



## **Please read this information carefully.**

The supply of Services under this agreement is provided by **Red Broadband Pty Ltd ABN 83 164 117 462** (in this agreement referred to as “our”, “we”, “us”, “RBB” or “Red Broadband”) and in part by our third party suppliers.

By applying for a Red Broadband Service and by using our network you have indicated your acceptance of all the terms and conditions referred to in this agreement.

### **1 Definitions**

In these Terms and Conditions:

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

**“Authorised User”** means any person nominated by the customer who is authorised to use the service.

**“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. (This is in the form of our online sign up 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 via our online sign up tool.

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

**“Customer”** means the company, association, and partnership, local, state or commonwealth authority or other entity or private individual described in the Order Form.

**“Order Form”** means the online application for which the customer applies for the service to be contracted from RBB.



**“Initial Set-Up Fee”** means the initial set-up fee or installation charge specified in the application.

**“Interest Rate”** means the annual rate charged by RBB’s principal banker (as nominated by RBB from time to time) on current overdraft rates plus 2%.

**“RBB”** means Red Broadband Pty. Ltd. (ABN 83 164 117 462).

**“Rules”** means the RBB Standard Rules as in force from time to time.

**“Service”** means the service or other services provided by RBB to the Customer as described in the Order Form including where applicable access to RBB’s network (including computer resources, disk storage and computer communication facilities) and the Internet, and any other services contracted between RBB and the Customer as specified in the Order Form.

**“Terms and Conditions”** means the Terms and Conditions as outlined below.

## **2 Agreement**

- 2.1** The Agreement is bound by the Order Form and these Terms and Conditions.
- 2.2** Where a minimum contract period is specified in the Order Form, the minimum contract period starts on the service commencement date.
- 2.3** Subject to these Terms and Conditions, the Agreement shall remain in force:
- Where a minimum contract period is specified in the Order Form, the agreement shall be continued for that minimum period, and then continue until such time as it is terminated by either RBB, or the Customer giving to the other thirty days written (Email, Fax or Letter) notice;
  - Where a minimum contract period is not specified in the Order Form, the agreement shall continue until such time as it is terminated by either RBB, or the Customer.
- 2.4** RBB shall supply the Services to the Customer during the term of the Agreement unless suspended or terminated in accordance with the Agreement.

## **3 Credit Clauses**

- 3.1 Important Notice To Applicant(s) For Credit (Section 18(E)(1) Privacy Act 1988) Notice of disclosure of your credit information to a credit-reporting agency. (Privacy Act 1988)** Red Broadband Pty. Ltd. may give information about you to a credit reporting agency, for the following purposes:
- To obtain a consumer credit report about you, and/or



- To allow the credit reporting agency to create or maintain a credit information file containing information about you. The information is limited to:
  1. Identity particulars - your name, sex, address (and the previous two addresses) date of birth, name of employer, and drivers licence number.
  2. Your application for credit or commercial credit - the fact that you have applied for credit and the amount.
  3. The fact that Red Broadband Pty. Ltd. is a current credit provider to you.
  4. Loan repayments which are overdue by more than 60 days, and for which debt collection action has started.
  5. Advice that your loan repayments are no longer overdue in respect of any default that has been listed.
  6. Information that, in the opinion of Red Broadband Pty. Ltd. you have committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with your credit obligations).
  7. Dishonoured cheques - cheques drawn by you for \$100 or more which have been dishonoured more than once.
  8. That credit provided to you by Red Broadband Pty. Ltd. has been paid or otherwise discharged.

### **3.2 Period to which this understanding applies**

This information may be given before, during or after the provision of credit to you.

### **3.3 Statement by applicant(s) for credit**

#### **Giving information to a Credit Reporting Agency (Section 18E(8)(c) Privacy Act 1988)**

Red Broadband Pty. Ltd. has informed me that it may give certain personal information about me to a credit-reporting agency.

#### **Access to Commercial Credit Information (Section 18L(4) Privacy Act 1988)**



I/we agree that Red Broadband Pty. Ltd. may obtain information about me/us from a business, which provides information about the commercial credit worthiness of persons for the purpose of assessing my/our application for consumer credit.

**Access to Consumer Credit Information (Section 18K(1)(b), Privacy Act 1988)**

I/we agree that Red Broadband Pty. Ltd. may obtain a consumer credit report containing information about me from a credit-reporting agency for the purpose of assessing my/our application for commercial credit.

**Exchange of Credit Worthiness Information (Section 18N, Privacy Act 1988)**

I/we agree that Red Broadband Pty. Ltd. may exchange information with those credit providers named in this application or named in a consumer credit report issued by a credit reporting agency for the following purposes;

- to assess an application by me/us for credit
- to notify other credit providers of a default by me/us
- to exchange information with other credit providers as to the status of this loan where I am in default with other credit providers
- to assess my/our credit worthiness
- I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

**Agreement to a credit provider being given a consumer credit report by a credit reporting agency to assess a guarantor (Section 18K 1(c) Privacy Act 1988)**

I/we agree the Red Broadband Pty. Ltd. may obtain from a credit-reporting agency a consumer credit report containing information about me/us for the purpose of assessing whether to accept me/us as a guarantor for credit applied for by, or provided to, the borrower(s) [named in agreement]. I/we agree that this agreement commences from the date of this agreement and continues until the credit covered by the borrower(s) application ceases.

**Agreement to a credit provider disclosing a report including a consumer credit report to potential or existing guarantor (Section 18K (1) Privacy Act 1988)**



I/we agree that Red Broadband Pty. Ltd. may give to a person who is currently a guarantor, or whom I/we indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of [name of prospective guarantor] deciding whether to act as a guarantor, or to keep [name of existing guarantor] informed about the guarantee.

I/we understand that the information disclosed can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act, and includes a credit report.

#### **4 Provision of the Service**

**4.1** The Customer shall pay to RBB any invoiced amounts rendered including installation and/or initial set-up fees and ongoing charges in respect to the provision of the Service as follows:

- The Customer shall pay the Charges by way of credit card payment, direct deposit, cheque or such other method of payment as shall be agreed.
- The Charges for the Service are payable by the Customer in the manner described in the Order Form.
- After the initial term, the Charges may be reviewed by RBB from time to time and such Charges, once reviewed, shall be the Charges payable by the Customer to RBB for the provision of the Service for the period commencing 30 days after notification of the reviewed Charges.
- The Customer is responsible for and will pay any charges generated as a result of any use of the Service accessed through the Customer's identification or log-in whether used by or authorised by the Customer or an authorised User or not.
- The Customer shall pay overdue fees for any amount overdue more than 14 days.
- The initial set-up fee is non-refundable.

**4.8** If the Customer terminates the Agreement within the minimum contract period specified in the Order Form, RBB reserves the right to charge the Customer the full amount of any minimum monthly fees and/or flat rate charges specified in the Order Form for the balance of the minimum contract period.

**4.9** RBB may pay a commission to any partner or agent who introduces the Customer to RBB.



## **5 Conditions of Connection**

**5.1.** The Customer must provide appropriate telecommunications software and hardware for Connection to RBB's network.

**5.2.** If payment of any Charges is overdue for 14 days or more RBB may suspend provision of the Service. RBB reserves the right to charge the Customer a fee for reconnection of the service.

**5.3.** RBB may charge any reasonable expenses in connection with recovery of late payments including the costs of engaging a mercantile recovery agent.

## **6 Conditions of Service**

**6.1** The Customer shall adhere to the Rules in force from time to time.

**6.2** RBB may monitor or keep any records that it deems necessary referable to the Customer's use of the Service.

**6.3** The Customer shall not use the Service, nor shall the customer permit the Service to be used:

- In such a manner as may reasonably be expected by RBB to impair the use of the Service by other customers of RBB; or
- For any activities of an illegal or fraudulent nature, including activities prohibited under the Telecommunications Act 1997 (Cth), the Copyright Act 1968 (Cth), the Privacy Act 1988 (Cth) or under other applicable Australian State and Commonwealth laws.

**6.4** Under relevant state or federal legislations, industrial code of practice or under directions of regulatory authorities or court order, we may take any steps deemed necessary in order to comply with any legal obligations.

**6.5** If your account is set up on a monthly billing cycle then RBB requires that you have credit or debit card details saved to our system for an automatic monthly debit.

**6.6** When requesting changes to your plan, either through our call centre, using on online portal or via email you must state whether you wish to be immediately upgraded or from your next billing cycle. Also:

- Plan changes will attract a pro rata adjustment calculated by RBB based upon the period remaining in your billing cycle and the difference in value between the new plan you selected and the original plan.
- When changing to a plan with a higher monetary value than the plan you are currently on then there will not be any fees applicable to the plan change.



- When changing to a plan with a lesser monetary value than the plan you are currently on then there will be a once off fee applicable of \$15.
- If your account is set up as an automatic debit (using credit or debit card details stored by RBB) when you change your plan then you are providing authorisation for us to deduct the new amount from your nominated account.
- You may change your service plan no more than once during any given calendar month.

## **7 Billing**

**7.1** GST is included in all prices quoted on our sales and promotional material.

**7.2** RBB offers two different billing cycles to its customers, Monthly and Quarterly.

### **Monthly billing cycle;**

- We require that all accounts that are set up with a monthly billing cycle be paid through Credit or Debit card only.
- RBB will send out your monthly invoice on the first working day of the month.
- RBB will process an automatic monthly debit from your saved credit card details on file within 24 - 48 hours from when your invoice is sent out to you, for those with a static invoice amount each month. Those with a variable invoice amount the debit will take place 10 days after we issue your invoice.

### **Quarterly billing cycle;**

- RBB will send out quarterly invoices within 3 days of the first of the month dependant on the day of the week that the first of the month falls.
- RBB offers Direct Deposit via Electronic Funds Transfer as well as cheques as an option to pay quarterly invoices.
- RBB Reserves the right to charge a processing fee of no more than \$10 per month for any cheques received.

**7.3** It remains your responsibility to pay all monies owing on your Account by the due date. If payment is not received on the due date, your account will be suspended immediately and until full payment has been received, fees and charges may apply.

**7.4** If your service remains suspended for an entire calendar month or any part thereof, you are still required to pay for the provision of the Service in that



month. If payment for Services have not been received for 90 days, your account will be closed, and action taken to recover any debt.

**7.5** Any expenses, costs, or disbursements incurred by us in recovering any outstanding monies including dishonour fees, debt collection, agency fees or legal fees will be billed to your account.

**7.6** It is your responsibility to pay all monies invoiced by the due date, even if the charges are the result of unauthorised access to your Service.

**7.7** A re-installation fee of not more than \$75 will apply to re-activate a suspended or closed account.

## **8 Customer Responsibilities**

**8.1** The Account Holder must have attained the age of 18 years.

**8.2** If you allow a person under the age of 18 to use the Service then you are legally responsible for supervising that person's usage and particularly to ensure the suitability of content transmitted to and seen by that person.

**8.3** It is your responsibility to provide us with a nominated E-mail Address that we can use to contact you.

**8.4** It is your responsibility to ensure that your computer meets the minimum specification to connect to the Service, including any Software and Hardware requirements. Please read <http://www.redbroadband.com.au/technology/>

**8.5** You are asked to regularly check your nominated E-mail Address for any correspondence from us about your Service.

## **9 Security and Network Security**

**9.1** The Customer shall be responsible for implementing and maintaining network security at the Customer's site.

**9.2** RBB will at the Customer's request endeavour to implement access restrictions to the Customer's network via the Connection and in accordance with any Customer's specifications approved by RBB.

**9.3** The Customer acknowledges that to the extent permitted by law RBB does not make any representations or warranties concerning the fitness for purpose or effectiveness of any access restrictions or RBB's network security or the Customer's network security.

**9.4** The Customer acknowledges that RBB's network is not a secure and confidential method of communication and shall transmit data on RBB's network at its own risk.





**9.5** Without being in any way liable so to do RBB shall endeavour to ensure that all data transmitted on RBB's network is transmitted to the person to whom it is addressed.

**9.6** The Customer acknowledges that it is liable for all charges associated with the Service resulting from use of its password and agrees to keep its password confidential. RBB accepts no liability for unlawful use of the Customer's password even in the event of it being lost or stolen.

- The Customer agrees to immediately notify RBB of loss or theft of their password. On application to RBB the Customer may change their password at any time.

**9.7** The Customer acknowledges that some material on the Internet may be offensive, inappropriate or unsuitable and agrees that RBB has no responsibility whatsoever for such material. Additionally, the Customer hereby agrees that in using the Service the Customer must not:

- Use the Service to undertake any illegal or unlawful or offensive activity or commit any fraud or breach any Australian legislation, codes of conduct or standards established for the Internet Service Provider Industry;
- Disseminate computer viruses or other malicious programs;
- Transmit, store or place on the Internet any content which is defamatory, offensive or of a menacing and/or obscene character;
- Place on the Internet, or issue invitations to give directions (including hyperlinks) to, any illegal content or potentially illegal content;
- Engage in sending unsolicited emails, spamming and advertising material;
- Engage in conduct so as to interfere with or disrupt any other Internet users or service providers;
- Engage in any unauthorized use of any material protected by patent, copyright, trademark or other intellectual property rights;
- Talk about hacking or about breaching any laws, talk of or engage in any conduct that may contravene any RBB Policy (including but not limited to any Acceptable Use Policy that we may have and our Privacy Policy) and any other Policies or Practice to which RBB may subscribe to.

**9.8** Where your continued use of the Service adversely affects the network, we reserve the right to suspend/control the Service being delivered to your premises.

**9.9** Any persons that use your Service have read and understand the Contract.



## **10 Limitation of Liability**

### **10.1** To the maximum extent permitted by law:

The use of the Service by the Customer (which includes the contents thereof and any storage or use of information) is at the Customer's sole risk.

RBB and its information providers, licensors, licensees, employees or agents do not:

- Warrant that the Service will be uninterrupted or error free; or
- Make any warranty as to the results obtained from the use of the Service.

The Service is provided on an "as is" basis and to the extent permitted by law without warranties of any kind, either expressed or implied including but not limited to warranties of title or implied warranties of merchantability or fitness for a particular purpose or use.

Neither RBB nor its information providers, licensors, licensees, employees, and agents nor anyone else involved in creating, producing or delivering the Service shall be liable for any direct, indirect, incidental, special or consequential damages arising out of use of the Service or inability to use the Service or out of any breach of any warranty.

**10.2** Where legislation implies in the Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in the Agreement. However, the liability of RBB for any breach of such conditions or warranty shall be limited, at the option of RBB, to one or more of the following:

if the breach relates to goods:

- the replacement of the goods or the supply of equivalent goods; or
- the repair of such goods; or
- the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- the payment of the cost of having the goods repaired; and

if the breach relates to services:

- the supplying of the services again; or
- the payment of the cost of having the services supplied again



**10.3** The Customer acknowledges that any electronic material ("material") accessed by the Customer through the RBB network is varied, and that RBB will not be liable for or responsible to the Customer or any other person for the nature and content of that material, the Customer's access to that material or the Customer's use of that material.

**10.4** The Customer hereby indemnifies and shall keep indemnified RBB and its information providers, licensors, licensees, employees or agents in respect of any loss or damage, action, claim, suit, or proceeding suffered by or brought against RBB and its information providers, licensors, licensees, employees or agents by any person:

- in relation to or concerning any use of the RBB network or the Service by the Customer or an Authorised User; or
- as a result of the transmission of any illegal and/or fraudulent or offensive material by the Customer or an Authorised User; or
- as a result of any breach of the Agreement by the Customer or an Authorised User; or
- as a result of any willful, unlawful or negligent act or omission of the Customer or an Authorised User.

**10.5** The provisions of this Clause will survive any termination of the Agreement.

## **11 Termination of Service**

**11.1** RBB may terminate the Agreement without notice upon the occasion of misuse or abuse of the Service by the Customer. What constitutes misuse or abuse of the Service is determined by RBB at its absolute discretion.

**11.2** The Agreement may be terminated forthwith at the option of RBB;

- if a Receiver, Receiver and Manager, Manager, Official Manager, Administrator, Provisional Liquidator, Liquidator or Trustee in Bankruptcy is appointed to all or any substantial part of the assets and undertakings of the Customer; or
- if either party commits a material breach of its obligations made under the Agreement and fails or is unable to remedy that breach within 14 days after receiving notice from the other party requiring remedy of that breach; or
- Upon the death of the Account holder, the account shall be deemed terminated.

Note: If RBB terminates an account whilst in contract, a termination fee may be applied if termination is resulting from the misuse of the Service.



**11.3** Upon the termination of the Agreement by either party RBB will cease to provide Services to the Customer. The Agreement will thereafter be at an end but without prejudice to any accrued rights of either the Customer or RBB under the Agreement.

**11.4** A customer may terminate the account at any time by providing written notice (Email, Fax or Letter) to cancel the service. RBB requires that notice is received at least 7 days prior to the commencement of the next billing cycle. If notice is not received at least 7 days prior to the end of the billing cycle, then the customer will be liable for the following billing cycle.

Note: If the service is still within the contract term, then the customer will be liable for termination fees. A termination fee of \$25 per month remaining in the contract term OR \$150, whichever is lesser will be applicable.

**11.5** Any pre-paid fees for Services are non-refundable on termination.

**11.6** In some cases a cooling off period is required by law. If you are covered by a cooling off period, you may terminate the Service without penalty if you provide written notification to RBB within the timeframe allowed from the commencement of the Contract.

## **12 Force Majeure**

**12.1** Neither party shall be liable for any delay or failure to perform its obligations other than the Customers obligations to pay the Charges pursuant to the Agreement if such delay or failure is due to Force Majeure.

**12.2** If a delay or failure of a party to perform its obligations is caused or reasonably anticipated by RBB due to Force Majeure, the performance of that Party's obligations may be suspended by RBB.

**12.3** If a delay or failure by a party to perform its obligations due to Force Majeure exceeds thirty (30) days, either party may immediately terminate the Agreement on providing notice in writing to the other party.

**12.4** If the Agreement is terminated pursuant to this clause, RBB shall refund any Charges previously paid by the Customer pursuant to the Agreement for goods or services not provided by RBB to the Customer.

**12.5** In the Agreement "Force Majeure" means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under the Agreement. Such circumstances shall include but shall not be limited to fire, storm, flood, earthquake, accident, war, labour dispute, materials or labour shortage other than the party's own staff or staff under its control, law or regulation or act or omission of any third person (including without limitation any provider or related body corporate).



## **13 Miscellaneous**

**13.1** The Agreement shall be governed by the laws in force in the State of Western Australia and each party hereto submits to the exclusive jurisdiction of the Courts of that State.

**13.2** The Agreement shall endure to the benefit of and be binding upon the successors, assigns, heirs, executors and administrators of the parties.

**13.3** These Terms and Conditions and the other documents comprising the Agreement constitute the full and entire understanding between the parties with regard to the Agreement. Neither the Agreement nor any term of it may be amended or any term waived except in writing signed by the parties.

**13.4** The Customer agrees that RBB may obtain access to, use and disclose information about the Customer, pursuant to the Privacy Act 1988 (Cth).

**13.5** Goods and Services Tax (GST) - RBB reserves the right to increase or decrease the charge for the Service to allow for the impact of a GST, consumption tax or similar tax imposed by any government from the date such tax is imposed, but is not obliged to do so.

**13.6** All billing disputes must be lodged within 10 days of receipt of invoice.

**13.7** The Customer shall pay invoices within 14 days of invoice issue or be held liable for overdue fees for any amount overdue more than 14 days and may be subject to service suspension. If the service is suspended, ongoing monthly charges will still be accrued.

**13.8** RBB maintains ownership of the Wireless Broadband Hardware installed on the roof of your premise and upon termination for the service, may decide to reclaim this equipment.

## **14 Notices**

**14.1** All notices shall be in writing and shall be sent by hand delivery, post, facsimile or electronic mail to the parties at their addresses in the Order Form or to such other address as any party may specify to the other. A notice shall be regarded as having been given:

- when delivered if sent by hand; or
- the business day three days following posting if sent by post; or
- the business day following the date of transmission if sent by facsimile; or
- the business day following the date of transmission if sent by electronic mail.



## **15 Ownership and Use of the Equipment**

**15.1** Internet connections can only be made to Network Access Ports (NAPs) installed by RBB authorised installers, or to indoor CPE shipped to the Customer from RBB

**15.2** All new indoor CPE provided by RBB is covered by a 12 month warranty from the date of installation. During the warranty period, RBB will undertake all necessary repairs and maintenance to the indoor CPE at no cost to the Customer (including no call out charge fees) unless the failure of the CPE could have been reasonably prevented by the Customer. The Customer is required to maintain indoor CPE in good condition and repair at all times.

**15.3** All external, outdoor CPE is owned by RBB and will be maintained by RBB in good condition and repair. RBB will, at all times, retain ownership of this equipment. RBB may charge the Account Holder any reasonable costs incurred for replacing the equipment if lost, damaged or stolen.