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Attachment 1

Terms and Conditions – Area Switch for Full Fibre Upgrade for Complex Multi Dwelling Properties

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

The Applicant listed in the Build Quote (**Applicant**)

1. Terms and Conditions

1.1 Agreement

(a) Together with the Build Quote, these Terms and Conditions form the Applicant's agreement with nbn (**Agreement**), and set out the parties' rights and obligations, in relation to the Area Switch.

(b) Capitalised terms used in the Build Quote and these Terms and Conditions have the meanings set out in clause 16.

(c) This Agreement may only be varied, supplemented or replaced by a document signed by both parties.

(d) This Agreement including all additional terms and conditions contained in the Build Quote constitutes the entire agreement of the parties about its subject matter.

(e) This Agreement commences on the Contract Commencement Date and continues until the earlier of the date on which it is terminated in accordance with its terms and the expiry of the Term.

1.2 Condition precedent to operation

(a) The Applicant acknowledges and agrees that the Applicant has obtained an Authority in respect of the relevant Premises which is the subject of the Area Switch.

(b) This Agreement is conditional upon, does not become binding on the parties and has no force or effect unless and until:

(i) the Applicant has provided any Financial Security or revised Financial Security requested by nbn under clauses 8.7(f) and 8.8; and

(ii) the Applicant has provided nbn with the relevant postal addresses of the Property Owners and Property Occupiers in order for nbn to notify the Property Owners and Property Occupiers of entry into the Premises.

2. Authority

(a) If nbn has reasonable grounds to believe that the Applicant has not obtained an Authority, nbn will not be obliged to proceed with any works in respect of the Area Switch.

(b) The Applicant indemnifies nbn against any loss or claim and any liability to, or claims by, a third party, arising as a result of a failure to obtain an Authority or otherwise in relation to a breach by the Applicant of this clause 2.

3. Build Quotes

3.1 Acceptance of Build Quote

By accepting the Build Quote, the Applicant acknowledges that:

(a) it is authorised to act on behalf of each relevant Property Owner and Property Occupier in respect of the Area Switch;

(b) without limiting clause 3.1(a), the Applicant is authorised to accept the Build Quote and enter into this Agreement on behalf of each Property Owner of a Premises identified in the Build Quote;

(c) the Area Switch consists only of the design and installation of certain Infrastructure required for carriage services over the National Broadband Network to be made available by means of the technology nominated in the Build Quote at the Premises identified in the Build Quote through RSPs and does not include the Connection Processes;

(d) this Agreement does not contain any terms under which:

(i) the Applicant or Property Occupier at a Premises within the MDU may order carriage services from nbn or any RSP; or

(ii) nbn is obliged to offer any carriage services to the Applicant, any Property Occupier within the MDU or any RSP; and

(e) any carriage services supplied to any Premises following the Area Switch will be supplied by the relevant Property Occupier's chosen RSP under the terms of a contract between that RSP and the Property Occupier.

3.2 Variation of Build Quote

(a) Either party may notify the other party that it considers a variation is required to the Build Quote in order to complete the Area Switch (**Variation Notice**),

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provided that no variation may be made to the Cost Contribution per Premises.

(b) If a party issues a Variation Notice, the parties will use their best endeavours to agree on the reasonable terms of the variation to the Build Quote within 20 Business Days after the notice is issued.

(c) The parties may agree to vary the Build Quote following negotiations under clause 3.2(b).

4. Performing the Area Switch

4.1 Area Switch

(a) nbn will, subject to this Agreement, carry out the nbn Activities including carrying out the design and installation of certain Infrastructure required for carriage services over the National Broadband Network to be made available by means of the Planned Technology at each of the Premises identified in the Build Quote (**Area Switch**).

(b) nbn will only be required to provide the Area Switch to a Premises to the extent that the Property Owner or Property Occupier has not objected to nbn accessing the Premises in reliance on nbn's powers and immunities under Schedule 3 of the Act.

4.2 Design Feedback process

(a) nbn will provide the Applicant with a copy of the design documents, including (where applicable) installation plans, in respect of the Area Switch on an information only basis.

(b) The Applicant may provide feedback within 10 Business Days of receiving the design documents.

(c) nbn will review and, in its complete discretion, take into account any reasonable feedback.

(d) nbn will acknowledge and respond to the Applicant's feedback within 15 Business Days from the date the Applicant provides feedback under clause 4.2(b).

(e) The Design Feedback process and Planning and Design Phase will conclude, and the Build Phase will commence upon the occurrence of any of the following:

(i) the Applicant does not provide any feedback within 10 Business Days of receiving the design documents in accordance with clause 4.2(b), or does not notify nbn in writing within 10 Business Days of receiving nbn's response under clause 4.2(d) that it does not wish to proceed with the Area Switch; or

(ii) the Applicant provides feedback in accordance with clause 4.2(b), and accepts nbn's response to that feedback under clause 4.2(d).

4.3 Time

(a) nbn will use its best endeavours to complete the works in respect of the Area Switch within a reasonable time period, taking into account:

(i) the extent of design and installation work required for the Area Switch (and the resources available to nbn);

(ii) the availability of and time required to access third party infrastructure for use by nbn; and

(iii) any circumstances that are beyond the reasonable control of nbn and could not have been reasonably foreseen by nbn at the Contract Commencement Date.

(b) nbn may, from time to time, provide an indicative timetable showing the anticipated time for completion of the Area Switch (which is indicative only and must not be relied upon by the Applicant).

4.4 Completion

(a) Without limiting clause 4.1(b), nbn's representative will notify the Applicant of the Date of Practical Completion.

(b) A defects liability period of 6 months will commence on:

(i) the Date of Practical Completion; or

(ii) in circumstances where the Agreement is terminated before all the relevant Premises are completed and only in respect of those Premises where an Area Switch has been completed, the termination date.

(**Defects Liability Period**).

(c) At any time prior to the expiry of the Defects Liability Period, the Applicant may issue a notice to nbn identifying any Defects at any completed Premises, after which, nbn will rectify the relevant Defect.

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5. Safe Access

(a) The Applicant must ensure that nbn and its contractors have safe, clear and timely access to carry out the Area Switch.

(b) If there are Other Contractors undertaking work or services on the Premises (or parts of the Premises) or adjacent to the Premises, at the same time as the Area Switch is being performed, the Applicant must use reasonable endeavours to ensure that the Other Contractors fully co-operate with nbn and its contractors, and do everything reasonably necessary to facilitate the Area Switch, including providing nbn and its contractors with such assistance as may be directed by nbn.

(c) The Applicant must advise nbn of all matters that may have an adverse effect upon the performance of the Area Switch as soon as it becomes aware of the relevant matter.

(d) The Applicant acknowledges and agrees that nbn will not be liable upon any claim by the Applicant arising out of or in any way in connection with:

(i) the Other Contractors undertaking work or services on the Premises, parts of the Premises, or adjacent to the Premises; or

(ii) any act or omission of an Other Contractor.

(e) Without limiting clause 9, to the maximum extent permitted by law, the Applicant indemnifies nbn from and against any claim or loss (including any claim by, or loss to, a third party) which nbn suffers, incurs or for which it becomes liable arising out of or in connection with a breach of this clause 5 by the Applicant.

6. Ownership

6.1 Infrastructure and equipment

The Applicant acknowledges and agrees that:

(a) except for any rights expressly granted under this Agreement, the Applicant does not obtain any right, title or interest (whether legal, equitable or statutory) in any part of the Infrastructure in connection with the Area Switch under or in accordance with this Agreement; and

(b) where the Area Switch comprises Pathway Works or Horizontal MDU Pit and Pipe Works, it grants (or procures) a licence to nbn for the use of any Pathway Works and any Horizontal MDU Pit and Pipe Works, in connection with the Area Switch, including the right to grant sub-licences or transfer the licence to any other party.

For the purposes of this clause:

(c) **Horizontal MDU Pit and Pipe Works** means the physical infrastructure, including all pits, pipes, conduits and any other materials, in respect of a Horizontal MDU;

(d) **Horizontal MDU** means a MDU that will be serviced by pit and pipe works that will be located on part of the site for which ownership will be transferred to an owners corporation; and

(e) **Pathway Works** means the physical infrastructure and spatial requirements, including all pathways, conduits, cable trays, ducts, risers, cabinets, communications rooms, lead-in conduits and any other materials, necessary to properly service the Premises the subject of the Area Switch.

6.2 Applicant's obligations in relation to nbn infrastructure and equipment

The Applicant must not (and use reasonable endeavours to ensure that the Property Owners and Property Occupiers do not) damage or interfere with, or remove, Infrastructure or associated equipment which is used or installed in connection with the Area Switch.

7. Access

7.1 Statutory carrier powers

(a) The Applicant acknowledges and agrees that:

(i) in accessing the Common Area Premises or any areas ancillary to the Premises for the purposes of this Agreement; and

(ii) in undertaking any activities for the purposes of this Agreement,

nbn (or its contractors, agents or employees) will rely upon the powers and immunities under Schedule 3 of the Act, to the extent to which such powers and immunities authorise the relevant activities.

(b) The Applicant must give any reasonable assistance which nbn or its contractors, agents or employees requires to enable nbn to rely on its powers and immunities under Schedule 3 of the Act in connection with the Area Switch

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including, without limitation by providing the address details for each of Property Owner and Property Occupier that may be eligible for the Planned Technology.

7.2 Non-statutory consent

To the extent to which rights of access and tenure in relation to the Premises required for activities to be undertaken for the purposes of this Agreement are not able to be secured in reliance on the powers and immunities under Schedule 3 of the Act, the Applicant must provide nbn with such assistance as nbn reasonably requires to obtain the written consent of each Property Owner and Property Occupier to nbn and its contractors, subcontractors, agents and employees entering onto and accessing the Premises, any areas ancillary to the Premises and any shared or common property (if necessary) in undertaking any activities for the purposes of this Agreement.

7.3 Other statutory requirements

(a) The Applicant consents to nbn, its contractors, agents or employees applying for and obtaining all licences, authorisations, permits, approvals and consents necessary for the purposes of this Agreement.

(b) The Applicant must give such assistance to nbn, its contractors, agents or employees as nbn is reasonably required to obtain the licences, authorisations, permits, approvals and consents required under clause 7.3(a).

7.4 Other access requirements

(a) The Applicant must use best endeavours to ensure that any consent given under clause 7.3(a), binds all future Property Owners and Property Occupiers of the Premises.

(b) If nbn, acting reasonably, determines that it requires a temporary licence to any part of the site for the purposes of performing the Area Switch (including for the temporary storage of materials), the Applicant must provide (or, where it is not the owner of the relevant part of the site, it must procure the provision by a relevant Property Owner or Property Occupier of) such a licence to nbn at the time, or times, reasonably required by nbn.

(c) The licence in clause 7.4(b) must enable nbn to:

(i) sub-licence it to any contractor, sub-contractor or agent of nbn;

(ii) have access to the site for the period of time specified in the licence; and

(iii) secure any materials stored on the licensed site.

8. Payment

8.1 Cost

(a) The Applicant must pay nbn the Cost Contribution for the Area Switch.

(b) The Applicant acknowledges that the Applicant and not the Property Owner or Property Occupier represented by the Applicant is responsible for all payments required to be made under this Agreement including:

(i) where a Property Owner or Property Occupier ceases to own or occupy the relevant Premises after the Applicant's acceptance of the nbn Build Quote; or

(ii) where a Property Owner or Property Occupier decides that it no longer wishes to proceed with the Area Switch in respect of its Premises.

8.2 Timing of payment

(a) Following an Applicable Invoice Trigger, nbn will invoice the Applicant for the relevant portion of the Cost Contribution (as set out in the Build Quote) or Break Amount.

(b) The Applicant must pay nbn the full amount set out in an invoice on or before the due date specified in an invoice which is 30 calendar days after the date of the invoice (**Due Date**).

(c) Each invoice issued by nbn will:

(i) set out the amount payable by the Applicant in Australian dollars;

(ii) contain sufficient information to reasonably enable the Applicant to identify the payment to which the invoice relates; and

(iii) comply with all of the requirements of a Tax Invoice under the GST Law.

8.3 Payment

(a) Each payment of an invoice by the Applicant must be:

(i) paid in accordance with a method identified in the invoice;

(ii) paid without any set-off, counterclaim, withholding or deduction, including on account of any amounts owed to the Applicant by nbn or any third party; and

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

(b) If an invoice payment made by the Applicant is dishonoured, then that payment will be treated as not having been received by nbn until it has been received by nbn, together with a reimbursement of any dishonour fees and charges that have been paid, or may be payable, by **nbn** in respect of that dishonoured payment.

8.4 GST

(a) The Cost Contribution includes GST (where applicable). nbn will provide a Tax Invoice to the Applicant no later than 14 days after the day on which any consideration is to be first provided for that supply.

(b) The Applicant must pay all stamp duties, other duties and similar taxes including GST where payable together with any related fees, penalties, fines, interest or statutory charges, in respect of this Agreement.

(c) If a party (**Supplier**) makes a supply under or in connection with this Agreement in respect of which GST is payable by the Supplier (**Taxable Supply**):

(i) the party who provides or is liable to provide the consideration for that Taxable Supply (**Receiver**) must pay to the Supplier, an additional amount equal to the GST payable on the Taxable Supply (**GST Amount**) at the same time as the other consideration is to be first provided for that Taxable Supply;

(ii) if a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by the amount of any input tax credit the other party is entitled to in respect of the loss, cost or expense, and then increased in accordance with clause 8.4(b) if applicable; and

(iii) where GST Amounts are payable between the parties to this Agreement pursuant to clause 8.4(b), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to provide a valid Tax Invoice.

(d) If the GST payable by a Supplier on any supply made under or in connection with this Agreement varies from the GST Amount paid or payable by the Receiver under clause 8.4(b) for any reason, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Receiver.

(e) If an adjustment event occurs in relation to a Taxable Supply, the Supplier must issue an adjustment note to the Receiver in relation to that Taxable Supply within 10 Business Days after becoming aware of the adjustment event.

8.5 Billing errors or disagreement

(a) If an invoice omits or miscalculates any amounts payable under this Agreement, nbn may issue an additional invoice to the Applicant, adjust an invoice submitted to the Applicant or issue a credit to the Applicant to recover or refund the omitted or miscalculated amounts if nbn does so no later than 6 months after the date of the original invoice.

(b) If the Applicant disagrees with any amount set out in an invoice, the Applicant must immediately notify nbn by emailing complex_fibre_upgrades@nbnco.com.au and/or contacting the nbn contact person identified in the Build Quote (**nbn Contact**).

8.6 Failure to pay

(a) nbn's rights under this clause 8.6 are in addition to, and do not exclude or limit, its other rights under this Agreement or by law. Any exercise of nbn's rights under this clause will not waive or prevent the exercise of nbn's other rights or remedies under this Agreement or by law.

(b) If the Applicant anticipates that it will not be able to pay nbn any undisputed amount set out in an invoice under this Agreement by the Due Date, the Applicant must immediately notify nbn in writing.

(c) If the Applicant does not pay the amount set out in an invoice by the Due Date, and has not notified nbn under clause 8.6(b), the Applicant will be in breach of this Agreement.

(d) If the Applicant does not pay any undisputed amount in an invoice under this Agreement by the Due Date, nbn may do one or more of the following:

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(i) recover any overdue amount, plus the reasonable costs of recovery, as a debt due and payable immediately to nbn;
(ii) notify and exchange information regarding the Applicant with nbn's debt collection and credit reporting bodies concerning overdue amounts;
(iii) 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 clause 8.8;
(iv) review and assess the Credit Risk posed by the Applicant in accordance with clause 8.7;
(v) require the Applicant to provide a new, or adjust the amount of an existing, Financial Security in accordance with clause 8.8;
(vi) suspend any Area Switch works the subject of this Agreement until the overdue amount is paid; and
(vii) terminate this Agreement in accordance with clause 11.1(a)(ii).

8.7 Credit Reviews

(a) nbn may assess the Credit Risk posed by the Applicant at any time after the date of this Agreement (**Credit Review**).

(b) If the Applicant becomes aware, or has reasonable grounds for suspecting, that a Credit Review Event will occur or has occurred, the Applicant must notify nbn immediately in writing.

(c) In conducting a Credit Review, nbn may consider and weigh as it considers appropriate any factors nbn reasonably considers relevant, including:

(i) the aggregate value of this Agreement;
(ii) whether the Applicant has an Acceptable Credit Rating; and
(iii) whether the Applicant has been the subject of any claim in respect of amounts owed by it to third parties or any insolvency-related proceedings.

(d) During the course of a Credit Review, the Applicant must co-operate with and assist nbn and any and all of nbn's professional advisers assisting nbn with the Credit Review, including by:

(i) providing access to the Applicant's financial documents, materials and Personnel, and corresponding records of the Applicant's Related Bodies Corporate where those records are relevant to the Credit Risk posed by the Applicant; and
(ii) providing any other information nbn reasonably considers relevant to an assessment of the Applicant's creditworthiness, as soon as is practicable but in any case within 20 Business Days of nbn making a request for information.

(e) If the Applicant fails to provide the assistance requested under clause 8.7(d), it will not be a breach of this clause 8.7 but nbn may determine that such failure increases the Credit Risk posed by the Applicant.

(f) Following the completion of a Credit Review, nbn may, in its absolute discretion, determine the Applicant to be a Credit Risk and:

(i) require the Applicant to provide a Financial Security (including an additional, supplemental or replacement Financial Security) in accordance with clause 8.8; and/or
(ii) change the conditions relating to any existing Financial Security,

in respect of this Agreement.

(g) nbn may take into account any factors it considers relevant to the requirement for a new or varied Financial Security, including the total value of this Agreement and:

(i) the aggregated amount of the Cost Contributions; and
(ii) an amount equal to the reasonable costs of returning the Premises, nbn facilities, and any third party property to their original condition.

8.8 Requests for Financial Security

(a) This clause 8.8 applies to a Financial Security that nbn may require the Applicant to provide in relation to the aggregated value of this Agreement.

(b) The Applicant must:

(i) provide any Financial Security to nbn in the form specified by nbn, and in the amount and containing the terms and conditions specified by nbn, within 15 Business Days of the date that nbn advises the Applicant that it requires that Financial Security; and
(ii) do all things reasonably necessary to give full effect to any Financial Security, such as assisting to perfect that security, where required by nbn acting reasonably.

(c) Failure to provide a Financial Security or a revised Financial Security is a

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breach of this Agreement by the Applicant.

(d) Without affecting any other rights it may have under this Agreement and without limiting the unconditional nature of the Financial Security, nbn may enforce the Financial Security to recover any overdue amount in accordance with clause 8.6 of this Agreement. For the avoidance of doubt, if nbn enforces any Financial Security, but the amount of that Financial Security is not enough to settle the due and payable amount fully, the Applicant remains liable to pay the balance to nbn.

(e) If nbn enforces any Financial Security, the Applicant must within 10 Business Days of that enforcement restore the amount of Financial Security to the level it was at before nbn enforced the Financial Security.

(f) nbn may apply any Financial Security towards payment of the final invoice for amounts payable by the Applicant under this Agreement, including to cover any Break Amount.

(g) The Applicant may request nbn to return any Financial Security and following receipt of such request from the Applicant, nbn will return the Financial Security no later than three months after the later of:

(i) the expiry or termination of this Agreement; or
(ii) the date that the Applicant irrevocably and unconditionally pays to nbn all outstanding amounts payable by the Applicant under this Agreement.

9. Risk of loss or damage

The Applicant bears the risk of and indemnifies nbn from and against (and must pay nbn on demand the amount of) any loss of or damage to property of nbn and any liability to, or claims by, a third party (including arising out of death or personal injury) caused by, arising out of, or in any way in connection with:

(a) a breach of this Agreement by the Applicant; or

(b) any negligence of the Applicant or its contractors, agents or employees, acting within the scope of their authority.

10. Parties' liability to each other

(a) To the maximum extent permitted by law:

(i) nbn is not liable to the Applicant, and the Applicant is not liable to nbn, in respect of any Consequential Loss which may be suffered or incurred arising out of or in connection with the Area Switch; and
(ii) each of:
A. nbn's liability to the Applicant; and
B. the Applicant's liability to nbn,
whether under this Agreement, in tort (including negligence or otherwise), under any statute (to the extent that it is possible to exclude such liability) or otherwise at law or in equity, arising out of or in connection with the performance of nbn's or the Applicant's obligations under this Agreement (as the case may be) is limited to the total charges for the Area Switch paid or payable under this Agreement other than in relation to:
A. liability for personal injury including death; or
B. liability for damage to nbn's, the relevant Property Owner or Property Occupier's or the Applicant's property (as applicable), in which case the aggregate liability (including in respect of all Premises under this Agreement) will be limited to $1 million.

(b) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by the Australian Consumer Law which cannot be lawfully excluded or restricted.

11. Termination

11.1 nbn termination

(a) nbn may terminate this Agreement upon notice to the Applicant:

(i) at any time upon 21 calendar days notice for nbn's sole convenience;
(ii) if the Applicant breaches this Agreement (including not making payments under clause 8.2) and:
A. that breach is not capable of remedy; or
B. if the breach is able to be remedied, the Applicant fails to remedy the breach within 30 calendar days of a notice by nbn requiring the Applicant to do so;

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(iii) if the Applicant fails to provide nbn and its contractors with safe, clear and timely access to carry out the Area Switch under clause 5(a), and fails to remedy the impediment within 30 calendar days of receiving notice from nbn or its contractors;

(iv) if nbn issues a Variation Notice under clause 3.2(a) and the parties fail to agree the variation within 20 Business Days of the Variation Notice being issued;

(v) if, in nbn's reasonable assessment, it is not feasible to proceed or complete the Area Switch due to unanticipated infrastructure limitations, operational or technical constraints, or circumstances outside nbn's control; or

(vi) if an Insolvency Event occurs in respect of the Applicant.

(b) If nbn terminates this Agreement for convenience under clause 11.1(a)(i), or under clause 11.1(a)(v), subject to any legal or regulatory requirements, where nbn has commenced works on Premises which have not yet been completed, nbn will use its best endeavours to ensure that such Premises are remediated to a standard equivalent to the original state of those Premises.

11.2 Applicant notification

The Applicant may notify nbn in writing that it no longer wishes to proceed with the Area Switch, in which case nbn will, within 21 calendar days, notify the Applicant of the Break Amount and request that the Applicant confirm (in writing, within 5 Business Days) that it no longer wishes to proceed with the Area Switch (**Termination Confirmation Notice**).

11.3 Applicant termination

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

(a) the Applicant issues a Termination Confirmation Notice under clause 11.2;

(b) nbn fails to use its best endeavours to complete the Area Switch within a reasonable time period following the Applicant's acceptance of the Build Quote, taking into account:

(i) the extent of design and installation work required for the Area Switch and the resources available to nbn;

(ii) the availability of third party infrastructure for use by nbn; and

(iii) any circumstances that are beyond the reasonable control of nbn and could not have been reasonably foreseen by nbn at the Contract Commencement Date;

(c) the Applicant notifies nbn in writing within 10 Business Days of receiving nbn's response to its feedback under clause 4.2(d) that it does not wish to proceed with the Area Switch, in which case the Agreement will be deemed terminated on the date of that notification; or

(d) nbn issues a Variation Notice under clause 3.2(a) and the parties fail to agree to the variation within 20 Business Days of the Variation Notice being issued.

11.4 nbn termination of build

If nbn identifies that a location or non-premises has been incorrectly identified as a Premises in the Build Quote or this Agreement, and nbn determines (acting reasonably) that it cannot build to that location, nbn may cancel the Area Switch in respect of that location and refund the Applicant the Cost Contribution paid for the cancelled Premises.

11.5 Break Amounts

(a) nbn may issue the Applicant an invoice for the Break Amount if:

(i) this Agreement is terminated due to the Applicant's breach of this Agreement (under clause 11.1(a)(ii));

(ii) the Applicant issues a Termination Confirmation Notice (under clause 11.3(a));

(iii) the Applicant notifies nbn in writing that it does not wish to proceed with the Area Switch (under clause 11.3(c));

(iv) the Applicant fails to provide nbn and its contractors with safe, clear and timely access to carry out the nbn Activities (under clause 11.1(a)(iii));

(v) an Insolvency Event occurs in respect of the Applicant (under clause 11.1(a)(vi)); or

(vi) a party terminates under clause 11.1(a)(iv) or 11.3(d) and the Variation Notice proposes to vary the number of Premises at the request of the Applicant.

(b) Subject to clause 11.5(a)(vi), a Break Amount will not be payable following termination under clause 11.1(a)(iv) or 11.3(d) in circumstances where one Party proposes to reduce the number of

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Premises (for example, as nbn cannot reasonably access the relevant Premises) in accordance with the variation process set out in clause 3.2.

(c) The parties acknowledge and agree that the relevant Break Amount is a reasonable pre-estimate of loss resulting from a termination of this Agreement.

(d) The Break Amount payable will be offset against the Applicant's previous payments to nbn.

(e) If the Applicant's payments that nbn has received as at the date of the notice of termination exceed any Break Amount payable, nbn will refund the excess portion of the payments within a reasonable time.

11.6 Refunds

If this Agreement is terminated under clauses 11.1(a)(i), 11.1(a)(iv), 11.1(a)(v) or 11.3(b), then:

(a) the Applicant will be liable to pay the Cost Contribution for Premises where nbn has completed all nbn Activities for the Area Switch at those Premises; and

(b) nbn will refund any part of the Cost Contribution paid by the Applicant in excess of the amount required under clause 11.6(a) within a reasonable time period.

11.7 Other consequences of termination

If this Agreement is terminated for any reason:

(a) except for its obligations with respect to the Defects Liability Period in clause 4.4 and as otherwise noted in this clause 11.7, nbn does not have any obligation to complete the Area Switch or make it available to the Applicant (including to the Property Owner represented by the Applicant and relevant to the Premises identified in the Build Quote) and, to the extent permitted by law, nbn will not have any liability to the Applicant whether under this Agreement or otherwise in connection with the Area Switch not being completed; and

(b) if the Applicant wishes to proceed with a new Area Switch at the same Premises after termination of this Agreement, the Applicant must submit a new application.

12. Notices

12.1 Communications

(a) nbn may give notices to the Applicant by sending a letter to the Applicant's address (by post or email).

(b) The Applicant's contact person nominated in the Build Quote (or as otherwise notified to nbn) must be authorised to send and receive notices on behalf of each Property Owner represented by the Applicant for the purposes of the Area Switch (**Applicant Contact Person**).

(c) The Applicant may contact nbn by emailing, writing or calling the nbn contact person identified in the Build Quote.

13. Confidentiality and public disclosure

(a) Unless required by law or otherwise agreed by nbn, the Applicant must not use or disclose to any person or make public any information disclosed by nbn under this Agreement, for any purpose.

(b) The Applicant must not use nbn's name, trademarks or service marks directly or indirectly, including in any media release or interview, public announcement, public disclosure, promotion or marketing materials, customer or client lists, business presentations or otherwise communicate with the press, radio or television, without prior written approval from nbn.

(c) nbn may disclose information it has obtained from the Applicant to any Minister of Parliament (or their corresponding Department) on the written instruction or request of nbn's shareholders.

(d) Without limiting clause 13(c), and on the written instruction or request of nbn's shareholders, nbn may publish key information including the Applicant, subject matter, term and value (whether on nbn's website or otherwise).

14. Disputes

(a) Any dispute or difference which arises between nbn and the Applicant in respect of any fact, matter or thing arising out of, or in any way in connection with this Agreement (**Dispute**) must be resolved in accordance with this clause 14.

(b) Where such Dispute arises, either party may give a notice in writing to the other party specifying the Dispute and the position which the party believes is correct (**Notice of Dispute**).

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(c) If a Notice of Dispute is served, persons detailed in the Build Quote (or their nominated delegates) of each party must meet and negotiate with a view to resolving the Dispute.

(d) If the Dispute is not resolved within 20 Business Days of service of the Notice of Dispute (or such other period agreed by the parties in writing), then, subject to the parties' right to seek injunctive or urgent declaratory relief, either party may refer the Dispute to arbitration conducted in accordance with the Resolution Institute Arbitration Rules by notice to the other party.

(e) Any Dispute which is referred to arbitration will be conducted before a person to be:

(i) agreed between the parties; or
(ii) failing agreement within 10 Business Days after the referral of the Dispute to arbitration, a person nominated by the Resolution Institute.

(f) Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a Dispute.

(g) This clause 14 does not apply to, and does not effect, any termination or purported termination of this Agreement by nbn.

15. General

(a) This Agreement is to be construed in accordance with the laws applicable in New South Wales.

(b) A party may execute this Agreement (and any variation and renewal of this Agreement) with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted technology which the parties agree satisfies applicable requirements for execution by digital signature of the document (including requirements of the *Electronic Transactions Act 1999* (Cth) and any equivalent State or Territory legislation). A party who receives such a digital signature may assume that such execution was validly and lawfully performed by the other party.

(c) If the Applicant requires reassignment or transfer of this Agreement, the Applicant needs to obtain permission from nbn.

(d) nbn may reassign or transfer any of its rights or obligations under this Agreement.

(e) A reference to nbn includes its successors, permitted substitutes and permitted assignees.

(f) A reference to law or to a provision of a law includes a change to it or a re-enactment of it, a provision substituted for it and a regulation or statutory instrument issued under it.

(g) A reference to "includes" or "including" means without limitation.

(h) A reference to a "Schedule" is a reference to a Schedule of this Agreement, unless the context provides otherwise.

(i) If part of this Agreement is not legally enforceable, that part will be severed from this Agreement. All other parts of the Agreement will continue with full effect.

(j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement.

(k) "Reasonable endeavours" or any similar expression does not require the payment of money or the provision of any financial benefit.

(l) A monetary amount is to that amount in Australian dollars and all amounts payable in connection with this Agreement are payable in Australia dollars.

16. Definitions

Acceptable Credit Rating means long term credit rating for senior unsecured indebtedness of at least BBB from Standard & Poor's Ratings Group, or an equivalent rating from a reputable international rating agency.

Acceptable Insurer means an insurer which is:

(a) a reputable APRA authorised insurer;

(b) APRA exempt and maintains a 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 (which consent must not be unreasonably withheld).

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

Agreement has the meaning given in clause 1.1(a).

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Applicable Invoice Trigger means for:

(a) the Cost Contribution, the invoice triggers identified in the Build Quote; and

(b) a Break Amount, a determination by nbn that a Break Amount is payable in accordance with clause 11.5(a).

Area Switch has the meaning given in clause 4.1(a).

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Authority means the authorisation provided directly to the Applicant by the Property Owner which authorises the Applicant to act as its authorised representative in respect of the Area Switch including:

(a) authorising the Applicant to commence the process of placing an application with **nbn**; and

(b) authorising the entry into this Agreement by the Applicant on behalf of the Property Owner,

for the Area Switch in respect of the Premises and to use information relevant to the Property Owner's personal particulars and affairs for that purpose.

Break Amount means the amount calculated as follows:

(a) if the Area Switch is in the Planning and Design Phase at the time of the relevant termination (as determined by nbn, acting reasonably), 70% of the Cost Contribution;

(b) if the Area Switch is in the Build Phase at the time of the relevant termination (as determined by nbn, acting reasonably), 85% of the Cost Contribution; and

(c) if the Date of Practical Completion has occurred at the time of the relevant termination, 100% of the Cost Contribution.

Build Phase means the phase starting on the day when nbn commences build activities at any Premises after the Planning and Design Phase and ending on the Date of Practical Completion.

Build Quote means the build quote document to which these Terms and Conditions attach.

Business Day means a day which is not a Saturday, Sunday, bank holiday or public holiday in the State or Territory in which the Area Switch is performed.

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.

Common Area Premises include shared or communal areas within the MDU, such as lobbies, carparks, rooftops, basements and areas housing energy systems (such as solar or water infrastructure). For clarity, Common Area Premises do not include non-premises areas that the Build Quote does not identify. Lift and fire alarm systems located in Common Area Premises will not operate during a power outage unless the Applicant provides an independent battery back-up.

Connection Processes means the processes and work required to connect the Premises to the National Broadband Network and to activate a National Broadband Network-based service.

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

(a) loss of profit;

(b) loss of revenue;

(c) loss of goodwill;

(d) loss of business opportunity;

(e) compensation, charges or other liability arising out of network disruption or network performance; or

(f) without limiting paragraphs (a)–(e), losses other than those losses that may fairly and reasonably be considered as naturally (i.e. according to the usual course of things) flowing from the breach of this Agreement as the probable result of the breach of this Agreement,

but excludes:

(g) nbn's fees and charges relating to the Area Switch; and

(h) the Break Amount.

Contract Commencement Date means the last date of execution by the parties in the Build Quote.

Control has the meaning set out in section 50AA of the *Corporations Act 2001* (Cth).

Cost Contribution means the Cost Contribution identified in the Build Quote.

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Cost Contribution per Premises means the Cost Contribution per Premises identified in the Build Quote.

Credit Review has the meaning given in clause 8.7(a).

Credit Review Event means the occurrence of any of the following in respect of this Agreement:

(a) the Applicant fails to pay nbn any amount due;

(b) nbn has reasonable grounds to believe that the Credit Risk posed by the Applicant is materially increased, or will materially increase;

(c) nbn has reasonable grounds to believe that the Applicant is, or is likely to be, subject to an Insolvency Event;

(d) there is, or in nbn's reasonable opinion is likely to be, a substantial increase in the amount of the Cost Contribution payable by the Applicant;

(e) nbn has issued a notice of rectification or termination to the Applicant; or

(f) there is a Change in Control of the Applicant.

Credit Risk means an unacceptable risk for **nbn** (as determined by nbn) that the Applicant is unable to pay all the Cost Contribution and other amounts payable under this Agreement to nbn in full and promptly as they fall due.

Date of Practical Completion means the date the Area Switch has been completed for all relevant Premises.

Defect means any defect, shrinkage, fault or omission in the works for the Area Switch, but does not include minor damage caused by a person other than nbn (or its contractors).

Defects Liability Period has the meaning given in clause 4.4(b).

Dispute has the meaning given in clause 14(a).

Due Date has the meaning given in clause 8.2(b).

Financial Security means an unconditional guarantee from either an entity registered as an Authorised Deposit-taking Institution by the Australian Prudential Regulation Authority, or an insurer regulated by the Australian Prudential Regulation Authority under the *Insurance Act 1973* (Cth), which has an Acceptable Credit Rating.

GST has the meaning given in the GST Law.

GST Amount has the meaning given in clause 8.4(c)(i).

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

Infrastructure means any equipment or civil, mechanical or electrical engineering works installed or used by nbn including but not limited to any optic fibre cables, fixed wireless towers and associated equipment.

Instalment have the corresponding meanings given in the Build Quote.

Insolvency Event means any of the following events occurring:

(a) a receiver, manager, receiver and manager, trustee, administrator, Controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) or similar officer is appointed in respect of that party or any asset of that party;

(b) a liquidator or provisional liquidator is appointed in respect of that party or the party is wound up;

(c) an application is made to court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of appointing a person referred to in paragraphs (a) or (b);

(d) a scheme of arrangement is entered into (and that application is not withdrawn or dismissed within 10 Business Days);

(e) a moratorium of any debts of the party, or an official assignment or a composition of or an arrangement (formal or informal) with any creditors of that party (or similar proceedings or arrangements by which the assets of the party are subjected to the control of the party's creditors), is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 10 Business Days;

(f) the party becomes, admits in writing that it is, is declared to be or is deemed under any applicable Law to be, insolvent or unable to pay its debts;

(g) any writ of execution, garnishee order, mareva injunction or similar order is made, levied or issued against, or in relation to, any asset of the party; or

(h) any act is done or event occurs which under the Laws of any country other

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than Australia has an analogous or similar effect to any of the events in paragraphs (a) to (g).

MDU means the Multi-Dwelling Unit identified in the Build Quote.

National Broadband Network means the national telecommunications network owned or controlled by, or operated by or on behalf of, nbn or a related entity.

nbn Activities has the following meaning:

(a) inclusions:

(i) supply and installation of fibre and NTDs inside each Premises. Where nbn or its contractors are not granted access inside a Premises, nbn will complete the installation to a point that enables the Property Occupier to order an nbn service through their preferred RSP and the supply and installation of fibre and NTDs will be deemed to have met this inclusion;
(ii) associated fibre preparation, splicing and cable preparation;
(iii) restoring brick, concrete, or fire wall to the fire safety requirements as required if modifications are made to the wall;
(iv) supply and installation of appropriate fire stopping method as required;
(v) commissioning of all nbn equipment;
(vi) nbn construction partner contacting the Applicant and notifying a construction schedule with indicative delivery timeframes; and
(vii) end to end project management; and

(b) exclusions:

(i) any site management and/or access approvals, which will be the responsibility of the Applicant;
(ii) migration of existing services over to the Planned Technology connection. To request this migration, the Property Occupier should contact an RSP; and
(iii) providing services to the Premises, such as landline phone and broadband. To request these services, the Property Occupier should contact an RSP.

Notice of Dispute has the meaning given in clause 14(b).

NTDs means Network Termination Devices.

Other Contractor means any contractor, supplier or other person engaged by the Applicant.

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

Planned Technology has the meaning given in the Build Quote.

Planning and Design Phase means the phase starting on the Contract Commencement Date and ending the day before the Build Phase, during which nbn carries out preparatory and design activities including the site survey and design development.

Premises means the premises identified in the Build Quote which is the subject of the Area Switch, which includes Common Area Premises.

Property Occupier means the occupier of a Premises identified in the Build Quote, which is the subject of the Area Switch (which may include a Property Owner).

Property Owner means the owner of a Premises identified in the Build Quote, which is the subject of the Area Switch.

Receiver has the meaning given in clause 8.4(c)(i).

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

RSP means a retail service provider.

Supplier has the meaning given in clause 8.4(c).

Tax Invoice has the meaning given in the GST Law.

Term means the period from the Contract Commencement Date until the date the Defect Liability Period ends.

Termination Confirmation Notice has the meaning given in clause 11.2.

Variation Notice has the meaning given in clause 3.2(a).

90 Day Bank Bill Swap Rate for any period means:

(a) the rate which is the average of the bid rates shown at or about 10.30 am (Sydney time) on page "BBSY" on the Reuters Monitor System on the first day of that period for a term equal to 90 days; and

(b) if:

(i) the rate referred to in paragraph (a) of this definition is replaced or

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the service referred to in paragraph (a) of this definition ceases to be available; or

(ii) the basis on which the rate referred to in paragraph (a) of this definition is calculated or displayed changes after the date of this Agreement and nbn determines that the rate ceases to reflect nbn's cost of funding to the same extent as at the date of this Agreement,

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

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