

# PDF Agreement: Product Development Forum Terms





# PDF Agreement: Product Development Forum Terms

## Revision history

| Version | Description                       | Effective Date    |
|---------|-----------------------------------|-------------------|
| 1.0     | First issued version              | Commencement Date |
| 1.1     | Amended definition of Expiry Date | Commencement Date |
| 1.2     | Amended definition of Expiry Date | Commencement Date |
| 1.3     | Amended definition of Expiry Date | Commencement Date |

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## Environment

**nbn** asks that you consider the environment before printing this document.



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# PDF Agreement: Product Development Forum Terms

## Parties

This document is entered into between:

- **nbn co limited** (ABN 86 136 533 741) of Level 13, 100 Mount Street, North Sydney NSW 2060 (**nbn**)
- **[Insert full legal name of PDF Participant]** (ABN **[Insert ABN]**) of **[insert registered address of PDF Participant]** (**PDF Participant**)

## Background

- A. The SAU contains PDF Processes governing the establishment and operation of the Product Development Forum.
- B. This document:
  - (i) binds **nbn** and the PDF Participant to comply with the PDF Processes; and
  - (ii) sets out the Confidential Information and Intellectual Property Rights terms that apply to the Product Development Forum.

## 1. Application of this document

- (a) **nbn** and the PDF Participant agree to comply with the PDF Processes and the terms set out in this document in connection with any participation in the Product Development Forum.
- (b) [Module G \(Dispute Management\)](#) of the Head Terms of the WBA does not apply to the PDF Processes, but does apply to clauses 4 and 5 of this document.
- (c) In the event of any inconsistency between the [Head Terms of the WBA](#) and the PDF Processes concerning any matter which is the subject of clauses 4 and 5 of this document, the PDF Processes will prevail to the extent of the inconsistency.

## 2. Participation in the Product Development Forum

- (a) As at the Commencement Date and continuing for the Term, the PDF Participant warrants to **nbn** that the PDF Participant is and will remain a Customer, Access Seeker or Consumer Advocacy Group and must notify **nbn** immediately if the PDF Participant ceases to be a Customer, Access Seeker or Consumer Advocacy Group.
- (b) The PDF Participant must comply with any reasonable instructions, directions or requests that are made or given by **nbn** or its Personnel in relation to the PDF Participant's participation in the Product Development Forum, including the PDF Participant's access to and use of any online collaboration tools and communications media and participation in workshops, training or other activities.
- (c) If the PDF Participant ceases to be a Customer, Access Seeker or Consumer Advocacy Group during the Term or otherwise fails to comply with any provision in this document, the PDF Participant's right to participate in the Product Development Forum will automatically be suspended with immediate effect and **nbn** may terminate this document with immediate effect by giving notice to the PDF Participant.



## 3. Term

This document will start on the Commencement Date and will continue in full force and effect until the Expiry Date, unless terminated earlier (the **Term**).

## 4. Confidential Information

### 4.1 Identification of Confidential Information

- (a) PDF Participant must clearly identify information submitted:
  - (i) to **nbn** in accordance with the PDF Processes;
  - (ii) through workshops; or
  - (iii) otherwise in connection with this document,which PDF Participant requires **nbn** to treat as Confidential Information.
- (b) PDF Participant must identify the information submitted under clause 4.1(a) by giving notice to **nbn** at the time of submitting the relevant information or as soon as reasonably practicable thereafter, and in any event within 6 weeks after submission.
- (c) PDF Participant is requested to keep claims for confidentiality to a minimum, to allow Product Ideas the best chance of being developed by **nbn** in the Product Development Forum.

### 4.2 Maintaining confidentiality

- (a) Subject to clauses 4.2(b) and 4.2(d) and any applicable statutory duty, each party (**Recipient**) must keep confidential all Confidential Information of the other party (**Discloser**) and must not:
  - (i) use or copy such Confidential Information; or
  - (ii) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any person.
- (b) Subject to clause 4.2(d), Confidential Information of the Discloser may only be used by the Recipient for the purposes of considering Product Ideas and to exercise its rights and perform its obligations under this document.
- (c) Notwithstanding anything else in this document, the PDF Participant must not, and must use reasonable endeavours to ensure that each person to whom the PDF Participant discloses Confidential Information under clauses 4.2(d)(i), 4.2(d)(ii) or 4.2(d)(vii) does not, use Confidential Information of **nbn** to develop, enhance, market or promote products and services that compete with Products.
- (d) A Recipient may to the extent necessary use and/or disclose (as the case may be) the Confidential Information of the Discloser:
  - (i) to those of its Related Bodies Corporate and its and their Personnel to whom the Confidential Information is reasonably required to be disclosed for the purposes of considering Product Ideas and to exercise its rights and perform its obligations under this document, subject to clause 4.4 and provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;
  - (ii) where the Recipient is a Customer, to Downstream Customers who are not End Users to whom the Confidential Information is reasonably required to be disclosed for the purposes of considering Product Ideas and to exercise its rights and perform its



obligations under this document, provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;

- (iii) to any professional person for the purpose of obtaining advice in relation to matters arising out of or in connection with this document, provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;
- (iv) to an auditor acting for the Recipient to the extent necessary to permit that auditor to perform its audit functions, provided the person to whom the disclosure is made is subject to an obligation to keep the information confidential;
- (v) in connection with legal proceedings, arbitration, expert determination and other dispute resolution mechanisms set out in the WBA (as applicable), provided that the Recipient has first given as much notice (in writing) as is reasonably practicable to the Discloser so that the Discloser has an opportunity to protect the confidentiality of its Confidential Information;
- (vi) as required by law provided that the Recipient has first given as much notice (in writing) as is reasonably practicable to the Discloser that the Recipient is required to disclose the Confidential Information, so that the Discloser has an opportunity to protect the confidentiality of its Confidential Information, except that no notice is required in respect of disclosures made by **nbn** to the ACCC under sections 152BEA to 152BEC (inclusive) of the Competition and Consumer Act;
- (vii) with the written consent of the Discloser provided that prior to disclosing the Confidential Information of the Discloser:
  - (A) the Recipient informs the relevant person or persons to whom disclosure is to be made that the information is the Confidential Information of the Discloser;
  - (B) if required by the Discloser as a condition of giving its consent, the Recipient must provide the Discloser with a confidentiality undertaking (which is in a form approved by the Discloser) signed by the person or persons to whom disclosure is to be made; and
  - (C) if required by the Discloser as a condition of giving its consent, the Recipient must comply with clause 4.5;
- (viii) in accordance with a lawful and binding directive issued by a Regulator or Government Agency;
- (ix) as required by the listing rules of any stock exchange where that party's securities are listed or quoted; and
- (x) where **nbn** is the Recipient, where required by law, to:
  - (A) any Shareholder Minister and their respective government departments; or
  - (B) any Regulator.

### 4.3 No disclosure

Except where expressly contemplated by this document, **nbn** may not disclose Confidential Information of PDF Participant to any other Customer, Access Seeker or Consumer Advocacy Group.

### 4.4 Sanitisation of Confidential Information of PDF Participant

- (a) Before disclosing Confidential Information of PDF Participant in accordance with clause 4.2(d)(i), **nbn** must, where possible and to the extent that it does not make the Confidential Information less useful for the purpose for which it is being disclosed, anonymise, aggregate



or otherwise sanitise Confidential Information to a form that overcomes the PDF Participant's reasons for identifying it as confidential or is otherwise satisfactory to the PDF Participant.

- (b) The PDF Participant must provide any reasonable assistance requested by **nbn** to facilitate the process provided for in clause 4.4(a).

## 4.5 Co-operation

Subject to clause 4.2(d), each party must co-operate in any action taken by the other party to:

- (a) protect the confidentiality of the other party's Confidential Information; or
- (b) enforce its rights in relation to its Confidential Information.

## 4.6 Return of Confidential Information on demand

- (a) Subject to any agreement made under clause 4.9, the Recipient must return, destroy or delete the Discloser's Confidential Information on demand by the Discloser except to the extent it is impracticable to do so, or necessary to comply with the Recipient's internal governance processes, or any applicable law.
- (b) To the extent that a demand under clause 4.6(a) leads to **nbn** reasonably forming the view that it is no longer able to continue to consider a Product Idea, then **nbn** may cease consideration of the Product Idea.

## 4.7 No warranty

Confidential Information provided by one party to the other party is provided for the benefit of that other party only. Each party acknowledges that no warranty is given by the Discloser that the Confidential Information is or will be correct.

## 4.8 Injunctive relief

Each party acknowledges that a breach of this clause 4 by one party may cause another party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a party may seek injunctive relief against such a breach or threatened breach of this clause 4.

## 4.9 Access to Confidential Information of PDF Participant for the Product Build Phase

- (a) If **nbn** proposes to progress a Product Idea which relies on Confidential Information of the PDF Participant to the Product Build Phase:
  - (i) **nbn** will notify the PDF Participant; and
  - (ii) if **nbn** determines that it is necessary or desirable, **nbn** may request that the PDF Participant:
    - (A) grant **nbn** additional rights to use or disclose; and
    - (B) waive any restriction under this clause 4 in respect of, the Confidential Information of the PDF Participant.
- (b) If **nbn** makes a request under clause 4.9(a), **nbn** will negotiate with the PDF Participant on a case by case basis for the use of that information. Any agreed right to use or disclose Confidential Information of PDF Participant, or any waiver, must be in writing.



- (c) Customer acknowledges that section 152AXD of the Competition and Consumer Act imposes an obligation on **nbn** to not discriminate between Customers in developing a new Eligible Service or enhancing a Declared Service (as those terms are defined in the Competition and Consumer Act).
- (d) In the event that **nbn** and a PDF Participant cannot agree mutually acceptable access rights under this clause 4.9, or **nbn** forms the view that confidentiality claims preclude the development of a Product Idea, **nbn** will notify the PDF Participant accordingly and **nbn** may cease consideration of the Product Idea. In that case, **nbn** must not use the relevant Confidential Information of PDF Participant except as permitted by this clause 4, but **nbn** may continue to consider and develop the Product Idea if it is able to do so without using the Confidential Information of PDF Participant in a manner which is inconsistent with this clause 4.

## 4.10 Data Security

Each party must apply reasonable security standards in respect of any data or information (including Confidential Information) of the other party (having regard to the nature of the data or information and the party's obligations under applicable law) that the party collects, stores, uses or discloses to third parties by any means inside or outside Australia and must not allow any person inside or outside of Australia to access any such data or information except in compliance with those data security standards.

# 5. Intellectual property

## 5.1 General Principles

- (a) Except as expressly provided in this clause 5, nothing in this clause confers on either party any right, title or interest in or to (including to permit or cause to be used) any of the other party's, or any third party's, Intellectual Property Rights.
- (b) Subject to clause 5.1(c), **nbn** owns all the Intellectual Property Rights in:
  - (i) Materials developed by **nbn** for the purposes of considering and developing a Product Idea; and
  - (ii) Products, Product Components or Product Features (or any similar or alternative product or service) developed by **nbn**.
- (c) **nbn** does not own any Customer IPRs or Third Party IPRs.

## 5.2 Submission of Materials

- (a) If the PDF Participant submits any Materials:
  - (i) to **nbn** in accordance with this document;
  - (ii) through workshops; or
  - (iii) otherwise in connection with this document,then PDF Participant must identify whether or not it believes that any Intellectual Property Rights may subsist in those Materials.
- (b) The identification under clause 5.2(a) must be done by giving notice in writing to **nbn** at the time of submitting the relevant Materials.





### 5.3 nbn internal use of Customer Materials

- (a) The PDF Participant grants to **nbn** (acting through its Personnel) a non-exclusive, royalty-free, non-transferrable licence to reproduce, communicate and adapt any Intellectual Property Rights embodied in Customer Materials submitted under clause 5.2 for the activities of the Product Development Forum and internally within **nbn** in each case strictly for the purposes of considering whether to develop a Product Idea (**Permitted Use**).
- (b) The licence in clause 5.3(a) does not extend to incorporating Customer IPRs or Third Party IPRs into:
  - (i) Products, Product Components or Product Features (or any similar or alternative product or service); or
  - (ii) Material that will be circulated to third parties other than as permitted in connection with the activities of the Product Development Forum for the purposes of considering whether to develop a Product Idea.
- (c) **nbn** remains liable for each act and omission of its Personnel in connection with the use of Intellectual Property Rights licensed to it under this clause 5.3 as though it was an act and/or omission of **nbn**.
- (d) **nbn** must not, and must ensure its Personnel do not, use any Intellectual Property Rights licensed to it under this clause 5.3 except as expressly licensed, or otherwise in accordance with this document.

### 5.4 Negotiated licence to exploit Customer IPRs and/or Third Party IPRs

- (a) If, in connection with the activities of the Product Development Forum, **nbn** believes it necessary or desirable to use Customer Materials in any manner or for any purpose other than the Permitted Use, **nbn** will give written notice to the PDF Participant identifying:
  - (i) the Materials which **nbn** wishes to use (**Proposed Use Materials**); and
  - (ii) the use which **nbn** wishes to make of those Proposed Use Materials.
- (b) The PDF Participant will give written notice to **nbn** within 4 weeks (or such longer period as the parties agree is reasonable, having regard to the nature of the Proposed Use Materials) after receiving a notice under clause 5.4(a), which:
  - (i) states whether or not any Customer IPRs or Third Party IPRs subsist in the Proposed Use Materials;
  - (ii) states whether or not PDF Participant is prepared to enter into negotiations with **nbn** for use of any Customer IPRs or Third Party IPRs that subsist in the Proposed Use Materials for the purpose specified by **nbn** under clause 5.4(a); and
  - (iii) if it is prepared to enter into such negotiations, identifies:
    - (A) Customer IPRs that subsist in the Proposed Use Materials and the nature of those rights; and
    - (B) Third Party IPRs that subsist in the Proposed Use Materials and the nature of those rights.
- (c) If the PDF Participant does not give written notice to **nbn** in accordance with clause 5.4(b), **nbn** may give a further written notice to the PDF Participant requesting that the PDF Participant provide a notice in accordance with clause 5.4(b) within 2 weeks (or such longer period as the parties agree is reasonable, having regard to the nature of the Proposed Use Materials).



- (d) If the PDF Participant does not respond under clause 5.4(b) within the additional timeframe specified in clause 5.4(c) or states that it is not prepared to enter into negotiations with **nbn** for use of any Customer IPRs or Third Party IPRs that subsist in the Proposed Use Materials for the purpose specified by **nbn** under clause 5.4(a), or having entered into negotiations the parties fail to reach agreement on the terms of such use, then **nbn**:
- (i) may cease consideration of any relevant Product Idea; and
  - (ii) must not use the Proposed Use Materials for the purpose referred to in clause 5.4(a)(ii) or for any purpose other than a Permitted Use.
- (e) If there are any Customer IPRs or Third Party IPRs that subsist in the Proposed Use Materials that are not identified in a notice given under clause 5.4(b) (**Unidentified IPRs**) and Customer:
- (i) stated in the notice that no such Unidentified IPRs exist; or
  - (ii) stated in the notice that it was prepared to enter into negotiations with **nbn** for use of Customer IPRs or Third Party IPRs that subsist in the Proposed Use Materials, but failed to give a complete and accurate disclosure of the Unidentified IPRs,
- then the PDF Participant grants an unconditional and irrevocable waiver of all rights to bring any Claim in relation to any infringement of the Unidentified IPRs in respect of the use identified by **nbn** in clause 5.4(a)(ii).
- (f) Notwithstanding the commitments and timeframes referred to in clauses 5.4(b), 5.4(c) and 5.4(e), **nbn** and PDF Participant may at any time elect, but are under no obligation, to negotiate and agree a licence or assignment of a right to use the Intellectual Property Rights in the Proposed Use Materials.
- (g) The following conditions will apply to any licence that is negotiated and agreed as contemplated by this clause 5.4:
- (i) the licence will be made before the Customer IPRs are used by **nbn** for any purpose other than the Permitted Use;
  - (ii) the licence will be made before the business case for the development of the Product Idea is finalised;
  - (iii) **nbn** will pay a commercially agreed price for the use of the Customer IPRs; and
  - (iv) the licence will be on terms that enable **nbn** to use the Customer IPRs including for the benefit of PDF Participant and other Customers and to meet its Non-Discrimination Obligations.

## 5.5 Third Party IPRs Indemnity

- (a) Subject to clauses 5.5(b) and 5.5(c), PDF Participant must pay on demand to **nbn** the amount of any Loss suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, or their respective Personnel, arising from, under or in connection with any Claim brought by any third party alleging that the exercise by **nbn** of any rights assigned, transferred or granted, or purportedly assigned, transferred or granted, by or on behalf of the PDF Participant under this document infringes any Third Party IPRs.
- (b) If, prior to **nbn** engaging in the Permitted Use of any Materials, a PDF Participant notifies **nbn** in writing that the Permitted Use of those Materials may infringe any Third Party IPRs, then clause 5.5(a) will not apply in respect of those Third Party IPRs in those Materials.
- (c) Clause 5.5(a) does not apply to any rights assigned, transferred or granted, or purportedly assigned, transferred or granted, by or on behalf of the PDF Participant under any licence that is negotiated and agreed as contemplated by clause 5.4.



## 5.6 Risk Management

- (a) No party is liable to make any payment to the other party for any and all Losses of that other party arising from or in connection with this document, regardless of how that Liability arises, to the extent such Liability is Indirect Loss.
- (b) The liability of a party (the **First Party**) to the other party in respect of any and all Claims and Losses arising from or in connection with this document (regardless of whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) is reduced proportionally to the extent that:
  - (i) the other party has not taken all reasonable steps to minimise and mitigate its own Losses in relation to the act, omission, event or circumstance giving rise to such Claim or Loss (where such costs are recoverable from the First Party); or
  - (ii) any Losses of the First Party are caused, or contributed to, by:
    - (A) any act or omission of the other party, its Related Bodies Corporate or their respective Personnel; or
    - (B) the networks, systems, equipment or facilities of the other party, its Related Bodies Corporate or their respective Personnel.
- (c) The liability of the PDF Participant to pay on demand an amount under clause 5.5 to **nbn** will be the sole and exclusive financial remedy in respect of the liability the subject of the indemnity.
- (d) It is not necessary for **nbn** to incur expense or make payment before enforcing the right of indemnity conferred by clause 5.5.
- (e) In relation to any third party Claim against which the PDF Participant indemnifies **nbn** under clause 5.5, **nbn** must:
  - (i) notify the PDF Participant as soon as is reasonably practicable of the relevant Claim; and



- (ii) where the PDF Participant can demonstrate to the reasonable satisfaction of **nbn** that it has the resources to pay all Losses which are reasonably likely to arise in the event the Claim is successful:
- (A) give the PDF Participant the option to conduct the defence of the Claim, including negotiations for settlement or compromise. If the PDF Participant exercises this option, the PDF Participant must not do anything during the course of any defence, settlement or compromise which adversely affects **nbn**'s business or reputation, must consider in good faith any submissions made by **nbn** with respect to the defence, settlement or compromise of the Claim and must first obtain the consent of **nbn** (which must not be unreasonably withheld) to the terms of any settlement or compromise of the relevant Claim, and provided that no consent is required where the terms of any such settlement or compromise involve only the payment of money;
  - (B) promptly provide all assistance reasonably requested by the PDF Participant (at the cost of the PDF Participant) in conducting the defence of the Claim; and
  - (C) not make any admissions in relation to the Claim without the prior written consent of the PDF Participant.

## 6. General

### 6.1 Assignment, novation and other dealings

The PDF Participant must not assign or novate this document or otherwise deal with the benefit of this document or a right under it, or purport to do so, without the prior written consent of **nbn**.

### 6.2 Counterparts

This document may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.

### 6.3 Cumulative rights

The rights of a party under this document are in addition to and do not exclude or limit any other rights or remedies provided by law.

### 6.4 Entire agreement

This document is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

### 6.5 Governing law and jurisdiction

This document is governed by the laws of New South Wales and the Commonwealth of Australia. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales, the Commonwealth courts having jurisdiction in New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought in relation to this document.



## 6.6 Severability

Any term of this document that is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this document is not affected.

## 6.7 Variation

No variation of this document is effective unless made in writing and signed by each party.

## 6.8 Waiver

No waiver of a right or remedy under this document is effective unless it is in writing and signed by the party granting it.

## 6.9 Notice

A notice under this document must be given to the other party in writing by hand, post, email or fax using the details set out in this document, as each party may update by notice. In addition, **nbn** may give notice to the PDF Participant via the PDF Representative.

# 7. Definitions and Interpretation

## 7.1 Definitions

**Access Seeker** has the meaning given to that term in section 152AG of the Competition and Consumer Act 2010 (Cth), but excludes Customers.

**ACCC** means the Australian Competition and Consumer Commission.

**Claim** means any and all claims, alleged claims, actions, suits or proceedings by any person of any nature or kind, whether in contract, tort (including negligence) at common law, in equity, under statute or otherwise however arising.

**Commencement Date** means the date on which this document is entered into by the PDF Participant and **nbn**.

**Commonwealth** means the Commonwealth of Australia.

**Competition and Consumer Act** means the *Competition and Consumer Act 2010* (Cth).

**Confidential Information** means all information, know-how, ideas, concepts, technology, marketing, operational, financial and other industrial or commercial knowledge and data of a confidential nature (whether in tangible or intangible form and whether coming into existence before or after the commencement of this document which:

- (a) a party (the "first mentioned party") or any of its Related Bodies Corporate discloses under this document; and
- (b) is identified by the first mentioned party as confidential or which may reasonably be inferred to be confidential from the circumstances in which it is disclosed,

but does not include:

- (c) information which is or becomes part of the public domain (other than through any breach of this document);



- (d) information rightfully received by the other party from a third person without a duty of confidentiality being owed by the other party to the third person, except where the other party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first mentioned party; or
- (e) information which has been independently developed by the other party.

**Consumer Advocacy Group** means a body or association whose functions include representing the interests of consumers of telecommunications services in Australia.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Customer** means a person who has entered into a WBA with **nbn** (whether or not **nbn** has supplied any products or services to that person).

**Customer IPRs** means any Intellectual Property Rights owned by a PDF Participant or a Related Body Corporate of a PDF Participant.

**Customer Material** means all material provided or otherwise made available by or on behalf of Customer to **nbn** in connection with the WBA.

**Discloser** has the meaning given to that term in clause 4.2(a).

**Downstream Customer** means any person acquiring a Customer Product or a Downstream Product, including:

- (a) any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale Customer Product;
- (b) any Carrier, Carriage Service Provider or Content Service Provider acquiring a wholesale Downstream Product; and
- (c) any Contracted End User.

**End User** means a person who is the ultimate recipient or user of a Customer Product or Downstream Product.

**Expiry Date** means:

- (a) if an SAU is in effect that required **nbn** to make the Product Development Forum open to participation by the PDF Participant, 30 days after **nbn** has offered a replacement PDF participation agreement to the PDF Participant; or
- (b) if paragraph (a) of this definition does not apply, the earlier of:
  - (i) 30 days after the PDF Participant receives a notice of termination from **nbn**; and
  - (ii) 15 December 2020,

or, in each case, such later date as may be notified by **nbn** to the PDF Participant.

**First Party** has the meaning given to that term in clause 5.6(b).

**Government Agency** means any court or tribunal of competent jurisdiction or any agency, authority, board, department, government, instrumentality, ministry, official or public or statutory person of the Commonwealth or of any State or Territory of Australia, and any local or municipal government or governmental bodies.

**Head Terms** means the document entitled "Head Terms" that forms part of the WBA.



**Indirect Loss** means Loss which:

- (a) does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question; or
- (b) constitutes loss of profit, loss of anticipated profit, loss of opportunity or anticipated savings, loss of revenue, loss or impairment of credit rating, loss of data, loss of business opportunities and loss of or damage to reputation or goodwill even if such loss arises directly or naturally in the usual course of things from that breach,

but does not include the following Losses to the extent that they arise directly, or naturally in the usual course of things, from the breach, action or inaction in question:

- (c) reasonable costs incurred in remedying the impact of the breach, action or inaction in question;
- (d) reasonable overtime and related expenses (including travel, lodging and wages); and
- (e) payments or penalties imposed by any Government Agency.

**Intellectual Property Rights** means any patent, copyright, design right, trade name, trade mark, service mark, domain name right, semiconductor or circuit layout right or any other form of protection of a similar nature to any of these, anywhere in the world (whether registered or not and including applications for any such right).

**Liability** means any legal liability, whether arising in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise.

**Materials** means any documentation, data, spreadsheets, graphs, graphics, images and designs (whether physical or digital) and video, audio and software.

**PDF Processes** means the "PDF Processes" specified in the SAU.

**Permitted Use** has the meaning given to that term in clause 5.3(a).

**Personnel** means, in relation to a party or third party, that party's officers, employees, agents, contractors, subcontractors and consultants. References in this document to Personnel of **nbn** do not include Customer, its Related Bodies Corporate or their respective officers, employees, agents, contractors, subcontractors or consultants when performing the activities described in section 4.5.2 of the WBA Operations Manual as contractor of **nbn**.

**Product** means a product or service described in a Product Description.

**Product Build Phase** means the stage in the product development process where the construction of the network, system and/or operational processes required to offer a product occurs.

**Product Component** means, in respect of a Product, a component of that Product described in the relevant Product Description which may have one or more Product Features or Service Features.

**Product Description** means each document entitled "Product Description" or "Service Description" in the WBA.

**Product Development Forum** has the meaning given to that term in an SAU.

**Product Feature** means, in respect of a Product, a feature of a Product Component described in the relevant Product Description.

**Proposed Used Materials** has the meaning given to that term in clause 5.4(a)(i).

**Recipient** has the meaning in clause 4.2(a).



**Regulator** means, as the context requires:

- (a) the Commonwealth government minister responsible for administering Part XIB and/or Part XIC of the Competition and Consumer Act;
- (b) the Commonwealth government minister responsible for administering the Telecommunications Act;
- (c) the ACCC;
- (d) the ACMA;
- (e) the Telecommunications Industry Ombudsman; and
- (f) any other Commonwealth government minister, Government Agency or parliamentary committee or parliamentary body whose activities impact on **nbn**'s business.

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act.

**SAU** means a special access undertaking submitted by **nbn** to the ACCC regarding the supply of any or all of the Products that has been accepted by the ACCC and is in effect.

**Shareholder Ministers** means collectively the Communications Minister (which has the meaning given to that term in the NBN Companies Act) and the Finance Minister (which has the meaning given to that term in section 7 of the Telecommunications Act).

**Term** has the meaning given to that term in clause 3.

**Third Party IPRs** means any Intellectual Property Rights owned by a third party which is not a PDF Participant or a Related Body Corporate of a PDF Participant.

**Unidentified IPRs** has the meaning given to that term in clause 5.4(e).

**WBA** means the SFAA Wholesale Broadband Agreement as amended from time to time.

## 7.2 Interpretation

Unless the context otherwise requires, in this document:

- (a) a reference to a clause is a reference to a clause of this document; and
- (b) capitalised terms:
  - (i) if defined in clause 7.1, have the meaning set out in clause 7.1;
  - (ii) if not defined in clause 7.1, have the meaning as set out in the WBA; or
  - (iii) if not defined in clause 7.1 or the WBA, have the meaning as set out in the SAU.





## Execution

### Executed as an agreement

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

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Date of signature

\_\_\_\_\_  
Date of signature

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Executed by [**insert full name of PDF Participant**] by its authorised representatives:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Date of signature

\_\_\_\_\_  
Date of signature