

Test Agreement

Test Description: **nbn**<sup>TM</sup> Disaster Service

# Test Agreement

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### Environment

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

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# Test Agreement

## Test Description: **nbn**<sup>TM</sup> Disaster Service

### Parties

- nbn co limited (ABN 86 136 533 741) of Level 13, 100 Mount Street, North Sydney NSW 2060 (**nbn**);
- <company name> (ABN **XX XXX XXX XXX**) of <address> (**Test Participant**).

### Background

- Many locations across Australia are particularly susceptible to natural disasters including bush fires and flooding, as well as public health crises.
- Severe bushfires across many parts of Australia have caused unprecedented impact, for example by burning out huge tracts of land, forcing many individuals from their homes and damaging and/or rendering inoperable key infrastructure, including fixed line, fixed wireless and mobile communications equipment.
- Public health crises, such as the COVID-19 pandemic, also place significant strain on local communities who need to communicate effectively during such crises, including to receive vital public health and community information.
- Such emergencies also place a huge strain on emergency services, and also affect critical infrastructure suppliers, such as **nbn** and its customers.
- nbn** has been approached to develop and make available to its customers an interim service in the nature of the Test Product to support people, emergency services, businesses and communities during such emergencies until normal services can be supplied or restored.
- This document constitutes a Test Description for the purposes of the Standard Test Terms.
- 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;
  - the performance and functionality of the Test Product; and
  - the capability of **nbn** and Test Participant to order, provision, support, and operate the Test Product during and between Disaster Events.

## 1. Interpretation and definitions

### 1.1 Interpretation

For the purposes of this Test Description:

- 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
- 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 following order of precedence:

- (i) the standard form of access agreement version of the “**nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Interim Agreement” published on the **nbn** website from time to time;
- (ii) the standard form of access agreement version of the “**nbn**<sup>TM</sup> BSS Interim Launch Agreement” published on the **nbn** website from time to time; and
- (iii) the standard form of access agreement version of the WBA published on the **nbn** website from time to time.

## 1.2 Definitions

In this Test Description:

**Agreement** means this Test Description and the Standard Test Terms.

**Designated Location** means a location designated by **nbn**, or as agreed between **nbn** and an emergency services organisation or other competent Authority, to be a location which at which it is necessary to provide critical communications services to a local community affected, or likely to be affected, by a Disaster Event.

**Disaster Event** means a sudden, calamitous event that seriously disrupts, or threatens to seriously disrupt, the functioning of a community or society and causes, or is likely to cause, human, material, and economic or environmental losses that exceed the community's or society's ability to cope using its own resources.

**End User Equipment** means any equipment that is used by an End User in connection with the Test Products, including routers and personal computers.

**nbn**<sup>TM</sup> **BSS Interim Launch Agreement** means the standard form of access agreement version of the “**nbn**<sup>TM</sup> BSS Interim Launch Agreement” published on the **nbn** website from time to time.

**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.

**nbn**<sup>TM</sup> **Sky Muster Plus Interim Agreement** means the standard form of access agreement version of the “**nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Interim Agreement” published on the **nbn** website from time to time.

**Standard Test Terms** means the agreement entitled “Test Agreement – Standard Test Terms” entered 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 IAC** means the IAC product component of a Test Product based upon **nbn**<sup>TM</sup> VISIP described in Appendix A section 3.2(a).

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

**Test Product** means a **nbn**<sup>TM</sup> Disaster Service as described in Appendix A.

**Test Term** means the term of the Test as determined in accordance with clause 8.1.

**Test UNI** means the UNI product component of a Test Product based upon **nbn**<sup>TM</sup> VISIP described in Appendix A section 3.2(b).

**VSAT NTD** means a very small aperture terminal network termination device comprising:

- (a) an indoor unit; and
- (b) an outdoor unit comprising an antenna and transceiver.

## 2. Pre-conditions for participation

To participate in this Test, Test Participant must by the date notified by **nbn**:

- (a) have entered into the Standard Test Terms and this Test Description;
- (b) have completed the relevant on-boarding and certification activities required by **nbn** for this Test; and
- (c) be a party to a WBA and, at all such times, be fully compliant with the terms of that WBA.

## 3. Documentation

- (a) **nbn** may, without limiting clause 8, immediately amend or replace this Test Description by giving notice to Test Participant.
- (b) If **nbn** provides notice under clause 3(a), the parties will use reasonable endeavours to work with each other for the purpose of avoiding any inconvenience to either party.

## 4. Test Product

- (a) Subject to clause 4(d), **nbn** will supply a Test Product to Test Participant in respect of a Designated Location if:
  - (i) **nbn** has notified Test Participant that the Test Product is available in respect of a specified Designated Location; and
  - (ii) Test Participant requests the supply of the Test Product to the Designated Location and confirms to **nbn** that Test Participant will supply a Downstream Product at that Designated Location.
- (b) **nbn** may:
  - (i) select the type of Test Product it supplies to each Designated Location; and
  - (ii) by providing notice to Test Participant, change the type of Test Product it supplies to a Designated Location.
- (c) **nbn** will install one or more of the following items of **nbn**<sup>TM</sup> Equipment at a Designated Location:
  - (i) a VSAT NTD to which **nbn** will supply a Test Product;
  - (ii) a Wi-Fi router; and
  - (iii) any other customer premises equipment, to the extent required for **nbn** to supply a Test Product to the Designated Location.

Notes:

- 1) As part of the supply of a Test Product **nbn** will provide activation and assurance services to the Test Participant.

- 2) To the extent **nbn** liaises with the end-user in providing the activation and assurance services to the Test Participant, **nbn** will be doing so on behalf of the Test Participant.
- (d) Test Participant acknowledges and agrees that:
- (i) the supply of each Test Product is subject to the availability of any relevant inputs in connection with that Test Product, including:
    - (A) capacity on the SMP Network or the BSS Network (as applicable); and
    - (B) any equipment, systems and infrastructure,at the time the Test Participant places an order and at all relevant times during the Test Term, as determined by **nbn** in its discretion; and
  - (ii) in addition to **nbn**'s rights under clause 2(c) of the Standard Test Terms, and given the circumstances described in paragraphs A to E of the Background, **nbn** may decline to supply Test Products for any reason and at its sole discretion.

## 5. Service Levels

- (a) No service levels, rebate or compensation of any kind, however described, is available or applicable in connection with this Test or the supply of any Test Product.
- (b) Test Participant acknowledges and agrees that the Test Product:
  - (i) is supplied for the purposes of assisting in emergency circumstances where standard Carriage Services (including internet access and broadband access services) are not available; and
  - (ii) may not provide features, functionality, performance, capacity or reliability that are equivalent to a standard Carriage Service (including an internet access or broadband access service).
- (c) **nbn** may interrupt a Product supplied to a Designated Location to which **nbn** is also supplying or proposing to supply a Test Product and any such interruption will not constitute an Outage or a Service Fault.

## 6. Test Participant's Obligations

### 6.1 General Obligations

- (a) Test Participant must support and assist **nbn** with the conduct of this Test, including by doing any of the following where required by **nbn**:
  - (i) undertaking Test related activities (including manual processes) in timeframes determined by **nbn** (acting reasonably) and notified to Test Participant;
  - (ii) providing dedicated resources to work with **nbn** to resolve issues that may arise during this Test;
  - (iii) working collaboratively with **nbn** to refine this 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 this Test, as soon as reasonably practicable after becoming aware of that material error, defect or deficiency;

- (v) without limiting clause 6.1(a)(iv), providing feedback, for the purposes of improving the products, processes or procedures the subject of this Test;
  - (vi) participating in periodic meetings with **nbn** to review test findings; and
  - (vii) performing any other activities as required by a Test Plan.
- (b) 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.

## 6.2 Test Contact

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

## 6.3 Reports

- (a) Test Participant must provide **nbn** with feedback and reporting in the form, and at the times, defined in the Test Plan.
- (b) 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 any Test Products; and
  - (ii) use reasonable endeavours to assist **nbn** to obtain information regarding the performance of a Test Product, any infrastructure that is used to supply the Test Product, and **nbn's** relevant processes and procedures.

## 6.4 Test Results

- (a) Test Participant consents to **nbn** monitoring and recording, for the purposes of this Test, the usage of Test Products and Downstream Products.
- (b) Test Participant must provide information and feedback to **nbn** regarding the Test Products 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 this Test, including in respect of any person not actively participating in this Test.

## 7. Charges

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



## 8. Term, termination and withdrawal

### 8.1 Term and termination

- (a) The supply of each Test Product under this Test Description:
  - (i) will start on the date specified in the applicable Test Plan or as otherwise agreed between **nbn** and Test Participant; and
  - (ii) will end on the earlier of:
    - (A) the date notified in a Cancellation Notice in respect of a Test relating to that Test Product issued in accordance with clause 4 of the Standard Test Terms; and
    - (B) the expiry or termination of this Test Description.
- (b) This Test Description will expire on 31 December 2020 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, in which case this Test Description will expire on that extended date.

### 8.2 Cancellation by **nbn**

Without limiting **nbn**'s rights under the Standard Test Terms, if Test Participant breaches any provision of this Agreement during the Test Term (including failing to comply with any condition in clause 2), **nbn** may immediately:

- (a) cancel Test Participant's participation in any Test or any part of any Test under this Test Description;
- (b) cease supplying one or more of the Test Products to Test Participant;
- (c) terminate this Test Description; and
- (d) terminate this Agreement.

### 8.3 Cancellations by Test Participant

- (a) Subject to clauses 8.3(b) and 8.3(c), Test Participant may cancel the supply of a Test Product in respect of a Designated Location by giving **nbn** at least 10 Business Days' written notice.
- (b) If Test Participant cancels the supply of a Test Product under clause 8.3(a), Test Participant will inform **nbn** of the reason for the cancellation.
- (c) If Test Participant considers that the supply of a Test Product is resulting in an adverse impact on Test Participant'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; and
  - (iii) Test Participant will provide **nbn** with all reasonably requested assistance in its investigation and resolution activities.

## 8.4 Obligations regarding termination of supply

If either party cancels or terminates the supply of a Test Product, this Test Description or this Agreement, the parties will use their reasonable endeavours to work with each other for the purpose of avoiding any inconvenience.

## 9. 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 this Test, the 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 this Test, the 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, and any End User Equipment or **nbn**<sup>TM</sup> Equipment, other than in respect of **nbn**'s confidentiality obligations under this Agreement.
- (b) To the extent that clause 9(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.

## 10. 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 all Tests, the Test Products 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 all Tests, the Test Products 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 this 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 any 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

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Signed for **nbn co limited** by its authorised representatives:

---

Signature of authorised representative

---

Signature of authorised representative

---

Name of authorised representative

---

Name of authorised representative

---

Date of signature

---

Date of signature

---

Signed for < **Test Participant** > by its authorised representatives:

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Signature of authorised representative

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Signature of authorised representative

---

Name of authorised representative

---

Name of authorised representative

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Date of signature

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Date of signature

# Appendix A Test Product

## 1. **nbn**<sup>TM</sup> Disaster Service

- (a) The Test Product supplied to a Designated Location will be based on either:
- (i) the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Product as described in the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Interim Agreement, subject to (and in accordance with) section 2 of this Appendix A; or
  - (ii) the **nbn**<sup>TM</sup> VISP Product as described in the **nbn**<sup>TM</sup> BSS Interim Launch Agreement, subject to (and in accordance with) section 3 of this Appendix A,
- as determined by **nbn**.

## 2. Test Product based on **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus

### 2.1 Test Product

- (a) The **nbn**<sup>TM</sup> Disaster Service based on **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus:
- (i) is a Layer 3 and above service that carries traffic between a UNI used to serve a Designated Location and the **nbn**<sup>TM</sup> Upstream Network Boundary;
  - (ii) is supplied by means of the SMP Network;
  - (iii) enables Test Participant to supply a Carriage Service or Content Service to a Designated Location; and
  - (iv) comprises two Product Components:
    - (A) UNI; and
    - (B) Plan.
- (b) Subject to section 2.1(c), but without limiting any other provision of this Agreement:
- (i) the **nbn**<sup>TM</sup> Disaster Service is subject to each limitation, qualification and exclusion of scope, feature, functionality and performance that applies to the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Product described in the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Interim Agreement; and
  - (ii) each limitation, qualification and exclusion of **nbn**'s responsibility and liability in respect of End User Equipment that applies under the WBA or the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Interim Agreement also applies in respect of any Wi-Fi router or other customer premises equipment installed by **nbn** at a Designated Location.
- (c) Despite anything to the contrary in the **nbn**<sup>TM</sup> Sky Muster Plus Interim Agreement (including section 10(b)(viii) of the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Product Description) **nbn** may, in its discretion, perform traffic filtering in respect of Test Products. This traffic filtering may result in blocked or restricted access to some websites, services, apps, files and other network resources that may otherwise be accessible via those Test Products.

### 2.2 UNI

The UNI is a UNI as described in the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Product Description in the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Interim Agreement with such features as made available under the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Product Description and selected by **nbn**.

## 2.3 Plan

- (a) Subject to section 2.3(c), the Plan is a Plan described in the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Product Description in the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Interim Agreement and selected by **nbn**.
- (b) Subject to section 2.3(c), the Plan will have sub-features described in the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Product Description in the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Interim Agreement and selected by **nbn**.
- (c) **nbn** may, by notice to Customer, vary details of the Plans and sub-features from the details included in the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Product Description in the **nbn**<sup>TM</sup> Sky Muster<sup>TM</sup> Plus Interim Agreement (for example, **nbn** may change access rates, included data allowances, shaping rates, data types, traffic profiles for data types, shaped periods and time of day rate limits).

## 3. Test Product based on **nbn**<sup>TM</sup> BSS VISP

### 3.1 Test Product

- (a) The **nbn**<sup>TM</sup> Disaster Service based on **nbn**<sup>TM</sup> VISP:
  - (i) is a Layer 3 virtual connection that carries traffic between a Test UNI used to serve a Designated Location and an Internet Point of Presence;
  - (ii) is supplied by means of the BSS Network;
  - (iii) enables Test Participant to supply business grade internet services to a Designated Location;
  - (iv) comprises two Product Components which Test Participant must acquire and optional or configurable Product Features as follows:

Product Component (required)	Product Feature (optional / configurable)
Test IAC	VISP Data Usage Allowance Bandwidth profile QoS Marking
Test UNI	IP Address ( <b>nbn</b> provided) DC Power Solar Power

- (b) Subject to section 3.1(c), but without limiting any other provision of this Agreement:
  - (i) the **nbn**<sup>TM</sup> Disaster Service is subject to each limitation, qualification and exclusion of scope, feature, functionality and performance that applies to the **nbn**<sup>TM</sup> VISP Product described in the **nbn**<sup>TM</sup> BSS Interim Launch Agreement; and
  - (ii) each limitation, qualification and exclusion of **nbn**'s responsibility and liability in respect of End User Equipment that applies under the WBA or the **nbn**<sup>TM</sup> BSS Interim Launch Agreement also applies in respect of any Wi-Fi router or other customer premises equipment installed by **nbn** at a Designated Location.
- (c) Despite anything to the contrary in the **nbn**<sup>TM</sup> BSS Interim Launch Agreement, **nbn** may, in its discretion, perform traffic filtering in respect of Test Products. This traffic filtering may result in blocked or restricted access to some websites, services, apps, files and other network resources that may otherwise be accessible via those Test Products.

### 3.2 Product Components (required)

(a) Test IAC

- (i) The Test IAC:
  - (A) terminates on a single Test UNI used to serve a Designated Location;
  - (B) is a Layer 3 virtual connection between the Test UNI and the Internet Point of Presence; and
  - (C) has one of the following combinations of downstream and upstream peak information rate:

Downstream (Mbps)	Upstream (Mbps)
30	1
30	5

- (ii) The Test IAC will operate subject to any data usage allowance notified by **nbn** to Test Participant from time to time, including as set out in an applicable Test Plan.
- (iii) **nbn** may measure data transfers and traffic related to any Test Product based on **nbn**<sup>TM</sup> VISP at any time throughout the Test Term.

(b) Test UNI

The Test UNI:

- (i) is a RJ-45 port into which Test Participant or **nbn** may plug in a Layer 3-capable customer premises equipment which has been approved by **nbn** or installed by **nbn** under section 4(c) of this Agreement;
- (ii) is capable of operating in 10/100/1000 Base-T interfacing modes;
- (iii) supports the 802.1Q VLAN standard;
- (iv) is addressable by an IPv4 Address; and
- (v) is located on a dedicated VSAT NTD that is optimised for this Test Product.

### 3.3 Product Features (optional)

- (a) The Product Features of the **nbn**<sup>TM</sup> Disaster Service based on **nbn**<sup>TM</sup> VISP will function and perform as determined by **nbn**.