

nbn[®] FibreOne Agreement

nbn co limited



nbn[®] FibreOne Agreement

Version	Description	Effective Date
1.0	Issued on 16 September 2026	Execution Date

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Environment

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

Parties

nbn co limited (ABN 86 136 533 741) of Tower 5, Level 14, 727 Collins Street, Docklands, VIC, 3008 (nbn)

[Insert full legal name of MSP] (ABN [insert ABN]) of [insert registered address of MSP] (MSP or Managed Service Provider)

Background

- A. This Agreement sets out the terms on which:
- MSP may order nbn[®] FibreOne from nbn in respect of Eligible Estates, and nbn will supply nbn[®] FibreOne to MSP over nbn[®] FibreOne Infrastructure; and
 - MSP will acquire nbn[®] FibreOne from nbn in respect of Eligible Estates and use nbn[®] FibreOne as an input to MSP's supply of the MSP Product to End Users in relation to those Eligible Estates.
- B. The parties recognise the importance of ensuring Eligible Estates have continued access to functionality comparable to that of the MSP Product, and acknowledge the need to cooperate to ensure continuity in the event of early termination of this Agreement by either party.
- C. MSP acknowledges if nbn terminates this Agreement early for a material breach or MSP seeks to terminate this Agreement early, MSP will be required to provide nbn with a proposal for the continued supply of a replacement to the MSP Product to End Users at the affected Eligible Estates (in accordance with clause 23).

Agreement

1. Product

- 1.1 nbn[®] FibreOne is a product comprising the following elements in respect of an Eligible Estate to which nbn supplies nbn[®] FibreOne to MSP:
- (a) the grant by nbn to MSP of non-exclusive limited access to nbn[®] FibreOne Infrastructure at locations specified by nbn; and
 - (b) the carriage by nbn of the MSP Product Communications, as transmitted by MSP via nbn[®] FibreOne Infrastructure, between CXCs and CXRs at that Eligible Estate.
- 1.2 MSP Product Communications comprise any Integrated Communications carried by the MSP Product including any Common Area Wi-Fi but excluding all other Broadband Traffic.
- 1.3 Further details of nbn[®] FibreOne are set out in Schedule 2 and Annexure 1.
- 1.4 nbn will grant facilities access to MSP exclusively to the extent required for MSP to acquire nbn[®] FibreOne, under and subject to Appendix 1.
- 1.5 MSP must supply all network elements required for the supply of MSP Product except for the network

elements set out in clauses 1.1 and 1.4.

- 1.6 Without limiting clause 1.5, MSP must supply all network elements:
- (a) upstream of the CXG; and
 - (b) downstream of the CXG (including wireless or other network equipment for the purposes of providing Common Area Wi-Fi).
- 1.7 Where nbn supplies nbn[®] FibreOne to MSP in respect of an Eligible Estate, MSP may only use nbn[®] FibreOne to supply the MSP Product within that Eligible Estate and perform such other activities as are contemplated by this Agreement.
- 1.8 MSP must self supply, or separately obtain from third parties, any facilities access required to perform its obligations under this Agreement except to the extent granted under Schedule 3.
- 1.9 For clarity, nbn FibreOne does not provide, and is not designed to support, carriage beyond the Site for an Eligible Estate.
- 1.10 MSP must not use nbn FibreOne:
- (a) to carry Broadband Traffic other than Common Area Wi-Fi by means of the MSP Product;
 - (b) to support Data Aggregation by means of the MSP Product;
 - (c) to offer or supply broadband access or other general connectivity for End User communications beyond the Site for an Eligible Estate, except to the extent expressly permitted under this Agreement for Common Area Wi-Fi; or
 - (d) in any other way which nbn determines, acting reasonably, to be inappropriate or excessive and notifies to MSP in writing, such prohibition taking effect on not less than 20 Business Days' written notice as has been notified by nbn to MSP from time to time.

2. Preconditions to supply

- 2.1 As a pre-condition to nbn supplying nbn[®] FibreOne to MSP, MSP must participate in and successfully complete all on-boarding activities and pass all capability and verification testing reasonably required by nbn from time to time, including to ensure:
- (a) the safety of MSP Equipment and MSP Platforms and their compatibility with the nbn[®] Network and nbn[®] Platform;
 - (b) MSP's ability to supply the MSP Product within relevant Eligible Estates; and
 - (c) MSP's ability to perform its obligations under this Agreement, including in a manner that ensures the safety and operation of the nbn[®] Network and nbn[®] Platform.
- 2.2 MSP warrants to nbn that, throughout the period in which nbn supplies nbn[®] FibreOne to MSP, MSP:
- (a) is and will remain a Carrier, Carriage Service Provider, Content Service Provider and/or a Specified Utility engaging in a related Specified Activity; and
 - (b) is of good financial standing and creditworthiness, having regard to all relevant circumstances.

(the **Supply Conditions**).

- 2.3 nbn is not obliged to supply or continue to supply nbn[®] FibreOne to MSP if MSP fails to:
- (a) comply with the Supply Conditions; or
 - (b) supply the MSP Product in accordance with this Agreement in respect of any Eligible Estate.
- 2.4 MSP must notify nbn within 2 Business Days of the time MSP no longer complies with any Supply Condition.

3. Acceptance Tests

- 3.1 MSP must:
- (a) conduct Acceptance Tests prior to the installation and activation of any new form of MSP Equipment which has not been previously tested and approved by nbn; and
 - (b) rectify any matter which causes any Acceptance Tests to fail.
- 3.2 Prior to entering into any agreement or arrangement with any third party to supply the MSP Product in respect of an Eligible Estate, MSP must:
- (a) ensure the compatibility of the MSP Equipment which will be used in conjunction with nbn[®] FibreOne Infrastructure to supply the MSP Product (including through any testing requirements notified by nbn from time to time, which may include testing at specified facilities notified by nbn);
 - (b) obtain approval from nbn (which is not to be unreasonably withheld) for the MSP Product which will be supplied using nbn[®] FibreOne; and
 - (c) obtain approval from nbn (which is not to be unreasonably withheld) for any other MSP commitment or obligation in such agreement or arrangement which relies on any supply by nbn under this Agreement.

4. Ordering

- 4.1 From time to time throughout the Term, nbn will:
- (a) make available to MSP a list of Eligible Estates in respect of which nbn has installed or plans to install nbn[®] FibreOne Infrastructure; and
 - (b) subject to clause 4.2, include MSP as a potential provider of services powered by nbn[®] FibreOne at Eligible Estates, in lists made available to developers of Eligible Estates on the nbn public website.
- 4.2 To be included in a list under clause 4.1(b), the MSP must satisfy, and continue to satisfy, the pre-conditions for supply in clause 2.1 and the Supply Conditions in clause 2.2 and comply with nbn's reasonable processes and information requests for the lists.
- 4.3 MSP may place an order for nbn[®] FibreOne in respect of any listed Eligible Estate by submitting to

nbn, using such means as nbn may specify from time to time:

- (a) a Delivery Plan (including any facilities access that MSP requests from nbn under Schedule 3); and
- (b) a Developer Authorisation.

4.4 A Delivery Plan and Developer Authorisation submitted in accordance with this clause 4 constitutes an offer from MSP to acquire nbn[®] FibreOne in respect of an identified Eligible Estate, which is capable of acceptance by nbn.

4.5 As part of processing an order for nbn[®] FibreOne in respect of an identified Eligible Estate, nbn may seek information about, and clarifications and amendments to, the Delivery Plan.

4.6 nbn will accept or reject an order for nbn[®] FibreOne in respect of an Eligible Estate by written notice to MSP.

4.7 nbn may reject an order for nbn[®] FibreOne in respect of an Eligible Estate:

- (a) if nbn determines, on reasonable grounds, that MSP:
 - (i) has failed to submit a valid Delivery Plan and Developer Authorisation in respect of the order, including because a submitted Delivery Plan or Developer Authorisation fails to comply with any part of this Agreement; or
 - (ii) has failed, or is reasonably likely to fail, to comply with any part of this Agreement or the Delivery Plan;
- (b) if nbn declines, on reasonable grounds, to supply any facilities access that is requested in the Delivery Plan; or
- (c) in any other circumstances, if nbn determines that:
 - (i) it will be unable to supply the order; and
 - (ii) it is consistent with nbn's statutory obligations to supply nbn[®] FibreOne.

4.8 If nbn accepts an order for nbn[®] FibreOne in respect of an Eligible Estate, then:

- (a) nbn will supply nbn[®] FibreOne to MSP in respect of that Eligible Estate; and
- (b) MSP will promptly commence installation and activation activities for the supply of the MSP Product at that Eligible Estate in accordance with clause 5.

4.9 Notwithstanding clause 4.8, if nbn accepts an order for nbn[®] FibreOne in respect of an Eligible Estate, it may subsequently reject the order at any time up until it begins supplying nbn[®] FibreOne to MSP if nbn determines, acting reasonably, that:

- (a) an Acceptance Test conducted under clause 3 has failed;
- (b) MSP has failed to comply with its Delivery Plan in respect of the Eligible Estate, including by failing to take all steps necessary to install and activate required MSP Equipment;
- (c) MSP is preparing to supply MSP Products other than in accordance with its Delivery Plan in respect of the Eligible Estate; or

- (d) nbn is no longer able to supply nbn[®] FibreOne to MSP because nbn[®] FibreOne Infrastructure installation and make ready cannot be completed or MSP's Developer Authorisation has been revoked.

5. Installation and Activation

- 5.1 This clause 5 applies in respect of each Eligible Estate for which nbn accepts a nbn[®] FibreOne order under clause 4.
- 5.2 MSP must, at its own cost, install, activate and test the MSP Equipment in accordance with:
 - (a) its Delivery Plan, subject to any amendments agreed with nbn from time to time; and
 - (b) any reasonable directions given by nbn from time to time.
- 5.3 MSP must ensure all MSP Equipment is clearly marked as such in accordance with all reasonable directions given by nbn from time to time.
- 5.4 If a Delivery Plan includes the supply of nbn[®] FibreOne to serve MSP Equipment or End User Equipment located in outdoor or non-weather protected areas:
 - (a) nbn will install a fibre cable to a segment joint location in a pit specified in the Delivery Plan;
 - (b) nbn will install an nbn customer connecting cable with either an 8 or 15 metre length, connectorised at both ends;
 - (c) nbn will provide the MSP with the number of CXRs specified in the Delivery Plan and leave the customer connecting cable coiled in the specified pit;
 - (d) the MSP must then install the CXR in a suitable weather-protected location and run and connect the customer connecting cable to it.
- 5.5 MSP acknowledges that the installation of the nbn[®] FibreOne Infrastructure in respect of an Eligible Estate is subject to separate arrangements between nbn and the relevant developer. Any delay will delay nbn's supply of nbn[®] FibreOne to MSP.
- 5.6 nbn is not responsible for the supply, installation, operation, maintenance, repair, assurance or support of any Internal Cabling or End User Equipment.

6. Operations, Assurance and Maintenance

- 6.1 Following successful installation and activation of MSP Equipment and nbn[®] FibreOne Infrastructure in respect of an Eligible Estate, and throughout the Term, MSP must supply the MSP Product to End Users at that Eligible Estate in accordance with its Delivery Plan.
- 6.2 MSP must ensure that the MSP Product only transmits MSP Product Communications via the nbn[®] FibreOne Infrastructure:
 - (a) through injection of the communications at CXCs and CXRs for the Eligible Estate as notified by nbn;
 - (b) using GPON ONT and OLT equipment operating at a nominal 1490 nanometre wavelength for downstream and a nominal 1310 nanometre wavelength for upstream (and not, for clarity,

transmitting or receiving using XGS-PON or other PON standards);

- (c) in accordance with each technical requirement in Schedule 2 and Annexure 1;
- (d) otherwise in accordance with its Delivery Plan and this Agreement; and
- (e) in accordance with any reasonable directions given by nbn from time to time.

- 6.3 MSP must, at its own cost, maintain all MSP Equipment and MSP Platforms in a good, proper, and operable condition and state of repair in accordance with all applicable laws and this Agreement.
- 6.4 MSP must promptly give nbn written notice of any damage to any lines, civil works, MSP Equipment, the nbn® Network or nbn® Platform, or of any other maintenance issue of which MSP becomes aware.
- 6.5 MSP is responsible for managing all End User interactions regarding any matter in connection with this Agreement, including the MSP Product, nbn® FibreOne, nbn® FibreOne Infrastructure, MSP Equipment, Internal Cabling and End User Equipment.
- 6.6 If MSP identifies a fault which is affecting, or which has the potential to affect, the supply of the MSP Product, MSP must take the following actions, as applicable:
- (a) in relation to any fault in the nbn® FibreOne Infrastructure, nbn® FibreOne or any other matter or circumstance within nbn's control or responsibility, promptly notify nbn and provide nbn with a status report and diagnostics for the associated MSP Equipment;
 - (b) in relation to any fault with an end user's broadband service, promptly refer affected end users to their broadband access service providers;
 - (c) in relation to any fault with an end user's television service supplied using Fibre TV, promptly refer affected end users to their Fibre TV provider;
 - (d) in relation to any fault with the MSP Product keep nbn updated in relation to fault investigation and rectification to allow nbn to monitor impacts on nbn® FibreOne or any other nbn products and services supplied in connection with the Eligible Estate; and
 - (e) in relation to any fault in End User Equipment or Internal Cabling that MSP will not investigate and rectify, promptly refer affected end users to a suitably qualified and registered technician.
- 6.7 nbn will use reasonable endeavours to rectify any fault affecting its supply of nbn® FibreOne to MSP.
- 6.8 MSP must:
- (a) procure access for nbn to any premises or area containing MSP Equipment or End User Equipment as required by nbn in connection with operations, assurance and maintenance of nbn® FibreOne Infrastructure or the nbn® Network, nbn® Platform or any other network, platforms, systems, equipment or facilities of nbn; and
 - (b) provide nbn such assistance as:
 - (i) is required by any operations manual provided by nbn, as updated from time to time; and

- (ii) otherwise reasonably requested by nbn in connection with its obligations under clause 6.7.

- 6.9 nbn may interrupt the supply of nbn® FibreOne at any time if nbn determines that such interruption is necessary or desirable to respond to or avoid any suspected or confirmed cyber security incident or attack, rectify a fault in, upgrade, maintain or reconfigure any product or service, the nbn® Network, nbn® Platform or any other networks, platforms, systems, equipment or facilities of nbn.
- 6.10 nbn will give MSP as much notice of an interruption under clause 6.9 as is reasonably practicable in the circumstances.
- 6.11 MSP must ensure that it has and maintains all resources necessary to comply with this clause 6 in a manner that:
- (a) complies with any service standards notified by nbn from time to time; and
 - (b) does not adversely affect the reputation of nbn, the nbn® Network or any nbn® product or service.
- 6.12 Unless otherwise notified by nbn, MSP must keep nbn informed of all assurance and maintenance activities in connection with this Agreement.
- 6.13 nbn may at any time and at nbn's cost, acting reasonably, conduct, or direct MSP to conduct, operational tests or usage audits of MSP Equipment and generate, collect and review any status reports in relation to the MSP Equipment, use of the MSP Product and compliance with this Agreement.
- 6.14 If nbn determines that there is any defect, non-compliance or other issue which requires the replacement, repair or reconfiguration of any MSP Equipment, or reconfiguration to any MSP Product to comply with this Agreement, MSP must undertake such replacement, repair or reconfiguration within any timeframe required by nbn, acting reasonably.

7. Charges, GST, Invoicing and Payment

- 7.1 Charges for the supply of nbn® FibreOne are set out in Annexure 2 (Price List), as amended from time to time.
- 7.2 Without limiting clause 24, nbn may increase Charges not more than once in any 12-month period, by no more than the percentage change in the CPI over the most recent 12-month period for which figures have been published at the date of the notice, by giving MSP at least 60 days' notice before the effective date of the increase.
- 7.3 For each supply of nbn® FibreOne in respect of an Eligible Estate, recurring Charges will commence on the date that nbn starts to supply nbn® FibreOne to MSP in respect of that Eligible Estate (regardless of whether MSP has installed MSP Equipment or used nbn® FibreOne on that date) and will apply until the Effective Disconnection Date (if any).
- 7.4 The Charges and other amounts payable under this Agreement are inclusive of GST (unless expressly stated otherwise). If GST is or becomes payable on a Supply made in connection with this Agreement, MSP is responsible for paying GST to nbn without set off, demand or deduction at the

same time and in the same manner as the consideration for the Supply.

- 7.5 Charges will accrue on a monthly basis and nbn will invoice MSP annually for any amounts due to nbn for that year and for any previous years not already invoiced. nbn will ensure that each invoice:
- (a) complies with all of the requirements of a Tax Invoice under the GST Law;
 - (b) sets out the amounts payable by MSP in Australian dollars; and
 - (c) contains information to reasonably enable MSP to identify products and services to which the Charges and other amounts relate.
- 7.6 If nbn commits to any credits or rebates, and the amount of such credits and rebates due to MSP exceeds the amount payable in the invoice issued by nbn, nbn will deduct the excess from the amounts due in any subsequent invoices until the total value of those credits or rebates has been provided to MSP.
- 7.7 Subject to clause 7.9(a), MSP must pay nbn the full amount set out in each invoice on the due date specified in the invoice (**Due Date**).
- 7.8 If MSP considers, acting reasonably, that there is any error in any invoice:
- (a) it must promptly (and, at the latest, within 6 months from the invoice's date of issue) raise a billing dispute and must use any form or process made available by nbn from time to time;
 - (b) the parties will work together in good faith to seek to resolve the billing dispute and document any resolution (including the time for payment or reimbursement of the disputed amounts); and
 - (c) if the billing dispute cannot be resolved by the parties working together, either party may seek determination of the billing dispute by an expert in accordance with clauses B5.7 to B5.10 of the WBA SFAA Head Terms (applied *mutatis mutandis*).
- 7.9 If MSP raises a billing dispute prior to the Due Date, then:
- (a) MSP may withhold payment of any identified disputed amount until that dispute is resolved; and
 - (b) MSP must pay all undisputed amounts by the Due Date of the relevant invoice.
- 7.10 MSP must not withhold payment where:
- (a) a billing dispute relates to the amount of any credits or rebates; or
 - (b) nbn has notified MSP, acting reasonably, that nbn considers the billing dispute mechanism has previously not been used in accordance with its intended purpose.
- 7.11 Each payment of an invoice by MSP must be:
- (a) by electronic funds transfer directly to nbn's nominated bank account or by such other means agreed between the parties;
 - (b) paid without any set-off, counter-claim, withholding or deduction including on account of any non-payment of amounts owed to MSP by nbn or any third party; and

- (c) accompanied by sufficient information for nbn to identify, process and properly allocate those invoice payments.

7.12 Each invoice payment made by MSP will be treated as being received by nbn when:

- (a) that payment is credited to nbn's nominated bank account; and
- (b) in the case of a payment that is part payment of an invoice, nbn receives a remittance advice from MSP that specifies the invoice or invoices in respect of which the part payment has been made.

7.13 If an invoice payment made by MSP is dishonoured, then that payment will be treated as not having been received by nbn until it is credited to nbn's nominated account in cleared funds, together with a reimbursement of any dishonour fees and charges that have been paid, or may be payable, by nbn in respect of that dishonoured payment.

7.14 MSP must, if required by nbn, pay nbn interest on any overdue amount applied for each day from but excluding the Due Date until and including the date that nbn receives payment in full, at an annual percentage rate equal to the aggregate of the 3 Month Bank Bill Swap Rate plus 7 per cent.

7.15 Failure by MSP to pay all undisputed amounts by the Due Date, and disputed amounts found to be payable by the date payment is required under clause 7.8, is a material breach of this Agreement.

7.16 Terms used in this clause 7 that are defined in the GST Law have the meaning given to those terms in the GST Law.

8. Assurance

8.1 For each Eligible Estate at which nbn supplies nbn[®] FibreOne to MSP nbn will use reasonable endeavours to achieve the Assurance Standard specified in Annexure 3 for the area in which that Eligible Estate is located.

8.2 If, in Annexure 3, nbn specifies multiple sets of Assurance Standards available for an area in which an Eligible Estate is located, MSP must:

- (a) select one of the sets of Assurance Standards; and
- (b) pay any applicable recurring Charges for the set of Assurance Standards selected, as set out in Annexure 2.

8.3 nbn will report on its performance against applicable Assurance Standards, but will not provide MSP with any rebates, credits, or other payments in connection with any failure to achieve any Assurance Standards. MSP acknowledges the Assurance Standards are targets and not binding commitments.

8.4 MSP must record its fault response and rectification performance in connection with its obligations under clauses 6.4 to 6.6 and provide nbn with such records or summaries as reasonably requested by nbn from time to time.

9. Policies and Procedures

9.1 MSP must comply with each nbn[®] policy and procedure applicable to MSP's activities in connection with this Agreement, including all the policies outlined in any operations manual and user guides

provided by nbn, as updated from time to time.

- 9.2 nbn will make the applicable policies and procedures available to MSP prior to the commencement of the Agreement.
- 9.3 MSP acknowledges that nbn may need to update or issue new policies and procedures from time to time, including to:
- (a) protect the integrity of the network, systems, equipment or facilities of nbn or any other person which are used in connection with the nbn's network, systems, equipment or facilities;
 - (b) ensure the quality of any product or service supplied to the MSP or any other person;
 - (c) protect the health or safety of any person or protection of the environment; or
 - (d) comply with law.
- 9.4 nbn will endeavour to provide MSP 30 days' notice before any new or changed policies and procedures take effect. Where practicable, in respect of any material changes that may adversely affect MSPs, nbn will consult with the MSP before making the changes and will take MSP's feedback into account. If dissatisfied with the outcome, MSP may raise the matter as a Dispute under clause 20.

10. Protection and safety

- 10.1 Each party is responsible for the safe and environmentally responsible operation of its network, platforms, systems, equipment and facilities.
- 10.2 Each party must not cause, and must ensure that:
- (a) acts or omissions of its Personnel do not;
 - (b) its networks, platforms, systems, equipment and facilities (and those of its Personnel) do not; and
 - (c) in the case of MSP, any MSP Equipment and any MSP Platform does not,
- give rise to an Adverse Network Impact.
- 10.3 MSP must:
- (a) comply, and ensure that its Personnel comply, with all work, health and safety laws and environmental laws;
 - (b) not, and ensure that its Personnel do not, at any time, cause nbn to be in contravention of any work, health and safety laws or environmental laws;
 - (c) ensure that it and its Personnel undertake all work in accordance with all relevant laws and in a manner which does not contribute to any risk to the health or safety of any person,
- in connection with its acquisition of nbn[®] FibreOne and supply of the MSP Product.

11. Insurance

- 11.1 MSP must hold appropriate and industry-standard levels of insurances including each Required Insurance throughout the Term.
- 11.2 MSP must ensure that nbn is an insured party in respect of MSP's Required Insurance in respect of public liability.
- 11.3 MSP must maintain its Required Insurance in respect of professional indemnity for a period of three (3) years after the expiry or termination of this Agreement.
- 11.4 MSP must ensure, save in respect of its Required Insurance for professional indemnity, that its Insurance Policies include terms whereby the insurer's indemnity applies on an occurrence basis (not on a claims-made basis).

12. Warranties

- 12.1 Throughout the Term, MSP warrants that:
 - (a) prior to accessing any Site, it has obtained or will obtain, each Authorisation which is required for MSP to lawfully access the Site;
 - (b) prior to injecting any MSP Product Communications into nbn[®] FibreOne Infrastructure in respect of an Eligible Estate, it has obtained or will obtain, each Authorisation which is required for MSP to lawfully do so;
 - (c) all MSP Product Communications have all necessary Authorisations and comply with each condition or requirement of each such Authorisation (including as to copyright, classification, privacy, confidentiality, surveillance notification and any other condition or requirement imposed by any person with a right to do so);
 - (d) prior to performing each obligation under this Agreement, it has obtained or will obtain, each Authorisation which is required for MSP to lawfully perform the obligation;
 - (e) it will maintain and comply with each Authorisation under clauses 12.1(a) to 12.1(d);
 - (f) its Personnel will be suitably qualified and trained and will possess all skills and experience necessary or desirable to facilitate MSP performing its obligations under this Agreement; and
 - (g) it will comply with all relevant laws in exercising its rights and performing its obligations under this Agreement.
- 12.2 MSP must do all things necessary to give effect to each warranty in clause 12.1 at its own cost.

13. Confidential Information

- 13.1 Each party (recipient) must keep confidential, and not disclose, any Confidential Information of the other party, except:
 - (a) where the recipient has obtained the prior written permission of the other party;
 - (b) to the recipient's Personnel, professional advisers, auditors and insurers, provided that it

directs such persons to keep confidential all such Confidential Information and, where MSP is the recipient, procures a written undertaking that such persons will keep confidential all such Confidential Information and only use such Confidential Information for the purpose for which it was disclosed by nbn; and

- (c) where the recipient is compelled to do so by law, provided that it gives the other party written notice prior to disclosure if permitted.

- 13.2 The recipient must only use Confidential Information of the other party for the purpose for which it was disclosed in connection with this Agreement.
- 13.3 nbn may disclose Confidential Information of MSP to any Minister, Department or officer of the Commonwealth Government of Australia or any Government Agency for a legitimate government purpose.
- 13.4 nbn may, on the directions of any Minister, Department or office of the Commonwealth Government of Australia or any Government Agency publish key information in respect of this Agreement including MSP's name, subject matter, term and value of this Agreement.
- 13.5 MSP must not make any public statement or issue any press release concerning or relating to this Agreement or MSP's relationship with nbn unless it has first obtained the written consent of nbn to do so, such consent not to be unreasonably withheld.
- 13.6 nbn may require MSP to sign a confidentiality agreement or undertaking in respect of any confidential information of a third party data provider which nbn proposes to disclose to MSP.

14. Privacy

- 14.1 Each party must comply with all Privacy Laws in its performance of this Agreement.
- 14.2 Each party must obtain all necessary consents prior to disclosing any Personal Information to the other party in connection with this Agreement, including consents to the other party collecting, using, storing and disclosing such Personal Information for the purposes of this Agreement.
- 14.3 Each party must only use Personal Information disclosed by the other party under this Agreement for the purpose for which it was provided and not any other purpose.

15. Data security

Each party must apply reasonable security standards in respect of any data or information which it holds of the other party (including Confidential Information and Personal Information).

16. Credit review

- 16.1 At any time, upon providing reasonable notice to MSP, nbn may conduct a Credit Review as set out in clause 16.2.
- 16.2 A Credit Review is an assessment of data to enable nbn to determine whether MSP has good financial standing and creditworthiness. A Credit Review may include, but is not limited to, an

investigation of MSP's:

- (a) credit rating;
- (b) financial statements and credit information; and
- (c) insurance details, including current and historical statuses.

16.3 MSP will allow nbn to conduct a Credit Review and will co-operate fully with nbn in facilitating this review.

17. Intellectual Property Rights

Nothing in this Agreement operates to transfer or assign ownership of Intellectual Property Rights, or confers on either party any right, title or interest in or to, any of the other party's Intellectual Property Rights or Third Party IPR, except as expressly provided under this Agreement.

18. Rights and Beneficial Interest

Nothing in this Agreement gives or transfers to MSP (or any other person) any right, title or interest (whether legal, equitable or statutory) in any part of the nbn[®] Network, nbn[®] Platform, nbn's systems, equipment, facilities or any other tangible or intangible property of nbn except to the extent expressly provided for in this Agreement.

19. Liability and Indemnities

19.1 Except as expressly stated in this Agreement, nbn will, to the maximum extent permitted by law, have no liability in connection with this Agreement, whether in contract, tort (including negligence), statute, equity or otherwise.

19.2 MSP indemnifies nbn and its Personnel (those indemnified) from and against any Loss or Claim which any of those indemnified pays, suffers, incurs or is liable for arising out of or in connection with:

- (a) the death or personal injury of any person;
- (b) loss of, or damage to, any tangible property;
- (c) any breach of law or infringement of a third party's rights (including Intellectual Property Rights);
- (d) any failure to collect, use, store or disclose Personal Information in accordance with clause 14;
- (e) any interference with any nbn[®] products or services or their supply;
- (f) any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation;
- (g) the acquisition of nbn[®] FibreOne or supply of, or failure to supply, the MSP Product (including any failure to supply, or error or defect in the supply, of the MSP Product to an End User);

to the extent caused or contributed to by any act or omission of MSP or its Personnel.

- 19.3 Without limiting any indemnity under clause 19.2, if any Prohibited Use occurs:
- (a) MSP indemnifies and must pay to nbn, for each month in which Prohibited Use occurs, a sum calculated by reference to the total CXRs in the Eligible Estate, as follows: $CXRs \times Take-up Factor \times Broadband Loss Amount$ (**Anticipated Loss Amount**); and
 - (b) to the extent not compensated by the Anticipated Loss Amount, MSP indemnifies nbn and its Personnel (**those indemnified**) from and against any Loss (including Indirect Loss) or Claim which any of those indemnified pays, suffers, incurs or is liable for arising out of or in connection with the Prohibited Use
- 19.4 MSP acknowledges and agrees that the Anticipated Loss Amount:
- (a) protects nbn's legitimate interests, including recovery of its costs, and earning a reasonable return, in connection with building, operating and maintaining infrastructure in and for the Eligible Estates;
 - (b) has been considered by MSP with the benefit of separate advice, and is not out of all proportion to nbn's legitimate interests; and
 - (c) is payable by the MSP as a debt due and owing in the event of Prohibited Use, without the need for nbn to prove the actual amount of its Loss.
- 19.5 MSP indemnifies nbn and its Personnel (those indemnified) from and against any Loss or Claim which any of those indemnified pays, suffers, incurs or is liable for arising out of or in connection with any Claim brought by an End User against those indemnified arising out of or in connection with this Agreement, the supply, non-supply, or error or defect in the supply, of the MSP Product any representation, warranty or commitment made by MSP or its Personnel in connection with the MSP Product or nbn[®] FibreOne, or any act or omission of MSP or its Personnel.
- 19.6 nbn indemnifies MSP and its Personnel (those indemnified) from and against any Loss or Claim which any of those indemnified pays, suffers, incurs or is liable for arising out of or in connection with:
- (a) the death or personal injury of any person;
 - (b) loss of, or damage to, any tangible property; and
 - (c) any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation, to the extent caused or contributed to by any act or omission of nbn or its Personnel.
- 19.7 To the maximum extent permitted by law, but subject to clause 19.3(b), each party excludes any and all liability for any Indirect Loss suffered in connection with this Agreement, whether in contract, tort (including negligence), statute, equity or otherwise.
- 19.8 To the extent permitted by law, but subject to clause 19.9 each party's aggregate liability to the other party in any Contract Year in respect of any and all Losses under, arising from or in connection with this Agreement, is limited to the total amount payable under this Agreement in that Contract Year. In this clause 19.8 Contract Year means a 12 month period starting on the execution date of this

Agreement, or the anniversary of that date.

19.9 The limitation of liability under clause 19.8 does not apply to:

- (a) any indemnity under clause 19.3 or 19.5; or
- (b) Loss arising from fraud, dishonesty or wilful misconduct

20. Disputes

20.1 Where a party considers there is a dispute under this Agreement (other than a billing dispute) (**Dispute**), the party must, as soon as reasonably practicable, give written notice to the other setting out the existence and nature of the Dispute (**Dispute Notice**).

20.2 The parties must endeavour to resolve any Dispute within 10 Business Days of the date of the Dispute Notice or such other period of time as the parties may agree.

20.3 If the Dispute is not resolved within the period referred to in clause 20.2:

- (a) each party will promptly refer the Dispute to their appropriate officers with authority for resolving the Dispute; and
- (b) the officers of each party must meet to attempt to resolve the Dispute within a further 10 Business Days or such other period of time as may be agreed.

20.4 If the Dispute is still not resolved within the period referred to in clause 20.3(b), either party may, by notice to the other party, refer the Dispute to mediation, in which case:

- (a) the mediation will be undertaken in accordance with the then current Resolution Institute Mediation Rules;
- (b) the mediator will be agreed by the parties or, failing agreement within 5 Business Days of the referral, either party may request the mediator be appointed by the Chair of the Resolution Institute;
- (c) the parties will endeavour, with the assistance of the mediator, to resolve the Dispute within 30 Business Days of the appointment of the mediator or such other period as the parties may agree;
- (d) any mediation meetings and proceedings under this clause 20.4 must be held in Sydney, Australia unless otherwise agreed by the parties;
- (e) the parties will comply with the then current Resolution Institute Mediation Rules and any agreed procedures relating to the proceedings; and
- (f) the mediation and all communications during the mediation will be treated as confidential and must be treated as made in the course of compromise and settlement negotiations for the purposes of the applicable rules of evidence and any professional secrecy protections provided by any applicable law.

20.5 If any Dispute which has been referred to mediation under clause 20.4 has not been resolved within 30 Business Days of such referral, either party may, by notice to the other party, refer the Dispute to

arbitration, in which case:

- (a) the arbitration will be conducted in accordance with the then current Resolution Institute Arbitration Rules;
- (b) the arbitrator will be agreed by the parties or, failing agreement within 5 Business Days of a referral to arbitration, either party may request that the arbitrator be appointed by the Chair of the Resolution Institute;
- (c) the arbitrator may not be the same person as the mediator;
- (d) the arbitration must be held in Sydney, Australia unless otherwise agreed by the parties; and
- (e) a decision of the arbitrator will be binding on the parties except in the event of a manifest error or mistake of law.

20.6 Neither party may commence court proceedings in connection with a Dispute under this Agreement unless it has complied with this clause 20, except where:

- (a) a party takes action to recover any amount as a debt due pursuant to this Agreement;
- (b) the party seeks urgent interlocutory, injunctive or other declaratory relief; or
- (c) the Dispute relates to the other party's material non-compliance with this clause 20.

20.7 Each party must continue to perform their respective obligations in accordance with this Agreement pending the resolution of a Dispute in accordance with this clause 20.

20.8 Each party must do all things reasonably necessary for the proper and expeditious conduct of the processes set out in this clause 20.

20.9 Except as otherwise provided under a binding order as to costs or under law:

- (a) each party will bear its own costs in connection with the resolution of the Dispute; and
- (b) the costs of any arbitrators or mediators, or other costs relating to both parties will be shared equally.

21. Term

21.1 This Agreement starts on the date both parties have signed this Agreement and expires on 30 November 2029, unless terminated earlier in accordance with this Agreement or extended by agreement of the parties (**Term**).

21.2 From the date both parties have signed this Agreement until eighteen (18) months after that date, the parties will meet each six months (on a date agreed between the parties) to discuss:

- (a) the performance of this Agreement by each party;
- (b) any issues or problems arising out of the operation of this Agreement by either party;
- (c) any outstanding issues identified in relation to this Agreement; and
- (d) the ongoing commercial viability of this Agreement.

- 21.3 Twenty four (24) months after both parties have signed this Agreement in its original form, nbn and MSP will review the terms of this Agreement.

22. Suspension

- 22.1 Without limiting any other rights of nbn under this Agreement (including as to termination), nbn may immediately suspend the supply of nbn® FibreOne:
- (a) to avoid or mitigate the effect of an Emergency;
 - (b) in order to comply with a lawful order, instruction or request of a Regulator, an emergency services organisation or any other competent authority;
 - (c) if nbn reasonably considers that the continued supply of nbn® FibreOne or the MSP Product may:
 - (i) endanger the health or safety of any person; or
 - (ii) damage, interfere with or threaten the nbn® FibreOne Infrastructure;
 - (d) if any Prohibited Use occurs; or
 - (e) in any other circumstance in which nbn has a termination right under clause 23.1.
- 22.2 During any period of suspension:
- (a) nbn will have no obligation to provide the suspended services; and
 - (b) to the maximum extent permitted by law, nbn will not be liable for any Loss arising from or in connection with the suspension, except to the extent caused by nbn's breach of this Agreement, fraud, dishonesty or wilful misconduct.
- 22.3 nbn must notify MSP of any suspension or proposed suspension as soon as reasonably practicable (and if practical, before applying the suspension).
- 22.4 MSP must, as soon as reasonably practicable after receiving a notice of suspension or proposed suspension, provide nbn with reasonable evidence and details of the steps taken to avoid or remedy the basis for suspension, comply with any reasonable directions of nbn to facilitate reinstatement of services and otherwise cooperate with nbn to minimise any disruption or inconvenience to End Users.

23. Termination

- 23.1 nbn may terminate the supply of nbn® FibreOne in respect of specific Eligible Estates, or this Agreement, by notice to MSP, where:
- (a) nbn determines, acting reasonably, that there is a health or safety risk sufficiently serious to warrant such termination;
 - (b) nbn determines, acting reasonably, that the supply or continued supply of nbn® FibreOne will unreasonably jeopardise or interfere with the integrity of the nbn® Network, nbn® Platform, or any other network, platforms, systems, equipment or facilities owned, controlled or operated by nbn or a third party;

- (c) nbn determines, acting reasonably, that MSP no longer has all the rights or ability to acquire nbn[®] FibreOne or supply all elements of the MSP Product (including, for example, due to the termination or expiry of any agreement between the MSP and a relevant End User for supply of the MSP Product);
- (d) MSP ceases or fails to successfully supply MSP Product;
- (e) any Prohibited Use occurs;
- (f) MSP breaches any obligation under this Agreement which is incapable of remedy or which is capable of remedy, but is not remedied within 30 days of receipt of a written notice from nbn specifying the breach and requiring it to be remedied;
- (g) MSP breaches any of the warranties in clause 12.1, any of the Supply Conditions or its obligation in clause 26.11(b);
- (h) MSP or any of its Personnel does anything that materially damages or is likely to materially damage the brand or reputation of nbn or any Related Body Corporate;
- (i) MSP fails to obtain or ceases to hold an Authorisation required for MSP to supply MSP Product;
- (j) a Change of Control or Insolvency Event occurs in relation to MSP;
- (k) nbn ceases to have rights to operate or access infrastructure or facilities required to supply nbn[®] FibreOne in respect of an Eligible Estate (in which case the termination will only relate to that Eligible Estate); or
- (l) nbn and MSP fail to agree to the continuation of, or amendment to, the terms of this Agreement pursuant to a review under clause 21.3.

23.2 The events in clauses 23.1(d), 23.1(e), 23.1(f), 23.1(g), 23.1(h) and 23.1(i) will each constitute a material breach of this Agreement.

23.3 If MSP wishes to terminate this Agreement or the supply of nbn[®] FibreOne to a specific Eligible Estate, it must give written notice to nbn and comply with clauses 23.4 to 23.6.

23.4 Upon notice of termination by either party to the other, MSP must provide nbn with a proposal for the supply of a replacement to the MSP Product at the affected Eligible Estate(s), which proposal must provide for at least:

- (a) identifying any alternative suppliers;
- (b) the transfer or replacement of all Authorisations required by the alternative supplier (including entry into a nbn[®] FibreOne agreement or other agreement with nbn if the alternative supplier has not already done so); and
- (c) a transition plan to minimise or avoid any disruption or inconvenience to End Users at the Eligible Estate(s).

23.5 nbn may accept or reject, or direct alterations to, a proposal provided under clause 23.4 at its

discretion (acting reasonably).

23.6 If nbn rejects or directs alterations to a proposal provided under clause 23.4, MSP must submit a revised proposal to nbn and clauses 23.4, 23.5 and this clause 23.6 will apply to such a revised proposal.

23.7 A notice from MSP to nbn under clause 23.3 is:

- (a) only effective after nbn has approved a related proposal; and
- (b) subject to the terms and conditions of any approved related proposal, under clauses 23.5 and 23.6.

23.8 Upon termination or expiry of:

- (a) the supply of nbn[®] FibreOne in respect of specific Eligible Estates; or
- (b) this Agreement,

MSP must take all steps necessary to ensure successful transition to a replacement to the MSP Product at all affected Eligible Estates in accordance with a proposal accepted by nbn under clause 23.5, including by transferring to an alternative supplier, to the extent necessary:

- (c) each item of MSP Equipment connected to nbn[®] FibreOne Infrastructure; and
- (d) each Authorisation.

23.9 MSP must comply with all requirements under clause 23.8:

- (a) immediately, if more than 2 months' notice of termination has been given; or
- (b) within 2 months (or other notice period agreed in writing with nbn), if 2 months' or less notice of termination has been given or if this Agreement expires.

23.10 If MSP fails to:

- (a) provide a proposal to nbn under clause 23.4 which is approved by nbn under clause 23.5; or
- (b) comply with clause 23.8,

MSP must immediately transfer to nbn or its nominee:

- (c) each item of MSP Equipment connected to nbn[®] FibreOne Infrastructure which is affected by the termination or expiry; and
- (d) each Authorisation required to supply any content which is affected by the termination or expiry.

23.11 Upon termination or expiry of the supply of nbn[®] FibreOne in respect of specific Eligible Estates or this Agreement until the successful conclusion of a transfer under clauses 23.8 to 23.10 (as applicable), MSP must:

- (a) not disconnect, disable or otherwise impair the continued operation of any MSP Equipment; and

- (b) to the extent that MSP can do so in accordance with this Agreement and the law, and in accordance with any reasonable directions from nbn, continue to supply MSP Product.

23.12 As soon as practicable after expiry or termination of this Agreement, MSP must return, and must ensure that all MSP's Personnel return, to nbn all Confidential Information, equipment, records, documents and materials provided by or on behalf of nbn in connection with this Agreement.

23.13 Clauses 11, 13, 14.3, 15, 19, 20, 23.8 – 23.12, this clause 23.13, clauses 26.2, 26.13, 27, clauses 12.3 and 12.4 of Schedule 3 – and any other obligations which are expressed to or, by their nature, survive expiry or termination, will survive expiry or termination of this Agreement and are enforceable at any time at law or in equity.

24. Changes to this Agreement and other documents

24.1 Subject to clause 24.2, and without limiting clause 7.2, for the duration of the Term, nbn may change this Agreement by giving written notice to MSP where nbn determines, acting reasonably, that such a change:

- (a) will not have a material adverse impact on MSP, by giving at least 30 Business Days' notice of that change to MSP;
- (b) is necessary to comply with any applicable law or required by a Regulatory Event, by giving as much notice as reasonably practicable of that change to MSP; or
- (c) in all other circumstances, by giving at least 60 Business Days' notice of that change to MSP.

24.2 Prior to making a change under this clause 24, nbn must:

- (a) inform MSP of the purpose of the proposed change;
- (b) give MSP a reasonable opportunity (of not less than 10 Business Days) to provide feedback to nbn on the proposed change, unless impractical in relation to a Regulatory Event; and
- (c) consider any feedback given by MSP about the proposed change and determine (in nbn's reasonable discretion) whether to vary the proposed change to address MSP's feedback.

24.3 Where a change made under clause 24.1(c) has a material adverse impact on MSP, MSP may terminate this Agreement by giving written notice to nbn within 30 Business Days after receiving notice of the change.

24.4 A termination under clause 24.3 will take effect on the date specified in the termination notice, which must be no earlier than the effective date of the relevant change.

25. Force Majeure

25.1 To the extent that a Force Majeure prevents a party from performing an obligation under this Agreement, the affected party will be excused from performing that obligation.

25.2 A party affected by a Force Majeure must:

- (a) as soon as reasonably practicable, notify the other party of the Force Majeure, its impact on the affected party and the steps the affected party is taking or will take to mitigate the effects

of the Force Majeure; and

- (b) use reasonable endeavours to minimise, overcome the impact of, and mitigate any Losses in connection with that Force Majeure.

26. General

- 26.1 **Assignment and subcontracting.** MSP must not assign, novate or otherwise transfer any of its rights or obligations under this Agreement without nbn's prior written consent (such consent not to be unreasonably withheld). Each party may use subcontractors or other agents to meet any of its obligations or exercise any of its rights under this Agreement, but it remains liable in respect of the performance of those obligations and the exercise of those rights.
- 26.2 **Notices.** All notices given under this Agreement by one party to the other party must be sent to the address notified by the other party. Any such notice will be taken to be received by the addressee:
- (a) in the case of delivery by hand, on delivery;
 - (b) in the case of prepaid post, on the fifth Business Day after the day of posting;
 - (c) in the case of email, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain, when the email was sent; and
 - (d) in the case of any notice given in accordance with any operations manual, at the time specified in the operations manual,
- but:
- (e) if the notice would otherwise be taken to be received on a day that is not a Business Day or after 5.00 pm, it is deemed to be received at 9.00 am on the next Business Day; and
 - (f) if the notice is given by MSP and relates to a dispute or potential dispute in connection with this Agreement, a copy must be given to nbn's Chief Legal and Regulatory Officer at janevanbeelen@nbnco.com.au
- 26.3 **Relationship.** The parties are independent contractors and nothing in this Agreement gives rise to any relationship of agency, partnership, employment or otherwise.
- 26.4 **Publicity and representations.** MSP must not make any representation or public statement in connection with this Agreement or the supply of the MSP Product without approval from nbn, not to be unreasonably withheld.
- 26.5 **Variation.** Except as set out in clause 24, no variation of this Agreement is effective unless made in writing and signed by each party.
- 26.6 **Costs, expenses and duties.** Except where this Agreement provides otherwise, each party is responsible for its own costs and expenses of negotiating, preparing and executing this Agreement and any other instrument executed under this Agreement and complying with its obligations under this Agreement.
- 26.7 **Counterparts.** This Agreement may consist of a number of counterparts and, if so, the counterparts

taken together constitute one document.

- 26.8 **Rights cumulative.** The rights of each party under this Agreement are in addition to, and do not exclude or limit, any other rights or remedies provided by law (except where this Agreement provides otherwise).
- 26.9 **Waiver.** No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it.
- 26.10 **Entire Agreement.** These Head Terms, Schedules 1 – 3 and Annexures 1-3 constitute the entire agreement between the parties in connection with their subject matter and supersede all previous agreements or understandings between the parties in connection with the relevant subject matter. No oral explanation or information provided by any party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding between the parties. For the avoidance of doubt, nothing in this clause is intended to exclude liability for fraud or fraudulent misrepresentation or any other representations which cannot be excluded by law.
- 26.11 **Further assurances and compliance with law.**
- (a) Except where otherwise provided in this Agreement, each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by the other party (in form and content reasonably satisfactory to the other party) to give effect to this Agreement.
 - (b) Each party must comply with all relevant laws in exercising its rights and performing its obligations under this Agreement.
- 26.12 **Severability.** Any term of this Agreement which is wholly or partially void or unenforceable will be severed to the extent that it is void or unenforceable and the remainder of this Agreement continues unaffected.
- 26.13 **Governing Law and Jurisdiction.** This Agreement is governed by the laws having force in New South Wales and each party submits to the exclusive jurisdiction of the courts having jurisdiction in New South Wales.

27. Interpretation

- 27.1 In this Agreement the following rules of interpretation apply unless the contrary intention appears:
- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
 - (b) the singular includes the plural and vice versa;
 - (c) words that are gender neutral or gender specific include each gender;
 - (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
 - (e) a reference to:
 - (i) a person includes an individual, partnership, joint venture, Government Agency,

- association, trust, corporation or other body corporate and its agents, successors and permitted assigns;
- (ii) a clause, term, party, schedule or attachment in a part of this Agreement is a reference to a clause, term, party, schedule or attachment to the relevant part of this Agreement;
 - (iii) this Agreement includes all schedules and attachments to it; and
 - (iv) 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;
- (f) the words “such as”, “including” and “particularly” and similar expressions are not used as, nor are they intended to be, interpreted as words of limitation;
- (g) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, legislative instrument, ordinance, by-law, mandatory code, mandatory standard, mandatory guideline, mandatory directive, order, ordinance, rule, determination, ministerial direction, binding restriction of or determination by any Government Agency, statutory rule, judgment, writ, order, injunction, declaration, rule of common law or equity, or rule of any stock or securities exchange where the relevant party’s stocks or securities are listed or quoted and is a reference to that law as amended, consolidated or replaced and includes any regulations and other subordinate instruments made under or in accordance with those laws;
- (h) “reasonable endeavours” or any similar expressions does not require the payment of money or the provision of any financial benefit;
- (i) “reasonably practicable” or any similar expression does not require a party to take action if the cost of taking that action is, on balance, unreasonable in the prevailing circumstances;
- (j) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;
- (l) capitalised terms where used in this Agreement have the meanings given to them in Schedule 1 and, if not specified in Schedule 1, as set out in the WBA SFAA; and
- (m) if there is any inconsistency between the terms of this Agreement and any schedule or annexure of this Agreement, then that inconsistency will be resolved by giving precedence to the documents in the following order:
- (i) these Head Terms and Schedule 1;
 - (ii) Schedules 2 and 3; and
 - (iii) Annexures 1, 2 and 3.

Schedule 1 – Dictionary

3 Month Bank Bill Swap Rate means, for any period:

- (a) the rate designated as the Bank Bill Swap Rate (BBSW) for a tenor of 3 months, as shown at or about 10.30 am (Sydney time) on the Refinitiv page “BBSW” or the Bloomberg LLP page “ASX@342849” (or any successors of these pages), on the first Business Day in Sydney of that period; and
- (b) if:
 - (i) the pages referred to in paragraph (a) of this definition are replaced or the services referred to in paragraph (a) of this definition cease to be available; or
 - (ii) the basis on which the rate referred to in paragraph (a) of this definition is calculated or displayed changes after the date of this Agreement and nbn determines that the rate ceases to reflect nbn’s cost of funding to the same extent as at the date of this Agreement,

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

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

Acceptance Tests means tests of the operation of installed and activated MSP Equipment and MSP Platforms as specified by nbn from time to time or, if nbn has not specified any such tests, industry standard tests for such installations and activations.

Access Seeker Undertaking means a deed of undertaking that is enforceable by any third party whose authorisation is required for Authorised Persons to obtain access to an nbn® Facility, in the form provided by nbn to MSP from time to time.

Adverse Network Impact means conduct which:

- (a) endangers the health or safety of any person;
- (b) damages, threatens, interferes with, prejudices the integrity of, degrades, or results in the deterioration of, the operation or performance of any other party's network, platforms, systems, equipment and facilities;
- (c) causes a nuisance in or while accessing the network, platforms, systems, equipment and facilities of the other party; or
- (d) in the case of MSP, damages, threatens, interferes with, prejudices the integrity of, degrades, or causes the deterioration, operation or performance of:
 - (i) the nbn® Network, nbn® Platform or any other network, platforms, systems, equipment or facilities of nbn;
 - (ii) communications within the nbn® Network, nbn® Platform or any other network, platforms, systems, equipment or facilities of nbn (including Carriage Services and Content Services provided over any of them);

- (iii) the network, platforms, systems, equipment and facilities of any other user of the nbn[®] Network or nbn[®] Platform;
- (iv) the ability of nbn to supply products or services to any person; or
- (v) other property or facilities of any third party.

Anticipated Loss Amount has the meaning given to that term in clause 19.3.

Assurance Standard means a standard for the acknowledgement or rectification of a fault affecting nbn[®] FibreOne as specified in Annexure 3.

Authorisation means any third-party consent, permit, approval, authorisation and licence, including from any Government Agency, owner, landlord, licensor or mortgagee (including each agreement, determination and consent required under heritage or native title laws).

Authorised Person means a person who has been approved by nbn to access an nbn[®] Facility on behalf of MSP, who has successfully completed relevant site induction courses and who has taken all steps and fulfilled all conditions required by nbn and each relevant third party for access to an nbn[®] Facility.

Broadband Loss Amount means:

(a) \$51.80 and

(b) on each anniversary of the date on which the Agreement is signed, the amount in paragraph (a) as adjusted by the percentage change in CPI over the preceding 12 months.

Broadband Traffic means any broadband access traffic (however described, including as signal, communications or data), carried over nbn[®] FibreOne Infrastructure connected to the Internet or other external networks via the CXC to MSP Equipment and then additional carriage services such as nbn[®] Ethernet.

Business Day means any day other than a Saturday, Sunday or public holiday in the location where the relevant works or tasks are being carried out.

Carriage Service Provider has the meaning given to that term by section 87 of the Telecommunications Act.

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

Change of Control means, in relation to a party, a change of the person which Controls the party or, if no entity Controls the party, the assumption of Control of the party by any person.

Charges means the charges (including any Taxes) set out in Annexure 2, without the application of any discount, credit, rebate or waiver.

Claim means any and all claims, alleged claims, actions, suits or proceedings by any person of any nature or kind, whether in contract, tort (including negligence) at common law, in equity, under statute or otherwise howsoever arising.

Common Area Wi-Fi means a Wi-Fi network or networks created by MSP Equipment, End User

Equipment or third party equipment connected to one or more CXRs used solely for Broadband Traffic access in common areas, utility areas and building management areas of the Eligible Estate (for clarity, excluding apartments, businesses and any other Premises located within the Eligible Estate).

Confidential Information means, in relation to a party, all information, know-how, ideas, concepts, technology, marketing, product, operational, financial and other industrial or commercial knowledge and data of a confidential nature (whether in tangible or intangible form and whether coming into existence before or after the commencement of this Agreement) of the party or any of its Related Bodies Corporate relating to or developed in connection with this Agreement, but Confidential Information does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of this Agreement);
- (b) information rightfully received by the other party from a third person without a duty of confidentiality being owed by the other party to the third person, except where the other party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first party;
- (c) information which has been independently developed by the other party; or
- (d) information about MSP's use of nbn[®] FibreOne or supply of the MSP Product (including where that information is generated by nbn) that has been aggregated with other information of a similar or related nature, such that MSP cannot be identified by the information or any part of it.

CPI means the Consumer Price Index (All Groups weighted average of eight capital cities), as last published by the Australian Bureau of Statistics before the relevant date.

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

Control has the meaning given to that term in section 50AA of the Corporations Act.

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

CXC has the meaning given to that term in Schedule 2.

CXR has the meaning given to that term in Schedule 2.

Data Aggregation means any use of an MSP Product:

- (a) for the collection or aggregation of traffic from, or distribution of traffic to, networking devices, networks, services or End Users that are outside the Eligible Estate served by that MSP Product; or
 - (b) which constitutes backhaul for a mobile base station or backhaul for a Public HetNet access point,
- but does not include the provision, operation or management of Common Area Wi-Fi within an Eligible Estate.

Delivery Plan means a plan developed by MSP for the supply of the MSP Product at an Eligible Estate, which plan must comprise the following minimum information in the forms and to the specificity

required by nbn from time to time:

- (a) details of the Eligible Estate;
- (b) such evidence as nbn may require from time to time that MSP has all Authorisations which it requires to supply the MSP Product at the Eligible Estate;
- (c) a detailed schedule of milestones and timeframes for the delivery and supply of the MSP Product at the Eligible Estate;
- (d) drawings, diagrams and technical specifications detailing MSP's proposed solution design for the supply to the MSP Product at the Eligible Estate, including all interconnection and other technical details required for installation and activation of the MSP Equipment, End User Equipment and Internal Cabling; and
- (e) any other information as may reasonably be requested by nbn from time to time.

Developer Authorisation means, in respect of an Eligible Estate, a confirmation from the developer of the Eligible Estate in a form approved by nbn, that:

- (a) the developer has agreed a draft plan with MSP for the deployment of MSP Equipment and the supply of the MSP Product; and
- (b) the developer authorises nbn to share with MSP any confidential information of the developer that nbn determines is necessary or desirable to facilitate the supply or proposed supply by nbn to MSP of nbn[®] FibreOne at the Eligible Estate.

Duct means, in respect of an Eligible Estate, an underground tubular structure installed, ready to be used, or intended to be used for the installation, operation and maintenance of telecommunications cables and associated telecommunications equipment, which is owned by nbn or over which nbn is in a position to exercise control.

Effective Disconnection Date means, in respect of the supply of nbn[®] FibreOne at an Eligible Estate, the last day of the month in which nbn ceases to supply nbn[®] FibreOne (whether at the request of MSP in accordance with any requirements of an operations manual or processes specified by nbn, or in accordance with termination and transfer processes under clause 23 or otherwise).

Eligible Estate means a new development of horizontal or vertical multi dwelling units or both, which:

- (a) comprises a sufficient number of premises to satisfy nbn's scale requirements (as amended from time to time) for the offer of nbn[®] FibreOne Infrastructure to the developer of the new development; and
- (b) satisfies any other criteria adopted by nbn from time to time to determine whether it will offer nbn[®] FibreOne Infrastructure to developers in respect of a new development.

Emergency means an imminent actual or potential risk to the safety of persons or property or the integrity of a telecommunications network requiring immediate action to avoid or mitigate any loss, damage or personal injury.

End User means the recipient of the MSP Product, whether or not they have entered into a direct contractual relationship with the MSP (including, for example, owners and occupiers of premises within Eligible Estates and body corporates, strata corporations or owners' corporations).

End User Equipment means any equipment used by any end user in connection with nbn® FibreOne or the MSP Product.

Fibre TV is the nbn product of that name supplied by nbn.

Force Majeure means any event or circumstance that:

- (a) is not within the reasonable control of an affected party, any of its Personnel or any of its Related Bodies Corporate or any of their Personnel;
- (b) the affected party or any of its Related Bodies Corporate or any of their Personnel is not reasonably able to prevent or overcome by the exercise of reasonable care such as by having a disaster recovery plan in place; and
- (c) causes the affected party to fail to perform any of its obligations under this Agreement, but does not include:
 - (d) any event or circumstance that arises as a result of any lack of funds for any reason or any other inability to pay; or
 - (e) any event or circumstance that arises as a result of any negligent act or omission of the affected party.

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 Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Head Terms means clauses 1 to 27 of this Agreement.

Indirect Loss means loss of revenue, loss of profit, loss of goodwill, loss of anticipated savings, loss of opportunity, and any other Loss, not arising naturally and according to the usual course of things from the relevant breach, whether or not such Loss may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the relevant breach.

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

- (a) an order is made that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (d) a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) it enters into an arrangement or composition with one or more of its creditors (in their capacities as

creditors) and that arrangement or composition is not terminated within 10 Business Days, or an assignment is made for the benefit of one or more of its creditors (in their capacities as creditors), in each case other than to carry out a reconstruction or amalgamation while solvent;

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

Integrated Communications means communications (however described, including as signal, traffic or data) related to building management, intercoms, security cameras, security access, other integrated communication applications and Common Area Wi-Fi.

Intellectual Property Rights means any patent, copyright, design right, trade name, trade mark, service mark, domain name right, semiconductor or circuit layout right or any other form of protection of a similar nature to any of these, anywhere in the world (whether registered or not and including applications for any such right).

Internal Cabling has the meaning given to that term in Schedule 2.

Interconnection Site means, in relation to an Eligible Estate, the location of the CXC for nbn[®] FibreOne as offered by nbn in connection with that Eligible Estate.

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

MSP Equipment means any equipment that is:

- (a) used by MSP in connection with nbn[®] FibreOne Infrastructure, MSP's acquisition of nbn[®] FibreOne or

MSP's supply of the MSP Product; or

- (b) provided by or on behalf of MSP to any third party for use in connection with MSP's supply of the MSP Product,

but excludes all nbn[®] Equipment.

MSP Product means the product or service supplied by MSP to which nbn[®] FibreOne is an input, which may include, for example, building management, intercom, security camera, security access and other such integrated communication applications, Common Area Wi-Fi, or a service for carriage of such applications and traffic.

MSP Product Communications has the meaning given to that term in clause 1.2.

MSP Platform means all information technology systems and platforms used by or on behalf of MSP in connection with this Agreement which directly or indirectly interact with information technology systems and platforms used by or on behalf of nbn.

MSP Works means any works undertaken by or on behalf of MSP in connection with the installation, operation, inspection, testing, maintenance, repair, relocation, replacement or removal of MSP Equipment in, at, on or around an nbn[®] Facility under this Agreement.

nbn[®] Equipment means any equipment that is owned, operated or controlled by nbn (or any Related Body Corporate of nbn):

- (a) that is provided by nbn (or any Related Body Corporate of nbn) to MSP for use as part of, or in connection with, nbn[®] FibreOne; or
- (b) to which nbn (or any Related Body Corporate of nbn) permits MSP to access (or on-grant such access to any third party) as part of, or in connection with, nbn[®] FibreOne, including the CXC, nbn[®] FibreOne Infrastructure and CXR,

but does not include any Internal Cabling.

nbn[®] Facility means Pit, Duct, or other nbn[®] FibreOne Infrastructure, as the context requires.

nbn[®] FibreOne has the meaning given to that term in clause 1.1 of the Head Terms.

nbn[®] FibreOne Infrastructure means the elements of the nbn[®] Network used by nbn to supply nbn[®] FibreOne.

nbn[®] Network means, in respect of an Eligible Estate, nbn's fibre-to-the-premises network serving that Eligible Estate.

nbn[®] Platform means all information technology systems and platforms used by or on behalf of nbn in connection with this Agreement which directly or indirectly interact with information technology systems and platforms used by or on behalf of MSP.

Personal Information means:

- (a) 'personal information', having the meaning given to that term in the *Privacy Act 1988* (Cth); and
- (b) any other information (if any) that is subject to the operation of Part 13 of the Telecommunications

Act.

Personnel means, in relation to a party or third party, that party's officers, employees, agents, contractors, subcontractors, consultants, Related Bodies Corporate and their officers, employees, agents, contractors, subcontractors, consultants, but in the case of MSP and its Related Bodies Corporate, does not include nbn, its Personnel, its Related Bodies Corporate and their Personnel.

Pit means, in respect of an Eligible Estate, an underground vault not large enough for a person to fully enter and work within that is owned by nbn or over which nbn is in a position to exercise control.

Privacy Laws means all laws pertaining to privacy, protection of personal information and protection of information contained in communications, applicable in Australia, as amended from time to time, including:

- (a) the *Privacy Act 1988* (Cth) (including the Australian Privacy Principles); and
- (b) Part 13 of the Telecommunications Act.

Prohibited Use means any use described in clause 1.10.

Public HetNet or **Public Heterogeneous Network** means a network of multiple technologies and cell types with a seamless mobile coverage created through the use of handoff and authentication protocols that enable roaming between the multiple technologies and cell types and consists of access points made available to members of the public as part of a public mobile telecommunications service.

Regulator means 'Regulator' as defined in the WBA SFAA.

Regulatory Event means any of the following events:

- (a) a 'Regulatory Event' as defined in the WBA SFAA; or
- (b) the outcome of a dispute under any agreement between nbn and any third party, the subject matter of which is the same or similar to the subject matter of this Agreement, if nbn determines that the resolution may affect its ability to perform its obligations under this Agreement.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act.

Required Insurance means:

- (a) workers compensation insurance in accordance with applicable law and awards, and insurance against common law liability to a party's Personnel engaged in connection with this Agreement which must, where permitted by law, include an indemnity in favour of the other party in respect of statutory liability to that party's Personnel;
- (b) public liability and product liability insurance as follows:
 - (i) public liability insurance for an amount not less than \$20 million per occurrence; and
 - (ii) product liability insurance for an amount not less than \$20 million in the annual aggregate; and
 - (iii) insuring legal liability for:

- (A) loss of, destruction of or damage to Tangible Property;
 - (B) personal injury, sickness, disease or death of any person; and
 - (C) indirect loss resulting from any of the above circumstances,
- under, arising from or in connection with this Agreement;
- (c) professional indemnity insurance for an amount not less than \$10 million per claim and in annual aggregate;
 - (d) motor vehicle third party property damage insurance for not less than \$20 million in respect of motor vehicles used in connection with this Agreement; and
 - (e) any other insurance required by law,
- (together, the **Insurance Policies**).

Site means each, and any part, of:

- (a) an Eligible Estate;
- (b) an Interconnection Site; and
- (c) a site associated with an Interconnection Site, on or at which Duct is located.

Specified Activity means any of the activities referred to in sections 10 to 16 (inclusive) of the *NBN Companies Act 2011* (Cth).

Specified Utility has the meaning given to the term 'Utility' in section 151DA(9) of the *Competition and Consumer Act 2010* (Cth).

Supply Conditions has the meaning given to that term in clause 2.2 of the Head Terms.

Take-up Factor means 80%.

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

Term has the meaning given to that term in clause 21 of the Head Terms.

Third Party IPR means Intellectual Property Rights of a third party.

WBA means any agreement between nbn and another person or persons on the same or similar terms as a WBA SFAA.

WBA SFAA means the 'Wholesale Broadband Agreement' published on nbn's website as updated by nbn from time to time or any replacement to that agreement.

Schedule 2 – nbn® FibreOne Product Details

- 1.1 The following network elements must be used, and supplied by the responsible party, to enable the supply of nbn® FibreOne:

Network element	Responsible party
MSP GPON OLT which is all equipment necessary to transmit and receive MSP Product Communications to and from the CXC. This equipment must comply with the GPON specifications in Annexure 1.	MSP
CXC which provides the optical interface port(s) at a centralised location in an Eligible Estate determined by nbn, for the transmission and reception of MSP Product Communications over the nbn® FibreOne Infrastructure to and from multiple CXRs.	nbn
nbn® FibreOne Infrastructure which is the nbn® Network between the CXC and multiple CXRs.	nbn
CXR which provides the optical interface port at a premises or other location within an Eligible Estate, as determined by nbn, for the transmission and reception of MSP Product Communications over the nbn® FibreOne Infrastructure to and from the CXC (and which may also provide a Fibre TV interface for use by a Fibre TV provider).	nbn
Internal Cabling which is fibre optic cabling from a CXR to an MSP GPON ONT.	MSP*
MSP GPON ONT which is all equipment necessary to transmit and receive MSP Product Communications to and from the CXR via Internal Cabling. This equipment must comply with the GPON specifications in Annexure 1.	MSP

* Internal Cabling is a cabling and related infrastructure at a premises or other locations within an Eligible Estate which MSP is required to use to supply MSP Product under this Agreement. It may be supplied by MSP or organised by a third party but will not be supplied by nbn. See clauses 5.6 and 6.5 of the Head Terms for further details.

- 1.2 MSP must ensure that MSP Product Communications which it transmits using nbn® FibreOne Infrastructure, and which nbn carries over nbn® FibreOne Infrastructure through the supply of nbn® FibreOne, conforms with GPON specifications in Annexure 1 and other requirements notified by nbn from time to time.

Schedule 3 – nbn® FibreOne Facilities Access

1. Pre-conditions

- 1.1 nbn will supply facilities access to MSP in respect of a specific Eligible Estate in conjunction with the supply of nbn® FibreOne only as follows:
- (a) for MSP to acquire nbn® FibreOne in respect of that Eligible Estate;
 - (b) subject to space, third party authorisations and other practical limitations; and
 - (c) subject to MSP complying with all prerequisites and processes notified by nbn, **(Specified Access)**.
- 1.2 The only nbn® Facilities to which nbn will supply Specified Access are the Pits, and associated Ducts, nominated by nbn for a relevant Eligible Estate.
- 1.3 Except as expressly specified, Specified Access does not include any of the following for any nbn® facilities or third party sites or facilities:
- (a) building entry rights for MSP Equipment;
 - (b) rights to co-locate MSP Equipment; or
 - (c) physical access rights for MSP Personnel or third parties.
- 1.4 MSP must, at its cost, obtain, maintain and comply with each Authorisation required to lawfully exercise any Specified Access.

2. Ordering process

- 2.1 As part of an MSP's Delivery Plan, the MSP must submit a request for Specified Access in the form, and subject to any reasonable requirements, determined by nbn from time to time (**Request**).
- 2.2 nbn may:
- (a) require MSP to sign an Access Seeker Undertaking specified by nbn (acting reasonably) before nbn accept a Request; and
 - (b) reject a Request in its reasonable discretion and will give MSP written notice of such rejection in accordance with clause 4.6 of the Head Terms.

3. Facilities Access Licence

- 3.1 If nbn accepts a Request, nbn will give MSP a notice granting MSP a non-exclusive, non-transferrable licence for Specified Access (**Facilities Access Licence**) subject to such terms and conditions as determined by nbn and set out in the notice (each, a Licence Condition).
- 3.2 MSP must:
- (a) upon request, provide copies of any or all Authorisations obtained by MSP;

- (b) provide any assistance requested to assess MSP's compliance with this Schedule 3, any Licence Condition, any Access Seeker Undertaking or any Authorisation; and
- (c) notify nbn within 2 Business Days of any breach of this Schedule 3, any Licence Condition, any Access Seeker Undertaking or any Authorisation.

3.3 Without limiting any other rights nbn may have, nbn may terminate affected Facilities Access Licence(s), and any related supply of nbn® FibreOne under clause 23.1(c) of the Head Terms, if MSP (or its Personnel, where relevant):

- (a) uses access under the Facilities Access Licence for any purpose not expressly permitted under the Facilities Access Licence;
- (b) breaches or fails to comply with any provision of this Agreement (including this Schedule 3), any Licence Condition, any Access Seeker Undertaking or any Authorisation.

4. Property rights and beneficial interest in the nbn® Facilities

4.1 Rights granted under each Facilities Access Licence rest in contract only. Nothing in this Agreement or any Facilities Access Licence:

- (a) creates any tenancy between nbn and MSP;
- (b) confers upon MSP any right, title or interest (whether legal, equitable or statutory) in any nbn® Facilities which are the subject of the Facilities Access Licence by way of occupation rights (other than the Facilities Access Licence), easements, rights of way or otherwise; or
- (c) gives or transfers to MSP any right, title or interest (whether legal, equitable or statutory) in any part of nbn's network, systems, equipment or facilities except to the extent expressly provided for in this Agreement

4.2 MSP must not lodge any caveat against the title of any nbn® Facilities.

4.3 Each Facilities Access Licence in relation to an nbn® Facility:

- (a) is subject to the encumbrances affecting the land described in the certificate of title for such nbn® Facility and any applicable lease, licence or other tenure document (if applicable); and
- (b) except as expressly stated, does not affect or remove the rights of nbn, its Personnel and other invitees.

4.4 Despite any right granted to MSP under this Agreement (including a Facilities Access Licence), nbn:

- (a) retains the right to access each of its nbn® Facilities at any time and for any purpose, including for it or its other invitees to undertake works and to install, maintain, upgrade or remove cables and other telecommunications equipment;
- (b) may grant any third party rights in relation to any nbn® Facility, including any portion of the nbn® Facility to which the MSP is granted a Facilities Access Licence; and
- (c) may, subject to clause 11 of this Schedule 3, terminate the Facilities Access Licence in the event of a sale (or intended sale) or leaseback or any other similar arrangement affecting the relevant nbn® Facility, which cannot be disputed by MSP.

- 4.5 MSP must not assign, lease, license, sub-license, share, alienate, part with, or otherwise deal with any Facilities Access Licence, or any right or benefit under it, or attempt to do any such thing.

5. Protection and safety

- 5.1 MSP must comply with any instructions, directions, policies or procedures given by nbn to:
- (a) protect the integrity of the network, systems, equipment or facilities of nbn or any third party;
 - (b) ensure the quality of any product or service supplied by nbn to the MSP or any other person;
or
 - (c) protect the health or safety of any person or protection of the environment.

6. MSP Equipment

- 6.1 MSP must ensure that each item of MSP Equipment installed or used in or at an nbn[®] Facility:
- (a) has been approved for installation and use by nbn (which approval may be given by equipment type or class);
 - (b) complies with, and is used in accordance with, this Agreement, all technical requirements notified by nbn, applicable laws and regulator directions;
 - (c) has all necessary regulatory approvals and is safe and marked and labelled in accordance with all applicable laws;
 - (d) is maintained and repaired in a good, proper and safe and operable condition in accordance with all applicable laws and this Agreement; and
 - (e) does not cause electromagnetic or optical interference which disrupts, or has the capacity to disrupt, the efficient operation of the networks, systems, equipment and facilities of nbn or any other person.
- 6.2 Except as expressly set out in this Agreement, even if MSP Equipment is located in an nbn[®] Facility:
- (a) each item of MSP Equipment remains at MSP's risk at all times; and
 - (b) nbn accepts no responsibility for MSP Equipment or any other property of MSP.

For clarity, this clause 6.2 of this Schedule 3 does not (and is not intended to) override any rights a party may have pursuant to applicable law, including the Australian Consumer Law.

7. MSP Works

- 7.1 MSP must not begin MSP Works unless and until nbn approves the work in writing (which nbn may do subject to conditions, or decline to do, acting reasonably) and issues any permit to work (if nbn has notified MSP that a permit to work is required).
- 7.2 MSP is responsible for locating all other utility and Carrier services before commencing any MSP Works and ensuring the MSP Works do not interrupt, interfere or degrade any such services.

- 7.3 If at any time during the conduct of MSP Works, MSP needs to change any specifics of the MSP Works approved by nbn, including the location of any MSP Equipment or pit, MSP must first seek and obtain nbn's approval of that change (not to be unreasonably withheld or delayed).
- 7.4 In conducting the MSP Works, MSP must:
- (a) not do anything in or around any nbn[®] Facility which in nbn's reasonable opinion is noxious, offensive or a nuisance;
 - (b) comply with any reasonable directions and maximum timeframes notified by nbn;
 - (c) not do, suffer or permit, anything which intentionally or negligently causes loss or damage to the owners or occupiers of any adjoining or neighbouring land to the nbn[®] Facility;
 - (d) not damage the nbn[®] Facility, any equipment or other property that is owned, operated or controlled by nbn or any third party and located on or near the nbn[®] Facility;
 - (e) not install any fittings or fixtures in or on the nbn[®] Facility, except as expressly permitted by nbn in writing;
 - (f) perform its obligations in a diligent and professional manner with due skill and care; and
 - (g) not invite, permit or suffer any person who is not an Authorised Person to access any nbn[®] Facility.
- 7.5 MSP must give nbn written notice of any damage to an nbn[®] Facility, cables or equipment of nbn or any third party, or other maintenance issues immediately after the MSP becomes aware of it.
- 7.6 MSP must provide each of the following items to nbn within 10 Business Days of the MSP completing MSP Works:
- (a) a written notice certifying that MSP Equipment has been installed or altered only as permitted;
 - (b) as-built drawings, marked up photographs and marked up copies of the approved network designs in a format reasonably specified by nbn; and
 - (c) any other information reasonably requested by nbn.
- 7.7 nbn may at any time (acting reasonably) request audits or inspections of MSP Works. MSP must co-operate with nbn and provide any information and assistance that is reasonably requested.
- 7.8 If nbn identifies defects in relation to the MSP Works including:
- (a) any damage to the nbn[®] Facilities or the networks, systems, equipment and facilities of nbn or any other third party; or
 - (b) any non-compliance with the terms of this Agreement,
- MSP must, at its cost, rectify those defects as soon as possible.

- 7.9 If MSP fails to comply with obligations in respect of MSP Works, without limiting any other rights nbn may have, nbn may require MSP to, in accordance with nbn's directions:
- (a) remove (or procure the removal of) all MSP Equipment installed or altered in connection with the non-compliant MSP Works; and
 - (b) reinstate the nbn[®] Facility to the same standard, style and condition which existed prior to the non-compliant MSP Works.
- 7.10 If the MSP fails to perform activities required under clause 7.9 of this Schedule 3, nbn may undertake such activities at the MSP's cost.

8. Physical access

- 8.1 For physical access to an nbn[®] Facility in respect of which nbn is supplying Specified Access, MSP must submit a request in accordance with processes specified by nbn from time to time.
- 8.2 MSP must only request and nbn will, subject to this Agreement, only provide physical access to Authorised Persons to install, operate, maintain, repair and replace MSP Equipment up to the Termination Point (but not to connect the cables to, or terminate the cables on, nbn[®] Equipment).
- 8.3 MSP may only physically access (or permit or allow others to physical access) an nbn[®] Facility or a related Site owned, controlled or operated by nbn:
- (a) if nbn gives MSP a written notice of approval of a physical request submitted by MSP; and
 - (b) at the times, on the basis and subject to any other conditions as specified by nbn.
- 8.4 MSP must not make, or cause to be made, any visual or audio-visual recordings within or of any nbn[®] Facility or a related Site owned, controlled or operated by nbn including photographs or videos, without the prior written consent of nbn (which may be given or withheld or given with conditions, in nbn's discretion).
- 8.5 MSP must ensure that Authorised Persons physically accessing any nbn[®] Facilities:
- (a) comply with all policies and reasonable directions notified by nbn from time to time; and
 - (b) are properly experienced, qualified and skilled to perform the tasks for which physical access is provided.
- 8.6 Any person may be refused physical access to any nbn[®] Facility or by any third party with rights in an associated Site, including where:
- (a) there is or may be a health, safety or security risk;
 - (b) the access may jeopardise or interfere with the integrity of infrastructure, network, equipment, facilities or operations owned or operated by nbn or a third party;
 - (c) MSP is in breach of any provision of this Agreement; or
 - (d) the person seeking access:
 - (i) is not appropriately identified in any arrangements made for physical access;

- (ii) does not produce acceptable photographic identification;
- (iii) has previously caused problems for nbn or a third party; or
- (iv) has not completed any site induction or prerequisite course or refresher.

9. nbn's interconnection works

9.1 nbn will perform the following interconnection works for each instance of Specified Access:

- (a) **Termination:** nbn physically connects MSP Equipment via one or more single mode fibre optic cables supplied by MSP and terminates the cables at a point designated by nbn on passive nbn[®] Equipment; and
- (b) **Cross Connection:** nbn physically cross-connects one or more single mode fibre optic cables supplied by MSP from the designated termination point on the passive nbn[®] Equipment to a point designated by nbn on the CXC, establishing connectivity between the MSP Equipment and the nbn[®] FibreOne Infrastructure.

9.2 MSP must:

- (a) operate and monitor any cables used for interconnection; and
- (b) only provide single-mode fibre cables comprising the number of fibres determined by nbn, up to a maximum of 24 fibres.

9.3 nbn will conduct interconnection works at mutually agreed times and MSP acknowledges that elements of interconnection may be supplied by nbn at different times.

9.4 After nbn conducts all interconnection works, nbn will advise MSP and:

- (a) if requested by MSP, the parties will jointly inspect the works at a mutually agreed time;
- (b) if interconnection is agreed not to have been successful, nbn will perform required rectification works.

9.5 nbn may permit third parties to be present during interconnection works or inspections.

9.6 MSP must not, and must not invite, permit or suffer any third party to:

- (a) physically access, interact with, interconnect with, interfere with, or otherwise affect, the nbn[®] Network, any nbn[®] Equipment, or (where located in or operating through an nbn[®] Facility) any third party infrastructure, network, equipment, facilities or services; or
- (b) connect the MSP Equipment to any third party infrastructure network, equipment or facilities within any nbn[®] Facility.

10. Temporary interruptions

10.1 nbn may undertake or permit works that affect nbn[®] Facilities at any time, including for the purposes of maintaining or upgrading those nbn[®] Facilities.

- 10.2 MSP's physical access to nbn® Facilities and Sites may be interrupted for any such works. nbn will use reasonable endeavours to minimise such interruptions and to give MSP as much notice as is reasonably practicable in the circumstances (though prior notice may not always be practicable).
- 10.3 The parties will cooperate and work together reasonably to respond to any Emergency and the MSP must carry out any works in accordance with nbn's directions.

11. Decommissioning or sale of nbn® Facilities

- 11.1 nbn may permanently decommission or sell (or sell and leaseback) any part or whole of an nbn® Facility which is the subject of a Facilities Access Licence if nbn has given reasonable notice in writing to MSP (**Decommissioning Notice**).
- 11.2 When a nbn® Facility is decommissioned or sold, nbn may elect to offer MSP access to an alternative nbn® Facility.
- 11.3 Any Facilities Access Licences affected by a Decommissioning Notice will be deemed to have been terminated from the date set out in the Decommissioning Notice except as otherwise expressly agreed.
- 11.4 If nbn decommissions or sells an nbn® Facility nbn may terminate any related supply of nbn® FibreOne under clause 23.1(k) of the Head Terms.

12. Grant and termination in respect of an Eligible Estate

- 12.1 nbn will only supply Specified Access to MSP from the date specified in the relevant Facilities Access Licence until the successful transfer of MSP Equipment and Authorisations under clauses 23.8 to 23.10 of the Head Terms.
- 12.2 Without limiting any other rights nbn may have, nbn may terminate supply of Specified Access to MSP earlier than specified in clause 12.1 of this Schedule 3 by reasonable notice.
- 12.3 On or after termination or expiry of Specified Access, nbn may require MSP to remove or re-locate specified MSP Equipment from an nbn® Facility by a specified date and carry out any related works.
- 12.4 If MSP fails to perform any activities required under clause 12.3 of this Schedule 3, nbn may perform such activities (or procure the performance of such activities) at MSP's cost.

13. General conditions

- 13.1 If nbn or MSP require access to third party sites or facilities in connection with Specified Access, nbn's obligation to supply Specified Access is dependent on, and subject to:
- (a) nbn having continuing rights to access and use (and allow MSP to access and use) such sites and facilities; and
 - (b) MSP having continuing rights to access and use such sites and facilities.

- 13.2 Notifications from nbn to MSP in connection with Specified Access may be provided to operational or other points of contact with MSP as agreed from time to time.
- 13.3 Specified Access is not a listed carriage service or a service that facilitates the supply of a listed carriage service for the purposes of section 152AL of the *Competition and Consumer Act 2010* (Cth). The inclusion or supply of the Specified Access under this Agreement published on nbn's Website does not have the effect of making the Specified Access a declared service for the purposes of Part XIC of the *Competition and Consumer Act 2010* (Cth).

Annexure 1 – nbn[®] FibreOne Technical Specifications

MSP access to nbn's nbn[®] FibreOne Infrastructure for transmission and reception of MSP Product Communications is provided via a spliced connection at a "meet-me" location agreed for each Eligible Estate on a site by site basis as set out in a final Delivery Plan.

CXC Interface (NNI-GPON) Parameters

Table 1 details the optical specifications of the CXC demarcation point.

Table 1. nbn[®] CXC optical interface parameters

Parameter	Unit	Value
Downstream Operating Wavelength*	nm	1490 (nominal)
Upstream Operating Wavelength*	nm	1310 (nominal)
Maximum input Power*	dBm	+7
Return Loss	dB	> 50
Isolation	dB	> 30

*As specified in ITU-T G984.2 Recommendation, section 8.2.5, but noting that downstream/upstream directions are described in the table above from the perspective of the MSP's OLT at the CXC interface.

MSP's OLTs and ONTs must fully comply with ITU-T Recommendation G.984.4. The MSP OLT must use optics that are fully compliant with ITU-T Recommendation G.984.2, Appendix V, Class C+.

CXR Interface (UNI-GPON) Parameters

Table 2 details the optical specifications of the CXR demarcation point.

Table 2. nbn[®] CXR optical interface parameters

Parameter	Unit	Value
Downstream Operating Wavelength*	nm	1490 (nominal)
Upstream Operating Wavelength*	nm	1310 (nominal)
Maximum input Power*	dBm	+5
Return Loss	dB	>= 45
Isolation	dB	> 30

*As specified in ITU-T G984.2 Recommendation, section 8.2.5, but noting that downstream/upstream directions are described in the table above from the perspective of the MSP's OLT at the CXC interface.

Applicable nbn[®] Optical Loss

To assist with any MSP Product design, this section details the typical optical loss in the nbn[®] FibreOne Infrastructure between the CXC (NNI-GPON) and CXR (UNI-GPON) demarcation points.

Table 3. nbn[®] optical fibre loss

Parameter	Parameter	Typical Minimum Loss (dB)	Typical Maximum Loss (dB)
Optical loss	dB	18	28

Annexure 2 – Price List

1. Non-Recurring Charges

Activity	Non-Recurring Charge
Device Compatibility Testing	\$0
Permit to Connect	\$0

* **Note:** Charges are subject to clause 3 of this Annexure 2

2. Recurring Charges

Eligible Estate type	Recurring Charge per CXR per month
Vertical Multi-Dwelling Unit	\$0.88*
Horizontal Multi-Dwelling Unit (Detached dwellings, single-dwelling style structures or otherwise not determined by nbn to be a vertical multi-dwelling unit)	\$1.87*

***Note:** Charges are subject to clause 3 of this Annexure 2.

3. Promotional Period waiver of Charges

- (a) For a period of 12 months from the date on which nbn first publishes a standard form of access agreement for nbn[®] FibreOne (**Waiver Period**), nbn waives the Non-Recurring Charges and Recurring Charges in clauses 1 and 2 that are noted as being subject to this section (**Waived Charges**), subject to clause 3(b) of this Annexure 2.
- (b) nbn may change, extend or withdraw the waiver in clause 3(a) of this Annexure 2 in accordance with clause 24 of the Head Terms.

Annexure 3 – Assurance Standards

The Assurance Standards for rectification of a fault affecting nbn® FibreOne at an Eligible Estate, are as follows:

Assurance operational hours	Time of fault ticket acknowledgement	Fault rectification Assurance Standard from the time of fault ticket acknowledgement			
	Urban Area, Rural Area, Remote Area, Isolated Area	Urban Area	Rural Area	Remote Area	Isolated Area
7am to 7pm on Business Days	1 Business Day	5:00pm next Business Day	5:00pm second Business Day	5:00pm third Business Day	5:00pm tenth Business Day

These Assurance Standards are targets and are not binding commitments. See clause 8 of the Head Terms.

The Assurance Standards are measured from the time that nbn receives or accepts a fault report, and subject to interpretation, limitation, exclusion and reporting rules based on nbn's standard processes from time to time.

Appendix 1: Rider of Facilities Access Licence for nbn[®] FibreOne

[Insert date]

Notice of Facilities Access Licence for nbn[®] FibreOne

1. This Notice of Licence is issued under the nbn[®] FibreOne Agreement made between [MSP] and nbn dated [insert date] (Agreement), and the capitalised terms used in this Notice may be defined in the Agreement.
2. The Facilities Access Licence will commence on [insert date].
3. Details of the nbn[®] Facility covered by this Notice of Licence are as follows:

- [insert]

4. Details of the approved MSP Equipment, MSP Works and MSP contact details are as follows:

- [insert]

5. This Facilities Access Licence is subject to the following conditions:
 - (a) MSP must only install or permit the installation of the MSP Equipment specified above, in accordance with the network design approved by **nbn**, or otherwise approved by **nbn** in writing;
 - (b) MSP must complete its installation within the shorter of 30 Business Days of the date of this Facilities Access Licence or any alternative period specified above;
 - (c) MSP warrants that the MSP Equipment will only be used to supply the MSP Product;
 - (d) MSP must only perform the MSP Works specified above or otherwise approved by nbn in writing;
 - (e) MSP must comply with any relevant technical specifications, operations manual, processes, policies, directions, rules, standards, conditions and limitations issued from time to time by **nbn** and relevant third parties;
 - (f) MSP must not engage in any activity that is likely to compromise the ability of **nbn** to perform its obligations under the Agreement;
 - (g) MSP must not prejudice the ability of any other person to use the **nbn**[®] Facility or any product or service supplied by nbn; and
 - (h) MSP must ensure its Authorised Persons do and refrain from doing all things as necessary to ensure MSP complies with the Agreement.

If you have any queries, please contact [insert email].

Yours sincerely,
[Insert Signature]

[Insert Name]
[Insert Title]