

Test Agreement

Test Description: Managed Wi-Fi Trial



This Agreement is a Standard Form of Access Agreement for the purposes of Part XIC of the *Competition and Consumer Act 2010* (Cth) where one is required for nbn to supply a Test Product

Test Agreement

Test Description: Managed Wi-Fi Trial

Version	Description	Effective Date
1.0	Issued on 5 September 2019	Execution Date

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Environment

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

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Test Agreement

Test Description: Managed Wi-Fi Trial

Parties

- **nbn** Co Limited (ABN 86 136 533 741) of Level 11, 100 Arthur Street, North Sydney NSW 2060 (**nbn**);
- [Insert party name] (ABN [insert ABN]) of [insert registered address of Test Participant] (**Test Participant**)

Background

- A. This Test Description, together with the Standard Test Terms, forms the Agreement for this Test.
- B. The purpose of this Test is to gather insights from Customers and End Users in relation to the End User Wi-Fi environment and RSP Wi-Fi Solution to better identify, diagnose and remediate Wi-Fi related issues in the Premises.

1. Interpretation and definitions

1.1 Interpretation

For the purposes of this Test Description:

- (a) the singular includes the plural and vice versa;
- (b) any capitalised term used but not defined in this Test Description has the meaning given to that term in the Standard Test Terms; and
- (c) any capitalised term used but not defined in this Test Description or the Standard Test Terms has the meaning given to that term in the WBA.

1.2 Definitions

In this Test Description:

Agreement means the Standard Test Terms and this Test Description, together with any Supporting Documents.

Deployment Period means the period specified within 4.3(b)(ii).

Eligible Premises means the Premises for which the RSP Wi-Fi Solution is, or will be, deployed to.

Eligible Premises List means a list of Premises containing information required in accordance with this Test Description, including, for each Premises, the Target Device, the quantity of Target Device, the nature of End User initiated, incidents raised and the nature of each incident.

Expiry Date means 30 April 2020 (or such other later date as notified by **nbn** to the Test Participant).

RSP Wi-Fi Solution means the tool, firmware agent, or feature deployed or to be deployed on End User Premises equipment (**CPE**) Wi-Fi gateways which is designed to improve identification, diagnosis and remediation of CPE and Wi-Fi related issues in the Premises for the purposes of this Test.

Supporting Documents means any document notified to Test Participant by **nbn** that details instructions, policies and procedures regarding the Test Activities.

Target Device means the RSP residential gateway model type.

Test Activities means the activities and processes set out in clause 4 of this Test Description and any other activities and processes that **nbn** notifies to Test Participant from time to time required to perform this Test.

Test Contact means each person appointed by **nbn** and Test Participant as:

- (a) their single central contact point regarding this Test; and
- (b) any additional people appointed as contact points in relation to specific matters regarding this Test (such as operational or technical issues).

Test Description means this document, which is issued by **nbn** under the Standard Test Terms.

2. Participation in this Test

- (a) To participate in this Test, the Test Participant must:
 - (i) be a party to a WBA;
 - (ii) be in good standing with **nbn**; and
 - (iii) have entered into the Standard Test Terms and this Test Description.
- (b) If Test Participant ceases to comply with any one of the conditions in clause 2(a) at any time, **nbn** may immediately do any one or more of the following things:
 - (i) exclude Test Participant from this Test; and/or
 - (ii) terminate this Test Description.

3. Documentation Changes

nbn may, without limiting clause 9, amend or replace this Test Description by giving 10 Business Days' written notice to Test Participant.

4. Test Activities

The Test Activities will include the activities in this clause 4 to be undertaken by **nbn** and the Test Participant in accordance with the Agreement.

4.1 Selection of Eligible Premises

- (a) Test Participant must:
 - (i) propose one Target Device model type to be used for the purposes of this Test;
 - (ii) ensure the Target Device's firmware can be managed and updated during the Test Period;
 - (iii) provide a completed Eligible Premises List to **nbn**;
 - (iv) maintain a minimum number of 5,000 Eligible Premises during the Test Period, or as otherwise agreed between **nbn** and Test Participant;
 - (v) notify **nbn** if Test Participant intends to include additional Eligible Premises to this Test during the Deployment Period; and

- (vi) obtain agreement from **nbn** prior to including additional Eligible Premises to this Test.
- (b) Test Participant and **nbn** must agree that the Target Device proposed by the Test Participant in 4.1(a)(i) is suitable for the purposes of this Test prior to the use of the Target Device in this Test.
- (c) Test Participant must not, unless otherwise agreed by **nbn**, include in the Eligible Premises List any Premises:
 - (i) which is registered on **nbn**'s Medical Alarm Register;
 - (ii) which Test Participant is otherwise aware requires ongoing medical or security alarm services; or
 - (iii) to which Test Participant supplies:
 - (A) a Downstream Priority Assistance Service; or
 - (B) a Special Service.
- (d) Test Participant must notify **nbn** of any Premises in the Eligible Premises List to which clause 4.1(c) applies prior to commencing this Test.
- (e) For the purposes of clause 4.1(a)(iii), **nbn** has sole discretion to determine whether an Eligible Premises List has been completed or contains sufficient information for this Test. If **nbn** determines that an Eligible Premises List that has been provided to **nbn** is not complete or does not contain sufficient information, Test Participant must amend the Eligible Premises List and resubmit the Eligible Premises List to **nbn**.
- (f) **nbn** will select a number of Eligible Premises from the Eligible Premises List and advise the Test Participant prior to the Deployment Period.

4.2 Test Preparation

- (a) If the Test Participant intends to use their existing RSP Wi-Fi Solution, Test Participant must:
 - (i) advise **nbn** prior to the selection of the RSP Wi-Fi Solution vendor;
 - (ii) without limiting clause 4.3(c), be responsible for the cost of the integration and/or development necessary for the Test Participant's RSP Wi-Fi Solution to be made available for the purposes of this Test;
 - (iii) provide **nbn** with valid proof of the Test Participant's RSP Wi-Fi Solution software license costs per unit; and
 - (iv) if reasonably requested by **nbn**, develop the RSP Wi-Fi Solution to meet the standard functions and features advised by **nbn** for the purposes of this Test.
- (b) Except where Test Participant uses their existing RSP Wi-Fi Solution:
 - (i) **nbn** will:
 - (A) advise Test Participant of the pool of RSP Wi-Fi Solution vendors selected by **nbn**;
 - (B) select an RSP Wi-Fi Solution vendor from the pool of RSP Wi-Fi Solution vendors based on the preferences provided by Test Participants;
 - (C) subject to the Test Participant satisfying their obligations under clauses 4.1 and 4.2(b)(ii), fully subsidise the costs agreed between the chosen RSP Wi-Fi Solution vendor and **nbn** for the RSP Wi-Fi Solution to be made available to the Test Participant's Target Device for the sole purposes of this Test.

- (ii) Test Participant will:
 - (A) provide their preferences from a pool of RSP Wi-Fi Solution vendors selected by **nbn** and advised to the Test Participant in accordance with clause 4.2(b)(i)(A);
 - (B) enter into an agreement with the RSP Wi-Fi Solution vendor selected by **nbn** in accordance with clause 4.2(b)(i)(B) for the supply of the RSP Wi-Fi Solution on terms consistent with this Test Description; and
 - (C) arrange co-operation between the chosen RSP Wi-Fi Solution vendor and the vendor of the Test Participant's Target Device in order to facilitate the integration of the RSP Wi-Fi Solution into the firmware of the Test Participant's Target Device.
- (c) **nbn** will:
 - (i) not be responsible for any costs or claims incurred by Test Participant from any RSP gateway vendor; and
 - (ii) upon receipt of valid proof of Test Participant's RSP Wi-Fi Solution software license costs per unit, agree with the Test Participant on the software license costs to be subsidised by **nbn** pursuant to clause 4.3(c), which where clause 4.2(b) applies may be no greater than the amount agreed by **nbn** in clause 4.2(b)(i)(C).

4.3 Test Deployment

- (a) Subject to clause 4.2, **nbn** will:
 - (i) contribute facilitation and project management;
 - (ii) share data generated by **nbn** from this Test with Test Participant in accordance with the Test Plan; and
 - (iii) if determined to be necessary by **nbn**, aggregate and anonymise trial results across all Test Participants and share results with all RSPs.
- (b) Subject to clause 4.2, Test Participant will:
 - (i) make available for training, the Test Participant's call center agents, as instructed by **nbn** from time to time;
 - (ii) deploy the RSP Wi-Fi Solution to the Target Devices at Eligible Premises and operate it for a continuous period of at least 2 months until a date specified in the Test Plan provided by **nbn** from time to time (**Deployment Period**);
 - (iii) operate the RSP Wi-Fi Solution in accordance with the Test Plan provided by **nbn** from time to time;
 - (iv) validate the successful deployment of the RSP Wi-Fi Solution to the Target Devices;
 - (v) obtain End User consent for:
 - (A) Test Participant to collect and share Wi-Fi performance data with **nbn**; and
 - (B) **nbn** to share, on a de-identified basis, Wi-Fi performance data with any RSPs who do not participate in this Test;
 - (vi) share data generated by Test Participant from this Test, including any related operational and assurance metrics, with **nbn** for the purposes of this Test;
 - (vii) where an issue with in-home Wi-Fi is identified, participate in remediation activities as specified in the Test Plan provided by **nbn** from time to time; and

- (viii) manage the relationship between Test Participant and End Users or vendors of Target Device or RSP Wi-Fi Solution during the Test Period, including, if reasonably requested by **nbn**:
 - (A) deliver communications related to any Test Activities to End Users and/or vendors; and
 - (B) support and provide sufficient information for **nbn** to communicate directly with End Users and/or vendors for the purpose of the Test Activities.
- (c) Upon:
 - (i) the completion of the Test Activities listed above in 4.3(a) and 4.3(b); and
 - (ii) receipt by **nbn** of a valid invoice for the software license costs agreed in clause 4.2(c)(ii);

nbn will fully subsidise the software license costs agreed between the Test Participant and **nbn** for the RSP Wi-Fi Solution deployed to Eligible Premises required for the sole purpose of this Test incurred within the duration of the Deployment Period.

5. Service performance

- (a) To the full extent permitted by law, **nbn** excludes all liability to Test Participant in respect of any Loss arising by reason of:
 - (i) any works undertaken by **nbn** as part of the Test Activities; and
 - (ii) any services or products supplied by, or otherwise any acts or omissions of, the RSP Wi-Fi Solution vendors or RSP gateway vendors.
- (b) Test Participant acknowledges that the Test Activities are not subject to and do not affect the calculation of the Service Levels under the WBA.

6. Test Contacts

- (a) **nbn** and Test Participant will each appoint a person as a Test Contact in relation to co-ordination of the Test Activities.
- (b) On commencement of this Test Description, **nbn** and Test Participant will provide telephone and email contact details of their Test Contacts, and maintain and provide updates to these contact details for the duration of the Test Period.

7. Responsibilities of the parties

Subject to the rights and obligations set out in the Agreement, **nbn** and Test Participant will co-operate with each other and work collaboratively in connection with the performance of the Test Activities including by:

- (a) undertaking relevant Test Activities in timeframes set out in the Test Description, any Supporting Document or as otherwise determined by **nbn** (acting reasonably);
- (b) where required, co-locating human resources to assist with the coordination and execution of the Test Activities;
- (c) working collaboratively to refine the Test Activities; and
- (d) sharing information regarding the Test Activities in accordance with this Test Description.

8. Data Security and Personal Information

8.1 Data Security

- (a) Each party must apply reasonable security standards in respect of any data or information (including Confidential Information) of the other party (having regard to the nature of the data or information and the party's obligations under applicable law) that the party collects, stores, uses or discloses to third parties by any means inside or outside Australia and must not allow any person inside or outside of Australia to access any such data or information except in compliance with those data security standards.
- (b) Each party (the first party) must promptly notify the other party if the first party becomes aware that:
 - (i) the first party's security standards, as referred to in clause 8.1(a), have been compromised; and
 - (ii) the compromise of the first party's security standards results, in the reasonable opinion of the first party, in a risk that there has been, or will imminently be, unauthorised access by any person to:
 - (A) Personal Information disclosed or transferred to the first party by the other party in connection with the Agreement; or
 - (B) the information systems or interfaces of the other party that contain such Personal Information.

8.2 Personal Information

- (a) If either party collects, holds, uses, discloses, transfers or otherwise handles Personal Information in connection with the Agreement, it must comply with, and ensure that its Related Bodies Corporate and Personnel (and the Personnel of its Related Bodies Corporate) comply with, all Privacy Laws as if it was an "organisation" for the purposes of the Privacy Act 1988 (Cth).
- (b) Subject to clauses 8.2(c) and 8.2(d), if a party (the first party) becomes aware or suspects that the other party may be required under the Privacy Act 1988 (Cth) to prepare a statement regarding an Eligible Data Breach, or to assess a suspected Eligible Data Breach, in respect of Personal Information that the other party collects, holds, uses, discloses, transfers or otherwise handles in connection with the Agreement, the first party must (as applicable);
 - (i) promptly notify the other party of the Eligible Data Breach or suspected Eligible Data Breach;
 - (ii) promptly provide the other party with any reasonable assistance requested by the other party, at the other party's cost:
 - (A) in connection with the other party's investigation of; or
 - (B) to manage any consequences for the other party of, that Eligible Data Breach or suspected Eligible Data Breach; and
 - (iii) to the extent permitted by law, not notify any third party of the Eligible Data Breach or suspected Eligible Data Breach without the other party's consent (except that the first party need not obtain the other party's consent if that Eligible Data Breach or suspected Eligible Data Breach is also an Eligible Data Breach or suspected Eligible Data Breach of the first party).
- (c) Subject to clause 8.2(d), if:

- (i) a relevant Eligible Data Breach or suspected Eligible Data Breach described in clause 8.2(b) is also an Eligible Data Breach or suspected Eligible Data Breach of the first party; and
 - (ii) sections 26WK and 26WL of the Privacy Act 1988 (Cth) apply in relation to that Eligible Data Breach, then each party will, in good faith, discuss which of those parties will comply with the requirements under sections 26WK and 26WL of the Privacy Act 1988 (Cth) in respect of that Eligible Data Breach.
- (d) Nothing in clauses 8.2(b) or 8.2(c) requires a party to take any action, or refrain from taking any action, that would result in that party breaching its obligations under the Privacy Act 1988 (Cth) or breaching any obligation of confidence to a third party.

9. Term, termination and withdrawal

- (a) This Test Description will commence once executed by both parties and terminates on the Expiry Date (unless extended by **nbn** and notified to Test Participant or terminated on an earlier date in accordance with the Agreement) (**Test Period**).
- (b) **nbn** may issue a Cancellation Notice at any time by giving 10 Business Days written notice in accordance with the Standard Test Terms to terminate any one or more of the following:
 - (i) this Test Description; and/or
 - (ii) part or all the Test Activities.
- (c) **nbn** may immediately cease any Test Activities in respect of an Eligible Premises, and exclude that Eligible Premises from this Test, if:
 - (i) Test Participant no longer acquires an **nbn**TM Ethernet Ordered Product in respect of that Eligible Premises; or
 - (ii) **nbn** becomes aware that the Eligible Premises is registered on **nbn**'s Medical Alarm Register or that a Downstream Priority Assistance Service or a Special Service is being supplied in respect of that Eligible Premises.
- (d) If Test Participant withdraws its participation in this Test:
 - (i) Test Participant must:
 - (A) give 10 Business Days written notice to **nbn**; and
 - (B) inform **nbn** of the reason for the withdraw.
 - (ii) **nbn** will:
 - (A) cease part or all the Test Activities; and/or
 - (B) terminate this Test Description.
- (e) If, during the Test Period, Test Participant (acting reasonably) wishes to withdraw an Eligible Premises from this Test:
 - (i) Test Participant must:
 - (A) give 2 Business Days' notice to **nbn** of the relevant Eligible Premises; and
 - (B) if the RSP Wi-Fi Solution is developed in accordance with clause 4.2(b), remove all instances of the RSP Wi-Fi Solution from the relevant Eligible Premises' Target Device.

- (ii) **nbn** will, as soon as reasonably practicable following notice, cease any Test Activities in respect of the relevant Eligible Premises and exclude that Eligible Premises from this Test.
- (f) The parties will use their reasonable endeavours to work with each other for the purpose of avoiding any inconvenience to any End Users affected by termination or cancellation of this Test Description or any Test Activities.
- (g) Test Participant must, within 5 Business Days after the end of Test Period, perform a review of the data shared in accordance with this Test.

10. Charges

- (a) No charges will apply to this Test. Applicable charges under the **nbn**TM Ethernet Price List will continue to apply.
- (b) Without limiting clauses 4.2(b)(i)(C) and 4.3(c), each party to the Agreement will bear its own costs of participating in this Test.

Execution

Executed as an agreement

Signed for **nbn Co Limited** by its authorised representatives:

Signature of authorised representative

Signature of authorised representative

Name of authorised representative

Name of authorised representative

Date of signature

Date of signature

Signed for **[insert party name]** by its authorised representatives:

Signature of authorised representative

Signature of authorised representative

Name of authorised representative

Name of authorised representative

Date of signature

Date of signature