

Fair Use Policy

nbn[®] Smart Places 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[®] Smart Places 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**[®] Smart Places Fair Use Policy.*

1. Purpose and objectives

- (a) The purpose of this **nbn**[®] Smart Places 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 Commercial Launch Date, recognising that the **nbn**[®] Infrastructure is a shared resource and the activities of one person can detrimentally affect the use of the **nbn**[®] Infrastructure or relevant **nbn** products or services by another person.
- (b) The objectives that this **nbn**[®] Smart Places Fair Use Policy aims to meet are as follows:
 - (i) avoid adverse impacts on the quality or reliability of the **nbn**[®] 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**[®] Infrastructure and **nbn**[®] Smart Places in accordance with the relevant terms of this Agreement; and
 - (iii) enable **nbn** to deliver products and services in a commercially sustainable manner.

*Section 2 sets out the application of this **nbn**[®] Smart Places Fair Use Policy.*

2. Application

This **nbn**[®] Smart Places Fair Use Policy applies to RSP's use of the **nbn**[®] Infrastructure and **nbn**[®] Smart Places. This document forms part of the **nbn**[®] Smart Places Product Module.

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

3. Fair use

3.1 **nbn**[®] Smart Places Product design

- (a) **nbn** and RSP agree that each AVC TC-4:
 - (i) has been designed for use as an input to the supply of a Mass Market Retail Product to a single Contracted End User for use within a single Smart Location; 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) Each AVC TC-2 has been designed for use as an input to the supply of a Performance Engineered Retail Product to a single Contracted End User for use within a single Smart Location.

3.2 Allowed devices and plans

Except as set out in sections 4.3 and 4.4, 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 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) at a single Smart Location only in connection with the applicable Mass Market Retail Products or Performance Engineered Retail Products 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 Smart Location 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**[®] Infrastructure and **nbn**[®] Smart Places.*

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**[®] Smart Places Fair Use Policy, **Unfair Use** means use of the **nbn**[®] Infrastructure or **nbn**[®] Smart Places that:

- (a) is expressly prohibited, exceeds an express limitation, or is expressly described as Unfair Use in sections 4.3 or 4.4; 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 National Test Facility;

- (iii) the quality or reliability of the **nbn**[®] 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**[®] Infrastructure or **nbn**[®] Smart Places 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**[®] Infrastructure or **nbn**[®] Smart Places 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 (other than to support a Public WiFi Service that complies with section 4.4);
 - (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 a location outside of the Smart Location Boundary of the Smart Location in respect of which the relevant Ordered Product has been ordered, 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).

4.4 Unfair Use for Public WiFi

RSP must ensure that any Public WiFi Service:

- (a) does not operate as part of a Public HetNet;
- (b) only connects to an End User Equipment device via an Instrument, Scientific and Measurement (ISM) band determined by ACMA (e.g. 2.4GHz to 2.5GHz or 5.725GHz to 5.875GHz); and

(c) does not permit use outside the Smart Location except for Incidental Use,

where:

(d) **Incidental Use** means use which:

- (i) is intermittent and not long term; and
- (ii) does not, and is unlikely to, result in a traffic profile that is materially different to the traffic profile that **nbn** determines, acting reasonably, would be expected from use solely within the Smart Location; and

(e) **Public WiFi Service** means an RSP Product, Downstream Product or service supplied by a Contracted End User which:

- (i) provides WiFi connectivity to End Users;
- (ii) is offered and supplied to those End Users for no charge or other consideration from those End Users; and
- (iii) relies on **nbn**[®] Smart Places as an input.

4.5 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**[®] Smart Places Fair Use Policy.*

5. Non-compliance

(a) Non-compliance with this **nbn**[®] Smart Places 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).