



Interim Terms

nbn[™] Sky Muster[™] Plus Interim Agreement

This document forms part of the nbn[™] Sky Muster[™] Plus Interim Agreement, which is a Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act 2010

Interim Terms

nbn™ Sky Muster™ Plus Interim Agreement

Version	Description	Effective Date
1.0	First issued version of nbn™ Sky Muster™ Plus Interim Agreement	Execution Date

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Environment

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

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Module A Supply of Products

A1 Ordering Products

- (a) Customer may place an order for a Product through the **nbn**TM SMP Portal or in accordance with any other processes determined and notified by **nbn** from time to time.
 - (b) An order submitted by Customer in accordance with clause A1(a) constitutes an offer from Customer to acquire the Product, which is capable of acceptance by **nbn**.
-

A2 Supply of Ordered Products

A2.1 **nbn**'s obligation to supply

- (a) **nbn** may, in accordance with the terms of this Agreement and any standard processes determined by **nbn** from time to time, accept, cancel or reject an order for a Product.
- (b) **nbn** will notify Customer once **nbn** accepts, cancels or rejects an order for a Product.
- (c) If **nbn** accepts an order for a Product, **nbn** will supply the relevant Ordered Product to Customer in accordance with this Agreement.

A2.2 Pre-conditions to **nbn** supply

- (a) Customer warrants to **nbn** that throughout the period in which **nbn** supplies an Ordered Product to Customer:
 - (i) Customer is and will remain a Carrier, Carriage Service Provider, Content Service Provider and/or a Specified Utility engaging in a related Specified Activity;
 - (ii) Customer complies, and will continue to comply, with the Credit Policy including providing a Financial Security where required under the Credit Policy;
 - (iii) Customer has entered into a WBA Access Agreement and the WBA Access Agreement has not terminated or expired; and
 - (iv) Customer has completed On-boarding for **nbn**TM Ethernet (Satellite) and **nbn**TM Sky MusterTM Plus,(the **Supply Conditions** in respect of that Ordered Product).
- (b) **nbn** is not obliged to supply or continue to supply any Ordered Product to Customer unless Customer complies with the Supply Conditions.
- (c) Customer must notify **nbn** within 2 Business Days of the time Customer no longer fully complies with any of the Supply Conditions.

A2.3 Disconnection of Products

- (a) Customer may request that **nbn** disconnect an Ordered Product at any time in accordance with any processes determined and notified by **nbn** from time to time.
- (b) **nbn** will disconnect an Ordered Product if requested by Customer in accordance with clause A2.3(a).
- (c) **nbn** may also disconnect an Ordered Product, without a request from Customer, in accordance with standard processes determined by **nbn** from time to time.

- (d) **nbn** will notify Customer once **nbn** disconnects an Ordered Product.

A2.4 Transitional arrangements – WBA

- (a) Customer acknowledges and agrees that, upon expiry or termination of this Agreement in accordance with clause F2(b), **nbn** may, at its discretion:
- (i) cease supplying any Ordered Products and remove any related **nbn**TM Equipment; or
 - (ii) if Customer is or becomes a party to an **nbn**TM Sky MusterTM Plus WBA, transition the supply of Ordered Products to the terms of that **nbn**TM Sky MusterTM Plus WBA, on and from the date notified by **nbn**.
- (b) This clause A2.4 survives termination or expiry of this Agreement.
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A3 **nbn** processes

- (a) **nbn** may notify Customer from time to time of new or revised operational processes with which Customer must comply, by giving Customer at least:
- (i) 5 Business Days' notice where that notice is given on or before 3 months from the SMP Launch Date; or
 - (ii) 20 Business Days' notice where that notice is given after 3 months from the SMP Launch Date.
- (b) Customer must comply with processes notified by **nbn** under clause A3(a).

Module B Financial Management

B1 Charges, discounts, invoices, payment, enquiries and disputes

- (a) Subject to clause B1(b), Module B of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full, except to the extent that those provisions relate to "CSG Compensation".
- (b) Any Discount, Credit or Rebate in the Discounts, Credits and Rebates List that applies in respect of Charges for **nbn**TM Ethernet (Satellite) will apply in respect of the equivalent Charges (if any) for **nbn**TM Sky MusterTM Plus in accordance with the terms of that Discount, Credit or Rebate, unless a contrary intention appears in the Discounts, Credits and Rebates List.

Module C Operational Management

C1 Operations, product supply and network management and safety

Module C of the WBA Head Terms, other than clauses C3.3, C13, C15.5 and C16.2(a)(ii), is incorporated by reference into these [Interim Terms](#) as if set out in full except:

- (a) to the extent that those provisions relate to “Upgrades”; and
- (b) each reference to an “Other Wholesale Broadband Agreement” is to be read as a reference to a “WBA Access Agreement, Other Wholesale Broadband Agreement or Other SMP Interim Agreement”.

Module D Information & Rights Management

D1 Confidential Information, data security, personal information and supply communications

- (a) Module D of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full, except that:
- (i) clause D1.7 of the WBA Head Terms is replaced by clause D2 of these [Interim Terms](#); and
 - (ii) clause D5 of the WBA Head Terms is replaced by clause D3 of these [Interim Terms](#).
- (b) For the purpose of clause D1.4 of the WBA Head Terms (as incorporated into this Agreement), **nbn** may disclose Confidential Information of Customer to an Other Customer if the Other Customer is a Third Party Supplier and then only in that Other Customer's role as a Third Party Supplier.
-

D2 Disclosure by **nbn** for debt collection

If:

- (a) Customer fails to pay an amount due or owing to **nbn** under this Agreement by the due date for payment; or
- (b) an Insolvency Event occurs in respect of Customer,

then, notwithstanding anything in clause D1.2 of the WBA Head Terms, **nbn** may do one or both of the following:

- (c) notify and exchange information about Customer (including Customer's Confidential Information) with any credit reporting agency or **nbn's** collection agent to the extent necessary for the credit reporting agency or **nbn's** collection agent to carry out their respective functions; and
 - (d) without limiting clause D2(c), disclose to a credit reporting agency:
 - (i) the defaults made by Customer to **nbn**; and
 - (ii) the exercise by **nbn** of any right to suspend or cease supply of an Ordered Product under this Agreement.
-

D3 Intellectual property

- (a) Each party (or its licensors) owns all right, title and interest (including Intellectual Property Rights) in its own network, platform and other systems, equipment, facilities and materials which currently exist or may be acquired, created or developed by or on behalf of that party.
- (b) **nbn** (or its licensors) owns all Intellectual Property Rights in:
 - (i) the **nbn**TM Network and the **nbn**TM Platform;
 - (ii) this Agreement, including any changes made to this Agreement; and
 - (iii) the Products, including any changes made to any Products.

- (c) Nothing in this Agreement transfers or assigns ownership of a party's Intellectual Property Rights (or those of a third party).
- (d) Nothing in this Agreement confers on any person a right, title or interest in a party's Intellectual Property Rights except as expressly set out in this Agreement.
- (e) Each party agrees that their rights and obligations in relation to Intellectual Property Rights provided as part of the Product Development Forum are subject to the separate provisions set out in the PDF Terms.
- (f) Subject to clause D3(h), each party (**licensor**) grants the other party (**licensee**) an irrevocable, non-exclusive, royalty-free, non-transferrable, sublicensable, worldwide licence for the Term to use, reproduce, communicate, adapt and exploit the licensor's intellectual property rights but only to the extent strictly necessary for the licensee to perform its obligations and exercise its rights under this Agreement.
- (g) Unless otherwise agreed in writing by the parties, each party must procure, at its own cost and expense, licences of Third Party IPR to the extent reasonably required for that party or its Personnel to perform its obligations pursuant to this Agreement.
- (h) Nothing:
 - (i) in this clause D3 limits a party's obligations under clause D1, and any exercise by a party of a right under this clause D3 is subject to that party's obligations under clause D1; and
 - (ii) in this Agreement confers a right on either party to use the other party's trade marks, service marks, logos or branding.

Module E Risk Management

E1 Liability

E1.1 Liabilities of each party

- (a) This Agreement, to the full extent permitted by law, exhaustively governs all of the Liabilities that a party owes to the other party arising from, or in connection with, this Agreement.
- (b) To the full extent permitted by law, each party excludes all Liability that it would otherwise have to the other party in connection with this Agreement and its subject matter (including for negligence), except to the extent that the first party has accepted Liability under this Agreement.
- (c) Every exclusion, restriction, limitation and indemnity in this Agreement separately applies on its own terms and survives expiry or termination of this Agreement.

E1.2 Liability for Service Faults

- (a) To the full extent permitted by law, and subject to clause E1.2(b), **nbn** excludes all liability to Customer in respect of any Loss arising by reason of:
 - (i) any failure of **nbn** to achieve a Service Level;
 - (ii) any delay in supplying a product or service; or
 - (iii) any failure to supply or an error or defect in its supply of a product or service, including any failure of a product or service to:
 - (A) perform in accordance with this Agreement;
 - (B) be fit for the purposes for which such goods or services are commonly supplied, or any other purpose; or
 - (C) be durable.
- (b) **nbn**'s sole and exclusive Liability to Customer in respect of any Loss arising by reason of a failure of **nbn** to achieve a Service Level or any delay in supplying, failure to supply or an error or defect in the supply of an Ordered Product will be the applicable Commercial Rebate (if any).
- (c) The parties agree that:
 - (i) clause E1.2(b) does not limit **nbn**'s liability:
 - (A) under the indemnities given by **nbn** in clauses E2.1 to E2.4 of these [Interim Terms](#); or
 - (B) to the extent that a matter is described in clauses E1.3(c)(i) to E1.3(c)(v) of these [Interim Terms](#).
 - (ii) the amount of any Commercial Rebate is reflective of the diminution in value of the Ordered Products actually provided; and
 - (iii) Commercial Rebates do not represent agreed damages or liquidated damages and do not amount to a penalty.

E1.3 Liability cap

- (a) To the full extent permitted by law, and subject to clause E1.3(c), each party's aggregate Liability to the other party in relation to any and all events that arise in connection with this Agreement or its subject matter (including for negligence) is limited to \$1 million.
- (b) The amount of one party's Liability to the other party for the purposes of clause E1.3(a) will be reduced to the extent that the other party otherwise recovers in respect of any event or cause giving rise to the Liability, including from the relevant insurer if that other party has a right to recover under any contract of insurance with any third party in respect of any event or cause giving rise to the Liability.
- (c) The limitations of liability imposed by clause E1.3(a) do not apply to either party's liability:
 - (i) for any negligent or wilful acts or omissions of the party that cause death, personal injury or damage to Tangible Property;
 - (ii) for any acts or omissions of the party constituting fraud;
 - (iii) under the indemnities given by that party under clause E2 (other than clause E2.4);
 - (iv) under the indemnity given by that party under clause E2.4 to the extent that the liability giving rise to that indemnity was caused or contributed to by a negligent or wilful act or omission of that party; or
 - (v) in the case of Customer's liability, to pay Charges or Overdue Amounts to **nbn**.

E1.4 Customer group aggregated liability caps

- (a) In respect of any Claim by Customer, the liability limit applicable under clause E1.3(a) will be reduced by the monetary value of any remedies provided, or required to be provided, by **nbn** in respect of all earlier Claims arising by any Customer Group Member.
- (b) In respect of any Claim by **nbn**, the liability limit applicable under clause E1.3(a) will be reduced by the monetary value of any remedies provided, or required to be provided, by all Customer Group Members in respect of all earlier Claims arising by **nbn**.

E1.5 No liability for Indirect Loss

- (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 Agreement or its subject matter, regardless of how that Liability arises, to the extent such Liability constitutes Indirect Loss.
- (b) The exclusion of liability in clause E1.5(a) does not apply in respect of the indemnity set out in clause E2.5(a).

E1.6 General exclusions of liability

To the full extent permitted by law, **nbn** excludes all Liability for any and all Losses suffered or incurred by Customer to the extent such Losses are caused or contributed to by:

- (a) any and all:
 - (i) Claims brought against Customer by a Downstream Service Provider or End User, to the extent that that Liability could have been lawfully excluded, restricted or limited under that contract; or
 - (ii) End User Losses,

except to the extent that such Claims or Losses fall within clauses E1.3(c)(i), E1.3(c)(ii) or E2.4(b)(i); or

- (b) any Customer Event.

E1.7 Force majeure

If an Affected Party is unable to perform an obligation under this Agreement (excluding any obligation of either party to pay money) because of a Force Majeure Event affecting it (or in the case of **nbn**, affecting a third party supplier (including any Third Party Supplier)), then to the extent the Force Majeure Event prevents that party from performing that obligation, the Affected Party:

- (a) will be excused from performing that obligation for the duration of the Force Majeure Event; and
- (b) will not be liable for any costs, expenses, losses, damages or Liabilities arising from or in connection with the non-performance of that obligation for the duration of the Force Majeure Event.

E1.8 Exclusion or limitation of certain representations, conditions, warranties and guarantees

Clause E1.7 of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full.

E1.9 Other exclusions of liability

Clause E1.8 of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full.

E1.10 Apportionment and mitigation

- (a) 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 Agreement (including for negligence) 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 other party are caused, or contributed to, by:
 - (A) any act or omission of the other party, its Related Bodies Corporate or their respective Personnel (whether in relation to this Agreement or any other relationship between **nbn** and that person); or
 - (B) the networks, systems, equipment or facilities of the other party, its Related Bodies Corporate or their respective Personnel.
- (b) The reduction of liability in clause E1.10(a) does not apply in respect of the indemnity set out in clause E2.5.

E2 Indemnities

E2.1 Confidentiality

Each party must pay to the other party on demand an amount equal to all Losses suffered or incurred by the Indemnified Party, or their respective Personnel, arising from or in connection with any breach

of clause D1 of the WBA (to the extent incorporated into this Agreement) or clause D2 of these [Interim Terms](#) by the Indemnifying Party.

E2.2 Intellectual property

- (a) Each party must pay to the other party on demand an amount equal to all Losses suffered or incurred by the Indemnified Party arising from or in connection with any Claim brought by any third party alleging that the exercise by the Indemnified Party of any rights assigned, transferred or granted, or purportedly assigned, transferred or granted, by or on behalf of the Indemnifying Party in connection with this Agreement infringes any Intellectual Property Rights of that third party.
- (b) Customer must pay to **nbn** on demand an amount equal to all Losses suffered or incurred by **nbn** arising from or in connection with any Claim brought by any third party if:
 - (i) Customer or any Downstream Service Provider or Contracted End User uses any Product, Customer Product or **nbn**TM Sky MusterTM Plus Product or uses any network, system, facility, equipment or infrastructure in connection with the any Product in a manner that is inconsistent with any requirements notified by **nbn** from time to time; and
 - (ii) the Claim brought by the third party alleges that the conduct by Customer or any Downstream Service Provider or Contracted End User as referred to in clause E2.2(b)(i) infringes any Intellectual Property Rights of that third party.

E2.3 Death and personal injury

Each party must pay to the other party on demand an amount equal to all Losses suffered or incurred by the Indemnified Party arising from or in connection with the death or personal injury of any person to the extent that:

- (a) an act or omission of the Indemnifying Party, its Related Bodies Corporate, their respective Personnel or suppliers in connection with this Agreement:
 - (i) is negligent and causes or contributes to that death or personal injury; or
 - (ii) intentionally causes or contributes to that death or personal injury; or
- (b) the network, systems, equipment or facilities of the Indemnifying Party causes or contributes to that death or personal injury in connection with this Agreement.

E2.4 Damage to property and networks

- (a) Customer 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 arising from or in connection with any:
 - (i) damage to, or loss of, the Tangible Property of **nbn** and/or any third party, including damage to sites or any third party equipment sites at which any POI is located and sites at which facilities access services are supplied to Customer;
 - (ii) damage to, or loss of, the whole or any part of the **nbn**TM Network, the National Test Facility, and/or the **nbn**TM Platform;
 - (iii) disruption of, interference with, or deterioration or degradation of, the normal operation or performance of the whole or any part of the **nbn**TM Network or **nbn**TM Platform; or

- (iv) interruption of access to or use of Products by Customer or of access to or use of products or services by any Other Customer,

to the extent that such Losses are caused, or contributed to, by Customer, its Related Bodies Corporate or any of their respective Personnel or third party suppliers, or by any Downstream Service Provider or Contracted End User in connection with this Agreement or its subject matter.

- (b) **nbn** must pay to Customer on demand an amount equal to all Losses suffered or incurred by Customer arising from or in connection with any damage to, or loss of:

- (i) the Tangible Property of Customer and/or any third party; or
- (ii) the whole or any part of the Customer Network and/or Customer Platform,

to the extent that such Losses are caused, or contributed to, by **nbn**, its Related Bodies Corporate or any of their respective Personnel in connection with this Agreement or its subject matter.

E2.5 Claims by End Users and other third parties

- (a) Subject to clause E2.5(b), Customer 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 arising from or in connection with any Claim:

- (i) against **nbn**, any Related Body Corporate of **nbn**, or their respective Personnel for any End User Loss or by any Downstream Service Provider or End User in connection with this Agreement; or
- (ii) by a third party against **nbn**, any Related Body Corporate of **nbn**, or their respective Personnel to the extent that the Claim arises from or in connection with any:
 - (A) failure to meet a Service Level or any cancellation of, delay in supplying, failure to supply or an error or defect in the supply of, an Ordered Product;
 - (B) breach of this Agreement by Customer (including any Claim arising by reason of any failure to include terms in contracts with End Users as required by clause E4); or
 - (C) negligent act or omission of Customer, any Related Bodies Corporate of Customer, or their respective Personnel or suppliers arising directly from or in connection with this Agreement or its subject matter.

- (b) Clause E2.5(a)(i) does not apply to the extent that the Loss suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, or their respective Personnel arose from a Claim in relation to which Customer could not have lawfully excluded or limited the relevant Losses.

E2.6 Operational indemnities

Customer must pay to **nbn** on demand an amount equal to all Losses suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, and their respective Personnel arising from or in connection with:

- (a) the reasonable exercise by **nbn** of its rights to disconnect or remove any network, systems, equipment or facilities in accordance with clause C10 of the WBA Head Terms (as incorporated into this Agreement);
- (b) Customer's failure to comply with clause C11 of the WBA Head Terms (as incorporated into this Agreement); or

- (c) the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort), including the defamation of a person, by Customer or any of its Related Bodies Corporate, any Downstream Service Provider or End User using a Product, Customer Product or Downstream Product.

E2.7 General rules for all indemnities

- (a) The liability of a party to pay on demand an amount under this clause E2 to the party being indemnified for an event set out in this clause E2 will be the sole and exclusive financial remedy in respect of the liability the subject of the indemnity.
- (b) It is not necessary for any party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- (c) Where an indemnity applies in favour of an Indemnified Party related to the act or omission of a third party supplier of the Indemnifying Party, the Indemnified Party will not receive the benefit of the indemnity where that third party supplier is the Indemnified Party, any Related Body Corporate of that Indemnified Party or their respective Personnel.
- (d) An Indemnified Party under clause E2.2 must:
 - (i) notify the Indemnifying Party as soon as is reasonably practicable of a relevant Claim; and
 - (ii) where the Indemnifying Party can demonstrate to the reasonable satisfaction of the Indemnified Party that the Indemnifying Party has the resources to pay all Losses which are reasonably likely to arise in the event the relevant Claim is successful:
 - (A) give the Indemnifying Party the option to conduct the defence of the relevant Claim, including negotiations for settlement or compromise;
 - (B) promptly provide all assistance reasonably requested by the Indemnifying Party (at the cost of the Indemnifying Party) in conducting the defence of the relevant Claim; and
 - (C) not make any admissions in relation to the relevant Claim without the prior written consent of the Indemnifying Party.
- (e) If the Indemnifying Party exercises its option under clause E2.7(d)(ii), the Indemnifying Party must:
 - (i) not do anything during the course of any defence, settlement or compromise which adversely affects the Indemnified Party's business or reputation;
 - (ii) consider in good faith any submissions made by the Indemnified Party with respect to the defence, settlement or compromise of the Claim; and
 - (iii) first obtain the consent of Indemnified Party (which must not be unreasonably withheld) to the terms of any settlement or compromise of the relevant Claim, provided that no consent is required where the terms of any such settlement or compromise involve only the payment of money.

E3 No claims against certain persons

- (a) Each party agrees that it will not make any Claims arising from or in connection with the subject matter of this Agreement against:
 - (i) the Personnel of the other party; or

- (ii) any Related Body Corporate of the other party which is not a party to this Agreement or any of their Personnel.
- (b) Customer must not make any Claims against:
 - (i) any Third Party Supplier; or
 - (ii) any tenant of any data centre in respect of which a Third Party Supplier supplies data centre facilities or services to **nbn**,
arising from or in connection with:
 - (iii) any failure of a Third Party Supplier to supply goods, services or facilities to **nbn** under a contract between **nbn** and such a Third Party Supplier; or
 - (iv) any act or omission of a tenant referred to in clause E3(b)(ii) in connection with any contract referred to in clause E3(b)(iii).
- (c) Customer must not make any Claims against **nbn** arising from or in connection with:
 - (i) any event that falls within paragraph (d) of the definition of Excluded Event; or
 - (ii) any act or omission of a tenant referred to in clause E3(b)(ii) in connection with that person's tenancy of that data centre.

E4 Downstream contracts

- (a) Customer must include in the terms of each contract with a Downstream Service Provider or End User for the supply of Customer Products, and must ensure that each Downstream Service Provider includes in the terms of each contract with any other Downstream Service Provider or any End User for the supply of Downstream Products, provisions that:
 - (i) exclude (to the full extent permitted by law) all Liability of **nbn**, its Related Bodies Corporate and each of their respective Personnel, arising from or in connection with Customer Products or Downstream Products (as applicable); and
 - (ii) state **nbn** is not providing, and does not have a contractual relationship with the Downstream Service Provider or End User for the supply of, any products or services to the Downstream Service Provider or End User.
- (b) Customer must ensure that contracts with Downstream Service Providers and End Users for the supply of Customer Products or Downstream Products (as applicable) do not prevent or hinder **nbn** or Customer from exercising rights or performing obligations under this Agreement.
- (c) In addition to Customer's obligations under clause E4(a), Customer must include an undertaking in its Downstream Contracts on the following terms, or such other terms that are no less effective in protecting **nbn**'s interests:
 - "X *Notwithstanding anything else in [this agreement], [the relevant Downstream Service Provider / Contracted End User] agrees:*
 - X.1 *the [Customer Product] is provided 'as is' and without warranty of quality or availability;*
 - X.2 *[the relevant Downstream Service Provider / Contracted End User]'s use of the [Customer Product] is at [the relevant Downstream Service Provider / Contracted End User]'s own risk;*

- X.3 *[the relevant Downstream Service Provider / Contracted End User] is using a public, unfiltered internet connection and should take all precautions for the security and filtering (if applicable) of [the relevant Downstream Service Provider / Contracted End User]'s information;*
 - X.4 *[the relevant Downstream Service Provider / Contracted End User] is solely responsible for any loss or damage to [the relevant Downstream Service Provider / Contracted End User]'s equipment, device or to any information or other data that may result from [the relevant Downstream Service Provider / Contracted End User]'s use of the [Customer Product];*
 - X.5 *there may be interruptions, delays, omissions, inaccuracies with the [Customer Product] and that it may not be available at some times;*
 - X.6 *subject to Y, and to the extent permitted by law, [the relevant Downstream Service Provider / Contracted End User] releases **nbn** and its related bodies corporate, affiliates, directors, officers, agents, employees, contractors or representatives, but excluding [Customer], (**Released Parties**) from any and all liability that may arise in connection with the [Customer Product] or [the relevant Downstream Service Provider / Contracted End User]'s use of the [Customer Product]; and*
 - X.7 *[Customer] holds the benefit of this clause for and on behalf of the Released Parties, and any of the Released Parties may enforce this clause as if it were party to this agreement.*
- Y *Clause x.6 does not apply to a claim by [relevant Downstream Service provider / Contracted End User] for loss or damage suffered or incurred by [relevant Downstream Service Provider / Contracted End User] arising from or in connection with:*
- Y.1 *any damage to, or loss of, tangible property to the extent that such losses are caused or contributed to by **nbn**, its Related Bodies Corporate or any of their respect Personnel or third party suppliers; or*
 - Y.2 *the death or personal injury of any person to the extent caused or contributed to by:*
 - Y.2.1 *negligent or wilful acts or omissions of **nbn**, its Related Bodies Corporate or any of their respective Personnel or third party suppliers; or*
 - Y.2.2 *any equipment or network owned, operated or controlled by **nbn**."*
- (d) In addition to Customer's obligations under clauses E4(a), Customer must ensure that its Downstream Customers and Contracted End Users (as applicable) include an undertaking in their Downstream Contracts on the following terms, or such other terms that are no less effective in protecting **nbn**'s interests:

- "X *Notwithstanding anything else in [this agreement], [the relevant Contracted End User] agrees:*
- X.1 *the [Downstream Product] is provided 'as is' and without warranty of quality or availability;*
 - X.2 *[the relevant Contracted End User]'s use of the [Downstream Product] is at [the relevant Contracted End User]'s own risk;*
 - X.3 *[the relevant Contracted End User] is using a public, unfiltered internet connection and should take all precautions for the security and filtering (if applicable) of [the relevant Contracted End User]'s information;*
 - X.4 *[the relevant Contracted End User] is solely responsible for any loss or damage to [the relevant Contracted End User]'s equipment, device or to any information or other data that may result from [the relevant Contracted End User]'s use of the [Downstream Product];*
 - X.5 *there may be interruptions, delays, omissions, inaccuracies with the [Downstream Product] and that it may not be available at some times;*
 - X.6 *to the extent permitted by law, [the relevant Contracted End User] releases **nbn** and its related bodies corporate, affiliates, directors, officers, agents, employees, contractors or representatives (**Released Parties**) from any and all liability that may arise in connection with the [Downstream Product] or [the relevant Contracted End User]'s use of the [Downstream Product];*
 - X.7 *to indemnify and hold harmless the Released Parties from any claim or demand, including reasonable legal fees arising out of:*
 - x.7.1 *content [the relevant Contracted End User] submits, posts, transmits or otherwise makes available through the Service;*
 - x.7.2 *any cancellation of, delay in supplying, failure to supply or an error or defect in the supply of the [Downstream Product];*
 - x.7.3 *[the relevant Contracted End User]'s use of the Service; and*
 - x.7.4 *[the relevant Contracted End User]'s breach of this Agreement; and*
 - x.8 *[Downstream Customer / Contracted End User] holds the benefit of this clause for and on behalf of the Released Parties, and any of the Released Parties may enforce this clause as if it were party to this agreement.*

E5 **nbn**TM Network Boundaries

Clause E4 of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full.

E6 Insurance

Clause E5 of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full.

Module F Agreement Management

F1 Relationship and Operational Points of Contact

Clause F1 of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full.

F2 Term

- (a) This Agreement starts on later of:
 - (i) the SMP Launch Date; and
 - (ii) the Execution Date.
 - (b) This Agreement expires on the earlier of:
 - (i) the Expiry Date; and
 - (ii) the date the Parties enter into an **nbn**TM Sky MusterTM Plus WBA, unless extended by agreement of the parties or terminated earlier in accordance with this agreement.
-

F3 Changes to this Agreement

F3.1 General Changes

- (a) **nbn** may change this Agreement by giving Customer 3 months' notice of the change.
- (b) After consulting with Customer, **nbn** may change this Agreement by giving Customer 1 month's notice of the change where **nbn** considers, acting reasonably, that the change will not have a material adverse effect on Customer.

F3.2 Product Module Enhancements

nbn may change a Product Module:

- (a) to introduce an Enhancement to a Product (including by introducing or Enhancing a Product Component or Product Feature) by giving Customer at least 30 Business Days' notice of that change, provided that **nbn** has first consulted with Customer; or
- (b) to carry out a minor variation or enhancement which updates the functionality or performance of a Product that **nbn** considers, acting reasonably, will not have any material adverse impact on Customer, by giving Customer notice of that change.

F3.3 Changes to rectify errors

nbn may vary the Agreement by giving Customer at least 5 Business Days' notice if **nbn** reasonably believes that the change is necessary to rectify any error, defect or omission in the Agreement.

F3.4 Product Withdrawal

nbn may change this Agreement to withdraw a Product Component or Product Feature in accordance with the [nbnTM Sky MusterTM Plus Product Terms](#).

F3.5 Standard Process changes

After consulting with Customer, **nbn** may change:

- (a) a Product Module to implement or reflect a change to its standard processes by giving at least 30 Business Days' notice of that change to Customer; or
- (b) the Credit Policy, by giving at least 60 Business Days' notice of that change to Customer.

F3.6 Changes to the Price List

- (a) **nbn** may change the [nbn™ Sky Muster™ Plus Price List](#) or any other amount payable under this Agreement:
 - (i) where reasonably necessary for **nbn** to comply with the requirements or consequences of its Non-Discrimination Obligations, on a date specified by **nbn**; or
 - (ii) in connection with a Tax Change Event by giving no less than 40 Business Days' prior notice to Customer.
- (b) If **nbn** issues a notice under clause F3.6(a)(ii), then any change to a Charge in a Price List or any other amount payable under this Agreement:
 - (i) will be an amount estimated by **nbn** to be a reasonably apportioned equivalent to that imposed or increased Tax or third party charge; and
 - (ii) may include any material prior over or under recovery that may have occurred in relation to any such imposed or increased Tax or third party charge.

F3.7 Changes required by law

nbn may change this Agreement where that change is necessary to comply with any applicable law or required by a Regulatory Event, by giving as much notice as is reasonably practicable of that change to Customer.

F3.8 Wholesale Broadband Agreement changes

nbn may change this Agreement by giving notice to Customer where **nbn** considers that change is necessary to align with:

- (a) any change to a WBA Access Agreement between **nbn** and Customer, provided that the change to this Agreement is made within 20 Business Days of the date on which the change to the WBA Access Agreement is effective; or
- (b) any terms of a new WBA Access Agreement agreed between **nbn** and Customer, provided that the change to this Agreement is made within 20 Business Days of the commencement of that new WBA Access Agreement.

F3.9 Supporting rights and obligations

- (a) **nbn** may change this Agreement (other than these [Interim Terms](#)) where that change is consequential upon, or so as to give effect to, any change made under clauses F3.2 to F3.7 by including the consequential change in the same notice as is required for the original change.
- (b) Each change right in this clause F3 is a separate right that may be exercised independently of any other change right. A change right of a specific nature will not be read or interpreted as limiting any other general change right.
- (c) As part of any notice to change this Agreement issued under this clause F3, where reasonably practicable, **nbn** will include a comparison document showing in mark-up the change(s) being

made to the relevant part or parts of this Agreement or the corresponding part or parts of any published Standard Form of Access Agreement.

F4 Immediate remedies

- (a) Clause F5 of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full.
- (b) In addition to **nbn**'s rights under clause F4(a), **nbn** may immediately impose an Ordering Freeze, Service Reduction or Suspend an Ordered Product or part of an Ordered Product (including in respect of any processes or activities associated with the supply or proposed supply of an Ordered Product) if:
 - (i) **nbn**'s ability to supply a relevant Ordered Product is adversely affected (including any delay in such supply) by the supply or non-supply, including any failure, delay, unwillingness or defect in the supply, of any products or services by a Third Party Supplier;
 - (ii) **nbn**'s supply of a relevant Ordered Product could result in the infringement of any Intellectual Property Rights of any third party or Third Party Supplier; or
 - (iii) **nbn** reasonably considers that continued supply, acquisition or use of a relevant Ordered Product or any relevant process is likely to prejudice the integrity of, or result in the deterioration of, the operation or performance of any other Carriage Service supplied by Customer or any third party.

F5 Defaults

Clauses F6 to F8 of the WBA Head Terms are incorporated by reference into these [Interim Terms](#) as if set out in full.

F6 Disconnection and termination

F6.1 Disconnection of Ordered Products and termination by Customer

- (a) Customer may terminate this Agreement:
 - (i) by giving 3 months' notice to **nbn**;
 - (ii) immediately, by giving notice in writing to **nbn**, if:
 - (A) Customer has issued 3 or more Default Notices within a 12 month period in respect of the same or different Defaults, each of which remains unremedied at the expiry of that period, save that any Default Notice resolved in **nbn**'s favour shall be disregarded for these purposes;
 - (B) **nbn** ceases to hold a valid Carrier licence;
 - (C) **nbn** suffers an Insolvency Event; or
 - (D) Customer is expressly entitled to exercise a right of termination in any other provision of this Agreement.

F6.2 Termination, suspension, reduction, disconnection or discontinuation by **nbn**

- (a) **nbn** may terminate this Agreement at any time by giving Customer 6 months' notice.
- (b) Without limiting **nbn**'s rights under clause F6.2(a), **nbn** may, in its discretion and by giving written notice to Customer, immediately impose a Service Reduction, Suspend, disconnect or

otherwise discontinue the supply of any Ordered Product, or terminate this Agreement (in whole or part in each case) if:

- (i) Customer:
 - (A) does not complete On-boarding within 6 months after the Start Date;
 - (B) satisfies clause F6.2(b)(i)(A) but does not receive supply of the **nbn**[™] Sky Muster[™] Plus Product within 6 months after completing such On-boarding; or
 - (C) satisfies clause F6.2(b)(i)(B) but at any time subsequently, does not receive supply of the **nbn**[™] Sky Muster[™] Plus Product for a continuous period of 6 months,
subject to **nbn** complying with clause F6.2(c);
- (ii) a Service Reduction or Suspension by reason of an event or for a reason caused or contributed to by any act or omission of Customer has subsisted for more than 20 Business Days and continues to subsist at the date on which **nbn** gives that notice to Customer;
- (iii) Customer ceases to be a Carrier, Carriage Service Provider, Content Service Provider or Specified Utility engaged in a related Specified Activity;
- (iv) Customer suffers an Insolvency Event;
- (v) a Third Party Supplier or any of its Related Bodies Corporate or guarantors suffers an Insolvency Event;
- (vi) **nbn** is expressly entitled to exercise a right of disconnection, termination, or to impose a Service Reduction or Suspension, pursuant to any other provision of this Agreement;
- (vii) **nbn** reasonably believes that its ability to supply any Ordered Product is, or will be, adversely affected by:
 - (A) any act or omission of a Third Party Supplier in connection with the supply of (or a failure to supply) any Ordered Product, including any breach by the Third Party Supplier of any agreement, arrangement or understanding with **nbn** in connection with the supply of any Ordered Product; or
 - (B) any negligent or unlawful act or omission of a Third Party Supplier,
whether or not any finding has been made by a competent court or tribunal;
- (viii) any agreement, arrangement or understanding between **nbn** and a Third Party Supplier is suspended or terminated for any reason;
- (ix) **nbn** reasonably believes that:
 - (A) a Third Party Supplier's supply to **nbn** of any relevant inputs to any Ordered Product;
 - (B) its supply of any Ordered Product; or
 - (C) the supply by Customer or a Downstream Service Provider of any Customer Product or Downstream Product,
may result in the infringement of any third party's Intellectual Property Rights; or

- (x) any WBA Access Agreement to which Customer is party terminates or expires without being immediately replaced by a new WBA Access Agreement.
 - (c) Before terminating this Agreement under clause F6.2(b)(i), **nbn** must:
 - (i) provide Customer with at least 20 Business Days' notice of **nbn**'s intention to terminate this Agreement under that clause; and
 - (ii) make its Relationship Point of Contact reasonably available for consultation with Customer for the purpose of discussing any concerns which Customer has with the termination of this Agreement or entry into an Information Agreement (if applicable).
 - (d) Nothing in clause F6.2(a) or F6.2(b)(i) limits Customer's rights under Part XIC of the Competition and Consumer Act to seek the supply of products and services from **nbn** under any available terms of supply for those products and services.
 - (e) Clause F9.3 of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full.
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F7 Exercise of remedies

Clause F10 of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full.

F8 Disengagement after expiry or termination of this Agreement

Clause F13 of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full, except for references to clauses F12.1 to F12.3 of the WBA Head Terms.

Module G Dispute Management

G1 Interaction with WBA provisions

Module G of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full except that each reference to an “Other Wholesale Broadband Agreement” is to be read as a reference to an “Other Wholesale Broadband Agreement or Other SMP Interim Agreement”.

Module H General Terms

H1 General terms

- (a) Module H of the WBA Head Terms is incorporated by reference into these [Interim Terms](#) as if set out in full, to the extent relevant to this Agreement, except:
- (i) clauses H1.1(a)(v), H1.2(d), H4.5(a)(i) and H5.3 of the WBA Head Terms are removed;
 - (ii) for references to clause F12 of the WBA Head Terms;
 - (iii) for references to the CLMS;
 - (iv) for references to Schedule A to the WBA Head Terms;
 - (v) each reference to an "Other Wholesale Broadband Agreement" is to be read as a reference to an "Other SMP Interim Agreement"; and
 - (vi) each reference to "clause F4 of Other Wholesale Broadband Agreements" is to be read as a reference to an "clause F3 of Other SMP Interim Agreements"; and
- (b) Other than for communications described in clause H1.1(e) of the WBA Head Terms (as incorporated into this Agreement), if **nbn** determines and notifies specific means for giving specific types of notices (such as through the **nbn**TM SMP Portal or by e-mail), the parties must use such means for giving those specified types of notices rather than the means set out in clause H1.1 of the WBA Head Terms (as incorporated into this Agreement).
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H2 Interpretation of this Agreement

H2.1 Defined terms

- (a) A capitalised term used in this Agreement, including any capitalised term used in any provision of the WBA Head Terms that is incorporated by reference into this Agreement, has the meaning given to it in the [Dictionary](#).
- (b) The rules of interpretation and definitions in the [Dictionary](#) must be applied in this Agreement unless otherwise specified.

H2.2 Incorporation of WBA Head Terms provisions

- (a) In respect of those WBA Head Terms provisions incorporated by reference into these [Interim Terms](#), for the purposes of this Agreement:
- (i) references to the WBA Operations Manual and the processes set out in the WBA Operations Manual are to be read as referring to "standard processes determined by **nbn** from time to time"; and
 - (ii) except where expressly specified otherwise, references to other provisions in the WBA Head Terms are to be treated as references to the corresponding provisions of these [Interim Terms](#), including where those corresponding provisions of these [Interim Terms](#) themselves incorporate other provisions of the WBA Head Terms (with or without amendment).

H2.3 Resolving inconsistencies between parts of this Agreement

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

- (a) terms set out in the [Agreement Execution Document](#) and Special Terms;
- (b) terms set out in these [Interim Terms](#) and the [Dictionary](#);
- (c) terms other than Special Terms set out in Product Terms;
- (d) terms set out in Product Descriptions;
- (e) terms set out in the [nbn™ Sky Muster™ Plus Price List](#);
- (f) terms set out in the [nbn™ Sky Muster™ Plus Service Levels Schedule](#);
- (g) terms set out in the [Credit Policy](#); and
- (h) terms set out in Fair Use Policies.