

Fair Use Policy

nbn[®] BSS ILA Product Module

nbn[®] BSS Interim Launch Agreement

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nbn[®] Interim Launch Agreement

Version	Description	Effective Date
1.0	First issued version of nbn [®] BSS Interim Launch Agreement	Execution Date
1.1	Amendments to introduce nbn [®] Mobility VISIP and nbn [®] Mobility Private Network Layer 3	15 December 2021
1.2	Amendments to update certain Charges and to introduce the Product Features, GTP Acceleration and Port Forwarding, and new bandwidth profiles	28 February 2023
1.3	WBA5 and other amendments	1 December 2023

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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 **nbm**[®] BSS ILA Fair Use Policy.*

1. Purpose and objectives

- (a) The purpose of this **nbm**[®] BSS ILA Fair Use Policy is to support the objective of providing a consistent supply of **nbm**[®] BSS Products to all **nbm** retail service providers, and ultimately to End Users, as expected by both parties as at the Execution Date, recognising that the **nbm**[®] Infrastructure is a shared and finite resource and the activities of one person may detrimentally affect the use of the **nbm**[®] Infrastructure by another person.
- (b) The objectives that this **nbm**[®] BSS ILA Fair Use Policy aims to meet are as follows:
 - (i) avoid adverse impacts on the quality and reliability of the **nbm**[®] Infrastructure by ensuring that RSP does not use, or permit others to use an **nbm**[®] BSS Product in an excessive or unreasonable manner; and
 - (ii) permit use of the **nbm**[®] Infrastructure and the **nbm**[®] BSS Products in accordance with the relevant terms of the [nbm[®] BSS Interim Launch Agreement](#).

*Section 2 sets out the application of this **nbm**[®] BSS ILA Fair Use Policy.*

2. Application

This **nbm**[®] BSS ILA Fair Use Policy applies to RSP's use of the **nbm**[®] Infrastructure and **nbm**[®] BSS Products. This document forms part of the [nbm[®] BSS Interim Launch Agreement](#).

*Section 3 sets out what the **nbm**[®] BSS Products have been designed for.*

3. Fair Use

3.1 **nbm**[®] BSS Product design

nbm and RSP agree that the **nbm**[®] BSS Products:

- (a) have been designed for use as an input to the supply of:
 - (i) retail business grade broadband services utilising satellite technology; and
 - (ii) other services utilising satellite technology that support the business, enterprise and government segments in Australia; and
- (b) is supplied to RSP using shared and finite network resources over which **nbm** supplies other products and services to RSP and Other RSPs.

3.2 Allowed devices and plans

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

- (a) the types or ranges of plans for RSP Products or Downstream Products offered by RSP or any Downstream Service Provider to End Users that rely on **nbm**[®] BSS Products; or
- (b) the types of networking devices (including routers or gateways) that may be offered by RSP or any Downstream Service Provider in connection with any RSP Products or Downstream Products which rely on **nbm**[®] BSS Products as an input,

provided that:

- (c) such plans and networking devices are designed and intended to be used in conjunction with the RSP Products or Downstream Products offered by the RSP or any Downstream Service Provider; and

- (d) without limiting the foregoing, the traffic volumes being managed or handled by networking devices do not exceed the traffic volumes that would reasonably be expected to be managed or handled by a networking device designed and intended to be used in conjunction with the RSP Products or Downstream Products.

3.3 RSP obligations

RSP must ensure that the VSAT NTD is not replaced with any other device other than a device supplied by **nbn** to the RSP.

*Section 4 sets out the meaning of Unfair Use and RSP obligations in relation to use of **nbn**[®] Infrastructure and the **nbn**[®] BSS Products.*

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**[®] BSS ILA Fair Use Policy, Unfair Use means use of the **nbn**[®] Infrastructure that:

- (a) is expressly prohibited, exceeds an express limitation, or is expressly described as Unfair Use in sections 4.3 to 4.5; or
- (b) creates a risk to:
 - (i) the integrity of the **nbn**[®] Infrastructure;
 - (ii) the integrity of the network, systems, equipment or facilities of RSP or any Other RSP used in connection with the **nbn**[®] Network or at the **nbn**[®] Melbourne Test Facility;
 - (iii) the quality of any product or service supplied by **nbn** to RSP or any Other RSP; or
 - (iv) the health or safety of any person.

Examples of conduct that may constitute Unfair Use include:

1. use of the **nbn**[®] Infrastructure 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 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 **nbn**[®] BSS Products

- (a) RSP must not use, or permit a Downstream Service Provider or Contracted End User to use the **nbn**[®] Infrastructure in connection with the **nbn**[®] BSS Products or any VSAT NTD:
- (i) in any manner which improperly interferes with Other RSPs or End Users; or
 - (ii) in any way which **nbn** considers, acting reasonably, to be inappropriate or excessive, as notified by **nbn** to RSP from time to time.
- (b) Each of the following uses of the **nbn**[®] Infrastructure in connection with **nbn**[®] BSS Products constitute Unfair Use:
- (i) offering RSP Products, or permitting the offer of Downstream Products, with features that contribute, to an unreasonable degree, to **nbn** deprioritising data transfers or reducing data transfer rates under section 25.6(d) of the [nbn[®] BSS ILA Product Description](#) (as determined by **nbn**, acting reasonably);
- Note:** Features of RSP Products or Downstream Products that may result in a contravention of section 4.3(b)(i) include large base download or upload allowances, 'bonus' or 'top-up' data, and data offered on a shaped basis after the usage cap has been reached.
- (ii) 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 25.6(d) of the [nbn[®] BSS ILA Product Description](#); or
 - (iii) modifying the Product Features of an **nbn**[®] BSS Product with inappropriate or excessive frequency or volumes (as determined by **nbn**, acting reasonably).
- (c) In determining whether it considers that a use of the **nbn**[®] Infrastructure in respect of **nbn**[®] BSS Products is inappropriate or excessive under section 4.3(a), reasonableness is to be determined by having regard to **nbn**'s actual knowledge at the relevant time and not any constructive knowledge.

4.4 Unfair use of Disaster Recovery Product Feature

RSP using, or permitting a Downstream Service Provider or Contracted End User to use, the Disaster Recovery Product Feature as a bandwidth solution for a period that **nbn** determines, acting reasonably, is long term in connection with **nbn**[®] VISP, **nbn**[®] Mobility VISP or **nbn**[®] Mobility Private Network Layer 3 will constitute Unfair Use.

4.5 Unfair Use of VoIP Prioritisation Product Feature

RSP using, or permitting a Downstream Service Provider or Contracted End User to use, the VoIP Prioritisation Product Feature to prioritise any traffic other than voice traffic, will constitute Unfair Use.

4.6 Unfair Use of **nbn**[®] VISP with uncapped data usage allowance

- (a) Any use by:
- (i) RSP of an **nbn**[®] VISP Ordered Product with an uncapped data usage allowance; or
 - (ii) a Downstream Service Provider or Contracted End User of an RSP Product or Downstream Product that relies on an **nbn**[®] VISP Ordered Product with an uncapped data usage allowance as an input,

for the purpose of supplying broadband services to a Premises other than the Premises in respect of which the relevant Ordered Product was ordered (including for the purpose of supplying broadband services to multiple Premises within multi-dwelling units), will constitute Unfair Use.

- (b) Section 4.6(a) does not limit the application of any other provision of this **nbn**[®] BSS ILA Fair Use Policy.

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

5. Non-compliance

- (a) Non-compliance with this **nbn**[®] BSS ILA Fair Use Policy, including in response to Unfair Use under sections 4.3 to 4.6, may result in:
 - (i) an immediate disconnection, discontinuation, Ordering Freeze, Service Reduction or Suspension (in whole or in part) of any **nbn**[®] BSS Ordered Product under clause F5 of the WBA SFAA Head Terms (as that clause is incorporated by clause F4(a) of the [Interim Terms](#)) or clause F6.2(b)(vi) of the [Interim Terms](#) (as relevant);
 - (ii) the immediate disconnection of RSP Equipment under clause C10 of the WBA SFAA Head Terms (as that clause is incorporated in clause C1 of the [Interim Terms](#)); or
 - (iii) other consequences in respect of **nbn**[®] BSS Products, including as set out in this **nbn**[®] BSS ILA Fair Use Policy.
- (b) RSP must, if requested in writing by **nbn**, exercise those rights referred to in section 4.1(b)(i) 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).