

Standard Supplier Terms and Conditions

1. Application of Terms

(a) If **nbn** or any of its Related Bodies Corporate (each, an **nbn Entity**) issues a purchase order to acquire Goods or Services from the Supplier (**PO**), then, subject to clauses 1(b) to 1(d), these Terms will apply to that PO.

(b) Where there is an existing written agreement in place between the relevant nbn Entity and the Supplier, or the relevant nbn Entity and the Supplier enter into a written agreement, in relation to any Goods or Services specified in a PO, the terms of that written agreement will apply to the supply of those Goods or Services, and these Terms will not apply.

(c) The relevant nbn Entity may, in its absolute discretion, issue a statement of work in relation to the Goods or Services the subject of a PO (**Statement of Work**). The terms of any Statement of Work issued by the relevant nbn Entity in relation to a PO are hereby expressly incorporated into that PO.

(d) All other terms and conditions (including any Supplier or third party terms and conditions) are excluded and, in no event, will such terms and conditions be incorporated into any Statement of Work, PO or these Terms, except for the terms of the **nbn** Policies. To the extent of any inconsistency between the terms in a **nbn** Policy, Statement of Work, a PO and these Terms, the order of priority of these documents will reflect the order in which these documents are listed in this clause 1(d).

2. Formation of Supply Contracts

(a) The Supplier may confirm acceptance of a PO and any applicable Statement of Work by notice in writing to the relevant nbn Entity, or by supplying the Goods or Services or any part of them.

(b) Without prejudice to clause 1(b), when the Supplier accepts a PO, a contract for the supply of the Goods and Services specified in the PO is formed between the Supplier and the relevant nbn Entity on these Terms and the terms specified in the PO and any applicable Statement of Work (**Supply Contract**).

(c) Each Supply Contract is a separate and independent contract that will continue in accordance with its terms unless terminated in accordance with its terms or these Terms, and may run concurrently with, and continue after, the expiry or termination of these Terms.

3. No exclusivity

The Supplier acknowledges that it is not the exclusive provider of the Goods and Services or any goods or services the same as or similar to the Goods and Services.

4. Supply of Goods and Services

(a) The Supplier must, and must ensure that the Supplier's Personnel and sub-contractors:

(i) supply the Goods, Services and Work Product in accordance with these Terms, the Supply Contract, their Specifications, all applicable Laws, and the reasonable directions of the relevant nbn Entity; and

(ii) comply with all Laws applicable to the performance of its obligations under these Terms or a Supply Contract at all times.

(b) The Supplier must ensure that no Malicious Code is introduced by the Supplier, any of its sub-contractors, any Supplier Personnel or any third party under the direction or control of the Supplier into any environment or other equipment, software or system of nbn or any of its Related Bodies Corporate.

(c) The Supplier must ensure that all Goods and Work Product delivered to an nbn Entity are clearly identified and, where possible, packaged using environmentally friendly packaging materials.

(d) The Supplier must supply any documentation described in the Supply Contract and any other documentation or information required to enable the relevant nbn Entity to operate, make full use of, and maintain the Goods, Services and any Work Product.

(e) Notification of incidents of security breach

(i) The Supplier must notify nbn as soon as possible after becoming aware of any Security Incident having occurred, and promptly confirm the Security Incident in a written report to nbn and the steps the Supplier intends to take to remedy the Security Incident.

(ii) The steps to be taken by the Supplier to remedy the Security Incident must be reviewed and approved by nbn.

(iii) To the extent the Security Incident exposes any nbn Data or any information technology system owned or used by nbn or any of its Related Bodies Corporate to a risk or threat of any unauthorised access or interference, the Supplier must comply with nbn's direction to mitigate or remove the risk or threat at no additional cost to nbn.

5. Compliance

The Supplier must, and must ensure that the Supplier's Personnel and sub-contractors, comply with all **nbn** Policies and procedures notified by an nbn Entity to the Supplier in writing from time to time, including **nbn**'s Whistleblower policy (a copy being available on below) when performing the Supplier's obligations under these Terms or a Supply Contract at all times.

Whistleblower policy

18 October 2023

[Download \(PDF - 1 MB\)](#)

6. Variations and cancellations

(a) The relevant nbn Entity may at any time before delivery, and without any liability to the Supplier, cancel the Supply Contract by giving written notice to the Supplier.

(b) The relevant nbn Entity may at any time before delivery by written notice to the Supplier vary its requirements for the Goods, Services or Work Product.

7. Access to the nbn Entities' Premises

(a) The Supplier must ensure that the Supplier's Personnel:

(i) access the Premises only for the purposes of performing the Supply Contract and at the times agreed by the relevant nbn Entity;

(ii) participate in and comply with any induction processes in relation to work performed on the Premises;

(iii) when accessing the Premises, comply with all instructions and **nbn** Policies; and

(iv) take reasonable care not to damage any property of the nbn Entity (or any of its Related Bodies Corporate) or injure any personnel or contractors of that nbn Entity (or any of its Related Bodies Corporate).

(b) The relevant nbn Entity will not be liable for any personal injury (including death) or loss of, or damage to, property suffered by any of the Supplier's Personnel when present at the Premises, except where such injury, loss or damage is caused by the negligence or wilful misconduct of the nbn Entity.

8. Safety

Where any work is performed by the Supplier's Personnel on any Premises or in connection with the Services, Goods or Work Products, the Supplier must:

(a) control and supervise all aspects of the work performed by the Supplier's Personnel, and ensure that such work is only undertaken without risks to the safety, health and welfare of any persons and in compliance with any relevant work health and safety policy or procedure established by the Supplier and in compliance with all **nbn** Policies relating to work health and safety;

(b) advise the relevant nbn Entity immediately of any hazard or safety incident with respect to the Premises or arising out of the provision of the Services, Goods or Work Products, and provide the nbn Entity with any assistance, as requested, in relation to the incident, including by preparing any rectification plan or schedule;

(c) assist the relevant nbn Entity with respect to its defence to any actual or potential claim or prosecution with respect to work performed at the Premises or in connection with the Services, Goods or Work Products;

(d) assist the relevant nbn Entity in the conduct of any work health and safety review, and provide periodic updates to the nbn Entity regarding work health and safety performance; and

(e) nominate a suitably qualified person to act as the representative of the Supplier with respect to any work health and safety matters arising out of the Supply Contract.

9. Acceptance & Testing

(a) The relevant nbn Entity may inspect or conduct testing within 30 days of delivery of the Goods, Services and Work Product (**Tested Items**) to satisfy itself that those Tested Items comply with their Specifications, these Terms and the Supply Contract. The relevant nbn Entity will notify the Supplier of any such inspection or testing.

(b) If, after inspection or testing, the relevant nbn Entity is not satisfied that a Tested Item complies with its Specifications, these Terms and the Supply Contract, then the nbn Entity may require the Supplier to collect the Tested Items and, at the nbn Entity's sole option:

(i) resupply the relevant Goods, Services or Work Product, in which case, the nbn Entity may conduct further inspection and testing under this clause 9; or

(ii) reject the Tested Item (and any other Goods, Services or Work Product it was intended to be used with) and terminate the relevant Supply Contract in whole or part. If an nbn Entity exercises its rights under this clause 9(b)(ii), then, without prejudice to the nbn Entity's other rights and remedies, the Supplier must refund all Fees and other amounts paid by the nbn Entity for the rejected Goods, Services and Work Product.

(c) Any inspection, testing, notification or acceptance by the relevant nbn Entity does not constitute any waiver of rights, or give rise to any estoppel, if the Tested Item is later found not to comply with its Specifications, these Terms or the Supply Contract.

10. Delivery, risk and title

(a) Unless otherwise specified in the Supply Contract, time will be of the essence with respect to the Supplier's delivery obligations under these Terms.

(b) Title and risk in any Goods or Work Product passes from the Supplier to the relevant nbn Entity as follows:

(i) if the nbn Entity conducts any inspection or testing under clause 9, on the date that the nbn Entity notifies the Supplier that the relevant Goods or Work Product has passed such inspection or testing; or

(ii) if the nbn Entity does not conduct any inspection or testing under clause 9, on the date on that the that nbn Entity otherwise accepts the Goods or Work Product by written notice, (**Acceptance Date**).

11. Payment

(a) Unless otherwise specified in the Supply Contract, the Supplier may invoice the relevant nbn Entity for the Fees at the times specified in the Supply Contract. If no such times are specified, the Supplier may invoice the relevant nbn Entity on the Acceptance Date.

(b) The relevant nbn Entity will pay any correctly rendered, undisputed invoice issued by the Supplier under the Supply Contract within 30 days from the end of the month in which the invoice is received by the nbn Entity.

(c) The Fees are inclusive of all costs and expenses incurred by the Supplier and no further amounts are payable by the relevant nbn Entity unless otherwise specified in the Supply Contract.

(d) If the relevant nbn Entity disputes the amount of an invoice, it may, on written notice to the Supplier, withhold or suspend payment of any disputed part of the disputed invoice until that

dispute is resolved. That nbn Entity must pay any undisputed part of the disputed invoice within the time specified in paragraph 11(b), and, where any disputed amount is subsequently found to be payable to the Supplier, must pay that amount promptly. To the extent that the Supplier has continuing obligations under a Supply Contract, it must continue to fulfil those obligations in accordance with the Supply Contract, notwithstanding a dispute over invoices that it has issued to the relevant nbn Entity.

12. GST

Unless otherwise specified in the Supply Contract, the Fees are inclusive of all taxes, levies, rates, charges and imposts of any kind, including withholding tax but excluding GST. If any supply under these Terms or the Supply Contract is a Taxable Supply, then the party making the supply may, at the same time that an invoice is rendered for the agreed consideration for the Taxable Supply, recover the amount of GST payable on that Taxable Supply, subject to the issue of a valid Tax Invoice. Unless the context indicates otherwise, terms used in this clause 12 which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as in that Act.

13. Intellectual Property

(a) The Supplier presently and unconditionally assigns, and must procure the assignment of, to the relevant nbn Entity, all present and future Intellectual Property Rights in any Work Product immediately upon creation, free of encumbrances and third party rights. The Supplier must, at its own cost, do all things necessary to give effect to this clause 13(a), including executing any required documents or effecting any required registrations.

(b) The Supplier grants, and must procure the grant, to the relevant nbn Entity a worldwide, perpetual, irrevocable, royalty free, non-exclusive, transferable licence (with the right to sub-licence) to use any Intellectual Property Rights which are comprised in the Goods, Services and Work Product and which are not assigned to the nbn Entity pursuant to clause 13(a) to the extent required for the nbn Entity to receive, use, maintain and modify the Services, Goods and Work Product for the internal and external business purposes of the nbn Entity and each other nbn Beneficiary.

(c) The Supplier must obtain in writing from all individual authors and performers involved in the creation of any Work Product an irrevocable Moral Rights Consent and provide such Moral Rights Consents to NBN Co on request by, and in a form acceptable to, nbn. Where a Work Product is software, the Supplier must also deliver to nbn the source code on request.

(d) The Supplier must not incorporate any Open Source Materials into any Work Product or Goods without the prior written consent of the nbn Entity that is party to the relevant Supply Contract.

14. Confidentiality and Privacy

(a) Each party (disclosing party) must keep confidential, and not disclose, any Confidential Information of the other party, except:

(i) where the disclosing party has obtained the prior written permission of the other party;

(ii) to the disclosing party's officers, agents, professional advisers, employees, contractors, sub-contractors, auditors and insurers, provided that it directs such persons to keep confidential all such Confidential Information and, where disclosure is to professional advisers, contractors, sub-contractors, auditors and/or insurers, procures from such persons a written undertaking that

such persons will keep confidential all such Confidential Information and only use such Confidential Information for the purpose for which it was disclosed in connection with these Terms or the Supply Contract;

(iii) to the disclosing party's Related Bodies Corporate; and

(iv) where the disclosing party is compelled to do so by Law, provided that it gives the other party written notice prior to disclosure.

(b) Each party must only use Confidential Information of the other party for the purpose for which it was disclosed in connection with these Terms or the Supply Contract.

(c) An nbn Entity may disclose Confidential Information of the Supplier to any Minister, Department or officer of the Commonwealth Government of Australia or any government agency for a legitimate government purpose.

(d) nbn may on the directions of any Minister, Department or office of the Commonwealth Government of Australia or any Government Agency publish key information in respect of these Terms and any Supply Contract including the Consultant's name, subject matter, term and value of these Terms and any Supply Contract.

(e) The Supplier must not make any public statement or issue any press release concerning or relating to these Terms, the Supply Contract or its relationship with NBN Co unless it has first obtained the written consent of nbn to do so.

(f) The Supplier must not export, disclose or transfer, or permit the export, disclosure or transfer of, any nbn Data outside Australia, or otherwise allow any person outside Australia to access any nbn Data, or store or process any nbn Data or any other data, including any Personal Information, collected, stored, used, processed, generated or disclosed as part of the Services or Work Product, whether or not such other data or Personal Information forms part of the nbn Data, in or using any Cloud Infrastructure whether located in or outside of Australia, in each case, without the prior written consent of the relevant nbn Entity.

15. Warranties

(a) The Supplier warrants, and it is a condition of these Terms and the Supply Contract, that on delivery, acceptance and during any applicable Warranty Period:

(i) all Goods, Services and Work Product will:

(A) comply with their Specifications and meet the requirements of these Terms and the Supply Contract;

(B) be able to be used, assembled, handled, stored, dismantled, decommissioned and disposed of, without risk to the health or safety of any person; and

(C) be fit for the purpose for which they are supplied;

(ii) all Goods and Work Product will:

(A) be free from material defects in design, materials and workmanship; and

(B) be newly manufactured and not second hand;

(iii) without limiting the generality of clauses 15(a)(i) and 15(a)(ii), all Goods that are software will be free from any code or software designed to disable or reduce the functionality of that software, permit unauthorised access to any software, or disable any software or data;

(iv) the use of any new release, fix or work-around will not degrade the functionality or performance of any software in any way; and

(v) all Services will:

(A) be performed with due care and skill, in a professional, efficient and safe manner, and to best industry standards; and

(B) be performed by suitably qualified and experienced Personnel.

(b) The Supplier warrants, and it is a condition of these Terms and the Supply Contract, that the supply of any Goods, Work Product and Services, and the use of those Goods, Work Product and Services, does not and will not contravene any Laws, or infringe any rights of a third party (including any Intellectual Property Rights).

(c) During any applicable Warranty Period, the Supplier must, at no additional charge and without prejudice to any other rights or remedies of the relevant NBN Entity, repair, collect and replace or resupply any Goods, Services or Work Product that do not comply with any of the applicable warranties.

16. Indemnity

The Supplier indemnifies the nbn Entities and their respective Personnel (**those indemnified**) from and against any claim, action, demand, Loss which any of those indemnified pays, suffers, incurs or is liable for arising out of or in connection with:

(a) a breach of these Terms or a Supply Contract;

(b) the death or personal injury of any person;

(c) loss of, or damage to, any property;

(d) any breach of Law or infringement of a third party's rights (including Intellectual Property Rights);

(e) any failure to collect, use, store, disclose or handle nbn Data which is Personal Information in accordance with any nbn Policy relating to privacy, and any requirements of NBN Co (as notified to the Supplier from time to time) and the Privacy Act 1988 (Cth);

(f) any loss or corruption of, or alteration or damage to, nbn Data;

(g) any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation; and

(h) any breach of any duty of confidentiality,

to the extent caused or contributed to by any act or omission of the Supplier or its Personnel or sub-contractors

17. Liability

(a) Other than its obligations to pay the Fees due and payable to the Supplier under the Supply Contract and its obligations under clause 14, the nbn Entity will, to the maximum extent permitted by law, have no liability to the Supplier whether in contract, tort (including negligence), statute, equity or otherwise, under or in connection with these Terms or any Supply Contract.

(b) The relevant nbn Entity excludes any and all liability for any Indirect Loss suffered in connection with these Terms and the Supply Contract, whether arising under contract, tort (including negligence), statute, equity or otherwise.

(c) To the extent permitted by Law, the operation of the apportionment of liability provisions in the Apportionment Legislation is excluded in relation to any and all claims, rights, obligations and liabilities arising under or in relation to these Terms or any Supply Contract, howsoever such claims, rights, obligations or liabilities are sought to be enforced, and the parties agree that their rights, obligations and liabilities will be those which would exist if the Apportionment Legislation did not apply.

18. Insurance

(a) The Supplier must comply with Laws with respect to the requirement to hold workers compensation insurance, and hold:

(i) liability insurance including public liability and product liability insurance, each for an amount not less than \$20 million any one occurrence and, in respect of products liability, in the annual aggregate, or such other amount appropriate to the Supplier's activities, including loss of or damage to personal and real property of the relevant nbn Entity (including documents and records); and

(ii) professional indemnity insurance for an amount not less than \$10 million for any one claim and in the annual aggregate, or such other amount as is appropriate to the Supplier's activities, for breach of professional duty whether incurred in contract, tort or otherwise by reason of any act, omission of the Supplier,

(together, **the insurance policies**).

(b) The Supplier must provide, on the relevant nbn Entity's request, certificates of currency and such other evidence satisfactory to the nbn Entity of insurance coverage specified in this clause 18.

(c) The Supplier must effect the insurance policies before starting to supply the Goods, Services and Work Products and maintain them until the Supply Contract has terminated or expired, or as otherwise required by the relevant nbn Entity.

19. Term

The Supply Contract commences on the date it is accepted by the Supplier (or such other date as may be specified in the Supply Contract) and continues until the Supply Contract is terminated or cancelled pursuant to these Terms, or until each party has fulfilled its obligations under the Supply Contract, whichever occurs first.

20. Termination

The relevant nbn Entity may terminate the Supply Contract (in whole or in part) by immediate effect upon written notice to the Supplier:

(a) if the Supplier breaches any obligation under these Terms or the Supply Contract including any breach of a nbn Policy, which is incapable of remedy or which is capable of remedy, but is not remedied within 14 days of receipt of a notice from the nbn Entity specifying the breach and requiring it to be remedied;

(b) if any Goods or Work Product are required to be delivered or installed, or any Services are required to be completed, prior to a specified delivery date, and the Goods or Work Product are not delivered or installed, or the Services are not completed, prior to that date, or the nbn Entity reasonably determines that the Goods or Work Product will not be delivered or installed, or the Services will not be completed, prior to that date, in each case because of a breach of these Terms or the Supply Contract by the Supplier;

(c) if the Supplier or any of its Personnel commit any act of fraud or dishonesty in relation to these Terms or the Supply Contract;

(d) if the Supplier or any of its Personnel does anything that materially damages or is likely to materially damage the brand or reputation of nbn or any of its Related Bodies Corporate;

(e) if a Change in Control occurs in relation to the Supplier;

(f) if the Supplier becomes insolvent, bankrupt or enters into liquidation or administration; or

(g) for any breach of clause 4(b) or 4(e) or where a security breach relating to nbn's networks or systems or nbn Data occurs as a result of any act or omission of the Supplier.

21. Termination for convenience

The relevant nbn Entity may at any time on at least thirty (30) days' written notice to the Supplier terminate these Terms or one or more Supply Contracts, for convenience and without any requirement to give reasons, in which case that nbn Entity's sole liability will be to pay the Supplier for all Work Product delivered, and Services duly performed, up to the date of termination.

22. Consequences of Termination

(a) As soon as practicable after expiry or termination of the Supply Contract, the Supplier must:

(i) provide to the relevant nbn Entity a copy of all Work Product (including any incomplete Work Product and, where that Work Product is, or comprised of, software, the source code of such software) produced under the Supply Contract;

(ii) return, and must ensure that all the Supplier's Personnel return, to the relevant nbn Entity all Confidential Information, nbn Data, equipment, records, documents and materials provided by the nbn Entity for the purposes of the Supply Contract, including any security passes and keys in their possession or control, unless such information is required for the purposes of clause 22(b) and any other Supply Contract between the nbn Entity and the Supplier that remains on foot.

(b) As soon as practicable after expiry or termination of the Supply Contract, the Supplier must provide such services as the relevant nbn Entity reasonably requests to achieve an orderly, uninterrupted transition of the supply of any relevant Services to an nbn Entity or a replacement supplier of similar services appointed by any nbn Entity, such services to be provided at the time and materials rates to be agreed by the parties

(c) Clauses 9, 13, 14, 15, 16, 17, 20, 21 and 22 and any other obligations which are expressed to or, by their nature, survive expiry or termination, will survive expiry or termination of the Supply Contract and are enforceable at any time at law or in equity.

23. Subcontracting

(a) The Supplier must not subcontract any of its obligations under a Supply Contract without the prior written consent of the relevant nbn Entity.

(b) To the extent that the Supplier subcontracts any of its obligations to a third party, the Supplier will remain liable to the relevant nbn Entity for each act and omission of that third party in connection with the performance of such obligations as if it were an act or omission of the Supplier.

(c) The Supplier must ensure that its subcontractors comply with all applicable Laws, **nbn** Policies and all other directions or requirements that apply to the provision of Services, Goods or Work Product under the terms of a Supply Contract.

24. General

(a) **Beneficiaries.** The relevant nbn Entity enters into these Terms and the Supply Contract on its own behalf and on trust for each nbn Beneficiary.

(b) **Entire Agreement.** Without prejudice to clause 1(b), these Terms and the Supply Contract constitute the entire agreement between the parties in connection with the subject matter of the Supply Contract and supersede all previous agreements or understandings between the parties in connection with the relevant subject matter. No oral explanation or information provided by any party to another affects the meaning or interpretation of these Terms and the Supply Contract or constitutes any collateral agreement, warranty or understanding between the parties.

(c) **Assignment and subcontracting.** The Supplier must not assign, novate or otherwise transfer any of its rights or obligations under these Terms or the Supply Contract without the relevant NBN Entity's prior written consent. The Supplier agrees that the relevant nbn Entity may assign or transfer the whole or part of these Terms or the Supply Contract to any other nbn Entity.

(d) **Variation.** No variation of these Terms or the Supply Contract is effective unless made in writing and signed by each party.

(e) **Relationship.** The parties are independent contractors and nothing in these Terms or the Supply Contract gives rise to any relationship of agency, partnership, employment or otherwise.

(f) **Set-off.** The relevant nbn Entity may, by notice to the Supplier, reduce any Fees or other charges or costs payable to the Supplier under these Terms or the Supply Contract by any fee, credit, rebate or other amount which is payable to the nbn Entity under or in connection with these Terms or the Supply Contract.

(g) **Notices.** All notices given under these Terms or the Supply Contract must be given by a party to the other party at the addresses specified in the Supply Contract or as otherwise notified by the other party from time to time.

(h) **Waiver.** No waiver of a right or remedy under these Terms or the Supply Contract is effective unless it is in writing and signed by the party granting it.

(i) **Governing law.** These Terms and the Supply Contract is governed by the Laws of New South Wales and each party submits to the exclusive jurisdiction of the courts of New South Wales.

(j) **Counterparts.** These Terms and the Supply Contract may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

25. Definitions

In these Terms and the Supply Contract:

Apportionment Legislation means (i) *Part 4 of the Civil Liability Act 2002* (NSW) where any Services are provided in New South Wales, (ii) the *Civil Liability Act 2002* (Tas) where any Services are provided in Tasmania; and (iii) Part 1F of the *Civil Liability Act 2002* (WA) where any Services are provided in Western Australia.

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

Change in Control means the happening of circumstances or events following which a person becomes Controlled by another person, alone or together with any associates, who did not previously Control the first person. For the purposes of this definition, Control is defined in the Corporations Act 2001 (Cth).

Cloud Infrastructure means cloud computing software, hardware or other infrastructure or services, whether public, private, community-based or otherwise.

Confidential Information in relation to a party means information of a confidential nature including information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

Fees means the amounts payable by the relevant nbn Entity under the Supply Contract for any Goods or Services (including any Work Product).

Goods means goods described in the Supply Contract, and includes all acts, matters and things that may be necessary for and incidental to the proper and efficient supply or use of such goods.

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

Indirect Loss means loss of revenue, loss of profit, loss of goodwill, loss of anticipated savings, loss of opportunity, and any other Loss, not arising naturally and according to the usual course of things from the relevant breach, whether or not such Loss may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the relevant breach.

Intellectual Property Rights means all copyright, trade mark, design, patent, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of these Terms or any Supply Contract anywhere in the world.

Law means any applicable statute, regulation, by-law, ordinance, or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

Loss means any loss, damage, liability, charge, expense, outgoing, cost, fine, payment (including all legal and other professional costs on a full indemnity basis) of any nature.

Malicious Code means any files, programmes or programme code in any part of a software, firmware or hardware system or script that is intended to affix itself to, bury itself within or send instructions to, other files, computers, or other programmes or programme code to cause malfunctions, errors or destruction, corruption or disclosure of data, or to lower protective security controls to enable security breaches to occur.

Moral Rights means the moral rights set out in the Copyright Act 1968 (Cth) and any similar rights under foreign laws.

Moral Rights Consent means a waiver of Moral Rights to the extent permitted by Law and an unconditional consent sufficient to allow the relevant nbn Entity, each Related Body Corporate of that nbn Entity, and each of their respective licensees and assigns from time to time to use, disclose, reproduce, adapt, copy, publish, perform, exhibit, transmit, communicate, modify and translate the Work Product anywhere in the world, in any form and in any circumstances: (i) which, but for the waiver or consent, would infringe the Moral Rights of any author or performer involved in the creation or performance of the Work Product, including without attributing authorship to any author or performer of any Work Product; and (ii) for any purpose relating to the business of the relevant nbn Entity and/or each Related Body Corporate of that **nbn Entity**, including in any manner provided in any Supply Contract, or as otherwise agreed by the parties.

nbn means NBN Co Limited ABN 86 136 533 741 of Level 40, 360 Elizabeth Street, Melbourne VIC 3000.

nbn Beneficiary means each nbn Entity, and any other company which the relevant nbn Entity designates from time to time, for the purpose of implementing, operating or maintaining nbn Co's network in whole or part.

nbn Data means all data and information (whether or not Confidential Information) relating to any nbn Entity, its business, operations, facilities, customers, Personnel, assets, products, sales, transactions, security events, configurations, environments, uses and systems, in whatever form such information may exist and whether entered into, stored in, generated by or processed as part of the Services, Goods or Work Product.

nbn Entity means as detailed in clause 1(a) above.

nbn Policy means nbn's policies, procedures and standards (including any updates, supplements and amendments from time to time) which are:

(a) made available to the Supplier on that **nbn** website from time to time or at such other location as is notified by **nbn** or the nbn Entity from time to time; or

(b) otherwise notified in writing, or made available, by or on behalf of nbn or the nbn Entity to the Supplier from time to time, including **nbn**'s "*Supplier Code of Conduct*" (which, as at the date of these Terms, is available below).

nbn Supplier Code of Conduct

28 September 2023

[Download \(PDF - 802 KB\)](#)

Open Source Materials means any materials which are distributed subject to: (i) the licence terms known as the 'GNU General Public Licence', or the 'GNU Lesser General Public Licence' or any substantially similar licensing terms; or (ii) any other terms authorising use by the public generally, but also requiring modifications, adaptations or derivations of, or enhancements to, those materials to be made available to the public on particular terms.

Personal Information has the meaning given to that term in the *Privacy Act 1988* (Cth).

Personnel means employees, secondees, agents and contractors.

Premises means premises owned, leased or otherwise occupied by an nbn Entity.

Related Body Corporate is defined in the *Corporations Act 2001* (Cth).

Security Incident includes any:

- (a) suspicious or seemingly targeted emails with attachments or links to files or websites;
- (b) actual or attempted unauthorised intrusion into any information technology system;
- (c) unauthorised compromise or corruption of information;
- (d) intentional or accidental introduction of any Malicious Code;
- (e) intentional or accidental disruption to services or damage to, or loss of, equipment; and
- (f) misuse, interference, loss, unauthorized access, modification or disclosure of NBN Co Data or any other actual or potential invasion of privacy.

Services means the services described in the Supply Contract and includes all acts, matters and things that may be necessary for and incidental to the proper and efficient supply or use of such services.

Specifications means, in respect of a Good, Service or Work Product, the requirements for that Good, Service or Work Product set out or referred to in:

- (a) the Supply Contract or developed by the Supplier under the Supply Contract, including all agreed requirements and specifications as to design, quality, functionality, performance, interoperability, testing and other matters;
- (b) any sample or demonstration provided by the Supplier to the relevant nbn Entity;
- (c) all published specifications for that Good, Service or Work Product (as applicable), including the Supplier's or third party manufacturer's specifications.

In the event of any inconsistency between the Specifications comprised in paragraphs (a) to (c) above, the order of priority of these Specifications will reflect the order in which these Specifications are listed in this definition.

Supplier means the entity identified as the supplier in the Supply Contract.

Terms means these Standard Terms.

Warranty Period means, unless otherwise agreed in writing by the parties:

(g) in the case of Goods that are software, 90 days; and

(h) in the case of all other Goods and Work Product, 12 months, from the Acceptance Date.

Work Product means all things, materials, documents, information and items developed by or on behalf of the Supplier or its Personnel in the course of or in connection with the supply of the Services in any form whatsoever (including electronic form) and includes all inventions, software, databases, models, drawings, plans, artwork, designs, logos, reports, advices, proposals and records, including all things described as Work Product in the Supply Contract.

2. Interpretation

In these Terms and the Supply Contract the following rules of interpretation apply unless the contrary intention appears:

(a) headings are for convenience only and do not affect the interpretation of these Terms or the Supply Contract;

(b) the singular includes the plural and vice versa; the words 'such as', 'including' and similar expressions are not to be interpreted as words of limitation;

(c) a reference to:

(i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;

(ii) a party includes its successors and permitted assigns;

(iii) a document includes all amendments or supplements to that document;

(iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

(v) a right includes a benefit, remedy, discretion or power; and

(vi) time is to local time in Sydney, Australia; and

(vii) a monetary amount is in Australian dollars;

(d) an agreement on the part of two or more persons binds them jointly and severally; and

(e) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.

(f) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of these Terms, the Supply Contract, or any part of them.