

**Aussie Broadband Pty Ltd**  
**Australian Broadband Guarantee Wimax Wireless Service**  
**Terms and Conditions V2.2**

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Information regarding this agreement.

**Please read this Agreement carefully.**

The supply of Services under this agreement are provided by Aussie Broadband Pty Ltd ABN: 29 132 090 192, with its offices at 3 Electra Ave. Morwell, VIC, 3840 (in this agreement referred to as "our", "we", "us" or "Aussie Broadband") and in part by our Third Party Suppliers. By applying for Wireless Internet access and by using our 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.

**"Australian Broadband Guarantee Program"** means the Australian Broadband Guarantee Program established by the Commonwealth of Australia as represented by the Department that operates between 1<sup>st</sup> July 2010 and 30 June 2011 and as more fully described in the Australian Broadband Guarantee Program Guidelines.

**"Australian Broadband Guarantee Program Guidelines"** means the Australian Broadband Guarantee Program Guidelines published by the Department on the Australian Broadband Guarantee Program website in June 2010 at [www.dbcde.gov.au/abg](http://www.dbcde.gov.au/abg)

**"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 Wireless Broadband Application Form.

**"Service"** means the supply of Wireless Broadband access 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 by us as advised by us.

**"Application Date"** means the date your application is received by us either by fax or mail.

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

**"The Department"** means the Commonwealth Department of Broadband, Communications & The Digital Economy – An Australian Government Department.

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.

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 a Service to you and to provide the necessary information to

access that Service. We will use our best endeavours to ensure a continuous Service, however this is not guaranteed. We will aim to connect your service within 30 days (or a longer period agreed to by you and approved by the Department) of you agreeing to these terms and conditions. We will not be liable to you for any delay in connecting your service.

In the event of a Service outage or fault for which we are responsible, and where that outage requires an onsite visit we commit to restoration of the Service within 14 days, subject to a Force Majeure event. Where an outage does not require a service call we commit to resolving the outage within 2 working days.

We will take care of any personal information you provide us, in accordance with the *Privacy Act 1988* (cth) and our Privacy Policy as published on our website. You consent to us disclosing your personal information to the Department and other appropriate Government agencies for the purposes of Program administration, regulation, evaluation and further policy development.

Whilst 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 are not responsible for training you in the use of this Service.

The pricing and the plan which you have specified on your application form will be available to you for a period of 3 years from the commencement date without change in price, speed or data allocation. You may move up or down between our plans at any stage without any cost, however only the original plan is guaranteed at this rate.

At the conclusion of the initial 1 month contract term, you have the right to renew for a negotiated period at a monthly price no greater than the original contracted Price. The maximum contract term of the Service may not exceed 36 months from initial Australian Broadband Guarantee Service commencement.

You are entitled to enter into a fixed-term contract for the supply of the Program Service for 18 months, from the date of the commencement of the contract.

We commit to provide you with full information about the Australian Broadband Guarantee Service, as required under the Australian Broadband Guarantee Program

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 required to complete the customer declaration form and provide as attachments the relevant supporting information to show your eligibility under the Australian Broadband Guarantee.

You agree to provide a truthful declaration to us (and hold any relevant supporting documentation) so that that we can make a claim for an incentive payment under the Australian Broadband Guarantee program.

In order for you to receive this service you must be an eligible customer and have an eligible premises as defined under Section 2 of the Australian Broadband Guarantee Program Guidelines.

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

You are required to insure the Customer Premises Equipment including but not limited to Indoor equipment, external equipment including the antenna and associated

transmitting equipment against loss or damage caused by accident, natural disaster, vandalism and theft.

We will provide an invoice for the service on the date your connection becomes active and each month thereafter on that anniversary date. Your credit card or bank account will be debited within 7 days of the date of the invoice. Your monthly fee is billed in advance and any applicable excess usage charges are billed in arrears. Any applicable connection fees and additional hardware will be billed on your first invoice.

You agree that should your connection be suspended by us for failure to meet the agreed payment schedule that you will 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. We may terminate your connection for continued failure to meet payment schedule or payment of outstanding monies.

You agree that should your connection be terminated by us for failure to meet the agreed payment schedule that you will be liable for any collection fees (including legal fees and any other 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.

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 service.

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 the Service, and acknowledge that our payment terms are 7 days, should your credit card or bank account not be able to be debited or if payment is not received for any reason, you will be considered in default.

This service is for your use only, and reselling of bandwidth or services directly related to this connection is strictly forbidden.

#### 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.

You agree that only equipment certified by us, as listed and updated on our web site from time to time will be used with the Service.

This service is provided under Australian Broadband Guarantee. We are required to guarantee that you experience network availability 99 per cent of the time (excluding scheduled downtimes, which may be performed between midnight and 6am).

The average download and upload speeds must be at least 60% of the peak speeds and available on your selected service for at least 85% of the time.

We will participate in the Australian Broadband Guarantee performance reporting for the life of the Australian Broadband Guarantee Program.

You can test the data speed of your Australian Broadband Guarantee Service at <http://www.abgtest.com.au>

Where we are unable to provide a minimum guaranteed service for any reason and after agreement from you, we

may apply to the Department for an exemption to supply a lower level service under Australian Broadband Guarantee

You will have access to speed testing tools to check the speed of your link and your usage information (on at least a daily basis) will be available via the <http://www.aussiebroadband.com.au> website

Your acknowledge that we may limit certain traffic types or protocols on our network to enable peak performance and/or to prevent network attacks where that traffic may be affecting the overall performance of the network.

#### Universal Coverage

The Service can only be provided on qualified sites where clear line of sight to an access tower exists. Not all customer sites will be able to access the service. We will advise this at the time of attempting to connect your service.

#### 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 us or any of our Third Party Suppliers safe access to your premises if required.
- Ensure that we or our Third Party Suppliers are provided with sufficient and timely access to the premises to enable us to provide the service.
- If you do not have control or have access to the premises in with the service is delivered, you must:
- procure for us or our Third Party Suppliers all such access to the premises as may be required.
- Indemnify us and our Third Party Suppliers 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 viruses is forbidden, as is unauthorised access to system areas and information on our network or any systems connected to our network. Any Act which would contravene Australian Law is prohibited on our network.

You agree to accept total responsibility for the content of files owned by you and stored on our network, and also accept total responsibility for any data transferred or caused to be transferred across our network to your service.

You agree that you will not send unsolicited bulk commercial e-mail via any method.

You acknowledge that we do not edit, control, or store 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 your both your uploaded & downloaded data counts towards usage. Downloading and Uploading data occurs when you access web pages, send and receive email, and upload and download files. All access to any service on the internet incurs Uploads and Downloads.

Once your data limit has been reached your connection will either be "shaped" to 64K downstream and 64K upstream with no additional data charges.

Once your service is shaped, access is provided for reasonable use. Examples of reasonable use are web

pages, email and other interactive services. Continuous access services like peer to peer or other file sharing applications is not considered reasonable use once your connection is shaped. Should continuous use occur once your connection is shaped further shaping of the offending traffic may occur or your connection may be suspended.

#### Technical Support

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

You are able to log a fault 24 hours a day, 7 days a week via our phone messaging system by calling our support number 1300 731 851 – Cost of a local call (mobiles may be higher)

Manned Helpdesk hours are currently 8am to 8:30pm Monday to Friday and 10am to 4pm Weekends.

On Site visits are available for an additional fee.

#### Warranty on CPE Hardware

We will provide a full onsite warranty for the Antenna Hardware and associated Power Adaptors whilst you remain a customer of Ours.

#### Ownership of Equipment

All antenna and indoor equipment used in the Supply of our Wireless Broadband service remains Our Property. Should you disconnect your service with us, we will remove the equipment supplied at our cost.

#### IP Address Space

You agree that the IP addresses assigned under this agreement remain the property of us 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

We may assign any or all of the rights and obligations on its part contained herein subsequent to approval by the Department.

#### Information

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

#### Amendment

We may amend this agreement from time to time provided that the Department has approved all changes in writing. We will provide 20 working days written notice to you of any approved changes. The amendment will take effect unless you notify us in writing of your objection and cancellation.

#### Force Majeure

Neither party will be liable to the other for any failure to deliver our services or for any breach by it of this Agreement, where such failure or breach is due to a reason outside the reasonable control of such party, including, but not limited to: lightning, exceptionally severe weather, fire, explosion, war, industrial disputes, government action or regulation or national or local emergency. If such failure to deliver continues for more than 3 months after the commencement of such failure, then either party may terminate this Agreement on notice in writing to the other party.

#### Exit Strategy

In the event that our ABG Provider Registration is terminated voluntarily or otherwise, We will:

- allow You to terminate your service without penalty;
- honour our contract with You;
- You may elect to migrate to a comparable service offered by another Provider (if such a service is available), and we will make arrangements for a seamless transition of Your Service to the other Provider chosen by You; and
- where title to the CPE Equipment continues to reside with us, either:

- i) remove the CPE only after the You have been transitioned to another Provider, at no cost to You; or
- ii) offer to sell the CPE to the other Provider if the same technology is used by that Provider.

In the event that we propose to withdraw a Service but continue Registration as a Provider, and this proposal to withdraw the Service(s) has been agreed in writing and signed by the Department then we as required under subclause 29.2 of the Funding Deed, We will:

- give You at least 30 days written notice of the withdrawal;
- offer to migrate You from the withdrawn Service to a comparable Service, if such a service is available; and
- if no comparable Service is available, we will offer to migrate You to any one of our Threshold Service(s), or Added Value Service(s) as chosen by You.

If you nominate to migrate to any one of our Threshold Service(s) or Added Value Service(s), as applicable, we will give effect to the migration without any additional charge to You.

In the event You do not elect to migrate to any one of our Threshold Service(s) or Added Value Service(s), as applicable, we will:

- provide to You the contact details of all registered Providers, that may be able to offer a comparable service to You or details as to how You can ascertain such information; and
- provide reasonable assistance to You in transferring to a new comparable service, with another Provider (if such a service is available) as chosen by You;
- where title to you CPE continues to reside with us, either
  - i) remove the CPE only after You have been transitioned to another Provider, and at no cost to You;

or

- ii) offer to sell the CPE to the other Provider if the same technology is used by that Provider.

#### Australian Broadband Guarantee Service Definitions

**A Program Service** means an Internet access service meeting the performance and pricing requirements of the Australian Broadband Guarantee Guidelines that is registered under the Australian Broadband Guarantee and included for supply by a Provider under a Provider's Funding Deed. A Program Service can be an Entry Level Service, a Threshold Service or an Added Value Service. A full list of Program Services is available on the Aussie Broadband website at [www.aussiebroadband.com.au](http://www.aussiebroadband.com.au).

**A Threshold Service** means:

- A) Access to the Internet at a peak download/upload Data Speed of at least 1024/256 kbps and at least 6GB per month data allowance (of which, at least 3GB must be offered during peak periods and at least 3GB during off-peak periods).
- B) A price to the Customer over three years of no more than \$2500 (GST inclusive) including equipment, installation, connection, account establishment and ongoing provision of service. This amount excludes the cost of installing a fixed line telephone service to premises where such a service is available but not connected. No additional costs are to be charged to a Customer for non-standard installations. A non-standard installation may include installation of larger antenna masts, cyclone-proofing of equipment, higher gain antennas and separate mountings where necessary. The Service must not be conditional on other services being purchased (such as bundling, as outlined in Section 2.3.4.1 of the Guidelines).
- C) Availability 99 per cent of the time (averaged over a quarterly period) with average data download

and upload Data Speeds of at least 60 per cent of the specified peak Data Speeds at least 85 per cent of the time as measured in accordance with the Department's Data Speed testing regime, as described in Section 4.6 of the Guidelines and set out in detail on the Department's website at [www.dbcde.gov.au/abg](http://www.dbcde.gov.au/abg)

- D) [For the purposes of this agreement] Ownership of the CPE resides with the Provider. Where the CPE remains the property of the Provider, the Provider must ensure that appropriate arrangements are in place to maintain the CPE during the term of the contract, and where necessary, to repair or replace it within the overall approved pricing of the Service Plan.
- E) Free helpdesk support for Customer connection problems and service faults.
- F) The ability for the Customer to be informed within 24 hours of current data usage and any associated costs.
- G) Shaping of data to no less than 64 Kbps at no cost or excess data charges of no more than five cents per megabyte with no shaping for any data used above the specified monthly Data Usage Allowance (which may include advance purchase of blocks of data).
- H) Plans with initial excess usage charges at higher rates, up to the 5 GB data usage allowance, will be considered compliant if the total price to the Customer for this data usage over three years would not exceed \$2500 (GST inclusive).

As a requirement of Registration, We must offer at least one Threshold Service for each Service Solution registered.

An **Entry Level Service** is defined as:

- A) Access to the Internet at a peak download/upload Data Speed of at least 256/64 Kbps and at least 500 MB per month usage allowance (with no restrictions within these limits on downloads or uploads or usage time or peak/off peak limitations).
- B) A price to the Customer over three years, including equipment, installation, connection, account establishment and ongoing provision of service, that is appropriately discounted below the threshold price cap, and that appropriately takes into account the speed and functionality of the service and the incentive payment applying to the service.
- C) The price excludes the cost of installing a fixed line telephone service to premises where such a service is available but not connected. No additional installation costs are to be charged to the Customer for non-standard installations. A non-standard installation may include but not be limited to installation of larger antenna mast, cyclone-proofing of equipment and areas, higher gain receivers and separate mountings. The Department reserves the right not to register proposed Entry Level Services where an appropriate price discount is not applied.
- D) Service complies with the requirements at Section 2.3.1 (c)-(g) of the Guidelines

A **Value Added Service** is defined as:

- A) A condition of registration is that Providers must have registered at least one Added Value Service with at least 5GB per month usage allowance (with no restrictions within these limits on downloads or uploads or usage time or peak/off peak limitations), for each Service Solution registered. Providers are also encouraged to register additional Added Value Service Plans with greater functionality including higher Data Speeds and/or

data usage allowances which exceed those applying to a Threshold Service.

- B) When registering an Added Value Service, the Provider is required to demonstrate that:
  - 1. The price for that Service appropriately takes the Incentive Payment into account
  - 2. The price of the Added Value Service is reasonable (commensurate with the additional features) relative to the price of the Provider's Threshold Service using the same Service Solution.
  - 3. The Service complies with the requirements at Section 2.3.1(c)-(g) of the Guidelines

The Data Speeds and/or usage allowance must exceed that applying to the Provider's Threshold Service to be recognised as an Added Value Service. For the purposes of Data Speed Testing outlined in Section 4.6 of the Guidelines, Providers must nominate a peak Data Speed for each of their Services. The Service must achieve 60 per cent of nominated peak speeds at least 85 per cent of the time.