

# TERMS & CONDITIONS

Mobile Wireless Broadband Pty Ltd ABN 14 611 988 071. Blink® is a trademark of Mobile Wireless Broadband.

## Part A - General Terms And Conditions

### DEFINITIONS

**Agreed Term** has the meaning given in the Agreement Details.

Agreement means the terms and conditions on which we supply the Service to you.

**Agreement Details** means the document headed "Agreement Details" or "Contract Summary" describing the details for the Service and the associated fees.

**Business Day** means a day other than a Saturday, Sunday or a day gazetted as a public holiday throughout Australia.

**Loaner Equipment** has the meaning given in clause 14.

**Service** means each service (as further described in the service descriptions which we provided to you) and any related goods (including Loaner Equipment) and ancillary services which we supply to you in connection with that service.

**you** means the person named in the Agreement Details (and **your** and **yours** is to be construed accordingly).

**we** means Mobile Wireless Broadband Pty Ltd ABN 14 611 988 071 (and us and ours is to be construed accordingly).

Capitalised terms used in the Agreement Details have the same meaning in this document.

### 1) ENTIRE AGREEMENT

- a) The Agreement is made up of:
  - i) the Agreement Details;
  - ii) Part A – General Terms and Conditions;
  - iii) if you complete a direct debit request, Part B – DDR Terms and Conditions;
  - iv) if you select Equipment Protection, Part C – Loaner Equipment Program Terms and Conditions;
  - v) Part D – Mobile Broadband Internet Terms and Conditions;
  - vi) and any other document that is incorporated into the above by reference; and
  - vii) other variation requested and actioned via our website/s.
- b) Any brochures and marketing materials you may have seen are provided for your information only and do not form part of this Agreement.
- c) When you sign up for a Service, there will be terms and conditions applicable to that Service including any specific pricing details. These terms and prices for the Service are set out on the our webpage [www.blinkit.net.au](http://www.blinkit.net.au) and are incorporated into this Agreement by reference.

### 2) PAYMENTS, TAXES AND PORTABILITY

- a) You must pay to us the Total Amount Payable per month shown in the Agreement Details each month until you decide to stop.
- b) If the payment date falls on a weekend or public holiday, payment is due on the next Business Day.
- c) Unless we otherwise agree, all payments must be made by direct debit from your bank account or credit card.
- d) Subject to applicable laws and except as otherwise set out in this Agreement, all payments are in advance and once paid, are not refundable for any reason. If you believe that we have not complied with our obligations under this Agreement or if you have a claim against us based on our conduct, please follow the disputes process set out in clause 13.
- e) You must pay or reimburse us for:
  - i) all taxes (including GST) and stamp duties payable in connection with this Agreement; and

- ii) any expenses we reasonably incur in enforcing this Agreement or incur because you have repudiated, terminated or breached this Agreement, including, without limitation, any legal costs and expenses, financing break costs, costs incurred in repossessing or attempting to repossess the Loaner Equipment and costs incurred in storing and disposing of the Loaner Equipment.
- f) If there is any change to the amount of stamp duty or GST payable or if any other taxes or government charges become payable in respect of this Agreement, you agree that we may adjust the Total Monthly Payment by that amount.
- g) Prices quoted are GST inclusive. On your tax invoice charges will be calculated including GST. GST will be calculated on the total amount of taxable supplies during the billing period.
- h) You are unconditionally bound to pay all amounts due under this Agreement in full without set-off or counter claim and without any deduction in respect of taxes unless prohibited by law.
- i) We will not introduce new fees or vary any fees during the Agreed Term.
- j) Fees will be charged at our standard rates applicable from time to time.
- k) Late Payment Fee: each time a Total Monthly Payment or any other amount due is not paid in full and on time, a Late Payment Fee of \$15 (or such lesser amount as determined by us) applies. All Late Payment Fees are payable on demand. We may debit any such amount from your nominated bank account or credit card without notice to you.
- l) Dishonour Fee: each time an attempt by us to process a payment or amount due under this Agreement is refused by your financial institution, a Dishonour Fee of \$15 applies.

### 3) ASSIGNMENT AND TRANSFER

- a) At law we may, without giving you notice, sell, assign or otherwise transfer or dispose of or deal with, our interest in the Loaner Equipment or this Agreement. The person to whom we assign this Agreement has no greater rights than us.
- b) You may not assign this Agreement.

### 4) COMMISSIONS AND OTHER USERS

- a) You agree that we may pay commissions or fees to any broker, agent, dealer or other person who introduces you to us, or us to you.
- b) You must ensure that any person you allow to use the Services complies with this Agreement as if they were you.

### 5) PRIVACY

We will collect, use and disclose your personal information in accordance with our Privacy Policy. We may update our Privacy Policy from time to time. You may obtain a copy of our privacy statement from use or on our website at: <https://www.blinkit.net.au/privacy-policy>

### 6) DEFAULT AND TERMINATION

This Agreement will terminate upon the occurrence of any of the following events:

- a) you give us 5 days' notice terminating this Agreement;
- b) after the expiry of the Agreed Term, we give you 30 days' notice terminating this Agreement;
- c) we give you notice terminating this Agreement after you:
  - i) do not pay in full any Total Monthly Payment or any other amount payable by you under this Agreement; or
  - ii) become insolvent or become subject to any arrangement or composition with creditors, or as a company or business you enter administration, receivership, liquidation or external administration.

### 7) CHANGES TO THESE TERMS AND CONDITIONS

- a) Subject to clause 7(d), we may change the terms of this Agreement, including but not limited to prices, download rates and data block fees, at any time by giving you not less than 30 days' notice.

- b) Where we give you notice of a change to this Agreement within the Agreed Term and the change will have more than a minor detrimental impact on you, you will have the right to cancel the Service by giving notice of termination to us within 42 days from the date of our notice. We will not charge you any early termination fees if you cancel the Agreement under this clause.
- c) If you choose to cancel the Service under clause 7(b):
  - i) we will cancel the Service on the date on which you notify us that you wish to cancel the Service; and
  - ii) you will have to pay your usage charges or access fees incurred to the date on which you notify us you wish to cancel the Service.
- d) During your Agreed Term we will not increase the Total Monthly Payment or decrease the monthly broadband allowance but we may vary fees associated with the Service.

**8) NOTICES**

- a) You must tell us if you change your bank account or credit card details, your business, postal or email address, or if you think there is any information that we should be aware of about your ability to comply with this Agreement.
- b) We can give you notice by delivering it to you personally or leaving it at, or sending it by post, facsimile or email to your home, business, postal or email address last known to us. An email notice will be valid if not returned.

**9) GOVERNING LAW AND LIABILITY**

- a) This Agreement is governed by the laws of New South Wales.
- b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- c) Our goods and Services come with unconditional guarantees under consumer protection legislation. For goods, the unconditional guarantees include that they will be of acceptable quality, reasonably fit for their purpose and match any description or sample. For services, the unconditional guarantees include that they will be rendered with due care and skill and be reasonably fit for their purpose. We do not exclude our liability under these guarantees.
- d) Subject to paragraph (c), you acknowledge that the Services are telecommunications services that by their nature are dependent, directly and indirectly, on related services provided by third party suppliers (in other words, suppliers who provide services to us). We do not control, and are not responsible for, any interruption, degradation or failure of the service to the extent it is caused or contributed to by these third party suppliers.
- e) Subject to paragraph (c) and to the maximum extent permitted by law, you agree that you accept all risk for your use of the goods and the Services, and neither we nor our suppliers will have any liability to you for loss suffered in connection with your use of the goods or Services (this includes liability in contract, tort (including negligence) or liability for lost profits, lost revenue, lost savings, any consequential or indirect loss or any claim by a third party, even if we knew such loss or liability was possible or was otherwise foreseeable).

**PART B - DDR TERMS AND CONDITIONS****10) DEBITING YOUR ACCOUNT**

- a) You authorise us to debit funds from your nominated account for any amount payable under this Agreement and any other agreement between you and us. You agree that we will not send monthly statements to you in relation to amounts to be debited from your nominated account, unless you request to receive monthly paper statements by contacting Blink on 1800 254 654. If you elect to receive monthly statements a monthly statement fee of \$2.20 per statement will be debited from your nominated account each month.
- b) If any payment falls due on a non-Business Day, it will be debited from your nominated account on the following Business Day.
- c) All enquiries about direct debit arrangements should in the first instance be directed to us.
- d) Your records and account details held by us will be kept confidential, except for information required by our financial institution in the event of a claim or relating to an alleged incorrect or wrongful debit.

**11) CHANGES**

- a) If you want to request a change to the drawing arrangements, please contact us at least 14 days prior to the next scheduled drawing date. You should contact us (as set out in the Agreement Details) before contacting your financial institution.
- b) These requests may include:
  - i) deferring the drawing;
  - ii) stopping an individual debit;
  - iii) suspending the DDR; or
  - iv) cancelling the DDR completely.
- c) However, as we have relied on your agreement to honour the DDR, we would be unlikely to agree to a request to change it, unless you provide a reasonable proposal as to how you will make good your payment obligations under this Agreement.

**12) YOUR OBLIGATIONS**

- a) It is your responsibility to:
  - i) ensure that your nominated account can accept direct debits as direct debits are not available on all accounts (your financial institution can confirm whether your account can accept direct debits);
  - ii) check your nominated account details with your financial institution before completing the DDR;
  - iii) ensure that there are sufficient cleared funds in the nominated account, by the Payment Date, to allow for payment of the amounts payable; and
  - iv) advise us if the nominated account is transferred or closed.
- b) If your drawing is returned or dishonoured by your financial institution, you should contact us to make suitable arrangements to rectify the non payment. If no contact is made, we reserve the right to redraw the non-payment plus any applicable liquidated damages and fees payable pursuant to this Agreement at any time at our discretion.

**13) DISPUTES**

- a) If you believe that a drawing has been initiated incorrectly, contact us during business hours (as set out in the Agreement Details) before contacting your financial institution.
- b) If you do not receive a satisfactory response from us to your dispute, contact your financial institution.
- c) You will receive a refund of the drawing amount if we cannot substantiate the reason for the drawing.

**PART C - LOANER EQUIPMENT PROGRAM TERMS AND CONDITIONS****14) LOANER EQUIPMENT**

- a) The Loaner Equipment program is only applicable to customers who have chosen this option in the Agreement Details.
- b) If your equipment needs repair, we will, at your request, lend you equipment (the Loaner Equipment) while the damaged equipment is being repaired, once we receive the following amounts from you:
  - i) \$220 bond, which is refundable upon return of the Loaner Equipment in good working order; and
  - ii) \$30, which is non-refundable, to cover the cost of insurance and freight of the Loaner Equipment from us to you, and back again.
- c) You agree to the following terms in relation to the Loaner Equipment:
  - i) the Loaner Equipment will be of the same class of equipment as the damaged equipment (for example, if the damaged equipment is a laptop the Loaner Equipment will be a laptop) but the Loaner Equipment may not be identical to the damaged equipment (in brand, size or technical specifications);

- ii) you may only request Loaner Equipment for computer equipment which you use to access the mobile broadband internet service;
- iii) you may request Loaner Equipment on more than one occasion, up to a maximum of 42 days in aggregate for all requests in any 2 consecutive calendar years;
- iv) you can have use of the Loaner Equipment with no monthly payment for the Loaner Equipment for a total of 42 days;
- v) if you do not return the Loaner Equipment within the 42 days, you will be charged \$25 per week thereafter until you return the Loaner Equipment to us;
- vi) you must return the Loaner Equipment to us after the 42 days if we give you one month's notice requiring you to do so;
- vii) subject to some exceptions for remote areas, we will deliver the Loaner Equipment to, and collect the Loaner Equipment from, anywhere within Australia, provided that you pay the amounts specified in clauses 14(b)(i) and (ii) above;
- viii) if your request is made during normal business hours and delivery is to an Australian metropolitan area, we will make reasonable efforts to deliver Loaner Equipment to you within 1 business day of your request (our ability to do this will depend on a number of factors including (but not limited to), the equipment we have in our storage facility); and
- ix) Loaner Equipment is subject to availability of equivalent equipment in our storage facility.

## 15) OWNERSHIP OF LOANER EQUIPMENT

- a) We are the owner of the Loaner Equipment. You only have the right to use it.
- b) For the purposes of this Agreement, Loaner Equipment includes hardware and software.
- c) You must protect our ownership of the Loaner Equipment and not attempt to sell, hire, encumber, dispose or deal with it in any way other than in accordance with this Agreement.

## 16) DISCLAIMER OF WARRANTIES

- a) Upon delivery of the Loaner Equipment you must inspect it and satisfy yourself that it is in good operating order and condition.
- b) You must rely on your own judgment as to:
  - i) the quality and condition of the Loaner Equipment and its fitness and suitability for any particular purpose; and
  - ii) the performance of services provided by third parties.
- c) No warranties are given in relation to the Loaner Equipment or any services other than those implied by law.
- d) To the extent permitted by law, damages for breaches of warranties implied by law are limited to repair or replacement of the Loaner Equipment or the re-supply of the services.
- e) We exclude all liability for indirect or consequential damage, loss of income, loss of profit or interruption of business.

## PART D - MOBILE BROADBAND INTERNET TERMS AND CONDITIONS

### 17) THE SERVICE

The Service is a mobile broadband internet service and provides access to the internet and related services. The Service provides a connection to the internet via the Optus Mobile 4G/3G/HSDPA and GSM networks as appropriate based on among other things, your device, location and plan. The Service is available to residential and small and medium business customers who connect to a mobile broadband internet service and are approved by us. All applications for the Service are subject to our credit assessment and acceptance. The Service is only available to customers within the Optus 4G/3G/HSDPA or GSM coverage area and is subject to network availability, refer to [blinkit.net.au/coverage](http://blinkit.net.au/coverage).

### 18) SATISFACTION GUARANTEE

The Blink Coverage Satisfaction Guarantee applies. If within the first 7 days of connection, you are unhappy with the level of mobile broadband internet service coverage or connection you may, by giving notice to us within those 7 days, terminate this Agreement and we will waive any early termination fees, as long as you return the mobile broadband internet modem and SIM at your expense to an address nominated by us with a copy of your receipt or proof of purchase.

If you do not return the modem to us, an equipment charge equivalent to the dollar amount paid for the modem at the time of purchase will be applicable.

Total Monthly Payment and excess usage fees are not refundable, except in accordance with the circumstances set out in clause 2(d).

### 19) DATA PLAN ONLY

The mobile broadband internet plans may only be used as a data plan. You must not use the supplied SIM to access other services such as voice calls.

### 20) PURCHASING ADDITIONAL DATA

- a) Your Plan Details in the Agreement Details sets out a maximum amount of included data that you can use to download and upload at high speed in a billing month for the Total Monthly Payment.
- b) If you exceed your plan's included monthly data allowance and you do not purchase additional data blocks from us, then you will be unable to access the Service until the next month starts. If you wish to continue using the Service during that month, you will need to purchase additional data blocks from Blink. The current data block prices are available online at [blinkit.net.au](http://blinkit.net.au).
- c) Unused data allowance in your monthly data allowance or in additional data blocks you have activated expire at the end of each month and cannot be rolled over to a subsequent period or substituted for other services.

### 21) DATA USAGE AND STATEMENTS

You can check your data usage online by simply logging on to [blinkit.net.au](http://blinkit.net.au). You acknowledge that we will not send bills or monthly statements of your account to you. You may contact us to request monthly paper statements by telephoning Blink on 1800 254 654. If you elect to receive monthly paper statements, a monthly statement fee of \$2.20 per statement will be debited from your nominated account each month. Data usage is counted in one Megabyte increments, where 1MB = 1024 kilobytes and includes both uploads and downloads.

### 22) DOWNLOAD SPEED

Many factors affect speeds such as your distance from the mobile tower, the capacity and load of the mobile tower, which bearer you are currently using (GSM, 4G / 3G / HSDPA), your hardware and software, the source of your download, and general internet traffic. To the maximum extent permitted by law, the service is subject to network availability.

### 23) CHANGING PLANS

You can change your plan to any other available plan at any time. The new plan becomes effective at the beginning of your next month's anniversary.

### 24) TERM

You may have signed up to a contract with a term as shown on the Blink Agreement Details, under Agreed Term.

### 25) CONSEQUENCES OF TERMINATION

If this Agreement is terminated:

- a) your rights under this Agreement immediately cease (including your right to use the broadband internet service under the Part D – Mobile Internet Broadband Terms and Conditions and, if applicable, to access Equipment Protection Part C - Loaner Equipment Program Terms and Conditions);
- b) you must return all Loaner Equipment to us; and
- c) you must immediately pay to us:
  - i) all overdue Total Monthly Payments; plus
  - ii) any other fees or charges that are due; plus
  - iii) if the Loaner Equipment is not returned to us, the estimated fair market value of the Loaner Equipment as at the end of the Agreed Term; plus
  - iv) an Early Termination Fee equal to the monthly fixed charge for each month remaining in your Agreed Term or:
    - A. \$0 for month to month contracts,

B. Up to \$120 for a 12 month contract and up to \$240 for contract with terms of 24 months or more depending on the months remaining. No early Termination Fee is payable if you terminate under clause 7(b) or clause 18, as a result of our breach or insolvency or after the expiry of the Agreed Term.

## 26) CARRIER REQUIREMENTS

Our carrier has agreed to support us to provide the Service on the condition that you give the following undertakings, which by your use of the Service you agree to do.

- a) Resale: you may not resell or resupply the Service.
- b) Privacy and marketing consents: you consent to allow us to disclose to the carrier (or its related bodies corporate) your end user details, including information relating to your affairs or personal particulars (including any listed or unlisted telephone number, address and account history) or carriage services supplied to you. Subject to applicable laws, you consent to allow our carrier (or its related bodies corporate) to use that information in order to facilitate the supply of carriage services to you by us or by the carrier and for marketing purposes.
- c) Carrier liability: The carrier is not liable to you (in contract, tort (including negligence) or otherwise) in relation to the Service, or any delay or any failure to provide the Service. Carriers and carriage service providers: you confirm that you are not a carrier or carriage service provider (as those terms are defined in the Telecommunications Act 1997 (Cwth)). If you become a carrier or carriage service provider, then we or the carrier may immediately cancel the Service by notice to you. If we or the carrier do so, we or they will negotiate in good faith with you to enter into an agreement governing supply of the service, on terms to be agreed.
- d) Indemnity: You acknowledge that we do not promise that the Service will be uninterrupted, error free or continuously available. To the maximum extent allowed under any law, statute, regulation or code, you indemnify us and the carrier in relation to any claims made against us or the carrier by persons that suffer loss as a result of us providing the Service to you or any defect in that Service we provide.
- e) No mobile number portability: you acknowledge that the Service does not support mobile number portability between mobile carriers.
- f) Acceptable use policy: you agree to comply with our Acceptable Use Policy as amended from time to time, which is available at [blinkit.net.au](http://blinkit.net.au). The Acceptable Use Policy forms part of this Agreement.
- g) You must not disassemble, decompile or reverse engineer any software provided by us in relation to the Service.
- h) Suspension and termination of service: In addition to any other rights of suspension and termination under this Agreement, you agree that we may, at any time without notice (although we will endeavour to provide notice as reasonably practicable in the circumstances, taking into account technical, operational and commercial issues) suspend or terminate your Service. This is usually, but not limited to, the following reasons: fraud or criminal activity, reached plan data limits or high excess usage, credit management, system or network maintenance, emergency or network interference.