

SHOALNET/FASTRAC
ADSL BROADBAND AGREEMENT
TERMS AND CONDITIONS

About this Agreement

Please read this Agreement carefully.

The agreement outlines the terms and conditions relating to the provision of ADSL BROADBAND services by TOURIST FACILITIES PTY LTD trading as SHOALNET/FASTRAC (herein after referred to as “SHOALNET/FASTRAC”).

By signing this Agreement you indicate your acceptance of all the Terms and Conditions herein.

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1. **DEFINITIONS**

Acceptable Use Policy means the conditions of use applicable to the service as set out in Clause 19 or as otherwise published by Shoalnet/Fastrac;

Access Period means period from the Activation Date that is the minimum service period plus any renewable period of one calendar month that is automatically rolled over until you terminate your agreement;

Activation Date means the date that the Service is available for use by you; provided that we have given you advance notice of this date.

Asynchronous Digital Subscriber Line (ADSL) means the physical network connection layer applied to a standard analogue phone line that allows a broadband connection to be effected.

Client Premise Equipment (CPE) means hardware, including ADSL modems and line filtering equipment, which you order from Shoalnet/Fastrac when you place an order for the Service.

Charges means the charges payable by you to Shoalnet/Fastrac pursuant to this agreement, in accordance with the information given to you at the time you place an order for the Service;

Fraudulent Activity means any act or omission including but not limited to:-

- Fraudulent, deceptive or illegal activity;
- Infringement of copyright, trademarks or other intellectual property rights;
- Infringement of laws relating to censorship and classification of material;
- Using the Service to create, forward or distribute defamatory statements.

Internet means the worldwide connection of computer networks providing for the transmittal of data by methods including electronic mail, the World Wide Web and other data transmission protocols;

Internet Protocol Address (IP Address) a unique network number assigned to an end user connection once an internet connection has been established.

Minimum Service Period means the minimum period for which you have agreed to this ADSL connection being of not less than 6 months in duration;

Phone Connection means a standard telephone service purchased by you in your name from Telstra or a reseller of Telstra and connected to the Telstra public telecommunications network;

Place an Order means to request the provisioning of an ADSL service to your residence or business. Placing an order does not guarantee the provisioning of the service.

Service means permanent ADSL connection access to Shoalnet/Fastrac's connection to the Internet, the provision of a back-up dial up connection for those times when an ADSL connection is unavailable, the provision of email facilities and space on our World Wide Web server as set out in the description of the plan that you order;

Shaped means your Internet is slowed to 64k/64k for the remainder of the month once the relevant data limit is reached, this is instead of incurring per megabyte charges.

World Wide Web means a method of representing and obtaining graphical and other data and linking data items used by Internet users.

You means the customer who enters into this agreement (the customer must also be the account-holder of the standard telephone service which is to be connected to the Service).

2. TERMS AND ACCESS PERIOD

- 2.1 This Agreement starts on the date when you place an order for the Service with Shoalnet/Fastrac.
- 2.2 By placing an order you agree to be bound by the terms and conditions of this Agreement.
- 2.3 Shoalnet/Fastrac will start providing the Service to you from the Activation Date for the duration of the Access Period.
- 2.4 This agreement will automatically be renewed for subsequent periods of one month, starting from the end of the minimum service period for which you have signed up, unless:
 - a) You give us at least 7 days notice before the end of the current Access Period that you wish to discontinue the service. If you give us less than 7 days notice, we may postpone the date of termination by one calendar month; or
 - b) We notify you in advance that we wish to discontinue providing the Service to you. We will only do this if:
 1. We consider that you have breached these terms and conditions or the Acceptable Use Policy;
 2. You disconnect your Phone Connection (including by changing service providers or moving premises); or
 3. We are no longer able to supply the Service to you because our arrangements with our suppliers have ended and we have been unable to source alternative arrangements.
- 2.5 Shoalnet/Fastrac may adjust the Charges at the beginning of a new monthly period, provided that Shoalnet/Fastrac gives you at least 30 days advance notice of any adjustment via their Website Homepage.
- 2.6 Shoalnet/Fastrac requires your termination of this agreement to be either by email or hard-copy correspondence posted to their offices.

3. PROVISION OF SERVICE

- 3.1 Shoalnet/Fastrac, in accordance with the Terms and Conditions of this agreement (but subject to Clause 12 of this Agreement), will do all things reasonable to provide the customer with the service by such means as Shoalnet/Fastrac determines.
- 3.2 Shoalnet/Fastrac will provide the service on a continuous basis during the term of this agreement. Shoalnet/Fastrac will inform the customer if the service is unavailable for access by the customer due to maintenance or any other foreseeable factor.
- 3.3 Shoalnet/Fastrac will provide you with all identification and log-in information required for connection to the Service.
- 3.4 If you wish to change the connection speed for the Service, you must request a change at least 14 days before the end of the current Access Period. The change will take effect at the start of the next Access Period. In addition to any changes in monthly fees, Shoalnet/Fastrac will charge a fee, as detailed on their Website Homepage, to your credit card at the time you request the change. Should you not be paying your account by credit card, you will be invoiced this charge.
- 3.5 Shoalnet/Fastrac is not liable for any loss of business if your account is suspended due to fraudulent activity.

4. CUSTOMER OBLIGATIONS

- 4.1 You must provide your own access facilities, including the Phone Connection.
- 4.2 You are responsible for maintaining the secrecy and confidentiality of all identification and log-in information required by the customer to access the service.
- 4.3 You are responsible for viewing on a regular basis, the Shoalnet/Fastrac Website Homepage for any changes to fees and charges.
- 4.4 You agree not to disclose to any other person, corporation, entity or organisation any identification or log-in information, whether in use or not, nor any other confidential information relating to the service or Shoalnet/Fastrac.
- 4.5 You are liable for all fees resulting from use of the service accessed through your identification or log-in information, whether authorised by you or not.
- 4.6 You are responsible for the payment of the Disconnection Fee as detailed on the Shoalnet/Fastrac Website Homepage should you disconnect your phone lines within the 6 month minimum service period.

5. USE OF THE SERVICE

- 5.1 You must comply with all reasonable directions by Shoalnet/Fastrac regarding the access and use of the Service.
- 5.2 Throughout the Access Period, you must comply with the Acceptable Use Policy.
- 5.3 You warrant that in accessing and using the Service you will only use software that you are legally entitled to use.

- 5.4 You acknowledge that Shoalnet/Fastrac does not and cannot in any way supervise, edit or control the content and form of any information or data accessed through the Service and Shoalnet/Fastrac will not be held responsible in any way for any content or information accessed via the Service (except where Shoalnet/Fastrac actually provides such content or information).
- 5.5 Shoalnet/Fastrac disclaims all or any liability for any material on the Internet that you may find offensive, upsetting or defamatory.
- 5.6 You must not access, nor permit any other party to access, the Service for any purpose or activity of an illegal or fraudulent nature.
- 5.7 You will not reproduce, distribute, transmit, publish, copy, transfer or commercially exploit any information accessed through or received from the Service that would infringe the intellectual property right of any person.
- 5.8 You are responsible for preparing and maintaining sufficient back-up files and data storage capacity for all your data including electronic messages.
- 5.9 Shoalnet/Fastrac has no responsibility to provide training in the use of the service pursuant to this agreement.

6. CHARGES

- 6.1 You must pay the charges at the rate and in the manner specified in the plan description for the plan you ordered. Payment for any set-up fee, the provision of the Service in the first Access Period and for any ADSL Hardware you order must be made at the time you order the Service. If we later determine that we are unable to provide the Service to you, we will refund Charges, per the Summary of Charges detailed on the Shoalnet/Fastrac Website Homepage as follows:
 - a) Charges for any set-up fee and provision of the Service during the Access Period will be refunded within 10 business days;
 - b) Charges for any CPE will be refunded to you when we receive the CPE from you, provided that such hardware is undamaged, in its original packaging and in saleable condition.
- 6.2 All plans, Shoalnet/Fastrac will automatically charge your credit card or invoice you in advance for access at the beginning of each calendar month. Charges for all plans for the first month will be pro-rated to allow billing to occur at the beginning of each calendar month. It is your responsibility to ensure that:
 - a) You have provided correct credit card or address details to us; and
 - b) There are sufficient funds on your credit card at the time when payments are deducted. If a credit card transaction is declined for any reason (other than a failure in our or our financial institution's payment processing systems), we will suspend your account at the end of the current Access Period. As well as suspending your account, we may terminate this Agreement if Charges remain outstanding beyond the end of any Access Period for which you have paid. We will make reasonable efforts to contact you to inform you that a credit card transaction has been declined.

- 6.3 Until we terminate this Agreement, we may continue trying to debit your credit card even though a previous attempt was declined. We may also impose a reasonable processing fee for declined credit card transactions, provided we have given you prior notice of this fee.
- 6.4 If you make payment of a Charge while your access to the Service is suspended, we will enable your access to the Services as soon as possible. We are not liable to refund any Charges for the period of any suspension.
- 6.5 Except as required by relevant legislation, or as set out in this clause, no Charges will be refunded to you.
- 6.6 From time to time, a discounted introductory offer may be advertised for various connection plans. If existing customers are eligible for the introductory offer, a new set-up fee may be payable by customers taking advantage of the offer.

7. CONTINUOUS SERVICE

- 7.1 Shoalnet/Fastrac will use reasonable commercial endeavours to provide the Service continuously. However, Shoalnet/Fastrac makes no guarantees that access will be available at all times and, to the extent permitted by law, will not be liable for any losses whatsoever that may be incurred as a result of the unavailability of the Service. You acknowledge that there may be a reduction in availability during periods of maintenance and enhancement of the Service.

8. EXISTING PHONE CONNECTION

- 8.1 You agree and acknowledge as follows:
 - 8.1.1 The Service can only be provided to you if the cable that runs between your premises and the nearest exchange is owned by Telstra. This means that you must purchase a standard telephone service from Telstra or a reseller of Telstra in order to receive the Service.
 - 8.1.2 If you do not currently purchase your standard phone service from Telstra or a Telstra reseller, then Shoalnet/Fastrac is unable to provide the Service to you at this time.
 - 8.1.3 If, after you start receiving the Service, your standard phone service becomes disconnected, you move premises, or you transfer your phone services to someone other than Telstra or a Telstra reseller, this may mean that you will be unable to receive the Service. Shoalnet/Fastrac is not obliged to refund any of the fees you have paid in these circumstances.
 - 8.1.4 If you move premises, this will be treated by Shoalnet/Fastrac as a disconnection. You may then apply for a new connection at your new premises.
 - 8.1.5 Some services offered by your telecommunications service provider or another person may not be compatible with the Service. This includes, for example, Telstra's "Easycall Multiple Number" and "Faxstream Duet" services.

- 8.1.6 The installation of the service on your Phone Connection may interfere with other services you receive, such as back-to-base security monitoring services. It may be necessary to install additional equipment, such as central line splitters, filters and network termination devices, to ensure that these services continue to operate when an ADSL service has been installed.
- 8.1.7 You must inform any provider of monitoring services that installation of the ADSL service may cause temporary interruption of monitoring services and that installation of additional equipment may be required.

9. INDEMNITY

- 9.1 You indemnify Shoalnet/Fastrac, its servants and agents against all actions, claims and demands which may be instituted against Shoalnet/Fastrac arising out of a breach of this agreement by you or arising out of an act or omission by any other person for whose acts or omissions you are vicariously liable.

10. WHOLE OF AGREEMENT

- 10.1 The parties acknowledge that this Agreement embodies the whole agreement between them relating to the subject matter of this agreement document and supersedes any and all oral and written negotiations and communications by or on behalf of any of them. Each party acknowledges that it has not, in entering into this Agreement, relied upon any warranty representation or statement, whether oral or written, made or published by any other party or any person on behalf of any other party or otherwise in connection howsoever with the subject matter of this Agreement, except such as are expressly provided herein and subject thereto has relied entirely upon its own enquiries relating to the subject matter of this agreement document. The parties agree that to the extent that each of them may exclude any warranties or conditions which might otherwise be implied in connection with this Agreement document or the subject matter of this agreement document by any competent legislation, then each party hereby expressly excludes from application all such implied warranties and conditions. Amendments hereto shall not come into operation until duly embodied in an amending agreement properly executed on behalf of both the parties hereto.

11. LIMITED LIABILITY

- 11.1 Except in relation to liability for personal injury (including sickness and death), the aggregate liability of Shoalnet/Fastrac to the customer in connection with this agreement (whether in contract, tort including negligence, under statute or otherwise) in respect of any loss or damage (including consequential loss or damage) is limited to the Charges received by Shoalnet/Fastrac in the Access Period during which the liability arises.
- 11.2 Where legislation (such as the Trade Practice Act 1974 and State Fair Trading Legislation) implies in this agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty will be deemed to be included in this agreement. However, to the extent permitted by such legislation, the liability of Shoalnet/Fastrac for any breach of such condition or warranty shall be limited, at the option of Shoalnet/Fastrac, to one or more of the following:

11.3 If the breach relates to goods:

- the replacement of the goods or the supply of equivalent goods;
- the repair of such goods;
- the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- the payment of the cost of having the goods repaired; and

11.4 if the breach relates to services:

- the supplying of the services again; or
- the payment of the cost of having the services supplied again.

12. RELEASE REGARDING FACTORS BEYOND CONTROL OF SHOALNET/FASTRAC

12.1 To the extent permitted by law, you release Shoalnet/Fastrac for any liability arising out of its failure or delay in performance or provision of services where such failure or delay is caused by factors beyond the reasonable control of Shoalnet/Fastrac.

12.2 Should the failure or delay referred to in 12.1. continue for a period of more than sixty (60) days Shoalnet/Fastrac may terminate this Agreement without penalty and with immediate effect by giving notice to you in writing.

12.3 You acknowledge that factors which may result in failure or delay in performance or provision of services by Shoalnet/Fastrac beyond their reasonable control, include but are not limited to:-

- a) Continuity and connection speed of your Internet access depends on a wide range of factors, many of which are beyond the control of Shoalnet/Fastrac;
- b) Shoalnet/Fastrac has no control over the accuracy or appropriateness of any information on the Internet;
- c) Shoalnet/Fastrac is not responsible for any software available on the Internet;
- d) Your Internet access may be interrupted or slowed by a variety of factors, including, but not limited to, equipment failure, the need for routine maintenance and/or upgrades, and peak demand.
- e) Connection speeds at the maximum theoretical speed of your equipment and the Service plan you purchase may not be achievable in practice.

13. TERMINATION

13.1 In addition to any other right of Termination under this agreement, Shoalnet/Fastrac may terminate this Agreement with immediate effect if:

- a) You breach any of your obligations and the breach continues for more than 5 days after we have given you notice of the breach; or

- b) (if you are an individual), You become bankrupt or insolvent; or
- c) (if you are a company), You become insolvent, or an administrator, receiver or liquidator is appointed.

14. CONSUMER PROTECTION

14.1 Pursuant to Australian State and Federal Consumer Protection Legislation, you may have additional rights beyond those set out in these Terms and Conditions. Also, such legislation may imply additional terms or warranties in these Terms and Conditions which cannot be varied. Nothing in these Terms and Conditions is intended to be inconsistent with, or vary, such rights, terms or warranties.

15. NOTICES

15.1 Shoalnet/Fastrac relies on email as its primary means of communication. Shoalnet/Fastrac will send notices to you by email as follows:

15.1.1 If you are a current customer of Shoalnet/Fastrac and your account is not suspended, the email will be sent to your primary Shoalnet/Fastrac user address;

15.1.2 If you are not a current customer of Shoalnet/Fastrac but you provide Shoalnet/Fastrac with an email address, Shoalnet/Fastrac will send notices to that address;

15.1.3 If you do not have an email address (or your Shoalnet/Fastrac address is suspended), Shoalnet/Fastrac will make reasonable efforts to contact you by phone or mail.

15.2 If Shoalnet/Fastrac sends a notice to you by email, it is deemed to be received by you at the time that the communication leaves Shoalnet/Fastrac's email servers, unless Shoalnet/Fastrac receives an automatic notification of non-delivery within 24 hours.

15.3 You may send notices to Shoalnet/Fastrac:

a) By email to *accounts@shoal.net.au*

b) By mail to PO Box 1137, Nowra NSW 2541

c) By fax to 02 4422 5016

d) For some types of notices (such as changes in credit card details and contact details), Shoalnet/Fastrac may make on-line forms available to you from your Account Management web page.

16. LAW

16.1 The laws of New South Wales, Australia govern this Agreement and the parties submit to the non-exclusive jurisdiction of the laws of that state.

17. ASSIGNMENT

17.1 Your rights and obligations under this agreement shall not be assigned, sold, delegated, alienated, transferred or otherwise disposed of without our consent in writing.

18. **SEVERABILITY**

- 18.1 The parties to this agreement agree if any provision of this Agreement shall be determined to be void by operation of law or the decision of any Court of competent jurisdiction such determination shall not affect any other provision of this Agreement and all other provisions shall remain in full force and effect.

19. **ACCEPTABLE USE POLICY**

This is the Shoalnet/Fastrac Acceptable Use Policy which forms part of this Agreement. By signing this Agreement you are bound to use Shoalnet/Fastrac services in accordance with this Acceptable Use Policy.

It is the your sole responsibility to check the Shoalnet/Fastrac homepage and email to remain up-to-date with any changes to this Policy.

19.1 **Definitions**

You means a subscriber to the Service, or any person who accesses the Service using the subscriber's access details;

Policy means this document, as may be amended by Shoalnet/Fastrac from time to time on 14 days notice (except that Shoalnet/Fastrac must give 90 days notice of any change that will introduce any download data limits or other usage restrictions of a similar nature);

Service means a residential ADSL broadband service provided by Shoalnet/Fastrac, together with associated services and software such as email facilities, web space and customer support.

19.2 **When this Policy comes into effect**

This Policy applies immediately if you are a new subscriber to the Service. For current Users, this Policy applies 14 days after this Policy is posted on Shoalnet/Fastrac's website. If any changes are made to this policy by Shoalnet/Fastrac, these changes come into effect 14 days after the revised policy is posted on Shoalnet/Fastrac's website.

19.3 **Security**

a) **Passwords**

You must keep confidential the password you use to subscribe to the Service. You remain responsible for any use of the Service made using your password.

b) **Unauthorised access**

You must not attempt to obtain unauthorised access to any computer system, including unauthorised access to Shoalnet/Fastrac's system (for example, by attempting to use the account of another user).

c) **Attacks on third party systems**

You must not participate in any attempt to cause any computer system (including Shoalnet/Fastrac's system) to malfunction, whether by way of viruses, worms, service attacks or otherwise.

19.4 **Illegal and infringing use**

You must not use the Service to breach any applicable criminal laws or to infringe on the rights of a third party. This includes, without limitation:

- fraudulent, deceptive or illegal activity;
- infringement of copyright, trademarks or other intellectual property rights;
- infringement of laws relating to censorship and classification of material;
- using the Service to create, forward or distribute defamatory statements.

19.5 **Electronic Mail**

You must not use the Service to distribute electronic communications (including electronic mail, SMS messages, chat messages and newsgroup postings):

- To a person or group who has indicated that they do not wish to receive the communication from you;
- If the communication is unsolicited bulk mail or "spam" (whether or not it is commercial in nature);
- In a way that forges or disguises the origin of the communication;
- In a way which is intended, or likely to, adversely affect the functionality of any computer system (including Shoalnet/Fastrac's systems).

19.6 **Consequences of Breach of Acceptable Use Policy**

If Shoalnet/Fastrac believes on reasonable grounds that you have breached this Policy, Shoalnet/Fastrac may:

- Suspend your access to the Service indefinitely or for a specific period;
- Terminate your access to the Service and refuse to provide the Service to you or your associates in the future;
- Inform appropriate government and regulatory authorities of suspected illegal or infringing conduct; and
- Delete or edit any of your data (including webpage content) stored on Shoalnet/Fastrac's computer systems.

20. AUTHORITY OF CUSTOMER TO ENTER CONTRACTUAL ARRANGEMENTS

- 20.1 Individuals who sign this agreement warrant that they are over 18 years of age. Persons who sign this agreement on behalf of a company or business warrant they have express authority to so.

I of.....
.....

have read and understand the contents of this Agreement document and agree to be bound by the Terms and Conditions therein.

I wish to contract for (circle one of the following):

- 1. the Minimum Service Period of 6 months
- 2. 12 month service period
- 3. 18 month service period
- 4. 24 month service period

with the understanding that at the expiration of the nominated Service Period, this Agreement will continue on a month to month basis until I give Shoalnet/Fastrac 7 days notice in writing of my intention to terminate the Agreement.

Signed: Witness:.....

Print Name: Print Name:

Date:

OFFICE COPY

I of.....
.....

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Print Name: Print Name:

Date: