

**Please read this Agreement carefully**

Services supplied under this agreement are provided by **BlueMaxx Communications Pty Ltd** (ABN 42 114 528 273), Bld 11A, 2404 Logan Road, Eight Mile Plains QLD 4118, trading as \*BlueMaxx (in this agreement referred to as “our”, “we”, “us”, or “the Provider”) and in part by our Third Party Suppliers. By applying for Satellite or access and by using our network you have indicated your acceptance of all the terms and conditions referred to in this Agreement.

**Definitions**

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

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

“Australian Broadband Guarantee” or “Australian Broadband Guarantee Program” means the Australian Government’s funding Program described in the Program Guidelines 2009 available at [www.dbcde.gov.au/abg](http://www.dbcde.gov.au/abg).

“Charges” means the charges payable by you to us pursuant to this agreement including but not limited to access, usage, default fees, interest, postage, service call-out and equipment removal fees.

“CPE” means Customer premises equipment. Where the Service is a Satellite Service, the CPE includes but is not limited to the satellite equipment and satellite modem.

“Customer” is the authorised person entering into this agreement, also referred to in this agreement as “you” and “your”

“Department” means the Department of Broadband, Communications and the Digital Economy.

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

“Installation Date” means the date your Service has been installed and site acceptance has been completed by the Installer.

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

“Qualified Site” means a site that we have determined as being capable of accessing the Service because it has clear line of sight to the Satellite.

“Schedule” means the duly completed Satellite Broadband Application Form.

“Program Service” or “Australian Broadband Guarantee Program Service” means the supply of a Satellite Broadband Internet access service meeting the performance and pricing requirements of the Program Guidelines that is registered under the Australian Broadband Guarantee and included for supply by us under our Funding Deed, being an Entry Level Service, Threshold Service or Added Value Service as described in this Agreement. A complete list of our Satellite Service Plans is available at [www.bluemaxx.net.au](http://www.bluemaxx.net.au)

“Threshold Service” means a Service as defined in the Guidelines with access to the Internet at a peak download/upload Data Speed of at least 512/256 kbps and at least 3 GB per month usage allowance (with no restrictions within these limits on downloads or uploads or on usage time or peak/off peak limitations) at a

price to you over three years of no more than \$2,500 (GST inclusive) including equipment, installation, connection, account establishment and ongoing provision of service. No additional costs are to be charged to you for non-standard installations.

“Entry Level Service” means a Service as defined in the Guidelines with access to the Internet at a peak download/upload Data Speed of at least 512/256 kbps and at least 500 MB per month usage allowance (with no restrictions within these limits on downloads or uploads or usage time or peak/off peak limitations) at a price to you over three years, including equipment, installation, connection, account establishment and ongoing provision of service, that is appropriately discounted below the threshold price cap, and that appropriately takes into account the speed and functionality of the service and the incentive payment applying to the service.

“Added Value Service” means a Service as defined in the Guidelines one of which has access to the Internet at a peak download/upload Data Speed of at least 1024/256 kbps and at least 5 GB per month usage allowance (with no restrictions within these limits on downloads or uploads or on usage time or peak/off peak limitations).

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

“Third Party Supplier” means a third party supplier used for the provision of Services provided under this Agreement.

**Australian Broadband Guarantee**

This Service is provided under Australian Broadband Guarantee, and the following provisions are required to be included.

The Provider must not change Customer Agreement terms and conditions of an Australian Broadband Guarantee Program Service without first obtaining approval from the Department. The Provider will give the Customer at least 14 days notice of the proposed change before the change takes effect.

At the conclusion of the initial 30 day agreement term, the Customer has the right to renew for a negotiated period at a monthly price no greater than the original contracted Price. The maximum agreement term of the Service may not exceed 36 months from the commencement of the Australian Broadband Guarantee Program Service.

The Customer may migrate between the Provider’s Australian Broadband Guarantee Program Services or to other non-Program services offered within the relevant Service Solution at a cost that reflects the administrative cost to the Provider of the migration, and is always entitled to return to the original Australian Broadband Guarantee Service.

The Customer is entitled to enter into a fixed-term agreement for the supply of the Program Service for 30 days for Satellite Services from the date of the commencement of the agreement.

In circumstances where the Provider ceases to offer broadband services, including Australian Broadband Guarantee Services, the Customer is entitled to terminate the agreement without penalty and apply for a new Australian Broadband Guarantee Service.

The overall price of the Program provided will not be increased for three years from the commencement of the agreement for the Australian Broadband Guarantee Service.

The Provider will provide a free-of-charge 24/7 fault reporting, and a help desk facility which operates from 8:00 am to 6:00 pm AEST

Weekdays and 10:00 am to 4:00 pm Weekends and Public Holidays.

The Provider will provide the Australian Broadband Guarantee Service with an average data download and upload Data Speeds of at least 60 per cent of the Service's nominated peak speeds at least 75 per cent of the time as measured according to a prescribed Australian Broadband Guarantee testing schedule.

The Provider commits to the Australian Broadband Guarantee Service being available at least 99 per cent of the time, averaged over a quarterly period, excluding scheduled downtimes, which may be performed between midnight and 6:00 am.

The Customer can test the data speed of their Australian Broadband Guarantee Service at [www.abgtest.com.au](http://www.abgtest.com.au)

The Provider will provide a means for Customers to check their usage on at least a daily basis, either by email or online at [www.bluemaxx.com.au](http://www.bluemaxx.com.au).

The Provider commits to provide the Customer with full information about the Australian Broadband Guarantee Service, as required under the Australian Broadband Guarantee Program. The Customer agrees to provide a truthful attestation to the Provider (and hold any relevant supporting documentation) so that the Provider can make a claim for incentive payment.

The Provider commits to the connection of a new Australian Broadband Guarantee Service within 30 calendar days for Satellite Services (unless otherwise agreed by the Customer and approved by the Department) of the Customer entering into a contract for the Service.

In the event of a Service outage or fault for which the Provider is responsible, the Provider commits to restoration of the Service within 14 days of notification of the outage or fault and in accordance with the maintenance provisions of the Australian Broadband Guarantee Guidelines.

The Customer consents to their details being provided by the Provider to the Department, and potentially other appropriate agencies for the purposes of the Australian Broadband Guarantee Program administration, regulation and evaluation, and policy development.

The Provider shall not assign the whole or part of this agreement to another party without the prior written consent of the Customer.

The Provider will provide timely and appropriate servicing of CPE owned by BlueMaxx or its Customers.

During the first 12 month period the Provider will not charge call out fees or repair charges (and any associated labour charges) unless the failure of the CPE could have reasonably been prevented by the Customer.

Regardless of the ownership of the CPE, the Customer shall ensure that the Satellite CPE is insured against all risks whilst in their possession and under their control.

The Customer agrees that they have the appropriate authority to authorise installation of the Service at their premises.

### **Service Description**

Subject to Australian Broadband Guarantee performance requirements, any transmission speeds referred to by us refer to the peak theoretical speeds achievable with the Service under ideal conditions, and you acknowledge that actual speeds may be different than the theoretical speeds. Speeds may vary for reasons which include but are not limited to:

- Third Party Supplier network congestion
- Third Party radio interference or physical/topological interference and inclement weather
- Internet Congestion
- Contention ratios, and
- Errors in the configuration of your equipment or installed software.

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

### **Term of this Agreement**

This Agreement commences on the Service Commencement Date.

This Agreement will continue for a period of 30 days from the Service Commencement Date or until the Service is terminated by either party in accordance with this Agreement.

If you terminate this Agreement you will remain liable for all Charges and all other amounts that you are required to pay under this Agreement.

### **Ownership of Equipment**

All equipment used in the supply of the Satellite Program Service automatically transfers to you, the Customer upon completion of installation.

In the event that our claim for an incentive payment is not paid because of an untruthful declaration, BlueMaxx reserves our rights to terminate the service and recover the equipment from you and seek reimbursement for full financial costs incurred including full cost of equipment.

BlueMaxx will remain responsible for the maintenance, repair and if necessary replacement of the CPE during the first 12 months, provided you remain a Customer of BlueMaxx during this period.

### **BlueMaxx Technical Support**

In addition to the technical support described above, Our Service includes free technical support for the installation and commissioning of the Service plus technical support relating to the diagnosis and resolution of service related faults. This support is only provided by email, telephone and via our website apart from the connection of the Satellite equipment by our nominated installer at your premises prior to the commencement of the Service.

You are able to log via our Help Desk or phone message system by calling our help desk on 1300 791 990. Support requests may also be logged via email to [support@bluemaxx.net.au](mailto:support@bluemaxx.net.au) or via fax (07) 46 387 966.

During the first 12 months, We will not charge call out fees or repair charges (and any associated labour charges) unless the failure of the CPE could have reasonably been prevented by You.

At the end of the first 12 months, We will offer you an extended warranty to continue to cover call-out fees and repair charges as described above for \$75 per year or part thereof. The extended warranty will provide the same level of cover as the initial warranty.

**Acceptable Use Policy**

You agree not to use your Service for illegal purposes and to conduct yourself in a responsible and considerate manner.

You acknowledge that cracking, hacking, crashing, spamming, transmission or storage of copyright infringing data or any data which would contravene Australian laws relating to the production and distribution of pornographic material, or distribution of viruses or causing or attempting denial of service attacks is forbidden, as is unauthorised access to system areas and information on our network or any systems connected to our network.

You acknowledge that we determine the priority of the traffic carried on our network and that the use by you of programs, such as peer to peer file sharing applications, that place a continuous or excessive load on our network and affect the service speed for other users is inconsistent with our Acceptable Use Policy and we may limit or even cease the transmission of such traffic at our discretion.

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

You agree that you will not send unsolicited bulk email via any method.

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

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

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

**Our Obligations to you**

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

The Service can only be provided to Qualified Sites. We accept no liability or responsibility whatsoever for providing Services to sites that are not Qualified Sites.

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

We will protect any personal information you provide us in accordance with our obligations under the *Privacy Act 1988 (Cth)* however you consent to your details being provided by the Provider to the Department, and potentially other appropriate agencies for the purposes of the Australian Broadband Guarantee Program administration, regulation and evaluation and policy development.

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

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

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

**Your Obligations to us**

You must provide us with accurate and truthful information in your Service application and keep us informed of any changes to this information including changes to credit cards (including expiry dates) and bank details.

You must pay for the Service over the full Agreement Term, and acknowledge that our payment terms are 7 days.

Should your credit card or direct debit account not be able to be debited for any reason, you will be considered in default and we reserve the right to disable your account and to collect all outstanding fees and charges including those charges incurred as a result of your default in payment.

You agree that on the termination of this Agreement, you allow us or our nominated representative access to your premises to collect equipment owned by us as outlined under the Termination clause of this Agreement.

If you vacate your property and wish to take your Service to your new address you will be liable for all costs involved in removing and reinstalling the equipment. You further acknowledge that there are no guarantees that we can connect you at your new address. If we cannot connect you, you remain liable for the above mentioned fees.

If you move and the new occupant wishes to take over your Service, we will novate your Agreement over to the new occupant. Once the new occupant signs the Agreement, you will be discharged of all your obligations under the Agreement and no further fees will be due and payable by you.

You will be responsible for any collection fees (including legal fees and any other costs) incurred by us as a result of the collection of outstanding monies including interest at the rate 10% per annum calculated daily and compounded monthly.

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

You agree that we may use Third Party Suppliers for the provision of this Service and you agree that you will not contact any of our Third Party Suppliers, other than in response to their communications.

You acknowledge that if you do contact one of our Third Party Suppliers, other than in response to their communications, that you will be liable for all costs imposed on us by our Third Party Supplier.

**Interference with the Service**

You agree that you will:

- Not interfere with normal operation of the Service or any facility, or make either unsafe.

- Allow us and our Third Party Suppliers safe access to the Customer premises if required.
- Ensure that we and our Third Party Suppliers are provided with sufficient and timely access to the Customer premises to enable us to provide the Service.

If you do not have control or have access to the premises in which the Service is delivered, you must:

- procure for us and our Third Party Suppliers all such access to the premises as may be required.
- Indemnify us and our Third Party Suppliers against any claim by the owner or occupier of the Service premises, or any other person, in relation to the entry of those premises.

#### **Interference with the Equipment**

You agree that neither you nor any other person (except us or our nominated installer or representative) will or attempt to carry out any modifications, maintenance or repair of any supplied equipment without our prior approval. Any item damaged or discarded by you whether purposefully, maliciously, accidentally or due to ill-will, mistreatment, undue care or otherwise will be repaired or replaced at your expense. We reserve the right to inspect the equipment to determine the fitness of the equipment to continue to provide the Service under the Agreement and subject to the requirements of the Australian Broadband Guarantee Program. BlueMaxx is responsible for repair and maintenance in the first 12 months at no cost to you, the Customer, unless the failure of the CPE could reasonably have been prevented by you, the Customer.

#### **Termination**

You may cancel this Agreement in part or total by giving us at least thirty (30) days notice in writing after the Agreement Term specifying the cancellation date. The Agreement will remain in force until the cancellation date and a pro rata period fee applicable to the cancellation date will be due and payable.

We may cancel this Agreement in part or total by giving at least thirty (30) days notice in writing to you specifying a termination date provided that notice of cancellation does not take effect prior to a period of three (3) years from the Service Commencement Date.

Provided that all payments due up to the termination date have been paid, we will carry out our obligations under this Agreement to such date.

We may cancel this Agreement on notice to you if:

- a) You become bankrupt or go into liquidation or make any arrangement for the benefit of your creditors or become subject to official management.
- b) You breach the warranties contained in the Interference clauses hereof.
- c) You breach any of your obligations under this Agreement and fail to remedy the same within thirty (30) days after receipt of written notice from us requesting you to do so;

You may cancel this Agreement on notice if BlueMaxx Pty Ltd:

- a) Goes into liquidation or makes any arrangement to benefit its creditors or has a receiver or official manager appointed.

- b) Breaches any of its obligations under this Agreement and fails to remedy the same within thirty (30) days after receipt of written notice from you requesting us to do so.

Rights and obligations which by their nature should survive will remain in effect after termination or expiration of this Agreement.

On the termination of this Agreement, should the ownership reside with BlueMaxx, you are responsible to return all the equipment to BlueMaxx's nominated address including but not limited to modem, BUC, LNB and Satellite Dish. Should it be required you agree to allow our nominated representative access to your premises to collect CPE owned by BlueMaxx used in the supply of the Program Service. Further, you agree that we or our nominated representative may leave the Satellite or mount and wiring in place, including the wall plate or socket otherwise you agree to make good any repairs at your expense.

Should CPE owned by BlueMaxx not be returned an equipment recovery fee of \$150.00 will apply and be charged.

#### **Limit of Liability**

Except for obligations contained in this Agreement and to the extent not prohibited by applicable law:

- a) each party's aggregate liability to the other for claims relating to this Agreement, whether for breach or in tort, shall be limited to the amount you would be liable to pay to us for 12 months access to the Service.

- b) neither party will be liable for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement (including loss of business, revenue, profits, use, data or other economic advantage), however it arises, whether for breach or in tort, even if that party has been previously advised of the possibility of such damage; and

- c) liability for damages shall be limited and excluded, even if any exclusive remedy provided for in this Agreement fails of its essential purposes.

#### **IP Address Space**

You agree that any IP address allocated to you in connection with the Service may change from time to time, and the IP addresses always remain our property or the property of BlueMaxx.

#### **Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the State of Queensland.

#### **Assignment**

You may not assign any of your rights or obligations hereto without our express prior written consent.

#### **Credit Information**

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

**Notices**

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

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

**Name:-** \_\_\_\_\_

**Signature:-** \_\_\_\_\_

**Date:-** \_\_\_\_\_

Office Use:-  
Member Code: \_\_\_\_\_

Application Accepted: Y / N    Name:                      Date:    /    /