

## **ACCEPTABLE USE POLICY (AUP)**

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This document sets out the rules which apply to your use of our services as stated in your Application which we provide to you for connection to the Internet, email, voice and video services as well as other publicly accessible data and information networks.

### **1. DEFINITIONS**

Capitalised terms have the meaning set out in our SFOA and the following definitions are used in our Acceptable Use Policy.

<b>Application</b>	means the application you complete for the Service we provide to you.
<b>Internet</b>	means the world wide connection of computer networks which provides a number of services to users including the transmission of electronic mail, provision of information on the world wide web and transfer of files.
<b>Network Prioritisation</b>	means that the provision of Services will occur across our Network in a prioritised order, such order to be determined by us in our sole discretion.
<b>Our Network</b>	means the infrastructure used and maintained by us to provide you with your Service. Our Network does not include the computer networks that make up the Internet
<b>Policy</b>	means this Acceptable Use Policy, a copy of which is accessible on our website at <a href="http://www.adam.com.au/legal">www.adam.com.au/legal</a> .
<b>Service(s)</b>	means a product or service(s) which we have agreed to supply to you as stated in your Application.
<b>Shaped Services or Shaping</b>	means the controlled reduction in speed of a Broadband service.
<b>SFOA</b>	means our Standard Form of Agreement.
<b>we, our or us</b>	means Adam Internet Pty Ltd.
<b>you or your</b>	means the current account holder.

## 2. APPLICATION OF THIS POLICY

This Policy applies to all customers who acquire a Service from us. Your obligation to comply with this Policy includes your obligation to ensure any person who uses your Service, whether with or without your authority, also complies with this Policy.

Your failure to comply with this Policy (including by any person who you authorise or otherwise permit to use your Service) may lead to the restriction, suspension or termination of your Service.

## 3. INTERACTION WITH OUR STAFF

You will not bully, abuse, harass, intimidate or otherwise engage in threatening or offensive behaviour towards our staff. Our staff reserves the right to terminate any phone call with you, and/or refuse to serve you, if you engage in such behaviour. We reserve the right to terminate your Service if you engage in such behaviour.

## 4. RESPONSIBLE USAGE

- (a) You, or anyone connecting to your Service, must use your Service responsibly and in accordance with the law. If you engage in any conduct which could result in injury or damage to any person or property (including our network, systems and equipment) access to your Internet Service may be restricted, suspended or terminated without prior notice.
- (b) You **must not** use or attempt to use your Service to store, send, distribute or otherwise make available any content or material which:
  - (i) defames, harasses, threatens, abuses, menaces, offends or incites violence or hatred against any person or class of persons whether on grounds of gender, race, religion or otherwise;
  - (ii) is prohibited or unlawful under any Commonwealth, State or Territory law or classification system, or which is likely to be offensive or obscene to a reasonable person;
  - (iii) is confidential, subject to copyright or any other rights of a third party (unless you have a lawful right to do so); or
  - (iv) is otherwise illegal, fraudulent or likely to give rise to civil or criminal proceedings.
- (c) You **must not** use or attempt to use your Service to:
  - (i) store, send or distribute any viruses or other harmful programs, codes or other malicious software;
  - (ii) hinder, restrict or interfere with the normal operation of our network, systems and equipment or that of any other person or entity;
  - (iii) access, monitor, use or control any other person's equipment, systems, networks or data (including usernames and passwords) without their knowledge or consent or to otherwise probe, scan or test the vulnerability of any such equipment, networks, systems or data;

- (iv) send, relay or otherwise distribute any electronic message, the contents or properties of which have been created, forged or altered for the purpose of impersonating, hiding or otherwise obscuring the original sender or source of that message;
  - (v) send or distribute any material or take any other action with the aim of overloading any network or system (including our network and systems);
  - (vi) make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam such as 'pyramid schemes', 'Ponzi schemes', and 'chain letters';
  - (vii) add, remove or modify identifying network header information in an effort to deceive or mislead. Attempting to impersonate any person by using forged headers or other identifying information is prohibited. The use of anonymous remailers or nicknames does not constitute impersonation;
  - (viii) access, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, ours or a third party's security measures, computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data;
  - (ix) engage in any activity which adversely affects the ability of other people or systems to use our Internet Services or the Internet. This includes 'denial of service' (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited. It is the User's responsibility to ensure that their network is configured in a secure manner; or
  - (x) aggregate, redistribute or multi-link a like service provided by us. A 'like service' being two services that are the same technology ie. AdamDirect. Where this is detected, in our sole opinion, the additional service shall be terminated and data transiting that link shall be charged at a rate of excess data, as set out in our Schedule of Fees and Charges.
- (d) You **must not** authorise, aid, abet, encourage or incite any other person to do or attempt to do any of the acts or engage in any of the prohibited conduct described above.

## 5. EXCESSIVE USE

- (a) You must use your Service in accordance with any download or capacity limits stated in your Application Form. We may limit, suspend or terminate your Internet Service if you unreasonably exceed such limits or excessively use the capacity or resources of our network and systems in a manner which may hinder or prevent us from providing services to other customers.
- (b) If you use devices or knowledge to exceed our account restrictions pertaining to your account, that data or Service in excess of your allocated amount may be subject to cost recovery.

- (c) Services with no fixed upload data cap are not designed to provide sustained, high-volume access as it will compromise the Service for other users. As such, continuous uploading of data in excess of a 2:1 (uploads:downloads) ratio will be considered excessive use. To ensure we do not unreasonably restrict our customers, the following steps will occur if we consider that a Service is showing excessive use:
- (i) **Month 1:** We may contact you to discuss your usage requirements. Where a peak in usage occurs but is not expected to continue, no alternative arrangements are necessary.
  - (ii) **Month 2:** If the excessive usage continues in a second billing period, a second contact may be made to discuss an alternative plan.
  - (iii) **Month 3:** If the excessive usage continues into a third billing period, you may be placed on a plan with a fixed upload data cap. If you do not agree to this, your Service may be suspended or cancelled.

## 6. SECURITY

You are responsible for:

- (a) maintaining the security of your Service, including protection of account details, usernames and passwords against unauthorised use by a third party;
- (b) all charges incurred by other persons who use your Service, whether authorised by you or not, including anyone to whom you have disclosed your password and account details; and
- (c) taking appropriate security measures such as installation of a firewall and use of anti-virus software to protect your personal data, computer and other equipment from loss or damage.

## 7. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

- (a) You **must not** use your Service to:
  - (i) copy, reproduce, distribute or otherwise make available to other persons any content or material (including but not limited to music files in any format) which is subject to copyright or do any other acts in relation to such copyright material which would infringe the exclusive rights of the copyright owner under the *Copyright Act 1968 (Cth)* or any other applicable law; or
  - (ii) transmit any material (by email, uploading, posting, or otherwise) that infringes any trademark, patent, trade secret, or other proprietary rights of any third party.
- (b) You acknowledge and agree that we have the right to immediately cease hosting and to remove from our network or systems any material upon receiving a complaint or allegation that the material infringes the copyright or any other intellectual property rights of any person.

## 8. 8. ACCESS TO INTERNET CONTENT

- (a) You are responsible for determining the content and information you choose to access on the Internet when using your Service.
- (b) It is your responsibility to take all steps you consider necessary (including the use of filtering programs) to prevent access to offensive or obscene content on the Internet by children or minors who you authorise or permit to use your Service.

## 9. COMMUNICATING WITH OTHERS

- (a) You **must not** use, attempt to use, or permit to be used your Internet Service to make inappropriate contact with children or minors.
- (b) You are responsible for any content you send or distribute (or permit to be sent or distributed) to other Internet users using your Service including, but not limited to, content you post on web pages, email, chat or discussion forums, bulletin boards, instant messaging and other services available via the Internet. You must not use such services to send or distribute any content which is prohibited, deemed obscene or offensive or otherwise unlawful under any applicable Commonwealth, State or Territory law, including to send or distribute classes of restricted content to children or minors if that is prohibited or an offence under such laws.
- (c) Your failure to comply with these requirements may lead to immediate suspension or termination of your Service without notice.

## 10. CLASSIFYING CONTENT

You must label or otherwise clearly identify any content you make publicly available using your Service in accordance with the applicable classification guidelines and the National Classification Code (issued pursuant to the *Classification (Publications, Films and Computer Games) Act 1995 (Cth)*) or any other industry code or content standard which applies to your use or distribution of that content.

## 11. COMPLYING WITH REGULATORY AUTHORITIES

- (a) Commonwealth legislation allows the Australian Communications and Media Authority (ACMA) to direct us to remove from our network and servers any content which is classified, or likely to be classified, as 'prohibited' content. You must not hinder or prevent us from taking all steps necessary to comply with any direction from ACMA or any law enforcement agency and you acknowledge that we may comply with the directions of such authorities without notice to you.

You acknowledge that we reserve the right to restrict, suspend or terminate your Service if there are reasonable grounds for suspecting that you are engaging in illegal conduct or where use of your Service is subject to any investigation by law enforcement agencies or regulatory authorities.

## 12. SPAM

- (a) In this section, "Spam" includes one or more unsolicited commercial electronic messages with an Australian link for the purposes of the *Spam Act 2003*. You must not use the Service to:
- (i) send, allow to be sent, or assist in the sending of Spam;
  - (ii) use or distribute any software designed to harvest email addresses; or
  - (iii) otherwise breach the *Spam Act 2003* and accompanying regulations,
- and we may suspend the Service under clause 14.4(g) of our Standard Form of Agreement if you do any of those acts, or if we reasonably suspect that you or a person using your Service is engaging in any of those acts.
- (b) We may also suspend the Service if the Service is being used to host any device or service that allows email to be sent between third parties not under your authority and control.
- (c) Because damages are often difficult to quantify, you agree to pay us liquidated damages in connection with your breach of this clause 12. We reserve the right to either apply the SPAM/Unsolicited Email Fee specified in our Schedule of Fees and Charges or to recover from you the actual damages incurred by us, whichever is greatest;
- (d) Subject to our obligations under Part 13 of the *Telecommunications Act 1997*, prior to suspending the Service we will first make reasonable attempts to contact you and give you an opportunity to remedy the issue within a reasonable timeframe, depending on the severity of the breach or suspected breach.
- (e) You must use reasonable endeavours to install the necessary security protocols to guard against Spam or a breach of the *Spam Act 2003* (by you or third parties), including where appropriate:
- (i) the installation and maintenance of antivirus software;
  - (ii) the installation and maintenance of firewall software; and
  - (iii) the application of operating system and application software patches and updates.
- (f) Our right to suspend your account applies regardless of whether the breach or suspected breach was committed intentionally, or by means not authorised by you, such as through a Trojan horse or a virus.
- (g) We may (but we are not obligated to) scan any IP address ranges allocated to you in connection with the Service in order to monitor compliance with this Acceptable Use Policy.
- (h) If the Service is suspended and the grounds upon which it was suspended are not corrected by you within **seven days**, we may terminate the service in accordance with clause 15 below.

**13. COMPLAINTS**

- (a) If you have a complaint about Internet content you should visit ACMA's website at [www.acma.gov.au/hotline](http://www.acma.gov.au/hotline)
- (b) If you have any questions or concerns about this Policy you should contact us at [help@adam.com.au](mailto:help@adam.com.au) or by calling (08) 8423 4000

**14. CHANGES**

We may vary this Policy by posting the revised Policy on our website at [www.adam.com.au/legal](http://www.adam.com.au/legal) and by giving notice to you of the variation by email to the email address notified by you or otherwise in accordance with the notice provisions of our SFOA. As this Policy forms part of our Agreement with you, any change to this Policy will take effect in accordance with clauses 3.3 to 3.5 of our SFOA.

**15. BREACH OF ACCEPTABLE USE POLICY**

We reserve the right to terminate your Service for breach of any term of this Acceptable Use Policy and you acknowledge that you will be liable for costs associated with the termination of your Service.