

Pre-Transfer Agreement

nbn co limited



This document is a Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act 2010.

nbn co limited

Pre-Transfer Agreement

Version 2.0

Revision history

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Environment

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

Pre-Transfer Agreement

Parties

This agreement is entered into between:

- nbn co limited (ABN 86 136 533 741) of Level 11, 100 Arthur Street, North Sydney NSW 2060 (**nbn**); and
- [Insert full legal name of Customer] (ABN [insert ABN]) of [insert registered address] (**Customer**).

Background

- A. **nbn** and Customer are parties to a WBA which provides for the supply by **nbn** of the NEBS by means of the **nbn**[™] Network.
- B. **nbn** and Customer have entered into an Asset Transfer Agreement.
- C. This agreement sets out the terms and conditions on which Customer is permitted to access, occupy and use:
 - (i) the **nbn**[™] Copper Elements in a SAM prior to the relevant Copper Asset Transfer Date for that SAM; and
 - (ii) the **nbn**[™] HFC Elements in a SAM prior to the relevant HFC Asset Transfer Date for that SAM.

PART A – AGREEMENT TERM

1 Agreement Term

- (a) This agreement commences on the date this agreement is executed by both parties and continues until the earlier of:
 - (i) two years from the date this agreement is executed by both parties; and
 - (ii) the date on which the Pre-Transfer Installed Assets Licence granted to Customer under this agreement has expired or been terminated,(**PT Agreement Term**), unless terminated earlier in accordance with the terms of this agreement.
- (b) **nbn** may in its sole discretion, terminate this agreement at any time by giving at least 10 Business Days' written notice to Customer.

PART B – PRE-TRANSFER INSTALLED ASSETS LICENCE

2 Pre-Transfer Installed Assets Licence

2.1 Pre-conditions to **nbn** supply

- (a) Clause A2.2 of the WBA is incorporated by reference into this agreement as if set out in full.
- (b) Customer warrants to **nbn** that throughout the period in which **nbn** supplies the Pre-Transfer Installed Assets Licence to Customer, Customer:
 - (i) is the owner or controller of a network in Australia comprising Copper Lines (as augmented or modified from time to time) which is or has been at any time used to provide Carriage Services (**Customer Copper Network**);

- (ii) is the owner or controller of a hybrid fibre coaxial cable network in Australia (as augmented or modified from time to time) which is or has been at any time used to provide Carriage Services (**Customer HFC Network**);
 - (iii) is a party to the Asset Transfer Agreement that has not expired or terminated; and
 - (iv) is a party to a WBA that has not expired or terminated.
- (c) Each warranty provided by the Customer under clause 2.1(b) is deemed to be a Supply Condition for the purpose of clause A2.2 of the WBA.

2.2 Pre-Transfer Installed Assets Licence

- (a) **nbn** grants Customer a licence from the date this agreement is executed by both parties:
- (i) until the relevant Copper Asset Transfer Date for a SAM to access (but not to occupy or use), at Customer's cost, a Non-Interconnected **nbn**TM Copper Element in that SAM;
 - (ii) until the relevant Copper Asset Transfer Date for the relevant SAM to access, occupy and use, at Customer's own cost, any Interconnected **nbn**TM Copper Element (including any Copper Additional Capacity) in that SAM;
 - (iii) until the HFC Asset Transfer Date for the relevant SAM to access, occupy and use the HFC Equivalent Capacity in that SAM; and
 - (iv) until the HFC Asset Transfer Date for the relevant SAM to access, occupy and use the HFC Additional Capacity in that SAM,
- only for the purposes, and subject to the terms, specified in this agreement (collectively the **Pre-Transfer Installed Assets Licence**), which licence:
- (v) is a right arising under this agreement;
 - (vi) does not create any tenancy between **nbn** and Customer;
 - (vii) must not be subject to any Security Interest that materially adversely affects or, if the Security Interest were to be enforced or any rights under the Security Interest were to be exercised, would materially adversely affect the Pre-Transfer Installed Assets Licence;
 - (viii) is exclusive (as to the parts occupied or used by Customer);
 - (ix) does not confer on Customer any proprietary title, proprietary interest or Security Interest or any interest capable of becoming a Security Interest in the land or in an Installed Asset;
 - (x) does not confer on Customer any relevant approval, permission or consent from third parties or any permission from **nbn** to undertake any activity in relation to any third party asset; and
 - (xi) only confers a right on Customer to access the land on which any Installed Asset is situated if **nbn**:
 - (A) has legal and beneficial title to that land; and
 - (B) is able to provide physical access to Customer to that land.
- (b) Unless otherwise agreed between the parties, Customer must not sub-license the Pre-Transfer Installed Assets Licence, provided that this will not prevent Customer from providing, or allowing a Downstream Customer to provide Customer's products to third parties in exercising its licence rights under this agreement.

2.3 Subcontracting

Unless otherwise agreed between the parties, Customer must not enter subcontracts to relocate, repair or replace the Installed Assets.

2.4 General obligations

Customer must, when accessing, occupying and using any Installed Asset:

- (a) act in accordance with the standard that can reasonably be expected of a Competent Contractor; and
- (b) be responsible, at its cost, for obtaining, maintaining and prosecuting any authorisations required from a third party for Customer to access, occupy, and use that Installed Asset.

PART C – nbn™ COPPER ELEMENTS

3 Limited rights to use nbn™ Copper Elements

- (a) Customer is not authorised or licensed to access, occupy or use the **nbn™** Copper Elements (save to the extent authorised under clause 3(b) and clause 4).
- (b) **nbn** hereby authorises Customer to access (but not occupy or use) a Non-Interconnected **nbn™** Copper Element to the extent necessary to remedy or mitigate a situation (including a fault) in the Customer Copper Network, Customer Copper Assets or any **nbn™** Copper Elements which will, or are reasonably likely to:
 - (i) cause prejudice (other than a de minimis prejudice) to the integrity of the Customer's network, any Customer Asset or any Equipment Building;
 - (ii) cause a Copper Security Risk;
 - (iii) cause death or personal injury;
 - (iv) have a Material Customer Impact; or
 - (v) cause damage to property (other than Minor Damage).
- (c) When accessing a Non-Interconnected **nbn™** Copper Element under clause 3(b), Customer will not physically remove an FTTC Control Joint or an **nbn™** DPU from the location in which **nbn** has installed any such joint or device, except where Customer is permitted to do so under the Copper Applicable Requirements or otherwise with **nbn's** agreement in writing.

4 Use by Customer of nbn™ Copper Elements

4.1 Use of Interconnected nbn™ Copper Elements

Until the relevant Copper Asset Transfer Date for the relevant SAM:

- (a) Customer may, at its own cost, access, occupy or use any Interconnected **nbn™** Copper Elements in that SAM for the purposes of operating and maintaining the Customer Copper Network;
- (b) Customer must comply with the Copper Applicable Requirements when accessing, occupying or using any **nbn™** Copper Elements; and
- (c) Customer must, at its own cost, maintain and repair any **nbn™** Copper Elements Interconnected to the Customer Copper Network in that SAM (other than any **nbn™** FTTC Interconnection Point or **nbn™** DPU) in a manner consistent with Customer's maintenance and repair practices at the time.
- (d) Customer will not physically remove an FTTC Control Joint or an **nbn™** DPU from the location in which **nbn** has installed any such joint of device, except where Customer is

permitted to do so under the Copper Applicable Requirements or otherwise with **nbn**'s agreement in writing.

4.2 Reversing use of Copper Additional Capacity

The parties agree that **nbn** may (acting reasonably), within 60 days following the relevant Copper Asset Transfer Date for a SAM, give Customer notice that it intends to reverse any use by Customer of Copper Additional Capacity, but only to the extent such use:

- (a) has prevented, or is reasonably likely to prevent, **nbn**'s use of such Copper Additional Capacity for its planned purpose;
- (b) is not a result of Customer using an **nbn**[™] Copper Element as agreed under clause 4.3(b); or
- (c) is not a result of Customer re-jumpering a Customer Copper Line through a **nbn**[™] Node in order to remedy or rectify a failure of a Carriage Service within the Customer Copper Network resulting in a trouble ticket being raised with Customer or by Customer, except where the failure is as a result of the activities authorised as part of a Planned Outage.

4.3 Significant Network Events

- (a) Customer will, from the date designated by **nbn** for a SAM or an Accelerated SAM until the applicable Copper Asset Transfer Date for that SAM (or until the date further designated by **nbn**) notify **nbn** of any construction work identified by Customer as being required in that SAM:

- (i) on or in relation to a Pillar; or
- (ii) that would result in the addition of a new copper Cable, of at least 30 copper pairs (in size) and more than 100 metres (in length), to the Customer Copper Network,

in that SAM that will, or might reasonably be expected to, impact on **nbn** or **nbn**'s requirements for that SAM (**Significant Network Event**).

- (b) As soon as reasonably practicable following receipt by **nbn** of the notice under clause 4.3(a), the parties will discuss and agree whether:
 - (i) **nbn** will authorise Customer to use any new Copper Additional Capacity constructed by **nbn** to address the Significant Network Event; or
 - (ii) **nbn** could update its requirements for the affected SAM to complete construction of any new Copper Additional Capacity in sufficient time to enable Customer to use the Copper Additional Capacity to address the Significant Network Event,without **nbn** having the right to charge Customer to reverse the use of the Copper Additional Capacity after the relevant Asset Transfer Date for the relevant SAM under clause 4.2.
- (c) If the parties do not agree under clause 4.3(b) or if **nbn** is unable to complete construction of the Copper Additional Capacity in sufficient time to enable Customer to use it, Customer may:
 - (i) undertake any construction work in that SAM and will advise **nbn** of the intended action which will include sufficient detail to enable **nbn** to update its requirements accordingly; or
 - (ii) use any Copper Additional Capacity, subject to its obligations under this clause 4, as it considers necessary or appropriate to address that Significant Network Event.

4.4 Non-Interconnected **nbn**[™] Copper Elements

Customer must not:

- (a) operate, occupy or use any Non-Interconnected **nbn**TM Copper Elements; or
- (b) subject to clause 3(b), access any Non-Interconnected **nbn**TM Copper Elements.

4.5 Representations and Warranties

- (a) To the extent the access, occupation or use of the **nbn**TM Copper Elements are made available to Customer under this agreement, Customer acknowledges and agrees that Customer accesses, occupies and uses such **nbn**TM Copper Elements at its own risk and **nbn** accepts no liability whatsoever arising out of or in connection with any access, occupation or use by Customer of any **nbn**TM Copper Elements.
- (b) To the extent permitted by applicable law, **nbn** makes no warranty or representation (express or implied) in respect of any access, occupation or use by Customer of any **nbn**TM Copper Elements including no warranty or representation:
 - (i) as to the condition or contents of any **nbn**TM Copper Element;
 - (ii) as to the suitability or functionality of the **nbn**TM Copper Element for any purpose whatsoever;
 - (iii) in relation to the nature or scope of rights which any party other than Customer has in relation to the **nbn**TM Copper Elements; or
 - (iv) in relation to the nature or scope of **nbn**'s rights in relation to any surrounding area to any **nbn**TM Copper Element.

4.6 No relocation

- (a) Unless otherwise agreed between the parties, Customer must not relocate within the Customer Copper Network, repair or otherwise replace, until the relevant Copper Asset Transfer Date for the relevant SAM, Interconnected **nbn**TM Copper Elements with any other element.

PART D – nbnTM HFC ELEMENTS

5 Limited rights to use nbnTM HFC Elements

- (a) Customer is not authorised or licensed to access, occupy or use the **nbn**TM HFC Elements (save to the extent authorised under clauses 5(b) and 6 below).
- (b) **nbn** hereby authorises Customer to access (but not occupy or use) **nbn**TM HFC Elements to the extent necessary to remedy or mitigate a situation (including a fault) in the Customer HFC Network or any HFC Asset which will, or is reasonably likely to:
 - (i) cause prejudice (other than a de minimis prejudice) to the integrity of the Customer's network, any Customer Asset or any Equipment Building;
 - (ii) cause a security risk which will, or is reasonably likely to, increase the likelihood of unauthorised access to the Customer HFC Network or any HFC Asset;
 - (iii) cause death or personal injury;
 - (iv) have a Material Customer Impact; or
 - (v) cause damage to property (other than incidental damage which does not impact the structural integrity or performance of any component of any Customer Asset or **nbn**TM HFC Element).

6 Use by Customer of nbnTM HFC Elements

6.1 Restrictions on Customer's use of HFC Equivalent Capacity

Until the HFC Asset Transfer Date for the relevant SAM:

- (a) Customer must not accept an order to supply a Customer HFC Service to a location outside of the Customer HFC Footprint if such a service would be supplied using a **nbn™** HFC Element within that SAM;
- (b) Customer may access, occupy and use the HFC Equivalent Capacity in that SAM:
 - (i) to supply Customer HFC Services to a location within the Customer HFC Footprint; and
 - (ii) to provide such other services as permitted by **nbn**.

6.2 Restrictions on Customer's use of HFC Additional Capacity

- (a) Customer must not access, occupy or use the HFC Additional Capacity in a SAM prior to the HFC Asset Transfer Date, except:
 - (i) to connect an HFC Lead-In within the Customer HFC Footprint to an HFC Tap that is a **nbn™** HFC Element;
 - (ii) to enable Customer to use any HFC Asset within the Customer HFC Footprint in the same manner as Customer could use an HFC Asset before the installation of HFC Additional Capacity; or
 - (iii) as otherwise agreed in respect of such other HFC Assets.
- (b) Customer's rights under the exceptions listed in clause 6.2(a) are for the sole purpose of supplying Customer HFC Services and such other services as permitted by **nbn**.
- (c) To the extent any HFC Additional Capacity or use of the **nbn™** HFC Elements are made available to Customer under this agreement, Customer acknowledges and agrees that it will be in accordance with clause 6.2(d) and Customer uses such HFC Additional Capacity and **nbn™** HFC Elements at its own risk.
- (d) To the extent permitted by law, **nbn** makes no warranty or representation (express or implied) in respect of any use by Customer of the HFC Additional Capacity or any **nbn™** HFC Elements including no warranty or representation:
 - (i) as to the condition or contents of any HFC Additional Capacity or **nbn™** HFC Element;
 - (ii) as to the suitability or functionality of the HFC Additional Capacity or **nbn™** HFC Element for any purpose whatsoever;
 - (iii) in relation to the nature or scope of rights which any party other than Customer has in relation to the HFC Additional Capacity or **nbn™** HFC Elements; and
 - (iv) in relation to the nature or scope of **nbn's** rights in relation to any surrounding area to any HFC Additional Capacity or **nbn™** HFC Element.

6.3 No relocation

Unless otherwise agreed between the parties, Customer must not decommission, remove or relocate any **nbn™** HFC Elements within the Customer HFC Footprint.

PART E – CHARGES

7 Charges

- (a) Customer must reimburse **nbn** for all reasonable costs incurred by **nbn** in undertaking **nbn's** rights under this agreement including in respect of reversing any use by Customer of Copper Additional Capacity under clause 4.2.
- (b) To the extent permitted by Law, **nbn** will not have any liability to Customer arising out of or in connection with its wilful default or otherwise in undertaking the activities referred to in clause 7(a).

PART F – INTERPRETATION AND COMMON WBA PROVISIONS

8 Common WBA provisions

8.1 Credit Policy

The Credit Policy of the WBA is incorporated by reference into this agreement as if set out in full.

8.2 Charges

Module B of the WBA is incorporated by reference into this agreement as if set out in full.

8.3 Operational Management

Module C (excluding clauses C1, C2, C7, C10, C13, C15 and C16) of the WBA is incorporated by reference into this agreement as if set out in full.

8.4 Information & Rights Management

Module D (excluding clause D1.8) of the WBA is incorporated by reference into this agreement as if set out in full.

8.5 Risk Management

Module E of the WBA is incorporated by reference into this agreement as if set out in full.

8.6 Agreement Management

Module F (excluding clauses F2, F3, F11 and F12.4) of the WBA is incorporated by reference into this agreement as if set out in full.

8.7 Dispute Management

(a) Module G (excluding clauses G10.1 and G10.2) of the WBA is incorporated by reference into this agreement as if set out in full, except that references in Module G to:

- (i) "Approved Dispute Guidelines" are deemed to be references to "the guidelines applicable to disputes under the WBA";
- (ii) "Approved Panel Terms" are deemed to be references to "the standard terms of appointment applicable to panel members appointed as arbitrators under the WBA";
- (iii) "Pool" are deemed to be the same pool of arbitrators appointed under the WBA;
- (iv) "Pool Member" are deemed to be the same arbitrators appointed under the WBA; and
- (v) "Resolution Advisor" are deemed to be the same resolution advisor appointed under the WBA.

(b) The parties acknowledge that the appointment and termination of the appointment, of the Resolution Advisor and Pool Members will occur under the WBA without any further action required under this agreement.

8.8 General Terms

Module H (excluding clause H5.3) of the WBA is incorporated by reference into this agreement as if set out in full.

8.9 Resolving inconsistencies between parts of this agreement

This agreement comprises a number of different documents. If there is any inconsistency between any of these different documents, then that inconsistency will be resolved by giving precedence to documents in the following order:

- (a) this agreement including provisions of the Head Terms of the WBA that are incorporated by reference into this agreement as if set out in full;
- (b) Copper Applicable Requirements, which for the avoidance of doubt, do not form part of this agreement; and
- (c) Credit Policy.

9 Survival

- (a) The following clauses survive termination or expiry of this agreement:
 - (i) the following clauses of the WBA that are incorporated by reference into this agreement:
 - (A) clause C9 of the WBA (Removals and disconnections);
 - (B) Module D (excluding clause D1.8) of the WBA (Information & management rights);
 - (C) clauses E1 to E3 (inclusive) of the WBA (Liability and indemnity);
 - (D) clause F9.2 of the WBA (Disconnection and termination by **nbn**);
 - (E) clause F12 (excluding clause F12.4) of the WBA (Effect of expiry or termination of this agreement); and
 - (F) Module G (excluding clauses G10.1 and G10.2) of the WBA (Dispute resolution); and
 - (ii) this clause 9 (Survival).
- (b) Termination of this agreement by either Customer or **nbn** does not affect the right of either party to enforce its accrued rights against the other party.

10 Definitions and interpretation

10.1 Definitions

In this agreement, unless otherwise specified, the definitions in the Dictionary which form part of the WBA apply subject to clause 10.2 and:

Accelerated SAM means a SAM which **nbn** designates to be accelerated.

API means a pole, any pole infrastructure, a building and any other passive infrastructure that is used to support Customer Copper Assets or HFC Assets, but does not include:

- (a) the land on which the API is situated; and
- (b) a duct, any associated duct infrastructure, a lead-in conduit, an Equipment Building, or any passive infrastructure comprising the Customer Copper Assets or the HFC Assets.

Asset Transfer Agreement means the agreement entered into by the parties in which the Customer agrees to transfer to **nbn** the Customer's legal and beneficial interest in the physical assets of the Customer Copper Network and the Customer HFC Network as contemplated by that agreement.

Cable means a telecommunications cable.

Charges means **nbn's** costs calculated under clause 7(a) and such costs will be deemed to be set out in the Price List.

Competent Contractor means any person who is appropriately accredited (if applicable) and otherwise competent having regard to the nature of the work or services to be undertaken by that person.

Copper Additional Capacity means an increase of capacity in the Customer Copper Network that arises solely as a result of Interconnected **nbn**[™] Copper Elements installed by **nbn** as part of its Copper Construction Works prior to the Copper Asset Transfer Date.

Copper Applicable Requirements means any technical specification for Copper Lines including any risk and restoration plan and quality management plan notified by **nbn** to Customer from time to time.

Copper Asset Transfer Date means the date Customer transfers to **nbn** the legal and beneficial interest in the physical assets of the Customer Copper Network for a SAM as contemplated and pursuant to the Asset Transfer Agreement.

Copper Construction Works means the following works or activities undertaken or to be undertaken by or on behalf of **nbn**:

- (a) such remediation of the Customer Copper Network;
- (b) such adds, moves or changes to the Customer Copper Network in connection with construction; and
- (c) such construction and commissioning of the **nbn**[™] Node,

as more fully specified by **nbn** from time to time.

Copper Lines means copper or aluminium wire based Lines within a Cable.

Copper Security Risk means a security risk which will, or is reasonably likely to, increase the likelihood of unauthorised physical access to the Customer Copper Network or any Customer Copper Asset.

Customer Asset means any asset of Customer or a Related Body Corporate of Customer.

Customer Copper Assets means physical assets forming part of the copper network in Australia over which Customer is in a position to exercise control which are used for providing, or for enabling the provision of, Carriage Services or Content Services over that network and for the avoidance of doubt does not include any **nbn**[™] Copper Elements or any such assets owned by, or transferred to, **nbn** or a Related Body Corporate of **nbn**.

Customer Copper Lines means Copper Lines owned by Customer or a Related Body Corporate of Customer.

Customer Copper Network has the meaning given in clause 2.1(b)(i).

Customer HFC Footprint means each location identified by Customer in Customer's location inventory system, as updated from time to time and approved by **nbn**.

Customer HFC Network has the meaning given in clause 2.1(b)(ii).

Customer HFC Service means a Carriage Service or Content Service as designated by **nbn** and provided by Customer or a Related Body Corporate of Customer over the Customer HFC Network or **nbn**[™] HFC Elements.

Equipment Building means a building (or any part of a building) which is owned or leased by, or licensed to Customer or a Related Body Corporate of Customer that is used primarily to house facilities such as switching equipment or transmission equipment, and includes Exchange Buildings.

Exchange Building means a building (or any part thereof) which is owned or leased by, or licensed to, Customer or a Related Body Corporate of Customer that houses telecommunications switching equipment or an Equipment Building that is otherwise nominated by Customer as an Exchange Building.

Exchange Serving Area means an exchange serving area which is a unique singular geographical area which defines locations that are provided service by a Customer exchange.

FTTC Control Joint means any of the following:

- (a) an **nbn**TM FTTC Interconnection Point; or
- (b) an existing Customer re-enterable joint closure (including as repaired or upgraded by or on behalf of **nbn**),

that is installed or connected to an **nbn**TM DPU; or

- (c) where none of (a) or (b) apply, the point in a Copper Line at which **nbn** indicates that any of the items in (a) or (b) will be installed and/or connected to an **nbn**TM DPU.

HFC Additional Capacity means:

- (a) any capacity (which is not HFC Equivalent Capacity) to supply Carriage Services or Content Services over the Customer HFC Network or **nbn**TM HFC Elements that arises solely as a result of:
 - (i) the HFC Construction Works undertaken by or on behalf of **nbn** including:
 - (A) increasing the number of ports on an existing HFC Tap;
 - (B) replacing an existing HFC Tap with an HFC Tap that has a greater number of ports; and
 - (C) increasing the number of HFC Taps; or
 - (ii) the installation of an HFC Tap by Customer but excluding such assets as determined by **nbn** from time to time; or
- (b) such other capacity as determined by **nbn** from time to time.

HFC Assets means each and any of the assets comprising the Customer HFC Network but excluding:

- (a) API;
- (b) **nbn**TM HFC Elements;
- (c) HFC Spare Parts; or
- (d) infrastructure that is, may or will be licensed (or made available) to **nbn** under a facilities access service agreement entered into by the parties from time to time.

HFC Asset Transfer Date means the date Customer transfers to **nbn** the legal and beneficial interest in such of the physical assets of the Customer's HFC Network for a SAM contemplated by and pursuant to the Asset Transfer Agreement.

HFC Construction Works means works or activities undertaken or to be undertaken by or on behalf of **nbn** on the Customer HFC Network or **nbn**TM HFC Elements, including rearrangement, remediation, additions, moves, changes, construction, commissioning and testing as more fully specified by **nbn** from time to time.

HFC Customer Network Boundary Point means:

- (a) the wall plates at a location;
- (b) if there is no wall plate at the location, the HFC PCD at the location; or
- (c) if there is no HFC PCD at the location, the HFC Tap point nearest to the location.

HFC Equivalent Capacity means capacity to supply Carriage Services or Content Services over the Customer HFC Network or **nbn**TM HFC Elements that arises solely as a result of:

- (a) the HFC Construction Works undertaken by or on behalf of **nbn**:

(b) the installation of an HFC Tap by Customer,

and is equivalent to the capacity to supply Carriage Services or Content Services over the Customer HFC Network that existed prior to any HFC Construction Works undertaken by or on behalf of **nbn**.

HFC Lead-In means coaxial cable running between an HFC Tap and an HFC Customer Network Boundary Point.

HFC PCD means a premises connection device used to connect in-building cabling to coaxial cable running from an HFC Tap.

HFC Spare Parts means physical spare parts which are used, or intended to be used, solely for the operation, repair or maintenance of the Customer HFC Network (excluding **nbn**[™] HFC Elements).

HFC Tap means an access point on coaxial cable in the Customer HFC Network or coaxial cable that is an **nbn**[™] HFC Element, to which another coaxial cable (that connects or is capable of connecting to an HFC PCD) connects or is capable of connecting.

Installed Assets means the **nbn**[™] Copper Elements and the **nbn**[™] HFC Elements.

Interconnected means, in relation to a **nbn**[™] Copper Element, that the **nbn**[™] Copper Element:

- (a) is electrically connected to the Customer Copper Network and is capable of being used for the provision of Carriage Services; or
- (b) is a pillar enclosure, joint enclosure or other **nbn**[™] Copper Element agreed by the parties, but excludes a **nbn**[™] Copper Element that has been jumpered prior to the relevant Copper Asset Transfer Date into the Customer Copper Network.

Material Customer Impact means a situation where one or more of Customer's customers will suffer cessation or material degradation of services or products provided to them beyond the time period allowed under a planned outage authorised and implemented in accordance with any technical specifications and procedures agreed by the parties.

Minor Damage means in relation to Customer Assets or **nbn**[™] HFC Elements, incidental damage which does not impact the structural integrity or performance of any component of that asset.

nbn[™] **Copper Element** means any equipment or item installed or constructed by or on behalf of **nbn** in or in relation to the Customer Copper Network or any Customer Copper Assets (other than such Cables agreed by the parties).

nbn[™] **Copper Line** means Copper Lines owned by **nbn** or a Related Body Corporate of **nbn**.

nbn[™] **DPU** means a reverse-powered distribution point unit that will connect to an FTTC Control Joint and by used to supply a service over the **nbn**[™] Fixed Line Network.

nbn[™] **FTTC Interconnection Point** means a copper interconnection unit or openable joint that is installed by or on behalf of **nbn** and which will connect to an **nbn**[™] DPU.

nbn[™] **Fixed Line Network** means any fixed line telecommunications network that is owned or controlled by, or operated by or on behalf of, **nbn** or a Related Body Corporate of **nbn** including fibre to the premises, fibre to the basement, fibre to the node, hybrid fibre-coaxial cable access technologies, fibre to the curb or other fixed line network as advised by **nbn** from time to time.

nbn[™] **HFC Elements** means:

- (a) any new HFC Taps installed by Customer; and
- (b) all assets installed by or on behalf of **nbn** in connection with any activity in respect of the Customer HFC Network agreed by the parties during the period prior to the relevant HFC Asset Transfer Date.

nbn[™] **Node** means a DSLAM (or equipment having similar functionality) used by **nbn** or a Related Entity of **nbn** for the purposes of providing a service over the **nbn**[™] Fixed Line Network but does not include an **nbn**[™] DPU.

Non-Interconnected nbn™ Copper Element means **nbn™** Copper Elements which are not Interconnected.

PT Agreement Term has the meaning given to it in clause 1(a).

Pillar means a pillar that is owned or leased by, or licensed to, Customer or a Related Body Corporate of Customer, and that is intended to accommodate and permit access to copper pairs.

Pre-Transfer Installed Assets Licence has the meaning given to it in clause 2.2(a).

RF Combiner means the physical components within the collective racks at an Exchange Building exclusively used for providing bi-directional communication to all optical nodes directly connected off that Exchange Building, but excludes:

- (a) the transmission hardware owned and used by Customer to inject the Customer HFC Services at a RF Combiner; and
- (b) any other equipment designated by **nbn**.

SAM means an area designated by **nbn**.

Security Interest means:

- (a) a mortgage, charge, pledge, lien, hypothecation, or title retention arrangement, a right of set-off or right to withhold payment of a deposit or other money, or a charge arising out of a notice under section 255 of the *Income Tax Assessment Act 1936* (Cth), section 260-5 or section 260-10 of the *Taxation Administration Act 1953* (Cth) or any similar legislation;
- (b) any:
 - (i) "PPSA security interest" within the meaning of section 51 of the Corporations Act;
 - (ii) "security interest" within the meaning of section 51A of the Corporations Act;
 - (iii) "circulating security interest" within the meaning of section 51C of the Corporations Act;
 - (iv) "possessory security interest" within the meaning of section 51D of the Corporations Act; or
 - (v) "security interest" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth);
- (c) any other interest or arrangement of any kind that secures the payment of money or the performance of an obligation or which gives a creditor priority over other creditors in relation to any property; or
- (d) any agreement to create any of them or to allow any of them to exist.

Significant Network Event has the meaning given in clause 4.3(a).

Upstream NBP means the point at which the **nbn™** Copper Line physically connects or will physically connect to a third party network, as more specifically notified by **nbn** to Customer from time to time.

WBA means the WBA Access Agreement.

WBA Access Agreement means the document entitled "Wholesale Broadband Agreement" that contains the terms of supply for the NEBS by means of the **nbn™** Network entered into between **nbn** and Customer as amended, modified or substituted from time to time.

10.2 Definitions of the WBA incorporated by reference

Capitalised terms used in the modules and clauses of the WBA which are incorporated by reference into this agreement, are also incorporated by reference into this agreement, except that references to:

"this **Agreement**" are deemed to be references to "this agreement".

"**Cable**" are deemed to be references to "Cable" as defined in this agreement.

"**Charges**" are deemed to be references to "Charges" as defined in this agreement.

"**Customer**" are deemed to be references to "Customer" under this agreement.

"**Effective Disconnection Date**" are deemed to be references to "the day of termination of this agreement".

"**Execution Date**" are deemed to be references to "the date of this agreement".

"**Head Terms**" are deemed to be references to "this agreement".

"**NBN Co**" are deemed to be:

- (a) references to "**nbn**"; or
- (b) if used in compound, references to "**nbn**TM".

"**Ordered Product**" are deemed to be references to "the Pre-Transfer Installed Assets Licence".

"**Product**" are deemed to be references to "the Pre-Transfer Installed Assets Licence".

"**Product Component**" are deemed to be references to "a component of the Pre-Transfer Installed Assets Licence".

"the **Product Description**" are deemed to be references to clauses 2 to 6 of this agreement.

"**Product Feature**" are deemed to be references to "a feature of the Pre-Transfer Installed Assets Licence".

"**Ready for Use Date**" are deemed to be references to "the date of this agreement".

"**Term**" are deemed to be references to "PT Agreement Term".

"**WBA**" are deemed to be references to "WBA" as defined in this agreement.

"**Wholesale Broadband Agreement**" are deemed to be references to "WBA Access Agreement".

Execution

Executed as an agreement

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

Executed by [**insert full name of Customer**] in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director / company secretary

Signature of director

Name of director / company secretary

Name of director

Date of signature

Date of signature