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## STANDARD FORM OF AGREEMENT

# STANDARD FORM OF AGREEMENT

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## OUR STANDARD FORM OF AGREEMENT

### 1. INTRODUCTION

#### 1.1 Terms and Conditions

Adam Internet Pty Ltd, trading as Adam Internet, 'us or we', supplies Services on the terms and conditions in this Standard Form of Agreement. If you obtain or seek to obtain Services from us, you do so in accordance with these terms and conditions and the other documents which comprise your Agreement with us. This Agreement supersedes all prior agreements that we have with you in accordance with our right to vary that agreement.

#### 1.2 Our Standard Form of Agreement

This Standard Form of Agreement is formulated for the purpose of section 479 of the *Telecommunications Act 1997* and is filed with the Australian Communications and Media Authority.

#### 1.3 Structure of your Agreement

Your Agreement with us comprises:

- (a) Your Application;
- (b) any Conditions of Service;
- (c) this Standard Form of Agreement; and
- (d) our Acceptable Use Policy.

Your Application, this Standard Form of Agreement, any Conditions of Service and our Acceptable Use Policy constitute the entire agreement between Adam Internet and you and supersede all prior representations, agreements, statements and understandings whether verbal or in writing.

#### 1.4 Order of Precedence

Unless expressly stated otherwise, the order of precedence between the various parts of our Agreement will be resolved in favour of the document appearing earlier in the list stated in **Clause 1.3** above.

#### 1.5 Customer Assistance

If you require any assistance or further information, please contact our Customer Assistance line on (08) 8423 4000. Alternatively, contact the National Relay Service (NRS) on 133 677 from anywhere in Australia. For language assistance, contact the Translating & Interpreting Service (TIS) on 131 450 from anywhere in Australia.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

The following definitions apply unless the context requires otherwise:

- Acceptable Use Policy** means our policy which applies to your use of the Services, a copy of which is accessible on our Website at [www.adam.com.au/legal](http://www.adam.com.au/legal)
- Agreement or our Agreement** means the agreement between you and us for the Services, comprising the terms stated in your Application, this Standard Form of Agreement, the Conditions of Service and our Acceptable Use Policy.
- Application** means an application made by you for the provision of Services by us, made by way of either:
- (a) a form, either online or printed, approved by us; or
  - (b) a telephone application with us.
- Approved Purposes** means:
- (a) providing directory assistance services;
  - (b) providing operator services or operator assistance services;
  - (c) publishing and maintaining public number directories;
  - (d) providing location dependent carriage services;
  - (e) the operation of emergency call services or assisting emergency services under Part 8 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
  - (f) assisting enforcement agencies or safeguarding national security under Part 14 of the *Telecommunications Act 1997*, the *Telecommunications (Interception and Access) Act 1979* or any other applicable legal requirement;
  - (g) verifying the accuracy of information provided by the data provider and held in the Integrated Public Number Database (IPND) against the information the data provider holds;
  - (h) undertaking research of a kind specified in the *Telecommunications IPND - Permitted Research Purposes) Instrument 2007*;

- (i) assisting the Australian Communications and Media Authority, or its nominee, to verify the accuracy and completeness of information held in the IPND; and
- (j) any other purposes where permitted by the *Telecommunications Act 1997*, and any other applicable Laws.

|                                  |  |
|----------------------------------|--|
| <b>Business Hours</b>            | means 9.00am to 5.30pm Monday to Friday, excluding days which are public holidays in South Australia.  |
| <b>Carriage Service Provider</b> | means a carriage service provider within the meaning of the <i>Telecommunications Act 1997</i> .   |
| <b>Claim</b>                     | includes an action, loss, damage, cost or expense.   |
| <b>Commercial Credit</b>         | has the meaning given in section 6 of the <i>Privacy Act 1988 (Cth)</i> .  |
| <b>Conditions of Service</b>     | means the specific terms and conditions applying to a particular Service as set out in the Conditions of Service for the particular Service.   |
| <b>Consumer Guarantee</b>        | means a guarantee set out in Schedule 2, Part 3-2, Division 1 of the <i>Competition and Consumer Act 2010 (Cth)</i> .  |
| <b>Credit Reporting Agency</b>   | has the meaning given in section 6 of the <i>Privacy Act 1988 (Cth)</i> .  |
| <b>Customer Equipment</b>        | means any equipment or facility in the possession, ownership or control of you other than Service Equipment.   |
| <b>Due Date</b>                  | unless otherwise agreed, means the date specified on the invoice as the due date.  |
| <b>Equipment</b>                 | unless otherwise specified, means Service Equipment or Purchased Equipment.  |
| <b>Facilities</b>                | has the meaning given in the <i>Telecommunications Act 1997</i> .  |
| <b>Fee(s)</b>                    | means a fee payable for a Service as set out in the Application, the relevant Conditions of Service or the Schedule of Fees and Charges and any other amount payable by you in accordance with the terms of our Agreement. |
| <b>Fixed Term</b>                | has the meaning given in <b>Clause 3.2</b> .   |
| <b>GST</b>                       | has the meaning given in section 195-1 of the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .  |

|                                     |   |
|-------------------------------------|---|
| <b>Internet Access</b>              | means being able to access the Internet such that data can be transferred to and from the user's computer.  |
| <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>Law</b>                          | means Commonwealth, state or local legislation, judicial administrative, or regulatory decrees, judgments, awards or orders, binding industry codes and all common laws and equity.   |
| <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 and notified on our Website.  |
| <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>Personal Information</b>         | means any information or document referred to in section 276(1) of the <i>Telecommunications Act 1997</i> and any Personal Information within the meaning given in section 6 of the <i>Privacy Act 1988 (Cth)</i> .           |
| <b>Privacy Act</b>                  | means the <i>Privacy Act 1988 (Cth)</i> .   |
| <b>PSTN</b>                         | means the Public Switched Telephone Network, the standard telephone system which consists of interconnected public telephone networks designed primarily for voice traffic and primarily owned by Telstra Corporation Limited |
| <b>Purchased Equipment</b>          | has the meaning given in <b>Clause 11</b> .   |
| <b>Schedule of Fees and Charges</b> | means our price list for Services and administrative fees and charges payable in accordance with our Agreement, as displayed on our Website.  |
| <b>Service(s)</b>                   | means a product or service which we have agreed to supply to you as stated in your Application.   |
| <b>Service Equipment</b>            | has the meaning given in <b>Clause 10</b> .   |
| <b>Shaped Services or Shaping</b>   | means the controlled reduction in speed of a DSL service.   |
| <b>Taxable Supply</b>               | has the meaning given in section 195-1 of the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .   |
| <b>Telecommunications Act</b>       | means the <i>Telecommunications Act 1997 (Cth)</i> .  |



|                             |   |
|-----------------------------|---|
| <b>Third Party Supplier</b> | means a third party supplier from whom we acquire wholesale services which form all or part of the Service we provide to you. |
| <b>Website</b>              | means <a href="http://www.adam.com.au">www.adam.com.au</a>  |
| <b>we, our or us</b>        | means Adam Internet Pty Ltd.  |
| <b>you or your</b>          | means the current account holder for the Services.  |

## 2.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause or attachment is a reference to a clause or attachment to, this Standard Form of Agreement unless stated otherwise.
- (f) A reference to an agreement or document (including a reference to this Standard Form of Agreement) is to the agreement or document as amended, varied, supplemented, notated or replaced, except to the extent prohibited by this Standard Form of Agreement or that other agreement or document.
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to dollars and \$ is to Australian currency.
- (i) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.

## 3. PROVISION OF SERVICES

### 3.1 Commencement

Our Agreement commences when we accept (at our sole discretion) your Application and continues until terminated in accordance with our Agreement.

When you request us to supply a Service to you, which may be made using our Application Forms (either online or printed), our Voice Verification System or by telephone, we decide whether to accept your Application and to supply the Service to you based on:

- (a) the Conditions of Service;

- (b) your eligibility for that Service;
- (c) its availability to you;
- (d) you meeting our credit requirements; and
- (e) your prior conduct or history with respect to any previous supply by us or a reseller of any goods or service to you.

### 3.2 Application

The terms of this Standard Form of Agreement do not apply to the extent that we have agreed on different conditions with you. In particular, the Application which you completed in order to receive the Service and the Conditions of Service relating to your required service may require different terms, for example you may be required to receive the Service from us for a minimum or fixed term which is greater than a month to month period (**'Fixed Term'**). In such cases, your Application and the Conditions of Service will state the specific details of the term which applies.

### 3.3 Changing our Agreement

- (a) During the term of our Agreement, we may need to change the terms or charges of our Agreement due to circumstances beyond our control, including changes in Law, urgent changes required for security reasons, changes by one of our Third Party Suppliers of the terms on which they supply services to us or to the functionality or nature of a Service or its underlying technology. We are therefore not always able to provide you with ongoing supply of a Service on the same terms and conditions that existed when we first commenced providing that Service to you.
- (b) In addition to changes which we are required to make due to circumstances beyond our control, we may elect to make changes for our own purposes during the term of our Agreement. Any changes we elect to make will take effect for your Service in accordance with **Clauses 3.4** and **3.5** below.
- (c) You acknowledge and agree that in accordance with paragraphs (a) and (b), from time to time the nature of the Services and the terms on which we supply those Services to you may change and that if we elect to change those terms we will give you notice in accordance with **Clauses 3.4** and **3.5** below.

### 3.4 Your Rights if we Change the Agreement

- (a) Subject to the exceptions permitted by **Clause 3.5**, we will give you notice of any changes we propose to make to our Agreement, including the terms of this Standard Form of Agreement, at least **30 days** prior to the date on which those changes are to take effect.
- (b) Subject to the exceptions permitted by **Clause 3.5**, if the changes we propose to make will cause more than a minor detriment to you then you may immediately cancel the affected Service without incurring any exit fee or penalty (provided that we can recover any outstanding Fees incurred up to the date on which our Agreement ends and any outstanding amounts that cover installation costs or equipment where such equipment can be used in connection with services provided by other Third Party Suppliers), by giving us notice in writing to that effect within **42 days** of the date of the notice referred to in paragraph (a) above.

- (c) If the date you give notice to us to cancel the Service in accordance with paragraph (b) occurs after the date of the change to our Agreement, the change will not apply to you. We will issue a corrected invoice or adjustment note as appropriate and, if you have overpaid as a result of the change to our Agreement, credit your account with the overpayment or, if you have cancelled your Service with us, refund the overpayment promptly after deduction of any other amounts due by you to us. Upon cancellation of the Service due to a change to our Agreement that has more than a minor detrimental impact on you, the charge for costs of equipment we have provided to you that you have not paid for shall be as a lump sum and payable by the Due Date.
- (d) You acknowledge and agree that if you do not give notice to us within the **42 day** period referred to in paragraph (b), you are deemed to have accepted our changes from the date those changes are to take effect and that our Agreement, as amended by those changes, will govern the relationship between you and us from that date.

### 3.5 Exceptions

You acknowledge and agree that our obligation to give you **30 days** notice of our proposed changes and to afford you a right to terminate our Agreement in accordance with **Clause 3.4** will not apply in relation to:

- (a) urgent changes we are required to make by Law, for security reasons or technical reasons necessary to protect the integrity of our network;
- (b) the introduction of a new Fee or an increase in an existing Fee due to an additional tax or levy imposed by Law;
- (c) the introduction of a new Fee or an increase in existing administrative Fees for ancillary services such as credit card transaction fees (provided we have offered you a reasonable alternative at the same or lesser cost to the original Fee); and
- (d) increases in Fees due to increases imposed on us by other Third Party Suppliers for the following types of Services and charges:
  - (i) international carriage services (including for voice and data) the current Fees for which are available on our Website; and
  - (ii) content and premium services (including 1900 prefix services) which we resell to you from a third party, including where we collect fees from you on behalf of that third party.

Where practicable to do so, we will give you reasonable notice of the changes referred to in this **Clause 3.5** in accordance with the notice provisions of **Clause 18.1**.

### 3.6 Change of Account Holder

If you require your account to be changed into the name of another person, you can do so by having you and the new account holder complete the Account Holder Change Form (which will attract an administrative fee as set out in our Schedule of Fees and Charges). You will remain liable for your obligations under our Agreement up to the date that we acknowledge acceptance of the change of account holder.

The new account holder will be required to agree to be bound by this Standard Form of Agreement prior to the transfer being accepted by Adam Internet.

#### **4. FEES FOR THE SERVICES**

##### **4.1 Fees**

- (a) You must pay the Fees for the Services during the term of our Agreement. You are liable to pay for all Fees arising out of the use of the Services we provide to you, whether by yourself or any other person, whether with or without your consent.
- (b) If a Service is used to access the facilities or services of another Carriage Service Provider, amounts charged by that other Carriage Service Provider are, unless our Agreement specifies otherwise, your responsibility, and you will indemnify us for them. If we are charged those amounts we may include them in the Fees.
- (c) If during any period of our Agreement you do not receive, or are unable to use, the Services you will, unless our Agreement specifically provides otherwise, be liable to pay for all Fees during such period. However, in certain circumstances you will be entitled to claim a pro-rata refund of Fees for the duration of an Interruption, in accordance with clause 15.2.

##### **4.2 Discounts, Credits and Rebates**

Upon making your Application you will be informed of any discount or special rate for which you may be eligible. If you are eligible for a rebate, such as a promotional rebate, we will inform you of such an entitlement.

##### **4.3 GST**

Unless expressly stated otherwise, all amounts payable by you under or in connection with our Agreement are inclusive of GST. If GST is payable on a Taxable Supply made to you, the amount payable by you for that Taxable Supply will be the amount expressed in our Agreement or the relevant document connected with our Agreement.

##### **4.4 Invoicing**

We may invoice you for the Service, plus any applicable GST. We may vary invoice frequency upon giving you reasonable notice. All portions of your use of the Services are charged for and unused allocations are not transferable or refundable. We reserve the right to reissue an invoice if any error in the amount shown owing on the invoice is subsequently discovered.

We may issue an interim bill in the following circumstances:

- (a) you change your existing plan;
- (b) you request a new service to be connected;
- (c) you relocate an existing service;
- (d) you request to be invoiced for any 'unbilled' charges;
- (e) we have reasonable grounds to believe you may be a credit risk.

We will refund or credit any overpayment due to a variation in the Fees or cancellation of a Service. If we have undercharged you, you will be liable for any underpayment.

#### 4.5 **Calculation of Fees**

Fees will be calculated by reference to data recorded or logged by us. Records held by Adam Internet will be conclusive evidence of the Usage of your Service and charges payable by you.

Data is calculated, monthly, in accordance with your Conditions of Service.

#### 4.6 **Time for Payment**

All Fees must be paid in full by the Due Date.

#### 4.7 **Methods of Payment**

Residential services must be paid by credit card standing authorisation or direct debit standing authorisation.

Business services may pay outstanding invoices either by credit card standing authorisation, electronic funds transfer, cheque or money order.

We reserve the right to charge you for any fees that we incur from or must pay to your bank. When making payment by credit card, you will be charged a credit card surcharge as set out in our Schedule of Fees and Charges. If there is any payment discrepancy or disagreement about bank charges applied, you should contact us before your bank and we will try to resolve the issue. If you contact your bank and we incur a bank fee as a result, we reserve the right to pass this fee on to you.

#### 4.8 **Late Payment Fee**

If any amount remains unpaid after the Due Date you will be liable to pay a late payment fee as set out in the Schedule of Fees and Charges which shall be added to your next invoice.

#### 4.9 **Dishonoured Cheques**

If an invoice is paid by cheque and that cheque is dishonoured, a dishonoured cheque fee as set out in the Schedule of Fees and Charges will be added to your next invoice.

#### 4.10 **Dishonoured Direct Debit Transaction**

If an invoice is paid by direct debit and sufficient funds are not available, a direct debit dishonour fee will be added to your next invoice as set out in the Schedule of Fees and Charges.

#### 4.11 **Debt Recovery Services**

We may use debt recovery services to recover any outstanding Fees (which will include any administrative fees and you may be liable for any charges and collection costs such as legal costs).

#### 4.12 **Exit Fee**

If your Application records that you have agreed to receive a Service from us for a Fixed Term then, if the Service is cancelled before the expiry of the Fixed Term, you will be liable to pay an exit fee as set out in the Schedule of Fees and Charges.

#### 4.13 **Removal of Discount**

If any Fees remain unpaid for **7 days** or more, we reserve the right to vary or remove any discount previously provided to you and to charge you at our standard rate rather than any special rate which we have previously allowed you.

#### 4.14 **Suspension for Non-Payment**

We reserve the right to;

- (a) physically disconnect your service if Fees or any other amount payable by you remains unpaid **28 days** after the Due Date (unless we have received written notice from you of a legitimate dispute of those Fees or other amount prior to the Due Date); and
- (b) suspend your service if you fail to pay the outstanding amount in full within **7 days** after we give you a notice demanding payment of the Fees which for the avoidance of doubt will include any administrative fees.

#### 4.15 **Refunds and Credits**

- (a) The set-up fee is processed upon commencement date and is non-refundable unless we are unable to provision the service for you.
- (b) In the event that your account for a Service is terminated and monies are owed to you by us (for example, for the unexpired portion of any Fee paid in advance by you), you agree that we may deduct any outstanding Fees on final settlement of your account and state on your final invoice (as applicable) the amount credited to you or the amount you must pay to us.
- (c) You may elect to claim a refund for any amount credited on your final invoice or apply the credited amount to another Service we may supply to you by notifying us within **90 days** of your receipt of the final invoice.

#### 4.16 **Prepayment**

- (a) If, at the time of application, we have reasonable grounds to believe you may be a credit risk, we may request that you pay in advance the estimated cost of using your Service for an invoice period.
- (b) We may decline your Application, cancel, suspend or disconnect a Service if you do not provide the prepayment in advance when requested to do so in accordance with paragraph (a) above.
- (c) If we cancel or disconnect all of the Services, we will return to you that portion of the prepayment that is not required to meet any outstanding Fees.

#### 4.17 **Disputed Invoices**

- (a) If you dispute an invoice or claim a refund for overpayment of any Fees under our Agreement you should do so within 12 months of the Due Date of the invoice to which the disputed amount or alleged overpayment relates.
- (b) Any requests for investigation which are made 12 months or more after the Due Date of the bill may be subject to a complaint administration fee (as set out in the Schedule of Fees and charges), which is payable by you if, after we inform you of it you wish to continue to pursue the investigation. The complaint administration fee will be reimbursed if the billing dispute is subsequently resolved in your favour.

#### 4.18 **Cancellation, Suspension or Disconnection**

If we cancel, suspend or disconnect any Service for non-payment, you remain liable for all Fees and other liabilities incurred before the date of cancellation, suspension or disconnection of the relevant Service.

#### 4.19 **Disconnection or Reconnection**

We may charge you a fee for the disconnection or reconnection of any Service as set out in the Schedule of Fees and Charges, except where the disconnection was caused by our failure to perform our obligations under this Agreement.

#### 4.20 **Set Off**

Unless we agree in writing, you must pay the Fees without any set off, counterclaim or deduction.

### 5. **TRANSFER OF YOUR SERVICES FROM US TO ANOTHER SUPPLIER**

#### 5.1 **Transfer**

If you ask us to transfer any of the Services to another Carriage Service Provider, then you remain liable to us for any amount payable in relation to the supply of the Services up to the date on which we transfer those services to another Carriage Service Provider. You will pay us that amount by the Due Date.

#### 5.2 **Termination of Services on Transfer**

The provision of Services ceases on the date on which we transfer your services to another Carriage Service Provider.

#### 5.3 **Invoicing**

We will endeavour to invoice you for Fees incurred in relation to Services which you transfer to another Carriage Service Provider within the next normal billing period. If, after that time, we become aware of other Fees or amounts (including fees payable to any other Carriage Service Provider) for those Services up to the date of transfer, or we resolve any dispute so that any liability relating to those Services is quantified and payable by you, then you will pay us all such amounts within **7 days** of your receipt of our invoice for them.

#### 5.4 **Indemnity**

We will not accept liability for any amounts owing by you to a Carriage Service Provider or other person. You must indemnify us against any Claim made by a Carriage Service Provider or other person against us in relation to any such amounts.

### 6. **PERSONAL INFORMATION**

#### 6.1 **Consent to Collection and Use**

You consent to us obtaining, using and disclosing your Personal Information for any of the purposes specified in this **Clause 6**. If you choose not to provide all or part of the Personal Information we request, we may not be able to provide you with the Services, or we may refuse to provide or limit the provision to you of any Service or credit.

#### 6.2 **Use of Personal Information**

- (a) You authorise us to collect, use and disclose Personal Information (including details of your account and information relating to the use of your Service) which you provide to us in connection with the supply to you of the Services to our Third Party Suppliers, our agents, credit reporting agencies and our contractors and use that information for the purpose of managing your account or as otherwise necessary to fulfil our obligations under our Agreement.
- (b) In particular, you acknowledge and agree that we will use your Personal Information:
  - (i) to identify you and to assess your Application;
  - (ii) to supply the Services and Equipment to you (including for investigation or resolution of disputes relating to any Services and Equipment provided to you);
  - (iii) to issue you with invoices and to collect Fees and any other debts you owe to us in connection with our Agreement;
  - (iv) for the purposes of marketing activity associated with our services completed by us or on our behalf by an outsourced third party;
  - (v) for the purposes of preventing fraud or any other illegal activity; and
  - (vi) for all other purposes reasonably required to provide the Services to you.
- (c) You agree that we may disclose your Personal Information:
  - (i) to other Carriage Service Providers for the purpose of enabling us to provide the Services and Equipment to you (including for the purpose of provisioning Services or Equipment and providing particulars of calls and call charges to those Carriage Service Providers for interconnection and invoicing purposes);



- (ii) to any other person who provides services to us in connection with the Services and Equipment we supply to you (including to our resellers, outsourced installation and repair service companies, outsourced billing companies and debt-recovery agencies);
  - (iii) to credit reporting agencies for the purposes referred to in **Clauses 6.3 and 6.4**;
  - (iv) to outsourced third parties for the purposes of marketing activity associated with our products and services;
  - (v) if you elect to participate in a loyalty program with us, to other persons with whom we have established or will establish the loyalty program to enable you to participate in it;
  - (vi) to anyone to whom we are permitted to assign or transfer this Agreement in accordance with **Clause 17**;
  - (vii) to government agencies, Law enforcement authorities and other persons as required by Law, including disclosures to the manager of the Integrated Public Number Database (as noted in **Clause 6.2(d)**); and
  - (viii) to any other person, where you have consented for us to do so.
- (d) We are required by Law to provide your name, address, telephone service number and other public number customer details to the manager of the Integrated Public Number Database ('**IPND**') for the Approved Purposes. Unless you specify otherwise in your Application:
- (i) your telephone service number for a fixed or landline Service will be recorded as a 'listed number'; and
  - (ii) your telephone service number for a mobile service will be recorded as an 'unlisted number'.

Unlisted service information is marked and controlled by the manager of the IPND to ensure that it is only used for the relevant Approved Purposes (unlisted numbers or suppressed address listings recorded in the IPND are not available to the general public via public number directories or directory assistance services). You must notify us of any change to your IPND data and you may request changes to the listing status of your Service by contacting us on (08) 8423 4000.

### 6.3 **Consent to Credit Check**

- (a) Your Personal Information in our possession, whether collected by us from you or obtained from a third party, may be disclosed by us to a credit reporting agency for the purposes of providing the Services to you.
- (b) For the purposes of **Clause 6.3(a)**, Personal Information which may be disclosed by us to a credit reporting agency consists of:
  - (i) identity particulars such as your name, sex, address (and previous two addresses), date of birth, name of employer and drivers licence number;

- (ii) your application for commercial credit (including the amount requested);
  - (iii) the fact that we are a current credit provider to you;
  - (iv) information that, in our opinion, you have committed a serious credit infringement, including:
    - (A) by conduct which is fraudulent or shows an intention not to comply with your credit obligations;
    - (B) the fact that an undisputed account of \$100 or more is overdue by more than 60 days, where we have started debt collection action against you;
    - (C) the fact that cheques drawn by you for \$100 or more have been dishonoured more than once; and
  - (v) advice that accounts are no longer overdue in respect of any default that has been listed.
- (c) The information specified in paragraph (b) may be given before, during or after the provision of credit to you.

#### 6.4 Use of Credit Report

- (a) You agree that a credit report which contains Personal Information concerning you may be given to us by any credit reporting agency for the purpose of either assisting us to assess your creditworthiness or in collecting payments that are overdue.
- (b) You agree that we may disclose a credit report or other report relating to you and any Personal Information derived from that report, to any other credit provider for any of the following purposes, namely:
  - (i) the assessment by us or the other credit provider of your creditworthiness;
  - (ii) the collection by us or the other credit provider of payments that are overdue; or
  - (iii) the exchange of information between us and the other credit provider for the purposes referred to in subparagraphs (i) and (ii).
- (c) The information which may be exchanged pursuant to paragraph (b) can include anything about your credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988 (Cth)*.
- (d) You agree that a trade insurer may obtain a credit report about you for the purpose of assessing whether to provide trade insurance to us in relation to your application for commercial credit.

#### 6.5 Access to Information

Where we hold any Personal Information about you, you may request access to that information. We will provide you with access to most Personal Information that we

have about you (once we have verified your request is in good faith) but in some cases that will not be possible, in which case we will tell you why.

## 6.6 Compliance

To the extent that you provide us with Personal Information which you have collected or accessed for the purposes of receiving the Services you must:

- (a) comply with the *Privacy Act 1988 (Cth)*;
- (b) comply with any reasonable direction which we may give regarding how to comply with any such legislation;
- (c) obtain the informed consent of any individual whose Personal Information you intend to provide to us so as to allow us to collect, use, disclose and store that information for the purposes of providing you with the Services or as otherwise contemplated by our Agreement;
- (d) notify us of any changes to that Personal Information of which you become aware;
- (e) notify us of any complaint made by an individual in respect of their Personal Information; and
- (f) cooperate with us in the resolution of any complaint alleging a breach of the Privacy Act, a privacy policy or an approved privacy code.

## 6.7 Records

You must keep sufficient records in respect of Personal Information that you collect, store, use and disclose pursuant to our Agreement to enable us to determine whether you are complying with your privacy obligations under our Agreement, and must provide us with access to such records at our request.

## 6.8 Indemnity

You warrant that any such Personal Information that you provide to us is complete and accurate and agree to indemnify us against any Claim that may be incurred by us relating to any Personal Information which you provide to us not being treated in accordance with your obligations under **Clauses 6.6** and **6.7**.

## 7. CONFIDENTIALITY

### 7.1 Confidential Information

We retain all rights (including intellectual property) in any information we provide to you relating to the Equipment, the Services or to the provision of the Services which, by its nature, or the circumstances of its disclosure to a recipient, is or could reasonably be expected to be regarded as confidential (**'Confidential Information'**).

### 7.2 Protecting Confidentiality

You will not disclose Confidential Information to any third party and will not allow any written or electronically recorded Confidential Information to be copied or disclosed to a third party without our consent (unless you are required to do so by Law or the information has entered the public domain other than through a breach of

confidence). You may also disclose Confidential Information to your professional advisers on condition that they also agree to keep the information confidential.

### 7.3 **Obligations on Termination**

On the termination of the Services for any reason, you will return the Confidential Information and all copies of it to us or as we otherwise reasonably direct. If you have destroyed these, or any of them, then you will give us a written declaration to that effect upon our demand following termination of the Services.

### 7.4 **Restrictions on Use**

You will not use information which you acquire from us for any purpose unauthorised in writing by us or in any manner which may cause us loss, whether by way of damage to our reputation, financial loss or otherwise.

## 8. **YOUR OBLIGATIONS**

### 8.1 **Compliance**

You are responsible for the use of your Service and you will not use your Service other than in accordance with our Agreement and Laws and obligations applicable to the Services and their use.

### 8.2 **Obligations**

- (a) Subject to your rights under clause 3.4, you accept and will comply with such conditions as are from time to time imposed by us in respect of a Service, whether as part of the Conditions of Service, Acceptable Use Policy or otherwise, including without limitation, limits on usage and type of usage, size of emails and attachments and web space, time and volume limits applicable to data transfer and storage and session and idle times, deletion and loss of data.
- (b) In providing the Services to you, you agree that we may:
  - (i) delete any transitory data stored on our servers for a duration exceeding **90 days**;
  - (ii) reject any email (including attachments), which exceeds 5Mb (including encapsulation) and is sent to or by you via any of our mail servers;
  - (iii) where it is deemed necessary in order to comply with our legal obligations, monitor data accessed or transmitted by you while using the Service; and
  - (iv) take any steps deemed necessary to comply with our legal obligations under relevant State or Federal legislation, industry codes of practice or under direction from a relevant regulatory authority or court order.
- (c) You must not do or allow to be done, in relation to a Service, any of the following:
  - (i) engage in denial-of-service attacks, or allow a computer under your authority to be used as part of one;

- (ii) obtain or attempt to obtain unauthorised access to or control of any other computer or network;
  - (iii) scan ports on other computers or otherwise probe them for means of access or vulnerabilities;
  - (iv) spread (either deliberately or through want of reasonable care) any virus, Trojan horse or other harmful action;
  - (v) breach any Law regulating content on the Internet or of email;
  - (vi) contravene the *Privacy Act 1988 (Cth)*, the *National Privacy Principles*, or any guidelines made under them;
  - (vii) send spam.
- (d) If we or another Third Party Supplier provide you with any software, you will only use it in accordance with its licence terms as notified to you from time to time.
- (e) Except to the extent that we have specifically agreed otherwise, the Service that is supplied to you is for domestic and personal use only and you agree not to resell the Service, nor to establish, maintain or permit multiple concurrent connections to the Service, nor to connect the Service to a local area network, except if the Service is designated by us as one which supports use of a local area network.
- (f) Except to the extent that we have specifically agreed otherwise, you are solely responsible at your own expense for:
- (i) providing and maintaining the necessary telephone service or other connection between you and the point of presence or other specified point of connection to the Internet;
  - (ii) providing and maintaining the modem and all other Customer Equipment and Equipment necessary for that purpose; and
  - (iii) ensuring that you have access to the Services by means of a local or untimed call. You acknowledge that we are not in any way responsible or liable for call costs that you incur to your telephone service provider and that it is your sole responsibility to ensure you are dialling a local number when accessing the Services.
- (g) You acknowledge that:
- (i) continuity and speed of access to the Internet depend on a wide range of factors, many of which are beyond our control;
  - (ii) we have no control over the accuracy or appropriateness of any information on the Internet;
  - (iii) we are not responsible for any software or data available on the Internet;
  - (iv) if we provide to you technical or other support or advice in relation to any matter which is outside our direct responsibility under this Agreement, we do so only in an attempt to assist you and without

incurring any liability other than any which cannot lawfully be excluded;

- (v) you may lose access to your current email addresses; and
  - (vi) you should regularly check your email inbox for communications from us.
- (h) You are responsible for all call charges incurred by you dialling into our Service.

### 8.3 **Internet Security**

You acknowledge and accept that any access to the Internet involves security risks and that new threats to Internet security are continually evolving. You accept responsibility for maintaining your own security and acknowledge that we have recommended that you should at least:

- (a) maintain and protect your user identity, email address and password (keeping the password secure, including not disclosing it, avoiding the use of dictionary words, names or dates, changing it regularly, not keeping it in writing or storing it on a computer);
- (b) not disclose Personal Information (including credit card details) on the Internet;
- (c) use and keep current anti virus software and firewall;
- (d) restrict access to Equipment;
- (e) not accept emails or files from unknown sources;
- (f) protect users from unsuitable Internet content;
- (g) keep up to date on Internet security issues;
- (h) be aware that premium rate '190' and international '0011' telephone call fees can be incurred inadvertently by users accessing certain Internet sites and while using dialup services; and
- (i) avoid unexpected data Fees by regularly monitoring your data usage.

### 8.4 **Information**

You warrant that the information supplied by you in relation to our Agreement is true and correct. You will promptly inform us of any changes to this information.

### 8.5 **Assistance**

For the duration of our Agreement, you will provide us free of charge with all assistance, information, access, facilities and services reasonably required by us to enable us to perform our obligations under our Agreement, including use of Customer Equipment (including PABX and key system equipment) and any other telecommunications facilities which you own or control, if required.

## 8.6 Insurance

You are responsible for insuring and maintaining Equipment or facilities which we provide to you.

## 8.7 Changes to Personal Information

You will promptly inform us of any changes to your billing or address details.

## 8.8 Indemnity

You will not use a Service to transmit or publish any material which is defamatory of any person, or any material in breach of copyright or any obligations of confidentiality, or otherwise in breach of any Law, and you will indemnify us against any Claim we suffer as a result of your use of the Service in breach of this clause.

## 9. USE OF SERVICES

### 9.1 Installation and Programming of Customer Equipment

You will assist us in ensuring that any Equipment or Customer Equipment necessary for you to receive the Services is installed and programmed so that calls to destinations nominated by us from time to time are, so far as possible, carried by facilities preferred by us.

### 9.2 Interference

If inadequate capacity in the Customer Equipment or Equipment or your use of the Service interferes, or in our opinion threatens to interfere, with the efficiency of any network used in the supply of the Services, you must follow our directions or the directions of the relevant network operator on how to end or avoid that interference.

### 9.3 Use of Services

You must:

- (a) ensure the Services are used solely for their intended purpose;
- (b) notify us immediately of any security breach (suspected or otherwise) regarding the Service or of your confidential password or customer login; and
- (c) not permit any other person to resell or purport to resell this Service.

### 9.4 Technical Regulation

You must not connect or maintain a connection to a facility used in connection with the supply of Services to you or other parties which does not comply with technical codes, standards or regulations made under the Telecommunications Act, with any declaration or other requirement of the Australian Communications and Media Authority or with any code, standard or guideline published by Communications Alliance Ltd.

### 9.5 Illegal Use

You must not use or allow another person to use a Service to commit an offence.

## 10. EQUIPMENT WE SUPPLY TO YOU

### 10.1 Title

If we provide a facility or any item of equipment ('**Service Equipment**') to you either for use in the provision of the Services to you or otherwise, and we do not sell that Service Equipment to you, then:

- (a) that Service Equipment always remains our property;
- (b) you will allow us to and, where applicable, will ensure that the landlord allows us to, remove the Service Equipment from the premises where it is installed upon expiry or termination of the supply of the Services;
- (c) you will not part with possession of the Service Equipment except to us;
- (d) if we are unable to recover the Service Equipment, we may recover the value of it as a debt due by you, including offsetting the value of the Service Equipment against any monies owed to you by us;
- (e) you indemnify us against any loss or damage to the Service Equipment, unless that loss or damage arises from fair wear and tear; and
- (f) you must not remove or obscure any identification marks on the Service Equipment, and must comply with our reasonable instructions to protect our ownership and not do anything which might detrimentally affect our ownership of the Service Equipment.

### 10.2 Changes to Service Equipment

We may at any time replace any of our Service Equipment as we think fit. If we have agreed to provide a Service to you for a Fixed Term, replacement of Service Equipment will be subject to our obligations under **Clauses 3.3** and **3.4**.

### 10.3 Access

- (a) You will allow us access to the Service Equipment during Business Hours (or at such other times as we arrange with you), and this right of access will not end until all Service Equipment is returned to us, even if the Services have been cancelled.
- (b) We (or a Third Party Supplier) may need access to your premises from time to time in connection with the provision and maintenance of the Service Equipment or a Service. If you do not provide such access as we, or a relevant Third Party Supplier, reasonably require, we may limit, suspend, cancel or disconnect your Services.
- (c) If you want us to provide a Service and that Service requires the installation of any facility, equipment or cabling on your premises whether by us or a Third Party Supplier, you must allow us or any relevant Third Party Supplier to:
  - (i) have access to your premises to install the facility, equipment or cabling; and
  - (ii) install the facility, equipment or cabling on your premises.



- (d) If you do not own the premises referred to in paragraph (c) you must have the owner's permission and you warrant to us that you do have that permission.
- (e) If we need access to your premises you must provide us with safe access and indemnify us against any Claim by the owner or occupier of the premises in relation to our entry onto the premises.

#### 10.4 **Maintenance of Service Equipment**

We may suspend Services for a reasonable period of time to perform maintenance on the Service Equipment, provided that in each case, we will use our reasonable endeavours to:

- (a) give you reasonable notice (bearing in mind the urgency and nature of the work) of any interruption to the Services; and
- (b) minimise any interruption to the Services.

#### 10.5 **Maintenance of Customer Equipment**

If we use any of your facilities or Customer Equipment to provide the Services to you, you are responsible for the maintenance of your facilities and Customer Equipment unless we otherwise agree in writing.

#### 10.6 **Interference**

You will ensure that the Service Equipment, and any other Customer Equipment, facilities or connections used in providing Services, are not altered, maintained, repaired or connected to, or disconnected from, any power source or line except by service personnel approved by us.

#### 10.7 **Electricity**

You will make available and be responsible for payment of, an adequate power supply for the operation of any Equipment or Customer Equipment used in the provision of Services. If provision of the Service is dependent on the supply of electricity we do not guarantee the supply of the Service where the supply of electricity is either disrupted or discontinued.

#### 10.8 **Insurance**

If we request you to, you must insure any Service Equipment for an amount and on terms reasonably required by us.

#### 10.9 **Return**

On the termination of supply of the Services for any reason you will immediately return all Service Equipment to us, or make it available for collection by us. If you do not return the Service Equipment, you must pay to us on demand the full retail price of the Service Equipment (including the cost of acquiring or renewing any necessary software licences).

## **11. EQUIPMENT YOU ACQUIRE FROM US**

### **11.1 Title**

If we sell to you a facility or any item of equipment (**'Purchased Equipment'**) either for use in the provision of the Services to you or otherwise, then:

- (a) that Purchased Equipment remains our property until we receive full payment from you;
- (b) until we receive full payment from you, you will not part with possession of the Purchased Equipment except to us;
- (c) if you do part with the Purchased Equipment before making full payment to us, we may recover the value of it as a debt due, including offsetting the value of the Purchased Equipment against any monies owed to you by us;
- (d) until full payment of the Purchased Equipment is received, you indemnify us against any loss or damage to it, unless that loss or damage arises from fair wear and tear; and
- (e) until we receive full payment for the Purchased Equipment, you must not remove or obscure any identification marks on it, and must comply with our reasonable instructions to protect our ownership and not do anything which might detrimentally affect our ownership of the Purchased Equipment.

### **11.2 Risk**

Risk of loss or damage to the Purchased Equipment will pass to you upon delivery.

### **11.3 Installation**

Subject to agreement between us as to which Services and/or Purchased Equipment we install, we will install such Services and/or Purchased Equipment at a site nominated by you. We may charge you our current Fees (including travel and accommodation expenses) for installing the Purchased Equipment and/or a Service. We will use reasonable endeavours to install the Purchased Equipment and/or a Service on or around the installation date requested by you but will not be liable for any loss or damage for failure to do so.

### **11.4 Purchase Price**

You agree to acquire, and we agree to supply, the Purchased Equipment in consideration for the price set out in the Application or as otherwise notified by us to you.

### **11.5 Installation Site**

You will prepare the installation site in accordance with the site preparation requirements reasonably required by us. We may refuse to install Purchased Equipment and/or a Service if the installation site has not been prepared in accordance with our reasonable requirements. We may agree from time to time to change the installation site, in which case we will be entitled to impose an additional Fee for our costs.

### **11.6 Returns and Refunds**

- (a) We do not refund unwanted Purchased Equipment. If you require a different model, we allow **7 business days**, from the date you receive the Purchased Equipment, to return to us at your own cost, any unopened Purchased Equipment from us. Your account will be credited with the purchase price less a **15%** restock fee. No credit will be applicable on any Purchased Equipment returned opened or after the **7 business day** period.
- (b) Due to the nature of the Services we provide, any Purchased Equipment is provided on a return to manufacturer basis. No replacement items are held by us.

## 12. TECHNICAL SUPPORT SERVICES

- 12.1 We will provide free technical support services in accordance with the terms and conditions set out in the technical support section of our Website at [www.adam.com.au/techsupport/](http://www.adam.com.au/techsupport/). Due to the support being free, it does not extend to any other software, returning phone calls or calls to mobile numbers. Adam Internet free support is defined as three hours support for the Service per year. Should you require additional support in excess of this amount, it may be provided by Adam Internet at our sole discretion and at an hourly rate as defined in our Schedule of Fees and Charges.
- 12.2 We are not responsible for, and will not provide support for, any fault caused by:
  - (a) your Customer Equipment;
  - (b) the interaction of Software with other software packages used by you;
  - (c) the inability to gain wireless connectivity from your wireless access point/router to your computer; or
  - (d) other services as provided by a Third Party Supplier, another carrier or any other third party.

## 13. EMAIL ACCOUNTS/DATA/WEB SPACE

- 13.1 Unless your Application specifies otherwise, you are entitled to five (5) free Email accounts, and 50,000,000 bytes (50Mb) of disk storage in each. Any changes, additions and alterations to your email accounts can be made through your Members Area.
- 13.2 All personal accounts can use a Web Space under users.adam.com.au/username to a maximum capacity of 50,000,000 bytes (50Mb). This area is provided at your risk and Adam Internet does not provide support, additional features or guarantee its continuance for any period of time. Furthermore, Adam Internet does not warrant any data stored in this area. This does not extend to businesses and cottage industries.
- 13.3 We may provide you with an exclusive, non-transferable license to use the non private IP addresses provided by us in your Equipment for the sole purpose of enabling those devices to access the Service. This provision terminates immediately if you:
  - (a) terminate the Service with us; or
  - (b) breach our Agreement.

- 13.4 Upon termination of our Agreement you must immediately cease using and remove the supplied IP addresses from all software and Equipment that contain the supplied IP addresses.
- 13.5 All IP addresses are dynamically assigned unless a static IP option is provided in your Application. Where dynamic IP addresses are supplied for a Service, those IP addresses may be subject to change without notice and at irregular intervals.
- 13.6 Upon reaching your allocated data allowance in accordance with your Conditions of Service, you will be charged in accordance with the excess Fees set out in our Schedule of Fees and Charges or we will implement Shaped Services. This Shaping will occur across our entire Network, based on Network Prioritisation.

#### **14. SUSPENSION AND CANCELLATION OF SERVICES**

##### **14.1 Your rights to cancel or terminate:**

- (a) You may cancel a Service by giving us **7 days** notice provided that you may be liable to pay an exit fee in accordance with **Clause 4.124.12** if you do so during a Fixed Term.
- (b) You may otherwise cancel a Service at any time by giving us notice via the member service area of our Website if:
- (i) you are entitled to do so in accordance with **Clause 3.4**;
  - (ii) we are in material breach of our Agreement, which is capable of being remedied, but which we have failed to remedy within **14 days** after you telling us of that breach;
  - (iii) we are in material breach of our Agreement and it is something which cannot be remedied. This clause does not apply to Interruptions which occur because of:
    - (A) a cancellation, suspension or restriction to the supply of the Service in any of the circumstances listed in clause 14.4;
    - (B) a system or network outage for an insignificant period;
    - (C) maintenance of Service Equipment in accordance with clause 10.4;
    - (D) a fault or other event which may reasonably be attributed directly or indirectly to your Equipment; or
    - (E) your acts or omissions.
- (c) If you cancel a Service for any of the reasons set out in paragraph (b), you will not be liable to pay an exit fee (provided that we can recover any outstanding Fees incurred up to the date on which our Agreement ends and any outstanding amounts that cover installation costs or Equipment where such Equipment can be used in connection with services provided by other suppliers), and you will be entitled to a refund of the unexpired portion of any amounts you have paid in advance for the Service in accordance with **Clause 4.15**.

## 14.2 Preparation Costs

If you request a Service from us and cancel that request before we provide the Service, you may be liable to pay us the service cancellation fee as set out in the Schedule of Fees and Charges for our costs incurred in preparing to provide the Service.

## 14.3 Our Suspension and Cancellation Rights

We may suspend, limit or cancel a Service if:

- (a) you notify us in accordance with **Clause 14.1**;
- (b) the Australian Competition and Consumer Commission (ACCC) issues us with a competition notice in respect of the Service or we reasonably anticipate that it may do so;
- (c) we are required to do so by Law;
- (d) there is an emergency;
- (e) the Network is being modernised or upgraded;
- (f) Telstra or another third party withdraw a service which means we cannot provide your Service;
- (g) during any technical failure, modification or maintenance involved in the Service provided that we will use reasonable endeavours to procure the resumption of the Services as soon as practicable;
- (h) there are reasonable grounds for believing a threat or risk exists to the security or integrity of our network or that provision of the Service may cause death, personal injury or damage to property;
- (i) we reasonably determine that such action is necessary to repair, maintain or restore any part of our network;
- (j) the provision of the Services by us is or may be unlawful or we have reasonable grounds to believe that it may become so;
- (k) an event occurs outside of our reasonable control preventing us from providing the Service, including explosions, natural disasters, war or an act of God; or
- (l) your Service has not been used or accessed for a continuous period of **24 months**.

If we cancel or suspend the Service for any of these reasons, we will not charge you any disconnection or reconnection fee. If your account is terminated as a result of any of these events, you will be entitled to a refund of the unexpired portion of any amounts you have paid in advance in accordance with **Clause 4.15**.

## 14.4 Other Suspension or Cancellation Events

We may suspend, limit or cancel a Service if:

- (a) you vacate the premises to which we have been supplying a Service to you;

- (b) we are unable to enter the premises to inspect, repair or maintain any Equipment or cabling connected with a Service provided to you;
- (c) we have the right to do so in accordance with **Clause 4.14** for your failure to pay Fees or other amounts;
- (d) you do not provide prepayment as required by us in accordance with **Clause 4.16**;
- (e) we have reasonable grounds to suspect fraud or other illegal conduct by you in applying for the Service;
- (f) we have reasonable grounds to suspect fraud or other illegal conduct by you or any person using your Service;
- (g) you fail to comply with our Acceptable Use Policy (if applicable to your Service);
- (h) you fail to rectify any defect or inadequacy in any Customer Equipment or cabling not owned or maintained by us within **30 days** of being requested to do so by us;
- (i) your use of the Services interferes with the efficiency of our network or a Third Party Supplier's network and you fail to rectify the situation within **24 hours** of being requested to do so by us;
- (j) if you do, or allow to be done, anything which in our reasonable opinion may have the effect of jeopardising the operation of any Service;
- (k) you become a carrier or Carriage Service Provider within the meaning of the *Telecommunications Act 1997*;
- (l) you become bankrupt, insolvent or have a receiver, manager, administrator or liquidator appointed over you or any of your assets;
- (m) we have reasonable grounds for believing you are a credit risk, including the following grounds:
  - (i) your usage of the Service is unusually high when compared to previous account activity and you fail to respond to notices from us about that usage (but you acknowledge that we are not obliged to monitor usage of a Service, or to suspend, limit or cancel a Service if there is unusual usage, and you remain liable to us for usage of that Service);
  - (ii) you fail to pay an invoice by the Due Date and have a payment history indicating late payments, dishonoured payments or failures to pay; or
  - (iii) we become aware of public notices of your pending bankruptcy, winding up or other insolvency events,and we have taken reasonable steps to notify you of the suspension, limitation or cancellation of the Service; or
- (n) you are in material breach of any of the terms or conditions of our Agreement, including the terms of this Standard Form of Agreement.

If we cancel or suspend the Service for any of these reasons, you will be liable to pay a disconnection fee and (if we agree to reconnect the Service) a reconnection fee, as set out in the Schedule of Fees and Charges, in addition to your liability to pay all other Fees incurred up to the time of cancellation of the Service in addition to any other rights we may have under this Standard Form of Agreement or at Law.

#### 14.5 Cancellation for convenience

Adam Internet reserves the right to remove any Service:

- (a) if there is no Fixed Term specified in your Application, at any time by giving **30 days** notice to you;
- (b) if a Fixed Term is specified in your Application:
  - (i) at any time after the end of the Fixed Term by giving **30 days** notice to you; or
  - (ii) during the Fixed Term, if we get your consent to do so; or
  - (iii) during the Fixed Term, if we offer to migrate you to a reasonably comparable alternative service for the remainder of the Fixed Term and take reasonable steps to offset any more than minor detrimental effects of the migration caused by differences between the cancelled service and the alternative service we offer;
- (c) if we reasonably determine that it is not technically or operationally feasible to supply the Service to you, at any time prior to the Service commencement date specified in clause 3.1, by giving you notice.

If we advise you that we are removing your Service, you will not be liable to pay a disconnection fee, but will be liable to pay all other Fees incurred up to the time we remove your Service.

#### 14.6 Expiration of a Fixed Term or Other Period

If we have agreed to provide a Service to you for a Fixed Term or any other agreed period, and that Fixed Term or other period expires and neither you nor we cancel the Service, we will continue to supply the Service to you on a month-to-month basis.

#### 14.7 Connection Fees

We may charge you a fee for the disconnection or reconnection of any Service as set out in the Schedule of Fees and Charges, except where the disconnection was caused by our error or our failure to perform our obligations under this Agreement or was the result of any of the events specified in **Clause 14.3**.

#### 14.8 Ongoing Liability

You remain liable for all Fees payable in respect of Services provided to you up to the time of cancellation, suspension or termination.

## 15. LIABILITY

### 15.1 Our liability under the Customer Service Guarantee

- (a) To the extent that we provide you with a standard telephone service (as defined in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*) and specified enhanced call handling features, our service must comply with the Customer Service Guarantee Standard (the 'CSG'). The CSG sets out minimum performance standards in relation to service connection times, fault repair times and keeping appointments to provide you with a Service. The CSG does not apply to Customer Equipment or to customers that have more than five telephone services. We will connect Services not covered by the CSG within a reasonable time.
- (b) If we do not meet the CSG performance standards, you may be entitled to receive monetary compensation as specified in the CSG. However, there are circumstances in which we may be exempt from meeting those requirements, including if you have agreed to a CSG waiver under the terms of the Conditions of Service for your service in accordance with Part 5 of the Telecommunications (Customer Service Guarantee) Standard 2000 (No.2), where you unreasonably refuse us access to your premises or if you miss an appointment without giving us reasonable notice. For more information about the CSG, go to the Australian Communications and Media Authority website at [www.acma.gov.au](http://www.acma.gov.au).

### 15.2 Our liability for Interruptions to the Service

- (a) If you are not eligible for compensation under the CSG, and we are not permitted to limit our liability for breach of a Consumer Guarantee in accordance with **clause 15.4**, then in addition to any rights you may have under the Consumer Guarantees described in **clause 15.3**, but subject to **clause 15.2(b)**, we will be liable to you for Interruptions to the Service, but only to the extent of providing you:
- (i) a pro-rata refund of service charges payable for the duration of the Interruption; and
  - (ii) where the Interruption is directly caused by our fault or negligence, reasonable compensation for any direct loss incurred by you.
- (b) The refund and compensation in **clause 15.2(a)** does not apply to Interruptions which occur because of:
- (i) a system or network outage for an insignificant period;
  - (ii) scheduled maintenance to Our Network, a Third Party Supplier's network, Our Equipment or Purchased Equipment;
  - (iii) a cancellation, suspension or restriction to the supply of the Service in accordance with clause 14;
- (c) To receive the refund or compensation set out in **clause 15.2(a)**, you must contact our Customer Assistance line on (08) 8423 4000 and lodge a complaint about the Interruption.



### 15.3 **Terms Implied by Law**

We agree to provide Services to you subject only to the terms, conditions and warranties contained in this Standard Form of Agreement and requirements imposed by Law which cannot be limited, excluded or modified. For example, if we supply Equipment or a Service to you which costs less than a prescribed amount (currently \$40,000) or which, regardless of cost, is of a kind ordinarily acquired for personal, domestic or household use or consumption then we are required to supply the Equipment or Service to you in accordance with the Consumer Guarantees.

- (a) If the Equipment or Service we supply to you fails to meet a Consumer Guarantee then, depending on the circumstances and subject to our right to limit our liability under clause 15.4:
  - (i) you may be entitled to certain remedies, including a repair, a replacement or a refund; and
  - (ii) you can take action to recover compensation for any reasonably foreseeable loss incurred by you as a result of the failure.

### 15.4 **Limitation of Liability where Consumer Guarantees Apply**

Where we are not permitted to exclude our liability for our breach of a Consumer Guarantee, but are permitted to limit our liability for such a breach and it is fair and reasonable for us to do so, then our liability to you is limited to:

- (a) repairing or replacing the Equipment, supplying equivalent Equipment or paying the cost of doing any one of those things; or
- (b) resupplying the Service or paying the cost of doing so.

However, we are not permitted by Law to limit our liability in certain circumstances, for example, where a breach of any Consumer Guarantee relates to Equipment or Services of a kind ordinarily acquired for personal, domestic or household use or consumption.

### 15.5 **Limitation of Liability where Consumer Guarantees do not Apply**

The terms of this clause 15.5 apply if we are not required to supply the Equipment or Service to you in accordance with the Consumer Guarantees (for example, if we supply Equipment or a Service to you which costs more than a prescribed amount (currently \$40,000) or which, regardless of cost is not of a kind ordinarily acquired for personal, domestic or household use or consumption).

- (a) To the extent lawfully permitted, the cumulative total liability of a party in respect of all Claims in connection with this Agreement (whether based in negligence or any other tort, in contract, under statute or otherwise) will be the total sum of all Fees paid or payable by you to us under this Agreement as at the date on which the event giving rise to the liability occurs.
- (b) The limitations of liability in clauses 15.5(a) and 15.6(a) do not apply to:
  - (i) personal injury (including illness and disability) or death;
  - (ii) the loss, destruction or damage to, or loss of use of tangible property; and

- (iii) breach of clause 7.

## 15.6 Exclusion of Liability

To the extent permitted by Law, we have no liability to you or to any other person for:

- (a) any Claim by you or any other person for loss of profits, economic loss, loss of data or any indirect or consequential loss or damage arising from or in connection with any breach of contract, any tort (including negligence) or any other basis;
- (b) any loss or damage suffered by you in connection with this Agreement or the Service to the extent that your acts or omissions or any Customer Equipment cause or contribute to that loss or damage;
- (c) any failure on our behalf to perform our obligations under this Agreement where that failure is due to an event occurring outside our reasonable control, including explosions, natural disasters, war or an act of God; and
- (d) acts, omissions or defaults of any Third Party Supplier or any person who provides goods or services directly to you for use in connection with a Service. However, we will use reasonable endeavours to ensure that any Third Party Supplier cooperates in order to deliver the Service in a timely manner, provides and maintains the Service in a responsible fashion and rectifies any faults in relation to the Service in a timely manner.

## 15.7 Cancellation of a Service

Cancellation of a Service or termination or expiry of this Agreement does not affect the provisions of this Agreement concerning limitation of liability and indemnity.

## 16. FORCE MAJEURE

Subject to our obligations under the CSG, as described in clause 15.1, we are not liable for:

- (a) any delay in installing a Service;
- (b) any delay in correcting any fault in a Service;
- (c) failure to provide or incorrect operation of any Service;
- (d) Service outages; or
- (e) any default by us in compliance with this Agreement,

if it is caused directly or indirectly by any event beyond our reasonable control.

## 17. ASSIGNMENT

### 17.1 Your Right to Assign

You may not assign or transfer or otherwise deal with any of your rights under our Agreement without our prior written consent.

### 17.2 Our Right to Assign

We may assign or otherwise transfer any of our rights under our Agreement to:

- (a) a related body corporate (being a company in our corporate group); or
- (b) a Third Party Supplier for the purposes of outsourcing or resupplying a Service to you

on condition that the assignee agrees to provide the Service to you on materially the same terms and conditions of our Agreement. Otherwise, we may assign, transfer or deal with our rights under our Agreement on terms to which you consent.

## **18. GENERAL**

### **18.1 Giving Notice to You**

We may satisfy any obligation to give you notice by:

- (a) delivering the information to you in person;
- (b) sending the information by pre-paid post to the address listed in our records for you;
- (c) transmitting the information to the email address listed in our records for you. By applying for the Service, you consent to notices being sent to your email address. It is your responsibility to check your emails and to inform us of the most appropriate email address for receipt of notices or if you do not wish to receive notices via email;
- (d) including the information on, in or with an invoice, including by an invoice made available to you online via the Website, provided you have consented to receiving the invoice in that format;
- (e) in the case of pre-paid telecommunications Services, any of the above means or by making the information available to you by means such as through our Website, or at a retail outlet, and informing you how you can obtain the information by means of a recorded message or text message or in writing; or
- (f) to the extent permitted by the terms of this Standard Form of Agreement and any other applicable Law, by publishing a notice in a daily newspaper circulating generally in the region or capital city of the State or Territory in which you ordinarily reside or carry on business.

### **18.2 Disputes**

We will seek to resolve any dispute by agreement or consultation with you and request that you ring our Escalations Officer on 8423 4000 in the first instance. If a dispute remains unresolved, you may have rights under the Telecommunications Industry Ombudsman (TIO) scheme. For further information go to [www.tio.com.au](http://www.tio.com.au) or call the TIO on 1800 062 058 or (TTY) 1800 675 692.

### **18.3 Current Terms**

A current version of our Standard Form of Agreement, the Schedule of Fees and Charges and the Conditions of Service may be found at [www.adam.com.au/legal](http://www.adam.com.au/legal).

### **18.4 Intellectual Property**

You do not own or have any legal interest in any of our intellectual property or in any telephone number, IP address, domain name, personal identification number or other locator or identifier issued by us to you.

#### 18.5 **Authority**

If you have a business Service, you agree that if we need your consent to undertake certain actions then, provided we act in good faith, we may rely upon the authority of any of your employees, who tell us that they are authorised to provide that consent on your behalf. For residential Services, you must inform us if you want another person to have authority to access or make changes to your Service or account. We will not let another person access your account unless we have received your authority to so.

#### 18.6 **Entire Agreement**

This Agreement contains the entire agreement between the parties and supersedes all prior agreements and understandings between the parties in connection with it.

#### 18.7 **Governing Law**

This Standard Form of Agreement is governed by the Laws of the State or Territory in which you reside (as stated on your Application).

#### 18.8 **No Reliance**

You acknowledge that:

- (a) advice from Adam Internet's staff is given in good faith and with the best of intention, however Adam Internet does not represent that its staff are experts in the operation of your computer hardware or software. You undertake to act on any advice given by any Adam Internet's staff member at your own risk;
- (b) Adam Internet makes reasonable efforts to ensure that the information on the Adam Internet website is correct and up to date. However, Adam Internet does not warrant the accuracy of that material.

#### 18.9 **Subcontractors**

We may subcontract any of our obligations under this Agreement.

#### 18.10 **No Waiver**

No failure to exercise, nor any delay in exercising, any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting the waiver unless made in writing.

#### 18.11 **Survival**

Any provision of this Agreement which by its nature is intended to survive termination or expiry of this Agreement (including without limitation any exclusion or limitation of liability or indemnity in this Agreement) will survive termination or expiry of this Agreement for any reason.

**18.12 Severability of Provisions**

Any provision of this Standard Form of Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Standard Form of Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.