

## CONDITIONS OF SERVICE - MICROWAVE SERVICES

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### 1. ABOUT

These terms are product specific terms which apply to our Microwave Service.

### 2. APPLICATION

We will supply the Microwave Service to you pursuant to the terms and conditions set out in these Conditions of Service which form part of and must be read in conjunction with our Standard Form of Agreement found at [www.adam.com.au/legal](http://www.adam.com.au/legal). To the extent of any inconsistency between these Conditions of Service and the Standard Form of Agreement, these Conditions of Service will prevail.

### 3. DEFINITIONS

Capitalised terms have the meaning set out in our Standard Form of Agreement, and in these Conditions of Service, the following definitions apply, unless the context requires otherwise.

<b>Additional Work</b>	means any structural or engineering works that must be completed at the Premises to allow for the installation of the Microwave Equipment in order for you to receive the Microwave Service.
<b>Agreement or our Agreement</b>	means the agreement between you and us for the Microwave Service, comprising the terms stated in your Application form, the Standard Form of Agreement, these Conditions of Service and the Schedule of Fees and Charges.
<b>Indoor Unit</b>	means the internal radio unit which is located at a POP and is usually mounted inside a cabinet. This may also be referred to as the IDU.
<b>Interruption</b>	in the supply of goods or a service means a delay in supplying, a failure to supply or an error or defect in the supply of, those goods or that service.
<b>Microwave Equipment</b>	means the Microwave equipment used to deliver the service to end users.
<b>Microwave Service</b>	means a service which is delivered by Microwave Equipment directly to the Network Termination Device at the Premises.

<b>Minimum Term</b>	means the minimum term (if any) specified in your Application.
<b>Network</b>	means the infrastructure used and maintained by us to provide you with your Microwave Service. Our Network does not include the computer networks that make up the Internet.
<b>Network Prioritisation</b>	means that the supply of Microwave Services will occur across our Network in a prioritised order, such order to be determined by us in our sole discretion.
<b>Network Termination Device</b>	means the onsite network termination device located in your POP which allows Microwave Services to terminate for distribution at your Premises. This may also be referred to as network terminating equipment (NTE).
<b>Outdoor Unit</b>	means the external radio unit which is located at a POP and usually mounted on top of a mast or on the side of a building. This may also be referred to as the ODU.
<b>Point of Presence</b>	means the physical location which houses the necessary Microwave Equipment to provide the Microwave Service. It can mean either customer or service provider locations as the context requires. This may also be referred to as the POP.
<b>Premises</b>	means the location where you intend to use the Microwave Service.
<b>Site Survey</b>	means a site analysis that is undertaken to determine the requirements and costs relating to the build of the infrastructure required to operate the Microwave Service.
<b>we, our or us</b>	means Adam Internet Pty Ltd.
<b>you or your</b>	means the current account holder for the Microwave Service.

#### 4. COMMENCEMENT OF MICROWAVE SERVICE

Our Agreement commences when we accept your Application and continues until terminated in accordance with our Agreement ('**Term**').

#### 5. MICROWAVE SERVICE CONDITIONS

- 5.1 During the Term, and provided that you are not in default of your obligations set out in our Agreement, we will provide the Microwave Service to you in accordance with these Conditions of Service and your Application.
- 5.2 You may only obtain the Microwave Service if your Premises has an unobstructed, line of sight visibility to one of our approved POPs.

- 5.3 You must provide Adam Internet or its nominated contractor with physical access to the Premises for the purpose of completing a Site Survey, inspecting the Premises, and installing and maintaining the Microwave Equipment and Microwave Service.
- 5.4 In order for us to provide you with the Microwave Service you require Microwave Equipment including an Indoor Unit, Outdoor Unit and a Network Termination Device to be installed at your Premises.
- 5.5 The connection, configuration, maintenance and installation of any customer equipment or other items required for the Microwave Service which are not a part of our Agreement will be at your sole responsibility and cost.
- 5.6 ODU installations, external structures and building works on your Premises may be subject to body corporate and council laws and regulations. You must provide us or our nominated contractor with all assistance necessary to obtain all required permits and approvals prior to the installation of the Microwave Equipment.
- 5.7 If:
- (a) a Site Survey of your Premises determines that you cannot receive a Microwave Service; or
  - (b) an approval or permit is not granted by a relevant regulatory or council body or a body corporate,
- then either party may elect to terminate the provision of the Microwave Service.
- 5.8 If Additional Work is necessary at your Premises because:
- (a) at the time of installing the Microwave Equipment we find the Premises has been altered from the original state inspected at the Site Survey and you have not advised us of that change; or
  - (b) it is required before an approval or permit is granted to you,
- then you will be responsible for the cost of such Additional Work and we will provide you with a quote for this Additional Work.
- 5.9 The Microwave Service is a licensed spectrum service. Licensed spectrum services are subject to Australian Communications and Media Authority (ACMA) licensing fees and conditions which are set out on the ACMA website and in the spectrum licence.
- 5.10 An annual licence fee is payable to ACMA for the Microwave Service. This licence fee will be passed through to you as a separate item on your invoice.
- 5.11 Further to clause 10.1 of our Standard Form of Agreement, we retain ownership of all Microwave Equipment provided to you, which includes but is not limited to the IDU, ODU and NTE.

## **6. LIMITATIONS OF MICROWAVE SERVICE**

- 6.1 You acknowledge that:
- (a) the Microwave Service can only be delivered to premises that have the required Network Termination Device installed. Any installation of a Network Termination Device or cabling from the Network Termination Device to the location within your

Premises where you will use the Microwave Service is your responsibility and you may incur charges for the installation, maintenance, repair or any other work required in respect of such cabling;

- (b) to the extent permitted by law, we do not warrant, and have not represented, that the Microwave Service is or will be free of errors, defects or interruptions, nor that it will be available at all times. You acknowledge that there will be variations in capacity and quality of service and you acknowledge that regardless of any faults or interruptions, you are responsible to maintain your monthly commitments;
- (c) if a fault, error, defect or interruption to the Microwave Service is caused by your owned or managed equipment, your power supply or the Premises at which you nominate in your Application, then we will charge you a fee for service which will be calculated and advised to you at the time;
- (d) you will direct all services and performance enquiries related to the Microwave Service to us. Furthermore, prior to lodging a fault, Adam Internet will conduct a Microwave Service fault analysis that you must confirm with us at lodgement. Should a fault be found to be related to this analysis (i.e. customer error, which includes, but is not limited to, your owned or managed equipment, your power supply or the Premises at which you nominate in your Application) a 'fault lodgement fee' as set out in our Schedule of Fees and Charges will apply;
- (e) without excluding any statutory guarantees implied by legislation into this Agreement, whilst we will act in your best interest to provide an effective service, no guarantee is offered in respect of the time to provision services, detecting faults, or to repair or restore a Microwave Service which develops a fault;
- (f) the Microwave Service may rely upon the operation of third party networks operated by third party carriers and we are unable to guarantee the operation of or the use of the Microwave Service through third party supplier networks. Any failure of the Microwave Service caused by a third party network or third party service is beyond our control, and we will not be responsible to, or liable to you, for any such failures other than as described in clause 15 of our Standard Form of Agreement; and
- (g) subject to your rights under clause 3.4 of our Standard Form of Agreement, we may:
  - (i) limit the performance of the Microwave Service from time to time;
  - (ii) effect Network Prioritisation;
  - (iii) cease or interrupt the Microwave Service to troubleshoot or conduct maintenance or upgrade the Network, Microwave Equipment or infrastructure through which the Microwave Service is provided; or
  - (iv) update our Network which may require you to update, at your cost, any equipment owned by you and that is attached to the Microwave Equipment to continue to receive your Microwave Service.

## **7. USE OF MICROWAVE SERVICES**

7.1 You expressly acknowledge and agree that:

- (a) your use of the Microwave Services is subject to our Acceptable Use Policy;

- (b) you will not modify, tamper or interfere with any Microwave Equipment or any other equipment owned and managed by us that is on your Premises without our prior written consent. For the avoidance of doubt this includes the IDU, ODU and NTE;
- (c) you must adopt appropriate measures to ensure the security of your account information, password and your data and advise us in a timely manner if you have reason to suspect that the Microwave Service is being used contrary to our Agreement;
- (d) you warrant that you are the same end user to which your Application for Microwave Services relates or that you have obtained authority of that person;
- (e) your Microwave Service is not a portable service;
- (f) notwithstanding clause 7.1(e):
  - (i) in the event you relocate to another location and you require a new Microwave Service, we cannot guarantee reconnection unless your new location is within an area that has the Microwave Service available. If your new location is capable of receiving a Microwave Service we will reconnect your Microwave Service at that location and waive any applicable early termination fee, subject to you paying us a relocation fee. The relocation fee will be calculated and advised to you at the time and may include, but is not limited to, ACMA licensing fees, fees and charges associated with a Site Survey and installation of Microwave Equipment at the new location and Additional Work; and
  - (ii) if you relocate to a location that does not have access to a Microwave Service or you elect not to acquire a service from us at your new location, your Agreement with us will terminate. If this occurs during your Minimum Term, you will be liable to pay an early termination fee which is equal to the sum of fees payable for the unexpired portion of the Minimum Term;
- (g) any stated transmission speeds for Microwave Services refer to the maximum theoretical throughput speed under ideal conditions;
- (h) the Microwave Service speed may be affected by environmental factors, the internal wiring of your Premises, service faults, peak use of our Network and limitations on the attainable speed based on your computer network equipment;
- (i) tools provided to you by us to monitor your usage or any other services that we may choose to provide you from time to time are a guide only and must not be relied upon as a commitment or authoritative in nature;
- (j) you acknowledge that should you default on your scheduled monthly payment, a late payment fee as detailed in our Schedule of Fees and Charges will be charged and if we are unable to secure a suitable payment, your Microwave Service will be restricted without further notice;
- (k) should your account remain unpaid after 7 days your Microwave Service will be suspended. Should your account remain unpaid after 28 days your Microwave Service will be disconnected; and
- (l) debt recovery services will be used to recover any outstanding amount from you which will incur a debt recovery fee as detailed in our Schedule of Fees and

Charges. You acknowledge that you will be liable for any financial institution charges and collection fees, including but not limited to solicitors' costs or fees associated with any collection agent appointed by Adam Internet.

**8. NETWORK ACCESS AND TRANSFERS**

- 8.1 A Microwave Service is not transferable to another service provider.
- 8.2 Data is calculated in accordance with your Application.

**9. TERMINATION OF MICROWAVE SERVICE**

- 9.1 If you have selected a Minimum Term and you terminate our Agreement during the Minimum Term you will be liable to pay an early termination fee which is equal to the sum of fees payable for the unexpired portion of the Minimum Term.
- 9.2 Upon expiry or termination of your Agreement with us, all Microwave Equipment must be returned to us. You must provide us or our nominated contractor with access to the Premises to remove all Microwave Equipment and any other equipment owned by us.

**10. FEES**

We will charge you for Microwave Services at the rates set out in your Application form.