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CUSTOMER CONTRACT FOR SERVICES PROVIDED UNDER THE AUSTRALIAN BROADBAND GUARANTEE

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THE PARTIES AGREE THAT:

1. INTRODUCTION

1.1 Terms and Conditions

Adam Internet Pty Ltd, trading as Adam Internet, 'us or we', supplies Program Services on the terms and conditions in this Agreement. If you obtain or seek to obtain Program Services from us, you agree to 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.

1.2 Structure of your Agreement

Your Agreement with us comprises:

- (a) this Customer Contract;
- (b) any terms stated in your Application; and
- (c) our Acceptable Use Policy

The terms stated in this Customer Contract, your application 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.

1.3 Order of Precedence

- (a) Unless expressly stated otherwise, the order of precedence between the various parts of our Agreement will be resolved in favour of:
 - (i) the document appearing earlier in the list stated in **Clause 1.2** above; and
 - (ii) the Australian Broadband Guarantee-specific terms and conditions, in the event of any inconsistency with the general terms and conditions of service (calculated by reference to Attachment A of the Australian Broadband Guarantee Program Guidelines 2010-11).

1.4 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 Program Services, a copy of which is accessible on our Website at <http://www.adam.com.au/legal>.

- Added Value Service** means a Program Service with the features and requirements as set out in section 2.3.3 of the Australian Broadband Guarantee Program Guidelines 2010-11.
- Agreement or our Agreement** means the agreement between you and us for the Program Services, comprising the terms stated in your Application, this Customer Contract, and our Acceptable Use Policy.
- Application** means an application made by you for the provision of Program Services by us, made by way of either:
- (a) a form, either online or printed, approved by us; or
 - (b) 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 1997*;
 - (f) assisting enforcement agencies or safeguarding national security under Parts 14 and 15 of the *Telecommunications Act 1997* 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 (including directives by the Department).

Australian Broadband Guarantee or Australian Broadband Guarantee Program	means the Australian Government's funding program described in the Australian Broadband Guarantee Program Guidelines 2010-11 issued in May 2010 and available at www.dbcde.gov.au/abg
Business Hours	means 9.00am to 5.30pm Monday to Friday, excluding days which are public holidays in South Australia.
Claim	includes an action, loss, damage, cost or expense.
Commercial Credit	has the meaning given in section 6 of the <i>Privacy Act 1988 (Cth)</i> .
Credit Reporting Agency	has the meaning given in section 6 of the <i>Privacy Act 1988 (Cth)</i> .
Customer Equipment	means any equipment or facility in the possession, ownership or control of you other than Program Service Equipment.
Data Speed	means the speed at which data bits, comprising both protocol headers and data payload, are carried by a service. Data speed is measured in bits per second.
Department	means the Department of Broadband, Communications and the Digital Economy.
Department Eligibility Requirements	means the eligibility criteria set out in section 2 of the Australian Broadband Guarantee Program Guidelines 2010-11 and includes being assigned a unique customer ID number and signing a valid Customer Declaration Form.
Due Date	unless otherwise agreed, means the date specified on the invoice as due date.
Entry Level Service	means a Program Service with the features and requirements as set out in section 2.3.2 of the Australian Broadband Guarantee Program Guidelines 2010-11.
Equipment	unless otherwise specified, means Program Service Equipment or Purchased Equipment.
Facilities	has the meaning given in the <i>Telecommunications Act 1997</i> .
Fee(s)	means a fee payable for a Program Service and any other amount payable by you in accordance with the terms of our Agreement.

Fixed Term	has the meaning given in Clause 3.3 .
GST	has the meaning given in section 195-1 of the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
Internet Access	means being able to access the Internet such that data can be transferred to and from the user's computer.
Network Prioritisation	means that the provision of Program 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.
Our Network	means the infrastructure used and maintained by us to provide you with your Program Service. Our Network does not include the computer networks that make up the Internet.
Personal Information	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> .
Privacy Act	means the <i>Privacy Act 1988 (Cth)</i> .
Program Service(s)	means the product or service stated in your Application, and is an Internet access service meeting the performance and pricing requirements of the Australian Broadband Guarantee Program Guidelines 2010-11, registered under the Australian Broadband Guarantee and included for supply by Adam Internet under Adam Internet's Funding Deed. Your Program Service is either an Entry Level Service, a Threshold Service or an Added Value Service.
Program Service Equipment	has the meaning given in Clause 11 .
PSTN	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
Purchased Equipment	has the meaning given in Clause 12 .
Schedule of Fees and Charges	means our price list for Program Services and administrative fees and charges payable in accordance with our Agreement, as displayed on our Website.
Shaped Program Services or Shaping	means the reduction in speed of an Internet service to 64k/64k for residential services or to 128k/128k for business services.

Supplier	means a carriage service provider within the meaning of the <i>Telecommunications Act 1997</i> .
Taxable Supply	has the meaning given in section 195-1 of the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
Telecommunications Act	means the <i>Telecommunications Act 1997 (Cth)</i> .
Threshold Service	means a Program Service with the features and requirements as set out in section 2.3.1 of the Australian Broadband Guarantee Program Guidelines 2010-11.
Website	means www.adam.com.au.
We, our or us	means Adam Internet Pty Ltd.
you or your	means the current account holder for the Program 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 Customer Contract unless stated otherwise.
- (f) A reference to an agreement or document (including a reference to this Customer Contract) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Customer Contract 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 PROGRAM SERVICES

3.1 Commencement

- (a) Subject to **paragraph (b)**, our Agreement commences when we accept (at our sole discretion) your Application and continues until terminated in accordance with our Agreement.
- (b) The maximum term of this Customer Contract, including renewals, will not exceed **36 months** from the initial Program Service commencement.

3.2 Australian Broadband Guarantee Program Service

- (a) Subject to you passing the Department's Eligibility Requirements, we will provide you with a Program Service. A Program Service is the product or service stated in your Application, and is an Internet access service meeting the performance and pricing requirements of the Australian Broadband Guarantee Program Guidelines 2010-11, registered under the Australian Broadband Guarantee and included for supply by Adam Internet under Adam Internet's Funding Deed. A Program Service can be an Entry Level Service, a Threshold Service or an Added Value Service.
- (b) Details of our Program Services (e.g. price, functionality and technical features), as stated in our advertised plans, can be found at <http://www.adam.com.au>.
- (c) When you request us to supply a Program 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 Program Service to you based on:
 - (i) your eligibility for that Program Service (including the Department's Eligibility Requirements);
 - (ii) its availability to you;
 - (iii) you meeting our credit requirements; and
 - (iv) your prior conduct or history with respect to any previous supply by us or a reseller of any goods or service to you.
- (d) You may change between Adam Internet's Program Services if:
 - (i) they are delivered using the same technology platform used to supply your initial Program Service (e.g. wireless broadband);
 - (ii) you are prepared to pay the higher Fees associated with that different Program Service, where applicable (e.g. if you change from a Threshold Service to an Added Value Service); and
 - (iii) you are prepared to pay the administrative cost of the change, which is set out in our Schedule of Fees and Charges,

and you are always entitled to return to the original Program Service (where it has not been withdrawn).

- (e) If you change to one of our broadband services that is not a Program Service, this Agreement will be at an end, and those services will be supplied to you on the terms and conditions of our Standard Form of Agreement. If you are on a Fixed Term, you may be subject to Fees as detailed in **Clause 5.14**. You may have to re-apply if you wish to change back to a Program Service.

3.3 Application

- (a) The terms of this Customer Contract 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 Program Service relating to your required service may require different terms, for example you may be required to receive the Program 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 will state the specific details of the term which applies.
- (b) If you have entered into a Fixed Term agreement for the supply of the Program Service, the Fixed Term period will be stated on your Application but in any event shall be no more than **18 months**. At the conclusion of the initial Fixed Term and subject to the maximum term in **Clause 3.1**, you have the right to renew for a negotiated period at a monthly price no greater than the original contracted monthly Fees.

3.4 Changing our Agreement

- (a) During the term of our Agreement, we may need to change the terms of our Agreement due to circumstances beyond our control, including changes in law, urgent changes required for security reasons, changes by one of our Suppliers of the terms on which they supply services to us or to the functionality or nature of a Program Service or its underlying technology. We are therefore not always able to provide you with ongoing supply of a Program Service on the same terms and conditions that existed when we first commenced providing that Program 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. If there is no Fixed Term for a Program Service that you acquire from us, or the Fixed Term has expired, then any changes we elect to make will take effect for that Program Service in accordance with **Clauses 3.5** and **3.6** below. If you acquire a Program Service from us for a Fixed Term and that Fixed Term has not expired then any changes we elect to make in relation to that Program Service for our own purposes will not take effect until expiry of the Fixed Term (unless you provide your express consent, in which case such changes we elect to make will take effect in accordance with **Clauses 3.5** and **3.6** below) notwithstanding anything to the contrary in **Clause 3.5**.
- (c) All changes made under this **Clause 3.4** are subject to prior approval by the Department.
- (d) You acknowledge and agree that in accordance with **paragraphs (a), (b) and (c)**, from time to time the nature of the Program Services and the terms on which we supply those Program Services to you may change and that if we elect to change those terms we will give you notice in accordance with **Clauses 3.5** and **3.6** below.

3.5 Your Rights if we Change the Agreement

- (a) Subject to the exceptions permitted by **Clause 3.6**, we will give you notice of any changes we propose to make to our Agreement, including the terms of this Customer Contract, at least **30 days** prior to the date on which those changes are to take effect.
- (b) Subject to the exceptions permitted by **Clause 3.6**, if the changes we propose to make will cause material detriment to you, for example, the changes will result in a material increase in the Fees or unreasonably and materially change the characteristics or functionality of the Program Service we initially supplied to you, then you may immediately cancel the affected Program Service without incurring any early termination 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 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) 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.

3.6 Exceptions

You acknowledge and agree that our obligation to afford you a right to terminate our Agreement in accordance with **Clause 3.6** 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 Suppliers for the following types of Program 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 which we resell to you from a third party, including where we collect fees from you on behalf of that third party.

Where it is impracticable to give you **30 day's** notice, we will endeavour to give you reasonable notice of the changes referred to in this **Clause 3.6** in accordance with the notice provisions of **Clause 19.1**.

3.7 **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 Agreement prior to the transfer being accepted by us.

4. **AUSTRALIAN BROADBAND GUARANTEE**

4.1 **Performance Commitment**

- (a) We commit to providing your Program Service with:
- (i) an average data download and upload Data Speed of at least 60 per cent of the Program Service's nominated peak speeds; and
 - (ii) the minimum or average Data Speed as registered under the Australian Broadband Guarantee Program at least 85 per cent of the time, as measured according to a prescribed Australian Broadband Guarantee testing schedule.
- (b) We commit to the Program Service being available at least 99 per cent of the time, averaged over a quarterly period.
- (c) Subject to **Clause 17**, if we fail to meet our commitments in this **Clause 4.1** you may cancel the Program Service in accordance with **Clause 15.1(b)**, and you agree that to the extent permitted by law this will be your sole remedy in respect of the event giving rise to the right to cancel the Program Service.

4.2 **Usage and Data Testing**

You may test the Data Speed of your Program Service at <http://www.abgtest.com.au/>.

4.3 **Usage Information**

We will provide a means for you to check your usage on at least a daily basis online at the Website.

4.4 **Information Commitment**

We commit to provide you with full information about the Program Service (otherwise known as the Australian Broadband Guarantee Service), as required under the Australian Broadband Guarantee Program.

4.5 **Truthful Declaration**

Upon request by us, you will provide a truthful declaration to us (and hold any relevant supporting documentation) so that we can make a claim for an incentive payment.

5. FEES FOR THE PROGRAM SERVICES

5.1 Fees

You must pay the Fees for the Program Services during the term of our Agreement. You are liable to pay for all Fees arising out of the use of the Program Services we provide to you, whether by yourself or any other person, whether with or without your consent.

If a Program Service is used to access the facilities or services of another Supplier, amounts charged by that other Supplier are, unless our Agreement specifies otherwise the responsibility of you, and you will indemnify us. If we are charged those amounts we may include them in the Fees.

If during any period of our Agreement you do not receive, or are unable to use, the Program Services you will, unless our Agreement specifically provides otherwise, be liable to pay for all Fees during such period.

5.2 Price Commitment

- (a) The overall minimum plan pricing of the Program Service provided (not including administrative and miscellaneous fees as set out in our Schedule of Fees and Charges) will not be increased for **three years** from the commencement of this Agreement.
- (b) The total plan pricing over **three years** from commencement of this Agreement (not including administrative and miscellaneous fees as set out in our Schedule of Fees and Charges) will be capped at the following amounts:
 - (i) **\$1,428.20** (GST inclusive), where the Program Service is an AdamMax 512 Light Entry Level Service; and **\$1,618.20** (GST inclusive), where the Program Service is an AdamMax 512 Medium Entry Level Service; or
 - (ii) **\$1,618.20** (GST inclusive), where the Program Service is an AdamMax Open Starter Entry Level Service; **\$1,978.20** (GST inclusive), where the Program Service is an AdamMax Open Light Threshold Service; **\$2,158.20** (GST inclusive), where the Program Service is an AdamMax Open Medium Threshold Service; **\$2,518.20** (GST inclusive), where the Program Service is an AdamMax Open Average Added Value Service; **\$3,058.20** (GST inclusive), where the Program Service is an AdamMax Open Super Added Value Service; **\$3,778.20** (GST inclusive), where the Program Service is an AdamMax Open Premium Added Value Service; and **\$4,498.20** (GST inclusive), where the Program Service is an AdamMax Open Ultra Added Value Service; or
 - (iii) **\$3,024** (GST inclusive), where the Program Service is a SmartBiz AdamMax Starter Added Value Service; **\$3,384** (GST inclusive), where the Program Service is a SmartBiz AdamMax Light Added Value Service; **\$4,104** (GST inclusive), where the Program Service is a SmartBiz AdamMax Medium Added Value Service; **\$5,904** (GST inclusive), where the Program Service is a SmartBiz AdamMax Average Added Value Service; **\$7,344** (GST inclusive), where the Program Service is a SmartBiz AdamMax Super Added Value Service.

5.3 **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 in writing of such an entitlement.

5.4 **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, plus GST.

5.5 **Invoicing**

We may invoice you for the Program Service, plus any applicable GST. We may vary invoice frequency upon giving you reasonable notice. All portions of your use of the Program 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 at any time.

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

5.6 **Time for Payment**

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

5.7 **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, direct debit or money order.

We reserve the right to charge you for any fees that we incur from or must pay to your bank. 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. 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.

5.8 **Interest**

We reserve the right to charge interest on the unpaid amount of any invoice which is not paid to us by the Due Date in accordance with the interest rate set out in the Schedule of Fees and Charges.

5.9 **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.

5.10 **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.

5.11 **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.

5.12 **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).

5.13 **Early Termination Fee**

If your Application records that you have agreed to receive a Program Service from us for a Fixed Term then:

- (a) the total amount payable for the whole of the Fixed Term (comprising any Equipment Fees, monthly service fees or other periodic fees as stated) is a debt owing to us as at the time we accepted your Application for that Program Service; and
- (b) if you cancel the Program Service before the expiry of the Fixed Term, you will be liable to pay the balance of the stated fees which are payable for the unexpired portion of the Fixed Term, in the form of an early termination fee (calculated in accordance with the Schedule of Fees and Charges).

5.14 **Removal of Discount**

Subject to **Clause 5.2**, 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.

5.15 **Suspension for Non-Payment**

We reserve the right to:

- (a) physically disconnect your Program 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);
- (b) suspend your Program 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; and

- (c) suspend your Program Service without notice if we assess you as an unacceptably high credit risk or we suspect you have committed fraud.

5.16 Refunds and Credits

- (a) The set-up fee (where applicable) is processed upon commencement date and is non-refundable unless we are unable to provision the Program Service for you.
- (b) In the event that your account for a Program 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 Program Service we may supply to you by notifying us within **90 days** of your receipt of the final invoice.

5.17 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 Program Service for an invoice period.
- (b) We may decline your Application, cancel, suspend or disconnect a Program 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 Program Services, we will return to you that portion of the prepayment that is not required to meet any outstanding Fees. Accounts paid on a monthly basis cannot be pro-rated nor are refundable.

5.18 Disputed Invoices

If you dispute an invoice or claim a refund for overpayment of any Fees under our Agreement you must do so within **12 months** of the Due Date of the invoice to which the disputed amount or alleged overpayment relates.

5.19 Cancellation, Suspension or Disconnection

If we cancel, suspend or disconnect any Program 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 Program Service.

5.20 Disconnection or Reconnection

We may charge you a fee for the disconnection or reconnection of any Program 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.

5.21 **Set Off**

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

6. **TRANSFER OF YOUR PROGRAM SERVICES FROM US TO ANOTHER SUPPLIER**

6.1 **Transfer**

If you ask us to transfer any of the Program Services to another Supplier, then you remain liable to us for any amount payable in relation to the supply of the Program Services up to the date on which we transfer those services to another Supplier. If you are on a Fixed Term, you may also be subject to Fees as detailed in **Clause 5.13**. You will immediately pay us that amount on receipt of our invoice.

6.2 **Termination of Program Services on Transfer**

The provision of Program Services ceases on the date on which we transfer your services to another Supplier.

6.3 **Invoicing**

We will endeavour to invoice you for Fees incurred in relation to Program Services which you transfer to another Supplier within the next normal billing period. If, after that time, we become aware of other Fees or amounts (including fees payable to any other Supplier) for those Program Services up to the date of transfer, or we resolve any dispute so that any liability relating to those Program 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.

6.4 **Indemnity**

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

7. **PERSONAL INFORMATION**

7.1 **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 7**. 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 Program Services, or we may refuse to provide or limit the provision to you of any Program Service or credit.

7.2 **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 Program Service) which you provide to us in connection with the supply to you of the Program Services to other 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 Program Services and Equipment to you (including for investigation or resolution of disputes relating to any Program 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 preventing fraud or any other illegal activity; and
 - (v) for all other purposes reasonably required to provide the Program Services to you.
- (c) You agree that we may disclose your Personal Information:
- (i) to other Suppliers for the purpose of enabling us to provide the Program Services and Equipment to you (including for the purpose of provisioning Program Services or Equipment and providing particulars of calls and call charges to those Suppliers for interconnection and invoicing purposes);
 - (ii) to any other person who provides services to us in connection with the Program 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 7.3 and 7.4**;
 - (iv) 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;
 - (v) to anyone to whom we are permitted to assign or transfer this Agreement in accordance with **Clause 18**;
 - (vi) to the Department, and potentially other appropriate agencies for the purposes of the Australian Broadband Guarantee Program administration, regulation and evaluation, and policy development;
 - (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 7.2(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 Program 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 Program Service.

7.3 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 Program Services to you.
- (b) For the purposes of **Clause 7.3(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; and
 - (v) dishonoured cheques.
- (c) The information specified in **paragraph (b)** may be given before, during or after the provision of credit to you.

7.4 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.

7.5 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.

7.6 Compliance

To the extent that you provide us with Personal Information which you have collected or accessed for the purposes of receiving the Program 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 Program 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.

7.7 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.

7.8 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 7.6 and 7.7**.

8. CONFIDENTIALITY

8.1 Confidential Information

We retain all rights (including intellectual property) in any information we provide to you relating to the Equipment, the Program Services or to the provision of the Program 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**').

8.2 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.

8.3 Obligations on Termination

On the termination of the Program 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 Program Services.

8.4 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.

9. YOUR OBLIGATIONS

9.1 Compliance

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

9.2 Obligations

- (a) You accept and will comply with such conditions as are from time to time imposed by us in respect of a Program 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 Program Services to you, you agree that we may:
 - (i) delete any transitory data stored on our servers for a duration exceeding **90 days**;

- (ii) where it is deemed necessary in order to comply with our legal obligations, monitor data accessed or transmitted by you while using the Program Service; and
 - (iii) 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 the Department, a relevant regulatory authority or court order.
- (c) You must not do or allow to be done, in relation to a Program 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 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 or unsolicited email;
 - (viii) fail to take all reasonable care to avoid damage to Program Service Equipment.
- (d) If we or another 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 Program Service that is supplied to you is for domestic and personal use only and you agree not to resell the Program Service, nor to establish, maintain or permit multiple concurrent connections to the Program Service, nor to connect the Program Service to a local area network, except if the Program Service is designated by us as one which supports use of a local area network.
- (f) 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.

9.3 **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 antivirus 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 charges, such as '190' and international '0011' telephone call fees, can be incurred inadvertently by users accessing certain Internet sites and while using dialup services;
- (i) avoid unexpected data Fees by regularly monitoring your data usage.

9.4 **Information**

You warrant that the information supplied by you in relation to our Agreement is true and correct.

9.5 **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.

9.6 **Insurance**

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

9.7 **Changes to Personal Information**

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

9.8 **Indemnity**

You will not use a Program 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 Program Service in breach of this clause.

10. **USE OF PROGRAM SERVICES**

10.1 **Installation and Programming of Customer Equipment**

You will assist us in ensuring that any Equipment or Customer Equipment necessary for you to receive the Program 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.

10.2 **Interference**

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

10.3 **Use of Program Services**

You must:

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

10.4 **Technical Regulation**

You must not connect or maintain a connection to a facility used in connection with the supply of Program 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 Department, Australian Communications and Media Authority or with any code, standard or guideline published by the Australian Communications Industry Forum.

10.5 **Illegal Use**

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

11. EQUIPMENT WE SUPPLY TO YOU

11.1 Title

- (a) If we provide a facility or any item of equipment ('**Program Service Equipment**') to you either for use in the provision of the Program Services to you or otherwise, and we do not sell that equipment to you pursuant to Clause 12 or otherwise, then title in that equipment is vested in you upon installation.

11.2 Access

- (a) You will allow us access to the Program 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 Program Services have been cancelled.
- (b) We (or a Supplier) may need access to your premises from time to time in connection with the provision and maintenance of the Program Service Equipment or a Program Service. If you do not provide such access as we, or a relevant Supplier, reasonably require, we may limit, suspend, cancel or disconnect your Program Services.
- (c) If you want us to provide a Program Service and that Program Service requires the installation of any facility, equipment or cabling on your premises whether by us or a Supplier, you must allow us or any relevant 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 and installation or maintenance of equipment.

11.3 Maintenance of Program Service Equipment

- (a) We will provide timely and appropriate servicing of the Program Service Equipment for the first **36 months** from commencement of the Program Service free of charge (e.g. no call out fee, repair charges or any associated labour charges) unless the fault or failure of the Program Service Equipment could have reasonably been prevented by you. If upon maintenance or repair of the Program Service Equipment we ascertain, in our reasonable opinion, that the fault or failure could have been reasonably prevented by you, we may charge you for the repair and maintenance in accordance with the call out fee as set out in our Schedule of Fees and Charges.
- (b) After the anniversary of **36 months** from commencement of the Program Service, we will continue to provide you with servicing and maintenance of the Program Service Equipment until your Program Service is cancelled or

this Agreement terminated, for which you will be liable to pay for any costs related to the servicing and maintenance of the Program Service Equipment.

- (c) We may suspend Program Services for a reasonable period of time to perform maintenance on the Program Service Equipment, provided that in each case, we will use our reasonable endeavours to:
- (i) give you reasonable notice (bearing in mind the urgency and nature of the work) of any interruption to the Program Services; and
 - (ii) minimise any interruption to the Program Services.

11.4 **Maintenance of Customer Equipment**

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

11.5 **Interference**

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

11.6 **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 Program Services. If provision of the Program Service is dependent on the supply of electricity we do not guarantee the supply of the Program Service where the supply of electricity is either disrupted or discontinued.

11.7 **Insurance**

If we request you to, you must insure any Program Service Equipment for an amount and on terms reasonably required by us during the first 12 months from commencement of the Program Service.

11.8 **Return**

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

12. **EQUIPMENT YOU ACQUIRE FROM US**

12.1 **Title**

If we sell to you a facility or any item of equipment (**'Purchased Equipment'**) either for use in the provision of the Program 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.

12.2 Risk

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

12.3 Installation

Subject to agreement between us as to which Program Services and/or Purchased Equipment we install, we will install such Program Services and/or Purchased Equipment at a site nominated by you.

12.4 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.

12.5 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 Program Service if the installation site has not been prepared in accordance with our reasonable requirements.

12.6 Maintenance of Purchased Equipment

At your request, we will provide you with servicing and maintenance of the Purchased Equipment until your Program Service is cancelled or this Agreement terminated, for which you will be liable to pay for any costs related to the servicing and maintenance of the Purchased Equipment.

12.7 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 Program Services we provide, any Purchased Equipment is provided on a return to manufacturer basis. No replacement items are held by us.

13. TECHNICAL SUPPORT SERVICES AND INSTALLATION

13.1 Installation

We commit to the connection of a new Program Service within **20 business days**, and in any event no greater than **30 days** of the commencement of this Agreement, unless otherwise approved by the Department.

13.2 Support

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/adamsupport.php. The Adam Internet helpdesk is open from 8am - 10pm Monday to Friday, and 9am - 5pm Saturday and Sunday. If you have any questions or problems with using your internet connection, you can contact our support line on (08) 8423 4000. Due to the support being free, it does not extend to any other software, returning phone calls or calls to mobile numbers.

You may lodge a fault with us at help@adam.com.au 24 hours a day, **seven days** a week. This is also provided free of charge.

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 Supplier or another carrier or third party other than us.

13.3 Support Timeframes

Subject to **Clause 17**, in the event of a service outage or fault for which we are directly responsible, we commit to restoration of the Program Service within 48 hours for 90% of faults and 14 days for the remaining 10% of such service outages and in accordance with the maintenance provisions of the Australian Broadband Guarantee Guidelines.

Longer service outages may be caused by exceptional hardware faults or by intermittent frequency faults which are difficult to identify, however in all circumstances, Adam Internet will use best endeavours to restore Program Services at the earliest possible opportunity.

14. EMAIL ACCOUNTS/DATA

- 14.1 Unless this Agreement provides 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 made to your email accounts can be made through your Members Services Area.

- 14.2 All personal accounts can use a web space under www.adam.com.au/username to a maximum capacity of 50,000,000 bytes (50Mb). This area is provided at your risk and we do 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.
- 14.3 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 Program Service. This provision terminates immediately if you:
- (a) terminate the Program Service with us; or
 - (b) breach our Agreement.
- 14.4 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.
- 14.5 All IP addresses are dynamically assigned unless a static IP option is provided in your Application. Where dynamic IP addresses are supplied for a Program Service, those IP addresses may be subject to change without notice and at irregular intervals.
- 14.6 Upon reaching your allocated data allowance in accordance with your program service, we will implement Shaped Program Services. This Shaping will occur across our entire Network, based on Network Prioritisation.

15. SUSPENSION AND CANCELLATION OF PROGRAM SERVICES

- 15.1 Your rights to cancel or terminate:
- (a) You may cancel a Program Service by giving us **7 days** notice via the member service area of our Website provided that you may be liable to pay an early termination fee in accordance with **Clause 5.13** if you do so during a Fixed Term.
 - (b) You may otherwise cancel a Program 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 3.5** or **Clause 4.1(c)**;
 - (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; or
 - (iii) we are in material breach of our Agreement and it is something which cannot be remedied.

A decision by us to cease to provide Services, other than for your breach of the Agreement, is a material breach of the Agreement by us that allows you to terminate the Agreement without penalty or early termination fee.

If you cancel a Program Service for any of the reasons set out in this **paragraph (b)**, you will not be liable to pay an early termination 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 Program Service in accordance with **Clause 5.16**.

15.2 Preparation Costs

If you request a Program Service from us and cancel that request before we provide the Program 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 Program Service.

15.3 Our Suspension and Cancellation Rights

We may suspend, limit or cancel a Program Service if:

- (a) we give you notice of cancellation at least **42 days** before withdrawing or cancelling the Program Service;
- (b) you notify us in accordance with **Clause 15.1**;
- (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 Program Service;
- (g) there are reasonable grounds for believing a threat or risk exists to the security or integrity of our network or that provision of the Program Service may cause death, personal injury or damage to property;
- (h) we reasonably determine that such action is necessary to repair, maintain or restore any part of our network;
- (i) the provision of the Program Services by us is or may be unlawful or we have reasonable grounds to believe that it may become so;
- (j) an event occurs outside of our reasonable control preventing us from providing the Program Service, including explosions, natural disasters, war or an act of God; or
- (k) your Program Service has not been used or accessed for a continuous period of **24 months**.

For the avoidance of doubt, each of the events listed in **paragraphs (a) to (k)** above are exclusive to the other listed events, and give rise to the rights of suspension, limitation or cancellation without reference to the occurrence of any other act, omission, event or thing.

If we cancel or suspend the Program 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 5.16**.

You may also be entitled to apply for a new Program Service, either from us (if we still provide them) or from another provider.

15.4 Other Suspension or Cancellation Events

We may suspend, limit or cancel a Program Service if:

- (a) you vacate the premises to which we have been supplying a Program Service to you;
- (b) the Australian Competition and Consumer Commission (ACCC) issues us with a competition notice in respect of the Program Service or we reasonably anticipate that it may do so;
- (c) we are unable to enter the premises to inspect, repair or maintain any Equipment or cabling connected with a Program Service provided to you;
- (d) we have the right to do so in accordance with **Clause 5.15** for your failure to pay Fees or other amounts;
- (e) you do not provide prepayment as required by us in accordance with **Clause 5.17**;
- (f) we have reasonable grounds to suspect fraud or other illegal conduct by you or any person using your Program Service;
- (g) you fail to comply with our Acceptable Use Policy (if applicable to your Program 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 Program Services interferes with the efficiency of our network or a Supplier's network and you fail to rectify the situation within **24 hours** of being requested to do so by us;
- (j) during any technical failure, modification or maintenance involved in the Program Service provided that we will use reasonable endeavours to procure the redemption of the Program Services as soon as practicable and, where applicable, in accordance with **Clause 13.3**;
- (k) if you do, or allow to be done, anything which in our reasonable opinion may have the effect of jeopardising the operation of any Program Service;
- (l) you become a carrier or carriage service provider within the meaning of the *Telecommunications Act 1997*;
- (m) you become bankrupt, insolvent or have a receiver, manager, administrator or liquidator appointed over you or any of your assets;
- (n) we have reasonable grounds for believing you are a credit risk, including the following grounds:
 - (i) your usage of the Program 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 Program Service, or to suspend, limit or cancel a Program Service if there is unusual usage, and you remain liable to us for usage of that Program 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 Program Service; or

- (o) you are in material breach of any of the terms or conditions of our Agreement, including the terms of this Agreement, and where that breach is capable of being rectified, you fail to do so upon being given notice by us.

If we cancel or suspend the Program Service for any of these reasons, you will be liable to pay a disconnection fee and (if we agree to reconnect the Program 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 Program Service in addition to any other rights we may have under this Agreement or at law.

15.5 **Expiration of a Fixed Term or Other Period**

If we have agreed to provide a Program 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 Program Service, we will continue to supply the Program Service to you on a month-to-month basis.

15.6 **Connection Fees**

We may charge you a fee for the disconnection or reconnection of any Program 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 15.3**.

15.7 **Ongoing Liability**

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

16. **LIABILITY**

16.1 **Performance**

To the extent permitted by law and our commitments under **Clause 4.1**, we do not warrant that Program Services will be totally free of interruption, delays or faults of any kind. Before reporting a fault to us, you must take reasonable steps to ensure that the fault is not a fault in any of your Customer Equipment.

16.2 Terms Implied by Law

We agree to provide Program Services to you subject only to the terms, conditions and warranties contained in this Agreement and those which are implied by law and cannot be excluded. For example, if the Program Service we supply to you is of a kind ordinarily acquired for personal, domestic or household use then it may be implied by law that:

- (a) the Program Service must be provided with due care and skill; and
- (b) any goods supplied in connection with the Program Service will be reasonably fit for the purpose for which they are supplied.

In the event that we breach a term, condition or warranty that is implied by law and cannot be excluded then, subject to our right to limit our liability for that breach in **Clause 16.3**, we will be liable for that breach in accordance with the law applied in the courts having jurisdiction over this Agreement.

16.3 Limitation of Liability

Where we are not permitted to exclude our liability for any loss or damage in connection with our breach of a term, condition or warranty, but are permitted to limit our liability for such a breach, our liability to you is limited:

- (a) if the breach relates to the supply of Equipment, the repair or replacement of the Equipment, the supply of equivalent Equipment or the payment of the cost of repairing or replacing the Equipment or supplying equivalent Equipment; or
- (b) if the breach relates to the supply of a Program Service, resupplying the Program Service or payment of the cost of having the Program Service resupplied.

All conditions, terms and warranties which would otherwise be implied into our Agreement are expressly excluded except to the extent such exclusion is prohibited by law.

16.4 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) faults or defects in any facility or Equipment we provide to you or the Program Services which are caused by or contributed to by your conduct or misuse;
- (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 Supplier or any person who provides goods or services directly to you for use in connection with a Program Service.

However, we will use reasonable endeavours to ensure that any Supplier cooperates in order to deliver the Program Service in a timely manner, provides and maintains the Program Service in a responsible fashion and rectifies any faults in relation to the Program Service in a timely manner (and pursuant to our commitment in **Clause 13.3**).

16.5 **Cancellation of a Program Service**

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

17. **FORCE MAJEURE**

We are not liable for:

- (a) any delay in installing a Program Service;
- (b) any delay in correcting any fault in a Program Service;
- (c) failure to provide or incorrect operation of any Program Service;
- (d) Program 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.

18. **ASSIGNMENT**

18.1 **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.

18.2 **Our Right to Assign**

We shall not assign the whole or part of this Agreement to a third party without your prior written consent (not to be unreasonably withheld).

19. **GENERAL**

19.1 **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 Program Service, you consent to notices being sent to your email address. It is your responsibility to check you 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 Program 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 Agreement and any other applicable law or regulatory code, 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.

19.2 **Disputes**

We will seek to resolve any dispute by agreement or consultation with you. Give us a call first, we're here to help you: (08) 8423 4000.

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 or call the TIO on 1800 062 058 or (TTY) 1800 675 692. If your complaint relates to our compliance with the Australian Broadband Guarantee Program, please contact the Department on 1800 883 488.

19.3 **Current Terms**

A current version of our Agreement, the Acceptable Use Policy and the Schedule of Fees and Charges may be found at www.adam.com.au.

19.4 **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.

19.5 **Authority**

If you have a business Program 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 Program Services, you must inform us if you want another person to have authority to access or make changes to your Program Service or account. We will not let another person access your account unless we have received your authority to so.

19.6 **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.

19.7 **Governing Law**

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

19.8 No Reliance

You acknowledge that:

- (a) you are obtaining the Program Services entirely as a result of your own enquiries and that you do not rely on any statement, representation or promise by us or on our behalf not expressly set out in this Agreement;
- (b) advice from Adam Internet 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 of Adam Internet's staff members at your own risk;
- (c) 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.

19.9 Subcontractors

We may subcontract any of our obligations under this Agreement.

19.10 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.

19.11 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.

19.12 Severability of Provisions

Any provision of this 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 Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.