

# Test Agreement

## Test Description: Connected Communities Pilot Program



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### Environment

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

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# Test Agreement

## Test Description: Connected Communities Pilot Program

### Parties

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

### Background

- A. On 6 October 2020, **nbn** released a 'Request for Expressions of Interest – Connected Communities Pilot Program' seeking expressions of interest (**EoI**) from service providers to participate in a pilot program involving the provision of **nbn**<sup>™</sup> Ethernet (Fibre) services to certain non-Premises locations in greenfield areas that form (or will form) part of the Fibre Network (new developments) and/or other Fibre Network built areas (**Connected Communities Pilot Program**).
- B. This Test Description, together with the Standard Test Terms, forms the Agreement in respect of the Connected Communities Pilot Program.
- C. In order to facilitate the Test:
  - **nbn** and Test Participant will agree on the non-Premises locations/sites (each, an **Agreed Site**) located in greenfield areas that form (or will form) part of the Fibre Network (new developments) and/or other Fibre Network built areas at which the Test is to occur.
  - Test Participant will enter into an arrangement with the relevant End User allowing **nbn** to extend the Fibre Network to the Agreed Sites and for the Test to occur at the Agreed Sites.
  - **nbn** will extend the Fibre Network to the Agreed Sites to facilitate the relevant connectivity under the Test.
- D. Once the activities in recital C have been completed, the Test Product to be supplied under this Test Description (the **Non-Premises nbn**<sup>™</sup> **Ethernet (Fibre) Test Product**) is based on the existing **nbn**<sup>™</sup> Ethernet (Fibre) product but differs in a number of respects intended to make it suitable for use in connection with the Agreed Sites. These differences include:
  - it is not supplied to a Premises but to a non-Premises end-point location at an Agreed Site;
  - the NTD is in the form of a small form-factor pluggable (SFP) transceiver, which will be supplied by **nbn**; and
  - the Fibre Network will be terminated in a suitable location within or close to the Agreed Site at which the Test Participant or End User Equipment is terminated, which will form the demarcation point for **nbn**<sup>™</sup> Network.

# 1. Interpretation and definitions

For the purposes of this Test Description:

- (a) the singular includes the plural and vice versa;
- (b) any capitalised term used but not defined in this Test Description has the meaning given to that term in the Standard Test Terms;
- (c) any capitalised term used but not defined in this Test Description or the Standard Test Terms has the meaning given to that term in the WBA; and
- (d) any definition or provision in the Standard Test Terms, or incorporated into this Agreement from the WBA, which refers to 'Premises' will be read to refer to 'Premises or Agreed Site (as applicable)', and:

**Agreed Site** has the meaning given in recital C.

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

**AVC or Access Virtual Circuit** has the meaning given in clause 3.4(a).

**CVC or Connectivity Virtual Circuit** has the meaning given in clause 3.3(a).

**EoI** means the document referred to in recital A.

**nbn Indemnified Parties** means **nbn**, each of **nbn's** Related Bodies Corporate, each of the Personnel of **nbn** and **nbn's** Related Bodies Corporate, each of **nbn's** subcontractors and each of the Personnel of each of **nbn's** subcontractors.

**NNI or Network-Network Interface** has the meaning given in clause 3.2(a).

**Non-Premises nbn™ Ethernet (Fibre) Test Product** is defined in clause 3.1.

**SFP NTD** means a small form-factor pluggable transceiver network termination device with specifications notified by **nbn** from time to time.

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

**Test Contact** means each person appointed by **nbn** and Test Participant 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 this document, which is issued by **nbn** under the Standard Test Terms.

**Test End User Contract** means a contract between Test Participant and End User which:

- (a) permits **nbn** to extend the Fibre Network and supply a Non-Premises **nbn™** Ethernet (Fibre) Test Product to the Agreed Site and conduct all related inspection, installation, maintenance and deinstallation works;
- (b) obliges End User to provide or procure all reporting, feedback and any other assistance that **nbn** or Test Participant may reasonably require in connection with the Test;

- (c) includes any necessary consents from End User to permit End User's confidential information and its Personnels' Personal Information to be disclosed to and used and disclosed by **nbn** and its Personnel for the purposes of the Test.

**Test Participant** has the meaning given to that term in the "Parties" provision of this Agreement.

**Test Term** means the term of the Test as determined in accordance with clause 11.

**UNI** or **User Network Interface** has the meaning given in clause 3.5(a).

## 2. Pre-conditions

- (a) To participate in the Test, Test Participant must:
- (i) have responded to the EoI and been selected by **nbn** to participate in the Test;
  - (ii) have entered into the Standard Test Terms and this Test Description;
  - (iii) have completed the relevant on-boarding and certification activities required by **nbn** for the Test;
  - (iv) have in place (and maintain at all times during the Test Term) a Test End User Contract in respect of each End User; and
  - (v) have provided **nbn** with evidence of each Test End User Contract as required by **nbn**; and
  - (vi) be a party to a WBA and, at all such times, be fully compliant with the terms of that WBA.
- (b) If Test Participant ceases to comply with the conditions in clause 2(a) at any time, **nbn** may immediately do any one or more of the following things:
- (i) exclude Test Participant from the Test;
  - (ii) cease supplying the Non-Premises nbn™ Ethernet (Fibre) Test Product to Test Participant; and
  - (iii) terminate this Agreement.
- (c) The Test Participant acknowledges that, in order for the Test to commence:
- (i) **nbn** and the Test Participant must agree the Agreed Sites;
  - (ii) the Test Participant must enter into an arrangement with the relevant End User(s) to be the End Users' retail service provider for the Test at the Agreed Sites;
  - (iii) where required to facilitate the Test, Test Participant must obtain authority to act on the End User's behalf with respect to access to Agreed Sites and the installation, maintenance and replacement of equipment at Agreed Sites; and
  - (iv) **nbn** must extend the Fibre Network to the Agreed Sites, and **nbn** is not under any obligation to commence such extensions until conditions sets out in clause 2(c)(i), 2(c)(ii) and 2(c)(iii) are met.

## 3. Test Product

### 3.1 Test Product Components

- (a) The **Non-Premises nbn™ Ethernet (Fibre) Test Product** is a Test Product comprised of the product components described in sections 3.2 to 3.5 supplied by **nbn** to Test Participant to an Agreed Site for the purpose of the Test.

- (b) **nbn** will supply Test Participant with the Non-Premises **nbn**<sup>™</sup> Ethernet (Fibre) Test Product at the Agreed Sites in accordance with this Agreement and each applicable Test Plan as updated from time to time.

## 3.2 Network-Network Interface (NNI)

- (a) The Network-Network Interface or NNI is the interface at a POI where the Test Participant's traffic is handed over to the **nbn**<sup>™</sup> Network.
- (b) For each POI which **nbn** notifies to Test Participant is a POI associated with an Agreed Site, Test Participant must:
  - (i) use, by agreement with **nbn**, an "NNI" Product Component of **nbn**<sup>™</sup> Ethernet as a component of the Non-Premises **nbn**<sup>™</sup> Ethernet (Fibre) Test Product under and subject to this Agreement; or
  - (ii) order an NNI.

## 3.3 Connectivity Virtual Circuit (CVC)

- (a) A Connectivity Virtual Circuit or CVC is Ethernet-based Layer 2 virtual capacity on the **nbn**<sup>™</sup> Network used to carry the Test Participant's traffic between multiple AVCs in a CSA on an aggregated basis and the NNI at the POI serving that CSA.
- (b) For each CSA that has an Agreed Site, Test Participant must either:
  - (i) use, by agreement with **nbn**, a "CVC" Product Component of **nbn**<sup>™</sup> Ethernet as a component of the Non-Premises **nbn**<sup>™</sup> Ethernet (Fibre) Test Product under and subject to this Agreement; or
  - (ii) order a CVC in each traffic class and bandwidth profile agreed with **nbn**.

## 3.4 Access Virtual Circuit (AVC)

- (a) An Access Virtual Circuit or AVC is an Ethernet-based Layer 2 virtual connection on the Fibre Network that carries Test Participant's traffic between an NNI and UNI.
- (b) Test Participant must order an AVC for each Agreed Site in each traffic class and bandwidth profile agreed with **nbn**.

## 3.5 User Network Interface (UNI)

- (a) The User Network Interface or UNI is the interface to which **nbn** supplies the Non-Premises **nbn**<sup>™</sup> Ethernet (Fibre) Test Product in respect of an Agreed Site.
- (b) For each Agreed Site served by the Fibre Network, **nbn** will determine the form, type (and, if applicable, model) of NTD that **nbn** will supply for the purpose of providing Test Participant with access to the UNI.
- (c) The location of the UNI will be at the NTD which may be in the form of an SFP NTD.

# 4. Ordering

- (a) Test Participant must comply with any ordering processes notified by **nbn** from time to time in connection with the Test.
- (b) Test Participant must, to the extent specified by **nbn**, acquire facilities access, under a WBA or other agreement between **nbn** and Test Participant, for the POI at which **nbn** supplies the NNI for the Non-Premises **nbn**<sup>™</sup> Ethernet (Fibre) Test Product.

## 5. Trial Activities

- (a) The Test activities will:
  - (i) commence on the date specified in the applicable Test Plan or otherwise as agreed between **nbn** and Test Participant; and
  - (ii) conclude on 14 April 2022, unless extended by **nbn** or terminated earlier in accordance with this Agreement.
- (b) **nbn** may, by giving Test Participant 5 Business Days' written notice, amend either or both of the dates on which Test activities begin and cease.

## 6. Service performance and fair use

- (a) Test Participant acknowledges and agrees that no service level, rebate or compensation of any kind, however described, is available or applicable to any aspect or component of the supply of the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product.
- (b) This Test Description incorporates, as if set out in full:
  - (i) the **nbn**<sup>TM</sup> Ethernet Fair Use Policy under the WBA; and
  - (ii) the provisions of section 14 (Speeds, performance and availability) of the **nbn**<sup>TM</sup> Ethernet Product Description under the WBA.

which are taken to apply to the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product to the extent applicable, in addition to all other qualifications, conditions and limitations in this Agreement, subject to the following:

- (iii) references to "RSP" or "RSPs" are to be read as "Test Participant" or "Test Participants";
- (iv) references to "Ordered Product" or "Ordered Products" are to be read as "Test Product" and "Test Products";
- (v) references to "Product Description" are to be read as "this Test Description"; and
- (vi) references to "**nbn**<sup>TM</sup> Ethernet" are to be read as "Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product".

## 7. Title and risk in NTDs

- (a) Nothing in this Test Description gives Test Participant any right, title or interest in any part of any NTD made available by **nbn** to Test Participant or used by Test Participant.
- (b) Each NTD made available by **nbn** to Test Participant or used by Test Participant is **nbn**<sup>TM</sup> Equipment and the Tangible Property of **nbn** for the purposes of the Standard Test Terms.

## 8. Charges

- (a) **nbn** will charge Test Participant for the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product product components supplied to Test Participant under this Agreement as if the corresponding **nbn**<sup>TM</sup> Ethernet Product Components had been supplied to Test Participant under the terms of the WBA.
- (b) Each party to this Agreement will bear its own costs of participating in the Test.



## 9. Test Participant's Obligations

### 9.1 General obligations

- (a) Throughout the Test, Test Participant is responsible for the supply, management and compliance of all telecommunications services delivered to the End User.
- (b) Test Participant will only use the Non-Premises nbn™ Ethernet (Fibre) Test Product for the Test.
- (c) Test Participant must:
  - (i) perform any integration and acceptance testing activities as required by **nbn** from time to time; and
  - (ii) support and assist **nbn** with the conduct of the Test including by:
    - (A) undertaking activities relating to the Test (including manual processes) in timeframes determined by **nbn** (acting reasonably) and notified to Test Participant;
    - (B) providing dedicated resources to work with **nbn** to resolve issues that may arise during the Test;
    - (C) working collaboratively with **nbn** to refine the 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 the subject of the Test, as soon as reasonably practicable after becoming aware of that material error, defect or deficiency;
    - (E) without limiting clause 9.1(c)(ii)(D), providing feedback, including any feedback received from End User, for the purposes of improving the products, processes or procedures the subject of the Test;
    - (F) participate in weekly meetings with **nbn** and End Users to review test findings; and
    - (G) performing any other activities as required by a Test Plan.
- (d) Test Participant acknowledges and agrees that **nbn** may:
  - (i) notify potential End Users that Test Participant may supply Downstream Products to the potential End Users; and
  - (ii) provide Test Participant's contact details to potential End Users.

### 9.2 Review and reporting

- (a) Test Participant must provide **nbn** with feedback and reporting in the form, and at the times, defined in the Test Plan.
- (b) At regular intervals during the Test and within 10 Business Days of completion of the Test, Test Participant will, at **nbn**'s request:
  - (i) meet with **nbn** to review and evaluate the performance of the Non-Premises nbn™ Ethernet (Fibre) Test Product; and
  - (ii) use reasonable endeavours to obtain and assist **nbn** to directly obtain additional feedback from any relevant third parties regarding the performance of the Non-Premises nbn™ Ethernet (Fibre) Test Product, the **nbn**™ Network and **nbn**'s relevant processes and procedures.

## 9.3 Test Results

- (a) Test Participant consents to **nbn** monitoring and recording, for the purposes of the Test, the usage of Non-Premises **nbn**<sup>™</sup> Ethernet (Fibre) Test Products and Downstream Products.
- (b) Test Participant must provide information and feedback to **nbn** regarding the Non-Premises **nbn**<sup>™</sup> Ethernet (Fibre) Test Product by:
  - (i) providing information directly to **nbn** as requested by **nbn**; and
  - (ii) immediately notifying **nbn** if Test Participant becomes aware of any actual or likely unexpected or unintended impact of the Test, including in respect of any person not actively participating in the Test.

## 9.4 Marketing activities

Notwithstanding anything else in this Agreement, Test Participant consents to, and must obtain the written consent of each End User to, **nbn** making public details of:

- (a) the Test; and
- (b) the role of **nbn**, Test Participant and End User in relation to the Test, except where Test Participant notifies **nbn** by written notice to the contrary (which must not be unreasonably exercised).

# 10. Test Procedure

## 10.1 Test Contact

- (a) At **nbn**'s request, Test Participant must make relevant Test Contacts available for the purpose of co-ordination of the Test, including at Agreed Sites on request by **nbn**.
- (b) **nbn** and Test Participant will provide telephone and email contact details of their Test Contacts to each other on commencement of the Test, and maintain and provide updates to these contact details for the duration of the Test.

# 11. Term, termination and withdrawal

- (a) This Test Description will terminate on 14 April 2022, unless extended by **nbn** and notified to Test Participant or terminated earlier in accordance this Agreement.
- (b) **nbn** may amend or replace this Test Description by giving 10 Business Days' notice to Test Participant.
- (c) **nbn** may issue a Cancellation Notice at any time in accordance with the Standard Test Terms to terminate any one or more of the following:
  - (i) this Test Description;
  - (ii) the Test; or
  - (iii) the supply of the Non-Premises **nbn**<sup>™</sup> Ethernet (Fibre) Test Product at any Agreed Site.
- (d) Test Participant may cancel its participation in the Test at one or more Agreed Sites by giving 5 Business Day's written notice of the relevant Agreed Sites to **nbn**, in which case **nbn** may do any one or more of the following:
  - (i) cease supplying the Non-Premises **nbn**<sup>™</sup> Ethernet (Fibre) Test Product to the relevant Agreed Sites immediately; and

- (ii) give a Cancellation Notice under the Standard Test Terms in respect of any or all other Agreed Sites.
- (e) If Test Participant cancels its participation in the Test at an Agreed Site under clause 11(d), Test Participant will:
- (i) inform **nbn** of the reason for the cancellation; and
  - (ii) if Test Participant wishes to continue participating in the Test, assist **nbn** to mitigate the effect of such cancellation on the overall performance of the Test (for example, by using reasonable endeavours to identify and agree replacement Agreed Sites and the participation of replacement End Users, if requested by **nbn**).
- (f) Test Participant may terminate participation in the Test at one or more Agreed Sites immediately by written notice to **nbn** if supply of the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product in respect of an Agreed Site is resulting in a serious adverse impact on Test Participant's or End User's network or services (in the Test Participant's reasonable opinion).
- (g) Subject to clause 11(e), if Test Participant intends to cancel supply of the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product in respect of an Agreed Site because its supply is resulting in an adverse impact on Test Participant's or End User's network or services:
- (i) Test Participant will immediately notify **nbn**;
  - (ii) **nbn** will take reasonable steps to investigate and attempt to resolve the issue;
  - (iii) Test Participant will provide **nbn** with all reasonably requested assistance in its investigation and resolution activities; and
  - (iv) if the issue is not resolved within 5 Business Days after **nbn** receives Test Participant's notice, **nbn** will promptly terminate the supply of the Test Product in respect of the Agreed Site at the written request of the Test Participant.
- (h) If Test Participant enters into an agreement with **nbn** for the supply of a non-premises **nbn**<sup>TM</sup> Ethernet (Fibre) service on a non-test basis employing an SFP NTD and covering a class of locations that includes the Agreed Sites (**Commercial Product**), **nbn** may, in its sole discretion:
- (i) terminate this Test Description and the Test by issuing a Cancellation Notice in accordance with the Standard Test Terms; or
  - (ii) continue supplying the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product as the Commercial Product (however it may be described) under and subject to the terms of that agreement, by giving notice to RSP.

## 11.2 Obligations regarding termination of supply

- (a) The parties will use their reasonable endeavours to work with each other for the purpose of avoiding any inconvenience to any End User affected by termination or cancellation of the Test or the supply of the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product.
- (b) Without limiting clause 11(h), **nbn** is not obliged to supply any Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product after termination of this Test Description.

## 12. Liability exclusion

- (a) Notwithstanding anything in the Standard Test Terms, to the full extent permitted by law, Test Participant:
  - (i) must not make a Claim against **nbn** for any Loss suffered or incurred by Test Participant in relation to the Test, the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Products or this Agreement;

- (ii) releases and forever discharges **nbn** from all Claims and Liabilities which Test Participant has (or at any time might have or may have had) in relation to the Test, the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Products or this Agreement; and
  - (iii) indemnifies and holds each of the **nbn** Indemnified Parties harmless in respect of any Loss suffered or incurred as a result, or in connection with the supply of the Test Products other than in respect of **nbn**'s confidentiality obligations under this Agreement.
- (b) To the extent that clause 12(a) does not operate to exclude or limit a party's liability or to indemnify a party against Loss, clauses 10 to 11 of the Standard Test Terms will apply.

## 13. Test Participant Acknowledgements

Test Participant warrants and agrees that:

- (a) Test Participant has made and has relied on its own investigations, enquiries, knowledge and expertise in respect of the Test, the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product and this Agreement and its own evaluation of any material provided by **nbn** to Test Participant or its Personnel including before the date of this Agreement;
- (b) As part of its investigations and enquiries in respect of the Test, the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product and this Agreement, Test Participant or its representatives have had access to all documents and information they have requested from **nbn** or its Personnel;
- (c) Test Participant has knowledge and experience in relation to the provision of services similar to the Downstream Products and has had the benefit of independent legal, financial and technical advice relating to its proposed participation in the Test and its entry into this Agreement;
- (d) **nbn** has not made, and no Personnel of **nbn** have made, any warranty as to the performance of the Non-Premises **nbn**<sup>TM</sup> Ethernet (Fibre) Test Product provided to Test Participant or its Personnel before the date of this Agreement; and
- (e) Test Participant is not entering into this Agreement in reliance on, and it may not rely on, any statement of opinion, statement of intention or any other warranty, representation or other statement made or purporting to be made by or on behalf of **nbn** or its or their Personnel, other than as expressly set out in this Agreement.