



# **Activ8me Wireless Broadband Service**

## **End User Terms and Conditions**

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## **1 Agreement**

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### **1.1 The Agreement**

The following documents make up your agreement with us and form the Standard Form of Agreement under the Telecommunications Act:

- (a) Application Form – Activ8me Wireless Broadband Service;
- (b) the Rate Plans;
- (c) these End User Terms and Conditions;
- (d) the Services Description;
- (e) the Optus Acceptable Use Policy; and
- (f) the Optus Mobile Fair Go Policy.

These documents set out the terms and conditions upon which Activ8me provide Service to you. A reference to “this agreement” is a reference to the above documents.

### **1.2 This document**

A reference to “these End User Terms and Conditions” or “these terms” is a reference to these End User Terms and Conditions.

## **2 Interpretation**

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### **2.1 Dictionary and interpretation**

Words beginning with a capital letter in these terms are set out in clause 24. These terms are to be interpreted in accordance with the rules for interpretation in clause 24.

### **2.2 Inconsistency**

If there is any inconsistency between the documents mentioned in clause 1.1, then the priority of the documents shall be the order in which those documents are set out in clause 1.1.

### **2.3 Amendments to this agreement**

We may amend this agreement from time to time in accordance with clause 12 or if required by law.

## **3 The Service**

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### **3.1 Commencement and term**

- (a) We will supply the Service to you commencing on the date we accept your application and on the terms and conditions set out in this agreement. We will cease to provide the Service to you on and from the termination of this agreement.
- (b) Your agreement is for the period specified in your Application Form or applicable Rate Plan. We will continue to provide the Service to you after the expiration of that period on a month to month basis, unless terminated by you.

### **3.2 Variations to the Service**

We may vary the Service, without liability, if reasonably required for technical or operational reasons as long we comply with clause 12 of these terms.

### **3.3 Nature of Service**

We provide the Service to you as a resupplier using the Optus Network. Activ8me does not represent or act on behalf of Optus. Activ8me engages a network of distributors to market the Service on behalf of Activ8me. The distributors do not represent or act on behalf of Optus. Activ8me and the distributors each conduct business independent of Optus.

### **3.4 Supply by other parties**

We may provide all or any part of the Service to you through the use of any of our Related Bodies Corporate and/or our agents.

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## **4 Personal use**

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### **4.1 Representations**

You represent and warrant that:

- (a) the Service will be used for your own personal use or business use only. Notwithstanding that the Service may be used for business use, the Service is a consumer grade service and is not intended to be used for mission critical applications; and
- (b) you are not a Carrier or Carriage Service Provider (as those terms are defined in the Telecommunications Act) engaged in reselling the Service,

### **4.2 Acknowledgement**

You acknowledge that if you become a Carrier or Carriage Service Provider (as those terms are defined in the Telecommunications Act) or resell the Service, then we may or our supplier may immediately cancel the Service upon giving notice to you. If this occurs, we will negotiate in good faith with you to enter into an agreement governing the supply of the Service, on terms to be agreed between you and us in our absolute discretion and subject to the law.

### **4.3 No resale or wholesale**

You must not:

- (a) wholesale any part of the Service (including transit, refile or aggregate domestic or international traffic) or part of the network or system involved in the provision of the Service; or
- (b) resell, distribute or reproduce any part of the Service.

### **4.4 Responsibility for persons using your Service**

You are responsible for and must ensure that any person you allow to use the Service complies with this agreement as if they were you.

## **5 Your obligations**

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### **5.1 General obligations**

In addition to any obligations set out in this agreement, you must:

- (a) not expose Activ8me or its suppliers or providers to any liability;
- (b) not transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted;
- (c) not misuse the Service;
- (d) not disclose to any person any confidential information or security number provided by Activ8me relating to the Service;
- (e) comply with the Optus Acceptable Use Policy, the Optus Mobile Fair Go Policy and Activ8me's usage policy;
- (f) keep any Equipment supplied by Activ8me safe and in good condition;
- (g) not exceed the Monthly Data Usage Limit;
- (h) provide any information and reasonable assistance to Activ8me or its suppliers to enable the Service to be provided to you;
- (i) comply with all reasonable directions by Activ8me with respect to access and use of the Service;
- (j) provide any information and reasonable assistance to Activ8me or its suppliers to enable investigations into activities of an illegal nature, including potential incidences of fraud;
- (k) comply with all laws, regulations, standards and industry codes applicable to you; and
- (l) comply with any rules imposed by any third party whose Content or services you access using the Service or whose network your data goes through.

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## 5.2 Prohibited Activity

In addition to any obligations set out in this agreement, you must:

- (a) not use the Service in any way which damages, interferes with or interrupts, suspends or bars the Service or the Network;
- (b) not use or access the Service for any activity of an illegal or fraudulent nature, or to break any law;
- (c) not use the Service in connection with a device that switches or reroutes calls to or from the Network or the network of any supplier;
- (d) not use the Service for the provision of services to support peer to peer applications (encrypted or unencrypted) or continuous file transfer;
- (e) not engage in spamming;
- (f) not reproduce, distribute, transmit, publish, copy, transfer or commercially exploit any information or Content accessed through or received from the service that would infringe the intellectual property right of any person; and
- (g) not engage in conduct which, in our opinion, could be reasonably expected to adversely affect our reputation or result in a liability to us.

## 5.3 Your acknowledgment

We will take all reasonable steps to provide you with the Service. However you acknowledge that:

- (a) Activ8me uses the network of other suppliers to provide the Service and is reliant on third parties (including third party suppliers who are not controlled or authorised by Activ8me) to provide the Service;
- (b) the Service is not free from faults or interruption (which may include network failure, any network congestion or any network drop out);
- (c) the Service is only available within the Service Area. You may not be able to use the Service in some areas and in some buildings within the Service Area;
- (d) quality and speed of the Service may vary;
- (e) the Service may not be available at all times;
- (f) there may be delays in transferring data when switching between bearer networks;
- (g) Activ8me or its suppliers may be required by law to intercept communications over the Service and may also monitor your usage of the Service and communications sent over the Network;
- (h) the Service does not support mobile number portability between mobile carriers and that you are not allocated with a mobile service number; and
- (i) Activ8me does not warrant that it will be able to supply the Service or any equipment associated with the Service; and

## 5.4 No warranty as to content

Activ8me does not exercise any control over, authorise or make any warranty regarding:

- (a) your right or ability to use, access or transmit any content (whether error-free, in time, or at all) using the Service;
- (b) the accuracy, reliability or completeness of any Content which you may use, access or transmit using the Service, including any data which Activ8me or its suppliers may cache as part of the Service;
- (c) the consequences of you using, accessing or transmitting any content using the Service, including without limitation any virus or other harmful software; and
- (d) any charges which a third party may impose on you in connection with your use of the Service.

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## 5.5 Direction

We may ask you to act or stop acting in a manner which we reasonably believe is contrary to this clause. You will as soon as reasonably practicable (but in any case within 3 days) comply with any such request. If you do not, then we may take any steps reasonably necessary to ensure compliance with this clause or the request.

## 5.6 Monitoring usage

- (a) We may monitor usage of the Service to ensure that you do not exceed the Monthly Data Usage Limit.
- (b) We may suspend or take such other action in relation to your Service if you exceed the Monthly Data Usage Limit or where your liability in any billing cycle exceeds such amount as reasonably determined by us from time to time. We will give you as much warning as possible. If your Service is suspended or cancelled under this clause, you will need to pay any applicable reconnection fees in respect of your service

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## 6 Network maintenance

### 6.1 Factors affecting quality

There are a number of factors affecting the quality and speed of the Service including, the number of people using the Network at any given time, associated line transmission rates, the computer hardware and software used by you, your geographical location, the type of activity you are engaged in, the speed and capacity of the server being accessed, the type of infrastructure within the Network you are using (depending upon location).

### 6.2 Quality

We will provide the Service to you with reasonable care and skill. In the event of unexpected faults we will use reasonable endeavours to ensure the Service is restored. We are not able to guarantee that the Service will be continuous or fault free due to the nature of the Network and our reliance on third party suppliers.

### 6.3 Customer service guarantee

- (a) If the Australian Communications and Media Authority publishes minimum performance standards for customer service guarantees that relate to the Service, we will use reasonable endeavours to meet those standards.
- (b) Subject to law, by ordering or using the Service, you agree to waive the protections and rights afforded to you under any customer service guarantee produced by ACMA including any statutory rebates for failure to meet certain stipulated times for deliveries, installations and repairs.

### 6.4 Maintenance

We may, or one of our suppliers may, conduct maintenance on the Network used to provide the Service. Whilst we will use reasonable endeavours to schedule maintenance outside of normal business hours, we may not be able to do so and may not be able to procure our suppliers to do so.

### 6.5 Faults

You must provide all reasonable assistance to enable us, or where necessary one of our suppliers, to investigate and repair a fault. We are not responsible for repairing any fault in the Service where the fault arises in or is caused by a supplier's network, or equipment that is owned by you or is not provided by us for your use.

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## 7 Termination, cancellation and suspension of Service

### 7.1 Suspension, cancellation or termination

We may (whether on our own or at the request of our suppliers) immediately suspend or cancel the Service or immediately terminate this agreement without liability to you upon giving notice to you for any reason including if:

- 
- (a) you breach these terms (including a breach of clause 4 (Personal Use) or a breach of clause 16 (Warranties));
  - (b) you do not meet your obligations set out in clause 5 (Your obligations);
  - (c) Activ8me is required by law to do so, or is requested to do so by a law enforcement agency;
  - (d) our agreement with Optus terminates;
  - (e) you or someone acting on your behalf informs Activ8me that you have lost any Third Party Equipment including a SIM Card, or Roaming Device;
  - (f) you provide false or incomplete information about you relating to the Service;
  - (g) you suffer an Insolvency Event;
  - (h) the use of the Service by you may cause damage to the Network;
  - (i) there are technical problems with the Network which requires corrective action by Activ8me or its suppliers;
  - (j) there is an Event of Default;
  - (k) there is a Force Majeure Event;
  - (l) you exceed the Monthly Data Usage Limit; or
  - (m) you die.

#### **7.2 Charges to you where suspension**

If we suspend the Service otherwise than as a result of our fault, we may ask you to pay a reconnection fee as set out in the Rate Plans. You may be entitled to a rebate if suspension of the Service is not attributable to you or if suspension of the Service is for an extended period that is not due to your actions.

#### **7.3 Rights to alter Service**

In addition to the rights in this clause, we may, at any time without notice or liability:

- (a) refuse to activate or re-activate any Service or comply with a request from you;
- (b) deactivate any Service for any activated service number; and
- (c) suspend part or all of any Service for any activated service number.

#### **7.4 Events of default**

The following events are events of default for the purposes of these terms:

- (a) **(non-payment)** if you fail to pay any amount that is due and payable by you under this agreement within 14 days of its due date; or
- (b) **(misrepresentation)** if any representation, warranty or statement made by or repeated by you in connection with this agreement is untrue or misleading (whether by omission or otherwise) in any material respect when made or repeated.

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## **8 Effect of Termination**

### **8.1 Monies become due and payable**

If this agreement is terminated:

- (a) all monies owing to us become due and payable; and
- (b) you must pay to us all costs and fees incurred by us up to and including the termination date.

### **8.2 Early termination**

Without limiting clause 8.3, if you terminate this agreement before the end of any applicable term then you must pay a genuine pre-estimate of the loss incurred by Activ8me which shall be the lesser of:

- (a) an amount equal to the monthly access fee as set out in the Rate Plans payable for the remainder of the relevant term; or
- (b) the early termination fee set out in the Rate Plans (if applicable).

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### **8.3 Other obligations**

On termination of this agreement for any reason:

- (a) you must immediately stop and procure that any third party stops using the Service;
- (b) you must immediately pay the balance of the retail price of any Equipment provided by us or our supplier that is not owned by you; and
- (c) you must immediately return to us at your expense and risk all Equipment owned by us or our supplier or equipment which you have purchased but not fully paid for (including any SIM Card).

### **8.4 Claims and rights not affected**

Termination of this agreement does not affect:

- (a) any Claim either party may have against the other in respect of anything done or required to be done before termination; or
- (b) each person's accrued rights and obligations are not affected and the parts of this agreement which are by their nature intended to survive termination of this agreement will do so.

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## **9 Equipment and software**

### **9.1 Title in SIM Cards**

You acknowledge that Activ8me does not own the SIM Cards provided to you. All SIM Cards remain the property of Optus and do not become your property. You hold the SIM Cards as bailee for Optus. Risk in the SIM Cards will pass to you on delivery to you.

### **9.2 Obligations in relation to equipment**

You must ensure that all equipment used by you in relation to the Service and the manner in which you use that equipment complies with all laws and any directions reasonably given by us.

### **9.3 Equipment not acquired through Activ8me**

If you wish to use the Service and you have a Roaming Device that is not acquired through Activ8me then:

- (a) we will charge a swap-over fee as may be set out in the Rate Plans; and
- (b) you will not receive the benefit of any warranties relating to the Equipment.

### **9.4 Equipment acquired through Activ8me**

- (a) You may purchase Equipment from us or any of our agents to use in connection with the Service.
- (b) Any Third Party Equipment remains our property or the property of our agent or our supplier Optus (as the case may be) until payment in full.
- (c) Subject to our obligations under any law (including statutory warranties), you bear the risk of any Third Party Equipment on receipt of the Equipment by you. You must not mortgage or grant a charge, lien or encumbrance over any Third Party Equipment until you have paid for it in full.
- (d) Upon termination of this agreement, the balance of the retail purchase price of the Third Party Equipment as at the time you entered into the agreement becomes immediately due and payable.
- (e) Until you own any Third Party Equipment, you must take reasonable care of it and take responsibility for its safety and storage.

### **9.5 Software**

- (a) You must comply with the terms of any licence for any software provided to you in relation to the Service (including any software provided any third party to enable us to provide the Service to you).
- (b) We do not, and our suppliers and agents do not make any warranty or representation regarding the performance or compatibility of software on your computer. You agree not to make a claim against us or any of our suppliers in respect of the software or its performance.

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- (c) You must not, disassemble, decompile or reverse engineer any software provided by us, our suppliers or Optus in relation to the Service.

## **10 Privacy and Personal Information**

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### **10.1 Warranty**

You warrant that all information you have provided or will provide to us under this agreement or in connection with the Service will comply with any laws relating to the collection and disclosure of personal information under the Privacy Laws.

### **10.2 Purpose of collecting Personal Information**

Activ8me, its agents and suppliers may collect, use and disclose Personal Information provided by you for purposes relating to the supply of the Service, or for purposes that would be reasonably expected as part of the supply of the Service (including for the purpose of keeping you informed about features of our services or the services of our supplier, conducting research in order to provide a better service to you, for the purposes of internal administration and for promotional and marketing purposes).

### **10.3 Disclosure**

We may receive and disclose Personal Information about you and information relating to your Service (including any listed or unlisted telephone number, IP address, address and account history) to or from:

- (a) third parties such as our suppliers for the purpose of supplying a Service to you;
- (b) credit providers or credit reporting agencies for purposes permitted under the Privacy Laws (including obtaining a consumer or commercial credit report about your creditworthiness, credit history, credit standing and credit capacity and/or to allow the credit reporting agency to create or maintain a credit information file containing information about you which may include the fact that payments are overdue by more than 60 days or that you have committed a serious credit infringement);
- (c) law enforcement agencies to assist them in the prevention of criminal activity;
- (d) our service and content providers, dealers and agents, or any company within the Activ8me group for purposes that are related to providing you with a service which would be reasonably expected;
- (e) to Optus or another supplier where the provision of the Service is transferred to that supplier under this agreement; and
- (f) other persons where a disclosure is permitted by the Privacy Laws or other laws.

### **10.4 Promotions**

If you have elected to receive promotional offers via electronic form, you agree to receive promotional offers and information via electronic messaging (such as SMS, MMS or email) from Activ8me or Activ8me's suppliers, unless you withdraw this consent.

### **10.5 General**

- (a) We will take all reasonable steps to protect your Personal Information.
- (b) We will provide you with access to your Personal Information in accordance with the Privacy Laws and our Privacy Policy. If any of your Personal Information is inaccurate, you may request that it be corrected.
- (c) You acknowledge that any calls made to an Activ8me customer call centre may be recorded for quality assurance purposes.

## **11 Fees and charges**

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### **11.1 Commencement**

We will charge you for your use of the Service on and from the commencement of the Service under clause 3.1.

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## **11.2 Rate Plans**

Details of your rate plan containing the fees and charges payable by you are set out in the Rate Plans. These details may change if these details are varied under clause 12 or Optus commence supplying the Service under clause 21.

## **11.3 Monthly invoices**

You will be invoiced monthly in advance at the start of each month for your Plan Fee and in arrears for your excess usage of the Service during that month and any other charges incurred We will use reasonable endeavours to:

- (a) process and deliver invoices within 10 business days of the closure of the billing period;
- (b) incorporate all charges incurred by you within the current billing period. Where charges appear on your invoices that relate to a previous billing period this will be clearly set out; and
- (c) pass on third party supplier charges as soon as practicable.

## **11.4 Minimum fees**

You agree to incur charges at least equal to the minimum spend, if any, set out in Rate Plans. If you do not do so, then we may from time to time invoice you for any shortfall, in addition to charges actually incurred.

## **11.5 When fees payable**

You must pay the fees even if:

- (a) the Service is unavailable or the Network is unavailable; or
- (b) you are unable to use the Service for any reason,

provided that if the Service is suspended or unavailable for use for a substantial period, we may provide a discount for the period in which the Service was suspended or unavailable for use.

## **11.6 Payment terms**

You must pay all fees and charges set out in any invoice by the due date. You must pay each invoice by the method set out in any invoice or by electronic funds transfer (direct debit or credit card) to a bank account nominated from time to time by us.

## **11.7 Prepayment**

In certain circumstances, we may request you to pay in advance the estimated cost of using your Service for the billing period. We will only ask you to do this if you have no credit record or if we have reason to believe that you have failed to pay outstanding charges on a previous account.

## **11.8 Paper based invoices**

An additional administration charge of \$2 as varied by clause 12, for invoices sent by pre-paid post.

## **11.9 Late or dishonoured payments**

- (a) If you do not pay an invoice by its due date, we may charge you an administrative fee, as varied by clause 12.
- (b) If you pay a bill by direct debit and there are insufficient funds, a bank dishonour fee will automatically be charged to your account, as varied by clause 12.

## **11.10 Indemnity for late payment**

You indemnify us against all Losses incurred by us including all legal costs and other expenses incurred by us in connection with a demand, action, or other proceeding taken for recovery of any debt owing from you to us.

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# **12 Variations**

## **12.1 When variation may be made**

Activ8me may vary this agreement (including varying the service charges and adding new types of charges) if:

- (a) the change will not have any effect or will benefit, or places a minor detriment upon you; or

- 
- (b) you agree to the variation.

## **12.2 Changes requiring notice**

If we vary the service charges or add new types of charges and the change could be reasonably expected to have a detrimental impact on you, we will give you at least 21 days notice.

## **12.3 Date of variations**

Variations will become effective on the date specified in the notice.

## **12.4 Variations entitling you to cancel Service**

If we propose a variation which may have detrimental impact on you, we will give you 42 days from the date of the notice to cancel the Service. If you cancel the Service in accordance with this clause we will charge you for:

- (a) usage or access fees incurred up to the date on which you notify us of cancellation of the Service;
- (b) if you have acquired and not paid for the Equipment in full, the balance of the retail price of the Equipment provided as at the date you enter into this agreement; and
- (c) any other outstanding amounts.

## **12.5 Showing detrimental impact**

If you provide evidence that you will suffer a greater than minor detriment upon a variation to our charges or fees, the rights under clause 12.4 apply.

## **12.6 Likely variations**

- (a) If the prices charged by Optus to us change, we may pass the changes on to you.
- (b) If a tax imposed by law changes, we may pass on the change to the tax imposed by law.
- (c) In addition to the costs you incur for your use of the Service, we may charge you for administration and other similar charges if you cancel, change, suspend, terminate the Service or otherwise pay late, which fees may only be genuine costs incurred by us.

# **13 Support and fault reporting**

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## **13.1 Contact**

We aim to provide support and resolve all faults efficiently and effectively in accordance with our support and fault reporting policy. If you wish to report a fault please contact us by telephone, by email or by writing.

# **14 Complaints and disputes**

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## **14.1 Complaints procedure**

- (a) If you have a complaint in relation to the Service, you may complain by telephone to us or in writing to us in accordance with our complaints procedure as amended from time to time. A copy of our complaints procedure is available on our website or upon request by you.
- (b) We will use our best endeavours to assist you to resolve your complaint. If we are not able to satisfactorily resolve your complaint, you may lodge your complaint with various industry bodies, including but not limited to, the Telecommunications Industry Ombudsman, or the relevant Department of Consumer Affairs in your state or territory.

# **15 Financial undertaking**

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## **15.1 Financial security**

We may from time to time, upon reasonable notice to you seek and you shall provide for the purposes of assessing your creditworthiness or as security against non-payment any combination of the following:

- (a) financial information;
- (b) varying levels of financial security (for example a guarantee, charge, deposit or debtors insurance);

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- (c) if you are a corporation, personal guarantees from any directors; and/or
  - (d) if you are a corporation, corporate guarantees from any of your Related Body Corporates.

## **16 Warranties**

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### **16.1 Customer**

You represent and warrant on the date of your application, and on each date this agreement continues that:

- (a) this agreement constitutes your legal, valid and binding obligations, enforceable against you;
- (b) you are not the subject of an Insolvency Event;
- (c) if you are a corporation, you have taken all corporate action that is necessary or desirable to authorise your entry into this agreement and your carrying out the transactions that this agreement contemplates; and
- (d) you have provided full and accurate information to Activ8me in connection with this agreement.

## **17 Exclusion of liability**

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### **17.1 Exclusions**

Except where to do so would contravene any law or cause any part of this agreement to be void or unenforceable, Activ8me excludes liability for any and all Losses suffered or incurred by you or any person that uses the Service in connection with:

- (a) any SIM Cards or Roaming Devices or failure or delay in supplying SIM Cards or Roaming Devices as part of the Service;
- (b) failure for any reason to activate, reactivate or to deactivate the Service or a service number;
- (c) any failure to provide all or part of any of the Service as a result of our suppliers, including due to any network failure, any network congestion or any network drop out, or any delay in providing the Service where that failure is not the fault of Activ8me;
- (d) a breach by you of this agreement;
- (e) any incorrect information provided by you or any third party;
- (f) access by you or a person using your Service to any material available to the public that you find offensive, upsetting, defamatory or personally offensive; and
- (g) access by you or a person using your Service to any sites that may be illegal or pornographic.

### **17.2 Optus exclusion**

You acknowledge that Optus is not liable to you (in contract, tort (including negligence) or otherwise) in relation to any part of the Service supplied to you or any delay or any failure to provide the Service.

## **18 Liability**

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### **18.1 Scope of liability**

Nothing in this agreement removes or limits any rights that you have under existing laws or regulations. We accept liability to you in connection with this agreement, but only to the extent provided in this clause and clause 17. We exclude any Loss or liability (including in negligence) that we might otherwise have to you in connection with this agreement to the extent that such liability or Loss is not expressly accepted under this clause.

### **18.2 Implied warranties and conditions**

Activ8me shall be liable under the *Trade Practices Act 1974 (Cth)* and other laws, only to the extent where not to do so would be illegal or would make any part of this clause void or unenforceable. Otherwise, Activ8me excludes all conditions and warranties implied into this agreement and limits its liability for any non-excludable conditions and warranties, where permitted by law to do so, at the option of Activ8me to:

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- (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
  - (b) in the case of services, the supplying of the services again or the payment of the cost of having the services supplied again.

### **18.3 Personal injury**

Each party indemnifies the other party for all Loss to the other party arising from personal injury to the other party's personnel to the extent it is caused directly by the negligence of the first party in connection with this agreement.

### **18.4 Consequential loss**

To the extent permitted by law, we are not liable for any Consequential Loss even if the possibility of such a Loss being suffered has been brought to the attention of Activ8me.

## **19 Indemnity**

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### **19.1 General Indemnity**

To the maximum extent permitted by law, you release Activ8me from, and must indemnify and hold harmless Activ8me and its officers, employees, suppliers and agents (those indemnified) from and against, any Loss or Claim (including reasonable legal costs and expenses) brought against, incurred or suffered by Activ8me or liability reasonably incurred or suffered by any of those indemnified arising from any proceedings against those indemnified and arising directly or indirectly in connection with the provision of the Service by Activ8me including:

- (a) where such loss or liability was caused by a breach of your obligations under this agreement;
- (b) where such loss or liability was caused by any wilful, unlawful or negligent act or omission by you; or
- (c) any claims brought by you or any third person for loss suffered as a result of a defect in the Service.

## **20 GST**

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### **20.1 GST payable**

All amounts paid in or provided for or in connection with this agreement are, unless otherwise specified, exclusive of GST. If the supply of goods or services by one party (Supplier) to another party (Recipient) under this agreement is a taxable supply, then the amount due to the Supplier for that supply will be the sum of:

- (a) the amount that is payable under this agreement by the Recipient for that supply (or, if no amount is payable, the value of that supply); and
- (b) the amount of GST payable by the Supplier in respect of that supply.

### **20.2 Definitions**

In this clause, any expression used that is defined in GST Law has that defined meaning.

## **21 Transition**

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### **21.1 Transferring**

- (a) We may at any time arrange for other suppliers to provide the infrastructure or services to enable us to provide the Service to you.
- (b) If arrangements between Optus and Activ8me are terminated, Optus may arrange to supply the Service directly to you.

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## 22 Assignment and subcontracting

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### 22.1 Assignment

- (a) Activ8me shall have the right to assign or novate all or part of its rights and obligations under this agreement to any of its suppliers or any other party without any further consent required by you.
- (b) Your rights under this agreement are personal. You must not assign or novate all or part of your rights and obligations under this agreement.

### 22.2 Subcontract

We may subcontract for the performance of this agreement or any part of this agreement to any party without obtaining your prior written consent.

## 23 General conditions

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### 23.1 Severance

This deed is to be interpreted so that it complies with all applicable laws. If any provision of this agreement is held to be illegal, invalid or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable. If that clause cannot be read down, then that provision shall be severed without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this agreement.

### 23.2 Further assurances

The parties will promptly execute all documents and do all things that the other party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of this agreement.

### 23.3 Non-merger of provisions

A provision of this agreement which can and is intended to operate after its conclusion will remain in full force and effect.

### 23.4 Waiver

A single or partial exercise or waiver of a right relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

### 23.5 Jurisdiction

This agreement is governed by and construed in accordance with all applicable laws in force in Victoria from time to time, and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

### 23.6 Statements by Activ8me

A statement by Activ8me on any matter relating to this agreement (including any amount owing by you) is conclusive unless clearly wrong on its face.

### 23.7 Agency

You appoint Activ8me as your agent for the purposes of completing any customer authorisation form on your behalf.

### 23.8 Continuing indemnities

Each indemnity contained in this agreement is an independent and continuing obligation and survives termination of this agreement, despite a settlement of account or any other matter.

## 24 Definitions and Interpretation

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### 24.1 Definitions

The following definitions apply in these terms:

**Activ8me** means Australian Private Networks Pty Ltd (ACN 103 009 552) and its Related Bodies Corporate and any successor in title.

**agreement** means the agreement as defined in clause 1.1.

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**Claim** means a claim, action, proceeding or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Consequential Loss** means any special, indirect, incidental, consequential or economic loss (including loss of profits, revenue, savings, opportunity or goodwill), even if the possibility of such a loss being suffered has been brought to the attention of the relevant party.

**Content** means all forms of information, including text, voice, pictures, animations, video, sound recordings, software, separately or combined, sent and received across a network.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Equipment** means equipment required to access the Service, including the Roaming Device and the SIM Card.

**Event of Default** has the meaning set out in clause 7.6.

**Force Majeure Event** means an occurrence or omission as a direct result of which the party relying on it is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this agreement and that is beyond the reasonable control of that party, including (but not limited to) an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, electrical outages, computer viruses, network failure, any network congestion or any call drop out, lightning, fire, earthquake, storm, flood, drought, disease, inevitable accident, explosion or executive or administrative order or act of either general or particular application of a government (whether de jure or de facto).

**GST** means has the same meaning as set out in GST Law

**GST Law** means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means, in relation to a person, when the person is:

- (a) insolvent as that term is defined in section 9 of the Corporations Act;
- (b) the subject of an event described in sections 459C(2) (a) to (f) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement may reasonably deduce it is so subject); or
- (c) an insolvent under administration or suffers the appointment of a controller, administrator, liquidator or provisional liquidator as those terms are defined in section 9 of the Corporations Act other than to carry out an amalgamation or reconstruction while solvent; or
- (d) is subject to winding up proceedings (in the case of a company)
- (e) is otherwise unable to pay its debts as and when they become due and payable; or
- (f) being a natural person, commits or suffers an act of bankruptcy; or
- (g) takes or suffers a similar consequence in debt to those set out above under the law of any jurisdiction.

**Loss** means a damage, loss, cost, expense or liability incurred by the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent, and includes Consequential Loss.

**Monthly Data Usage Limit** means, in any calendar month, the amount of data that you have uploaded and downloaded in using the Service, measured in gigabytes or megabytes as nominated by you in your application.

**Network** means any telecommunications network, equipment, facilities or cabling controlled by Activ8me, or its suppliers (including the Optus Network).

**Optus** means Optus Mobile Pty Ltd (ABN 65 054 365 696) and includes Singapore Telecommunications Limited (ARBN 096 701 567) and each of their Related Bodies Corporate.

**Optus Acceptable Use Policy** means the OptusNet Acceptable Use Policy as published by Optus setting out the rules and guidelines with which you must comply in using the Service.

**Optus Network** means any telecommunications network, equipment, facilities or cabling controlled by Optus.

**Optus Mobile Fair Go Policy** means the most current Optus Mobile Fair Go Policy published by Optus from time to time.

**Prohibited Activity** means the activities specified in clause 5.2.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether included in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Privacy Laws** means *Privacy Act 1988* (Cth), the Telecommunications Act and the *Spam Act 2003* (Cth), each as amended or replaced from time to time.

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**Privacy Policy** means Activ8me's privacy policy as amended or replaced from time to time. The most recent version of the privacy policy is available at on the website.

**Rate Plans** means the Rate Plans provided to the customer at the time of entering into the Agreement as amended in accordance with these terms from time to time.

**Related Body Corporate** has the meaning as that term is defined in the Corporations Act.

**Roaming Device** means a wireless model (such as a USB modem or 3G PC Data Card) which is used to access the Network.

**Service** means the service set out in the Service Description.

**Service Area** means the area in which the Service is available as specified in the Service Description or by Activ8me from time to time.

**Service Description** means the document containing description of the services as provided to the customer at the time of entering into this agreement and as amended from time to time.

**SIM Card** means a subscriber identity module card of the type provided to you which contains customer and associated information and which when activated and used with a Roaming Device enables access by you to the Network.

**Telecommunications Act** means the Telecommunications Act 1997 (Cth).

**Third Party Equipment** means any equipment provided by us, our supplier or our agents to you that has not been fully paid for by you.

**we or us or our** means Australian Private Networks Pty Ltd (ACN 103 009 552) and its Related Bodies Corporate and any successor in title.

**You or you** means the customer who fills out the application for the Service (and your and yours is to be construed accordingly).

## 24.2 Rules for Interpreting this agreement

The following rules also apply in interpreting this agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
- (b) A reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) A reference to a party to this agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- (d) A reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (e) Headings are for convenience only, and do not affect interpretation.
- (f) A singular word includes the plural, and vice versa.
- (g) A word which suggests one gender includes the other genders.
- (h) If a word is defined, another part of speech has a corresponding meaning.
- (i) Words defined in the GST Law have the same meaning where context permits.
- (j) A reference to a party in this agreement is a reference to you or us.

## 24.3 Multiple parties

If you are made up of more than one person then:

- (a) your obligations apply to each of those persons jointly and severally; and
- (b) any other reference to you is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.