

Service Terms

Facilities Access Service Module

Wholesale Broadband Agreement





Service Terms

Facilities Access Service Module

Wholesale Broadband Agreement

Version	Description	Effective Date
4.0	First issued version of WBA 4	1 December 2020

Copyright

This document is subject to copyright and must not be used except as permitted below or under the Copyright Act 1968 (Cth). You must not reproduce or publish this document in whole or in part for commercial gain without the prior written consent of **nbn**. You may reproduce and publish this document in whole or in part for educational or non-commercial purposes as approved by **nbn** in writing.

Copyright © 2020 nbn co limited. All rights reserved. Not for general distribution.

Disclaimer

This document is provided for information purposes only. The recipient must not use this document other than with the consent of **nbn** and must make its own inquiries as to the currency, accuracy and completeness of this document and the information contained in it. The contents of this document should not be relied upon as representing **nbn**'s final position on the subject matter of this document, except where stated otherwise. Any requirements of **nbn** or views expressed by **nbn** in this document may change as a consequence of **nbn** finalising formal technical specifications, or legislative and regulatory developments.

Environment

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

Introduction

These Service Terms for the Facilities Access Service include:

- provisions which are specific to **nbn**'s supply of the Facilities Access Service, 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 Service Terms for the Facilities Access Service 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, which is used to identify provisions which are Special Terms.



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

This document forms part of the Facilities Access Service Module.

Roadmap

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

Part A: Product Supply

No Facilities Access Service-specific Special Terms or Service Terms currently apply with respect to product supply.

Part B: Financial Management

No Facilities Access Service-specific Special Terms or Service Terms currently apply with respect to financial management.

Part C: Operational Management

Part C sets out Facilities Access Service-specific Service Terms related to operational management.

Part C: Operational Management		Page
1	Conditions regarding Type 2 Facilities	7
2	The Access Seeker Undertaking	8

Part D: Information & Rights Management

No Facilities Access Service-specific Special Terms or Service Terms currently apply with respect to information & rights management.

Part E: Risk Management

Part E sets out a Facilities Access Service-specific Special Term related to risk management.

Part E: Risk Management		Page
3	Insurance Policies	10

Part F: Agreement Management

No Facilities Access Service-specific Special Terms or Service Terms currently apply with respect to agreement management.

Part G: Dispute Management

No Facilities Access Service-specific Special Terms or Service Terms currently apply with respect to dispute management.

Part H: General Terms

Part H sets out the Facilities Access Service-specific Service Terms of a general nature.

Part H: General Terms		Page
4	Facilities Access Service not a listed carriage service	13

Part I: Service Management

Part I sets out the Facilities Access Service-specific Service Terms related to service management.

Part I: Service Management		Page
5	Use of the Facilities Access Service	14
6	Hand back obligations	14

Part A: Product Supply

This document does not contain any Product Supply terms which are specific to the Facilities Access Service and additional to Module A of the [Head Terms](#).

Part B: Financial Management

This document does not contain any Financial Management terms which are specific to the Facilities Access Service and additional to Module B of the [Head Terms](#).

Part C: Operational Management

Section 1 is a Service Term which should be read in conjunction with section 3 of the Service Description for the Facilities Access Service.

1. Conditions regarding Type 2 Facilities

- (a) If **nbn**'s contractual access or use rights or obligations in respect of a Type 2 Facility are varied or terminated for any reason beyond the reasonable control of **nbn**, then:
- (i) if **nbn** is unable to continue to provide the Facilities Access Service in respect of that Type 2 Facility on terms that are reasonably acceptable to **nbn**, that variation or termination will constitute a Force Majeure Event;
 - (ii) **nbn** may vary or terminate supply of the Facilities Access Service to RSP in respect of that Type 2 Facility;
 - (iii) RSP must comply with **nbn**'s directions relating to RSP's access to that Type 2 Facility; and
 - (iv) the procedure set out in clause C14.3 of the [Head Terms](#) will apply.
- (b) RSP must:
- (i) sign an Access Seeker Undertaking before **nbn** will supply the Facilities Access Service in respect of a Type 2 Facility; and
 - (ii) at all times comply with the Access Seeker Undertaking.
- (c) If the Underlying Facility Provider wishes to be present during the performance of infrastructure, make ready or maintenance works by RSP at Type 2 Facilities:
- (i) **nbn** may schedule works at a time when the Underlying Facility Provider is able to be present; and
 - (ii) RSP must not, without the consent of **nbn**, perform the works unless the Underlying Facility Provider is present.
- (d) RSP must comply, and ensure that RSP Personnel and any person RSP invites, permits or causes to enter any Type 2 Facility complies, with any conditions, limitations or requirements of the Underlying Facility Provider, including:
- (i) the removal of RSP Equipment from a Type 2 Facility which has not been installed in compliance with the Underlying Facility Provider's requirements; and
 - (ii) as set out in the [WBA Operations Manual](#) or notified by **nbn** or the Underlying Facility Provider to RSP from time to time.
- (e) Failure by RSP to take into account possible lead times for the grant of Building Entry Rights from the Underlying Facility Provider in relation to Type 2 Facilities constitutes an RSP Event.
- (f) In circumstances where RSP receives a direction or communication from the Underlying Facility Provider which impacts on RSP's access to a Type 2 Facility or RSP's use of a Service Element of the Facilities Access Service it has acquired, RSP must notify **nbn** of the details of that direction or communication, as soon as practicable.

Section 2 is a Service Term which applies to the Facilities Access Service.

2. The Access Seeker Undertaking

RSP must comply with, and ensure that its Authorised Persons comply with, all obligations described in the Access Seeker Undertaking including with regard to health, safety and environment in Type 2 Facilities and any directions given to RSP by the Underlying Facility Provider.

Part D: Information & Rights Management

This document does not contain any Information & Rights Management terms which are specific to the Facilities Access Service and additional to Module D of the [Head Terms](#).

Part E: Risk Management



Section 3 is a Special Term which applies in connection with the Facilities Access Service.

3. Insurance Policies

- (a) If RSP wishes to order a Service Element of the Facilities Access Service which would require RSP or its Personnel to physically access a site at which that Service Element is supplied to RSP, each party must ensure that each of the Insurance Policies they effect and maintain in accordance with clause E5.1(b) of the [Head Terms](#) are for an amount not less than \$50 million per occurrence (except for product liability insurance, which will be for not less than \$50 million in the annual aggregate).
- (b) Clauses E5.2 to E5.5 of the [Head Terms](#) apply with respect to RSP's obligation under section 3(a) as if a reference in those clauses to clause E5.1 of the [Head Terms](#) was a reference to section 3(a).

Part F: Agreement Management

This document does not contain any Agreement Management terms which are specific to the Facilities Access Service and additional to Module F of the [Head Terms](#).

Part G: Dispute Management

This document does not contain any Dispute Management terms which are specific to the Facilities Access Service and additional to Module G of the [Head Terms](#).

Part H: General Terms

Section 4 is a Service Term which should be read in conjunction with the Introduction to the [Service Description for the Facilities Access Service](#).

4. Facilities Access Service not a listed carriage service

The Facilities Access Service is not a listed carriage service or a service that facilitates the supply of a listed carriage service for the purposes of section 152AL of the Competition and Consumer Act. The inclusion or supply of the Facilities Access Service under this Agreement published on **nbn**'s Website does not have the effect of making the Facilities Access Service a declared service for the purposes of Part XIC of the Competition and Consumer Act.

Part I: Service Management

Section 5 is a Service Term which applies to the Facilities Access Service.

5. Use of the Facilities Access Service

RSP must not assign, lease, license or otherwise deal with any right or benefit that **nbn** makes available to RSP as part of the Facilities Access Service, or attempt to do any of these things except to the extent expressly permitted by this Agreement.

Section 6 is a Service Term which applies to the Facilities Access Service.

6. Hand back obligations

- (a) Within 4 weeks after **nbn** commences to supply a Service Element of the Facilities Access Service to RSP, RSP must start providing an RSP Product to a Downstream Service Provider or Contracted End User that relies on that Service Element as an input.
- (b) Subject to section 6(c), if:
 - (i) RSP:
 - (A) fails to commence supply in accordance with section 6(a); or
 - (B) ceases to provide any RSP Product to any Downstream Service Provider or Contracted End User that relies on that Service Element of the Facilities Access Service as an input for a continuous period of 4 weeks or more; and
 - (ii) an Other RSP places an order for that Service Element of the Facilities Access Service in respect of the relevant POI Site or Aggregation Node Site and **nbn**, acting reasonably, considers that it is prevented from fulfilling that order due to RSP's acquisition of that Service Element of the Facilities Access Service at the relevant POI Site or Aggregation Node Site,

nbn may, by giving written notice to RSP, terminate the supply of that Service Element of the Facilities Access Service at the relevant POI Site or Aggregation Node Site. A termination of supply under this section 6(b) will be a disconnection for the purposes of clause F9.2(a)(v) of the [Head Terms](#).

- (c) Section 6(b) does not apply in relation to Co-location supplied by **nbn** to RSP in respect of a POI Site or Aggregation Node Site if RSP Active Equipment is installed in the rack space that is made available by **nbn** to RSP as part of the supply of Co-location at that POI Site or Aggregation Node Site.