

# Wholesale Broadband Access Agreement

DATED This \_\_\_\_\_ day of \_\_\_\_\_ 2021

## PARTIES

LBN Co Pty Ltd (ACN 073 226 114) ("**Access Provider**")

XXXX RSP Entity XXXX (ACN XXX XXX XXX) ("**Access Seeker**")

## BACKGROUND

- A. Various residents, businesses, end users and occupiers ("**End Users**" or "**Residents**") in certain land developments or buildings ("**Community**" or, as the case may be "**Communities**") require wholesale networks to provide a choice of broadband telecommunication services including carriage services, internet services, content services, other data applications and services ("**Retail Services**").
- B. Access Provider holds a carrier Licence under the *Telecommunications Act 1997 (Cth)* ("**the Act**") and provides the maintenance and wholesale network operational services ("**Network Services**") more particularly described in the Access Provider Product Description Summary for advanced broadband networks ("**Networks**") in various Communities on a wholesale only, open access basis and non-discriminatory terms of access.
- C. Access Provider connects End User premises within those Communities to the Network so they may receive Retail Services from Retail Service Providers ("**RSPs**") that may contract with End Users.
- D. Access Seeker is an RSP that wants to provide Retail Services to the End Users premises within the Communities and seeks access to Networks of Access Provider and requires Network Services.
- E. In some instances the Access Seeker also requires Access Provider to supply through sub-contracted providers of back haul broadband connections ("**Back Haul Services**") to connect the Access Seeker's network equipment at a point of interconnection ("**POI**") or point of presence ("**POP**") to the Networks in Communities to which it has access.
- F. The terms and conditions of this Agreement incorporate many of the provisions of the Access Determination No 2 of 2017 Final Access Determination ("**FAD**") made by the Australian Competition & Consumer Commission ("**ACCC**") on 24 May 2017 for the declared Local Bitstream Access Service ("**LBAS**") under Section 152BC of the *Competition and Consumer Act 2010* ("**CCA**"), but the express terms and conditions of this Agreement take priority over and shall apply over any provisions of the FAD that directly or indirectly conflict with the express terms and conditions of this Agreement.

## OPERATIONAL PROVISIONS

### 1. OPERATION OF ACCESS DETERMINATIONS

#### 1.1 Acknowledgement of LBAS

The parties acknowledge that:

- (a) ACCC has made a Final Access Determination No 2 of 2017 **FAD** on 24 May 2017 for the declared **LBAS** under Section 152BC of the **CCA**;
- (b) Certain Access Provider's Networks for which access and Network Services are required may be affected by **LBAS** in the absence of agreement between the Access Seeker and Access Provider.

#### 1.2 Provisions of FAD apply unless conflicted

Save and except as specifically provided in this Agreement and in any amendment or variation of this Agreement or substitute Agreement that may be provided to the Access Seeker by Access Provider or published by Access Provider on its web portal SPACE, the **FAD** shall apply to such of the Networks of Access Provider and be implied as provisions of this Agreement, notwithstanding that any such Networks may not be described as a LBAS network or not covered by the FAD or that the **FAD** shall cease to be in force or be revoked or replaced by some other determination. For the sake of clarity, should the **FAD** be determined, repealed, revoked, amended or replaced then unless the Access Provider otherwise notifies the terms and conditions of this Agreement including the **FAD** applicable as at the date of this Agreement shall continue to apply as between the parties to this Agreement but as expressly or impliedly amended by the provisions of this Agreement.

#### 1.3 Conflict between this Agreement and the FAD

If there is any implied or express conflict between any provision of this Agreement or power, duty or obligation of either party to this Agreement and any provision of the **FAD** or any power, duty or obligation of either party to this Agreement because of the **FAD** then the provisions of this Agreement and the powers, duties and obligations of this Agreement shall apply, prevail and take priority.

#### 1.4 Variations and New Terms

Access Provider may from time to time introduce, vary, amend this Agreement by 30 days written notice to the Access Seeker of the new, varied or amended Agreement or publication of the new, varied or amended Agreement on its web portal SPACE for 30 days and if the Access Seeker continues to access the network and receive Network Services or Backhaul Services, then after such 30 days period of time, the terms and conditions of the new, varied or amended Agreement shall be deemed to apply and bind the parties to this Agreement.

#### 1.5 Charges for Services

Under this Agreement:

- (a) LBN Co Pty Ltd (ACN 073 226 114) is deemed to be the "**Access Provider**" within the meaning of that term under the **FAD**;
- (b) "**Charges**" shall mean and include:
  - (i) **Monthly Service Fees** for Network Services provided by Access Provider for the Access Seeker;

- (ii) any **Back Haul Service Fees** for the Back Haul Services provided by Access Provider to enable the Access Seeker to connect its network equipment to the Network; and
- (iii) any other charges, fees or costs payable to Access Provider for any services:
  - as may, from time to time, be determined by Access Provider and specified in:
    - Access Provider Product Pricing Schedule; and
    - Network Services Description and Service Level Assurances, published by Access Provider on its web portal SPACE;
- (c) **“Service”** and **“Services”** shall mean and include such service or services of Access Provider as may be Ordered by Access Seeker and provided by Access Provider from time to time to an Active Port on the Network, including such Network Services and any Back Haul Services as from time to time, may be determined by Access Provider and specified in:
  - Access Provider Product Pricing Schedule; and
  - Network Services Description and Service Level Assurances; published by Access Provider on its web portal SPACE;
- (d) **“FAD”** means the Final Access Determination No 2 of 2017 made on 24 May 2017 for the declared local bitstream access service (**“LBAS”**) under Section 152BC of the Competition and Consumer Act 2010 (**“CCA”**) and where the context permits the acronym **“FAD”**, also means “provisions of this Agreement as amended, varied or altered as herein provided”.

## 2. BILLING & NOTIFICATIONS

### 2.1 Variations on Schedule 3 of the FAD

- (a) **Clause 3.10** of the FAD shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:
  - “3.10 If the Access Seeker believes a Billing Dispute exists, it may invoke the Billing Dispute Procedures by providing written notice (with the words **“Billing Dispute Notice”** printed at or about the top of the notice to the Access Provider and may only be initiated by the Access Seeker:*
    - (a) *If the Access Seeker is acting in good faith; and*
    - (b) *If the Access Seeker has paid to the Access Provider all moneys that relate to the Charges in the invoice and which are not being disputed by the Access Seeker.”*
- (b) Clause 3.11 of the FAD shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:
  - “3.11 Except where a party seeks urgent injunctive relief, the Billing Dispute must be invoked before the Access Seeker may begin legal proceedings in relation to any Billing Dispute.”*
- (c) Clause 3.12 of the FAD shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:
  - “3.12. If a Billing Dispute Notice is given to the Access Provider by the due date for payment of the invoice containing the Charge which is being disputed, the Access Seeker may withhold payment only to the extent of the amounts actually disputed in relation to that Charge until such time as the Billing Dispute has been resolved and the Access Seeker must pay to the Access Provider all other amounts not actually disputed in relation to*

*that Charge. Otherwise the Access Seeker must pay the invoice in full in accordance with this Agreement (but subject to the outcome of the Billing Dispute Procedures)."*

- (d) **Clause 3.14** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:

**"3.14** *A Billing Dispute Notice may only be given to the Access Provider in relation to a Charge within 6 months of the earlier of:*

- (a) The date that that the invoice for the Charge is posted to the Access Seeker;*
- (b) The date that that the invoice for the Charge is emailed to the Access Seeker; or*
- (c) The date that that the invoice for the Charge is delivered to the Access Seeker."*

- (e) **Clause 3.15** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:

**"3.15** *The Access Provider must:*

- (a) acknowledge receipt of a Billing Dispute Notice within 5 Business Days by providing the Access Seeker with a reference number; and*
- (b) within 30 Business Days of the date of acknowledgement of the Billing Dispute Notice, give written notice to the Access Seeker:*
  - (i) accepting the Billing Dispute Notice; or*
  - (ii) rejecting the Billing Dispute Notice if the Access Provider considers that:*
    - A. the subject matter of the Billing Dispute Notice is already being dealt with in another dispute;*
    - B. the Billing Dispute Notice was not submitted in good faith; or*
    - C. the Billing Dispute Notice is incomplete or contains inaccurate, false or incorrect information;*
- (c) If the Access Provider fails to accept or reject to Billing Dispute Notice within 30 Business Days of acknowledging the Billing Dispute Notice under clause 3.15(a), then the Access Provider is taken to have rejected the Billing Dispute Notice."*

- (f) **Clause 3.17** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:

**"3.17.** *The Access Provider and the Access Seeker must try in good faith to resolve any Billing Dispute as soon as practicable and in any event within 30 Business Days of the Access Provider accepting or rejecting a Billing Dispute Notice or such longer period as may be agreed by the parties, by the following process:*

- (a) Access Provider shall notify the Access Seeker in writing of its proposed resolution of the Billing Dispute and that notice shall:*
  - (i) explain the Access Provider's proposed resolution and provide copies, where necessary, of all information or documentation relied upon in coming to that proposed resolution; and*
  - (ii) set out any action to be taken by:*
    - (A) the Access Provider (eg withdrawal, adjustment or refund of the disputed Charge); or*

(B) the Access Seeker (eg payment of the disputed Charge).

(b) *If the Access Provider reasonably considers that it will take longer than 30 Business Days after rejecting a Billing Dispute Notice to provider a proposed resolution, then the Access Provider may request the Access Seeker's consent to an extension of time to provide the proposed resolution and such consent must not be unreasonably withheld, delayed or granted subject to any unreasonable conditions.*

(g) **Clause 3.28** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:

**"3.28.** *Each party must continue to fulfil its obligations under this Agreement while a Billing Dispute and the Billing Dispute Procedure are either pending resolution by the parties or undetermined by mediation or legal or regulatory proceedings. If there is no pending Billing Dispute and no unresolved Billing Dispute Procedure or court or regulatory proceedings actually pending in relation to a Charge or Charges when such Charge or Charges are due and payable, then the Access Provider may at its discretion:*

(c) *suspend or terminate any or all of the Services; or*

(d) *suspend or terminate the Back Haul Services; or*

(e) *deny the Access Seeker any further access to any part or all of the Network or any Active Ports on any Networks of the Access Provider; and*

*any such remedies do not exclude any other legal, regulatory or equitable remedies that may also be available to the Access Provider and any such remedies or the above actions may be pursued by the Access Provider simultaneously or separately at any time."*

(h) **Clause 3.30** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:

**"3.30.** *Communications between the parties during the course of a Billing Dispute are not made on a without prejudice or confidential basis unless specifically stated in relation to each particular communication between the parties."*

(i) **Clause 3.31** of the **FAD** shall not apply in this Agreement.

### 3. CREDITWORTHINESS & SECURITY

#### 3.1 Variations on Schedule 4 of the FAD

(a) **Clause 4.9** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:

**"4.9.** *The Access Seeker may require a confidentiality undertaking to be given to Access Seeker by any person authorised by and acting on behalf of the Access Provider, if confidential information is contained in the Ongoing Creditworthiness Information of the Access Seeker prior to such confidential information being provided to that person."*

### 4. GENERAL DISPUTE RESOLUTION PROCEDURE

#### 4.1 Variations on Schedule 5 of the FAD

(a) **Clause 5.1** of the **FAD** shall be amended in this Agreement by adding at the end of Sub-clause (b) the following new sub-clause (c):

**"(c)** *Provided that a dispute about the non-payment of any moneys that are claimed to be due and owing by the Access Seeker to the Access Provider under an invoice or invoices for Charges by the Access Provider for Services, is not a dispute to be managed in accordance*

with either the Billing Dispute Procedures or the Non-Billing Dispute Procedures in Schedule 4 of FAD if:

- (i) a Billing Dispute Notice or a Non-Billing Dispute Notice is not given to the Access Provider by the Access Seeker in strict compliance with the provisions of this Agreement;
  - (ii) Access Seeker is not acting in good faith; or
  - (iii) Access Seeker has not paid to the Access Provider any and all moneys in relation to Charges in an invoice or invoices that are not disputed by the Access Seeker as payable to the Access Provider.”
- (b) **Clause 5.8** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:
- “5.8. Communications between the parties during the course of a Non-Billing Dispute are not made on a without prejudice or confidential basis unless specifically stated in relation to each particular communication between the parties.”*
- (c) **Clause 5.10(d)(iii)** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:
- “(iii) not be an officer, director or employee of a carrier, carriage service provider, internet service provider or content service provider or otherwise have a reasonable potential for there being a conflict of interest.”*

## 5. CONFIDENTIALITY PROVISIONS

### 5.1 Variations on Schedule 6 of the FAD

- (a) **Clause 6.3** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:
- “6.3. If the Access Provider has the reasonable capability to provide information to the Access Seeker on the quarterly aggregate traffic flow generated within the Access Provider’s Network in respect of a particular Service for an Access Seeker and that Access Seeker makes a specific written request (issued not more than 3 months before the end of the particular quarter and not after the end of the quarter) for that information relating to the particular quarter, then Access Provider shall provide that information upon payment of the Access Provider’s reasonable costs for producing and providing it.”*
- (b) **Clause 6.10** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clause which shall apply to this Agreement:
- “6.10. If the Access Provider has the right to suspend or cease the supply of any Network Services, Backhaul Services or other Services under this Agreement or after the suspension or cessation of supply of any such Services under this Agreement the Access Seeker fails to pay all moneys due and owing to the Access Provider by the due date for payment then, without limitation or restriction of any other rights or powers at law, equity or under this Agreement, the Access Provider may do one or more of the following:*
- (a) *Notify and exchange information about the Access Seeker (including the Access Seeker’s Confidential Information) with any credit reporting agency or the Access Provider’s collection agent; and*
  - (b) *Without limiting any provision of this Agreement, disclose to a credit reporting agency the defaults made by the Access Seeker under this Agreement and the exercise by the Access Provider of any right to suspend or cease supply of the Services under this Agreement.”*

## 6. SUSPENSION AND TERMINATION

### 6.1 Variations on Schedule 7 of the FAD

- (a) **Clauses 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 7.7** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clauses which shall apply to this Agreement:

**“7.1. Suspension of Services**

*Access Provider may immediately suspend the supply of any Network Services, Backhaul Services or other Services or access to the Access Provider’s Network, provided that it gives written notice of that suspension of supply to the Access Seeker and where practicable provides the Access Seeker with as much notice as is reasonably practicable where there is a “Suspension Event”, namely if, in the reasonable opinion of the Access Provider:*

- (a) *an Emergency arises or is possibly going to arise; or*
- (b) *the supply to the Access Seeker of any Network Services, Backhaul Services, or other Services or access to the Access Provider’s Network may pose a potential or actual danger, threat or hazard:*
  - (i) *to the health, life or safety of any person, or*
  - (ii) *to the operation, maintenance, access, integrity or security of the Network or any equipment connected to it; or*
  - (iii) *likely to impede the activities of authorised persons responding to an Emergency or maintaining the Network; or*
- (c) *the Access Seeker’s Network or equipment potentially or actually adversely affects or threatens to affect the operation, maintenance, access, commerciality, integrity or security of the Access Provider’s Network or any equipment connected to it or access to the Access Provider’s Network or equipment; or*
- (d) *Access Seeker has delivered or is likely to deliver on to the Access Provider’s Network any Prohibited Traffic (being content, carriage service or applications or downloadable or executable computer files which are prohibited by law or considered by any lawful authority or government agency to be unlawful, dangerous, a threat to the health or safety of any persons or to the public); or*
- (e) *Access Seeker’s use of its Facilities (being any device, equipment, network or line link), the Access Provider’s Network or any Network Services or Backhaul Services supplied by the Access Provider, is in contravention of any law or regulation or causes or may cause Access Provider to be in breach of the Access Provider’s carrier licence; or*
- (f) *Access Seeker is in breach of a material obligation or term of this Agreement and:*
  - (i) *the Access Provider has given reasonable notice to the Access Seeker of that breach and (if it is possible to remedy the breach) required the Access Provider to remedy that breach within a period specified by the Access Provider in its notice to the Access Seeker; but*
  - (ii) *the breach has not been remedied within that period; or*
- (g) *an Event set out in clauses 7.8 of the FAD occurs; or*
- (h) *when any Charge or Charges are due and payable but unpaid by the Access Seeker to the Access Provider and there is no Billing Dispute and no pending*

*Billing Dispute Procedure or court or regulatory proceedings actually pending in relation to such Charge or Charges; and*

*Access Provider is entitled to continue such suspension or refuse to provide the Access Seeker with Network Services, Backhaul Services or any other Services until, as the case may be, the relevant Suspension Event or circumstances giving rise to the suspension has been remedied to the satisfaction of the Access Provider.*

## **7.2. Reconnection of Services**

*Access Provider must reconnect and continue the supply of Network Services, Backhaul Services and any other Services and provide access for the Access Seeker to the Network as soon as reasonably practicable after:*

- (a) the cause for suspension of Services by the Access Provider cease to exist; or*
- (b) in the case of a breach of a material obligation or term of this Agreement by the Access Seeker, the breach has been remedied; and*
- (c) Access Seeker pays to the Access Provider all of the Access Provider's costs and expenses of or incidental to the suspension and reconnection of the Services or providing access to the Network for the Access Seeker.*

## **7.3. Reconnection of Services**

*For the avoidance of doubt, Access Provider may provide a notice of suspension before, after or at the same time as providing a notice of a breach of this Agreement to Access Seeker and may provide a notice of breach of this Agreement to the Access Seeker at any time following the breach by the Access Seeker."*

## **7. Liability and Indemnity**

### **7.1 Variations on Schedule 8**

- (a) Clauses 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12 and 8.13** of the **FAD** shall not apply in this Agreement and shall be replaced by the following new clauses which shall apply to this Agreement:

#### **"8.1 Liability and Indemnity**

*Neither party is liable (including under any indemnity) to the other for any indirect or consequential loss, damage, loss, cost or expense (including without limitation and whether cause by loss of or corruption of data or for the loss of contract, opportunity, continuity of business or profit) arising out of or in connection with this Agreement or any document relating to it, except to the extent expressly stated otherwise in this Agreement."*

## **8. INTERPRETATION OF FAD TERMS**

### **8.1 Variations on Schedule 1 of the FAD**

- (a)** The definitions of "Suspension Event" and "Suspension Notice" in **Schedule 7** of the **FAD** shall not apply in this Agreement and the following definitions shall apply to this Agreement in their stead:

*“Suspension Event” means the cause for suspension of Services to the Access Seeker or denial of Access Seeker’s access to the Network by the Access Provider as described in clause 6 of this Agreement;*

*“Suspension Notice” means a notice that the Access Provider may provide to the Access Seeker under this Agreement where there is a Suspension Event.”*

## **9. ACCESS SEEKER GENERAL OBLIGATIONS**

### **9.1 General obligations**

Access Seeker must:

- (a) not connect any active telecommunications or other equipment, device or Network Units to any part of the Network without the consent of Access Provider which consent may in its absolute discretion be withheld or granted subject to such conditions as it may, in its absolute discretion, deem appropriate;
- (b) ensure that the Access Seeker’s Interception Capability is compliant at all times with any and all obligations under the Act and any related telecommunications legislation or subordinate regulations or directions; and
- (c) take all reasonable precautions and steps to ensure that End Users to which Retail Services are provided by the Access Seeker do not breach any Acceptable Use Policy.
- (d) The Access Seeker agrees that it will not approach any site or developer of the Access Provider to provide a broadband service of any nature.

## **10. ORDERS**

### **10.1 Placement**

The Access Seeker may place Orders for Network Services to activate Ports in End User Premises by:

- (a) delivery of Orders to the Access Provider;
- (b) which Orders shall and are only to be for those Network Services detailed in the Product Pricing Schedule and Network Services Description and Service Level Assurances published by Access Provider on its web portal SPACE; and
- (c) paying to Access Provider any and all moneys payable by the Access Seeker (including any Connection Fees or fees or charges for connection, reconnection, disconnection, or changes to Network Services) in respect to the Orders or provisioning or activation of the Active Port or Ports that are the subject of the Orders.

### **10.2 Acceptance of Orders**

Access Provider or, as the case may be, its Network Manager may either accept or reject any Order from Access Seeker, but if accepted then each such acceptance shall be on the terms and conditions of this Agreement and in consideration for the payment by the Access Seeker of all moneys due for the

Network Services provided in relation to the Active Ports which are the subject of the accepted Order or Orders.

### 10.3 Rejection

In the event that Access Provider or, as the case may be, its Network Manager deems it appropriate to reject any Orders from Access Seeker then, unless the Disputes Resolution Procedure is initiated by a party in accordance with the provisions of this Agreement, then the amount of any moneys pre-paid by the Access Seeker in relation to such rejected Order shall be refunded to the Access Seeker by Access Provider.

### 10.4 Variations, Disconnections and Reconnections

In any Order for variation, disconnection or reconnection of Network Services, Access Seeker must give 5 business days' notice in writing to Access Provider and from the date upon which such request is to take effect, Access Provider shall cause the variation, disconnection or reconnection of the Network Services to such Active Port as is specified in the notice and the Access Seeker shall pay to Access Provider all relevant charges for such variation, disconnection or reconnection from time to time, may be determined by Access Provider and specified in:

- Access Provider Product Pricing Schedule; and
- Network Services Description and Service Level Assurances;

and published by Access Provider on its web portal SPACE.

## 11. INFORMATION & COOPERATION

Access Provider and the Access Seeker each undertake to promptly supply the other party to this Agreement, free of charge, all information and co-operation that the other may reasonably require and which Access Provider or Access Seeker is able to supply from time to time to enable each of them to continuously and effectively perform its obligations contemplated under this Agreement (including but not limited to, the compliance of all Laws), including any confidential information of the Access Seeker.

## 12. SERVICE DELIVERY

### 12.1 Acknowledgements of other arrangements

The Access Seeker acknowledges and agrees that Access Provider may provide the Network Services or Back Haul Services for any Network using:

- (a) facilities that are owned, licensed or managed by Access Provider;
- (b) the services or Facilities of any Other Provider;
- (c) any combination of the services and Facilities referred to in **clauses 12.1(a) and (b)**;
- (d) the Back Haul Services of such Back Haul Service Provider as Access Provider may deem fit; and

- (e) such services as may be provided by a Network Manager (if any is appointed by Access Provider).

## **12.2 Compliance with terms and conditions of Other Providers**

If Access Provider provides Network Services using any services or Facilities referred to in **clauses 12.1**, then the Access Seeker must:

- (a) not do anything which would cause Access Provider to breach of the terms and conditions relating to such services or Facilities; and
- (b) do all things reasonably necessary to enable Access Provider to comply with any applicable terms and conditions imposed on Access Provider by the Other Provider, Back Haul Service Provider or, as the case may be Network Manager and notified to the Access Seeker;
- (c) not make, bring, commence or participate in any claim, action, suit or demand for compensation or terminate this Agreement or make any adverse or critical public statement or comment to any other parties about or in relation to or for any loss, failure, delay, poor performance or non-performance of any services or Facilities referred to in **clauses 12.1** or the Network Services or the Back Haul Services due to circumstances that are outside the control of Access Provider or within the control of such Other Provider or Back Haul Service Provider as may be the case.

## **12.3 Suspension for Planned Outages, Maintenance etc**

Without limiting any other right to suspend Network Services or access to the Network for the Access Seeker, Access Provider may immediately suspend the provision of the Network Services or the Back Haul Services, including disconnecting or de-activating any or all Active Ports or deny the Access Seeker access to the Network or any Facility without liability of Access Provider to the Access Seeker:

- (a) During any Planned Outage Period; or
- (b) During the period of any Maintenance work that may be required to be undertaken in connection with the Network or any systems required to operate the Network provided that:
  - (i) Access Provider gives reasonable written notice of the suspension of Network Services to do that Maintenance and
  - (ii) such a notice is given not less than 5 Business Days before it is to take effect except; or
  - (iii) there is an emergency that requires the immediate performance of such Maintenance work;
- (c) if Access Provider is required by any Governmental Agency or emergency service organisation to suspend any Network Services;
- (d) Any Facility or Back Haul Service required to operate the Network or provide Network Services is not available, disconnected or not provided by any Back Haul Service Provider or Other Provider for any reason whatsoever;

- (e) if any act or omission by the Access Seeker or a third party to whom the Access Seeker provides Services is, in the reasonable opinion of Access Provider, likely to:
  - (i) damage or diminish the integrity, quality or functionality of:
    - (A) Access Provider Facilities, Networks or systems;
    - (B) any Access Provider Equipment; or
    - (C) the Network Services; or
  - (ii) cause Access Provider to suffer or incur financial loss; or
  - (iii) breach the Acceptable Use Policy; or
- (f) there is an emergency of any kind which may require work to be carried out on the Facilities, Networks or systems of the Access Provider or any Other Provider in which case Access Provider will use its best endeavours to keep the Access Seeker informed of the status and duration of the emergency, its impact on the Network Services or Back Haul Services and when the emergency may cease;
- (g) a Force Majeure Event occurs and effects the ability of Access Provider to provide the Network Services or Back Haul Services or access to any Network, for the period that the Force Majeure Event continues; and
- (h) where it is reasonable in the circumstances; then

Access Provider shall endeavour to give the Access Seeker reasonable notice of the suspension of Network Services, Back Haul Services or access to a Network.

#### **12.4 No Affect on Existing Liabilities**

No suspension of Network Services or termination, disconnection or de-activation of any Active Port by Access Provider shall affect the liability of the Access Seeker to pay any Charges, fees, moneys owing, accrued or otherwise due to be paid to Access Provider under this Agreement.

### **13. REBATES FOR FAILURE TO MEET SLA**

#### **13.1 Payment or Set Off by Access Provider**

During the Term of this Agreement and subject always to **clauses 12.2, 12.3 and 12.4**, if the Network Services are not provided in accordance with the provisions of this Agreement then Access Provider shall either pay or, as it may deem fit, set off the amount of any credit for Service Level Rebates payable to the Access Seeker against any future Charges that are or may become payable by the Access Seeker to Access Provider.

## **14. LIMITATION AND EXCLUSION OF LIABILITY**

### **14.1 Liability of Access Provider**

Notwithstanding any other provision of this Agreement, the liability of Access Provider to the Access Seeker for each and any claim (including claims in contract, torts (including negligence), under any statute or otherwise) arising out of or in respect of this Agreement or any failure to provide any Network Services is limited to and shall not exceed the amount (if any) of the relevant Service Level Rebates specified in the Network Services Description and Service Level Assurances (SLA) and any party claiming under the Access Seeker shall have no remedy at Law or in equity or under any statute other than the possibility of payment or credit of an amount of the relevant Service Level Rebates to the Access Seeker.

### **14.2 No liability for Indirect or Consequential Loss**

Neither party is liable (including under any indemnity) to the other for any indirect or consequential loss, damage, loss, cost or expense (including without limitation and whether cause by loss of or corruption of data or for the loss of contract, opportunity, continuity of business or profit) arising out of or in connection with this Agreement or any document relating to it, except to the extent expressly stated otherwise in this Agreement.

## **15. CHARGES**

### **15.1 Access Seeker to pay Charges**

Subject to **Clauses 1, 2 and 4** of this Agreement, the Access Seeker must duly and promptly pay to Access Provider:

- (a) any Back Haul Fees for Back Haul Services required by the Access Seeker;
- (b) Connection Fees for new connection of any Network Services;
- (c) Monthly Service Fees for Network Services provided to Active Ports Ordered by the Access Seeker and which Orders are accepted by Access Provider, including charges relating to changes to Networks Services and any connection or disconnection of Network Services and subject to any set offs for Service Level Rebates credited or payable to the Access Seeker;
- (d) interest on the amount due at the rate equal to 3% above the Commonwealth Bank of Australia Overdraft Reference Rate (or such other comparable rate as chosen by Access Provider) from the date that the amount outstanding became due and payable and to the date that the amount outstanding and any interest on that amount, is paid to Access Provider; and
- (e) all costs, fees and expenses incurred by Access Provider in connection with Access Provider taking any action against the Access Seeker to recover the payment of any amount that is overdue (including any interest or legal costs incurred on a full indemnity basis) or otherwise.

## 15.2 Changes to the Monthly Service Fees

From time to time, Access Provider may change the amounts of Monthly Service Fees (which are specified in the Wholesale Product Pricing Schedule published on the website of Access Provider at its web portal SPACE) payable by the Access Seeker and Access Provider may also introduce new products and service at new prices (also to be specified in the Wholesale Product Pricing Schedule published on the website of Access Provider at its web portal SPACE) if:

- (a) the Monthly Service Fees payable by the Access Seeker for the various products and services specified in the Wholesale Product Pricing Schedule is the same price for the relevant product or service as that charged by Access Provider to other RSPs seeking access to the Network or Network Services for such product or service; and
- (b) changes in the rate or amount of the Monthly Service Fees proposed by Access Provider is notified in writing ("**New Monthly Service Fees Notice**") to the Access Seeker at least 30 days prior to the date on which the changes are to take effect; and
- (c) all New Monthly Fees are published by Access Provider on its website at its web portal SPACE; and
- (d) any New Monthly Service Fees are not increased by Access Provider for a period of 30 days after the New Monthly Service Fees for the particular product or service take effect.

## 16. GST & INVOICES

### 16.1 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, does not include an amount in respect of GST.

### 16.2 Gross up of Consideration

Despite any other provision in this Agreement, if a party ("Supplier") makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as "GST inclusive"):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause ("GST exclusive consideration") is increased by and the recipient of the supply ("Recipient") must also pay to the Supplier an amount equal to the GST payable by the Supplier on that supply; and
- (b) subject to **clause 16.4** the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### 16.3 Reimbursements

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party and is not in relation to a Taxable Supply made by that party to the payer, then the payment will be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense.

That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is less.

#### **16.4 Tax Invoice and Registration**

Despite any other provision of this Agreement, a Recipient need not make a payment of any amount for GST until the Recipient has been given by the Supplier:

- (a) Tax Invoice for that payment stating the amount of GST imposed on the Taxable Supply to the Recipient to which the Tax Invoice relates; and
- (b) evidence that the Supplier is registered for the purposes of GST.

#### **16.5 Interpretation**

Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.

#### **16.6 Invoices**

Access Provider shall provide to Access Seeker all Tax Invoices for Charges and any moneys owing hereunder monthly in arrears and, subject to **Clauses 1, 2 and 4** of this Agreement, the Access Seeker must pay the Charges and moneys owing hereunder to the Access Provider within One (1) calendar month from the date of each Tax Invoice.

### **17. WARRANTIES & INDEMNITY**

#### **17.1 Access Seeker Representations**

Access Seeker acknowledges that it:

- (a) has made and relied on its own enquiries in relation to all matters relevant to its decision to enter into this agreement; and
- (b) has not relied on any representation, warranty or undertaking (except as expressly contained in this Agreement) given by Access Provider in determining whether to enter into this Agreement or to provide Retail Services to any End Users or Residents, including any representation or warranty as to the accuracy or completeness of any information given to Access Seeker.

### **18. REGULATORY EVENTS & COMPLIANCE**

#### **18.1 Regulatory Events**

If at any time a Regulatory Event occurs or is likely to occur which adversely affects or may adversely affect the rights of a party or the ability of a party to perform its obligations under this Agreement:

- (a) that party may request that the parties enter good faith negotiations, as soon as practicable, to amend or vary this Agreement to the extent necessary or appropriate to address that party's reasonable concern regarding such Regulatory Event;

- (b) for the avoidance of doubt, Access Provider may seek to renegotiate the Monthly Service Fees or Back Haul Fees to address the changed cost to Access Provider of providing the Network Services pursuant to this Agreement arising from the Regulatory Event; and
- (c) if the parties are unable to reach agreement under **subclause (a) of this Clause** in what either party considers to be a reasonable period of time, the matter will be dealt with under the Dispute Resolution Procedure specified in **Clauses 1 and 4** of this Agreement.

## **18.2 Compliance with Laws**

Each party must comply with any applicable Law to the extent that it is relevant to that party's performance of this Agreement or their obligations generally under the Act, including those relating to any Equipment or Facility of the Access Seeker or Equipment or Facility of Access Provider or any Service Provider.

## **19. FORCE MAJEURE**

### **19.1 Notice and suspension of obligations**

If a party to this Agreement is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other prompt notice of that fact including:
  - (i) full particulars of the Force Majeure Event;
  - (ii) an estimate of its likely duration;
  - (iii) the obligations affected by it and the extent of its effect on those obligations; and
  - (iv) the steps taken to rectify it; and
- (b) the obligations under this Agreement of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

### **19.2 Effort to overcome**

A party claiming a Force Majeure Event must use reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. However, this does not require a party to settle any industrial dispute in any way it does not want to.

### **19.3 Alternative supply**

During any period in which a party to this document is not performing obligations because of a claimed Force Majeure Event, the other party may, but need not, make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing without incurring any liability to that party.

#### **19.4 Termination**

If a Force Majeure Event continues for more than 30 days, either party may terminate this document by giving at least 24 hours' notice in writing to the other party.

### **20. GENERAL**

#### **20.1 Counterparts**

This Agreement may be executed in counterparts.

#### **20.2 Operation of this Agreement**

- (a) This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter and supersedes and merges all prior discussion and any prior agreement. Each party acknowledges that in entering into this Agreement it has not relied on any warranty, representation or other promise of any nature not contained in this Agreement .
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that person may have.
- (c) Any provision of this Agreement which is unenforceable or partly enforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless it would materially change the intended effect of this Agreement .

#### **20.3 Governing Law**

This Agreement shall be governed by and construed in accordance with the law of Queensland and each of the parties hereby submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

#### **20.4 Consents and Approvals**

A party may give its consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Agreement provides otherwise.

#### **20.5 Costs**

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Agreement and any other related documentation.

#### **20.6 Notices**

- (a) All notices and other communications provided for or permitted under this Agreement or otherwise shall be sent by registered mail with postage prepaid or by email as follows:
  - (i) if to the Access Provider, at PO Box 557, Gladesville NSW 1675 or to [rsp@lbnco.com.au](mailto:rsp@lbnco.com.au); and

- (ii) if to the Access Seeker, to it at the address specified herein or to the last known address of the Access Seeker or to the email address of any one of the directors of the Access Seeker corporation;

or to the party's lawyer or to such other address or person as either party may specify by notice in writing to the other.

- (b) All such notices or communications shall be deemed to have been duly given or made:

- (i) 3 Business Days after being deposited in the mail with postage prepaid; or

- (ii) when delivered by hand; or

- (iii) if sent by email, on production of a report of the email server which indicates that the email was sent in its entirety to the email address of the recipient.

- (c) Notice received after 5.00pm in the place of receipt or on a non-Business Day are taken to be received at 9.00am on the next Business Day.

- (d) Notices or other written communications by a party's lawyer (for example, varying a date for the payment of money) will be treated as given with that party's authority.

## **20.7 Severance**

If any provision of this Agreement offends any law applicable to it in a jurisdiction and is as a consequence illegal, invalid or unenforceable in that jurisdiction then:

- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and

- (b) in any case the offending provision must be severed from this Agreement for that jurisdiction in which event the remaining provisions of the Agreement operate as if the severed provision had not been included.

## **20.8 Trustee**

If a party enters into this Agreement as a trustee of a trust, then the party covenants in favour of the other party that:

- (a) it is the sole trustee of the trust and warrants that it has the authority to act on behalf of, and bind the trust;

- (b) it makes this Agreement for the sole benefit of the beneficiaries of the trust;

- (c) it has taken all steps necessary to entitle it to be indemnified from the assets of the trust against any liability undertaken under this Agreement ;

- (d) if requested it will deliver to the other party copies of all constituent documents of the trust; and

- (e) notwithstanding anything in the trust deed or any other document, the party shall be and at all times remain personally liable to the other party for the performance, fulfilment and observance of the obligations contained in this Agreement .

#### **20.9 Waiver and Variation**

- (a) A party's failure or delay to exercise a power, right or remedy pursuant to this Agreement does not operate as a waiver of that power, right or remedy.
- (b) The exercise of a power or right does not preclude:
  - (i) its future exercise; or
  - (ii) the exercise of any other power or right.
- (c) The waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

#### **20.10 Attorney – No Notice of Revocation**

Any and every Attorney executing this Agreement acknowledges that at the time of execution of this Agreement no notice of the revocation of the power of attorney under the authority of which the Attorney executed this Agreement has been received by any of them.

#### **20.11 Authority to Sign**

Each person signing this Agreement as an authorised officer or agent of any party by doing so warrants to the other parties that, as at the date of signing, he or she has full authority to execute this Agreement on behalf of that party.

#### **20.12 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

### **21. DEFINITIONS AND INTERPRETATION**

In the interpretation of this Agreement, unless inconsistent with the subject or context each of the expressions defined in **Part 1 of Schedule 1** have the meaning there assigned to it and the provisions of **Part 2 of Schedule 1** will apply.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021

SIGNED by LBN Co Pty Ltd (ACN 073 226 114) )  
by its authorised officer in the presence of: )

\_\_\_\_\_  
Authorised Officer

\_\_\_\_\_  
Witness or Authorised Officer

\_\_\_\_\_  
Name and Position (print)

\_\_\_\_\_  
Name and Position (print)

SIGNED by XXXX RSP Entity XXXX (ACN XXX XXX) by )  
its authorised officer in the presence of: )

\_\_\_\_\_  
Authorised Officer

\_\_\_\_\_  
Witness or Authorised Officer

\_\_\_\_\_  
Name and Position (print)

\_\_\_\_\_  
Name and Position (print)

## SCHEDULE 1 - DEFINITIONS AND INTERPRETATION

### Part 1 - Definitions

In this AGREEMENT, unless the subject or context is inconsistent, each of the following expressions shall have the meaning assigned to it below:

<b>ACCC</b>	Means the Australian Competition and Consumer Commission or any such body or bodies that from time to time may replace or assume any responsibilities or powers of that body as it stands at the date of this Agreement.
<b>Acceptable Use Policy</b>	means any policy on acceptable use of the Network as may from time to time be imposed by law and published by Access Provider on its website <a href="http://www.lbnco.com.au">www.lbnco.com.au</a> or negotiated between the parties acting in good faith.
<b>Access Seeker</b>	means the party with whom Access Provider contracts under this Agreement.
<b>Access Provider</b>	means LBN Co Pty Ltd (ACN 073 226 114) and its successors and assigns.
<b>ACMA</b>	means the Australian Communications and Media Authority or any such body or bodies that from time to time may replace or assume any responsibilities or powers of that body as it stands at the date of this Agreement.
<b>Act</b>	means <i>Telecommunications Act 1997</i> (Cth) and all amendments and regulations and determinations in relation to such legislation.
<b>Active Ports</b>	means certain active Virtual Local Area Network (VLAN) Ethernet ports or analogue/POTS voice ports described in the Access Provider Network Service Description and Service Level Assurances and Wholesale Product Pricing Schedule.
<b>Back Haul Service Fees</b>	means: <ul style="list-style-type: none"><li>(a) the charges (if any) for the provision of the Back Haul Services between the Access Seeker's Point of Presence ("PoP") and the point of interconnection with a Network or Networks of the Access Provider; and</li><li>(b) such other fees, charges and moneys (whether due to increases in the charges mentioned in paragraph (a) of this definition or for interest, or fees or charges for late payment pursuant to any Back Haul Service Agreement (if such late payment is due to the failure of the Access Seeker to make any payment of moneys owing to Access Provider).</li></ul>
<b>Back Haul Services</b>	means the active line links and telecommunications network services which connect a Network or Networks of the Access Provider to the Access Seeker's network equipment at a point of interconnection or point of presence (" <b>POI</b> " or " <b>POP</b> ") beyond the Network Boundary Point of the particular Network or Networks.
<b>Back Haul Service Agreement</b>	means an agreement between Access Provider and the Back Haul Service Provider for the provision of Back Haul Services.
<b>Back Haul Service</b>	means the provider of the Back Haul Services.

**Provider**

**Billing Dispute** means a dispute between the Access Seeker and Access Provider concerning as to whether the Access Seeker is liable to pay all or part of a Charge or Charges that has been invoiced by Access Provider to the Access Seeker or otherwise concerning an amount of a Service Level Rebate or whether a Service Level Rebate has been paid or credited by Access Provider to the Access Seeker.

**Business Day** means a day other than a Saturday, Sunday or public holiday in the State in which the community or Communities are located.

**Carriage Service Provider** has the meaning given to it in the Act.

**Connection Fee or Fees** means the fee or fees payable by the Access Seeker for the initial connection of the Network Services at Premises and as otherwise specified in the Wholesale Product Pricing, but in the absence of such specification shall be such amount as then being charged by NBN Co Limited for their initial connection of Network Services at Premises;

**Community or Communities** Means certain residential, commercial, retail, industrial or other mixed use developments, land and buildings within Australia that are or will be occupied by End Users or Residents and connected by a Network.

**Customer Contract** means a contract between the Access Seeker and a Resident or End User for the provision of Retail Services via the Network.

**End Users** Means Residents, businesses and other occupiers of Premises to which a Network is connected.

**Equipment** means Network Units as defined under the Act.

**Facility or Facilities** have the meanings given to those terms under the Act.

**FAD** means the Final Access Determination No 2 of 2017 made by the ACCC on 24 May 2017 for the declared local bitstream access service under Section 152BCG of the Competition and Consumer Act 2010.

**MATV** means free to air television and Foxtel.

**GST** has the same meaning as in the *GST Act*.

**GST Act** has the meaning given to that term in *A New Tax System (Goods and Network Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of GST.

**Insolvent** A person is insolvent if:

- (a) it is (or states that it is) an insolvent under administration, an externally-administered body corporate or insolvent (each as defined in the Corporations Act); or
- (b) it has had a controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement); or
- (d) an application or order has been made, resolution passed, proposal put

forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or

- (e) it is taken (under section 459F(1) of the *Corporations Act*) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act* (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Interception Capability** means the capability to intercept and record telephone calls as may from time to time be imposed by the Act or any laws or subordinate legislation, order, regulation or directions and in respect to any Active Ports to which the Access Seeker has Network Services.

**Maintenance** means any maintenance or repairs to the Network or the Facilities of any Other Provider pursuant to the terms and conditions of any agreement between Access Provider and such Other Provider.

**Maintenance Plan** means a plan in line with maintenance recommendation by manufacturers of Equipment or systems comprising the Network and such other matters Access Provider deems fit including the minimisation of inconvenience for RSPs and Service Providers using a Network to provide Retail Services to Residents.

**Monthly Service Fees** means such fees for Network Services as Access Provider shall in its absolute discretion determined and charged by Access Provider to the Access Seeker for connecting, changing, managing, maintaining and operation of connected Active Ports Ordered by the Access Seeker and accepted by Access Provider and determined in accordance with the applicable Wholesale Product Pricing, whereupon:

- (a) the effective date for the commencement of the Monthly Service Fees for the particular Ordered Active Ports shall be the date of activation of the relevant Active Ports; and
- (b) the effective date of termination of the Monthly Service Fee shall be the date of de-activation or disconnection of the particular Ordered Active Ports; and
- (c) the charges shall, unless otherwise specified in the Wholesale Product Pricing be payable in advance of delivery of the relevant Network Services.

**Network** means the telecommunications network or, as the context may permit, networks of Access Provider and all improvements and replacements to that network or networks.

**Network Manager or Network Managers** means the party or parties from time to time appointed or contracted by Access Provider and notified to the Access Seeker to:

- receive Orders; or
- operate a Network or Networks; or
- maintain a Network or Networks; or
- provide online or telephone fault reporting and (first level or second level)

technical support; or

- provide help desk services in relation to the activations, de-activation, operations or maintenance of a Network or Networks and in relation to various Active Ports of those Networks.

<b>Network Services</b>	means maintenance and wholesale telecommunications Network operational services that may be provided by Access Provider to enable Access Seeker to access Active Ports on Networks to provide Retail Services to Residents or End Users and more particularly described in detailed in the Access Provider Product Pricing Schedule and Network Services Description and Service Level Assurances from time to time determined by Access Provider and published by Access Provider on its web portal SPACE.
<b>Network Units</b>	means telecommunications systems including internet protocol devices, switches, controls and active equipment, optical fibre cables, optical network units, conduits, pits, pipes, towers, shelters and related Facilities.
<b>Order or Orders</b>	means a written request addressed to Access Provider that: <ul style="list-style-type: none"><li>(a) is in such form and following such procedures as may be determined from time to time by Access Provider and published by it on its web portal SPACE; and</li><li>(b) is to supply or provide Network Services; or</li><li>(c) to connect, disconnect or reconnect or change the Network Services to Active Ports at the Premises specified in that request.</li></ul>
<b>Ordered</b>	means the process of placing a written Order or Orders.
<b>Other Provider</b>	means a telecommunications access seeker, a telecommunications Carriage Service Provider, Equipment supplier or, as the case may be, Service Provider.
<b>Personal Information</b>	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received by Access Provider from any source as a consequence of the performance of its rights and obligations under this Agreement.
<b>Planned Outage Period</b>	Means a period or periods that Network Services or Back Haul Services will not be available due to maintenance work that is scheduled to be undertaken in accordance with a Maintenance Plan.
<b>POP or POI</b>	means a point of presence or point of interconnection.
<b>Premises</b>	means the dwellings or places of business or occupancy within the Communities that are occupied or capable or occupation by End Users or Residents.
<b>Policies and Procedures for the Placement, Acceptance or Rejection of Orders</b>	means the policies and procedures specified from time to time and published by Access Provider on the Access Provider web portal SPACE.
<b>Prohibited Traffic</b>	means content, carriage service or applications or downloadable or executable computer files which are prohibited by law or considered by any lawful authority or government agency to be unlawful, dangerous, a threat to the health or safety of any persons or to the public.
<b>Network Services Description and Service</b>	means the document describing the Network Service and service level assurances of Access Provider from time to time specified and published by Access Provider

<b>Level Assurances</b>	on the Access Provider' web portal SPACE.
<b>Wholesale Product Pricing</b>	means the prices, fees and charges from time to time charged by Access Provider and payable by Access Seekers and published by Access Provider on its web portal SPACE for Network Services, Back Haul Services and any other services that may be Ordered by the Access Seeker.
<b>Regulatory Event</b>	means any legal or regulatory change which affects the rights or obligations of a party under this Agreement including, without limitation, the issue of a competition notice by the ACCC or a notice from the ACMA under the Act or, in relation to a particular Network.
<b>Related Entity</b>	has the meaning given to it in the <i>Corporations Act</i> .
<b>Residents</b>	means End Users, persons or entities that use own, lease, use or otherwise occupy Premises at or in the Community or Communities.
<b>Retail Services</b>	means voice or broadband telecommunication services including carriage services, internet services, content services, other data applications and services that may lawfully be provided under the Act by RSPs or Service Providers and may include MATV but which must not be in breach of or contravene the Acceptable Use Policy of the Access Provider.
<b>RSP or RSPs</b>	Means a provider or, as the case may be, the providers of one or more Retail Services.
<b>Service Level Rebates</b>	means money that Access Provider agrees to credit in favour of the Access Seeker pursuant to and in accordance with the Network Services Description and Service Level Assurances (SLA) for a service level failure which has been justified and evidenced by the Access Seeker to the reasonable satisfaction of Access Provider.
<b>Service Provider or Service Providers</b>	means a provider or providers of carriage, internet, content and other applications or telecommunications services regulated under the Act.
<b>SPACE</b>	means the web portal which provides provisioning software which the Access Provider operates and maintains from time to time and is available for access by Access Seekers through email verification from provisioning@lbnco.com.au.
<b>Tax Invoice</b>	has the same meaning as in the <i>GST Act</i> .
<b>Term of the Agreement</b>	means the period of operation of this Agreement and which shall continue from the date of execution until determined in accordance with the provisions of this Agreement.

## Part 2 - Interpretation

In this Agreement, headings are for convenience only and shall not affect its interpretation. Except to the extent that the context otherwise requires:

1. reference to any statute or statutory provision shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
2. words denoting the singular shall include the plural and vice versa;
3. words denoting individuals shall include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
4. words denoting any gender shall include all genders;

5. references to Parties, Parts, clauses, Annexures and Schedules are references to Parties, Parts, clauses, Annexures and Schedules to this Agreement as modified or varied from time to time;
6. references to any document, deed or agreement shall include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
7. references to any party to this Agreement or any other document, deed or agreement shall mean, in the case of a company, its successors and/or assigns and, in the case of a natural person, his representatives and permitted assigns;
8. all references to dates and times are to Brisbane time;
9. all references to "\$" and "dollars" are to the lawful currency of Australia; and
10. This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

## SCHEDULE 2- ACCESS SEEKER

### Details of Access Seeker

Company Name	
ACN/ABN	
Trading Name	
Postal Address	
Registered Address	
Address for Notices	
Email for Notices	
Name and Position of Officer 1 Executing Document	
Name and Position of Officer 2 Executing Document	

### Details of Contact Officer for Access Seeker

Name	
Position	
Office Address	
Postal Address	
Main Phone Number	
Direct Phone Number	
Mobile Phone Number	
Email Address	
Other Information	