



RETAIL WiMAX BROADBAND APPLICATION

Information regarding this agreement.

Please read this Agreement carefully. The supply of Services under this agreement is 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 High Speed WiMAX Broadband 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.

“**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.

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.

Some products have a minimum contract term. If your contract term is terminated before the end of this term you may be required to pay fees.

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 (unless a priority installation option is selected in which case this will be 10 days). We will not be liable 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.

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.

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 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, 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 if you do contact one of our Third Party Suppliers 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 are the maximum theoretical speed achievable with the service under ideal conditions. You acknowledge that actual speeds may be different from 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. You 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 which 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 both your uploaded & downloaded data count 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, or you may elect to keep your connection at full speed and pay an additional usage fee which will not be greater than 2 cents per megabyte.

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 are 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 880 905 – 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 and Public Holidays. 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.

Other Fees and Charges

Should you wish to relocate your connection to another area serviced by Aussie Broadband, you agree to pay a fee of \$199.00 each time you wish to relocate.

Direct Debit 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. Any excess data charge if applicable. Other charges including VoIP services, fixed phone 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 service information line on 1300 880 905
- Vis our office
- Email us at accounts@aussiebroadband.com.au
- Send written correspondence and allow 7 working days for a response.

The customer should also 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 your ledger financial institution before completing any drawing authority.

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

If the due date for a payment falls on a non-working day or a public holiday, the payment will be processed on the next working day.

For returned unpaid transactions the following procedures will apply:

The customer will be emailed, telephone or have an SMS sent to advise that the payment has been rejected within 2 business days.

If no response has been received within 2 business days the customer's account will be suspended until the matter has been resolved.

Fees and charges:

\$5.50 returned unpaid transaction fees apply

Any costs associated with the return of unpaid transaction fee 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 if the customer of financial institution in connection with a claim made to an alleged incorrect or doubtful debit.



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.

If you are in any doubt you should check with our ledger financial institution before completing the drawing authority.

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 and You.

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. 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.