

1. Terms and Conditions Overview

These Terms and Conditions ("Terms") describe the terms on which BBIT Pty Ltd, ACN, 087 328 532 ("Summit Internet Solutions"), provides you ("You" or "Subscriber") with Internet access and associated services ("Service").

The usage of any Summit Internet Solutions services or the signing of any service agreement with Summit Internet Solutions deems the Subscriber to have understood and agreed to these Terms.

Unless a duly authorised employee or officer of Summit Internet Solutions indicates to you in writing, no variation of the provisions of this Agreement is permitted.

If your application to Summit Internet Solutions is accepted, Summit Internet Solutions will provide you with access to the Internet subject to these Terms.

The terms and conditions described in this Agreement shall apply to the exclusion of any other terms and conditions whatsoever.

Summit Internet Solutions reserves the right to refuse applications for service in our complete discretion.

Words importing the singular include the plural and vice versa. If a word or phrase is defined cognate words and phrases have corresponding definitions.

A reference to a person includes a firm, unincorporated association, corporation and a government or statutory body or authority. A reference to a person includes its legal personal representatives, successors and assigns.

This or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties.

Clause headings do not affect the interpretation of this document.

You may not transfer or novate, nor try to transfer or novate the right to receive the Summit Internet Solutions Service or any other right under this agreement to anyone else without our consent. We may transfer or novate any of our rights or obligations under this agreement by sending you a notice.

2. Limit of Liability

While Summit Internet Solutions takes reasonable care and skill in providing ADSL services, we do not warrant or guarantee that the service will be continuous or error-free. The liability of Summit Internet Solutions is expressly limited to the price paid by you for the Services.

Summit Internet Solutions shall not be liable to you or your servants agents or representatives for any direct, indirect, incidental or consequential loss or damages of any nature howsoever caused including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of the sales contract and in no event shall any claim be recognised unless the claim is in writing and received by Summit Internet Solutions within 14 days of the date of delivery.

You acknowledge and represent that these limit of liability provisions are fair and reasonable having regard to the nature of this Agreement. In particular, you acknowledge and represent to Summit Internet Solutions that, in respect of these Terms, Summit Internet Solutions is not in a position of relative bargaining superiority to you and Summit Internet Solutions has offered no inducement.

Summit Internet Solutions does not warrant that the manuals or any related documentation is free of errors.

Summit Internet Solutions shall not be liable for any failure to perform its obligation under this Agreement for any cause beyond its reasonable control including without limitation fire, flood, strikes, transportation delays, fuel and energy shortages and defaults of sub-contractors.

Summit Internet Solutions makes no representations about the suitability of the Service for a particular purpose.

3. Summit Internet Solutions ADSL Broadband Internet Service Terms of Provision

Summit Internet Solutions agrees to supply the Subscriber with a Service that consists of a broadband (ADSL) connection to the Internet, and other associated services. The provision of this service is subject to these Terms.

The Service will be installed to an existing telephone line at your premises.

The Service is not available in all areas. You may check the availability of the service by telephoning Summit Internet Solutions or checking our website at 'www.summit.net.au'.

The Service availability information at Summit Internet Solution's disposal may not always be accurate. An advice that a Service is available on the Subscriber's telephone line may later be altered to advice that the Service is not available.

Summit Internet Solutions reserves the right to inform the Subscriber of the non-availability of a service to the Subscriber's premises, even after informing the Subscriber that the Service would be available.

Interruptions to the Subscriber's telephone service may occur during provisioning of the ADSL connection.

4. ADSL Modem

Subscribers will require an ADSL modem in order to be able to connect to the Service.

This modem can be supplied by Summit Internet Solutions on payment of the modem purchase price. The Subscriber may also supply their own modem.

If the Subscriber does supply their own modem, it must be approved for use in Australia. A list of approved modems is available from Summit Internet Solutions.

Minimum system requirements to install the ADSL modem for use on a PC are Pentium+, Windows 98 or above, 32 MB RAM, Spare USB port and a CD-ROM drive, or a spare Ethernet port.

Minimum system requirements to install the ADSL modem for use on a Mac are Power PC, Power Book, iMac or iBook, Operating System OS 8.6 to 10.1.3, 12 MB RAM, Spare USB Port and a CD-ROM drive, or a spare Ethernet port.

In order to install the modem for use, Summit Internet Solutions has designed the installation procedure to allow Subscribers to install the modem at their premises, and provides an installation manual. Summit Internet Solutions does not warrant or guarantee that this will enable the Subscriber to conduct the installation.

Qualified installers are available at an additional charge.

If the Subscriber has a back-to-base alarm system, or more than three telephone extensions on the ADSL telephone line, a central splitter must be installed by a qualified installer, before the provisioning of the service can take place.

Summit Internet Solutions expressly excludes the provision of this service from our standard offer, but can arrange for a qualified installer at an additional charge.

The actual bandwidth rates you experience may be less than the nominated rates since these rates are affected by many factors including: contention ratios, packet overhead, distance from exchange, line infrastructure quality and your equipment capability.

5. Payment

The Subscriber warrants that they are the same end user acquiring a standard telephone service on the line to which your application relates or that the Subscriber has obtained authority of the legal lessee of the standard telephone service.

You agree that you will be liable for a cancellation fee in the event that the legal lessee terminates the standard telephone service and that Telstra excludes liability for the termination of your ADSL service.

You must pay your bill when it is due whether or not you authorised the use of the Service.

The Subscriber must pay the monthly fee and additional MB rate set out in the Summit Internet Solutions rate card for the pricing plan which you nominate from the date on which we commence supplying the service to you.

For the purpose of additional MB charges a gigabyte (GB) equals 1000 megabytes (MB).

You agree that usage reports will not necessarily be made available detailing your actual usage. You agree that you will pay for your actual usage of the Service, whether or not usage reports have been made available to you.

You will be deemed to have commenced using the broadband Service from the date of activation of the Subscriber account

On the commencement of the Service, you will be billed for a connection fee, for the remainder of the month after the Service is provisioned, any additional services you have requested, and for the next month's fee in advance.

Thereafter, you will be billed monthly in advance.

All bills and invoices are due and payable immediately.

The Subscriber may change nominated pricing plan, incurring a charge as set out in the rate card. Migrating to another plan does not shorten the term of the agreement or terminate the agreement, which will continue to apply for the term.

Any applicable taxes on the charges (including, but not limited to, a Goods and Services Tax), even if a third party incurs the charges using your account.

We may terminate your Service if any charges remain outstanding for 30 days.

You agree that if you have paid for the Service in advance and you stop using the Service for any reason, you are not entitled to any refund except to the extent that Summit Internet Solutions is required by law to give a refund. This does not limit Summit Internet Solutions's right to give a refund for any reason at its sole discretion.

If you choose to disconnect your service while your account is still under contract a disconnection fee or the remaining value of the contract will apply.

If you wish to relocate the Service you will need to reapply and pay a fee which includes the reactivation of the service at your new location.

6. Additional Services

Summit Internet Solutions provides business account holders with 5 free email boxes, and 10MB of webspace for one account. The total space available for email is 20 MB.

Summit Internet Solutions provides residential account holders with 1 free email box and 5MB of webspace for personal use only.

Additional email boxes, additional space for email messages, and additional space for web hosting are available at the charges set out in the rate card.

7. Service Level Guarantees

Summit Internet Solutions may from time to time offer a guarantee on the level of service provided to the Subscriber, which may include rebates for outage periods. Unless a rebate is specifically promised to the Subscriber in writing, the full invoice or bill remains payable by the Subscriber, regardless of the level of Service.

8. Contract Term

Summit Internet Solutions agreements are subject to a 12 month contract term unless otherwise specified in your account conditions.

If you choose to disconnect your service while your account is still under contract a disconnection fee or the remaining value of the contract will apply.

If the Subscriber's Summit Internet Solutions account is disabled for any reason, a reactivation fee will apply.

Unless either Summit Internet Solutions or the Subscriber terminates the account after expiry of the initial contract term, the account will continue to renew for rolling 30 day periods, and will continue to be provided subject to these Terms.

9. Use of The Service

The Subscriber warrants that they will not engage in conduct that could be construed by anyone in any location as constituting sending of spam. This includes sending or causing the sending of any unsolicited or unauthorised advertising, promotional materials, junk mail, bulk unsolicited email, mail bombing, chain letters, multiple newsgroup cross-posting, or other form of solicitation;

The Subscriber warrants that they will not host any website which, on a regular basis, is advertised by any person sending unsolicited email or unsolicited bulk email or spam;

The Subscriber warrants that they will not employ any identity disguising techniques in connection with spam, including relaying email via a third party's mail server without permission, hosting an open mail relay server, or employing similar techniques to hide or obscure the source of an email;

The Subscriber warrants that they will not host any content which infringes any copyright, trademark, trade secret, patent or other property or other intellectual property rights of any third party unless the Subscriber is the owner of, or have the permission of the owner to post or transmit the content;

The Subscriber warrants that they will not including knowingly host or transmit any content that contains any software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

The Subscriber warrants that they will not host or transmit any content the hosting or transmitting of which would be a contravention of any law of the Commonwealth of, or a State in, Australia, such as, for example, material of a pornographic nature.

The Subscriber warrants that they will not engage in malicious activity against any host on the Internet, including defacing of web-sites without the permission of the website owner, obtaining (or attempting to obtain) un-authorised access to data by circumventing (or attempting to circumvent) security controls designed to prevent un-authorised access or interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system.

10. Privacy

Information concerning the Subscriber will be held in a database. The database will contain the Subscriber's name, address, telephone numbers, bank account or credit card details, billing details, information relating to the provision and use of the Service, and information provided by you in connection with this agreement.

This information may be used to enable Summit Internet Solutions to perform obligations to you under this agreement, including to provide the Service and to enable Summit Internet Solutions to ensure that you perform your obligations under this agreement.

Summit Internet Solutions may obtain and use information concerning your commercial activities and credit worthiness from a credit reporting agency or other business that reports on commercial credit worthiness to assess your application or to collect overdue payments.

11. Technical Support

If you experience a problem with the Service or the broadband transmission facilities, you should report it to Summit Internet Solutions by telephone or email.

Summit Internet Solutions will use reasonable efforts to rectify the problem as soon as possible.

In order for Summit Internet Solutions to provide telephone support you must be in front of the computer which is connecting to the Internet when calling and have a computer with functioning software and hardware.

Summit Internet Solutions support staff are not qualified to advise you on networking issues. Advice provided by support staff is of a general nature only and further assistance from a suitably qualified person may be required at your expense.

Summit Internet Solutions does not warrant that support advice given will resolve all problems encountered.

If you report a fault and we find there is no fault or the fault was not caused by us, we may charge you for any work we have done to try to find the fault or repair it in accordance with the rate card.

If Summit Internet Solutions supplies a modem to you at the commencement of your agreement with us, we agree to service and maintain that modem to keep it free from defects in workmanship and materials, under normal use during the maintenance period

If this agreement is terminated for any reason before the end of the contract we will no longer provide maintenance services under this clause.

Summit Internet Solutions will only supply service on the modem if we have supplied the modem to you and you have maintained the modem in accordance with the instructions we provide and you have not modified the Equipment in any way

Any modem warranties will be voided in the case of any abuse, misuse, neglect, mishandling or misapplication, accident, improper maintenance or service, unusual hazards (including, but not limited to, exposure to excessive humidity, heat, cold, dust, food, liquids, magnetic or electromagnetic interference or incorrect power voltage), any electrical supply problems or failure to provide a suitable environment for the modem, or any natural disaster (including but not limited to floods, lightning and fire), acts of terrorism or any other cause beyond our reasonable control.

If we do not exercise or delay in exercising our rights under this Agreement, we will not be taken to have waived our rights.

Summit Internet Solutions manages its resources to maintain availability of services to all users and in doing so may delete any single e-mail in excess of 2 megabytes in size or delete the contents of your mail box if the total size of un-deleted messages exceeds a reasonable size.

12. Suspension and Termination

Summit Internet Solutions reserves the right to terminate or suspend your account, at our sole discretion, in the event of any breach of these Terms by you or anyone using your account.

Such termination or suspension may be without notice to you.

Summit Internet Solutions may suspend your account for technical reasons and will attempt to provide notice to you if this is necessary. It may not be possible to provide notice to you of a suspension of your account due to technical reasons.

You can only terminate accounts if they are out of the contract period, or you pay the agreed termination fee.

You must provide a minimum of 14 days notice if you wish to terminate your account.

If your account is terminated for whatever reason you must pay any and all outstanding fees and charges immediately.

13. General

Summit Internet Solutions may amend or change these Terms by giving you reasonable notice, by e-mail, through our web site, or by other means.

Your continued use of the Service after the implementation of any amended Terms shall constitute acceptance of the new Terms.

If a provision of these Terms is found to be void, voidable or unenforceable, it may be severed from the Terms without affecting the operation or the remainder of the Terms.

The laws of New South Wales govern these Terms, and each party submits to the jurisdiction of the courts of that state.

Summit Internet Solutions reserves the right to introduce a Fair Use Policy in respect of this service.

Summit Internet Solutions may vary any terms of these Terms including any fees, rates and charges without notice to you if the variation arises due to a change in taxation law or other governmental action or by providing commercially reasonable notice to you of any other variation.

Your continued use of the Service after such notice will constitute acceptance of the variation. Notices can be provided under these Terms by email, post or facsimile.

You acknowledge that you must regularly check your default email address as allocated by Summit Internet Solutions or, if you have arranged for emails sent to your default email address to be forwarded to an alternate email address, that alternate email address. When Summit Internet Solutions elects to provide notices to you by email, you will be deemed to have received the email notification, in the absence of any evidence received by Summit Internet Solutions to the contrary.

If you acquire the Summit Internet Solutions Service by signing an agreement provided to you by a dealer, you acknowledge that the dealer is acting as Summit Internet Solution's agent only for the purposes of receiving the agreement from you and providing it to Summit Internet Solutions. The dealer is not Summit Internet Solution's agent for any other purposes or in any other capacity and the dealer does not provide the services.