

# Fair Use Policy

nbn™ Enterprise Ethernet Product Module

Wholesale Broadband Agreement



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### Wholesale Broadband Agreement

Version	Description	Effective Date
4.0	First issued version of WBA 4	1 December 2020

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#### Environment

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

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

## 1. Purpose and objectives

- (a) The purpose of this **nbn**<sup>TM</sup> Enterprise 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>TM</sup> Infrastructure is a shared resource and the activities of one person can detrimentally affect the use of the **nbn**<sup>TM</sup> Infrastructure or relevant **nbn** products or services by another person.
- (b) The objectives that this **nbn**<sup>TM</sup> Enterprise Ethernet Fair Use Policy aims to meet are as follows:
  - (i) avoid adverse impacts on the quality or reliability of the **nbn**<sup>TM</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>TM</sup> Infrastructure and **nbn**<sup>TM</sup> Enterprise 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>TM</sup> Enterprise Ethernet Fair Use Policy.*

## 2. Application

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

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

## 3. Fair use

### 3.1 **nbn**<sup>TM</sup> Enterprise Ethernet Product design

**nbn** and RSP agree that:

- (a) OVC CoS-L has been designed for use as an input to the supply of Best Efforts Business Products for use within a single Premises; and
- (b) OVC CoS-M and OVC CoS-H have been designed for use as inputs to the supply of Performance Engineered Business Products for use within a single Premises.

### 3.2 Allowed devices and plans

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

- (a) the types or ranges of plans for Best Efforts Business Products offered by RSP or any Downstream Service Providers provided that they rely on OVC CoS-L as an input; or
- (b) the types or ranges of plans for Performance Engineered Business Products offered by RSP or any Downstream Service Providers provided that they rely on OVC CoS-M or OVC CoS-H 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 Best Efforts Business Products or Performance Engineered Business Products which rely on the OVC 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 Best Efforts Business Product or Performance Engineered Business 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 Best Efforts Business Product or Performance Engineered Business 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>TM</sup> Infrastructure and **nbn**<sup>TM</sup> Enterprise 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>TM</sup> Enterprise Ethernet Fair Use Policy, Unfair Use means use of the **nbn**<sup>TM</sup> Infrastructure or **nbn**<sup>TM</sup> Enterprise Ethernet that:

- (a) is expressly prohibited, exceeds an express limitation, or is expressly described as Unfair Use in section 4.3; or
- (b) creates a risk to:
  - (i) the integrity of the **nbn**<sup>TM</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>TM</sup> Network or at the National Test Facility;

- (iii) the quality or reliability of the **nbm**<sup>TM</sup> Infrastructure, or the consistent supply of any relevant **nbm** of any product or service supplied by **nbm** to RSP or any Other RSP; or
- (iv) the health or safety of any person,

but excludes any use of the **nbm**<sup>TM</sup> Infrastructure or **nbm**<sup>TM</sup> Enterprise 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 **nbm**<sup>TM</sup> Infrastructure or **nbm**<sup>TM</sup> Enterprise 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 OVC

- (a) RSP must not use the OVC, or permit a Downstream Service Provider or Contracted End User to use an RSP Product or Downstream Product that relies on the OVC 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 OVC CoS-L, in any other way which **nbm** considers, acting reasonably, to be inappropriate or excessive, as notified by **nbm** to RSP from time to time.
- (b) Any use by:
  - (i) RSP of the OVC 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 OVC, 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 **nbm**<sup>TM</sup> Enterprise 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 Determination of Unfair Use

In determining whether it considers that a use of the OVC is inappropriate or excessive under section 4.3(a)(iii), reasonableness is to be determined by having regard to **nbm**'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**<sup>TM</sup> Enterprise Ethernet Fair Use Policy.*

## 5. Non-compliance

- (a) Non-compliance with this **nbn**<sup>TM</sup> Enterprise 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](#); or
  - (ii) the disconnection of RSP Equipment under clause C10 of the [Head Terms](#).
- (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).