

Test Agreement

Test Description: Enhanced Sky Muster



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Version	Description	Effective Date
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Environment

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

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Test Agreement

Test Description: Enhanced Sky Muster

Parties

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

Background

- A. This document constitutes a Test Description for the purposes of the Standard Test Terms.
- B. The purpose of the Test is to enable **nbn** and Test Participant to test:
 - the capability of **nbn** and Test Participant to deliver the Test Product and Downstream Products, respectively;
 - the performance and functionality of the Test Product; and
 - the usage patterns of the Test Product by End User.

1. Interpretation and definitions

1.1 Interpretation

For the purposes of this Test Description:

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

1.2 Definitions

In this Test Description:

Agreement means this Test Description and the Standard Test Terms.

End User means Laynhapuy Homelands Aboriginal Corporation (ABN 86 695 642 473).

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

- (a) permits **nbn** to supply the Test Product to the End User Premises;
- (b) obliges End User to provide all reporting, feedback and any other assistance that **nbn** or Test Participant may reasonably require in connection with the Test; and
- (c) includes any necessary consents from End User to permit End User's confidential information to be disclosed to and used by **nbn** and its Personnel for the purposes of the Test.

End User Premises means any Premises owned or occupied by End User identified in a Test Plan.

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

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 each of **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 Product has the meaning given to that term in clause 3.

Test Term means the term of the Test as determined in accordance with clause 7.1.

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

2. Pre-conditions for participation

- (a) To participate in the Test, Test Participant must by the date notified by **nbn**:
 - (i) be a party to a WBA;
 - (ii) have entered into the Standard Test Terms and this Agreement;
 - (iii) have completed the relevant on-boarding and certification activities as required by **nbn**;
 - (iv) have in place (and maintain at all times during the Test Term) an End User Contract; and
 - (v) have provided **nbn** with evidence of that End User Contract, as reasonably required by **nbn**.
- (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 part or all of the Test;
 - (ii) cease supplying the Test Product to Test Participant;
 - (iii) terminate this Test Description; and
 - (iv) terminate this Agreement.

3. Test Product

- (a) **nbn** will supply the Test Product to Test Participant in respect of End User Premises for periods during the Test Term in accordance with this Agreement and the applicable Test Plan as updated from time to time.
- (b) The **Test Product** is a Layer 3 virtual connection that carries traffic between the UNI used to serve the relevant End User Premises (which UNI is located on the NTD) and the Internet via the Satellite Network and also via infrastructure owned, operated and controlled by **nbn**'s contractors and other third parties which does not form part of the **nbn**[™] Satellite Network.
- (c) The Test Product will be subject to any Data Usage Limits and Application-Based Prioritisation notified by **nbn** to Test Participant from time to time, including as set out in an applicable Test Plan.

- (d) For the purposes of this clause 3:
 - (i) "Data Usage Limits" means any limits, including any application-specific limits, on data usage in respect of either or both uplink and downlink calculated over the course of a specified length of time, breach of which may result in **nbn** shaping the Information Rate for the Test Product in respect of one or more End User Premises; and
 - (ii) "Application-Based Prioritisation" means the prioritisation of traffic associated with designated applications.
- (e) **nbn** may measure data transfers and traffic related to a Test Product, including on an application-specific basis, at any time throughout the Test Term.
- (f) Where **nbn** considers it to be necessary to facilitate the supply of the Test Product, **nbn** will supply the Facilities Access Service to Test Participant on the same terms as they are supplied under the WBA, except to the extent the applicable terms under the WBA are inconsistent with the terms of this Agreement or an applicable Test Plan.

4. Service Levels

- (a) **nbn** may interrupt an **nbn**TM Ethernet (Satellite) Ordered Product supplied to an End User Premises to which we are also supplying or proposing to supply a Test Product and any such interruption will not constitute an Outage or a Service Fault.
- (b) No service levels apply in connection with the Test, the supply of the Test Product or the supply of the Facilities Access Service in connection with this Test.

5. Test Participant's Obligations

5.1 General Obligations

Test Participant must:

- (a) perform any integration and acceptance testing activities as required by **nbn** from time to time; and
- (b) support and assist **nbn** with the conduct of the Test including by:
 - (i) undertaking relevant activities (including manual processes) in timeframes determined by **nbn** (acting reasonably) and notified to Test Participant;
 - (ii) providing dedicated resources to work with **nbn** case managers or jeopardy managers to resolve issues that may arise during the Test;
 - (iii) working collaboratively with **nbn** to refine the Test;
 - (iv) 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;
 - (v) without limiting clause 5.1(b)(iv), providing feedback, including any feedback received from End User, for the purposes of improving the products, processes or procedures the subject of the Test; and
 - (vi) performing any other activities as required by a Test Plan.

5.2 Test Contact

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

5.3 Reports

- (a) Test Participant must provide **nbn** electronically with feedback in the form of daily usage and performance reports in relation to the Test Product at all times during the Test Term during which **nbn** supplies any Test Product in respect of any End User Premises.
- (b) Test Participant must make available electronically to the End User all daily usage reports received from **nbn** on the same day the reports are received from **nbn** for the duration of the Test Term.
- (c) Test Participant must, where reasonably requested by **nbn** by giving 5 Business Days' notice:
 - (i) meet with **nbn** to review and evaluate the performance of the Test Product; and
 - (ii) use reasonable endeavours to obtain, and to assist **nbn** to obtain, additional feedback directly from End User and any relevant third parties regarding the performance of the Test Product, the Satellite Network, other infrastructure owned, operated and controlled by **nbn**'s contractors and other third parties that is used to supply the Test Product, and **nbn**'s relevant processes and procedures.
- (d) Test Participant must comply with any other reporting obligations set out in a Test Plan.

5.4 Test Results

- (a) Test Participant consents, and must obtain the written consent of End User, to **nbn** monitoring and recording, for the purposes of the Test, the usage of Test Product and Downstream Products, including:
 - (i) upload and download data usage;
 - (ii) upload and download usage on specific applications;
 - (iii) usage patterns and intensity at different times of day; and
 - (iv) anything else set out in a Test Plan.
- (b) Test Participant must provide information and feedback to **nbn** regarding the Test Product by:
 - (i) providing information directly to **nbn** as requested by **nbn**;
 - (ii) providing any assistance reasonably requested by **nbn** to obtain feedback directly from End User in relation to the Test Product and related processes; and
 - (iii) 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.

5.5 Marketing activities

Notwithstanding anything else in the Agreement, Test Participant consents to, and must obtain the written consent of 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.

6. Charges

- (a) No charges will apply to the Test or the supply of the Test Product.
- (b) Each party to this Agreement will bear its own costs of participating in the Test.

7. Term, termination and withdrawal

7.1 Term and termination

- (a) The Test will start on the date specified in the applicable Test Plan unless amended by **nbn** by giving Test Participant 5 Business Days' written notice and will end in accordance with clause 4 of the Standard Test Terms.
- (b) This Test Description will expire on 30 April 2019 unless:
 - (i) terminated earlier in accordance with this Agreement; or
 - (ii) extended by **nbn** by giving notice in writing to Test Participant prior to expiry.

7.2 Cancellation by **nbn**

Without limiting **nbn**'s rights under the Standard Test Terms, **nbn** may immediately cancel the Test or any part of the Test if Test Participant commits any breach of this Agreement at any time.

7.3 Cancellations by Test Participant

- (a) Subject to clauses 7.3(b) and 7.3(c), Test Participant may cancel the supply of the Test Product in respect of one or more End User Premises by giving **nbn** at least 10 Business Days' written notice.
- (b) If Test Participant cancels the supply of the Test Product in respect of one or more End User Premises under clause 7.3(a), Test Participant will:
 - (i) inform **nbn** of the reason for the cancellation; and
 - (ii) use reasonable endeavours to assist **nbn** to mitigate any impact of the cancellation on the Test (including by using reasonable endeavours to identify, and procure the participation of, potential substitute end users if requested by **nbn**).
- (c) If Test Participant considers that the supply of a Test Product 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, Test Participant may require **nbn** to promptly terminate the supply of the Test Product in respect of one or more End User Premises.

7.4 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 End User.
- (b) **nbn** is not obliged to supply the Test Product after termination of this Test Description.

8. Liability exclusion

Notwithstanding anything in the Standard Test Terms, to the full extent permitted by law, Test Participant:

- (a) will have no right to make a Claim against **nbn** for any Loss suffered or incurred by Test Participant in relation to the Test, Test Product or this Agreement;
- (b) 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, Test Product or this Agreement; and
- (c) 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 Test or this Agreement other than in respect of **nbn**'s confidentiality obligations under this Agreement.

9. 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, 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, 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 extensive knowledge and experience in relation to the provision of services similar to the Downstream Product 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 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.

Execution

Executed as an agreement

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

Signature of authorised representative

Signature of authorised representative

Name of authorised representative

Name of authorised representative

Date of signature

Date of signature

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

Signature of authorised representative

Signature of authorised representative

Name of authorised representative

Name of authorised representative

Date of signature

Date of signature