

Test Agreement

Test Description: **nbn**TM Change of Access Technology
Process Test



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 Co to supply a Test Product.

nbn co limited

Test Agreement

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Version	Description	Effective Date
1.0	Issued on 22 May 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: **nbn**TM Change of Access Technology Process Test

Parties

- nbn co limited (ABN 86 136 533 741) of Level 11, 100 Arthur 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** is currently developing a process through which it may plan and perform various types of COATs.
- B. This Test Description, together with the Standard Test Terms, forms the Test Agreement for **nbn** and Test Participant to test certain elements of this process, including:
- the capability of **nbn** to implement various types of COATs in respect of Premises to which **nbn** currently supplies **nbn**TM Ethernet; and
 - **nbn**'s and Test Participant's systems and processes to plan and perform various types of COATs in respect of such Premises,
- in accordance with this Test Agreement, the Premises List, any Test Plan (which may include the proposed use-cases) and other Supporting Documentation.

1. Interpretation

In this Test Description:

- any capitalised term used but not defined has the meaning given to that term in the Standard Test Terms; and
- 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 the Test

To participate in this Test, the Test Participant must:

- be a party to a WBA;
- have entered into the Standard Test Terms;
- have entered into this Test Description; and
- have in place (and maintain at all times during the Test Period) an Eligible End User Contract with each Eligible End User.

3. Documentation

- (a) At any time before or during the Test Period, **nbn** may provide to the Test Participant a Test Plan in respect of one or more types of COATs and may provide other Supporting Documents.
- (b) **nbn** may issue, amend or replace any Supporting Document from time to time during the Test Period, including to reflect learnings from the performance of the Test Activities. Where practicable, **nbn** will provide Test Participant with reasonable notice of such issued, amended or replaced Supporting Document.
- (c) A capitalised term used but not defined in a Supporting Document has the meaning given to that term in this Test Description.
- (d) **nbn** may, without limiting section 6, amend or replace this Test Description by giving 10 Business Days' notice to Test Participant.

4. The Test

4.1 Test Activities

- (a) During the Test Period, **nbn** and Test Participant will participate in this Test.
- (b) Subject to the rights and obligations of each party under this Test Agreement, the parties will cooperate with each other and work collaboratively in connection with the performance of the Test Activities so as to enable **nbn** to carry out the Test Activities and use the learnings to develop and enhance its systems, products, services and processes.
- (c) The parties must participate in Test Activities in accordance with:
 - (i) the processes and procedures set out in this Test Agreement and any Supporting Documents; and
 - (ii) **nbn**'s reasonable instructions, policies and procedures regarding the Test Activities that are notified by **nbn** to Test Participant from time to time.

4.2 Selection of Eligible Premises

- (a) At any time before or during the Test Period, **nbn** may provide Test Participant with a new or updated list setting out the Premises that may form part of this Test (**Premises List**).
- (b) On receipt of a Premises List, Test Participant must return to **nbn** a list (**Eligible Premises List**) that sets out:
 - (i) subject to section 4.2(c), those Premises from the Premises List in respect of which Test Participant requests that **nbn** perform a COAT (each an **Eligible Premises**); and
 - (ii) for each Eligible Premises, the date on which Test Participant requests that **nbn** change the Service Class of the Eligible Premises to reflect the COAT (**Requested Change Date**).
- (c) Test Participant must not, unless otherwise agreed by **nbn**, include in an Eligible Premises List any Premises:
 - (i) which is registered on **nbn**'s Medical Alarm Register; or
 - (ii) 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 a Premises List to which section 4.2(c) applies.
- (e) For each Eligible Premises on an Eligible Premises List, **nbn** will:
 - (i) notify Test Participant of the date that **nbn** will aim to change the Service Class of the Eligible Premises to reflect the COAT;
 - (ii) aim to change the Service Class of the Eligible Premises to reflect the COAT within 5 Business Days of the Requested Change Date; and
 - (iii) notify Test Participant of the date on which **nbn** changes the Service Class of the Eligible Premises to reflect the COAT (**Change Date**).
- (f) **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;
 - (ii) a person other than Test Participant acquires an **nbn**TM Ethernet Ordered Product in respect of that Eligible Premises; or
 - (iii) **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.
- (g) If, during the Test Period, Test Participant (acting reasonably) wishes to withdraw an Eligible Premises from this Test:
 - (i) Test Participant will notify the relevant Test Contact notified by **nbn** from time to time of the relevant Eligible Premises at least 2 Business Days before the date notified by **nbn** in accordance with section 4.2(e)(i) in respect of that Eligible Premises (**Point of No Withdrawal**); and
 - (ii) **nbn** will, as soon as reasonably practicable following such notification, cease any Test Activities in respect of the relevant Eligible Premises and exclude that Eligible Premises from this Test.
- (h) After the Point of No Withdrawal for an Eligible Premises:
 - (i) Test Participant cannot withdraw the Eligible Premises from this Test; and
 - (ii) **nbn** will change the Service Class of the Eligible Premises to reflect the COAT in accordance with section 4.2(e) (subject to rollback under section 4.6, if applicable).
- (i) Test Participant will be solely responsible for coordinating the porting of any FNN relating to an Eligible Premises.

4.3 Installation

- (a) After the Change Date for an Eligible Premises, **nbn** will install and make ready for service Connecting Equipment.
- (b) If **nbn** performs an FTTB/FTTN Subsequent Installation or an FTTC Subsequent Installation, then Test Participant must pay to **nbn** any applicable charges for such installation as though such installation were performed under the WBA.

4.4 Test Participant obligations following Change Date

In respect of each Eligible Premises, Test Participant must:

- (a) within 5 Business Days of the Change Date for that Eligible Premises or such other time as agreed, place a Connect Order for a Subsequent Ordered Product; and
- (b) within 15 Business Days of the Change Date for that Eligible Premises or such other time as agreed, place a Disconnect Order under the WBA in respect of each Existing Ordered Product at that Eligible Premises.

4.5 Removal of Connecting Equipment

- (a) After all Existing Ordered Products have been disconnected in respect of an Eligible Premises, Test Participant and **nbn** will follow the process set out in section 4.8.1 of the WBA Operations Manual in relation to the removal by **nbn** of any Connecting Equipment associated with the Existing Ordered Product.
- (b) For clarity, no charges apply in respect of the removal of any Connecting Equipment in accordance with section 4.5(a).

4.6 Rollback

- (a) In respect of each Eligible Premises, if **nbn** has not completed a Connect Order for a Subsequent Ordered Product within 20 Business Days after the Change Date, **nbn** may change the Service Class of that Premises back to the Service Class that applied immediately prior to the commencement of Test Activities.
- (b) **nbn** will consult with Test Participant prior to changing the Service Class of a Premises under section 4.6(a).

4.7 Existing Ordered Product

On and from the Change Date for each Eligible Premises, despite any provision in the WBA:

- (a) no Service Level, Operational Target, Commercial Rebate or CSG Compensation under the WBA will apply in respect of any Existing Ordered Product;
- (b) until the end of the Test Period, **nbn** will aim, on a “best efforts” basis, to achieve all Service Levels that would have applied in respect of any Existing Ordered Product but for section 4.7(a);
- (c) Test Participant must not place an Excluded Order in respect of an Existing Ordered Product at that Eligible Premises;
- (d) **nbn** may treat as void, and cancel:
 - (i) any Excluded Order submitted contrary to section 4.7(c); or
 - (ii) any other submitted order as notified by **nbn**; and
- (e) before raising any Trouble Ticket in respect of the Existing Ordered Product at that Eligible Premises, Test Participant must notify the relevant Test Contact specified by **nbn** from time to time

4.8 Subsequent Ordered Product

- (a) Test Participant acknowledges and agrees that, despite any provision in the WBA, no Service Level, Operational Target, Commercial Rebate or CSG Compensation under the WBA is available or applicable to the Subsequent Ordered Product before the Connection Date.
- (b) For each Subsequent Ordered Product, on and after the Connection Date:
 - (i) the terms of the WBA (including in respect of Service Levels) will apply to the supply of the Subsequent Ordered Product as though the Subsequent Ordered Product were an Ordered Product; and

- (ii) the terms of this Test Agreement will no longer apply to that supply.

4.9 Charges

- (a) No charges will apply to Test Activities carried out under this Test Agreement.
- (b) For clarity:
 - (i) except as expressly set out in this Test Description, an Existing Ordered Product continues to be supplied under the terms of the WBA (including in respect of Charges) and nothing in this Test Agreement affects the Charges payable in respect of an Existing Ordered Product; and
 - (ii) a Subsequent Ordered Product is:
 - (A) prior to the Connection Date, supplied under the terms of this Test Agreement and therefore no charges apply for the supply of that Subsequent Ordered Product in accordance with section 4.9(a); and
 - (B) on and from the Connection Date, supplied under the terms of the WBA (including in respect of Charges) in accordance with section 4.8(b)(i).

4.10 Liability exclusion

To the full extent permitted by law, **nbn** excludes all liability to Test Participant in respect of any Loss arising by reason of any failure of the Test Activities performed or not performed in respect of an Eligible Premises to:

- (a) improve the performance of any Customer Product or Downstream Product supplied at that Eligible Premises;
- (b) be free from defects; or
- (c) otherwise be fit for any particular purpose.

5. Test Participant General Obligations

Test Participant must support and assist **nbn** with the conduct of this Test including by:

- (a) undertaking relevant activities (including manual processes) in timeframes determined by **nbn** (acting reasonably) and notified to Test Participant;
- (b) providing resources to work with **nbn** case managers or jeopardy managers to resolve issues that may arise during this Test;
- (c) working collaboratively with **nbn** to refine this Test;
- (d) notifying **nbn** of any matter which Test Participant considers to be a material error, defect or deficiency in the products, processes or procedures that are the subject of this Test, as soon as reasonably practicable after becoming aware of that material error, defect or deficiency;
- (e) without limiting section 5(d), providing feedback, including any feedback received from End User, for the purposes of improving the products, processes or procedures that are subject of this Test;
- (f) providing any information and data reasonably requested by **nbn** from time to time, including, on an itemised basis, Test Participant's actual or estimated costs incurred in connection with the Test;
- (g) performing any other activities as required by a Test Plan; and
- (h) doing all things reasonably required to facilitate the conduct of the Test Activities.

6. Term, termination and withdrawal

- (a) This Test Agreement will commence once this Test Description is executed by both parties and will expire on the Expiry Date unless terminated earlier in accordance with sections 6(b) or 6(c) (**Test Period**).
- (b) **nbn** may issue a Cancellation Notice at any time in accordance with the Standard Test Terms to terminate:
 - (i) this Test Agreement; and/or
 - (ii) any Test Activities.
- (c) Test Participant may terminate this Test Agreement or withdraw from this Test by giving 10 Business Days' written notice to **nbn**.
- (d) Upon expiry or termination of this Test Agreement, **nbn**:
 - (i) may, in its absolute discretion, complete any Test Activities in respect of an Eligible Premises at which it has already commenced the Test Activities; and
 - (ii) will not commence any Test Activities in respect of any Premises at which it has not already commenced any Test Activities.
- (e) Without limiting clause 10.1(b) of the Standard Test Terms, sections 4.5, 4.6, 4.7(a), 4.7(c) to 4.7(e), 4.10, this section 6(e) and section 8 will survive the termination or expiry of this Test Agreement.

7. Test Contacts

- (a) Whenever requested by **nbn**, Test Participant must make its Test Contacts available to meet with **nbn's** Test Contacts (either in person or by videoconference) to discuss any matters relating to this Test.
- (b) **nbn** and Test Participant will provide telephone and email contact details of their Test Contacts to each other prior to the start of this Test, and maintain and provide updates to these contact details for the duration of the Test Period.

8. Definitions

Change Date has the meaning given to that term in section 4.2(e)(iii).

COAT or **Change of Access Technology** means a change from one access technology that forms part of the **nbn**[™] Network used to serve a Premises to a different access technology, including changing the Service Class of that Premises, all installation and activation activities in respect of a Subsequent Ordered Product, and all disconnection and de-installation activities in respect of an Existing Ordered Product.

Connect Order means a connect order placed under this Test Agreement using the same processes as set out under the WBA.

Connection Date means, in respect of an Eligible Premises, the date on which **nbn** updates the order status of a Connect Order for a Subsequent Ordered Product to **Complete**.

Downstream Product has the meaning given to that term in the WBA.

Eligible End User means the Contracted End User in respect of an Eligible Premises (or that person's authorised representative).

Eligible End User Contract means a contract with an Eligible End User which permits **nbn** to conduct the Test Activities, includes all necessary consents from the Eligible End User to permit the Eligible End User's Personal Information to be disclosed to and used by **nbn** and its Personnel for the purposes of the Test Activities and which allows the Test Participant to comply with this Test Agreement.

Eligible Premises means a Premises that is included in the Eligible Premises List.

Eligible Premises List has the meaning given to that term in section 4.2(b).

Excluded Order means:

- (a) a Modify Order in respect of an AVC TC-2 Product Component increasing or decreasing the AVC TC-2 bandwidth profile to 5 Mbps symmetrical (CIR) or 10 Mbps symmetrical (CIR); and
- (b) any other type of order that **nbn** notifies to Test Participant from time to time.

Existing Ordered Product means, in respect of an Eligible Premises, the **nbn**TM Ethernet Ordered Product supplied to that Eligible Premises immediately before the commencement of any Test Activities at that Premises.

Expiry Date means 31 March 2020 or such later date as notified by **nbn** to Test Participant.

Premises List means the document referred to in in section 4.2(a).

Subsequent Ordered Product means, in respect of an Eligible Premises, an **nbn**TM Ethernet Ordered Product supplied or to be supplied to that Eligible Premises by means of a different access technology from the access technology used to supply the Existing Ordered Product to that Eligible Premises.

Supporting Document means any document notified from time to time to Test Participant by **nbn** that details the use cases, Premises or reasonable instructions, policies, processes and procedures regarding the Test Activities, and includes any Test Plan and the Premises List.

Test Activities means the activities and processes in this Test Description and any Test Plan, and any other activities and processes that **nbn** notifies to Test Participant from time to time, including a COAT and any other tasks, activities or functions required to perform a COAT.

Test Agreement means this Test Description together with the Standard Test Terms.

Test Contact means each person appointed by each of **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 Period has the meaning given in section 6(a).

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