P of the Telecommunications Act.
- (b) if an Insolvency Event occurs in relation to the Applicant;



- (c) if the Applicant breaches this Agreement (including not making payments under clause 7) and:
  - (i) that breach is not capable of remedy; or
  - (ii) if the breach is able to be remedied, the Applicant fails to remedy the breach within 30 days of a notice by **nbn** requiring the Applicant to do so.

### 15.2 nbn's termination rights for a Regulatory Event

**nbn** may terminate this Agreement, at any time upon notice to the Applicant if:

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

in which case:

- (c) **nbn** will not have any further obligation to perform the **nbn** Activities affected by such a termination;
- (d) **nbn** will not be liable to the Applicant in respect of any such termination; and
- (e) if this Agreement is terminated under this clause 15.2, then on and from date of termination the Applicant will not be required to make any payments to **nbn** under clause 7 whether or not an invoice has been issued as at the relevant termination date.

### 15.3 Applicant's termination rights

The Applicant may terminate this Agreement upon notice to **nbn** if **nbn** breaches this Agreement and:

- (a) that breach is not capable of remedy; or
- (b) if the breach is able to be remedied, **nbn** fails to remedy the breach within 30 days of a notice by the Applicant requiring **nbn** to do so.

### 15.4 Consequences of termination

- (a) If this Agreement is terminated for any reason, **nbn** does not have any obligation under this Agreement to complete the **nbn** Activities and, to the extent permitted by law, **nbn** will not have any liability to the Applicant whether

under this Agreement or otherwise in connection with the **nbn** Activities not being completed.

- (b) If this Agreement is terminated by **nbn**, the Applicant will not be required to pay the Prescribed Fee for that Site as at the date of termination.

### 15.5 Cancellation by Applicant for convenience

- (a) Subject to clause 15.5(b), at any time prior to Completion in respect of the Site, the Applicant may cancel the connection for that Site for convenience by providing not less than 10 Business Days' notice to **nbn** in writing.
- (b) If the Applicant cancels a connection at the Site pursuant to this clause 15.5 (including where no **nbn** Activities have commenced at the date of that cancellation), the Applicant will not be required to pay the Prescribed Fee for that Site as at the date of cancellation.

### 15.6 Cancellation by Applicant for delay

- (a) If Completion for the Site has not occurred by the date that is 30 Business Days after the Estimated Completion Date (as extended in accordance with clause 4.2(b)), the Applicant may at any time prior to Completion for that Site, cancel the connection for that Site by providing notice to **nbn** in writing.
- (b) If the Applicant cancels a connection at the Site pursuant to this clause 15.6, the Applicant will not be required to pay the Prescribed Fee for that Site as at the date of cancellation.

## 16. Disputes

### 16.1 Notice of Dispute

- (a) Any dispute or difference which arises between **nbn** and the Applicant in respect of any fact, matter or thing arising out of, or in any way in connection with this Agreement (**Dispute**) must be resolved in accordance with this clause 16.
- (b) Where such Dispute arises, either party may give a notice in writing to the other party specifying the Dispute and the position which the party believes is correct (**Notice of Dispute**).
- (c) If a Notice of Dispute is served, a duly authorised representative of each of the Applicant and **nbn** must meet and negotiate with a view to resolving the Dispute.



## 16.2 Arbitration

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

## 16.3 Court Proceedings

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

- (a) expressly permitted under this Agreement;
- (b) an Insolvency Event affects, or is reasonably likely to affect imminently, either **nbn** or the Applicant, and the other party reasonably considers it necessary to commence court proceedings in relation to a Dispute to preserve its position with respect to creditors of the other party;
- (c) **nbn** or the Applicant is seeking to enforce unpaid debts;
- (d) **nbn** or the Applicant is seeking urgent interlocutory relief; or
- (e) the relevant Dispute relates to a failure by **nbn** or the Applicant to comply with clause 7.3 (if applicable) or this clause 16, which is not trivial or immaterial.

## 17. General

### 17.1 Warranties

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

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

### 17.2 Electronic execution

- (a) This Agreement is entered into in accordance with clause 2.1.
- (b) Any document which must, under this Agreement, be executed or signed by a party may be:
  - (i) executed electronically; and
  - (ii) communicated electronically in any manner permitted under clause 14.

### 17.3 Assignment

- (a) Subject to clause 17.3(b), the Applicant may not assign any rights under this Agreement to any other person without the prior written consent of **nbn** (which may be given or withheld in its absolute discretion).
- (b) Any assignment or novation of this Agreement, or any transfer or dealing in any of the rights or benefits under this Agreement (including any deemed transfer of rights) by the Applicant:
  - (i) to effect, or as a result of, any corporate restructure of Applicant or any Related Body Corporate of Applicant that does not change the "ultimate holding company" (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) of Applicant;
  - (ii) as a result of a transfer or issue of any securities listed on any recognised stock or securities exchange; or
  - (iii) to charge or otherwise encumber any of Applicant's assets in the ordinary course of business, including any securitisation of Applicant's receivables (provided Applicant gives prior notice to **nbn** in





writing of the relevant proposed encumbrance),

will not be an assignment, novation, transfer or dealing (or deemed transfer) to which clause 17.3(a) applies.

#### 17.4 Governing Law

This Agreement is governed by and must be construed according to the Laws of New South Wales.

#### 17.5 Severability

Any provision in this Agreement which is invalid or unenforceable:

- (a) is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable; or
- (b) if the provision cannot be read down under clause 17.5(a), is capable of being severed to the extent of the invalidity or unenforceability,

without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

#### 17.6 Entire Agreement

The parties agree that this Agreement constitutes the entire agreement between the parties in respect of the subject matter of this Agreement and supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of this Agreement.

#### 17.7 Waiver

- (a) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

#### 17.8 Further Assurance

Each Party must promptly at its own cost do all things and execute and deliver all further documents (in such form and content reasonably satisfactory to the Parties) required by Law or reasonably requested by the other party to give effect to this Agreement.

#### 17.9 Amendments

The Agreement may only be amended by a document in writing which is signed by all Parties.

#### 17.10 Expenses

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

#### 17.11 Survivorship

Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or expiration of this Agreement and any rights arising on termination or expiration will survive.

### 18. Interpretation

#### 18.1 Definitions

In this Agreement:

**Agreement** means this agreement.

**Authority** means any:

- (a) government agency, department or Minister;
- (b) local government council;
- (c) other municipal, government or statutory authority; and
- (d) court or tribunal with relevant jurisdiction,

but, unless expressly stated, does not include the Applicant or **nbn**.

**Business Day** means any day that:

- (a) is not a Saturday, Sunday or public holiday in New South Wales; and
- (b) does not fall during the period commencing on the Monday before 24 December in any given year and ending on the Friday following 1 January of the following year.

**Common Property** means any real property or part thereof which is owned or managed by a third party strata body, managing corporation or other similar entity, or which is otherwise common to, accessible



by, or shared between, two or more separately owned or occupied Site to which **nbn** may require access.

**Completion** means, for the Site, the stage in the carrying out and completion of the **nbn** Activities when **nbn** considers it has successfully completed the **nbn** Activities.

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

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

whether the information was disclosed:

- (f) orally, in writing or in electronic or machine readable form;
- (g) before on or after the Effective Date; or
- (h) in the course of discussions between the Parties,

in each case which is not in the public domain.

**Connection Processes** means the processes and work required to connect the Site to the **nbn**<sup>TM</sup> network to activate an **nbn**<sup>TM</sup> network-based service.

**Consequential Loss** means any liability or claim suffered or incurred by any person (including under an indemnity) whether arising in contract, tort, under statute or on any other basis in law or equity for:

- (a) loss of profit;
- (b) loss of production;
- (c) loss of goodwill;
- (d) loss of business opportunity; or
- (e) without limiting (a) to (d), losses other than those losses that may fairly and reasonably be considered as naturally flowing from the breach of the Agreement as the probable result of the breach of the Agreement.

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

**Departments** means the Commonwealth Department of Communications and the Commonwealth Department of Finance or the departments of the Shareholder Ministers from time to time.

**Dispute** has the meaning given in clause 16.1(a).

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

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

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

**Due Date** means, for payment of a Prescribed Fee or other amount due under this Agreement, the later of the date identified on a Tax Invoice as the "due date" or the date that is 20 Business Days after the date the invoice was issued.

**Effective Date** means the date on which **nbn** notifies the Applicant that it accepts a request for connection of the Site in accordance with section 360P of the Telecommunications Act.

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

**Estimated Completion Date** has the meaning given in clause 4.1(a).

**Fibre Network** has the meaning given in the Wholesale Broadband Agreement.



**Force Majeure Event** means any occurrence or non-occurrence as a result of which a party is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Agreement and that is beyond the reasonable control of that party, including forces of nature, industrial action and action or inaction by a Government Agency.

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

**GST** includes amounts defined as "GST" under the GST Law and includes amounts payable on account of a notional liability under Division 177 of the GST Act.

**GST Act** means *A New Tax System (Goods and Services) Act 1999* (Cth).

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

**Insolvency Event** means any of the following events occurring:

- (a) a receiver, manager, receiver and manager, trustee, administrator, Controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed in respect of that party or any asset of that party;
- (b) a liquidator or provisional liquidator is appointed in respect of that party or the party is wound up;
- (c) an application is made to court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of appointing a person referred to in paragraphs (a) or (b);
- (d) a scheme of arrangement is entered into (and that application is not withdrawn or dismissed within 10 Business Days);
- (e) a moratorium of any debts of the party, or an official assignment or a composition or an arrangement (formal or informal) with any creditors of that party (or similar proceedings or arrangements by which the assets of the party are subjected to the control of the party's

creditors), is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 10 Business Days;

- (f) the party becomes, admits in writing that it is, is declared to be or is deemed under any applicable Law to be, insolvent or unable to pay its debts;
- (g) any writ of execution, garnishee order, mareva injunction or similar order is made, levied or issued against, or in relation to, any asset of the party; or
- (h) any act is done or event occurs which under the Laws of any country other than Australia has an analogous or similar effect to any of the events in paragraphs (a) to (g).

**Intellectual Property Rights** means all intellectual property rights, including but not limited to, the following rights:

- (a) all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, domain names, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.

**Liability Cap** means \$2,700.



**nbn Activities** means, for the Site, the design and installation of certain infrastructure, at **nbn**'s discretion, required for qualifying carriage services over the **nbn**<sup>TM</sup> network to be made available by the Qualifying Technology at that Site through retail service providers and does not include the Connection Processes.

**nbn Material** means all material (including modifications of or to those materials) in which **nbn** owns the Intellectual Property Rights and which is used or required to be provided as part of the **nbn** Activities or under or in accordance with the Agreement.

**nbn**<sup>TM</sup> **Service Portal** has the meaning given to that term in WBA.

**Notice of Completion** has the meaning given in clause 9.

**Notice of Dispute** has the meaning given in clause 16.1(b).

**Occupier Authority** means written permission from the occupier of the Site for **nbn** personnel to enter the Site and conduct the **nbn** Activities.

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

**Owner Authority** means written permission from the owner of the Site for **nbn** personnel to enter the Site and conduct the **nbn** Activities

**Party** means each of **nbn** and the Applicant.

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

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

**Prescribed Fee** means \$1 payable by the Applicant in accordance with this Agreement only on demand by **nbn**.

**Qualifying Technology** means the technology determined by **nbn** in accordance with its obligations under Part 19 of the Telecommunications Act which will be used to provide the connection of the Site to a

qualifying telecommunications network (as defined in the Telecommunications Act).

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

- (a) the Commonwealth government minister responsible for administering Part XIB and/or Part XIC of the *Competition and Consumer Act 2010* (Cth);
- (b) the Commonwealth government minister responsible for administering the *Telecommunications Act 1997* (Cth);
- (c) the Australian Competition and Consumer Commission;
- (d) the Australian Communications and Media Authority;
- (e) the Telecommunications Industry Ombudsman;
- (f) any other Commonwealth government minister, Government Agency or parliamentary committee or parliamentary body whose activities impact on **nbn**'s business.

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

**Service Area** has the meaning given in the Telecommunications Act.

**Service Request** has the meaning given to that term in WBA.

**Shareholder Minister** means the Commonwealth Minister for Communications and the Commonwealth Minister for Finance or the persons acting in those positions from time to time or the Commonwealth Ministers responsible for **nbn**.

**Site** means the site specified by the Applicant in the relevant application made by in Applicant in the **nbn**<sup>TM</sup> Service Portal.

**Site Study** means an assessment by **nbn** following a site visit in relation to the Site regarding the costs required to perform the **nbn** Activities.

**Statutory Infrastructure Provider** has the meaning given in the Telecommunications Act.



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

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

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

**Wholesale Broadband Agreement (WBA)** means the agreement between **nbn** and retail service providers published on **nbn**'s website at <https://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba.html>, as amended from time to time.

## 18.2 Interpretation principles

In this Agreement

- (a) reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a person includes a body corporate;
  - (iv) a Party includes the Party's executors, administrators, successors and permitted assigns;
  - (v) a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
  - (vi) this Agreement is to this Agreement as varied, novated, ratified or replaced from time to time;
  - (vii) a party, clause, schedule, exhibit, attachment or annexure is a reference to

a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;

- (viii) an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (obsolete body), means the agency or body which performs most closely the functions of the obsolete body;
- (ix) a statute includes any regulations or other instruments made under it (delegated legislation) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements; and
- (x) \$ or dollar is to Australian currency;
- (b) "including" and similar expressions are not words of limitation;
- (c) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (d) headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation; and
- (e) this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Agreement.

## 18.3 Business Day

If the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day.