

# Fair Use Policy

nbn<sup>®</sup> Ethernet Product Module

Wholesale Broadband Agreement



This document forms part of NBN Co's Wholesale Broadband Agreement, which is a Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act 2010 and constitutes nbn's Latest Standard Offer



# Fair Use Policy

**nbn**<sup>®</sup> Ethernet Product Module

Wholesale Broadband Agreement

Version	Description	Effective Date
5.0	First issued version of WBA 5	1 December 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.

*Section 1 sets out the purpose and objectives of this **nbn**<sup>®</sup> Ethernet Fair Use Policy.*

## 1. Purpose and objectives

- (a) The purpose of this **nbn**<sup>®</sup> Ethernet Fair Use Policy is to support the consistent supply of relevant products to all of **nbn**'s retail service providers and ultimately to end users as expected by both parties as at the Execution Date, recognising that the **nbn**<sup>®</sup> Infrastructure is a shared resource and the activities of one person can detrimentally affect the use of the **nbn**<sup>®</sup> Infrastructure or relevant **nbn** products or services by another person.
- (b) The objectives that this **nbn**<sup>®</sup> Ethernet Fair Use Policy aims to meet are as follows:
  - (i) avoid adverse impacts on the quality or reliability of the **nbn**<sup>®</sup> Infrastructure, or the consistent supply of any relevant **nbn** products and services to all **nbn** retail service providers and ultimately to end users, by ensuring that RSP does not use, or permit others to use, **nbn**'s products or services in an excessive or unreasonable manner;
  - (ii) permit use of the **nbn**<sup>®</sup> Infrastructure and **nbn**<sup>®</sup> Ethernet in accordance with the relevant terms of the WBA; and
  - (iii) enable **nbn** to deliver products and services in a commercially sustainable manner.

*Section 2 sets out the application of this **nbn**<sup>®</sup> Ethernet Fair Use Policy.*

## 2. Application

This **nbn**<sup>®</sup> Ethernet Fair Use Policy applies to RSP's use of the **nbn**<sup>®</sup> Infrastructure and **nbn**<sup>®</sup> Ethernet. This document forms part of the **nbn**<sup>®</sup> Ethernet Product Module.

*Section 3 sets out what the AVC has been designed for.*

## 3. Fair use

### 3.1 **nbn**<sup>®</sup> Ethernet Product design

- (a) **nbn** and RSP agree that the AVC TC-4:
  - (i) has been designed for use as an input to the supply of Mass Market Retail Products for use within a single Premises; and
  - (ii) is supplied to RSP using shared network resources (including parts that are contended) over which **nbn** supplies other products and services to RSP and Other RSPs.
- (b) **nbn** and RSP agree that AVC TC-1 and AVC TC-2 have been designed for use as inputs to the supply of Performance Engineered Retail Products for use within a single Premises.

### 3.2 Allowed devices and plans

Except as set out in sections 4.3, 4.5, and 4.6, sections 3 and 4 are not intended to limit:

- (a) the types or ranges of plans for Mass Market Retail Products offered by RSP or any Downstream Service Providers provided that they rely on AVC TC-4 as an input;

- (b) the types or ranges of plans for Performance Engineered Retail Products offered by RSP or any Downstream Service Providers provided that they rely on AVC TC-2 or AVC TC-1 as an input; or
- (c) the types of networking devices that may be offered by RSP or any Downstream Service Providers in connection with any Mass Market Retail Products or Performance Engineered Retail Products which rely on the AVC as an input, provided that:
  - (i) each such networking device is intended to be used by End Users:
    - (A) within a single Premises only in connection with the applicable Mass Market Retail Product or Performance Engineered Retail Product that the networking device is offered for; or
    - (B) as permitted under a Permitted Fair Use Policy Exemptions document; and
  - (ii) without limiting the foregoing, the traffic volumes being managed or handled by the networking device do not exceed the traffic volumes that:
    - (A) would reasonably be expected to be managed or handled by a networking device when used within a single Premises only in connection with the applicable Mass Market Retail Product or Performance Engineered Retail Product that the networking device is offered for; or
    - (B) are permitted under a Permitted Fair Use Policy Exemptions document.

*Section 4 sets out the meaning of Unfair Use and RSP obligations in relation to use of **nbn**<sup>®</sup> Infrastructure and **nbn**<sup>®</sup> Ethernet.*

## 4. Unfair Use

### 4.1 Obligations of RSPs, Downstream Service Providers and Contracted End Users

- (a) RSP must not, and must ensure its Personnel do not, engage in Unfair Use.
- (b) RSP must ensure that the contracts it enters into with Downstream Service Providers and Contracted End Users contain valid and enforceable provisions which:
  - (i) prohibit Downstream Service Providers and End Users from engaging in Unfair Use; and
  - (ii) entitle RSP to take steps to stop and/or prevent that Unfair Use (whether by way of disconnection or deactivation of equipment or suspension of the supply of the RSP Product or otherwise).

### 4.2 Meaning of Unfair Use

In this **nbn**<sup>®</sup> Ethernet Fair Use Policy, **Unfair Use** means use of the **nbn**<sup>®</sup> Infrastructure or **nbn**<sup>®</sup> Ethernet that:

- (a) is expressly prohibited, exceeds an express limitation, or is expressly described as Unfair Use in sections 4.3 to 4.6; or
- (b) creates a risk to:
  - (i) the integrity of the **nbn**<sup>®</sup> Infrastructure;

- (ii) the integrity of the network, systems, equipment or facilities of RSP or any Other RSP used in connection with the **nbn**<sup>®</sup> Network or at the National Test Facility;
- (iii) the quality or reliability of the **nbn**<sup>®</sup> Infrastructure, or the consistent supply of any relevant **nbn** product or service supplied by **nbn** to RSP or any Other RSP; or
- (iv) the health or safety of any person,

but excludes any use of the **nbn**<sup>®</sup> Infrastructure or **nbn**<sup>®</sup> Ethernet that is permitted under a Permitted Fair Use Policy Exemptions document.

Examples of conduct that may constitute Unfair Use include:

1. use of the **nbn**<sup>®</sup> Infrastructure or **nbn**<sup>®</sup> Ethernet in a way that causes or may cause interference, disruption, congestion or, more generally, sub-optimal network performance; and
2. undertaking (or attempting to undertake) any of the following activities without authorisation:
  - (a) disabling, disrupting or interfering with the regular working of any service or network, including, without limitation, via means of overloading it, denial of service attacks or flooding a network;
  - (b) probing, scanning or testing the vulnerability of a system or network; or
  - (c) breaching the security or authentication measures for a service or network.

#### 4.3 Unfair Use of the AVC

- (a) RSP must not use the AVC, or permit a Downstream Service Provider or Contracted End User to use an RSP Product or Downstream Product that relies on the AVC as an input:
  - (i) to support Data Aggregation;
  - (ii) to support connections for the purpose of providing or enabling Carrier, Carriage Service Provider or Content Service Provider interconnection; or
  - (iii) in respect of AVC TC-4, in any other way which **nbn** considers, acting reasonably, to be inappropriate or excessive, as notified by **nbn** to RSP from time to time.
- (b) Any use by:
  - (i) RSP of the AVC for the purpose of supplying broadband services to Premises other than to the Premises in respect of which the relevant Ordered Product has been ordered (including for the purpose of supplying broadband services to multiple Premises within Multi-Premises Sites), constitutes Unfair Use by RSP; and
  - (ii) a Downstream Service Provider or Contracted End User of an RSP Product or Downstream Product that relies on the AVC, for the purpose stated in section 4.3(b)(i), constitutes Unfair Use by the Downstream Service Provider or Contracted End User (as the case may be).

**Example:** A building manager for a multi-tenancy office building (where each business' office is a different addressable location) seeks to use a single **nbn**<sup>®</sup> Ethernet-based RSP Product to provide a building-wide Wi-Fi system. The building manager would not be entitled to use the RSP Product to satisfy the broadband needs of each of the different tenants in the building within their tenancies.

## 4.4 Unfair Use regarding the Satellite Network

- (a) Each of the following uses of **nbn**<sup>®</sup> Ethernet (Satellite) and the **nbn**<sup>®</sup> Infrastructure in connection with **nbn**<sup>®</sup> Ethernet (Satellite) constitute Unfair Use:
- (i) modifying AVCs to change the associated CVC with unreasonable frequency or in unreasonable volumes (as determined by **nbn**, acting reasonably);
  - (ii) offering RSP Products, or permitting the offer of Downstream Products, with features which contribute, to an unreasonable degree, to **nbn** deprioritising data transfers or reducing data transfer rates under section 4.5 of this **nbn**<sup>®</sup> Ethernet Fair Use Policy or section 3.7(d) of the [nbn<sup>®</sup> Ethernet Product Description](#) (as determined by **nbn** acting reasonably);

**Note:** Features of RSP Products or Downstream Products that may result in a contravention of section 4.4(a)(ii) include large base download or upload allowances, 'bonus' or 'top-up' data, and data offered on a shaped basis after a usage cap has been reached.

- (iii) unreasonably failing to enforce provisions in contracts entered into with Downstream Service Providers and Contracted End Users (as determined by **nbn**, acting reasonably) with the effect that **nbn** deprioritises data transfers or reduces data transfer rates under section 4.5;
- (iv) bonding, or knowingly permitting the bonding of, UNIs, even if **nbn** is supplying only one of the UNIs to RSP and the other UNI(s) to an Other RSP; and

**Note:** Section 4.4(a)(iv) does not apply in respect of Public Interest Premises to the extent that **nbn** waives this obligation under section 39 of the [nbn<sup>®</sup> Ethernet Product Terms](#).

- (v) disconnecting and activating AVCs in respect of a Premises with the effect or potential effect of bypassing **nbn**'s deprioritisation of data transfers or reduction of data transfer rates under section 4.5 of this **nbn**<sup>®</sup> Ethernet Fair Use Policy or section 3.7(d) of the [nbn<sup>®</sup> Ethernet Product Description](#).
- (b) **nbn** may immediately disconnect or discontinue (in whole or in part) any Ordered Product in response to Unfair Use under section 4.4(a)(iv) in accordance with clause F9.2(a)(v) of the [Head Terms](#) by giving 5 Business Days' notice to RSP.

## 4.5 Additional fair use thresholds for **nbn**<sup>®</sup> Ethernet (Satellite)

- (a) Without limiting section 4.3, RSP must limit usage of each **nbn**<sup>®</sup> Ethernet (Satellite) AVC TC-4 as follows:

Associated CVC Class	Download usage averaged across AVCs during Peak Periods (GB)	Upload usage averaged across AVCs during Peak Periods (GB)	Maximum usage by each AVC during Peak Periods (GB)	Maximum usage by each AVC in total (GB)
0	55	5	150	300
1	60	6	200	300
2	65	7	300	300

**Note:**

- All usage figures are calculated weekly, based on data transfers over the preceding four week period.

- Average usage across AVCs is calculated based on (1) all AVCs associated with each CVC and (2) all AVCs associated with each CVC Class on each Beam.
- Maximum usage by each AVC includes both upload and download usage. Maximum usage by each AVC in total is calculated based on data transfers in both Peak Periods and Off Peak Periods.
- Usage is measured based on Layer 2 frames calculated in accordance with section 2.2.2.1 of the [nbn<sup>®</sup> Ethernet Product Technical Specification](#), section 2.1 of the Network Interface Specification – AVC and section 2.1 of the Network Interface Specification – CVC.
- Section 4.5(a) does not apply in respect of Public Interest Premises to the extent that **nbn** waives any obligation in section 4.5(a) under section 39 of the [nbn<sup>®</sup> Ethernet Product Terms](#).

(b) If RSP fails to enforce any limitation in section 4.5(a), **nbn** may (without limiting any rights that **nbn** may have in relation to such failure under section 4.5(c) or the [Head Terms](#)):

- (i) deprioritise data transfers of any AVC or CVC contributing to the failure; and
- (ii) reduce, to 256 Kilobits per second for uploads and 256 Kilobits per second for downloads, the maximum data transfer rate of any AVC contributing to the failure,

until **nbn** determines that RSP is complying with all limitations in section 4.5(a).

**Note:** Data transfer rates in section 4.5(b)(ii) are subject to the limitations in section 13 of the [nbn<sup>®</sup> Ethernet Product Description](#).

(c) If RSP uses the capacity of the Satellite Network in excess of the average download and upload usage limitations in section 4.5(a), RSP must pay the CVC Class Adjustment Charge set out in the [nbn<sup>®</sup> Ethernet Price List](#).

(d) Without limiting section 4.3, RSP must ensure that the maximum utilisation of the capacity of each **nbn<sup>®</sup>** Ethernet (Satellite) CVC TC-4 is limited to the following:

- (i) 90% in any 10 hours in a calendar day;
- (ii) 100% in any 3 continuous hours; and
- (iii) 100% in any 5 hours in a calendar day.

**Note:** Section 4.5(d) does not apply in respect of Public Interest Premises to the extent that **nbn** waives any obligation in this section 4.5(d) under section 39 of the [nbn<sup>®</sup> Ethernet Product Terms](#).

(e) If RSP fails to comply with section 4.5(d) in respect of a CVC, **nbn** may (without limiting any rights that **nbn** may have in relation to such failure under the [Head Terms](#)):

- (i) decline AVC orders or modifications for AVCs associated with the CVC; and
- (ii) suspend the supply of any AVCs associated with the CVC,

until **nbn** determines that RSP is complying with all limitations in section 4.5(d).

**Note:** This **nbn<sup>®</sup>** Ethernet Fair Use Policy does not apply to the first Satellite Test Service supplied to RSP to the extent set out in section 7 of the [nbn<sup>®</sup> Ethernet Product Description](#) and section 34 of the [nbn<sup>®</sup> Ethernet Product Terms](#).

#### 4.6 Additional fair use thresholds for **nbn<sup>®</sup>** Ethernet (Wireless)

Without limiting section 4.3, RSP must not use or permit the use of **nbn<sup>®</sup>** Ethernet (Wireless) AVC TC-4 as an input to an RSP Product or Downstream Product:

- (a) where the average download usage for RSP's Ordered Products using the Wireless Network exceeds 200GB of data in a calendar month; or

- (b) where the average upload usage for RSP's Ordered Products using the Wireless Network exceeds 60GB of data in a calendar month.

#### 4.7 Determination of Unfair Use

In determining whether it considers that a use of AVC TC-4 is inappropriate or excessive under section 4.3(a)(iii), reasonableness is to be determined by having regard to **nbn**'s actual knowledge at the time of providing the relevant notice under section 4.3(a)(iii) and not any constructive knowledge.

*Section 5 sets out some of the consequences that may arise from RSP's non-compliance with this **nbn**® Ethernet Fair Use Policy.*

### 5. Non-compliance

- (a) Without limiting **nbn**'s rights set out in sections 4.4 and 4.5, non-compliance with this **nbn**® Ethernet Fair Use Policy may result in:
  - (i) an immediate Ordering Freeze, Service Reduction or Suspension of an Ordered Product under clause F5 of the [Head Terms](#);
  - (ii) the disconnection of RSP Equipment under clause C10 of the [Head Terms](#); or
  - (iii) other consequences in respect of **nbn**® Ethernet (Satellite), including as set out in this **nbn**® Ethernet Fair Use Policy.
- (b) RSP must, if requested in writing by **nbn**, exercise those rights referred to in section 4.1(b)(ii) as soon as reasonably practicable to the extent necessary to stop and/or prevent Unfair Use by the Downstream Service Provider or End User (as the case may be).