



BLUEMAXX Customer Agreement

This Agreement is available in electronic format and in a larger typeface at www.bluemaxx.net.au

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Please read this Agreement carefully

The Service supplied under this agreement are provided by **BLUEMAXX Communications Pty Ltd** (ABN: 42 114 528 273), PO Box 2777 QLD 4350 ("our", "we", "us" or "**BLUEMAXX**")

By applying for Satellite Internet access and by using the BLUEMAXX network, you are bound by this agreement.

Definitions

In this agreement, unless the context requires otherwise:

"Agreement" means this agreement to provide the Service to you as set out in the Schedule.

"Application Date" means the date your application is received by BLUEMAXX either by online signup, fax, phone, standard or electronic mail.

"Charges" means the charges payable by you to us under this agreement including, but not limited to, installation, access, usage, Default Fees, interest and consulting fees <as set out in the Schedule>.

"Contract Period" means the contract period selected in schedule commencing on the Service Commencement Date, subject to any rights of earlier termination.

"CPE" means customer premises equipment.

"Default Fees" means all charges, cost and expenses (including legal fees on a solicitor and own client basis) we incur as a result of a breach by you of any of your obligations to us.

"GST" has the same meaning as in "A New Tax System (Goods and Services Tax) Act 1999".

"Qualified Site" means a site determined by BLUEMAXX as capable of accessing the Services.

"Satellite Broadband" means access to computer and internet services by satellite broadband.

"Schedule" means the duly completed Satellite Broadband application form <attached>.

"Service" means the supply of Satellite Broadband as described in this agreement.

"Service Commencement Date" means the date that the Service is activated by us for you, as notified by us.

"Third Party Supplier" means a third party supplier providing Services under this agreement.

"you" means the customer whose name and details appear in the Schedule.

Reference to a singular number includes the plural and vice versa.

Reference to a gender includes all genders.

Reference to "person" includes natural persons, companies, government authorities and other forms of legal entities.

Headings are provided as a convenience only and do not form part of this agreement.

Term of this Agreement

This agreement commences on the Application Date and continues for the Contract Period. If you terminate this agreement you remain liable for all Charges and all other amounts you must pay under this agreement.

Notices

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

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

Our Obligations to You

We will use our best endeavours to provide the Service to you and to provide the necessary information to access that Service.

We will use our best endeavours to ensure a continuous Service, however this cannot be guaranteed.

We will take care of any personal information you provide us in accordance with our obligations under the Privacy Act 1988 (Cth).

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

We will obtain and keep current any necessary licences required under Australian law.



We are not responsible for training you to use this Service.

We will ensure that the plan you specified on your application form will be available to you for a period of 12 months from the Service Commencement Date without any change in overall price, speed or data allocation.

We will allow you to move up or down between our plans at any stage and a minimal charge may apply (except those associated with the respective monthly plan Charges).

We may use Third Party Providers to provide the Service. Where we use Third Party Providers, we are responsible for their acts and omissions.

Your Obligations to us

You must provide us with accurate and truthful information in your Service application and keep us informed of any changes to this information.

You are responsible for providing all necessary equipment for the connection to the Service, including computer equipment, network card, network hubs / switches, routers, software programs and electricity.

Subject to the provisions of this Agreement, you are responsible for maintaining, repairing and replacing all equipment supplied to you by BLUEMAXX. This includes but limited to cost of equipment, service calls and travel costs incurred.

You must pay any Default Fees incurred by us in collecting unpaid amounts owing to us, together with interest at the rate determined in accordance with section 48(1) of the Supreme Court Act 1995 plus 2%, calculated daily and compounded monthly.

You indemnify us and any Third Party Suppliers in respect of all costs, damages and losses arising, directly or indirectly, from any default, breach or termination of this Agreement by you.

You agree that we may use Third Party Suppliers to provide the Service.

You must not contact any of our Third Party Suppliers for any reason.

You acknowledge that if you do contact a Third Party Supplier, you must pay all costs imposed on us by that Third Party Supplier.

You must pay the Charges and for the Service within 7 days of the date on our invoice by credit card or direct debit account. If your credit card or direct debit account cannot be debited for any reason, you will be in default. We can recover all Default Fees.

You agree that on termination of this agreement for any reason, you allow BLUEMAXX or its representative access to your premises to collect all BLUEMAXX's equipment. If access is not granted for any reason, you agree to reimburse all costs that we incur as a result.

Service Description

Any transmission speeds we refer to are maximum theoretical speeds achievable with the Service under ideal conditions. You

acknowledge that actual speeds may differ from theoretical speeds for reasons including, without limitation:

- Third Party Supplier network congestion
- Third Party Supplier line interference
- Internet Congestion
- Contention ratios
- Errors in the configuration of your equipment.

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

Service Availability

The Service can only be provided to Qualified Sites. BLUEMAXX accepts no liability or responsibility whatever for providing Services to a site that is not a Qualified Site.

Interference with the Service

You agree you must:

- not interfere with normal operation of the Service or any facility or do anything which may make either unsafe
- allow us or any Third Party Suppliers safe access to your premises if required
- ensure that we and our Third Party Suppliers are provided with sufficient and timely access to your premises to enable provision of the Service

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

- procure for us or our Third Party Suppliers all access to the premises as may be required.
- indemnify us and our Third Party Supplier against any claim by the owner or occupier of the premises or any other person in connection with that entry to those premises.

Interference with the Equipment

You agree that you will not carry out or attempt to carry out any modifications, maintenance or repair of any equipment supplied by us without contacting BLUEMAXX support.

Any equipment damaged by any act or omission by you, whether deliberate, accidental or otherwise, will be repaired or replaced at your expense and void all warranty.

BLUEMAXX reserves the right at any time to inspect any equipment to determine its fitness to continue to provide the Service. BLUEMAXX may terminate the agreement if you refuse to pay for repair or replacement of equipment damaged as a result of your act or omission.

Limitation of Liability

Except as expressly set out in this agreement and to the maximum extent permitted by law:

a) each party's maximum liability to the other for all claims relating to this agreement shall be limited to the amount you pay us as of 12 months access to the Service; and

b) neither party will be liable under any circumstances 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, even if that party has been previously advised of the possibility of such damage.

Nothing in this agreement excludes, restricts or modifies any rights granted to you under the Trade Practices Act 1974 or other applicable legislation ("Applicable Law"), except to the extent that they can lawfully be excluded, restricted or modified. To the extent any provision of this agreement purports to do otherwise, it is of no effect.

If any condition, warranty or obligation is implied in this agreement or imposed on Bluemaxx by any Applicable Law, to the extent our liability in respect of any such condition, warranty or obligation cannot be or is not otherwise excluded, restricted or modified by the agreement, our liability in respect of any such breach shall, to the fullest extent permitted by law, be limited to an amount equal to the price referred to in this agreement and to:

- (i) in the case of supply of equipment by us, to any one or more of the following as we decide:
 - (1) replacement of the equipment or supply of equivalent equipment;
 - (2) repair of the equipment;
 - (3) payment of the cost of replacing the equipment or acquiring equivalent equipment;
 - (4) payment of the cost of having the equipment repaired; or
- (ii) in the case of supply of the Service (or other services) by us, to either of the following as we decide:
 - (1) supplying the Service (or the other services) again; or
 - (2) payment of the cost of having the Service (or the other services) supplied again.

Ownership of Equipment

All antenna and satellite equipment used in connection with the Service and supplied to you, including but not limited to, Satellite Dish, BUC, LNB, Modem, Mount/s, router, associated components or equipment forming part of the service and associated cabling, remains the property of BLUEMAXX, as per existing contract, requiring 3 consistent years of service commencing from original connection date, prior to ownership automatically transferring to you. (Excluding IP Address/s).

You remain responsible for equipment whilst in your care and possession and any damage incurred however caused, which is not covered under normal warranty conditions, will be your responsibility to repair or replace through BlueMaxx.

Termination

You may terminate this agreement **after expiry of the Contract Period** by giving us at least 30 days written notice. This agreement will remain in force until the date the termination comes into effect and a pro rata fee to that date will be due and payable.

We may terminate this agreement **after expiry of the Contract Period** by giving you at least 30 days written notice. Provided that all payments due up until the date the termination comes into effect are paid on demand, we will carry out our obligations under this agreement to that date.

BLUEMAXX may terminate this agreement **immediately** at any time on written notice to you if you:

- a) become bankrupt or insolvent or go into liquidation or make any arrangement for the benefit of your creditors or have a receiver, receiver/manager or any other form of insolvency administrator appointed to you or any of your property;
- b) interfere with any of our equipment in breach of this agreement; or
- c) breach any of your other obligations under this agreement and fail to remedy them within 30 days after receipt of written notice from us requesting you to remedy the breach.

You may terminate this agreement **immediately** at any time on written notice to us if BLUEMAXX:

- a) becomes insolvent or goes into liquidation or makes any arrangement for the benefit of its creditors or has a receiver, receiver/manager or any other form of insolvency administrator appointed to it or to any of its property; or
- b) breaches any of its obligations under this agreement and fails to remedy them within 30 days after receipt of written notice from you requesting us to remedy the breach.

Rights and obligations which by their nature should survive termination remain in effect after termination or expiry of this agreement.

On termination, BLUEMAXX or its nominated representative may leave the mount, the wall socket and wiring in place at your premises. Otherwise, you agree to make any repairs at your cost.

An equipment recovery/return cost of \$150.00 will remain in force, as per existing contract.

IP Address Space

You agree that any IP address/s allocated to you in connection with the Service remains the property of BLUEMAXX or its Third Party Supplier and that IP addresses may change from time to time by giving 14 days written notice.

Governing Law

This Agreement will be governed by and construed in accordance with the laws of Queensland and each party submits to the jurisdiction of the courts of that State.

Assignment

BLUEMAXX may assign any or all of its rights and obligations at any time but will not do so without giving you at least 14 days written notice.

You may not assign any of your rights or obligations under this agreement without BLUEMAXX'S prior written consent.

Amendment

BLUEMAXX may amend this agreement from time to time. We will give you 14 days written notice of any proposed change to this agreement. The amendment will take effect unless you notify us in writing within 5 working days that you object to the proposed change and wish to terminate the agreement.



This agreement can only be varied as set out in this clause or by agreement signed by both parties.

Acceptable Use Policy

You agree:

- not to use your access to the Service for illegal purposes
- to conduct yourself in relation to your access to the Service in a responsible and considerate manner
- that cracking, hacking, crashing, spamming, transmitting any material or sending any material which infringes copyright or any data which contravenes laws relating to the production and distribution of pornographic material or distribution of viruses is strictly forbidden
- that unauthorised access to system areas and information on the BLUEMAXX network or any systems connected to the BLUEMAXX network is strictly forbidden.

You accept total responsibility for the content of your files stored on the BLUEMAXX network and for any data transferred or caused to be transferred across the BLUEMAXX network.

You agree that you must not send unsolicited bulk commercial e-mail 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 must maintain the secrecy and confidentiality of all access information you require to access the Service and you agree not to disclose this information to any other person.

You must notify us **immediately** if your username and/or password are lost or you think an unauthorised person may be using them. You are liable for any unauthorised use of the Service which arises directly or indirectly from your access to the Service.

You acknowledge that we may introduce a Fair Use Policy in respect of the Service. We may only introduce a Fair Use Policy after giving you 60 days notice.

Technical Support

The Service includes **free** technical support for installing and commissioning the Service. This support is only provided by email, telephone and via our website, apart from connection of the radio equipment by BLUEMAXX's nominated installer at your premises prior to commencement of the Service.

Normal help desk hours; Seven (7) days a week 8am to 8pm (Qld); Customer Accounts – Mon – Frid -8.30 – 5.00pm; (Qld hours, excluding Brisbane public holidays) You are able to log a fault 24 hours a day, 7 days a week free of charge via our Help Desk or phone paging system by calling our help desk on 1300 791 990. Faults may also be logged via fax to (07) 4638 7966 or email to support@bluemaxx.net.au. On Site visits are available for an additional fee, if not covered under initial warranty period.

Additional Fees and Charges

You will be provided with a quotation detailing all costs and associated setup fees.

An equipment recovery/return cost of \$150.00 will remain in force, as per existing contract, should contract be terminated.

Failure to Perform

Bluemaxx shall not be liable for any failure to perform or to comply with this agreement if that failure arises from any circumstances beyond our reasonable control including, without limitation, from strikes and other labour disturbances, acts of God or the public enemy or terrorists, war, civil commotions, acts or omissions of government agencies, earthquakes, storm, fire, lightning, riots, epidemics, non delivery of materials from our usual sources of supply or any computer or equipment down-time or malfunction.

GST

- (a) Subject to any express provisions in this agreement to the contrary, if any supply made under or in connection with this agreement by one party ("Supplier") to the other party ("Acquirer") is subject to GST, the payment for that supply will be inclusive of GST (if any) and the Supplier is not entitled to recover any additional amount on account of GST from the Acquirer.
- (b) The Acquirer will not be obligated to make a payment on account of GST under paragraph (a) until the Supplier has issued a tax invoice to the Acquirer for the supply to which the payment relates.
- (c) If a payment made by one party to the other party is a reimbursement or indemnification of a cost, expense, loss or liability incurred by that other party, the reimbursement or indemnification sum will first be reduced to a net sum by deducting the amount, if any, for which that other party is entitled to an input tax credit, and then increasing that net sum by the amount of GST payable by that other party.
- (d) Words or expressions which are defined in *A New Tax System (Goods & Services Tax) Act 1999* have the same meaning in this clause.

Privacy

Bluemaxx needs to collect personal information about you, as requested in this application form and also from other sources for the purposes of your application. If Bluemaxx cannot collect this information it will be unable to process your application. Bluemaxx respects your privacy and will only use or disclose personal information in accordance with the *Privacy Act 1988*. Bluemaxx may disclose personal information to Third Party Suppliers.

You can access personal information about you in accordance with the *Privacy Act 1988*. To request access, ask a privacy related question or get a copy of our Privacy Policy Statement, please write

to the Managing Director, Bluemaxx.

Return of Equipment

Equipment must be returned in its original condition and equipment specially made, altered or damaged is not returnable for credit. An equipment return/recovery fee of \$150.00 applies or you may arrange your own freight arrangements for equipment to be returned to BlueMaxx.



Errors in any invoice

Errors in any invoice shall be corrected and appropriate adjustments made between the parties.

Bandwidth

BlueMaxx will not charge for excess usage, however if you exceed your data allowance, you will be shaped to 64/64 kpbs. Data is counted both ways. BlueMaxx Off Peak hours are 11.00pm to 8.00am (Qld AEST); Additional Blocks of data can be purchased at any time.

Entire agreement

This agreement together with any other documents referred to in this agreement or signed in connection with this agreement constitutes the entire agreement between the parties about the subject matter of the agreement. Neither party relies on any representation which is not set out in this agreement.

Claim for Credit

Any claim for credit must be delivered to us within 7 days of receipt of the relevant equipment and accompanied by the original invoice number and reasons for the claim. Claims for shortages must be made within 7 days of receipt of the relevant equipment. All returns must be authorised by us. Any transport charges must be prepaid and shall be subject to a surcharge or handling fee, to be determined by us, and this shall be deducted from the credit due and owing to you.

Acceptance by Bluemaxx of delivery of equipment returned for credit does not signify agreement to issue a credit. A credit note will only be issued after the equipment has been inspected and found to be satisfactory in the reasonable opinion of Bluemaxx.

Applicant's Privacy Agreement

In this clause, "personal information" means information about you collected by Bluemaxx in this application form and from other sources, including information about you, your circumstances, credit worthiness, credit history, credit standing and credit capacity.

You agree and acknowledge that:

By submitting this application, I/we agree that, subject to the *Privacy Act 1988*, Bluemaxx (and any agent of Bluemaxx deemed to be a credit provider under that Act) may:

- obtain credit reports about me/us from credit reporting agencies to assess my/our application for personal/commercial credit or to collect overdue payments from me/us;
- obtain and verify personal information from a motor vehicle, driver's licence or land title registry or from a business that provides commercial credit worthiness information;
- disclose personal information to credit reporting agencies before, during or after providing credit to me/us. This includes, but is not limited to:
 - identity particulars, name, sex, address (and the previous 2 addresses), date of birth, employer or driver's licence number;

- the fact that I/we have applied for credit and the credit limit/amount and that Bluemaxx is a credit provider to me;
- advice about payments which are at least 60 days overdue and which are in collection (and advice that payments are no longer overdue);
- advice that cheque/s drawn by me/us which are more than \$100 have been dishonoured more than once;
- Bluemaxx's opinion that I/we do not intend to meet my/our credit obligations (or that I/we have committed some other serious credit infringement);
- that credit provided to me/us has been paid or otherwise discharged;
- exchange personal information with a credit provider who is named in this application or in a credit report issued by a credit reporting agency or who proposes to provide credit to me/us or has provided credit to me/us. This is for purposes including but not limited to:
 - assessing my/our credit worthiness, this application and any subsequent application by me/us for personal or commercial credit;
 - assisting me/us to avoid defaulting in my/our credit obligations;
 - assessing my/our position if I/we fall into arrears;
 - notifying other credit providers of my/our default;
 - exchanging information about my/our credit obligations regarding my/our default with other credit providers;
 - Bluemaxx's approval process as to any transactions I/we wish to make using credit provided by Bluemaxx;
 - Bluemaxx's administration of my/our credit account;
- exchange personal information with any person whose name I/we give Bluemaxx from time to time in connection with my/our credit account;
- notify and exchange personal information with Bluemaxx's collection agent if I/we default on my/our credit obligations.

I/We also agree that Bluemaxx may:

- use personal information to send me/us marketing material and offers about products and services including products and services supplied by third parties (to stop receiving this, I/we understand that I/we should write to Bluemaxx at the address notified below);
- monitor and record my/our telephone conversations with Bluemaxx from time to time in order to train Bluemaxx's staff and control service quality;
- disclose personal information to a likely or actual buyer of the whole or part of Bluemaxx, if reasonably necessary for such a sale.

I/We also agree that where I/we have provided Bluemaxx with information about another individual in this application form, I/we will make sure that the individual is aware that:

- information about that individual is provided to Bluemaxx for the purpose of my/our credit application for verifying that information;
- without that information, Bluemaxx may not be able to accept this application; subject to the *Privacy Act 1988* individuals can access information about them held by Bluemaxx by writing to: The Managing Director, Bluemaxx.