

Standard Test Terms

Test Agreement



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.



Standard Test Terms

Test Agreement

Version	Description	Effective Date
3.0	Introduced simplification and standardisation of Test Descriptions	31 August 2021
3.1	Amendments to extend Standard Test Terms expiry date.	1 September 2023

Copyright

This document is subject to copyright and must not be used except as permitted below or under the Copyright Act 1968 (Cth). You must not reproduce or publish this document in whole or in part for commercial gain without the prior written consent of **nbn**. You may reproduce and publish this document in whole or in part for educational or non-commercial purposes as approved by **nbn** in writing.

Copyright © 2023 nbn co limited. All rights reserved. Not for general distribution.

Disclaimer

This document is provided for information purposes only. The recipient must not use this document other than with the consent of **nbn** and must make its own inquiries as to the currency, accuracy and completeness of this document and the information contained in it. The contents of this document should not be relied upon as representing **nbn**'s final position on the subject matter of this document, except where stated otherwise. Any requirements of **nbn** or views expressed by **nbn** in this document may change as a consequence of **nbn** finalising formal technical specifications, or legislative and regulatory developments.

Environment

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



Introduction

This Framework Agreement sets out the Standard Test Terms that apply to the supply of products and services by **nbn** on a non-commercial basis for the purposes of Tests. Products and services that are supplied on a commercial basis are supplied under separate contractual arrangements, such as the Wholesale Broadband Agreement.

In addition to the Standard Test Terms, each Test will be subject to additional terms and conditions set out in the relevant Test Description. For each individual Test, the relevant Test Description, together with the Standard Test Terms, will form a single agreement and will govern the terms on which that Test will be performed.



Contents

Part A: Operation of this Framework Agreement	6
1. Test Agreements	6
2. Term and Termination	6
Part B: Standard Test Terms	7
3. Performance of the Test	7
4. Supply of Test Products	7
5. Duration of the Test	8
6. Cancelling the Test	9
7. Participation of third parties	10
8. Use of networks, facilities, systems and equipment	11
8.1 Lawful use	11
8.2 Network protection and safety	11
8.3 RSP and End User equipment	12
8.4 nbn™ equipment	12
8.5 Property rights and beneficial interest	12
9. Access to premises	12
10. Visiting sites and premises	13
11. Confidentiality and marketing	13
11.1 Scope	13
11.2 Use of Confidential Information	14
11.3 Disclosure of Confidential Information	14
11.4 General rules	14
12. Marketing the Test	15
13. Liability	15
13.1 Liabilities of each party	15
13.2 Limitation of liability	16
13.3 Uncapped liability	16
13.4 No liability for Indirect Loss	16
13.5 General exclusions of liability	17
13.6 Apportionment and mitigation	17
13.7 nbn™ Network Boundaries	17



13.8 Force majeure	18
14. Indemnities	18
14.1 Confidentiality	18
14.2 Intellectual property	18
14.3 Death and personal injury	18
14.4 Damage to property, etc.	19
14.5 Claims by End Users and other third parties	19
14.6 Operational indemnities	20
14.7 General rules for all indemnities	20
14.8 No claims against certain persons	21
14.9 Downstream liabilities	21
15. Title and Intellectual Property	21
16. Insurance	22
17. Effect of expiry or termination of the Test Agreement	22
18. Dispute Management	22
19. General	23
19.1 Compliance with applicable laws	23
19.2 Relationship between the parties	23
19.3 Relationships with third parties	23
19.4 Subcontractors and agents	23
19.5 No variation of existing WBAs	23
19.6 Entire agreement	23
19.7 Changes to the Test Description	24
19.8 Assignment, novation and other dealings	24
19.9 Waiver	24
19.10 Notices	24
19.11 Other general clauses	24
20. Interpretation	24
21. Dictionary	25



Test Agreement

Standard Test Terms

Parties

This Framework Agreement is entered into between:

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

Part A: Operation of this Framework Agreement

1. Test Agreements

- (a) Each Test will be performed by **nbn** and RSP on the terms set out in clauses 3 to 21 below (the **Standard Test Terms**) and the Test Description for that Test as agreed between **nbn** and RSP in accordance with clause 1(c) (which together form the **Test Agreement** in respect of that Test).
- (b) The parties are only required to comply with the Standard Test Terms in clauses 3 to 21 to the extent that they form part of one or more Test Agreements.
- (c) **nbn** and RSP may agree to a Test Description by:
 - (i) executing that Test Description in writing and notifying **nbn** via any RSP contact person nominated under clause H1.3(a) of the WBA; or
 - (ii) RSP contact person nominated under clause H1.3(a) of the WBA agreeing to that Test Description in accordance with any other method notified by **nbn** from time to time in respect of that Test Description.
- (d) To the extent of any inconsistency between these Standard Test Terms and the Test Description, the terms set out in the Test Description will prevail.

2. Term and Termination

- (a) This Framework Agreement:
 - (i) starts on the Execution Date; and
 - (ii) expires on the earlier of:
 - (A) 31 August 2025; and
 - (B) the date that is 10 Business Days after a party gives notice to the other party that it wishes to terminate this Framework Agreement,unless otherwise agreed between the parties.
- (b) **nbn** may vary clause 2(a)(ii)(A) to extend the expiry date of this Framework Agreement by giving RSP 10 Business Days' notice.



- (c) If a Test, as described in a Test Description, continues after the expiry or termination of this Framework Agreement, this Framework Agreement continues to the extent relevant to the Test.

Part B: Standard Test Terms

3. Performance of the Test

- (a) Subject to the rights and obligations of each party under the Test Agreement, the parties will cooperate with each other and work collaboratively in connection with:
 - (i) the performance of the Test;
 - (ii) the supply and acquisition of Test Products under the Test Agreement;
 - (iii) resolving any issues that may arise during the Test;
 - (iv) refining or improving the Test, including (promptly) if either party becomes aware of any matter that that party considers to be a material error, defect or deficiency in the products, processes or procedures the subject of the Test; and
 - (v) providing feedback, including any feedback received from third parties or end users, so as to enable **nbn** to develop and enhance its network, systems, facilities, products, services and processes through the learnings gained by **nbn** and RSP from the Test.
- (b) RSP must participate in the Test in accordance with:
 - (i) the Test Description;
 - (ii) any Test Plan for the Test as provided by **nbn** to RSP;
 - (iii) any operational procedures agreed between the parties from time to time; and
 - (iv) **nbn**'s reasonable instructions, policies and procedures regarding the Test that are notified by **nbn** to RSP in accordance with clauses 3(f) and 3(g).
- (c) On request by **nbn**, RSP must provide to **nbn** any Test Information within any reasonable timeframe specified by **nbn**.
- (d) **nbn** and RSP must exchange telephone and email contact details for their respective Test Contacts before the Test commences, and notify each other of any changes to those contact details during the Test.
- (e) At a party's request, the other party must make relevant Test Contacts available for the purpose of co-ordinating the Test.
- (f) Before the start of the Test, **nbn** will provide RSP with any applicable Test Plan, and any available instructions, policies and procedures relating to the Test.
- (g) **nbn** may amend or add a Test Plan and any instructions, policies and procedures relating to the Test by giving as much notice as reasonably practicable (which must be at least 5 Business Days' notice) or by following any relevant process in the Test Description.

4. Supply of Test Products

- (a) **nbn** will supply Test Products to RSP on the terms of the Test Agreement.



- (b) RSP acknowledges and agrees that any Test Products are provided in a test environment for limited test purposes only (including, where applicable, for supply to a limited number of End Users) and for a limited time only.
- (c) RSP acknowledges that:
 - (i) no service levels, performance objectives or rebates are available or applicable in connection with the Test or the supply of any Test Product; and
 - (ii) **nbn** may interrupt or suspend any product or service supplied under any other agreement (including a WBA) to a premises to which **nbn** is also supplying or proposing to supply a Test Product, and any such interruption will not constitute an outage, service fault or performance incident.
- (d) RSP must not use any Test Product for any purpose other than the performance of the Test.
- (e) RSP agrees that Test Products have not been designed by **nbn** as (and are not suitable as) inputs into the supply of Downstream Products on a commercial basis, including Downstream Products that are Priority Services or standard telephone services for the purposes of the TCPSS Act, and RSP must not use Test Products for such purposes.

5. Duration of the Test

- (a) The Test Agreement will:
 - (i) start on the date on which the parties agree to the Test Description in accordance with clause 1(c); and
 - (ii) end on the earlier of:
 - (A) the date on which the Test Period ends; and
 - (B) the date on which the Test is cancelled in full in accordance with clause 6.
- (b) The Test will:
 - (i) start on the later of:
 - (A) the date on which the Test Period starts; and
 - (B) the date on which the parties agree to the Test Description; and
 - (ii) end on the earlier of:
 - (A) the date on which the Test Period ends; and
 - (B) the date on which the Test is cancelled in accordance with clause 6.
- (c) The supply of a Test Product will:
 - (i) start on the date specified by **nbn** (if applicable) or otherwise when **nbn** completes an order for that Test Product; and
 - (ii) end on the earlier of:
 - (A) the date on which the supply of that Test Product ends in accordance with the Test Description or relevant Test Plan; and



- (B) the date on which the supply of that Test Product is cancelled in accordance with clause 6.
- (d) **nbn** may interrupt or suspend the performance of the Test or the supply of Test Products for any reason, by giving RSP the following amount of notice:
 - (i) where the interruption or suspension relates to an Adverse Network Impact, as much notice as reasonably practicable in the circumstances; and
 - (ii) in all other cases, 10 days' notice.
- (e) **nbn** may amend the Test Description by notice to RSP at any time before the expiry of the Test Period, with immediate effect, to extend the Test Period.
- (f) Cancellation or expiry of the Test does not affect:
 - (i) the continued operation of any other agreement that incorporates these Standard Test Terms; or
 - (ii) any similar, related or alternative tests that **nbn** may be performing with any Other RSPs.

6. Cancelling the Test

- (a) **nbn** may cancel the Test, any part of the Test or the supply of any Test Product by giving as much notice to RSP as is reasonably practicable in the circumstances and such notice must include reasons for the cancellation.
- (b) In addition to **nbn's** rights under clause 6(a), **nbn** may cancel the Test, any part of the Test or the supply of any relevant Test Product, by giving notice to RSP if:
 - (i) RSP has ceased to comply with any Eligibility Criteria of the Test at any time;
 - (ii) **nbn** has notified RSP of its non-compliance with the Eligibility Criteria, and has specified in such notice a reasonable deadline by which RSP must resume complying with that Eligibility Criteria; and
 - (iii) RSP does not comply with that Eligibility Criteria by the deadline specified in the notice by **nbn** under clause 6(b)(ii) (or at any later date prior to cancellation).
- (c) A notice under clauses 6(a) or 6(b) that only cancels part of the Test or certain Test Products does not otherwise affect the continued operation of the Test Agreement.
- (d) RSP may request to withdraw from, or cancel, the Test, in part or in full, at any time by giving notice to **nbn**, which must specify the reason for RSP's withdrawal or cancellation.
- (e) If **nbn** receives a notice from RSP under clause 6(d):
 - (i) **nbn** will, as soon as reasonably practicable, cancel the Test, in part or in full, and cease supplying relevant Test Products in accordance with RSP's request; and
 - (ii) (if RSP only requested to withdraw or cancel part of the Test) **nbn** may cancel any other part of the Test and cease supplying any other Test Products under the Test Agreement.
- (f) Either party may cancel the Test if the other party suffers an Insolvency Event that affects its ability to perform its obligations under the Test Agreement, or the first party considers that the other party may be so affected.
- (g) Cancellation of the Test under this clause 6 does not affect:



- (i) the continued operation of any other agreement that incorporates these Standard Test Terms; or
- (ii) any similar, related or alternative tests that **nbn** may be performing with any Other RSPs.

7. Participation of third parties

- (a) RSP must manage all aspects of its relationship with End Users who assist in the Test, including:
 - (i) arranging for the participation of each End User in the Test and termination of the Test in a manner consistent with the Test Agreement;
 - (ii) managing all interactions with End Users, including handling service, technical and maintenance enquiries and requests, disputes, provision of information as reasonably directed by **nbn**; and
 - (iii) if the Test Description specifies that this clause 7(a)(iii) applies, ensuring that RSP or a downstream service provider enters into an agreement with each relevant End User on terms which comply with clauses 7(b) and 14.9 (**Test End User Contract**).
- (b) Each Test End User Contract must:
 - (i) allow RSP to comply with the Test Agreement (including with regard to the basis on which any Downstream Product is supplied and its limitations, including drawing to the End User's specific attention the nature of the testing environment and that the supply of products or services are for testing purposes and will not necessarily perform in accordance with their descriptions, be fit for the purposes for which such goods or services are commonly supplied; be free from defects; durable; fit for a particular purpose or supplied within a particular time; or at all);
 - (ii) permit **nbn** to perform its obligations and exercise its rights under the Test Agreement regarding the Test, supply of relevant Test Products, and conduct of all related inspection, installation, maintenance and deinstallation works;
 - (iii) require End User to provide or procure all reporting, feedback and any other assistance that **nbn** or RSP may reasonably require in connection with the Test;
 - (iv) include consents from End User that permit End User's confidential information and its Personnel's Personal Information to be disclosed to, and used and disclosed by, **nbn** and **nbn's** Personnel solely in connection with the Test; and
 - (v) exclude, to the extent permitted by law, all express or implied representations, conditions, warranties and guarantees arising from or in connection with the Test, whether based in statute, regulation, common law or otherwise, and, to the extent such matters cannot be lawfully excluded, limit all liability for such matters to:
 - (A) in the case of goods, the replacement of the goods, the supply of equivalent goods or the repair of the goods; and
 - (B) in the case of services, the supply of the services again.
- (c) RSP may fulfil its obligations under the Test Agreement in relation to the Test (including the provision of Downstream Products to End Users where relevant) through a downstream service provider or third party supplier provided that RSP:
 - (i) notifies **nbn** of any such third party involvement before the parties agree to the Test Description for that Test or the Test Description expressly permits the involvement of that third party;



- (ii) ensures that any such downstream service providers or third party suppliers fulfil RSP's obligations under the Test Agreement as if those obligations were imposed on that downstream service provider or third party supplier (as the case may be); and
- (iii) remains liable to **nbn** for all its obligations under the Test Agreement and for all acts and omissions of any such third party to the same extent that RSP would be liable to **nbn** under the Test Agreement if they were the acts and omissions of RSP.

8. Use of networks, facilities, systems and equipment

8.1 Lawful use

- (a) RSP must:
 - (i) ensure that use by RSP of the **nbn**TM Infrastructure or any Test Product is lawful and in accordance with the Test Agreement; and
 - (ii) use reasonable endeavours to ensure that use by any End Users and any downstream service providers of any Downstream Product is lawful, is consistent with the Test Agreement and does not give rise to a breach of any provision of the Test Agreement by **nbn** or by RSP.

8.2 Network protection and safety

- (a) Each party is responsible for the safe operation of its network, systems, equipment and facilities and must take all necessary steps, so far as is reasonably practicable, to ensure that it and its networks, systems, equipment and facilities do not, in connection with the Test Agreement or the exercise of rights or the performance of obligations under the Test Agreement:
 - (i) endanger the health or safety of any person;
 - (ii) damage, threaten, interfere with, degrade or result in the deterioration of the operation or performance of the other party's network, systems, equipment or facilities; or
 - (iii) in the case of RSP, damage, threaten, interfere with, degrade or cause the deterioration of the operation or performance of any **nbn** customer's network, systems, equipment or facilities used in connection with the **nbn**TM Network.
- (b) RSP must use reasonable endeavours to ensure that End Users do not damage, threaten, interfere with or degrade or cause the deterioration of the operation or performance of the **nbn**TM Infrastructure, or any **nbn** customer's network, systems, equipment or facilities used in connection with the **nbn**TM Network.
- (c) RSP must:
 - (i) ensure that any connection made and maintained by or on behalf of RSP or from its networks, systems, equipment or facilities to the **nbn**TM Network; and
 - (ii) use reasonable endeavours to ensure any connection made and maintained by or on behalf of any End Users to the **nbn**TM Network,is made and maintained in accordance with the Test Agreement and all applicable laws.
- (d) If RSP becomes aware that any network, system, equipment or facility is causing an event that RSP has an obligation under this clause 8 to ensure, or use reasonable endeavours to ensure, does not occur (e.g. it is degrading the operation of any product being supplied by



nbn to its customers), RSP must immediately disconnect or deactivate the network, system, equipment or facility and use reasonable endeavours to minimise the breach.

8.3 RSP and End User equipment

- (a) RSP must ensure that its equipment has all necessary regulatory approvals, the uses to which the RSP equipment is put are not prohibited by any Regulator and comply with the Test Agreement and all applicable laws, and the RSP equipment is maintained in good repair and working condition.
- (b) RSP must use reasonable endeavours to ensure that End User equipment has all necessary regulatory approvals, the uses to which End User equipment are put are not prohibited by any Regulator and comply with the Test Agreement and all applicable laws, and End User equipment is maintained in good repair and working condition.

8.4 **nbn**TM equipment

- (a) **nbn** must ensure that **nbn**TM equipment has all necessary regulatory approvals, the uses to which the **nbn**TM equipment is put are not prohibited by any Regulator and comply with the Test Agreement and all applicable laws, and the **nbn**TM equipment is maintained in good repair and working condition.

8.5 Property rights and beneficial interest

- (a) Nothing in the Test Agreement gives RSP (or any End User) any right, title or interest (whether legal, equitable or statutory) in any part of the **nbn**TM Infrastructure made available by **nbn** to RSP or used by **nbn** to supply products or services under the Test Agreement.

9. Access to premises

- (a) RSP must provide, or procure the provision of, safe and timely access to any premises owned, controlled or occupied by RSP and all valid and enforceable consents, approvals and rights of access required by **nbn** from each of RSP, the End User and any third party in a form approved by **nbn** that enables **nbn** and any Personnel of **nbn** to enter and do anything necessary in respect of that site or premises to:
 - (i) conduct the Test and supply the relevant Test Products;
 - (ii) disconnect or remove any part of the **nbn**TM Network or equipment following termination or expiry of the Test Agreement, following cancellation of part of a Test or supply of a Test Product, where permitted by a Test Agreement or Test Plan, or as otherwise agreed between the parties; and
 - (iii) exercise any of its rights or perform any of its obligations under and in accordance with the Test Agreement.
- (b) RSP must:
 - (i) hold all consents, approvals and rights of access provided or obtained by RSP under clause 9(a) on trust for the benefit of **nbn**; and
 - (ii) on request by **nbn**, provide to **nbn** documentary evidence of having obtained all of the consents, approvals and rights of access referred to in clause 9(a).
- (c) RSP must use reasonable endeavours to ensure that:
 - (i) no End Users create, or allow the creation of, any security interest, encumbrance, lien, charge or mortgage over any part of the **nbn**TM Network;



- (ii) End Users take all reasonable care of any part of the **nbn**TM Network to which they have access;
 - (iii) End Users provide true and complete answers to any reasonable installation questions asked by any **nbn** Personnel or RSP and inform such **nbn** Personnel or RSP of any issue which may affect or prevent the conduct of the Test on the first visit to the relevant site or premises (including anything which may prevent access to the site or premises); and
 - (iv) End Users are available at the relevant site or premises where the Test is to be conducted (and able to give any access required) on the date and at the times agreed with the relevant **nbn** Personnel or RSP.
- (d) If RSP fails to comply with this clause 9, then:
- (i) **nbn** will not be liable for any Claims or Losses that may be suffered or incurred by RSP or any End User, arising from or in connection with **nbn**'s failure to perform its obligations under the Test Agreement as a result of RSP's failure to comply with this clause 9; and
 - (ii) RSP must pay to **nbn** on demand the amount of any and all Losses suffered or incurred by **nbn**, any of its Related Bodies Corporate and any of their Personnel arising from or in relation to RSP's failure to comply with this clause 9, including as a result of Claims from **nbn** Personnel.

10. Visiting sites and premises

- (a) Each party must, and must ensure that any Personnel of the party visiting any premises which are owned, controlled or operated by or on behalf of the other party and used in connection with the Test:
- (i) comply with any policies that are notified by the other party from time to time, any reasonable directions that may be given by the other party from time to time and all OH&S Laws; and
 - (ii) do not at any time cause the other party to be in contravention of an OH&S Law.

11. Confidentiality and marketing

11.1 Scope

- (a) This clause 11 applies to Confidential Information that is either generated by a party or provided to it by the other party in connection with the Test Agreement.
- (b) If any Confidential Information is subject to this clause 11, that Confidential Information will not be subject to clause D1 of the WBA.
- (c) This clause 11 does not apply to any Confidential Information that is subject to clause 4 of the PDF Terms.
- (d) Subject to clauses 11.2 and 11.3 and any applicable statutory duty, the Recipient must keep confidential all Confidential Information of the Discloser and must not:
- (i) use or copy such Confidential Information except as set out in the Test Agreement; or
 - (ii) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any person.



- (e) Information generated within the **nbn**TM Infrastructure in connection with the supply of a Test Product to RSP or the interconnection of the **nbn**TM Infrastructure with the RSP Network in connection with the Test is the Confidential Information of RSP (except if it is De-Identified Information).

11.2 Use of Confidential Information

- (a) The Recipient may use Confidential Information of the Discloser for any purpose related to any **nbn** Supply except as specified in clause 11.2(b).
- (b) RSP must not use:
 - (i) information in or derived from **nbn**'s Medical Alarm Register or **nbn**'s Fire Alarms and Lift Phones Register except as approved by **nbn** in writing and in accordance with any conditions specified in such written approval;
 - (ii) **nbn**'s Confidential Marketing Information for purposes other than those permitted under the WBA; or
 - (iii) **nbn**'s Confidential Information to develop, enhance, market or promote products and services that compete with products or services supplied by **nbn**.

11.3 Disclosure of Confidential Information

- (a) The Recipient may only disclose Confidential Information of the Discloser:
 - (i) to the Recipient's Related Bodies Corporate, Personnel, professional advisors, (in the case of RSP) any Downstream Service Providers and (in the case of **nbn**) facilities access providers and third party network operators, provided that the person to whom the disclosure is made is subject to an obligation to keep the information confidential on terms that are no less restrictive than this clause 11;
 - (ii) in respect of disclosure by **nbn** of Test Information only, for the purpose of **nbn** developing and supplying products and services to retail service providers and complying with **nbn**'s legal obligations, including in relation to non-discrimination, and any other Permitted Purposes;
 - (iii) as required by law, a Regulator, Government Agency, Shareholder Ministers or their departments, or the listing rules of any stock exchange;
 - (iv) for the purposes of legal proceedings, arbitration, expert determination and other dispute resolution mechanisms set out in the Test Agreement or any WBA; and
 - (v) where reasonably required to protect the safety of persons or property or the integrity of a telecommunications network or in connection with an Emergency.
- (b) For any disclosure under clauses 11.3(a)(iii) to 11.3(a)(v), the Recipient must:
 - (i) ensure that existing commercial-in-confidence markings, if any, are retained or reproduced in any disclosure made to, or required by, a Regulator or Government Agency; and
 - (ii) where clause 11.3(b)(i) does not apply, give the Discloser as much notice (in writing) as is reasonably practicable.

11.4 General rules

- (a) Each party must co-operate in any action taken by the other party to:
 - (i) protect the confidentiality of the other party's Confidential Information; and



- (ii) enforce the other party's rights regarding its Confidential Information.
- (b) The Recipient must, on request from the Discloser, return, destroy or delete the Discloser's Confidential Information except to the extent that:
 - (i) it is impracticable to do so; or
 - (ii) the Recipient is required to retain that Confidential Information to comply with its internal governance processes or any applicable law.
- (c) Confidential Information is provided for the benefit of the Recipient only. Each party acknowledges that the Discloser gives no warranty that the Confidential Information is or will be correct.
- (d) The parties agree that damages are not an adequate remedy for a breach of this clause 11 and that, in addition to other remedies that may be available, a party may seek injunctive relief against such a breach or threatened breach.
- (e) The following provisions of the WBA Head Terms are incorporated into this clause 11:
 - (i) clause D1.10 (Anonymising Confidential Information); and
 - (ii) clause D2 (Data Security and Personal Information).

12. Marketing the Test

- (a) Despite anything else in the Test Agreement, if the Test Description specifies that this clause 12 applies, then RSP consents to, and must obtain the written consent of each End User to, **nbn** making public details of:
 - (i) the Test; and
 - (ii) the role of **nbn**, RSP and End User in relation to the Test, except where RSP provides **nbn** a notice in writing to the contrary (which RSP must not do unreasonably).
- (b) RSP acknowledges and agrees that **nbn** may:
 - (i) notify potential End Users that RSP may supply Downstream Products to the potential End Users; and
 - (ii) provide RSP's contact details to potential End Users.

13. Liability

13.1 Liabilities of each party

- (a) The Test Agreement, to the extent permitted by law, exhaustively governs all of the liabilities that a party owes to the other party arising from, or in connection with, the Test Agreement.
- (b) To the extent permitted by law, a party is not liable to the other for any liability (including for negligence) arising from, or in connection with, the Test Agreement, to the extent that the first party has excluded, restricted or limited its liability under the Test Agreement.
- (c) Every exclusion, restriction, limitation and indemnity in the Test Agreement separately applies on its own terms and survives expiry or termination of the Test Agreement.



13.2 Limitation of liability

- (a) To the full extent permitted by law, **nbn** excludes all liability to RSP in respect of any Loss arising by reason of any failure of a product or service supplied by **nbn** or its Personnel to RSP or End User to perform in accordance with their descriptions, be fit for the purposes for which such goods or services are commonly supplied; free from defects; durable; fit for a particular purpose or supplied within a particular time; or at all.
- (b) To the full extent permitted by law, except as expressly set out in the Test Agreement, **nbn** excludes all express or implied representations, conditions, warranties and guarantees arising from or in connection with the Test Agreement, whether based in statute, regulation, common law or otherwise.
- (c) To the full extent permitted by law, each party's aggregate liability to the other party in relation to any and all events that arise in connection with the Test Agreement or its subject matter (whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise) is limited to \$1 million.
- (d) The amount of one party's liability to the other party for the purposes of clause 13.2(c) will be reduced to the extent that the other party otherwise recovers in respect of any event or cause giving rise to the liability, including from the relevant insurer if that other party has a right to recover under any contract of insurance with any third party in respect of any event or cause giving rise to the liability.
- (e) 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.

13.3 Uncapped liability

- (a) The limitations of liability imposed by clause 13.2(c) do not apply to either party's liability:
 - (i) for any negligent or wilful acts or omissions of the party that cause death, personal injury or damage to Tangible Property;
 - (ii) for any acts or omissions of the party constituting fraud;
 - (iii) under the indemnities given by the party under clause 14 (other than clauses 14.4(a) or 14.4(b) as applicable); or
 - (iv) under the indemnity given by the party under clauses 14.4(a) or 14.4(b) (as applicable) where the liability giving rise to that indemnity was caused by a negligent or wilful act or omission of the party.

13.4 No liability for Indirect Loss

- (a) No party is liable to make any payment to the other party for any and all Losses of that other party arising from or in connection with the Test Agreement or its subject matter (regardless of whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise) to the extent such liability constitutes Indirect Loss.
- (b) The exclusion of liability in clause 13.4(a) does not apply in respect of the indemnity set out in clause 14.5(a).



13.5 General exclusions of liability

- (a) To the extent permitted by law, **nbn** excludes all liability for any and all Losses suffered or incurred by RSP to the extent such Losses are caused or contributed to by:
 - (i) any and all:
 - (A) Claims brought against RSP by a third party to whom RSP provides products or services under a contract, to the extent that that liability could have been lawfully excluded, restricted or limited under that contract; or
 - (B) End User Losses,
except to the extent that such Claims or Losses fall within clauses 13.3(a)(i), 13.3(a)(ii) or 14.4(b)(i); or
 - (ii) any RSP Event.

13.6 Apportionment and mitigation

- (a) The liability of a party (the **first party**) to the other party in respect of any and all Claims and Losses arising from or in connection with the Test Agreement (regardless of whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise howsoever arising) is reduced proportionally to the extent that:
 - (i) the other party has not taken all reasonable steps to minimise and mitigate its own Losses in relation to the act, omission, event or circumstance giving rise to such Claim or Loss (where such costs are recoverable from the first party); or
 - (ii) any Losses of the other party are caused, or contributed to, by:
 - (A) any act or omission of the other party, its Related Bodies Corporate or their respective Personnel; or
 - (B) the networks, systems, equipment or facilities of the other party, its Related Bodies Corporate or their respective Personnel.
- (b) The reduction of liability in clause 13.6(a)(ii) does not apply in respect of the indemnity in clause 14.5(a)(i).

13.7 **nbn**TM Network Boundaries

- (a) RSP is responsible for (and assumes all liabilities and obligations in respect of) all activities required for:
 - (i) the supply of Downstream Products, or performance of any activities in respect of the Test beyond the **nbn**TM Network Boundaries including all services, systems, equipment or facilities associated with the supply of Downstream Products or performance of any activities in respect of the Test (other than Common MDU Site Equipment or any **nbn**TM equipment); and
 - (ii) the proper operation and interface of any RSP platform, RSP equipment, End User equipment and any Central Splitter.



13.8 Force majeure

- (a) If an Affected Party is unable to perform an obligation under the Test Agreement (other than an obligation to pay money in the ordinary course of business) because of a Force Majeure Event, then to the extent the Force Majeure Event prevents that party from performing that obligation, the Affected Party:
- (i) will be excused from performing that obligation for the duration of the Force Majeure Event; and
 - (ii) will not be liable for any costs, expenses, losses, damages or liabilities arising from or in connection with the non-performance of that obligation for the duration of the Force Majeure Event.

14. Indemnities

14.1 Confidentiality

Each party must pay to the other party on demand an amount equal to all Losses suffered or incurred by the Indemnified Party arising from or in connection with any breach of clause 11 by the Indemnifying Party.

14.2 Intellectual property

- (a) Each party must pay to the other party on demand an amount equal to all Losses suffered or incurred by the Indemnified Party arising from or in connection with any Claim brought by any third party alleging that:
- (i) the exercise by the Indemnified Party of any rights assigned, transferred or granted, or purportedly assigned, transferred or granted, by or on behalf of the Indemnifying Party in connection with the Test Agreement infringes any Intellectual Property Rights of that third party; or
 - (ii) where **nbn** is the Indemnified Party:
 - (A) the use of any Test Product by RSP other than in accordance with the terms of the Test Agreement; or
 - (B) the use by any downstream service provider or End User of a Downstream Product (other than where the Claim arises from the use of a Test Product in accordance with the terms of the Test Agreement),infringes any Intellectual Property Rights of that third party.

14.3 Death and personal injury

Each party must pay to the other party on demand an amount equal to all Losses suffered or incurred by the Indemnified Party arising from or in connection with the death or personal injury of any person to the extent that:

- (i) an act or omission of the Indemnifying Party, its Related Bodies Corporate, their respective Personnel or suppliers in connection with the Test Agreement:
 - (A) is negligent and causes or contributes to that death or personal injury; or
 - (B) intentionally causes or contributes to that death or personal injury; or



- (ii) the network, systems, equipment or facilities of the Indemnifying Party causes or contributes to that death or personal injury in connection with the Test Agreement.

14.4 Damage to property, etc.

- (a) RSP must pay to **nbn** on demand an amount equal to all Losses suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, or their respective Personnel arising from or in connection with any:
 - (i) damage to, or loss of, the Tangible Property of **nbn** and/or any third party, including damage to sites at which facilities access services are supplied to RSP;
 - (ii) damage to, or loss of, the whole or any part of the **nbn**TM Network and/or the **nbn**TM Platform;
 - (iii) disruption of, interference with or deterioration or degradation of the normal operation or performance of the whole or any part of the **nbn**TM Network, the **nbn**TM Platform or any other third party equipment sites at which **nbn** provides interconnection to its customers and sites at which facilities access services are supplied to RSP; or
 - (iv) interruption of access to and use of any product or service supplied by **nbn** to any person that is an "RSP" under another agreement or is otherwise a customer of **nbn**,

to the extent that such Losses are caused, or contributed to, by RSP, its Related Bodies Corporate or any of their respective Personnel or third party supplier to RSP in connection with the Test Agreement or its subject matter.

- (b) **nbn** must pay to RSP on demand an amount equal to all Losses suffered or incurred by RSP arising from or in connection with any damage to, or loss of:
 - (i) the Tangible Property of RSP and/or any third party; or
 - (ii) the whole or any part of the network, systems, equipment or facilities of RSP,

to the extent that such Losses are caused, or contributed to, by **nbn**, its Related Bodies Corporate or any of their respective Personnel in connection with the Test Agreement or its subject matter.

14.5 Claims by End Users and other third parties

- (a) Subject to clause 14.5(b), RSP must pay to **nbn** on demand an amount equal to all Losses suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, or their respective Personnel arising from or in connection with any Claim:
 - (i) against **nbn** for any End User Loss or by any downstream service provider or End User in connection with the Test Agreement, to the extent that RSP could lawfully have excluded or limited such Losses in its arrangements with downstream service providers, End Users or third parties; or
 - (ii) by a third party against **nbn** to the extent that the Claim arises from or in connection with any:
 - (A) breach of the Test Agreement by RSP (including any Claim arising by reason of any failure to include terms in contracts with End Users as required by clause 14.9(a)); or



- (B) negligent act or omission of RSP, any Related Bodies Corporate of RSP, or their respective Personnel or suppliers arising directly from or in connection with the Test Agreement or its subject matter.
- (b) Clause 14.5(a) does not apply to the extent that the Loss suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, or their respective Personnel arose from a Claim in relation to which RSP could not have lawfully excluded liability.

14.6 Operational indemnities

- (a) RSP must pay to **nbn** on demand an amount equal to all Losses suffered or incurred by **nbn**, any Related Body Corporate of **nbn**, and their respective Personnel arising from or in connection with:
 - (i) the reasonable exercise by **nbn** of its rights to disconnect or remove any network, systems, equipment or facilities in accordance with clause 17(c); or
 - (ii) RSP's failure to comply with clause 9(a).

14.7 General rules for all indemnities

- (a) The liability of an Indemnifying Party to pay on demand an amount under this clause 14 to an Indemnified Party will be the sole and exclusive financial remedy in respect of the liability the subject of the indemnity.
- (b) It is not necessary for any party to incur expense or make payment before enforcing a right of indemnity conferred by the Test Agreement.
- (c) Where an indemnity applies in favour of an Indemnified Party, and such an event relates to the act or omission of a third party supplier of the Indemnifying Party, the Indemnified Party will not receive the benefit of the indemnity where that third party supplier is the Indemnified Party, any Related Body Corporate of the Indemnified Party or their respective Personnel.
- (d) An Indemnified Party under this clause 14 must:
 - (i) notify the Indemnifying Party as soon as is reasonably practicable of any relevant third party Claim; and
 - (ii) where the Indemnifying Party can demonstrate to the reasonable satisfaction of the Indemnified Party that the Indemnifying Party has the resources to pay all Losses which are reasonably likely to arise in the event the relevant third party Claim is successful:
 - (A) give the Indemnifying Party the option to conduct the defence of the relevant third party Claim, including negotiations for settlement or compromise. If the Indemnifying Party exercises this option, the Indemnifying Party must not do anything during the course of any defence, settlement or compromise which adversely affects the Indemnified Party's business or reputation;
 - (B) promptly provide all assistance reasonably requested by the Indemnifying Party (at the cost of the Indemnifying Party) in conducting the defence of the relevant third party Claim; and
 - (C) not make any admissions in relation to the relevant third party Claim without the prior written consent of the Indemnifying Party.



- (e) If the Indemnifying Party exercises its option under clause 14.7(d)(ii), the Indemnifying Party must first obtain the consent of Indemnified Party (which must not be unreasonably withheld) to the terms of any settlement or compromise of the relevant Claim.

14.8 No claims against certain persons

- (a) Each party agrees that it will not make any Claims arising from or in connection with the subject matter of the Test Agreement against:
 - (i) the Personnel of the other party; or
 - (ii) any Related Body Corporate of the other party which is not a party to the Test Agreement or any of their Personnel.
- (b) RSP must not make any Claims of the type described in clause E3(b) of the WBA Head Terms.

14.9 Downstream liabilities

- (a) RSP must include in the terms of each Test End User Contract provisions that:
 - (i) exclude (to the full extent permitted by law) all liability of **nbn**, its Related Bodies Corporate and each of their respective Personnel, arising from or in connection with the Test; and
 - (ii) state **nbn** is not providing, and does not have a contractual relationship with the End User for the supply of, any products or services to the End User.

15. Title and Intellectual Property

- (a) Each party (or its licensors) owns all right, title and interest (including Intellectual Property Rights) in its own network, platform and other systems, equipment, facilities and materials (including Test Information generated by that party) which currently exist or may be acquired, created or developed by or on behalf of that party.
- (b) **nbn** (or its licensors) owns all Intellectual Property Rights in:
 - (i) the **nbn**[™] Network and the **nbn**[™] Platform;
 - (ii) the Test Agreement, including any changes made to these Standard Test Terms and the Test Description; and
 - (iii) the products and services supplied by **nbn** in connection with any Test, including any changes made to any products and services after the Execution Date.
- (c) Nothing in the Test Agreement transfers or assigns ownership of a party's Intellectual Property Rights (or those of a third party) or confers on any person a right, title or interest in such Intellectual Property Rights, except as expressly set out in this clause 15 or the Test Description.
- (d) To the extent RSP acquires any right, title or interest (including Intellectual Property Rights) in existing or future **nbn** products, services or materials in connection with any Test, RSP, by the Test Agreement, hereby assigns to **nbn** absolutely and as beneficial owner the entire right, title and interest in and in relation to the relevant **nbn** products or services, for no additional consideration, and must do all other things reasonably necessary to ensure that such right, title or interest becomes owned by **nbn** (if any).
- (e) RSP grants to **nbn** a non-exclusive, transferable, sub-licensable, perpetual, irrevocable, fully paid and royalty free licence to use, copy, adapt and communicate the Test Information for the purpose of **nbn** developing and supplying products and services to retail service providers



and complying with its legal obligations, including in relation to non-discrimination, and any other Permitted Purposes.

16. Insurance

- (a) RSP must maintain the insurances required by Module E of the WBA Head Terms and Part E of the Service Terms for the Facilities Access Service and comply with the insurance requirements of that Module E and Part E as if a reference in that Module E and Part E to the WBA is a reference to the Test Agreement.

17. Effect of expiry or termination of the Test Agreement

- (a) From the effective date of expiry or termination of the Test Agreement (as applicable):
 - (i) RSP's right to use services and products supplied in connection with the Test immediately ceases; and
 - (ii) **nbn** may take all steps necessary or desirable pursuant to clause 17(a)(i), including ceasing to supply products and services supplied in connection with the Test.
- (b) If requested by **nbn**, RSP must, within 90 Business Days after the later of the request and the effective date of termination of the Test:
 - (i) disconnect RSP's and End Users' network, systems, equipment and facilities used in connection with that Test from any **nbn**TM Infrastructure and remove RSP's and End Users' network, systems, equipment and facilities used in connection with the Test from any sites owned or controlled by **nbn**; and
 - (ii) assist **nbn** to remove any part of any **nbn**TM Infrastructure and the **nbn**TM Platform used in connection with the Test from sites owned or controlled by RSP or an End User.
- (c) If RSP does not comply with a request from **nbn** to perform its obligations under clause 17(b), **nbn** may perform the activities contemplated by that clause without further notice to RSP.
- (d) Within 20 Business Days after the effective date of expiry or termination, each party must return, destroy or delete any of the other party's Confidential Information disclosed to it under or in connection with the Test Agreement, except to the extent it is impracticable to do so, or impermissible under applicable law.
- (e) Each party may retain one copy of, and use, the other party's Confidential Information after the effective date of expiry or termination for the purpose of enforcing its rights under the Test Agreement, discharging its obligations under applicable law or its own record-keeping purposes and no other purpose.
- (f) Expiry or termination of the Test Agreement by either party does not affect the right of either party to enforce its accrued rights against the other party.
- (g) Clauses 11 to 13 and 17 to 21 will survive the termination or expiry of the Test Agreement, as will any other term which is expressed, or by its nature is intended, to do so.
- (h) No provision of the Test Agreement merges on completion of any transaction contemplated by the Test Agreement.

18. Dispute Management

- (a) Any dispute that arises between **nbn** and RSP under or in relation to the Test Agreement must be resolved in accordance, and the parties agree to comply, with Module G of the WBA Head Terms.



- (b) The provisions of Module G and the definitions set out in the Dictionary of the WBA will be modified for the purposes of the Test Agreement as follows:
- (i) "Relationship Point of Contact" is to be read as a reference to a person nominated by a party under clause 19.10(b);
 - (ii) "Other Wholesale Broadband Agreement" is to be read as a reference to "any Other Test Agreement";
 - (iii) "Wholesale Broadband Agreement" means the WBA;
 - (iv) the words "other than a Billing Dispute" in clause G1(a) and clause G1(b) will be deleted;
 - (v) the words "of Module E (Risk Management)" in clause G9.1(a)(v) will be deleted and "E6" in clause G9.1(b)(v) is to be read as a reference to "13.8"; and
 - (vi) "Other RSP Dispute" means a dispute between **nbn** and an Other RSP under or in relation to an Other Test Agreement between **nbn** and that Other RSP that has been classified as an industry relevant dispute under that Other Test Agreement".

19. General

19.1 Compliance with applicable laws

- (a) Each party must comply with all applicable laws in connection with the exercise of its rights and the performance of its obligations under the Test Agreement.

19.2 Relationship between the parties

- (a) The relationship between the parties under the Test Agreement is that of independent contractors only.

19.3 Relationships with third parties

- (a) The Test Agreement does not create any obligation or legal relationship between **nbn** and any End User or other third party, nor does it grant any right or benefit to any End User or other third party.

19.4 Subcontractors and agents

- (a) Except for the performance of RSP's obligations in connection with the performance of the Test, which may only be subcontracted in accordance with clause 7(c), each party may use subcontractors or other agents to meet any of its obligations under the Test Agreement.

19.5 No variation of existing WBAs

- (a) Except as expressly provided in the Test Agreement, nothing in the Test Agreement varies or otherwise limits the terms of any WBA between **nbn** and RSP.

19.6 Entire agreement

- (a) Subject to clause 19.5(a), the Test Agreement is the entire agreement between the parties about the matters dealt with in the Test Agreement. It replaces all previous agreements, understandings, representations and warranties about those matters.



19.7 Changes to the Test Description

- (a) **nbn** may vary the Test Description by giving 10 Business Days' notice to RSP or as otherwise specified in the Test Description.

19.8 Assignment, novation and other dealings

- (a) A party must not assign or novate the Test Agreement, or deal with the benefit of, or right under the Test Agreement, or attempt to do any of these things, unless that party has obtained the prior written consent of the other party (not to be unreasonably withheld or delayed).

19.9 Waiver

- (a) A party will only be deemed to have waived a right or remedy under the Test Agreement if that waiver is in writing and signed by that party. Any failure or delay in exercising or a single or partial exercise of a right or remedy under the Test Agreement will not operate as a waiver and will not prevent further exercise of that, or of any other, right or remedy.

19.10 Notices

- (a) The parties must comply with the notice provisions in clause H1 of the WBA to the extent applicable as if references in that clause to the WBA are references to the Test Agreement. For the purposes of that clause a party's "Contact Details" are those notified under clause 19.10(b) and references to a "Dispute" are to any dispute under the Test Agreement.
- (b) Each party must ensure that they provide the other party with up-to-date details of the name, mail address and email address for each party's:
 - (i) contact person for the purposes of notices under the Test Agreement; and
 - (ii) other relevant contacts, as may be agreed.

19.11 Other general clauses

- (a) Clauses H3, H4.1, H4.4 to H4.6, H4.8 to H4.11 and H4.13 of the WBA will apply to the Test Agreement as if references in those clauses to the WBA are references to the Test Agreement.

20. Interpretation

- (a) A capitalised term used but not defined in the Test Agreement has the meaning given to it in the WBA, but with the following changes:
 - (i) references to "Ordered Product" and "Product" are to be read as "Test Product";
 - (ii) references to "Downstream Service Provider" are to be read as "downstream service provider";
 - (iii) references to "Contracted End User" are to be read as "End User";
 - (iv) references to "RSP Equipment" are to be read as "RSP equipment";
 - (v) references to "RSP Platform" are to be read as "RSP platform".
- (b) Clause H5.4 of the WBA will apply to the Test Agreement as if a reference in that clause to the WBA is a reference to the Test Agreement.



- (c) To the extent that the Test Agreement incorporates provisions of the WBA, the incorporated provisions are those provisions of the WBA that were in force at the time **nbn** and RSP entered into the Test Agreement, and do not include any amendments or replacements subsequently made to the WBA unless otherwise notified by **nbn**.

21. Dictionary

In the Framework Agreement and in the Test Agreement:

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Claim means any and all claims, alleged claims, actions, suits or proceedings by any person of any nature or kind, whether in contract, tort (including negligence) at common law, in equity, under statute or otherwise howsoever arising.

Corporations Act means the *Corporations Act 2001* (Cth).

De-identified Information means information that falls within paragraph (e) of the definition of Confidential Information.

Discloser means a party which discloses its Confidential Information to the other party, and includes RSP in respect of information to which clause 11.1(e) relates.

Downstream Product means a product or service supplied by RSP which relies on a Test Product as an input.

Eligibility Criteria means the conditions as specified in the Test Description as required to be met by RSP to be eligible to participate in the Test.

End User means a person who is the ultimate recipient or user of a product or service supplied by RSP which relies on a Test Product as an input.

End User Loss means:

- (a) any Loss suffered by a person who uses a product or service supplied directly or indirectly from RSP, a Related Body Corporate of RSP or any other entity controlled by RSP within the meaning of the Corporations Act where that Loss is in connection with any telecommunications network over which RSP is in a position to exercise control or which RSP uses; and
- (b) any Loss suffered by RSP as result of any loss referred to in paragraph (a) of this definition.

Execution Date means the date that the Framework Agreement is executed by the last party to sign the Framework Agreement.

Framework Agreement means this document, which is titled "Standard Test Terms" and which contains the Standard Test Terms.

Indemnified Party means the party with a right of indemnity from the other party.

Indemnifying Party means the party obliged to indemnify the other party.

Indirect Loss means any liability which:

- (a) does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question; or



- (b) constitutes or arises from or in connection with loss of profit, loss of anticipated profit, loss of opportunity or anticipated savings, loss of revenue, loss of income, loss of production, loss or impairment of credit rating, loss of data, loss of management time, loss of business opportunities and loss of or damage to reputation or goodwill even if such loss arises naturally or in the usual course of things from that breach.

Intellectual Property Rights means any patent, copyright, design, trade name, trade mark, service mark or other intellectual property right (whether registered or not) including ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, tracings, diagrams and models.

Loss means losses, damages, liabilities, charges, expenses, compensation, fine, penalty, payment outgoings or costs and all related costs and expenses (including reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) of any nature or kind, howsoever it arises and whether it is present or future, fixed or unascertained, actual or contingent.

nbn™ Infrastructure means the **nbn™** Network, **nbn™** Platform and any other network, systems, equipment and facilities used by **nbn** in connection with the Test.

nbn™ Network means any of the telecommunications networks owned or controlled by, or operated by or on behalf of, **nbn** (or any Related Body Corporate of **nbn**) and any equipment owned, operated or controlled by **nbn** (or any Related Body Corporate of **nbn**) and used as part of, or in connection with the Test (whether part of the **nbn™** Network, any replica 'sandpit' environment, or otherwise).

nbn™ Network Boundaries means, in respect of the Test or a Test Product:

- (a) the "**nbn™** Downstream Network Boundary" as specified in the applicable Test Description; and
- (b) the "**nbn™** Upstream Network Boundary" as specified in the applicable Test Description.

nbn™ Platform means the operational support systems and billing support systems that are used by **nbn** from time to time for purposes that may include the ordering and tracking of products and services provided in connection with the Test, billing and payment, and fault reporting, detection and restoration, but excludes **nbn**'s core systems or any functionality of those core systems. For clarity, the **nbn™** Platform may comprise automated systems, semi-automated systems, manual systems (such as manually manipulated spreadsheets) or any combination thereof.

nbn Supply means the supply by **nbn** of products and services to any person or the acquisition by RSP of products and services from **nbn**.

Other RSP means a person (other than RSP) who has entered into an Other Test Agreement with **nbn**.

Other Test Agreement means an agreement dealing with the subject matter of the Test Agreement entered into between **nbn** and a person other than RSP.

Permitted Purposes means purposes for which **nbn** may use, copy, adapt, communicate and disclose Test Information as specified in the Test Description.

Personnel means, in relation to a party or third party, that party's or third party's officers, employees, agents, contractors, subcontractors and consultants.

Priority Services means priority assistance, emergency calling, critical medical or similar services.

Recipient means a party which receives Confidential Information of the other party.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act.



RSP Event means:

- (a) any act or omission of RSP or any End User other than in accordance with the terms of the Test Agreement or that is otherwise unlawful; or
- (b) any event or circumstance to the extent caused or contributed to by:
 - (i) the network, systems, equipment or facilities of RSP; or
 - (ii) the network, systems, equipment or facilities of any End Users.

Standard Test Terms has the meaning given to that term in clause 1(a).

Tangible Property means physical property, including real property, but does not include non-physical property such as incorporeal property or Intellectual Property Rights.

TCSS Act means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

Test means the activities conducted by **nbn** with the assistance of RSP under the Test Agreement, in relation to a specified or proposed product, service or process, or a feature, enhancement or component of a product, service or process, the details of which **nbn** specifies in the Test Description.

Test Agreement has the meaning given to that term in clause 1(a).

Test Contact means each person appointed by **nbn** and RSP (respectively) as:

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

Test Description means a set of terms specific to the Test agreed or to be agreed (as the context requires) between **nbn** and RSP, covering the content set out in Schedule 1 or such other matters as agreed by the parties.

Test End User Contract has the meaning given to that term in clause 7(a)(iii).

Test Information means any observations, findings or results in connection with the Test.

Test Period means the time period specified as such in the Test Description.

Test Plan means the plan provided by **nbn** to RSP in relation to the Test including any definition or description document, which describes how RSP must perform the Test and the assistance and direction which **nbn** intends to provide.

Test Product means a product or service supplied by **nbn** for the purpose of the Test.

WBA means the most recent agreement of that name entered into between the parties (as amended from time to time) including any replacement version of that agreement entered into between the parties before the parties' entry into the Framework Agreement.



Execution

Executed as an agreement

This page is intentionally blank.

If your organisation requires the executable version of this agreement, please contact contractmanager@nbnco.com.au



Schedule 1

Test Description: *[Insert name of test, trial or pilot]*

Commercial-in-confidence | Version: *[insert]* | Date of issue: *[insert]*

This Test Agreement is a Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act 2010 (Cth). *[Include or delete this statement, as required.]*

- A. This document is a Test Description for the purposes of the Framework Agreement between **nbn** and RSP.
- B. This Test Description, together with the Standard Test Terms, forms the Test Agreement for the Test.
- C. If RSP wishes to participate in the Test, RSP must notify **nbn** of its intention to participate;
 - i. during the related Expressions of Interest process (if applicable); or
 - ii. after **nbn** publishes the Test Description on **nbn** website or issues this Test Description to RSP.
- D. To be eligible to participate in the Test, RSP must satisfy the following conditions (**Eligibility Criteria**):
 - be party to the latest version of the Wholesale Broadband Agreement and be in good financial standing under that agreement;
 - have been selected to participate in the Test through the related Expression of Interest or other selection process (if applicable); and
 - *[insert other conditions]*.
- E. If checked by **nbn**, the following provisions in the Standard Test Terms apply:
 - (Requirements for Test End User Contracts) clause 7(a)(iii) applies; and
 - (Marketing-related disclosures) clause 12 applies.
- F. The particulars of this Test are set out in the table below:

#	Item	Details
1.	Name of Test	<i>Insert the name of the test, trial or pilot.</i>
2.	Description of the Test	<i>Describe the nature and purpose of the Test. Describe also the obligations on RSP and nbn.</i>
3.	Description of the Test Product	<p><i>If a Test Product is to be supplied,</i></p> <ol style="list-style-type: none"> <i>1. describe the nature of the Test Product; or</i> <i>2. create an annexure and write "As set out in Annexure <A> to this Test Description".</i> <p><i>If the Test Product is an existing product or service, refer to the description of the existing product or service as found in another document or agreement as at a particular date and specify any changes for the Test (e.g. "nbn™ Ethernet (Wireless) subject to the amendments in Annexure <A>").</i></p> <p><i>If no Test Product is to be supplied, write "Not applicable".</i></p>
4.	Test Period	<i>Insert the date on which the Test is to start and end.</i>



#	Item	Details
5.	Location for the Test (if applicable)	<p><i>Insert the location at which the Test will be conducted.</i></p> <p><i>If this is addressed in the Test Plan, write “As set out in the Test Plan.”</i></p> <p><i>If there is no specific location relevant to the Test, write “Not applicable.”</i></p>
6.	Test Plan (if applicable)	<p><i>Either:</i></p> <ol style="list-style-type: none"> <i>1. insert the details of the Test Plan here;</i> <i>2. create an annexure and write “As set out in Annexure to this Test Description”;</i> <i>3. write “To be provided by nbn to RSP”;</i> or <i>4. write “Not applicable.”</i>
7.	Operational procedures (if applicable)	<p><i>Either:</i></p> <ol style="list-style-type: none"> <i>1. insert the details of the operational procedures here;</i> <i>2. create an annexure and write “As set out in Annexure <C> to this Test Description”;</i> <i>3. write “To be agreed between nbn and RSP”;</i> or <i>4. write “Not applicable.”</i>
8.	Other instructions, policies and procedures (if applicable)	<p><i>Either:</i></p> <ol style="list-style-type: none"> <i>1. insert the details of the instructions, policies and procedures here;</i> <i>2. create an annexure and write “As set out in Annexure <D> to this Test Description”;</i> <i>3. write “To be notified by nbn to RSP”;</i> or <i>4. write “Not applicable.”</i>
9.	Supply of Downstream Products to End Users	<p><i>If applicable, describe the third parties to whom RSP can supply Downstream Products in connection with the Test. Unless this is specified, RSP will not be entitled to use the Test Product as an input to supply to third parties (i.e. it would be RSP-only testing). If this is not applicable, write “Not applicable.”</i></p>
10.	Supply through third parties (including downstream service providers)	<p><i>For the purpose of clause 7(c) of the Standard Test Terms, RSP is permitted to fulfil its obligations in relation to this Test through the following downstream service providers/third parties:</i></p> <p><i>[insert]</i></p> <p><i>Unless this is specified, RSP will not be entitled to involve downstream service providers or service delivery partners in connection with the Test. If this is not applicable, write “Not applicable.”</i></p>



#	Item	Details
11.	nbn™ Downstream Network Boundary	<p><i>If the downstream network boundary for a Test Product is something other than the UNI used to serve a Premises, please specify here.</i></p> <p><i>Otherwise, write “The UNI used to serve a Premises”.</i></p> <p><i>Note that the nbn™ Downstream Network Boundary for nbn™ Ethernet (FTTC) is not the UNI and for FTTC testing, the default UNI boundary above should not be used.</i></p>
12.	nbn™ Upstream Network Boundary	<p><i>If the downstream network boundary for a Test Product is something other than the NNI, please specify here.</i></p> <p><i>Otherwise, write “As described in paragraph (b) of the definition of “nbn™ Network Boundaries” in the WBA”.</i></p>
13.	Permitted Purposes for Test Information	<p><i>The Permitted Purposes for the Test, in addition to those set out in the Standard Test Terms, are:</i></p> <ul style="list-style-type: none"> <i>[Insert any test-specific Permitted Purposes for which nbn can use, copy, adapt, communicate and disclose Test Information]</i>
14.	Survival of specific provisions of this Test Description	<i>Insert any items in this Test Description that would survive termination or expiry.</i>
15.	Other special conditions for this Test (if applicable)	<i>Insert any special conditions.</i>



#	Item	Details
16.	RSP acknowledgements	<p><i>RSP warrants and agrees that:</i></p> <ul style="list-style-type: none"> • <i>RSP has made and has relied on its own investigations, enquiries, knowledge and expertise in respect of the Test Agreement, the Test and each Test Product and its own evaluation of any material provided by nbn to RSP or its Personnel;</i> • <i>nbn has not made, and no Personnel of nbn have made, any warranty as to the performance of any Test Product to RSP or its Personnel;</i> • <i>RSP is not entering into the Test Agreement in reliance on, and it will 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 the Test Agreement;</i> • <i>RSP has had the benefit of independent legal, financial and technical advice relating to its proposed participation in the Test and its entry into this Test Agreement;</i> • <i>as part of its investigations and enquiries in respect of the Test, each Test Product and the Test Agreement, RSP or its representatives have had access to all documents and information they have requested from nbn or its Personnel;</i> • <i>[Optional - may be removed if the Test will not involve Downstream Products] RSP has knowledge and experience in relation to the provision of services similar to the Downstream Products.</i> • <i>[Insert any other test-specific acknowledgements]</i>
17.	Definitions	<p><i>Insert definitions of terms that are not otherwise defined in the Standard Test Terms. If there are no additional defined terms, write "Not applicable."</i></p>

Copyright

This document is subject to copyright and must not be used except as permitted below or under the *Copyright Act 1968* (Cth). You must not reproduce or publish this document in whole or in part for commercial gain without the prior written consent of nbn. You may reproduce and publish this document in whole or in part for educational or non-commercial purposes as approved by nbn in writing.

Copyright © 2021 nbn co limited. All rights reserved. Not for general distribution.

Disclaimer

This document is provided for information purposes only. The recipient must not use this document other than with the consent of nbn and must make their own inquiries as to the currency, accuracy and completeness of this document and the information contained in it. The contents of this document should not be relied upon as representing nbn's final position on the subject matter of this document, except where stated otherwise. Any requirements of nbn or views expressed by nbn in this document may change as a consequence of nbn finalising formal technical specifications, or legislative and regulatory developments.

Environment

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