

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|--------------------------|---|------------------------|
| In re: | § | |
| | § | Chapter 11 |
| | § | |
| SPEEDCAST INTERNATIONAL | § | |
| LIMITED, <i>et al.</i> , | § | Case No. 20-32243 (MI) |
| | § | |
| Debtors. ¹ | § | (Jointly Administered) |
| | § | |

**MOTION OF DEBTORS FOR ENTRY OF AN
ORDER (I) AUTHORIZING AND APPROVING NBN TRANSACTION,
INCLUDING (A) PRIVATE SALE FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (B) ASSUMPTION
AND ASSIGNMENT OF CERTAIN CONTRACTS, AND (C) SETTLEMENT
AND RELEASE OF CLAIMS, (II) APPROVING FORM AND MANNER OF
NOTICES OF NBN TRANSACTION, AND (III) GRANTING RELATED RELIEF**

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

SpeedCast International Limited (“Speedcast”) and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kcellc.net/speedcast>. The Debtors’ service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.



Preliminary Statement

1. Over the course of these chapter 11 cases, the Debtors have been focused on restructuring the financial, and in some instances, operational, aspects of their businesses. In addition to securing new contracts and shedding others, the Debtors have considered, and are continuing to consider, opportunities to sell assets and operations as part of achieving their overall restructuring goals. Debtor Speedcast Managed Services Pty Ltd. (“**SMS**”), in particular, represents one such opportunity. SMS has entered into, subject to approval of the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”), that certain Transition Agreement dated September 16, 2020 (attached hereto as **Exhibit A**) (including all exhibits and schedules attached thereto, the “**Transition Agreement**”) which includes, among other things, an agreement to sell substantially all of its assets to contract counterparty, nbn co limited (“**Buyer**”) (collectively, the “**nbn Transaction**”).

2. The nbn Transaction will bring substantial benefits to the Debtors and their estates including cash proceeds and relief from certain contractual obligations and other liabilities. Accordingly, the Debtors submit that, in the exercise of their business judgment, the nbn Transaction is in the best interest of their estates and this Motion should be granted.

Background

3. On April 23, 2020 (the “**Petition Date**”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the “**Bankruptcy Code**”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure

(the “**Bankruptcy Rules**”) and Rule 1015-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the “**Local Rules**”).

5. On May 6, 2020, the United States Trustee for Region 7 (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (as reconstituted on May 12, 2020, the “**Creditors’ Committee**”). No trustee or examiner has been appointed in these chapter 11 cases.

Jurisdiction

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

7. By this Motion, pursuant to sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9019, the Debtors seek the entry of an order substantially in the form of **Exhibit B** attached hereto (the “**Proposed Order**”) (i) authorizing and approving (a) the Transition Agreement, including the sale by SMS of the SMS Assets (as defined below) free and clear of all liens, claims and interests, and encumbrances, the assumption by Buyer of certain liabilities, including employee entitlements, the settlement of claims, and granting of mutual releases, and other related terms, and (b) the assumption and assignment of contracts as listed in **Exhibit 1** (the “**Proposed Assigned Contracts**”) to the Proposed Order, (ii) approving the form and manner of notice of the Motion and proposed assumption and assignment of the Proposed Assigned Contracts, and (iii) granting related relief.

Background with Buyer

8. SMS and Buyer entered into a 10-year Master Equipment and Services Supply Agreement (the “**MESSA**”) on February 2, 2018, pursuant to which SMS would design,

build and manage Buyer's enterprise satellite services. Buyer is a publicly owned corporation of the Australian Government, tasked to design, build, and operate Australia's National Broadband Network as Australia's wholesale broadband provider. The MESSA was structured in three stages, the last of which began in September 2019.

9. The MESSA has historically been unprofitable for SMS, generating an EBITDA loss since inception of approximately \$0.3 million USD (\$0.4 million AUD). The MESSA has also been a significant cash drain for SMS, with negative cumulative cash flow since inception of approximately \$16 million USD (\$22 million AUD). In addition, Buyer has alleged claims against SMS under the MESSA in an amount of approximately \$9 million USD (\$12.3 million AUD) based on allegations by Buyer that SMS failed to achieve certain milestones under the MESSA within the agreed timetable. SMS disputes these claims and they remain unresolved between SMS and Buyer. On the other hand, SMS has claims against Buyer under the MESSA for unpaid milestone payments. Moreover, the MESSA contains agreements that are relatively one-sided in favor of Buyer, which include the right of Buyer to terminate the MESSA for convenience in certain circumstances. A termination for convenience by Buyer could, and Buyer has asserted it would, result in damages payable by SMS to Buyer. Lastly, a portion of the MESSA is backed by a performance bond in an amount of approximately \$4.1 million USD (\$5.6 million AUD).

10. The prospect for future profitability under the MESSA is speculative and contingent upon potential pipeline opportunities SMS has identified. There is substantial risk that such opportunities will not materialize. Based on these factors, SMS entered into negotiations with Buyer regarding a potential termination of the MESSA and a transfer of the accounts

receivable, inventory, intellectual property (collectively, the “**SMS Assets**”), and certain personnel (“**SMS Employees**”) to Buyer.

Negotiations with Buyer

11. During April 2020, Buyer and SMS held discussions in relation to the MESSA and how arrangements under the MESSA could continue given Speedcast’s ongoing financial challenges. On April 21, 2020, Buyer issued a Non-Binding Indicative Offer (the “**NBIO**”) to transition and in-source to Buyer the services currently provided by SMS to Buyer under the MESSA. Following an additional period of preliminary due diligence, Buyer issued a second NBIO on May 19, 2020, and a further revised NBIO (the “**Revised NBIO**”) on June 5, 2020. The Revised NBIO proposed an agreed termination of the MESSA (including mutual releases of all historical, present, and future claims under the MESSA, other than managed service fees and milestone payments owing to SMS), a purchase of certain assets (including equipment, payables, and other assets) from SMS, and the assumption of certain liabilities and contracts for cash consideration paid by Buyer. The proposed transaction also contemplates the engagement of SMS Employees by Buyer.

12. Since the issuance of the NBIO, the Debtors’ management and the Debtors’ financial advisors have been involved in arms’-length negotiations with Buyer with respect to the terms of a proposed transaction. Following the confirmation by the Debtors on or around June 18, 2020 that the terms of the Revised NBIO were acceptable, Buyer conducted approximately 12 weeks of confirmatory due diligence with the Debtors. Those negotiations and further diligence by the Buyer resulted in the execution of the Transition Agreement.

nbn Transaction

13. As indicated above, the Debtors are seeking, among other things, the approval of the nbn Transaction. The nbn Transaction is governed by the terms of the Transition

Agreement. Generally, the nbn Transaction includes an agreed transition and in-sourcing to Buyer of the services currently provided by SMS to Buyer under the MESSA, a purchase of the SMS Assets by Buyer, a transfer of SMS Employees to Buyer, an assumption of certain liabilities and contracts by Buyer, and the provision by SMS of certain transition services prior to completion under the Transition Agreement to assist Buyer in-sourcing the services currently provided by SMS to Buyer under the MESSA.

14. Consideration for the SMS Assets and provision of services under the Transition Agreement includes:

- (a) payment by Buyer of the purchase price (“**Asset Purchase Price**”);
- (b) assumption by Buyer of the Proposed Assigned Contracts listed on **Exhibit 1** to the Proposed Order;
- (c) assumption of all the future entitlements and liabilities in respect of each SMS Employee who accepts an offer of employment with Buyer;
- (d) payment by Buyer for the provision by SMS of the transition services prior to completion under the Transition Agreement; and
- (e) payment by Buyer in relation to the accrued managed services fees and milestone payments under the MESSA (“**Accrued Services Fees**”).

15. In total, the monetary consideration to be paid to SMS by Buyer upon Completion (as defined in the Transition Agreement) is approximately \$12.7 million USD (\$18.1 million AUD) and is subject to adjustment at Completion. All monetary consideration, other than the amount referred to in paragraph 20 below, is required to be paid by Buyer to SMS on Completion under the Transition Agreement.

16. Subject to and conditional on the occurrence Completion, SMS and Buyer have agreed to terminate the MESSA on and from Completion and provide each other with mutual

releases from all historical, present, and future claims they have against each other under the MESSA.

17. Completion of the transactions contemplated under the Transition Agreement is conditional on a limited number of conditions precedent being satisfied or waived prior to Completion, including:

- (a) approval of the Court of the Transition Agreement;
- (b) formal novation of an agreed list of material Proposed Assigned Contracts in Exhibit 1 being agreed to by each counterparty to the relevant list of material Proposed Assigned Contracts, each such novation to include mutual releases by SMS and each applicable contract counterparty in respect of all claims arising under or in connection with the relevant Proposed Assigned Contract; and
- (c) certain key SMS Employees, and a specified aggregate number of total SMS Employees, accepting offers of employment with Buyer.

18. Assumption and assignment to the Buyer of the approximately fifteen (15) Proposed Assigned Contracts is a key part of the nbn Transaction and Buyer has agreed to satisfy the cure costs of approximately \$500,000 USD (\$700,000 AUD). If any Proposed Assigned Contract has not been formally novated with the consent of the applicable counterparties to the Proposed Assigned Contract before Completion, SMS and Buyer have agreed to seek a novation of such contract for three (3) months following Completion. If a novation cannot be secured within this period, the relevant contract may be terminated and/or rejected.

19. The Transition Agreement includes customary pre-completion, or closing, covenants on the part of SMS requiring SMS to continue to carry on business in the ordinary course prior to Completion. Under the Transition Agreement, SMS provides Buyer with a limited set of warranties as to title and ownership of the SMS Assets and transferability of key intellectual

property rights relating to the SMS Assets. The SMS Assets are otherwise being transferred to Buyer on an “as is, where is” basis.

20. The Transition Agreement includes a comprehensive limitation of liability regime for the benefit of SMS, including a 12-month time limitation for Buyer to bring claims against SMS and a total aggregate liability cap in respect of SMS’s liability to Buyer under the Transition Agreement. The Transition Agreement provides that an additional contingent amount of \$1.75 million USD (\$2.5 million AUD) of the Asset Purchase Price will become payable by Buyer to SMS if and on the earlier of (i) the date that all claims (if any) made by Buyer under the Transition Agreement are resolved; and (ii) 12 months after the Completion date. Buyer may offset from that amount any claim against SMS which is resolved in favor of Buyer during the 12-month period after Completion. No other security is provided by SMS for claims by Buyer against SMS under the Transition Agreement.

21. The SMS Assets being transferred to, and the liabilities being assumed by, Buyer are exclusively related to the MESSA, and the MESSA includes restrictions on the ability for a third party to step into the shoes of SMS. Because of the character of the SMS Assets, the consents required, and the complexity of the MESSA, Buyer is the uniquely situated natural party to acquire the SMS Assets and assume the contracts and other obligations described in the Transition Agreement. Moreover, without the settlement and mutual releases embodied in the Transition Agreement, SMS and the Debtors would need to explore other, potentially more costly, solutions to the controversies under the MESSA. Indeed, monetizing the value in the SMS business far outweighs the value, if any, in potential litigation claims against Buyer, particularly taking into account the potential costs of such litigation and the counterclaims that Buyer would likely assert. Thus, in the business judgment of the Debtors and, in particular, SMS, the Transition

Agreement and the nbn Transaction, overall, are reasonable and in the best interest of the Debtors and their estates.

Assumption and Assignment Notice and Procedures

22. To facilitate the nbn Transaction, the Debtors seek authority to assume and assign the Proposed Assigned Contracts to Buyer in accordance with the Transition Agreement and the following procedures (the “**A&A Procedures**”):

- Within two (2) business days of the filing of this Motion, SMS and the Debtors will send by first class mail and email, where available, a Notice of Contracts and Lease that may be Assumed and Assigned in Connection with the nbn Transaction and Proposed Cure Costs, the form of which is attached to the Proposed Order as Exhibit 2 (the “**A&A Notice**”).
- The Debtors’ good faith estimate of the cure costs, if any, for each Proposed Assigned Contract will be included on Exhibit A to the A&A Notice.
- Objections to the assumption and assignment of a Proposed Assigned Contract including to the proposed cure costs or the provision of adequate assurance of future performance by Buyer (each, an “**Assumption Objection**”) must be filed with the Court and served on counsel to SMS and Buyer within twenty-three (23) days from the date of the Motion (the “**Assumption Objection Deadline**”).
- If any Assumption Objection or other objection to this Motion remains unresolved 24-hours following the Assumption Objection Deadline, the Debtors will request that the Court set a hearing (the “**nbn Transaction Hearing**”) to consider this Motion and any unresolved objections.
- If any counterparty to a Proposed Assigned Contract fails to file with the Court and serve on counsel to SMS and Buyer a timely Assumption Objection, the counterparty shall be deemed to have consented to the assumption and assignment of the Proposed Assigned Contracts to Buyer, notwithstanding any anti-alienation provision or other restriction on assumption or assignment in the Proposed Assigned Contracts, and shall be forever barred from asserting any objection with regard to adequate assurance of future performance by Buyer or the cost to cure any defaults under the applicable contract or lease and any proof of claim asserting a claim for such amount shall be expunged without further order of the Court. The cure costs set forth in the Assumption Notice shall be controlling and shall be the only amount necessary to cure outstanding defaults under the applicable contract or lease under section 365(b) of the Bankruptcy Code, notwithstanding anything to the contrary in the contract or lease, or any other document, and the counterparty shall be forever barred from asserting any

additional cure or other amounts with respect to such contract or lease through the date of assumption or assumption and assignment, whether in a proof of claim or otherwise against the Debtors, or their property.

23. The Debtors also request that the Court approve and ratify the form of the A&A Notice attached as **Exhibit 2** to the Proposed Order. The Debtors submit that service of the A&A Notice on the counterparties to the Proposed Assigned Contracts is proper and sufficient to provide notice to the counterparties of the proposed assumption by SMS and assignment to Buyer, and that the Debtors should be granted the authority to assume and assign the Proposed Assigned Contracts to Buyer.

Relief Requested

A. Approval of the nbn Transaction is Appropriate and in the Best Interests of the Debtors' Estates

- (i) *The nbn Transaction and the Transition Agreement Should be Approved as an Exercise of the Debtors' Sound Business Judgment*

24. Section 363(b) of the Bankruptcy Code provides that a debtor may sell property of the estate outside the ordinary course of business after notice and a hearing. Although section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts have found that a debtor's sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate "some articulated business justification," as established by the Second Circuit in *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983), which decision has been adopted in this circuit. See *Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc., et al. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); see also *In re ASARCO*,

650 F.3d at 601; *In re Cowin*, No. 13-30984, 2014 WL 1168714, at *38 (Bankr. S.D. Tex. Mar. 21, 2014); *In re St. Marie Clinic PA*, No. 10-70802, 2013 WL 5221055, at *9 (Bankr. S.D. Tex. Sept. 17, 2013); *In re Particle Drilling Techs., Inc.*, No. 09-33744, 2009 WL 2382030, at *2 (Bankr. S.D. Tex. July 29, 2009); *In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 944 (Bankr. S.D. Tex. 1988). Once the Debtors articulate a valid business justification, “[t]he business judgment rule . . . ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re S.N.A. Nut Co.*, 186 B.R. 98 (Bankr. N.D. Ill. 1995); *see also In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992); *Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[A] presumption of reasonableness attaches to a Debtor’s management decisions.”).

25. The Debtors have a sound business justification for undertaking the nbn Transaction. Based upon an analysis of the Debtors’ ongoing and future business prospects, the Debtors’ concluded that the nbn Transaction is in the best interests of the Debtors’ estates and the best way to maximize recoveries for creditors in connection with the Debtors’ restructuring efforts in these chapter 11 cases, as:

- (a) Absent its termination, the MESSA represents a material capital cost to the Debtors;
- (b) The MESSA has significant operational challenges which are likely to lead to only marginal profitability on an ongoing basis;
- (c) The sale of the SMS Assets will generate approximately \$11 million of cash consideration;
- (d) The nbn Transaction will further simplify SMS’s and the Debtors’ global operations;

- (e) The mutual releases contained in the Transition Agreement resolve significant potential liabilities for SMS under the MESSA; and
- (f) The payment of cure costs by Buyer in connection with the assumption and assignment of the Proposed Assigned Contracts will reduce counterparty claims against SMS and increase recoveries for other creditors.

26. The Debtors submit that the Transition Agreement and the nbn Transaction will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. As such, the Debtors' determination to undertake the nbn Transaction is a valid and sound exercise of the Debtors' business judgment.

(ii) *The Settlement and Mutual Releases in the Transition Agreement Should Be Approved Under Bankruptcy Rule 9019*

27. The settlement embodied in the Transition Agreement is fair and reasonable, and benefits the Debtors' estates by providing for (i) releases of potential liquidated damages claims by Buyer, (ii) the payment of cure costs by Buyer in connection with the Proposed Assigned Contracts, and (iii) the assumption of additional liabilities by Buyer in consideration for a compromise of payments owed by Buyer to SMS. The Court may grant the relief requested under the standards for approving compromises under Bankruptcy Rule 9019. "In determining whether a settlement is fair and equitable, [courts] apply [a] three-part test . . . with a focus on comparing 'the terms of the compromise with the likely rewards of litigation.'" *In re Age Ref., Inc.*, 801 F.3d 530, 540 (5th Cir. 2015) (quoting *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (internal quotation marks omitted)). Specifically,

[a] bankruptcy court must evaluate: (1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise. These "other" factors—the so-called *Foster Mortgage* factors—include: (i) "the best interests of the creditors, 'with proper

deference to their reasonable views’”; and (ii) “‘the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.’”

Id. (citing *Jackson Brewing*, 599 F.2d at 602 and quoting *Cajun Elec. Power Coop.*, 119 F.3d at 356; *Foster Mortg.*, 68 F.3d at 917–18). “[I]t is unnecessary to conduct a mini-trial to determine the probable outcome of any claims waived in the settlement.” *Cajun Elec. Power Coop.*, 119 F.3d at 356.

28. The releases in the Transition Agreement should be approved because they are part of an overall agreement that is squarely in the best interests of the Debtors’ estates and creditors. Absent the Transition Agreement and the nbn Transaction, SMS and the Debtors would need to explore other, potentially more costly, solutions to the controversies under the MESSA. Finally, monetizing the value in the SMS business far outweighs the value, if any, in potential litigation claims against Buyer, particularly taking into account the potential costs of such litigation and the counterclaims that may be asserted by Buyer. Accordingly, the standard for approving the settlement embodied in the Transition Agreement is satisfied and the settlement should be approved.

(iii) *The Sale of the SMS Assets Should Be Approved “Free and Clear” Under Section 363(f) of the Bankruptcy Code*

29. Section 363(f) of the Bankruptcy Code permits the Debtors to sell assets free and clear of all liens, claims, interests, charges, and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As section 363(f) is stated in the disjunctive, when proceeding pursuant to section 363(f), it is only necessary to meet one of the five conditions of section 363(f). *In re Nature Leisure Times, LLC*, No. 06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007) (“The language of § 363(f) is in the disjunctive such that a sale

free and clear of an interest can be approved if any one of the aforementioned conditions contained in § 363(f) are satisfied.”). The Debtors believe that they demonstrated that they have satisfied one or more of these conditions and, in particular, that absent an objection to the sale of the SMS Assets, any party with a claim or interest in the SMS Assets may be deemed to have consented to the sale and that any party with a claim or interest in the SMS Assets could be compelled to accept a money satisfaction of such interest or claim.

30. Additionally, the Court also may authorize the sale of a debtor’s assets free and clear of any liens pursuant to section 105 of the Bankruptcy Code, even if section 363(f) did not apply. *See In re Ditech Holding Corp.*, 606 B.R. 544, 591 (Bankr. S.D.N.Y. 2019) (“[P]lan sales can be free and clear of claims without invoking section 363(f).”); *In re Trans World Airlines, Inc.*, No. 01–0056, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) (“[B]ankruptcy courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of section 363(f).”); *see also Volvo White Truck Corp. v. Chambersberg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of liens] is within the court’s equitable powers when necessary to carry out the provisions of Title 11.”).

(iv) *The Sale of the SMS Assets in the Transition Agreement Has Been Proposed in Good Faith and Without Collusion, and the Buyer Will Be a “Good-faith Purchaser”*

31. Pursuant to section 363(m) of the Bankruptcy Code, a good-faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *O’Dwyer v. O’Dwyer (In re O’Dwyer)*, 611 Fed. App’x 195, 200 (5th Cir. 2015); *In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Congoleum Corp.*, No. 03-51524, 2007 WL 1428477, *2 (Bankr. D.N.J. May 11, 2007); *see also In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (to

constitute lack of good faith, a party's conduct in connection with the sale must usually amount to fraud, collusion between the buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders).

32. In other words, a party would have to show fraud or collusion between the purchaser and the debtor-in-possession or trustee or other bidders in order to demonstrate a lack of good faith. An appropriate characterization of good faith in a bankruptcy sale is a lack of "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Bleaufontaine, Inc.*, 634 F.2d 1383, 1388 n.7 (5th Cir. 1981) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

33. The Debtors submit that Buyer is a "good-faith" purchaser within the meaning of section 363(m) and the terms of the Transition Agreement were negotiated at arms'-length and in good faith without any collusion or fraud.² Additionally, Buyer is not an "insider" or "affiliate" of any of the Debtors as those terms are defined in section 101 of the Bankruptcy Code. Accordingly, the Debtors contend, consistent with the *Declaration of Elliott Etheridge-Yan in Support of Motion of Debtors for Entry of an Order (I) Authorizing and Approving nbn Transaction, Including (A) Private Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Assumption and Assignment of Certain Contracts, and (C) Settlement and Release of Claims, (II) Approving Form and Manner of Notices of nbn Transaction, and*

² Section 363(m) provides that:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease or property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

(III) *Granting Related Relief* (“**Etheridge-Yan Declaration**”) filed contemporaneously herewith, that Buyer is entitled to the protections of section 363(m).

B. Assumption of Contracts

34. In connection with the nbn Transaction, the Debtors seek to assume and assign the Proposed Assigned Contracts in **Exhibit 1** to Buyer pursuant to section 365 of the Bankruptcy Code.

35. Section 365 of the Bankruptcy Code authorizes a debtor to assume and/or assume and assign its executory contracts and unexpired leases, subject to the approval of the court, so long as the defaults under such contracts and leases are cured and adequate assurance of future performance is provided. The Debtors’ decision to assume or reject an executory contract or unexpired lease must only satisfy the “business judgment rule” and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *See, e.g., Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (applying a business judgment standard to debtor’s determination to assume an unexpired lease); *In re Penn Traffic Co.*, 524 F.3d 373, 383 (2d Cir. 2008) (business judgment test “rather obviously presupposes that the estate will assume a contract only where doing so will be to its economic advantage.”); *In re Del Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990) (“[T]he standard to be applied for approval of the assumption [of an executory contract] is the business judgment standard.”).

36. Any assumption of the Proposed Assigned Contracts in **Exhibit 1** is an exercise of the Debtors’ sound business judgment because the transfer of such contracts and lease is integral to the nbn Transaction and is necessary for the Debtors to obtain the best value for their assets. Given that consummation of the nbn Transaction is critical to the Debtors’ efforts to maximize value for their estates and stakeholders, the Debtors’ assumption of the Proposed Assigned Contracts is an exercise of sound business judgment and should be approved.

37. In addition, to facilitate the assumption or assumption and assignment of the Proposed Assigned Contracts, the Debtors further request that the Court find that all anti-assignment provisions therein, whether such provisions expressly prohibit or have the effect of restricting or limiting assignment of such contract or lease, to be unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.³

C. The Court Should Waive the Stay of Bankruptcy Rules 6004 and 6006

38. Because time is of the essence with regard to the nbn Transaction, the Debtors request that the Court waive the 14-day stay (i) provided in Bankruptcy Rule 6004(h) in all orders requested to be entered herein and (ii) provided in Bankruptcy Rule 6006(d) in the Proposed Order approving the nbn Transaction and the Transition Agreement.

Notice

39. This Motion will be served upon (i) to the best knowledge of Debtors' management and advisors, all entities that have expressed written interest in a transaction for the SMS Assets within the past six (6) months; (ii) all known creditors of SMS; (iii) all counterparties to the Proposed Assigned Contracts; (iv) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief granted herein; and (v) all parties entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1 via ECF, by

³ Section 365(f)(1) provides in part that, "notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease..." 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that "Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee." 11 U.S.C. § 365(f)(3).

email, fax, or first class mail, as soon as practicable, and in no event later than two (2) business days following the date of this Motion.

40. The Debtors believe the notice described above constitutes adequate and reasonable notice of, among other things, the nbn Transaction, the Transition Agreement, the sale of the SMS Assets, and the deadline to object to the proposed nbn Transaction. Accordingly, the Debtors request that the Court find that the notices provided hereunder are adequate and appropriate under the circumstances and comply with the requirements of Bankruptcy Rule 2002 and Local Rule 2002-1.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested in this Motion and such other and further relief, at law or in equity, as the Court may deem just and appropriate.

Dated: September 22, 2020
Houston, Texas

Respectfully submitted,

/s/ Alfredo R. Pérez

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*Attorneys for Debtors
and Debtors in Possession*

Certificate of Service

I hereby certify that on September 22, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Alfredo R. Pérez
Alfredo R. Pérez

Exhibit A

Transition Agreement

CLAYTON UTZ

Execution Version

Transition Agreement

Speedcast Managed Services Pty Ltd
Supplier

nbn co limited
nbn

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Our reference 617/20393/80209388

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Transition Agreement

Date 16 September 2020

Parties **Speedcast Managed Services Pty Ltd ABN 58 105 681 589** of Unit 4F, Level 1, Lakes Business Park, 12 Lord Street, Botany NSW 2019 (**Supplier**)

nbn co limited ABN 86 136 533 741 of Tower 5, Level 13, 727 Collins Street, Docklands VIC 3008 (**nbn**)

Background

- A. **nbn** and the Supplier are party to the MESSA pursuant to which the Supplier provides works and managed services which enable **nbn** to provide a satellite broadband telecommunications service to **nbn** customers.
- B. The Supplier Group Members are the subject of the Chapter 11 Proceedings.
- C. In order to ensure delivery of **nbn's** satellite broadband telecommunications service to its customers and in order to provide additional liquidity to the Supplier Group Members, **nbn** and the Supplier have agreed:
- A. to terminate the MESSA and for **nbn** to pay to the Supplier all accrued service fees for works and managed services provided by the Supplier under the MESSA up to termination of the MESSA;
 - B. to provide each other with mutual releases from all Claims in respect of the MESSA; and
 - C. for **nbn** to assume certain associated liabilities of the Supplier and for certain contracts and assets used in the provision of the managed services under the MESSA to be transferred to **nbn**,

on the terms of this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

Acceptable Release means, in respect of each Registered Security Interest, documentation evidencing, to the satisfaction of **nbn**, acting reasonably, that the relevant Registered Security Interest over the Assets has been discharged or will be extinguished by the sale under this agreement, including an undertaking signed by or on behalf of the holder of the relevant Registered Security Interest to promptly take all reasonable and necessary steps and file all documents as may be reasonably necessary to end any registration on the Register with respect to the relevant Registered Security Interest.

Accounting Standards means, at any time:

- (a) the requirements of the Corporations Act about the preparation and contents of financial reports;
- (b) the accounting standards approved under the Corporations Act; and
- (c) generally accepted accounting principles, policies, practices and procedures applied in Australia for companies similar to the Supplier to the extent not inconsistent with the accounting standards described in paragraphs (a) and (b).

Activities means the supply of the Initial Works, Services and the Deliverables conducted and/or delivered by or on behalf of the Supplier under the MESSA.

Additional Conditional Payment Amount means each amount determined in accordance with clause 16.2(a).

Additional Conditional Payment Date means, in respect of an Additional Conditional Payment Amount, the relevant date determined under clause 16.2(a).

Agreement Claim means, in relation to a person, any Claim made or brought by or against the person however arising in relation to:

- (a) any provision of this agreement, including any Warranty Claim;
- (b) the Assets or their sale; or
- (c) any other matter connected with the Activities,

excluding, prior to Completion but without otherwise limiting clause 10.2, any Claims under or in respect of the MESSA.

ASIC means the Australian Securities and Investments Commission.

Assets means:

- (a) the Plant and Equipment;
- (b) the Inventory;
- (c) the Intellectual Property;
- (d) the Goodwill;
- (e) the Documentation and Materials;
- (f) the right to be registered as the proprietor of the Domain Names;
- (g) the right to the goods and services still to be supplied to the Supplier in respect of the Activities after Completion and the other benefits still to be received by the Supplier in respect of the Activities after Completion for which the Supplier has been paid before Completion;
- (h) the benefit, subject to the burden, of the Contracts;
- (i) the benefit of the Jeylabs IP Indemnity Rights;
- (j) each Authorisation held by the Supplier and used predominantly by the Supplier in connection with the Activities to the extent capable of being transferred to **nbn**;

- (k) the benefit of all rights and Claims that the Supplier has against any third party at Completion under any applicable law in respect of any express or implied representation, warranty, indemnity, guarantee, credits, or right to set off or subrogation or other arrangement relating to any other Asset; and
- (l) all other rights, title, interests and assets of the Supplier used predominantly by the Supplier in connection with the Activities,

other than the Excluded Assets.

Assumed Liabilities means:

- (a) all obligations of the Supplier in respect of the Employee Entitlements;
- (b) the Contract Liabilities; and
- (c) all of the Cure Amounts contemplated under paragraph (b) of the definition of "Cure Amounts".

Authorisation means any licence, consent, approval, permit, registration, accreditation, certification or other authorisation given or issued by any Regulatory Authority or any other person.

Avoidance Actions means any and all avoidance, recovery, subordination, or other claims, actions, or remedies that may be brought by or on behalf of the Supplier or its Estate or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 502, 510, 542, 544, 545, and 547 through and including 553 of the Bankruptcy Code, including all claims or actions:

- (a) related to vendors and service providers used in connection with the Activities that are counterparties to the Contracts; or
- (b) related to Assumed Liabilities.

Bankruptcy Code means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as may be amended from time to time, or any successor statute.

Bankruptcy Court means the United States Bankruptcy Court for the Southern District of Texas.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in New South Wales.

Chapter 11 Proceedings means the proceedings commenced by the Supplier and certain of its affiliates on 23 April 2020 under chapter 11 of title 11 of the United States Code in the Bankruptcy Court as jointly administered under Case No. 20-32243 (MI).

Claim includes, in relation to a person or anyone acting in their name or on their behalf, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Collection Period means each consecutive 14 day period commencing on the day after the Completion Date.

Completion means the completion of the sale and purchase of the Assets in accordance with clause 11.

Completion Date means the date on which Completion occurs.

Completion Payment means the amount determined in accordance with clause 8.7.

Completion Statement means the excel spreadsheet included as document number 10.11.09 in the Data Room, as updated and agreed or determined in accordance with clauses 2.4(b) and 8.

Completion Statement Dispute means a dispute in respect of any matter contemplated in clause 8.1(a) in respect of which the parties have not reached, or are unable to reach, an agreement.

Completion Statement Update Date has the meaning given in clause 8.1(a).

Condition means each condition specified in clause 2.1.

Conditional Payment Amount means the amount determined in accordance with clause 16.1(b).

Conditional Payment End Date means the date which is the first anniversary of the Completion Date.

Confidential Information means:

- (a) all trade secrets, know how, operating procedures and technical information relating to the Assets or the operations or affairs of the Activities; and
- (b) all other information relating to the Assets or the operations or affairs of the Activities;
 - (i) treated by the Supplier as confidential;
 - (ii) which is capable of being protected at law or equity as confidential information; or
 - (iii) the disclosure of which might cause loss or damage to or otherwise adversely affect the Activities,

in whatever form and in each case including information that has been disclosed by the Supplier or its Representatives under the terms of a confidentiality agreement.

Confidentiality Agreement means the Confidentiality Agreement between Speedcast International and **nbn** dated 4 May 2020.

Contract Liabilities means:

- (a) all of the obligations and liabilities which arise on or after the Effective Time under any of the Contracts for which the Supplier would be liable if this agreement had not been entered into and Completion had not occurred; and
- (b) all of the Cure Amounts which are due and payable under the Contracts.

Contracts means:

- (a) the contracts listed in part 1 of Schedule 3;
- (b) the Material Contracts;
- (c) the Lease; and
- (d) any agreement or arrangement:
 - (i) notified by the Supplier to **nbn** under clause 9.5; or

(ii) which was not included in the Due Diligence Materials,

and which **nbn** notifies the Supplier in writing at any time prior to Completion that the relevant agreement or arrangement is to form part of the Contracts,

and excludes the Excluded Contracts.

Corporations Act means the Corporations Act 2001 (Cth).

Cure Amounts means the dollar amount reflected in cells F47 (Cure Amounts) and F48 (Other Contractor Accruals) of the "Summary" tab of the Completion Statement, being all amounts which are due and payable by the Supplier under:

- (a) any of the Contracts in respect of the period up to 23 April 2020 and which have not been paid by the Supplier, as specified in tab "D" of the Completion Statement; and
- (b) other contracts related to the Activities in respect of the period up to 23 April 2020 and which have not been paid by the Supplier, and which **nbn** has agreed to assume liability for, as specified in tab "E" of the Completion Statement.

Data Room means the archived "Project Blackbird" section of the virtual data room titled "Project Pioneer" hosted by Ansarada and dated 14 September 2020, a copy of which has been downloaded by each party prior to the execution of this agreement.

Defaulting Party has the meaning given in clause 11.6.

Deliverables has the meaning given in the MESSA.

DIP Credit Agreement means that certain Senior Secured Superpriority Debit-in-Possession Term Loan Credit Agreement, dated as of 24 April 2020 by and among Speedcast International Limited, SpeedCast Communications, Inc., the lenders named therein, and Credit Suisse AG, Cayman Island Branch, as agent for the lenders, as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof.

Dispute Notice has the meaning given in clause 8.1(b).

Disputed Gilat Supply Item has the meaning given in clause 2.5(c).

Documentation and Materials means all originals and copies of all books, records, reports, correspondence, files, manuals and other documents and information created by, owned by, or under the control of, the Supplier to the extent relating to or used in connection with the Assets, the Transferring Employees or the Key Individual Contractor, whether in printed, electronic or any other form and including all:

- (a) Materials necessary for the effective installation, operation, use, modification, development and maintenance of any Deliverables;
- (b) Documents;
- (c) materials required to be delivered in accordance with clause 3.2 of Attachment B to Schedule 20 of the MESSA in the form required under that clause;
- (d) trading and financial records, employee records and related correspondence;
- (e) title deeds and other documents of title in relation to the Assets (if any); and
- (f) originals and copies of all Contracts and Authorisations in relation to the Activities, other than the Excluded Documentation and Materials.

Documents has the meaning given to the term Documentation in the MESSA.

Domain Names means each of the domain names specified in Schedule 2.

Due Diligence Materials means:

- (a) the written information and documents provided to **nbn** by the Supplier and its Representatives before the date of this agreement in the Data Room, an index of which is included in document number 10.11.06 in the Data Room; and
- (b) the written questions raised by **nbn** in the due diligence process and the written responses given to those questions by the Supplier and its Representatives before the date of this agreement, copies of which are included in document number 10.11.07 in the Data Room.

Effective Time means 11:59pm on the Completion Date.

Employee Entitlements means all entitlements to annual leave, long service leave and personal/carer's leave of Transferring Employees accrued as at the Effective Time whether arising by law or under any Enterprise Agreement, Modern Award, Transitional Instrument, contract or arrangement.

Employee Offer Date means the date which is 10 Business Days after the date of execution of this agreement, or any other date agreed in writing between the Supplier and **nbn**.

Employees means:

- (a) the employees of the Supplier specified in part 1 of Schedule 4;
- (b) the Key Employees;
- (c) the Seconded who is employed by the Seconded Employer; and
- (d) any other person who is employed by the Supplier before Completion and is agreed by **nbn** to be an Employee under clause 9.6,

in each case whose employment with the Supplier has not ceased prior to the Effective Time, but, for the avoidance of doubt, excluding the Excluded Employees.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

End Date means 30 October 2020 or, subject to clause 2.4, any other date agreed in writing between the Supplier and **nbn**.

Enterprise Agreement has the meaning given in section 12 of the Fair Work Act.

Excluded Assets means:

- (a) cash on hand or deposited with any financial institution;
- (b) the Receivables and all other debts owing to the Supplier at Completion, or which become due and payable to the Supplier after Completion, in respect of the Activities; and
- (c) the Excluded Documentation and Materials.

Excluded Contracts means:

- (a) all Speedcast Shared Supplier Contracts;
- (b) all contracts of employment;
- (c) all agreements and arrangements under which the Supplier owes borrowings or other indebtedness;
- (d) all option, swap, exchange and other derivative or hedging contracts; and
- (e) all contracts or policies of insurance.

Excluded Documentation and Materials means:

- (a) a copy of all books and records relating to the Activities, the Assets or the Employees that the Supplier is required by law to maintain despite completion of the transactions contemplated by this agreement;
- (b) all statements of financial performance or financial position of the Supplier and other documents and information relating to the Tax affairs of the Supplier;
- (c) any email correspondence sent or received by the internal or external legal counsel of any Supplier Group Member which is the subject of legal professional privilege;
- (d) any internal email correspondence between any personnel of a Supplier Group Member with the title of executive, director, vice president or equivalent concerning the management of the Supplier;
- (e) a copy of any part of the Documentation and Materials (in addition to the copies and originals to be delivered to **nbn** under this agreement) to the extent that it relates to any Contract, but only until that Contract is novated to **nbn** pursuant to this agreement (at which time that copy will cease to be Excluded Documentation and Materials and clause 19.4 will apply to that copy);
- (f) any books, records, reports, correspondence, files or documents created by, owned by, or under the control of, the Supplier to the extent not relating to or used in connection with the Assets, the Transferring Employees or the Key Individual Contractor (even if it is somehow otherwise related to the Activities); and
- (g) any email correspondence or other communication relating to the preparation, negotiation or finalisation of this agreement.

Excluded Employees means the employees of the Supplier specified in part 3 of Schedule 4.

Expert has the meaning given in clause 8.4.

Fair Work Act means the Fair Work Act 2009 (Cth).

Final Additional Conditional Payment Amount means the amount determined in accordance with clause 16.2(b).

Final Additional Conditional Payment Date means the relevant date determined under clause 16.2(b).

Final Order means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court and has not been reversed, vacated, or stayed.

Gilat Australia means Gilat Satellite Networks Australia Pty Limited ABN 19 146 050 071.

Gilat Australia Sub-Contract means the Sub-Contract (as that term is defined in the MESSA) between the Supplier and Gilat Australia dated on or about 31 January 2018.

Gilat Sub-Contracts has the meaning given in the MESSA.

GST has the meaning given in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Goodwill means the goodwill in relation to the Activities including the exclusive right of **nbn** to represent itself as carrying on the Activities as the successor to the Supplier.

Indemnified Losses means, in relation to any fact, matter or circumstance, all losses, costs, charges, damages, expenses and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any Claim relating to that fact, matter or circumstance (including any Claim based on the terms of this agreement).

Initial Works has the meaning given in the MESSA.

Intellectual Property means all Intellectual Property Rights owned by the Supplier and necessary for the Activities or (to the extent not already assigned to **nbn**) created in the course of the Activities and the right to take action against any third party for the infringement of any rights relating to those Intellectual Property Rights whether occurring before or after the date of this agreement.

Intellectual Property Licences means any rights to use any Intellectual Property Rights of another person or any trade secrets, know how, operating procedure, technical information or other confidential information of another person contained in the Contracts.

Intellectual Property Rights means:

- (a) patents, designs, trade marks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;
- (b) copyright (including copyright in software, websites, databases and advertising and other promotional materials);
- (c) all rights to have information (including trade secrets, know-how, operating procedures and technical information) kept confidential; and
- (d) all other rights or protections having similar effect anywhere in the world.

Inventory means all goods, consumables and packaging materials held or owned by the Supplier and used predominantly to perform the Activities as at the Effective Time.

Jeylabs Contract means the sub-contractor agreement between the Supplier and Jeylabs Pty Ltd ABN 98 135 541 598 dated 8 March 2018.

Jeylabs IP Indemnity Rights means any rights that the Supplier may have under clause 35.1(i) of the MESSA terms incorporated into the Jeylabs Contract pursuant to clause 3 of the Jeylabs Contract.

Key Employees means the persons identified as such in document number 10.11.03 in the Data Room.

Key Individual Contractor means the person identified as such in document number 10.11.03 in the Data Room.

Landlord means Select Property Holdings (Mauritius) Limited ABN 98 739 283 534.

Lease means the lease between the Landlord (as lessor) and the Supplier (as lessee) dated 9 May 2018 with respect to the premises known as Part Level 8, 432 St Kilda Road, Melbourne VIC 3000.

Lease Assignment Deed has the meaning given in clause 2.1(f).

Material Authorisation means each Authorisation held by the Supplier and used predominantly by the Supplier in connection with the Activities and necessary to perform the Activities to the extent capable of being transferred.

Material Contract means:

- (a) the Contracts listed in part 2 of Schedule 3; and
- (b) any agreement or arrangement which becomes a Contract in accordance with paragraph (d) of the definition of "Contracts" and which **nbn** notifies the Supplier in writing at least 15 Business Days prior to Completion is to be a Material Contract.

Materials has the meaning given in the MESSA.

MESSA means the Master Equipment and Services Supply Agreement between **nbn** and the Supplier dated 2 February 2018 as amended from time to time.

MESSA Accrued Service Fees means the dollar amount reflected in cell F9 of the "Summary" tab of the Completion Statement.

Modern Award has the meaning given in section 12 of the Fair Work Act.

nbn Beneficiary has the meaning given to the term "NBN Co Beneficiary" in the MESSA.

nbn Commercially Sensitive Information means the information set out or described in document number 10.11.10 in the Data Room.

nbn-SCMS Email Data means a copy of all email correspondence between any officer, employee, agent or attorney of the Supplier (on the one hand) and any officer, employee, agent or attorney of **nbn** (on the other hand) sent on or before the close of business on the day before Completion, excluding any **nbn** Commercially Sensitive Information.

nbn Group Member means **nbn** and each Related Entity of **nbn**.

nbn Warranties means the warranties set out in Schedule 6.

Net Asset Purchase Price means the dollar amount reflected in cell F11 of the "Summary" tab of the Completion Statement rounded up to the nearest whole dollar, arrived at by, among other things, deducting the absolute value of the dollar amount specified in cell F56 of the "Summary" tab of the Completion Statement which forms part of the Conditional Payment Amount calculation under clause 16.

Non-Defaulting Party has the meaning given in clause 11.6.

Plant and Equipment means all equipment and information technology items (including mobile or portable devices) owned by the Supplier and specified in Schedule 1.

PPSA means the Personal Property Securities Act 2009 (Cth).

Receivables means:

- (a) all trade debts owing to the Supplier at Completion in respect of the Activities (including any amount on account of GST); and
- (b) all trade debts that become owing to the Supplier after Completion in respect of goods or services sold or provided by the Supplier in the course of carrying on the Activities before Completion (including any amount on account of GST).

Register means the *Personal Property Securities Register* established under section 147 of the PPSA.

Registered Security Interests means the following Security Interests registered on the Register on the date which is two Business Days before the date of this agreement:

- (a) 201805150019507;
- (b) 201805150020158;
- (c) 201805150020906;
- (d) 201805150021100;
- (e) 201805150021214;
- (f) 202004170013525;
- (g) 202004170013663;
- (h) 202004240035976;
- (i) 202004240036087;
- (j) 202004240036311;
- (k) 202004240036444; and
- (l) 202004240036542,

and any other Security Interests over the Assets which are registered on the Register between the date which is two Business Days before the date of the agreement and the Completion Date.

Regulatory Authority means:

- (a) any government or local authority and any department, minister or agency of any government; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Related Entity of a corporation means:

- (a) a related body corporate of that corporation within the meaning of section 50 of the Corporations Act; and
- (b) a trustee of any unit trust in relation to which that corporation, or any corporation referred to in paragraph (a), directly or indirectly:

- (i) controls the right to appoint the trustee; or
- (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
- (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust.

Representatives means, in relation to a party, all officers, employees, professional advisers, agents and attorneys of the party or of its Related Entities.

Resolved Claim means any Agreement Claim in respect of which notice has been given by **nbn** to the Supplier in accordance with clauses 17.8 and 18.3(b) before the Conditional Payment End Date and which has been resolved by:

- (a) **nbn** withdrawing the Agreement Claim;
- (b) **nbn** being taken to have withdrawn that Agreement Claim in accordance with clause 18.3;
- (c) the Agreement Claim becomes barred under clause 18.11;
- (d) the Supplier and **nbn** agreeing in writing the amount to be paid, or that no such amount will be paid, in settlement of the Agreement Claim; or
- (e) a court of competent jurisdiction making a final award of damages, or a determination that no damages are payable, in respect of the Agreement Claim.

Sale Order means the order of the Bankruptcy Court, in form attached to this agreement as Attachment 1 or otherwise in form and substance agreed by the parties, to be entered by the Bankruptcy Court pursuant to sections 105, 363 and 365 of the Bankruptcy Code, which shall, among other things:

- (a) approve the execution, delivery and performance by the Supplier of this agreement and the terms and obligations of this agreement in all respects;
- (b) approve the sale of the Assets to **nbn** free and clear of all liens, Claims and encumbrances (other than any encumbrances included in the Assumed Liabilities) pursuant to section 363(f) of the Bankruptcy Code;
- (c) approve the assumption and assignment to **nbn** of the Contracts and the Assumed Liabilities; and
- (d) find that this agreement was negotiated at arms' length and that **nbn** is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

Seconded means the individual listed in in part 2 of Schedule 4.

Seconded Employer means SpeedCast Australia Pty Ltd ABN 28 159 524 553.

Secured nbn-SCMS Email Data has the meaning given in clause 19.5(a)(i).

Security Interest has the meaning given in section 12 of the PPSA.

Services has the meaning given in the MESSA.

Shareholder Minister means collectively the Communications Minister (which has the meaning given to that term in section 5 of the National Broadband Network Companies Act

2011 (Cth)) and the Finance Minister (which has the meaning given to that term in section 7 of the Telecommunications Act 1996 (Cth)).

Specified Persons (nbn) means the persons specified in document number 10.11.01 in the Data Room.

Specified Persons (Supplier) means the persons specified as such in document number 10.11.03 in the Data Room.

Specified Subcontractors means the parties listed in Schedule 8.

Speedcast International means Speedcast International Limited ABN 50 600 699 241.

Speedcast Shared Supplier Contracts means:

- (e) the *Global Master Services Agreement* between Telstra Corporation Limited ABN 33 051 775 556 and Speedcast Australia Pty Ltd ABN 28 159 524 553 dated 20 October 2018 (**Telstra Contract**), and any Service Order Forms delivered by any Supplier Group Member under the Telstra Contract; and
- (f) the *Vocus Service Order* between the Supplier and Vocus Pty Ltd ABN 78 127 842 853 dated 14 May 2018.

Supplier Group Member means the Supplier and each Related Entity of the Supplier.

Standard Rate in relation to interest payable on any payment due under this agreement means the rate which is the 90 day Australian Bank Bill Swap Reference Rate (Average Bid) administered by ASX Benchmarks Pty Limited (or any other person which takes over the administration of that rate) displayed on page BBSY of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate) on the first date on which interest accrues on that payment (or if that rate or publication is not published, the rate determined by **nbn**, acting reasonably, to be the nearest equivalent rate having regard to prevailing market conditions) plus (in either case) a margin of 2% per annum.

Standstill Period means the period commencing on the date of this agreement and expiring on the earlier of:

- (a) Completion; and
- (b) the termination of this agreement.

Tax means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges.

Tax Authority means any Regulatory Authority responsible for the assessment, collection, withholding or administration of Tax in any country or jurisdiction.

Third Party Claim means any Claim by a third party against **nbn** in relation to the Assets or the Activities.

Transferring Employees means those Employees who accept **nbn**'s offer of employment made under clause 14.

Transition Period has the meaning given in clause 10.3(b) for the purposes of this agreement.

Transition Plan means the plan set out in document number 10.11.08 in the Data Room.

Transition Services means services set out in the Transition Plan to be provided by the Supplier to **nbn** in the manner set out in the Transition Plan.

Transition Services Fee means the dollar amount reflected in cell F10 of the "Summary" tab of the Completion Statement.

Transitional Instrument has the meaning given in the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth).

Unconditional Performance Guarantee means the unconditional performance guarantee provided by Speedcast International in favour of **nbn** under the MESSA dated 26 January 2018.

Unresolved Claim means any Agreement Claim in respect of which notice has been given by **nbn** to the Supplier in accordance with clauses 17.8 and 18.3(b) before the Conditional Payment End Date which is not a Resolved Claim. **Warranties** means the warranties set out in Schedule 5.

Update Inputs means the numerical values and their underlying input cells in the Completion Statement in respect of the items set out in document number 10.11.04 in the Data Room.

Warranty Claim means any Claim by **nbn** arising out of a breach of a Warranty, including a Claim under the indemnity set out in clause 17.7 and any Claim for breach of a Warranty which **nbn** makes, or **nbn** is entitled to make, as a result of a Third Party Claim.

1.2 Reasonable endeavours

Any provision of this agreement which requires a party to use reasonable endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation:

- (a) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority; or
- (b) to commence any legal action or proceeding against any person,

except where that provision expressly specifies otherwise.

1.3 Knowledge and awareness of the Supplier

If any Warranty is qualified by the Supplier's awareness or knowledge, the facts of which the Supplier is aware or that are within the Supplier's knowledge are taken to be, and are limited to, all facts of which any of the Specified Persons (Supplier) is actually aware at the date of this agreement.

1.4 Business Days

If the day on which any act is to be done under this agreement is a day other than a Business Day, that act must be done on or by the immediately preceding Business Day except where this agreement expressly specifies otherwise.

1.5 General rules of interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) an obligation or a liability assumed by 2 or more persons binds them jointly and severally and a right conferred on 2 or more persons benefits them jointly and severally;
- (b) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (c) the word **including** or any other form of that word is not a word of limitation;
- (d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) a reference to a **person** includes an individual, the estate of an individual, a corporation, a Regulatory Authority, an incorporated or unincorporated association or parties in a joint venture, a partnership and a trust;
- (f) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (h) a reference to this agreement is to this agreement as varied, novated, ratified or replaced from time to time;
- (i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (j) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (k) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (l) a reference to **\$** or **dollar** is to Australian currency; and
- (m) this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

2. Conditions precedent

2.1 Conditions

Clause 11 does not become binding on **nbn** and the Supplier and has no force or effect, and Completion cannot take place, unless each of the conditions listed in the first column of the following table has been either satisfied or waived in accordance with clause 2.7:

| Condition | Right to waive |
|---|-------------------------|
| (a) no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction, no preliminary or final decision, determination, or | nbn and Supplier |

| Condition | Right to waive |
|---|-------------------------|
| order issued by any Regulatory Authority and no other legal restraint preventing any of the transactions contemplated by this agreement is in effect; | |
| (b) within 25 Business Days of the date of this agreement, or such later date notified by nbn to the Supplier in writing, the Bankruptcy Court has entered the Sale Order and such Sale Order is a Final Order and is in full force and effect; | N/A |
| (c) all Key Employees have accepted an offer of employment made by nbn in accordance with clause 14; | nbn |
| (d) not less than 10 of the Employees (excluding the Key Employees) have accepted an offer of employment made by nbn in accordance with clause 14; | nbn |
| (e) the Key Individual Contractor has accepted an offer of employment made by nbn in accordance with clause 14 (with such changes as are necessary to reflect that the Key Individual Contractor is not an Employee) or has agreed in writing to be engaged by nbn as a contractor via a panel consultancy firm engaged by nbn ; | nbn |
| (f) the Supplier has received from the Landlord confirmation in writing that the Landlord consents to the assignment, with effect on and from Completion, of the Lease from the Supplier to nbn on the same terms and conditions of the Lease existing at the date of this agreement and otherwise on terms of a deed of assignment of the Lease (Lease Assignment Deed) which are satisfactory to nbn and the Supplier acting reasonably; | nbn and Supplier |
| (g) each of the following has occurred: <ul style="list-style-type: none"> (i) in respect of each Contract, the relevant Contract is assumed by the Supplier and assigned to nbn under the Sale Order; (ii) nbn has received from the respective counterparties under each of the Gilat Sub-Contracts an original counterpart of the novation agreement in the form set out in Attachment 3 but subject to clause 2.5, or otherwise on terms satisfactory to nbn acting reasonably, executed by each of the respective counterparties under the Gilat Sub-Contracts; and (iii) nbn has received from the respective counterparties under each other Material Contract an original counterpart of the novation agreement in the form set out in Attachment 2 but subject to clause 2.5, or otherwise on such other terms satisfactory to nbn acting reasonably, executed by the third party to the relevant Material Contract, | nbn |

| Condition | Right to waive |
|--|----------------|
| subject to, and with effect from, Completion; and | |
| (h) the Supplier has performed all of the Transition Services in the manner contemplated in the Transition Plan. | nbn |

2.2 Reasonable endeavours to satisfy Conditions

Each party must use all reasonable endeavours to ensure that each Condition (other than the Condition in clause 2.1(a)) is satisfied as soon as practicable after the date of this agreement and in any event before the earlier of any deadline for such Condition set out in clause 2.1 and the End Date and, in particular:

- (a) **nbn** must at its own cost provide to the Supplier all information reasonably required by the Supplier for the purposes of procuring the satisfaction of any Condition, including all information required by the Supplier, or other otherwise requested by the Landlord, under the terms of the Lease for the purpose of the Supplier seeking the consent of the Landlord contemplated under the Condition set out in clause 2.1(f);
- (b) the Supplier must at its own cost prepare and dispatch notices and requests for consent to each party from whom consent is required under each Contract for the purposes of procuring the satisfaction of the Condition set out in clause 2.1(g);
- (c) each party must otherwise co-operate with, and comply with all reasonable requests of the other party for the purposes of procuring the satisfaction of any Condition and must not take any action that will or is likely to hinder or prevent the satisfaction of any Condition;
- (d) each party must keep the other party informed of any fact, matter or circumstance of which it becomes aware that may result in a Condition not being satisfied in accordance with its terms; and
- (e) the Supplier must take all actions reasonably required to assume and assign the Contracts to **nbn** and must use all reasonable endeavours to facilitate any negotiations with the counterparties to the Contracts and to obtain an order of the Bankruptcy Court containing a finding that the proposed assumption and assignment of the Contracts to **nbn** satisfies all applicable requirements of section 365 of the US Bankruptcy Code.

2.3 Chapter 11 Proceedings

The Supplier:

- (a) must deliver to **nbn** a copy of each notice, motion or pleading to be filed with the Bankruptcy Court in connection with this agreement or the transactions contemplated herein at least three (3) Business Days in advance of filing such notice, motion or pleading with the Bankruptcy Court; and
- (b) may only file such notice, motion or pleading with the Bankruptcy Court if such notice, motion or pleading is in form and substance reasonably acceptable to **nbn**.

2.4 Extension of End Date

The parties agree that if they mutually agree to extend the End Date at any time during the term of this agreement, then in respect of the first agreed extension to the End Date:

- (a) the Supplier is entitled to issue to **nbn** an invoice for all Managed Services (as defined in the MESSA) which it is entitled to issue under the MESSA (but for clause 10.1) for the period commencing on 23 April 2020 and ending on 30 October 2020;
- (b) the Completion Statement must be amended to reflect a deduction from the Completion Payment in respect of the Managed Services (as defined in the MESSA) invoiced to **nbn** under this clause 2.4 in accordance with process set out in clause 8; and
- (c) **nbn** must pay the Supplier for all Managed Services invoiced to **nbn** under this clause 2.4 within 15 Business Days of the date of the relevant invoice.

2.5 Novation of Material Contracts

- (a) The parties agree that for the purposes of the Conditions in clauses 2.1(g)(ii) and 2.1(g)(iii) the Supplier will initially seek the agreement of each counterparty to each Material Contract (each, a **Contract Counterparty**) to the novation of the relevant Material Contract to which the Contract Counterparty is a party:
 - (i) in respect of each Gilat Sub-Contract, on the terms set out in the novation agreement set out in Attachment 3; and
 - (ii) in respect of each other Material Contract, on the terms set out in the novation agreement set out in Attachment 2.
- (b) The parties agree that if a Contract Counterparty, in response to a request from the Supplier under clause 2.5(a), refuses to agree:
 - (i) in respect of a Gilat Sub-Contract, to provide any one or more of the warranties contemplated in clause 8(c) of the form of novation agreement set out in Attachment 3; or
 - (ii) in respect of any other Material Contract, provide any one or more of the warranties contemplated clause 4.2 of the form of novation agreement set out in Attachment 2,

as applicable, the Supplier and **nbn** must agree to accept the removal of the relevant warranty from the novation agreement for the applicable Material Contract to which the Contract Counterparty is a party and such agreement and removal will not constitute grounds for which either of the Conditions in clauses 2.1(g)(ii) and 2.1(g)(iii) (as applicable) is not satisfied.
- (c) If Gilat Australia, in response to a request from the Supplier under clause 2.5(a) or **nbn**, refuses to agree to amend the Gilat Australia Sub-Contract under clause 6 of the form of novation agreement set out in Attachment 3 in the manner contemplated in item 1(c) or item 2 of Schedule 3 to the form of novation agreement set out in Attachment 3 because **nbn** and Gilat Australia cannot agree the relevant increase to the price (or prices) for any one or more of the items supplied under the Gilat Australia Sub-Contract as a result of the amended or varied terms (each item being a **Disputed Gilat Supply Item**), **nbn** will not withhold its agreement to the novation of the Gilat Australia Sub-Contract on the basis of that price increase if each increase for a Disputed Gilat Supply Item sought by Gilat Australia does not exceed 20%, effective on and from Completion, and any such increase sought (being 20% or less) will not constitute grounds for which the Condition in clause 2.1(g)(ii) is not satisfied.

2.6 Notice in relation to satisfaction of Conditions

Each party must within 1 Business Day after becoming aware of the satisfaction of any Condition notify the other party of the satisfaction of that Condition and provide reasonable evidence that the Condition has been satisfied.

2.7 Waiver of Conditions

A Condition, other than the Condition in clause 2.1(b) which cannot be waived by either party, may be waived and may only be waived:

- (a) if one party is specified in the second column of the table in clause 2.1 opposite that Condition, by that party by notice to the other party; or
- (b) if both parties are specified in the second column of the table in clause 2.1 opposite that Condition, by written agreement between the parties.

A party entitled to waive or to agree to waive a Condition under this clause 2.7 may do so in its absolute discretion. A party that waives or agrees to waive a Condition is not prevented from bringing a Claim against the other party in respect of any breach of this agreement that caused that Condition not to be satisfied.

2.8 Failure of Conditions

A party is entitled to terminate this agreement by notice to the other party at any time before Completion:

- (a) if any Condition has become incapable of satisfaction and that Condition has not been waived in accordance with clause 2.7 within 5 Business Days after the occurrence of the fact, matter or circumstance which caused that Condition to become incapable of satisfaction;
- (b) if any Condition has not been satisfied or waived in accordance with clause 2.7 before the End Date; or
- (c) if any Condition, having been satisfied on or before the End Date, ceases to be satisfied before Completion,

except where the relevant Condition has become incapable of satisfaction, has not been satisfied, or ceases to be satisfied, as a direct result of a failure by the party seeking to terminate to comply with its obligations under clauses 2.2 or 2.6.

3. Assets and liabilities

3.1 Sale and purchase of Assets

On Completion:

- (a) the Supplier must sell to **nbn**, and **nbn** must buy, the Assets, free from all Encumbrances; and
- (b) without limiting paragraph (a), the Supplier must, subject to entry of the Sale Order, assign to **nbn** each of the Contracts that is capable of being assumed and assigned under applicable law.

3.2 Excluded Assets

The Excluded Assets are not included in the sale and purchase under clause 3.1 and nothing in this agreement operates to transfer the Excluded Assets to **nbn**.

3.3 Assumption of liabilities

On and from Completion **nbn**:

- (a) must assume, pay, perform and discharge all Assumed Liabilities; and
- (b) indemnifies the Supplier against, and must pay to the Supplier on demand the amount of, any Indemnified Loss suffered or incurred by any Supplier Group Member in connection with the Assumed Liabilities.

3.4 Excluded liabilities

Nothing in this agreement operates to transfer or otherwise pass to **nbn** or will be construed as an acceptance by **nbn** of any liability or obligation that is not expressly assumed by **nbn** under this agreement.

4. Consideration for the sale of the Assets

4.1 Consideration

The consideration for the sale of the Assets is:

- (a) payment by **nbn** of the Net Asset Purchase Price;
- (b) the assumption by **nbn** of the Assumed Liabilities;
- (c) the Conditional Payment Amount (if any);
- (d) the aggregate of all Additional Conditional Payment Amounts (if any); and
- (e) the Final Additional Conditional Payment Amount (if any).

4.2 Payment of Net Asset Purchase Price

nbn must pay the Supplier the Net Asset Purchase Price at Completion in accordance with clause 11.2 and clause 22 by paying the Supplier the Completion Payment.

4.3 Payment of Conditional Payment Amount, Additional Conditional Payment Amounts and Final Additional Conditional Payment Amount

nbn must pay the Supplier:

- (a) the Conditional Payment Amount on the date contemplated in accordance with clause 16.1(a) and clause 22;
- (b) each Additional Conditional Payment Amount (if any) on the relevant Additional Conditional Payment Date in accordance with clause 16.2(a) and clause 22; and
- (c) the Final Additional Conditional Payment Amount (if any) on the Final Additional Conditional Payment Date in accordance with clause 16.2(b) and clause 22.

4.4 Allocation of consideration

The consideration referred to in clause 4.1 must be allocated between the Assets in accordance with Schedule 7.

4.5 Adjustment for certain payments

Any payment made by the Supplier to any **nbn** Group Member for a Warranty Claim will be treated as a reduction in the consideration for the sale of the Assets.

5. Consideration for provision of Transition Services

- (a) The consideration for the provision by the Supplier to **nbn** of the Transition Services during the Transition Period in accordance with clause 10.3 is the Transition Services Fee.
- (b) **nbn** must pay to the Supplier the Transition Services Fee at Completion in accordance with clause 11.2 and clause 22 by paying the Supplier the Completion Payment.

6. Payment of accrued fees under MESSA

- (a) **nbn** and the Supplier acknowledge and agree that as at Completion, and immediately prior to termination of the MESSA in accordance with clause 10.1, the MESSA Accrued Service Fees will be become due and payable by **nbn** to the Supplier in respect of Activities provided by or on behalf of the Supplier to **nbn** under the MESSA before Completion.
- (b) **nbn** must pay the Supplier the MESSA Accrued Service Fees at Completion in accordance with clause 11.2 and clause 22 by paying the Supplier the Completion Payment.

7. Avoidance Actions

7.1 Undertaking

On and from Completion, the Supplier undertakes not to directly or indirectly pursue any Avoidance Action against any of the Specified Subcontractors or to permit or consent to any person pursuing such Avoidance Actions on behalf of the Supplier or its estate, whether by derivative standing or otherwise.

7.2 No assignment

The Supplier agrees not to assign or otherwise transfer by any means any of the Avoidance Actions against any of the Specified Subcontractors to any third party.

8. Completion Statement Update and determination of Completion Payment

8.1 Completion Statement Update

- (a) On the date falling 12 Business Days before the scheduled date for Completion (**Completion Statement Update Date**), the parties must use their respective reasonable endeavours and act in good faith to update and recalculate the Completion Statement by:
 - (i) updating the relevant Update Inputs in the Completion Statement in accordance with:
 - A. the specific principles and policies set out next to each relevant Update Input in document number 10.11.04 in the Data Room; or

- B. to the extent that the treatment of any item is not dealt with in the principles and policies referred to in clause 8.1(a)(i), those accounting principles, policies and practices as are consistent with the Accounting Standards in force at Completion; and
- (ii) agreeing, for the purposes of Completion, the Completion Statement.
- (b) If the parties cannot reach agreement, having each used reasonable endeavours in good faith to reach such agreement, on any matter contemplated in clause 8.1(a) within 5 Business Days (or any shorter time period agreed between the parties in writing) of the Completion Statement Update Date, either party may notify the other party in writing that there is a Completion Statement Dispute (**Dispute Notice**). A Dispute Notice must include specific details of the relevant Completion Statement Dispute and the reasons why, or grounds on which, the party providing the Dispute Notice considers there to be a Completion Statement Dispute.

8.2 Assistance to nbn

The Supplier must, until the Completion Statement has been agreed in accordance with this clause 8, provide all access (including for the purposes of a physical stocktake), assistance and information reasonably required by **nbn** to enable it to determine whether the updated Completion Statement is complete and accurate.

8.3 Referral to Expert

If a Completion Statement Dispute set out in a Dispute Notice is not resolved by the parties within 2 Business Days (or any shorter time period agreed between the parties in writing) after a Completion Statement Dispute Notice has been received by the Supplier or **nbn** (as applicable), the Supplier or **nbn** may by written notice to the other require that the Completion Statement Dispute be determined by expert determination in accordance with clause 8.4.

8.4 Expert determination

Any expert determination of a Completion Statement Dispute must be conducted in accordance with the then current Resolution Institute Expert Determination Rules, except that:

- (a) the expert must be a person (or firm of accountants) with experience and academic qualifications in the field of managerial accounting (**Expert**);
- (b) the Expert must make the determination within the shortest possible time but, in any event, within 20 Business Days after the date of appointment; and
- (c) the costs of the Expert are payable by **nbn** and the Supplier in any manner decided by the Expert, having regard to the merits of the dispute.

8.5 Adjustment of Completion Statement

The Completion Statement is to be updated and adjusted to reflect the resolution of any Completion Statement Dispute under clause 8.4 and will constitute the Completion Statement for the purposes of this agreement.

8.6 Parties may defer completion

If there is a Completion Statement Dispute that is yet to be resolved in accordance with the procedures under this clause 8 prior to the date falling 5 Business Days before the scheduled date for Completion, **nbn** or the Supplier may elect to defer Completion by notice in writing until the date falling 5 Business Days after relevant Completion Statement Dispute has been resolved and the Completion Statement has been finalised.

8.7 Determination of Completion Payment

The parties agree that the Completion Payment payable by **nbn** to the Supplier in accordance with clause 11.2 and clause 22 will be:

- (a) if the Net Asset Purchase Price is greater than zero, an amount equal to the aggregate of:
 - (i) the Net Asset Purchase Price; *plus*
 - (ii) the Transition Services Fee; *plus*
 - (iii) the MESSA Accrued Services Fee; or
- (b) if the Net Asset Purchase Price is less than zero, an amount equal to:
 - (i) the Transition Services Fee; *plus*
 - (ii) the MESSA Accrued Services Fee; *less*
 - (iii) the absolute value of the Net Asset Purchase Price.

8.8 Completion Payment Less than Zero

If the Completion Payment is less than zero:

- (a) **nbn** may (but is not obliged to) terminate this agreement on or before Completion by notice in writing to the Supplier; and
- (b) no amount will be payable in respect of the Completion Payment by either party pursuant to clause 11.2.

9. Period before Completion

9.1 Access

- (a) For the purposes of assisting **nbn** and its Representatives to understand the Activities and to prepare for the transition to **nbn**'s normal working procedures, the Supplier must procure that from the date of this agreement until Completion **nbn** and its Representatives are given reasonable access on reasonable notice to:
 - (i) the Plant and Equipment, Inventory and Documentation and Materials; and
 - (ii) all counterparties to Contracts, the Employees and the Key Individual Contractor during business hours,

provided that the Supplier is not obliged to comply with this clause 9.1 to the extent that giving that access would cause material disruption to or have a material adverse effect on the day to day conduct of the Activities or constitute a breach by the Supplier of any law or of the terms of any agreement to which it is party.
- (b) In exercising its rights of access under clause 9.1(a), **nbn** will (and will ensure that its Representatives do) comply with any directions of the Supplier that the Supplier reasonably considers necessary to ensure that the exercise by **nbn** of **nbn**'s rights under clause 9.1(a) does not:
 - (i) interfere with the provision of the Activities in any material respect;

- (ii) contravene any law or give rise to a breach by any Supplier Group Member under any contract with any of its suppliers; or
 - (iii) compromise the health or safety of any personnel of nbn, the Supplier, any Supplier Group Member or any supplier of a Supplier Group Member engaged in the provision of the Activities.
- (c) **nbn** releases the Supplier and each Supplier Group Member from all Claims arising from any death of, or injury to, any of **nbn's** personnel, contractors, representatives, agents or advisers occurring in connection with **nbn** exercising its rights of access under clause 9.1(a), except and to the extent that they are caused by the negligent act or omission of the Supplier or any other Supplier Group Member.

9.2 Conduct of Activities

Subject to clause 9.4, until Completion, except with the prior consent of **nbn**, in accordance with applicable law or any order of the Bankruptcy Court, the Supplier must:

- (a) conduct the Activities in the ordinary and usual course consistent with its usual business practices and must not make any significant change to the nature or scale of any activity comprised in the Activities;
- (b) conduct the Activities in accordance with all applicable laws and regulations;
- (c) maintain, and comply with the terms of, all Authorisations necessary to own and operate the Assets and conduct the Activities;
- (d) keep and maintain proper records of all its dealings and transactions relating to the Activities;
- (e) maintain its current business relationships and the goodwill of the Activities;
- (f) protect and maintain each Asset and maintain appropriate and adequate insurance in respect of each Asset which is insurable as authorised by the *Final Order (I) Authorizing Debtors to Continue Insurance Programs and Pay All Obligations with Respect Thereto; (II) Modifying Automatic Stay with Respect to Workers' Compensation; and (III) Granting Related Relief* entered by the Bankruptcy Court on 18 May 2020 or as otherwise authorised by the Bankruptcy Court and/or applicable law; and
- (g) pay all amounts owing by the Supplier to trade or other creditors of the Activities for goods or services delivered on a post-petition basis to the Supplier in respect of the Activities on a current basis in accordance with customary terms for payment thereof, and pay such other prepetition amounts as authorised by the Bankruptcy Court.

9.3 Restricted conduct

Subject to clause 9.4, before Completion, except with the prior consent of **nbn**, the Supplier must not:

- (a) dispose of, or create any new Encumbrance over, or declare itself the trustee of, any Asset except in the ordinary course of business in respect of the Activities;
- (b) permit to exist any Encumbrance over any Asset except in the ordinary course of business in respect of the Activities or as may be required under the DIP Credit Agreement;
- (c) incur or enter into commitments to incur capital expenditure in excess of \$20,000 for any individual item or \$50,000 in aggregate in respect of the Activities;

- (d) in respect of any agreement or arrangement notified by the Supplier to **nbn** under clause 9.5, make any representations to a counterparty to such agreement or arrangement that the agreement or arrangement will be novated to **nbn**;
- (e) terminate or vary (or offer to vary) the terms of, or do or omit to do anything which might result in the termination of, any Contract or provide a consent to the sub-contracting of that Contract;
- (f) do or omit to do anything which might result in the variation, termination, suspension, revocation or non-renewal of any Material Authorisation held by the Supplier which is material to the conduct of the Activities;
- (g) except in the ordinary course of business in respect of the Activities or as required by law or by the terms of any Transitional Instrument, Enterprise Agreement or Modern Award or other existing terms of employment:
 - (i) terminate the employment of any Employee;
 - (ii) increase or make any representation about an increase in the annual remuneration of any Employee or create or increase any entitlement for any Employee to receive a bonus or other payment in addition to annual remuneration; or
 - (iii) otherwise vary the terms of employment or engagement of any Employee;
- (h) procure (and must procure that each Supplier Group Member does not) induce or encourage any Employee or the Key Individual Contractor to accept an offer of employment with the Supplier (for the period following Completion) or any other Supplier Group Member;
- (i) enter into any profit sharing or profit or equity participation arrangement in relation to the Activities with any Employee, agent, distributor, representative or other person;
- (j) terminate or permit the termination or amendment of, or fail to renew on its expiry, any insurance policy in respect of the Activities or any of the Assets as at the date of this agreement;
- (k) destroy or otherwise dispose of any Documentation and Materials; or
- (l) authorise, or agree conditionally or otherwise to do, any of the things referred to in this clause 9.3.

9.4 Operation of conduct clauses

Nothing in clause 9.2 or clause 9.3 restricts or prevents:

- (a) the Supplier extending the term of any Contract which relates to the engagement by the Supplier of any contractor in connection with the Activities, provided that the extended term of the Contract does not extend past the date that is one month after the End Date;
- (b) any matter reasonably undertaken by the Supplier in an emergency or disaster situation with the intention of minimising any adverse effect of the situation;
- (c) subject to Bankruptcy Court approval, the completion or performance of any obligations undertaken under this agreement or the terms of any Contract; or

- (d) any matter undertaken at the written request of **nbn**, where such request is stated to be provided for the purposes of this agreement and is either provided or subsequently confirmed in writing by the **nbn** Executive General Manager, Fixed Wireless and Satellite or their nominee notified in writing by **nbn** to the Supplier prior to the relevant request.

9.5 Entry into new contracts

Before Completion, the Supplier must notify **nbn** of any new agreement or arrangement entered into by the Supplier or a Related Entity of the Supplier in connection with the Activities (including any agreements or arrangements entered into by the Supplier or a Related Entity of the Supplier to the extent they are necessary or convenient in order to perform the Services) which:

- (a) either
 - (i) requires, or may require, payment to or by the Supplier in excess of \$50,000 in aggregate; or
 - (ii) might otherwise reasonably be expected to be material to the performance, operation or profitability of the Activities; and
- (b) will not be fully performed at Completion.

9.6 Engagement of new employees

Before Completion the Supplier must not engage any person for employment in the Activities without first obtaining the written consent of **nbn**. If **nbn** provides consent under this clause 9.6 at the same time as giving that consent **nbn** must advise the Supplier whether or not that new employee will be treated as an Employee for the purposes of this agreement.

9.7 Notification of breach

If, at any time before Completion, the Supplier becomes aware that it is in breach of its obligations under clause 9.2 to clause 9.6 (inclusive), the Supplier must promptly provide notice to **nbn** describing in reasonable detail the relevant fact, matter or circumstance giving rise to the breach.

10. Termination of MESSA and Transition Services

10.1 MESSA claims before Completion

Each party agrees to not pursue any Claim it has, or may have, under or in connection with the MESSA against the other party, including in respect of any breach of the MESSA or any proposed or alleged breach of the MESSA, as at the date of this agreement or which may arise during the Standstill Period, until the earlier of:

- (a) Completion; and
- (b) the termination of this agreement,

provided that nothing in this clause 10.1 limits any rights a party may have under this agreement, including (without limitation) clause 2.4, the benefit of clause 10.2 on and from Completion or the payment of any amounts comprising the Completion Payment.

10.2 Termination of MESSA

With effect from Completion but subject to clause 6:

- (a) the parties agree, in consideration for the mutual releases referred to in clauses 10.2(b) and 10.2(c), to terminate the MESSA;
- (b) **nbn** unconditionally and irrevocably releases and forever discharges the Supplier from all Claims in respect of past, present or future liabilities of the Supplier under or in connection with the MESSA, including any Claims in respect of liquidated damages, pre-payments, defect liability and fitness for purpose warranties in respect of deliverables provided to **nbn** under the MESSA; and
- (c) the Supplier unconditionally and irrevocably releases and forever discharges **nbn** from all Claims in respect of past, present or future liabilities of **nbn** under or in connection with the MESSA, including all Claims for payment for work performed, services delivered or expenses or liabilities incurred in relation to the MESSA.

10.3 Performance of Transition Services

- (a) **nbn** and the Supplier agree that the Supplier will provide the Transition Services to **nbn** during the Transition Period.
- (b) The Supplier must provide the Transition Services to **nbn** (or any **nbn** Beneficiary or Other Suppliers (as defined in the MESSA) nominated by **nbn**) during the period (**Transition Period**) commencing on the date of this agreement and ending on the earlier of:
 - (i) the date the Supplier has performed all of the Transition Services; and
 - (ii) the Completion Date.
- (c) To the extent that the Transition Services require the Supplier to:
 - (i) assign or novate any third party contracts, including sub-contracts, equipment leases and licence agreements, to the extent they are necessary or convenient in order to perform the Activities, to **nbn**;
 - (ii) transfer title to any equipment, software, systems, hardware or other assets used predominantly in the performance of the Activities to **nbn**; or
 - (iii) permit and facilitate **nbn** making offers of employment to any or all employees and contractors of the Supplier who are predominantly involved in the provision of the Activities,

nbn and the Supplier agree that the Supplier will have satisfied these obligations by performing its obligations under this agreement.

11. Completion

11.1 Time and place for Completion

Subject to clauses 8.6 and 22.3(c), Completion must take place:

- (a) on the date which is 5 Business Days after all of the Conditions have been satisfied or waived in accordance with clause 2.7, other than the Condition in clause 2.1(a) which by its nature will be satisfied on Completion; and
 - (b) at the offices of DLA Piper at Level 22, 1 Martin Place, Sydney, New South Wales,
- or at any other place, date or time as the Supplier and **nbn** agree in writing (which may include remote completion by email or other means if necessary).

11.2 Parties' obligations to effect Completion

At Completion, each party must perform, or procure the performance of, the following actions.

| Step | Party required to take action | Action |
|------|-------------------------------|---|
| 1. | The Supplier | <p>Deliver to nbn:</p> <ul style="list-style-type: none"> (a) original counterparts of each of the following documents duly executed by the Supplier: <ul style="list-style-type: none"> (i) in respect of each Domain Name, the form of transfer (if any) required by the relevant domain name registry to transfer the licence in respect of that Domain Name to nbn and the domain password (if any) in respect of each Domain Name; (ii) the Lease Assignment Deed in registrable form (subject to payment of any duty) executed by the Supplier and the Landlord, accompanied by or bearing the duly executed written consent of the Landlord to the Lease Assignment Deed; and (iii) any other document reasonably required by nbn to vest legal and beneficial ownership of any Asset in nbn with effect from Completion; (b) the Plant and Equipment, the Inventory, the Documentation and Materials and all other Assets title to which is capable of being transferred by delivery; (c) written confirmation of the destruction of the Confidential Information specified in clause 19.4, in accordance with clause 19.4(a)(ii); (d) Acceptable Releases in respect of each Registered Security Interest; (e) an original counterpart of each of the novation agreements referred to in Condition 2.1(g) duly executed by the Supplier; (f) for each Contract (other than the Lease, which is addressed in step 1(a)(ii) of this table), an original counterpart of each novation agreement which has been executed by the counterparty to the relevant Contract before Completion in accordance with clause 13.2 and a further original counterpart of each such novation agreement duly executed by the Supplier; and (g) a separate encrypted and password protected copy of the nbn-SCMS Email Data. |
| 2. | nbn | Pay the Completion Payment to the Supplier in accordance with clause 22. |

| Step | Party required to take action | Action |
|------|-------------------------------|--|
| 3. | nbn | Pay to each party to which a Cure Amount is owed the amount of the relevant Cure Amount, subject only to receipt by nbn of a valid GST invoice and payment details for an Australian bank specified by the recipient party (including such details as nbn may reasonably require), at least 5 Business Days before Completion. |
| 4. | nbn | <p>Deliver to the Supplier:</p> <ul style="list-style-type: none"> (a) an original counterpart of each novation agreement specified in step 1(e) of this table duly executed by nbn; (b) an original counterpart of each novation agreement specified in step 1(f) of this table duly executed by nbn; (c) a duly executed release in a form reasonably acceptable to the Supplier in respect of the Unconditional Performance Guarantee, executed by nbn; (d) a duly executed release in a form reasonably acceptable to the Supplier in respect of, or return of, the Performance Bond issued by Citibank on 1 October 2019 in respect of the Supplier's obligations under the MESSA, executed by nbn; (e) an original counterpart of the Lease Assignment Deed, duly executed by nbn; and (f) evidence in a form reasonably acceptable to the Supplier of nbn's payment of the Completion Payment under step 2 of this table and each Cure Amount under step 3 of this table. |

11.3 Intellectual Property

The Supplier assigns to **nbn** on Completion all of the Intellectual Property.

11.4 Delivery method

Any document or other item specified in step 1(b) of the table set out in clause 11.2 may be delivered to **nbn** by leaving that document or other item in a safe and appropriate place at the premises which are the subject of the Lease, in accordance with the Transition Plan, or as otherwise agreed by **nbn**.

11.5 Interdependence of obligations at Completion

The obligations of **nbn** and the Supplier under clause 11.2 and clause 11.3 are interdependent and must be performed, as nearly as possible, simultaneously. If any obligation specified in clause 11.2 or clause 11.3 is not performed on or before Completion then, without limiting any other rights of **nbn** and the Supplier, Completion is taken not to have occurred and any document delivered, or payment made, under clause 11.2 or clause 11.3 must be returned to the party that delivered it or paid it.

11.6 Notice to complete

If Completion does not occur in accordance with this clause 11 because of the failure of any party (**Defaulting Party**) to satisfy any of its obligations under this clause 11 then:

- (a) **nbn** (where the Defaulting Party is the Supplier); or
- (b) the Supplier (where the Defaulting Party is **nbn**),

(in either case the **Non-Defaulting Party**) may give the Defaulting Party a notice requiring the Defaulting Party to satisfy those obligations within a period of 5 Business Days after the date of the notice and specifying that time is of the essence in relation to that notice.

11.7 Remedies for failure to comply with notice

If the Defaulting Party fails to comply with a notice given under clause 11.6, the Non-Defaulting Party may without limiting its other rights or remedies available under this agreement or at law:

- (a) immediately terminate this agreement, in which case the Non-Defaulting Party may seek damages for breach of this agreement; or
- (b) seek specific performance of this agreement, in which case:
 - (i) if specific performance is obtained the Non-Defaulting Party may also seek damages for breach of this agreement; and
 - (ii) if specific performance is not obtained the Non-Defaulting Party may then terminate this agreement and may seek damages for breach of this agreement.

11.8 Beneficial title and risk

Beneficial title to and risk in the Assets:

- (a) remains solely with the Supplier until Completion; and
- (b) passes to **nbn** on and from Completion.

12. Contracts

12.1 Assignment and Assumption at Completion

With effect from Completion, the Supplier, subject to the Sale Order, assigns to **nbn** each of the Contracts that is capable of being assumed and assigned under applicable law.

12.2 Jeylabs IP Indemnity Rights

Without limiting clause 12.1, at Completion, the Supplier assigns to **nbn** the Jeylabs IP Indemnity Rights.

13. Contracts (excluding the Material Contracts and the Lease)

13.1 Application

This clause only applies in respect of Contracts that are not the Lease or Material Contracts.

13.2 Novation

- (a) The Supplier and **nbn** must use all reasonable endeavours to procure that each Contract is novated to **nbn** before Completion, conditional only on Completion occurring and using a novation agreement in the form attached as Attachment 2 (or such other form as the parties agree, acting reasonably).
- (b) If novation of any Contract has not occurred by Completion, the Supplier and **nbn** must use all reasonable endeavours to procure that it is novated to **nbn** as soon as practicable after Completion.

13.3 Benefit of Contracts

To the maximum extent permitted under each Contract, **nbn** is entitled to the benefit of each Contract with effect from Completion and the Supplier must in respect of each Contract from Completion unless and until the relevant Contract is novated to **nbn**:

- (a) account to **nbn** for any benefits received under that Contract as soon as reasonably practicable after receipt;
- (b) enter into all arrangements and do all other things reasonably requested by **nbn** to enable **nbn** to obtain the benefit of that Contract; and
- (c) give all assistance reasonably requested by **nbn** to enable **nbn** to enforce the rights of the Supplier under that Contract including exercising any right to terminate that Contract.

13.4 Obligations and liabilities under Contracts

- (a) With effect from Completion:
 - (i) **nbn** must, to the extent that it lawfully can, perform on behalf of the Supplier all obligations of the Supplier and discharge all liabilities of the Supplier under each Contract due to be performed or discharged after Completion;
 - (ii) if **nbn** cannot lawfully perform any obligation of the Supplier or discharge any liability of the Supplier under that Contract due to be performed or discharged following Completion then unless and until that Contract is novated to **nbn**:
 - A. the Supplier must, on request and at the expense of **nbn**, perform that obligation or discharge that liability in accordance with **nbn**'s reasonable directions; and
 - B. **nbn** must at its own expense do all things reasonably necessary to assist the Supplier to comply with clause 13.4(a)(ii)A.
- (b) Nothing in this agreement requires **nbn** to perform any obligation under any Contract which was due to be performed before Completion or results in **nbn** being liable for any act or omission by or on behalf of the Supplier in respect of any Contract before Completion, other than in respect of any obligation forming part of the Assumed Liabilities arising before Completion.

13.5 Exclusion of Contracts

If any Contract to which clause 13.2 applies has not been novated to **nbn** by the date which is 3 months after the Completion Date, either party may by notice to the other party elect that this clause 13.5 applies in respect of that Contract in which case:

- (a) the provisions of clauses 13.2, 13.3 and 13.4 will cease to apply to that Contract;
- (b) no party will be liable to the other in respect of the failure to secure novation, or assignment of the benefit, of that Contract to **nbn** or any subsequent termination of that Contract by the Supplier; and
- (c) clause 7 will not apply in respect of the Specified Subcontractor that is the counterparty to that Contract from the date which is 3 months after the Completion Date.

14. Employees

14.1 Offer of employment

nbn, or another **nbn** Group Member nominated by **nbn**, must make an offer of employment to all Employees and to the Key Individual Contractor which must be made in consultation with the Supplier and on or before the Employee Offer Date.

14.2 Terms of offer of employment

Each offer of employment made under clause 14.1 must:

- (a) be conditional on Completion occurring and expressed to take effect from the Effective Time;
- (b) be conditional on the Employee's employment with the Supplier or Seconddee Employer (as applicable) not ceasing before the Effective Time;
- (c) be on terms and conditions (including terms relating to superannuation) that are substantially similar to and, considered on an overall basis, no less favourable than, the terms and conditions of employment that applied to that Employee in connection with their employment with the Supplier or the Seconddee Employer (as applicable) immediately before the Effective Time;
- (d) provide that the Employee's continuous service with the Supplier or the Seconddee Employer (as applicable), or a predecessor of the Supplier or the Seconddee Employer (as applicable), (**Prior Service**) will be treated as service with **nbn** for the purposes of all service-related employment entitlements and otherwise the continuity of the Employee's service with the Supplier or the Seconddee Employer (as applicable) and **nbn** is deemed to be unbroken;
- (e) provide that:
 - (i) by accepting the offer of employment the Employee will be taken to resign from employment with the Supplier or the Seconddee Employer (as applicable) with effect from the Effective Time; and
 - (ii) the Employee appoints **nbn** as the Employee's agent for the purposes of notifying the Supplier and the Seconddee Employer (as applicable) of the resignation referred to in clause 14.2(e)(i); and
- (f) provide that the offer will lapse if it has not been accepted by the relevant Employee within the later of:
 - (i) 8 Business Days after the date of the offer or such longer period as may be requested by the Supplier and approved by **nbn** in writing (such approval not to be unreasonably withheld); and
 - (ii) any extended period agreed in writing between the Employee and **nbn**.

14.3 Changes in the period before Completion

Until Completion, the Supplier must promptly provide to **nbn**:

- (a) notice of the termination of employment of any Employee for any reason including details of the name, position, location and termination date of that Employee; and
- (b) notice of the commencement of employment of any person who becomes an Employee in accordance with clause 9.5 including accurate details of:
 - (i) the name, position, location and start date of that Employee;
 - (ii) the terms of employment of that Employee including all remuneration and other benefits payable during or upon termination of that employment or engagement; and
 - (iii) any other information reasonably requested by **nbn** in respect of that Employee to enable **nbn** to comply with its obligations under clause 14.1 and 14.2.

14.4 Acceptance of offer of employment

- (a) The Supplier must use, and must where applicable procure that the Seconded Employer uses, all reasonable endeavours to encourage each Employee to accept any offer of employment made by **nbn** including by providing **nbn** with reasonable access to the Employees for the purposes of encouraging acceptance of the offer.
- (b) **nbn** must notify the Supplier of each Employee who accepts an offer of employment made by **nbn** or the applicable **nbn** Group Member no later than 2 Business Days after the last day on which offers of employment to Employees lapse under clause 14.2(f).

14.5 Acceptance of resignation and release

With effect from the Effective Time, the Supplier must in respect of each Transferring Employee:

- (a) accept, or where applicable procure that the Seconded Employer accepts, the resignation of that Transferring Employee; and
- (b) release, or procure where applicable that the Seconded Employer releases, that Transferring Employee from employment with the Supplier or the Seconded Employer (as applicable), including any restraint or restriction which would otherwise prevent the Transferring Employee from working with **nbn** or any other person.

14.6 Supplier's payment obligations

On or before the Effective Time, the Supplier must pay, and where applicable must procure that the Seconded Employer pays, to or in respect of each Transferring Employee:

- (a) all amounts to which the Transferring Employee is entitled including wages, salary, allowances, superannuation contributions and commissions accrued or arising at the Effective Time (whether arising by law or under any Transitional Instrument, Modern Award, Enterprise Agreement, contract or arrangement) in relation to their employment by the Supplier or the Seconded Employer (as applicable) before the Effective Time; and
- (b) to the extent it has not already done so, all bonus payments which have fallen due for payment before the Effective Time,

but nothing in this clause 14.6 places any obligation on the Supplier or the Secondee Employer to make payment of the Employee Entitlements.

14.7 **nbn's payment obligations**

With effect from the Effective Time, **nbn** must pay to or in respect of each Transferring Employee as and when they fall due:

- (a) all wages, salary, allowances, superannuation contributions and commissions of that Transferring Employee after the Effective Time;
- (b) all annual leave, long service leave and personal/carer's leave of that Transferring Employee accruing after the Effective Time; and
- (c) all Employee Entitlements of that Transferring Employee,

on the basis that there has been a transfer of the Activities and Prior Service of each Transferring Employee with the Supplier or Secondee Employer (as applicable) is, for these purposes, taken to be service with **nbn**.

14.8 **Supplier's indemnity**

The Supplier indemnifies **nbn** against, and must pay to **nbn** on demand the amount of, any Indemnified Loss suffered or incurred by **nbn** arising out of or in connection with:

- (a) any Claim by any Transferring Employee for any amount to which the relevant Transferring Employee is entitled including wages, salary, allowances, all bonus payments which have fallen due for payment before the Effective Time, superannuation contributions and commissions in relation to their employment by the Supplier or the Secondee Employer (as applicable) before the Effective Time other than the Employee Entitlements; and
- (b) the termination of employment with the Supplier or the Secondee Employer (as applicable) of any Employee, other than Indemnified Losses arising as a direct result of a failure by **nbn** to comply with its obligations under clause 14.1 and clause 14.2.

14.9 **nbn's indemnity**

- (a) **nbn** indemnifies each of the Supplier and the Secondee Employer against, and must pay to the Supplier or the Secondee Employer (as applicable) on demand the amount of, any Indemnified Loss suffered or incurred by the Supplier arising out of or in connection with:
 - (i) any Claim by a Transferring Employee or the Key Individual Contractor in respect of any breach by **nbn** or any other **nbn** Group Member of its statutory, contractual or other legal obligations to a Transferring Employee or the Key Individual Contractor from the Effective Time; and
 - (ii) any offer of employment to an Employee made in accordance with clause 14.1 failing to be made or comply with the requirements of clause 14.2, including but not limited to any consequent impact on the Employee's entitlement to redundancy/severance pay or notice of termination or payment in lieu of notice of termination.
- (b) The Supplier holds the benefit of the indemnity in clause 14.9(a) on trust for the Secondee Employer and the provisions of this clause 14 may be enforced by the Supplier on behalf of and for the benefit of the Secondee Employer.

15. Other obligations following Completion

15.1 Access to Documentation and Materials

In addition to any other rights of access under this agreement, **nbn** must for a period of 7 years after Completion (or for any longer period required by law) retain all Documentation and Materials and make available to the Supplier and its Representatives on reasonable notice and at the expense of the Supplier any Documentation and Materials which are reasonably required:

- (a) to enable any Supplier Group Member to prepare accounts, Tax returns and other statutory returns or fulfil any other obligation relating wholly or partly to any period before Completion;
- (b) in connection with any audit, notice, demand, assessment, amended assessment, determination, return or other document issued by a Tax Authority or lodged, or to be lodged with a Tax Authority under a system of self-assessment in relation to the affairs of any Supplier Group Member relating wholly or partly to any period before Completion; or
- (c) in connection with the prosecution or defence of any Claim by or against any Supplier Group Member (but excluding any Claims by or against any **nbn** Group Member which do not arise under or in respect of this agreement),

provided that **nbn** is not required to comply with any request under this clause 15.1 to the extent that doing so may in the reasonable opinion of **nbn** result in a waiver of privilege in relation to any document or breach any obligation of confidentiality owed by **nbn** (in which case, **nbn** must use its reasonable endeavours to procure the consent of the person to whom the obligation of confidentiality is owed to disclosure of the relevant Documentation and Materials).

15.2 Access to Excluded Documentation and Materials

In addition to any other rights of access under this agreement the Supplier must for a period of 7 years after Completion (or for any longer period required by law) retain all Excluded Documentation and Materials remaining in its possession following Completion and make available to **nbn** on reasonable notice and at the expense of **nbn** any Excluded Documentation and Materials (other than the Excluded Documentation and Materials referred to in paragraphs (c) and (g) of the definition of Excluded Documentation and Materials) which are reasonably required:

- (a) to enable any **nbn** Group Member to prepare accounts, Tax returns and other statutory returns or fulfil any other obligation relating wholly or partly to any period after Completion;
- (b) in connection with any audit, notice, demand, assessment, amended assessment, determination, return or other document issued by a Tax Authority or lodged, or to be lodged with a Tax Authority under a system of self-assessment in relation to the affairs of any **nbn** Group Member relating wholly or partly to any period after Completion; or
- (c) in connection with the prosecution or defence of any Claim by or against any **nbn** Group Member (but excluding any Claims by or against any Supplier Group Member which do not arise under or in respect of this agreement),

provided that the Supplier is not required to comply with any request under this clause 15.2 to the extent that doing so is reasonably likely to result in a waiver of privilege in relation to any document or breach any obligation of confidentiality owed by the Supplier (in which case, the Supplier must use its reasonable endeavours to procure the consent of the person to whom

the obligation of confidentiality is owed to disclosure of the relevant Excluded Documentation and Materials).

15.3 Receivables

Any amount received by **nbn** after Completion on account of any Receivable must be paid by **nbn** to the Supplier by no later than the close of business on the expiry of the relevant Collection Period in which that amount was received by **nbn**.

16. Conditional Payment

16.1 Determination of Conditional Payment Amount

- (a) The Conditional Payment Amount (if any) must be paid by **nbn** to the Supplier within 5 Business Days after the Conditional Payment End Date.
- (b) The Conditional Payment Amount payable by **nbn** to the Supplier in accordance with clause 16.1(a) will an amount equal to:
 - (i) the absolute value of the dollar amount specified in cell F56 of the "Summary" tab of the Completion Statement; *less*
 - (ii) the amount (if any) payable, but unpaid, by the Supplier to **nbn** in respect of any Agreement Claims which have become Resolved Claims between Completion and the Conditional Payment End Date; *less*
 - (iii) the aggregate of the amount of any Unresolved Claims outstanding on the Conditional Payment End Date (**Unresolved Claims Amount**).

16.2 Unresolved Claims and determination of Additional Conditional Payment Amounts

- (a) If an Unresolved Claim outstanding on the Conditional Payment End Date subsequently becomes a Resolved Claim under which the amount (if any) payable by the Supplier to **nbn** is less than the amount claimed by **nbn** and included in the Unresolved Claims Amount, **nbn** must pay the difference (**Additional Conditional Payment Amount**) to the Supplier within 5 Business Days of the date that the relevant Unresolved Claim becomes a Resolved Claim.
- (b) If all of the Unresolved Claims outstanding on the Conditional Payment End Date have become Resolved Claims, **nbn** must pay the Supplier within 5 Business Days of the date that the final such Unresolved Claim becomes a Resolved Claim an amount (**Final Additional Conditional Payment Amount**) that is equal to the greater of zero and:
 - (i) the Unresolved Claims Amount; *less*
 - (ii) the aggregate of all Additional Conditional Payments paid by **nbn** to the Supplier in accordance with clause 16.2(a).
- (c) The maximum aggregate amount payable by **nbn** pursuant to this clause 16.2 is an amount equal to the Unresolved Claims Amount referred to in clause 16.1(b)(iii).

16.3 No obligation to pay

nbn is under no obligation to pay any amount in respect of the Conditional Payment Amount, each Additional Conditional Payment Amount (if any) and the Final Additional Conditional

Payment Amount (if any) unless and until the amount has been calculated and becomes payable in accordance with this clause 16 and clause 22.

17. Warranties

17.1 Warranties

The Supplier warrants to **nbn** that each Warranty is true and correct as at:

- (a) the date of execution of this agreement; and
- (b) the time immediately prior to Completion,

unless the Warranty is expressed to be given only at a particular time in which case it is given as at that time.

17.2 Warranties separate

Each Warranty is to be treated as a separate Warranty and is not limited by reference to any other Warranty or any other provision of this agreement.

17.3 Reliance

The parties acknowledge that **nbn** has entered into this agreement in reliance on the Warranties.

17.4 nbn acknowledgement

nbn acknowledges and agrees that:

- (a) at no time has any Supplier Group Member or any Representative of a Supplier Group Member made or given any representation or warranty other than the Warranties;
- (b) no Supplier Group Member, nor any of their Representatives, has made any representation or warranty (including the Warranties) as to the accuracy of, or the reasonableness of any assumptions underlying, any forecast, model, budget, estimate, projection, business plan, statement of opinion, statement of intention, forward-looking estimate or forward-looking statement (**Forward Looking Information**) to **nbn** or its Representatives before the date of this agreement, and **nbn** is not entering into this agreement in reliance on, and it may not rely on, any Forward Looking Information made or purporting to be made by or on behalf of any Supplier Group Member or their Representatives;
- (c) **nbn** is not entering into this agreement in reliance on any statement or information contained in, and may not rely on, any management presentations or any meetings with the Representatives of the Supplier;
- (d) without limiting any other paragraphs of this clause 17.4, other than the Warranties, no warranty, statements or representation have:
 - (i) induced or influenced **nbn** to enter into this agreement or any of its terms;
 - (ii) been relied on in any way as being accurate; and
 - (iii) been warranted or represented as being true or otherwise been taken into account as being important to **nbn**'s decision to enter into this agreement or to agree to any of its terms; and

- (e) the Assets are sold on an "as is, where is" basis and **nbn** has satisfied itself as to the condition, existence, location and the state of repair, of any of the Assets.

17.5 **nbn due diligence**

nbn acknowledges and agrees that:

- (a) **nbn** and its Representatives have had an opportunity to conduct due diligence investigations and evaluate the Assets and have reviewed the Due Diligence Materials;
- (b) **nbn** has made and has relied on their own searches, investigations and enquiries in respect of the Assets and their own evaluation of any material provided by the Supplier to **nbn** or their Representatives before the date of this agreement, including the Due Diligence Materials;
- (c) irrespective of whether or not the Due Diligence Materials were as full or exhaustive as **nbn** would have wished, it has nevertheless independently and without the benefit of any inducement, representation or warranty (other than the Warranties) from a Supplier Group Member or a Representative of a Supplier Group Member, determined to enter into this agreement;
- (d) the disclosures contained in the Due Diligence Materials are accepted by **nbn** and that, except as expressly provided in this agreement, no Supplier Group Member has made or makes any representation or warranty (other than the Warranties) as to the accuracy or completeness of those disclosures or that information;
- (e) except as expressly provided in this agreement, no Supplier Group Member nor any Representative of a Supplier Group Member owes or accepts any duty of care in relation to **nbn** in respect of any disclosures or the provision of any information as part of the transactions contemplated under this agreement;
- (f) **nbn** has some knowledge and understanding of the Assets (including as to their existence) as a result of **nbn** being the sole counterparty to the Supplier under the MESSA and, in that capacity but noting that **nbn** has not had an opportunity to do a physical audit of the Assets given the restrictions associated with the COVID-19 pandemic, having received some information from the Supplier in respect of the Assets in accordance with the Supplier's information sharing obligations under the MESSA; and
- (g) **nbn** has had the benefit of independent legal and financial advice relating to its proposed purchase of the Assets and the terms of this agreement.

17.6 **Exclusions**

nbn acknowledges and agrees that:

- (a) subject to any law to the contrary and except as expressly provided in this agreement, all terms, conditions, statements, representations and warranties (except the Warranties) whether express, implied, written, oral, collateral, statutory or otherwise, are excluded, and, to the maximum extent permitted by law, the Supplier disclaims all liability in relation to them (and to the extent that any terms and conditions of this type cannot be excluded then **nbn** irrevocably waives all rights and remedies that it may have in relation to, and releases the Supplier and each of its Representatives from any liability in respect of, any terms and conditions of this type); and
- (b) to the maximum permitted by law, **nbn** agrees not to make and waive any right it may have to make any Claim against a Supplier Group Member or any Representative of a Supplier Group Member under any provision of the

Corporations Act (including section 1041H of the Corporations Act), the *Competition and Consumer Act 2010* (Cth) (including sections 18, 20, 21, 22 and 29 of Schedule 2 (Australian Consumer Law) of the *Competition and Consumer Act 2010* (Cth)), the *Australian Securities and Investments Commission Act 2001* (Cth) or any similar provisions in the legislation of any State or Territory or the Commonwealth of Australia or in any other applicable jurisdiction.

17.7 Indemnity for breach of Warranty

Without limiting any other remedy available to **nbn**, the Supplier indemnifies **nbn** against, and must pay to **nbn** on demand:

- (a) the amount of, any Indemnified Loss suffered or incurred by **nbn** arising out of or in connection with the breach of any Warranty; and
- (b) an amount equal to, any additional Tax assessable on any **nbn** Group Member arising out of or in connection with the receipt by **nbn** of a payment under this clause 17.7 or otherwise arising out of or in connection with the breach of any Warranty.

17.8 Notification of Agreement Claims

If **nbn** becomes aware of any fact, matter or circumstance which is reasonably likely to result in an Agreement Claim by **nbn**, **nbn** must within 30 Business Days after becoming aware of that fact, matter or circumstance and the fact that it is reasonably likely to result in an Agreement Claim give the Supplier notice describing that fact, matter or circumstance in reasonable detail and stating the basis on which that fact, matter or circumstance may give rise to an Agreement Claim and an estimate of the amount of that Agreement Claim. Each notice given by **nbn** under this clause 17.8 must be accompanied by a copy of the Secured nbn-SCMS Email Data in accordance with clause 19.5(a)(iii)A.

17.9 nbn Warranties

nbn warrants to the Supplier that each **nbn** Warranty is true and correct as at the date of execution of this agreement and as at the time immediately prior to Completion.

17.10 Tax gross up

If a party (**First Party**) is liable to pay an amount to another party in respect of any Agreement Claim (**Second Party**) and that payment results in an increase in the Tax payable by the Second Party, then the payment must be grossed-up by the amount necessary to ensure that the net amount retained by the Second Party after deduction of or payment of that additional Tax equals the amount the Second Party would have retained had that additional Tax not been payable.

18. Limitations of liability

18.1 Disclosure

The Supplier is not liable in respect of a Warranty Claim if the fact, matter or circumstance giving rise to the Warranty Claim:

- (a) is disclosed or described in this agreement;
- (b) is fairly disclosed in the Due Diligence Materials;
- (c) would have been disclosed to **nbn** had **nbn** conducted searches:
 - (i) 2 Business Days before the date of this agreement of:

- A. the public records maintained by ASIC, IP Australia, the Register (as defined in the PPSA); and
 - B. the "whois" data base of domain name registrants in respect of each Domain Name; or
- (ii) in the name of the Supplier of the publicly searchable registers maintained by the Federal Court of Australia and the Supreme Courts of each State and Territory of Australia in each case on the date listed in Schedule 9 for the relevant court;
- (d) is provided for or otherwise taken into account in the Completion Statement; or
- (e) was actually known by the Specified Persons (**nbn**) before the date of this agreement.

For the avoidance of doubt, any disclosure (whether in the Due Diligence Materials or otherwise) which is expressed to relate only to particular Warranties or categories of Warranties shall not limit the scope of such disclosure which shall be considered to be disclosed or for all purposes of this agreement, and not merely for the Warranties specifically referred to. No matter or information set out in or referred to in the Due Diligence Materials relating to a possible breach or violation of any contract, law, regulation or order (or similar) is to be construed as an admission or indication that a breach or violation exists or has actually occurred.

18.2 Fair disclosure

For the purposes of clause 18.1(b), a fact, matter or circumstance is fairly disclosed if sufficient information has been disclosed so as to enable a reasonable and experienced purchaser of the Assets to identify the nature and scope of the relevant fact, matter or circumstance and to assess the impact of the relevant fact, matter or circumstance on the Assets and Activities.

18.3 Time limits for Agreement Claims and withdrawal of Agreement Claims

Despite any other provision of this Agreement, the Supplier is not liable in respect of any Agreement Claim and the Agreement Claim will be taken to be withdrawn and otherwise barred unless:

- (a) **nbn** gives the Supplier notice of the Agreement Claim in accordance with clause 17.8;
- (b) the notice provided by **nbn** in accordance with clause 17.8 is received by the Supplier by no later than 12 months after the Completion Date; and
- (c) within 3 months after the Supplier has received the notice, the Agreement Claim has been:
 - (i) admitted or satisfied by the Supplier;
 - (ii) withdrawn by **nbn**; or
 - (iii) referred to a court of competent jurisdiction by **nbn** properly issuing and validly serving legal proceedings against the Supplier in relation to the Agreement Claim.

18.4 Minimum amount for Warranty Claims

The Supplier is not liable in respect of a Warranty Claim unless the aggregate amount that **nbn** would be entitled to recover in relation to that Warranty Claim is at least \$30,000.

18.5 Threshold for Warranty Claims

The Supplier is not liable in respect of a Warranty Claim unless the aggregate amount that **nbn** would be entitled to recover, but for this clause 18.5, in relation to all Warranty Claims that satisfy clause 18.4 is at least \$300,000, in which case the Supplier is liable for the whole of that amount and not merely the excess.

18.6 Other limitations of liability

No Agreement Claim may be made, and the Supplier is not liable in respect of any Agreement Claim, to the extent that:

- (a) the fact, matter or circumstance giving rise to the Agreement Claim is provided for, accrued, reserved or allowed for (including in each instance by way of offset) in the Completion Statement;
- (b) the loss or damage giving rise to the Agreement Claim is recovered by **nbn** under another Agreement Claim or is made good or otherwise compensated for without cost to **nbn**;
- (c) the loss or damage giving rise to the Agreement Claim is recovered by any **nbn** Group Member under any contract of insurance or is made good or otherwise compensated for without cost to any **nbn** Group Member;
- (d) the fact, matter or circumstance giving rise to the Agreement Claim gives rise to any Tax benefit (including the reduction of or extinguishing of any current or future Tax liability) or any other savings or net quantifiable financial benefit to any **nbn** Group Member;
- (e) the Agreement Claim arises out of any voluntary act, omission or transaction carried out after Completion by or on behalf of an **nbn** Group Member;
- (f) the Agreement Claim amount is increased as a result of the failure of an **nbn** Group Member to take reasonable steps to mitigate its losses to the maximum possible extent;
- (g) the Agreement Claim arises from any introduction of or change in any legislation or regulation or other law, or judicial or administrative interpretation of the law or any practice or policy of a Regulatory Authority after the date of this agreement (whether or not retrospective in effect);
- (h) the Agreement Claim arises out of any change after Completion in the accounting policies or principles applied by any **nbn** Group Member;
- (i) the Agreement Claim arises out of anything done or omitted to be done in accordance with the terms of this agreement or with the prior written approval of **nbn**;
- (j) the amount of the Agreement Claim is increased as a result of the failure of **nbn** to give notice of any fact matter or circumstance relating to the Agreement Claim within the time period referred to in clause 17.8;
- (k) the Agreement Claim arises from a cessation of, or significant change in, the nature of the Activities after Completion undertaken by or at the direction of **nbn**; or
- (l) the Agreement Claim could only have been avoided by a Supplier Group Member breaching its obligations at law or under this agreement.

18.7 Maximum recovery

The maximum aggregate amount recoverable by **nbn** from the Supplier in relation to all Agreement Claims is \$3,630,000.

18.8 Rights against third parties

If a Supplier Group Member has made a payment to **nbn** in relation to any Agreement Claim and any **nbn** Group Member has or subsequently obtains a right to recover an amount from any person other than a Supplier Group Member in connection with the fact, matter or circumstance that gave rise to that Agreement Claim, **nbn** must:

- (a) promptly notify the Supplier of that right of recovery and provide all information in relation to the circumstances giving rise to that right as the Supplier may reasonably require; and
- (b) take or procure that the relevant **nbn** Group Member takes all reasonable steps to enforce that right of recovery.

18.9 Reimbursement of benefits subsequently received

If the Supplier has made a payment to an **nbn** Group Member in respect of an Agreement Claim (**Claim Amount**) and, after that payment is made, any **nbn** Group Member receives any payment, benefit or credit (including any benefit in relation to Tax) by reason of the fact, matter or circumstance to which the Claim relates (**Recovery Amount**), the **nbn** Group Member must as soon as reasonably practicable repay to the Supplier an amount equal to the lesser of the Claim Amount and the Recovery Amount less:

- (a) all reasonable costs incurred by any **nbn** Group Member in recovering the Recovery Amount; and
- (b) any Tax payable by any **nbn** Group Member as a result of receiving the Recovery Amount.

18.10 Mitigation

Nothing in this agreement relieves **nbn** from any duty at law to mitigate any loss or damage that it may suffer or incur as a result of any breach of this agreement (including a breach of any Warranty) or any matter subject to indemnification in this agreement. Without prejudice or limitation to the foregoing, **nbn** shall take, and shall procure that each **nbn** Group Member shall take, all reasonable steps to avoid or mitigate any loss or damage in respect of which a Claim is or is to be made.

18.11 Liability of the Supplier to nbn

To the extent that **nbn**'s right to make any Claim under or in connection with this agreement is limited or excluded by this clause 18, the Claim against and the liability of the Supplier Group Member is, to the extent permitted by law, absolutely barred and **nbn** must not make such a claim against any Supplier Group Member but only to the extent of such limitation or exclusion.

18.12 Exclusion of certain losses

No party is liable to any other party for any loss or damage resulting from a breach of this agreement (including a breach of any Warranty):

- (a) which does not arise naturally or in the usual course of things from that breach; or
- (b) which constitutes, or arises from or in connection with, a loss of revenue, profit or opportunity, loss of goodwill or loss of business reputation, even if that loss arises naturally or in the usual course of things from that breach,

except where this agreement specifically provides that that type of loss or damage is recoverable.

18.13 No action against officers and employees

nbn waives all rights and Claims that it may have personally against the current and former officers and employees of any Supplier Group Member in relation to any matter arising directly or indirectly in connection with the transactions contemplated by this agreement. The parties acknowledge and agree that:

- (a) the Supplier has sought and obtained this waiver as agent for and on behalf of each Supplier Group Member's respective current and former officers and employees and holds the benefit of this clause 18.13 as trustee for them; and
- (b) the provisions of this clause 18.13 may be enforced by the Supplier on behalf of and for the benefit of each Supplier Group Member's respective current and former officers and employees and those persons may plead this clause 18.13 in answer to any Claim made by an **nbn** Group Member against them.

18.14 No double recovery

No party is entitled to recover any loss or liability or obtain payment, reimbursement, restitution or indemnity more than once in respect of any one loss, shortfall, deficiency or other set of circumstances which gives rise to more than one Claim.

18.15 Circumstances where limitations do not apply

None of the limitations in clause 18 apply to any Claim to the extent that it arises out of, or is increased as a result of any fraud, wilful default or wilful concealment by the Supplier or any of its Representatives.

19. Confidentiality

19.1 No announcement or other disclosure of transaction

Except as permitted by clause 19.2 the Supplier and **nbn** must keep confidential, and must procure that each of their respective Representatives keeps confidential, the terms of this agreement, all negotiations between the parties in relation to the subject matter of this agreement and all other information given to it under this agreement.

19.2 Permitted disclosure

Nothing in this agreement prevents a person from disclosing matters referred to in clause 19.1:

- (a) if disclosure is required to be made by law or the rules of a recognised stock or securities exchange and the party whose obligation it is to keep matters confidential or procure that those matters are kept confidential:
 - (i) has not through any voluntary act or omission (other than the execution of this agreement) caused the disclosure obligation to arise; and
 - (ii) has before disclosure is made notified the other party of the requirement to disclose and, where the relevant law or rules permit and where practicable to do so, given the other party a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;

- (b) if disclosure is made by way of a written announcement the terms of which have been agreed in writing by **nbn** and the Supplier prior to the making of the announcement;
- (c) if disclosure is required in connection with the Sale Order, including the filing of a motion with the Bankruptcy Court seeking approval of the Sale Order;
- (d) if disclosure is reasonably required to enable a party to perform its obligations under this agreement;
- (e) to any professional adviser of a party who has been retained to advise in relation to the transactions contemplated by this agreement or to the auditor of a party, provided that the professional adviser or auditor is under a similar obligation to keep the information confidential;
- (f) to any financier who has made a bona fide proposal to provide finance to a party in relation to the transactions contemplated by this agreement;
- (g) with the prior written approval of each party other than the party whose obligation it is to keep those matters confidential or procure that those matters are kept confidential;
- (h) in relation to **nbn** and its Representatives:
 - (i) to any Australian Federal Government Minister or their government department on the written instruction or request of either of **nbn**'s Shareholder Ministers; or
 - (ii) on the written instruction or request of either of **nbn**'s Shareholder Ministers or their government departments, by publishing key information in respect this agreement including the Supplier's name, subject matter, term and value of the agreement; or
- (i) where the matter has come into the public domain otherwise than as a result of a breach by any party of this agreement.

19.3 No use or disclosure of Confidential Information

The Supplier must not at any time after Completion use or disclose to any person other than **nbn** and its Representatives any Confidential Information except if such use or disclosure:

- (a) is required by the rules of a recognised stock or securities exchange and the Supplier:
 - (i) has not through any voluntary act or omission (other than the execution of this agreement) caused the disclosure obligation to arise; and
 - (ii) has before disclosure is made notified **nbn** of the requirement to disclose and, where the relevant law or rules permit and where practicable to do so, given **nbn** a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;
- (b) is required by law;
- (c) is with the prior written approval of **nbn**;
- (d) is required for the purposes of complying with a provision of this agreement; or

- (e) is required for a Supplier Group Member (in their sole and absolute discretion) to bring, prosecute, avoid, dispute, resist, defend, appeal, compromise or mitigate any Claim, action, demand, proceeding or other legal action, provided that:
 - (i) use or disclosure is made on the condition that the relevant Supplier Group Member is subject to equivalent confidentiality obligations as are imposed on the Supplier under this clause 19;
 - (ii) the Supplier uses all reasonable endeavours to notify **nbn** of its intention to make such use or disclosure prior to the disclosure; and
 - (iii) the Supplier must not disclose any Confidential Information to SpeedCast Australia Pty Ltd ABN 28 159 524 553 or any of its Representatives.

19.4 Destruction of copies of Confidential Information

- (a) Subject to clause 19.4(b), the Supplier must, without otherwise limiting any obligation of the Supplier to deliver copies of the Documentation and Materials to **nbn** pursuant to this agreement:
 - (i) delete or destroy, or procure the deletion or destruction of, any copies of Confidential Information that is held by the Supplier or its Representatives or contractors or has been entered into a computer, database or other electronic means of data or any other information storage medium by or on behalf of the Supplier (whether or not it was created by the Supplier or its Representatives or contractors); and
 - (ii) confirm in writing to **nbn** that all of the Confidential Information required to be destroyed or deleted pursuant to this clause 19.4 has been so destroyed or deleted and that if any further Confidential Information required to be destroyed or deleted under this clause is later found, the Supplier will, and will procure that its Representatives and contractors (excluding any person who is or will become an **nbn** Representative on Completion and any counterparty to a Contract), return, destroy or delete (as appropriate) the relevant Confidential Information.
- (b) Clause 19.4(a) does not apply to any Confidential Information:
 - (i) that will only be accessible to **nbn** Representatives following Completion;
 - (ii) to the extent that it must be retained by any Supplier Representative that is a professional adviser pursuant to any law or in accordance with applicable professional conduct rules or industry standard record keeping practices applying to that profession;
 - (iii) that is Excluded Documentation and Materials; or
 - (iv) that the Supplier is required to deliver to **nbn** pursuant to this agreement, but which the Supplier has not yet delivered to **nbn**.

19.5 **nbn-SCMS Email Data**

- (a) Without limiting **nbn**'s obligations under clause 15.1, **nbn** must for a period of 18 months after Completion:
 - (i) retain in a confidential and secured data storage facility the encrypted and password protected copy of the **nbn-SCMS Email Data** delivered by the Supplier to **nbn** at Completion under step 1(g) of clause 11.2 (**Secured nbn-SCMS Email Data**) and must not destroy, delete,

damage, alter, access or otherwise tamper with the Secured nbn-SCMS Email Data;

- (ii) ensure that the Secured nbn-SCMS Email Data is only accessible by the General Counsel of **nbn** or persons acting strictly in accordance with his or her directions in respect of such access; and
- (iii) without the need for any other notice, requirement, investigation or authority, deliver to the Supplier a copy of the Secured nbn-SCMS Email Data:
 - A. at the same time that **nbn** gives the Supplier each notice of any Agreement Claim in accordance with clause 17.8; and
 - B. no later than 3 Business Days after the date on which the Supplier notifies **nbn** in writing from time to time that it:
 - 1) has received a written Claim from any third party in connection with, or otherwise related to, the Assets or the Activities; or
 - 2) seeks to bring a Claim in connection with, or otherwise related to, the Activities against any third party that is not a Transferring Employee, the Key Individual Contractor or a party to a Contract that is novated (or, in the case of the Lease, assigned) to **nbn** pursuant to this agreement.

- (b) The Secured nbn-SCMS Email Data is Confidential Information for the purposes of clause 19.3 and the Supplier must return the Secured **nbn**-SCMS Email Data to **nbn** (and delete or destroy each copy of the Secured nbn-SCMS Email Data provided to it by **nbn** under clause 19.5(a)(iii)) no later than 3 Business Days after the date on which the relevant Agreement Claim or Claim (as applicable) which triggered the delivery by **nbn** to the Supplier of the relevant copy of the Secured nbn-SCMS Email Data is:

- (i) settled between the parties to the Agreement Claim or Claim (as applicable);
- (ii) withdrawn by **nbn** or the person making the Claim (as applicable); or
- (iii) finally determined by a court, or applicable courts of appeal from such courts, of competent jurisdiction,

and must confirm in writing to **nbn** as soon as practicable after such deletion or destruction that all of the Secured nbn-SCMS Email Data required to be destroyed or deleted pursuant to this clause 19.5(b) has been so destroyed or deleted.

19.6 PPSA confidentiality and waiver

- (a) Without limiting any other provision in this clause 19, if this agreement creates, gives rise to, or provides for, a Security Interest, each party agrees that, to the extent permitted by law:
 - (i) it will not disclose information of the kind mentioned in section 275(1) of the PPSA in response to a request made pursuant to that section, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA;

- (ii) nothing in this agreement is to be construed as constituting the consent of a party to the disclosure of information for the purpose of section 275(7) of the PPSA; and
 - (iii) it will not authorise the disclosure of information under section 275(7)(c) of the PPSA or request information under section 275(7)(d) of the PPSA (as applicable).
- (b) If a party is a grantor in relation to a Security Interest created or arising under, or provided for in, this agreement, it waives its right under section 157 of the PPSA to receive a notice of any verification statement relating to the Security Interest.

20. Non disparagement

On and from the date of this agreement, neither party will, in any communication concerning the MESSA or this agreement, deliberately or maliciously disparage or injure the reputation of the other party or any of its Representatives.

21. Termination

21.1 Termination by nbn

nbn may terminate this agreement at any time before Completion in accordance with clause 2.8, clause 8.8 or clause 11.7, but is not entitled to terminate or rescind this agreement for any other reason.

21.2 Termination by Supplier

The Supplier may terminate this agreement at any time before Completion:

- (a) in accordance with clause 2.8 or clause 11.7; or
- (b) by notice to **nbn** if there is a breach by **nbn** of the **nbn** Warranty set out in paragraph 1.4 of Schedule 6,

but is not entitled to terminate or rescind this agreement for any other reason (including if there is a breach of any other **nbn** Warranty before Completion).

21.3 Effect of termination

If this agreement is terminated then:

- (a) subject to clause 21.3(b), each party is released from its obligations and liabilities under this agreement and the provisions of this agreement will cease to have effect, except for the provisions of clauses 1, 19.1 and 19.2, this clause 21 and clauses 23 to 27 which will survive termination;
- (b) each party retains the rights it has against the others in respect of any breach of this agreement (or the MESSA) occurring before termination; and
- (c) **nbn** must return to the Supplier all Due Diligence Materials in accordance with the terms of the Confidentiality Agreement.

22. Payments

22.1 Direction

Any reference in this agreement to a payment to any party includes payment to another person at the direction of that party.

22.2 Method of payment

Payment of any amount due under this agreement by any party must be made by the paying party to the recipient party:

- (a) by electronic funds transfer to an account with an Australian bank specified by the recipient party to the paying party (including such details as the paying party may reasonably require) at least 5 Business Days before the due date for payment;
- (b) by unendorsed bank cheque drawn on an Australian bank or other immediately available funds; or
- (c) in any other manner reasonably required by the recipient party in writing.

22.3 Invoice

- (a) The Supplier must provide a valid GST invoice to **nbn** in respect of the Completion Payment and any other amounts payable to the Supplier under this agreement no later than 5 Business Days prior to the expected payment date.
- (b) **nbn** is under no obligation to pay any amount to the Supplier under this agreement unless and until the Supplier provides a valid GST invoice to **nbn** in a form reasonably acceptable to **nbn**.
- (c) The parties agree that if the Supplier has not provided **nbn** with a valid GST invoice, in a form reasonably acceptable to **nbn**, in respect of the Completion Payment by no later than 5 Business Days prior to the expected date for Completion, Completion will be delayed until the date falling 5 Business Days after the date on which **nbn** receives a valid GST invoice, in a form reasonably acceptable to **nbn**, in respect of the Completion Payment.

22.4 No deduction

Any payment to be made under this agreement must be made free and clear of any set-off, deduction or withholding, except as expressly provided by this agreement or where that set-off, deduction or withholding is required or compelled by law.

22.5 Gross up for withholdings

Any person who is required or compelled by law to make any deduction or withholding from any amount payable under this agreement must, to the extent permitted by law, pay to the payee an additional amount sufficient to ensure that the amount received by the payee equals the full amount that would have been received by the payee, if that deduction or withholding had not been required or compelled.

22.6 Default interest

If any party (**Payor**) fails to make a payment to any other party (**Payee**) under this agreement on or before the due date for payment, then, without limiting any other remedy of the Payee, the Payor must pay to the Payee on demand interest on the due amount calculated at the rate which is 2% above the Standard Rate, with interest to accrue from the due date to the day

immediately before the actual date of payment, calculated daily on the basis of a 365 day year and capitalised monthly.

22.7 Completion Payment to be paid in USD

The Completion Payment must be paid in United States Dollars and, for the purposes of calculating the United States Dollar amount of the Completion Payment, any Australian Dollar amounts will be translated into United States Dollars in accordance with the rules set out in the Completion Statement.

23. GST

23.1 Interpretation

nbn and the Supplier agree that:

- (a) except where the context suggests otherwise, terms used in this clause 23 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) if part of a supply is a separate supply under the GST Act (including for GST attribution purposes), that part is a separate supply for the purpose of this clause;
- (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 23; and
- (d) all consideration provided by **nbn** is exclusive of GST unless it is specifically expressed to be GST inclusive.

23.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

23.3 GST payable

If GST is payable in relation to a supply made under or in connection with this agreement, then:

- (a) any party (**Recipient**) that is required to provide consideration to the other party (**Provider**) for that supply must pay an additional amount to the Provider equal to the amount of that GST at the same times as other consideration is to be provided for that supply; and
- (b) the Provider must provide a tax invoice to the Recipient no later than 5 Business Days after the day on which any consideration is to be first provided for that supply.

23.4 Variation

If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 23.3 so that:

- (a) a further amount of GST is payable in relation to the supply; or
- (b) a refund or credit of GST is obtained in relation to the supply,

then the Provider must provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 23.3.

23.5 Input tax credits

nbn covenants with the Supplier that **nbn** will not seek to assert that **nbn** is entitled to any input tax credits in consequence of any acquisition made under or in connection with this agreement except to the extent that **nbn** pays an additional amount to the Supplier under clause 23.3 in respect of that acquisition.

24. Notices

- (a) A notice, consent or other communication under this agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email, using the details for the party set out below (or as otherwise notified by that party to the other party from time to time, on at least 5 Business Days' notice):

nbn

Name: **nbn co limited**
Address: Level 13, 100 Mount Street, North Sydney NSW 2060
Email: justinforsell@nbnco.com.au
with a copy to marielebras@nbnco.com.au
Attention: Chief Legal Counsel
with a copy to General Counsel – Regional Development & Engagement

Supplier

Name: Speedcast Managed Services Pty Ltd
Address: Unit 4F, Level 1, Lakes Activities Park, 12 Lord Street, Botany NSW 2019
Email: dominic.gyngell@speedcast.com
Attention: Dominic Gyngell, General Counsel

- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
- (i) if it is delivered by hand or courier service, when it has been left at the addressee's address;
 - (ii) if it is sent by mail, three Business Days after it is posted;
 - (iii) if it is sent by email by 5.00 pm on a Business Day, on that Business Day, or if it is sent by email after 5.00 pm or on a day that is not a Business Day, on the next Business Day; and
 - (iv) if it is sent by fax, at the time shown on the transmission confirmation report produced by the fax machine from which it was sent.

25. Entire agreement

- (a) To the extent permitted by law, this agreement constitutes the entire agreement between the parties in relation to its subject matter including the transfer of the Activities and the Assets and supersedes all previous agreements and understandings between the parties in relation to its subject matter.
- (b) On and from Completion, the Confidentiality Agreement will cease to apply in respect of the Confidential Information which is the subject of the Confidentiality Agreement, it being acknowledged that this information will be confidential to **nb** following Completion.

26. General

26.1 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

26.2 Assignment

A party cannot assign or otherwise transfer any of its rights under this agreement without the prior consent of the other party.

26.3 Consents

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

26.4 Costs

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with:

- (a) negotiating, preparing, executing and performing this agreement; and
- (b) any subsequent consent, agreement, approval, waiver or amendment relating to this agreement.

26.5 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

26.6 Further acts and documents

Each party must promptly do, and procure that its employees and agents promptly do, all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

26.7 No merger

A party's rights and obligations do not merge on completion of any transaction under this agreement.

26.8 Severance

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

26.9 Stamp duties

nbn:

- (a) must pay all stamp duties and other duties, together with any related fees, penalties, fines, interest or statutory charges, and similar Taxes in respect of this agreement, the performance of this agreement and each transaction effected or contemplated by or made under this agreement; and
- (b) indemnifies the Supplier against, and must pay to the Supplier on demand the amount of, any Indemnified Loss suffered or incurred by the Supplier arising out of or in connection with any delay or failure to comply with clause 26.9(a).

26.10 Operation of indemnities

Without limiting any other provision of this agreement, the parties agree that:

- (a) each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement; and
- (b) it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.

26.11 Waivers

Without limiting any other provision of this agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement;
- (b) a waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

27. Governing law and jurisdiction

27.1 Governing law and jurisdiction

- (a) This agreement is governed by the law applying in New South Wales, Australia.
- (b) Each party irrevocably submits to the jurisdiction of the Bankruptcy Court with respect to any proceedings that may be brought at any time relating to this agreement and waives any objection it may have now or in the future to the venue of any proceedings, and any Claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 27.1.

27.2 Arbitration

Without limiting clause 8.4, if and when a dispute, controversy or claim arises out of, relating to or in connection with this agreement, including any questions regarding its existence, validity or termination, the parties may agree to resolve such dispute, controversy or claim by arbitration in accordance with the ACICA Expedited Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English.

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Schedule 1 Plant and Equipment

Refer to document number 10.11.05 in the Data Room.

Schedule 2 Domain Names

| Domain Name | Registrant | Registrar | Renewal date |
|--------------------|-------------------|---------------------|---------------------|
| nbnbss.com.au | Supplier | NetRegistry Pty Ltd | 23 February 2023 |
| nbnbss.net | Supplier | NetRegistry Pty Ltd | 14 August 2024 |
| nbncoess.com.au | Supplier | NetRegistry Pty Ltd | 21 August 2021 |
| nbness.com | Supplier | NetRegistry Pty Ltd | 21 August 2021 |
| nbness.com.au | Supplier | NetRegistry Pty Ltd | 21 August 2021 |
| scmssdp.com | Supplier | NetRegistry Pty Ltd | 10 April 2021 |
| speedcastms.com | Supplier | NetRegistry Pty Ltd | 7 February 2021 |
| testnbnbss.com.au | Supplier | NetRegistry Pty Ltd | 12 June 2021 |
| testnbnbss.net | Supplier | NetRegistry Pty Ltd | 7 May 2021 |

Schedule 3 Contracts (Other than the Lease)

Part 1 – Contracts

The contracts specified as such in document number 10.11.02 in the Data Room.

Part 2 – Material Contracts

The contracts specified as such in document number 10.11.02 in the Data Room.

Schedule 4 Employees

Part 1 – Employees

The employees specified as such in document number 10.11.02 in the Data Room.

Part 2 – Seconded

The person specified as such in document number 10.11.02 in the Data Room.

Part 3 – Excluded Employees

The employees specified as such in document number 10.11.02 in the Data Room.

Schedule 5 Warranties

1. The Supplier

1.1 Capacity and authorisation

The Supplier:

- (a) is a company properly incorporated and validly existing under the laws of Australia; and
- (b) has the legal right and full corporate power and capacity to:
 - (i) execute and deliver this agreement; and
 - (ii) subject to satisfaction of the Conditions, perform its obligations under this agreement and each transaction effected by or made under this agreement; and
- (c) has obtained all necessary authorisations and consents and taken all other actions necessary to enable it execute and deliver this agreement.

1.2 Valid obligations

Subject to Bankruptcy Court approval, this agreement constitutes (or will when executed constitute) valid legal and binding obligations of the Supplier and is enforceable against the Supplier in accordance with its terms, except that:

- (a) their enforceability may be limited by applicable bankruptcy or similar laws affecting the enforcement of creditors' rights generally, including the Chapter 11 Proceedings; and
- (b) the enforcement is subject to principles of equity (regardless of whether their enforcement is considered in a proceeding in equity or at law), including:
 - (i) the possible unavailability of specific performance, injunctive relief or any other equitable remedy; and
 - (ii) concepts of materiality, reasonableness, good faith and fair dealing.

1.3 Breach or default

The execution, delivery and performance of this agreement by the Supplier does not result in a breach of or constitute a default under:

- (a) any agreement to which the Supplier is party;
- (b) any provision of the constitution of the Supplier; or
- (c) any law or regulation or any order, judgment or determination of any court or Regulatory Authority by which the Supplier is bound.

2. Assets

2.1 Ownership

The Supplier is the sole legal and beneficial owner of the Assets and, at Completion, will have complete and unrestricted power and authority to sell the Assets to **nbn**.

3. Contracts

3.1 Disclosure of certain contracts

True and complete copies of each of the following have been disclosed to **nbn** in the Due Diligence Materials:

- (a) each Material Contract and the Lease; and
- (b) all documents entered into or issued on or before the date of this agreement varying or otherwise affecting the terms of any Material Contract or the Lease.

4. Specified Subcontractors

The list of Specified Subcontractors in Schedule 8 includes all counterparties to the Contracts which may be subject to an Avoidance Action and who are material vendors or service providers used in connection with the Activities such that, if an Avoidance Action was brought by the Supplier against them, it may result in a material adverse impact on the Activities.

5. Intellectual property

5.1 Registered Intellectual Property

Schedule 2 sets out accurate details of all Intellectual Property that is registered in the name of the Supplier and all registration, application and other fees due for payment in relation to that Intellectual Property have been paid in full.

5.2 Unregistered Intellectual Property

There is no commercially significant unregistered Intellectual Property which is necessary for the conduct of the Activities as at Completion.

5.3 Ownership and use of Intellectual Property

The Supplier is the sole legal and beneficial owner of the Intellectual Property and:

- (a) no person other than the Supplier has any right to use the Intellectual Property and, so far as the Supplier is aware, there has been no unauthorised use by any other person of the Intellectual Property; and
- (b) nothing has been done or omitted to be done by the Supplier and, so far as the Supplier is aware, no other circumstance exists that may affect the validity or ownership of the Intellectual Property.

5.4 Ownership and use of Jeylabs Intellectual Property

- (a) All of the Intellectual Property Rights in the Materials assigned to the Supplier under the Jeylabs Contract (Jeylabs Materials) have been validly assigned by the Supplier to nbn under the MESSA.
- (b) So far as the Supplier is aware, all software components within EWSP (as that term is defined in the MESSA) that require a commercial licence have had the commercial licence paid in full and no further payment is required to be made in respect of their ongoing use within the EWSP.

5.5 Intellectual Property Licences

Schedule 3 sets out complete and accurate details of all material Intellectual Property Licences to which the Supplier is a party and, in relation to each of those Intellectual Property Licences:

- (a) as far as the Supplier is aware, the Intellectual Property Licence is valid, binding and enforceable;
- (b) the Supplier is not in breach of the Intellectual Property Licence;
- (c) the Supplier has not received any notice alleging breach of the Intellectual Property Licence;
- (d) the licensor under that Intellectual Property Licence has not given any written notice terminating or purporting to or advising of an intention to terminate that Intellectual Property Licence and, as far as the Supplier, is aware no circumstance exists that may entitle the licensor to do so; and
- (e) as far as the Supplier is aware, no circumstance exists that may affect the validity or ownership of the Intellectual Property Rights the subject of that Intellectual Property Licence or use of those Intellectual Property Rights in connection with the Activities.

5.6 Infringement of third party rights

As far as the Supplier is aware, none of the Activities infringes or is likely to infringe any Intellectual Property Rights of any third party and, as far as the Supplier is aware, no Claim has been made against the Supplier in respect of any alleged infringement.

5.7 Assignments

Each contractor engaged by the Supplier for the purpose of undertaking any activity that has given rise to or may give rise to the creation of any Intellectual Property Rights used in connection with the Activities has executed an assignment of that Intellectual Property Right to the Supplier and any employee of the Supplier who has devised any invention in connection with the Activities which is or may become the subject of any application for a patent or registered design in Australia has executed an assignment of that invention, and the right to be granted a patent in relation to the invention, to the Supplier.

5.8 Supplier Group

No Supplier Group Member (other than the Supplier) owns any Intellectual Property Rights which are necessary for the Activities.

6. Disclosure

6.1 Accuracy of Due Diligence Materials

So far as the Supplier is aware, all information contained in the Due Diligence Materials (except for any information or opinion consisting of any forecast, budget, estimate, projection, or statement of intention), when read as a whole, is true and accurate as at the date of this agreement.

6.2 Completeness of Due Diligence Materials

- (a) The Due Diligence Materials have been compiled in good faith and with reasonable care and diligence for the purpose of fairly disclosing material information about the Activities and the Assets.

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- (b) The Supplier has not deliberately omitted from the Due Diligence Materials any information which would be material to **nbn**'s willingness to proceed with the purchase of the Assets.

Schedule 6 nbn Warranties

1. nbn

1.1 Capacity and authorisation

nbn:

- (a) is a company properly incorporated and validly existing under the laws of Australia; and
- (b) has the legal right and full corporate power and capacity to:
 - (i) execute and deliver this agreement; and
 - (ii) perform its obligations under this agreement and each transaction effected by or made under this agreement,

and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so.

1.2 Valid obligations

This agreement constitutes (or will when executed constitute) valid legal and binding obligations of **nbn** and is enforceable against **nbn** in accordance with its terms.

1.3 Breach or default

The execution, delivery and performance of this agreement by **nbn** does not and will not result in a breach of or constitute a default under:

- (a) any agreement to which **nbn** is party;
- (b) any provision of the constitution of **nbn**; or
- (c) any law or regulation or any order, judgment or determination of any court or Regulatory Authority by which **nbn** is bound.

1.4 Solvency

None of the following events has occurred in relation to **nbn**:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of **nbn** or any of its assets or anyone else is appointed who (whether or not as agent for **nbn**) is in possession, or has control, of any of **nbn**'s assets for the purpose of enforcing an Encumbrance;
- (b) an event occurs that gives any person the right to seek an appointment referred to in paragraph (a);
- (c) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of **nbn** or an event occurs that would give any person the right to make an application of this type;
- (d) **nbn** proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them;

- (e) **nbn** is declared or taken under any applicable law to be insolvent or **nbn**'s board of directors resolves that **nbn** is, or is likely to become at some future time, insolvent; or
- (f) any person in whose favour **nbn** has granted any Encumbrance becomes entitled to enforce that Encumbrance or any floating charge under that Encumbrance crystallises; or
- (g) any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (f).

Schedule 7 Allocation of consideration for the sale of the Assets

| Asset | Amount \$ |
|--|--|
| Plant and Equipment | 230,242, as adjusted pursuant to the Completion Statement |
| Inventory | 1 |
| Documentation and Materials | 1 |
| Right to be registered as proprietor of the Domain Names | 1 |
| Right to the goods and services to be supplied to the Activities after Completion and the other benefits to be received by the Activities after Completion for which the Supplier has paid before Completion | 1 |
| Benefit of the Contracts (other than the Lease) and the Jeylabs IP Indemnity Rights | The balance of the consideration for the sale of the Assets pursuant to clause 4.1 |
| Benefit of the Lease | 1 |
| Authorisations held by the Supplier and used by the Supplier in connection with the operation of the Activities to the extent capable of being transferred | 1 |
| Benefit of all rights and Claims that the Supplier has against any third party at Completion under any warranty, indemnity, guarantee or other arrangement relating to any other Asset | 1 |
| Intellectual Property | 1 |

Schedule 8 Specified Subcontractors

| Vendor | Country |
|--|----------------|
| APA Olsen Pty Ltd | AUSTRALIA |
| Apcom Australia Pty Ltd | AUSTRALIA |
| Gilat Satellite Networks Australia Pty Ltd | AUSTRALIA |
| Gilat Satellite Networks Ltd | ISRAEL |
| Jones Lang Lasalle (Vic) Pty Ltd | AUSTRALIA |
| Komputer Kraft Consulting Pty Ltd | AUSTRALIA |
| Meta PM Pty Ltd | AUSTRALIA |
| SofTel Systems Pty Ltd | AUSTRALIA |
| Talent International (VIC) Pty Ltd | AUSTRALIA |
| Transpara International LLC | USA |
| UNICO ENTERPRISE SERVICES PTY LTD | AUSTRALIA |

Schedule 9 Search Dates

| Court | Date searched |
|--|----------------------|
| Federal Court of Australia | 28 June 2020 |
| Supreme Court of Victoria | 26 June 2020 |
| Supreme Court of New South Wales | 29 June 2020 |
| Supreme Court of South Australia | 10 July 2020 |
| Supreme Court of Western Australia | 2 July 2020 |
| Supreme Court of Australian Capital Territory | 30 June 2020 |
| Supreme Court of Northern Territory | 2 July 2020 |
| Supreme Court of Queensland (Cairns, Brisbane, Rockhampton and Townsville) | 29 June 2020 |
| Supreme Court of Tasmania | 26 June 2020 |

Signed as an agreement.

Supplier

Executed by Speedcast Managed Services Pty Ltd ABN 58 105 681 589 in accordance with section 127 of the Corporations Act 2001 (Cth):

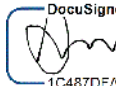
DocuSigned by:

 91C23EF73D594AE...
 Signature of director

Dominic Gynge

Full name of director

16/9/2020 | 9:21 AM BST

DocuSigned by:

 1C487DFAE4A0474...
 Signature of company secretary/director

Peter Myers

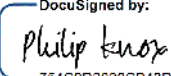
Full name of company secretary/director

16/9/2020 | 6:53 PM

A party executing under section 127 of the Corporations Act 2001 (Cth) may execute this document and any variations to this document with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted and lawful form of technology agreed by the parties as satisfactory for execution by digital signature of the document, in accordance with the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (Cth). A party who receives such a digital signature may assume that such execution was validly and lawfully performed by the other party, in accordance with the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (Cth).

nbn

Executed for and on behalf of nbn co limited ABN 86 136 533 741 by its authorised representative:

DocuSigned by:

 754C9D3030CB43D...
 Signature of Philip Knox
 Chief Financial Officer

16/9/2020 | 5:14 PM AEST

A party executing via authorised representatives may execute this document and any variations to this document with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted and lawful form of technology agreed by the parties as satisfactory for execution by digital signature of the document. A party who receives such a digital signature may assume that such execution was validly and lawfully performed by the other party.

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Attachment 1 Form of Sale Order

Please refer to the Proposed Order exhibited to the Motion of Debtors for Entry of an Order (I) Authorizing and Approving nbn Transaction, Including (A) Private Sale Free and Clear of all Liens, Claims, Encumbrances, and Other Interests, (B) Assumption and Assignment of Certain Contracts, and (C) Settlement and Release of Claims, (II) Approving Form and Manner of Notices of nbn Transaction, and (III) Granting Related Relief

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Attachment 2 Novation and amendment agreement

Novation and Amendment Agreement

Speedcast Managed Services Pty Ltd
Outgoing Party

nbn co limited
New Party

[insert name of Continuing Party]
Continuing Party

Clayton Utz
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 617/20393/80209388

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Novation and Amendment Agreement

Date

Parties

Speedcast Managed Services Pty Ltd ABN 58 105 681 589 of Unit 4F, Level 1, Lakes Business Park, 12 Lord Street, Botany NSW 2019 (**Outgoing Party**)

nbn co limited ABN 86 136 533 741 of Tower 5, Level 13, 727 Collins Street, Docklands VIC 3008 (**New Party**)

[insert name of Continuing Party] [insert ABN or ACN] of [insert address]
(**Continuing Party**)

Background

- A. The Outgoing Party and the Continuing Party are parties to the Agreement.
- B. The Outgoing Party and the New Party are parties to the Transition Agreement.
- C. The parties wish to release and discharge the Outgoing Party from the Agreement and to substitute the Agreement with a new agreement between the New Party and the Continuing Party on the terms set out in this agreement.
- D. In consideration of the Outgoing Party entering into this agreement, the New Party has agreed to assume the Assumed Historical Liabilities and to perform and discharge the Outgoing Party's obligations and liabilities arising after Completion under the Agreement.
- E. The New Party and the Continuing Party have also agreed to amend the Agreement with effect from Completion on the terms set out in this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

Agreement means [insert description of agreement which matches the form of the document provided to nbn in due diligence] dated ●, a copy of which is included as Attachment 1.

Assumed Historical Liabilities means the liabilities of the Outgoing Party to the Continuing Party under the Agreement not to exceed [the cure amount necessary to assume the Agreement pursuant to US Bankruptcy Code section 365, as determined by stipulation of the Continuing Party and/or an order of the United States Bankruptcy Court for the Southern District of Texas in the bankruptcy proceedings of the Outgoing Party] OR [\$●]. **[Drafting Note: In the event that a pre-petition liability is not fully stipulated or determined by order - an agreed amount including all such pre-petition liabilities to be inserted by agreement of the parties.]**

Business Day means a day that is not a Saturday, Sunday or public holiday and on which the banks are open for business generally in New South Wales.

Completion has the meaning given in the Transition Agreement.

GST has the meaning given in the GST Act.

GST Act means the *A New Tax System (Goods and Services) Act 1999* (Cth).

Expected Completion Date means [insert].

Material Proceedings means any investigation, prosecution, litigation, legal proceedings, arbitration, mediation, notice, order, direction, declaration or any other form of litigation or dispute resolution process or administrative or governmental proceeding that will, or would reasonably be likely to, have an adverse effect on the right or ability of New Party to, following Completion, conduct the activities formerly conducted by the Outgoing Party in relation to New Party's satellite service.

Outgoing Party Group Member means each Related Entity of the Outgoing Party.

Pre-Completion Trade Debt means any charge or fee due and payable prior to Completion by the Outgoing Party to the Continuing Party in the ordinary course under the Agreement in respect of services or equipment ordered by the Outgoing Party from the Continuing Party on a post-petition basis prior to Completion but which, for the avoidance of doubt, excludes any charge or fee the subject of the Assumed Historical Liabilities.

Regulatory Authority means:

- (a) any government or local authority and any department, minister or agency of any government; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Related Entity of a corporation means:

- (a) a related body corporate of that corporation within the meaning of section 50 of the *Corporations Act 2001* (Cth); and
- (b) a trustee of any unit trust in relation to which that corporation, or any corporation referred to in paragraph (a), directly or indirectly:
 - (i) controls the right to appoint the trustee; or
 - (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
 - (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust.

Released Claims means any and all claims, actions, causes of action, choses in action, suits, debts, damages, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, based in law or equity, including under the U.S. Bankruptcy Code, whether direct, indirect, derivative, or otherwise, existing at any time, whether asserted or unasserted at Completion, arising out of or related to the Agreement.

Transition Agreement means the transition agreement between the Outgoing Party and the New Party dated [insert] September 2020.

U.S. Bankruptcy Code means title 11 of the United States Code, 11 U.S.C. §§ 101 et. seq.

1.2 Interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, a Regulatory Authority, an incorporated or unincorporated association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (g) a reference to this agreement is a reference to this agreement as varied, novated, ratified or replaced from time to time;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to **\$** or **dollar** is to Australian currency; and
- (k) this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

2. Novation

2.1 Rights and obligations of New Party

- (a) Subject to clause 2.1(b), with effect from Completion the New Party:
 - (i) is entitled to all rights and benefits under the Agreement to which, but for this agreement, the Outgoing Party or its bankruptcy estate would have been entitled at and after Completion (including any such rights and benefits that arose prior to Completion);
 - (ii) must:
 - A. perform all obligations and discharge all liabilities under the Agreement which, but for this agreement, the Outgoing Party would have been required to perform or discharge at and after Completion; and

- B. subject to clause 2.5, discharge the Assumed Historical Liabilities on Completion; and
 - (iii) is bound by and must comply with all other provisions of the Agreement by which, but for this agreement, the Outgoing Party would have been bound at and after the Completion,
- as if the New Party had been a party to the Agreement instead of the Outgoing Party.
- (b) The New Party does not assume any obligation or liability under the Agreement arising before Completion, other than the Assumed Historical Liabilities in accordance with clause 2.1(a)(ii)B.

2.2 Rights and obligations of Continuing Party

With effect from Completion the Continuing Party:

- (a) is entitled to all rights and benefits under the Agreement to which, but for this agreement, it would have been entitled at and after Completion;
- (b) must perform all obligations and discharge all liabilities under the Agreement which, but for this agreement, it would have been required to perform or discharge at and after Completion; and
- (c) is bound by and must comply with all other provisions of the Agreement by which, but for this agreement, it would have been bound at and after Completion,

as if the New Party had been a party to the Agreement instead of the Outgoing Party.

2.3 Release of Outgoing Party

- (a) With effect from Completion, the Continuing Party absolutely, unconditionally and irrevocably releases and forever discharges the Outgoing Party and each Outgoing Party Group Member from:
 - (i) the Assumed Historical Liabilities;
 - (ii) all obligations and liabilities under or in respect of the Agreement, including, in respect of each Outgoing Party Group Member, under any guarantee or cross-guarantee provided by the relevant Outgoing Party Group Member; and
 - (iii) any Released Claims ever held by the Continuing Party against the Outgoing Party, any Outgoing Party Group Member or their respective bankruptcy estate, excluding any Pre-Completion Trade Debt.
- (b) The parties acknowledge and agree that:
 - (i) each Outgoing Party Group Member is entitled to the benefit of the releases in clause 2.3(a) which may be enforced by the Outgoing Party on behalf of and for the benefit of each Outgoing Party Group Member, and each Outgoing Party Group Member may plead clause 2.3(a) in answer to any claim, action, demand or proceeding made by the Continuing Party against them; and
 - (ii) the Outgoing Party holds on trust for each Outgoing Party Group Member, jointly and severally, the benefit conferred by clause 2.3(a).

2.4 Release of Continuing Party

With effect from Completion, the Outgoing Party absolutely, unconditionally and irrevocably releases the Continuing Party from:

- (a) all obligations and liabilities under or in respect of the Agreement to be performed or discharged at or after Completion (including in respect of obligations and liabilities which arose prior to Completion); and
- (b) any Released Claims ever held by the Outgoing Party or its bankruptcy estate against the Continuing Party.

2.5 Payment

- (a) Subject to clause 2.5(c), payment of the Assumed Historical Liabilities by the New Party to the Continuing Party must be made on the date on which Completion occurs and by way of electronic funds transfer to an account with an Australian bank specified by the Continuing Party in accordance with clause 2.5(b)(i).
- (b) At least 5 Business Days before the Expected Completion Date, the Continuing Party must:
 - (i) notify the New Party of the Australian bank account to which the New Party must transfer the Assumed Historical Liabilities (including such details as the New Party may reasonably require) (**Bank Account Details**); and
 - (ii) provide a valid GST invoice in respect of the Assumed Historical Liabilities to the New Party in a form reasonably acceptable to the New Party (**GST Invoice**).
- (c) The New Party is under no obligation to pay the Assumed Historical Liabilities unless it has received at least 5 Business Days' notice of the Bank Account Details and a GST Invoice in the form contemplated by clause 2.5(b).

2.6 Notices

The address of the New Party for the purposes of clause 1.1 of the Agreement is as follows (or as otherwise notified by the New Party to the Continuing Party from time to time):

| New Party Name | Attention | Address (for hand delivery or delivery by courier or post) | Email address |
|----------------|---|--|---|
| nbn co limited | Chief Legal Counsel, with a copy to General Counsel – Regional Development & Engagement | Level 13, 100 Mount Street, North Sydney NSW 2060 | justinforseil@nbnco.com.au, with a copy to marielebras@nbnco.com.au |

as if the New Party had been a party to the Agreement instead of the Outgoing Party.

2.7 Amendments

The New Party and the Continuing Party agree that the Agreement is amended from Completion in the manner set out in Schedule 1.

3. Notice of Completion

- (a) Within 5 Business Days after Completion, the New Party must give the Continuing Party notice of the date on which Completion occurred.
- (b) The New Party must provide the Outgoing Party with a copy of the notice provided to the Continuing Party under clause 3(a).

4. Warranties

4.1 Authority and capacity

Each party severally warrants to each other party as at the date of execution of this agreement and as at the time immediately before Completion that:

- (a) it is a company properly incorporated and validly existing under the laws of Australia;
- (b) it has the legal right and full corporate power and capacity to:
 - (i) execute and deliver this agreement; and
 - (ii) perform its obligations under this agreement,and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so;
- (c) this agreement constitutes (or will when executed constitute) valid legal and binding obligations of that party in accordance with its terms, except that:
 - (i) their enforceability may be limited by applicable bankruptcy or similar laws affecting the enforcement of creditors' rights generally; and
 - (ii) the enforcement is subject to principles of equity (regardless of whether their enforcement is considered in a proceeding in equity or at law); and
- (d) the execution, delivery and performance of this agreement by that party does not and will not result in a breach of or constitute a default under:
 - (i) any agreement to which it is party;
 - (ii) any provision of its constitution; or
 - (iii) any law or regulation or any order or judgment of any court or Regulatory Authority to which it is a party or by which it is bound.

4.2 No Known Proceedings

The Continuing Party warrants that, so far as it is aware:

- (a) no Material Proceedings are pending or threatened; and
- (b) there are no circumstances that will, or could reasonably be likely to, give rise to any Material Proceedings,

except as notified in writing by the Continuing Party to the New Party prior to the date of this agreement.

4.3 Reliance

The parties acknowledge that in entering into this agreement they have each relied on the warranties in clauses 4.1 and 4.2.

5. GST

5.1 Interpretation

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the GST Act; and
- (b) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 5.

5.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

5.3 GST payable

If GST is payable in relation to a supply made under or in connection with this agreement, then:

- (a) any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient no later than 7 days after the day on which any consideration is to be first provided for that supply.

5.4 Variation

If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 5.3 so that:

- (a) a further amount of GST is payable in relation to the supply; or
- (b) a refund or credit of GST is obtained in relation to the supply,

then the Supplier must provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 5.3.

6. Termination

The Outgoing Party or the New Party may terminate this agreement by written notice to the other parties if the Transition Agreement is terminated at any time prior to Completion.

7. General

7.1 Amendments

This agreement may only be varied by an agreement executed by or on behalf of each party.

7.2 Electronic signature

Each party warrants that immediately prior to entering into this agreement, it has unconditionally consented to:

- (a) the requirement for a signature under any law being met; and
- (b) any other party to this agreement executing it,

by digital signature generated by DocuSign or Adobe Sign.

7.3 Counterparts

This agreement may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement. Where this agreement is executed in counterparts, its date is taken to be the date on which the last of the parties to do so executes its counterpart(s).

7.4 Electronic exchange

Without limitation, the parties agree that their communication of an offer or acceptance of this agreement, including exchanging counterparts, may be by any electronic method that evidences that party's execution of this agreement.

7.5 Costs

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

7.6 Further acts and documents

Each party must promptly do, and procure that its employees and agents promptly do, all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

7.7 Stamp duties

The New Party:

- (a) must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement; and
- (b) indemnifies, and must pay, to each other party on demand the amount of any loss, cost, damage, expense or other liability suffered or incurred by that party including all legal and other professional expenses on a solicitor-client basis arising out of or in connection with any failure to comply with clause 7.7(a).

8. Governing law and jurisdiction

This agreement is governed by the law applying in New South Wales. Each party irrevocably submits to the non exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 8.

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Executed as an agreement.

A party executing via authorised representatives may execute this document and any variations to this document with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted and lawful form of technology agreed by the parties as satisfactory for execution by digital signature of the document. A party who receives such a digital signature may assume that such execution was validly and lawfully performed by the other party.

A party executing under section 127 of the Corporations Act 2001 (Cth) may execute this document and any variations to this document with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted and lawful form of technology agreed by the parties as satisfactory for execution by digital signature of the document, in accordance with the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (Cth). A party who receives such a digital signature may assume that such execution was validly and lawfully performed by the other party, in accordance with the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (Cth).

Outgoing Party

Executed by Speedcast Managed Services Pty Ltd ABN 58 105 681 589 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director**New Party**

Executed for and on behalf of nbn co limited ABN 86 136 533 741 by its authorised representative:

Signature of authorised representative

Full name of authorised representative

Title of authorised representative

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Continuing Party

Executed by **[insert name and ABN or ACN of Continuing Party]** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Schedule 1 - Amendments to Agreement

1. Amendments

The parties agree that the Agreement is amended as set out below, subject to and with effect from Completion:

- (a) the term of the Agreement will end, and the Agreement will terminate on, either:
 - (i) the first anniversary of Completion (**First Anniversary Date**); or
 - (ii) the second anniversary of Completion, if the New Party elects to extend the term by a further year by notice in writing to the Continuing Party on or before the day that is **[10]** Business Days prior to the First Anniversary Date,and **[insert reference to term clause in Agreement]** as it appears in the Agreement is deleted and of no further force or effect.
- (b) **[Drafting Note: To be included for each MSA]** new clause 10.1 (General) of the Agreement is inserted as follows: "The terms of this Master Agreement remain in effect for any Order that is outstanding at the time of termination or expiration of this Master Agreement";
- (c) **[Drafting Note: To be included for the APA Olsen Pty Ltd MSA only]** Clause 10.2 (Termination for Convenience) as it appears in the Agreement is deleted and of no further force or effect; and
- (d) **[Drafting Note: To be included for each agreement in respect of which there is no privacy clause]** The following clause is incorporated into the Agreement:

Privacy

- (a) In this clause:

Continuing Party Associate means any Related Body Corporate of the Continuing Party and any officer, employee, agent, contractor, consultant or adviser (including subcontractors whether directly or indirectly engaged) of the Continuing Party or a Related Body Corporate of the Continuing Party (excluding any member of the New Party Group) who performs or may perform work in connection with the Continuing Party's obligations under the Agreement.

Continuing Party Personnel means the Continuing Party's employees, officers, agents or representatives.

Interference with Privacy means:

- (i) an interference with the privacy of an individual as that term is defined in the Privacy Act 1988 (Cth); or
- (ii) a breach of any requirement of a Privacy Act.

New Party Group means the New Party and its Related Bodies Corporate from time to time.

Personal Information has the meaning given under the Privacy Act.

Privacy Act means:

- (i) the Privacy Act 1988 (Cth); and
- (ii) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time.

Regulatory Authority means:

- (i) any government or local authority and any department, minister or agency of any government; and
- (ii) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

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

- (b) The Continuing Party must comply, and ensure that the Continuing Party Personnel and the Continuing Party Associates comply, with:
 - (i) the *Privacy Act 1988* (Cth), including the Australian Privacy Principles, as updated from time to time; and
 - (ii) any additional requirements, standards and/or policies referenced in this Agreement as they relate to Personal Information.
- (c) The Continuing Party must not, and must ensure that Continuing Party Personnel and Continuing Party's Associates do not, use Personal Information for any purpose other than performing the obligations under the Agreement.
- (d) The Continuing Party must:
 - (i) immediately notify the New Party of any complaint or enquiry about, or request for access to, Personal Information made to the Continuing Party, Continuing Party Personnel or Continuing Party's Associates, or any actual or potential breach of the publicly available privacy policy of the New Party (as amended from time to time); and
 - (ii) comply with all directions of the New Party relating to any matters referred to in paragraph (i) above, and any request received by the New Party in relating to any Personal Information that is handled by the Continuing Party, Continuing Party Personnel or the Continuing Party's Associates.
- (e) The Continuing Party must, and must ensure that Continuing Party Personnel and Continuing Party Associates, promptly return any Personal Information (or destroy it so it is permanently irretrievable) if required by the New Party, in accordance with the New Party's data retention and destruction requirements notified to the Continuing Party from time to time.
- (f) In the event of any privacy complaint or incident, or any other actual or suspected Interference with Privacy, relating to the Agreement, the Continuing Party must, and must procure that the Continuing Party Personnel and the Continuing Party's Associates:

- (i) immediately notify the New Party in writing of the matter, and promptly provide the New Party details;
- (ii) cooperate and comply with the New Party's reasonable directions in respect of the matter;
- (iii) promptly take any necessary steps to contain and rectify the matter and its consequences; and
- (iv) not notify any other person or party of the matter without the New Party's consent, unless such notification is required to be made by law or by a regulation, direction or requirement of any Regulatory Authority.

2. Amendments not to affect validity, rights or obligations

- (a) These amendments do not affect the validity or enforceability of the Agreement.
- (b) Except as provided in the Agreement as amended, nothing in this agreement:
 - (i) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Agreement before the date of this agreement; or
 - (ii) discharges, releases or otherwise affects any other liability or obligation arising under the Agreement before the date of this agree.

3. Confirmation

Each party is bound by the Agreement as amended by this agreement.

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Attachment 1 - Agreement

[Drafting Note: Agreement must match the version included in nbn due diligence (unless otherwise agreed by nbn).]

Attachment 3 Gilat novation and amendment agreement

NBN Co Limited
Speedcast Managed Services Pty Limited
Gilat Satellite Networks Limited
Gilat Satellite Networks Australia Pty Limited

Novation Agreement

Novation Agreement in respect of the Sub-Contracts between:
Speedcast Managed Services Pty Limited and Gilat Satellite Networks Limited

dated on or around 31 January 2018

and

Speedcast Managed Services Pty Limited and Gilat Satellite Networks Australia Pty Limited

dated on or around 31 January 2018

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
T +61 2 9230 4000
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This agreement is made on

Parties

- 1 **NBN Co Limited** ABN 86 136 533 741 of Tower 5, Level 13, 727 Collins Street, Docklands VIC 3008 (**NBN Co**).
- 2 **Speedcast Managed Services Pty Limited** ABN 58 105 681 589 of Unit 4F, Level 1, 12 Lord Street, Botany NSW 2019 (**Supplier**).
- 3 **Gilat Satellite Networks Limited** incorporated in Israel of Gilat House, 21 Yegia Kapayim Street, Kiryat Arye, Petah Tikva, 4913020 Israel (**Gilat**).
- 4 **Gilat Satellite Networks Australia Pty Limited** ABN 19 146 050 071 of Level 7, 436 St. Kilda Road, Melbourne VIC 3004 (**Gilat Australia**, and together with Gilat, the **Gilat Parties** and each a **Gilat Party**).

Recitals

- A NBN Co and Supplier are parties to the Master Equipment and Services Supply Agreement dated on or around 31 January 2018 for the supply of managed enterprise satellite services to NBN Co (the **Agreement**).
- B Supplier, Gilat and Gilat Australia are parties to two Sub-Contracts of the Agreement dated on or around 31 January 2018 (the **Sub-Contracts**).
- C In consideration of the Supplier entering into this agreement, NBN Co has agreed to assume the Assumed Historical Liabilities and to perform and discharge the Supplier's obligations and liabilities arising after the Effective Date under the Sub-Contracts.
- D The parties to this agreement have agreed to novate the Sub-Contracts on the terms of this agreement.

It is agreed as follows.

1 Definitions

Assumed Historical Liabilities means the liabilities of the Supplier to the Gilat Parties under the Sub-Contracts not to exceed [the cure amount necessary to assume the Sub-Contracts pursuant to US Bankruptcy Code section 365, as determined by stipulation of the Gilat Parties and/or an order of the United States Bankruptcy Court for the Southern District of Texas in the bankruptcy proceedings of Supplier] OR [\$●]. **[Drafting Note: In the event that a pre-petition liability is not fully stipulated or determined by order - an agreed amount including all such pre-petition liabilities to be inserted by agreement of the parties.]**

Business Day means a day that is not a Saturday, Sunday or public holiday and on which the banks are open for business generally in New South Wales.

Effective Date has the meaning given in clause 3.1.

Expected Effective Date means [insert].

GST has the meaning given in the GST Act.

GST Act means the *A New Tax System (Goods and Services) Act 1999* (Cth).

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Material Proceedings means any investigation, prosecution, litigation, legal proceedings, arbitration, mediation, notice, order, direction, declaration or any other form of litigation or dispute resolution process or administrative or governmental proceeding that will, or would reasonably be likely to, have an adverse effect on the right or ability of NBN Co to, following the Effective Date, conduct the activities formerly conducted by the Supplier in relation to NBN Co's satellite service.

Pre-Completion Trade Debt means any charge or fee due and payable prior to the Effective Date by the Supplier to a Gilat Party in the ordinary course under the Sub-Contracts in respect of services or equipment ordered by the Supplier from a Gilat Party on a post-petition basis prior to the Effective Date but which, for the avoidance of doubt, excludes any charge or fee the subject of the Assumed Historical Liabilities.

Related Entity of a corporation means:

- (a) a related body corporate of that corporation within the meaning of section 50 of the *Corporations Act 2001* (Cth); and
- (b) a trustee of any unit trust in relation to which that corporation, or any corporation referred to in paragraph (a), directly or indirectly:
 - (i) controls the right to appoint the trustee; or
 - (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
 - (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust.

Released Claims means any and all claims, actions, causes of action, choses in action, suits, debts, damages, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, based in law or equity, including under the U.S. Bankruptcy Code, whether direct, indirect, derivative, or otherwise, existing at any time, whether asserted or unasserted at the Effective Date, arising out of or related to the Sub-Contracts.

Supplier Group Member means each Related Entity of the Supplier.

US Bankruptcy Code means title 11 of the United States Code, 11 U.S.C. §§ 101 et. seq.

2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (v) A reference to a clause, or Schedule or Annexure is a reference to a clause of, or Schedule or Annexure to, this agreement.
 - (vi) A reference to an agreement or document (including a reference to this agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this agreement or that

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other agreement or document, and includes the recitals, and schedules and annexures to that agreement or document.

- (vii) A reference to a party to this agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (viii) A reference to a *right* or *obligation* of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).

3 Novation

3.1 Novation

The parties agree to novate the Sub-Contracts, such that on and from termination of the Agreement in whole by NBN Co in accordance with clause 31.1 (but only following the Services Schedule Commencement Date in respect of Schedule 20 to the Agreement and including where there is a deemed termination of the Agreement in whole in accordance with clause 31.1(b)), clause 31.2, clause 31.3 or clause 31.4 of the Agreement (the **Effective Date**):

- (a) NBN Co is substituted for Supplier under the Sub-Contracts as if NBN Co had originally been a party to the Sub-Contracts instead of Supplier; and
- (b) each reference in the Sub-Contracts to the Supplier (as defined in this agreement) is to be read as if it were a reference to NBN Co. Parties acknowledge that the term "Supplier" in each of the Sub-Contracts refers to Gilat or Gilat Australia (as applicable).

3.2 Notice of Effective Date

- (a) Within 5 Business Days after the Effective Date, NBN Co must give each Gilat Party notice of the date that is the Effective Date.
- (b) NBN Co must provide the Supplier with a copy of the notice or notices provided to each Gilat Party under clause 3.2(a).

3.3 Assumption of rights and obligations

On and from the Effective Date:

- (a) NBN Co:
 - (i) will be bound by, and must comply with, the Sub-Contracts as it relates to Supplier;
 - (ii) will enjoy all the rights and benefits conferred on Supplier under or in respect of the Sub-Contracts arising or accruing on and from the Effective Date;
 - (iii) will assume all the obligations and liabilities of Supplier under or in respect of the Sub-Contracts arising or accruing on or after the Effective Date (but, subject to paragraph (iv) below, will not assume any obligation or liability of Supplier under or in respect of the Sub-Contracts arising or accruing before the Effective Date); and
 - (iv) subject to clause 6, will discharge the Assumed Historical Liabilities on the Effective Date.

in each case as amended in accordance with clause 6 of this agreement.

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- (b) NBN Co will assume the right of Supplier or its bankruptcy estate under or in respect of the Sub-Contracts to bring any claim, action, demand or proceedings against Gilat or Gilat Australia (as applicable) in respect of any circumstances arising or accruing before the Effective Date to the extent that such circumstances have resulted in NBN Co suffering any loss, damage, liability, charge, expense outgoing or cost (including all legal and other professional costs on a full indemnity basis) or any nature or kind under or in connection with the Sub-Contracts.
- (c) NBN Co will comply with the Sub-Contracts, as amended in accordance with clause 6 of this agreement, on the basis that NBN Co has replaced Supplier under it in accordance with the terms of this agreement.

4 Releases**4.1 Release by Gilat Parties**

- (a) With effect from the Effective Date, the Gilat Parties absolutely, unconditionally and irrevocably release and forever discharge the Supplier and each Supplier Group Member from:
 - (i) its obligations and liabilities under or in respect of the Sub-Contracts, including, in respect of each Supplier Group Member, under any guarantee or cross-guarantee provided by the relevant Supplier Group Member; and
 - (ii) all claims, actions, demands, proceedings and liability that the Gilat Parties may have or claim to have, or but for this release might have had, against the Supplier in connection with the Sub-Contracts, including, in respect of each Supplier Group Member, under any guarantee or cross-guarantee provided by the relevant Supplier Group Member,arising or accruing on or after the Effective Date and:
 - (iii) the Assumed Historical Liabilities; and
 - (iv) any Released Claims ever held by the Gilat Parties against the Supplier, any Supplier Group Member or their respective bankruptcy estate, excluding any Pre-Completion Trade Debt.
- (b) The parties acknowledge and agree that:
 - (i) each Supplier Group Member is entitled to the benefit of the releases in clause 4.1(a) which may be enforced by the Supplier on behalf of and for the benefit of each Supplier Group Member, and each Supplier Group Member may plead clause 4.1(a) in answer to any claim, action, demand or proceeding made by Gilat against them; and
 - (ii) the Supplier holds on trust for each Supplier Group Member, jointly and severally, the benefit conferred by clause 4.1(a).

4.2 Release by the Supplier

With effect from the Effective Date, the Supplier absolutely, unconditionally and irrevocably releases each Gilat Party from:

- (a) their respective obligations and liabilities under or in respect of the Sub-Contracts; and
- (b) all claims, actions, demands, proceedings and liability that the Supplier may have or claim to have, or but for this release might have had, against each Gilat Party in connection with the Sub-Contracts,

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arising or accruing on or after the Effective Date; and

- (c) all claims, actions, demands, proceedings and liability that the Supplier may have or claim to have, or but for this release might have had, against each Gilat Party in respect of the subject matter of clause 3.3(b) above; and
- (d) any Released Claims ever held by the Supplier or its bankruptcy estate against each Gilat Party.

5 Payment

- (a) Payment of the Assumed Historical Liabilities by NBN Co to the Gilat Parties must be made on the Effective Date and by way of electronic funds transfer to an account with an Australian bank specified by the Gilat Parties in accordance with clause 5(b).
- (b) At least 5 Business Days before the Expected Effective Date, the Gilat Parties must:
 - (i) notify NBN Co of the Australian bank account to which NBN Co must transfer the Assumed Historical Liabilities (including such details as NBN Co may reasonably require) (**Bank Account Details**); and
 - (ii) provide a valid GST invoice in respect of the Assumed Historical Liabilities to NBN Co in a form reasonably acceptable to NBN Co (**GST Invoice**).
- (c) NBN Co is under no obligation to pay the Assumed Historical Liabilities unless it has received at least 5 Business Days' notice of the Bank Account Details and a GST Invoice in the form contemplated by clause 5(b).

6 Amendments to Sub-Contracts

On and from the Effective Date:

- (a) the Sub-Contract between Supplier and Gilat, a copy of which is included as Attachment 1, (the **Gilat Israel Sub-Contract**) is amended as set out in Schedule 2 to this agreement; and
- (b) the Sub-Contract between Supplier and Gilat Australia, a copy of which is included as Attachment 2, (the **Gilat Australia Sub-Contract**) is amended as set out in **Schedule 3** to this agreement.

7 Notices Under the Sub-Contracts

For the purposes of all provisions in the Sub-Contracts regarding service of notices, the address for NBN Co is the address set out at the start of this agreement.

8 Representations and Warranties

- (a) Each party represents and warrants to each other party as at the date of execution of this agreement and as the time immediately before the Effective Date that:
 - (i) the execution and delivery of this agreement has been properly authorised by all necessary corporate action of the party;
 - (ii) it has full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed its obligations under this agreement; and
 - (iii) this agreement constitutes a legal, valid and binding obligation of the party enforceable in accordance with its terms by appropriate legal remedy, except that:

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- (A) their enforceability may be limited by applicable bankruptcy or similar laws affecting the enforcement of creditors' rights generally; and
 - (B) the enforcement is subject to principles of equity (regardless of whether their enforcement is considered in a proceeding in equity or at law).
- (b) Each of Supplier, Gilat and Gilat Australia represents and warrants to NBN Co that, as at the Effective Date, neither Supplier, Gilat nor Gilat Australia is in default under any provision of the Sub-Contracts.
- (c) Each of the Gilat Parties warrants that, so far as it is aware:
 - (i) no Material Proceedings are pending or threatened; and
 - (ii) there are no circumstances that will, or could reasonably be likely to, give rise to any Material Proceedings,except as notified in writing by either or both of the Gilat Parties to NBN Co prior to the date of this agreement.

9 Delivery of Documents

Supplier will deliver to NBN Co on request a copy of all documents in its possession, custody or control connected with or evidencing its rights under the Sub-Contracts.

10 Further Assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this agreement and the transactions contemplated by it.

11 Assignment

- (a) Neither Supplier, Gilat nor Gilat Australia may assign, novate or transfer their rights and/or obligations (as applicable) under this agreement, or attempt or purport to do so, without the prior written consent of NBN Co.
- (b) NBN Co may assign, novate or transfer its rights and/or obligations (as applicable) under this agreement to any person with the consent of Supplier, such consent not to be unreasonably withheld or delayed.

12 Amendment

This agreement may be amended only by another agreement executed by all the parties.

13 GST

13.1 Interpretation

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the GST Act; and
- (b) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 13.

13.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

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13.3 GST payable

If GST is payable in relation to a supply made under or in connection with this agreement, then:

- (a) any party (**Recipient**) that is required to provide consideration to another party (**GST Supplier**) for that supply must pay an additional amount to the GST Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply; and
- (b) the GST Supplier must provide a tax invoice to the Recipient no later than 7 days after the day on which any consideration is to be first provided for that supply.

13.4 Variation

If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 13.3 so that:

- (a) a further amount of GST is payable in relation to the supply; or
- (b) a refund or credit of GST is obtained in relation to the supply,

then the GST Supplier must provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 13.3.

14 Costs and Duty

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this agreement. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this agreement and any instrument executed under or any transaction evidenced by this agreement must be borne by NBN Co.
- (b) NBN Co indemnifies, and must pay, to each other party on demand the amount of any loss, cost, damage, expense or other liability suffered or incurred by that party including all legal and other professional expenses on a solicitor-client basis arising out of or in connection with any failure to comply with clause 14(a).

15 Governing Law and Jurisdiction

This agreement is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

16 Resolution of Disputes

- (a) If a difference or dispute between the parties arises out of or relates to this agreement, or the breach, termination, validity or subject matter of it (**Dispute**), and a party wishes to pursue that Dispute, that party must give the other parties a written notice of the Dispute adequately identifying and providing details of the Dispute (**Dispute Notice**).
- (b) The parties must enter into negotiations in good faith to resolve the Dispute as soon as possible.
- (c) If the parties are unable to resolve the Dispute in accordance with clause 16(b) within 10 Business Days of the Dispute Notice being issued, either party may refer the Dispute for resolution by arbitration to be conducted in accordance with Schedule 1 to this agreement.

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This agreement may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes an original of this agreement and all together will be taken to constitute one instrument. Where this agreement is executed in counterparts, its date is taken to be the date on which the last of the parties to do so executes its counterpart(s).

18 Electronic signature

Each party warrants that immediately prior to entering into this agreement, it has unconditionally consented to:

- (a) the requirement for a signature under any law being met; and
 - (b) any other party to this agreement executing it,
- by digital signature generated by DocuSign or Adobe Sign.

19 Electronic exchange

Without limitation, the parties agree that their communication of an offer or acceptance of this agreement, including exchanging counterparts, may be by any electronic method that evidences that party's execution of this agreement.

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Schedule 1**Arbitration**

- 1 The arbitration must be conducted in accordance with (and subject to) the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the **ACICA Arbitration Rules**) in effect on the Escrow Commencement Date by a single arbitrator (the **Arbitrator**).
- 2 The seat of the arbitration will be Sydney, Australia.
- 3 The Parties will endeavour to agree on the person to be appointed as the Arbitrator, but if no such agreement is reached within 20 Business Days of the Dispute being referred to arbitration, the Arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.
- 4 The language of the arbitration will be English and parties may be legally represented at the arbitration.
- 5 The parties further agree to the following general principles relating to the procedure of the arbitration:
 - (a) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (b) that any arbitration conducted pursuant to this clause shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the Arbitrator;
 - (c) no party will unnecessarily delay the arbitration proceedings;
 - (d) all evidence in chief will be in writing, unless otherwise ordered by the Arbitrator;
 - (e) each Party may only rely upon one expert witness in respect of any recognised area of specialisation, unless otherwise ordered by the Arbitrator; and
 - (f) the duration of any oral hearings shall be fixed by the Arbitrator.
- 6 If a party gives notice to the Arbitrator and the other party requesting the Arbitrator to stay the arbitration of any Dispute referred under this **Schedule (Stay Request Notice)**, pending the final resolution (including any appeal process) of any Dispute to the extent that it is relevant to or connected with the Dispute, the Arbitrator may, at its discretion, stay the arbitration on terms decided by the Arbitrator. Any Stay Request Notice must set out the reasons why the stay is requested.
- 7 In the exercise of its discretion under paragraph (6), the Arbitrator must take into consideration:
 - (a) any application by a party for the Arbitrator to grant interim measures or preliminary orders which might apply notwithstanding any stay;
 - (b) the risk of inconsistent findings or determinations in relation to the matters in dispute;
 - (c) costs associated with multiple dispute processes; and
 - (d) any prejudice to a party caused by a stay, including where there are concerns with the financial capacity of a party to make any payment following the period of any requested stay.
- 8 The application for a stay under paragraph (6) will not prejudice or limit the ability of a party to seek from, or be granted by, the Arbitrator, any interim measures or preliminary orders under Chapter IV A of Schedule 2 of the *International Arbitration Act 1974* (Cth).
- 9 The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply, subject to all parties affected by the consolidation having agreed in writing to the consolidation.

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- 10 The Arbitrator has the power, on the application of any party to this arbitration agreement, to allow a third party who the Arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party, provided that third party has agreed in writing to arbitration and provided that any other party to this arbitration agreement has agreed in writing to joinder of the third party. In the event of such joinder of parties in the arbitration, the Arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
- 11 Any award will be final and binding upon the parties.
- 12 The law governing this arbitration agreement is the law of New South Wales, Australia.

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Schedule 2

Amendment to Gilat Israel Sub-Contract

The Gilat Israel Sub-Contract is amended as follows:

- 1 Clause 6 (Bank Guarantee) is deleted and replaced with the following:
- 2 "The Supplier must procure and provide to NBN Co a Performance Bond in the same amount as
the Performance Bond provided by it to Speedcast Managed Services Pty Ltd prior to the
Effective Date of novation of this Agreement to NBN Co."
- 3 Clause 9 (General) is deleted in its entirety.
- 4 Schedule 1 is deleted in its entirety except for sections 5 (Indemnity (For actions of Gilat
Australia)), 10 (Payment Terms and Prices) and 13 (No Receipt of Data Subject to US Export
Controls) of that Schedule which will remain in force and effect following the Effective Date.

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Schedule 3

Amendment to Gilat Australia Sub-Contract

- 1 The Gilat Australia Sub-Contract is amended as follows:
 - (a) Clause 8 (General) is deleted in its entirety.
 - (b) Schedule 1 is deleted in its entirety except for sections 5 (Limitation of Liability), 8 (Payment Prices and Terms) and 10 (No Disclosure of Data Subject to US Export Controls) of that Schedule which will remain in force and effect following the Effective Date.
 - (c) Clause 3.4 is deleted in its entirety.
- 2 The parties confirm that clause 17.1 of the Imported MESSA Terms (as defined in the Gilat Australia Sub-Contract) is incorporated into the Gilat Australia Sub-Contract and the reference to "INCOTERMS 2010" will be read as a reference to "INCOTERMS 2020".

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Attachment 1 Gilat Sub-Contract

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Attachment 2 - Gilat Australia Sub-Contract

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Each attorney executing this agreement states that he or she has no notice of the revocation or suspension of his or her power of attorney.

Executed as an agreement

Executed for and on behalf of **nbn co limited**
ABN 86 136 533 741 by its authorised
representative:

Signature of Philip Knox
Chief Financial Officer

Executed in accordance with section 127 of
the *Corporations Act 2001* (Cth) by
Speedcast Managed Services Pty Limited
ABN 58 105 681 589:

Director Signature

Director/Secretary Signature

Print Name

Print Name

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Executed for and on behalf of **Gilat Satellite Networks Limited** in the presence of:

Signature of Witness

Signature of Authorised Signatory

Name of Witness

Name of Authorised Signatory

Executed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **Gilat Satellite Networks Australia Pty Limited** **ABN 19 146 050 071**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

A party executing via authorised representatives may execute this document and any variations to this document with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted and lawful form of technology agreed by the parties as satisfactory for execution by digital signature of the document. A party who receives such a digital signature may assume that such execution was validly and lawfully performed by the other party.

A party executing under section 127 of the *Corporations Act 2001* (Cth) may execute this document and any variations to this document with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted and lawful form of technology agreed by the parties as satisfactory for execution by digital signature of the document, in accordance with the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (Cth). A party who receives such a digital signature may assume that such execution was validly and lawfully performed by the other party, in accordance with the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (Cth).

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

| | | |
|--|---|---|
| In re: SPEEDCAST INTERNATIONAL LIMITED, <i>et al.</i>, Debtors.¹ | § § § § § § § § § | Chapter 11 Case No. 20-32243 (MI) (Jointly Administered) Re: Docket No. ____ |
|--|---|---|

**ORDER (I) AUTHORIZING AND APPROVING NBN TRANSACTION
INCLUDING (A) PRIVATE SALE FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND OTHER INTERESTS, (B) ASSUMPTION
AND ASSIGNMENT OF CERTAIN CONTRACTS, AND (C) SETTLEMENT
AND RELEASE OF CLAIMS, (II) APPROVING FORM AND MANNER
OF NOTICES OF NBN TRANSACTION, AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion, dated September 22, 2020 (the “**Motion**”)² of SpeedCast International Limited and its affiliated debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order (i) authorizing and approving (a) that certain Transition Agreement, dated as of September 16, 2020, between SMS and Buyer, and the related schedules, exhibits, agreements, documents, or other instruments contemplated therein (the “**Transition Agreement**”), including the sale (the “**nbn Transaction**”) by SMS of the SMS Assets free and clear of all liens, claims and interests and encumbrances, the assumption by Buyer of certain liabilities, including employee entitlements, the granting of mutual releases, and other related terms, and (b) the assumption and assignment of the Proposed Assumed and Assigned Contracts and Lease listed on **Exhibit 1** hereto

¹ A complete list of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kcellc.net/speedcast>. The Debtors’ service address for the purposes of these Chapter 11 Cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

(collectively, the “**Contracts**”); (ii) approving the form and manner of the notice of the Motion and to counterparties to the Contracts regarding the Debtors’ potential assumption and assignment of the Contracts, and the procedures for such assumption and assignment (the “**Assignment Procedures**”), including the Debtors’ calculation of the amount necessary to cure any monetary defaults under the Contracts (the “**Cure Amounts**”), substantially in the form and manner annexed hereto as **Exhibit 2** (the “**A&A Notice**”); and (iii) granting related relief pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, 6006, and 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), as more fully set forth in the Motion; and consideration of the Motion and the Etheridge-Yan Declaration; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and the Etheridge-Yan Declaration; and upon the record of all of the proceedings had before the Court; all parties in interest having been heard, or having had the opportunity to be heard, regarding the approval of the Transition Agreement, the nbn Transaction, and the other transactions contemplated by the Transition Agreement; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

Statutory Predicates

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute

conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). This is a core proceeding under 28 U.S.C. § 157(b) and this Court may enter a final order consistent with Article III of the United States Constitution. Venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory bases of the relief requested in the Motion are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9019.

D. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d), and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of this Order as set forth herein which shall not be subject to any stay.

Notice

E. As evidenced by the certificates of service and publication, as applicable, previously filed with this Court [Docket Nos. [●]], due, proper, timely, adequate, and sufficient notice of the Motion, the nbn Transaction, and the Assignment Procedures has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, to each party entitled to such notice, and no further notice shall be required in connection with the relief granted in this Order. A reasonable opportunity to object to and to be heard regarding the relief granted by this Order has been afforded to parties entitled to notice pursuant to Bankruptcy Rule 6004(a). The deadline to file an objection to the assumption

and assignment to Buyer of any Contracts has expired, and any such objections have been resolved, withdrawn or overruled.

Private Sale and Sound Business Purpose

F. Based upon the record in these Chapter 11 Cases, including the Etheridge-Yan Declaration, SMS exercised reasonable business judgment in negotiating the Transition Agreement and the transactions contemplated therein with Buyer. Buyer was the only reasonable counterparty to the proposed nbn Transaction and, because of the consents required, the complexity of the MESSA, and the nature of the SMS Assets, the Debtors were not required to market the SMS Assets to other potential purchasers.

G. The terms contained in the Transition Agreement provide fair and reasonable consideration to the Debtors' estates for the SMS Assets and the assumption of the Assumed Liabilities (as defined in the Transition Agreement); and the consideration provided by Buyer under the Transition Agreement constitutes reasonably equivalent value under the Bankruptcy Code. Approval of the Motion and the Transition Agreement, and the consummation of the nbn Transaction contemplated thereby, are in the best interests of the Debtors, their creditors, their estates, and other parties-in-interest, and constitutes a valid and sound exercise of the Debtors' business judgment.

H. Each entity with an Interest or Claim (defined below) attached to the SMS Assets (i) has, subject to the terms and conditions of this Order, consented to the nbn Transaction or is deemed to have consented to the nbn Transaction; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such encumbrance; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of any Claims and Interests against the SMS Assets who did not object or who withdrew their objections to the Transition

Agreement or the Motion are deemed to have consented to the transactions contemplated thereby pursuant to section 363(f)(2) of the Bankruptcy Code. For the avoidance of doubt, nothing in this Order establishes any rights or interests in the SMS Assets (other than the Debtors' rights and interests in such SMS Assets and Buyer's rights and interests in the SMS Assets from and after Completion (as defined in the Transition Agreement)), and nothing herein shall be construed to govern or affect the distributions of the cash proceeds from the nbn Transaction of the SMS Assets.

Assumption and Assignment of the Contracts

I. The Assignment Procedures set forth in the A&A Notice and the Transition Agreement are adequate, sufficient, and appropriate under the circumstances.

J. The assumption and assignment of the Contracts is integral to the nbn Transaction, is in the best interests of the Debtors and their estates, and represents the valid and reasonable exercise of the Debtors' sound business judgment.

Good Faith Finding

K. Buyer is not an "insider" or "affiliate" of any of the Debtors as those terms are defined in section 101 of the Bankruptcy Code.

L. The Transition Agreement was negotiated, proposed and entered into by the Debtors and Buyer without collusion or fraud, in good faith and from arms'-length bargaining positions.

No Fraudulent Transfer or Successor Liability

M. The aggregate consideration from Buyer for the SMS Assets as set forth in the Transition Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code; and the nbn Transaction is the best means to monetize the SMS Assets in the business judgment of the Debtors.

N. Neither the Debtors, Buyer, nor any affiliate of either the Debtors or Buyer have taken, or failed to take, any other action that would cause or permit the nbn Transaction to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code or otherwise.

O. Buyer is not a mere continuation of or successor to any Debtor or its estate in any respect. The Transition Agreement does not amount to a consolidation, merger, or *de facto* merger of Buyer and any Debtor, and there is no continuity of enterprise between any Debtor and Buyer.

Validity of Transfer and Authorizations

P. The SMS Assets constitute property of the Debtors' estates and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The Debtors have full corporate power and authority to execute and deliver the Transition Agreement, and all other documents contemplated thereby, and have all corporate authority necessary to consummate the transactions contemplated by the Transition Agreement. No consents or approvals, other than those expressly provided for in the Transition Agreement, are required for the Debtors to consummate the transactions contemplated by the Transition Agreement on behalf of the Debtors.

Valid and Binding Releases

Q. Pursuant to Bankruptcy Rule 9019, and in consideration for the benefits provided under the Transition Agreement and other good and valuable consideration provided to the Debtors, their estates, and the Buyer in connection with the nbn Transaction, upon the Completion, the Transition Agreement shall constitute a good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Transition Agreement. The Motion shall be deemed a motion to approve the good faith compromise and settlement of all such Claims and

Interests and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Order shall constitute the Court's approval of such compromise and settlement under Bankruptcy Rule 9019, as well as a finding by the Court that such settlement and compromise is a valid exercise of the Debtors' business judgment, fair, equitable, reasonable, and in the best interests of the Debtors and their estates.

IT IS HEREBY ORDERED THAT:

1. Any and all objections and responses to the Motion that have not been withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby overruled and denied on the merits. Notice of the Motion, the nbn Transaction, and the Assignment Procedures was fair and equitable under the circumstances, and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

Sale and Transfer Free and Clear of Claims and Interests

2. The Transition Agreement, and all of the terms and conditions thereof, and the nbn Transaction contemplated thereby, are hereby approved in all respects. The settlement embodied in the Transition Agreement is fair and reasonable, and is approved pursuant to Bankruptcy Rule 9019. The Debtors' and Buyer's agreement to provide the mutual releases in accordance with the Transition Agreement is in the best interests of the Debtors' estates and such releases are approved pursuant to Bankruptcy Rule 9019. Each of the releases entered into pursuant to the Transition Agreement are fully consensual and approved. The releases are hereby approved in their entirety and the consideration provided by Buyer pursuant to the Transition Agreement is found to be fair consideration for the releases.

3. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order, including to effectuate, implement, and close the transactions set forth in the Transition

Agreement, including all additional instruments and documents that may be reasonably necessary or desirable to implement the Transition Agreement and to perform their obligations thereunder.

4. This Order and the Transition Agreement shall be binding in all respects upon, and shall inure to the benefit of, the Debtors and their bankruptcy estates, their affiliates, all creditors, all holders of equity interests in the Debtors, and all holders of any Claims and Interests (as defined below) against the Debtors or any portion of the SMS Assets, all counterparties to any executory contract or unexpired lease of the Debtors, Buyer and all agents, representatives, affiliates, and permitted successors and assigns of Buyer, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code appointed in these Chapter 11 Cases or upon a conversion of any of these Chapter 11 Cases to chapter 7 under the Bankruptcy Code.

5. The conditions of section 363(f) of the Bankruptcy Code have been satisfied and, upon entry of this Order, the Debtors may transfer all of the Debtors' right, title and interest to the SMS Assets free and clear of (i) any and all liens, encumbrances, claims, mortgages, restrictions, hypothecations, charges, instruments, collective bargaining agreements, leases or subleases, licenses, options, deeds of trust, security interests, other interests, conditional sale or other title retention agreements, pledges, other liens (including mechanic's, materialman's, possessory and other consensual and non-consensual liens and statutory liens), judgments, demands, encumbrances, easements, servitudes, rights-of-way, encroachments, restrictive covenants, restrictions on transferability or other similar restrictions, rights of first refusal, offsets, contracts, recoupment, rights of recovery, rights of use or possession, and charges of any kind or nature, if any, including any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership, and (ii) all claims as defined in Bankruptcy Code section 101(5), including all rights or causes of action (whether in law or equity), warranties,

guarantees, indemnities, rights of recovery, setoff, recoupment, or liabilities relating to any act or omission of any Debtor or any other person prior to Completion, known or unknown, and regardless of whether currently exercisable), whether arising prior to or subsequent to the commencement of these Chapter 11 Cases ((i) and (ii), collectively, the “**Claims and Interests**”).

6. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, upon Completion and pursuant to and except as otherwise set forth in the Transition Agreement, the SMS Assets will be transferred to Buyer free and clear of all Claims and Interests that existed prior to Completion, of any person, including, without limitation, the DIP Liens, the Prepetition Liens, and the Adequate Protection Liens (each, as defined in the *Interim Order (I) Authorizing Debtors to (A) Refinance Their Postpetition Financing Obligations and (B) Use Cash Collateral, (II) Amending the Interim and Final Orders, and (III) Granting Related Relief*[Docket No. 724] (the “**Interim DIP Order**”)), and all such Claims and Interests shall attach to the cash proceeds of the nbn Transaction, subject to the terms and conditions set forth in the Interim DIP Order, in the order of their relative priority and with the same validity, force, and effect the holder of such Interest or Claim had against the SMS Assets prior to Completion.

7. Upon Completion, this Order will be construed and will constitute for any and all purposes a complete, valid, legal, and effective general assignment, conveyance, and transfer of all of the SMS Assets free and clear of all Claims and Interests, and will vest Buyer with all of the Debtors’ right, title, and interest in and to the SMS Assets as set forth in this Order and the Transition Agreement.

8. Except to enforce the terms of the Transition Agreement, upon Completion, all entities or persons are permanently and forever prohibited, estopped, and enjoined from asserting against Buyer, and its permitted successors, designees, and assigns, or property, or the

SMS Assets conveyed in accordance with the Transition Agreement, any Claim or Interest of any kind or nature whatsoever arising prior to Completion.

9. The Transition Agreement may be modified, amended, or supplemented through a written document signed by the parties thereto in accordance with the terms thereof and this Order without further order of this Court; provided that no such modification, amendment, or supplement may be made without further order of this Court if it is materially adverse to the Debtors or the Debtors' estates.

10. The Transition Agreement shall be of full force and effect, regardless of any Debtor's lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

11. To the extent applicable, the automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of the Court, to allow Buyer to (a) give the Debtors notice provided for in the Transition Agreement, and (b) take actions permitted by the Transition Agreement.

Assumption and Assignment of the Contracts

12. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon Completion, the Debtors' assumption and assignment to Buyer, and Buyer's assumption, on the terms set forth in this Order, the Transition Agreement and the A&A Notice of the Contracts set forth in **Exhibit 1** are hereby approved in their entirety, but not required, and the requirements of section 365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

13. The A&A Notice, substantially in the form attached as **Exhibit 2** hereto, is appropriate and reasonably calculated to provide counterparties to the Contracts with timely and

proper notice of the potential assumption and assignment of the Contracts pursuant to the Assignment Procedures in connection with the nbn Transaction and the related Cure Amounts, and no other or further notice is required.

14. The Debtors are hereby authorized in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to assume and assign to Buyer, effective upon Completion, the Contracts free and clear of all Claims and Interests of any kind or nature whatsoever (except as otherwise assumed in, or permitted by, the Transition Agreement) and to execute and deliver to Buyer such documents or other instruments as may be necessary or desirable to novate the Contracts to Buyer.

15. Upon Completion, in accordance with sections 363 and 365 of the Bankruptcy Code, Buyer will be fully and irrevocably vested in all right, title, and interest of each Contract.

16. Upon assignment, the Contracts shall remain in full force and effect for the benefit of Buyer in accordance with their respective terms and pursuant to the Transition Agreement, notwithstanding any provision in any such Contract of the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code.

17. The payment of the applicable Cure Amount (if any) for any Contract pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code shall effect a cure of all defaults of the Debtor in respect thereof and all other obligations or liabilities of the Debtor under such Contract existing, occurring, arising, or accruing prior to the date that such Contract is assumed, and shall compensate for any actual pecuniary loss to such non-Debtor counterparty resulting from any such default.

18. After payment of the applicable Cure Amount (if any) for any Contract assigned to Buyer in accordance with the Transition Agreement and pursuant to sections 65(b)(1)(A) and (B) of the Bankruptcy Code, neither the Debtors, their estates, nor Buyer shall have any further liabilities to the non-Debtor counterparty to such Contract, in respect of such Contract, other than Buyer's obligations under such Contracts that accrue or become due and payable on or after the date that such Contract is assumed.

Other Provisions

19. Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and the Debtors and Buyer shall be entitled to the protections thereunder. The reversal or modification on appeal of the authorization provided herein to consummate the nbn Transaction shall not affect the validity of the nbn Transaction (including the assumption and assignment of the Contracts).

20. The nbn Transaction may not be avoided under section 363(n) of the Bankruptcy Code.

21. Notwithstanding the provisions in the Bankruptcy Rules to the contrary, including Bankruptcy Rule 6004(h), this Order shall constitute a final order and be immediately effective and enforceable upon its entry.

22. Upon Completion, a certified copy of this Order evidencing the release, cancelation, and termination provided herein of any Claims and Interests of record on the SMS Assets may be filed or recorded with the appropriate filing agents or officers, administrative agencies or units, governmental departments or officials, and all other persons as may be required; and will constitute conclusive evidence of the release of all Claims and Interests in the SMS Assets; *provided that*, the provisions of this Order are self-executing.

23. Each foreign, federal, state, and local governmental agency or department is hereby authorized to accept all documents and instruments necessary or appropriate to consummate the transactions contemplated by the Transition Agreement, including, without limitation, recordation of this Order.

24. In the event of any conflict between this Order and the Transition Agreement, this Order shall control in all respects.

25. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2020
Houston, Texas

THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Proposed Assumed and Assigned Contracts and Lease

Proposed Assumed and Assigned Contracts and Lease¹

| Contract | Counterparty | Contact details | Cure amount (AUD)¹ | Cure amount (USD)¹ |
|-----------------|---|--|--------------------------------------|--------------------------------------|
| Supply contract | APA Olsen Pty Limited | PO Box 675 Tullamarine, VIC 3043, Australia | 9,753 | 6,730 |
| Supply contract | Apcom Australia Pty Limited (FSE) | 52 Ochiltree Court, Cardigan, VIC 3352, Australia | 1,650 | 1,139 |
| Supply contract | Buildstack Pty Limited | 24 Moonbeam Parada, Mudgeeraba, QLD 4213, Australia | - | - |
| Supply contract | Dimension Data Pty Limited | 121-127 Harrington Street The Rocks, NSW 2000, Australia | - | - |
| Supply contract | Gilat Satellite Networks Australia Pty Ltd | Level 7, 436 St Kilda Road Melbourne, VIC 3004, Australia | 180,794 | 124,748 |
| Supply contract | Gilat Satellite Networks Ltd | 21 Yegia Kapayim St Kiryat Arye, Petah Tikva 49130, Israel | 421,067 | 290,536 |
| Supply contract | Ian C.C. West and Nickie T. West (trading as NIW Solutions) | 74 Trevilla Rd Humbug Scrub, SA 5114, Australia | - | - |
| Supply contract | Insight VM (Rapid 7) | Suite 400 120 Causeway Street Boston, MA 02114, United States | - | - |

¹ Converted at AUD/USD exchange rate of 0.69

| Contract | Counterparty | Contact details | Cure amount (AUD)¹ | Cure amount (USD)¹ |
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| Supply contract | Meinberg Funkhuren GmbH & Co. KG | Lange Wand 9 31812 Bad Pyrmont Hannover, 100322 Germany | - | - |
| Supply contract | MetaPM Pty Limited | Level 3, 420 Collins Street Melbourne, VIC 3000, Australia | - | - |
| Supply contract | Skybridge Group Pty Limited (VSAT SDP) | Unit 4, 101-105 Keilor Park Drive Tullamarine, VIC 3043, Australia | - | - |
| Lease | Select Property Holdings (Mauritius) Ltd c/- Jones Lang Lasalle (Vic) Pty Ltd | Level 40,101 Colins Street Melbourne, VIC 3000, Australia | 314 | 216 |
| Supply contract | Softel Systems Pty Limited | Level 3, 26-28 Prospect St Box Hill, VIC 3128, Australia | 9,910 | 6,838 |
| Supply contract | Sunbird Software Inc | 200 Cottontail Lane, Suite B106E Somerset, NJ 08873, United States | - | - |
| Supply contract | Talent International (VIC) Pty Limited | Level 8, Rialto North Tower 525 Collins Street Melbourne, VIC 3000, Australia | - | - |
| Supply contract | Transpara International LLC | 4715 W Culpepper Drive Aguila, AZ 85087, Australia | 32,410 | 22,363 |

| Contract | Counterparty | Contact details | Cure amount (AUD)¹ | Cure amount (USD)¹ |
|-----------------|---------------------------------------|---|--------------------------------------|--------------------------------------|
| Supply contract | Unico Enterprise Services Pty Limited | 5th Floor, 5 Queens Road Melbourne, VIC 3004, Australia | - | - |
| Supply contract | WJD Services Pty Limited | 1/22 Peninsula Blvd Seaford, VIC 3198, Australia | 198 | 137 |

Exhibit 2

A&A Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

| | | |
|---|---|---|
| In re: SPEEDCAST INTERNATIONAL LIMITED, et al., Debtors.¹ | § § § § § § § § § | Chapter 11 Case No. 20-32243 (MI) (Jointly Administered) |
|---|---|---|

**NOTICE OF CONTRACTS AND LEASE THAT MAY BE
ASSUMED OR ASSUMED AND ASSIGNED IN CONNECTION WITH NBN
TRANSACTION AND THE PROPOSED CURE COSTS WITH RESPECT THERETO**

On April 23, 2020, SpeedCast International Limited and its debtor affiliates in the above chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”) filed with the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”) a motion (the “**Motion**”) seeking, among other things, entry of an order (i) authorizing and approving the private sale of substantially all of Speedcast Managed Services Pty Ltd’s assets (“**SMS**” and its assets, the “**SMS Assets**”), free and clear of all liens, claims, encumbrances and other interests, the assumption by nbn co limited (“**Buyer**”) of certain liabilities, including employee entitlements, the granting of mutual releases, and other related terms, pursuant to that certain Transition Agreement with Buyer dated September 16, 2020 (the “**Sale**”), and (b) the assumption and assignment of certain contracts and a lease (the “**Proposed Assigned Contracts**”); (ii) approving the form and manner of notice of the Motion and to counterparties to the Proposed Assigned Contracts of the Debtors’ potential assumption and assignment (the “**Assumption Notice**”), and the procedures for such assumption and assignment, including the Debtors’ calculation of the amount necessary to cure any monetary defaults under the Proposed Assigned Contracts (“**Cure Costs**”); and (iii) granting related relief pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

You are receiving this Assumption Notice because you may be a counterparty to a contract or lease that potentially could be assumed or assumed and assigned in connection with the Sale.

Cure Costs

In accordance with the Motion, the Debtors are, in connection with the Sale, seeking to assume and assign the Proposed Assigned Contracts to Buyer.

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kcellc.net/speedcast>. The Debtors’ service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

Each of the Proposed Assigned Contracts that may be assumed or assigned in connection with the Sale and the Debtors' good faith calculation of the Cure Costs with respect thereto are set forth on **Exhibit A** hereto.

The inclusion of any Proposed Assigned Contracts identified on **Exhibit A** does not constitute an admission that a particular Proposed Assigned Contract is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Proposed Assigned Contract ultimately will be assumed or assigned. The assumption or assignment of a Proposed Assigned Contract is subject to Bankruptcy Court approval and the execution by the counterparty of a Novation Agreement in the form attached as Attachment 2 to the Transition Agreement. All rights of the Debtors with respect thereto are reserved.

Cure or Adequate Assurance Objections

Any objection to the proposed assumption, assumption and assignment, or potential designation of a Proposed Assigned Contract identified on **Exhibit A**, the subject of which objection is the Debtors' proposed Cure Costs or the provision of adequate assurance of future performance by Buyer (an "**Assumption Objection**"), must (i) identify the applicable Proposed Assigned Contracts; (ii) state, with specificity, the legal and factual bases for the objection, including the cure amount the counterparty believes is required to cure defaults under the relevant Proposed Assigned Contract; and (iii) include any appropriate documentation in support thereof, and must be filed with the Bankruptcy Court and served on counsel for the Debtors (detailed on the signature page hereto) and counsel for Buyer (Morgan, Lewis & Brockius LLP, One State Street, Hartford, Connecticut, 06163 Attn: David Lawton, david.lawton@morganlewis.com) (the "**Objection Recipients**") by no later than October 15, 2020 (**prevailing Central Time**) (the "**Assumption Objection Deadline**").

If a timely Assumption Objection is not resolved by the parties 24 hours following the Assumption Objection Deadline, the Debtors will request that the Bankruptcy Court set a hearing (the "**Sale Hearing**") to consider the Motion and any pending Assumption Objections or other objections, and the amount to be paid or reserved with respect to such objection shall be determined by the Bankruptcy Court at the Sale Hearing; provided that the parties first shall use commercially reasonable, good faith efforts to resolve such objection without further Bankruptcy Court intervention.

IF A COUNTERPARTY FAILS TO FILE WITH THE COURT AND SERVE ON THE OBJECTION RECIPIENTS A TIMELY ASSUMPTION OBJECTION, THE COUNTERPARTY SHALL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND ASSIGNMENT OF THE PROPOSED ASSIGNED CONTRACTS TO BUYER, NOTWITHSTANDING ANY ANTI-ALIENATION PROVISION OR OTHER RESTRICTION ON ASSUMPTION OR ASSIGNMENT IN THE PROPOSED ASSIGNED CONTRACTS, AND SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY BUYER OR THE COST TO CURE ANY DEFAULTS UNDER THE APPLICABLE CONTRACT OR LEASE AND ANY PROOF OF CLAIM ASSERTING A CLAIM FOR SUCH AMOUNT SHALL BE EXPUNGED WITHOUT FURTHER ORDER OF THE BANKRUPTCY COURT. THE CURE COSTS SET FORTH IN THE ASSUMPTION NOTICE SHALL BE CONTROLLING AND WILL BE THE ONLY

AMOUNT NECESSARY TO CURE OUTSTANDING DEFAULTS UNDER THE APPLICABLE CONTRACT OR LEASE UNDER SECTION 365(B) OF THE BANKRUPTCY CODE, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT OR LEASE, OR ANY OTHER DOCUMENT, AND THE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY ADDITIONAL CURE OR OTHER AMOUNTS WITH RESPECT TO SUCH CONTRACT OR LEASE THROUGH THE DATE OF ASSUMPTION OR ASSUMPTION AND ASSIGNMENT, WHETHER IN A PROOF OF CLAIM OR OTHERWISE AGAINST THE DEBTORS, OR THEIR PROPERTY.

Additional Information

Copies of the Motion, including the Transition Agreement and the Proposed Order may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent, Kurtzman Carson Consultants LLC, located at <https://kccllc.net/speedcast>.

Dated September 22, 2020

/s/ Alfredo R. Pérez
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-and-

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Jake.Rutherford@weil.com

*Attorneys for Debtors
and Debtors in Possession*

Exhibit A

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