

# EE Program Management Support Agreement

**NBN Co Limited ABN 86 136 533 741**

nbn

**[insert customer name], ABN [insert ABN]**

RSP

The **nbn**<sup>™</sup> Activities described in this document are not a listed carriage service or a service that facilitates the supply of a listed carriage service for the purposes of section 152AL of the Competition and Consumer Act. The supply of **nbn**<sup>™</sup> Activities under this Agreement does not have the effect of making the **nbn**<sup>™</sup> Activities a declared service for the purposes of Part XIC of the Competition and Consumer Act. This document is not executable and is not a Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act.





# Execution

## **Executed as an agreement.**

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Signed for **nbn co limited** by its authorised representatives:

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Signature of authorised representative

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Signature of authorised representative

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Name of authorised representative

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Name of authorised representative

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Date of signature

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Date of signature

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Executed by **[RSP]** by its authorised representatives:

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Signature of authorised representative

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Signature of authorised representative

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Name of authorised representative

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Name of authorised representative

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Date of signature

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Date of signature



## Background

- A **nbn** and RSP are parties to a WBA that sets out the terms on which RSP may order Products from **nbn** and **nbn** will supply those Products to RSP.
- B **nbn** and RSP are also parties to the EE Build Agreement that governs the design and construction of infrastructure required for the supply of **nbn**<sup>TM</sup> Enterprise Ethernet Ordered Products.
- C **nbn** and RSP promise to carry out and complete their respective obligations in accordance with these Terms and Conditions.

## Terms and Conditions

Current as at 6 March 2023.

### 1. EE Program Management Support

- (a) RSP may submit a Registration Form in respect of each Opportunity.
- (b) **nbn** may accept or reject such a Registration Form. **nbn** will endeavour to inform RSP whether their Opportunity has been accepted within 5 Business Days of receiving the Registration Form, or if **nbn** requires any further information.
- (c) If **nbn**, in its discretion, accepts a Registration Form in respect of an Opportunity, **nbn** will provide RSP with the following support activities (the **EE Program Management Support**):
  - a. development of a schedule of EE Build Activities having regard to the delivery requirements of both RSP and the End User, to the extent notified to **nbn** by RSP (for clarity, this schedule will not affect any Committed Delivery Date given under the WBA);
  - b. regular reporting on the progress of the EE Build Activities, which will be provided at a cadence determined by **nbn** (such as written weekly reports and monthly steering committees); and
  - c. ongoing contact with the **nbn** representatives, which includes access to an escalation process and may include, on request, tripartite meetings between the RSP, End User and **nbn** from time to time.
- (d) If **nbn** accepts a Registration Form in accordance with section 1(b), RSP must place orders under the WBA for **nbn**<sup>TM</sup> Enterprise Ethernet Products, to be supplied to the Premises to which the Registration Form relates, within 60 Business Days of **nbn** notifying RSP that the Registration Form has been accepted (or such other period as may be agreed with **nbn**). RSP is responsible for all activities and procedures required in the placement of such orders, including the re-validation of any associated Enterprise Ethernet Quotes.
- (e) For the duration of EE Program Management Support, RSP must provide all assistance that may be requested by **nbn**, including:
  - a. providing a single project manager to work with **nbn** for the Opportunity to which the EE Program Management Support relates;
  - b. facilitating a tripartite kick-off meeting between the RSP, **nbn** and the End User;
  - c. providing accurate address information (including Location IDs);
  - d. placing any orders under the WBA for **nbn**<sup>TM</sup> Enterprise Ethernet Products, in relation to the Opportunity, in line with any transition plan delivery dates agreed between **nbn** and RSP, and ensure that the Customer Required Dates are entered correctly; and
  - e. submitting a Registration Form for any new Premises to be added to the Opportunity.

### 2. RSP acknowledgements regarding EE Program Management Support

- (a) RSP acknowledges and agrees that: (A) no service levels, performance objectives or rebates are available or applicable in connection with EE Program Management Support; (B) **nbn**'s capacity to provide the EE Program Management Support may be constrained from time to time; and (C) EE Program Management Support has not been designed by **nbn** as (and is not suitable as) input into the supply of Downstream Products on a commercial basis.
- (b) RSP further acknowledges that:
  - a. the activities (including build activities) described in this document are not a listed carriage service or a service that facilitates the supply of a listed carriage service for the purposes of section 152AL of the Competition and Consumer Act; and



- b. this document is not a Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act.

### 3. Termination and suspension

- (a) Notwithstanding anything to the contrary in these Terms and Conditions, **nbn** may suspend or cease the provision of EE Program Management Support (or any aspect of the EE Program Management Support) and / or terminate these Terms and Conditions, at any time by giving as much notice to RSP as is reasonably practicable in the circumstances, which for the avoidance of doubt, may be immediate if RSP fails to comply with these Terms and Conditions.
- (b) RSP may cancel the provision of EE Program Management Support in full at any time by giving notice to **nbn**. Upon receipt of such notice from RSP, **nbn** will cease supplying EE Program Management Support.

### 4. Participation of third parties

RSP must manage all aspects of the End Users' involvement in EE Program Management Support, and must:

- (a) ensure that the End User participates in any activities in connection with EE Program Management Support as reasonably requested by **nbn** from time to time;
- (b) manage all interactions with End Users, including handling all requests, disputes and the provision of information as reasonably directed by **nbn**;
- (c) ensure that any necessary consents have been obtained to disclose End User confidential information and Personal Information to, and for that information to be used and disclosed by **nbn**; and
- (d) exclude, to the extent permitted by law, all express or implied representations, conditions, warranties and guarantees arising from or in connection with EE Program Management Support, and to the extent such matters cannot be lawfully excluded, limit all liability for such matters to the re-performance of the activities in connection with EE Program Management Support.

### 5. Access to premises

- (a) RSP must provide, or procure the provision of, safe and timely access to any premises owned, controlled or occupied by RSP or End User to the extent access is required by **nbn** to provide EE Program Management Support.
- (b) RSP must hold any consent, approval or right of access obtained under section 5(a) of these Terms and Conditions on trust for the benefit of **nbn**, and on request must provide **nbn** documentary evidence of such consent, approval or right of access.
- (c) When visiting any premises of the other party or an End User, the visiting party must comply with any policies of the other party (or the End User), any reasonable directions given by that party (or the End User), and all OH&S Laws.

### 6. Confidentiality

- (a) Clauses 18.1 to 18.5 (inclusive) and clause 20 of the EEBC will apply to these Terms and Conditions as if references in those clauses to the EEBC are references to these Terms and Conditions.

### 7. Liability

- (a) To the full extent permitted by law, **nbn** excludes: (A) all liability to RSP in respect of any loss arising by reason of any failure of EE Program Management Support to perform in accordance with the descriptions set out in the Registration Form, be fit for the purposes for which such services are commonly supplied; fit for a particular purpose or supplied within a particular time; or at all; and (B) all express or implied representations, conditions, warranties and guarantees arising from or in connection with EE Program Management Support, whether based in statute, regulation, common law or otherwise.
- (b) To the full extent permitted by law, **nbn's** aggregate liability to RSP in relation to any and all events that arise in connection with EE Program Management Support (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise) is limited to \$100.
- (c) If **nbn** breaches any condition, warranty or guarantee under or implied by law which cannot be lawfully excluded, to the maximum extent permitted by law, the liability of **nbn** is limited, at **nbn's** option, to the re-performance of the activities in connection with EE Program Management Support.

### 8. Pricing and delivery dates

- (a) RSP acknowledges that the EE Program Management Support does not guarantee pricing in relation to any EE Build Activities or under the WBA.
- (b) If, as a part of EE Program Management Support, RSP agrees to a date by which **nbn** will complete Delivery that is more than 50 Business Days after Accepting an Order, RSP acknowledges and agrees that in such circumstances RSP is waiving its right to rely on the Service Delivery Guarantee.



## 9. Title and Intellectual Property

- (a) Each party (or its licensors) owns all right, title and interest in its own systems, equipment, facilities and materials which currently exist or may be acquired, created or developed by or on behalf of that party.
- (b) Subject to section 9(a), **nbn** (or its licensors) will own all intellectual property rights in the any products or services supplied by **nbn** in connection with EE Program Management Support.

## 10. General

- (a) Each party must comply with all applicable laws in connection with the exercise of its rights and the performance of its obligations in connection with EE Program Management Support.
- (b) These Terms and Conditions represent the entire agreement between the parties about EE Program Management Support and replace all previous agreements, understandings, representations and warranties about those matters. These Terms and Conditions do not amend and do not replace the parties obligations under the WBA or an EE Build Agreement.
- (c) **nbn** may vary these Terms and Conditions during the EE Program Management Support Period and such amended Terms and Conditions will apply to any Registration Forms submitted from the date the Terms and Conditions are amended.
- (d) Clauses 23, 24, 25, 26, 27, 28, 29(a), 29(b) of the EEBC will apply to these Terms and Conditions as if references in those clauses to the EEBC are references to these Terms and Conditions.

## 11. Defined terms

- (a) Subject to section 11(b) of these Terms and Conditions, a capitalised term used but not defined in these Terms and Conditions has the meaning given to it in the EEBC or WBA (and to the extent of any inconsistency, the meaning given in the EEBC will apply).

- (b) In these Terms and Conditions, the following definitions apply:

**EE Build Activities** means the build activities provided under an EEBC.

**EEBC** means the **nbn** Enterprise Ethernet Build Contract version 6 and any subsequent versions (or replacements) of that agreement.

**EE Build Agreement** means the EEBC entered into between the parties (as amended from time to time).

**End User** means the person in respect of which the Opportunity relates.

**EE Program Management Support** has the meaning given to it in section 1(c) of these Terms and Conditions.

**EE Program Management Support Period** means the period commencing on the date on which these Terms and Conditions are executed by the last party, and ending on the date that **nbn** terminates these Terms and Conditions in accordance with section 3(a) of these Terms and Conditions.

**Opportunity** means the opportunity set out on the first page of the Registration Form, which relates to the Premises in respect of which RSP requests **nbn** to provide EE Program Management Support.

**Registration Form** means a form by which RSP provides **nbn** with details of proposed Opportunities for EE Program Management Support, in the form set out in Annexure A or such other form as developed and notified by **nbn** from time to time.

**WBA** means the most recent agreement of that name entered into between the parties (as amended from time to time).



## Annexure A Registration Form

Please send this completed Registration Form (along with the completed excel spreadsheet of fields as set out in Annexure B – Site Details, including the Premises details and LOC IDs, etc) to your respective account manager and cc [RSP\\_business\\_fibre@nbnco.com.au](mailto:RSP_business_fibre@nbnco.com.au)

Please submit a Registration Form for each Opportunity.

**nbn** will endeavour to respond to this Registration Form within 5 Business Days of receipt.

<b>RSP Details</b>	Name: Telephone: Email
<b>RSP Project Manager Details</b>	Name: Telephone: Email:
<b>Opportunity name</b>	<i>Please attach the registration site form along with the completed excel spreadsheet as set out in Annexure B – Site Details. All fields marked mandatory must be completed, including all details including Customer name, site address(es) and LOC ID number/s.</i>

By ticking this box, RSP warrants that the information in this Registration Form is accurate and complete, that it will comply with this Registration Form and that it further agrees to provide any additional information as may reasonably be requested by **nbn** from time to time to better understand the Opportunity (including any relevant site transition information).

By ticking this box, RSP confirms that it has read the Terms and Conditions and agrees that those Terms and Conditions will apply to the EE Program Management Support.

By ticking this box, RSP confirms that it has not placed any Orders regarding the Opportunity via the **nbn**<sup>TM</sup> Enterprise Ethernet Portal prior to submitting this Registration Form. RSP acknowledges that Orders placed via the **nbn**<sup>TM</sup> Enterprise Ethernet Portal prior to **nbn** providing the EE Program Management Support will not be eligible for EE Program Management Support.



# Annexure B Site Details



Registration Form –  
Opportunity Site Lis