

**Attachment A – Released under FOI Act - NBN Co FOI1213/12 – Document 1
Standard Senior Executive Employment Contract**

**NBN Co Limited
EMPLOYMENT AGREEMENT – FULL TIME EMPLOYEE**

Employee	[insert name and address of Employee].
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Agreement

This Agreement consists of the attached Standard Terms and the attached schedules.

Executed by [insert name of Employee] in the)
presence of:)
)

.....
Witness

.....
Employee

.....
Name of Witness (print)

Executed by NBN Co Limited ABN 86 136 533)
741 by its authorised representative in the)
presence of:)

.....
Authorised representative

Rachael Heald

.....
Name of authorised representative (print)

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STANDARD TERMS

1 Position

1.1 Position

You will be employed on a full-time basis in the position specified at **Item 1 of Schedule Two** based at NBN Co's offices specified at **Item 2 of Schedule Two**. You may also be required to work at other locations from time to time as necessary.

1.2 Reporting

The position to which you will initially report is set out in **Item 3 of Schedule Two**. NBN Co may change this reporting line from time to time as necessary.

1.3 Terms of document

The terms set out in this document will continue to govern your employment with NBN Co despite any changes from time to time to your position, duties and responsibilities, remuneration, working hours or employment location unless otherwise agreed in writing.

1.4 Pre-employment test

Notwithstanding any other term of this or any other document, this offer and your employment with NBN Co is conditional upon you successfully passing NBN Co's pre-employment drug and alcohol test. If you do pass that test your employment will commence on the terms set out in this document. If you do not pass that test your employment will not commence and your contract of employment will not come into existence.

1.5 Visa requirements

Your employment with NBN Co is conditional on your legal entitlement to work in Australia and you must produce evidence of this entitlement upon request by NBN Co. You also are required to inform NBN Co as soon as there is a change to your circumstances that affects your legal entitlement to work in Australia. Failure to comply with this requirement may result in the termination of your employment.

1.6 Background checks

Your employment at NBN Co is subject to the completion of satisfactory background checks, including any criminal record checks, to ensure that you are suitable to carry out the requirements of your position, and to ensure that the information you have provided is true and

correct. In the event that the background checks (when and if conducted) reveal that you have given false information or disclose unsatisfactory results, NBN Co reserves the right to immediately terminate your employment without notice, or, if your employment has not commenced, to immediately revoke any offer of employment that may have been made to you.

2 Commencement

Your employment will commence on the date specified at **Item 4 of Schedule Two** and will continue until terminated in accordance with this document.

3 Probationary period

Your employment will be subject to the probationary period specified at **Item 5 of Schedule Two**. During the probationary period, NBN Co will assess your suitability for the position. At any time during the probationary period, your employment may be terminated by either party on one month's notice, or by NBN Co making a payment of one month's pay in lieu of notice or part thereof.

4 Duties

4.1 Primary duties

Details of your primary duties and responsibilities will be provided to you on commencement. You may also be required to perform other duties as required by NBN Co in addition to these duties.

4.2 Manner of performance

By accepting employment with NBN Co, you agree to honestly and faithfully serve NBN Co and use your best endeavours to promote its interests and welfare. Unless you are absent on leave, as provided for in this document, you agree to devote the whole of your time and attention during your working hours to the business of NBN Co.

4.3 Warranty

You warrant that you are not subject to any restrictions to your ability to perform your role.

5 Conflicts of Interest

5.1 Duty to avoid conflict

You must not undertake any activity (including paid or unpaid work) which may either compromise or give rise to a conflict with either:

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- (a) your duties and responsibilities under this contract; or
 - (b) the business interests of NBN Co,
- unless you have obtained the prior written consent of NBN Co.

5.2 Duty to avoid certain conduct

Without limiting the generality of the above, you must not during the time you are employed by NBN Co directly or indirectly engage in any of the following conduct other than in the course of your employment with NBN Co unless full details of the conduct have been provided to NBN Co and it has consented to the conduct in writing:

- (a) participate in any dishonest or unfair conduct or any business transaction or other dealing with NBN Co's suppliers, contractors, employees or joint venturers;
- (b) assist or participate in the Australian business of any operator of fixed line telecommunications infrastructure, including Telstra or SingTel Optus;
- (c) undertake a business or perform work during working hours which is unrelated to that of NBN Co;
- (d) undertake a business or perform work outside of working hours which gives rise to a conflict of interest;
- (e) provide work, business or any other benefit on behalf of NBN Co to a business in which you or any of your immediate or extended family, friends, partners or associates have a significant financial personal interest;
- (f) encourage employees or contractors of NBN Co to terminate their contract with NBN Co (whether or not that termination would amount to a breach of contract);
- (g) accept a benefit from someone other than NBN Co in return for an act or forbearance in relation to NBN Co's business or activities;
- (h) accept a benefit from a party that does business with NBN Co;
- (i) earn or attempt to earn a secret profit or commission from NBN Co's business.

5.3 Disclosure

You must immediately and fully disclose in writing to NBN Co any potential or actual conflicts of interest.

5.4 Permissible activity

You are not prevented by this clause from:

- (a) any reasonable involvement in any profession or educational activity or body; or
- (b) trading in any shares or stock of any company which is listed on a recognised stock exchange for the purpose of investment only, provided that such shares or stock do not exceed 5 per cent of the company's issued capital.

The obligations contained in this clause are not intended to detract from your express or implied obligations of good faith and fidelity towards NBN Co.

6 Hours

6.1 Normal hours

You will be required to work 38 hours per week at times to be agreed between you and NBN Co and as set out in **Item 6 of Schedule Two**.

6.2 Additional hours

You may be required to work additional hours on occasion. Your remuneration includes an allowance for this and no additional payment will be made for overtime.

7 Remuneration and Benefits

7.1 Remuneration

You will be entitled to the remuneration and other benefits specified in **Item 7 of Schedule Two**. The salary component of your remuneration will be paid monthly by direct deposit into an account nominated by you.

7.2 All inclusive amount

Your remuneration is inclusive of all entitlements you may have under a modern award or an enterprise agreement (including, but not limited to allowances, penalties, overtime or loadings including leave loading).

7.3 Review

Your remuneration will be reviewed annually and any increases will be at NBN Co's discretion.

7.4 Superannuation

As part of your remuneration, NBN Co will contribute the minimum amount to a complying superannuation fund in order to avoid any charge under the *Superannuation Guarantee (Charge) Act 1992*. This amount is included in your remuneration specified in **Item 7 of Schedule Two**.

7.5 Choice of fund

You are free to direct your superannuation contributions to a regulated complying superannuation fund of your choice. You are required to provide information about your chosen fund as listed in the standard choice form.

7.6 Total employment cost

Your remuneration is calculated on a "total employment cost" basis. You may request and NBN Co may agree to structure your remuneration to fit in with your personal requirements (for example to include extra superannuation payments, motor vehicle, etc) provided that:

- (a) the total cost to NBN Co including any fringe benefits tax or other taxes or charges and any additional administration expenses which NBN Co incurs will not exceed the remuneration specified in **Item 7 of Schedule Two**; and
- (b) the arrangements comply at all times with NBN Co's policies and applicable laws (as amended from time to time).

7.7 Authorised deductions

In the event you are paid salary in a month that is in excess of that to which you are entitled under **clause 7.1** you authorise NBN Co to deduct the amount of the overpayment from any subsequent payment of salary under **clause 7.1**.

8 Business expenses

NBN Co will reimburse to you, in accordance with NBN Co's policy, reasonable expenses incurred by you in the performance of your duties.

9 Annual leave

Each year of service you are entitled to four weeks' paid annual leave in accordance with *Fair Work Act 2009* (Cth).

10 Paid Personal/Carer's leave

You will be entitled to 10 days' paid personal/carer's leave for each year of continuous service in accordance with the *Fair Work Act 2009* (Cth). Your entitlement to this leave accrues progressively during your period of service. In accordance with that Act, the leave can be taken if you are suffering from an illness or injury or to care or support a member of your immediate family or household who has an illness or injury or unexpected emergency. Untaken personal/carer's leave will accumulate from year to year but is not payable on termination of your employment. NBN Co may require medical certificates for absences on personal leave of more than one day or otherwise at the request of NBN Co.

11 Carer's leave

You will be entitled to two days' unpaid carer's leave in accordance with the *Fair Work Act 2009* (Cth) when one of your immediate family or a member of your household requires care or support because of a personal illness or injury or unexpected emergency affecting that person.

12 Parental leave

You will be entitled to parental leave in accordance with NBN Co's parental leave policy, as amended from time to time, and in accordance with the *Fair Work Act 2009* (Cth). NBN Co's parental leave policy does not form part of your contract of employment.

13 Public holidays

You will be entitled to the public holidays proclaimed in the State or Territory in which you are employed without loss of pay.

14 Long service leave

You will be entitled to long service leave in accordance with applicable State or Territory legislation and the *Fair Work Act 2009* (Cth).

15 Garden leave and termination

15.1 Garden leave

NBN Co may, at its sole discretion, at any time not require you to carry out your duties and/or attend NBN Co's offices. During this time you are not to provide services in any other business or undertaking, otherwise than with NBN Co's consent.

15.2 Termination with notice

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- (a) Your employment may be terminated at any time by either you or NBN Co giving written notice or by NBN Co giving you pay in lieu of notice being the period of notice specified at **Item 8 of Schedule Two**.
- (b) If your employment is terminated by NBN Co in accordance with this **clause 15.2** you will also be entitled to a lump sum in termination payment specified at **Item 9 of Schedule Two**.

15.3 Redundancy payment

The payment referred to in **clause 15.2(b)** is intended to include any payment due to you in respect of redundancy under either NBN Co's policies or the *Fair Work Act 2009* (Cth).

15.4 Termination without notice

If however you are guilty of misconduct or otherwise commit a serious or persistent breach of a term or condition of this document, NBN Co may terminate your employment immediately without notice.

15.5 Employee with visa

If your employment is subject to a visa and the visa ceases or a condition of the visa is breached by you causing the visa to be cancelled, your employment will be terminated by NBN Co giving you the minimum notice required by the *Fair Work Act 2009* (Cth) or payment in lieu thereof.

16 Appointment to and resignation from offices

16.1 Officeholder

During your employment, NBN Co may request that you hold offices with it or some associated entity. Unless otherwise agreed these offices will be held without any further remuneration being paid to you.

16.2 Resignation from office

On termination of your employment (for whatever reason), you must immediately resign from any office held by you in NBN Co or any associated entity without claim for compensation.

17 Confidential Information

17.1 Duty to keep confidential

You will not at any time, before, during or after your employment, use or disclose to any person any Confidential Information, except:

- (a) in the proper performance of your responsibilities and duties;
- (b) if you are compelled by law and have used every lawful means available to you to prevent disclosure; or
- (c) if you have been authorised in writing by NBN Co to do so.

17.2 Delivery

You shall immediately deliver to NBN Co all Confidential Information capable of delivery:

- (a) upon the termination of your employment; or
- (b) at any time on the request of NBN Co or its nominee.

17.3 Non-disclosure

The provisions of this document are confidential and may not be disclosed by you to any other person, including any other employee, other than your immediate family or your legal or financial advisors.

17.4 Non-disclosure by NBN Co

This document is confidential and may not be disclosed by NBN Co to any other party without your consent, except to a HR Service Provider or NBN Co's legal and financial advisors.

18 Intellectual Property

You acknowledge and agree that all Intellectual Property developed, created or conceived by you during your employment with NBN Co, is and will be the sole and exclusive property of NBN Co. You further acknowledge and agree that:

- (a) full right, title and interest in and to copyright works created by you will vest in NBN Co immediately on creation;
- (b) full right, title and interest in all other Intellectual Property is assigned to NBN Co by you;
- (c) you shall promptly execute all documents and do all things necessary to vest or

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assign full right, title and interest in the Intellectual Property in and to NBN Co;
and

- (d) you grant NBN Co (and NBN Co's licensees, successors in title and authorised agents) consent to do or omit to do any act which would otherwise infringe your moral rights under the *Copyright Act 1968* (Cth) in relation to all copyright works you make in the course of your employment.

19 Privacy

You consent to NBN Co and any HR Service Provider collecting, using, disclosing to related bodies corporate or third parties, and transferring overseas to third parties, your Personal Information and your Sensitive Information for the purpose of your employment or purposes related to your employment with NBN Co.

20 Surveillance

From the commencement of your employment, on an ongoing basis, your computer use, including your internet and email use will be subject to continuous monitoring through the use of software, in accordance with NBN Co's policies. You also consent to and agree that you may be subject to ongoing or intermittent recorded video surveillance on or around NBN Co's premises, location tracking on electronic devices (including smart phones), vehicle location tracking and driver identity monitoring (to the extent you are given access to an NBN Co vehicle) in accordance with NBN Co's policies.

21 Policies

You agree to abide by all policies of NBN Co as replaced, amended or varied from time to time, including but not limited to NBN Co's Drug and Alcohol Policy, Anti-Discrimination and Sexual Harassment Policy and any Workplace Surveillance Policy. The policies of NBN Co, however, are not incorporated into your contract of employment.

22 Previous understandings and agreements

This document:

- (a) constitutes the whole of the terms and conditions of your contract of employment with NBN Co; and
- (b) supersedes all previous agreements, arrangements, understandings or representations in relation to your employment with NBN Co.

23 Governing law

This document is governed by and is to be construed in accordance with the laws applicable in the location specified at **Item 2 of Schedule Two**.

SCHEDULE ONE

1 Interpretation

1.1 Definitions

In this document:

Confidential Information means all information regardless of the manner in which it is recorded or stored, including but not limited to information in an electronic form, relating to the business interests, methodology or affairs of the Group, or any person or entity which the Group deals or is concerned with. Confidential information includes information regarding investment, access and funding arrangements, legislation and negotiations related to the National Broadband Network, including information created by Federal or State government bodies, the Panel of Experts and private sector entities.

Fair Work Act 2009 (Cth) includes the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)* and the *Fair Work Regulations 2009 (Cth)*.

HR Service Provider means any party with which NBN Co contracts for the provision of human resource services to NBN Co, whether based in Australia or internationally.

Intellectual Property means patents, trade marks, copyright, and designs, whether registered or unregistered, and software developments, computer programs, eligible layout rights, know-how, processes, inventions and improvements in procedure made or discoveries conceived.

NBN Co means NBN Co Limited (ABN 86 136 533 741).

Personal Information has the meaning it has in the *Privacy Act 1988 (Cth)*.

Sensitive Information has the meaning it has in the *Privacy Act 1988 (Cth)*.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (c) "includes" means includes without limitation;
- (d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (e) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) a party includes that party's heirs, successors and permitted assignees;
 - (iv) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (v) a right includes a benefit, remedy, discretion, authority or power;
 - (vi) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (vii) provisions or terms of this document or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
 - (viii) "\$" or "dollars" is a reference to Australian currency;

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- (ix) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
- (xi) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

1.3 Headings

Headings do not affect the interpretation of this document.

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SCHEDULE TWO

1	Position	[Insert title]
2	Location	You will be based in [insert location being name of city eg Sydney]
3	Reporting To	You will be initially reporting to the [insert position of direct manager]
4	Commencement Date	[Date], unless otherwise agreed by the parties in writing
5	Probationary Period	3 months commencing from the Commencement Date
6	Hours of Work	[insert] hours per week [insert - default is:] during normal working hours
7	Remuneration and Other Benefits	Total Fixed Remuneration of [\$] per annum (gross). Subject to Board approval of each year's plan, you may also be invited to participate in the NBN Co short term incentive plan with a target of 30% of your Total Fixed Remuneration (TFR), which is fully at risk. In this event, you will be provided with a written invitation outlining the terms of the offer and the STI Rules which may be amended from time to time.
8	Notice	3 months' notice to be given by the employee 3 months' notice to be given by NBN Co
9	Termination Payment	3 months' remuneration (gross)