



ADSL Terms & Conditions

Things you should know:

- A. The total amount payable by you for our ADSL services depends on the plan that you have selected and your usage of the service.
- B. Depending on the plan you purchase, this agreement runs on a monthly basis, quarterly or yearly basis, and then renews automatically. If you give us 14 days written or emailed notice in advance, you can cancel this agreement at the end of each month or year. You also have the right to cancel this agreement if HugoNet change the terms and conditions or the Acceptable Use Policy in a way that adversely affects your rights or obligations.
- C. These terms and conditions should also be read in conjunction with our Acceptable use policy and General / Dialup / Website Terms and conditions.
- D. The supplier of this service is CS Sutherland Corporation Pty Ltd (ACN 006 681 394) trading as HugoNet (HugoNet). You can call HugoNet on 1800 424 683.

1. About this document

This document contains the general terms and conditions on which HUGONET provide to you ADSL services.

2. Definitions

Acceptable Use Policy means the conditions of use applicable to the service as published by HugoNet from time to time;

Access Period means a renewable period of one calendar month, starting from the Activation Date;

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

ADSL Hardware means hardware, including ADSL modems and line filtering equipment, which you order from HugoNet when you place an order for the Service;

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

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;

Minimum Period means the minimum period (for example, 12 months) for which you must stay connected to the Service as set out in the description of the plan you purchase. Not all our plans have a Minimum Period;

Minimum Period Termination Charge means the number of months remaining in the Minimum Period as at the date of termination multiplied by the monthly access Charge applicable to your Service;

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;

Service means permanent ADSL connection access to HugoNet'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;

Unlimited Plan means access that that does not have a component of Usage Charges.

Usage Charges means that part of the Charges that relate to any or all of the following:

- (a) the amount of data downloaded by you; and/or
- (b) the amount of data uploaded by you; and/or



ADSL Terms & Conditions

(c) the time you spend connected to the service;

as set out in any information given to you at the time you place an order for the Service;

Usage Plan means an access plan that involves a component of Usage 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).

3. Term and Access Period

3.1 This Agreement starts on the date when you place an order for the Service using the HugoNet on-line sign-up process or the telephone sign-up process or by registering by the manual sign-up form.

3.2 HugoNet will start providing the Service to you from the Activation Date for the duration of the Access Period or, if a Minimum Period applies, for the Minimum Period.

3.3 This agreement will automatically be renewed for subsequent periods of one month, starting from the monthly anniversary of the Activation Date, unless:

3.3.1 You give us at least 14 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, HugoNet may postpone the date of termination by one calendar month; or

3.3.2 HugoNet notify you in advance that HugoNet wish to discontinue providing the Service to you. HugoNet will do this if:

3.3.2.1 HugoNet consider that you have breached these terms and conditions or the Acceptable Use Policy;

3.3.2.2 you disconnect your Phone Connection (including by changing service providers or moving premises); or

3.3.2.3 HugoNet no longer able to supply the Service to you because our arrangements with our suppliers have ended and HugoNet have been unable to source alternative arrangements.

3.4 HugoNet may adjust the Charges at the beginning of a new monthly period, provided that HugoNet gives you at least 30 days advance notice of any increase.

3.5 If a Minimum Period applies and you cancel a Service under clause 3.3.1 or HugoNet cancel the Service under clause 3.3.2.1, you must pay the Minimum Period Termination Charge on the date your Service is terminated.

3.6 This agreement will automatically be renewed for subsequent periods of one month, starting from the monthly anniversary of the Activation Date, unless:

3.6.1 You cancel this agreement because you are moving premises; and

3.6.2 You apply to HugoNet to provide ADSL services to you at your new premises for the remainder of the Minimum Period; and



ADSL

Terms & Conditions

3.6.3 The ADSL connection at your new premises is successfully provisioned.

HugoNet may also reduce the Minimum Period Termination Charge at its discretion if HugoNet is unable to provision an ADSL connection at your new premises.

4. Provision of Service

- 4.1 HugoNet, in accordance with the terms and conditions of this agreement, will provide the customer with the service by such means as HugoNet determines.
- 4.2 HugoNet will provide the service on a continuous basis during the term of this agreement. HugoNet will inform the customer if the service is unavailable for access by the customer due to maintenance or any other foreseeable factor.
- 4.3 HugoNet will provide you with all identification and log-in information required for connection to the Service.
- 4.4 If you wish to change your account down in speed or monthly value 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, HugoNet will charge a fee of \$66.00 to your credit card at the time you request the change. If you have committed to a Minimum Contract Period then it is unaffected by the speed change.

5. Customer Obligations

- 5.1 You must provide your own access facilities, including the Phone Connection.
- 5.2 You are responsible for maintaining the secrecy and confidentiality of all identification or log-in information required by the customer to access the service.
- 5.3 You agree not to disclose to any other person, corporation, entity or organization any identification or log-in information, whether in use or not, nor any other confidential information relating to the service or HugoNet.
- 5.4 You are liable for all fees resulting from use of the service accessed through your identification or log-in information, whether authorized by you or not.

6. Use of the Service

- 6.1 You must comply with all reasonable directions by HugoNet regarding the access and use of the Service.
- 6.2 Throughout the Access Period, you must comply with the Acceptable Use Policy.
- 6.3 You warrant that in accessing and using the Service you will only use software that you are legally entitled to use.
- 6.4 You acknowledge that HugoNet 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 HugoNet will not be held responsible in any way for any content or information accessed via the Service (except where HugoNet actually provides such content or information).
- 6.5 HugoNet disclaims all or any liability for any material on the Internet that you may find offensive, upsetting, defamatory or personally offensive.



ADSL

Terms & Conditions

- 6.6 You must not access, nor permit any other party to access, the Service for any purpose or activity of an illegal or fraudulent nature.
- 6.7 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.
- 6.8 You are responsible for preparing and maintaining sufficient back-up files and data storage capacity for all your data including electronic messages.
- 6.9 HugoNet Internet has no responsibility to provide training in the use of the service pursuant to this agreement.

7. Charges

- 7.1 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 HugoNet later determine that HugoNet are unable to provide the Service to you, HugoNet will refund Charges as follows:
 - 7.1.1 Charges for any set-up fee and provision of the Service during the Access Period will be refunded within 10 business days;
 - 7.1.2 Charges for any ADSL Hardware will be refunded to you when HugoNet receive the ADSL Hardware from you, provided that such hardware is undamaged, in its original packaging and in salable condition.
- 7.2 If you are on an Unlimited Plan, HugoNet will automatically charge your credit card in advance for access Charges in an Access Period, at the start of that Access Period. If you are on a Usage Plan, HugoNet will automatically charge your credit card in advance for access Charges in an Access Period at the start of that Access Period. At the same time, HugoNet will also charge your credit card the Usage Charges (if any) in the previous Access Period. It is your responsibility to ensure that:
 - 7.2.1 you have provided correct credit card detail to us; and
 - 7.2.2 there are sufficient funds on your credit card at the time when payments are deducted.
- 7.3 If a credit card transaction is declined for any reason (other than a failure in our or our financial institution's payment processing systems), HugoNet will suspend your account at the end of the current Access Period. As well as suspending your account, HugoNet may terminate this Agreement if Charges remain outstanding beyond the end of any Access Period for which you have paid. HugoNet will make reasonable efforts to contact you to inform you that a credit card transaction has been declined.
- 7.4 Until HugoNet terminate this Agreement, HugoNet may continue trying to debit your credit card even though a previous attempt was declined. HugoNet may also impose a reasonable processing fee for declined credit card transactions, provided HugoNet have given you prior notice of this fee.
- 7.5 If you make payment of a Charge while your access to the Service is suspended, HugoNet will enable your access to the Services as soon as possible. HugoNet are not liable to refund any Charges for the period of any suspension.
- 7.6 Except as required by relevant legislation, or as set out in this clause, no Charges will be refunded to you.



ADSL

Terms & Conditions

7.7 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.

8. Continuous Service

HugoNet will use reasonable commercial endeavors to provide the Service continuously. However, HugoNet 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.

9. Existing Phone Connection

9.1 You agree and acknowledge as follows:

9.1.1 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.

9.1.2 If you do not currently purchase your standard phone service from Telstra or a Telstra reseller, then HugoNet is unable to provide the Service to you at this time.

9.1.3 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. HugoNet is not obliged to refund any of the fees you have paid in these circumstances.

9.1.4 If you move premises, this will be treated by HugoNet as a disconnection. You may then apply for a new connection at your new premises.

9.2 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.

9.3 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 a central line splitters, filters and network termination devices, to ensure that these services continue to operate when an ADSL service has been installed.

9.4 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.

10. Indemnity

You release and indemnify HugoNet, its servants and agents against all actions, claims and demands which may be instituted against HugoNet arising out of a breach of this agreement by you or arising out of an act or omission by any other person (such as an employee) for whose acts or omissions you are vicariously liable.

11. Implied Terms

11.1 Subject to clause 9, any condition or warranty which would otherwise be implied in this agreement is hereby excluded.

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



ADSL

Terms & Conditions

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 HugoNet for any breach of such condition or warranty shall be limited, at the option of HugoNet, to one or more of the following:

11.2.1 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

11.2.2 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. Liability of HUGONET

Except in relation to liability for personal injury (including sickness and death), to the extent permitted by law the aggregate liability of HugoNet 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 HugoNet in the Access Period during which the liability arises.

13. Termination

13.1 In addition to the rights of the parties not to renew this agreement in accordance with clause 3.3 HugoNet may terminate this agreement immediately if:

13.1.1 you breach any of your obligations and the breach continues for more than 5 days after HugoNet have given you notice of the breach.

13.1.2 (if you are an individual) you become bankrupt or insolvent;

13.1.3 (if you are a company) you become insolvent, or an administrator, receiver or liquidator is appointed.

14. Events beyond HugoNet's Control

14.1 To the extent permitted by law, HugoNet will not be liable for any defect in the provision of the Service which is caused by a reason beyond the reasonable control of HugoNet. In particular (but without limitation) you acknowledge that:

14.1.1 Continuity and connection speed of your Internet access depends on a wide range of factors, many of which are beyond the control of HugoNet;

14.1.2 HugoNet has no control over the accuracy or appropriateness of any information on the Internet;



ADSL Terms & Conditions

- 14.1.3 HugoNet is not responsible for any software available on the Internet;
- 14.1.4 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 peak demand.
- 14.1.5 Connection speeds at the maximum theoretical speed of your equipment and the Service plan you purchase may not be achievable in practice.

15. IP Addresses

Any IP Address allotted to you by HugoNet, whether as a static address or dynamically allocated:

- 15.1 remains the sole property of HugoNet;
- 15.2 may be changed or revoked by HugoNet at its discretion at any time; and
- 15.3 is not transferable.

16. Consumer Protection

- 16.1 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.

17. Notices

- 17.1 HugoNet relies on email as its primary means of communication. HugoNet will send notices to you by email as follows:
 - 17.1.1 If you are a current customer of HugoNet and your account is not suspended, the email will be sent to your primary HugoNet user address;
 - 17.1.2 If you are a current customer of HugoNet but you provide HugoNet with an email address, HugoNet will send notices to that address;
 - 17.1.3 If you do not have an email address (or your HugoNet address is suspended), HugoNet will make reasonable efforts to contact you by phone or mail.
- 17.2 If HugoNet sends a notice to you by email, it is deemed to be received by you at the time that the communication leaves HugoNet's email servers or arrives in your HugoNet mail box, unless HugoNet receives an automatic notification of non-delivery within 24 hours.
- 17.3 You may send notices to HugoNet:
 - 17.3.1 By email to info@hugonet.com.au
 - 17.3.2 By mail to PO Box 664, Geelong, 3220
 - 17.3.3 By fax to 03 5221 7659
 - 17.3.4 For some types of notices (such as changes in credit card details and contact details), HugoNet may make online forms available to you from your Account Management (CustData) web page.



ADSL Terms & Conditions

18. Law

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

19. Changes to this Agreement

HugoNet may change these terms and conditions or the Acceptable Use Policy at any time by giving you 30 days notice. If the change adversely affects your rights or obligations under this agreement, you may cancel this agreement by notice to HugoNet without penalty (including without paying any Minimum Period Termination Charge that would otherwise apply). To be effective, HugoNet must receive your notice of cancellation before the change in the terms and conditions or Acceptable Use Policy becomes effective.

20. General provisions

- 20.1 If HugoNet need to send you a notice concerning this agreement, HugoNet can do so by email to the primary email account you receive as part of the Services.
- 20.2 The laws of Victoria, Australia govern the interpretation of this agreement.
- 20.3 You may not assign or otherwise transfer your rights and obligations under this agreement and any attempted assignment or transfer is void.
- 20.4 You must not re-sell our Services.
- 20.5 HugoNet may change these terms and conditions or the Acceptable Use Policy at any time by giving you 30 days notice. If the change adversely affects your rights or obligations under this agreement, you may cancel this agreement by notice to HugoNet without penalty (including without paying any Minimum Period Termination Charge that would otherwise apply). For your notice of cancellation to be effective, HugoNet must receive the notice before the change in the terms and conditions or Acceptable Use Policy takes effect.
- 20.6 If you validly cancel this agreement under clause 11.5 because of a change to the terms and conditions or Acceptable Use Policy made by us, HugoNet will refund to you any unused part of any Fixed Charge that you have pre-paid, on a pro-rated basis.