

# Permitted Fair Use Policy Exemptions



**This document does not form part of any Wholesale Broadband Agreement or any Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act 2010.**



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## Environment

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

## Introduction

- (a) The [nbn™ Ethernet Fair Use Policy](#) and the [nbn™ Enterprise Ethernet Fair Use Policy](#) each form part of the Wholesale Broadband Agreement and impose obligations on RSP regarding use of **nbn™** Ethernet and **nbn™** Enterprise Ethernet respectively and, in each case, use of **nbn™** Infrastructure.
- (b) This includes obligations to not engage in Unfair Use and to take steps to prevent specified third parties from engaging in Unfair Use.
- (c) The [nbn™ Ethernet Fair Use Policy](#) and the [nbn™ Enterprise Ethernet Fair Use Policy](#) also specify that a use set out in this Permitted Fair Use Policy Exemptions document will not be Unfair Use.
- (d) Unless otherwise specified:
  - (i) **Products** refers to **nbn™** Ethernet and **nbn™** Enterprise Ethernet (to the exclusion of all other Products offered under the Wholesale Broadband Agreement);
  - (ii) **Fair Use Policies** refers to the [nbn™ Ethernet Fair Use Policy](#) and the [nbn™ Enterprise Ethernet Fair Use Policy](#) (to the exclusion of all other Fair Use Policies that form part of the Wholesale Broadband Agreement); and
  - (iii) otherwise, capitalised terms used in this document have the meanings given to those terms in the Wholesale Broadband Agreement.

## Roadmap

A roadmap describing the structure of this document follows for the assistance of RSP.

### Part A: Permitted Fair Use Policy Exemptions processes

Part A sets out the process which **nbn** must follow to update this Permitted Fair Use Policy Exemptions document.

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### Part B: List of current permitted uses

Part B sets out a short description of each currently permitted use under this Permitted Fair Use Policy Exemptions document.

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### Part C: Details and conditions

Part C sets out further details and conditions that apply to each currently permitted use listed in the table in Part B.

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# Part A: Permitted Fair Use Policy Exemptions processes

## 1. Changes

**nbn** may only change this Permitted Fair Use Policy Exemptions document:

- (a) to introduce a new type of permitted use, including any terms, conditions and limitations relating to that permitted use, by giving at least 30 calendar days' notice of that change, provided that **nbn** consults with RSP for at least 4 weeks before giving any notice and has regard to any submissions or feedback provided by RSP during the consultation period;
- (b) to vary any of the terms, conditions or limitations set out in this Permitted Fair Use Policy Exemptions document to expand or enhance the scope or operation of a permitted use, by giving at least 30 calendar days' notice of that change, provided that the change must not reduce or detract from the scope or operation of that permitted use as it applied immediately before the change; or
- (c) where that change is consequential upon, or so as to give effect to, any change made to the Wholesale Broadband Agreement, by giving notice of the consequential change at the same time as **nbn** gives notice of the change to the Wholesale Broadband Agreement.

## Part B: List of current permitted uses

### 2. Current permitted uses under this Permitted Fair Use Policy Exemptions document

The following uses of specified Products and the **nbn**<sup>TM</sup> Infrastructure are permitted for the Term and will not, subject to the corresponding conditions set out in Part C: Details and conditions, constitute Unfair Use.

#	Type of permitted use	Description	Details and conditions
1.	Public WiFi Service	Use of <b>nbn</b> <sup>TM</sup> Ethernet or <b>nbn</b> <sup>TM</sup> Enterprise Ethernet as an input to the supply of a Public WiFi Service.	See section 3.
2.	WiFi Hotspot	Use of <b>nbn</b> <sup>TM</sup> Ethernet or <b>nbn</b> <sup>TM</sup> Enterprise Ethernet as an input to the supply of a WiFi Hotspot.	See section 4.

## Part C: Details and conditions

*The details and conditions in section 3 apply in respect of Public WiFi Service uses of the Products*

### 3. Public WiFi Services

- (a) Subject to the terms of this section 3, RSP may use, and permit the use of, Products and **nbn**<sup>TM</sup> Infrastructure as inputs to any Public WiFi Service made available to Temporary WiFi Users in a Public WiFi Coverage Area.
- (b) RSP must ensure that any Public WiFi Service:
  - (i) does not operate as part of a Public HetNet;
  - (ii) 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
  - (iii) does not permit use outside the **nbn**<sup>TM</sup> Product Delivery Location except for use within the Public WiFi Coverage Area and Incidental Use.
- (c) Subject to RSP complying with section 3(b)(iii):
  - (i) Data Aggregation by a Public WiFi Service is permitted despite section 4.3(a) of the [nbn<sup>TM</sup> Ethernet Fair Use Policy](#) and section 4.3(a) of the [nbn<sup>TM</sup> Enterprise Ethernet Fair Use Policy](#); and
  - (ii) use of a Public WiFi Service outside the **nbn**<sup>TM</sup> Product Delivery Location is permitted despite section 4.3(b) of the [nbn<sup>TM</sup> Ethernet Fair Use Policy](#) and section 4.3(b) of the [nbn<sup>TM</sup> Enterprise Ethernet Fair Use Policy](#).
- (d) Except to the extent set out in section 3(c), all other provisions of the Fair Use Policies continue to apply to use of the Products and **nbn**<sup>TM</sup> Infrastructure as inputs to Public WiFi Services.
- (e) In this section 3:
  - (i) **Incidental Use** means, for a Public WiFi Service, use which:
    - (A) is intermittent and not long term;
    - (B) occurs outside the Public WiFi Coverage Area; and
    - (C) 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 Public WiFi Coverage Area;
  - (ii) **nbn<sup>TM</sup> Product Delivery Location** means, with respect to a Public WiFi Service, the Approved Non-Premises Location or other Premises in respect of which **nbn** supplies the Product that is an input to the Public WiFi Service;
  - (iii) **Public WiFi Coverage Area** means a single contiguous public location (for example, a park, a museum, or a shopping centre) which comprises or includes the **nbn**<sup>TM</sup> Product Delivery Location;
  - (iv) **Public WiFi Service** means an RSP Product, Downstream Product or service supplied by a Contracted End User which:
    - (A) provides WiFi connectivity to End Users;

- (B) is offered and supplied to those End Users for no charge or other consideration from those End Users; and
- (C) relies on **nbn**<sup>TM</sup> Ethernet or **nbn**<sup>TM</sup> Enterprise Ethernet as an input; and
- (v) **Temporary WiFi User** means an End User that:
  - (A) does not normally reside in or occupy the relevant Public WiFi Coverage Area; and
  - (B) only accesses the Public WiFi Service on a once-off or occasional basis.

*The details and conditions in section 4 apply in respect of WiFi Hotspot uses of the Products*

## 4. WiFi Hotspots

- (a) Subject to the terms of this section 4, RSP may use, and permit the use of, Products and **nbn**<sup>TM</sup> Infrastructure as inputs to any WiFi Hotspot made available to Temporary WiFi Users and Permanent WiFi Users within the relevant **nbn**<sup>TM</sup> Product Delivery Location.
- (b) RSP must ensure that any WiFi Hotspot:
  - (i) does not have the primary purpose of operating as part of a Public HetNet;
  - (ii) 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
  - (iii) does not permit use outside the **nbn**<sup>TM</sup> Product Delivery Location except for Incidental Use.
- (c) RSP must, in respect of each WiFi Hotspot, warrant to **nbn** that the WiFi Hotspot does not have the primary purpose of operating as part of a Public HetNet.
- (d) Subject to RSP complying with section 4(b)(iii):
  - (i) Data Aggregation by a Public WiFi Service is permitted despite section 4.3(a) of the [nbn<sup>TM</sup> Ethernet Fair Use Policy](#) and section 4.3(a) of the [nbn<sup>TM</sup> Enterprise Ethernet Fair Use Policy](#); and
  - (ii) use of a Public WiFi Service outside the **nbn**<sup>TM</sup> Product Delivery Location is permitted despite section 4.3(b) of the [nbn<sup>TM</sup> Ethernet Fair Use Policy](#) and section 4.3(b) of the [nbn<sup>TM</sup> Enterprise Ethernet Fair Use Policy](#).
- (e) Except as set out in section 4(d), all other provisions of the Fair Use Policies continue to apply to use of the Products and **nbn**<sup>TM</sup> Infrastructure as inputs to WiFi Hotspots.
- (f) In this section 4:
  - (i) **Incidental Use** means, for a WiFi Hotspot, use which:
    - (A) is intermittent and not long term;
    - (B) occurs outside the **nbn**<sup>TM</sup> Product Delivery Location; and
    - (C) 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 **nbn**<sup>TM</sup> Product Delivery Location;



- (ii) **nbn™ Product Delivery Location** means, with respect to a WiFi Hotspot, the Approved Non-Premises Location or other Premises in respect of which **nbn** supplies the Product that is an input to the WiFi Hotspot;
- (iii) **Permanent WiFi User** means, in respect of a WiFi Hotspot, an End User that:
  - (A) normally resides in or occupies the coverage area of that WiFi Hotspot;
  - (B) only accesses the WiFi Hotspot on a one-off or occasional basis; and
  - (C) has an active RSP Product or Downstream Product at the location at which they normally reside or occupy in the coverage area of the WiFi Hotspot;
- (iv) **Temporary WiFi User** means an End User that:
  - (A) does not normally reside in or occupy the coverage area of the relevant WiFi Hotspot; and
  - (B) only accesses the WiFi Hotspot on a once-off or occasional basis; and
- (v) **WiFi HotSpot** means an RSP Product, Downstream Product or service supplied by a Contracted End User which:
  - (A) provides WiFi connectivity to End Users;
  - (B) is offered and supplied to those End Users for no direct charge or direct consideration from those End Users; and
  - (C) relies on **nbn™** Ethernet or **nbn™** Enterprise Ethernet as an input.