



## E-ACCESS TERMS AND CONDITIONS

Please read this document carefully, and ensure that you understand it, as the use of E-Access Internet Service(s) implies your acceptance of the following terms and conditions.

By commencing to use E-Access Service(s), utilising data or accessing your email account, you indicate your acceptance of all the terms and conditions.

If in E-Access's reasonable opinion, you breach any of these terms and conditions of use, we may limit, suspend or terminate your Internet access.

E-Access may change portions of this Agreement from time to time upon reasonable notice to you by giving reasonable notice to you by posting the last revision of this Agreement at [www.e-access.com.au](http://www.e-access.com.au). In addition, E-Access may also advise you of such changes by sending you an electronic mail message at your nominated email address. You are responsible for regularly reviewing information posted online to obtain timely notice of such changes. Your non-termination or continued use of the Services after the effective date constitutes your acceptance of this agreement as modified by the posted changes.

If you do not agree with any of the amendments to this Agreement, you agree to stop using the Services and to provide notice to E-Access of your termination of this Agreement as per the Terms and Conditions.

*This document is available online or to download as a PDF document. If you would like a hard copy please contact [accounts@e-access.com.au](mailto:accounts@e-access.com.au).*

### Definitions

**"E-Access"** means TouchTV Pty Ltd ABN 33 079 700 253 trading as E-Access Broadband, its successors and assigns.

**"Agreement"** means the Application, together with these Terms and Conditions, E-Access Privacy Policy, E-Access Acceptable Use Policy and your nominated Internet Access Plan, as published on the E-Access web site and as may be varied from time to time.

**"Application"** means the electronic, paper, voice or other form of application lodged by You.

**"you"** or **"your"** means the person that is named on the Application.

**"Service(s)"** means being able to access the Internet such that data can be transferred to and from the user's computer, and related services, including if it is so agreed, access to email.

**"Customer"** means any person who has entered into an Agreement with E-Access for the purpose of provision of Service(s).

**"Charges"** mean all charges due to E-Access for use of the Service(s) in accordance with this Agreement.

**"Plan Period"** means a period, which may be one of successive periods or the duration for which the Services(s) are nominated by the Customer and automatically renewed.

**"Due Date"** means the recurring date on which you are required to pay the Charges for the Service(s), which will occur each month, quarter, year or other period as agreed commencing on the start of the Service(s) Plan Period.

**"Material(s)"** means information sent or received through your Service(s). This includes without limitation text, graphics, software, sound, video, email and any other form of information or data.

## **1. Our Agreement**

- 1.1. This Agreement commences on the date of commencement of the provision of the Service(s) to you and will continue until terminated by either party in accordance with the applicable notice period. If you terminate this Agreement, you will remain liable for all Charges and all other fees that you are required to pay to E-Access under this Agreement.

## **2. The Services**

- 2.1. In accordance with the terms and conditions of this Agreement, E-Access will use reasonable commercial endeavours to provide you with the Service(s), and any necessary access information required to use the Service(s).
- 2.2. E-Access grants access to the Service(s) on the basis that you the applicant agree to be bound by the following conditions:
  - 2.2.1. E-Access reserves the right to change charging and this Agreement without notice, e.g. in order to cover any third party price increases such as carriers and other service providers. Prepaid accounts are not refundable and will be transferred to the new rate, terms, and conditions automatically.
  - 2.2.2. You agree to indemnify E-Access, its parents, subsidiaries, affiliates, officers and employees, harmless from any claim, demand, or damage, including reasonable solicitor's fees, asserted by any third party due to arising out of your use of or conduct on the Service(s).
  - 2.2.3. E-Access provides electronic Internet Service(s), including information and links to content from third parties. The Materials available through your Service(s) and any third party are provided "as is" and "as available" and without warranties or conditions of any kind either express or implied. To the fullest extent permitted by applicable law, E-Access expressly disclaims all warranties and conditions, express or implied, including, but not limited to, implied warranties and conditions of merchantability, merchantable quality, correspondence to description and fitness for a particular purpose.
  - 2.2.4. E-Access does not represent or warrant that the Service(s) and/or Material(s) will be uninterrupted or error-free, that defects will be corrected, or that the site or the server that makes it available are free of viruses or other harmful components. E-Access does not warrant or represent that the use or the results of the use of the Material(s) available through the Service(s) or from third parties will be correct, accurate, timely, reliable or otherwise.
  - 2.2.5. Any transmission speeds referred to by E-Access refer to the maximum theoretical speed achievable with the Service(s) under ideal conditions, and you acknowledge that the actual achieved speeds may be different from the theoretical speeds.
  - 2.2.6. E-Access dial-up Services are available at the cost of a local call to 98% of fixed phones in Australia. The responsibility to check the call costs of our supplied dial-in numbers remains with the customer; this information can be checked with the end-users telecommunications company.
  - 2.2.7. E-Access owns all addresses provided to you, including but not limited to IP addresses, e-mail addresses and personal web page addresses. E-Access may modify such addresses at any point in time and shall in no way be required to compensate you for such changes.
  - 2.2.8. All personal accounts are entitled to a free Web Page. This does not extend to businesses or commercial ventures. Organisations requiring virtual shop fronts, web pages and multiple users access to the system should ring Helpdesk for further details.

## **3. Installation of Service and Faults**

- 3.1. The operation of a Service(s) is dependant on third party carrier equipment, infrastructure and personnel. E-Access is not liable for any delay in installing, correcting a fault in a Service(s), or any other failure, delay, or default in performance under this Agreement caused by criteria and events beyond its control.

## **4. Your Equipment Maintenance**

- 4.1. You agree to provide and maintain the telephone line, modem, computer, hardware, software and all other equipment required to access your Service(s).
- 4.2. The support of hardware, software and network configurations is outside of E-Access's Technical Support jurisdiction.

## **5. Authorised Use**

- 5.1. The Service(s) are provided to individuals only. Any unauthorised commercial use of the Service(s), or the resale of its Service(s), is expressly prohibited. Accounts are granted on a single user basis and are not transferable or refundable.
- 5.2. You are responsible for all authorised users of the account, whether such usage is a result of deliberate and / or negligent action on the your part. You must be over the age of eighteen (18) years and agrees to pay all fees and charges incurred using the account. You are responsible for all costs associated with Material or other products and services obtained from third parties via the Service(s).

## **6. Refund Policy**

- 6.1. E-Access reserves the right to grant a refund except as required by law. You may apply for a pro-rata refund for any charges already paid by you subject to the terms and conditions of this Agreement and an E-Access administrative fee for any costs incurred to cover establishment of the Service(s).

## **7. Charges, Billing and Credit Cards**

- 7.1. You may contact E-Access on 1300 13 88 10 between 9am and 9pm ACST seven days a week to verify the current financial status of your account.
- 7.2. Tax invoices are sent to all E-Access Dial-Up, Broadband and Hosting customers via email to the email address nominated by the customer 7 days in advance of the Due Date. Alternative arrangements can be made by negotiation.
- 7.3. You agree that emailed invoices and other notices sent to your nominated email address are deemed to be received if a delivery failure report for that email is not received by E-Access.
- 7.4. All Charges (unless otherwise specifically agreed) except Charges for excess usage or specified non-Internet or telecommunications services, are payable in advance and must be paid prior to the commencement of the Service(s) and prior to each Due Date (as applicable). Any other Charges for additional hours or excess megabyte usage are charged in arrears for the previous month.
- 7.5. Where you request E-Access to directly debit amounts owing from your credit card, your account will be debited on or after your Due Date. The amount to be debited is clearly noted on your Invoice / Statement provided 7 days before your Due Date.
- 7.6. Under this Agreement where payments for the Service(s) are by credit card, the nominated credit card must be Visa, MasterCard or Bankcard.
- 7.7. Where you have nominated BPay as your preferred method of payment the initial payment must be made before the account will be activated.
- 7.8. Where you have nominated credit card payments, to the extent permitted by law, you irrevocably authorise E-Access to automatically debit the charges for the first plan period and subsequent plan periods against your credit card; and automatically debit any outstanding charges against your credit card at any time, including after termination or suspension of the Internet access service.
- 7.9. You are obliged to operate your credit card within terms and credit limits set in order to pay your account in full. You will provide the authority to complete and sign on behalf of yourself, all necessary forms and documents to facilitate payments from the relevant bank, or other financial institution; and you agree to remain liable to us for all amounts owing to your account consequently billed to your credit card until all amounts outstanding have been paid in full.
- 7.10. In the event that your credit card has insufficient funds on the Due Date, or is declined for any reason on the third attempt, a \$15 administration fee is payable.
- 7.11. The amounts payable by you to us for, or in connection with the Service(s) under this Agreement will include any GST payable.
- 7.12. E-Access may change the Charges at any time, but will not change any charges which have already been incurred. It is your responsibility to make sure you are aware of these changes, as published on the E-Access web site ([www.e-access.com.au](http://www.e-access.com.au)).
- 7.13. You are responsible for providing and paying all communication and usage charges including without limitation telephone charges, line charges and other charges involved in the connection between your premises and the point of presence used for access to the Service(s).
- 7.14. You must pay disputed Charges. A credit may, at the discretion of E-Access, be issued at a later date. Where you dispute a Charge, you must notify E-Access immediately after receiving your invoice or credit card statement.

## **8. Backup Copies and Data**

- 8.1. E-Access will periodically make backup copies of information that you lodge on the network / system. However, we do not guarantee successful restoration of any information lodged on our servers. It is your responsibility to ensure that you keep backup copies of all information that you lodge on the network.
- 8.2. E-Access takes reasonable care to ensure the security of the system; we accept no responsibility for loss of data.

## **9. Helpdesk and Support**

- 9.1. E-Access provides free telephone support for Microsoft and Netscape Internet Browsers and most PC and Macintosh operating systems. This service is for registered dial-up, broadband and hosting account users between 9am and 9pm seven days a week (Australian Central Standard Time). Due to the service being free, regretfully, it does not extend to any other software, returning phone calls or calls to mobiles.

- 9.2. Technical support is limited to commissioning and ensuring a stable Internet dial-up or broadband connection on one computer only. Support does not extend to home networking, business networks, firewalls, or external services outside of the control of E-Access. Additional support may be provided, but it would be an additional cost to you in the event that the reported problem is due to faults in your software or hardware.
- 9.3. If contacted, Telstra may also provide support for ADSL services. However, Telstra will charge for such a call. E-Access in-turn will invoice any incurred Telstra charges to you.

## **10. Changes to your Service Requirements**

- 10.1. If you disconnect from an E-Access Broadband service within 6 months of the service being provisioned a \$88 administration / cancellation fee will apply.
- 10.2. Reconnection and disconnection is payable if you need to reprovision the Service. This includes relocation of your premises or a change of phone number. This process may incur some downtime of your Service and you may be liable for a \$88 disconnection fee, and \$139 reconnection fee. Please call the Customer Service Desk for any charges that may be applicable.
- 10.3. You may change the configuration of your Service at any time. If your ADSL line transmission rate is increased or decreased, or the configuration of your set-up needs to be changed, \$55 is payable.
- 10.4. You may move between plans within your current speed at no charge at the start of your next Plan Period providing no configuration changes are required or reprovisioning of your Service is necessary.
- 10.5. It is your responsibility to provide and maintain a standard telephone line. If your telephone service is disconnected due to non-payment of your telephone account, your ADSL Service will also be disconnected, and you may be liable for a \$88 disconnection fee, and \$139 reconnection fee.

## **11. Suspension and Termination**

- 11.1. E-Access reserves the right to terminate or suspend, at our sole discretion, in the event of any breach of this Agreement by you or anyone using your account. Such termination or suspension may be without notice including but not limited to the following circumstances:
  - Failure to pay outstanding charges;
  - During an investigation of alleged defined abuse;
  - Where your financial position is significantly changed, including without limitation, bankruptcy, insolvency, a winding up application or the appointment of a receiver;
  - In an emergency or to safeguard the provision of any services to a Customer;
  - Where you have provided any false, misleading or incomplete information to E-Access;
  - Where your nominated payment method is refused or dishonoured by your nominated financial institution;
  - Where you fail to notify E-Access of changes to your personal details.
- 11.2. E-Access may immediately terminate any account that it believes, in its sole discretion, is transmitting or is otherwise connected with any Spam or other unsolicited bulk email. In addition, you agree to pay E-Access liquidated damages from or otherwise connected with your E-Access account. This may be charged at the rate of \$5 for each piece of Spam or unsolicited bulk email transmitted, or 40 cents per megabyte, or actual damages to E-Access, whichever is greater.
- 11.3. E-Access is not required to issue you a refund if your account is suspended or terminated for any of the reasons in clause 17.1, except as required by law.
- 11.4. Your access to the Service(s) will continue until the Service is suspended or terminated in accordance with this Agreement.
- 11.5. E-Access may terminate or suspend Service(s) without cause by giving 24 hours written notice to you. You may apply for a pro-rata refund for any Charges already paid by you. E-Access may levy a reasonable fee for any costs incurred as a result of the early termination.
- 11.6. E-Access may delete any data on the system following the termination of an account.
- 11.7. E-Access reserves the right to act in an appropriate manner where there are grounds for believing that malicious or unacceptable use of the system or the network is occurring. If you are found to be using the system for either abusive or derogatory reasons your Service(s) may be terminated and you may forfeit all prepaid access time.
- 11.8. Where your account is in default or overdue, the E-Access systems may suspend or terminate your Service(s) for non-payment automatically. If your account is suspended or terminated for, whatever reason you must pay any and all outstanding fees and Charges immediately.

11.9. In the event that there are Charges owing post-termination, your account may be passed to a nominated credit collection agency for recovery. If the account is not cleared to E-Access's satisfaction, a credit default may be lodged against you with a credit-reporting agency.

## 12. Cancellation of your Internet Access Plan

12.1. Cancellation or changes to account type or term must be made in writing to E-Access or by calling the Customer Service Helpdesk 28 days prior to account expiration. Termination of your Service(s) before the end of your Plan Period may incur an administration fee. E-Access will need to verify your identity via telephone before any cancellation or changes are processed.

## 13. Limitation of Liability

13.1. E-Access is not liable for any loss, damage or injury, including without limitation any loss of profit, indirect, consequential or incidental loss, damage or injury, in respect to your use of the goods or Service(s), including any information obtained from them, timed and untimed telephone calls charged by a telephone company to you, and any faults or outages affecting the Service(s).

13.2. You further agree that E-Access will not be responsible to you for any indirect, special or punitive damages or losses you may incur in connection with our Service(s) or any of the Material(s) transmitted through or residing on our system, even if we have been advised of the possibility of such damage or loss. In addition, you agree to defend and indemnify us and do hereby hold us harmless from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs and expenses (including legal fees) relating to any acts by you or materials or information transmitted by you in connection with our system leading wholly or partially to claims against us or our system by other users or third parties.

13.3. E-Access is dependent on external network and data services; therefore, you indemnify E-Access for any inability to provide such services, which are beyond its control. E-Access does not guarantee that access to any Service(s) will be error free or fault free.

13.4. The failure of E-Access at any time to enforce or require the strict compliance of any provision in this Agreement shall not be interpreted as a variation of this agreement. E-Access reserves the right to alter the system rules as required and to subcontract or assign this Agreement without giving you notice.

## 14. Acceptable Use Policy

14.1. The E-Access Acceptable Use Policy is intended to help enhance the use of the Internet by preventing unacceptable use. Your non-compliance with this Acceptable Use Policy may result in the restriction, suspension or termination of either your access to the Service(s).

14.2. In accordance with this Agreement we may remove any materials, that at our sole discretion may be considered illegal, may subject us to liability, or which may violate this Acceptable Use Policy.

14.3. The following are considered by E-Access to be Unacceptable Conduct:

14.3.1. **Illegal Use.** Using the Service(s) to transmit any material (by email, uploading, downloading, posting or otherwise) that, intentionally or unintentionally, violates any applicable local, state, national or international law.

14.3.2. **Harm to Minors.** Using the Service(s) to harm, or attempt to harm, minors in any way.

14.3.3. **Threats.** Using the Service(s) to transmit any material (by email uploading, downloading, posting or otherwise) that threatens or encourages bodily harm or destruction of property.

14.3.4. **Harassment.** Using the Service(s) to transmit any material (by email, uploading, downloading or otherwise) that harasses another.

14.3.5. **Sexually Explicit Material.** Using the Service(s) to transmit any material (by email, uploading, downloading or otherwise) that contains explicit or graphic descriptions or accounts of sexual acts including but not limited to sexual language of a violent or threatening nature directed at another individual or group of individuals.

14.3.6. **Discrimination.** Using the Service(s) to discriminate against, victimise, harass, degrade or intimidate an individual or group of individuals based on religion, gender, sexual orientation, race, ethnicity, age or disability.

14.3.7. **Libel or Defamation.** Using the Service(s) to make libellous or defamatory remarks about another person or entity.

14.3.8. **Fraudulent Activity.** Using the Service(s) to make fraudulent offers to sell or buy products, items or services or to advance any type of financial scam such as "pyramid schemes," "chain letters," and other forms of business fraud.

14.3.9. **Forgery or Impersonation.** Using the Service(s) to impersonate any person or entity, including any employee or representative of E-Access. Includes but is not limited to adding, removing or modifying identifying network header information in an effort to deceive or mislead as well as attempting to impersonate any person or entity by using forged headers or other identifying information.

- 14.3.10. **Unsolicited Commercial Email / Unsolicited Bulk Email.** Using the Service(s) to transmit any unsolicited commercial email or unsolicited bulk email (also known as "Spamming"). Users may not transmit such email even if the transmission provides an electronic email address to which the recipient may send a request for declining such electronic mail. Activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email whether or not that email is commercial in nature are also included.
- 14.3.11. **Unauthorised Access.** Using the Service(s) to access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of E-Access's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption, loss or theft of data.
- 14.3.12. **Copyright or Trademark Infringement.** Using the Service(s) to transmit any material (by email, uploading, downloading, posting or otherwise) that infringes any copyright, trademark, patent, trade secret, or other proprietary rights of any third party, including, but not limited to, the unauthorised copying of copyrighted material.
- 14.3.13. **Licensing.** You are responsible for obtaining all necessary permissions, authorisations, licences and consents in relation to the use of any third party materials used in the provision of the Services; and payment of all royalties and other fees associated with the use of such third party materials, and you must indemnify E-Access in respect of any liability arising directly or indirectly from a failure by you to observe your obligations as set out in the Agreement.
- 14.3.14. **Reselling the Services.** Reselling the Service(s) without E-Access authorisation. The Service(s) are for your use only.
- 14.3.15. **Network Disruptions and Activity.** Using the Service(s) for any activity which adversely affects the ability of other people or systems to use E-Access Service(s) or the Internet. This includes "denial of service" attacks against another network host or individual user. Interference with or disruption of other network users, network services or equipment is prohibited. This includes but is not limited to software viruses or any other computer code, files or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or damage or obtain unauthorised access to any data or information of any third party.
- 14.3.16. **Excessive Bandwidth Use.** E-Access reserves the right to monitor bandwidth use of its customers and may suspend or terminate the account of any customer using excessive bandwidth, excessive downloads, uploads and/or file transfers if such activity is deemed to be having a detrimental effect on other users of the network.
- 14.3.17. **Compromising Security.** Using or distributing tools designed or used for compromising security either against E-Access's systems and/or network, or any other hosts or users on the Internet.
- 14.4. E-Access may take any one or more of the following actions in response to unacceptable conduct in relation to your use of the Service(s):
- 14.4.1. Issue warnings, written or verbal
  - 14.4.2. Restrict a customer's account or Service(s) in order to halt the unacceptable conduct. At the discretion of E-Access the onus may be placed on the customer to prove to an acceptable degree that such unacceptable conduct has ceased and will not reoccur before such restrictions are removed
  - 14.4.3. Suspend a customer's account or Service(s)
  - 14.4.4. Terminate a customer's account or Service(s)
  - 14.4.5. Invoice a customer for administrative costs and/or reactivation charges associated with the unacceptable conduct
  - 14.4.6. Bring legal action to collect damages, if any, caused by violations
  - 14.4.7. Report any violations to the appropriate legal authorities

## 15. Privacy Policy

- 15.1. The E-Access Privacy Policy forms part of E-Access Terms and Conditions and is in accordance with the Telecommunications Act.
- 15.2. To join E-Access Broadband, information such as your name, contact details, age and gender are requested and are necessary to identify you and provide the Service(s). E-Access will not disclose this personal information unless we have received your consent to do so.
- 15.3. The exceptions to 20.2 is if it is required to establish and maintain your Service, required by law or in response to legal processes. The primary purpose we use your personal information is to provide you with Service(s). Related uses include providing customer service; provisioning or connecting services; network routing; billing; and debt collecting.

- 15.4. E-Access takes all reasonable steps to ensure that all information collected, used or disclosed is accurate, complete, up-to-date and stored in a secure environment accessed only by authorised persons.
- 15.5. E-Access may, in our discretion, retain and access any data or information concerning your use of the Services.
- 15.6. Specific instances where information or data held by us about you is disclosed to a third party include:
  - 15.6.1. Where E-Access suspects that unlawful activity is being or may be or has been engaged in and uses the personal information to investigate the suspected unlawful activity;
  - 15.6.2. There are reasonable grounds to believe that disclosure is necessary to prevent a threat to life, health or property;
  - 15.6.3. The use or disclosure is authorised or required or permitted by law or reasonably necessary to enforce the law;
  - 15.6.4. Your account is in default and we require the service of a credit collection agency to recover outstanding monies.
- 15.7. You acknowledge that we must cooperate with the lawful requests of members of the police force or any other person duly authorised to investigate breaches of the law, and that we may disclose any information held by us in relation to your account to such authorities if compelled or required to do so.
- 15.8. In addition to the Applicant's personal details, E-Access receives Calling Number Identification (CLI) via telecommunications carriers each time a dial-up connection is authenticated on the E-Access network, regardless of whether the customer has blocked it. The CLI is used for customer identification, user verification and technical support and is stored in a secure database.

**16. Modifications to these Terms & Conditions**

- 16.1. E-Access reserves the right to modify or amend this Agreement and our other policies and agreements at any time and in any manner. Notice of any modification or amendment will be emailed and / or distributed in accordance with this Agreement.
- 16.2. Reports of activity in violation of this policy may be sent in e-mail to [abuse@e-access.com.au](mailto:abuse@e-access.com.au).