



**nbn™ Regional Co-Investment
Fund
Guidelines**





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1 Message from the CEO

At nbn, we are driven by a simple purpose: to lift the digital capability of Australia.

This is a purpose that is about more than just helping to connect homes and businesses to the internet. It is about providing homes, businesses, cities, towns and communities with access to the digital tools and services that will help enable us to be a productive, socially connected and prosperous nation.

Throughout the social and economic disruptions of COVID-19, the importance of broadband connectivity has only increased. What was once thought of as a simple utility has now become the digital lifeline that allows us to stay connected with each other and the world.

This shift has had a particularly powerful effect in rural and regional Australia where we have seen people relocate from their city homes - but not their city jobs - thanks to the connectivity made possible through access to services like those over the **nbn**TM network.

As Australia's digital landscape continues to grow, we too must evolve with it. That means continually investing in the technologies and infrastructure that underpin our transition to a smarter, digitally-enabled economy.

That's why in September 2020, we announced the next phase of **nbn**'s evolution. This \$4.5 billion investment over the next three years will increase the capability, reach and value of this critical asset for the nation.

This is an investment that will also increase our focus on how we better serve industries, businesses, schools and health services so they too can transform and deliver better service, be more productive and create new sources of value for society.

As part of this investment, we established a \$300 million Regional Co-Investment Fund to further enhance broadband services for rural and regional households, businesses and communities to help meet the growing and diverse needs of Australians living in regional areas.

By co-investing with governments and local councils we can continue to improve access to broadband services for Australia's rural and regional communities, enhance digital capability and boost job prospects to help our regions thrive.

With greater connectivity and access, comes great opportunities. I am excited about the opportunities we can realise together.

Stephen Rue



2 Background

2.1 About nbn

NBN Co Limited (**nbn**) was established in 2009 to design, build and operate Australia’s wholesale broadband access network (i.e. the **nbn**[™] network). The Company’s key objective is to ensure Australians have access to fast broadband as soon as possible, at affordable prices, and at least cost to taxpayers. To achieve this objective, **nbn** has been structured as a wholesale-only, open-access broadband network. **nbn** provides services on its local access network on equivalent terms to retail phone and internet providers, to provision for end-user needs. This is intended to level the playing field in Australian telecommunications, creating real and vibrant competition within the industry and providing choice for customers.

In 2020 **nbn** completed its initial build¹ of the **nbn**[™] network and is now moving from its build to operational phase which will involve operating, maintaining, and continuing to expand and upgrade the network to meet future demand for broadband. It is in this context, **nbn** made a commitment in late 2020 to invest in the **nbn**[™] network through a \$4.5 billion, three-year, network upgrade plan which will build upon the platform already established over the last decade. This plan will capitalise on the positive social and economic benefits the **nbn**[™] network can deliver to households, businesses, communities and the country as a whole.

2.2 nbn’s Network Investment Plan

Having completed the initial build¹ of one of the largest infrastructure projects in Australia’s history, **nbn** is now focused on the next stage in the planned evolution of the **nbn**[™] network.

The network investment plan brings forward \$4.5 billion of incremental funding to accelerate network investments that would have been required to commence in future years, based on the pre-COVID-19 trajectory for broadband demand, but which now make financial and economic sense to commence immediately.

The plan is designed to deliver targeted and demand-driven investments to help ensure the network keeps pace with increasing demand for higher broadband speeds and greater capacity, helping to lift customer experience and enhance customer choice while improving network performance and resilience.

The network investment plan has three components:

1. \$3.5 billion to make **nbn**’s highest wholesale speed plans available, as demand arises, to up to 75 per cent of households and businesses in the fixed-line network by 2023 (and up to 68 per cent in the total network)
2. Up to \$700 million in a package of initiatives to collaborate with industry to help deliver enhanced digital capabilities supporting business innovation, productivity and growth (known as Business Fibre Zones), and

¹ NBN Co’s initial volume build completion commitment was that all standard installation premises in Australia would be able to connect to the **nbn**[™] access network as at 30 June 2020. This excluded premises in future new developments which would be an ongoing activity for NBN Co beyond 30 June 2020. It also excluded a small proportion of premises defined as ‘complex connections’ – which includes properties that are difficult to access, culturally significant areas and heritage sites – where connection depends on factors outside of NBN Co’s control such as permission from traditional owners, and where network construction to allow such premises to connect would be an ongoing activity of NBN Co beyond 30 June 2020.



3. \$300 million to establish a dedicated fund from which **nbn** can co-invest with all levels of government to continue to improve broadband services for Australia's rural, regional and remote communities – the Regional Co-investment Fund (the Fund).

Aside from the immediate economic stimulus impact through construction, **nbn**'s network investment plan will provide long-lasting benefits through extending the reach, speed and capacity of the **nbn**TM network and lifting the digital capability of Australia.

2.3 Program purpose and objectives

The purpose of the Regional Co-Investment Fund (the Fund) is to further enhance broadband services for rural and regional households, businesses and communities to help meet the growing and diverse needs of Australians living in regional areas.

The \$300 million (GST exclusive) fund invites federal, state and territory and local governments to co-invest alongside **nbn**, to help deliver improved broadband services to communities where those investment would otherwise be sub-commercial.

The Fund aims to:

- improve broadband services for Australia's regional rural and remote communities;
- strengthen relationships with government, industry and communities to optimise customer benefits,
- provide immediate economic stimulus through infrastructure enhancements; and
- help regional and rural communities realise the socioeconomic benefits that access to high-speed broadband can unlock.

The Fund is intended to deliver access to higher speed wholesale broadband services over the **nbn**TM network to households and businesses in regional and remote areas of Australia and, in turn, promote socioeconomic benefits such as improvements in regional digital inclusion and capability which lead to better outcomes for health, educational, business, disaster recovery and first nations stakeholders.

nbn encourages all levels of governments where possible, to work together with **nbn** to help maximise benefits for regional Australia.

2.4 Key Principles

The design of the Regional Co-Investment Fund incorporates the following four principles:

1. Projects to deliver enhanced broadband infrastructure in **nbn**'s regional footprint.
2. Funded applications are required to deliver a threshold commercial rate of return to **nbn**.
3. Projects to deliver socioeconomic benefits for the target localities.
4. Equitable access to the Regional Co-investment Fund for all states and territories.

In addition, as part of the proposal application, **nbn** will retain 100% ownership of the infrastructure asset and as such, will be responsible to maintain the asset and be the sole recipient of any revenues derived from the asset.



3 Regional Co-Investment Fund Design

3.1 Availability of funds

In 2020, **nbn** established a \$300 million (GST exclusive) fund using money raised on commercial debt markets. Since the fund has been established, **nbn** has leveraged the fund to participate in other connectivity programs, such as the Commonwealth's Regional Connectivity Program. Funding allocations will be adjusted where necessary to take account of any investments **nbn** is required to make, and any additional funding received, under other programs that **nbn** has already applied for or will apply for in future. **nbn**'s participation in other programs that may utilise the Fund are at **nbn**'s discretion.

3.2 Key Dates

The table below sets out a timeline of the key milestones for the process. The timetable is indicative only.

Activity	Estimated timeframe
Guidelines released and applications open	23 June 2021
Closing date for receiving build estimate requests	5pm 1 October 2021 (AEST)
Closing date for receiving build quote requests	5pm 19 November 2021 (AEDT)
Closing date for receipt of Applications	5pm 18 February 2022 (AEDT)
All upgrade work expected to be completed by	30 June 2024

If the full allocation of funds is not used for co-investment, **nbn** may make the remaining funds available for co-investment in one or more subsequent funding round(s) which may use different criteria to those outlined in these guidelines. Alternatively, **nbn** may choose to extend the closing date for receipt of applications.

Details of any future funding rounds will be determined at a later stage.

nbn intends to complete all works associated with the Fund, including any subsequent funding rounds, by 30 June 2024. It is recommended that applicants submit their applications under this initial round of funding to maximise the time available for completing projects within this timeframe.

3.3 Fund Design

nbn recognises that eligible applicants may have differing priorities and timelines which mean adhering to a tight time period in which to apply may not be practicable. To facilitate broad participation in the Fund, the initial round of the Fund will run for a period of 8 months (see **Section 3.2** of the Guidelines for key dates). During this time, applications will be assessed in the order in which they are received, subject to funding allocation limits, allowing applicants who are ready to apply early in the process to do so, whilst not excluding those applicants who may not be prepared to apply until later in the funding round.

3.4 Allocation of funds

A key design principle of the Fund is to facilitate equitable access to the Fund across states and territories, and by all levels of government. Given the primary focus of the Fund is to upgrade **nbn**'s Fixed Wireless and Satellite footprint, initial maximum allocations for each State and Territory will be based on the weighted proportion of Fixed Wireless and Satellite premises which are Ready to Connect (RTC) within that State or Territory.

By providing access to the Fund on this basis, all levels of government across Australia have an opportunity to leverage funding to deliver projects that are a high priority for the relevant area and can help address their digital



strategies. **nbn** encourages all levels of governments where possible, to work together with **nbn** to maximise benefits for regional Australia.

Eligible Applicants can contact **nbn** by emailing Regional_Co-Investment_Fund@nbnco.com.au to enquire on the amount of remaining available funds in their state or territory.



4 Eligibility and Assessment Criteria

nbn intends to assess Applications as a 'Yes'/'No' against the requirements described in these Guidelines. Projects will not be competitively assessed across Applicants.

4.1 Eligible Project Types

The fund is designed to uplift digital capability in regional and remote areas, outside capital cities, that are served by **nbn**'s Fixed Wireless or Satellite infrastructure, by increasing the number of premises that can access technologies that support higher speeds.

The types of projects that are eligible under the fund are:

1. Satellite or Fixed Wireless to Fibre to the Premises
2. Satellite to Fixed Wireless.

Other technology change options may be considered on a case by case basis where:

- the majority of premises included in the Application are currently connected via **nbn**TM Fixed Wireless or Satellite,
- the upgrade does not overlap with **nbn**'s other programs or future network plans in that area,
- the upgrade would deliver significant community benefit; and
- the project is not located in any Urban Centre classified by the Australian Bureau of Statistics as 'Major Urban', i.e. with a population of 100,000 or more ².

A map showing the currently planned **nbn**TM technologies is available at www.nbnco.com.au/residential/learn/rollout-map.

4.2 Eligible Applicants

All levels of government (Federal, State and Territory and Local) are eligible to apply in accordance with the other criteria in this document.

4.2.1 Co-investment with third parties

nbn recognises that some governments may seek to source financial co-contributions for their projects beyond **nbn**'s Regional Co-investment Fund (e.g. other third parties). **nbn** will not enter into a co-investment agreement with any non-government parties.

It is a requirement that all applications must demonstrate significant, broader benefit to multiple individuals, businesses and/or organisations, not just private third parties. See **Sections 4.4 and 4.5**.

Cross-border collaborative applications for projects are acceptable under the Fund (e.g. a proposed technology upgrade for a border community such as Albury-Wodonga), however the application should make clear which local, state or territory government(s) are co-investing with **nbn**.

² Based on ABS Release — 1270.0.55.004 — Australian Statistical Geography Standard (ASGS): Volume 4 — Significant Urban Areas, Urban Centres and Localities, Section of State, July 2016. A map showing the 2016 Australian Bureau of Statistics Section of State boundaries is available at: <https://dbr.abs.gov.au/absmaps/index.html>



4.2.2 Existing government programs for regional connectivity

nbn recognises that some governments administer their own programs focussed on improving connectivity in regional Australia, for example the Commonwealth Regional Connectivity Program.

nbn will consider using the Fund to support its participation in other government programs where this arrangement is preferred by the applicant, and the program meets the Fund's principles discussed in this document.

4.3 Co-contribution

The fund has been established using money raised on commercial debt markets. As a result, it is required for **nbn** to achieve a threshold commercial return on the company's investment. The Fund's co-investment model will provide a dedicated source of funding through partnering with governments and enabling **nbn** to generate a threshold commercial return on its contributed capital to make otherwise sub-commercial projects viable for **nbn**. See **Section 4.3.1** for information on how co-contribution amounts are determined.

4.3.1 Determining required co-contribution amounts

nbn's ability to co-contribute towards potential projects relates to a number of factors including cost to build, potential revenue, impact to operating costs and assessment of applicable cost avoidance opportunities.

A project is a geographically contiguous area that is covered by one build estimate or build quote. Each Project cost will be based on a range of factors.

For example, factors which may influence build costs include, but are not limited to the:

- type of technology currently deployed and technology to be deployed (e.g. Satellite to Fixed Wireless, Satellite or Fixed Wireless to Fixed Line);
- number and density of premises in the area being upgraded;
- distance to existing infrastructure such as **nbn**TM fibre backhaul;
- local conditions and terrain; and
- workforce mobilisation costs.

The potential revenue will be relatively defined and understood based on population, current usage and forecast demand.

By applying the same commercial return requirement to the analysis of each Project, **nbn** intends to develop a level playing field and consistent benchmark by which to measure and compare projects. This process will involve determining what percentage of overall costs **nbn** can contribute to the upgrade of each locality, and the percentage of total costs which will need to be contributed by applicants of the Fund in order to achieve **nbn**'s threshold commercial return.

To assist applicants through the Application process, **nbn** will prepare a business case for each proposed locality to provide applicants with an indicative build cost and **nbn**'s co-contribution towards each project, **see Section 4.3**. The business case will consider a range of factors including the expected capital and operational costs to deliver the technology upgrade, as well as any expected variation in revenues, timings of cash flows or cost savings resulting from the upgrade. The business case, together with **nbn**'s commercial return obligation, determine the overall percentage contribution **nbn** can make towards upgrading any given locality. This approach will be applied to all applications and enables a fair and standardised approach to determining **nbn**'s level of co-contribution.



Factors which may influence revenue and cost efficiencies include, but are not limited to the:

- number of premises in the area being upgraded;
- existing take-up of services over the **nbn**[™] network in an area and predicted take-up of services once upgrade is complete; and
- cost that would have been incurred to maintain existing infrastructure (e.g. Fixed Wireless capacity upgrades).

4.3.2 In-kind contributions

In-kind contributions for the use of existing infrastructure, may be considered by **nbn** on a case-by-case basis. However, due to the difficulty in **nbn** qualifying the value of in-kind contributions, most will generally not be considered in the development of build estimates or quotes.

The only exception is for projects upgrading Satellite areas to Fixed Wireless, where build estimates or quotes may include the value of Land or Tower Assets use proposed by an Applicant, subject to meeting **nbn**'s requirements.

In-kind infrastructure proposals other than Fixed Wireless Land or Tower Assets will be considered and assessed after contract execution, but prior to commencing build. If **nbn** determines that the in-kind contribution provides significant benefit to the project and is deemed feasible, then the co-funding amounts required from the applicant and **nbn** may be adjusted accordingly through a contract variation.

nbn will not assess any labour or services-based in kind contributions.

Please note, **nbn**'s acknowledgement of an applicant's proposal for in-kind contribution does not signal commitment by **nbn** that it will use the proposed in-kind contribution.

4.4 Projects to deliver social and economic benefits to regional Australia

Applicants will be asked to provide details of expected social and economic benefits for each project in their application and provide evidence to support claims (this could include letters of community support, business plans, strategic plans, or economic modelling). In their Application, Applicants are asked to consider how each project addresses the following principles when preparing a response:

- Enhances broadband connectivity to better meet the growing and diverse needs of the region's households, businesses and communities
- Addresses disadvantage within the community. This may include addressing lower rates of digital inclusion, providing affordable services to places with entrenched disadvantage, or providing people who are excluded with improved opportunities to access support services.
- Improves regional amenity, community connections and inclusion. This may include improving affordability, providing services that help to attract and retain a workforce or enhancing cultural heritage.
- Facilitates provision of more efficient and effective health or education services, including improved access to health or education resources in the home.
- Increases in employment opportunities or economic activity (beyond the construction phase), improvements in productivity, wider access to markets or fairer and more equitable economic outcomes, particularly for Small to Medium Enterprises (SMEs) in regional areas.
- Provides opportunities for growth in existing sectors, e.g. tourism, agriculture, manufacturing.



- Delivers better public safety outcomes within a defined area by enhancing connectivity and improves the effectiveness, resilience or safety of Public Safety Premises.
- Focusing on opportunities for investment to be leveraged with broader infrastructure planning, to maximise potential efficiencies.

4.5 Activities ineligible for funding

The following activities will not be eligible under the Fund:

1. Costs incurred by applicants in the preparation of the application for funding or related documentation
2. Ongoing operating and maintenance costs incurred by the Applicant
3. Projects that benefit one or more private third parties exclusively, as opposed to benefiting the community
4. Projects that target less than 50 premises or are under \$500k total build cost.



5 Application Process

As outlined in Figure 1, the following steps outline the application process:

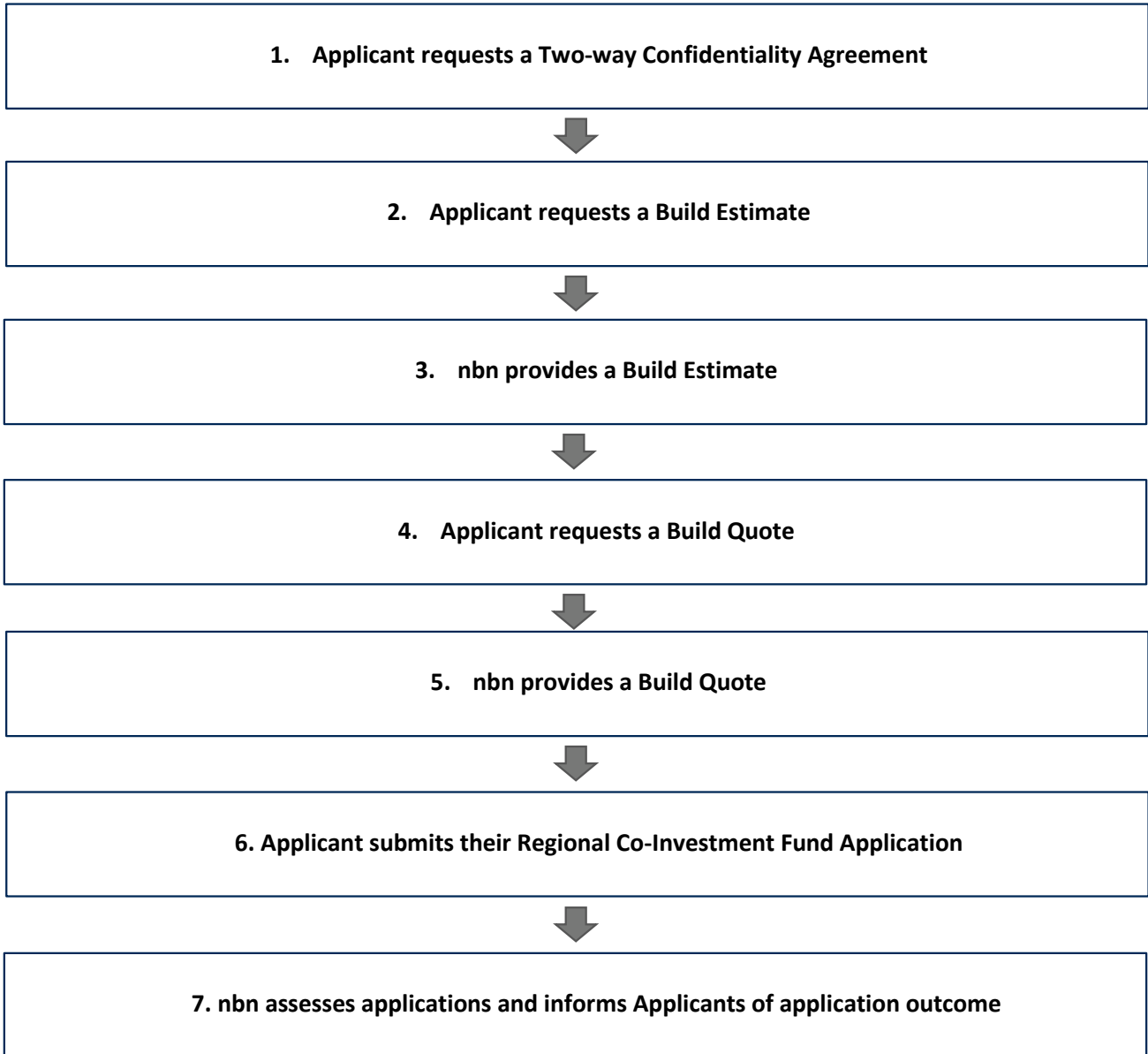


Figure 1 – Application Process

As the Applicant moves through the process, any documents that the Applicant needs to fill out will be provided by **nbn** as they are required.

As outlined in Figure 1, the following steps outline the application process:

1. Sign Two-way Confidentiality Agreement

Due to the commercial and confidential nature of information that will be shared with applicants, a Two-way Confidentiality Agreement must be in place prior to these discussions. To request a Two-way Confidentiality Agreement, Eligible Applicants can email Regional_Co-Investment_Fund@nbnco.com.au and include their **nbn**TM Representative (as defined in Appendix A - the person in **nbn** you normally interact with, for example, a representative from **nbn**TM Local, **nbn**TM Community & Stakeholder Engagement or **nbn**TM Government Relations).



If Eligible Applicants do not know who their **nbn**[™] Representative is or require additional information, they can email Regional_Co-Investment_Fund@nbnco.com.au. Your **nbn**[™] Representative will be your point of contact throughout the application process however any official communications as part of the Application Process should be sent to Regional_Co-Investment_Fund@nbnco.com.au to ensure they are received and properly recorded.

Once a Two-way Confidentiality Agreement is in place, **nbn** will provide the applicant with a Build Assessment Form.

2. Applicant requests a Build Estimate

A build estimate is a high-level desktop study which assesses the expected costs and revenue associated with the proposed project. It provides Applicants with an estimate of the total build costs, **nbn**'s indicative contribution and the co-investment Applicants will be required to contribute.

To request a build estimate, the applicant completes a Build Assessment Form in which they describe the details of the location to be assessed. One Build Assessment Form can be used for multiple locations. Any in-kind proposals need to be noted in the Build Assessment Form.

We recommend build estimates are requested as early as possible, to enable time for **nbn**[™] to process these requests and allow sufficient time for Applicants to gain any necessary internal approvals. Applicants will need to submit their Build Assessment Form to Regional_Co-Investment_Fund@nbnco.com.au, copying their **nbn**[™] Representative.

3. nbn provides a Build Estimate

nbn will develop the build estimate and, if an NDA has been signed by the applicant, provide the applicant with a Build Estimate Letter, which includes a copy of the proposed boundaries. If, based on the details in the Build Estimate Letter, the applicant would like to make changes to what is being assessed, they can update their Build Assessment Form and re-submit it. **nbn** will then provide the applicant with an updated Build Estimate Letter.

A Funding Strategy Proposal will also be provided with the Build Estimate Letter which will need to be completed if the applicant wants to proceed to a formal build quote. Please note the Build Estimate Letter will have a 60-day validity period.

If you have requested consideration of Land or Tower Asset in-kind contributions (see **Section 4.3.2**), we will ask you to complete an In-Kind Assessment Form which will be provided by **nbn** if required.

4. Applicant requests a build quote

A build quote is a more comprehensive assessment of the proposed project. It provides applicants a fixed quote for the total build costs and required co investment they will be required to contribute.

To request a build quote, the applicant updates the Build Assessment Form with their selected localities and submits it to **nbn**. Due to the significant amount of resource required by **nbn** to develop a quote, the applicant is also required to complete a Funding Strategy Proposal. The Funding Strategy Proposal demonstrates to **nbn** that the applicant has considered how they will potentially fund the proposed project/s. The letter must have details of how the applicant intends to fund the proposed project based on the Build Estimate contribution requirement.

We recommend build quotes are requested as early as possible, to enable time for **nbn** to process these requests and allow sufficient time for Applicants to gain any necessary internal approvals. Applicants will need to submit their Build Assessment Form and Funding Strategy Proposal to Regional_Co-Investment_Fund@nbnco.com.au, copying their **nbn**[™] Representative.



5. nbn provides a Build Quote

nbn will develop the build quote and provide the applicant with a Build Quote Letter. If, based on the details in the Build Quote Letter, the Applicant would like to make changes to what is being assessed, they can update the Build Assessment Form and re-submit it with their Funding Strategy Proposal to **nbn**. **nbn** will then provide the applicant with an updated Build Quote Letter. Note that the Build Quote Letter will have a 60-day validity period. After this date, a new build quote request needs to be made by re-submitting the Build Assessment Form and Funding Strategy Proposal to Regional_Co-Investment_Fund@nbnco.com.au, copying their **nbn**TM Representative.

6. Applicant submits Application

If the Applicant wishes to apply for RCIF Funds, the Applicant completes and submits a completed Application Form, attaches the supplied Build Quote Letter, and other supporting material and submits it to **nbn**. Applicants will be required to complete an accountant declaration and will need to provide a Letter of Support for any funding partners as part of the Application Form. Successful Applicants will be required to enter into a commercial agreement with **nbn**. Applicants must submit their applications to **nbn** via Regional_Co-Investment_Fund@nbnco.com.au, copying their **nbn**TM Representative, at any time up until the Closure Date (**5.00pm AEST on 18 February 2022**). In extenuating circumstances, late applications may be accepted at the sole discretion of **nbn**. Only applications received to this email address will be eligible. Note that the primary contact will be emailed with a receipt of the submitted application to confirm that the application has been received and will be **nbn**'s point of contact regarding the application.

7. nbn assess applications and inform Applicants of application outcome

Upon receiving the Application, **nbn** will aim to review the Application within 20 Business Days:

- During the Application Process, where the Application has not been completed correctly, or **nbn** reasonably forms the view that it is not a Conforming Application, **nbn** may contact the Applicant and work with them to obtain required information or ask them to re-submit when ready. Please note **nbn** is not under any duty to check Applications for completeness or accuracy.
- Where the application has or appears to have been completed correctly, **nbn** may then assess the application against the program eligibility requirements and may then proceed with assessment of the application against the criteria detailed in **Section 4**.
- When assessing applications, **nbn** may utilise information obtained from other sources.

If the application is successful, **nbn** will notify the Applicant and reserve **nbn**'s contribution funds towards this application and aim to commence contract negotiation process within 30 Business Days. Please note, **nbn** co-contribution may be reserved but is not committed until a commercial agreement has been entered into by the Applicant and **nbn**. Please refer to the Application Validity Period and Binding Obligations in **Section 3.4** of Appendix A.

If the application is unsuccessful, **nbn** will notify the Applicant in writing of the outcome.

Applicants must comply with the Process Terms and nothing in the above limits or otherwise alters the Process Terms.

5.1 Contact information

If you have any questions or require further information, please contact your **nbn**TM Representative or email Regional_Co-Investment_Fund@nbnco.com.au.



Appendix 1- Process Terms

1 Definitions and Interpretation

1.1 In these Guidelines and the Application documents:

AEST means Australian Eastern Standard Time.

Applicant means the persons that are eligible to apply for the Regional Co-investment Fund.

Application means any material submitted by an Applicant during the Application Process including any amendments or supplementary information lodged by an Applicant.

Application Process means the process set out in the Guidelines commencing on the date the Guidelines are issued by **nbn** and ending on the date on which a Contract is executed, or such earlier date that the process is terminated by **nbn** (if any).

Application Validity Period means the period of time that the Application must remain open for acceptance by **nbn**, being the period commencing on the date the Application is submitted, and ending on either:

- (a) the date on which the Applicant is notified that the Application is not successful; or
- (b) the date on which a successful Applicant commences negotiation with **nbn** on the Contract.

Build Estimate means a high-level desktop study which assesses the expected costs and revenue associated with the proposed project. It provides Applicants with an estimate of the total build costs, **nbn**'s indicative contribution and the co-investment Applicants will be required to contribute.

Build Quote means a more comprehensive assessment of the proposed project than a Build Estimate and provides applicants a fixed quote for the total build costs and required co investment they will be required to contribute.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in New South Wales.

Closure Date means the date specified as the Closure Date in the Guidelines, as may be amended by **nbn** from time to time.

Conforming Application means an Application that addresses the requirements of these Guidelines.

Contract means any contract executed by **nbn** and the Applicant in respect of the Fund.

Eligibility Criteria means the eligibility criteria specified in the Guidelines.

Fund means the Regional Co-Investment Fund as described in these Guidelines.

Government Agency means any government or any governmental administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

Guidelines means this Guidelines document and its Schedules and Appendices, as varied, clarified and supplemented by **nbn** during the Application Process.

Indirect Loss means any:

- (a) indirect or consequential loss; and
- (b) any loss of revenue, loss of profit or loss of business opportunities.



Intellectual Property Rights means all existing and future industrial and intellectual property rights, including copyright (including computer software), trademarks and designs (whether registered or unregistered), service marks, patents (including the inventions the subject of such patents), semiconductor and circuit layout rights, trade, business, company and domain names, database rights, confidential and other proprietary rights, trade secrets and know how, inventions, discoveries and processes, and the rights to apply for the registration of any such rights, and any similar or analogous rights from time to time, whether created before or after the date of these Process Terms both in Australia and throughout the world.

Law means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in any part of the world and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

nbn means **nbn** Limited ABN 86 136 533 741 of Level 13, 100 Mount Street, North Sydney NSW 2060.

nbn™ Representative means the person in **nbn** you normally interact with, for example, a representative from **nbn™** Local, **nbn™** Community & Stakeholder Engagement or **nbn™** Government Relations.

Process Terms means the conditions in this [Appendix 1](#).

Project means a geographically contiguous area that is covered by one build estimate or build quote.

RCIF means Regional Co-Investment Fund (the Fund).

Related Body Corporate means a related body corporate as that expression is defined in the Corporations Act 2001 (Cth).

Validity Period means the period of time that the build estimates and build quotes will remain valid.

'We' means **nbn**.

'You' means the Applicant.

1.2 Interpretation

In these Process Terms and other documents:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of these Process Terms.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in the Process Terms or these Guidelines have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (g) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (h) A reference to a party to a document includes that party's successors and permitted assignees.
- (i) A promise on the part of 2 or more persons binds them jointly and severally.



- (j) A reference to liquidation or insolvency includes any occurrence of any event of liquidation or insolvency including a winding up application being made and not withdrawn within twenty one (21) days, a failure to comply with a statutory demand, the appointment of a provisional liquidator or administrator, the entering into of an arrangement with creditors, a voluntary winding up other than for the purpose of a bona fide corporate reconstruction, any inability to pay debts as and when they fall due, any admission of insolvency, any court order relating to any of the above or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (k) No provision of these Process Terms, the Guidelines or any Application documentation will be construed adversely to a party because that party was responsible for the preparation of that provision.
- (l) A reference to a body, other than **nbn** or an Applicant (including an institute, association or authority), whether statutory or not:
 - I. which ceases to exist; or
 - II. whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (m) A reference to time is to local time in Sydney.
- (n) A reference to '\$' or 'dollars' is a reference to the lawful currency of Australia.

1.3 Interpretation of inclusive expressions

Specifying anything in these Process Terms after the words 'include' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

1.4 Business Day

Where the day on which or by which any thing is to be done is not a Business Day, that thing must be done by the next Business Day.

2 Representatives

2.1 nbn Representative

- (a) All notices, instructions, information and other communications that the Applicant is required to give to **nbn** in relation to the Application Process must be given to the **nbn**[™] Representative, except as otherwise provided.
- (b) The **nbn**[™] Representative may at any time delegate to any person any of the powers and duties vested in it and will provide the Applicant with notice in writing of this delegation.

2.2 Primary Contact

- (a) You must identify the Primary Contact in your Build Assessment Form.
- (b) You must notify **nbn** of the details of any replacement Primary Contact.
- (c) The Primary Contact represents and acts for the Applicant at all times and the Applicant will be bound by the actions of the Primary Contact. Matters within the knowledge of the Primary Contact are taken to be within the knowledge of the Applicant.



- (d) Any notices, instructions, information and other communications **nbn** provides to the Primary Contact will be deemed to have been delivered to the Applicant.

3 Application Process

3.1 Invitation

The Application Process is an invitation for you to submit an Application on the terms set out in the Guidelines and in accordance with these Process Terms.

3.2 Submission of Applications

- (a) In submitting an Application, You must:
- I. submit the Application by the Closure Date specified in the Guidelines;
 - II. submit the Application at the place specified in the Guidelines or otherwise notified by **nbn**;
 - III. submit the number of soft copies of your Application (in the formats specified) as specified in the Guidelines;
 - IV. include in the Application the required information specified in the Guidelines.
- (b) In submitting any other materials required to be submitted by the Guidelines, You must submit them in accordance with the requirements of these Guidelines.
- (c) **nbn** may strictly enforce the Closure Date and any other closing dates outlined in the Guidelines but reserves the right to accept late Applications and response materials. **nbn** may extend the Closure Date and any other closing dates in these Guidelines by giving you notice in writing.

3.3 Timing of Application Process

The indicative timetable for the Application Process is set out in the Guidelines (refer **Section 3.2** of the Guidelines). The proposed timetable does not create any legal obligation on **nbn** to take any action or exercise any right within the time frames specified.

3.4 Binding obligations

- (a) You agree that the request for a Two-way Confidentiality Agreement, or submission of any other document required to be submitted by these Guidelines (whichever occurs first) creates a contract between **nbn** and you governing the Application Process on the terms of these Guidelines, including these Process Terms.
- (b) To the extent of any inconsistency between these Process Terms and the rest of the Guidelines, these Process Terms prevail to the extent of that inconsistency.
- (c) An Application constitutes an offer binding on you and capable of acceptance by **nbn** at any time before the expiration of the Application Validity Period.
- (d) By submitting an Application, You agree:
- I. that Your Application, including terms and prices, will remain valid and irrevocable until the end of the Application Validity Period;



- II. not to replace, amend or supplement Your Application unless requested to do so by **nbn** or otherwise agreed by **nbn**; and
- III. any replacement, amendment or supplement to Your Application will constitute a co-existing offer binding on You and capable of acceptance by **nbn**.

3.5 Amendments

- (a) You must not amend your Application or withdraw Your Application during the Application Validity Period, unless **nbn** agrees.
- (b) If You purport to amend or withdraw Your Application (without the agreement of **nbn**), **nbn** may in its absolute discretion accept the Application in the amended form, defer consideration of the Application as a new Application, or remove the Application from the process.
- (c) **nbn** may ask any other Applicant to submit variations or additions to its Application. If so, **nbn** is not under any obligation to extend the same opportunity to You.
- (d) You must inform **nbn** promptly in writing of any material change:
 - I. to any information in your Application;
 - II. in circumstances that may affect the truth, completeness, or accuracy of any of the information You have provided in connection with the Application; or
 - III. which could impact adversely on Your ability to perform the obligations in relation to the Application or the Contract.
- (e) If **nbn** accepts any amendment or supplementary information provided by an Applicant, then such amendment or supplementary information will be taken to form part of the Applicant's Application.

3.6 Clarification

- (a) If You find any discrepancy, error or omission in the Guidelines, you may submit a request for clarification. A request for clarification should be submitted by email to Regional_Co-Investment_Fund@nbnco.com.au, by the date (if any) specified in and in accordance with the provisions of the Guidelines.
- (b) **nbn** will acknowledge your submission of a request for clarification but may in its absolute discretion decline to answer the request.
- (c) **nbn** reserves the right to decline to answer requests for clarification.
- (d) If **nbn** decides to answer the Applicant's request for clarification, it may do so by notice in writing to all Applicants.
- (e) **nbn** will treat any request for clarification as confidential if the Applicant requests a confidential response and **nbn** agrees, in its discretion, that the question will be treated as confidential.
- (f) **nbn** will provide the Applicant with the opportunity to withdraw a question if **nbn** does not agree to treat the question and/or any response to the request for clarification as confidential.



3.7 Variations to Guidelines

- (a) **nbn** may amend or vary the Guidelines, including the EOI Process Terms and any other Fund document, and will notify the Primary Contact if **nbn** considers that any such amendment or variation is a material amendment or variation.
- (b) If You have lodged Your Application to **nbn** on or before the date on which You were notified of the relevant material amendment or variation, You may, within 5 Business Days, amend, vary or withdraw your Application by notice in writing by emailing Regional_Co-Investment_Fund@nbnco.com.au.
- (c) You agree that no amendment or variation will, unless material, be deemed to be an amendment or variation which entitles you to amend, vary or withdraw Your Application.

3.8 Initial assessment

- (a) **nbn** will initially review the Application for completeness to ensure that all the required information required by the Guidelines has been provided. **nbn** is not under a duty to check Applications for completeness, accuracy or otherwise however.
- (b) If a Response is not complete, **nbn** will decide whether it should be considered in, or excluded from, the assessment process and whether the missing information should be requested from the Applicant.
- (c) **nbn** may engage the services of external experts or advisers to assist with the assessment of Applications.

3.9 Assessment Criteria

- (a) If any assessment criteria are specified in the Guidelines, **nbn** will assess the Applications by reference to the assessment criteria.
- (b) The listing order of the assessment criteria should not be interpreted as an indication of the weighting **nbn** will attribute to the assessment criteria when reviewing the Applications.
- (c) In addition, **nbn** may in its absolute discretion have regard to:
 - I. its previous dealings and experience with the Applicant (and the dealings and experience of **nbn**'s advisers with the Applicant);
 - II. any information about the Applicant that is in the public domain; and
 - III. any information obtained pursuant to any meetings conducted with the Applicant.
- (d) **nbn** reserves the right in its absolute discretion to:
 - I. vary or amend the assessment criteria at any time;
 - II. seek clarification, additional information or further actions (including site visits or inspections) from one or more of the Applicants (but not necessary all) in respect of any aspect of their Application;
 - III. call for the submission of revised Application from one or more Applicants;
 - IV. enter into direct negotiations with one or more of the Applicants in respect of the RCIF; and/or
 - V. give preference to any one or more of the assessment criteria over the other assessment criteria.



- (e) Where **nbn** exercises its rights under **Section 3.9(d)**, it will give the Applicant notice of the variation or amendment and give the Applicant opportunity to amend, vary or withdraw its Application by notice, in writing.
- (f) By submitting a Response, You agree that:
 - I. **nbn** is under no obligation to disclose any aspect of its assessment process, including but not limited to, any working papers produced when selecting approved Applicant(s); and
 - II. You must not seek access to such information.

4 Licence to use intellectual property

You hereby grant **nbn**, its Related Companies, and its personnel, advisers, contractors and consultants, an irrevocable, perpetual, world-wide, royalty-free, transferable licence (with unlimited rights to sub-licence) to copy, adapt, modify, disclose or otherwise use the Application and any other materials submitted by You in response to these Guidelines, including any Intellectual Property Rights incorporated in your Application and any other materials submitted by You in response to these Guidelines, for the purposes of:

- (a) undertaking this Application Process, including assessing and clarifying Your Application; and
- (b) negotiating, preparing, executing and performing the Contract, if any.

5 Costs

- (a) You must bear all costs you incur during the Application Process including in relation to the preparation, lodgement and evaluation of Your Application and the negotiation of a resulting Contract (if any).
- (b) **nbn** is not responsible for, and will not pay, any costs, expenses or losses you incur in the preparation, clarification or negotiation of Your Application or in connection with the Application Process.

6 Contracting

No enforceable contract with respect to delivery of the project the subject of the Application, or in respect of the Fund, will exist between **nbn** and any other party, unless and until the parties have signed a written Contract.

7 Confidentiality

- (a) The Two-Way Confidentiality Agreement between you and **nbn** governs confidentiality in relation to the Fund, these Guidelines and the Application Process.
- (b) Notwithstanding any other document, You acknowledge and agree that the information You submit on social and economic benefits associated with Your Application does not constitute 'confidential information' of the Applicant (as that term may be defined in any Two-way Confidentiality Agreement between the Applicant and **nbn**).

8 Publicity

- (a) **nbn** may publish or make public statements about key information in respect of the Applicant's participation in the Application Process and/or the Fund, including the Applicant's name, subject matter of the Application, location and value of the project(s) in the Application and social and economic benefits associated with the Application.



- (b) You must not make any press or other public announcements or releases, including by social media, relating to the Fund, the Application Process, or the negotiation of any Contract without the prior written consent of **nbn**.

9 No lobbying, improper interference or solicitation

Applicants and their representatives are prohibited from engaging directly or indirectly in lobbying, improper interference or solicitation of **nbn**, including but not limited to Members of Parliament, their Advisors, other related Government agents and **nbn**'s advisers with respect to any aspect relating to the Application Process, the Fund or any activities which are likely to give rise to the perception that they have engaged in lobbying, improper interference or solicitation of **nbn** or its advisers. Any breaches of these requirements may result in an Applicant being removed from the process.

10 Probity and conflicts

10.1 Conflicts of Interest

- (a) Applicants, and their officers, employees and professional advisors must not engage in collusive anticompetitive conduct or any similar conduct with another Applicant or any other person in relation to the Application Process or the Fund, including:
- I. entering into an agreement with any other Applicant as to which Applicant should be successful;
 - II. meeting with other Applicants or their officers, employees, advisers, consultants, contractors or agents;
 - III. agreeing to fix prices or the terms of any contract; or
 - IV. agreeing to pay any amount of money or any other benefit to any unsuccessful Applicant.
- (b) In the event You have a real or perceived conflict of interest, You must:
- I. declare that interest to **nbn** in writing as soon as the conflict is identified;
 - II. ensure that it is assessed in consultation with **nbn**;
 - III. comply with any additional Application Process requirements notified to you by **nbn** in writing from time to time in connection with that real or perceived conflict of interest (including the **nbn** Conflict of Interest Policy and **nbn** Whistleblower Policy which may be found on **nbn**'s website at www.nbnco.com.au); and
 - IV. ensure that it is resolved in favour of the public interest.
- (c) You must ensure that your performance in respect of identifying, declaring and resolving any conflict of interest is beyond reproach.

10.2 Probity and Conflicts

- (a) A Probity Adviser has been engaged who will provide oversight of the sourcing and Application Process.
- (b) The Probity Adviser is not part of the assessment committee but is an independent observer of the assessment process for the purpose of monitoring compliance with due probity measures.



- (c) Any probity concerns regarding this Application Process, or any other aspect of the process, must be raised with **nbn** in writing with appropriate detail. **nbn** may then brief the Probity Adviser on the matter for the purpose of seeking advice.
- (d) Where the Applicant, being reasonable, feels that their concerns are not being adequately addressed, they may submit their probity concerns direct to the Probity Adviser in writing.
- (e) The Probity Adviser will raise all such matters with **nbn**, making recommendations where necessary. Any action taken as a result of such process will be at the absolute discretion of **nbn**.
- (f) The probity adviser's contact details are:
 - Mr. Michael Shatter
 - Director - Risk Advisory Services
 - RSM Australia
 - Email: michael.shatter@rsm.com.au

10.3 Probity checks

- (a) By submitting request for a Two-way Confidentiality Agreement or any other material required by the Guidelines to be submitted (whichever comes first), you consent to probity checks being conducted on you, your officers and employees.
- (b) Probity checks may include (without limitation):
 - I. inquiries as to your identity and standing, including the identity and standing of your officers, employees and any guarantor or referee named in any Response document;
 - II. independent investigation regarding you and the information contained in an Application document;
 - III. investigations into probity and security issues, commercial structure, business and credit history, prior contract compliance and performance and any criminal records or pending charges;
 - IV. interviews with any referees; and
 - V. research into any activity that is, or might reasonably be expected to be, the subject of criminal or other regulatory investigation.
- (c) We may take into account any matters revealed as a result of probity checks in evaluating a Response document.
- (d) We are under no obligation to provide you with details of the results of our probity checks.

11 nbn rights

Without limiting any other section of these Process Terms, **nbn** may, in its absolute discretion, do any one or more of the following:

- (a) alter or amend any aspect of the Application Process at any time and withdraw from the Application Process at any time;
- (b) repeat any stage of the Application Process;
- (c) change any date in the Application Process (eg extend or shorten timeframes);

- (d) not proceed with the Fund or not proceed with the Fund in the manner specified in the Guidelines or other Fund documents;
- (e) change the scope of the Fund, including any requirements set out in the Guidelines or other Fund documents;
- (f) suspend, cancel or reinstate the Application Process;
- (g) elect not to contract with any Applicant on a nominated location;
- (h) establish a short list of Applicants with which to negotiate;
- (i) hold one or more Applicants in reserve;
- (j) negotiate, discuss or clarify matters with one or more Applicants or any other person (whether or not such Applicants have been short-listed without prior notice to any other Applicant);
- (k) enter into one or more Contracts in respect of the Fund without prior notice to any Applicant;
- (l) exclude any person from the Application Process (whether on the grounds of capability, conflict of interest or otherwise);
- (m) allow further parties to participate in the Application Process without notice at any time;
- (n) accept, reject or not consider all or any part of an Application, a partial Application or any Application that does not comply with the Guidelines;
- (o) obtain further, revised or replacement Applications from You or any other Applicant;
- (p) reject Your Application if You do not comply with any reasonable request from nbn to lodge further information or documents;
- (q) accept or reject any Applications which are not Conforming Applications without the need to notify any other Applicants;
- (r) decline to answer queries from any Applicant;
- (s) have any of nbn's representatives at any reasonable time inspect any of Your property, or interview any of Your personnel as part of the assessment process;
- (t) not provide any reason for not proceeding with an Applicant, not accepting an Application, not entering into a Contract or proceeding with the Fund or any project the subject of an Application, or any reason why nbn exercised or elected not to exercise any of its other rights under the Process Terms;
- (u) take such other action in relation to the Application Process as nbn considers appropriate in its discretion;
- (v) waive any requirement or obligation of an Applicant or Application under the Process Terms. Any such waiver will not affect any other requirements or obligations of the relevant Applicant or Application contained in the Process Terms; and
- (w) accept all or any part of an Application subject to satisfaction of stipulated conditions to which the Applicant may be asked to agree.

12 No Recourse for Unsuccessful Applicants

- (a) **nbn's** decision in the above matters will be final and (subject to statutory rights that cannot be excluded or modified) no Applicant is entitled to any redress or claim against **nbn** as a result of **nbn** exercising any or all of its rights as mentioned above or otherwise in the Guidelines including these Process Terms.



- (b) **nbn's** total aggregate liability to the Applicant arising under, out of, or in connection with the Fund and these Guidelines, including these Process Terms and the Application Process, under contract, statute, in tort (for negligence or otherwise) or any other basis in law or equity, is limited to AUD10,000.
- (c) **nbn** is not liable for any Indirect Loss suffered by the Applicant in connection with the Fund and these Guidelines, including these Process Terms and the Application Process, whether under contract, tort (including negligence or otherwise) or otherwise.

13 Warranties

13.1 No warranties by nbn

- (a) The Guidelines do not, and do not purport to, comprehensively describe the scope of the Fund or contain all the information that potential Applicants would need to decide in relation to the Fund. You must form your own views as to what information is relevant to such decisions.
- (b) **nbn's** networks and products are continually evolving. Today's performance and products may improve in the future as part of regular product and network upgrades. Therefore, participating in the RCIF is at the Applicant's own initiative.
- (c) Neither **nbn** nor any of its employees, agents, advisors, contractors or consultants, warrants, guarantees or makes any representation or accepts any liability for the information in the Guidelines or any advice, correspondence, clarifications or information given by **nbn** with respect to accuracy, adequacy, suitability or completeness and **nbn** accepts no responsibility for any interpretations placed on the information by the Applicant. Any marketing, financial and statistical data provided is only an indication of projected levels of activities.
- (d) By submitting an Application, You agree that you have:
 - I. read and understood the Guidelines and Fund documents and any other written information **nbn** makes available and have satisfied yourself as to the correctness and sufficiency of those documents;
 - II. examined all information relevant to the risks, contingencies and other circumstances having an effect on Your Application;
 - III. satisfied Yourself by inspection or inquiry as to all other matters relating to Your Application, including in relation to the nature and effect of any Laws pertaining to the Fund and Your Application, and not relied on any warranty or representation made by or on behalf of **nbn**; and
 - IV. not relied on any letter, document or arrangement whether oral or in writing as adding to or amending the Guidelines or Application Process (other than a formal amendment to or variation of the Guidelines or Application Process by **nbn**).

13.2 Warranties by Applicants

- (a) By submitting an Applicant, You warrant and represent that:
 - I. the information contained in Your Application is accurate and complete in all respects and is not misleading in any way;



- II. there is no legal or other impediment to you entering into the Contract and doing all things required of you under the Contract;
 - III. if You are ultimately successful, and You enter into a Contract, You will be doing so on Your own behalf and on behalf of the community of the regional and remote area the subject of the Application, and not on behalf of any specific individual third party or entity;
 - IV. You are a solvent legal entity and are under no form of insolvency, administration or legal disability to contract of any kind;
 - V. no litigation, arbitration or administrative proceeding is presently taking place, pending, or to the knowledge of the Applicant threatened against or otherwise involving the Applicant which may cause a material adverse effect on the Applicant's business, assets or financial condition or any effect upon **nbn's** reputation if the Response is accepted or which could impact adversely on the Applicant's ability to enter into an agreement with **nbn**;
 - VI. You have no conflict of interest or anticipated conflict of interest in entering into the Contract and doing all things required of You under the Contract which has not otherwise been disclosed in writing to **nbn** prior to, or at the time of, lodging Your Application; and
 - VII. You have, after diligent inquiry and investigation, fully disclosed to **nbn** in Your Application all information (within Your knowledge or which should have been within Your knowledge) which could reasonably be regarded as affecting in any way the decision of **nbn** to accept or reject Your Application.
- (b) The warranties in paragraph (a) are given on the date the Application is lodged and will continue during the Application Process and any subsequent stage of **nbn's** consideration of the Application and any Contract with You.
- (c) You must inform **nbn** immediately in writing if any change in circumstances renders any information in Your Application inaccurate or incomplete.

14 Laws

The Applicant must comply with all applicable Laws and all requirements of Government Agencies. The Applicant must not do anything, or allow anything to occur, which may constitute a breach of any Law.

15 Implied Terms

Any implied terms, conditions warranties or representations are to the extent permitted by Law excluded from the Process Terms.

16 General

16.1 Governing Law

The Guidelines and Application Process are governed by the laws of New South Wales. The parties submit to the exclusive jurisdiction of courts exercising jurisdiction there.



16.2 Invalidity and enforceability

If any provision of the Guidelines including these Process Terms is invalid, the provision is enforceable to the extent that it is valid, whether it is in severable terms or not.

16.3 Waiver

Neither You nor **nbn** may rely on the words or conduct of the other as a waiver of any right, unless the waiver is in writing and signed by the party granting the waiver, and stated to be a waiver granted under this **Section 16.3** of the Process Terms.