

These Terms and Conditions set out the Standard Contract between the Customer/Applicant and OOKI for the Supply of Broadband Internet Services specified on the Application Form and applies to You as a user of the Service. The aim of this document is to ensure that You know both Your rights and obligations when using the Service as well as Our rights and obligations.

1.0 Application and Variation of the Contract

- 1.1 This Contract is the terms on which We provide the Service to You and supersedes any previous Contracts set by Us.
- 1.2 If we notify you of a proposed change that we consider detrimental to You, You may terminate the service provided you give Us at least 7 days written notice prior to the new agreement taking action. Under this clause, there will be no termination fee applied to contracts, however all equipment owned by OOKI must be returned.

2.0 Services

2.1 Service Plans

- 2.1.1 We will supply you with one of the OOKI services as nominated by you.

2.2 Speeds

- 2.2.1 Advertised speeds are stated in kbps and are peak achievable Download and Upload rates.
- 2.2.2 The expected average download and upload speeds will be not less than 75% of the nominated peak speeds at least 70% of the time.

2.3 Traffic Limits

- 2.3.1 Both down and upload traffic is measured – as well as the combined total. Once Your Limit is reached on any of these measures, Your Account, comprising all Traffic types, is placed on Cruise Control until the end of that calendar month

2.4 Continuity of Service

- 2.4.1 We do not take responsibility for any loss, damage, liability or expense resulting from the lack of continuous provision of Service.
- 2.4.2 OOKI cannot guarantee connection to any particular Internet site, however the service will be available at least 95 per cent of the time, averaged over a quarterly period.

2.5 E-mail Capacity

- 2.5.1 E-mails sent and received through the OOKI network can be no larger than 35MB inclusive of Attachments and Encapsulation
- 2.5.2 Sending an e-mail to multiple recipients has been limited to 35 at a time in order to control 'Spamming' on our network.

2.6 Monitoring

- 2.6.1 Where it is deemed necessary in order to comply with legal obligations, OOKI may monitor data access transmitted by you while using the Service.
- 2.6.2 We may take any steps deemed necessary to comply with legal obligations under the relevant state or federal legislations, industrial code of practice or under directions of regulatory authorities or court order.

3.0 Billing

- 3.1 All prices quoted are GST inclusive unless otherwise noted.

3.2 Account Payments

- 3.2.1 All accounts must be paid through an accepted Credit Card, cheque or Direct Deposit. OOKI has the right to decline any other types of payment.
- 3.2.2 We reserve the right to disclose your credit card details to, and obtain information from, any financial institution or credit card issuer to verify the credit card details.

3.2.3 The initial payment is made in advance and must be cleared prior to the Account being activated for use.

3.2.4 All ongoing payments are payable in advance and are calculated on a calendar month basis. Any additional fees and charges that might be incurred will be payable in Arrears.

3.2.5 We must be notified of any changes that are required to Your Automatic Payment details at least 7 day prior to Your next Billing Cycle.

3.2.6 If you remain suspended for an entire calendar month, You are still required to pay for the provision of the Service in that month. If payment for Services has not been received within 60 days of invoice billing, your account will be closed and outstanding amounts collected.

3.3 Additional Charges may apply in the following circumstances:

3.3.1 If incorrect account details have been given, sufficient funds are unavailable or changes to account details are not passed on to Us.

3.3.2 Where Your account is suspended for any reason under this agreement.

3.3.3 If automatic payments have not been selected, it is Your responsibility to pay all monies owing on Your Account by the due date. If payment has not been received, Your account may be suspended until full payment has been received.

3.3.4 Any expenses, cost, or disbursements incurred by Us in recovering any outstanding monies including dishonour fees, debt collection, agency fees or legal fees.

3.3.5 To re-activate a closed account, the current re-connection fee will apply.

3.3.6 Sending out of hard-copy invoices.

3.4 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.

3.5 You may request Your account to be placed on hold for a minimum of 1 calendar month, paying only for access to Your Webmail Service. Your Internet Service from this account will be suspended for the time Your Account is on hold. A minimum of 7 days Written Notice is required prior to the beginning of the hold period being requested.

4.0 Customer Responsibilities

4.1 If the Customer allows a person under the age of 18 to use the Service then the Customer is legally responsible for supervising that person's usage particularly to ensure the suitability of content transmitted to and seen by that person.

4.2 It is the Customer's responsibility to ensure that their computer meets the minimum specification to connect to the Service, including any Software and Hardware requirements. This includes a working computer, portable or other, using one of the common operating systems, and a functioning Ethernet port, with moderate security software.

4.3 The customer must not connect any unauthorised equipment to the Service.

4.4 The Customer is asked to regularly check Their Default E-mail Address for any correspondence from Us about Your Service.

4.5 Security

4.5.1 OOKI will allocate a fixed User ID to the Customer.

4.5.2 The Customer agrees to keep their password confidential and acknowledges that it is liable for all charges associated with the Service resulting from the use of that password. OOKI assumes no liability for unlawful use of the Customer's password even in the event of it being lost or stolen and in those circumstances the Customer agrees to immediately notify OOKI of such loss or theft. On application to OOKI the Customer may change their password at any time.

- 4.5.3 Unauthorised access of Your Service via an unprotected connection is the sole responsibility of the Customer. It is recommended that you take necessary measures to protect Your equipment and Service from unauthorised access.
- 4.5.4 The customer acknowledges that OOKI cannot fully protect Your computer, software and data from viruses and other malicious programs, it is therefore the Customers responsibility to take necessary preventative measures.
- 4.6 The Customer acknowledges that some material in the Internet may be offensive, inappropriate or unsuitable and agrees that OOKI has no responsibility whatsoever for such material. Additionally the Customer hereby agrees that in using the Service the Customer must not:
- 4.6.1 use the Service to commit any fraud, or undertake any illegal or unlawful or offensive activity or breach any Australian legislation, codes of conduct or standards established for the Internet Service Industry;
- 4.6.2 transmit, store or place on the Internet any content which is defamatory, offensive or of an obscene and menacing character;
- 4.6.3 place on the Internet or issue invitations to give directions (including hyperlinks) to illegal content or potentially illegal content;
- 4.6.4 disseminate computer viruses or other malicious programs
- 4.6.5 engage in conduct so as to interfere with or disrupt any other Internet users or service providers;
- 4.6.6 engage in sending unsolicited emails, spamming and advertising material;
- 4.6.7 talk about hacking or about breaching any laws, talk of or engage in any conduct that may contravene any OOKI Policy (including but not being limited to any Acceptable User Policy that we may have and our Privacy Policy) and any other Policies or Practice to which OOKI may subscribe from time to time including Codes of the Internet Industry Association of Australia; and
- 4.6.8 engage in any unauthorised use of any material protected by patent, copyright, trademark or other intellectual property rights.
- 4.7 The Customer shall indemnify and hold harmless OOKI from and against any action, claim or loss that OOKI may suffer or may have brought against it as a result of the Customer breaching the Contract, including but not being limited to those listed in Clause 4.6.
- 4.8 Where Your continued use of the Service adversely affects the network, We reserve the right to suspend/control the Service.
- 4.9 At the time of installation the CPU will be sited to maximize line of sight (LOS) and signal strength to the base. The customer should ensure that once the CPU is placed, trees and shrubs should be maintained at their present size so that the foliage causes minimal interference to this LOS.
- 4.10 Any persons that use Your Service have read and understand the Contract.

5.0 Our Responsibilities

- 5.1 Network outages may occur from time-to-time that may result in the Customer suffering from Downtime. In the case of scheduled maintenance outages, all Customers who may be affected will be notified through Their Default E-mail Address no later than 2 days prior to the scheduled outage. If the outage is for emergency maintenance status messages will be placed on the office voicemail (1300 858 295).

5.2 Connection of Service

5.2.1 Given that all required cabling is completed and active, and we have received an application form from which payment has been successfully processed, connection to the Service will be provided within fifteen working days of the nominated or agreed connection date.

5.3 Outages

5.3.1 We will endeavour to restore Services resulting from a System-Wide Outage within 24 hours, a Community-Wide Outage within 36 hours and an Individual Outage within 96 hours of initial report.

5.3.2 Restoration of Services resulting from Outages, where possible will be kept within indicated times, but may vary in the event of exceptional circumstances.

5.4 If OOKI provides a Customer with a link to another web site or resource, OOKI will not be responsible for the content of those web sites or resources and OOKI makes no warranties or representations as to the accuracy of any information in or linked to its web site and assumes no liability or responsibility for any errors or omissions in content thereof. Additionally OOKI will not be responsible for the content or form of any information or data passed into the Internet in the provisions of the Service including any information which is defamatory, offensive, unlawful or unsuitable for people under 18 years or for any one in particular. Nor will it be liable for any damage to or viruses which may infect, contaminate or act to the detriment of any computer equipment or other equipment owned or utilised by the Customer.

5.5 OOKI provides the Service in accordance with its Privacy Policy which is available on request.

6.0 Commencement of the Contract and the Service

6.1 The Contract is active from the date the Application Form is signed and received by OOKI. OOKI may deduct any initial setup costs including the cost of the Service over the initial Billing Period between the activation of the Contract and the commencement of the Service.

6.2 The provision of Service will commence once all of the following criteria have been met:

6.2.1 Cable infrastructure has been installed and tested OK.

6.2.2 The Application Form has been completed fully and accurately.

6.2.3 Payment of the initial setup costs including the cost of the Service over the initial Billing Period has been successfully processed.

7.0 Abuse Procedures will be commenced by

7.1 giving an unauthorised person the Customer's account and password details;

7.2 deliberately or recklessly disrupting OOKI's Service or activities, or engaging in any activity likely to disrupt the same, either deliberately or not;

7.3 engaging in spamming;

7.4 misusing access to the Internet in a manner identified in writing by a competent law enforcement official as unlawful;

7.5 using access to the Internet to menace or harass others;

7.6 behaviour that results in the disruption of other people's access to the Internet or their enjoyment thereof, including but not being limited to computer viruses, email bombardment and damage to Internet-connected resources and channel flooding;

7.7 using access to the Internet to unlawfully obtain access to other networks.

8.0 Suspension or Termination of Service

8.1 by User:

8.1.1 The User can terminate the account at any time, providing You provide Us with Written Notification at least 7 days prior to the next billing cycle.

8.1.2 If an account is closed while still in contract, termination fees will apply.

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

8.1.4 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 OOKI within the timeframe allowed from the commencement of the contract.

8.2 by OOKI:

8.2.1 Any breach of the Contract, as opposed to termination, OOKI may choose to suspend the Service for such period it determines.

8.2.2 OOKI supports the right to privacy and the laws that support privacy in all forms and it strictly prohibits the sending of unsolicited mass messages of any kind or any other e-mail forms. We will terminate the account of any member who uses "spamming" techniques to solicit referrals and who does not remove a recipient upon being requested to do so by that recipient.

8.2.3 If OOKI suspends Your Service for any breaches under this agreement, you shall remain liable for all charges due throughout the period of suspension. A fee may apply.

8.2.4 Upon the death of or insolvency of the person or company holding the Account holder, the account shall be deemed terminated and outstanding amounts collected.

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

8.2.6 If the account is terminated, You remain liable for all charges payable under the agreement in respect of the provision of services from the time of termination to the end of the Billing Cycle or Contract Period.

9.0 Ownership and Use of the Equipment and Facilities

9.1 The OOKI Broadband Network is an important part of our ability to provide you with the Service. This means that we need to make sure that the Broadband Network remains our absolute property at all times. The boundary of our Broadband Network is the Ethernet point of connection in the Premises.

9.2 Internet connections can only be made to Wireless Modem Points installed by OOKI authorised installers.

9.3 All CPE provided by OOKI remains the property of OOKI. If the Customer terminates their account the equipment must be returned to OOKI. Standard termination fees apply, equal to half that of the contracted plan level, over the remaining unpaid months of the term. Any remaining paid months that have not been used will be forfeited.

9.4 All CPE owned by OOKI, including but not limited to loan stock and ITP's, must be maintained in good condition and repair. OOKI will, at all times, retain ownership of this equipment. OOKI may charge the Account Holder any reasonable costs incurred for repairing or replacing the equipment if damaged, lost or stolen.

10.0

Internet Support Facilities

10.1 We provide You with an Internet support service from 8AM-6PM Mon-Fri.

10.1.1 If you are experiencing any difficulty with your access, you can contact support:

By phone on 1300 858 125

By E-mail helpdesk@ooki.com.au or info@ooki.com.au

We encourage you to make use of this free service for genuine service issues. As our support technicians are trained to solve broadband Internet issues, we ask that you acknowledge that:

We cannot offer support for networking multiple PC's;

We cannot offer support for general software issues or for general hardware.

10.2 In an effort to control spam, OOKI constantly monitors and excludes known spam ports. In addition, OOKI provides spam monitoring facilities. This does not prevent all spam from being received, however it does reduce the sheer amount of spam to your mailbox.

11.0

Contract period.

The contract period is for a minimum of six months from the date of contract. Once the initial period ends, you will be contracted to OOKI on a month by month basis, provided you wish to continue to receive the service.

12.0 Complaints Procedure

If you wish to lodge a complaint about our services or associated matters, you may contact us via e-mail, post, or phone –see details in 10.1.1.

13.0 Force Majeure

If either Party is unable, as a result of Force Majeure, to carry out their obligations under this Agreement, they shall give the other Party prompt written notice of the occurrence and particulars of the act, event or cause constituting the Force Majeure and, in so far as known, the probable extent to which it will be unable to carry out, or be delayed in carrying out its obligations and thereupon will not be required to carry out such obligations for the period provided the Party has used all possible diligence to overcome or remedy the Force Majeure as quickly as possible.

14.0 Proper Law And Jurisdiction

The laws in New South Wales shall govern this Agreement and the parties submit to the nonexclusive jurisdiction of the Courts of that State.

DEFINITIONS

Agreement

Your Application with Terms and Conditions

Application Form

Your Customer Application

Attachments

Any files or documents that are attached to an e-mail Billing Cycle

The Customer's selected billing period option (monthly, quarterly or annually)

Community-Wide Outage

An outage that results in downtime, affecting an entire OOKI community.

CPE

Consumer Premises Equipment (eg. Modems, Wireless Equipment, etc).

Cruise Control

Where the connection speed is reduced to simulated dial-up speeds.

Default E-mail Address

The e-mail address that you have specified to be the main OOKI e-mail address.

Defined Abuse

means misuse of the Service and access to the Internet as per Clause 8.0

Download

Any data that is received by your computer from the Internet

Downtime

The period in which a customer cannot gain access to the Service due to network outages.

OOKI, Us, Our

OOKI – ACN 168 390 136

Encapsulation

Coding and encryption of your e-mail when sent.

Force Majeure

means any act, event or cause beyond the reasonable control of the party concerned including, but not limited to, acts of God, perils of the sea, war, sabotage, riot, storm and tempest, earthquake, landslide, explosion, strike and other labour difficulties (whether or not involving employees of the party concerned) or failure of the internet or world wide web.

General Traffic

All traffic that is not classified as Local or Internal Traffic.

Individual Outage

An outage that results in downtime, affecting an individual premises or street.

Internal Traffic

All traffic that does not leave the OOKI network.

ITP

Information Technology Package available to selected communities.

kbps

kilobits per second

Local Traffic

All traffic that travels through the OOKI network.

Outage

The inability to deliver the Service.

Premises

The physical address where the Service is connected.

Spamming

Spamming is the unsolicited and unauthorised sending of messages of any kind to businesses and people who do not know you personally and have not agreed to receive your messages.

System-Wide Outage

An outage that results in downtime, affecting the entire OOKI Internet network Traffic Limits

The total allowable data transferred through your account over a calendar month Upload

Any data that is sent by your computer to the Internet

Written Notification

Acceptable forms of Written Notification is e-mail, fax or registered mail

You, Your, Customer, Applicant

The account holder as per the name given on application