

Wholesale Broadband Agreement

WBA4+ Bridging Offer



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Environment

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Parties

This variation agreement is entered into between:

- nbn co limited (ABN 86 136 533 741) of Level 13, 100 Mount Street, North Sydney NSW 2060 (**nbn**); and
- [Insert full legal name of RSP] (ABN [insert ABN]) of [insert registered address];
- [Insert names of any other related bodies corporate of RSP also acquiring services as parties in their own right] (**RSP**).

Background

nbn is offering to vary the current version of the Wholesale Broadband Agreement entered into between **nbn** and RSP, as amended from time to time (**WBA4**) and to make related commitments on the terms set out in the Amendments section below (**WBA4+ Bridging Offer**).

This WBA4+ Bridging Offer will provide various additional benefits to RSP and will extend the term of WBA4.

This extension will allow **nbn** and the rest of industry time to develop the terms of the fifth version of the Wholesale Broadband Agreement once the arrangements under **nbn**'s proposed variation to our Special Access Undertaking to the ACCC (**SAU**) have been finalised.

Amendments

nbn and RSP agree that, upon the later of the date that the parties agree this WBA4+ Bridging Offer and 1 December 2022 (**Effective Date**):

- (a) WBA4 will be amended in accordance with, and **nbn** makes the related commitments set out in, Attachments A and B to this WBA4+ Bridging Offer (the **WBA Amendments**);
- (b) **nbn** will waive certain rights it has under the Supply Terms for the Self-Install Kit – HFC & FTTC between **nbn** and RSP (**SIK Supply Terms**) in accordance with Attachment C to this WBA4+ Bridging Offer;
- (c) to the extent that WBA4 is changed after the date of this WBA4+ Bridging Offer, the WBA Amendments will be made to WBA4 on the Effective Date with such updates as are required to ensure that the WBA Amendments have their intended effect (for example, with updates to section references);
- (d) any subsequent variation to WBA4 after the date of this WBA4+ Bridging Offer will not be taken to reverse or otherwise amend the WBA Amendments except where expressly set out in any such variation; and
- (e) the parties' accrued rights under, and the continued operation of, WBA4 and the SIK Supply Terms will be otherwise unaffected by this WBA4+ Bridging Offer and will continue in full force and effect.

Unless otherwise specified, capitalised terms used in this WBA4+ Bridging Offer have the meanings given to those terms in WBA4.

Clauses H4.5 (Counterparts) and H4.10 (Governing law and jurisdiction) of the Head Terms of WBA4 apply to this extension.

Execution

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If your organisation requires the executable version of this agreement, please contact contractmanager@nbnco.com.au

Attachment A – Amendments to WBA4 and related documents

1. Extension to WBA4

The Term of WBA4 is extended by:

- (a) amending the definition of “Expiry Date” in the Dictionary as follows:

“Expiry Date means the earlier of the Price Transition Eve and 30 September 2023 (subject to change in accordance with clause F2.2 of the Head Terms) or such other date as the parties may agree in writing.”

- (b) adding a new definition of “Price Transition Eve” in the Dictionary as follows:

Price Transition Eve means the date immediately prior to the date on which **nbn** implements “Flat-Rate Offers” and “Bundled TC-4 Offers” in accordance with its commitments in an SAU variation accepted by the ACCC. It is acknowledged:

- (a) the Price Transition Eve will not occur before 30 June 2023; and
- (b) **nbn** will give RSP as much notice of the Price Transition Eve as is reasonably practicable (and at least one month’s advance notice).

Note: **nbn** is proposing new pricing to be set out in a varied SAU, together with a commitment to implement it by 1 July 2023 if the SAU variation is accepted by 31 March 2023. **nbn** intends to implement this new pricing by that date in WBA5.

If the SAU variation is accepted after 31 March 2023, **nbn** will still commit to implementing new pricing within 3 months after the SAU is varied. **nbn** anticipates that the SAU will be varied by 30 June 2023 at the latest, in which case new pricing would be implemented by 30 September at the latest.

2. Extension of certain Discounts, Credits, Rebates and Waivers

The [nbn™ Ethernet Discounts, Credits and Rebates Annexure](#) forming part of WBA4 is amended to extend specified Discounts, Credits, Rebates and Waivers as follows, subject to the notes below:

- (a) In section A1.1:

The duration of the following Discounts, Credits, Rebates and Waivers is extended from 30 November 2022 until 30 November 2023:

- (i) 50 Kbps CVC Credit;
- (ii) First Battery Credit;
- (iii) Ancillary Charges Waivers;
- (iv) Professional Wiring Service Charges Waiver;
- (v) NNI Diversity Upgrade Rebate;
- (vi) FTTC Installation Rebate and Waivers;
- (vii) HFC Installation Waivers and Rebate;
- (viii) Change of Access Technology Partial Waiver; and
- (ix) Professional Wiring Service Modify Order Discount,

and the duration of the following Discounts is extended from 14 April 2024 until 30 June 2025:

- (x) TC-4 Business Bundles; and
- (xi) TC-2 Business Bundles.

Notes:

- **nbn** currently intends to revise its Prices as part of the SAU variation proposal it is currently preparing. If this SAU variation proposal is accepted, the TC-4 Business Bundle and TC-2 Business Bundle discounts in their current form will not continue beyond the Expiry Date under this WBA4+ Bridging Offer.
- Some other Discounts, Credits, Rebates and Waivers set out above may also be affected by the SAU variation proposal, in which case they also may not continue beyond the Expiry Date under this WBA4+ Bridging Offer.

(b) For the NNI Diversity Upgrade Rebate:

- (i) in section B1.5.1(a)(iv), the period of delay permitted between a new Diverse Chassis NNI being activated and an old Single Chassis NNI being disconnected is extended from 3 months to 9 months; and
- (ii) in section B1.5.2(b)(i), the time to send **nbn** a Credit/Rebate Claim Form is extended from 6 months to 12 months after the Diverse Chassis NNI is activated.

(c) In sections B2.1.1(f)(ii) and B2.2.1(b)(ii), which form part of the TC-4 Business Bundles Discount and the TC-2 Business Bundles Discount respectively, the Campaign Period for each Discount is extended by extending the end date from "14 October 2023" to "31 December 2024".

3. **nbn**TM Ethernet (Wireless) quality measures

3.1 Extended preparation period before active fair use management

(a) Subject to clauses 3.1(b) and 3.1(c), from the Effective Date until the date notified by **nbn** by giving 60 days' notice to RSP, such date to be no earlier than 31 March 2023, **nbn** will not exercise its rights under section 5(a) of the [nbnTM Ethernet Fair Use Policy](#) (for example, to apply a Service Reduction) solely as a result of either:

- (i) RSP breaching section 4.6 of the [nbnTM Ethernet Fair Use Policy](#) by:
 - (A) the average download usage for RSP's Ordered Products using the Wireless Network exceeding 200GB of data in a calendar month; or
 - (B) the average upload usage for RSP's Ordered Products using the Wireless Network exceeding 60GB of data in a calendar month; or
- (ii) RSP breaching clause 4.3(a)(iii) of the [nbnTM Ethernet Fair Use Policy](#) by any **nbn**TM Ethernet (Wireless) AVC TC-4 supplied to RSP exceeding 120GB of upload usage.

Note: This threshold was set out in the notice from **nbn** to RSP titled "**nbn**TM Ethernet (Wireless): Notice of Unfair Use and steps **nbn** is taking for non-compliance with the Fair Use Policy".

(b) **nbn** may, by giving notice to RSP, exercise its rights under section 5(a) of the [nbnTM Ethernet Fair Use Policy](#) in the circumstances set out in clause 3.1(a) prior to 31 March 2023 for the purposes of testing systems and processes for the enforcement of the [nbnTM Ethernet Fair Use Policy](#).

(c) Nothing in clauses 3.1(a) or 3.1(b) limits or otherwise affects **nbn**'s ability to exercise its rights under section 5(a) of the [nbnTM Ethernet Fair Use Policy](#) for any other breach of the [nbnTM Ethernet Fair Use Policy](#) other than as expressly set out in clause 3.1(a).

3.2 Increased fair use download thresholds

The notice by **nbn** to RSP titled “**nbn**[™] Ethernet (Wireless): Notice of Unfair Use and steps **nbn** is taking for non-compliance with the Fair Use Policy”, dated 20 September 2021, is amended such that if RSP breaches section 4.6(a) of the [nbn[™] Ethernet Fair Use Policy](#) (relating to excessive average download usage) any Service Reduction will be applied to **nbn**[™] Ethernet (Wireless) AVC TC-4s with usage in a calendar month of more than 500GB, rather than 400GB.

4. Service Level improvements

The [nbn[™] Ethernet Service Levels Schedule](#) document forming part of WBA4 is amended as follows:

- (a) to improve the Service Level for Access Component Modifications that do not require attendance at Premises, set out in section 13.1, from 1 Business Day to 4 Operational Hours;
- (b) to improve the Service Level for CVC Modifications, set out in section 13.2, from 1 Business Day to 4 Operational Hours; and
- (c) to improve the Operational Target for Access Component Modifications that do not require attendance at Premises, set out in section 22.2, from 6 Operational Hours to 1 Operational Hour.

5. NPIS quality improvements

The quality of NPIS access is improved by inserting new section 6 into the [nbn[™] Platform Interfacing Service Terms](#) as follows:

*Section 6 is a Service Term which applies in connection with the **nbn**[™] Platform Interfacing Service and should be read in conjunction with clause C15 of the [Head Terms](#).*

6. No Planned Outages to occur over specific periods

- (a) *Subject to section 6(b), **nbn** will ensure that at least one weekend in each month is not subject to a Planned Outage in respect of the **nbn**[™] Platform Interfacing Service.*
- (b) *Section 6(a) does not apply in respect of NPIS Preventative Maintenance Outages or Emergency Outages.*

6. Operational improvements

6.1 Payment of specific Commercial Rebates during natural disasters

- (a) Subject to this clause 6.1, if there is a natural disaster (e.g. serious flooding, earthquakes or bushfires) that is a Force Majeure Event (**Natural Disaster FME**) between 1 October 2022 and 31 May 2023, and consequently, **nbn** does not pay any Commercial Rebates to RSP relying on clause E6.1(b) of the Head Terms of WBA4, then **nbn** will provide a credit to RSP for an amount equal to such Commercial Rebates as soon as is reasonably practicable after 31 May 2023.
- (b) **nbn** will notify RSP of the method to be used by **nbn** to provide any credits under clause 6.1(a).

- (c) **nbn** will not provide a credit to RSP under clause 6.1(a) to the extent that it would result in the total value of all such credits to all **nbn**'s retail service providers (in aggregate) exceeding:
- (i) \$500,000 in respect of any single Natural Disaster FME; or
 - (ii) \$2,000,000 in total for all Natural Disaster FMEs,
- as determined by **nbn**, acting reasonably.
- (d) If the \$500,000 cap in clause 6.1(c)(i) is reached in respect of any single Natural Disaster FME, subject to clause 6.1(e), **nbn** will pro-rate the credit to RSP and Other RSPs by reference to the amount of such credits due to RSP as a percentage of all such credits due to all retail service providers in respect of that single Natural Disaster FME.
- (e) If the \$2,000,000 in clause 6.1(c)(ii) is reached in respect of all Natural Disaster FMEs, **nbn** will notify RSP of the method to be used by **nbn** to calculate the total credits that **nbn** will provide to RSP in respect of all such Natural Disaster FMEs.

6.2 Information relating to a Force Majeure Event

Section 7.3 of the [WBA Operations Manual](#) document forming part of WBA4 is amended by inserting a new clause 7.3.2 as follows:

"7.3.2 Additional Force Majeure Event Details

nbn will use reasonable endeavours to provide additional details for each Force Majeure Event Notice beyond those details required under clause 7.3.1, including:

- details of the Ordered Products impacted by the Force Majeure Event;
- details of any Trouble Tickets, including any Infrastructure Restoration Trouble Tickets, relating to Premises that are the impacted by the relevant Force Majeure Event;
- additional geographical information regarding the impact of the relevant Force Majeure Event, including details of the impacted SAMs and CSAs;
- for each Premises receiving an Ordered Product and affected by the relevant Force Majeure Event, details of when the Premises was first impacted and when the Premises ceased to be impacted by the relevant Force Majeure Event.

7. Review of CVC inclusions

- (a) **nbn** will conduct a review:
- (i) firstly in or around October 2022; and
 - (ii) secondly in or around January-March 2023,
- to determine whether monthly CVC TC-4 peak utilisation across the industry is, or is likely to be, materially higher than forecast.
- (b) If a review referred to in clause 7(a) identifies that monthly CVC TC-4 peak utilisation across the industry is, or is likely to be, materially higher than forecast, **nbn** will, by means of additional CVC inclusions, rebates or otherwise, share the impact with RSP between 1 December 2022 and 1 July 2023.
- (c) **nbn** will make its determination having regard to:
- (i) its recorded monthly average CVC TC-4 peak utilisation for all retail service providers from June 2022 up to the month prior to the review; and

- (ii) the forecasts in its Pricing Review 2022 Consultation Closure Paper (RMID1098) released on 28 June 2022 (**Pricing Paper**) which predicted peak utilisation would increase at a compound annual growth rate of 9.22% to June 2023 (or 0.7377% compounded monthly) from a base of 2.321 Mbps in June 2022.
- (d) If the review referred to in clause 7(a)(ii) above identifies that monthly CVC TC-4 peak utilisation across the industry was materially higher than forecast during the period between 1 December 2022 and the month prior to that review, **nbn** will, by means of additional CVC inclusions, rebates or otherwise, share any identified impact with RSP retrospectively.

Attachment B –Sandpit Service Levels Schedule

The Sandpit Module forming part of WBA4 is amended by inserting the following [Sandpit Service Levels Schedule](#).

Service Levels Schedule

Sandpit Module

Wholesale Broadband Agreement

Service Levels Schedule

Sandpit Module

Wholesale Broadband Agreement

Version	Description	Effective Date
4.0	First issued version of Sandpit Service Levels Schedule	"Effective Date" of the WBA4+ Bridging Offer

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Environment

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Introduction

This document sets out the Performance Objectives that **nbn** will aim to achieve in relation to the Sandpit.

Failure to achieve a Performance Objective may give rise to consequences, such as an obligation on **nbn** to take Corrective Action.

This document forms part of the Sandpit Module.

Roadmap

A roadmap describing the structure of this document follows for the assistance of RSP.

Part A: Performance Objectives

Part A describes **nbn**'s Performance Objectives. While not achieving a Performance Objective is not a breach of this Agreement, **nbn** may be required to take Corrective Action under Part B if it does not meet a Performance Objective.

Part A: Performance Objectives		Page
1	NPIS Sandpit availability	14

Part B: Measurement and Corrective Action

Part B sets out **nbn**'s measurement, monitoring and reporting obligations and the mechanics involved in Corrective Action if **nbn** does not meet a Performance Objective.

Part B: Measurement and Corrective Action		Page
2	Measurement	15
3	Corrective Action	15

Part C: Interpretation and Exclusions

Part C contains the rules of interpretation and exclusions which apply to this Service Levels Schedule for the Sandpit.

Part C: Interpretation and Exclusions		Page
4	Interpretation	16
5	Exclusions	16



Part A: Performance Objectives

Section 1 sets out the Performance Objectives that **nbn** offers for the availability of the NPIS Sandpit using APIs. See section 4 for rules of interpretation that apply to this Performance Objective.

1. Availability of the NPIS Sandpit using APIs

1.1 Performance Objective for availability of the NPIS Sandpit using APIs

- (a) **nbn** will aim to achieve a Performance Objective of 99.00% availability of the NPIS Sandpit using APIs in each 90 day period.
- (b) The Performance Objective in section 1.1(a) will be measured based on the availability of the NPIS Sandpit using APIs to all of **nbn**'s retail service providers in each 90 day period referred to in section 2.3(a).

1.2 Measuring NPIS Sandpit using APIs Performance Objectives

For the purposes of measuring the Performance Objective set out in section 1.1(a), "availability" is calculated as follows:

$$\frac{(\text{Measurement Period} - \text{Unavailable Time})}{\text{Measurement Period}} \times 100$$

Where, for the purposes of this section 1.2:

Measurement Period means the aggregate of the total number of minutes which **nbn** has agreed to supply the NPIS Sandpit using APIs to all of **nbn**'s retail service providers during each 90 day period referred to in section 2.3(a).

Unavailable Time means:

- (i) the sum of all Unavailable Periods in the Measurement Period; less
- (ii) any time during those Unavailable Periods when:
 - (A) the NPIS Sandpit using APIs is non-operational due to any event or matter excluded under section 5; or
 - (B) a Planned Outage has been implemented.

Unavailable Period means each period:

- (iii) beginning when the NPIS Sandpit using APIs fails to respond to any two consecutive transactions submitted by any **nbn** retail service provider(s); and
- (iv) ending when the NPIS Sandpit using APIs responds to a transaction submitted by any **nbn** retail service provider.



Part B: Measurement and Corrective Action

2. Measurement

2.1 Measurement and monitoring

nbn will measure and monitor its performance, and produce reports based on that information, in relation to the availability of the NPIS Sandpit using APIs (**Performance Reports**).

2.2 Information accuracy

- (a) Performance Reports and any measurement and monitoring information produced by **nbn** are the Confidential Information of **nbn**.
- (b) **nbn** will:
 - (i) use its reasonable endeavours to:
 - (A) ensure that the Performance Reports generated by the measurement and monitoring tools are accurate (including by correcting any inaccuracies); and
 - (B) notify RSP within 10 Business Days of becoming aware of any inaccuracy; and
 - (ii) engage an independent auditor to review the general accuracy of its measurement and monitoring tools at least once during the Term and notify RSP of the outcome of that review.

2.3 Reporting

- (a) **nbn** will provide a Performance Report to RSP on or about 20 Business Days after the end of each month in relation to **nbn**'s compliance with the Performance Objectives in this Service Levels Schedule for the Sandpit for the 90 day period ending at the end of the relevant month.
- (b) **nbn** may, from time to time, include additional information about the NPIS Sandpit using APIs availability in its Performance Reports as **nbn**'s measurement and monitoring tools are developed.

2.4 Data Enquiries

- (a) RSP may, acting reasonably, make a Data Enquiry (via **nbn**'s Relationship Points of Contact) within 6 months after the end of the period to which the Performance Report applies.
- (b) **nbn** must use reasonable endeavours to respond to a Data Enquiry within 10 Business Days after receipt of the Data Enquiry (or such longer period agreed by the parties, acting reasonably).

3. Corrective Action

3.1 Corrective Action

- (a) Subject to section 3.2, if **nbn** does not achieve a Performance Objective, **nbn** will:
 - (i) inform RSP of the reasons for that non-achievement;
 - (ii) provide RSP with a corrective action plan that sets out the relevant Corrective Action that **nbn** will undertake to address the non-achievement;
 - (iii) undertake the relevant Corrective Action; and



- (iv) notify RSP as soon as reasonably practicable after Corrective Action is taken by **nbn**.
- (b) **nbn** will:
 - (i) take each action in section 3.1(a) as soon as reasonably practicable following the identification of the non-achievement of a Performance Objective by **nbn**; and
 - (ii) provide a corrective action plan under section 3.1(a)(ii) by or before the time that **nbn** provides a corresponding Performance Report to RSP under section 2.3.

3.2 Conditions

nbn is not required to provide the information set out above or undertake any Corrective Action in a measurement period if **nbn** has already provided information or performed, or is in the process of performing, Corrective Action in relation to an earlier event with the same cause as the subsequent event.

Part C: Interpretation and Exclusions

4. Interpretation

4.1 Service Levels apply in Operational Hours

- (a) All references to time in this Service Levels Schedule for the Sandpit are calculated by reference to Operational Hours.
- (b) Operational Hours are Operational Hours are 0800 to 1700 local time on Business Days in the location from which the NPIS Sandpit is provided.

4.2 Pro Rata measurement

If this Agreement is executed, terminated or expires part way through a measurement period, the measurement of **nbn**'s performance under this Service Levels Schedule for the Sandpit will be pro-rated to reflect that shorter period.

5. Exclusions

- (a) The sole consequence of a failure of **nbn** to achieve a Performance Objective will be the consequence (if any) specified in this Service Levels Schedule for the Sandpit and a failure to achieve a Performance Objective will not be regarded as a breach of the Agreement.
- (b) Performance Objectives do not apply for the period and to the extent that this Agreement provides that **nbn** does not have an obligation to perform in accordance with the Performance Objectives.
- (c) Without limiting section 5(b), Performance Objectives do not apply for the period and to the extent that **nbn**'s ability to perform in accordance with the Performance Objective is adversely affected by:
 - (i) inability of **nbn** or its Personnel to gain access to a location necessary to perform works; or
 - (ii) an Excluded Event, an RSP Event or any matter, thing, event or circumstance that is not within **nbn**'s reasonable control.



Attachment C – Waiver of liability for Replacement Costs of Unaccounted For nbn Supplied Equipment under the Supply Terms Self-Install Kit – HFC & FTTC

Waiver of RSP liability regarding Unaccounted for nbn Supplied Equipment

nbn waives its right to recover from RSP the Replacement Cost of any Unaccounted for **nbn** Supplied Equipment under clause 14.1(f) of the “Supply Terms Self-Install Kit – HFC & FTTC” in respect of the Stock Take Periods between 1 July 2019 and 30 June 2021.