

Test Agreement

Test Description: **nbn** In-Premises Gold Class Trial



nbn Limited

Test Agreement

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Version	Description	Effective Date
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Environment

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

Contents

Parties	4
Background	4
1. Interpretation and Definitions	4
1.1 Definitions	4
1.2 Interpretation	5
2. Participation in this Test	5
3. Documentation Changes	5
4. Test Activities	5
4.1 Test Activities	5
4.2 Test Premises	6
4.3 Charges	6
5. General Obligations	7
5.1 End User process	7
5.2 Feedback and insights	7
6. Liability	7
7. Termination and expiry	8
8. Test Participant Acknowledgements	8

Test Agreement

Test Description: **nbn** Gold Class In-Premises Trial

Parties

- nbn co limited (ABN 86 136 533 741) of Level 13, 100 Mount Street, North Sydney NSW 2060 (**nbn**);
- [Insert full legal name of Test Participant] (ABN [insert ABN]) of [insert registered address of Test Participant] (**Test Participant**)

Background

- A. **nbn** and Test Participant have entered into the Standard Test Terms.
- B. This document constitutes a Test Description for the purposes of the Standard Test Terms.
- C. The purpose of this Test is for the Test Participant and **nbn** to trial a process aimed at optimising various factors within a Contracted End User's in-premises environment that may affect the Contracted End User's experience of an Ordered Product.
- D. As part of the Test, **nbn** or its Service Delivery Partner may conduct Test Activities in accordance with this Test Description and the Test Plan.

1. Interpretation and Definitions

1.1 Definitions

In this Test Description:

Agreement means the Standard Test Terms and this Test Description.

SDP or **Service Delivery Partner** means any third party contractor(s) engaged by **nbn** to conduct some or all of the Test Activities.

SDP Equipment means a device installed downstream of the **nbn** Downstream Network Boundary by the Personnel of the SDP as part of this Test that may be used by a Contracted End User in connection with the **nbn**TM Network and includes any WiFi Extender.

Standard Test Terms means the agreement entitled "Test Agreement – Standard Test Terms" entered into between **nbn** and Test Participant.

Test Activities means the activities described in clause 5.1.

Test Commencement Date means 2 November 2020, or such other date as notified to the Test Participant by **nbn**.

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

Test Expiry Date means 30 April 2021, or such other date as determined by **nbn** in accordance with clause 7(c).

Test Premises has the meaning given in clause 4.2(a).

WiFi Extender means a hardware device which may be supplied and installed by the Personnel of an SDP at a Test Premises to extend the wireless range of a Contracted End Users' data connection.

WBA means an agreement between **nbn** and Test Participant entitled "Wholesale Broadband Agreement".

1.2 Interpretation

For the purposes of this Test Description and unless the context requires otherwise:

- (a) any capitalised term used but not defined in this Test Description has the meaning given to that term in the Standard Test Terms unless expressly specified otherwise; and
- (b) 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.

2. Participation in this Test

- (a) To participate in this Test, Test Participant must:
 - (i) be a party to the WBA;
 - (ii) have entered into the Standard Test Terms and this Agreement;
 - (iii) have completed all relevant on-boarding and certification activities as required by **nbn**; and
 - (iv) at all relevant times be fully compliant with the terms of the Test Participant's WBA.
- (b) If Test Participant ceases to comply with any 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 part or all of this Test;
 - (ii) terminate this Test Description; and/or
 - (iii) terminate this Agreement.

3. Documentation Changes

nbn may amend this Test Description from time to time by giving 10 Business Days' notice to Test Participant.

4. Test Activities

4.1 Test Activities

- (a) **nbn** may, at its discretion, perform any of the following at a Test Premises:
 - (i) In-Premises Wiring Activities;
 - (ii) relocation, testing or connection of Contracted End User Equipment at a Test Premises as set out in the Test Plan, which includes (but is not limited to):
 - (A) connecting Contracted End User Equipment to a UNI;

- (B) verification of the correct operation of Contracted End User Equipment; or
- (C) configuration of Contracted End User Equipment; or
- (iii) other activities set out in the Test Plan which are ancillary to **nbn**'s supply of an Ordered Product which have the purpose of improving the performance and End User experience of an Ordered Product.

(together, the **Test Activities**)

- (b) In determining whether it is technically feasible and otherwise appropriate to perform any of the Test Activities at a particular Test Premises, **nbn** may have regard to the following factors:
 - (i) a Contracted End User expressing any objection to the Test Activities;
 - (ii) technical configuration within the Test Premises which is considered to be complex or intricate in nature;
 - (iii) installation or reconfiguration of In-building Wiring required prior to conducting the In-Premises Wiring Activities;
 - (iv) dangerous or unsafe conditions;
 - (v) inability to access the relevant areas of the Test Premises to complete the Test Activities, such as the inability to access cabling;
 - (vi) factors indicating that there is unlikely to be a benefit to the Contracted End User or Test Participant from conducting the Test Activities; or
 - (vii) any other matter determined by **nbn** (acting reasonably).
- (c) Neither **nbn** nor the SDP will perform any Test Activity outside of, or external to, a Test Premises.
- (d) The SDP may perform additional activities related to the Test Activities, such as the installation of SDP Equipment (which may include installation of a Wi-Fi Extender).
- (e) Any SDP Equipment supplied or installed by the SDP in connection with this Test is not **nbn**TM Equipment and does not comprise part of any **nbn**TM Network.

4.2 Test Premises

- (a) The Test Activities may occur at eligible Premises which will be determined by **nbn** and communicated to Test Participant (**Test Premises**) in accordance with the process set out in the Test Plan.
- (b) Test Participant may request particular **nbn** Location IDs be included as Test Premises in accordance with the process and timing set out in the Test Plan, subject to approval by **nbn** in its absolute discretion.
- (c) **nbn** may remove or add Test Premises from or to the Test by notice to Test Participant.

4.3 Charges

- (a) The Test Participant will not be charged for the Test Activities. All other applicable charges under the **nbn**TM Ethernet Price List will continue to apply.
- (b) Each party to the Agreement will bear its own costs of participating in the Test.

5. General Obligations

5.1 End User process

- (a) Test Participant must follow existing End User interactions and operating processes, consistent with the WBA:
 - (i) for the purposes of conducting this Test, assist in arranging Appointments with End Users;
 - (ii) to procure all necessary consents from Contracted End Users who are receiving, or will receive, Customer Products or Downstream Products that rely on Ordered Products being supplied, or that will be supplied, to Premises that may be selected to be Test Premises for:
 - (A) **nbn** or the SDP to conduct the Test, including rights of safe and timely access to Test Premises; and
 - (B) **nbn** or its Personnel to conduct surveys in relation to the performance of the Test and the Test Activities.
- (b) Test Participant agrees that:
 - (i) **nbn** or its SDP may use the Confidential Information of Test Participant and Contracted End User Details, and that **nbn** or its SDP may contact Contracted End Users, for the purposes of and in accordance with this Test Description;
 - (ii) Test Participant will comply with clause D2.2 of the WBA Head Terms as if references to 'Agreement' in that clause were references to this Test Description; and
 - (iii) any consent procured in accordance with clause 5.1(a)(ii), must include any necessary rights or permissions for **nbn** to provide the SDP with information provided by the Test Participant or the Contracted End User (including Contracted End User Details) as may be required by the SDP to perform its obligations in connection with this Test.

5.2 Feedback and insights

- (a) At any time during the Test, **nbn** and its Personnel may use Contracted End User Details to survey Contracted End Users at Test Premises in relation to the performance of the Test and Test Activities.
- (b) After completion of the Test, **nbn**:
 - (i) will share aggregated results and insights with the Test Participant (and other test participants participating in the Test); and
 - (ii) may share aggregated and de-identified results and insights with Other Customers.

6. Liability

- (a) To the maximum extent permitted by law, except as expressly set out in this Agreement, **nbn** excludes all express or implied representations, conditions, warranties and guarantees arising from or in connection with this Agreement, whether based in statute, regulation, common law or otherwise.

- (b) If **nbn** breaches any condition, warranty or guarantee under or implied by law which cannot be lawfully excluded, to the maximum extent permitted by law, the liability of **nbn** is limited, at **nbn**'s option, to one or more of the following:
 - (i) in the case of goods, to the replacement of the goods, the supply of equivalent goods or the repair of the goods; and
 - (ii) in the case of services, to the supply of the services again.

7. Termination and expiry

- (a) This Test will commence on the later of the date that the parties execute this Test Description and the Test Commencement Date and will expire on the Test Expiry Date unless terminated earlier in accordance with this Agreement.
- (b) **nbn** may issue a Cancellation Notice at any time in accordance with the Standard Test Terms to terminate:
 - (i) this Test Description; and/or
 - (ii) any or all of the Test Activities.
- (c) **nbn** may extend the Test Expiry Date with 10 Business Days' notice.
- (d) Test Participant may terminate this Test Description or withdraw from the Test by giving 10 Business Days' written notice to **nbn**.
- (e) Upon termination or expiry of this Agreement, **nbn** may stop performing the Test Activities and otherwise conducting the Test at all Test Premises without any notice to Test Participant.

8. Test Participant Acknowledgements

Test Participant acknowledges and agrees that:

- (a) **nbn** has not made and no Personnel of **nbn** have made any warranty as to the performance of the Test or the Test Activities before the date of this Agreement;
- (b) Test Participant is not entering into this Agreement in reliance on, and it may not rely on, any statement of opinion, statement of intention or any other warranty, representation or other statement made or purporting to be made by or on behalf of **nbn** or its or their Personnel, other than as expressly set out in this Agreement;
- (c) this Test Description, the Test and the Test Activities do not contemplate or govern the supply of carriage services by **nbn** to Test Participant or Contracted End User which are the subject of the terms of the WBA; and
- (d) to the extent any SDP Equipment (including any WiFi Extenders) are provided to a Contracted End User by the SDP in connection with the Test or the Test Activities, any such device is supplied to that Contracted End User by the SDP and nothing in this Agreement constitutes an order by the Test Participant for, or an obligation on **nbn** to supply, any such device.

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 full legal name of Test Participant]** 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