

Category Terms

Part 2A: NBN Service

1. Application

- 1.1 These terms apply to the NBN Service (**Service**) we provide and form part of our customer contract with you. They must be read in conjunction with our core terms at www.nextgennetworks.com.au (**Core Terms**).

2. Service

- 2.1. The Service delivers data carriage over the NBN Network.
- 2.2. The Service is a best efforts “internet grade” product. We do not guarantee the availability or performance of the Service nor successful data transport using the Service.

3. Downstream Customers and Personnel

- 3.1. The obligations of these Category Terms apply to you as well as your Personnel and Downstream Customers. You must ensure that your Personnel and Downstream Customers comply with the obligations of these Category Terms as if they were you.

4. Access to Premises

- 4.1. You must provide or procure for NBN Co and us (and our respective Personnel) safe and timely access to any premises owned, controlled or occupied by you or your Downstream Customers, for so long as you or your Downstream Customers own, control or occupy the relevant premises where NBN Co or we (and our respective Personnel) require that access to:
- a) enable you or your Downstream Customers to be connected to or supplied with a Service;
 - b) deliver, install, connect, inspect, modify, replace, maintain, repair, reinstate, service, disconnect, remove and perform any other work on or in relation to a Service or any part of the NBN Network, including any NBN Equipment, or, where lawful, any third party network; or

- c) exercise any of our respective rights or perform any of Optus' or our obligations under and in accordance with the WBA or the standard form of agreement (**SFOA**).
- 4.2. You must ensure that the contracts you enter into with your Downstream Customers contain valid and enforceable provisions permitting NBN Co and us (and our respective Personnel) all relevant access in accordance with clause 4.1. You warrant that you hold all consents, approvals and rights of access that you are required to provide or procure under clause 4.1 on trust for the benefit of NBN Co and if requested must provide to us written evidence of same.
- 4.3. You agree and acknowledge (and must ensure that your Downstream Customers agree and acknowledge) that:
- a) we and Optus are not responsible for the acts or omissions of NBN Co in connection with any NBN Co activity at any premises owned, controlled or occupied by you or your Downstream Customers;
 - b) NBN Co is not our (or Optus') agent or representative; and
 - c) to the maximum extent permitted by applicable law, we and Optus do not accept (and exclude) any liability to you or your Downstream Customer for the acts or omissions of NBN Co.

5. Installation

- 5.1. We or NBN Co may determine that the installation of a Service is a standard installation, a non-standard or a subsequent installation. A subsequent installation means a subsequent installation to a premise after the initial installation.
- 5.2. If the installation is a non-standard installation or a subsequent installation, we or NBN Co will provide a quote to you or your Downstream Customer for additional charges. We or NBN Co will only carry out the non-standard installation or subsequent installation if you or your Downstream Customer have consented to the quote. The additional charges will be invoiced to you by us.
- 5.3. If you or your Downstream Customer does not agree to the quote, we may immediately suspend or cancel the pending order or the Service associated with the quote. Cancellation fees may apply in accordance with the SFOA.

6. ULLS

- 6.1. Where you order a Service in respect of premises to which Optus is the sole provider of carriage services using ULLS, then we (on behalf of Optus) may give you a direction requiring the ULLS to be disconnected in respect of that premises.
- 6.2. If we give such direction under clause 6.1, you must:
- a) obtain valid consents and approvals from all Downstream Customers as may be required to disconnect the ULLS from that premises and to deliver that premises and to deliver, install and connect the Service or any part of the NBN Network in respect of that premises (including obtaining an acknowledgement from End Users that, following such disconnection, the copper wire will not be reconnected under any circumstances, meaning that the End User will not be able to acquire services in the future over that copper wire, such as ULLS or local telephony);
 - b) inform us as to whether there are any priority assistance services, medical alert services, alarm services or any other services with similar service levels connected to that premises; and
 - c) provide all assistance reasonably requested by NBN Co or us in connection with any part of the Service or NBN Network being delivered, installed and connected in respect of that premises.

7. No UPS Battery

- 7.1. We do not offer a battery backup service in respect of the Service. Therefore you must (without limiting your or your Downstream Customer's obligation to comply with the ACMA Determination:
- a) inform and make each Downstream Customer aware of the effect and consequence of a Downstream Service being supplied without a battery backup service, including providing them with sufficient information to make an informed decision as to whether they require battery backup functionality;
 - b) inform and make each Downstream Customer aware that the Downstream Service requires mains power to operate in the ordinary course and will not work if the power goes out and should not be relied on for emergency calls;

- c) obtain the Downstream Customer's consent to not receive any battery backup for the Downstream Service;
 - d) retain a record of that consent and all other communications with the Downstream Customer in relation to this issue (and make them available to NBN Co or us upon request);
 - e) comply with any directions or instructions notified by us or NBN Co from time to time (including on the NBN website) in relation to the battery backup service or the obtaining of informed consent; and
 - f) not use Downstream Services to supply Priority Assistance services to Downstream Customers.
- 7.2. If we introduce a battery backup service in respect of a Service, we may upon notice to you vary any applicable Service Description and the provisions of this clause 7 to reflect such change. Nothing herein implies that we will introduce a battery backup.
- 7.3. You agree and acknowledge that you will fully comply with the ACMA Determination. In the event of any inconsistency between clauses 7.1(a) to (d) (inclusive) and the ACMA Determination, the ACMA Determination will prevail to the extent of any inconsistency.

8. Privacy and Downstream Customer Details

- 8.1. We may from time to time request you to provide to us information (including personal information) about your Downstream Customers ("**Downstream Customer Details**") in order to provide the Service or to comply with a request from NBN Co. NBN Co may require End User details in order to:
- a) provide goods or services under the WBA;
 - b) carry out any work in relation to the supply of goods or services, including to install, maintain, upgrade, repair, reinstate or remove all or part of the NBN Network or any other item that is licensed, owned or controlled by NBN Co that is or will be located at the relevant premises, and where lawful, any third party network; or
 - c) for any other purpose, where necessary for NBN Co to perform its obligations or exercise its rights under the WBA or comply with applicable law.
- 8.2. If you receive such a request from us under clause 8.1, you must:

- a) provide the requested Downstream Customer Details to us as soon as is reasonably practicable; and
- b) before providing the Downstream Customer Details to us, obtain all necessary consents, give all necessary notifications required to ensure that we and NBN Co are able to lawfully use and process those Downstream Customer Details as contemplated by this clause, and provide, or procure and provide, those Downstream Customer Details to NBN Co. You must use reasonable endeavours to ensure that any Downstream Customer Details provided to us are complete, accurate and up-to-date.

9. Use of Service

- 9.1. You must (and must ensure that your Downstream Customers) only use the Service for lawful purposes, and not use the Service in order to transmit, distribute or store material:
 - a) in violation of any applicable law;
 - b) in a manner that will infringe the copyright, trade mark, trade secret or other Intellectual Property rights of others or the privacy, publicity or other personal rights of others;
 - c) that is obscene, threatening, abusive or hateful; or
 - d) that contains a virus, worm, Trojan, or other harmful software or component.
- 9.2. You must not (and must ensure that your Downstream Customers do not) engage in any conduct that:
 - a) endangers the health or safety of any person;
 - b) damages, threatens, interferes with, prejudices the integrity of, degrades or results in the deterioration of the operation or performance of any other party's network, systems, equipment, property, infrastructure or facilities;
 - c) causes a nuisance in, and when accessing, NBN Protected Items; or
 - d) damages, threatens, interferes with, prejudices the integrity of, degrades or causes the deterioration of the operation or performance of:
 - (i) NBN Protected Items;

- (ii) communications within the NBN Protected Items (including carriage or content services provided over the NBN Protected Items);
- (iii) the supply of products or services to Optus, us or any other NBN Customer; or
- (iv) other property or facilities or any third party,
including through any act or omission, or the use of your networks, systems, equipment or facilities or those of your Personnel or Downstream Customers.

- 9.3. You must comply (and must ensure that your Downstream Customers comply) with any directions, instructions, policies or procedures given by us or any of our Personnel that relate to:
- a) protecting the health or safety of any person;
 - b) protecting the integrity of any NBN Protected Items;
 - c) ensuring the quality of any NBN Protected Items.

10. Network Compatibility

- 10.1. You must ensure that your networks, systems, equipment and facilities and those of your Personnel and Downstream Customers (and any connections you or they make to the NBN Network) comply with all applicable laws and the WBA (including as required by the NBN Co Operations Manual) and are capable of orderly, efficient integration and operation with the NBN Network and Services with no modification or conversion required.
- 10.2. If any of your networks, systems, equipment or facilities or those of your Personnel or Downstream Customer, are damaging, or are incompatible or interfering with, or degrading or deteriorating the operation of any NBN Protected Items, then (without limitation to any of your other obligations or our rights) we or NBN Co may, or if you are requested by us to do so then you must, immediately disconnect or deactivate (or procure the disconnection or deactivation of) the relevant network, system, equipment or facility.

11. Equipment

- 11.1. You must ensure that all equipment which you or your Personnel or Downstream Customers use in connection with the NBN Network or the Services comply, and

are used in compliance with all applicable laws, regulatory approvals and requirements and the WBA, and are maintained in good repair and working condition.

- 11.2. We or NBN may provide you and your Downstream Customers with NBN Equipment for the purposes of a Service. You agree and acknowledge (and must ensure your Downstream Customers agree and acknowledge) that:
- a) all NBN Equipment remains the property of NBN Co and must remain at your (or your Downstream Customer's) site or premises unless otherwise by instructed by us or NBN Co;
 - b) we or NBN Co may remove or disconnect the NBN Equipment at any time (and we will do so where required by NBN Co or Optus); and
 - c) if NBN Equipment is damaged or becomes inoperable, then we will endeavour to procure that NBN Co (as the owner and or supplier of that equipment) repairs or replaces it within a reasonable period, however, we are not responsible for such repair or replacement, or an interruption to a Service which may result from such damage or inoperability of NBN Equipment.
- 11.3. You must comply with any terms of use of the NBN Equipment (including the terms of access and use of any port on a network termination device (**NTD**), and any instructions in relation to use, disconnection or connection of the NBN Equipment, which we or NBN Co provide to you from time to time.

12. Disconnection from NBN Network

- 12.1. You agree and acknowledge (and must ensure that your Downstream Customers agree and acknowledge) that we may disconnect any networks, systems, equipment and facilities which you or your Downstream Customers use in connection with the Service if the WBA terminates or expires.
- 12.2. In addition, if we give you notice that the WBA is terminated or expired, you must within 45 days (or such shorter period as may be required by NBN Co or us) disconnect or procure the disconnection of any connections made by or on behalf of you or your Downstream Customers in connection with the Service or and comply with any reasonable instructions given by NBN Co or Nextgen Networks in connection with such work.

13. Policies

- 13.1. You must (and must ensure that your Downstream Customers):

- a) comply with our Acceptable Use Policy (**AUP**) available at www.nextgennetworks.com.au;
- b) comply with the NBN Policies; and
- c) in relation to any terms and conditions imposed by NBN Co (including under the WBA) as notified to you by us:
 - (i) not do anything which would cause Optus or us to breach them; and
 - (ii) do all things necessary to enable Optus or us to comply with them.

13.2 If we consider there to be excessive or unusual usage of a Service, we may, at our discretion, suspend, limit or cancel that Service. However we are not obliged to monitor use of the Service, or to suspend, limit or cancel the Service if there is excessive or unusual usage, and whether or not we do so, you remain liable for all uses of the Service.

14. Your Responsibility for Loss

14.1. You must pay to us on demand an amount equal to all Losses (and indemnify us from and against all claims) suffered or incurred by us arising from or in connection with:

- a) a breach of any of your obligations under clauses 3 to 13 (inclusive), 17 and 18 of these Category Terms;
- b) unavailability, suspension or cancellation of a Service in accordance with the SFOA;
- c) death or personal injury to any person, or damage to, or loss, theft, interference degradation or deterioration of any NBN Protected Items (including NBN Equipment), to the extent caused by you or your Downstream Customers (or yours or their networks, systems, equipment or facilities);
- d) any claim against us or our Personnel by your Downstream Customers in connection with the acts or omission of NBN Co in accessing or carrying out activities at their premises;
- e) the reproduction, broadcast, use or attempted use, transmission, publication, communication or making available of any material

(including data and information of any sort) by you or your Downstream Customers using the Service or any Downstream Service;

- f) any breach of law, or of a person's rights (including Intellectual Property rights) or defamation of a person (or allegation of such a breach or defamation) involving the use or attempted use by you or your Downstream Customers of the Service or any Downstream Service; and
- g) any claim against NBN Co by you or your Downstream Customers in connection with the Service or any Downstream Service, including any claim in negligence.

15. Termination and Suspension

- 15.1. In addition to any other rights or remedies which we may have, we may, without liability, immediately suspend or terminate one or more Services, or disconnect any network, system, equipment or facility you or your Downstream Customer's use in connection with any Service or any Downstream Service, if:
 - a) you breach a term of the SFOA; or
 - b) an NBN Event occurs.
- 15.2. If we intend to exercise our rights under clause 15.1 due to an NBN Event, we will try (where reasonably practicable) to give you a period of prior notice that we believe is reasonable in the circumstances, however the notice provided to you will not be greater than the period of notice that Optus provides to us.
- 15.3. Despite clause 16.1, if we suspend a Service due to an NBN Event resulting from an NBN Upgrade, you must continue making payments to us and we will have no obligation to refund the amounts paid, other than an amount equal to any applicable service level rebate received by us from Optus.
- 15.4. We are not liable for any damages of any nature whatsoever suffered by you, a Downstream Customer or any third person resulting in whole or in part from our exercise of our rights under this clause 15.
- 15.5. The terms of this clause 15 survive termination or expiration of any Service or the SFOA.

16. Variations

- 16.1. We may by notice to you vary one or more Services, including the terms of any relevant Service Description, if reasonably required due to variations made by

NBN Co to the NBN Network, goods or services or anything that is that is necessary for us to supply the Service to you.

16.2. If NBN Co makes any changes under the WBA in relation to:

- a) its price list; or
- b) any other amount payable by Optus, and

Optus subsequently makes any changes to the charges payable by us to Optus, we may by notice to you make corresponding changes under this SFOA, including in respect of charges for existing Services, to reflect those changes made.

16.3. If the WBA is changed by NBN Co, or if it is replaced by a new wholesale agreement with NBN Co, and Optus subsequently makes any changes to our agreement with Optus, we may by notice to you vary the SFOA, including these Category Terms, in order for us to comply with our agreement with Optus.

16.4. If we make any change or variation in accordance with this clause 16, we will try (where reasonably practicable) to give you a period of prior notice that we believe is reasonable in the circumstances, however the notice provided to you will not be greater than the period of notice that Optus provides to us.

17. **Your Rights against us**

17.1. You must not commence proceedings or make a claim against us (including claims in tort (including negligence), under statute or otherwise) for Loss you suffer or incur arising out of or in connection with a Service to the extent that the claimed amount exceeds the aggregate of the monthly recurring charges that you had become obliged to pay to us for the relevant Service in the twelve months period immediately prior to the date on which the event or the first of a series of events giving rise to the claim occurred. We may plead this clause 17.1 as a bar to any claim or proceeding brought against us.

17.2. To the maximum extent permitted by law, we will not be liable to you in contract, tort (including negligence), statute or otherwise for:

- a) any Consequential Loss arising out of or in connection with the SFOA; or
- b) an Excluded Event.

18. Downstream Customer Contracts

- 18.1. You agree and acknowledge (and must ensure that your Downstream Customers agree and acknowledge) that:
- a) NBN Co is not providing any products or services (including the Service) to you or your Downstream Customers;
 - b) NBN Co does not have a contractual relationship with you or your Downstream Customers in regards to the supply of the Service (or any Downstream Service);
 - c) you and your Downstream Customers must not contact NBN Co directly in relation to the Service or any Downstream Service, unless otherwise notified by us or NBN Co; and
 - d) to the full extent permitted by law, NBN Co will not be liable to you in any way (including any claim in negligence) for any Loss you or your Downstream Customers may suffer or incur arising from or in connection with the Service or any Downstream Service.
- 18.2. To the full extent permitted by law, you must not (and must ensure that your Downstream Customers do not) commence proceedings or make a claim against NBN Co for any Loss referred to in clause 18.1(d).

Definitions

In this Part 2A the following words have these meanings:

ACMA Determination means the *Telecommunications (Backup Power and Informed Decisions) Service Provider Determination 2014 (Cth)* and any amendment to or replacement of that determination from time to time.

Consequential Loss means:

- a) loss or damage that does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question;
- b) loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss even if such loss arises naturally or in the usual course of things from that breach, action or inaction in question;

- c) all forms of consequential, special, indirect, punitive or exemplary loss or damages; and
- d) any penalties or fines imposed by a Regulator.

Downstream Customers means your customers, End Users and any persons involved in the supply of Services to End Users (including, if applicable, your customers' customers) and each of their respective Personnel.

Downstream Service means any good or service supplied by you or your Downstream Customers that relies on the Service as an input.

End User means a person who contracts with a party to acquire services supplied by the party to the extent that it uses the services for itself.

Excluded Event means:

- a) a breach of the SFOA by you,
- b) an NBN Event;
- c) an act or omission of you or any of your Personnel or Downstream Customers; or
- d) a failure of any of your equipment or that of your Personnel or Downstream Customers.

Intellectual Property means all statutory, civil and common law, and other proprietary rights (including rights to require information be kept confidential), whether registered or not or capable of registration or not, and including all applications and the right to apply for any registrations in respect of inventions, copyright, trade marks, designs, patents, circuit layouts, know-how, trade secrets and all other rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

NBN Co (or **NBN**) means NBN Co Limited (ABN 86 136 533 741) of Level 11, 100 Arthur Street, North Sydney NSW 2060, its Related Bodies Corporate and each of their respective officers, employees, agents, subcontractors and consultants.

NBN Equipment means any equipment that is owned, operated or controlled by or on behalf of NBN Co or which we or NBN Co allow you or a Downstream Customer to access in connection with a Service.

NBN Event means an event or circumstance where for any reason NBN Co terminates, suspends, ceases, withdraws or interrupts Optus' and our access to, or the supply to

Optus and us of, all or any part of the NBN Network or products, services or anything else that is necessary for us to supply a Service to you.

NBN Customer means any person who has entered into an Other Wholesale Broadband Agreement with NBN (whether or not NBN Co has supplied any goods or services to that person).

NBN Customer Network means any NBN Customer's network, systems, equipment, property, infrastructure or facilities used in connection with the NBN Network or at the NBN national test facility.

NBN Network means the networks, systems, equipment, facilities and any other items that are used, licensed, owned or controlled by, or operated by or on behalf of, NBN Co and includes the NBN Equipment, NBN platform and the NBN national test facility.

NBN Policies means the means the policies, procedures and instructions, issued and updated from time to time by NBN Co, including:

- (i) the NBN Fair Use Policy;
- (ii) the NBN Fair Use Policy for NFAS in the NBN Co Product Catalogue;
- (iii) the NBN Co Equipment terms of use; and
- (iv) the NBN Co Operations Manual,

each available at www.nbnco.com.au (or such other URL as may be used by NBN Co from time to time to locate those documents), as may be varied or replaced from time to time.

NBN Protected Items means the NBN Network, Services, NBN Customer Networks and any goods or services supplied by NBN Co to Optus, us or any other person.

NBN Upgrade means any upgrade, enhancement, modernisation, reconfiguration, enablement or augmentation of the NBN Network, including the removal, rearrangement, replacement or decommissioning of the network elements and associated electronics comprising the NBN Network.

Optus means Optus Networks Pty Limited (ABN 92 008 570 330) of 1 Lyonpark Road, Macquarie Park, NSW 2113, who has entered into the WBA with NBN Co and on-sells products or services supplied by NBN Co to us.

Other Wholesale Broadband Agreement means an agreement dealing with the subject matter of the WBA entered into between NBN Co and a person other than Optus.



Nextgen Networks standard form of agreement
Nextgen Networks Pty Ltd ACN 094 147 403

Personnel of a party, means its directors, officers, employees, consultants, agents and sub-contractors, and those of its Related Bodies Corporate.

Priority Assistance has the meaning given to it in the WBA.

Related Body Corporate has the meaning given to it in the *Corporations Act 2001* (Cth).

Service means a good or service that relies on or uses, in whole or part, the NBN Network or any other products or services supplied by NBN Co, including as an input. It also includes applicable Downstream Services.

ULLS means unconditioned local loop service.

Wholesale Broadband Agreement (or **WBA**) means the most recent version of NBN Co's Wholesale Broadband Agreement with Optus (located at www.nbnco.com.au (or such other URL as may be used by NBN Co from time to time to locate that agreement)) as may be varied or replaced from time to time and includes the NBN Policies.