

# Wholesale Broadband Agreement

NBN Co Limited

[Insert Customer name]

12 JANUARY 2012 ~~30 NOVEMBER 2011~~



This document forms part of version **12.0** of NBN Co's Wholesale Broadband Agreement which is a Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act 2010.

NBN Co Limited

## Wholesale Broadband Agreement

12/01/2012~~30/11/2011~~

Version 1~~2~~.0

### Copyright

This document is subject to copyright and must not be used except as permitted below or under the *Copyright Act 1968* (Cth). You must not reproduce or publish this document in whole or in part for commercial gain without the prior written consent of NBN Co. You may reproduce and publish this document in whole or in part for educational or non-commercial purposes as approved by NBN Co in writing.

Copyright © 2011 NBN Co Limited. All rights reserved. Not for general distribution.

### Environment

NBN Co asks that you consider the environment before printing this document.

# Agreement Execution Document

## Parties

This Agreement is entered into between:

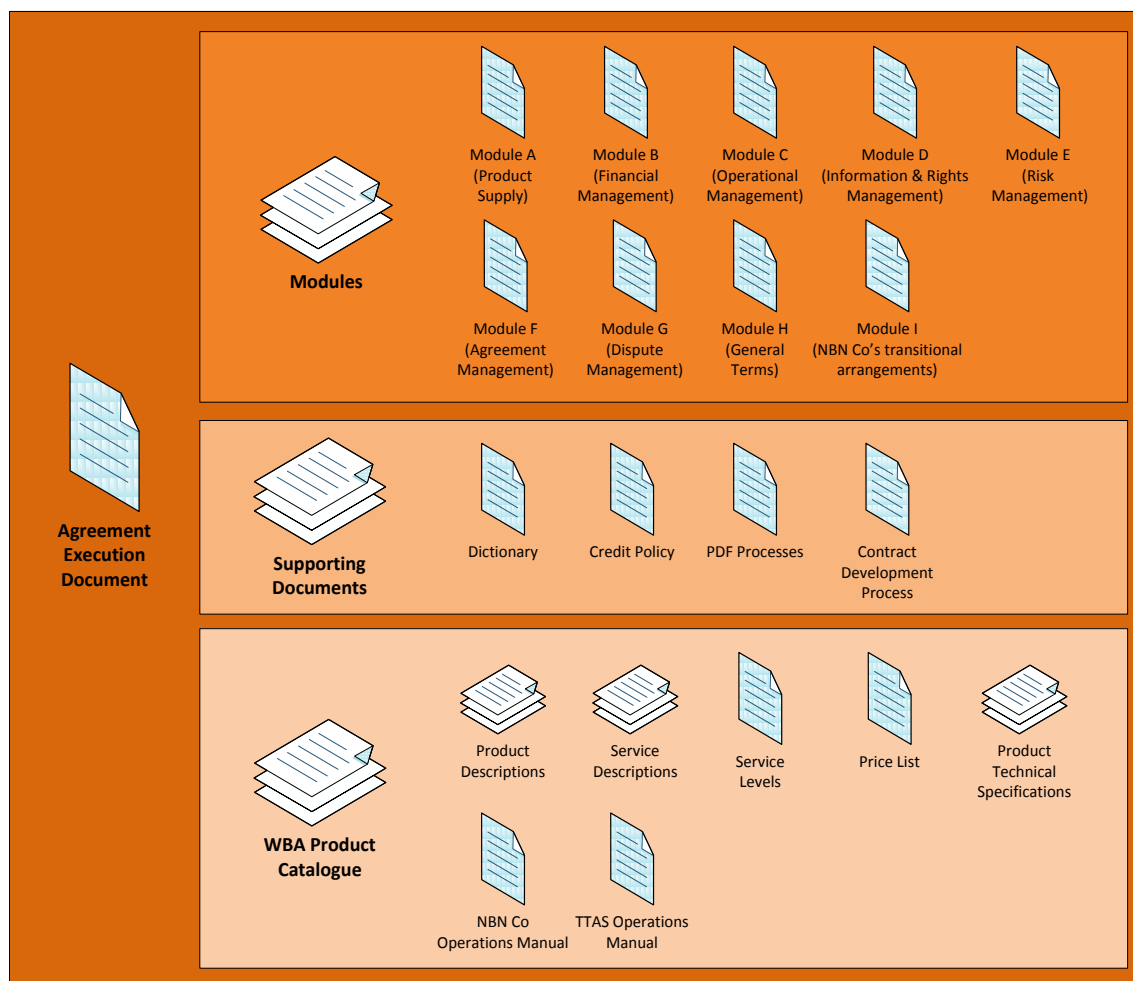
- NBN Co Limited (ABN 86 136 533 741) of Level 11, 100 Arthur Street, North Sydney NSW 2060 (**NBN Co**); and
- [Insert full legal name of Customer] (ABN [insert ABN]) of [insert registered address]
- [Insert names of any other related bodies corporate of customer also acquiring services as parties in their own right] (**Customer**).

## Background

This Agreement sets out the terms on which Customer may order Products from NBN Co and NBN Co will supply Products to Customer over the NBN Co Network.

## Agreement

The parties agree to comply with the terms of this Agreement which comprises the documents referred to in the diagram below:



## Execution

Executed as an agreement on

20

Signed for **NBN Co Limited** by its authorised representatives:

---

Signature of authorised representative

---

Signature of authorised representative

---

Name of authorised representative

---

Name of authorised representative

---

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

---

Signature of director / company secretary

---

Signature of director

---

Name of director / company secretary

---

Name of director

---

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

## Contents

Module A: Product Supply	7
A1 Ordering Products	7
A2 Supply of Ordered Products	7
A3 Development of new products and variations and enhancements to existing Products	9
A4 Withdrawal of Products	10
A5 Interim Satellite Services	11
Module B: Financial Management	12
B1 Charges	12
B2 Invoices	13
B3 Payment	14
B4 Non-payment	15
B5 Billing Enquiries and Billing Disputes	16
B6 Changes to the Price List and other amounts payable	17
Module C: Operational Management	20
C1 On-boarding	20
C2 National Test Facility	20
C3 Use of NBN Co Network and Ordered Products	21
C4 Network protection and safety	21
C5 Network compatibility, connections and capabilities	22
C6 Customer Equipment	24
C7 NBN Co Equipment	24
C8 Property rights and beneficial interest	25
C9 Removals and disconnections	25
C10 Access to premises	25
C11 Visiting sites and premises	26
C12 NBN Upgrades	27
C13 Points of Interconnection	29
C14 NBN Maintenance	32
C15 Faults	33

Module D: Information & Rights Management	34
D1 Confidential Information	34
D2 Data security and Personal Information	37
D3 Downstream Customers	38
D4 Rollout and migration communications	39
D5 Intellectual Property Rights	39
Module E: Risk Management	42
E1 Introduction	42
E2 Liability	42
E3 Indemnities	48
E4 No claims against certain persons	52
E5 Downstream Customers	53
E6 Insurance	54
E7 Force Majeure Events	56
Module F: Agreement Management	58
F1 Relationship and Operational Points of Contact	58
F2 Term	59
F3 Alignment with SAU	59
F4 Changes to this Agreement	60
F5 Default Notices	63
F6 Escalation	64
F7 Ordering Freeze	65
F8 Service Reduction	65
F9 Suspension	66
F10 Disconnection of Ordered Products and termination of this Agreement	68
F11 Choice of remedy	69
F12 Trial Agreement transition	69
F13 Effect of expiry or termination of this Agreement	70
Module G: Dispute Management	74
G1 Application of Dispute Management Rules	74

G2	Referral of Disputes	74
G3	Classification of Disputes	75
G4	Resolution of Bilateral Disputes	75
G5	Panel Arbitration	76
G6	Resolution of Industry Relevant Disputes	77
G7	Parties to the Panel Arbitration for an Industry Relevant Dispute	77
G8	Other provisions applicable to the conduct of Panel Arbitrations for Industry Relevant Disputes	80
G9	Rights to use dispute resolution processes outside of the Dispute Management Rules	80
G10	General rights and obligations	81
G11	Resolution Advisor	82
G12	The Pool	84
G13	Costs	86
G14	Non-discrimination	86
G15	Expert Determination Rules	86
	Module H: General Terms	90
H1	Notices and contacts	90
H2	Relationships	91
H3	Warranties	92
H4	Other general terms	92
H5	Interpretation of this Agreement	96
	Module I: NBN Co's Transitional Commitments	99
I1	Primacy and Term	99
I2	Price commitments	99
I3	Non-price commitments	100
I4	Regulatory Events	101
	Dictionary	102

---

## Module A: Product Supply

### A1 Ordering Products

#### A1.1 Ordering process

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

---

### A2 Supply of Ordered Products

#### A2.1 NBN Co's obligation to supply

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

#### A2.2 Pre-conditions to NBN Co supply

NBN Co is not obliged to supply or continue to supply any Product to Customer unless:

- (a) Customer is and remains a Carrier, Carriage Service Provider, Content Service Provider and/or a Specified Utility engaging in a related Specified Activity; and
- (b) Customer has provided to NBN Co and maintained any Credit Evidence or Financial Security required under the [Credit Policy](#).

#### A2.3 Customer's supply-related warranties

- (a) Customer warrants to NBN Co that throughout the period in which NBN Co supplies an Ordered Product to Customer:
  - (i) Customer is and will remain a Carrier, Carriage Service Provider, Content Service Provider and/or a Specified Utility engaging in a related Specified Activity; and
  - (ii) Customer complies and will continue to comply with the [Credit Policy](#) including providing Credit Evidence or a Financial Security where required under the [Credit Policy](#),  
  
(the **Supply Conditions** in respect of that Ordered Product).
- (b) If Customer breaches any of the Supply Conditions, NBN Co may, in addition to NBN Co's other rights, immediately Suspend supply of Ordered Products to Customer pursuant to clause F9.2(a)(v).
- (c) Customer must notify NBN Co immediately if, at any time during the supply of an Ordered Product, Customer no longer fully complies with any of the Supply Conditions.



#### **A2.4 Continued supply after expiry of Minimum Term**

Where NBN Co's supply of an Ordered Product to Customer is subject to a Minimum Term, NBN Co will continue to supply that Ordered Product to Customer following the expiry of that Minimum Term in accordance with the terms of this Agreement, unless Customer disconnects that Ordered Product in accordance with the [NBN Co Operations Manual](#) or supply of that Ordered Product otherwise ceases pursuant to the terms of this Agreement.

#### **A2.5 Service Levels**

NBN Co will supply each Ordered Product in accordance with the Service Levels that apply in respect of that Product, as set out in the [Service Levels Schedule](#), or the [TTAS Product Description](#).

#### **A2.6 Service Level Rebates**

If NBN Co fails to meet a Service Level, NBN Co will credit Customer with the applicable Service Level Rebate (if any) in accordance with the terms of the [Service Levels Schedule](#), or the [TTAS Product Description](#).

#### **A2.7 Measurement and monitoring of performance against Service Levels**

- (a) In order to measure its performance in supplying Ordered Products in accordance with the applicable Service Levels, NBN Co will:
  - (i) implement and operate such measurement and monitoring tools that it considers are reasonably required;
  - (ii) use reasonable endeavours to ensure that the information and data generated by the measurement and monitoring tools is accurate and correct any inaccuracy as soon as practicable after becoming aware of such inaccuracy; and
  - (iii) engage an independent auditor to audit the general accuracy of its measurement and monitoring tools at least once during the Term and NBN Co will notify Customer of the results of each audit, subject to any confidentiality obligations owed to third parties.
- (b) The information and data generated by the measurement and monitoring tools referred to in clause A2.7(a) is deemed to be accurate evidence of NBN Co's performance in supplying each Ordered Product in accordance with the applicable Service Levels, unless that information or data is found to be inaccurate following resolution of a Data Inquiry in accordance with clause A2.10 or in the determination of a Dispute.

#### **A2.8 Corrective action**

If, in supplying an Ordered Product, NBN Co fails to meet any applicable Service Level, then NBN Co will, on request by Customer:

- (a) investigate, and advise Customer of, the cause of that failure to the extent reasonably practicable in the circumstances;
- (b) take such action that NBN Co considers necessary to correct the cause of that failure; and
- (c) notify Customer of the corrective action taken.

## A2.9 Service Level Performance Report

- (a) Within 20 Business Days after the end of each Billing Period, NBN Co will provide a report to Customer regarding NBN Co's performance in meeting each Service Level during that Billing Period (**Service Level Performance Report**).
- (b) Each Service Level Performance Report will:
  - (i) be based on the information and data generated by the measurement and monitoring tools referred to in clause A2.7(a); and
  - (ii) contain details of NBN Co's performance in meeting each Service Level during the relevant Billing Period.

## A2.10 Data Enquiries

- (a) Customer may, acting reasonably, make an enquiry in relation to the accuracy of the information and data generated by the measurement and monitoring tools referred to in under clause A2.7(a) (a **Data Enquiry**) within 6 months after the end of the period to which a Service Level relates.
- (b) Customer's Relationship Point of Contact may at any time raise a Data Enquiry by contacting NBN Co's Relationship Point of Contact.
- (c) NBN Co must use reasonable endeavours to respond to the Data Enquiry within 10 Business Days of Customer raising that enquiry and may seek further details from Customer, which Customer will use reasonable endeavours to provide, so as to enable NBN Co to respond.
- (d) If NBN Co considers that it will not be able to respond to a Data Enquiry within 10 Business Days of receipt of that enquiry, it will notify the Customer of a revised timeframe for response.
- (e) If Customer is not reasonably satisfied with the resolution of a Data Enquiry, Customer may raise that enquiry as a Dispute, to be resolved in accordance with [Module G \(Dispute Management\)](#).

## A2.11 Further service levels

NBN Co intends to introduce further service levels from time to time during the Term and will, by no later than 30 June 2012, introduce an enhanced service level regime dealing with matters including network performance, service delivery, communication with Customer and planned and unplanned event management. NBN Co will consult with Customer and Other NBN Co Customers about the nature and extent of any future service levels as part of the forum established under clause C1.2(b).

---

# A3 Development of new products and variations and enhancements to existing Products

## A3.1 Product Development Forum

- (a) Save in respect of Designated Roadmap Products, NBN Co will establish and operate a multiparty forum where Customer and all Other NBN Co Customers can participate on a non-discriminatory basis (the **Product Development Forum**), using what NBN Co reasonably considers to be appropriate online collaboration tools and communication media.

- (b) The Product Development Forum will be the primary medium for consultation and communication between NBN Co and Customers regarding Product Ideas, as further described in the Product Development Forum processes (the **PDF Processes**).

### **A3.2 Conduct of the Product Development Forum**

- (a) NBN Co and Customer, if it participates, must comply with the [PDF Processes](#).
- (b) Customer's right to participate in the Product Development Forum is conditional on Customer complying with the [PDF Processes](#).

### **A3.3 Customer Product Ideas**

If Customer submits a Customer Product Idea to NBN Co through the Product Development Forum:

- (a) NBN Co will assess and respond to that Customer Product Idea in accordance with the [PDF Processes](#); and
- (b) Customer must consult with NBN Co and other participants in the Product Development Forum regarding that Customer Product Idea in accordance with the [PDF Processes](#).

### **A3.4 NBN Co Product Ideas**

- (a) Once NBN Co considers that an NBN Co Product Idea has been sufficiently developed for public comment, NBN Co will consult other participants in the Product Development Forum regarding that NBN Co Product Idea.
- (b) An NBN Co Product Idea is not an offer to supply that NBN Co Product Idea to Customer, any Other NBN Co Customer or any Access Seeker.

### **A3.5 Minor variations or enhancements**

If NBN Co wishes to implement a minor variation or enhancement to an existing Product (being a variation or enhancement that NBN Co, acting reasonably determines will not have, or is not likely to have, a material adverse impact on Customer) which:

- (a) varies or enhances the technical specifications or functionality of that existing Product; and
- (b) such variation or enhancement is not required to be submitted to a Product Development Forum under the [PDF Processes](#),

then NBN Co may implement that minor variation or enhancement upon reasonable prior notice (where practicable) to Customer. The withdrawal of supply of any Product Component or Product Feature will not be regarded, for the purposes of this clause A3.5, as a minor variation or enhancement to an existing Product.

---

## **A4 Withdrawal of Products**

### **A4.1 NBN Co's right to withdraw supply of Products**

- (a) NBN Co may withdraw from supply any Product, Product Component or Product Feature by giving:
  - (i) at least 24 months prior notice to Customer of the withdrawal of a Product (save for the TTAS which may be withdrawn by NBN Co on at least 6 months prior notice to Customer);

- (ii) at least 12 months prior notice to Customer of the withdrawal of a Product Component or Product Feature; and
  - (iii) at least 12 months prior notice to Customer of transitional arrangements (if any) that NBN Co may make available to Customer and Other NBN Co Customers, including migration to replacement or alternative products, services or solutions that may be offered by NBN Co (save for the TTAS, in respect of which the transitional arrangements will be notified to Customer at the time of the notice of withdrawal under clause A4.1(a)(i)).
- (b) If the withdrawal from supply of any Product Component or Product Feature would, whether withdrawn on its own or together with another Product Component or Product Feature in respect of a particular Product, materially adversely change the nature of the relevant Product, then the withdrawal will be regarded as a withdrawal of a Product and clause A4.1(a)(i) will apply.
- (c) NBN Co may, but is not obliged to, offer replacement or alternative products, services or solutions where a Product, Product Component or Product Feature is to be withdrawn and, if so, will reasonably assist Customer in planning and implementing a migration to replacement or alternative products, services or solutions that may be offered by NBN Co.

#### **A4.2 Restriction on NBN Co's right to withdraw Products**

NBN Co will not stop supplying or offering to supply a Product, Product Component or Product Feature if to do so would breach any law applying to NBN Co or any SAU.

---

## **A5 Interim Satellite Services**

The terms of this Agreement do not apply to the supply of Interim Satellite Services. If Customer wishes to acquire Interim Satellite Services from NBN Co, Customer must enter into a separate agreement with NBN Co for the supply of Interim Satellite Services.

---

## Module B: Financial Management

### B1 Charges

#### B1.1 Charges

The Charges that apply in respect of this Agreement are set out in the [Price List](#) or in the [TTAS Product Description](#).

#### B1.2 Commencement of recurring Charges

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

#### B1.3 Cessation of recurring Charges

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

#### B1.4 Break Fees

- (a) Unless any of clauses B6.1(d), E7 or F10.1(a)(iii) to F10.1(a)(vi) applies, if Customer disconnects an Ordered Product before the expiry of any applicable Minimum Term, then Customer must pay the applicable Break Fee to NBN Co.
- (b) NBN Co will not, during the period commencing on the Execution Date and ending on 30 November 2012, introduce a Minimum Term or Break Fee in respect of any Product described in the Product Catalogue as it exists on the Execution Date.

#### B1.5 Adjustment of Charges

- (a) If NBN Co supplies an Ordered Product for part of a Billing Period, NBN Co will ensure that the recurring Charges for that Ordered Product are adjusted on a pro rata daily basis in the invoice for the relevant Billing Period (or, where such recurring Charges have been paid in advance, credited on a pro rata daily basis in the invoice for the next Billing Period) to reflect the period of supply of the relevant Ordered Product.
- (b) If NBN Co subsequently accepts, or it is determined through the resolution of a Billing Dispute or Dispute, that Customer has paid Charges to NBN Co which should not have been paid (including as a result of NBN Co failing, in whole or in part, to supply the goods or services to which the Charges relate), then NBN Co will ensure that the Charges for those goods or services are credited to Customer on a pro rata daily basis in the invoice for the Billing Period after that acceptance or resolution.

#### B1.6 Charges are exclusive of GST

- (a) The Charges and other amounts payable under this Agreement (in this clause B1.6, the **consideration**) are exclusive of GST (unless expressly stated otherwise).
- (b) If GST is or becomes payable on a Supply made under or in connection with this Agreement, the party providing consideration for the Supply (in this clause B1.6, the **recipient**) is responsible for paying an additional amount (in this clause B1.6, the **additional amount**) to the party making that Supply (in this clause B1.6, the **supplier**).

- (c) The payment of the additional amount is conditional on receipt of a valid Tax Invoice by the recipient.
  - (d) The additional amount is equal to the amount of GST payable on that Supply, as calculated by the supplier in accordance with the GST Law.
  - (e) If section 84-5 of the GST Law applies to the Supply, no additional amount is payable.
  - (f) The additional amount is payable by the recipient without set off, demand or deduction at the same time and in the same manner as the consideration for the Supply.
  - (g) If an amount payable under or in connection with this Agreement is calculated by reference to an amount incurred by a party (in this clause B1.6, the **amount incurred**), the amount payable will be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that amount incurred.
  - (h) If an Adjustment Event occurs, the parties must do all things necessary to make sure that the Adjustment Event is appropriately recognised.
- 

## B2 Invoices

### B2.1 Issuing of invoices

- (a) NBN Co will issue Customer with an invoice for amounts payable by Customer under this Agreement in respect of each Billing Period in accordance with the processes set out in the [NBN Co Operations Manual](#).

### B2.2 Billing Period Options

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

### B2.3 Contents of invoices

- (a) After the start of each Billing Period (the **relevant Billing Period**), NBN Co will invoice Customer for:
  - (i) any recurring Charges that will be incurred by Customer during the relevant Billing Period; plus
  - (ii) any recurring Charges that were incurred by Customer during a Billing Period prior to the relevant Billing Period (a **prior Billing Period**) that were not invoiced by NBN Co in respect of that prior Billing Period; plus
  - (iii) any non-recurring Charges that were incurred by Customer during the relevant or a prior Billing Period; plus
  - (iv) any other amounts (such as interest) payable by Customer under this Agreement that were incurred by Customer during a prior Billing Period; less
  - (v) any deductions for Service Level Rebates accruing during a prior Billing Period; less

- (vi) any pro rata adjustments required in accordance with clause B1.5.
- (b) NBN Co will use reasonable endeavours to issue the invoice for each Billing Period within 10 calendar days after the start of the Billing Period.
- (c) The amounts payable by Customer under this Agreement that are set out in each invoice will be calculated by reference to data recorded by or on behalf of NBN Co. Such data is deemed to be accurate evidence of Customer's obligation to pay such amounts, unless that data is found to be inaccurate in the determination of a Dispute.

#### **B2.4 Requirements for invoices**

NBN Co will ensure that each invoice:

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

#### **B2.5 Omitted or miscalculated amounts**

- (a) If an invoice omits or miscalculates any amounts payable by Customer under this Agreement, NBN Co may, no later than 6 months after the date of that invoice, issue an additional invoice to Customer, adjust a later invoice submitted to Customer or issue a credit to Customer to recover or refund the omitted or miscalculated amounts.
- (b) If an omitted or miscalculated amount payable by Customer is an amount to which paragraph 6.5.4(c) of the Telecommunications Consumer Protections Code C628:2007 applies, Customer will not be required to pay any additional invoice issued under clause B2.5(a) if it is issued more than 95 calendar days after the date of the original invoice.

#### **B2.6 Crediting of Service Level Rebates**

If the total value of any Service Level Rebates accrued during a Billing Period exceeds the amount payable in the invoice issued by NBN Co for the Billing Period in which the amount of any Service Level Rebates will be credited to Customer, then NBN Co will deduct the excess from the amounts due in any invoices issued by NBN Co in the subsequent Billing Period or Billing Periods until the total value of those Service Level Rebates have been provided to Customer.

---

## **B3 Payment**

### **B3.1 Customer to pay invoices**

- (a) Subject to clause B3.1(c)(i), Customer must pay NBN Co the full amount set out in each invoice, on or before the due date specified in the invoice (which will be at least 30 calendar days after the date of the invoice) (**Due Date**).
- (b) If NBN Co issues an invoice to Customer electronically through the NBN Co Platform, then NBN Co is deemed to have issued the invoice to Customer on the date on which NBN Co receives confirmation from the NBN Co Platform that the invoice has been sent to Customer.
- (c) Subject to clause B5.6, if Customer reasonably raises a Billing Dispute prior to the Due Date in accordance with the relevant processes set out in clause B5, then:

- (i) Customer may withhold payment of the disputed amount identified in the Billing Dispute Notice until that Billing Dispute is resolved, except where the Billing Dispute relates to the amount of any Service Level Rebates to be credited against the amount payable in an invoice; and
  - (ii) Customer must pay the undisputed amount set out in the invoice by the Due Date.
- (d) Each payment of an invoice by Customer must be:
  - (i) paid by electronic funds transfer directly to NBN Co's nominated bank account or by such other means agreed between the parties;
  - (ii) paid without any set-off, counter-claim, withholding (except under clause B3.1(c)(i)) or deduction including on account of any non-payment of amounts owed to Customer by NBN Co or any third party; and
  - (iii) accompanied by sufficient information for NBN Co to identify, process and properly allocate those invoice payments (in this clause B3, a **remittance advice**).

### **B3.2 Receipt of invoice payments**

- (a) Each invoice payment made by Customer will be treated as being received by NBN Co when:
  - (i) that payment is credited to NBN Co's nominated bank account; and
  - (ii) NBN Co receives a remittance advice from Customer that specifies the invoice or invoices in respect of which the payment has been made.
- (b) If an invoice payment made by Customer is dishonoured, then that payment will be treated as not having been received by NBN Co until it is credited to NBN Co's nominated account in free and clear funds, together with a reimbursement of any dishonour fees and charges that have been paid, or may be payable, by NBN Co in respect of that dishonoured payment.

### **B3.3 Customer to notify NBN Co if Customer cannot pay invoice**

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

---

## **B4 Non-payment**

### **B4.1 Consequences of non-payment**

- (a) Customer is in Material Default if Customer does not pay the full amount set out in an invoice by the Due Date, except where it is entitled to withhold payment of that amount in accordance with clause B3.1(c)(i). Any such amount will be an **Overdue Amount** with effect from (but excluding) the Due Date.
- (b) Each of NBN Co's rights under this clause B4 are in addition to, and do not exclude or limit, its other rights or remedies under this clause B4 and/or its other rights or remedies under this Agreement or by law.
- (c) Any exercise of NBN Co's rights under this clause B4 will not waive or prevent the exercise of NBN Co's other rights under this clause B4 or its other rights or remedies under this Agreement or by law.



## **B4.2 Interest on Overdue Amounts**

- (a) If Customer fails to pay an invoice by the Due Date, Customer must, if required by NBN Co, pay NBN Co interest on any amount outstanding (applied for each day from (but excluding) the Due Date until (and including) the date that NBN Co receives payment in full at an annual percentage rate equal to the aggregate of the 30 Day Bank Bill Swap Rate plus 2 per cent.
- (b) The payment of any Overdue Amount under this Agreement does not relieve Customer from the obligation to pay the interest accrued on that Overdue Amount.

## **B4.3 Enforcement of Financial Security**

NBN Co may enforce, call on, use or otherwise take action to exercise or obtain the benefit of any Financial Security to recover any Overdue Amount in accordance with the [Credit Policy](#).

## **B4.4 Review of Financial Security requirement**

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

## **B4.5 Recovering Overdue Amounts as a debt**

NBN Co may recover any Overdue Amount as a debt due and payable immediately to NBN Co and may, in accordance with clauses D1.3(d)(i) or D1.3(d)(ii), notify and exchange information regarding Customer with NBN Co's debt collection and credit reporting agencies concerning Overdue Amounts.

---

# **B5 Billing Enquiries and Billing Disputes**

## **B5.1 Billing Enquiries**

Customer may make an enquiry about an invoice (a **Billing Enquiry**) in accordance with the processes and requirements set out in the [NBN Co Operations Manual](#).

## **B5.2 Billing Disputes**

A **Billing Dispute** is a dispute between the parties which arises because Customer, acting reasonably, considers there is an error in the amount of an invoice payable by Customer under this Agreement.

## **B5.3 Raising Billing Disputes**

Customer may, acting reasonably, raise a Billing Dispute in accordance with the processes and requirements set out in the [NBN Co Operations Manual](#) within 6 months after the date of the invoice to which the Billing Dispute relates.

## **B5.4 Resolution of Billing Disputes**

- (a) Each party must comply with the processes and requirements set out in the [NBN Co Operations Manual](#) to resolve Billing Disputes and use reasonable endeavours to resolve Billing Disputes as promptly and efficiently as possible.
- (b) Each party must continue to perform all its obligations under this Agreement despite the existence of a Billing Dispute.

## B5.5 Settling Billing Disputes

- (a) If a Billing Dispute is resolved and it is determined that:
  - (i) Customer overpaid NBN Co in respect of the relevant invoice, then NBN Co will, within 30 calendar days of that resolution, credit the overpaid amount to Customer, together with interest on that overpaid amount (applied for each day from (but excluding) the day on which that overpaid amount was paid until (and including) the date that the overpaid amount is credited to Customer); or
  - (ii) Customer has underpaid NBN Co in respect of the relevant invoice, then Customer will, within 30 calendar days of that resolution, pay that underpaid amount to NBN Co, together with interest on that underpaid amount (applied for each day from (but excluding) the relevant Due Date until (and including) the date that the underpaid amount is paid to NBN Co).
- (b) The rate of interest on any overpaid or underpaid amount will be equal to the aggregate of the 30 Day Bank Bill Swap Rate plus 2 per cent.

## B5.6 Unreasonable use of the Billing Dispute process

- (a) If NBN Co considers, acting reasonably, that Customer has raised, or is raising, Billing Disputes unreasonably or in bad faith, then NBN Co's Relationship Point of Contact will consult with Customer's Relationship Point of Contact regarding NBN Co's concerns with a view to resolving those concerns.
- (b) NBN Co may suspend Customer's rights under clause B3.1(c)(i) to withhold payment of disputed amounts for a period of 12 months if:
  - (i) Customer raises 3 or more Billing Disputes in any 6 month period; and
  - (ii) in at least 3, and in any case more than half of those Billing Disputes raised by Customer during that 6 month period, it is resolved that there was no error in the Charges or in the calculation of the amount of an invoice which was the subject of the Billing Dispute.
- (c) If NBN Co exercises its rights under clause B5.6(b), Customer may continue to raise Billing Disputes under clause B5.3.

---

## B6 Changes to the Price List and other amounts payable

### B6.1 Changes to the Price List and other amounts payable

- (a) NBN Co may change the [Price List](#), a charge set out in the [TTAS Product Description](#) or any other amount payable under this Agreement at any time by giving prior notice of that change to Customer in accordance with this clause B6.
- (b) A change to the [Price List](#), a charge set out in the [TTAS Product Description](#), or other amount payable under this Agreement will be effective on the later of:
  - (i) the date that is 3 months after the date of the notice referred to in clause B6.1(a), or where reasonably necessary for NBN Co to comply with the Non-Discrimination Obligations, an earlier date specified by NBN Co; and

- (ii) in respect of a Charge that is currently subject to a Validity Period, the expiry of that Validity Period.
- (c) A change to the [Price List](#), a Charge or other amount payable under this Agreement will be effective notwithstanding any Minimum Term that may apply to the supply of an Ordered Product.
- (d) If an Ordered Product is subject to a Minimum Term and a change to the [Price List](#) or other amount payable under this Agreement results in:
  - (i) an increase of the amount payable by Customer in respect of that Ordered Product, then Customer may place a disconnect order in respect of that Ordered Product subject to and in accordance with the [NBN Co Operations Manual](#) without incurring any Break Fees; or
  - (ii) a decrease of the amount payable by Customer in respect of that Ordered Product, then that change will be effective in accordance with clause B6.1(b).
- (e) Notwithstanding anything else in clauses B6.1(a) to B6.1(d), if:
  - (i) NBN Co is subject to a Regulatory Event;
  - (ii) any ACT Utilities Tax, or any Tax that becomes law and is effective after 1 July 2011 (including any increase in such a Tax after it becomes effective) is assessed, levied or imposed on NBN Co, the NBN Co Network or any facilities or land used, occupied or accessed in connection with the NBN Co Network, or the supply of Products, or anything used, occupied or accessed in connection with the supply of Products;
  - (iii) any Tax already assessed, levied or imposed on NBN Co, the NBN Co Network or any facilities or any land used, occupied, accessed in connection with the NBN Co Network, or the supply of Products, or anything used, occupied or accessed in connection with the supply of Products is increased;
  - (iv) any amount is charged by any person, to NBN Co and specifically identified by that person as a charge for a Tax of the same or similar nature to a Tax described in clauses B6.1(e)(ii) or B6.1(e)(iii), or an increased Tax under clause B6.1(e)(iii), and is an amount that third party is required to pay; or
  - (v) any amount is charged by any person to NBN Co arising from a Tax imposed on facilities, land or infrastructure used, occupied or accessed in connection with the NBN Co Network,

then:

  - (vi) NBN Co may change the [Price List](#), a charge set out in the [TTAS Product Description](#), or any other amount payable under this Agreement by an amount estimated by NBN Co to be a reasonably apportioned equivalent to that imposed or increased Tax or third party charge by giving notice of that change to Customer;
  - (vii) any such change to the [Price List](#), a charge set out in the [TTAS Product Description](#), a Charge or other amount payable under this Agreement will be effective 40 Business Days after the date of the notice referred to in clause B6.1(e)(vi), or where reasonably necessary for NBN Co to comply with the requirements or consequences of a Regulatory Event or the Non-Discrimination Obligations, an earlier date specified by NBN Co;

- (viii) any such change will not include the passing on of any penalty, interest or fines imposed on NBN Co in relation to that imposed or increased Tax; and
- (ix) each time that NBN Co makes a change in accordance with clause B6.1(e)(vi), NBN Co may take into consideration any material prior, over or under recovery that may have occurred in relation to any such imposed or increased Tax when determining the level of any future change to the [Price List](#), a charge set out in the TTAS Product Description, or any other amount payable under this Agreement.

---

## Module C: Operational Management

### C1 On-boarding

#### C1.1 Customer to complete on-boarding

- (a) As a pre-condition to NBN Co supplying any Product to Customer and as reasonably required by NBN Co from time to time, Customer must participate in and successfully complete all of the on-boarding processes and activities in accordance with the on-boarding module of the [NBN Co Operations Manual](#), including all required test activities in respect of each type of Product or new, modified or enhanced Product to be acquired by Customer.
- (b) The Charges applicable to the on-boarding processes and activities, if any, are set out in the [Price List](#).
- (c) NBN Co will provide reasonable assistance to Customer and its Personnel in regards to Customer's and its Personnel's performance and completion of on-boarding processes and activities, as notified by NBN Co to Customer from time to time as being required under this Agreement.

#### C1.2 Development of Operations Manual

NBN Co will, by no later than:

- (a) 15 December 2011, publish a high level roadmap for the process that will apply to further develop the [NBN Co Operations Manual](#) (**Operations Manual Roadmap**) and the terms of reference for the multiparty forum described in clause C1.2(b) and consult with Customer and Other NBN Customers to develop that roadmap and the terms of reference for the multiparty forum described in that clause; and
- (b) 31 January 2012, establish and operate a multiparty forum where Customer and all Other NBN Co Customers can participate, using what NBN Co reasonably considers to be appropriate tools and media, with the purpose of consultation and collaboration among participants concerning the further development of the [NBN Co Operations Manual](#) as contemplated by the Operations Manual Roadmap.

---

### C2 National Test Facility

#### C2.1 Use of the National Test Facility

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

## **C2.2 Suspension of use of the National Test Facility**

- (a) NBN Co may suspend Customer's use of the National Test Facility if NBN Co reasonably considers that Customer has breached any term regarding Customer's use of the National Test Facility.
- (b) If Customer remedies the breach, Customer may reapply for any further use of the National Test Facility and, where the breach has been remedied to NBN Co's reasonable satisfaction, NBN Co must lift the suspension as soon as practicable.

---

## **C3 Use of NBN Co Network and Ordered Products**

### **C3.1 Lawful use**

- (a) NBN Co must ensure that any use by NBN Co and its Personnel of the NBN-Related Networks is lawful, is in accordance with this Agreement.
- (b) Customer must ensure that any use by Customer (and its Personnel), or any of its Related Bodies Corporate (and their Personnel), of the NBN-Related Networks or any Ordered Product, is lawful, is in accordance with this Agreement.
- (c) Customer must use reasonable endeavours to ensure that any use of the NBN-Related Networks or any Customer Product, by any Downstream Customers, their Personnel and any End Users is lawful, does not give rise to a breach of any provision of this Agreement by NBN Co or by Customer.

### **C3.2 No prejudice to rights of Other NBN Co Customers and Access Seekers**

When exercising its rights or performing its obligations under this Agreement, Customer must not knowingly prejudice the ability of:

- (a) any Other NBN Co Customer to exercise its rights under the Wholesale Broadband Agreement between NBN Co and that Other NBN Co Customer; or
- (b) NBN Co to offer the terms of the Standard Wholesale Broadband Agreement to any Access Seeker.

---

## **C4 Network protection and safety**

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

- (a) Each party is responsible for the safe operation of its network, systems, equipment and facilities and must take all necessary steps, so far as is reasonably practicable, to ensure that except as expressly contemplated in this Agreement, it (and its Personnel), and each of its Related Bodies Corporate (and their Personnel), their networks, systems, equipment and facilities do not, in connection with this Agreement or the exercise of rights or the performance of obligations under this Agreement:
  - (i) endanger the health or safety of any person;
  - (ii) damage, threaten, interfere with, degrade or result in the deterioration of the operation or performance of the other party's network, systems, equipment or facilities; or

- (iii) in the case of Customer, damage, threaten, interfere with, degrade or cause the deterioration of the operation or performance of:
    - (A) NBN-Related Networks;
    - (B) any Other NBN Co Customer's network, systems, equipment or facilities used in connection with the NBN Co Network or at the National Test Facility; or
    - (C) the Products or the supply of any other products or services to Customer or any Other NBN Co Customer.
- (b) Customer must use reasonable endeavours to ensure that Downstream Customers do not (and that their Personnel do not) damage, threaten, interfere with or degrade or cause the deterioration of the operation or performance of:
  - (i) the NBN-Related Networks;
  - (ii) the Products or the supply of any other products or services to Customer or any Other NBN Co Customer; or
  - (iii) any Other NBN Co Customer's network, systems, equipment or facilities used in connection with the NBN Co Network or at the National Test Facility,including through the use of Downstream Customer's networks, systems, equipment or facilities.

#### **C4.2 Safeguarding the NBN Co Network, Products, persons and facilities**

Customer must comply with (and use reasonable endeavours to ensure that any Downstream Customers and each of their Personnel comply with) any instructions, policies or procedures given by NBN Co to Customer or any of its Personnel that relate to:

- (a) protecting the integrity of the NBN-Related Networks;
- (b) protecting the integrity of any Other NBN Co Customer's network, systems, equipment or facilities used in connection with the NBN Co Network or at the National Test Facility;
- (c) ensuring the quality of any product or service supplied by NBN Co to Customer or any Other NBN Co Customer; or
- (d) protecting the health or safety of any person.

---

## **C5 Network compatibility, connections and capabilities**

### **C5.1 Compatibility**

- (a) NBN Co will notify Customer of the compatibility requirements for the NBN-Related Networks during the on-boarding process described in this Agreement.
- (b) Customer must:
  - (i) ensure that Customer Network, Customer Platform and any other Customer networks, systems, equipment or facilities used in connection with the NBN Co Network are Compatible; and

- (ii) use reasonable endeavours to ensure that the networks, systems, equipment and facilities of any Downstream Customers and any End Users are Compatible.

## **C5.2 Connections to the NBN Co Network**

- (a) Customer must ensure that any connection made and maintained by or on behalf of Customer from Customer Network to the NBN Co Network or the National Test Facility is made and maintained in accordance with this Agreement and all applicable laws.
- (b) Customer must use reasonable endeavours to ensure that any connection made and maintained by or on behalf of Downstream Customers and any End Users to the NBN Co Network is made and maintained in accordance with this Agreement and all applicable laws.

## **C5.3 Disconnections from the NBN Co Network**

- (a) Customer must immediately, upon becoming aware of an occurrence described in this clause C5.3(a), disconnect or deactivate:
  - (i) any Customer Equipment that is damaging, interfering with, or degrading or causing the deterioration of the operation or performance of the NBN-Related Networks or the supply of products or services to Customer or any Other NBN Co Customer (including in breach of any Business Rules applicable to the supply of a Product);
  - (ii) any Customer Equipment that is incompatible with the NBN-Related Networks; and
  - (iii) any connections referred to in clause C5.2(a) that are not made and maintained in accordance with this Agreement and all applicable laws.
- (b) Customer must use all reasonable endeavours, upon becoming aware of an occurrence described in this clause C5.3(b), to procure the immediate disconnection or deactivation of:
  - (i) any networks, systems, equipment or facilities of any Downstream Customers and any End Users that are damaging, interfering with, or degrading or deteriorating the operation or performance of the NBN-Related Networks or the supply of products or services to Customer or any Other NBN Co Customer (including in breach of any Business Rules applicable to the supply of a Product);
  - (ii) any networks, systems, equipment or facilities of any Downstream Customers and any End Users that are incompatible with the NBN-Related Networks or in order for NBN Co to comply with the terms of supply to NBN Co by a Third Party Supplier; and
  - (iii) any connections referred to in clause C5.2(b) that are not made and maintained in accordance with this Agreement and all applicable laws.

## **C5.4 Back-up and redundancy**

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



---

## C6 Customer Equipment

### C6.1 Customer's obligations in respect of Customer Equipment

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

### C6.2 Customer's obligations in respect of Downstream Customer Equipment and End User Equipment

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

---

## C7 NBN Co Equipment

### C7.1 NBN Co's obligations in respect of NBN Co Equipment

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

### C7.2 Customer's obligations in respect of NBN Co Equipment

- (a) Customer must comply, and use reasonable endeavours to ensure compliance by its Personnel, Downstream Customers and their Personnel, and End Users, with the terms of use of any NBN Co Equipment, including the terms of access and use of any port on an NTD set out in this Agreement.
- (b) If Customer fails to disconnect and return NBN Co Equipment to NBN Co within 20 Business Days of being required to do so in accordance with this Agreement, then NBN Co (or any of its Personnel) may disconnect and recover that NBN Co Equipment in accordance with the provisions of this Agreement.

### C7.3 Lost, stolen or damaged NBN Co Equipment

- (a) NBN Co may, in its discretion, replace or repair any lost, stolen or damaged NBN Co Equipment at NBN Co's cost.
- (b) If NBN Co reasonably considers that an act or omission of Customer (or any Downstream Customer or any End User) has caused or contributed to the loss or theft of, or damage to, the NBN Co Equipment, then Customer must pay to NBN Co the proportion of Losses incurred by NBN Co in replacing or repairing the NBN Co Equipment to the extent to which Customer (or its Downstream Customer or its End User) has caused or contributed to that loss, theft or damage.

---

## C8 Property rights and beneficial interest

Nothing in this Agreement gives Customer (or any Downstream Customer or any End User) any right, title or interest (whether legal, equitable or statutory) in any part of the NBN Co Network, the NBN Co Platform, the National Test Facility, NBN Co Equipment or other platforms, software and systems supplied, made available by NBN Co to Customer or used by NBN Co to supply Products under or in accordance with this Agreement.

---

## C9 Removals and disconnections

### C9.1 NBN Co's rights to disconnect

If a Customer fails to comply with a Customer Disconnection Obligation or NBN Co has an NBN Co Disconnection Right then:

- (a) NBN Co (or any of its Personnel) may disconnect and/or remove that Customer Equipment, NBN Co Equipment or other items or connections; and
  - (b) Customer is deemed to have consented to and approved of NBN Co (or its Personnel, as the case may be) disconnecting and/or removing that Customer Equipment, NBN Co Equipment or other items or connections.
- 

## C10 Access to premises

### C10.1 Access to premises

- (a) Customer must:
  - (i) provide NBN Co and the Personnel of NBN Co with safe and timely access to any premises owned, controlled or occupied by Customer or any of its Related Bodies Corporate and/or any Downstream Customer at which any part of the NBN Co Network, including the NBN Co Equipment, or any other item that is licensed, owned or controlled by NBN Co, is or will be located, for so long as Customer or any of its Related Bodies Corporate and/or any Downstream Customer (as the case may be) owns, controls or occupies the relevant premises; and
  - (ii) ensure that the contracts it enters into with Downstream Customers and End Users contain valid and enforceable provisions permitting NBN Co and the Personnel of NBN Co safe and timely access to the premises referred to in clause C10.1(a)(i) for so long as the Downstream Customers or End Users (as the case may be) own, control or occupy the relevant premises,

where that access is required by NBN Co or its Personnel to:

- (iii) supply any Ordered Product;
- (iv) deliver, install, connect, inspect, modify, replace, maintain, repair, reinstate, service, perform any other work on or in relation to, disconnect, and remove part of the NBN Co Network, including any NBN Co Equipment, or any other item that is licensed, owned or controlled by NBN Co or, where lawful, any third party network whether or not in relation to the supply of an Ordered Product; or

- (v) exercise any of its rights or perform any of its obligations under and in accordance with this Agreement.
- (b) NBN Co will procure, and notify Customer of any relevant conditions of, access to Common Property for the purposes and for the period described in clause C10.1(a) either by obtaining the consent of the relevant person or body authorised to give such consent or pursuant to Schedule 3 of the Telecommunications Act.
- (c) Where Customer exercises its rights to access Common Property either by obtaining the consent of the relevant person or body authorised to give such consent or pursuant to Schedule 3 of the Telecommunications Act then, notwithstanding clause C10.1(b), it must:
  - (i) to the extent permitted by law, obtain that consent and/or exercise those rights on terms which provide that NBN Co and Other NBN Co Customers can also access the Premises on an open access basis; and
  - (ii) provide notice to NBN Co in writing of the particulars of the Common Property to which it has obtained a right of access by consent or by the exercise of its statutory rights within a reasonable period of obtaining that right of access.
- (d) Each party will provide reasonable assistance to the other in relation to access to Premises for the purposes described in this clause C10.
- (e) Customer warrants to NBN Co during the relevant periods specified in clause C10.1(a) that it holds all consents, approvals and rights of access that are to be provided or obtained by Customer pursuant to clause C10.1(a), and holds such consents, approvals and rights on trust for the benefit of NBN Co. Clause H2.1 does not apply to this clause C10.1(e).
- (f) This clause C10.1 survives termination or expiry of this Agreement.

#### **C10.2 ULLS disconnect consent**

- (a) If Customer orders a Product in respect of a Premises, and it:
  - (i) is the sole provider of Carriage Service to that Premises using ULLS; and
  - (ii) wishes to discontinue all Carriage Service supplied by it to that Premises using ULLS,Customer consents irrevocably to the ULLS being disconnected in respect of that Premises and must:
  - (iii) take all reasonable steps to assist NBN Co to deliver, install and connect any part of the NBN Co Network in respect of that Premises; and
  - (iv) upon ordering a Product in respect of that Premises, provide information to NBN Co as to whether there is a priority assistance service, medical alert service, alarm service or any other service with similar service levels.
- (b) Customer must obtain all valid consents and approvals from Downstream Customer or End User as may be required to comply with clause C10.2(a).

---

### **C11 Visiting sites and premises**

- (a) Customer must ensure that any Personnel of Customer visiting any premises owned, controlled or operated by NBN Co:

- (i) comply with any policies that are notified by NBN Co to Customer from time to time, any reasonable directions that may be given by NBN Co to Customer from time to time and all OH&S Laws; and
    - (ii) do not at any time cause NBN Co to be in contravention of an OH&S Law.
  - (b) NBN Co must ensure that any Personnel of NBN Co visiting any premises owned, controlled or operated by Customer comply with any policies that are notified by Customer to NBN Co from time to time and Customer must ensure that any policies that apply to NBN Co accessing such premises for the purposes of NBN Co performing upgrade, maintenance or rectification works, in accordance with this Agreement, are no more onerous than:
    - (i) NBN Co would be required to comply with at law; and
    - (ii) the policies that NBN Co notifies to Customer in accordance with clause C11(a)(i).
- 

## C12 NBN Upgrades

### C12.1 Major NBN Upgrades

- (a) If NBN Co wishes to implement a Major NBN Upgrade, NBN Co must:
  - (i) give as much prior notice as is reasonably practicable to provide to Customer before starting works to implement that Major NBN Upgrade, and in any event at least 6 months prior notice (**Major Upgrade Notice**); and
  - (ii) prepare a plan for the implementation of that Major NBN Upgrade (**Major Upgrade Plan**).
- (b) At a minimum, a Major Upgrade Notice must include the following information (as applicable):
  - (i) the nature and scope of the Major NBN Upgrade;
  - (ii) the date or dates, manner, locations and/or Products in whole or in part that will be affected by the Major NBN Upgrade;
  - (iii) without limiting the obligations of NBN Co under clause A4 with respect to the withdrawal of Products, whether alternative Products will be offered to Customer on a temporary or permanent basis, including essential details of those alternative Products such as the date of supply, cost and connection requirements;
  - (iv) the steps that NBN Co is taking to minimise disruption to Customer that may result from the Major NBN Upgrade;
  - (v) the actions that Customer can take to minimise disruption to its own customers to whom it supplies Customer Products that may result from the Major NBN Upgrade; and
  - (vi) details of the NBN Co representative whom Customer may contact to obtain further information about the Major NBN Upgrade.
- (c) At a minimum, the Major Upgrade Plan must include all of the information to be provided in the relevant Major Upgrade Notice as well as information regarding the nature and scope of the Major NBN Upgrade.

- (d) If the Major NBN Upgrade described in a Major Upgrade Plan will, or is likely to, have a material adverse impact on Customer, NBN Co will:
  - (i) provide a copy of that plan to Customer as soon as is reasonably practicable after the plan has been finalised;
  - (ii) reasonably consult with Customer in relation to the Major NBN Upgrade and the Major Upgrade Plan, either directly or through a multi-party forum that may be established by NBN Co for this purpose; and
  - (iii) reasonably consider any feedback received from Customer, including in regards to the timing of the Major NBN Upgrade, Customer's capability to adapt to the Major NBN Upgrade and the costs that will be incurred by Customer in connection with the Major NBN Upgrade.
- (e) NBN Co must use reasonable care when preparing Major Upgrade Plans and notices of the implementation of Major NBN Upgrades to ensure that those plans and notices are accurate. If at any time NBN Co discovers that the information in the Major Upgrade Plan or in the notice of implementation of a Major NBN Upgrade is not accurate, it will rectify that plan or notice (as the case may be) and notify Customer. However, any such inaccuracy will not prevent NBN Co from undertaking or completing the relevant Major NBN Upgrade.
- (f) If NBN Co wishes to change or rectify, or correct an inaccuracy in, a Major Upgrade Plan and NBN Co considers, acting reasonably, that such change or rectification is likely to have a material adverse impact on Customer, NBN Co must:
  - (i) provide a copy of that changed plan to Customer as soon as is reasonably practicable after the plan has been changed;
  - (ii) reasonably consult with Customer in relation to that changed plan, either directly or through a multi-party forum that may be established by NBN Co for this purpose; and
  - (iii) reasonably consider any feedback received from Customer in regards to the changes.
- (g) In all other cases, NBN Co may change or rectify a Major Upgrade Plan in its discretion.
- (h) As soon as is reasonably practicable after NBN Co finalises any changes to any Major Upgrade Plan, NBN Co must provide a copy of those changes to Customer for Customer's internal planning purposes.

### **C12.2 Minor NBN Upgrades**

If NBN Co wishes to implement a Minor NBN Upgrade, NBN Co must give Customer at least 1 months prior notice before starting works to implement that Minor NBN Upgrade.

### **C12.3 Emergency NBN Upgrades**

- (a) If NBN Co wishes to implement an Emergency NBN Upgrade, NBN Co must give notice to Customer as soon as is feasible in the circumstances, and, if feasible, before starting works to implement the Emergency NBN Upgrade (**Emergency NBN Upgrade Notice**).
- (b) At a minimum, an Emergency NBN Upgrade Notice must include a description of the Emergency giving rise to the implementation of that upgrade.

- (c) If NBN Co implements an Emergency NBN Upgrade, the parties agree to cooperate and work together reasonably in relation to that Emergency NBN Upgrade.

#### **C12.4 Minimising disruptions caused by NBN Upgrades**

- (a) NBN Co may temporarily interrupt the supply of Ordered Products in order for NBN Co (or any of its Personnel) to perform NBN Upgrades and such temporary interruptions will be regarded as Outages, not as Faults.
- (b) NBN Co will use reasonable endeavours to minimise:
  - (i) any disruption caused by NBN Upgrades to Customer and Customer Products; and
  - (ii) the frequency of NBN Upgrades in the same geographic area.

#### **C12.5 Disputes regarding NBN Upgrades**

A decision by NBN Co to implement an NBN Upgrade cannot be disputed and NBN Co is entitled to implement any NBN Upgrade despite the existence of any Dispute.

#### **C12.6 Charges during NBN Upgrades**

Subject to any applicable Service Level Rebates, Customer has to continue to pay all Charges and other amounts payable under this Agreement for the duration of the implementation of any NBN Upgrade, unless otherwise agreed between the parties.

---

### **C13 Points of Interconnection**

#### **C13.1 Locations of Points of Interconnection**

NBN Co will make details of the Points of Interconnection available to Customer from time to time through the NBN Co Platform or in a manner set out in the [NBN Co Operations Manual](#).

#### **C13.2 Changes to location and closures of Points of Interconnection**

- (a) NBN Co may change the location of, or close, any Point of Interconnection in accordance with the procedures set out in this clause C13.2, including if the location of any Point of Interconnection is changed in the ACCC Listed Points of Interconnection.
- (b) Before relocating or closing any Point of Interconnection, NBN Co must:
  - (i) notify Customer of the relocation or closure of that Point of Interconnection; and
  - (ii) prepare, and make available to Customer through the NBN Co Platform or in a manner set out in the [NBN Co Operations Manual](#), a POI Relocation/Closure Plan, at least 12 months prior to commencement of the relocation or closure of that Point of Interconnection.
- (c) NBN Co will ensure that the POI Relocation/Closure Plan includes, at a minimum, the following information (as applicable):
  - (i) the original location of the Point of Interconnection;
  - (ii) the location of the new Point of Interconnection, or the location of the Point of Interconnection which will serve Downstream Customers who were previously served at the original location of the Point of Interconnection;

- (iii) the estimated date on which the relocation or closure of the Point of Interconnection will be implemented;
  - (iv) the steps that NBN Co is taking to minimise disruption to Customer;
  - (v) the actions that Customer can take to minimise disruption to Downstream Customers;
  - (vi) details of the NBN Co representative whom Customer may contact to obtain further information about the relocation or closure;
  - (vii) the manner and locations and/or Products that will be affected by the relocation or closure; and
  - (viii) whether alternative Products will be offered to Customer on a temporary or permanent basis, including essential details of those alternative Products such as the date of supply, cost and connection requirements.
- (d) NBN Co will use reasonable care when preparing POI Relocation/Closure Plans to ensure that those plans are accurate. If at any time NBN Co discovers that the information in the POI Relocation/Closure Plan is not accurate, NBN Co will rectify that plan and notify Customer. Any such inaccuracy will not prevent NBN Co from implementing the relocation or closure of any Point of Interconnection.
- (e) Customer is responsible, at its own cost and expense, for re-establishing connections between the NBN Co Network and Customer Network at the new, relocated or relevant Point of Interconnection notified to Customer, within the notice period specified in this clause C13.2 or such other period agreed between the parties.

### **C13.3 Relocation of Point of Interconnection in an Emergency**

- (a) Notwithstanding clause C13.2, NBN Co may change the location of, or close, any Point of Interconnection in an Emergency in accordance with the procedures set out in this clause C13.3.
- (b) If NBN Co wishes to relocate or close a Point of Interconnection under this clause C13.3, NBN Co must give a notice (**Emergency POI Notice**) to Customer, if reasonably practicable in the circumstances, before or as soon as is reasonably practicable after NBN Co starts to implement the Emergency POI Relocation/Closure.
- (c) An Emergency POI Notice must include:
- (i) a description of the Emergency giving rise to the necessity to implement that Emergency POI Relocation/Closure; and
  - (ii) the location of the Point of Interconnection which will serve Downstream Customers who were previously served at the original location of the Point of Interconnection during the Emergency.
- (d) The parties must cooperate and work together reasonably in connection with any Emergency POI Relocation/Closure.
- (e) Customer is responsible, at its own cost and expense, for re-establishing connections between the NBN Co Network and Customer Network at the new, relocated or relevant Point of Interconnection notified to Customer as soon as is reasonably practicable in the

prevailing circumstances after receiving notice from NBN Co of the Emergency POI Relocation/Closure.

#### **C13.4 Decommissioning and replacement of Temporary POIs**

- (a) NBN Co may, in its discretion, decommission a Temporary POI and replace it with one or more Points of Interconnection that are not Temporary POIs at any time. In doing so, NBN Co must ensure that all Downstream Customers served by the Temporary POI are able to be serviced by the replacement Point or Points of Interconnection.
- (b) If NBN Co wishes to decommission a Temporary POI and replace it with one or more Points of Interconnection that is not a Temporary POI, NBN Co must give a notice (**Temporary POI Decommissioning Notice**) to Customer at least 6 months before the implementation of the decommissioning of that Temporary POI.
- (c) A Temporary POI Decommissioning Notice must include:
  - (i) the location of the Temporary POI being decommissioned;
  - (ii) the location of the Point of Interconnection that will replace that Temporary POI;
  - (iii) the date on which the replacement of the Temporary POI will be implemented;
  - (iv) the transition period during which Customer may migrate Downstream Customers to the replacement Point of Interconnection;
  - (v) any other steps that NBN Co is taking to minimise disruption to Customer; and
  - (vi) details of the NBN Co representative whom Customer may contact to obtain further information about the replacement.
- (d) Customer is responsible, at its own cost and expense, for re-establishing connections between the NBN Co Network and Customer Network at the Point of Interconnection that will replace the Temporary POI as notified to Customer, within the notice period specified in this clause C13.4 or such other period agreed between the parties.

#### **C13.5 New POIs**

- (a) NBN Co may offer Customer connection to a new Point of Interconnection at any time.
- (b) NBN Co will provide Customer with at least 12 months prior written notice of the location of a new POI under this clause C13.5.

#### **C13.6 Minimising disruptions caused by relocation, closure or replacement of Points of Interconnection and Temporary POIs**

- (a) Customer agrees that, in order for NBN Co (or any of its Personnel) to implement the relocation, closure or replacement of Points of Interconnection or Temporary POIs, it may be necessary for NBN Co to temporarily interrupt the supply of Ordered Products and such temporary interruptions will be regarded as Outages, not as Faults.
- (b) NBN Co will use reasonable endeavours to:
  - (i) minimise any disruption caused by the relocation, closure or replacement of Points of Interconnection and Temporary POIs to Customer and Customer Products;



- (ii) minimise the frequency of relocations, closures or replacements of Points of Interconnection and Temporary POIs in the same geographic area; and
- (iii) provide Customer with the expected duration of the Outage where it is reasonably practicable for NBN Co to do so.

### **C13.7 Disputes regarding relocations, closures or replacements of Points of Interconnection and Temporary POIs**

A decision by NBN Co to relocate, close or replace a Point of Interconnection or Temporary POI cannot be disputed, and NBN Co is entitled to implement any relocation, closure or replacement of a Point of Interconnection or Temporary POI despite the existence of any Dispute.

### **C13.8 Charges during relocation, closure or replacement of Points of Interconnection and Temporary POIs**

Subject to any applicable Service Level Rebates, Customer must continue to pay all Charges and other amounts payable under this Agreement for duration of the implementation of any relocation, closure or replacement of a Point of Interconnection or Temporary POI.

---

## **C14 NBN Maintenance**

### **C14.1 Planned NBN Maintenance**

- (a) NBN Co may notify Customer of, schedule and perform Planned NBN Maintenance in accordance with the [NBN Co Operations Manual](#).
- (b) NBN Co may schedule Planned NBN Maintenance on a recurring or non-recurring basis.
- (c) If any Planned NBN Maintenance will, or is likely to, have a material adverse impact on Customer (including where the Planned NBN Maintenance is likely to be service affecting), NBN Co must use reasonable endeavours to give notice of the nature of the Planned NBN Maintenance and:
  - (i) consult with Customer; and
  - (ii) consider any feedback received from Customer,before scheduling any Planned NBN Maintenance.
- (d) Where possible, NBN Co will perform Planned NBN Maintenance within specific windows that are set with regard to End User usage patterns. NBN Co proposes to establish, and will notify Customers of, any Planned NBN Maintenance embargo periods and refrain from performing Planned NBN Maintenance during Planned NBN Maintenance embargo periods. Such embargo periods may include periods in which unusually high End User usage is reasonably anticipated (for example Christmas, New Year or Easter).

### **C14.2 Unplanned NBN Maintenance**

NBN Co may notify Customer of, schedule and perform Unplanned NBN Maintenance in accordance with the [NBN Co Operations Manual](#).

### **C14.3 Minimising disruptions caused by NBN Maintenance**

- (a) Customer agrees that, in order for NBN Co (or any of its Personnel) to perform NBN Maintenance, it may be necessary for NBN Co to temporarily interrupt the supply of Ordered Products and such temporary interruptions will be regarded as Outages, not as Faults.
- (b) NBN Co will use reasonable endeavours to minimise:
  - (i) any disruption caused by NBN Maintenance to Customer and Customer Products; and
  - (ii) the frequency of NBN Maintenance in the same geographic area.

### **C14.4 Disputes regarding NBN Maintenance**

A decision by NBN Co to perform NBN Maintenance cannot be disputed and NBN Co is entitled to perform any maintenance despite the existence of any Dispute.

### **C14.5 Charges during NBN Maintenance**

Subject to any applicable Service Level Rebates, Customer must continue to pay all Charges and other amounts payable under this Agreement while any NBN Maintenance is performed.

---

## **C15 Faults**

### **C15.1 Fault diagnosis, reporting, investigation and repair**

- (a) The [NBN Co Operations Manual](#) sets out terms that apply to the diagnosis, reporting, investigation and repair of Faults which are NBN Faults.
- (b) NBN Co must investigate and repair NBN Faults that have been validly reported to NBN Co or of which NBN Co becomes aware in accordance with the relevant processes set out in the [NBN Co Operations Manual](#).
- (c) NBN Co may, but is not obliged to, investigate and repair any other Faults whether or not they have been validly reported to NBN Co in accordance with the processes set out in the [NBN Co Operations Manual](#).

### **C15.2 Minimising disruptions caused by investigating and repairing Faults**

- (a) Customer agrees that, in order for NBN Co (or any of its Personnel) to investigate and/or repair any Faults, it may be necessary for NBN Co to temporarily interrupt the supply of Ordered Products and such temporary interruptions will be regarded as Outages, not as Faults.
- (b) NBN Co will use reasonable endeavours to minimise any disruption caused by the investigation and/or repair of any Fault to Customer and Customer Products.

---

## Module D: Information & Rights Management

### D1 Confidential Information

#### D1.1 Maintaining confidentiality

- (a) If a party discloses Confidential Information to the Recipient, the Recipient must keep it confidential and not use or disclose it, except as provided in this Agreement.
- (b) The Recipient must exercise the greater of:
  - (i) the degree of care that a reasonable person with knowledge of the confidential nature of the Confidential Information would apply; and
  - (ii) the security or degree of care that it applies to its own confidential information of an equivalent nature.

#### D1.2 Use and disclosure of Confidential Information

Unless otherwise provided, the Recipient, may only:

- (a) use the Confidential Information to exercise its rights or perform its obligations under this Agreement and any SAU; and
- (b) disclose Confidential Information to:
  - (i) its Personnel to whom disclosure is necessary in order for the Recipient to perform its obligations or exercise its rights under or in connection with this Agreement or any SAU;
  - (ii) its professional advisers, to the extent necessary for those advisers to provide advice to the Recipient or exercise or protect the rights of the Recipient under or in connection with this Agreement or any SAU;
  - (iii) a third party, where the Discloser has consented to that disclosure in writing and subject to any conditions that may be placed on that disclosure by the Discloser; and
  - (iv) a third party, to the extent necessary to protect the health or safety of any person provided that the Recipient has taken steps that are reasonable in the circumstances to ensure that such information cannot be identified with, or attributed to, the Discloser (where possible).

#### D1.3 Additional disclosure by NBN Co

If NBN Co is the Recipient, NBN Co may, in addition to its rights under clause D1.2, disclose the Confidential Information of Customer:

- (a) to a third party to the extent necessary:
  - (i) to protect the integrity of the NBN Co Network, the NBN Co Platform or the National Test Facility, provided NBN Co has taken steps that are reasonable in the circumstances to ensure that such information cannot be identified with, or attributed to, Customer (where possible) and shall give notice to Customer if not reasonable or possible in the circumstances; or

- (ii) for NBN Co to comply with, or demonstrate its compliance with, any obligation owed by NBN Co under any law, any Non-Discrimination Obligation or any SAU, provided that NBN Co has taken steps that are reasonable in the circumstances to ensure that such information cannot be identified with, or attributed to, Customer (where possible) and shall give notice to Customer if not reasonable or possible in the circumstances;
- (b) subject to NBN Co ensuring that the person to whom the proposed disclosure is made is subject to an obligation to keep the information confidential:
  - (i) to the extent necessary for the purposes of pull through activities, investigating and rectifying faults on cables in lead-in conduits;
  - (ii) relating to facilities access by Customer necessary for the supply of Ordered Products;
  - (iii) relating to the ordering or provision of Products (including Downstream Customer Details and information about products and services provided to Downstream Customers) for purposes connected with:
    - (A) the disconnection of premises from the network of that third party (including for calculating any payments from NBN Co to that third party); or
    - (B) the provision by that third party to NBN Co of access to or ownership of parts of a network of that third party;
  - (iv) in relation to third party information (including Downstream Customer Details and information about services provided to Downstream Customers) relating to the ordering or provision of Products, for purposes connected with:
    - (A) the disconnection of premises from the network of that third party (including for calculating any payments from NBN Co to that third party); or
    - (B) the provision by that third party to NBN Co of access to or ownership of parts of a network of that third party;
- (c) to any Commonwealth government minister, their respective government departments and/or their delegates (as required or authorised by law), and any Regulator; and
- (d) where NBN Co complies with clauses D1.5(a) and D1.5(b), to:
  - (i) debt collection agents, but only for the purposes of, and only to the extent necessary to, facilitate the recovery of any Overdue Amounts and related interest;
  - (ii) Customer's creditors, suppliers, contractors and credit reporting agencies, but only for the purposes of, and only to the extent necessary to, conduct and complete a review of Customer's credit risk pursuant to the [Credit Policy](#); and
  - (iii) third parties, but only for the purposes of, and only to the extent necessary to, plan, develop, test, trial and supply Products and to exercise its rights and perform its obligations under the [PDF Processes](#).

#### **D1.4 NBN Co use of Network Information**

- (a) NBN Co may use Network Information to:

- (i) exercise its rights or perform its obligations under this Agreement, under any other agreement with Customer or under any SAU;
  - (ii) perform planning, maintenance, modernisation or reconfiguration activities of the NBN Co Network;
  - (iii) determine whether Customer is liable to NBN Co for certain Charges or other amounts payable to NBN Co; and
  - (iv) fulfil legal or regulatory requirements for statistical purposes.
- (b) NBN Co must ensure that in disclosing any Network Information as permitted under this Agreement:
  - (i) where it is possible to do so, such information is not identifiable with Customers; or
  - (ii) if it is not reasonable or possible in the circumstances to render the Network Information unidentifiable, NBN Co gives notice to Customer in order to allow a reasonable opportunity for Customer to request equivalent confidentiality obligations to those set out in this [Module D: Information & Rights Management](#) be imposed by NBN Co on the proposed disclosee and, if so requested, NBN Co will impose such obligations on the proposed disclosee.

#### **D1.5 Other agreed disclosures**

Without limiting clauses D1.2 or D1.3, if:

- (a) the Discloser is notified of any proposed disclosure under this clause D1.5 and given a reasonable opportunity to challenge or impose conditions on the proposed disclosure; and
- (b) the Recipient ensures that a person to whom the proposed disclosure is to be made is subject to substantially equivalent confidentiality obligations to those set out in this [Module D: Information & Rights Management](#),

then the Recipient may disclose Confidential Information of the Discloser to:

- (c) a third party, if it is required to do so by law, any Government Agency or Regulator, or any order of any court or tribunal;
- (d) the Recipient's financiers or investors (or potential financiers or investors) and their respective:
  - (i) professional advisers (but only to the extent necessary for those advisers to provide advice or services to those financiers or investors); and
  - (ii) financial advisers or bankers (but only to the extent necessary for those advisers or bankers to provide financial advice or services to those financiers or investors).

#### **D1.6 NBN Co use of Aggregated Network Information**

- (a) NBN Co may use Aggregated Network Information for any purpose.
- (b) NBN Co may disclose Aggregated Network Information to any third party.
- (c) If NBN Co discloses any Aggregated Network Information to any third party, NBN Co will ensure that the Aggregated Network Information does not identify, and cannot reasonably be used to identify, Customer or any Downstream Customer.

### **D1.7 Return of Confidential Information on demand**

The Recipient must return, destroy or delete the Discloser's Confidential Information on demand by the Discloser, except to the extent it is impracticable to do so, necessary to comply with the Recipient's internal governance processes, or any applicable law.

### **D1.8 Injunctive relief**

Each party agrees that damages may not be an adequate remedy for a breach of this clause D1 and that a party is entitled to seek specific performance or injunctive relief for a breach, anticipatory breach, or reasonably suspected breach of this clause D1.

### **D1.9 Confidentiality under the PDF Processes**

Each party agrees that their rights to use and disclose Product Development Confidential Information are subject to separate confidentiality provisions set out in the [PDF Processes](#).

### **D1.10 Consent for the purposes of section 152AYA**

For the purposes of section 152AYA of the Competition and Consumer Act, Customer consents to NBN Co using and disclosing any information that may be given by Customer to NBN Co and which is information to which section 152AYA of the Competition and Consumer Act applies, in accordance with this clause D1.

### **D1.11 Consent for the purposes of sections 152BEA to 152BEC (inclusive)**

For the purposes of sections 152BEA to 152BEC (inclusive) of the Competition and Consumer Act, Customer consents to NBN Co using and disclosing any Confidential Information of Customer to the extent necessary for NBN Co to comply with any of sections 152BEA to 152BEC (inclusive) of the Competition and Consumer Act.

### **D1.12 Part 4 of Schedule 1 to the Telecommunications Act**

If Customer is a Carrier, the parties agree that:

- (a) the rights and obligations of the parties under this clause D1 are in addition to the rights and obligations of the parties under Part 4 of Schedule 1 to the Telecommunications Act; and
- (b) this clause D1 does not, and is not intended to, set out the terms and conditions referred to in section 27 of Schedule 1 to the Telecommunications Act.

---

## **D2 Data security and Personal Information**

### **D2.1 Data Security**

Each party must apply appropriate security standards in respect of any data or information (including Confidential Information) of the other party that the party collects, stores, uses or discloses to third parties by any means inside or outside Australia and must not allow any person inside or outside of Australia to access any such data or information except in compliance with data security standards to which that party itself adheres in Australia.

## **D2.2 Personal Information**

- (a) If either party collects, uses, discloses, transfers or otherwise handles Personal Information, it must comply with, and ensure that its Related Bodies Corporate and Personnel (and the Personnel of its Related Bodies Corporate) comply with, all applicable Privacy Laws.
  - (b) Without limiting Customer's obligations under clause D2.2(a), Customer must:
    - (i) comply with NBN Co's privacy policy; and
    - (ii) reasonably assist NBN Co in complying with NBN Co's privacy policy and the Privacy Laws (including National Privacy Principle 1.5),in collecting and dealing with Personal Information that Customer receives from NBN Co.
- 

## **D3 Downstream Customers**

### **D3.1 Downstream Customers' activities**

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

### **D3.2 Obligations in respect of Downstream Customer Details**

- (a) NBN Co may request that Customer provide NBN Co with Downstream Customer Details if NBN Co:
  - (i) requires Downstream Customer Details to exercise its rights or perform its obligations under this Agreement or by law; and
  - (ii) does not have access to, and cannot otherwise obtain within a reasonable period of time, those Downstream Customer Details.
- (b) If Customer receives a request under clause D3.2(a), it must, as soon as is reasonably practicable:
  - (i) provide such Downstream Customer Details to NBN Co; and
  - (ii) obtain, or use reasonable endeavours to obtain, all necessary consents, give all necessary notifications required to ensure that NBN Co is able to use and process those Downstream Customer Details in accordance with this Agreement, and provide, or procure and provide, those Downstream Customer Details to NBN Co.
- (c) NBN Co may only use and process (including by collecting, storing, using, processing, reproducing and disclosing) any Downstream Customer Details and any information relating to Downstream Customer Details to exercise its rights or perform its obligations under this Agreement or by law.
- (d) Customer must use reasonable endeavours to ensure that any Downstream Customer Details provided by it to NBN Co are complete, accurate and up-to-date.
- (e) Customer must ensure that it has obtained all necessary consents and given all necessary notifications required to ensure that NBN Co is able to process the Downstream Customer Details in accordance with this Agreement, before providing Downstream Customer Details

to NBN Co in accordance with this clause D3.2 so that NBN Co can lawfully exercise its rights under clause D3.2(c).

- (f) NBN Co and Customer each agree to comply with all Privacy Laws with respect to Downstream Customer Details.

---

## **D4 Rollout and migration communications**

- (a) NBN Co will publish on NBN Co's Website a forecast of the dates and locations of the network ready for service areas from time to time.
- (b) Customer must include in timely communications with Downstream Customers, End Users and other third parties the matters specified by NBN Co to Customer as necessary for:
  - (i) the supply of any Ordered Product; and
  - (ii) NBN Co to deliver, install, connect, inspect, modify, replace, maintain, repair, reinstate, service, perform any other work on or in relation to, disconnect, and remove part of the NBN Co Network, including any NBN Co Equipment, or any other item that is licensed, owned or controlled by NBN Co (including pull through activities with respect to lead-in conduits to Premises) or, where lawful, any third party network, whether or not in relation to the supply of an Ordered Product.

---

## **D5 Intellectual Property Rights**

### **D5.1 General principles**

Except as expressly provided in this Agreement, nothing in this Agreement confers on either party any right, title or interest in or to (including to permit or cause to be used) any of the other party's, or any third party's, Intellectual Property Rights.

### **D5.2 Intellectual Property Rights owned and licensed under this Agreement and the Products**

- (a) NBN Co owns (or its licensors own) all right, title and interest (including Intellectual Property Rights) in:
  - (i) the NBN Co Network, the NBN Co Platform and the National Test Facility;
  - (ii) this Agreement and all documents referenced as part of this Agreement;
  - (iii) the on-boarding, testing and trialling activities in connection with this Agreement (including the materials relating to, and the performance of, those activities); and
  - (iv) the Products.
- (b) Customer hereby assigns to NBN Co all right, title and interest in or to New IPR, other than any New IPR created by NBN Co Personnel and Customer must do all things reasonably necessary to ensure that such New IPR is owned by NBN Co (or its nominee) on and from its creation.
- (c) Subject to clause D5.4, except as otherwise agreed, Customer grants NBN Co:
  - (i) a non-exclusive, royalty-free, transferable, irrevocable, worldwide licence (with a right to sub-license) for the Term to adapt, modify, develop or use in any other way



- whatsoever any Customer Background IPRs solely to the extent necessary for NBN Co to perform its obligations and exercise its rights, as between NBN Co and Customer, pursuant to this Agreement; and
- (ii) a non-exclusive, royalty-free, transferable, perpetual, irrevocable, worldwide licence (with a right to sub-license) to adapt, modify, develop or use in any other way whatsoever any Customer Background IPRs associated with, or that otherwise underlie, a Customer Product Idea other than those specifically excluded from the application of this clause D5.2(c)(ii) by notice in writing by Customer to NBN Co at the time of submitting the Customer Product Idea (**Submitted IPR**):
    - (A) to the extent necessary for NBN Co to adapt, modify, develop or use in any other way whatsoever any New IPR developed in connection with the Customer Product Idea;
    - (B) to the extent necessary for NBN Co to supply any Other Ordered Product that is based on the Customer Product Idea (whether in whole or in part); and
    - (C) otherwise to the extent necessary for NBN Co and Other NBN Customers to perform their obligations and exercise their rights pursuant to any Wholesale Broadband Agreement in connection with the Customer Product Idea.
  - (d) Subject to clause D5.4, except as otherwise agreed, NBN Co grants Customer a non-exclusive, royalty-free, non-transferable, worldwide licence for the Term to adapt, modify, develop or use in any other way whatsoever the NBN Co Background IPRs, New IPRs and any Other NBN Co Customer Submitted IPRs, solely to the extent required for Customer to:
    - (i) use any Ordered Product; and
    - (ii) otherwise to the extent necessary for Customer to perform its obligations and exercise its rights pursuant to this Agreement (including to assist with the adaptation, modification, development or use, by NBN Co, of the New IPR and any new products and services that may be supplied by NBN Co).
  - (e) The licence granted under clause D5.2(d) is irrevocable except at the end of the Term (at which time it automatically terminates without further notice) and to the extent necessary to give effect to the exercise of a right by NBN Co under or in relation to this Agreement.
  - (f) Customer may sub-license any of the rights granted to it under clause D5.2(d) to any of its Related Bodies Corporate or Downstream Customers, provided that:
    - (i) any such sub-license is limited solely to the extent required for such Downstream Customers to use any Ordered Product (with the right to further sub-license) and provided such sub-license and any further sub-license contains restrictions equivalent to the restrictions set out in this Agreement which protect the Intellectual Property Rights of NBN Co including the restrictions set out in clauses D5.2(i) and D5.4; and
    - (ii) Customer remains liable for each act and/or omission of such Downstream Customers and the sub-licensees of those Downstream Customers in connection with the exercise of such sub-license as though it was an act and/or omission of Customer.
  - (g) Customer represents and warrants to NBN Co that:

- (i) the exercise by NBN Co of the rights assigned under clause D5.2(c) does not, as at the date of assignment, infringe the Intellectual Property Rights of any third party;
  - (ii) any document or idea provided by Customer to NBN Co (in any form or by any means) in connection with a Customer Product Idea contains only New IPRs or Customer Background IPRs, except as specifically notified in writing by Customer to NBN Co at the time of providing that document or idea to NBN Co;
  - (iii) the exercise by NBN Co of the rights granted under clause D5.2(d) does not, and will not, infringe the Intellectual Property Rights of any third party; and
  - (iv) no additional right, authorisation, consent, approval, filing, registration or any other action is required to assign, grant or effect the assignment or grant, of any rights under this clause D5.2.
- (h) NBN Co represents and warrants to Customer that, as at the date of supply of an Ordered Product, as far as it is aware, the supply of that Ordered Product will not infringe the Intellectual Property Rights of any third party.
- (i) Each party must not, and must ensure its Personnel or sub-licensees do not, use any Intellectual Property Rights licensed to it pursuant to this clause D5:
- (i) for any purpose other than that expressly licensed;
  - (ii) at any time other than that expressly licensed; or
  - (iii) otherwise than in accordance with this Agreement.

### **D5.3 Responsibility for procuring third party Intellectual Property Rights**

Without limiting clause D5.2 or the [PDF Processes](#) in any way, unless otherwise agreed in writing by the parties in accordance with clause H1, each party must procure, at its own cost and expense, licences of Intellectual Property Rights owned by any third party to the extent reasonably required for the party or its Personnel to perform its obligations pursuant to this Agreement.

### **D5.4 Use of trade marks and branding, etc.**

- (a) A party must not use the trade marks, service marks, logos or branding of the other party without that other party's consent (which may be withheld in the other party's absolute discretion).
- (b) If a party (**first party**) permits another party to use the first party's trade marks, service marks, logos or branding, the other party must do so in accordance with the terms notified by the first party from time to time, including, in the case of use by Customer, in accordance with the NBN Co Brand Approved Use Terms and Conditions, which, with respect to the subject matter of that document, prevail to the extent of any inconsistency with the terms of this Agreement.

---

## Module E: Risk Management

### E1 Introduction

This [Module E \(Risk Management\)](#) sets out:

- (a) the liabilities (including exclusions and limitations) of each party to the other in relation to the subject matter of this Agreement;
- (b) the indemnities that are given by a party to the other under this Agreement;
- (c) requirements in relation to the parties' relationships with certain third parties;
- (d) the parties' required insurances; and
- (e) how the parties will deal with any Force Majeure Events that may arise.

---

### E2 Liability

#### E2.1 Liabilities of each party

- (a) This Agreement, to the extent permitted by law, exhaustively governs all of the liabilities that a party owes to the other party arising from, or in connection with, this Agreement and its subject matter (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise however so arising).
- (b) Each party accepts liability to the other party arising from, or in connection with this Agreement and its subject matter, but only to the extent provided for in this Agreement.
- (c) To the extent permitted by law, each party excludes all liability (including for negligence) that it would otherwise have to the other party in connection with this Agreement and its subject matter, except to the extent that the first party has accepted liability under this Agreement.
- (d) Each party releases the other party in respect of any and all Claims and agrees not to make any Claims against the other party for any liability (including negligence) that has not been expressly accepted by the other party under this Agreement, whether those Claims are based on information known at the Execution Date or become known thereafter (and this clause E2.1 will be a bar to any such Claims).
- (e) Every exclusion, restriction, limitation and indemnity in this Agreement separately applies on its own terms even if one or more of such terms is inapplicable in any circumstances, and survives expiry or termination of this Agreement.

#### E2.2 NBN Co's liability for failure to meet Service Levels

- (a) Subject to clause E2.2(b), NBN Co's sole and exclusive liability to Customer in respect of any Loss arising by reason of a failure of NBN Co to meet a Service Level pursuant to clause A2.5 will be the applicable Service Level Rebate (if any).
- (b) Clause E2.2(a) does not limit NBN Co's liability:
  - (i) under section 118A of the *Telecommunications (Consumer Protection and Service Standards Act) 1999* (Cth), and this clause E2.2(b)(i) shall not be taken for the

purposes of clause H4.16 or otherwise as a waiver of NBN Co's position that the CSG Standard does not apply to Type 1 Connections; or

- (ii) to the extent that a matter described in clause E2.3(d)(i), (ii) or (iii) applies in respect of a failure to meet a Service Level.

### **E2.3 Limitation of NBN Co's liability**

#### *Annual cap on liability for Losses*

- (a) To the extent permitted by law, NBN Co's aggregate liability to Customer in any Year in respect of any and all Losses under, arising from or in connection with this Agreement or its subject matter, including under clause E2.2, (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising and irrespective of the number of related or unrelated events) is limited to the following amounts:

- (i) if  $X \geq \$200$  million: \$200 million;
- (ii) if  $\$5 \text{ million} < X < \$200 \text{ million}$ : X; or
- (iii) if  $X \leq \$5 \text{ million}$ : \$5 million,

where X = Average Monthly Billings Amount .

#### *Events cap on liability for Losses*

- (b) To the extent permitted by law, NBN Co's aggregate liability to Customer in respect of any and all Losses under, arising from or in connection with this Agreement or its subject matter, including pursuant to clause E2.2, (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) in respect of, or connected to, any one occurrence, or in respect of or connected to all occurrences of a series of occurrences attributable to one source or original cause, is limited to the greater of \$5 million or 25 per cent of the liability cap that would otherwise apply under clause E2.3(a).

#### *Rules for determining amount of NBN Co's liability*

- (c) The amount of NBN Co's liability for the purposes of this clause E2.3 including for the purposes of the application of the liability caps in clauses E2.3(a) and E2.3(b):
  - (i) must be determined based on the following:
    - (A) where the liability is in respect of, or connected to, a single event or originating or underlying cause, the date that the event or cause giving rise to that liability occurred; or
    - (B) where the liability is in respect of a series of related events or originating or underlying causes, the date of the first event or cause in the series of related events or causes,
 not when any claim is made by Customer in connection with that liability; and
  - (ii) will be reduced in respect of liability arising from the same originating or underlying cause or event:

- (A) by any amounts that would have been paid by Customer under this Agreement for any goods or services replaced, repaired or resupplied by NBN Co for failing to comply with any condition, warranty or guarantee of the kind described in clause E2.6(c);
- (B) by the amount of any Service Level Rebates arising from the same originating or underlying cause or event given or due to Customer in accordance with this Agreement; and
- (C) to the extent that Customer otherwise recovers in respect of any event or cause giving rise to the liability, including from the relevant insurer if Customer has a right to recover under any contract of insurance with any third party in respect of any event or cause giving rise to the liability.

*Uncapped liability*

- (d) The limitations of liability imposed by this clause E2.3 do not apply to NBN Co's liability:
  - (i) for any negligent or wilful acts or omissions of NBN Co that cause death or personal injury;
  - (ii) for any negligent or wilful acts or omissions of NBN Co that cause damage to Tangible Property;
  - (iii) for any acts or omissions of NBN Co constituting fraud;
  - (iv) under the indemnities given by NBN Co under clause E3 (Indemnities) (other than clause E3.4(b) (Damage to property, etc)); [or](#)
  - (v) under the indemnity given by NBN Co under clause E3.4(b) (Damage to property, etc) where the liability giving rise to that indemnity was caused by a negligent or wilful act or omission of NBN Co.

## **E2.4 Limitation of Customer's liability**

*Annual cap on liability for Losses*

- (a) To the extent permitted by law, Customer's aggregate liability to NBN Co in any Year in respect of any and all Losses under, arising from or in connection with this Agreement or its subject matter (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising and irrespective of the number of related or unrelated events) is limited to the following amounts:
  - (i) if  $X \geq \$200$  million: \$200 million;
  - (ii) if  $\$5 \text{ million} < X < \$200 \text{ million}$ : X; or
  - (iii) if  $X \leq \$5 \text{ million}$ : \$5 million,

where X = Average Monthly Billings Amount

*Events cap on liability for Losses*

- (b) To the extent permitted by law, Customer's aggregate liability to NBN Co in respect of any and all Losses under, arising from or in connection with this Agreement or its subject matter (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) in respect of, or connected to, any one occurrence, or in respect of or connected to all occurrences of a series of occurrences attributable to one source or original cause, is limited to the greater of \$5 million or 25 per cent of the liability cap that would otherwise apply under clause E2.4(a).

*Rules for determining amount of Customer's liability*

- (c) The amount of Customer's liability for the purposes of this clause E2.4 including for the purposes of the application of the liability caps in clauses E2.4(a) and E2.4(b):
- (i) must be determined based on the following:
- (A) where the liability is in respect of, or connected to, a single event or originating or underlying cause, the date that the event or cause giving rise to that liability occurred; or
- (B) where the liability is in respect of a series of related events or originating or underlying causes, the date of the first event or cause in the series of related events or causes,
- not when any claim is made by NBN Co in connection with that liability; and
- (ii) will be reduced in respect of liability arising from the same originating or underlying cause or event to the extent that NBN Co otherwise recovers in respect of any event or cause giving rise to the liability, including from the relevant insurer if NBN Co has a right to recover under any contract of insurance in respect of any event or cause giving rise to the liability.

*Uncapped liability*

- (d) The limitations of liability imposed by this clause E2.4 do not apply to Customer's liability:
- (i) to pay any Charges or Overdue Amounts to NBN Co;
- (ii) for any negligent or wilful acts or omissions of Customer that cause death or personal injury;
- (iii) for any negligent or wilful acts or omissions of Customer that cause damage to Tangible Property;
- (iv) for any acts or omissions of Customer constituting fraud;
- (v) under the indemnities given by Customer under clause E3 (Indemnities) (other than clause E3.4(a) (Damage to property, etc)); or
- (vi) under the indemnity given by Customer under clause E3.4(a) (Damage to property, etc) where the liability giving rise to that indemnity was caused by a negligent or wilful act or omission of Customer.

**E2.5 No liability for Indirect Loss**

- (a) No party is liable to make any payment to the other party for any and all Losses of that other party arising from or in connection with this Agreement or its subject matter (regardless of

whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) to the extent such liability:

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

(in this Agreement, **Indirect Loss**).

- (b) The parties acknowledge that this clause E2.5 does not apply to, affect or limit any obligation to pay fees and charges under this Agreement (including a payment obligation arising on termination of this Agreement).
- (c) The exclusion of liability in clause E2.5(a) does not apply in respect of the indemnity set out in clause E3.5 (Claims by Downstream Customers, End Users and other third parties).

## **E2.6 Exclusion or limitation of certain representations, conditions, warranties and guarantees**

- (a) Each party agrees that:
  - (i) other than as expressly set out in this Agreement or as expressly set out in another written agreement between the parties extant at the Execution Date, no representation is or has been expressly or impliedly made and no warranty is or has been expressly or impliedly given by or on behalf of a party in respect of any matter relating to this Agreement whether before or on the Execution Date; and
  - (ii) it has not relied on any representation or warranty other than the express representations and warranties given by the other party in this Agreement.
- (b) To the extent permitted by law, except as expressly set out in this Agreement, each party excludes all express or implied representations, conditions, warranties and guarantees arising from or in connection with this Agreement and its subject matter, whether based in statute, regulation, common law or otherwise.
- (c) If:
  - (i) a condition, warranty or guarantee of the kind described in clause E2.6(b) is implied or imposed in relation to this Agreement;
  - (ii) a party cannot by law exclude that condition, warranty or guarantee; and
  - (iii) a party is able to limit its liability for failure to comply with that condition, warranty or guarantee,

then the liability of a party for failing to comply with that condition, warranty or guarantee is limited, at that party's option, to one or more of the following:

- (iv) in the case of goods, to the replacement of the goods, the supply of equivalent goods or the repair of the goods; and

- (v) in the case of services, to the supply of the services again.

## E2.7 General exclusions of liability

To the extent permitted by law, NBN Co excludes all liability for any and all Losses suffered or incurred by Customer to the extent such Losses are caused or contributed to by:

- (a) any and all:
  - (i) Claims brought against Customer by a third party to whom Customer provides products or services under a contract to the extent that that liability could have been lawfully excluded, restricted or limited under that contract;
  - (ii) Downstream Customer Losses;
  - (iii) End User Losses; or
  - (iv) events that fall within paragraph (b) of the definition of Excluded Event (other than an obligation to pay any applicable Service Level Rebates),except to the extent that such Claims or Losses fall within clauses E2.3(d)(i), E2.3(d)(ii), E2.3(d)(iii), or E3.4(b)(i); or
- (b) any:
  - (i) Customer Event;
  - (ii) events that fall within paragraphs (a), (c) or (d) of the definition of Excluded Event; or
  - (iii) Dispute Outcome Related Event.

## E2.8 Expeditious Claim initiation

Where a party becomes aware of an event that may give rise to it making a Claim, the party must use its reasonable endeavours to make that Claim (if any) within 12 months after the later of:

- (a) the date on which it first became aware or ought reasonably to have been aware of the event giving rise to the Claim; and
- (b) in respect of a third party Claim or Loss, the date on which it first became aware or ought reasonably to have been aware of the Claim or Loss by the relevant third party.

## E2.9 Apportionment and mitigation

The liability of a party (in this clause E2.9, the **first party**) to the other party in respect of any and all Claims and Losses arising from or in connection with the subject matter of this Agreement (regardless of whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) is reduced proportionally to the extent that:

- (a) the other party has not taken all reasonable steps to minimise and mitigate its own Losses, damage or liability in relation to the act, omission, event or circumstance giving rise to such Claim or Loss; or
- (b) the liability of the first party is caused, or contributed to, by any act or omission of the other party.



## E2.10 Minimum amount of Claims

Save in respect of an obligation under this Agreement for NBN Co to give any applicable Service Level Rebate which will not be affected by this clause E2.10, neither party may make a Claim for, nor is liable to the other in respect of a Loss, unless that Claim (alone or together with other Claims made together with the Claim), or the amount that other party would be entitled to recover in relation to that Loss (alone or together with other Losses), exceeds \$5,000 within any rolling period of 6 consecutive months during the Term.

## E3 Indemnities

### E3.1 Confidentiality

Each party (in this clause E3.1, the **indemnifying party**) must pay to the other party (in this clause E3.1, **the indemnified party**) on demand an amount equal to all Losses suffered or incurred by the indemnified party arising from or in connection with any breach of clause D1 (Confidential Information) by the indemnifying party.

### E3.2 Intellectual property

- (a) Each party (in this clause E3.2, the **indemnifying party**) must pay to the other party (in this clause E3.2, **the indemnified party**) on demand an amount equal to all Losses suffered or incurred by the indemnified party arising from or in connection with any Claim brought by any third party alleging that the exercise by the indemnified party of any rights assigned, transferred or granted, or purportedly assigned, transferred or granted, by or on behalf of the indemnifying party in connection with this Agreement infringes any Intellectual Property Rights of that third party (in this clause E3.2, an **infringement claim**).
- (b) The indemnified party must:
  - (i) notify the indemnifying party as soon as is reasonably practicable of the relevant infringement Claim; and
  - (ii) where the indemnifying party can demonstrate to the reasonable satisfaction of the indemnified party that it has the resources to pay all Losses which are reasonably likely to arise in the event the relevant infringement Claim is successful:
    - (A) give the indemnifying party the option to conduct the defence of the relevant infringement Claim, including negotiations for settlement or compromise;
    - (B) promptly provide all assistance reasonably requested by the indemnifying party (at the cost of the indemnifying party) in conducting the defence of the relevant infringement Claim; and
    - (C) not make any admissions in relation to the relevant infringement Claim without the prior written consent of the indemnifying party.
- (c) Without limiting clauses E3.2(a) and E3.2(b), if a third party makes an infringement claim against Customer in relation to the use of Products in connection with this Agreement, then NBN Co will use reasonable endeavours to, if requested by Customer (at no cost to Customer):

- (i) procure the right for Customer to continue using the Product;
  - (ii) modify the Product so that it becomes non-infringing; or
  - (iii) replace the Product with a non-infringing Product,
- except where the infringement claim arises as a result of a Customer Event.

### E3.3 Death and personal injury

- (a) Each party (in this clause E3.3(a), the **indemnifying party**) must pay to the other party (in this clause E3.3(a), **the indemnified party**) on demand an amount equal to all Losses suffered or incurred by the indemnified party arising from or in connection with the death or personal injury of any person to the extent that is caused or contributed to by:

- (i) a negligent act or omission; or
- (ii) an act or omission intentionally causing or contributing to that death or personal injury,

of the indemnifying party, its Related Bodies Corporate, their respective Personnel or suppliers in connection with this Agreement.

- (b) Each party (in this clause E3.3(b), the **indemnifying party**) must pay to the other party (in this clause E3.3(b), **the indemnified party**) on demand an amount equal to all Losses suffered or incurred by the indemnified party arising from or in connection with the death or personal injury of any person to the extent that is caused or contributed to by:

- (i) where Customer is the indemnifying party:

- (A) Customer Network;
- (B) Customer Platform; or
- (C) any Customer Equipment; or

- (ii) where NBN Co is the indemnifying party:

- (A) the NBN Co Network;
- (B) the NBN Co Platform; or
- (C) any NBN Co Equipment,

in connection with this Agreement.

### E3.4 Damage to property, etc.

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

- (i) damage to, or loss of, the Tangible Property of NBN Co and/or any third party, including damage to sites at which any POI is located and sites at which facilities access services are supplied to Customer;
- (ii) damage to, or loss of, the whole or any part of the NBN Co Network, the National Test Facility and/or the NBN Co Platform;

- (iii) disruption of, interference with or deterioration or degradation of the normal operation or performance of the whole or any part of the NBN Co Network, the National Test Facility, the NBN Co Platform or any other third party equipment sites at which any POI is located and sites at which facilities access services are supplied to Customer; or
- (iv) interruption of access to and use of the Products to Customer or any Other NBN Co Customer,

to the extent that such Losses are caused, or contributed to, by Customer, its Related Bodies Corporate or any of their respective Personnel, any Downstream Customer or third party supplier to Customer in connection with this Agreement or its subject matter.

- (b) NBN Co must pay to Customer on demand an amount equal to all Losses suffered or incurred by Customer arising from or in connection with any damage to, or loss of:
  - (i) the Tangible Property of Customer and/or any third party; or
  - (ii) the whole or any part of Customer Network and/or Customer Platform,

to the extent that such Losses are caused, or contributed to, by NBN Co, its Related Bodies Corporate or any of their respective Personnel in connection with this Agreement or its subject matter.

### E3.5 Claims by Downstream Customers, End Users and other third parties

- (a) Subject to clause E3.5(b), Customer must pay to NBN Co on demand an amount equal to all Losses suffered or incurred by NBN Co, any Related Body Corporate of NBN Co, or their respective Personnel arising from or in connection with any Claim:
  - (i) against NBN Co from any Downstream Customer Loss or End User Loss that is caused, or contributed to, by Customer, its Related Bodies Corporate or any of their respective Personnel, any Downstream Customer of Customer or supplier to Customer;
  - (ii) by any Downstream Customer or End User (including for any Downstream Customer Loss or any End User Loss) against NBN Co that is caused, or contributed to, by Customer, its Related Bodies Corporate or any of their respective Personnel, any Downstream Customer of Customer or supplier to Customer arising from or in connection with this Agreement or its subject matter, ~~including the supply of any Customer Product by Customer to any Downstream Customer;~~ or
  - (iii) by a third party against NBN Co to the extent that the Claim arises from or in connection with any:
    - (A) breach of this Agreement by Customer (including any Claim arising by reason of any failure to include terms in contracts with Downstream Customers as required by clause E5.3); or
    - (B) negligent act or omission of Customer, any Related Bodies Corporate of Customer, or their respective Personnel or suppliers arising directly from or in connection with this Agreement or its subject matter, including the supply of any Customer Product by Customer to any Downstream Customer.

- (b) Clause E3.5(a) does not apply to the extent that the Loss suffered or incurred by NBN Co, any Related Body Corporate of NBN Co, or their respective Personnel:

  - (i) is the direct result of a breach of this Agreement, or a negligent act or omission, by NBN Co;
  - (ii) was caused, or contributed to, by NBN Co, its Related Bodies Corporate or any of their respective Personnel or suppliers in connection with this Agreement or its subject matter; or
  - (iii) arose from a Claim in relation to which Customer could not have lawfully excluded liability.
- (c) NBN Co must:

  - (i) notify Customer as soon as is reasonably practicable of a Claim under clause E3.5(a); and
  - (ii) where Customer can demonstrate to the reasonable satisfaction of NBN Co that it has the resources to pay all Losses which are reasonably likely to arise in the event the relevant Claim is successful:

    - (A) give Customer the option to conduct the defence of the relevant Claim, including negotiations for settlement or compromise;
    - (B) promptly provide all assistance reasonably requested by Customer (at the cost of Customer) in conducting the defence of the relevant Claim; and
    - (C) not make any admissions in relation to the relevant Claim without the prior written consent of Customer.
- (d) If Customer exercises its option under clause E3.5(c)(ii)(A), Customer must first obtain the consent of NBN Co (which must not be unreasonably withheld) to the terms of any settlement or compromise of the relevant Claim.

### **E3.6 Data transmission and defamation**

- (a) Customer must pay to NBN Co on demand an amount equal to all Losses suffered or incurred by NBN Co, any Related Body Corporate of NBN Co, and their respective Personnel arising from or in connection with the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by Customer or any of its Related Bodies Corporate, any Downstream Customer or End User using a Product, Customer Product or Downstream Product.
- (b) Customer must pay to NBN Co on demand an amount equal to all Losses arising from or in connection with any breach of a person's rights or defamation of a person (or allegation of such a breach or defamation) involving use of a Product or a Customer Product.

### **E3.7 Operational indemnities**

Customer must pay to NBN Co on demand an amount equal to all Losses suffered or incurred by NBN Co, any Related Body Corporate of NBN Co, and their respective Personnel arising from or in connection with:

- (a) the recovery of Overdue Amounts from Customer;

- (b) the reasonable exercise by NBN Co of its rights referred to in clause C7.2(b) and C7.3(b);
- (c) the reasonable exercise by NBN Co of its rights in clause C9.1; or
- (d) Customer's failure to comply with clauses C10.1 or C10.2.

### **E3.8 General rules for all indemnities**

- (a) The liability of a party to pay on demand an amount under this clause E3 to the party being indemnified for an event set out in this clause E3 will be:
  - (i) the sole and exclusive financial remedy in respect of the liability the subject of the indemnity; and
  - (ii) reduced to the extent that the liability the subject of the indemnity claim is caused or contributed to by any unlawful act or omission by any indemnified party.
- (b) It is not necessary for either party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- (c) Payment pursuant to an indemnity given by a party under this clause E3 cannot be the subject of a Billing Dispute.

---

## **E4 No claims against certain persons**

- (a) Each party agrees that it will not make any Claims against:
  - (i) the Personnel of the other party; or
  - (ii) any Related Body Corporate of the other party which is not a party to this Agreement or any of their Personnel,arising from or in connection with the subject matter of this Agreement.
- (b) Customer must not make any Claims against:
  - (i) NBN Co's Related Bodies Corporate, or any of their respective Personnel;
  - (ii) any Third Party Supplier; or
  - (iii) any tenant of any data centre in respect of which a Third Party Supplier supplies data centre facilities or services to NBN Co,arising from or in connection with:
  - (iv) any failure of a Third Party Supplier to supply goods, services or facilities to NBN Co under a contract between NBN Co and such a Third Party Supplier ; or
  - (v) any act or omission of a tenant referred to in clause E4(b)(iii) above in connection with a contract referred to in clause E4(b)(iii) above
- (c) Customer must not make any Claims against NBN Co arising from or in connection with:
  - (i) any event that falls within paragraph (d) of the definition of Excluded Event; or
  - (ii) any act or omission of a tenant referred to in clause E4(b)(iii) above in connection with a contract referred to in clause E4(b)(iii)above.

## E5 Downstream Customers

### E5.1 NBN Co Network Boundaries

- (a) NBN Co is not responsible for (and assumes no liabilities and obligations in respect of) any activities required for the supply of Customer Products beyond the NBN Co Network Boundaries.
- (b) Customer is responsible for (and assumes all liabilities and obligations in respect of) all activities required for the supply of Customer Products beyond the NBN Co Network Boundaries including:
  - (i) all carriage, backhaul and cross connects beyond the boundaries of the NBN Co Network, including IP transit, Internet gateway connections, customer premises equipment (other than the NTD), BGP routing, soft switching infrastructure and all international connectivity associated with the supply of Customer Products; and
  - (ii) designing, building, operating and maintaining Customer Platform and the interfaces between Customer Platform and the NBN Co Platform, and interfacing Customer Platform with the NBN Co Platform.

### E5.2 Responsibility for Customer Products

Customer is responsible for (and assumes all liabilities and obligations in respect of) the design, and supply of Customer Products, including:

- (a) contention ratios of Customer Products (to the extent not determined by or established by the design of the NBN Co Network);
- (b) quality of service, service levels and fault restoration by Customer;
- (c) all communications with Downstream Customers;
- (d) customer service, including customer service enquiries and dispute management;
- (e) product and service information, fault reporting, maintenance and technical issues; and
- (f) customer invoicing and payments.

### E5.3 Terms in contracts with Downstream Customers

- (a) The parties agree that NBN Co does not have:
  - (i) any relationship with Downstream Customers in connection with Customer's supply of Customer Products to Downstream Customers; or
  - (ii) any interest in the terms on which Customer supplies Customer Products to Downstream Customers, except as set out in this clause E5.3 and elsewhere in this Agreement.
- (b) Customer must include in the terms of any contract with a Downstream Customer for the supply of Customer Products:

- (i) provisions that exclude (to the full extent permitted by law) all liability of NBN Co, its Related Bodies Corporate and each of their respective Personnel, arising from or in connection with Customer Products; and
  - (ii) provisions that state:
    - (A) NBN Co is not providing any products or services to the Downstream Customer;
    - (B) Customer Products require mains power to operate in the ordinary course; and
    - (C) NBN Co does not have a contractual relationship with the Downstream Customer in regards to the supply of Customer Products.
  - (c) Customer must ensure that every contract with a Downstream Customer for the supply of Customer Products does not contain provisions that prevent or hinder NBN Co or Customer from exercising its rights or performing its obligations under this Agreement.
- 

## E6 Insurance

### E6.1 Insurance Policies

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

- (a) workers compensation insurance in accordance with applicable law and awards, and insurance against common law liability to a party's Personnel engaged in connection with this Agreement which must, where permitted by law, include an indemnity in favour of the other party in respect of statutory liability to that party's Personnel;
- (b) public liability and product liability insurance:
  - (i) each for an amount not less than:
    - (A) \$20 million per occurrence (except for product liability insurance, which will be for not less than \$20 million in the annual aggregate); or
    - (B) \$50 million per occurrence (except for product liability insurance, which will be for not less than \$50 million in the annual aggregate) if Customer wishes to order a facilities access product from NBN Co pursuant to which Customer or its Personnel requires physical access to POIs; and
  - (ii) insuring legal liability for:
    - (A) loss of, destruction of or damage to Tangible Property;
    - (B) personal injury, sickness, disease or death of any person;
    - (C) obstruction, loss of amenities, trespass, nuisance, interference, denial of access or any like cause; and
    - (D) 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 \$20 million per claim and in annual aggregate;
- (d) motor vehicle third party property damage insurance for not less than \$20 million in respect of motor vehicles used in connection with this Agreement; and
- (e) any other insurance required by law,

(together, the **Insurance Policies**), and ensure, save in respect of the Insurance Policy specified in clause E6.1(c), that the Insurance Policies include terms whereby the insurer's indemnity applies on an occurrence basis (not on a claims-made basis).

## **E6.2 Other requirements**

Customer must:

- (a) in respect of Insurance Policies for public liability insurance, ensure that NBN Co is named as an additional insured and indemnified with regard to any vicarious or contingent liability incurred as a result of the activity of Customer's Personnel;
- (b) effect the Insurance Policies within 5 Business Days of the Execution Date and maintain them until this Agreement has terminated or expired, or as otherwise required by NBN Co;
- (c) provide evidence of the Insurance Policies to NBN Co in the form of certificates of currency on request and in a form acceptable to NBN Co;
- (d) not do, permit or fail to do anything which prejudices any of the Insurance Policies or insurance claims or recovery under the Insurance Policies;
- (e) immediately reinstate any lapsed Insurance Policies; and
- (f) immediately notify the relevant insurer of any fact, circumstance or change in circumstances which may prejudice the validity of any of the Insurance Policies or insurance claims or recovery under the Insurance Policies.

## **E6.3 Review of Insurance Policies amounts**

- (a) On or within a reasonable period after 1 May 2015, and thereafter no more frequently than once every 5 years, NBN Co may change the minimum amount of cover required in respect of the Insurance Policy specified in clause E6.1 by notifying Customer of those changes, subject to this clause E6.3.
- (b) In determining whether, and by how much, to increase the minimum amount of cover required in respect of the Insurance Policies, NBN Co must have regard to what is reasonable and obtainable in the insurance market at the time that it makes its determination.
- (c) A change to the minimum amount of cover required in respect of the Insurance Policies will be effective on the date that is 60 calendar days from the date of the notice referred to in clause E6.3(a).

## **E6.4 Consequences of failure to procure or maintain Insurance Policies**

If Customer fails to procure or maintain the Insurance Policies within 10 Business Days of being required to do so under this Agreement without NBN Co's written consent, which may not be unreasonably withheld where self-insurance arrangements are in place consistent with the requirements described in clause E6.1, NBN Co may on 5 Business Days' notice (but is not obliged to)



procure the Insurance Policies on Customer's behalf. If NBN Co does so, Customer must pay NBN Co the cost of arranging such insurance on demand.

#### **E6.5 Customer's responsibility for insurance or liability not affected**

- (a) Notwithstanding the provisions of this clause E6, Customer is responsible for assessing the risks and scope of its own insurance requirements.
- (b) Nothing in this clause E6 will limit Customer's liability or relieve Customer from any obligation arising from or in connection with this Agreement.

---

## **E7 Force Majeure Events**

### **E7.1 Dealing with Force Majeure Events**

- (a) If the Affected Party is unable to perform an obligation under this Agreement (other than, subject to clause E7.2(c), an obligation to pay money in the ordinary course of business) because of a Force Majeure Event, then to the extent the Force Majeure Event prevents that party from performing that obligation:
  - (i) the Affected Party will be excused from performing that obligation for the duration of the Force Majeure Event; and
  - (ii) the Affected Party will not be liable for any costs, expenses, losses, damages or liabilities (including Service Level Rebates) arising from or in connection with the non-performance of that obligation for the duration of the Force Majeure Event.
- (b) The Affected Party must:
  - (i) provide a Force Majeure Event Notice to the other party as soon as is reasonably practicable after that Force Majeure Event arises;
  - (ii) use reasonable endeavours to minimise the impact of that Force Majeure Event; and
  - (iii) use reasonable endeavours to mitigate any losses that may arise as a result of that Force Majeure Event.
- (c) A Force Majeure Event Notice must include:
  - (i) a description of the nature of the Force Majeure Event;
  - (ii) details of the extent to which the Affected Party is unable to perform its obligations because of that Force Majeure Event; and
  - (iii) an estimate of the duration that the Affected Party expects that it will be unable to perform those obligations because of that Force Majeure Event.
- (d) For the duration of a Force Majeure Event, each party must continue to perform all obligations that they are able to perform (including, subject to clause E7.2(c) [and E7.2\(d\)](#), an obligation to pay money under the terms of this Agreement) despite the Force Majeure Event.
- (e) Clause E7.1(a) excuses NBN Co's obligation to credit an applicable Service Level Rebate for a failure to meet any applicable Service Level under clause A2.6.

## E7.2 Recovering from Force Majeure Events

- (a) As soon as is reasonably practicable after the Force Majeure Event no longer prevents the Affected Party from performing an obligation, the Affected Party must notify the other party of that fact.
- (b) The Affected Party must fulfil any of its outstanding obligations as soon as reasonably possible after the Force Majeure Event has ended, except to the extent that it is no longer possible to do so or it is not required to do so by the other party.
- (c) If the Force Majeure Event has prevented the Affected Party from performing a material obligation under this Agreement, and the Force Majeure Event lasts for a continuous period of 40 Business Days or more from the date of the Force Majeure Event Notification, then the other party can elect to terminate this Agreement on 20 Business Days prior notice.
- (d) If the Force Majeure Event has prevented Customer from receiving an Ordered Product substantially in accordance with the Product Description or Product Technical Specification for that Ordered Product, and the Force Majeure Event lasts for a continuous period of ~~20~~5 Business Days or more from the date of the Force Majeure Event Notification, then Customer can elect to, by notice to NBN Co, suspend Customer's obligation to pay Charges in respect of the affected Ordered Product proportionally to the degree to which that Ordered Product is affected by the Force Majeure Event for the period that the Force Majeure Event lasts from the date which is ~~20~~5 Business Days after the ~~date~~commencement of the Force Majeure Event ~~Notification~~.
- (e) If the other party does not terminate this Agreement, then the Affected Party must fulfil any of its outstanding obligations as soon as reasonably possible after the Force Majeure Event has ended, except to the extent that it is no longer possible to do so or it is not required to do so by the other party.

## E7.3 No obligation to settle strikes, etc

- (a) Nothing in this clause E7 requires the Affected Party to settle an industrial dispute, strike, lockout, boycott, work ban or other labour dispute or difficulty, civil disobedience or native title claim.
- (b) The parties agree that the settlement of any such industrial dispute, strike, lockout, boycott, work ban or other labour dispute or difficulty, civil disobedience or native title claim will be determined by the Affected Party in its discretion.

---

## Module F: Agreement Management

### F1 Relationship and Operational Points of Contact

#### F1.1 Relationship and Operational Points of Contact

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

#### F1.2 Responsibilities of Relationship and Operational Points of Contact

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

## F2 Term

### F2.1 Term

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

### F2.2 Extension of Term

- (a) If Customer wants to extend the Term beyond the then current Expiry Date, Customer must give NBN Co a notice specifying the proposed new Expiry Date by no later than 40 Business Days prior to the Expiry Date (**Extension Notice**).
- (b) NBN Co must accept or reject an Extension Notice by notice to Customer within 10 Business Days of the date of the notice.
- (c) If NBN Co accepts an Extension Notice, this Agreement will continue on its then current terms until the new Expiry Date specified in the Extension Notice (or such other date as the parties may agree in writing).
- (d) If NBN Co rejects an Extension Notice, this Agreement will expire on the Expiry Date and on and from the date of the Extension Notice Customer may not place, and NBN Co is not obliged to accept, any orders for Products for supply after the Expiry Date.

## F3 Alignment with SAU

- (a) Within 10 Business Days after:
  - (i) the commencement of the operation of an SAU; or
  - (ii) the effective date of any variation of an SAU,
 NBN Co will:
  - (iii) give to Customer a notice (**WBA-SAU Alignment Notice**) specifying any changes to this Agreement required to the extent necessary to ensure that the terms of this Agreement are consistent with the terms of that SAU and the date on which those changes are proposed to take effect (being at least 40 Business Days after the date of that notice) (**Alignment Date**); and
  - (iv) following the issue of a WBA-SAU Alignment Notice, consult with Customer for a period of 10 Business Days concerning the specified changes and the impact that those changes may have on Customer (**Alignment Consultation Period**).
- (b) If, following the Alignment Consultation Period, changes are required to a WBA-SAU Alignment Notice given under clause F3(a)(iii), no later than 10 Business Days after the Alignment Consultation Period, NBN Co will issue an updated WBA-SAU Alignment Notice specifying the necessary changes to the WBA in substitution for the changes specified in the WBA-SAU Alignment Notice given under clause F3(a)(iii).
- (c) If, following the Alignment Consultation Period, Customer disagrees with the content of a WBA-SAU Alignment Notice, Customer may raise the disagreement as a Dispute. If Customer or any Other NBN Co Customer raises a disagreement with a WBA-SAU Alignment

Notice as a Dispute, NBN Co may suspend the alignment process described in this clause F3 and, following the resolution of that Dispute, terminate and recommence the alignment process contemplated by this clause F3.

- (d) Customer may, by notice in writing to NBN Co, elect to accept or reject the whole of the changes set out in a WBA-SAU Alignment Notice by the later of the date that is 10 Business Days after:
  - (i) an Alignment Consultation Period; and
  - (ii) the date of issue of an updated WBA-SAU Alignment Notice.
- (e) If Customer gives notice accepting the changes set out in a WBA-SAU Alignment Notice in accordance with clause F3(d), the changes set out in the WBA-SAU Alignment Notice will take effect on the Alignment Date without the need for further action by any party.
- (f) If Customer does not elect to accept or rejects a WBA-SAU Alignment Notice in accordance with clause F3(d), the changes set out in the WBA-SAU Alignment Notice will not take effect and this Agreement will continue on its then current terms between NBN Co and the Customer.

---

## F4 Changes to this Agreement

### F4.1 Changes made in accordance with specific processes

NBN Co may change this Agreement where that change:

- (a) is the introduction of a Designated Roadmap Product or has been considered and developed through the Product Development Forum in accordance with clause A3, by providing at least 40 Business Days' notice of that change to Customer;
- (b) is a minor variation or enhancement to an existing Product made in accordance with clause A3.5;
- (c) is a withdrawal of a Product made in accordance with clause A4;
- (d) is a change to the [Price List](#) or any other amounts payable under this Agreement made in accordance with clause B6;
- (e) is a change to the POI arrangements made in accordance with clause C13;
- (f) is a change to the minimum amount of cover required in respect of the Insurance Policies that is made in accordance with clause E6.3;
- (g) is a Minor Change that is not a change under any other part of this clause F4.1 (which changes must not be made more than once in any 6 month period) by providing at least 30 Business Days' notice of that change to Customer;
- (h) is a change to the [Credit Policy](#), a Product Technical Specification, and other documents incorporated by reference into this Agreement which are not otherwise specifically referred to in this clause F4.1(h), by providing at least 30 Business Days' notice of that change to Customer. NBN Co will:
  - (i) use reasonable endeavours to give details of (including by providing a copy of the draft notice) and discuss the changes with Customer; and

- (ii) consider any comments from Customer and the impacts that those changes will have on Customer,

before issuing a notice described in this clause F4.1(h);
- (i) is a change to the [PDF Processes](#) that is made in accordance with the terms of the [PDF Processes](#);
- (j) is to the [NBN Co Operations Manual](#), by providing at least 30 Business Days' notice of that change to Customer. Without limiting the operation of clause C1.2, where that change is proposed after 1 July 2013, NBN Co will:
  - (i) use reasonable endeavours to give details of (including by providing a copy of the draft notice) and discuss the changes with Customer; and
  - (ii) consider any comments from Customer and the impacts that those changes will have on Customer,

before making a change described in this clause F4.1(j);
- (k) is to the [TTAS Operations Support Manual](#), by providing at least 30 Business Days' notice of that change to Customer;
- (l) is agreed in writing with Customer;
- (m) is a change pursuant to a WBA-SAU Alignment Notice given under clause F3(a)(iii); or
- (n) is a change pursuant to the CDP by providing at least 20 Business Days' notice of that change to Customer.

#### **F4.2 Changes made through consultation**

- (a) NBN Co may propose a change to this Agreement, other than a change referred to in clause F4.1, by notice to Customer containing:
  - (i) a description of the proposed change (which may be by marking-up amendments to the then-current version of the relevant clause/s);
  - (ii) the reason/s for the proposed change; and
  - (iii) the process for consultation between the parties on the proposed change, as reasonably determined by NBN Co, including, NBN Co consulting and receiving feedback directly from, Customer, bilaterally or through a multi-party forum established by NBN Co for this purpose,

**(Change Proposal).**
- (b) NBN Co must ensure that the period of consultation specified in a Change Proposal must be no less than 60 Business Days (unless the proposed change must take effect sooner in order to comply with applicable law).
- (c) Where practicable, NBN Co will use reasonable endeavours to issue a single Change Proposal for multiple proposed changes.
- (d) After reasonably considering any feedback received from Customer pursuant to the process specified under clause F4.2(a)(iii), NBN Co will, by notice to Customer, either:

- (i) withdraw the Change Proposal;
  - (ii) issue a revised Change Proposal under clause F4.2(a); or
  - (iii) proceed with the Change Proposal.
- (e) The date on which a change described under the notice given under clause F4.2(d) is specified to commence (**Change Effective Date**) must be at least 60 Business Days after the date of that notice (**Change Notice Date**), unless the change must take effect sooner in order to comply with applicable law.
- (f) If the ACCC makes:
  - (i) an interim access determination under Division 4 of Part XIC of the Competition and Consumer Act; or
  - (ii) a binding rule of conduct under Division 4A of Part XIC of the Competition and Consumer Act,
 relating to a Change Proposal before the Change Effective Date, NBN Co will by notice to Customer, either:
  - (iii) cancel the implementation of the Change Proposal;
  - (iv) suspend the implementation of the Change Proposal for a period specified in the notice or until the occurrence of an event specified in the notice; or
  - (v) implement the Change Proposal in a manner consistent with that interim access determination or binding rule of conduct.
- (g) This clause F4.2 may apply, but is not limited, to Change Proposals:
  - (i) comprising new or varied non-price terms for new Products (other than the technical specifications or functionality of new Products);
  - (ii) arising from the resolution or determination of a Bilateral Dispute, an Industry Relevant Dispute or an Other NBN Co Customer Dispute;
  - (iii) required to ensure consistency with any Non-Discrimination Obligations; and
  - (iv) required in response to a Regulatory Event.

### **F4.3 Contract Development Process**

- (a) NBN Co will comply with the CDP in the further refinement of a long term wholesale broadband agreement which is intended to supersede this Agreement.
- (b) If there is any inconsistency between this Agreement and the CDP then, as between NBN Co and Customer, that inconsistency will be resolved by giving precedence to this Agreement to the extent of any inconsistency.
- (c) Where a “Key Issue”, as that term is defined in the CDP, has been resolved under the CDP and subject to the terms of the CDP, NBN Co may, acting reasonably, implement any relevant changes that follow from the resolution of that “Key Issue” to this Agreement pursuant to clause F4.1(n).

## F5 Default Notices

### F5.1 Issuing a Default Notice

- (a) A party (in this clause, the **notifying party**) may issue a notice to the other party (in this clause, the **receiving party**) if the notifying party reasonably considers that the receiving party is in Default (**Default Notice**).
- (b) A Default Notice must contain:
  - (i) a description of the Default;
  - (ii) if the notifying party reasonably considers the Default is capable of remedy, a deadline by which the Default must be remedied in accordance with clause F5.1(c)F1.1(c); and
  - (iii) whether the Default (individually or together with other Defaults identified in the Default Notice) is a Material Default.
- (c) The deadline set out in a Default Notice must be:
  - (i) at least 5 Business Days after the Default Notice is issued for Defaults that the notifying party reasonably considers:
    - (A) can be remedied within that period; or
    - (B) will, or are likely to have, a material adverse affect on the supply of a product or service to Customer or any Other NBN Co Customer; or
  - (ii) at least 20 Business Days after the Default Notice is issued for all other Defaults.
- (d) A notifying party may not issue a Default Notice more than 6 months after the date a Default becomes or ought to have become apparent to the notifying party.

### F5.2 Procedure after a Default Notice is issued

- (a) As soon as is reasonably practicable after the Default Notice is issued:
  - (i) the parties must make their Relationship Points of Contact available at reasonable times for consultation with a view to resolving the subject matter of that Default Notice; and
  - (ii) where the Default is capable of remedy, the receiving party must remedy the Default described in that Default Notice by the deadline in the Default Notice.
- (b) A Default Notice is of no further force or effect once the receiving party has remedied the Default described in the Default Notice.
- (c) A notifying party may withdraw a Default Notice at any time by notice to the receiving party.
- (d) Where NBN Co is the notifying party and:
  - (i) a Material Default remains unremedied by the deadline in a Default Notice or is incapable of being remedied; and
  - (ii) NBN Co has not withdrawn the Default Notice,



then NBN Co may exercise its rights under clauses F7, F8, F9.1 or F10.2 provided that:

- (iii) NBN Co has made its Relationship Points of Contact reasonably available for consultation under clause F5.2(a) until the expiry of the deadline of the relevant Default Notice;
  - (iv) NBN Co has provided at least 5 Business Days prior notice to Customer that NBN Co will exercise a right under clause F7, F8, F9.1 or F10.2 (as the case may be) and such notice is provided by NBN Co to Customer not later than 20 Business Days after the expiry of the deadline in the relevant Default Notice; and
  - (v) the exercise of its rights would not cause NBN Co to breach any applicable law, including section 152AXB of the Competition and Consumer Act.
- (e) Where Customer is the notifying party and:
- (i) a Material Default remains unremedied by the deadline in a Default Notice or is incapable of being remedied (an **NBN Co Material Default**); and
  - (ii) Customer has not withdrawn the Default Notice,

then Customer may escalate the NBN Co Material Default in accordance with clause F6, provided Customer has made its Relationship Point of Contact available for consultation under clause F5.2(a)(i) until the expiry of the deadline of the relevant Default Notice.

---

## F6 Escalation

### F6.1 Escalation of NBN Co Material Defaults

- (a) If an NBN Co Material Default remains unremedied by the deadline in a Default Notice or is incapable of being remedied, Customer may escalate the NBN Co Material Default to NBN Co's Head of Product Development and Sales, or their delegate.
- (b) Provided Customer has used reasonable endeavours to resolve the NBN Co Material Default under clause F6.1(a), if the subject matter of a Default Notice has not been resolved more than 20 Business Days (or such longer period as is agreed) after Customer escalated the relevant NBN Co Material Default under clause F6.1(a), Customer may further escalate the NBN Co Material Default to NBN Co's Chief Executive Officer.
- (c) Customer must not escalate, or further escalate, an NBN Co Material Default under this clause F6.1:
  - (i) unless Customer's Relationship Point of Contact has sought to resolve that NBN Co Material Default with NBN Co's Relationship Point of Contact;
  - (ii) where the Material Default has been remedied by NBN Co;
  - (iii) where the Default Notice has been withdrawn by Customer; or
  - (iv) which is or becomes the subject of, a Dispute under [Module G \(Dispute Management\)](#).
- (d) The exercise by Customer of its rights under this clause F6.1 does not limit or prejudice Customer's rights to immediately place a disconnection order in respect of any Ordered Product or terminate this Agreement pursuant to clause F10.1.

---

## F7 Ordering Freeze

### F7.1 Ordering Freeze for failing to remedy a Material Default

- (a) If Customer has failed to remedy a Material Default by the deadline in a Default Notice or the Material Default is incapable of being remedied, then NBN Co may, on giving notice to Customer, immediately:
  - (i) cease processing any orders for Products already made by Customer which have not yet been completed; and
  - (ii) refuse to accept any further orders for any Products that may be made by Customer, **(Ordering Freeze)**.
- (b) Acceptance of payments or the continued supply of any Ordered Products by NBN Co, either before or after its right to impose an Ordering Freeze have become exercisable or have been exercised, does not constitute a waiver of NBN Co's rights under this clause F7, or elsewhere in this Agreement.
- (c) Any orders for Products by Other NBN Co Customers may be moved ahead of any orders for Products by Customer in any queue established for the processing of orders by NBN Co during any Ordering Freeze.

### F7.2 Duration and cessation of an Ordering Freeze

- (a) An Ordering Freeze will continue until the earlier to occur of:
  - (i) Customer having remedied the event giving rise to that Ordering Freeze to NBN Co's reasonable satisfaction; or
  - (ii) NBN Co unilaterally determines in its discretion to discontinue the Ordering Freeze.
- (b) As soon as reasonably practicable after satisfaction of either of the conditions in clause F7.2(a), NBN Co will resume:
  - (i) processing the orders for any Products current at the time the Ordering Freeze was imposed, unless advised otherwise by Customer; and
  - (ii) accepting further orders for any Products that may be made by Customer.
- (c) On cessation of an Ordering Freeze Reduction, Customer will incur any applicable restoration fees or charges set out in the [Price List](#).
- (d) Customer remains liable for all Charges and other amounts payable by Customer under this Agreement that are incurred during an Ordering Freeze.

---

## F8 Service Reduction

### F8.1 Service Reduction for failing to remedy a Material Default

- (a) If Customer has failed to remedy a Material Default by the deadline in a Default Notice or the Material Default is incapable of being remedied, NBN Co may, on giving notice to Customer, immediately impose a Service Reduction on any Ordered Products where it is commercially and technically feasible for NBN Co to do so.

- (b) Acceptance of payments or the continued supply of any Ordered Products by NBN Co, either before or after its right to impose a Service Reduction have become exercisable or has been exercised, does not constitute a waiver of NBN Co's rights under this clause F8 or elsewhere in this Agreement.

## **F8.2 Duration and cessation of a Service Reduction**

- (a) A Service Reduction will continue until the earlier to occur of:
  - (i) Customer having remedied the event giving rise to that Service Reduction to NBN Co's reasonable satisfaction; or
  - (ii) NBN Co unilaterally determines in its discretion to discontinue the Service Reduction.
- (b) As soon as reasonably practicable after satisfaction of either of the conditions in clause F8.2(a) NBN Co will cease imposing that Service Reduction on the Ordered Products and restore supply of the relevant Ordered Products as soon as is reasonably practicable.
- (c) On cessation of a Service Reduction, Customer will incur any applicable restoration fees or charges set out in the [Price List](#).
- (d) Without limiting any other part of this Agreement, Customer is only required to pay Charges for the services actually supplied by NBN Co during a period of a Service Reduction.

---

## **F9 Suspension**

### **F9.1 Suspension for failing to remedy a Material Default**

- (a) NBN Co may Suspend an Ordered Product or the relevant part of an Ordered Product if Customer has failed to remedy a Material Default by the deadline specified in a Default Notice or the Material Default is incapable of being remedied.
- (b) Acceptance of payments or the continued supply of any Ordered Products by NBN Co, either before or after its rights to Suspend under this clause F9.1 have become exercisable or have been exercised does not constitute a waiver of NBN Co's rights under this clause F9.1 or elsewhere in this Agreement.

### **F9.2 Immediate Suspension**

- (a) NBN Co may Suspend an Ordered Product or the relevant part of an Ordered Product in the following circumstances:
  - (i) to avoid or mitigate the effect of an Emergency;
  - (ii) in order to comply with a lawful order, instruction or request of a Regulator, an emergency services organisation or any other competent authority;
  - (iii) where reasonably necessary to help officers and authorities of the Commonwealth and of the States and Territories to enforce criminal law and laws imposing pecuniary penalties, protect the public revenue or safeguard national security;
  - (iv) if NBN Co reasonably considers that the continued supply of an Ordered Product and/or use of that Ordered Product by Customer is likely to:
    - (A) endanger the health or safety of any person;

- (B) damage, interfere with or threaten the NBN-Related Networks; or
- (C) damage, interfere with or threaten any Other NBN Co Customer's network, systems, equipment or facilities used in connection with the NBN Co Network;
- (v) if Customer no longer fully complies with the Supply Conditions or the Business Rules;
- (vi) Customer in the course of the acquisition or use of Ordered Products damages, interferes with or threatens the NBN-Related Networks;
- (vii) Customer in the course of the acquisition or use of Ordered Products damages, interferes with or threatens any Other NBN Co Customer's network, systems, equipment or facilities used in connection with the NBN Co Network; or
- (viii) if, subject to section 600F of the Corporations Act, Customer suffers an Insolvency Event or NBN Co otherwise has reasonable grounds to believe that Customer will not be able to meet its payment obligations under this Agreement.
- (b) NBN Co will:
  - (i) use reasonable endeavours to provide Customer with as much prior notice of NBN Co's exercise of Suspension rights under this clause F9.2 as is reasonable in the circumstances; and
  - (ii) notify Customer as soon as is reasonably practicable after NBN Co exercises Suspension rights under this clause F9.2.
- (c) Acceptance of payments or the continued supply of any Ordered Products by NBN Co, either before or after its rights to Suspend under this clause F9.2 have become exercisable or are exercised, does not constitute a waiver of NBN Co's rights under this clause F9.2 or elsewhere in this Agreement.

### **F9.3 Duration and cessation of Suspension**

- (a) In the case of a Suspension under clause F9.1, a Suspension will continue until Customer has remedied the event giving rise to that Suspension to the reasonable satisfaction of NBN Co and it is reasonably practicable for NBN Co to complete restoration of the supply of the Ordered Products that have been Suspended.
- (b) In the case of a Suspension under clause F9.2, a Suspension will continue until the circumstances in clause F9.2(a) have ceased to apply or been remedied (as applicable) and it is reasonably practicable for NBN Co to complete restoration of the supply of the Ordered Products that have been Suspended.
- (c) On cessation of a Suspension, Customer must pay any applicable restoration fees or charges set out in the [Price List](#) (except that Customer is not obliged to pay any restoration fees or charges if the event or reason giving rise to that Suspension was not contributed to by any act or omission of Customer).
- (d) Without limiting any other part of this Agreement, Customer is not required to pay Charges in respect of Ordered Products that have been Suspended during the period of Suspension.

## F10 Disconnection of Ordered Products and termination of this Agreement

### F10.1 Disconnection and termination by Customer

- (a) Customer may:
- (i) by giving notice through the NBN Co Platform or through the processes set out in the [NBN Co Operations Manual](#), immediately place a disconnection order in respect of any Ordered Product pursuant to and in accordance with clause F10.1 and the terms of the [NBN Co Operations Manual](#); or
  - (ii) by giving written notice to NBN Co, terminate this Agreement,
- if:
- (iii) NBN Co has failed to remedy a Material Default by the deadline in a Default Notice or the Material Default is incapable of being remedied;
  - (iv) Customer has issued 3 or more Default Notices within a 12 month period in respect of the same or different Defaults, each of which remains unremedied at the expiry of that period, save that any Default Notice resolved in NBN Co's favour shall be disregarded for these purposes;
  - (v) NBN Co ceases to hold a valid Carrier licence;
  - (vi) NBN Co suffers an Insolvency Event; or
  - (vii) Customer is expressly entitled to exercise a right to place a disconnection order or a right of termination (as the case may be) in any other provision of this Agreement.
- (b) Making of payments or the continued acquisition of Ordered Products by Customer, either before or after its powers to place a disconnection order or terminate have become exercisable or have been exercised, does not constitute a waiver of Customer's rights under this clause F10.1.
- (c) Customer's rights and obligations in respect of the disconnection of Ordered Products for convenience are set out in the [NBN Co Operations Manual](#). NBN Co may amend the procedure for the disconnection of any Product described in the NBN Co Operations Manual during the period commencing on the Execution Date and ending on 30 November 2012 only in accordance with the provisions of clause F4.1(n) or clause F4.2.

### F10.2 Disconnection and termination by NBN Co

- (a) NBN Co may, by giving written notice to Customer, immediately disconnect any Ordered Product (in whole or in part) and/or terminate this Agreement if:
- (i) Customer has failed to remedy a Material Default by the deadline in a Default Notice or the Material Default is incapable of being remedied;
  - (ii) NBN Co has issued 3 or more Default Notices within a 12 month period in respect of the same or different Defaults, each of which remains unremedied at the expiry of that period, save that any Default Notice resolved in Customer's favour shall be disregarded for these purposes;

- (iii) a Suspension by reason of an event or for a reason caused or contributed to by any act or omission of Customer has subsisted for more than 20 Business Days and continues to subsist at the date on which NBN Co gives that notice to Customer;
  - (iv) Customer ceases to be a Carrier, Carriage Service Provider, Content Service Provider or Specified Utility engaged in a related Specified Activity;
  - (v) subject to section 600F of the Corporations Act, Customer suffers an Insolvency Event; or
  - (vi) NBN Co is expressly entitled to exercise a right of disconnection or termination pursuant to any other provision of this Agreement.
- (b) Acceptance of payments or the continued supply of Ordered Products by NBN Co, either before or after its rights to disconnect or terminate have become exercisable or have been exercised, does not constitute a waiver of NBN Co's rights under this clause F10.2 or elsewhere in this Agreement.

### F10.3 Other termination rights

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

## F11 Choice of remedy

NBN Co may exercise any of its rights under this [Module F \(Agreement Management\)](#) concurrently.

## F12 Trial Agreement transition

- (a) If Customer and NBN Co are parties to a Trial Agreement, the parties agree that the Trial Agreement terminates with effect on and from the Execution Date and any products or services being supplied by NBN Co to Customer under the Trial Agreement will, on and from the Execution Date, be supplied pursuant to, and be subject to the provisions of, this Agreement without further action by either party.
- (b) For the purposes of this clause F12, the following products or services being supplied under the Trial Agreement will cease to be supplied and will be replaced with the equivalent Products specified below under this Agreement:

Trial Agreement Product	Equivalent Product
Beta NFAS	NFAS
Beta NFAS for New Developments	NFAS
TTAS	TTAS
Beta Sandpit	Sandpit

- (c) Notwithstanding anything else in this Agreement, if a Customer has satisfactorily completed the on-boarding requirements necessary for it to acquire a product or service under the Trial Agreement, Customer:
  - (i) is deemed to have satisfied the on-boarding processes and activities in accordance with the on-boarding module of the [NBN Co Operations Manual](#) for the equivalent Product (as specified in the table in clause F12(b)); and
  - (ii) will not be required to pay the Charges applicable to the on-boarding processes and activities for the equivalent Product, if any, as set out in the [Price List](#).
- (d) With effect from the Execution Date, clause D10.3 of the Trial Agreement will have no force or effect and any invoices issued under the Trial Agreement will be payable in accordance with their terms.

---

## F13 Effect of expiry or termination of this Agreement

### F13.1 Fulfilment of orders and supply of Products

If this Agreement expires or is terminated, NBN Co may immediately:

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

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

### F13.2 Charges

- (a) Customer remains liable to pay to NBN Co:
  - (i) all Charges incurred by Customer; and
  - (ii) any other amounts payable by Customer under this Agreement (including Break Fees, if any),up to and including the Effective Disconnection Date (if any).
- (b) Subject to the terms of the resolution of any subsisting Billing Dispute, all Charges and other amounts payable by Customer under this Agreement incurred by Customer:
  - (i) that have been invoiced by NBN Co and are due and payable, will become immediately due and payable as a debt on the effective date of expiry or termination;
  - (ii) that have been invoiced by NBN Co but are not yet due and payable, will become immediately due and payable as a debt on the relevant Due Date; or
  - (iii) that have not yet been invoiced by NBN Co, will be invoiced by NBN Co as soon as is reasonably practicable after the effective date of expiry or termination and will be immediately due and payable as a debt on the relevant Due Date.

- (c) Within 20 Business Days after the effective date of expiry or termination, NBN Co will credit to Customer a proportion of any Charges and other amounts payable by Customer under this Agreement calculated on a pro rata daily basis which may have been paid in advance by Customer for the period after the effective date of expiry or termination, or NBN Co may set off that amount against any other amount which Customer must pay to NBN Co under or in connection with this Agreement.

### **F13.3 Service Level Rebates**

Within 20 Business Days after the effective date of expiry or termination, NBN Co will pay to Customer an amount equal to the value of any Service Level Rebates that accrued to Customer during the Term, but were not deducted from amounts due in invoices issued by NBN Co to Customer under this Agreement during the Term, or NBN Co may set off that amount against any other amount which Customer must pay to NBN Co under or in connection with this Agreement.

### **F13.4 Confidential Information**

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

### **F13.5 Disconnection from NBN Co Network and NBN Co Platform**

- (a) Within 60 Business Days (or such other period that may be agreed, including by reason of the scale of the necessary disconnection activities to be undertaken) after the effective date of expiry or termination, Customer must:
  - (i) disconnect any connections made by or on behalf of Customer from Customer Network to the NBN Co Network and the NBN Co Platform; and
  - (ii) comply with any reasonable instructions given by NBN Co in connection with such work.
- (b) Customer must use reasonable endeavours to procure within 60 Business Days (or such other period that may be agreed, including by reason of the scale of the necessary disconnection activities to be undertaken) after the effective date of expiry or termination of this Agreement that:
  - (i) any connections made by or on behalf of any Downstream Customer or any End User to the NBN Co Network in connection with Customer's supply of Customer Products are disconnected; and
  - (ii) those Downstream Customers and End Users comply with any reasonable instructions given by NBN Co in connection with such work.
- (c) NBN Co will grant Customer reasonable access to NBN Co sites for the purposes of performing its obligations under this clause F13.5 provided that Customer complies with any reasonable instructions given by NBN Co in connection with such access.



### **F13.6 Removal of equipment from NBN Co sites**

- (a) Within 60 Business Days (or such other period that may be agreed, including by reference to the scale of disconnection activities to be undertaken) after the effective date of expiry or termination, Customer must remove all:
  - (i) Customer Equipment and other items owned or controlled by Customer or any of its Related Bodies Corporate from the National Test Facility and any other property, facilities or sites owned or controlled by NBN Co; and
  - (ii) equipment and other items owned or controlled by any Downstream Customers from the National Test Facility and any other property, facilities or sites owned or controlled by NBN Co.
- (b) Customer must comply with any reasonable instructions given by NBN Co in connection with such work.
- (c) NBN Co will grant Customer reasonable access to the National Test Facility and other NBN Co property, facilities or sites for the purposes of performing its obligations under this clause F13.6 provided that Customer complies with any reasonable instructions given by NBN Co in connection with such access.
- (d) If Customer fails to remove any such equipment or other items from the National Test Facility and other property, facilities or sites owned or controlled by NBN Co within 60 Business Days after the effective date of expiry or termination or as otherwise agreed, then NBN Co (or any of its Personnel) may remove such equipment and other items by giving Customer at least 5 Business Days' notice of its intention to do so.
- (e) If NBN Co removes any such equipment and other items pursuant to clause F13.6(d), then Customer must reimburse NBN Co for all costs and expenses reasonably incurred by NBN Co in removing such equipment and other items.

### **F13.7 Removal of equipment from third party property**

- (a) Customer acknowledges that if Customer Equipment and other items or equipment owned or controlled by Customer or any of its Related Bodies Corporate is located on any third party property, facility or site and NBN Co no longer has a right to occupy that third party property, facility or site, then NBN Co will provide as much notice as is reasonably practicable to Customer to remove the Customer Equipment and other items or equipment owned or controlled by Customer or any of its Related Bodies Corporate from that third party property, facility or site. Customer must remove the Customer Equipment and other items or equipment owned or controlled by Customer or any of its Related Bodies Corporate and make good that property, facility or site, fair wear and tear excepted, within the timeframe specified by NBN Co in that notice.
- (b) If Customer fails to remove the Customer Equipment and any other items or equipment owned or controlled by Customer or any of its Related Bodies Corporate from the third party property, facility or site in accordance with the timeframe given under clause F13.7(a), then Customer agrees that NBN Co or a third party may remove the Customer Equipment or any other items or equipment owned or controlled by Customer or any of its Related Bodies Corporate from the third party property, facility or site.

### **F13.8 Accrued rights**

Expiry or termination of this Agreement by either party does not affect the right of either party to enforce its accrued rights against the other party.

---

## Module G: Dispute Management

### Part A: Dispute Management Rules

#### G1 Application of Dispute Management Rules

- (a) The Dispute Management Rules apply to any dispute that arises between NBN Co and Customer under or in relation to this Agreement (each, a **Dispute**), except for Billing Disputes, to which [Module B \(Financial Management\)](#) applies.
- (b) [Part B](#) of these Dispute Management Rules applies to Bilateral Disputes.
- (c) [Part C](#) of these Dispute Management Rules applies to Industry Relevant Disputes.
- (d) [Part D](#) of these Dispute Management Rules sets out some common processes and principles that apply to all Disputes.

---

#### G2 Referral of Disputes

##### G2.1 Referral of Disputes to a Resolution Advisor

- (a) A party that considers that a Dispute has arisen and is satisfied that the Dispute cannot be satisfactorily resolved through the parties' respective Relationship Points of Contact (whether or not the period specified in clause F1.2(c) has elapsed) may refer the Dispute to a Resolution Advisor, notifying the other party and providing a copy of its referral at the same time.
- (b) The referral of a Dispute to a Resolution Advisor must be in writing and in accordance with any procedural requirements notified by the Resolution Advisor to NBN Co and Customer from time to time.
- (c) The parties must consult with and have regard to the advice of the Resolution Advisor and the parties must use reasonable endeavours to seek to agree whether to resolve the Dispute through expert determination in accordance with the processes set out in clause G15 and upon such agreement the Dispute will be determined in accordance with clause G15 and the parties will advise the Resolution Advisor accordingly.

##### G2.2 The Panel

- (a) If the parties do not agree to seek to resolve the Dispute through expert determination under clause G2.1(c) within 5 Business Days, the Resolution Advisor must appoint 3 current and available members of the Pool to a panel including a Legal Practitioner or a Dispute Resolution Practitioner as the presiding member (each a **Panel Member**, together the **Panel**) to classify that Dispute under clause G3 and determine that Dispute under these Dispute Management Rules and must notify the parties in writing of the identity of the Panel Members.
- (b) In selecting members of the Pool to be appointed to the Panel, the Resolution Advisor must take any circumstances into account likely to give rise to any real danger of bias on the part of any member of the Pool in the performance of his or her duties as a Panel Member, if appointed.

- (c) Any challenge by a party to the appointment of any Panel Member (or the Panel) in accordance with the CAA must be made within 5 Business Days of the date of the Resolution Advisor's notice of the constitution of the Panel or occurrence of the event or circumstance which gives rise to the challenge.

---

### G3 Classification of Disputes

- (a) The Panel, after a period of 5 Business Days from the date of a notice given under clause G2.2(a) or, following resolution of a challenge under clause G2.2(c), the date on which the appointment of the Panel is confirmed for the parties and the Resolution Advisor to make submissions on classification, must classify the Dispute as a Bilateral Dispute or an Industry Relevant Dispute.
- (b) The Panel must classify the Dispute as an Industry Relevant Dispute if the Panel considers, based on the materials before it and the facts, matters and circumstances of the Dispute in question, that the resolution of the Dispute will, or is likely to, materially affect Other NBN Co Customers, including by reason of the Non-Discrimination Obligation.
- (c) Any classification by the Panel under clause G3(b) will be made:
  - (i) irrespective of whether NBN Co and any potentially affected Other NBN Co Customer are currently in dispute; and
  - (ii) subject to reclassification as a Bilateral Dispute in accordance with clause G7.3(d).
- (d) The Panel must classify a Dispute as a Bilateral Dispute if the Panel has not classified that Dispute as an Industry Relevant Dispute under clause G3(b).
- (e) Within 5 Business Days following classification of the Dispute under clause G3(b) the Resolution Advisor must notify NBN Co and Customer in writing of the Panel's determination.

---

## Part B: Bilateral Disputes

### G4 Resolution of Bilateral Disputes

- (a) A Bilateral Dispute will be resolved through Panel Arbitration in accordance with clause G5, except where, following consultation with the Resolution Advisor under clause G2.1(c), the parties have agreed to refer the Bilateral Dispute to expert determination in accordance with the processes set out in clause G15.
- (b) Nothing in this [Part B](#) is intended to prevent the parties from referring a Bilateral Dispute to mediation by agreement, which shall be conducted in accordance with, and subject to, the Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules and which the parties must endeavour with the assistance of the mediator to resolve within 30 Business Days of the appointment of the mediator.

## G5 Panel Arbitration

### G5.1 Panel Arbitration governed by the Commercial Arbitration Act 2010 (NSW)

- (a) The provisions of the CAA will apply to the conduct of any Dispute referred to Panel Arbitration, except where (in accordance with the CAA) the parties have agreed otherwise in these Dispute Management Rules.
- (b) For the purpose of the CAA, the proceedings in respect of a Panel Arbitration commence on the date of the Resolution Advisor's notice under clause G2.2(a) or, following resolution of a challenge under clause G2.2(c), the date on which the appointment of the Panel is confirmed.

### G5.2 Panel Arbitration proceedings

- (a) Panel Arbitrations will be conducted in English in Sydney, Australia under the law governing this Agreement. The Panel may meet at any other place for consultation among the Panel Members, to attend any inspection or engage in consultation by any electronic medium, but may not hold any hearing at any place other than Sydney, unless otherwise agreed by all parties to the Dispute.
- (b) The Panel must have regard to any award previously made by an arbitration panel in respect of a dispute under a Wholesale Broadband Agreement, to the extent relevant to the Dispute.
- (c) Where the Panel has regard to any award previously made by an arbitration panel in respect of a dispute under a Wholesale Broadband Agreement, the Panel must ensure that the confidentiality of any commercially sensitive information of a party to that previous award is preserved.

### G5.3 Award by the Panel

The Panel must make its Award in respect of the Dispute as soon as is reasonably practicable, and in any case will provide the parties with a signed copy of its Award by no later than 30 Business Days after the date on which all of the Panel Members are appointed to the Panel or by no later than such other date agreed by the parties to the Dispute and the Panel.

### G5.4 Raising objections to an Award

- (a) Each party has 10 Business Days from receipt of notice of the Panel's Award to exercise its rights to:
  - (i) apply for correction or interpretation of an Award pursuant to section 33(1) of the CAA; or
  - (ii) apply for an additional award pursuant to section 33(5) of the CAA.
- (b) The parties agree that:
  - (i) an Award may be set aside by a court, pursuant to section 34 of the CAA; and
  - (ii) an appeal may be made against the Panel's Award on a point of law, pursuant to section 34A of the CAA.

### G5.5 Publication of the Award

- (a) Within 5 Business Days after:

- (i) the expiry of the period in which a party can exercise its rights under clause G5.4(a); or
  - (ii) where a party has exercised its rights under clause G5.4(a), the confirmation of the Award or making of a correction, interpretation or additional award,
- the Panel will give each party to the Panel Arbitration a notice:
- (iii) advising that NBN Co will publish a copy of the Award on NBN Co's Website (subject to the confidentiality provisions set out below) for access by Other NBN Co Customers and Access Seekers; and
  - (iv) inviting the party to make a written submission to the Panel within 5 Business Days after the date of that notice identifying and justifying any part of the Award that the party considers is confidential to them and should not, therefore, be published.
- (b) Within 10 Business Days of issuing a notice under clause G5.5(a), the Panel must:
- (i) have regard to any written submissions that have been made to the Panel in accordance with this clause G5.5; and
  - (ii) notify NBN Co whether and which parts of the Award need to be redacted to protect confidentiality (if any).
- (c) When preparing a copy of the Award for publication, NBN Co will redact those parts of that Award that the Panel has required NBN Co to redact in accordance with this clause G5.5.
- (d) NBN Co will publish on the NBN Co Website a copy of that Award, subject to any redaction required by the Panel in accordance with this clause G5.5, for access by Other NBN Co Customers and Access Seekers.
- (e) Notwithstanding section 27E of the CAA, NBN Co and Customer agree and consent to the publication of Awards in accordance with this clause G5.5, and access to published Awards by Other NBN Co Customers and Access Seekers in accordance with this clause G5.5.

---

## Part C: Industry Relevant Disputes

### G6 Resolution of Industry Relevant Disputes

Industry Relevant Disputes will be resolved through Panel Arbitration.

---

### G7 Parties to the Panel Arbitration for an Industry Relevant Dispute

#### G7.1 Parties to the Panel Arbitration for an Industry Relevant Dispute

The parties to the Panel Arbitration for an Industry Relevant Dispute are:

- (a) NBN Co;
- (b) Customer; and
- (c) any Other NBN Co Customer whose application to join the Panel Arbitration as a party to an Industry Relevant Dispute is accepted by the Panel in accordance with this clause G7.

## G7.2 Invitation to apply to be joined to the Panel Arbitration for an Industry Relevant Dispute

- (a) Within 2 Business Days of the Dispute being classified as an Industry Relevant Dispute, the Resolution Advisor must issue a notice (**Invitation**) in writing to all potentially affected Other NBN Co Customers (each, an **Invitee**). An Invitation must inform each Invitee of the commencement of the Industry Relevant Dispute and of their right to make an application to become a party to the Panel Arbitration for that Industry Relevant Dispute.
- (b) An Invitation must be in the form prescribed by NBN Co and must set out:
  - (i) a brief history of the Industry Relevant Dispute (subject to the preservation of the confidentiality of NBN Co's and Customer's confidential information);
  - (ii) the process which the Invitee must comply with in order to make a valid application to become a party to the Panel Arbitration for the Industry Relevant Dispute, including the making of submissions in support of the Invitee's application to be joined as a party to that Panel Arbitration;
  - (iii) the conditions and/or criteria that the Invitee must meet, to the Panel's satisfaction, to become a party to the Panel Arbitration for the Industry Relevant Dispute; and
  - (iv) the terms on which the Panel Arbitration for the Industry Relevant Dispute will be conducted.
- (c) Where:
  - (i) Customer is an Invitee in relation to an Other NBN Co Customer Dispute; and
  - (ii) Customer makes an application to become a party to a Panel Arbitration in relation to that Other NBN Co Customer Dispute in accordance with the requirements set out in the Invitation,

Customer agrees that:

- (iii) Customer will only become a party to a Panel Arbitration in relation to that Other NBN Co Customer Dispute if the Panel grants its application to become a party to that Panel Arbitration; and
- (iv) if the Panel accepts that application in accordance with clause G7.3, then:
  - (A) the terms on which the Panel Arbitration for an Other NBN Co Customer Dispute will be conducted are those terms that are set out in the Invitation; and
  - (B) those terms will constitute an arbitration agreement between it, NBN Co, Customer and each Other NBN Co Customer that becomes a party to the Panel Arbitration for that Other NBN Co Customer Dispute for the purpose of the CAA.
- (d) Where Customer is an Invitee in relation to an Other NBN Co Customer Dispute and Customer does not make an application to become a party to the Panel Arbitration for that Other NBN Co Customer Dispute in accordance with the requirements set out in the Invitation within 5 Business Days following the issue of the Invitation, then Customer is deemed to have waived its right to apply to become a party to that Panel Arbitration.

- (e) Where Customer is an Invitee in relation to an Other NBN Co Customer Dispute and makes an application to be joined as a party to the Panel Arbitration for that Other NBN Co Customer Dispute, Customer may make submissions in support of that application, but is not entitled to make submissions in response to applications or submissions made by other Invitees and any such submissions shall be disregarded by the Panel.

### **G7.3 Joinder to a Panel Arbitration for an Industry Relevant Dispute**

- (a) The Panel will, and will only, grant an application by Customer to become a party to a Panel Arbitration in relation to an Other NBN Co Customer Dispute if the Panel considers Customer has, or is likely to have, a sufficient interest in the subject matter of that Other NBN Co Customer Dispute that is likely to be materially affected by the resolution of that Other NBN Co Customer (in this clause G7.3, a **sufficient interest**).
- (b) In considering any application made by Customer to become a party to the Panel Arbitration for that Other NBN Co Customer Dispute, the Panel must consider:
  - (i) the terms of the Wholesale Broadband Agreement between NBN Co and Customer;
  - (ii) whether Customer becoming a party to the Panel Arbitration might unreasonably interfere with the ability of the then-current parties to the Panel Arbitration to conduct the proceeding as they wish;
  - (iii) the Non-Discrimination Obligation; and
  - (iv) the criteria and conditions to be applied in determining whether Customer should become a party to a Panel Arbitration for that Other NBN Co Customer Dispute, as set out in guidelines issued by NBN Co to Customer from time to time. Before issuing these guidelines, NBN Co must consult with the Resolution Advisor, Customer and Other NBN Co Customers.
- (c) NBN Co will use reasonable endeavours to procure that within 10 Business Days following the date that an Invitation (or if there is more than one, the last Invitation) is issued by the Resolution Advisor in respect of an Industry Relevant Dispute, the Panel:
  - (i) conclusively determines which of those Invitees, that have submitted an application in response to an Invitation, has, or is likely to have, a sufficient interest in the subject matter of the Industry Relevant Dispute;
  - (ii) causes the Resolution Advisor to notify each Invitee, that has submitted an application in response to an Invitation, whether the Panel has determined whether that Invitee:
    - (A) has, or is likely to have, a sufficient interest in the subject matter of the Industry Relevant Dispute (in which case, the Panel is deemed to have accepted the application and that Invitee will be a party to the Panel Arbitration for that Industry Relevant Dispute); or
    - (B) does not have, or is likely not to have, a sufficient interest in the subject matter of the Industry Relevant Dispute (in which case, the Panel is deemed to have rejected the application and that Invitee will not be a party to the Panel Arbitration for that Industry Relevant Dispute); and



- (iii) causes the Resolution Advisor to notify in writing each party to the Panel Arbitration for the Industry Relevant Dispute of the identity of each of the other parties to that Panel Arbitration.
  - (d) If no Invitees have submitted an application in response to an Invitation or the Panel determines that no Invitee that has submitted an application in response to an Invitation, has, or is likely to have, a sufficient interest in the subject matter of the Dispute, then the Dispute will then be classified as a Bilateral Dispute and the Dispute will be managed and resolved accordingly.
- 

## **G8 Other provisions applicable to the conduct of Panel Arbitrations for Industry Relevant Disputes**

### **G8.1 Provisions for Panel Arbitrations for Bilateral Disputes applicable**

The provisions that apply to Panel Arbitration under clause G5 also apply to Panel Arbitrations under this [Part C](#), except as set out in this clause G8.

### **G8.2 Timeframe for making an Award**

The Panel must make its Award in respect of the Industry Relevant Dispute as soon as is reasonably practicable, and in any case will provide the parties with a signed copy of its Award by no later than 50 Business Days following the date on which all of the Panel Members are appointed to the Panel or such other date agreed by all of the parties to the Industry Relevant Dispute and the Panel.

---

## **Part D: Common processes and principles**

## **G9 Rights to use dispute resolution processes outside of the Dispute Management Rules**

### **G9.1 Court proceedings**

- (a) Neither NBN Co nor Customer may commence any court proceedings in relation to a Dispute, except in accordance with these Dispute Management Rules.
- (b) Clause G9.1(a) does not apply where:
  - (i) NBN Co reasonably considers it necessary to commence court proceedings in relation to a Dispute in order to preserve its position with respect to other creditors of Customer in circumstances where Customer is, or is reasonably likely to be, subject to an Insolvency Event;
  - (ii) NBN Co is seeking to enforce unpaid debts;
  - (iii) NBN Co or Customer seeks urgent interlocutory relief; or
  - (iv) the relevant Dispute relates to a failure by NBN Co or Customer to comply with these Dispute Management Rules which is not trivial or immaterial.
- (c) Neither NBN Co nor Customer may commence any court proceedings in relation to any decision or conduct of a Resolution Advisor under these Dispute Management Rules.

## **G9.2 Making of access determinations and binding rules of conduct by the ACCC**

Nothing in this Agreement prevents either NBN Co or Customer from petitioning the ACCC to make:

- (a) an access determination under Division 4 of Part XIC of the Competition and Consumer Act; or
- (b) a binding rule of conduct under Division 4A of Part XIC of the Competition and Consumer Act.

## **G9.3 Disputes concerning Interim Satellite Services**

If a Dispute to be determined under these Dispute Management Rules involves or is likely to involve facts, matters and circumstances in common with a dispute between the same parties in relation to the supply by NBN Co under an agreement for the supply of Interim Satellite Services, the two disputes may be conducted and resolved together if to do so will likely to result in the more efficient disposition of both disputes.

---

# **G10 General rights and obligations**

## **G10.1 Continuation of performance**

- (a) Except in the exercise of a right under this Agreement by:
  - (i) NBN Co to impose an Ordering Freeze, Service Reduction or Suspension;
  - (ii) Customer to withhold payment of a disputed amount;
  - (iii) NBN Co to disconnect, or Customer to place a disconnect order in respect of, an Ordered Product; or
  - (iv) NBN Co or Customer to terminate this Agreement,

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

- (b) If a Dispute involves or relates to:
  - (i) the exercise by NBN Co of its rights to impose an Ordering Freeze, Service Reduction or Suspension;
  - (ii) the exercise by Customer of its rights to withhold payment of a disputed amount;
  - (iii) the exercise by NBN Co of its rights to disconnect, or Customer's exercise of its rights to place a disconnect order in respect of, an Ordered Product; or
  - (iv) the exercise by NBN Co or Customer of its rights to terminate this Agreement,a party may exercise those rights pending the resolution of that Dispute.

## **G10.2 Further assurances**

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

### G10.3 Procedural fairness

NBN Co and Customer acknowledge and agree that these Dispute Management Rules exhaustively set out the principles of procedural fairness to be afforded to the parties to a Dispute governed by these Dispute Management Rules and accordingly any other obligations of procedural fairness do not apply in respect of the operation of these Dispute Management Rules.

## G11 Resolution Advisor

### G11.1 Appointment

- (a) NBN Co will nominate and NBN Co and Customer must, within the 20 Business Day period following the Execution Date, use their reasonable endeavours to agree on the appointment of one or more individuals (in this clause G11.1, each, a **candidate**) to the role of Resolution Advisor, on such terms as NBN Co and each candidate may agree.
- (b) It is intended that wherever possible, owing to the process for resolution of Disputes contemplated by this [Module G \(Dispute Management\)](#), the same Resolution Adviser will be appointed under this Agreement and under Wholesale Broadband Agreements.
- (c) If the parties cannot agree to the appointment of a Resolution Advisor (including disagreement as to the selection of candidates) in accordance with clause G11.1(a), NBN Co must refer the decision as to the appointment of a Resolution Advisor to the President of IAMA and request that person to make that decision in a manner consistent with the provisions of this clause G11.1.
- (d) Before appointing a candidate as a Resolution Advisor, the parties or the President of IAMA (as applicable) will:
  - (i) require the candidate to disclose any circumstances likely to give rise to claims of any real danger of bias on the part of the candidate in the performance of his or her duties as a Resolution Advisor;
  - (ii) consult with Customer and Other NBN Co Customers regarding the candidate's suitability as a Resolution Advisor;
  - (iii) provide a written notice to the ACCC setting out the name and the terms of the proposed appointment of such persons; and
  - (iv) to the extent a candidate has been appointed as a "Resolution Advisor" for the purposes of a Wholesale Broadband Agreement, ensure that the candidate is appointed as a Resolution Advisor under this Agreement, unless a party can demonstrate that the candidate is not suitable for reasons described in clause G11.3(a)(ii).
- (e) A person referred to in a written notice provided to the ACCC under clause G11.1(d)(iii) will not be appointed as a Resolution Adviser if, within 20 Business Days of NBN Co providing such written notice to the ACCC, the ACCC issues a notice of objection to the appointment of the person or to the terms of appointment.
- (f) A Resolution Advisor:
  - (i) must have an understanding of the Australian telecommunications industry (or be able to acquire such an understanding quickly);

- (ii) must be a Legal Practitioner or a Dispute Resolution Practitioner; and
  - (iii) need not be a citizen or resident of Australia.
- (g) A Resolution Advisor will be appointed for a period not exceeding the duration of the Term.
- (h) Nothing prevents a Resolution Advisor from being re-appointed for one or more successive terms.
- (i) For the duration of the appointment of a Resolution Advisor, NBN Co will require each Resolution Advisor to disclose without delay any circumstances likely to give rise to claims of bias or which indicate there is any real danger of bias on the part of that Resolution Advisor in the performance of his or her duties as a Resolution Advisor to NBN Co, Customer and each Other NBN Co Customer.
- (j) The Resolution Advisor to whom a Dispute is referred will be the Resolution Advisor for all aspects of that Dispute under these Dispute Management Rules, except where he or she is replaced in accordance with these Dispute Management Rules.
- (k) The parties agree that the Resolution Advisor is not, and will not act as, an arbitrator for the purpose of the CAA in respect of any Dispute.
- (l) The Resolution Advisor to whom a Dispute is referred may delegate his or her responsibilities to any other Resolution Advisor where necessary for the purpose of performing his or her responsibilities under these Dispute Management Rules (for example, in the event of temporary illness or holiday absence), but the Resolution Advisor to whom the Dispute is referred will remain fully responsible for the performance of all of his or her responsibilities under these Dispute Management Rules.

### **G11.2 Resolution Advisor to comply with these Dispute Management Rules and terms of engagement**

NBN Co will:

- (a) ensure that each contract between NBN Co and a Resolution Adviser contains provisions requiring the Resolution Adviser to comply with these Dispute Management Rules and their terms of engagement; and
- (b) use reasonable endeavours to procure the compliance by each Resolution Advisor with their contract with NBN Co, including enforcing that contract, where necessary.

### **G11.3 Termination**

- (a) NBN Co may terminate the appointment of a Resolution Advisor if:
  - (i) the Resolution Advisor does not comply with any provision of these Dispute Management Rules and does not cure that non-compliance within 5 Business Days after the date on which NBN Co provides the Resolution Advisor with written notice to do so; or
  - (ii) NBN Co reasonably considers that the Resolution Advisor is, or is likely to be, unable to continue to perform his or her responsibilities as a Resolution Advisor:
    - (A) where NBN Co considers that there is a real danger of bias, on the part of that Resolution Advisor; or

- (B) for a period of 10 Business Days or more due to ill health or other incapacity.
- (b) Before terminating the appointment of the Resolution Advisor, NBN Co may consult with Customer and consider any feedback that Customer may have in relation to the Resolution Advisor's performance in accordance with these Dispute Management Rules.

#### **G11.4 Replacement of a Resolution Advisor**

If the appointment of a Resolution Advisor is terminated or expires, or she or he resigns or is for any reason unable to continue their duties in relation to a Dispute, NBN Co will replace that Resolution Advisor with another Resolution Advisor for that Dispute.

#### **G11.5 Costs of retaining the Resolution Advisor**

NBN Co will not charge Customer any separate fees or charges for the costs associated with the appointment, retention and operations of the Resolution Advisor.

#### **G11.6 Resolution Advisor's decisions not subject of a Dispute**

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

---

## **G12 The Pool**

### **G12.1 Appointment**

- (a) NBN Co will nominate and NBN Co and Customer must, within the 20 Business Day period following the Execution Date, use their reasonable endeavours to agree on the appointment of the members of the Pool, on such terms as NBN Co and each member may agree.
- (b) It is intended that wherever possible, owing to the process for resolution of Disputes contemplated by this [Module G \(Dispute Management\)](#), the same members of the Pool will be appointed under this Agreement and under Wholesale Broadband Agreements.
- (c) If the parties cannot agree to the appointment of a member of the Pool (including disagreement as to the selection of a member) in accordance with clause G12.1(a), NBN Co must refer the decision as to the appointment of a member to the President of IAMA and request that person to make that decision in a manner consistent with the provisions of this clause G12.1.
- (d) Before making an appointment of a member of the Pool, the parties or the President of IAMA (as applicable) will:
  - (i) consult with the Resolution Advisor, Customer and Other NBN Co Customers regarding the person or persons being considered for appointment;
  - (ii) provide a written notice to the ACCC setting out the name and the terms of the proposed appointment of such persons; and
  - (iii) to the extent a person has been appointed as a member of a "Pool" for the purposes of a Wholesale Broadband Agreement, ensure that the person is appointed as a member of the Pool under this Agreement, unless a party can demonstrate that the

person is not suitable for appointment to the Pool for reasons described in clause G11.3(a)(ii) (where, in relation to which for the purposes of this paragraph, references to the Resolution Adviser will be taken to be references to a person nominated for membership of the Pool).

- (e) A person referred to in a written notice provided to the ACCC under clause G12.1(d)(ii) will not be appointed as a member of the Pool if, within 20 Business Days of NBN Co providing such written notice to the ACCC, the ACCC issues a notice of objection to the appointment of the person or to the terms of appointment.
- (f) NBN Co will use reasonable endeavours to ensure that, at all times:
  - (i) the Pool comprises of a sufficient number of members to enable Panel Arbitrations to proceed in the manner contemplated by these Dispute Management Rules;
  - (ii) the Pool comprises of members who have reasonably diverse and balanced range of professional skills and experience, whether commercial, technical, operational or legal; and
  - (iii) a reasonable proportion of the members of the Pool are Legal Practitioners or Dispute Resolution Practitioners.
- (g) A member of the Pool will be appointed for a period not exceeding the duration of the Term.
- (h) Nothing prevents a member of the Pool from being re-appointed for one or more successive terms.
- (i) Each member of the Pool:
  - (i) must have an understanding of the Australian telecommunications industry (or be able to acquire such an understanding quickly);
  - (ii) must have at least 10 years' experience in dispute resolution procedures; and
  - (iii) need not be a citizen or resident of Australia.

## **G12.2 Members of the Pool to comply with these Dispute Management Rules and terms of engagement**

NBN Co will:

- (a) ensure that each contract between NBN Co and a member of the Pool contains provisions requiring the member of the Pool to comply with these Dispute Management Rules and their terms of engagement; and
- (b) use reasonable endeavours to procure the compliance by each member of the Pool with their contract with NBN Co, including enforcing that contract, where necessary.

## **G12.3 Costs of retaining the Pool**

Subject to clause G13, NBN Co will not charge Customer any separate fees or charges for the costs associated with the appointment, retention and operations of members of the Pool, including the payment of retainers to members of the Pool (if any).

## G13 Costs

Except as otherwise provided in these Dispute Management Rules or determined in accordance with the CAA, neither NBN Co or Customer will be required to pay the other for any of the other party's costs and expenses in the conduct of Disputes and Other NBN Co Customer Disputes.

## G14 Non-discrimination

### G14.1 Decisions and determinations to give effect to the Non-Discrimination Obligations

Before making any orders, decisions, determinations or Awards, the Resolution Advisor and all Panels must, as part of their decision-making process, have regard to whether:

- (a) the order, decision, determination or Award; and
- (b) the implementation of the order, decision, determination or Award by the parties,

will or is likely to require NBN Co to treat Customer, any Other NBN Co Customer or any Access Seeker in a manner that does not comply with the Non-Discrimination Obligations.

### G14.2 Ensuring implementation of resolutions is non-discriminatory

- (a) Customer agrees to co-operate with NBN Co to ensure that:

- (i) the resolution of any Dispute; and
- (ii) the resolution of any Other NBN Co Customer Dispute,

can be implemented by NBN Co in a manner that does not discriminate between Customer, Other NBN Co Customers and Access Seekers, except where permitted in accordance with this Agreement or the law, special access undertaking or agreement that imposes the Non-Discrimination Obligation.

- (b) Customer agrees that the implementation of:

- (i) the resolution of any Dispute; and
- (ii) the resolution of any Other NBN Co Customer Dispute,

in a manner that does not discriminate between Customer, Other NBN Co Customers and Access Seekers may require NBN Co to propose and implement Non-Discrimination Changes under clause F4.2.

## G15 Expert Determination Rules

### G15.1 Selection of an expert

- (a) Within 5 Business Days of NBN Co and Customer agreeing to refer a Dispute to expert determination pursuant to clause G2.1(c) and each of the parties notifying the Resolution Advisor of that agreement, the Resolution Advisor will nominate 3 persons who are suitable and available to determine the Dispute as an expert and notify NBN Co and Customer in writing of the names, qualifications and relevant experience of those 3 persons (the **Expert Shortlist**).

- (b) When selecting each person to be included on the Expert Shortlist, the Resolution Advisor must:
  - (i) use reasonable endeavours in the time available to identify any circumstances likely to give rise to claims of any real danger of bias on the part of each of those persons in the performance of their duties in determining the Dispute as an expert, if selected; and
  - (ii) take any such circumstances into account in selecting each person to be included on the Expert Shortlist.
- (c) Any person nominated by the Resolution Advisor as being suitable and available to determine the Dispute as an expert:
  - (i) must have an understanding of the Australian telecommunications industry (or be able to acquire such an understanding quickly);
  - (ii) must have experience or expertise that is relevant to the nature of the Dispute;
  - (iii) should preferably be experienced in expert determination procedures; and
  - (iv) need not be a citizen or resident of Australia.
- (d) NBN Co and Customer may select an expert from the Expert Shortlist by agreement.
- (e) If NBN Co and Customer agree on the selection of an expert from the Expert Shortlist, then:
  - (i) NBN Co and Customer each must notify the Resolution Advisor of that selection within 5 Business Days of receiving a copy of the Expert Shortlist; and
  - (ii) as soon as practicable, the Resolution Advisor must do all things necessary to engage the selected expert on behalf of NBN Co and Customer to determine the Dispute as an expert.
- (f) If:
  - (i) NBN Co and Customer have not each notified the Resolution Advisor of the expert selected by agreement from the Expert Shortlist within 5 Business Days of receiving a copy of the Expert Shortlist; or
  - (ii) the Resolution Advisor (despite doing all things necessary) is unable to engage the expert selected by the agreement of NBN Co and Customer to resolve the dispute,then the Resolution Advisor must, as soon as practicable:
  - (iii) select an expert from the Expert Shortlist and notify NBN Co and Customer of that selection; and
  - (iv) do all things necessary to engage the selected expert on behalf of NBN Co and Customer to determine the Dispute as an expert.

## **G15.2 Conduct of the expert determination**

- (a) Any expert determination must be conducted in accordance with these Expert Determination Rules and the Institute of Arbitrators & Mediators (Australia) Expert Determination Rules.



- (b) If there is any inconsistency between these Expert Determination Rules and the Institute of Arbitrators & Mediators (Australia) Expert Determination Rules, these Expert Determination Rules will prevail to the extent of any inconsistency.
- (c) Subject to the foregoing, the expert will determine and adopt a procedure which, in the expert's opinion, is the most efficient procedure practicable in the circumstances.
- (d) The place of any expert determination hearing will be Sydney, Australia, unless otherwise agreed by all parties to the Dispute. The expert determination may meet at any other place to attend any inspection, but may not hold any hearing at any place other than Sydney, Australia, unless otherwise agreed by all parties to the Dispute.
- (e) The expert may seek independent legal advice regarding any aspect of the Dispute if in the expert's opinion it would assist in the efficient resolution of the Dispute. If such independent legal advice is sought:
  - (i) the expert will nominate 3 members of the NSW Bar Association with the title Senior Counsel or Queens Counsel who are suitable and available to provide legal advice;
  - (ii) NBN Co and Customer may select a barrister from the nominated list by agreement; and
  - (iii) if NBN Co and Customer do not reach agreement within 2 Business Days, the expert will select one barrister from the nominated list.
- (f) NBN Co and Customer must each provide the expert with any information that the expert reasonably requires within a timeframe reasonably determined by the expert. The expert is entitled to:
  - (i) make a decision in the absence of provision of any requested information; and
  - (ii) make adverse inferences from the failure of NBN Co or Customer to provide any requested information,

provided that the expert has reasonably determined the timeframe in which NBN Co or Customer (as applicable) is required to provide that requested information.
- (g) The expert has to act as an expert and not as an arbitrator. The parties acknowledge that the expert is not an arbitrator for the purpose of the CAA.
- (h) The expert is entitled to rely on the expert's own independent judgement and opinion, but must follow any code by CommsAlliance (or any replacement or successor to CommsAlliance) to which NBN Co is a code signatory, any Industry Code, any Industry Standard and any Technical Standard.
- (i) The expert must seek to make decisions in a timely, practical and efficient manner.

### **G15.3 Determination by the expert**

- (a) The expert must provide NBN Co and Customer with its draft decision, including draft reasons, regarding resolution of the Dispute prior to finalising it.
- (b) The expert must provide NBN Co and Customer with a reasonable period not exceeding 5 Business Days in which to comment on the draft decision and must take any comments received during that period into account in reaching a final decision.

- (c) The expert must make its decision in respect of the Dispute as soon as is reasonably practicable, and in any case will provide the parties with a signed copy of its final decision and reasons for that decision by no later than 40 Business Days after its appointment or by no later than such other date agreed by NBN Co, Customer and the expert.
- (d) NBN Co and Customer agree that the final decision by the expert is final and binding on them, except that either NBN Co or Customer may appeal to a court of competent jurisdiction if it considers that the final decision contains a manifest error or that the expert has acted in bad faith.
- (e) The decision of the expert is deemed to be final and binding pending the adjudication by the relevant court of competent jurisdiction.

#### **G15.4 Appealing the decision of the expert**

- (a) Each participant has 5 Business Days after receipt of the final decision to notify the Resolution Advisor and the other party that it considers that the final decision contains a manifest error or that the expert has acted in bad faith, and that it will pursue its rights in a court of competent jurisdiction.
- (b) If neither NBN Co nor Customer provides notice to the Resolution Advisor and the other party in accordance with clause G15.4(a), then each party is deemed to have waived its rights under clause G15.4(a) and agreed that the final decision by the expert is final and binding.

#### **G15.5 Costs**

- (a) Except as set out below:
  - (i) the costs of the expert, including any costs incurred by the expert in obtaining independent legal advice in accordance with clause G15.2(e), will be borne equally by NBN Co and Customer; and
  - (ii) NBN Co and Customer will each bear their own costs and expenses in relation to the expert determination.
- (b) Where NBN Co or Customer has asserted that the expert's final decision contains a manifest error or the expert has acted in bad faith and that assertion or appeal is not upheld by the relevant court of competent jurisdiction, then that court will determine which party will bear the reasonable costs and expenses of both NBN Co and Customer in relation to:
  - (i) the expert determination; and
  - (ii) the adjudication of its assertion or appeal by the relevant court of competent jurisdiction

#### **G15.6 Expert's decision to give effect to the Non-Discrimination Obligation**

Before making any decision, the Expert must, as part of its decision-making process, have regard to whether the decision and the implementation of the decision by the parties, will or is likely to require NBN Co to treat Customer, any Other NBN Co Customer or any Access Seeker in a manner that does not comply with the Non-Discrimination Obligations.

## Module H: General Terms

### H1 Notices and contacts

#### H1.1 Notices

- (a) This clause H1.1 does not apply to notices provided in relation to the Product Development Forum (which are governed by the provisions of the [PDF Processes](#)), or in relation to the [NBN Co Operations Manual](#) (which are governed by the provisions of the [NBN Co Operations Manual](#)).
- (b) Unless provided otherwise, each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement that is given by one party to the other must be:
  - (i) in writing, in English and (except in the case of notices sent by email or posted on the NBN Co Website) signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
  - (ii) (in the case of email) in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached to an email that states that the attachment is a communication under this Agreement; and
  - (iii) either:
    - (A) received in full and legible form at the addressee's delivery address, mail address or email address (as notified in the Contact Details Register);
    - (B) posted in full and legible form on the NBN Co Website (where expressly permitted by this Agreement) and also served by another means permitted by this clause H1.1; or
    - (C) received in full and legible form by any other means agreed between the parties.
- (c) If any notice, process or other document relating to:
  - (i) actual or potential litigation, administrative or arbitral proceedings;
  - (ii) an actual or potential Billing Dispute, Dispute, Claim or complaint;
  - (iii) a payment;
  - (iv) Service Levels; or
  - (v) any other aspect of [Module F \(Agreement Management\)](#) (except under clause F3 or F4) or [Module G \(Dispute Management\)](#),

is served by email or posted on the NBN Co Website in accordance with this clause H1.1 then it:

- (vi) must also be served by another means (other than by email or posting to the NBN Co Website) permitted under this clause H1.1; and
- (vii) will be taken to have been received at the earliest of the times applicable to that other means of service utilised, as specified in clause H1.1(d).

- (d) Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement is taken to be received by the addressee:
- (i) (in the case of delivery by hand) on delivery;
  - (ii) (in the case of prepaid post) on the fifth Business Day after the day of posting;
  - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent;
  - (iv) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this clause H1.1, 24 hours after the email was sent;
  - (v) (in the case of posting to the NBN Co Website) at the time the notice served by the other means of service is taken to have been received under this clause H1.1(d),

but if the communication 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.

## **H1.2 Contact Details Register**

Each party must ensure that the Contact Details Register contains up-to-date details of the name, mail address, email address and fax number for each party's:

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

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

---

## **H2 Relationships**

### **H2.1 Relationship between the parties**

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

### **H2.2 Relationships with third parties**

- (a) Except where expressly provided otherwise, this Agreement does not create any obligation or legal relationship between NBN Co and any Downstream Customer, End User, or any other third party (in this clause H2.2, **Third Parties**).
- (b) The parties have entered into this Agreement in their own legal capacity and not as agent or trustee for, or a partner of, any other person and this Agreement does not grant any right or benefit to Third Parties.

---

### H3 Warranties

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

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

---

### H4 Other general terms

#### H4.1 Agreement is not a standard form of agreement

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

#### H4.2 Applicable laws

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

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

### H4.3 Assignment, novation and other dealings

- (a) Neither NBN Co nor Customer can assign, novate or otherwise transfer any of its rights under this Agreement without the prior written consent of the other party (not to be unreasonably withheld or delayed). For the purposes of this clause H4.3(a), a Change in Control of a party is treated as giving rise to a transfer of that party's rights under this Agreement and must obtain the consent of the other party to that deemed transfer in accordance with this clause H4.3.
- (b) The other party must provide prior written consent to a proposed assignment under clause H4.3(a) if the party seeking consent:
  - (i) has given the other party at least 20 Business Days' notice before the intended effective date of the assignment or dealing;
  - (ii) is not in Default at the time, or at any time after, it requests consent;
  - (iii) complies with the other party's reasonable requirements in relation to:
    - (A) the documentation of the intended assignment or dealing; and
    - (B) the payment of the other party's reasonable costs (including reasonable legal costs) in relation to that intended assignment or dealing; and
  - (iv) where the party seeking consent is Customer:
    - (A) Customer can prove to the reasonable satisfaction of NBN Co that the incoming party satisfies the [Credit Policy](#), the Supply Conditions and otherwise has the ability to perform its obligations under this Agreement; and
    - (B) the incoming party, by binding instrument in writing, agrees with NBN Co to be bound by and comply with the terms of this Agreement, including the payment of all Charges and other amounts payable to NBN Co's reasonable satisfaction.
- (c) Any assignment of this Agreement, or any dealing of the benefit of this Agreement or a right under it, to:
  - (i) in respect of NBN Co:
    - (A) effect, or as a result of, any sale of the Commonwealth's ownership of NBN Co (in whole or in part);
    - (B) effect, or as a result of, any corporate restructure of NBN Co or any Related Body Corporate of NBN Co; or
    - (C) charge or otherwise encumber any of NBN Co's assets in the ordinary course of business, including any securitisation of NBN Co's receivables; or
  - (ii) in respect of Customer:
    - (A) effect, or as a result of, any corporate restructure of Customer or any Related Body Corporate of Customer that does not change the "ultimate holding company" (as that term is defined in section 9 of the Corporations Act) of Customer; or

- (B) a transfer or issue of any securities listed on any recognised stock or securities exchange,

will not be considered to be an assignment or dealing to which clause H4.3(a) applies.

#### **H4.4 Costs, expenses and duties**

- (a) Except where this Agreement provides otherwise, each party is responsible for its own costs and expenses of negotiating, preparing and executing this Agreement and any other instrument executed under this Agreement and complying with its obligations under this Agreement.
- (b) Customer must pay all stamp duty (including interest, fines and penalties) assessed to be payable on this Agreement, the performance of this Agreement (including the transfer of any property) and any transaction contemplated by it.

#### **H4.5 Counterparts**

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement and all together constitute one agreement.

#### **H4.6 Cumulative rights**

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

#### **H4.7 Entire agreement**

This Agreement is the entire agreement between the parties about the matters dealt with in this Agreement and supersedes any prior agreement or understandings between the parties and any prior representation or warranty given or made by a party

#### **H4.8 Further assurances**

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

#### **H4.9 Good faith**

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

- (a) is under an obligation that is fiduciary in nature;
- (b) is required to act in the interests of the other party;
- (c) is prevented from acting in accordance with shareholder requirements and directions; or
- (d) is required to disclose information:
  - (i) that is subject to legal professional privilege or public interest immunity; or

- (ii) if the provision of such information would breach an obligation of confidence owed by that party to any person other than a Related Body Corporate of that party and such breach would be actionable at the suit of that person.

#### **H4.10 Governing law and jurisdiction**

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

#### **H4.11 Reasonable endeavours obligations**

For the purpose of the clauses of this Agreement which impose an obligation on Customer to use reasonable endeavours with respect to the acts or omissions of Downstream Customers or End Users, that obligation includes:

- (a) ensuring that each contract between Customer and each Downstream Customer or End User, as the case may be for the supply of Customer Products contains provisions requiring each Downstream Customer or End User, as the case may be to comply with the relevant clause;
- (b) using reasonable endeavours to procure the compliance of each Downstream Customer or End User, as the case may be with the provisions of the relevant clause, including enforcing those provisions, where necessary.

#### **H4.12 Related Bodies Corporate**

- (a) Where Related Bodies Corporate execute this Agreement as customers, the term “Customer” shall mean all such related bodies corporate collectively.
- (b) If a Downstream Customer or End User is a Related Body Corporate of Customer and Customer is required under a clause of this Agreement to use “reasonable endeavours” to ensure that Downstream Customer or End User does (or does not do) those things required (or prohibited) by this Agreement then Customer must ensure that such Downstream Customer or End User does (or does not do those things) and the “reasonable endeavours” qualification of Customer’s obligations in those clauses will not apply with respect to the Related Body Corporate. The clauses to which this clause H4.12(b) applies include clauses C3.1(c) (Lawful use), C4.1(b) (Operation of networks etc), C4.2 (Safeguarding the NBN Co Network etc.), C5.2(b) (Connections to the NBN Co Network), C5.3(b) (Disconnections from the NBN Co Network), C6.2 (Customer’s obligations in respect of Downstream Customer Equipment etc.), D3.2(d) (Obligations in respect of Downstream Customer Details) and F13.5(b) (Disconnections etc.).



#### **H4.13 Severability**

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

#### **H4.14 Statutory rights**

Customer will not, and Customer will procure that its Related Bodies Corporate do not, during the Term:

- (a) seek access to facilities that are owned or controlled by NBN Co under Part 3 or Part 5 of Schedule 1 to the Telecommunications Act; or
- (b) engage in an activity that is covered by Divisions 2, 3 or 4 of Schedule 3 to the Telecommunications Act in relation to any land and/or facilities owned, operated or controlled by NBN Co where eligible to do so without first reasonably consulting with NBN Co in respect of such access or activity under or in accordance with this Agreement, including (where relevant) through the Product Development Forum.

#### **H4.15 Subcontractors and agents**

- (a) A party may use subcontractors or other agents to meet any of its obligations under this Agreement.
- (b) Without limiting the foregoing and without relieving NBN Co of any obligation imposed by this Agreement, Customer agrees that NBN Co may perform any of its obligations under this Agreement by arranging for them to be performed by another person, including a Related Body Corporate of NBN Co or a third party.

#### **H4.16 Waiver**

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

---

## **H5 Interpretation of this Agreement**

### **H5.1 Defined terms**

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

### **H5.2 Mandatory language**

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

### H5.3 Resolving inconsistencies between parts of this Agreement

- (a) This Agreement comprises a number of different documents. If there is any inconsistency between any of these different documents, then that inconsistency will be resolved by giving precedence to documents in the following order:
  - (i) [Module I \(NBN Co's Transitional Commitments\)](#);
  - (ii) the [Agreement Execution Document](#), the Modules (excluding [Module I \(NBN Co's Transitional Commitments\)](#)) and the [Dictionary](#);
  - (iii) the [WBA Product Catalogue](#);
  - (iv) the [Credit Policy](#); and
  - (v) the [PDF Processes](#).
- (b) If there is any inconsistency between any of the documents comprising the [WBA Product Catalogue](#), that inconsistency will be resolved in accordance with the precedence provision in the [WBA Product Catalogue](#).

### H5.4 Other rules of interpretation

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

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) a reference to:
  - (i) a “person” includes an individual, partnership, joint venture, governmental agency or authority, association, trust, corporation or other body corporate;
  - (ii) a party includes its agents, successors and permitted assigns;
  - (iii) obligations, liabilities, representations, undertakings or agreements of Customer that are assumed or made by more than one person, those obligations, liabilities or representations assumed or made on their part and the undertakings and agreements on their part contained or implied in this agreement bind them jointly and each of them severally and any right conferred on more than one person benefits them jointly and severally;
  - (iv) a document (including any technical manual or user guide) includes all amendments to that document;
  - (v) a clause, term, party, module, schedule or attachment is a reference to a clause, term, party, module, schedule or attachment to this Agreement;
  - (vi) this Agreement includes all schedules and attachments to it;

- (vii) an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (viii) 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;
- (ix) a monetary amount is in Australian dollars and all amounts payable are payable in Australian dollars;
- (f) the words “such as”, “including”, “particularly”, “principally” and similar expressions are not used as, nor are they intended to be, interpreted as words of limitation;
- (g) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, legislative instrument, ordinance, by-law, mandatory code, mandatory standard, mandatory guideline, mandatory directive, order, ordinance, rule, determination, ministerial direction, binding restriction of or determination by any Government Agency, statutory rule, judgment, writ, order, injunction, declaration, rule of common law or equity, or rule of any stock or securities exchange where the relevant party’s stocks or securities are listed or quoted and is a reference to that law as amended, consolidated or replaced and includes any regulations and other subordinate instruments made under or in accordance with those laws;
- (h) “reasonable endeavours” or any similar expressions does not require the payment of money or the provision of any financial benefit;
- (i) “reasonably practicable” or any similar expression does not require a party to take action if the cost of taking that action is, on balance, unreasonable in the prevailing circumstances;
- (j) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (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.

---

## Module I: NBN Co's Transitional Commitments

### I1 Primacy and Term

#### I1.1 Primacy

The provisions of this [Module I \(NBN Co's Transitional Commitments\)](#) prevail to the extent of any inconsistency with any other provisions of this Agreement.

#### I1.2 Term of Module I

This [Module I \(NBN Co's Transitional Commitments\)](#):

- (a) commences on the Execution Date; and
- (b) terminates without further action by either party on the earlier of:
  - (i) midnight on 30 June 2017; and
  - (ii) first acceptance of a special access undertaking lodged by NBN Co under section 152CBA of the Competition and Consumer Act.

#### I1.3 Effect of termination

This [Module I \(NBN Co's Transitional Commitments\)](#) will have no further effect and will no longer form part of this Agreement on and from the date of termination under clause I1.2(b).

---

## I2 Price commitments

#### I2.1 NBN Fibre Access Service 12/1 Price Commitment

NBN Co must not impose a AVC TC-4 (including UNI-D) Recurring Charge (as described in section 2.1 of the [Price List](#)) exceeding \$24 for the supply of the Product Features of the NBN Co Fibre Access Service comprising AVC TC-4 downstream of 12 Mbps (PIR) and AVC TC-4 upstream of 1 Mbps (PIR) during the term of this [Module I \(NBN Co's Transitional Commitments\)](#).

#### I2.2 CVC price commitment

NBN Co must not impose a CVC TC-4 Recurring Charge (as described in section 2.3 of the [Price List](#)) exceeding the equivalent of \$20 per Mbps for the supply of a CVC TC-4 during the term of this [Module I \(NBN Co's Transitional Commitments\)](#).

#### I2.3 NNI price commitment

NBN Co must not impose a NNI Bearer Recurring Charge (as described in section 2.4(a) of the [Price List](#)) exceeding the corresponding charges set out below for NNI bearer applicable to the supply of the NNI Product Features during the term of this [Module I \(NBN Co's Transitional Commitments\)](#):

NNI Bearer Profiles	Interface capacity (Gbps)*	Range (Km)	NNI Bearer Recurring Charge
1000BaseLX	1	10	\$200
10GBaseLR	10	10	\$400

## 12.4 Validity Periods

A Validity Period of a Product referred to in this clause 12 must not expire prior to the termination of this [Module I \(NBN Co's Transitional Commitments\)](#).

## 12.5 Price Events

If a Price Event, or a matter referred to in clause B6.1(e)(ii) to (v) save in relation to income, profit or capital gains-related tax of NBN Co, occurs in respect of the Recurring Charge referred to in clause 12.1, NBN Co may in accordance with clause B6 increase that charge to a charge which exceeds the amount specified in clause 12.1, consistently with, and to the minimum extent necessary to give effect to, that Price Event and the reasons for the Price Event, or the operation of clause B6.1(e)(vi), as the case may be.

# 13 Non-price commitments

## 13.1 Withdrawal of the 12/1 NBN Co Fibre Access Service

Except with the consent of the ACCC, NBN Co will not withdraw the Product Features of the NBN Co Fibre Access Service comprising an AVC TC-4 downstream of 12 Mbps (PIR) and AVC TC-4 upstream of 1 Mbps (PIR) (including the additional Product Features referred to in section 2.1(b) of the [Price List](#)).

## 13.2 Other non-price terms and conditions

Except with the consent of the ACCC, NBN Co will not:

- (a) implement a Major NBN Upgrade to take effect during the term of [Module I \(NBN Co's Transitional Commitments\)](#) other than in accordance with clause C12.1; or
- (b) change the location of or close any Point of Interconnection under clause C13.2 to take effect during the term of [Module I \(NBN Co's Transitional Commitments\)](#) other than in accordance with a review of the locations of Points of Interconnection where NBN Co has agreed the criteria for the location of the Points of Interconnection with the ACCC or in a manner consistent with a review under sections 151DC or 151DD of the Competition and Consumer Act.

## 13.3 Change management process

Except with the consent of the ACCC, NBN Co will not make a change:

- (a) to any of clauses F4.1(c), (d), (g), (h) or (k), G11.1(d)(iii), G11.1(e), G12.1(d)(ii) or G12.1(e) as they apply on the Execution Date; and
- (b) pursuant to clause F4.1 or F4.2, to any clause in this [Module I \(NBN Co's Transitional Commitments\)](#) or to this Agreement which is inconsistent with the operation of a clause in this [Module I \(NBN Co's Transitional Commitments\)](#) as it applies on the Execution Date.

### 13.4 Dispute resolution process

- (a) Prior to NBN Co:
    - (i) appointing any person to the role of the Resolution Advisor under clause G11.1; or
    - (ii) appointing any persons to be members of the Pool under clause G12.1,

NBN Co will provide a written notice to the ACCC setting out the name and the terms of appointment of such persons.
  - (b) NBN Co will not appoint any person referred to in a written notice provided to the ACCC under clause 13.4(a) if, within 20 Business Days of NBN Co providing such written notice to the ACCC, the ACCC issues a notice of objection to the appointment of the person or to the terms of appointment.
- 

## 14 Regulatory Events

- (a) NBN Co is excused from any commitment given in this [Module I \(NBN Co's Transitional Commitments\)](#) (other than in clause 12.1) to the extent inconsistent with a Regulatory Event, the outcome of a Regulatory Event, the Non-Discrimination Obligations and the operation of clause B6.1(e)(vi).
- (b) NBN Co will use reasonable endeavours to minimise, to the extent possible, the effect of a Regulatory Event or outcome of a Regulatory Event on the commitments given in this [Module I \(NBN Co's Transitional Commitments\)](#).

## Dictionary

**30 Day Bank Bill Swap Rate** means:

- (a) the 30 day Bank Bill Swap Rate: Average Bid quoted in the *Australian Financial Review* on the due date for payment of the relevant amount or, if no such rate is quoted on the due date, on the first date preceding the due date on which such rate is quoted in the *Australian Financial Review*; or
- (b) if the *Australian Financial Review* ceases to quote that rate, there is a manifest error in the publication of that rate, or the *Australian Financial Review* ceases to be published, such other rate reasonably determined by NBN Co.

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

**ACCC Listed Points of Interconnection** means the list of points of interconnection prepared and published by the ACCC under section 151DB(1) of the Competition and Consumer Act.

**Acceptable Insurer** means an insurer which is:

- (a) a reputable APRA authorised insurer;
- (b) APRA exempt and maintains an Standard & Poor's rating of A minus or higher (or an equivalent rating agency rating);
- (c) in the case of workers compensation insurance, an authorised self insurer, specialist insurer or scheme agent; or
- (d) otherwise approved in writing by NBN Co (which consent must not be unreasonably withheld).

**Access Seeker** means a Carrier, Carriage Service Provider, Content Service Provider or Specified Utility engaged in a related Specified Activity seeking the supply of a Product from NBN Co that is not Customer or an Other NBN Co Customer.

**Access Timetable** means the timetable of those dates and times that Customer may access and use the National Test Facility for the purpose of completing Interoperability Certification Testing or Operational Accreditation Testing (as the case may be), including any revised timetable (if applicable), as determined by NBN Co.

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

**ACT Utilities Tax** means the tax imposed under the *Utilities (Network Facilities Tax) Act 2006* (ACT).

**Adjustment Event** has the meaning given to that term in the GST Law.

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

**Affected Party** has the meaning given to that term in the definition of "Force Majeure Event".

**Aggregated Network Information** means Network Information that has been aggregated with other information of a similar or related nature, such that the Network Information (or any part of it) cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify, Customer, any Downstream Customer or any End User.

**Agreement** means this Wholesale Broadband Agreement, comprising the documents referred to in the “Agreement” provision of the [Agreement Execution Document](#).

**Agreement Execution Document** means the document entitled “[Agreement Execution Document](#)” that forms part of this Agreement (as changed from time to time in accordance with this Agreement).

**Alignment Date** has the meaning given to that term in clause F3(a)(iii).

**Ancillary Service** means a product that is ancillary to the supply of the Product Components and associated Product Features.

**Average Monthly Billings Amount** means the monthly average of Customer’s annual billings in any Year and, for a period of less than one Year, the monthly average calculated for that period, as calculated in accordance with the following formula:

$$\text{Average Monthly Billings Amount} = ((A+B)/C) \times (365/12)$$

where:

- A = the total amount of Charges (excluding GST) paid or payable by Customer between the first day of the relevant Year and the last relevant day of that Year;
- B = the total amount of Charges (excluding GST) which relate to a period other than a particular day, which are attributable to a day between the first day of the relevant Year and the last relevant day of that Year, on a pro rata basis; and
- C = the total number of days between the first day of the relevant Year and the last relevant day of the Year.

For the purposes of this formula:

- (a) the last relevant day of the Year will be:
  - (i) the last day of the Year; or
  - (ii) if a determination of liability is made in the same Year in which the relevant Claim is made, the day of that determination and the provisions of paragraph (b) will apply;
- (b) where paragraph (a)(ii) applies, the days which are taken into account will be those from (and including) the start of the relevant Year up to (and including) the day that the determination is made. In the event that a later determination is made which relates to a Claim made in the same Year as an another Claim in respect of which a determination has already been made, the calculation in the formula above will be made again and the result of that recalculation, less any amount paid or payable with respect to the earlier determination of liability, will be used to determine the maximum amount payable with respect to the subsequent Claim. In no event will a party’s liability for an already determined Claim or the liability limit applicable to a determination of liability pursuant to clause E2.3(a) or clause E2.4(a) in respect of that Claim be recalculated as a result of any recalculation of a liability limit under paragraph.

**Award** means a Panel’s final decision in respect of a Dispute.

**Bilateral Dispute** has the meaning given to that term in clause G3(d).

**Billing Dispute** has the meaning given to that term in clause B5.2.



**Billing Dispute Notice** has the meaning given to that term in the [NBN Co Operations Manual](#).

**Billing Enquiry** has the meaning given to that term in clause B5.1.

**Billing Period** means each period of one calendar month starting on the day selected or determined in accordance with the [NBN Co Operations Manual](#).

**Billing Period Options** has the meaning given to that term in clause B2.2(a).

**Break Fee** means, in respect of an Ordered Product that is subject to a Minimum Term, where the supply of that Ordered Product is:

- (a) disconnected following a disconnect order placed by Customer in accordance with the [NBN Co Operations Manual](#); or
- (b) withdrawn by NBN Co in accordance with clause A4.1(a), but only where Customer ordered that Ordered Product after NBN Co gave notice of the withdrawal of that Ordered Product under clause A4.1(a),

in each case before the end of that Minimum Term, an amount payable by Customer to compensate NBN Co for the Charges and other amounts payable by Customer under this Agreement that would have been payable by Customer to NBN Co in respect of that supply from the date after the effective date of that disconnection or withdrawal until the end of that Minimum Term, calculated in accordance with the [WBA Product Catalogue](#).

**Business Day** means:

- (a) in the context of timeframes within which operational works or tasks are to be performed, any day other than a Saturday, Sunday or public holiday in the State in which the work or tasks are to be carried out; and
- (b) in all other contexts, any day other than a Saturday, Sunday or public holiday in New South Wales.

**Business Rules** means any instructions, policies or procedures issued by NBN Co pursuant to clause C4.2 (including the Fair Use Policy) including, in respect of a Product, terms set out in the Product Description for that Product that are identified as being the “business rules” for that Product.

**CAA** means the *Commercial Arbitration Act 2010* (NSW).

**Carriage Service** has the meaning given to that term in section 7 of the Telecommunications Act.

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

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

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

**Change Proposal** has the meaning given to that term in clause F4.2(a).

**Charges** means the charges (including any Taxes) set out in the [Price List](#) or in the [TTAS Product Description](#).

**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 Property** means any real property or part thereof which is owned or managed or controlled by a third party strata body, managing corporation, body corporate or other similar entity, or which is otherwise common property under the relevant strata scheme, community titles or other similar legislation to which NBN Co may require access in connection with the supply of a Product at a Premises.

**Commonwealth** means the Commonwealth of Australia.

**Compatible** means capable of orderly, efficient integration and operation with the NBN-Related Networks with no modification or conversion required.

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

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

**Confidential Information** of the Discloser means all information of the Discloser or any of its Related Bodies Corporate in connection with this Agreement, including information of a third party that is used or disclosed by the Discloser or any of its Related Bodies Corporate under permission from that third party and including information derived from the Discloser's Confidential Information (regardless of form) which:

- (a) is confidential or can reasonably be inferred to be confidential from the circumstances in which it is disclosed; and
- (b) is disclosed to or observed by the Recipient in connection with this Agreement,

but does not include information:

- (c) which is in or comes into the public domain, other than by disclosure in breach of this Agreement or an obligation of confidence owed to a party;
- (d) which, at the time of first disclosure to or observation by the Recipient, was already in the lawful possession of that party;
- (e) which is disclosed to, or observed by, the Recipient from a third party entitled to disclose it, except, in the case of NBN Co, where NBN Co is entitled to disclose the information;
- (f) which is Product Development Confidential Information; or
- (g) Aggregated Network Information.

Where the Discloser is Customer, Confidential Information includes Network Information, and information of the kind referred to in section 152AYA of the Competition and Consumer Act.

**Contact Details** has the meaning given to that term in clause H1.2.

**Contact Details Register** means the electronic register that is accessible through NBN Co's Website that records the Contact Details of both parties (as changed from time to time in accordance with this Agreement).

**Content Service** has the meaning given to that term in section 15 of the Telecommunications Act.

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

**Contract Development Process** or **CDP** means the contract development process, described in the document of that name which is available on the NBN Co Website, pursuant to which NBN Co, Customer, Other NBN Co Customers and other third parties will engage with each other to develop a long term wholesale broadband agreement.

**Control** has the meaning set out in section 50AA of the Corporations Act.

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

**Credit Evidence** has the meaning given to that term in the [Credit Policy](#).

**Credit Policy** means the document entitled “[Credit Policy](#)” that forms part of this Agreement and which is published on the NBN Co Website (as changed from time to time in accordance with this Agreement).

**Customer** has the meaning given to that term in the “Parties” provision of the [Agreement Execution Document](#).

**Customer Background IPR** means any Intellectual Property Rights owned by Customer or a Related Body Corporate of Customer, whether coming into existence before or after the Execution Date excluding any Intellectual Property Rights in any New IPR and any Intellectual Property Rights owned by a third party.

**Customer Disconnection Obligation** means an obligation under this Agreement to:

- (a) disconnect and/or remove any Customer Equipment or other items owned or controlled by Customer from the NBN-Related Networks;
- (b) disconnect, remove and/or return to NBN Co any NBN Co Equipment supplied by NBN Co to Customer;
- (c) disconnect any connections made by or on behalf of Customer from Customer Network to the NBN-Related Networks; or
- (d) disconnect or procure the disconnection of any connections made by or on behalf of any Downstream Customer to the NBN-Related Networks in connection with Customer’s supply of Customer Products.

**Customer Equipment** means any equipment that is:

- (a) used by Customer in connection with the NBN Co Network, the NBN Co Platform, the National Test Facility or any Ordered Product; or
- (b) provided by or on behalf of Customer to any of its own customers to whom it supplies Customer Products for use in connection with the NBN Co Network or any Customer Product,

but excludes all NBN Co Equipment.

**Customer Event** means:

- (a) any act or omission of Customer, any Downstream Customer or any End User other than in accordance with the terms of this Agreement or that is otherwise unlawful; or

- (b) any event or circumstance to the extent caused or contributed to by:
  - (i) Customer Network, Customer Platform or any Customer Equipment; or
  - (ii) the network, systems, equipment or facilities of any of Downstream Customers or any End Users.

**Customer Network** means the networks, systems and facilities that are used, or are capable of being used, by Customer in relation to the carrying of communications by means of guided or unguided electromagnetic or optical energy in connection with the NBN Co Network, the NBN Co Platform, the National Test Facility or any Ordered Product, including Customer Equipment.

**Customer Platform** means the operational support systems and billing support systems used by Customer that are directly or indirectly connected to the NBN Co Platform.

**Customer Product** means a retail or wholesale product or service supplied by Customer to a third party under a contract that relies on an Ordered Product as an input.

**Customer Product Idea** means a request by a Customer made through the Product Development Forum that NBN Co develop:

- (a) a new product, product component or product feature; or
- (b) a variation or enhancement to an existing Product, Product Component or Product Feature.

**Data Enquiry** has the meaning given to that term in clause A2.10(a).

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

**Default Notice** has the meaning given to that term in clause F5.1(a).

**Designated Roadmap Product** means:

- (a) any product or service described in the Initial Roadmap; and
- (b) each of the following products or services:
  - (i) Ancillary Services; and
  - (ii) Product Components or Product Features which NBN Co has an obligation to offer as a result of a licence condition imposed under section 41(1) of the *National Broadband Network Companies Act 2011* (Cth).

**Dictionary** means this document (as changed from time to time in accordance with this Agreement).

**Directory Assistance Services** has the meaning given to that term in the Telecommunications Act.

**Discloser** means the party that discloses Confidential Information or Product Development Confidential Information to the other party, as the context requires.

**Dispute** has the meaning given to that term in clause G1(a).

**Dispute Management Rules** mean the provisions of [Module G \(Dispute Management\)](#).

**Dispute Outcome Related Event** means any of the following:

- (a) the publication of any Award on NBN Co's Website in accordance with clause G5.5; and

- (b) a failure by a Resolution Advisor or any member of the Pool to comply with the Dispute Management Rules or the terms of engagement of the Resolution Advisor or that member (as the case may be) as agreed between NBN Co and the Resolution Advisor or that member (as the case may be).

**Downstream Customer** means any person acquiring a Customer Product or a Downstream Product under a contract, including:

- (a) any person acquiring a retail Customer Product under a contract with Customer;
- (b) any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale Customer Product under a contract with Customer;
- (c) any person acquiring a retail Downstream Product under a contract with a third party; and
- (d) any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale Downstream Product under a contract with a third party.

**Downstream Customer Details** means any information about any Downstream Customer that is required by NBN Co to exercise its rights or perform its obligations under this Agreement or by law.

**Downstream Customer Equipment** means any equipment that is used by any Downstream Customer in connection with the NBN Co Network or any Downstream Product.

**Downstream Customer Loss** means:

- (a) any Loss suffered by:
  - (i) a person who receives a Carriage Service directly or indirectly from Customer, a Related Body Corporate of Customer or any other entity controlled by Customer within the meaning of the Corporations Act; or
  - (ii) a person who directly or indirectly provides the Carriage Services referred to in paragraph (a)(i) of this definition,

where that Loss is in connection with any telecommunications network over which Customer is in a position to exercise control or which Customer uses; and

- (b) any Loss suffered by Customer as result of any loss referred to in paragraph (a) of this definition.

**Downstream Product** means a retail or wholesale product or service supplied by a Downstream Customer to a third party under a contract that relies on a Customer Product as an input.

**Due Date** has the meaning given to that term in clause B3.1(a).

**Effective Disconnection Date** means the date on which a disconnection order in respect of an Ordered Product is effective pursuant to the [NBN Co Operations Manual](#) or the Product Description for an Ordered Product (as the case may be).

**Emergency** means an actual or potential state of danger requiring immediate action to avoid or mitigate any loss, damage or personal injury.

**Emergency Call Services** has the meaning given to that term in the Telecommunications Act.

**Emergency NBN Upgrade** means an NBN Upgrade performed by NBN Co in response to an Emergency where it is not in NBN Co's reasonable opinion feasible in the prevailing circumstances for NBN Co to comply with the requirements applying to the implementation of a Major NBN Upgrade or a Minor NBN Upgrade.

**Emergency NBN Upgrade Notice** has the meaning given to that term in clause C12.3(a).

**Emergency POI Notice** has the meaning given to that term in clause C13.3.

**Emergency POI Relocation/Closure** means the relocation or closure of a Point of Interconnection performed by NBN Co in response to an Emergency where it is not in NBN Co's reasonable opinion feasible in the prevailing circumstances for NBN Co to comply with the requirements applying to the implementation of a relocation or closure of a Point of Interconnection.

**End User** means a person who is the ultimate recipient or user of a Customer Product or Downstream Product.

**End User Equipment** means any equipment used by any End User in connection with the NBN Co Network or any Downstream Product, including residential gateways, routers and personal computers.

**End User Loss** means:

- (a) any Loss suffered by a person who uses a Carriage Service supplied directly or indirectly from Customer, a Related Body Corporate of Customer or any other entity controlled by Customer within the meaning of the Corporations Act where that Loss is in connection with any telecommunications network over which Customer is in a position to exercise control or which Customer uses; and
- (b) any Loss suffered by Customer as result of any loss referred to in paragraph (a) of this definition.

**Excluded Event** means:

- (a) any Force Majeure Event;
- (b) the implementation of any NBN Maintenance, NBN Upgrade or relocation or replacement of any Point of Interconnection or Temporary POI in accordance with [Module C \(Operational Management\)](#) performed in accordance with the terms of this Agreement;
- (c) any Ordering Freeze, Service Reduction or Suspension that has been validly imposed in accordance with [Module F \(Agreement Management\)](#); or
- (d) the supply of products, services, facilities or infrastructure by third parties (including failures by the third party to provide NBN Co with access to facilities; failures in the actual facilities provided by third parties; a failure by the third party to repair or reinstate those facilities; or delay or non-delivery by any supplier to NBN Co in the supply of equipment necessary for the supply of Ordered Products), where the third party is unable to perform its obligations to NBN Co as a result of a Force Majeure Event.

**Execution Date** means the date that this Agreement is executed by the last party to sign this Agreement, as specified in the Agreement Execution Document.

**Expert Determination Rules** means the rules for expert determination set out in clause G15.

**Expiry Date** means 30 November 2012 (subject to change in accordance with clause F2.2) or such other date as the parties may agree in writing.

**Extension Notice** has the meaning given to that term in clause F2.2(a).

**Fault** means when an Ordered Product does not perform substantially in accordance with the Product Description or Product Technical Specification for that Ordered Product but is not an Outage.

**Fair Use Policy** means the policy of that name published from time to time by NBN Co applicable to the Products.

**Fibre Release Business Services** means a set of Product Components and associated Product Features that allow Customers to serve small business through features that support high speed broadband, multi-line telephony solutions and optional enhanced service levels, as specified in the Initial Roadmap.

**Fibre Release Enterprise Ethernet Services** means a set of Product Components and associated Product Features that allow Customers to offer very high speed Carriage Services for high-end enterprises through features that support point to POI links, optional enhanced service levels and associated services such as feasibility studies, as specified in the Initial Roadmap.

**Fibre Release High Speed Broadband and Telephony** means a set of Product Components and associated Product Features that allow Customers to offer telephony services and high speed broadband services, as specified in the Initial Roadmap.

**Fibre Release Medium Business Services** means a set of Product Components and associated Product Features that allow Customers to serve medium sized businesses through features that support the provision of Carriage Services and Content Services across multiple sites for purposes such as building virtual private networks, video collaboration and video conferencing, business grade NTD and optional enhanced service levels, as specified in the Initial Roadmap.

**Fibre Release Multicast** means a set of Product Components and associated Product Features that allow Customers to offer IPTV services and other video content, as specified in the Initial Roadmap

**Fibre Release Service Enhancements** means a set of Product Components and associated Product Features that provide enhancements to Customers including advanced reporting capabilities

**Financial Security** has the meaning given to that term in the [Credit Policy](#).

**Force Majeure Event** means any event or circumstance that:

- (a) is not within the reasonable control of a person (the **Affected Party**) 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; 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.

**Formal Submission** has the meaning given to it in the [PDF Processes](#).

**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** means a goods and services tax or similar value added tax levied or imposed under the GST Law.

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

**Indirect Loss** has the meaning given to that term in clause E2.5(a).

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

**Industry Relevant Dispute** means a dispute that is classified as an industry relevant dispute under clause G3(b).

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

**Initial Roadmap** means the document of that name published by NBN Co on NBN Co's Website setting out key information and timelines in relation to the introduction, development, evolution and withdrawal of:

- (a) the Product Components and associated Product Features which NBN Co expects to introduce in the 3 years following the date of publication; and
- (b) Fibre Release Business Services, Fibre Release Enterprise Ethernet Services, Fibre Release High Speed Broadband and Telephony, Fibre Release Medium Business Services, Fibre Release Multicast, Fibre Release Service Enhancements and the Wireless and Satellite Services.

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

**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 for the benefit of one or more of its creditors (in their



capacities as creditors), in each case other than to carry out a reconstruction or amalgamation while solvent;

- (f) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors (in their capacities as creditors), or it proposes a standstill arrangement or composition with one or more of its creditors (in their capacities as creditors) and that standstill, arrangement or composition is not terminated within 10 Business Days;
- (g) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under sections 459C(2) or 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (h) it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (i) a notice is issued under sections 601AA or 601AB of the Corporations Act and not withdrawn or dismissed within 21 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.

**Insurance Policies** has the meaning given to that term in clause E6.1.

**Integrated Public Number Database** has the meaning given to that term in the Telecommunications Act.

**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).

**Interception Act** means the *Telecommunications (Interception and Access) Act 1979* (Cth).

**Interim Satellite Services** means the service more particularly described at <http://www.nbnco.com.au/our-network/fibre-wireless-satellite/satellite.html>

**Interoperability Certification Testing**, in respect of a Product Testing Module, means the interoperability certification testing that is set out in that Product Testing Module.

**Invitation** has the meaning given to that term in clause G7.2(a).

**Invitee** has the meaning given to that term in clause G7.2(a).

**Legal Practitioner** means a current or former solicitor, barrister, magistrate or judge in good standing with the legal profession in Australia with at least 10 years legal experience.

**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.

**Major NBN Upgrade** means an NBN Upgrade that is listed in the NBN Co Program of Works that will:

- (a) require Customer to take particular action in order to continue to use an Ordered Product after the implementation of the NBN Upgrade;
- (b) result in a Product no longer being supplied by reason of an NBN Upgrade; or
- (c) require Customer to commit material capital expenditure in response to the implementation of that NBN Upgrade,

but which is not an Emergency NBN Upgrade.

**Major Upgrade Notice** has the meaning given to that term in clause C12.1(a)(i).

**Major Upgrade Plan** has the meaning given to that term in clause C12.1(a)(ii).

**Material Default** means:

- (a) a Default which itself, or when combined with other Defaults, is a material breach of this Agreement; or
- (b) any other Default, the occurrence of which means that NBN Co ceases to be under an obligation under section 152AXB of the Competition and Consumer Act (or any other law) to supply Products to Customer.

**Minimum Term** means, in respect of an Ordered Product, the minimum fixed period during which Customer has agreed to acquire that Ordered Product from NBN Co, as specified in the Product Description for that Ordered Product.

**Minister** means the minister responsible for administering the relevant legislative provision or legislation.

**Minor Change** means a change to this Agreement that NBN Co, acting reasonably, determines will not have, or is not likely to have, a material adverse impact on Customer.

**Minor NBN Upgrade** means an NBN Upgrade that is not a Major NBN Upgrade or an Emergency NBN Upgrade and which NBN Co, acting reasonably, determines will not have, or is not likely to have, a material adverse impact on Customer.

**National Test Facility** means NBN Co's test environment at a location notified by NBN Co to Customer from time to time, including all NBN Co Equipment located at that site.

**NBN Co Background IPR** means any Intellectual Property Rights owned by NBN Co or a Related Body Corporate of NBN Co, whether coming into existence before or after the Execution Date, excluding any Intellectual Property Rights in any New IPR and any Intellectual Property Rights owned by a third party.

**NBN Co Brand Approved Use Terms and Conditions** means the terms and conditions of, and brand guidelines relating to, the use of NBN Co's brand issued by NBN Co to Customer from time to time.

**NBN Co Disconnection Right** means an express right under this Agreement or at law to:

- (a) remove or disconnect any Customer Equipment or other items owned or controlled by Customer from the NBN-Related Networks;
- (b) disconnect, remove and/or recover from Customer any NBN Co Equipment supplied by NBN Co to Customer;
- (c) disconnect any connections made by or on behalf of Customer from Customer Network to the NBN-Related Networks; or
- (d) disconnect any connections made by or on behalf of any Downstream Customer to the NBN-Related Networks in connection with Customer's supply of Customer Products.

**NBN Co Equipment** means any equipment that is owned, operated or controlled by NBN Co (or any Related Body Corporate of NBN Co):

- (a) that is provided by NBN Co (or any Related Body Corporate of NBN Co) to Customer for use as part of, or in connection with, any Product; or
- (b) to which NBN Co (or any Related Body Corporate of NBN Co) permits Customer to access (or on-grant such access to any Downstream Customers or any End Users) as part of, or in connection with, any Product, including NTDs.

**NBN Co Fibre Access Service** means the service with that name and as described in the [WBA Product Catalogue](#).

**NBN Co Fibre Network** means the fibre network that is owned or controlled by, or operated by or on behalf of, NBN Co (or any Related Body Corporate of NBN Co).

**NBN Co Network** means the NBN Co Fibre Network, the NBN Co Satellite Network, the NBN Co Wireless Network and the NBN Co Equipment.

**NBN Co Network Boundaries** means:

- (a) the User Network Interface on the Network Termination Device at or near a Premises; and
- (b) the Network-Network Interface at the Point of Interconnection associated with that Premises.

**NBN Co Operations Manual** means the document entitled "NBN Co Operations Manual" (as changed from time to time in accordance with this Agreement) that forms part of the [WBA Product Catalogue](#).

**NBN Co Platform** means NBN Co's operational support systems and billing support systems for the purpose of ordering and tracking of Products, billing, payment and fault reporting and detection and restoration, where NBN Co provides access to those systems and any functionality of those systems in accordance with this Agreement, (and for the purposes of communications, includes NBN Co's Website), but excludes access to NBN Co's core systems or any functionality of those core systems.

**NBN Co Product Idea** means a proposal developed by NBN Co in respect of:

- (a) new products, product components or product features; or
- (b) variations or enhancements to existing Products, Product Components or Product Features.

**NBN Co Program of Works** means any program of works issued by NBN Co and published on the NBN Co Website from time to time.

**NBN Co Satellite Network** means the satellite network that is owned or controlled by, or operated by or on behalf of, NBN Co (or any Related Body Corporate of NBN Co), including the satellite network through which the Interim Satellite Services are provided.

**NBN Co Service Qualification System** means a system or systems made available by NBN Co (whether automated or manually implemented) to enable a Customer to determine whether a particular address is identified by NBN Co as serviceable (at a given point in time) by the NBN Co Network.

**NBN Co Wireless Network** means the wireless network that is owned or controlled by, or operated by or on behalf of, NBN Co (or any Related Body Corporate of NBN Co).

**NBN Co's Website** means NBN Co's website, with the URL [www.nbnco.com.au](http://www.nbnco.com.au) or such other URL as NBN Co may notify Customer from time to time.

**NBN Fault** means a Fault to the extent that the occurrence of the Fault:

- (a) is contributed to by a fault in or failure of the NBN-Related Networks or any other matter or thing for which NBN Co is responsible; and
- (b) is not contributed to by an Outage.

**NBN Maintenance** means any maintenance, repair, rationalisation or remediation of:

- (a) any NBN-Related Network;
- (b) any other matter or thing for which NBN Co is responsible and which affects, or can affect, the supply of products by NBN Co to Customer or any Other NBN Co Customers; or
- (c) any facilities, at, on or under which the NBN Co Network is attached, located or installed,

including any maintenance, repair, rationalisation or remediation that is necessary or desirable to repair any NBN Faults.

**NBN-Related Networks** means the NBN Co Network, the NBN Co Platform, the National Test Facility and any other network, systems, equipment and facilities used by NBN Co in connection with the supply of Products.

**NBN Serviceable** means a Premises that NBN Co has determined is serviceable by the NBN Co Network, as shown in the NBN Co Service Qualification System.

**NBN Upgrade** means any upgrade, enhancement, modernisation, reconfiguration, enablement or augmentation of the NBN Co Network, including the removal, rearrangement, replacement or decommissioning of the network elements and associated electronics comprising the NBN Co Network, which will have, or is likely to have, an impact on Customer, but does not include any:

- (a) relocation, closure or replacement of Points of Interconnection or Temporary POIs, or the establishment of new Points of Interconnection (which are dealt with in clause C13);
- (b) NBN Maintenance (which is dealt with in clause C14); or
- (c) rollout or expansion of the NBN Co Network.

**Network Information** means any information regarding Customer, any Downstream Customer or any End User that is:

- (a) generated within the NBN Co Network, the NBN Co Platform, the National Test Facility and related systems as a result of the supply of Ordered Products by NBN Co to Customer; or
- (b) otherwise obtained from Customer in respect of the supply of an Ordered Product.

**Network-Network Interface** or **NNI** means a physical interface between the NBN Co Network and Customer Network at a Point of Interconnection.

**Network Termination Device** or **NTD** means a network termination device that is owned, operated or controlled by NBN Co (or any Related Body Corporate of NBN Co).

**New IPR** means any Intellectual Property Rights developed pursuant to this Agreement after the Execution Date (including those rights developed by a Related Body Corporate of a party), including any such Intellectual Property Rights in:

- (a) existing or new Products;
- (b) any Product Idea;
- (c) the development of new products or services which NBN Co may supply;
- (d) the NBN Co Network, including the NBN Co Equipment, the NBN Co Platform and the National Test Facility,

excluding:

- (e) any Intellectual Property Rights owned by a third party;
- (f) Customer Background IPRs; and
- (g) NBN Co Background IPRs.

**Non-Discrimination Change** means a change to this Agreement required to ensure consistency with a Non-Discrimination Obligation.

**Non-Discrimination Obligations** means the obligations applying to an NBN corporation (as that term is defined in section 5 of the *National Broadband Network Companies Act 2011* (Cth)) under section 152AXC and section 152AXD of the Competition and Consumer Act.

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

**Operational Accreditation Testing**, in respect of a Product Testing Module, means the operational accreditation testing that is set out in that Product Testing Module.

**Operational Issues** are issues that may arise between the parties in relation to this Agreement that are principally operational or technical in nature.

**Operational Point of Contact** has the meaning given to that term in clause F1.1(a)(ii).

**Operations Manual Roadmap** has the meaning given to that term in clause C1.2(a).

**Operator Services** has the meaning given to that term in the Telecommunications Act.

**Ordered Product** means a Product that has been validly ordered by Customer and for which NBN Co has accepted an order.

**Ordering Freeze** has the meaning given to that term in clause F7.1.

**Other NBN Co Customer** means a person (other than Customer) who has entered into a Wholesale Broadband Agreement with NBN Co (whether or not NBN Co has supplied any products or services to that person).

**Other NBN Co Customer Dispute** means a dispute between NBN Co and an Other NBN Co Customer under or in relation to a Wholesale Broadband Agreement between NBN Co and that Other NBN Co Customer that has been classified as an industry relevant dispute under that Wholesale Broadband Agreement.

**Other NBN Co Customer Submitted IPR** means any Intellectual Property Rights that are “Submitted IPR” under a Wholesale Broadband Agreement.

**Other Ordered Product** means a product or service that is an “Ordered Product” under a Wholesale Broadband Agreement”.

**Outage** means when an Ordered Product does not perform substantially in accordance with the Product Description or Product Technical Specification for that Ordered Product to the extent that substantial non-performance is contributed to by:

- (a) any:
  - (i) NBN Upgrade;
  - (ii) NBN Maintenance (except any NBN Maintenance which falls within paragraph (a) the definition of Unplanned NBN Maintenance); or
  - (iii) the relocation, closure or replacement of any Point of Interconnection or Temporary POI,

of which NBN Co has given prior notice to Customer in accordance with the terms of this Agreement;
- (b) that Ordered Product being subject to a Service Reduction, Suspension or termination at the time of that substantial non-performance; or
- (c) any other matter or thing specified in the [NBN Co Operations Manual](#).

**Overdue Amount** means the amount described in clause B4.1(a).

**Panel** has the meaning given to that term in clause G2.2(a).

**Panel Arbitration** means an arbitration conducted by the Panel in accordance with clause G5.

**Panel Member** has the meaning given to that term in clause G2.2(a).

**PDF Processes** has the meaning given to that term in clause A3.1(b).

**Personal Information** is information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion that is provided to, or obtained, accessed or generated by, either party in connection with this Agreement.

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

**Planned NBN Maintenance** is any NBN Maintenance that is not Unplanned NBN Maintenance.

**POI Relocation/Closure Plan** means a plan for the implementation of the relocation or closure of a Point of Interconnection under clause C13.2.

**Point of Interconnection** or **POI** means a point of interconnection between the NBN Co Network and Customer Network, the details of which are made available by NBN Co to Customer through the NBN Co Platform.

**Pool** means the pool of members constituted in accordance with clause G12.

**Pre-Certification Testing**, in respect of a Product Testing Module, means the pre-certification testing that is set out in that Product Testing Module.

**Premises** means each of the following where NBN Serviceable:

- (a) an addressable location currently used on an on-going basis for residential, business (whether for profit or not), government, health or educational purposes;
- (b) a school as defined by the Department of Education, Employment and Workplace Relations;
- (c) a location within a new development at an addressable location for which NBN Co is the wholesale provider of last resort;
- (d) an addressable location for a standard telephone service which is activated in compliance with the USO;
- (e) a payphone which is activated in compliance with the USO or which is otherwise specified by NBN Co as a premises from time to time; and
- (f) a location which NBN Co is directed by the Minister to connect to the NBN Co Network;
- (g) a non-addressable location that is capable of connection of a type agreed by NBN Co with the Minister; and
- (h) any other location specified in this Agreement.

**President of IAMA** means the President, from time to time, of the Institute of Arbitrators and Mediators (Australia).

**Price Event** means one or more of the following events:

- (a) the issue by the ACCC of a draft decision to reject a special access undertaking lodged by NBN Co under section 152CBA of the Competition and Consumer Act justified, wholly or partly, on the basis that the charge referred to in clause I2.1 is too low, or should be higher, during the term of [Module I: NBN Co's Transitional Commitments](#);
- (b) the issue by the ACCC of a final decision to reject a Special Access Undertaking lodged by NBN Co under section 152CBC(2)(b) of the Competition and Consumer Act justified, wholly or partly, on the basis that the charge referred to in clause I2.1 is too low, or should be higher, during the term of [Module I: NBN Co's Transitional Commitments](#);
- (c) a written notice given by the ACCC to NBN Co under section 152CBDA(2) of the Competition and Consumer Act stating that if NBN Co increases the charge referred to in clause I2.1 during the term of [Module I: NBN Co's Transitional Commitments](#), the ACCC will consider the varied Special Access Undertaking lodged by NBN Co under section 152CBC of the Competition and Consumer Act;



- (d) to the extent not inconsistent with an accepted Special Access Undertaking provided by NBN Co, the ACCC either:
  - (i) issues an NBN-specific access determination under section 152BC(4A) or issues an interim access determination under section 152BCG of the Competition and Consumer Act (to the extent to which those sections apply to NBN Co), specifying that NBN Co should increase the charge referred to in clause I2.1 during the term of [Module I: NBN Co's Transitional Commitments](#); or
  - (ii) issues an NBN-specific binding rules of conduct under section 152BD(4A) of the Competition and Consumer Act (to the extent to which that section applies to NBN Co), specifying that NBN Co should increase the charge referred to in clause I2.1 during the term of [Module I: NBN Co's Transitional Commitments](#);
- (e) a Ministerial Pricing Determination is made under section 152CH of the Competition and Consumer Act setting out principles dealing with price related terms and conditions which would have the effect of specifying that NBN Co should increase the charge referred to in clause I2.1 during the term of [Module I: NBN Co's Transitional Commitments](#);
- (f) a condition of NBN Co's carrier licence requires NBN Co to comply with section 152CJB of the Competition and Consumer Act and that or an associated condition has the effect of requiring NBN Co to increase the charge referred to in clause I2.1 during the term of [Module I: NBN Co's Transitional Commitments](#);
- (g) the ACCC issues a Part A competition notice under section 151AKA, a Part B competition notice under section 151AL or an advisory notice under section 151AQB of the Competition and Consumer Act which is justified, wholly or partly, on the basis that the charge referred to in clause I2.1 is too low, or should be higher, during the term of [Module I: NBN Co's Transitional Commitments](#); or
- (h) NBN Co is the subject of an order made by a court of competent jurisdiction in respect of proceedings brought by the ACCC, a Carrier, Carriage Service Provider or Content Service Provider under Part IV or Part XIB of the Competition and Consumer Act and which is made, wholly or partly, on the basis that the charge referred to in clause I2.1 is too low, or should be higher, during the term of [Module I: NBN Co's Transitional Commitments](#).

**Price List** means the document entitled "[Price List](#)" (as changed from time to time in accordance with this Agreement) that forms part of the [WBA Product Catalogue](#).

**Privacy Laws** include:

- (a) the *Privacy Act 1998* (Cth); and
- (b) Part 13 of the Telecommunications Act.

**Product** means a product or service described in the [WBA Product Catalogue](#) ordered by Customer and supplied by NBN Co to Customer under this Agreement.

**Product Component**, in respect of a Product, means a component of that Product (as more fully described in the Product Description for that Product) which may have one or more Product Features.

**Product Description**, in respect of a Product, means the "Product Description" for that Product as amended from time to time in the [WBA Product Catalogue](#). A reference to "Product Description" in this Agreement will be read to include a reference to "Service Description".



**Product Development Confidential Information** means all information of the Discloser, regardless of form, which:

- (a) is disclosed under the [PDF Processes](#); and
- (b) is confidential or can reasonably be inferred to be confidential from the circumstances in which it is disclosed,

but does not include information:

- (c) which is in or comes into the public domain, other than by disclosure in breach of this Agreement or an obligation of confidence owed to a party or a failure to comply with the [PDF Processes](#);
- (d) which, at the time of first disclosure to or observation by the Recipient under the [PDF Processes](#), was already in the lawful possession of that party (including pursuant to clause D1); or
- (e) which is disclosed to, or observed by, the Recipient from a third party entitled to disclose it.

**Product Development Forum** has the meaning given to that term in clause A3.1(a).

**Product Feature**, in respect of a Product, means a feature of a Product Component (as more fully described in the Product Description for that Product).

**Product Idea** means an NBN Co Product Idea and/or a Customer Product Idea (as the context requires).

**Product Order Form** means an electronic order form (including all of the information included within that form) that is completed and submitted by Customer to NBN Co in connection with the placement of an order for a Product under this Agreement.

**Product Technical Specifications**, in respect of a Product, means the Product Technical Specifications for that Product as set out from time to time in the [WBA Product Catalogue](#).

**Product Testing Module**, in respect of a Product, means the testing module that applies to that Product that is notified by NBN Co to Customer.

**Ready for Use Date** means the date on which an Ordered Product is ready for use by Customer, as determined in accordance with the Product Description for that Ordered Product.

**Recipient** means a party to whom Confidential Information or Product Development Confidential Information is disclosed by the other party, as the context requires.

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

- (a) the Commonwealth government minister responsible for administering Part XIB and/or Part XIC of the Competition and Consumer Act;
- (b) the Commonwealth government minister responsible for administering the Telecommunications Act;
- (c) the ACCC;
- (d) the ACMA;
- (e) the Telecommunications Industry Ombudsman; and

- (f) any other Commonwealth government minister, Government Agency or parliamentary committee or body whose activities impact on NBN Co's business.

**Regulatory Event** means:

- (a) any enactment, amendment, replacement or repeal of any law;
- (b) the lawful making, amendment or withdrawal of any determination, order, directive, consent or finding by a Regulator, Commonwealth government minister, Government Agency or a court of competent jurisdiction;
- (c) the making of any code by CommsAlliance (or any replacement or successor to CommsAlliance) to which NBN Co is a code signatory, the registration of any Industry Code, the determination of any Industry Standard or the making of any Technical Standard (or any amendment or withdrawal of such codes or standards);
- (d) any declaration, amendment or removal of a condition applying to a party's carrier licence (if applicable), including NBN Co being required to comply with section 152CJB of the Competition and Consumer Act in relation to a specific eligible service and NBN Co being prohibited from supplying a specified carriage service to Carriers, Carriage Service Providers or Content Service Providers under section 41(3) of the *National Broadband Network Companies Act 2011* (Cth);
- (e) any determination, amendment or removal of a Service Provider Rule applicable to a party;
- (f) the issue by the ACCC of a draft decision to reject a special access undertaking lodged by NBN Co under section 152CBA of the Competition and Consumer Act justified, wholly or partly, on the basis that a charge referred to in clauses I2.2 and I2.3 is too low, or should be higher, during the term of [Module I: NBN Co's Transitional Commitments](#);
- (g) the issue by the ACCC of a final decision to reject a special access undertaking lodged by NBN Co under section 152CBC(2)(b) of the Competition and Consumer Act justified, wholly or partly, on the basis that a charge referred to in clauses I2.2 and I2.3 is too low, or should be higher, during the term of [Module I: NBN Co's Transitional Commitments](#);
- (h) a written notice given by the ACCC to NBN Co under section 152CBDA(2) of the Competition and Consumer Act stating that if NBN Co increases a charge referred to in clauses I2.2 and I2.3 during the term of [Module I: NBN Co's Transitional Commitments](#), the ACCC will consider the varied special access undertaking lodged by NBN Co under section 152CBC of the Competition and Consumer Act;
- (i) the acceptance by the ACCC of an SAU by NBN Co;
- (j) the variation or withdrawal of an SAU by NBN Co;
- (k) the resetting of any parameters or conditions of a special access undertaking by NBN Co that is in force under Part XIC of the Competition and Consumer Act;
- (l) the declaration of any NBN Co product or service by the ACCC under Part XIC of the Competition and Consumer Act or a material change to any NBN Co product or service that is declared by the ACCC under Part XIC of the Competition and Consumer Act;
- (m) the issuing of an access determination or binding rules of conduct pursuant to Part XIC of the Competition and Consumer Act in respect of any NBN Co product or service;
- (n) the issuing of an Advisory Notice or Competition Notice by the ACCC in respect of NBN Co; or

- (o) the issuing of an injunction against a party in relation to a breach or contravention (alleged or otherwise) of the Competition and Consumer Act.

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

**Relationship Issues** are issues that may arise between the parties in relation to this Agreement that are not principally operational or technical in nature.

**Relationship Point of Contact** has the meaning given to that term in clause F1.1(a)(i).

**Resolution Advisor** means the person or persons appointed as such in accordance with clause G11.1.

**SAU** means any special access undertaking submitted by NBN Co to the ACCC regarding the supply of any or all of the Products that has been accepted by the ACCC and is currently in effect.

**Service Affecting Fault** means any fault in or failure of any product or services supplied by NBN Co to Customer or any Other NBN Co Customer that:

- (a) is an NBN Fault; and
- (b) needs to be fixed in order for NBN Co to comply with any Service Levels under this Agreement or any service levels under other agreement between NBN Co and any Other NBN Co Customer.

**Service Description**, in respect of a Product, means the “Service Description” for that Product as amended from time to time in the [WBA Product Catalogue](#).

**Service Level Performance Report** has the meaning given to that term in clause A2.9.

**Service Level Rebate**, in respect of a Service Level, means the rebate that NBN Co will credit to Customer if NBN Co fails to meet that Service Level.

**Service Levels**, in respect of a Product or an Ordered Product, means the service levels that apply in respect of that Product or Ordered Product set out in the [Service Levels Schedule](#).

**Service Levels Schedule** means the document setting out the Service Levels and Service Level Rebates that apply in respect of a Product or an Ordered Product (as changed from time to time in accordance with this Agreement) that forms part of the [WBA Product Catalogue](#).

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

**Service Reduction** means a limitation or restriction on the supply of an Ordered Product to Customer, or a downgrading of any of the Product Features of an Ordered Product.

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

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

**Standard Wholesale Broadband Agreement** means the latest version of the standard form Wholesale Broadband Agreement published on NBN Co’s Website.

**Submitted IPR** has the meaning given to that term in clause D5.2(c)(ii).

**Supply** has the meaning given to that term in the GST Law.

**Supply Conditions** has the meaning given to that term in clause A2.3(a).

**Suspend or Suspension** means:

- (a) to restrict or cease the supply of an Ordered Product (or any part of an Ordered Product) to Customer; and
- (b) to withdraw Customer's right to use or on-supply an Ordered Product (or any part of an Ordered Product),

but does not include an Ordering Freeze, Service Reduction or the disconnection or termination of the supply of an Ordered Product.

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

**Tax** means any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency, including the ACT Utilities Tax, but excluding any tax (howsoever described) that relates to income, profit or capital gains.

**Tax Invoice** has the meaning given to that term in the GST Law.

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

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

**Temporary POI** means a POI that is established temporarily until a POI serving the relevant connectivity serving area is established, including temporary POIs serving first release sites and new developments.

**Temporary POI Decommissioning Notice** has the meaning give to that term in clause C13.4(b).

**Term** means the current term of this Agreement being the period specified in clause F2.1 and any extension of that period in accordance with clause F2.2.

**Third Party Supplier** means any person supplying network services or network infrastructure to NBN Co under a contract between NBN Co and that person.

**Trial Agreement** means an agreement for the supply of products or services by NBN Co to access seekers on a trial basis.

**TTAS** means the TTAS service described in the [WBA Product Catalogue](#).

**TTAS Product Description** means the Product Description for TTAS.

**ULLS** means unconditioned local loop service.

**Unplanned NBN Maintenance** is any NBN Maintenance that needs to be performed:

- (a) to repair any Service Affecting Fault;
- (b) in response to an Emergency where it is not feasible in the prevailing circumstances for NBN Co to schedule and perform that NBN Maintenance in accordance with the [NBN Co Operations Manual](#); or

(c) in other circumstances described in the [NBN Co Operations Manual](#).

**User Network Interface** or **UNI** means the physical interface (including any associated ports) on a NTD.

**USO** means USO means universal service obligation which has the meaning given to that term in section 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

**Validity Period** means, in respect of a Charge, the period specified in the [Price List](#) for which that Charge is or will be valid, subject to any conditions set out in the [Price List](#).

**WBA Product Catalogue** comprises the documents specified in the Agreement Execution Document.

**WBA-SAU Alignment Notice** has the meaning given to that term in clause F3(a)(iii).

**Wholesale Broadband Agreement** means an agreement dealing with the subject matter of this Agreement entered into between NBN Co and an Other NBN Co Customer.

**Wireless and Satellite Services** means Products supplied by means of the NBN Co Satellite Network or the NBN Co Wireless Network, as the case may be.

**Year** means the 12 calendar month period commencing on the Execution Date, and each subsequent 12 month period (or part thereof where the Agreement terminates or expires) which commences on an anniversary of the Execution Date.