

No Lock-in Contract - ADSL2+ Service Application

Access Agreement Version 1.1 - 01/10/09

The supply of Services under this agreement is provided by Aussie Broadband Pty Ltd trading as Aussie Broadband ABN: 29 132 090 192, 3 Electra Ave, Morwell. VIC. 3840 (in this agreement referred to as “our”, “we”, “us” or “Aussie”) and in part by our Third Party Suppliers

By applying for Broadband access and by using the Aussie network you have indicated your acceptance of all the terms and conditions referred to in this Agreement.

Definitions

“**Agreement**” means this agreement for the provision of services by us to you as indicated on the Schedule.

“**Broadband**” means the ADSL, ADSL 2+, or Wireless or Satellite product this form relates to.

“**Charges**” means the charges payable by you to us pursuant to this agreement including but not limited to, installation, access, usage, Default Fees, interest and consulting fees.

“**Default Fees**” means all charges, cost and expenses we may incur in relation to a breach by you of your obligations to us

“**Schedule**” means the duly completed Application Form.

“**Service**” means the supply of Broadband as described in this Agreement.

“**GST**” has the same meaning as described in “A New Tax System (Goods and Services Tax) Act 1999 and any related legislation.

“**Service Commencement Date**” means the date that your service is activated or reactivated by us as advised by us.

“**Application Date**” means the date your application is received by Aussie either by online signup, fax or standard mail.

“**Third Party Supplier**” means a third party supplier used for the provision of services provided under this agreement.

“**Monthly Anniversary Date**” means the date on which you were first connected and the anniversary of this date each month for monthly access billing purposes.

Headings are provided as a convenience only and do not form part of this agreement.

Term of this agreement

This Agreement commences on the Application Date and will continue until Services are terminated by either party. If you terminate this Agreement you will remain liable for all Charges and all other amounts that you are required to pay under this Agreement.

A \$65 fee applies if this service is cancelled within the first 6 months.

Notices

Notices under this Agreement may be sent by prepaid ordinary post, facsimile, or by electronic mail and will be deemed given:-

- For ordinary mail, three days after dispatch by ordinary post.
- For facsimile or electronic mail, upon acknowledgement of receipt of transmission by our facsimile equipment or our server respectively.

Our Obligations to you

In Accordance with the terms and conditions of this Agreement, we will use our best endeavours to provide you with a Service and to provide the necessary information to access that Service.

Aussie will use its best endeavours to ensure a continuous Service, however this is not guaranteed.

We will take care of any personal information you provide us, in accordance with the Privacy Act 1988 (cth)

While we will use our best endeavours to ensure the data you transfer will be received by the intended destination (including electronic mail) we cannot guarantee that it will reach the intended destination.

We will obtain and hold any necessary licenses required under law.

We will not be responsible for training you in the use of this Service.

Your obligations to us

You must provide us with accurate and truthful information in your Service application and keep us informed of any changes to this information.

You are responsible for providing and maintaining all necessary equipment for the connection to the Service, computer equipment, network hubs / switches and electricity.

You agree that should your connection be terminated by Aussie for failure to meet the agreed payment schedule that you will be liable for all costs associated with terminating this agreement, including but not limited to, the monthly access charges up to and including the calendar month of termination. Should your connection be suspended or terminated, you will also be liable for all costs incurred by us as a result of the collection of outstanding monies including interest at the rate prescribed by the Supreme Court Act plus 2% calculated daily and compounded monthly. If suspended, Aussie Broadband may terminate your connection for continued failure to meet payment schedule or payment of outstanding monies.

You will indemnify us and any Third Party Suppliers in respect of all costs, damages, loss whatsoever including any third party claims or costs, howsoever arising from any default, breach or termination of this Agreement by you.

You agree that we may use Third Party Suppliers for the provision of this Service.

You agree that you will not contact any of our Third Party Suppliers for any reason in relation to this connection.

You acknowledge that if you do contact one of our Third Party Suppliers that you will be liable for all costs imposed on us by our Third Party Supplier.

You must pay for all applicable installation costs at the time of application for your ADSL Broadband Service. Your first month's access fee and any other items will be charged on the connection of your service and thereafter on your "Monthly Anniversary Date"

Should you not be able to be connected or receive a service you will be refunded your installation costs to your nominated bank account within 7 days.

Your obligations to us (cont)

If your account remains in default your account will be suspended until paid in full. You acknowledge that our payment terms are 7 days, should your credit card account

not be able to be debited for any reason, you will be considered in default.

Service Description

Any transmission speeds referred to by us refer to the maximum theoretical speed achievable with the Service under ideal conditions, and you acknowledge that actual speeds may be different than the theoretical speeds. Speeds may vary for reasons which include but are not limited to: Third Party Supplier network congestion, Third Party Supplier line interference, Internet Congestion, Contention ratios and errors in the configuration of your equipment.

The Service is provided on an "as is" basis and we cannot guarantee the provision of the Service to you where the service is reliant on a Third Party Supplier.

No service level guarantee is provided for this Service. We will use our best endeavours to provide timely restoration of service, however no guarantee is provided.

No Liability

The Service can only be provided through a telephone line where the exchange for that line is enabled for ADSL or ADSL 2+ and the line is within the coverage area.

Interference with the Service

You agree that you will:

- Not interfere with normal operation of the service or any facility, or make either unsafe.
- Allow any Third Party Suppliers or Aussie Broadband safe access to the customer premises if required.
- Ensure that our Third Party Suppliers or Aussie Broadband are provided with sufficient and timely access to the customer premises to enable our Third Party Supplier or Aussie Broadband to provide the service.
- If you do not have control or have access to the premises in which the service is delivered, you must:
 - Procure for our Third Party Suppliers and Aussie Broadband all such access to the premises as may be required.
 - Indemnify our Third Party Supplier and Aussie Broadband against any claim by the owner or occupier of the service premises, or any other person, in relation to the entry of those premises.

Acceptable Use Policy

You agree not to use your access for illegal purposes and to conduct yourself in a responsible and considerate manner, and acknowledge that cracking, hacking, crashing, spamming, transmission or storage of copyright infringing or any data which would contravene Australian laws relating to the production and distribution of pornographic material or distribution of virus is forbidden, as is unauthorised access to system areas and information on the Aussie Broadband network or any systems connected to the Aussie Broadband network

You agree to accept total responsibility for the content of files owned by you and stored on the Aussie Broadband network, and also accept total responsibility for any data transferred or caused to be transferred across the Aussie Broadband network. You agree that you will not send unsolicited bulk commercial e-mail via any method.

You acknowledge that we do not edit or control the content and form of any information or data accessed through the Service.

You are responsible for maintaining the secrecy and confidentiality of all access information required by you to access to the Service, and you agree not to disclose this to any other person.

You must notify us immediately if your username and/or password are lost or you think that someone may be using them. You will be responsible and liable for any unauthorized use of the Service.

You acknowledge that we may introduce a Fair Use Policy in respect of this Service. We may only introduce a Fair Use Policy by providing 60 days Notice to you.

Technical Support

Our Service includes free technical support for the installation and commissioning of Service. This support is only provided by E-mail, Telephone and via our website.

On Site visits are available for an additional fee.

Warranty on Hardware

The warranty provided on hardware supplied as part of the Connection is limited to the manufacturer's warranty.

Other Fees and Charges

Should you wish to relocate your connection to another area serviced by Aussie Broadband within the first six months since your Service Commencement Date. You agree to pay to

Aussie a service fee of \$144 each time you wish to relocate your connection.

Should you wish to relocate your connection to another area serviced by Aussie Broadband after the first six months since your Service Commencement Date. You agree to pay to Aussie a service fee of \$79 each time you wish to relocate your connection.

IP Address Space

You agree that the IP addresses assigned under this agreement remain the property of Aussie Broadband and/or our Third Party Suppliers and that IP addresses may change from time to time.

Governing Law

The agreement will be governed by and construed in accordance with the law of the state of Victoria.

Assignment

Aussie Broadband may assign any or all of the rights and obligations on its part contained herein. You may not assign any of your rights or obligations hereto.

Information

You authorise Aussie Broadband to make enquires as to your credit rating at any time and to report any delinquencies and any other information concerning you.

Amendment

Aussie Broadband may amend this agreement from time to time, providing 21 days written notice to you. The amendment will take effect unless you notify us in writing of your objection and cancellation. This Agreement can only be varied as provided in this clause or by agreement of both parties.

Direct Debit Request Service Agreement

Debiting details:

The contracted Plan with monthly payments in advance will be debited to the customer's account upon connection with Aussie Broadband Pty Ltd. An Excess Data Charge if applicable. Other charges including VOIP services, Pay TV or other additional services will be debited to the customer's account as per the separate individual contract

The Customer will be advised 14 days in advance of any changes to the Credit Card/Direct Debit arrangements.

For all matters relating to the Credit Card/Direct Debit arrangements, the Customer can:

- Call our Customer Information line on 1300 880 905
- Visit our office (Information supplied as below)
- Email us at accounts@aussiebroadband.com.au
- Send written correspondence outlining the request/issue to the above address and allow 7 working days for the amendments to take effect.

The customer should be aware that Direct Debiting through BECS is not available on all accounts and Account details should be checked against a recent statement from their Financial Institution.

If you are in any doubt, you should check with your Ledger Financial Institution before completing the drawing authority.

It is your responsibility to ensure sufficient cleared funds are in the nominated debiting account when the payments are to be drawn.

If the due date for payment falls on a non-working day or public holiday, the payment will be processed on the next working day. If the Customer is in any doubt, please refer to point 3 for further clarifications.

For returned unpaid transactions, the following procedures will apply:

The Customer will be emailed to advise that the payment has been rejected within 2 working days.

If no response has been received within a period of 2 working days, the Customer's account will be suspended until the matter has been resolved.

Fees and charges:

\$5.50 Returned Unpaid Transaction Fee applies.

\$5.50 Administration fee for all Credit Card/Direct Debit transactions retried for payment applies.

Any costs associated with the return of unpaid transaction fees that our bank may charge to Aussie Broadband, will be charged directly to the Customer.

All customer records and account details will be kept private and confidential to be disclosed only at the request of the Customer or Financial Institution in connection with a claim made to an alleged incorrect or wrongful debit.