



## **Standard Form of Agreement ('SFoA')**

### **General Terms**

Australian Broadband Services Pty Limited  
ABN 97 150 723 354  
(‘AusBBS’)

## **Contact AusBBS**

If You have any concerns or queries, You may contact us as follows:

### **Postal Contact**

AusBBS  
Attn – Customer Service  
Suite 2201 Level 22 Tower Two  
101 Grafton Street, Bondi Junction NSW 2022

### **By email**

[customerservice@ausbbs.com.au](mailto:customerservice@ausbbs.com.au)

### **By phone**

Customer Service  
Trading Hours:  
Monday – Friday: 8.30 a.m. – 6.30 p.m. (AEST / AEDT)  
Contact Number: +61 2 91464740

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## Introduction

The Standard Form of Agreement: General Terms, sets out the terms and conditions of the Service and of Use of the AusBBS Website at [www.ausbbs.com.au](http://www.ausbbs.com.au) . To the extent of any inconsistency, the Standard Form of Agreement: General terms shall prevail over the relevant Service Description. The Service Description is the description of each individual service, plan or product set out of the AusBBS Website.

Last Updated: Wednesday, 13 May 2015

## Section One - Preliminary Agreement

Upon creation of an account with AusBBS you agree to abide by to terms of Section One of this Agreement only.

### 1. Section One Acceptance

By clicking on the box to accept the AusBBS Terms and Conditions and submitting an order on the AusBBS website at [www.ausbbs.com.au](http://www.ausbbs.com.au) (the AusBBS Website), or instructing an AusBBS representative complete and order on your behalf, You agree that AusBBS may contact you in regards to its Service.

### 2. Account, Password, Security

- (a) You will receive a password and account designation upon completing the AusBBS Create Account page. You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities that occur under your password or account. You agree to
  - (i) immediately notify AusBBS of any unauthorized use of your password or account or any other breach of security , and
  - (ii) ensure that you exit from your account at the end of each session. AusBBS cannot and will not be liable for any loss or damage arising from your failure to comply with this Section.
- (b) You agree to provide true, accurate, current and complete information about yourself as prompted by the AusBBS registration process (such information being the "Subscriber Information") and maintain and promptly update the Subscriber Information to keep it true, accurate, current and complete. If you do not, or AusBBS has reasonable grounds to suspect that you have not, AusBBS has the right to suspend or terminate your account.
- (c) Subscriber Information and certain other information about you are subject to our Privacy Policy at [www.ausbbs.com.au/files/AusBBS\\_Privacy\\_Policy.pdf](http://www.ausbbs.com.au/files/AusBBS_Privacy_Policy.pdf) . Australian Broadband Services Pty Limited ('AusBBS') is committed to adopting the highest standards to safeguard customers' personal information.

### 3. Uploaded Content

- (a) AusBBS operates various online features ("Forums") that allow You to upload content including words, information, content, messages, text, files, images, photos, videos, music, sounds and profiles (collectively, "User Content"). For clarity this clause does not apply to Subscriber Information. You are responsible for all User Content, as set forth below.
- (b) You may not provide a false email address, impersonate any person or entity, or otherwise mislead as to the origin of any User Content.
- (c) Any photographs posted by you may not contain nudity or obscene, lewd, excessively violent, harassing, sexually explicit or otherwise objectionable subject matter.
- (d) Information or User Content provided by other Users may contain inaccurate, inappropriate or offensive material, products or services, and AusBBS assumes no responsibility or liability for this material.
- (e) AusBBS reserves the right, in its sole discretion, to reject, refuse to post, link to, or remove any User Content, or to restrict, suspend, or terminate your access to all or any part of the the AusBBS website and/or the Forums at any time, for any or no reason, with or without prior notice, and without liability.
- (f) AusBBS has the right but not the obligation to remove or edit User Content, but does not regularly review User Content. AusBBS takes no responsibility and assumes no liability for any User Content.
- (g) Unless AusBBS indicate otherwise, you grant AusBBS and its affiliates a nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable right to use, display, perform, reproduce, publish, and distribute such User Content throughout the world via the Forums.
- (h) You grant AusBBS and it affiliates the right to use the name that you submit in connection with such User Content. You are solely responsible for any necessary payments that may become due to any third parties as the result of your posting of or linking to the User Content and AusBBS's use thereof.
- (i) User Content shall not be illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties or objectionable. The following is a partial list of the kind of User Content that is illegal or prohibited on the Forums. Prohibited User Content includes but is not limited to content that:
  - (j) is obscene, patently offensive, or promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
  - (i) harasses or advocates harassment of another person;
  - (ii) involves the transmission of "junk mail", "chain letters," or unsolicited mass mailing or "spamming";
  - (iii) consists of information that you know is false or misleading or promotes illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
  - (iv) consists of an illegal or unauthorized copy of a copyrighted work, such as sound recordings, musical compositions and videos in which you do not personally own the copyright (including CDs and tracks you may have purchased), or otherwise do not have the necessary authority from the copyright owner(s);

- (v) computer programs or links to them or providing information to circumvent manufacturer-installed copy-protect devices; (vii) contains restricted or password-only access pages or hidden pages or images (those not linked to or from another accessible page);
  - (vi) provides material that exploits people under the age of 18 in a sexual or violent manner, or solicits personal information from anyone under 18;
  - (vii) provides instructional information about illegal activities such as making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses; solicits passwords or personal identifying information for commercial or unlawful purposes from other users;
  - (viii) involves commercial activities and/or sales without our prior written consent such as contests, sweepstakes, barter, advertising, or pyramid schemes; or
  - (ix) uses sexually suggestive imagery or any other unfair, misleading or deceptive content intended to draw traffic to the profile.
- (k) AusBBS reserves the right to investigate and take appropriate legal action in its sole discretion against anyone who violates this provision, including without limitation, removing the offending User Content from the Forums and terminating the membership of such violators.
- (l) Should AusBBS discover or be informed that you have posted User Content for which you do not personally own the copyright or otherwise do not have the necessary authority from the copyright owner, AusBBS may take all appropriate steps to rectify your noncompliance, including without limitation, disabling your ability to upload User Content to the Forums, unless you provide AusBBS with a counter notification of your right to upload such User Content acceptable to AusBBS at AusBBS's sole discretion. Should AusBBS discover or be informed that you continue to upload User Content for which you do not personally own the copyright or otherwise do not have the necessary authority from the copyright owner after AusBBS has made reasonable efforts to disable your ability to do so, you will be considered a repeat infringer, and AusBBS will terminate your account and delete all data associated with your account; remove all of the User Content you have uploaded/submitted to the Site; and use its reasonable efforts to prohibit you from signing up for another User account in the future.

### **3. Conduct**

- (a) You agree to abide by the terms of Section One of this Agreement, and to not use the Forums to:
- (i) interfere with, manipulate, or take any actions that may undermine the integrity of any rating system used on the Forums;
  - (ii) interfere with or disrupt the Forums or servers or networks connected to the Forums, or disobey any requirements, procedures, policies or regulations of networks connected to the Forums;
  - (iii) collect or store personal data about other Users; or
  - (iv) harass, abuse, or harm another person, or in order to contact, advertise to, solicit, or sell to any other User without their prior explicit consent.
  - (v) reverse engineer or decompile any elements of the Forums except to the extent you may be expressly permitted to decompile under applicable law, it is essential to do so in order to achieve operability of the Forums with another software program, and you have first requested AusBBS to provide the information necessary to achieve such operability and AusBBS has not made such information available..



- (b) Without limiting other remedies, AusBBS and its affiliates may immediately warn Users of your actions, issue a warning, temporarily suspend, indefinitely suspend or terminate your membership and refuse to provide the Forums to you if:
- (i) you breach this Agreement or the documents it incorporates by reference;
  - (ii) AusBBS are unable to verify or authenticate any information you provide to us; or
  - (iii) AusBBS believe that your actions may cause financial loss or legal liability for you, us or other subscribers to AusBBS.
- (c) Your membership will be terminated and you will be denied access to the Forums if you breach this Agreement or any other agreement between you and AusBBS in any way on more than one occasion.
- (d) You are solely responsible for your interactions with other Subscribers to AusBBS. AusBBS reserves the right, but has no obligation, to monitor disputes between you and other subscribers to AusBBS.

## Section Two – Service

Upon creation of an account with AusBBS, completion of the AusBBS plan and product selection process, and payment of a deposit to AusBBS, by either yourself or an AusBBS representative at on Your instructions, You agree to abide by to all terms of this Agreement.

You agree to acquire from AusBBS the Service on these Terms and Conditions and the terms and conditions contained in the relevant Service Description. AusBBS agrees to provide the Service to You subject to these Terms and Conditions and the relevant Service Description provided that You meet the requirements of AusBBS. To the extent of any inconsistency, these Terms and Conditions shall prevail over the relevant Service Description. You must ensure that third parties using the Service do so in accordance with these Terms and Conditions and the relevant Service Description.

### 4. Acceptance of Section Two

By clicking on the box, to accept the AusBBS Terms and Conditions on the AusBBS Website and placing an order for an AusBBS Service, or by advising an AusBBS representative to do so on Your behalf over the phone, You agree that this Agreement is a legally binding agreement between You and AusBBS.

### 5. The Service

- (a) Australian Broadband Services Pty Limited ('AusBBS') is a retailer of the internet and phone services set out on the AusBBS website and updated from time to time ('the Service').
- (b) AusBBS will endeavour to provide the Service in accordance with the relevant Service Description set out on the AusBBS Website but may change some elements of the Service Description at any time for operational or network planning reasons. AusBBS will use its reasonable endeavours to ensure that such changes do not adversely impact Your use of the Service.

(c) You agree that AusBBS may at any time, and without first telling You or asking for Your consent:

- (i) modify or replace one or all of the features of the Service; or
- (ii) provide additional features to those set out in the Description of Service.

## **6. Necessary interruptions**

From time to time necessary interruptions to the Service may occur for reasons such as maintenance or upgrades.

## **7. Customer Service**

If You experience a fault using the Service contact us by email on [customerservice@ausbbs.com.au](mailto:customerservice@ausbbs.com.au) and inform a Customer Service Representative of Your difficulties. AusBBS will attempt to resolve any problems as soon as practicable. You are required to report faults accurately and respond promptly to all reasonable requests from AusBBS Customer Service Representatives to troubleshoot and resolve any reported fault or issue with your service.

## **8. Fraudulent Use of Service**

You agree to notify AusBBS immediately, in writing to [customerservice@ausbbs.com.au](mailto:customerservice@ausbbs.com.au) or by calling the AusBBS on +61 2 8095 6550 if You become aware at any time that Your Service is being stolen or fraudulently used. When You call or write, You must provide Your account number and a detailed description of fraudulent use of AusBBS Service. Failure to do so in a timely manner may result in the termination of Your Service and additional charges to You. You will be liable to pay for the services used if the Service is breached and used inappropriately regardless of lack of awareness or knowledge. If You are responsible for theft of the Service, AusBBS will take whatever course of action necessary to recover damages and lost income from You that AusBBS is rightfully entitled to.

## **9. Emergency Services**

You acknowledge and understand that dialling 000 emergency services do not function correctly if You move or otherwise change the physical location of the Service. In the event that You dial an emergency service number from the Service, the service address provided by You to AusBBS will be displayed to the emergency services operator. It is Your responsibility to notify AusBBS of any changes to Your Service address details. In the event of a power failure or disruption to Your Broadband Internet connection, You will not be able to use the AusBBS service to contact emergency services. For this reason AusBBS recommend that You have an alternative medium of contact, such as a mobile telephone.

## **10. External interruptions**

Because AusBBS is dependent on the networks of Carriers over which AusBBS has no control, certain features of the Service may not be available when You are using the Service, and AusBBS does not guarantee the quality and reliability of the Service. Other factors such as third party hardware and/or software together or Your Broadband Internet connection may also cause interruptions to the Service for which AusBBS takes no responsibility. AusBBS will not be liable to provide the Service to You if it becomes impracticable to do so due to causes beyond AusBBS's reasonable control, including, without limitation, force majeure,

civil disorder or war, national or local emergency, adverse weather conditions, industrial dispute or acts or omissions of other Carriers or Carriage Service Providers or any authority.

### **11. Your Equipment**

Maintenance of wiring and equipment in your premises that is beyond the networks of Carriers over which AusBBS delivers its Service ('Your Equipment') is solely Your responsibility. Where there is a reported fault with the Service, AusBBS will communicate with You to identify the cause and You are required to test Your Equipment and the Service and provide results in accordance with instructions provided by AusBBS.

### **12. Changing Pricing Plans**

AusBBS may in its absolute discretion agree with You to change Your Pricing Plan. AusBBS will only permit You to change Your choice of Pricing Plan once a month. Your Pricing Plan will be changed within 7 days of AusBBS receiving Your request and Your Monthly Service Fee and any included calls will pro rata. To change Pricing Plans contact AusBBS Customer Service or visit the AusBBS Website.

### **13. Changing to Pricing Plans supplied by different Networks**

AusBBS may in its absolute discretion agree with You to change Your Pricing Plan to a Pricing Plan supplied by a different network supplier to AusBBS. Switching Fees for changing to a Pricing Plan supplied by a different network supplier to AusBBS will vary depending on costs incurred by AusBBS in order to make the change.

### **14. Your Obligations Regarding the Use of the Service**

When using the Service, You will ensure that You and others comply at all times with all laws and obligations, regulations, codes or determinations or any other requirements of any government or statutory authority, including licence conditions, applicable to the Services and their use. Failure to comply with any licence, permit or authorisation relating to the connection of equipment to the Service Delivery Point or the use of the Services may result in immediate termination of the agreement. You must take all reasonable steps to ensure that any other person who uses the Service must only use the Service in accordance with this Agreement or otherwise in a manner approved by us. You must not use the Service, attempt to use the Service or allow the Service to be used in any way that involves:

#### **Breach of law**

- a) Which results in You or AusBBS breaching, or being involved in a breach of a law, order or regulation (including a foreign law, order or regulation), a mandatory code of conduct; or a voluntary code of conduct that You have agreed to comply with;
- b) Damage to property or people which results, or could result, in damage to property or injury to any person;
- c) To harass, menace or stalk people;

#### **Protection of minors**

- d) Which enables a minor to access material inappropriate for a minor or to establish (or try to establish) contact with a minor not otherwise known to You;

### **Discrimination**

- e) Which unlawfully incites discrimination, hate or violence towards one person or group, for example because of their race, religion, gender or nationality;

### **Obscene, defamatory, offensive, abusive**

- f) To send, display or be otherwise involved in material, which is obscene or defamatory;
- g) Which is, or which would be considered by a reasonable person to be, offensive or abusive;

### **Illegal business practices and gambling**

- h) To engage in any misleading or deceptive business or marketing practice;
- i) that involves providing or promoting illegal pyramid selling schemes or unlawful gambling or gaming activities;

### **The rights of others**

- j) Which infringes AusBBS or any other person's rights (including intellectual property rights and moral rights);
- k) Which constitutes a misuse of AusBBS or any other person's confidential information;  
or
- l) Which results in a breach by You of any obligation that You owe to any person.
- m) Resell, distribute or reproduce any part of the Service;
- n) Use calling line identification or information derived from calling line identification except in accordance with the Privacy Act
- o) Disclose to any person any Confidential Information, security number or password provided by us (including but not limited to Your customer number, or personal identification number).

You indemnify and shall keep AusBBS indemnified against all claims, costs, loss, expenses or injuries arising in relation to a breach of this clause.

## **14. Change of Details or Line Status**

If You relocate or change Your correspondence address (electronic or otherwise) You must inform AusBBS of this change immediately. If the status of Your line with Your local network operator changes this may affect Your access to certain Services and You should advise one of our Customer Service Representatives by email on [customerservice@ausbbs.com.au](mailto:customerservice@ausbbs.com.au)

If You are using an AusBBS ADSL service through a third party pstn phone line provider, it is Your responsibility to maintain that line and ensure that it remains in service. Failure to do so may cause your AusBBS ADSL service to be disconnected and incur charges for reconnection.

## Section Three - Charges and Billing

### 15. What You will be charged for the service

AusBBS will charge You the Charges for Your use of the services applicable to the chosen Pricing Plan selected.

#### The Charges

The Charges include:

- A Monthly Service fee which AusBBS will charge You on Your invoice issue date, monthly in advance;
- Charges for Your use of the Service which AusBBS will charge You monthly in advance and arrears as applicable;
- Miscellaneous charges (for example, connection and disconnection charges if applicable) which AusBBS will also charge You monthly in arrears whenever You incur such charges, each of which are set out in the Description of Service Features and Charges and include GST (where applicable or unless otherwise indicated) but not any other government taxes, which You may also be required to pay.

#### Rounding

The actual charges AusBBS charge You may vary on Your Invoice, as each Charge is rounded up to the nearest cent before GST is included.

#### Variations to Charges and special promotions

If AusBBS wish, AusBBS may:

- Change the Charges from time to time or decide not to make a particular Charge; and
- Run special promotions or offers from time to time in connection with the service under which particular Charges may be waived or may differ from those set out in the Description of Service Features and Charges. You may be eligible to participate in a special promotion or offer depending on its terms and conditions. AusBBS may withdraw a promotion at any time. And unless otherwise specified or agreed to by AusBBS, promotions may not be used in conjunction with one another. You may obtain a copy of the current Charges by visiting the AusBBS Website.

### 16. Payment for the service

#### Invoicing

AusBBS will issue You with invoices, which will be sent to nominated e-mail address. You will be invoiced monthly on Your invoice issue date. If You do not receive Your invoice it is Your responsibility to notify AusBBS immediately. AusBBS does not issue paper invoices.

The presentation of the invoice maybe affected by Your choice of equipment and software. AusBBS will not accept any responsibility for consequential presentation, distortion or absence.

### **Invoice charges**

Invoices are sent via e-mail in a softcopy PDF format. Any billing enquiries should be sent using the form at <http://www.ausbbs.com.au/contactus>.

### **Invoice Frequency**

An electronic invoice is issued once a month on Your invoice issue date.

### **Payment of Your Invoices**

Upon connection, You agree to make all payments from Your nominated credit/charge card or bank account by direct debit unless otherwise agreed by us, at our discretion. Depending on Your method of payment, You may be required to pay a surcharge (e.g. BPAY, Visa, Mastercard, Paypal). Surcharges are not refundable. You must pay each invoice in full by the due date, that is, 14 days from Your invoice issue date or on the next business day.

### **Overdue Invoices**

If You do not pay Your invoices on time or cancel Your payment authority, You will be liable for additional fees as set out in this Agreement.

## **17. Assessment**

### **Credit Assessment**

When assessing Your application for AusBBS services, AusBBS may at its discretion undertake a Credit Assessment to determine whether to supply You with a service. When subscribing to AusBBS, a Credit Assessment may include but is not limited to:

- A charge of \$1.00 against the credit/charge card supplied by You in Your application/order. This charge is to ensure the credit card supplied by You is valid. The charge of \$1.00 will then be refunded the following business day;
- Your employment status;
- Your residential history;
- A Credit Check with a Credit Reporting Agency

If You are an existing AusBBS customer this Credit Assessment may include but is not limited to:

- Your previous payment history with AusBBS;
- Another charge of \$1.00 against a new/replacement credit card nominated by You. This charge is to ensure the credit card supplied by You is valid. The charge of \$1.00 will then be refunded the following business day.

Note - For more information regarding the Provision of Credit and the Privacy Act 1998 please refer to Section 6 - Personal Information of this Agreement. Should AusBBS decide to refuse to supply You with a service, which is entirely or partially based on information provided by a Credit Reporting agency, You have the right to ask:

- Why the application/order for AusBBS services has been refused;
- Why the decision was entirely or partially based on information about You, provided to AusBBS by a Credit Reporting Agency;
- What the name and address of the Credit Reporting Agency; and
- What Your right to obtain access to Your credit file from the Credit Reporting Agency.

## **18. Payment Obligations**

### **Your Obligations**

You must pay us all the Charges and fees, which You incur accessing and using the Service. Together with all applicable government taxes and charges by the due date of Your invoice.

You agree that all Charges incurred by You in using the AusBBS Service are Your responsibility, irrespective of whether You or another person (with or without Your consent) used this Service i.e. to use Your internet connection, make calls and incur charges without Your knowledge.

AusBBS has chosen to structure its charges so that all monthly Service Fees are charged in advance and any call charges are charged in advance and arrears as applicable.

- You must provide us with Your credit card details, or alternate payment details (agreed to by us at our discretion) and advise of any changes to these details, for the purposes of paying for Your AusBBS Service. AusBBS may:
  - a) Charge all fees to Your nominated payment method on a monthly basis from Your Service commencement date; and
  - b) Disclose Your payment details to, and obtain information from, any financial institution to verify Your payment details.
- You must take steps to verify that You have sufficient funds on Your credit card or bank account
- to meet likely fees.
- You must take all steps to ensure that AusBBS is notified of any changes to Your payment details.
- If any amount owed by You remains unpaid after the due date, AusBBS may terminate this Agreement.
- Processing and verification procedures may mean that not all charges made during the period covered by an invoice can be included in that invoice. AusBBS may include those charges in any subsequent invoices for a period of up to 190 days after the call was made.
- Your invoice will be calculated by reference to data recorded or logged by AusBBS.
- Records held, usage logging and call-logging procedures adopted by AusBBS will be conclusive evidence of the usage of the Service and the charges payable by You.

- If Your accumulated Internet usage or call charges for use of the Service are deemed as high usage at any time, AusBBS may at AusBBS's discretion, suspend Your access to the Service. AusBBS may suspend provision of the Service to You without prior notice.
- In addition, AusBBS may impose a charge on You to cover AusBBS's reasonable expenses and costs incurred in enforcing any failure or delay in Your payment.
- You must pay any taxes (including, without limitation, any goods and services tax), duties, stamp duties, imposts, levies or government charges relating to Your use of the Service.

Despite anything in these Terms and Conditions, AusBBS may suspend Your Service as a result of any unpaid charges extending beyond 60 days from the date that the charges were due for payment. If any amounts are outstanding beyond 60 days from the date on which payment for those charges was due, this Agreement may be terminated by AusBBS immediately and You will be required to pay all outstanding charges to AusBBS immediately.

- After debt collection activities, Your account remains unpaid in part or in whole for a period of two months (60 days) from the due date, Your information maybe referred to a debt collection agency or credit reference agency. AusBBS may charge reasonable expenses in connection with recovery of late payments (including the costs of engaging a mercantile recovery agency). If AusBBS engages a mercantile agent or institutes legal proceedings to recover any outstanding amounts due under the terms and conditions of this contract, You will, to the extent permitted by law, be liable for AusBBS's costs of taking that action.
- If You are declared to be experiencing financial hardship under AusBBS's Financial Hardship Policy and Your account remains unpaid in part or in whole for a period of two months (60 days) from the due date, AusBBS may agree to extend repayment of any outstanding fees beyond 60 days.

If You believe there is an error with Your account, please let us know immediately. If AusBBS agree that there is an error, AusBBS will endeavour to rectify this error to reflect on Your next invoice.

## 19. Miscellaneous Costs

Note all prices include GST.

| <b>MISCELLANEOUS FEES</b>  |  |                      |   |
|--|--|----------------------|---|
| <b>Fee Name</b>  | <b>Fee Description</b>   | <b>Fee Per Event</b> | <b>Alternative Fee</b>  |
| Early Termination Fee for 12 month and 24 month residential internet service contracts | Where you elect to terminate this agreement prior to the end of the Term |                      | Fee amount equal \$20 multiplied by the remaining months in the Term. |
| Early Termination Fee for SME internet service contracts                               | Where you elect to terminate this agreement prior to the end of the Term |                      | Fee amount equal to the monthly plan rate multiplied                  |



|  |  |         |  |
|--|--|---------|--|
|  |  |         | by the month remaining.  |
| Plan Downgrade Fee   | Where you elect to change your plan to a lower cost plan   | \$29.00 |  |
| Late order withdrawal fee  | Where you elect to withdraw your submitted contract before connection. Fee is waived if we provide an installation date more than 6 months from the date of order, or if no service can be provided.   | \$100   |  |
| Network switching Fee  | To be advised upon calculation of network switching costs.   |         |  |
| PSTN Line install Admin Fee  | To be charged in addition to any line install / activation fees charged by Telstra. This fee is non refundable.  | \$50    |  |
| Late Payment Fee   | The late payment fee may apply to customers who do not pay their invoice in full on the Due Date.  | \$5.00  |  |
| Direct Debit Decline Fee   | Where your direct debit payment is dishonoured.  | \$12.00 |  |
| Cheque Decline Fee   | Where your cheque payment is dishonoured.  | \$20.00 |  |
| Reconnection of a Suspended Account  | This fee is charged if your account is reconnected, after having been suspended due to non-payment of an invoice/s. Together with this fee you are also required to pay the outstanding invoice/s owing, prior to the reconnection-taking place. | \$25.00 |  |
| Reconnection of a suspended account due to disconnection of third party PSTN line. | This fee is charged if your account is reconnected, after a third party supplied PSTN line is disconnected. Together with this fee you are also required to pay the outstanding invoice/s owing, prior to the reconnection-taking place.         |         | Fee amount equal to AusBBS downstream supplier charges for reconnection. |
| Disconnection Fee  | This fee is charged your service is disconnected due to continued failure to pay amounts owed to AusBBS after multiple warnings followed by disconnection of your service under Section Five of this Agreement.                                  | \$100   |  |
| Third Party Collection   | Applicable once an account is passed to a third party collection agency. But only after the account has been disconnected due to non-payment, and previous Credit Control activity deemed futile.  | \$50.00 | 27% (whichever is greater)   |
| Account Split / Merge Fee  | Applicable when a customer requests to have the phone numbers from their account split into separate accounts. Or to have separate accounts merged into a single account.  | \$10.00 |  |
| Hardcopy Invoice   | The charge applies to each hardcopy invoice you request in addition to your e-mail invoice automatically sent on your invoice issue date.  | \$5.00  |  |

|                                      |  |         |  |
|--------------------------------------|--|---------|--|
| Access to Personal Information       | In accordance with the National Privacy Principles, AusBBS must provide the customer with access to the information on request by the customer. To provide a copy of the Customer Details and Notes History file.  | \$5.00  |  |
| Incomplete Returns Charge            | All hardware that is returned to AusBBS, must be returned in the original condition in which it was received, inclusive of the hardware, all cabling, manuals and any other included parts. If the hardware is returned without all the necessary components, you will be charged a fee. Damaged hardware will be charged the RRP of the package. A \$26.00 fee applies for incomplete returns | \$25.00 |  |
| Incorrect Chargeback Fee             | In the event that you authorise an unsubstantiated or inappropriate charge back of your payment from a credit/charge card, bank account or any other applicable payment facility.  | \$25.00 |  |
| Quotes / Repair Charges for Hardware | To be advised upon inspection and assessment.  |         |  |
| Postage and Handling                 | Orders/hardware purchased directly from AusBBS over the phone or via the website will attract this fee. Providing the ordered product is in stock, AusBBS will endeavour to despatch your order by the following business day.   | \$15.00 |  |
| Payment Method Surcharge 1           | For any payment using a Visa Card or Mastercard you will be charged a % surcharge for amount paid.   | 2%      |  |
| Payment Method Surcharge 2           | For Direct Debit transactions you will be charged a transaction fee.   | \$0.55  |  |
| Payment Method Surcharge 3           | For Paypal transactions you will be charged a transaction fee.   | \$0.55  |  |
| Payment Method Surcharge 4           | For Bpay transactions you will be charged a transaction fee.   | \$0.55  |  |
| No Fault Found                       | This fee is charged to your accounts if a fault is found to be caused by your own equipment or setup after you have requested escalated technical support and a specialist has been called in to check your line. Faults not associated with your equipment or setup will incur no charge.   | \$140   |  |
| Service callout fee type 1           | Attendance during a Business Day   | \$85    |  |
| Service callout fee type 2           | Attendance outside a Business Day  | \$275   |  |
| Service callout fee type 3           | 15 minutes labour during a Business Day  | \$35    |  |
| Service callout fee type 4           | 15 minutes labour outside a Business Day   | \$50    |  |

## Section Four – Term of Service

### 20. Term of Agreement

The term of Your Agreement is outlined below.

Where You have selected a Casual Term, the term of Your agreement;

- Commences when You are first connected to the AusBBS service;
- Ends when it is terminated by You in accordance with this Agreement; or
- Ends when it is terminated by AusBBS in accordance this Agreement.

12 month agreement:

- Commences when You are first connected to the AusBBS service;
- Ends when it is terminated by AusBBS in accordance with this Agreement.
- Ends when it is terminated by You in accordance with this Agreement on Your invoice issue date; or
- Ends where the 12 months from the date You are first connected to the AusBBS service has expired and You have continued to use the service on a month-to-month basis and thereafter until terminated by You in accordance with this Agreement.

24 month agreement:

- Commences when You are first connected to the AusBBS service;
- Ends when it is terminated by AusBBS in accordance with this Agreement.
- Ends when it is terminated by You in accordance with this Agreement on Your invoice issue date; or
- Ends where the 24 months from the date You are first connected to the AusBBS service has expired and You have continued to use the service on a month-to-month basis and thereafter until terminated by You in accordance with this Agreement.

## Section Five – Suspension or Termination of the Service

### 21. Suspension for High Usage/Unusual Usage

AusBBS randomly monitors high usage of the Service. At our discretion AusBBS may suspend the Service (or any part of the Service) until You pay the next invoice or incurred call charges. AusBBS may suspend or limit the Service if in our opinion the amount of charges incurred is unusually high, having regard to matters including:

- Your previous daily charges;
- Your uninvoiced charges total; and
- Any unusual calling patterns.

Suspension for unusually high charges is to protect You against unaffordable charges incurred. AusBBS will attempt to contact You prior to suspension of the service.

### 22. Fair Use of Pay As You Go (PAYG) Pricing Plans

AusBBS PAYG Pricing Plans are not intended for very high usage. Usage above 150GB for two consecutive months will be considered unfair use of a PAYG plan. Where such unfair use of PAYG plans occurs, AusBBS may, at its sole discretion offer to change Your Pricing

Plan to an Alternative Pricing Plan with a data quota or data cap appropriate to the level of usage recorded. Where you do not agree to change to the Alternative Pricing Plan, AusBBS may at our sole discretion suspend your account.

## **23. Acceptable Use Policy of All Pricing Plans**

### Summary

- (i) Our Acceptable Use Policy applies to all services (“Acceptable Use Services”).
- (ii) Our Acceptable Use Policy is intended to ensure:
  - a. the availability of our services to all eligible AusBBS Customers; and
  - b. that the Acceptable Use Services are not used in an unreasonable manner.
- (iii) AusBBS reserves the right to vary the terms of this Acceptable Use Policy from time to time.
- (iv) AusBBS may rely on the Acceptable Use Policy where Your usage of the Acceptable Use Services is unreasonable, as defined below.

### **Unreasonable Use**

- A. It is unreasonable use of a Acceptable Use Service where Your use of the service is reasonably considered by AusBBS to:
  - a. be fraudulent;
  - b. involve a non-ordinary use;
  - c. cause significant network congestion, disruption or otherwise adversely affect the AusBBS network, a supplier’s network; or
  - d. adversely affect another person’s use of or access to the Acceptable Use Services, the AusBBS network or a supplier’s network.
- B. Without limitation:
  - a. Fraudulent use includes resupplying or reselling a Service without AusBBS’s written consent so that someone else may access, use or commercially exploit a Acceptable Use Service;
  - b. Non-ordinary use includes circumstances where You make or receive calls and/or make use of the internet on Our network in any non-ordinary manner without obtaining Our written consent first, which consent AusBBS may give or withhold, or make subject to conditions, in Our discretion. Use in a non-ordinary manner includes:
    - i. in the case of fixed line services:
      - a. usage for running a telemarketing business or call centre; and
      - b. usage with handsets, auto-dialler devices or software or other equipment that have not been approved by Us for use on Our Network;
    - ii. in the case of mobile services, any use of a SIM in a SIM box, GSM gateway or any device that is used to automatically re-route calls;
    - iii. usage to menace, harass or injure any person or damage anything;
    - iv. usage in connection with an infringement or committing an offence against any law, standard or code; or

v. any other activity which would not be reasonably regarded as ordinary use in relation to the Acceptable Use Service.

## **Our Rights**

- If AusBBS reasonably considers that Your use of the Acceptable Use Services is unreasonable, AusBBS may, at its sole discretion, without telling You before doing so:
  - a. suspend or limit the Service (or any feature of it) in accordance with this Agreement; and/or
  - b. terminate the Service in accordance with Our Agreement with You.
  
- This policy is supplementary to and does not limit any of AusBBS's rights.

## **24. Immediate suspension, limitation and termination in our absolute discretion**

Although AusBBS will try to give You as much notice as is reasonably practicable, AusBBS may, if AusBBS chooses (and without notice) immediately:

- Suspend or limit the Service (or any feature of it) for any period AusBBS think is reasonably necessary; or
- Terminate this Agreement, if:
  - You fail to pay us the charges or are in breach of this Agreement, and where such breach can be corrected, You fail to correct the breach within 7 days of us requesting You to do so;
  - AusBBS believe that the use of the Service (or any feature of it) by You or any other person is or might damage, impair or interfere with the AusBBS Network or any of our other systems or equipment;
  - The Service (or any feature of it) is being used to commit unauthorised, criminal or unlawful activities;
  - If AusBBS becomes aware of unauthorised equipment being used on our network, AusBBS will issue You with a formal written warning to discontinue use and remove the equipment. If You do not comply with this request, AusBBS will take steps to immediately disconnect You from the network.

You will be responsible for any costs incurred in:

- Becoming Insolvent; or if You are a partnership, the partnership ceases; or
- AusBBS believes that the use of the Service (or any feature of it) by You or any other person is or might damage, impair or interfere with the AusBBS Network or any of our other systems or equipment;
- The Service (or any feature of it) is being used to commit unauthorised, criminal or unlawful activities;
- The Service (or any feature of it) is being used by You or another person in a manner which is unusual, unreasonable, excessive or fraudulent;
- You have engaged in fraudulent activities using the Service (or any feature of it); or
- You are a Carriage Service Provider or Carrier, or are operating as a Carriage Service.

## **25. Immediate suspension, limitation and termination on instruction of certain third parties or for technical problems**

Although AusBBS will try to give You as much notice as is reasonably practicable, AusBBS may, if we so choose (and without notice) immediately:

- Suspend or limit the Service (or any feature of it) for any period AusBBS think is reasonably necessary; or
- Terminate this Agreement, if:
  - AusBBS is required to do so by a regulatory authority such as the ACMA; or the law, or a law enforcement agency;
  - AusBBS is obliged to do so on the request of a Content Provider; or
  - There are technical problems with the AusBBS Network, which require corrective action by us.

## **26. Suspension, limitation and termination with notice**

In addition to our rights above, AusBBS may, by giving You reasonable notice (in any event at least 14 days notice):

- Suspend or limit the Service (or any feature of it) for such period as AusBBS determines is reasonably necessary; or
- Terminate this Agreement.

## **27. Your right to terminate this Agreement**

You may terminate this Agreement by giving us 30 days notice by contacting us on [customerservice@ausbbs.com.au](mailto:customerservice@ausbbs.com.au), on any Business Day. AusBBS will debit Your nominated payment method (e.g. Credit Card) for all charges You have incurred (including the Monthly Service fee up to the end of your contract Term). Termination will take place on Your designated invoice issue date, once the funds have been debited. If You are terminating a 24 month or 12 month contract you will also be charged the Early Termination Fee.

After terminating Your service with us, You will receive a final invoice on Your regular invoice date, which will include all charges incurred by You up to, and including the date on which Your Service was terminated.

If You have purchased hardware at a discounted rate and agreed to a minimum term contract You may also be liable for the full RRP (Recommended Retail Price) of the hardware upon termination (if within the minimum term).

Other charges may be applicable if You terminate Your Service within the minimum terms, refer to the relevant Service Description for details.

## **28. Consequences of Suspension or Limitation**

If AusBBS suspends or limit the Service (or any feature of it), You will be barred from using the Service (or the feature of it which AusBBS suspends/limits) until AusBBS un-bars the Service (or the feature of it which AusBBS have suspended/limited). AusBBS will continue to charge You, and You must pay AusBBS, the Monthly Service fee during the period in which Your Service was suspended or limited.

## **29. Consequences of Termination**

Upon termination of this Agreement:

- AusBBS will stop providing You with the Service, disconnect the Service and send You a final invoice for all accrued and outstanding Charges; and
- You will no longer have the right to use the Service.

## **30. Obligations on Termination**

If this Agreement is terminated, You must pay all amounts, which You owe AusBBS under this Agreement by the due date on Your final invoice. AusBBS must refund to You any amount AusBBS hold on Your behalf after You have paid us all the amounts, which You owe AusBBS under this Agreement. AusBBS may, if AusBBS choose, offset against any amounts AusBBS hold on Your behalf (for example, a security deposit), any amounts, which You owe AusBBS. You acknowledge that AusBBS may not pay You an amount AusBBS owes You because:

- AusBBS are unable to locate and/or contact You; or
- Your nominated credit card or bank account is no longer valid.

## **Section Six – Personal Information**

### **31. Privacy**

You acknowledge that AusBBS may give information about You to a credit-reporting agency for the following purposes:

- a) To obtain a consumer credit report about You; and/or
- b) To allow the credit-reporting agency to create or maintain a credit information file containing information about You; provided that:
- c) This information is limited to:
  - i. Identity particulars – Your name, sex, address (and the previous two addresses), date of birth, name of employer and drivers licence number;
  - ii. Your application for credit or commercial credit – the fact that You have applied for credit and the amount;
  - iii. the fact that AusBBS is a current credit provider to You;
  - iv. payments which are overdue by more than 60 days and for which debt collection action has started;
  - v. advice that Your payments are no longer overdue in respect of any default that has been listed;
  - vi. information that, in the opinion of AusBBS, You have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with Your credit obligations); and
- d) This information may be given before, during or after the provision of credit to You. You agree that AusBBS may obtain information about You from:
  - i. A business which provides information about the commercial credit worthiness of persons; and/or

- ii. A credit-reporting agency, for the purpose of assessing Your application for consumer credit.

You agree that AusBBS may exchange information about You with those credit providers names in Your credit application or names in a consumer credit report issued by a credit reporting agency for the following purposes:

- a) To assess an application by You for credit;
- b) To notify other credit providers of a default by You;
- c) To exchange information with other credit providers as to the status of this credit facility where You are in default with other credit providers; and/or
- d) To assess Your credit worthiness.

### **Collection**

Agents and/or our service providers may collect personal information about You for the primary purpose of providing You with the Service. If You do not provide personal information to us, AusBBS will not be able to provide You the Service.

### **Use**

AusBBS may use personal information about You for purposes that are related to providing You with the Service and reasons You would reasonably expect us to use to provide the Service (including for invoicing purposes). AusBBS may also undertake market and product analysis based on Your use of the Service and contact You with information about new developments, products, services and special offers. Under s18 (1) of the Spam Act 2003,

You agree and acknowledge that:

- AusBBS may send You commercial electronic messages or marketing material however You can, at any time, opt-out of receiving marketing material by replying to the email, e-mailing [customerservice@ausbbs.com.au](mailto:customerservice@ausbbs.com.au).

You also acknowledge that AusBBS will send You essential information about Your AusBBS account or changes to the Service to Your registered billing e-mail address.

### **Access and Correction**

If You request (in writing), AusBBS will:

- Provide You with the personal information AusBBS have about You, with the exception of sub-clause 6.1 of the National Privacy Principles; or
- Correct personal information or note that information about You is inaccurate, incomplete or out of date, in accordance with Privacy Act.

Written requests should be made to:

AusBBS  
Attn – Privacy Manager  
Suite 2201 Level 22 Tower Two  
101 Grafton Street, Bondi Junction NSW 2022

AusBBS will only send the requested information to the customer via registered post. AusBBS may charge You a reasonable fee to recover archived information.



## **Disclosure**

AusBBS may receive and disclose personal information or documents about You to or from:

- Credit providers or credit reporting agencies for purposes permitted under the Privacy Act;
- Law enforcement agencies to assist them in the prevention of criminal activity; or
- Our service and content providers, dealers and agents, for purposes that are related to providing You with the service and which You would reasonably expect us to use that information for. AusBBS may disclose personal information about You to other third parties if required by law or if AusBBS is permitted to make such disclosure under the Privacy Act or other legislation. In all other circumstances, AusBBS will not disclose personal information about You without Your consent.

## **Acknowledgment**

You acknowledge and give consent that any calls You make to AusBBS may be monitored and/or recorded for quality training purposes. If You wish for Your call not to be monitored and/or recorded please advise the operator upon commencement of the call.

## **Privacy Policy**

By providing personal information to AusBBS and obtaining the Service, You acknowledge and consent to the collection, use and disclosure of Your personal information as provided in the Privacy Act and this Agreement.

## **32. SPAM**

With Your express or inferred consent AusBBS may now and again send You commercial electronic messages. The Spam Act 2003 prohibits unsolicited commercial electronic messaging, which covers emails, instant messaging, SMS and other mobile phone messaging. The message must be commercial in nature. Commercial electronic messages must accurately identify their sender, and include a way for the recipient to unsubscribe from future such messages. The Australian Communications and Media Authority (ACMA) is responsible for enforcing the provisions of the Spam Act 2003.

## **33. IPND**

The Integrated Public Numbering Database (IPND) is an industry-wide database of all listed and unlisted public telephone numbers. In accordance with the Communications Alliance IPND Code and the Telecommunications Act, carriers and carriage service providers are obligated to update this database daily with information such as the customer's name, the customer's address, the name of the service provider, what the number is to be used for (private or business) and whether the public telephone number is to be listed or unlisted in telephone directories.

In certain circumstances information held in the database maybe disclosed for approved purposes such as operator and directory assistance services, publishing public number directories, use by emergency services and law enforcement agencies and any other activity specified by ACMA. For example law enforcement agencies and emergency services have access to numbers and information held on this database regardless of whether numbers are listed or unlisted.

## **Section Seven – Liability and Indemnity**

The following section outlines liability and indemnity, as well as warranties.

### **34. Our Liability to the Customer**

You agree to use the Service (and each of its features) accepting full risk and responsibility in doing so. You agree that, subject to this Agreement, AusBBS are not liable to You for any loss or damage (including Consequential Loss) whatsoever arising (including for AusBBS's breach of this Agreement) which You suffer under or in connection with this Agreement or the supply of the Service, unless You suffer direct loss or damage because of any negligent act or negligent omission by us under or in connection with this Agreement, in which event AusBBS will be liable to You for any such direct loss or damage suffered (but, for avoidance of doubt, not any Consequential Loss suffered). For example, AusBBS is not liable to You for any loss or damage (including Consequential Loss) You suffer as a result of:

- You or any other person using the Service or any of its features for any purpose (including a purpose in breach of this Agreement);
- Any person accessing or using Material You send or doing anything on the basis of Material You send;
- Any Material You send being inaccurate, incomplete, not current or of inadequate quality, or otherwise in breach of Your obligations under this Agreement regarding use of the Service;
- AusBBS Adapting any Material to enable it to be received or sent;
- You not receiving any material, or a delay in You receiving any material You have requested;
- Any person to whom You send or attempt to send Material not receiving the Material, or a delay in that person receiving the Material.

### **35. Implied representations and warranties and our maximum liability to You**

Subject to the paragraph 6.3 below:

- To the extent legally permissible, all conditions, terms and warranties which may be implied by custom, law or legislation into this Agreement are excluded; and
- Our maximum liability to You under or in connection with this Agreement, the supply of the Service, for any negligent act or omission by us (including our employees, contractors and agents) or for any other liability which is not excluded under this Agreement, will not be more than the total Charges paid by You under this Agreement: during the 1 month period prior to Your claim; or if this Agreement started less than month prior to Your claim, since the start of this Agreement.

### **36. Liability, which AusBBS cannot exclude**

Despite any of the above, AusBBS will be liable to You under any rights, which You may have under the Trade Practices Act 1974 and other legislation, for which AusBBS cannot exclude our liability. Even so, where our liability in respect of such rights can be limited, it is limited as AusBBS chooses, to:

- In the case of goods, the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
- In the case of services, the supply of the Services again; of the payment of the cost of having the services supplied again.

### **37. You indemnify us**

You indemnify us any loss or damage AusBBS suffers relating to the use of the AusBBS service by You. This indemnity does not apply to any loss or damage AusBBS suffers as a result of any wilful misconduct or reckless act or omission by AusBBS. Your obligations under this indemnity will continue despite:

- The Termination of this Agreement; or
- The occurrence of any other thing, until all monies You owe AusBBS have been paid in full.

### **38. Contributory Loss**

AusBBS's liability for any loss, cost or damage suffered or incurred by You is reduced to the extent that Your acts, omissions, equipment or external causes contribute to that loss, cost or damage.

## **Section Eight – Miscellaneous**

### **39. Assurances**

By entering into this Agreement You assure AusBBS that:

- You have provided full and accurate personal information to us in connection with this Agreement and that You will continue to ensure this information is accurate whilst there continues to be an Agreement between the parties (You and AusBBS) in place;
- You have full power and authority to enter into this Agreement; and
- You will do all that You need to do to perform Your obligations under this Agreement.

By entering this Agreement AusBBS assures You that:

- AusBBS is a carriage service provider under the Act; and
- Subject to the terms and conditions of this Agreement, AusBBS will provide the Service with all reasonable care and in a timely manner.

### **40. Assignment**

You may not transfer any rights and obligations under this Agreement without us first agreeing in writing.

AusBBS may, without telling You:

- a) Transfer our rights and obligations under this Agreement to another entity;
- b) Temporarily or permanently get another entity to perform our obligations under this Agreement on our behalf; or
- c) Require You to sign an agreement in the form of this Agreement with the other entity AusBBS nominates (or, if AusBBS cannot find You, AusBBS may sign such an agreement on Your behalf which, upon entering this Agreement, You authorise us to do).

## **41. Enforceability**

If any term in this Agreement is not enforceable in a certain State or Territory of Australia, that does not mean that:

- That term or right is not enforceable in any other State or Territory of Australia; or
- Any other term or right is not enforceable in that State or Territory of Australia or in any other State or Territory of Australia.

## **42. Waiver**

The only way in which AusBBS can be said to have given up any rights AusBBS has under this Agreement is if AusBBS agree to do so in writing. Even if AusBBS gives up one of its rights under this Agreement in a particular circumstance that does not mean that AusBBS has generally given up that right. A failure or delay to exercise a right under this Agreement does not constitute a waiver of the Agreement.

## **43. Variation**

- a) From time to time AusBBS may need to make changes to the SFOA, this may be done without Your agreement if the change is beneficial to You or does not adversely affect You.
- b) If a change to this Agreement is detrimental to You AusBBS will give You at least 30 days notice before the change takes place. AusBBS will post notice of the change on our website and AusBBS will notify You directly of the change in writing either by:
  - (i) Mail, to the last address You have given us; or
  - (ii) Email, to the last address You have given us; or
  - (iii) A message on Your monthly invoice
- c) If a change AusBBS makes is detrimental to You and You are in a fixed term agreement at the time of receiving notice of the change, You may cancel the agreement without incurring any Break fees or Early termination fees, by giving us notice within 42 days after the date of receiving written notice of the change under this clause.
- d) If You give us notice to cancel Your service in accordance with this clause, You will be still be liable for any usage based chargers or variable charges incurred by You up to the date of Your cancellation, You will also be liable for installation fees and costs of equipment AusBBS provided to You that You did not pay for, as long as that equipment can be used in connection with services supplied by another provider
- e) You acknowledge that AusBBS do not have to give You 30 days notice of a change to the Agreement or offer You the right to cancel Your service if You are in a fixed term agreement, even if that change impacts You, in relation to:
  - (i) An increase in international call rates, which can be varied without notice at any time in accordance with relevant industry codes. Current international call rates are available on our website.

- (ii) An increase in charges related to premium services which AusBBS resell to You from a third party
- (iii) The introduction of an additional tax or levy that is imposed by law (for example an increase in the rate of GST which is directed at You, but not for example an increase in the corporate tax rate which is directed at us)
- (iv) Changes AusBBS is required to make due to a change in the law
- (v) Changes AusBBS is required to make for security reasons
- (vi) Changes AusBBS is required to make to protect the integrity of our service or network

Unless allowed for in the Agreement You cannot make any changes to this Agreement without firstly obtaining our consent.

#### **44. Standard Form of Agreement**

This Agreement constitutes a Standard Form of Agreement within the meaning of the Act and is subject to the Act.

#### **45. Inconsistency**

If there is any inconsistency between this Agreement and any brochures or other marketing or advertising material, which relate to the Service or this Agreement then this Agreement prevails to the extent of the inconsistency.

#### **46. Commission**

You acknowledge that AusBBS may pay an agent a commission for introducing You to AusBBS and/or the Service.

#### **47. Notices**

You agree that AusBBS may give You written notice in connection with this Agreement by:

- Sending the notice to the e-mail address, postal address or fax number, which You advise AusBBS of in Your application or otherwise. Where AusBBS is entitled to notify You of information relating to the SFOA and changes to it by email, You acknowledge that You have consented to AusBBS sending You such notices to Your nominated addresses;
- If the change is deemed to be detrimental AusBBS will, prior to the change taking place, supply a notice of varying terms no less than 21 (twenty-one) days prior to the change taking place.

#### **48. Governing law & jurisdiction**

The laws of New South Wales govern this Agreement. Each of us agrees to submit (and may not subsequently change our mind about doing so) to the exclusive jurisdiction of the courts of New South Wales.

## **49. The AusBBS Website**

### **Copyright**

Everything on the AusBBS Website is copyrighted. The copyrights are owned by AusBBS and its affiliated companies, partners, or by the original creator of the material. Except as specifically stated, none of the material may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form without AusBBS's prior written permission. You also may not, without AusBBS's permission, "mirror" any material contained on our web site or any other server. However, You are free to view, copy, print, and distribute AusBBS material from this site, as long as the material is used for information and non-commercial purposes only and all copies of any material include AusBBS copyright notice.

### **Links**

AusBBS may provide hyperlinks or pointers to other web sites, including advertisements and commercial web sites, maintained by third parties. AusBBS provides the links to any such third party web sites for Your convenience and information only and does not endorse the companies or contents of any linked sites. The content in any linked web site is not under our control and may not have been reviewed by AusBBS, consequently, if You decide to access any such web site, You do so entirely at our own risk.

### **Limitation of Liability**

Under no circumstances shall AusBBS be liable for any direct, indirect, special, incidental or consequential damages, including, but not limited to, loss of data or profit, arising out of the use, or the inability to use, or resulting from the use or reliance on the materials presented in or through the AusBBS Website, even if AusBBS has been advised of the possibility of such damages.

### **Product and Service information**

AusBBS may at any time make changes to its products or services or discontinue any product or service without notice.

All products and services are licensed or sold subject to AusBBS's applicable terms and conditions of license or sale supplied at the time of order acknowledgment. Mention of non AusBBS products or services is for information purposes only and constitutes neither an endorsement nor a recommendation.

### **Prohibited Use**

You are prohibited from posting or transmitting any unlawful, threatening, obscene, libellous, defamatory or otherwise offensive material on the AusBBS Website.

### **Governing Law**

The laws of New South Wales, Australia, exclusive of its conflict of law provisions, shall govern any claims relating to the AusBBS Website.

## **Section Nine – Service Limitations**

Below is a list of Service limitations. Outlined are AusBBS's policies on emergency service limitations, priority assistance, porting and other miscellaneous topics.

### **50. Emergency Services**

Dialing emergency services will cease to function correctly if You move or otherwise change the physical location of Your AusBBS service. Onus rests on the customer to notify AusBBS of any changes to Your service address details.

In the event of an AusBBS network outage, power failure or disruption to Your Broadband Internet connection, You will not be able to use the Service to dial emergency services. For this reason AusBBS recommend that You have an alternative medium of contact, such as a cellular telephone.

### **51. Number Portability**

Currently AusBBS is capable of porting some allocated VoIP numbers. However AusBBS cannot port particular ranges of numbers.

### **52. BYO (Bring Your Own)**

AusBBS limits the extent of support for BYO devices to that of Customer Service only, which includes account and billing enquires. Due to the flexibility the Service offers users, it is not feasible or practicable for AusBBS to offer technical support to devices not sold by AusBBS. Whilst the BYO option is designed to allow users to bring their own device, under no circumstances does AusBBS offer any guarantee or assurance that all Devices will be compatible and function with the Service.

### **53. Priority Assistance**

AusBBS does not offer a Priority Assistance service for life threatening medical conditions.

### **54. 13/1300/1800 Numbers**

If You are issued a geographic telephone number in accordance with the address You provided (where the AusBBS service is to be used) AusBBS's partners will attempt to route these calls through the local gateway. Generally calls to these numbers should work correctly, with exception to an incidence of network congestion where an alternate gateway overflow is used for example. However, once AusBBS's partners have routed the call out the correct gateway, it is still a matter of whether the upstream carrier has configured the 13/1300/1800 Service to allow their switches to correctly route to a termination point.

### **55. Communication**

You agree that AusBBS's primary mode of communication will be via electronic mail for the delivery of invoices and all other collateral (including communications pertaining to Fair Use, Marketing, Compliance and Regulatory matters) issued by AusBBS. This however, does not rule out the use of post, facsimile or telecommunications as means of communication and they shall be employed at our discretion to contact You.