

Commercial-in-confidence

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Changes in this document are marked up against the version of the Fair Use Policy available to Customers as at 9 September 2015.

Fair Use Policy

Wholesale Broadband Agreement



This document contains amendments which contains amendments which describe a proposed Satellite variant of the NEBS product which NBN Co is considering introducing under the Wholesale Broadband Agreement. This version is not executable and is not a Standard Form Access Agreement for the purposes of Part XIC of the Competition and Consumer Act 2010.

NBN Co Limited

Fair Use Policy

~~Published December 2013~~

~~Version 2.0~~

This document applies to a Wholesale Broadband Agreement if the Head Terms are version 2.1, 2.2 or 2.3.



NBN Co Networks: Fibre, Wireless, FTTB, FTTN and Satellite



<u>Version</u>	<u>Description</u>	<u>Effective Date</u>
<u>2.0</u>	<u>Issued on 9 December 2013</u>	<u>Execution Date</u>
<u>2.1</u>	<u>NEBS supplied by means of the NBN Co Satellite Network</u>	<u>Satellite Commercial Launch Date</u>

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Environment

NBN Co asks that you consider the environment before printing this document.



Introduction

This document applies to a Wholesale Broadband Agreement if the Head Terms are version 2.0, 2.1, 2.2 or 2.3. If the Head Terms are not version 2.3, then all references to the "NBN Co Satellite Network" are to be disregarded.

The purpose of this Fair Use Policy is to support the consistent supply of Products to all NBN Co customers and ultimately to End Users recognising that the NBN-Related Networks are a shared resource and the activities of one person can detrimentally affect the use of the NBN-Related Networks by another person.

This Fair Use Policy:

1. applies to customers' use of the NBN-Related Networks; and
2. is intended to avoid adverse impacts on the quality or reliability of the NBN-Related Networks by ensuring that customers do not use NBN Co's products or services in an excessive or unreasonable manner.

Non-compliance with this Fair Use Policy may result in an immediate Ordering Freeze, Service Reduction or Suspension of an Ordered Product under clause F5 of the [Head Terms](#) or the disconnection of Customer Equipment under clause C9 of the [Head Terms](#). Other consequences may also apply, including as set out in this Fair Use Policy.

1. Fair use of networks, systems, equipment or facilities

This section 1 sets out the meaning of Unfair Use and Customer obligations in relation to use of networks, systems, equipment or facilities.

1.1 Customer and Downstream Customer obligations

- (a) Customer must not, and must ensure its Personnel do not, engage in Unfair Use.
- (b) Customer must ensure that the contracts it enters into with Downstream Customers and Designated End Users contain valid and enforceable provisions which:
 - (i) prohibit Downstream Customers and End Users (as the case may be) from engaging in Unfair Use; and
 - (ii) entitle the Customer 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 Customer Product or otherwise).
- (c) Customer must, if requested in writing by NBN Co, exercise those rights referred to in section 1.1(b)(ii) as soon as reasonably practicable to the extent necessary to stop and/or prevent Unfair Use by the Downstream Customer or End User (as the case may be).

1.2 Unfair Use

In this Fair Use Policy, **Unfair Use** means use of the NBN-Related Networks in a way that creates a risk to:

- (a) the integrity of the NBN-Related Networks;

- (b) the integrity of the network, systems, equipment or facilities of Customer or any Other NBN Co Customer used in connection with the NBN Co Network or at the National Test Facility;
- (c) the quality of any product or service supplied by NBN Co to Customer or any Other NBN Co Customer; or
- (d) the health or safety of any person.

Examples of conduct that may constitute Unfair Use include:

1. use of the NBN-Related Networks 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.

1.3 Unfair Use regarding the NBN Co Satellite Network

- (a) Without limiting section 1.2, each of the following uses of the NBN-Related Networks in connection with the NEBS supplied by means of the NBN Co Satellite Network constitute Unfair Use:
 - (i) modifying AVCs to change the associated CVC Class with unreasonable frequency or in unreasonable volumes (as determined by NBN Co, acting reasonably);
 - (ii) offering Customer Products, or permitting the offer of Downstream Products, with features (such as 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) which contribute, to an unreasonable degree, to NBN Co deprioritising data transfers or reducing data transfer rates under section 2.3 (as determined by NBN Co acting reasonably);
 - (iii) unreasonably failing to enforce provisions in contracts entered into with Downstream Customers and Designated End Users (as determined by NBN Co, acting reasonably) with the effect that NBN Co deprioritises data transfers or reduces data transfer rates under section 2.3;
 - (iv) bonding, or knowingly permitting the bonding of, UNIs, even if NBN Co is supplying only one of the UNIs to Customer and the other UNI(s) to an Other NBN Co Customer (except in respect of Public Interest Premises, to the extent that NBN Co waives this obligation under section 2.5(b)); and
 - (v) disconnecting and activating AVCs in respect of a Premises with the effect or potential effect of bypassing NBN Co's deprioritisation of data transfers or reduction of data transfer rates under section 2.3 of this Fair Use Policy or section 3.7(a)(v) of the Product Description for the NBN Co Ethernet Bitstream Service.
- (e)(b) NBN Co may immediately disconnect or discontinue (in whole or in part) any Ordered Product in response to Unfair Use under section 1.3(a)(iv) in accordance with clause F9.2(d) of the Head Terms by giving 5 Business Days' notice to Customer.

2. Fair use of Products

2.1 Fair Use Policy for NEBS

This section sets out the Fair Use policy for NEBS AVC in TC-4.

- (a) NBN Co and Customer agree that the NEBS AVC in TC-4:
 - (i) has been designed for use as an input to the supply of mass market retail broadband services; and
 - (ii) is supplied to Customer using shared network resources over which NBN Co supplies other products and services to Customer and Other NBN Co Customers.
- (b) Customer must not use the NEBS AVC in TC-4, or permit a Downstream Customer to use a Customer Product or Downstream Product that relies on the NEBS AVC in TC-4, as an input:
 - (i) to support substantial carrier or service provider data aggregation applications (such as backhaul for mobile base stations and multiplexed access systems and/or networks) that result in substantial and continuous network throughput;
 - (ii) to support connections for the purpose of providing or enabling carrier or service provider interconnection; and
 - ~~(iii) where the average download usage for Customer's Ordered Products using the NBN Co Wireless Network exceeds 200GB of data in a calendar month;~~
 - ~~(iv) where the average upload usage for Customer's Ordered Products using the NBN Co Wireless Network exceeds 60GB of data in a calendar month; and~~
 - ~~(v)(iii)~~ in any other way which NBN Co considers, acting reasonably, to be inappropriate or excessive, as notified by NBN Co to Customer from time to time.

2.2 Additional Fair Use thresholds for NEBS supplied by means of the NBN Co Wireless Network

Without limiting section 2.1(b), Customer must not use or permit the use of the NEBS AVC in TC-4 supplied by means of the NBN Co Wireless Network as an input to a Customer Product or Downstream Product:

- (a) where the average download usage for Customer's Ordered Products using the NBN Co Wireless Network exceeds 200GB of data in a calendar month; or
- (b) where the average upload usage for Customer's Ordered Products using the NBN Co Wireless Network exceeds 60GB of data in a calendar month.

2.3 Additional Fair Use thresholds for NEBS supplied by means of the NBN Co Satellite Network

- (a) Customer must limit usage of each NEBS AVC TC-4 supplied by means of the NBN Co Satellite Network as follows (except in respect of Public Interest Premises, to the extent that NBN Co waives this obligation under section 2.5(b)):

<u>Associated CVC Class</u>	<u>Download usage averaged across AVCs during Peak Periods (GB)</u>	<u>Upload usage averaged across AVCs during Peak Periods (GB)</u>	<u>Maximum usage by each AVC (GB)</u>

<u>0</u>	<u>15</u>	<u>3</u>	<u>75</u>
<u>1</u>	<u>20</u>	<u>4</u>	<u>100</u>
<u>2</u>	<u>25</u>	<u>5</u>	<u>150</u>

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 is calculated based on data transfers in both Peak Periods and Off-Peak Periods and includes both upload and download usage. Usage is measured based on Layer 2 frames calculated in accordance with section 4.3.1 of the Product Technical Specification for the NBN Co Ethernet Bitstream Service.*

(b) If Customer fails to enforce any limitation in section 2.3(a), NBN Co may (without limiting any rights that NBN Co may have in relation to such failure under 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 Co determines that Customer is complying with all limitations in section 2.3(a).

Note: *Data transfer rates in section 2.3(b)(ii) are subject to the limitations in section 13 of the Product Description for the NBN Co Ethernet Bitstream Service.*

(c) If Customer uses the capacity of the NBN Co Satellite Network in excess of the average download and upload usage limitations in section 2.3(a), Customer must pay the CVC Class Adjustment Charge set out in the Price List.

(d) Customer must ensure that the maximum utilisation of the capacity of each NEBS CVC TC-4 supplied by means of the NBN Co Satellite Network is limited to the following (except in respect of Public Interest Premises, to the extent that NBN Co waives this obligation under section 2.5(b)):

- (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.

(e) If Customer fails to comply with section 2.3(d) in respect of a CVC, NBN Co may (without limiting any rights that NBN Co 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 Co determines that Customer is complying with all limitations in section 2.3(d).

(f) This Fair Use Policy does not apply to the first Satellite Test Service supplied to Customer to the extent set out in section 8 of the Product Description for the NBN Co Ethernet Bitstream Service.

2.4 Allowed devices and plans

Except as set out in sections 2.1(b), 2.2 and 2.3, this section 2 is not intended to limit:

- ~~(e)~~(a) the types or ranges of plans for mass market retail broadband services and broadcast type services offered by Customer or any Downstream Customers that rely on the NEBS AVC in TC-4 as an input; or
- ~~(d)~~(b) the types of networking devices (including routers, gateways and femtocells) that may be offered by Customer or any Downstream Customers in connection with any mass market retail broadband services which rely on the NEBS AVC in TC-4 as an input,

provided that:

- ~~(e)~~(c) such plans and networking devices are intended to be used by End Users for residential, business or education purposes within a single Premises only; and
- ~~(f)~~(d) without limiting the foregoing, the traffic volumes being managed or handled by the networking device do not exceed the traffic volumes that would reasonably be expected to be managed or handled by a networking device when used for residential, business or education purposes within a single Premises only.

2.5 Public Interest Premises

- (a) Customer may request that NBN Co waive one or more obligations under:
 - (i) sections 1.3(a)(iv), 2.3(a) or 2.3(d) of this Fair Use Policy; or
 - (ii) sections 3.7(a)(i), 3.7(a)(ii) or 3.7(a)(iii) of the Product Description for the NBN Co Ethernet Bitstream Service,in respect of a Public Interest Premises (in whole or in part).
- (b) If NBN Co agrees to waive any of Customer's obligations in response to a request under section 2.5(a), NBN Co will provide written notice to Customer setting out the extent to which NBN Co waives the Customer's obligations in respect of the relevant Public Interest Premises.
- (c) Except to the extent set out in a written notice from NBN Co under section 2.5(b), Customer must comply with all obligations under this Fair Use Policy and the Product Description for the NBN Co Ethernet Bitstream Service, including in respect of Public Interest Premises.

3. Defined terms

Capitalised terms used but not defined in this Fair Use Policy have the meaning in the Dictionary of the Wholesale Broadband Agreement.