



BigAir Group Limited  
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## Terms and Conditions

### **1. Terms and Conditions Overview**

These **Terms and Conditions** (“Terms“) describe the terms on which BigAir Group Limited (“BigAir“), provides you (the “Subscriber“) with Internet access and associated service(s) (“Services“). The usage of any BigAir Services or the signing of any service agreement (the “Agreement“) with BigAir deems the Subscriber to have understood and agreed to these Terms. No variation of the provisions of this Agreement is permitted. If your application to BigAir is accepted, BigAir will provide you with access to the Internet subject to these Terms. The Terms described in this Agreement shall apply to the exclusion of any other terms and conditions whatsoever.

BigAir 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, nor try to transfer the right to receive the BigAir Service or any other right under this agreement to anyone else without our consent. We may transfer any of our rights or obligations under this agreement by sending you a notice.

### **2. BigAir Broadband Internet Service Terms of Provision**

BigAir agrees to supply the Subscriber with a Service that consists of a broadband connection to the Internet, and other associated services. The provision of this Service is subject to these Terms. The Service is not available in all areas. You may check the availability of the service by telephoning BigAir or checking our website at [www.bigair.com.au](http://www.bigair.com.au).

The Service availability information at BigAir’s disposal may not always be accurate. An

advice that the Service is available on the Subscribers telephone line or area may later be altered to advise that the Service is not available. BigAir reserves the right to inform the Subscriber of the non-availability of the Service to the Subscribers premises, even after informing the subscriber that the Service would be available.

### **3. Wireless Broadband Customer Equipment**

BigAir offers two (2) varieties of wireless broadband, mobile and fixed and these terms and conditions apply to both wireless broadband Services. Mobile wireless subscribers will require a wireless modem (User Terminal) in order to be able to connect to the mobile wireless Service. This modem can be supplied by BigAir on payment of the modem purchase price and these Terms apply to the modem supplied by BigAir to the exclusion of any other terms and conditions. Minimum system requirements to install the modem for use on a PC are Pentium + Windows 2000 or above, 32MB RAM, Spare PC Card Slot and a CD-ROM drive, or a spare Ethernet port. In order to install the modem for use, BigAir has designed the installation procedure to allow Subscribers to install the modem at their premises, and provides an installation manual. BigAir does not warrant or guarantee that this will enable the subscriber to conduct the installation. Qualified installers are available at an additional charge. The actual bandwidth rates you experience maybe less than the nominated rates since these rates are affected by many factors including but not limited to congestion, packet overhead, wireless conditions and distance from transmission towers.

### **4. Payment**

You must pay your bill when it is due whether or not you authorized the use of the Service. For plans that have an over usage charge, the subscriber must pay the monthly fee and additional megabytes ("MB") rate set out in the BigAir 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 MB. You agree that usage reports are updated no later than 6 hours after the time of the usage.

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 Service from the date of activation of the subscriber account. On the commencement of the Service, you will be billed for a connection fee, pro-rata 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 advanced. Thereafter you will be billed monthly in advance.

You must continue to pay the charges for the Service even if:

- your computer is not working;
- you actively cease using the Service for any reason in circumstances where the Service is available for use; or
- the Service is unavailable, or has limited availability, for a period due to a Network or system outage.

All bills and invoices are due and payable immediately. The Subscriber may change the 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. The Subscriber shall be liable for 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 reserve the right to suspend your Services 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 BigAir is required by law to give a refund. This does not limit BigAir'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, the payment of a disconnection fee which is the remaining value of the contract will apply. If you wish to relocate a fixed wireless Service, you will need to pay a reconnection fee which covers the cost of installation and reactivation of the service at your new location.

Customers with recurring charges of \$100 or less must select Credit Card or Direct Debit payment options. Payment by credit card for Unwired and Whome subscribers are sent to the bank for processing on the 1st business day of each month. Payments by direct debit for Unwired and Whome subscribers are sent to the bank for processing on the 6th business day of each month.

All transactions are processed in Australian Dollar AUD. Should a transaction fail to be processed on a credit card or by direct debit, for whatever reason, BigAir has the right to debit that card or account in a subsequent period to collect amounts owing from the subscriber.

## **5. Additional fees**

Any additional charges we receive from a bank or other institution relating to a failed direct debit or credit card transaction will be re-charged to the subscriber.

There is a 5% surcharge for paying by American Express card or Diners Club card and a 1% surcharge for paying by Mastercard or Visa card.

## **6. Shaping and Download Limits**

BigAir offers speed shaping on certain selected Wireless Broadband access plans. Shaping allows you to download even when you go over your monthly download quota at no extra cost. Speed is reduced to 64 kilo bits per second ("kpbs") once the monthly download quota is reached. When you exceed 120% of your monthly download quota and exceed your quota by more than 1GB, your connection will be shaped further to a speed of 32kbps. BigAir maintains an Acceptable Use Policy, see 11 below, that govern the use of the Service. BigAir will only meter download usage but not upload usage, however, upload usage is governed by the Acceptable Use Policy. BigAir reserves the right to take action on subscribers that breach this policy.

## **7. Limit of Liability**

While BigAir takes reasonable care and skill in providing broadband Services, we do not warrant or guarantee that the Service will be continuous, error-free or that speed won't vary from time to time. The liability of BigAir in these circumstances is expressly limited to the price paid by you for the Services provided such claim is received by BigAir within 14 days of the date of a claim under this provision. BigAir 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 however 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 provision of the Services.

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 BigAir that, in respect of these Terms, BigAir is not in a position of relative bargaining superiority to you and BigAir has offered no inducement in entering into this Agreement. BigAir does not warrant that the manuals or any related documentation is free of errors and 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 or suppliers to BigAir. BigAir makes no representations about the suitability of the Service for a particular purpose.

## **8. Additional Services**

BigAir provides subscribers with 5 free email boxes, each with a storage limit of 10MB. BigAir reserves the right to remove all emails older than 90 days in an email account. BigAir will also provide 10MB of free web space on request from the subscriber. The free web space is also bound by the Acceptable Use Policy.

## **9. Service Level Guarantees**

BigAir 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 agreed with the Subscriber in writing, the full invoice or bill remains payable by the Subscriber, regardless of the level of Service.

## **10. Refund Policy**

If, within 7 days of purchasing your mobile wireless Service, you are experience an unsatisfactory level of Service, which is not related to an incorrect choice, change of mind or other reasons advanced by the Subscriber, and wish to cancel the Service BigAir will, subject to meeting the criteria below, refund in full the purchase price paid for the Service. This is only to be done within the 7-day “the cooling off period “from the date of purchasing the Service.

Additionally, all of the following criterion must be met for a refund of the installation charge to be issued:

- The Subscriber has used less than 50MB of their monthly usage.
- Failure of the Service to achieve 50% of the maximum speed during the cooling off period
- The Subscriber has returned the unit, which must be in its original packing material and it must be in its original undamaged condition, within 7 days of advising BigAir of the cancellation of the Service and
- All accessories, CD's, cables and anything else included have to be returned to BigAir.

Subscribers claiming a refund outside of the 7 day cooling off period will not be given any remuneration for installation charges or be given the option to get a refund for any hardware purchased from us. Subscribers under contract have the obligation to pay out the full price of the contract for refund claims outside of the 7day cooling off period. Please allow up to a maximum of 20 days for the refunds to be processed.

Advertised plan speeds are the maximum possible speeds attained for that plan and at no point are they guaranteed. Failure to attain the highest possible speed is typically due to subscribers using their services in areas of poor reception. BigAir is unable to determine exact reception levels at any particular location and coverage maps are only an indication of coverage levels. For this reason, the 7-day cooling off period allows the Subscriber to test the Service in-situ to ensure acceptable levels of Service.

## **11. Contract Term**

BigAir Service is delivered for the agreed contract term (month-to-month contract, 12 month contract or 24 month contract). If you have agreed to a 12 month or 24 month contract term, and choose to disconnect your service while the account is still under contract, a disconnection fee for the remaining value of the contract will apply. Contracts maybe entered into by the subscriber by either signing a contract agreement, or by agreeing to these terms and conditions on commencement of Service. Usage of the Service constitutes agreement to these terms and conditions. If you have agreed to a 12 month or a 24 month contract term, usage of the service constitutes agreement to pay the agreed fee for the duration of the contract term.

No downgrade from one plan to another plan is possible for the duration of a contract. This includes, but is not limited to, a downgrade that reverses a previous upgrade. A downgrade is defined as moving from one plan to a second plan where the second plan has a smaller monthly recurring fee. Outside of a fixed-term contract, a downgrade charge of \$29 is payable when downgrading plans.

If the Subscribers BigAir account is disabled for any reason, a reactivation fee of \$60 will apply. Unless either BigAir 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.

## **12. Acceptable Use Policy**

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 unauthorized 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 or mail server when using BigAir's mobility wireless services which includes Unwired. 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) unauthorized access to data by circumventing (or attempting to circumvent) security controls designed to prevent un-authorized access or interference with Service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system.

Excessive usage contravenes the Acceptable Usage Policy. Excessive use is a continuing and unreasonably disproportionate use of the service when compared to other users or consistently significantly exceeding the download limit specified by your plan. Excessive usage of an "Unlimited" plan occurs when the level of download activity is significantly disproportionate to other "Unlimited" users. BigAir reserves the right to change the plan a subscriber is on if they contravene the Acceptable Use Policy. In this event, we will make reasonable efforts to contact you and advice of the amendment or change and we will allow you the option of terminating the Services without penalty.

## **13. 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 BigAir to perform obligations to you under this agreement, including to provide the Service and to enable BigAir to ensure that you perform your obligations under this agreement. BigAir 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.

#### **14. Security Policy**

When purchasing from BigAir Group, your financial details are passed through a secure server using the latest 128-bit SSL (secure sockets layer) encryption technology. 128-bit SSL encryption is approximated to take at least one trillion years to break, and is the industry standard. If you have any questions regarding our security policy, please contact our customer support centre [support@bigair.net.au](mailto:support@bigair.net.au).

#### **15. Credit Terms and Default reporting**

i. In entering into a contract with BigAir, the subscriber acknowledges and consents to the terms and conditions in relation to the Privacy ACT of 1988 which allows BigAir access to consumer credit reporting to allow subscriber credit assessment.

ii. The applicant allows BigAir to report to the credit-reporting agency any overdue mounts of more than 60 days and for which debt collection has started.

iii. It is understood that payment is due seven days from the date of invoice. Should payment be defaulted then the total account becomes due and BigAir reserves the right to use the services of a debt collection agency or solicitor to collect debts and if necessary report the default to a credit reporting agency. The person making the application is the person to whom BigAir will look for payment

#### **16. Technical Support**

If you experience a problem with the Service or the broadband transmission facilities, you should report it to BigAir by telephone or email. BigAir will use reasonable efforts to rectify the problem as soon as possible. In order for BigAir 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. BigAir support staff are not qualified to advise you on networking issues including but not limited to issues concerning your local area network (LAN), your local wireless network (WLAN), configuration of routers or switches. Advice provided by support staff is of a general nature only and further assistance from a suitably qualified person maybe required at your expense. BigAir 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 BigAir 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. BigAir 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. If asked, the Incumbent Carrier will also provide support, which will be provided at a charge. The procedure for billing for support given to you is via BigAir. BigAir will in turn bill you at a rate of \$120 per instance.

## **17. Suspension and Termination**

BigAir may terminate the service or any contract, with a reasonable notice, in the event that any third party supplier is unable provide the network service or in the case of force majeure. BigAir 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. BigAir 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. Suspended accounts that are still under a fixed term contract continue to incur the contracted charge and therefore will continue to be invoiced until the end of the contract. Accounts that have been suspended for longer than one month are required to pay a reconnection fee of \$60.

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 30 days notice in writing by email, letter or by fax if you wish to terminate your account. The 30 days is calculated from the day the notice is received by BigAir, including the day of receipt. The following contact details for cancellations must be used: email; [cancellations@bigair.net.au](mailto:cancellations@bigair.net.au), Post; PO BOX 2317, Strawberry Hills, NSW 2010, Fax; 02 8080 8162. If your account is terminated for whatever reason you must pay any and all outstanding fees and charges immediately. Whome customers must return their modem to BigAir within 10 calendar days after closing their account at their own cost. If the modem is not returned, or the modem is damaged during transit, a fee of \$99 will be incurred to cover the cost of the modem.

Subscribers are advised that they should keep proof of notification after their contract has been terminated. In the case of any future billing dispute, they will be able to provide this proof of termination to BigAir. BigAir will not be in a position to offer refunds to subscribers who cannot provide proof of termination.

## **18. The Spam Act**

We comply with the Spam Act 2003 (Cth). If we send you promotional emails, you will be able to respond asking us not to send you any more promotional emails. However all of our official communications with you will be by email, notice of upgrades and outages, invoices and so on. You agree as part of your acceptance of these Terms to our sending you emails for those and related purpose.

## **19. General**

BigAir may amend or change these Terms by giving you reasonable notice, by email, through our website, or by other means. If any amendment or change is likely to have a detrimental impact on you, including any adverse economic impact, we will make reasonable efforts to contact you and advise of the amendment or change and we will allow you the option of terminating the Services without penalty. 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.

You agree that BigAir may modify or change any terms of these Terms including any fees, rates and charges from time to time at its sole discretion. It is your responsibility to check periodically these terms and conditions for modifications and changes and to comply with the terms and conditions in effect at all times. Your continued use of the Service after such a change is additional evidence of your acceptance of the variation. Notices regarding changes may also be provided under these Terms by email, post or facsimile, and can also be posted on the website. You acknowledge that you must regularly check your default email address as allocated by BigAir 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. It is the subscriber's responsibility to ensure that their default email is kept up-to-date. When BigAir 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 BigAir to the contrary. If you acquire the BigAir Service by signing an Agreement provided to you by a dealer, you acknowledge the dealer is acting as BigAir's agent only for the purpose of receiving the Agreement from you and providing it to BigAir. The dealer is not BigAir's agent for any other purpose or in any other capacity and the dealer does not provide the Service.