

# Product Terms

nbn™ Enterprise Ethernet Product Module

Wholesale Broadband Agreement





# Product Terms

## nbn™ Enterprise Ethernet Product Module

### Wholesale Broadband Agreement

Version	Description	Effective Date
4.0	First issued version of WBA 4	1 December 2020
4.1	Amendments for Approved Non-Premises Locations	3 June 2021

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#### Environment

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

# Introduction

These **nbn**<sup>TM</sup> Enterprise Ethernet Product Terms include:

- provisions which are specific to **nbn**'s supply of **nbn**<sup>TM</sup> Enterprise Ethernet, but which are otherwise similar in nature to those in the [Head Terms](#);
- explanatory notes as a guide to provisions which have corresponding provisions in the [Head Terms](#); and
- Special Terms, which take priority over other provisions in this Agreement (including the [Head Terms](#)) and are subject to specific change management provisions in clause F4 of the [Head Terms](#).

The **nbn**<sup>TM</sup> Enterprise Ethernet Product Terms are generally arranged to replicate the order of the [Head Terms](#), with some modifications.

As an aid to the reader, this document includes the following icon:



This icon is used to identify provisions which are Special Terms.

This document forms part of the **nbn**<sup>TM</sup> Enterprise Ethernet Product Module.

# Roadmap

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

## Part A: Product Supply

No **nbn**<sup>TM</sup> Enterprise Ethernet-specific Special Terms or Product Terms currently apply with respect to product supply.

## Part B: Financial Management

Part B sets out **nbn**<sup>TM</sup> Enterprise Ethernet-specific Special Terms and Product Terms related to financial management.

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## Part G: Dispute Management

No **nbn**<sup>TM</sup> Enterprise Ethernet-specific Special Terms or Product Terms currently apply with respect to dispute management.

## Part H: General Terms

Part H sets out **nbn**<sup>TM</sup> Enterprise Ethernet-specific Special Terms and Product Terms related to general terms.

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## Part I: Product Management

Part I sets out **nbn**<sup>TM</sup> Enterprise Ethernet-specific Special Terms and Product Terms related to product management.

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## Part A: Product Supply

*This document does not contain any Product Supply terms which are specific to the **nbn**<sup>TM</sup> Enterprise Ethernet Product and additional to Module A of the [Head Terms](#).*

## Part B: Financial Management



*Section 1 is a Special Term. It takes priority over clause B1.1 of the [Head Terms](#).*

### 1. **nbn**<sup>TM</sup> Enterprise Ethernet Charges

The charges that apply in respect of this **nbn**<sup>TM</sup> Enterprise Ethernet Product Module are determined by **nbn** as set out in the [nbn<sup>TM</sup> Enterprise Ethernet Price List](#) and in the Price Confirmation provided by **nbn** to RSP in accordance with the [nbn<sup>TM</sup> Enterprise Ethernet Price List](#) and the [nbn<sup>TM</sup> Enterprise Ethernet Operations Manual](#).



*Section 2 is a Special Term. It takes priority over clause B2.2(a) of the [Head Terms](#).*

### 2. Billing Period Options

- (a) If **nbn** supplies **nbn**<sup>TM</sup> Enterprise Ethernet to RSP under this Agreement, RSP's Billing Period for **nbn**<sup>TM</sup> Enterprise Ethernet will commence on the date of the month on which RSP's Billing Period for **nbn**<sup>TM</sup> Ethernet commences.
- (b) Subject to section 2(a), RSP may select the date of the month on which RSP's Billing Period will commence from among the dates notified to RSP by **nbn** from time to time in accordance with the [nbn<sup>TM</sup> Enterprise Ethernet Operations Manual](#) (the **Billing Period Options**).

*Section 3 is a Product Term. It should be read in conjunction with clause B6 of the [Head Terms](#).*

### 3. Discounts, Credits, Rebates and Waivers

**nbn** may make available, and give, a Discount, Credit, Rebate or Waiver to RSP in accordance with:

- (a) the terms of a Price Confirmation provided to RSP under this Agreement in respect of an order with an Order Acknowledgement before the EE Price Transition; and
- (b) the [nbn<sup>TM</sup> Enterprise Ethernet Discounts, Credits and Rebates Annexure](#).

## Part C: Operational Management



*Section 4 is a Special Term. It takes priority over clause C11(c) of the [Head Terms](#).*

### 4. Access to Premises

- (a) RSP must procure, or ensure that End Users procure, access for **nbn** and **nbn** Personnel to Common Property for a purpose described in clause C11(b) of the [Head Terms](#).
- (b) Except as set out in section 4(a), each party will procure access for itself and its Personnel to Common Property.



*Section 5 is a Special Term. It takes priority over clause C14.4 of the [Head Terms](#).*

### 5. Temporary POIs

**nbn** will only supply **nbn**<sup>TM</sup> Enterprise Ethernet to Premises from Established POIs.



*Section 6 is a Special Term. It should be read notwithstanding clause H2 of the [Head Terms](#).*

### 6. Supply Terms for NNI Link

- (a) RSP represents and warrants to **nbn** during the period starting on the date that RSP orders an NNI Link and ending on the date that **nbn** ceases to supply that NNI Link:
  - (i) the Linked NNI is acquired for itself and as agent for and on behalf of V-NNI RSP of the Downstream V-NNI associated with that NNI Link (in this section 6, **Relevant V-NNI RSP**); and
  - (ii) the NNI Link is acquired for itself and as agent for Relevant V-NNI RSP, and it is duly authorised by Relevant V-NNI RSP to make such acquisition.
- (b) RSP, on its own behalf and on behalf of each V-NNI RSP, acknowledges and agrees that:
  - (i) with respect to any act or omission of RSP in relation to the NNI Link associated with the Downstream V-NNI of V-NNI RSP (in this section 6, **Relevant Downstream V-NNI**) or a Linked NNI (including in connection with billing and payment or any connection, modification, disconnection or fault):
    - (A) V-NNI RSP is bound by that act or omission, whether or not V-NNI RSP gave any instruction in relation to that matter;
    - (B) any such act or omission of RSP will be taken to be duly authorised by V-NNI RSP; and
    - (C) **nbn** is not required to enquire as to whether RSP has been given any instructions by V-NNI RSP or as to the terms of any such instructions; and



- (ii) on and from Activation of a Relevant Downstream V-NNI:
  - (A) RSP and any and all V-NNI RSPs are jointly and severally liable for the acts and omissions of RSP or any and all V-NNI RSPs in respect of the Linked NNI associated with the Relevant Downstream V-NNI; and
  - (B) RSP and Relevant V-NNI RSP are jointly and severally liable for the acts and omissions of RSP and Relevant V-NNI RSP in respect of the NNI Link.



*Section 7 is a Special Term. It should be read notwithstanding clause H2 of the [Head Terms](#).*

## 7. Supply Terms for V-NNI

- (a) RSP represents and warrants to **nbn** during the period starting on the date that RSP orders a V-NNI and ending on the date that **nbn** ceases to supply that V-NNI:
  - (i) the acquisition of the Upstream NNI Link in respect of which the V-NNI is configured (in this section 7, **Relevant Upstream NNI Link**); and
  - (ii) on and from the Activation of the V-NNI, the acquisition (or continued acquisition) of the Upstream Linked NNI associated with the Upstream NNI Link (in this section 7, **Relevant Upstream Linked NNI**),

is made by NNI Link RSP of the Relevant Upstream NNI Link (in this section 7, **Relevant NNI Link RSP**) as agent for and on behalf of RSP and that RSP has duly authorised Relevant NNI Link RSP to undertake such acquisition.

- (b) RSP acknowledges and agrees that:
  - (i) RSP is acquiring the V-NNI for itself and not as agent on behalf of any other person;
  - (ii) with respect to any act or omission of Relevant NNI Link RSP in relation to a Relevant Upstream NNI Link or a Relevant Upstream Linked NNI (including in connection with billing and payment or any connection, modification, disconnection or fault):
    - (A) RSP is bound by that act or omission, whether or not RSP gave any instruction in relation to that matter;
    - (B) any such act or omission of Relevant NNI Link RSP will be taken to be duly authorised by RSP; and
    - (C) **nbn** is not required to enquire as to whether Relevant NNI Link RSP has been given any instructions by RSP or as to the terms of any such instructions; and
  - (iii) on and from Activation of a V-NNI:
    - (A) RSP, Relevant NNI Link RSP and any other V-NNI RSP associated with the Relevant Upstream Linked NNI are jointly and severally liable for the acts and omissions of RSP, Relevant NNI Link RSP or any V-NNI RSP in respect of the Relevant Upstream Linked NNI; and
    - (B) RSP and Relevant NNI Link RSP are jointly and severally liable for the acts and omissions of RSP or Relevant NNI Link RSP in respect of the Relevant Upstream NNI Link.

## Part D: Information & Rights Management



*Section 8 is a Special Term. It should be read in conjunction with clause D1.2 of the [Head Terms](#).*

### 8. Use and disclosure of Confidential Information regarding **nbn**<sup>TM</sup> Enterprise Ethernet

Where **nbn** is the Recipient of Confidential Information of RSP, **nbn** may, to the extent necessary, use and disclose Confidential Information for the purposes of the installation, maintenance, upgrade, repair, reinstatement or removal of any part of the Enterprise Ethernet Network, subject to **nbn** ensuring that any person to whom a disclosure is made (which may be an Other RSP) is subject to an obligation to keep the information confidential and use the information only for the applicable purposes set out above.



*Section 9 is a Product Term which applies in connection with **nbn**<sup>TM</sup> Enterprise Ethernet. It should be read in conjunction with clauses D1.2 and D1.4 of the [Head Terms](#).*

### 9. Use and disclosure of Confidential Information relating to supply of NNI Link or V-NNI

- (a) Where **nbn** is the Recipient of Confidential Information of RSP, **nbn** may, to the extent necessary, use and disclose Confidential Information, including to an Other RSP, for the purposes of exercising its rights in respect of any Loss suffered by **nbn**, or any Claim which arises or which **nbn** considers likely to arise, under an Other Wholesale Broadband Agreement relating to:
- (i) a Downstream V-NNI associated with an NNI Link; or
  - (ii) an Upstream NNI Link in respect of which the V-NNI is configured.

## Part E: Risk Management



Section 10 is a Special Term. It should be read in conjunction with clauses E1 and E2 of the [Head Terms](#).

### 10. CSG and priority assistance

#### 10.1 Non-permitted uses of **nbn**<sup>TM</sup> Enterprise Ethernet

RSP must not use, and warrants to **nbn** that it will not use, **nbn**<sup>TM</sup> Enterprise Ethernet, or permit any Downstream Service Provider to use an RSP Product which relies on **nbn**<sup>TM</sup> Enterprise Ethernet as an input, to supply a:

- (a) Downstream CSG Service (including standard telephone services that are subject to customer service guarantees for the purposes of the TCPSS Act); or
- (b) Downstream Priority Assistance Service.

#### 10.2 CSG waivers

- (a) RSP waives, and must use reasonable endeavours to ensure that any relevant Downstream Service Provider waives, any right to recover any amount from **nbn** pursuant to section 118A of the TCPSS Act in respect of the supply of **nbn**<sup>TM</sup> Enterprise Ethernet to RSP under this Agreement.
- (b) RSP releases, and must use reasonable endeavours to ensure that any relevant Downstream Service Provider releases, **nbn** from any current or future Liability in connection with section 118A of the TCPSS Act in respect of the supply of **nbn**<sup>TM</sup> Enterprise Ethernet to RSP under this Agreement.

#### 10.3 Indemnification against CSG related claims

- (a) RSP must pay to **nbn**, on demand, an amount equal to all Losses suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, or their respective Personnel in connection with any Claim by RSP or Downstream Service Provider brought before, during or after the Term for any CSG Compensation or amounts under section 118A of the TCPSS Act in respect of the supply of **nbn**<sup>TM</sup> Enterprise Ethernet to RSP under this Agreement.
- (b) The indemnity in section 10.3(a) is subject to clauses E2.7 and E2.8 of the [Head Terms](#).
- (c) The limitations of liability imposed by clause E1.4 of the [Head Terms](#) and exclusions of liability in clause E1.6 of the [Head Terms](#) do not apply to any liability of RSP to **nbn** under this section 10.3.

Section 11 is a Product Term. It should be read in conjunction with clauses E1.3 to E1.5 of the [Head Terms](#).

## 11. Material Service Failure

- (a) If an event described in the table below is solely caused by one of the corresponding causes listed in the table below, **nbn** must resolve the event within the applicable Service Restoration Target (measured from the start of the event) set out in the table below.

Event	Cause of event	Service Restoration Target
95% or more of <b>nbn</b> <sup>TM</sup> Enterprise Ethernet ordered products supplied by <b>nbn</b> to all retail service providers from a single POI are simultaneously subject to Enterprise Ethernet Faults for at least 24 hours	Component Failure	3 Business Days
	General Failure	20 Business Days
95% or more of <b>nbn</b> <sup>TM</sup> Enterprise Ethernet ordered products supplied by <b>nbn</b> to all retail service providers across all CSAs are simultaneously subject to Enterprise Ethernet Faults for at least 24 hours	Component Failure	3 Business Days
	General Failure	20 Business Days

- (b) Subject to sections 11(c) to 11(d), if **nbn** fails to comply with section 11(a) in respect of an event described in that section 11(a), that event will constitute a **Material Service Failure** which:
- (i) starts at the end of the applicable Service Restoration Target; and
  - (ii) ends on the date it is resolved as described in section 11(c).
- (c) For the purposes of this section 11, an event described in section 11(a) (whether or not that event ultimately constitutes a Material Service Failure) will be considered resolved on the date **nbn** determines, acting reasonably, that either:
- (i) 90% of the relevant Enterprise Ethernet Faults have been rectified; or
  - (ii) a substantial portion of the relevant Enterprise Ethernet Faults have been rectified, taking into account any factors **nbn** considers to be relevant, which may include the following:
    - (A) the percentage of relevant ordered products that are ordinarily affected by an Enterprise Ethernet Fault at a given time (in the absence of a Material Service Failure);
    - (B) any failure by RSP or an Other RSP to provide reasonable assistance to **nbn** in resolving the Enterprise Ethernet Faults;
    - (C) the level of impact on RSP and Other RSPs of the remaining Enterprise Ethernet Faults; and
    - (D) the fact that the resolution of some Material Service Failures can require some Enterprise Ethernet Faults to be rectified after the resolution of the Material Service Failure itself, as a separate set of activities and measures.
- (d) An event will not constitute a Material Service Failure if:
- (i) the event is caused or contributed to by:

- (A) any cause that is not listed in section 11(a);
  - (B) a Cyber Attack;
  - (C) a failure of any part of the **nbn**<sup>TM</sup> Network, other than a Type 2 Facility, that is owned, operated or controlled by RSP or a third party; or
  - (D) a Force Majeure Event for which **nbn** provides a Force Majeure Event Notice under clause E6.1(c)(i) of the [Head Terms](#); or
- (ii) to remedy that event, **nbn** determines that it needs to obtain equipment that is not reasonably available for purchase by **nbn** in Australia.
- (e) **nbn** will notify RSP as soon as reasonably practicable after **nbn** becomes aware that a Material Service Failure has occurred pursuant to section 11(b).

## Part F: Agreement Management



Section 12 is a Special Term. It should be read in conjunction with clause F4.6(a)(i) of the [Head Terms](#).

### 12. Changes to withdraw **nbn**<sup>TM</sup> Enterprise Ethernet

- (a) In addition to **nbn**'s rights under clause F4 of the [Head Terms](#), subject to any applicable SAU or applicable law, **nbn** may withdraw from supply **nbn**<sup>TM</sup> Enterprise Ethernet, or any Product Component or Product Feature of **nbn**<sup>TM</sup> Enterprise Ethernet by complying with the process set out in this section 12.
- (b) **nbn** must consult with RSP in accordance with:
- (i) any applicable SAU to the extent that the SAU applies to the withdrawal of **nbn**<sup>TM</sup> Enterprise Ethernet or the relevant Product Component or Product Feature, as applicable; and
  - (ii) otherwise in accordance with clause F4.12 of the [Head Terms](#).
- (c) **nbn** must provide a notice to RSP specifying:
- (i) the period after which **nbn**<sup>TM</sup> Enterprise Ethernet or the relevant Product Component or Product Feature will be withdrawn (**Withdrawal Period**); and
  - (ii) the portion of the Withdrawal Period during which RSP may continue to order **nbn**<sup>TM</sup> Enterprise Ethernet or the Product Component or Product Feature being withdrawn, as applicable (**Continued Ordering Period**).
- (d) After the expiry of the Continued Ordering Period:
- (i) RSP must not submit an order under this Agreement for **nbn**<sup>TM</sup> Enterprise Ethernet or the Product Component or Product Feature being withdrawn, as applicable, unless that order is a Transition-out Modify Order or Disconnect Order; and
  - (ii) **nbn** may reject any order submitted in contravention of section 12(d)(i).
- (e) **nbn** must provide a minimum Withdrawal Period and minimum Continued Ordering Period as follows:

Product, Product Component, Product Feature	Withdrawal Period	Continued Ordering Period
<b>nbn</b> <sup>TM</sup> Enterprise Ethernet	30 months	12 months
Product Component	30 months	12 months
Material Product Feature	30 months	12 months
Non-Material Product Feature	18 months	6 months

*Section 13 is a Product Term.*

## 13. Changes to **nbn**<sup>™</sup> Enterprise Ethernet

If **nbn** changes this **nbn**<sup>™</sup> Enterprise Ethernet Product Module under clause F4.4 of the [Head Terms](#), **nbn** may make a related change to the definition of the Enterprise Ethernet Network by including the definition change in the same notice as is required for the original change.

## Part G: Dispute Management

*This document does not contain any Dispute Management terms which are specific to the **nbn**<sup>™</sup> Enterprise Ethernet Product and additional to Module G of the [Head Terms](#).*



## Part H: General Terms



*Section 14 is a Special Term.*

### 14. Interpretation

Each reference to “WBA Operations Manual” in the [Head Terms](#) will be read as if it were a reference to “[nbn™ Enterprise Ethernet Operations Manual](#)”.

# Part I: Product Management

*Section 15 is a Product Term.*

## 15. Standard Installations and Non Standard Installations

### 15.1 Standard Installations

**nbn** will determine, acting reasonably, whether an Installation in respect of a Premises is a **Standard Installation** or a **Non Standard Installation** on a case by case basis, having regard to the following:

- (a) length of fibre cabling;
- (b) generally accepted industry practices and any applicable industry guidelines, policies, laws, regulations or directions;
- (c) the level of complexity and difficulty associated with the Installation;
- (d) the access rights provided to the Premises and Common Property;
- (e) the uniqueness of the circumstances associated with the Installation;
- (f) the presence of obstacles, dangers or other safety concerns during the time of Installation; and
- (g) where a third party (e.g. a building manager or owner) imposes other procedural or other constraints.

**Note:** Generally, a Standard Installation will include a cable run distance up to 40 metres from the building entry point to the PCD (or SFPDH) and up to 40 metres cable run distance from that device to the B-NTD.

### 15.2 Exclusions from Standard Installations

- (a) In addition to any limitations in section 15.1 regarding what Installations will be Standard Installations, trenching in order to provide services to an individual Premises will not form part of any Standard Installation even if **nbn** agrees to perform such activities at the same time as a Standard Installation.
- (b) Without limiting **nbn**'s obligations under this Agreement, pursuant to clause E4 of the [Head Terms](#), **nbn** will not be responsible for any trenching in order to provide services to an individual Premises.

*Section 16 is a Product Term.*

## 16. Approved Non-Premises Locations

- (a) A location that would not otherwise qualify as a "Premises" under this Agreement will be a Premises for the purposes of the offer and supply of **nbn**<sup>TM</sup> Enterprise Ethernet if:

- (i) **nbn** builds the Enterprise Ethernet Network to, has agreed to build the Enterprise Ethernet Network to, or otherwise makes available the Enterprise Ethernet Network at, that location; and
  - (ii) (ii) nbn determines that location is Serviceable in respect of nbn™ Enterprise Ethernet.
- (b) If section 16(a) applies in respect of a location, RSP must comply with, and the supply of nbn™ Enterprise Ethernet to that location is subject to, each limitation relevant to that location (including in relation to any RSP Product or Downstream Product) that nbn determines to include in the Approved Non-Premises List in addition to any applicable limitations in this Agreement.