



Fair Use Policy

nbn[®] Sky Muster[®] Plus Product Module

nbn[®] Sky Muster[®] Plus Interim Agreement

This document forms part of the nbn[®] Sky Muster[®] Plus Interim Agreement, which is a Standard Form of Access Agreement for the purposes of Part XIC of the Competition and Consumer Act 2010

Fair Use Policy

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Version	Description	Effective Date
1.0	First issued version of nbn [®] Sky Muster [®] Plus Interim Agreement	Execution Date
1.1	Amendments to introduce 25GB+ Plan, unmetered inclusions changes, Data Block and Top-Up	Unmetered inclusions changes: 1 April 2020 All other changes: 15 May 2020
1.2	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 **nbn**[®] Sky Muster[®] Plus Fair Use Policy.*

1. Purpose and objectives

- (a) The purpose of this **nbn**[®] Sky Muster[®] Plus Fair Use Policy is to support the consistent supply of relevant products to all **nbn** retail service providers and ultimately to End Users as expected by both parties as at the Execution 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 by another person.
- (b) The objectives that this **nbn**[®] Sky Muster[®] Plus Fair Use Policy aims to meet are as follows:
 - (i) avoid adverse impacts on the quality or reliability of the **nbn**[®] Infrastructure by ensuring that RSP does not use, or permit others to use, **nbn**'s products or services in an excessive or unreasonable manner; and
 - (ii) permit use of the **nbn**[®] Infrastructure and **nbn**[®] Sky Muster[®] Plus in accordance with the relevant terms of this Agreement.

*Section 2 sets out the application of this **nbn**[®] Sky Muster[®] Plus Fair Use Policy.*

2. Application

This **nbn**[®] Sky Muster[®] Plus Fair Use Policy applies to RSP's use of the **nbn**[®] Infrastructure and **nbn**[®] Sky Muster[®] Plus. This document forms part of the **nbn**[®] Sky Muster[®] Plus Interim Agreement.

*Section 3 sets out what **nbn**[®] Sky Muster[®] Plus has been designed for.*

3. Fair use

3.1 **nbn**[®] Sky Muster[®] Plus Product design

nbn and RSP agree that the Plans:

- (a) have been designed for use as an input to the supply of mass market residential and small business retail broadband services for use within a single Premises; and
- (b) are supplied to RSP using shared network resources over which **nbn** supplies other products and services to RSP and Other RSPs.

3.2 Allowed uses

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 mass market residential, public interest and small business retail broadband services offered by RSP or any Downstream Service Providers that rely on Plans as an input; or
- (b) the types of networking devices (including routers, gateways and femtocells) that may be offered by RSP or any Downstream Service Providers in connection with any mass market residential, public interest or small business retail broadband services which rely on Plans as an input,

provided that:

- (c) such services and networking devices are intended to be used by residential End Users, Public Interest End Users and Small Business End Users within a single Premises only; and

- (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 the supply of retail broadband services for use by residential End Users, Public Interest End Users and Small Business End Users within a single Premises only.

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

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**[®] Sky Muster[®] Plus 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 4.4; 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 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, 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 Plans

- (a) RSP must not use a Plan, or permit a Downstream Service Provider or Contracted End User to use an RSP Product or Downstream Product that relies on a Plan as an input:
 - (i) to support substantial carrier or service provider data aggregation applications (including as backhaul for mobile base stations, backhaul for public Internet access points 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; or
 - (iii) 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 a Plan 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, constitutes Unfair Use by the RSP; and
 - (ii) a Downstream Service Provider or Contracted End User of an RSP Product or Downstream Product that relies on a Plan, 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 **nbn**[®] Sky Muster[®] Plus-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 Unfair Use examples

- (a) Each of the following uses of the **nbn**[®] Infrastructure in connection with **nbn** Sky Muster[®] Plus constitute Unfair Use:
 - (i) unreasonably failing to enforce provisions in contracts entered into with Downstream Service Providers and Contracted End Users (as determined by **nbn**, acting reasonably);
 - (ii) bonding, or knowingly permitting the bonding of, UNIs, even if **nbn** is supplying only one of the UNIs to RSP and the other UNI(s) to an Other RSP;
 - (iii) disconnecting and activating Plans in respect of a Premises with the effect or potential effect of bypassing the application of any applicable bandwidth profiles or data usage limits;
 - (iv) masking, manipulating or changing the signature of traffic, or knowingly permitting the masking, manipulating or changing the signature of traffic, to:
 - (A) present Metered Data usage as Unmetered Data usage;
 - (B) present one type of Unmetered Data usage as another type of Unmetered Data usage; or
 - (C) otherwise avoid the application of any applicable data transfer rates or data usage allowances;

- (v) performing, or knowingly permitting the performance of, excessive automated polling, refreshing or scraping of websites;
 - (vi) downloading, or knowingly permitting the download of, software updates to more than 20 unique devices using a single Ordered Product during a calendar month;
 - (vii) transferring, or knowingly permitting the transfer of, more than 30GB of Metered Data in excess of the applicable Peak Period Metered Data Allowance or Off-peak Period Metered Data Allowance for a Plan during a calendar month; and
 - (viii) routinely transferring, or knowingly permitting the routine transfer of, large files (greater than 20MB) via email.
- (b) **nbn** may immediately disconnect or discontinue (in whole or in part) any Ordered Product in response to Unfair Use under section 4.4(a)(ii) in accordance with clause F6.2(b)(vi) of the Interim Terms, by giving 5 Business Days' notice to RSP.

4.5 Determination of Unfair Use

In determining whether it considers that a use of a Plan 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**[®] Sky Muster[®] Plus Fair Use Policy.*

5. Non-compliance

- (a) Non-compliance with this **nbn**[®] Sky Muster[®] Plus Fair Use Policy may result in:
- (i) an immediate Ordering Freeze, Service Reduction or Suspension of an Ordered Product under clause F5 of the WBA Head Terms, as incorporated by clause F4 of the [Interim Terms](#);
 - (ii) the disconnection of RSP Equipment under clause C10 of the WBA Head Terms, as incorporated by clause C1 of the [Interim Terms](#); or
 - (iii) any other consequences set out in this Agreement, including this **nbn**[®] Sky Muster[®] Plus Fair Use Policy.
- (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).