

Terms and Conditions – Individual Premise Switch

Parties **NBN Co Limited** ABN 86 136 533 741 ("**nbn**")

The Applicant listed in the Build Quote ("**Applicant**")

1. About these Terms and Conditions

1.1 What is the agreement?

- (a) Together with the Build Quote, these Terms and Conditions form the Applicant's agreement with **nbn**, and set out the Applicant's rights and obligations, in relation to the Individual Premises Switch.
- (b) Capitalised terms used in the Build Quote and these Terms and Conditions have the meanings set out in clause 13.

1.2 Can the agreement be varied?

This agreement may only be varied, supplemented or replaced by a document signed by both parties.

1.3 Condition precedent to operation

If the Applicant does not own the Premises:

- (a) the Applicant acknowledges that the Applicant has obtained an Owner Authority in respect of the relevant Premises, executed by the Property Owner; and
- (b) this agreement is conditional upon, does not become binding on the parties and has no force or effect unless and until the Applicant has obtained an Owner Authority in respect of the relevant Premises, executed by the Property Owner.

If the Applicant does not occupy the Premises:

- (c) the Applicant acknowledges that the Applicant has obtained an Occupier Authority in respect of the relevant Premises, executed by the Property Occupier; and
- (d) this agreement is conditional upon, does not become binding on the parties and has no force or effect unless and until the Applicant has

obtained an Occupier Authority in respect of the relevant Premises, executed by the Property Occupier.

2. Property Owner / Property Occupier Authority

- (a) If **nbn** has reasonable grounds to believe that the Applicant has not obtained an Owner Authority or an Occupier Authority (as the case may be), **nbn** will not be obliged to proceed with any works in respect of the Individual Premises Switch.
- (b) The Applicant must provide a copy of the Owner Authority or Occupier Authority (as the case may be) to **nbn** within 5 business days of the request.
- (c) The Applicant indemnifies **nbn** against any loss or claim arising as a result of a failure to obtain an Owner Authority or Occupier Authority (as the case may be) or otherwise in relation to a breach by the Applicant of this clause 2.

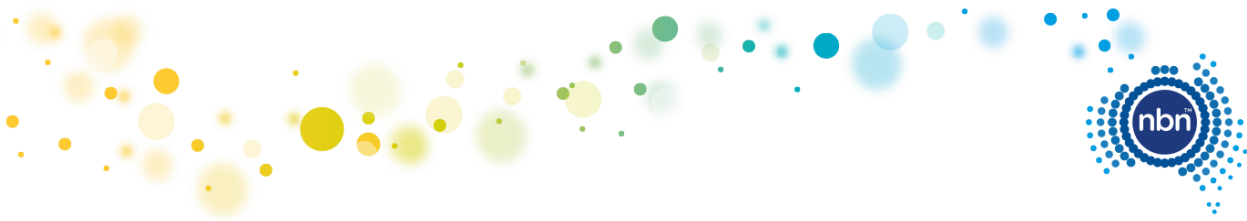
3. Build Quotes

3.1 What happens when the Applicant accepts a Build Quote?

By accepting the Build Quote, the Applicant acknowledges that:

- (a) the Applicant is authorised to accept the Build Quote and enter into this agreement;
- (b) the Individual Premises Switch consists only of the design and installation of certain infrastructure required for carriage services over the National Broadband Network to be made available by means of the technology nominated in the Build Quote at the Premises identified in the Build Quote through retail service providers and does not include the Connection Processes; and
- (c) the Individual Premises Switch will not enable services to be received over the National Broadband Network until the rollout in the respective area is at a stage when retail service providers are able to commence supplying services to the Premises.

3.2 When can the Build Quote be varied?



- (a) **nbn** may notify the Applicant that it considers a variation is required to the Build Quote in order to complete the Individual Premises Switch.
- (b) If **nbn** issues a notice under clause 3.2(a), the parties will use their best endeavours to agree the reasonable terms of the variation to the Build Quote within 10 business days (or such other period agreed by the parties) after **nbn** issues a notice under clause 3.2(a).

4. Performing the Individual Premises Switch

4.1 What is the Individual Premises Switch?

- (a) In the absence of this agreement, the "Original Planned Footprint" identified in the Build Quote has been (or will be) received by the Premises.
- (b) **nbn** will, subject to the Build Quote and these Terms and Conditions, carry out design and installation of certain infrastructure required for carriage services over the National Broadband Network to be made available by means of the technology identified as the "Requested Network Extension" in the Build Quote at the Premises identified in the Build Quote (**Individual Premises Switch**).
- (c) An indicative summary of the works that will be delivered in respect of the Individual Premises Switch is set out in the Build Quote.
- (d) The Applicant acknowledges and agrees that **nbn** may (in its absolute discretion) determine the network architecture and methodology for the Individual Premises Switch (and the Applicant will have no Claim arising out of or in connection with the specific technical solution or methodology determined by **nbn**).

4.2 How long will it take to perform the Individual Premises Switch?

- (a) **nbn** will use its best endeavours to complete the works in respect of the Individual Premises Switch within a reasonable time period, taking into account:

- (i) the extent of design and installation work required for the Individual Premises Switch (and the resources available to **nbn**); and
 - (ii) the availability of and time required to access third party infrastructure for use by **nbn**.
- (b) **nbn** may, from time to time, provide an indicative timetable showing the anticipated time for completion of the Individual Premises Switch (which is indicative only and must not be relied upon by the Applicant).

4.3 How will the Applicant know when the Individual Premises Switch is complete?

nbn's individual switch representative will notify the Applicant once the Individual Premises Switch has been completed.

5. Ownership of infrastructure

5.1 Who owns the infrastructure and equipment?

nbn owns the infrastructure, optic fibre cable and associated equipment installed (including in or on any part of the Premises) in connection with the Individual Premises Switch.

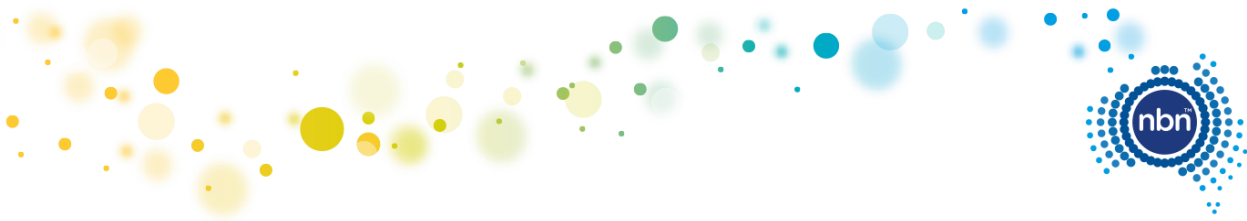
5.2 What are the Applicant's obligations in relation to **nbn** infrastructure and equipment?

- (a) The Applicant must not (and, if applicable, use reasonable endeavours to ensure that the Property Owner or Property Occupier does not) damage or interfere with, or remove, the optic fibre cable, infrastructure or associated equipment which is used or installed in connection with the Individual Premises Switch.

6. Access

6.1 Statutory carrier powers

- (a) The Applicant acknowledges and agrees that:
 - (i) in accessing the Premises or any areas ancillary to the Premises for the purposes of the Individual Premises Switch; and



- (ii) in undertaking any activities on or in relation to the Premises for the purposes of the Individual Premises Switch,

(together, the **Activities**) **nbn** will rely upon the powers and immunities under Schedule 3 of the *Telecommunications Act 1997* (Cth) (**Act**), to the extent to which such powers and immunities authorise the Activities.

- (b) As a pre-condition to the works being performed in relation to the Individual Premises Switch:
 - (i) to the extent to which the Applicant is the Property Owner and the Property Occupier, **nbn** agrees to waive its right to be given notice in relation to the Activities to be undertaken under Schedule 3 of the Act, by completing the form in Annexure A; and
 - (ii) to the extent to which the Applicant is not the Property Owner and Property Occupier, agrees to use best endeavours to procure from the Property Owner and Property Occupier a waiver of their right to be given notice in relation to the Activities by completing the form in Annexure A.
- (c) The Applicant must not, and must, to the extent to which the Applicant is not the Property Owner and Property Occupier, use best endeavours to procure that the Property Owner and Property Occupier do not, object to **nbn** undertaking the Activities in reliance on its powers and immunities under Schedule 3 of the Act.

6.2 Non-statutory consents

- (a) To the extent to which the powers and immunities under Schedule 3 of the Act do not apply to or authorise the Activities, as a precondition to works being performed in relation to the Individual Premises Switch, the Applicant:
 - (i) to the extent to which it is the Property Owner and Property Occupier, consents; or

- (ii) to the extent to which it is not the Property Owner and Property Occupier, must use best endeavours to procure from the Property Owner and Property Occupier their written consent,

to **nbn** and its employees, agents and contractors accessing the Premises and undertaking the Activities, and any activities necessary or ancillary to the Activities, including leaving all facilities and equipment in place following its installation as part of the Activities.

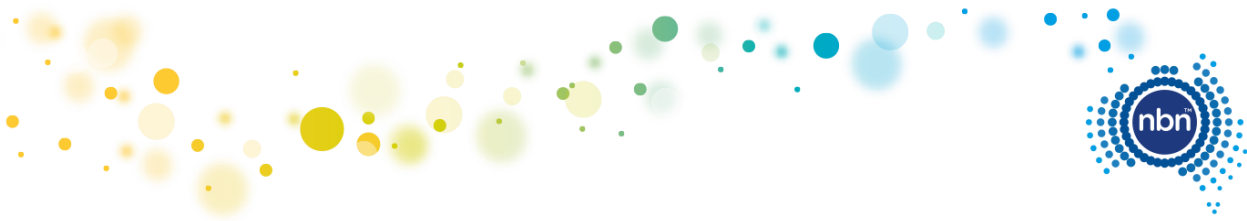
- (b) As soon as practicable after obtaining written consent for the purposes of clause 6.2(a)(ii), the Applicant must provide written evidence of such consent to **nbn**.

6.3 Other statutory requirements

- (a) The Applicant, on its own behalf and on behalf of the Property Owner and Property Occupier, consents to **nbn**, its contractors, agents or employees applying for and obtaining all licences, authorisations, permits, approvals and consents necessary to complete the Individual Premises Switch, and represents and warrants that it has the authority to provide such consent. The Applicant acknowledges and agrees that **nbn** will rely upon the consent contained in this clause 6.3(a) in seeking any required licences, authorisations, permits, approvals and consents.
- (b) The Applicant must give such assistance to **nbn**, its contractors, agents or employees as **nbn** reasonably requires to obtain the licences, authorisations, permits, approvals and consents required under clause 6.3(a) to complete the Individual Premises Switch.

6.4 Other access requirements

- (a) The Applicant must provide any reasonable assistance required by **nbn**, its contractors, agents or employees, in accessing the Premises for the purposes of completing the Individual Premises Switch, whether in reliance on Schedule 3 of the Act, or otherwise.



- (b) If **nbn**, acting reasonably, determines that it requires a temporary licence to any part of the site for the purposes of performing the Area Switch (including for the temporary storage of materials), the Applicant must provide (or, where it is not the owner of the relevant part of the site, it must procure the provision by a relevant Property Owner or Property Occupier of) such a licence to **nbn** at the time, or times, reasonably required by **nbn**.
- (c) The licence in clause 6.4(b) must enable **nbn** to:
 - (i) sub-licence it to any contractor, sub-contractor or agent of **nbn**;
 - (ii) have access to the area of land for the period of time specified in the licence; and
 - (iii) secure any materials stored on the licensed area.

7. Payment

7.1 What is the cost of the Individual Premises Switch?

- (a) The Applicant must pay **nbn** the Build Cost for the Individual Premises Switch, which reimburses **nbn** for the costs of the design and infrastructure build at the Premises for the Individual Premises Switch.
- (b) The Applicant acknowledges that the Applicant is responsible for all payments required to be made under this agreement including where the Applicant:
 - (i) ceases to own or occupy the relevant Premises after the Applicant's acceptance of the **nbn** Build Quote; or
 - (ii) decides that it no longer wishes to proceed with the Individual Premises Switch in respect of its Premises.

7.2 When must payment be made?

- (a) Following an Applicable Invoice Trigger, **nbn** will invoice the Applicant for the relevant portion of the Build Cost (as set out in the Build Quote).

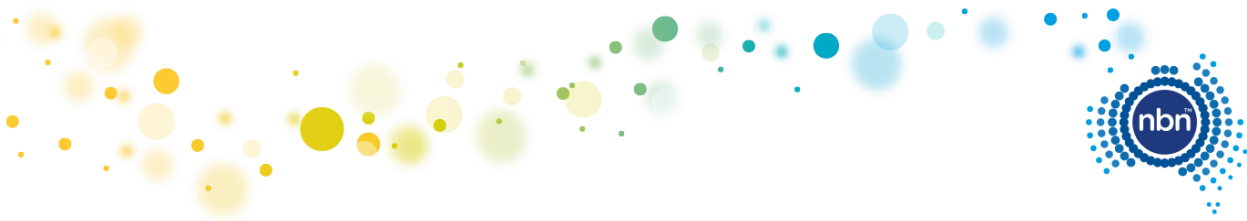
- (b) The Applicant must pay **nbn** the full amount set out in an invoice on or before the due date specified in an invoice which will be at least 30 calendar days after the date of the invoice (**Due Date**).
- (c) Each invoice issued by **nbn** will:
 - (i) set out the amount payable by the Applicant in Australian dollars;
 - (ii) contain sufficient information to reasonably enable the Applicant to identify the payment to which the invoice relates; and
 - (iii) comply with all of the requirements of a Tax Invoice under the GST Law.
- (d) Subject to clause 9.5, the parties acknowledge that any amounts paid by the Applicant are non-refundable.

7.3 How does the Applicant pay?

- (a) Each payment of an invoice by the Applicant must be:
 - (i) paid in accordance with a method identified in the invoice;
 - (ii) paid without any set-off, counterclaim, withholding or deduction, including on account of any amounts owed to the Applicant by **nbn** or any third party; and
 - (iii) accompanied by sufficient information for **nbn** to identify, process and properly allocate those invoice payments.
- (b) If an invoice payment made by the Applicant is dishonoured, then that payment will be treated as not having been received by **nbn** until it has been received by **nbn**, together with a reimbursement of any dishonour fees and charges that have been paid, or may be payable, by **nbn** in respect of that dishonoured payment.

7.4 Does the Build Cost include GST?

- (a) The Build Cost includes GST (where applicable). **nbn** will provide a Tax Invoice to the Applicant no later than 14 days after the day on which



any consideration is to be first provided for that supply.

- (b) The Applicant must pay all stamp duties, other duties and similar taxes including GST where payable together with any related fees, penalties, fines, interest or statutory charges, in respect of this agreement.

7.5 What happens if there is a billing error or the Applicant disagrees with an amount set out in an invoice?

- (a) If an invoice omits or miscalculates any amounts payable under this agreement, **nbn** may issue an additional invoice to the Applicant, adjust an invoice submitted to the Applicant or issue a credit to the Applicant to recover or refund the omitted or miscalculated amounts if **nbn** does so no later than 6 months after the date of the original invoice.
- (b) If the Applicant disagrees with any amount set out in an invoice, the Applicant must immediately notify **nbn** by calling or emailing the **nbn** contact identified in the Build Quote.

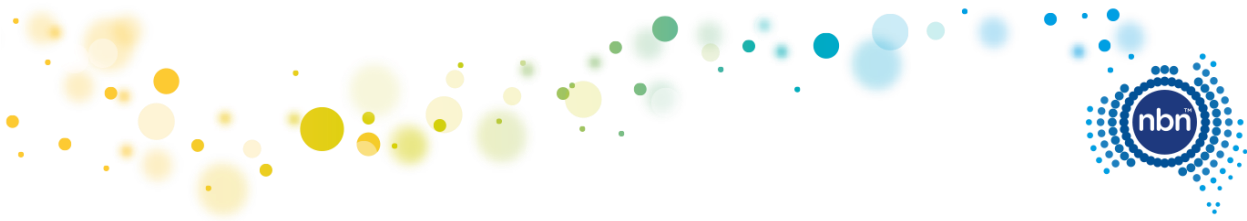
7.6 What happens if the Applicant does not pay the charges?

- (a) **nbn's** rights under this clause 7.6 are in addition to, and do not exclude or limit, its other rights under this agreement or by law. Any exercise of **nbn's** rights under this clause will not waive or prevent the exercise of **nbn's** other rights or remedies under this agreement or by law.
- (b) If the Applicant anticipates that it will not be able to pay **nbn** any undisputed amount set out in an invoice under this agreement by the Due Date, the Applicant must immediately notify **nbn** in writing.
- (c) If the Applicant does not pay the amount set out in an invoice by the Due Date, and has not notified **nbn** under clause 7.6(b), the Applicant will be in breach of this agreement.
- (d) If the Applicant does not pay any undisputed amount in an invoice under this agreement by the Due Date, **nbn** may do one or more of the following:

- (i) decline to accept an order for a service supplied to the Premises until the outstanding amount is paid;
- (ii) recover any overdue amount, plus the reasonable costs of recovery, as a debt due and payable immediately to **nbn**;
- (iii) notify and exchange information regarding the Applicant with **nbn's** debt collection and credit reporting bodies concerning overdue amounts;
- (iv) charge the Applicant interest on any overdue amount of an invoice applied for each day from (but excluding) the Due Date until (and including) the date that **nbn** receives payment in full at an annual percentage rate equal to the aggregate of the 90 Day Bank Bill Swap Rate plus 2.5 per cent. The payment of any overdue amount under this agreement does not relieve the Applicant from the obligation to pay the interest accrued on that overdue amount under this clause 7.6;
- (v) suspend any Individual Premises Switch works the subject of this agreement until the overdue amount is paid; and
- (vi) terminate this agreement in accordance with clause 9.1(b).

8. nbn liability to the Applicant, and Applicant liability to nbn

- (a) To the maximum extent permitted by law:
 - (i) **nbn** is not liable to the Applicant, and the Applicant is not liable to **nbn**, in respect of any Consequential Loss which may be suffered or incurred arising out of or in connection with the Individual Premises Switch; and
 - (ii) each of:
 - A. **nbn's** liability to the Applicant; and
 - B. the Applicant's liability to **nbn**,



whether under this agreement, in tort (including negligence or otherwise), under any statute (to the extent that it is possible to exclude such liability) or otherwise at law or in equity, arising out of or in connection with the performance of **nbn's** or the Applicant's obligations under this agreement (as the case may be) is limited to the total charges for the Individual Premises Switch paid or payable under this agreement other than in relation to:

- C. liability for personal injury including death; or
 - D. the Applicant's liability to **nbn** for damage to **nbn's** property.
- (b) Nothing in this agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by the Australian Consumer Law which cannot be lawfully excluded or restricted.

9. Termination

9.1 When can **nbn** terminate this agreement?

nbn may terminate this agreement upon notice to the Applicant:

- (a) at any time for **nbn's** sole convenience;
- (b) if the Applicant breaches this agreement (including not making payments under clause 7.2) and:
 - (i) that breach is not capable of remedy; or
 - (ii) if the breach is able to be remedied, the Applicant fails to remedy the breach within 30 days of a notice by **nbn** requiring the Applicant to do so; or
- (c) if **nbn** issues a notice under clause 3.2(a) and the parties fail to agree the variation to the Build Quote within the period required by clause 3.2(b).

9.2 What happens if the Applicant no longer wishes to have the Individual Premises Switch installed?

The Applicant may notify **nbn** in writing that it no longer wishes to proceed with the Individual Premises Switch, in which case **nbn** will, within 21 days, notify the Applicant of the Break Amount and request that the Applicant confirm (in writing, within 5 business days) that it no longer wishes to proceed with the Individual Premises Switch (**Termination Confirmation Notice**).

9.3 When can the Applicant terminate this agreement?

The Applicant may terminate this agreement upon notice to **nbn** if:

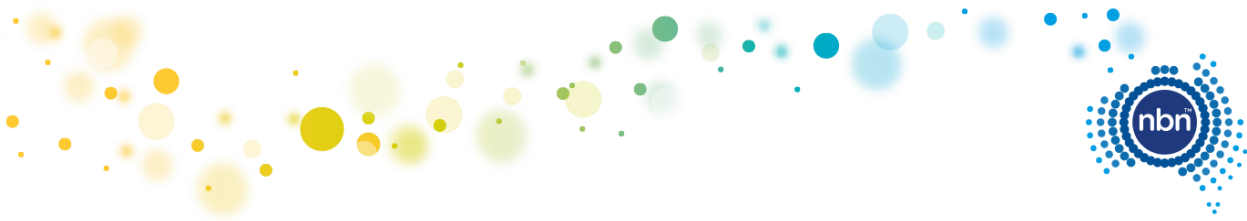
- (a) the Applicant issues a Termination Confirmation Notice; or
- (b) **nbn** fails to use its best endeavours to complete the Individual Premises Switch within a reasonable time period following the Applicant's acceptance of the Build Quote, taking into account:
 - (i) the extent of design and installation work required for the Individual Premises Switch and the resources available to **nbn**; and
 - (ii) the availability of third party infrastructure for use by **nbn**.

9.4 When may a Break Amount be payable and how is it calculated?

- (a) If:
 - (i) this agreement is terminated for the Applicant's breach of this agreement (under clause 9.1(b)); or
 - (ii) the Applicant issues a Termination Confirmation Notice (under clause 9.3(a)),

nbn may issue the Applicant with an invoice for the Break Amount.

- (b) If **nbn** terminates this agreement under clause 9.1(c), **nbn** may issue the Applicant with an invoice for an amount representing 50% of the Break Amount.



- (c) The **Break Amount** will be an amount (determined by **nbn**, acting reasonably) which represents:
- (i) any amount paid or payable by the Applicant to **nbn** to reimburse **nbn** for work carried out prior to the date of termination; and
 - (ii) the reasonable costs that **nbn** incurred after the date of termination in connection with:
 - A. terminating or varying any contracts **nbn** has entered into in relation to the Individual Premises Switch; and
 - B. returning the **nbn**TM Facilities or the Premises or other property to its original condition,
- less:
- (iii) any amount of the Build Cost that has been paid by the Applicant to **nbn**.

9.5 When will the Applicant get a refund?

If this agreement is terminated by:

- (a) **nbn** for convenience (under clause 9.1(a)); or
- (b) the Applicant **under** clause 9.3(b), then, within a reasonable period, **nbn** will refund any part of the Build Cost paid by the Applicant to **nbn** under this agreement.

9.6 What are the other consequences of termination?

If this agreement is terminated for any reason:

- (a) **nbn** does not have any obligation to complete the Individual Premises Switch or make it available to the Applicant and, to the extent permitted by law, **nbn** will not have any liability to the Applicant whether under this agreement or otherwise in connection with the Individual Premises Switch not being completed; and
- (b) if the Applicant wishes to proceed with a new Individual Premises Switch at the same Premises after

termination of this agreement, the Applicant must submit a new application (which may result in a different build quote).

10. Notices

10.1 How will nbn contact the Applicant?

- (a) **nbn** may give notices to the Applicant by sending a letter to the Applicant's address (by post, fax or email).
- (b) The contact person nominated in the Build Quote (or as otherwise notified to **nbn**) must be authorised to send and receive notices on behalf of the Applicant for the purposes of the Individual Premises Switch.

10.2 How can the Applicant can contact nbn?

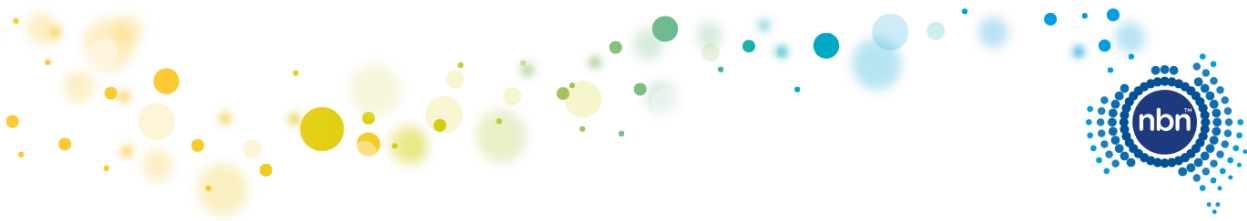
The Applicant may contact **nbn** by emailing, writing or calling the **nbn** contact person identified in the Build Quote.

11. Confidentiality and public disclosure

- (a) Unless required by law or otherwise agreed by **nbn**, the Applicant must not use or disclose to any person or make public any information disclosed by **nbn**, for any purpose.
- (b) The Applicant must not use **nbn**'s name, trademarks or service marks directly or indirectly, including in any media release or interview, public announcement, public disclosure, promotion or marketing materials, customer or client lists, business presentations or otherwise communicate with the press, radio or television, without prior written approval from **nbn**.

12. General

- (a) This agreement is to be construed in accordance with the laws applicable in New South Wales.
- (b) If part of this agreement is not legally enforceable, that part will be cut from this agreement. All other parts of the agreement will continue.
- (c) If the Applicant requires reassignment or transfer of this agreement, the Applicant needs to obtain permission from **nbn**.



- (d) **nbn** may reassign or transfer any of its rights or obligations under this agreement.
- (e) A reference to **nbn** includes its successors, permitted substitutes and permitted assignees.
- (f) A reference to law or to a provision of a law includes a change to it or a re-enactment of it, a provision substituted for it and a regulation or statutory instrument issued under it.
- (g) A reference to "includes" or "including" means without limitation.

13. Definitions

Applicable Invoice Trigger means for:

- (a) the Build Cost, the dates identified in the Build Quote; and
- (b) a Break Amount, upon:
 - (i) the receipt by **nbn** of the Applicant's Termination Confirmation Notice pursuant to clause 9.2;
 - (ii) the issue by **nbn** to the Applicant of a notice to terminate this agreement pursuant to clause 9.1(b); or
 - (iii) the issue by **nbn** of a notice to terminate this agreement pursuant to clause 9.1(c).

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Break Amount has the meaning in clause 9.4(c).

Build Cost means the Build Cost identified in the Build Quote.

Build Quote means the quote to which these Terms and Conditions are attached.

Connection Processes means the processes and work required to connect the Premises to the National Broadband Network and to activate a National Broadband Network-based service.

Consequential Loss means any liability or claim suffered or incurred by any person (including under an indemnity) whether arising in contract, tort (including negligence), under statute or on any other basis in law or equity for:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of goodwill;
- (d) loss of business opportunity;
- (e) compensation, charges or other liability arising out of network disruption or network performance; or
- (f) without limiting paragraphs (a) - (e), losses other than those losses that may fairly and reasonably be considered as naturally (i.e. according to the usual course of things) flowing from the breach of this agreement as the probable result of the breach of this agreement,

but excludes:

- (g) **nbn's** fees and charges relating to the Individual Premises Switch; and
- (h) the Break Amount.

Due Date has the meaning in clause 7.2(c).

GST has the meaning given in the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

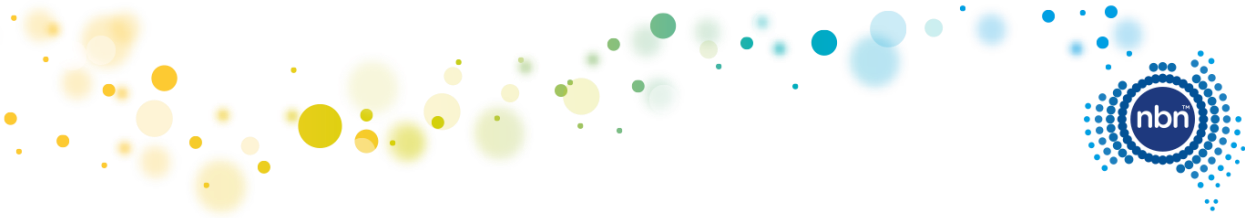
Individual Premises Switch has the meaning given in clause 4.1(b).

National Broadband Network means the national telecommunications network owned or controlled by, or operated by or on behalf of, **nbn** or a related entity.

Occupier Authority means the authorisation provided directly to the Applicant by the property occupier which authorises the Applicant to act as its authorised representative in respect of the Individual Premises Switch including:

- (a) authorising the Applicant to commence the process of placing an application with **nbn**; and
- (b) authorising the entry into this agreement by the Applicant,

for an Individual Premises Switch in respect of the Premises and to use information relevant to the property



occupier's personal particulars and affairs for that purpose.

Owner Authority means the authorisation provided directly to the Applicant by the property owner which authorises the Applicant to act as its authorised representative in respect of the Individual Premises Switch including:

- (a) authorising the Applicant to commence the process of placing an application with **nbn**; and
- (b) authorising the entry into this agreement by the Applicant,

for an Individual Premises Switch in respect of the Premises and to use information relevant to the property owner's personal particulars and affairs for that purpose.

Premises means the premises identified in the Build Quote which is the subject of the Individual Premises Switch.

Property Owner means the owner of a Premises identified in the Build Quote.

Property Occupier means the occupier or occupier of a Premises identified in the Build Quote.

Tax Invoice has the meaning given in the GST Law.

90 Day Bank Bill Swap Rate for any period means:

(a) the rate which is the average of the bid rates shown at or about 10.30 am (Sydney time) on page "BBSY" on the Reuters Monitor System on the first day of that period for a term equal to 90 days;

(b) if:

- (i) the page referred to in paragraph (a) of this definition is replaced or the service referred to in paragraph (a) of this definition ceases to be available; or
- (ii) the basis on which the rate referred to in paragraph (a) of this definition is calculated or displayed changes after the date of this agreement and **nbn** determines that the rate ceases to reflect **nbn**'s cost of funding to the same extent as at the date of this agreement,

the rate determined by **nbn** acting reasonably, to be the appropriate equivalent rate having regard to prevailing market conditions.

Rates will be expressed as a yield percent per annum to maturity and if necessary will be rounded up to the nearest fourth decimal place.



Annexure A - Waiver of Right to Receive Schedule 3 Notice (Property Owner / Occupier)

As owner / occupier (select as applicable) of **IPS Adress**, I:

- 1. acknowledge and agree that **nbn** and its contractors, agents and employees will undertake the activities required to complete the Individual Premises Switch under Schedule 3 of the *Telecommunications Act 1997* (Cth) (**Act**) to the extent to which such activities are authorised under Schedule 3 of the Act; and
- 2. agree waive my right to receive a notice under clauses 17(5) and 18(3) of Schedule 3 of the Act in connection with those activities at the Premises.

..... (name) (signed) (date)
..... (name) Witness (signed) (date)

Please sign, date and return this form to the regional lead listed on page 2 of this Build Quote, quoting **nbn** project reference, **[AYCA-XXX – 511066-XXX]**