



# STANDARD FORM OF AGREEMENT

## ACTIV8ME ADSL

Australian Private Networks Pty Ltd trading as Activ8me ABN 27 103 009 552  
Building 2, Level 2, 13A Albert Street Preston Victoria 3072

**Telephone:** 1300 760 219

**Website:** [www.activ8me.net.au](http://www.activ8me.net.au)





## Part A Agreement Overview

### 1 Agreement Overview

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#### 1.1 Overview

The following documents make up your agreement with us (**Agreement**):

- (a) Part A – Agreement Overview (this document) (**Agreement Overview**)
- (b) Part B – Application Form – Activ8me ADSL Service (**Application Form**)
- (c) Part C – Terms and Conditions (**Terms and Conditions**)
- (d) Part D – Service Description (**Service Description**)
- (e) Part E – Dictionary (**Dictionary**)

#### 1.2 Dictionary and interpretation

Part E – Dictionary contains definitions and rules for interpretation for the Agreement in addition to definitions appearing in other Parts of the Agreement.



## Part C Terms and conditions

### 1 Supply

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#### 1.1 Supply

This Agreement (including these terms) sets out the terms and conditions on which we will supply the Service to you.

#### 1.2 Nature of Service

You must satisfy the Eligibility Criteria to acquire the Service.

#### 1.3 Variations to the Service

You acknowledge that the Service may be unavailable for periods of time and may be varied for technical or other reasons without notice to you. We will use reasonable endeavours to provide you with appropriate notice where possible.

#### 1.4 Limitations

The Service is supplied on the basis of limitations contained in the Service Description. We do not guarantee that the Service will be continuous or fault free.

#### 1.5 No warranty

We do not warrant that we will be able to supply the Service or any equipment associated with the Service.

#### 1.6 Customer Service Guarantee

Refer to the Service Description for information as to whether or not the Customer Service Guarantee applies to the Service.

#### 1.7 Resupply

We resupply the Service to you using the Activ8me Network and networks and systems supplied by other Wholesale Service Providers. However, we do not represent or act on behalf of those Wholesale Service Providers. You must contact us if you have any queries or issues with respect to the supply of the Service.

#### 1.8 Change of supplier

We may or our Wholesale Service Providers may change the supplier of the Network used to supply the Service. If this occurs, then the equipment on your premises may need reconfiguration to enable your equipment to connect to the new Network. You agree to allow us and/or our Wholesale Service Providers to access your site or premises for the purpose of making these changes.

### 2 Term

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#### 2.1 Term

Subject to this Agreement, we will supply the Service to you for the Term.

#### 2.2 Supply after conclusion of Term

Subject to this Agreement, we will continue to supply the Service to you after the Term expires on a month to month basis unless you elect to terminate by giving written notice to us. The cancellation will take effect on your next monthly anniversary date. If you ask to cancel your Service, you will be required to pay the full month's service fee for your current billing month and any other applicable usage, data block and other charges.

### **3 Your use of the Service**

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#### **3.1 Use**

You must only use the Service for your own personal use or business use in accordance with this Agreement. You must not use or rely on the Service for priority assistance, mission critical applications or any use outside the parameters of the Eligibility Criteria.

#### **3.2 No resale or wholesale**

You must not wholesale, resell, distribute or reproduce all or any part of the Service without our prior written consent.

#### **3.3 Responsibility for third parties**

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.

#### **3.4 Prohibited activity**

You must:

- (a) not use or access the Service in an unlawful manner or for any activity of an illegal or fraudulent nature;
- (b) not expose Activ8me or its Wholesale Service Providers to any liability;
- (c) not use the Service to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or which constitutes spam;
- (d) not use the Service to transmit, publish or communicate material which breaches the Intellectual Property Rights of any third party or which infringes any duty or obligation in contract, tort or otherwise;
- (e) not misuse the Service;
- (f) not use the Service for purposes that are not in connection with the intended application of the Service or would unreasonably degrade the Service, the Network or other user's experience of the Service;
- (g) not use the Service in a manner prohibited by the Service Description;
- (h) not use the Service in any way which damages, interferes with or threatens the Network, systems, equipment or facilities of Activ8me or its Wholesale Service Providers;
- (i) comply with all reasonable directions by Activ8me with respect to access and use of the Service.

#### **3.5 No security interest**

You must not create, or cause to be created, any security interest (including any liens, encumbrances, charges or mortgages) over any part of the Service including any Network used to supply the Service.

### **4 Your obligations**

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#### **4.1 Acceptable Use**

You agree to use the Service in accordance with our Acceptable Use Policy as amended from time to time.

#### **4.2 Eligibility Criteria**

You warrant that you satisfy the Eligibility Criteria from the commencement of the Term and at all material times.

#### **4.3 Provide assistance**

You agree to provide any information and reasonable assistance to Activ8me or its Wholesale Service Providers to enable the Service to be provided to you. You must provide true and complete answers to any reasonable installation questions which may affect or prevent successful installation, commissioning or testing of any equipment provided as part of the Service.

#### **4.4 Assist with investigations**

You must provide any information and reasonable assistance to Activ8me or its Wholesale Service Providers to enable investigations into activities of an illegal nature, including potential incidences of fraud, whether or not they concern you or anyone you know.

#### **4.5 Disparaging comments**

You must not engage in conduct which, in our opinion, could be reasonably expected to adversely affect our reputation or result in any liability to us or to any third party.

#### **4.6 Your acknowledgment**

You acknowledge that:

- (a) Broadband Plan speeds are indicative maximum speeds only and Activ8me does not warrant that any broadband plan speed will in fact be achieved at any time or under any conditions
- (b) 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 to the extent the law allows;
- (c) Activ8me may disconnect or procure the disconnection of any connections made by you or on your behalf to any Wholesale Service Provider's Network, systems, equipment, property or facilities in connection with Activ8me's supply of the Services;
- (d) we do not exercise any control over, authorise or make any warranty regarding access of any content used when using the Service;
- (e) we will not be liable for any third party charges which may be incurred by accessing content, services, sites or software of third parties;
- (f) If transferring (churning) to Activ8me, any features on your current service may not be carried over, for example call barring. These features may be able to be reinstated by you calling our Customer Care Centre.

### **5 Changing your Service**

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#### **5.1 Request**

You may request a change (including a transfer, upgrade or downgrade) to your Service once per month. We will use reasonable endeavours to make the change provided that the change is feasible and can be achieved technically. Charges may apply for change(s) of plan. If you change your plan, then the change will come into effect in your next billing cycle. Fees for varying your Service will be set out in the Application Form and/or Critical Information Summary or will be notified to you. A requested upgrade of a Long Term Satellite (Sky Muster) plan is subject to our compliance with the NBN Fair Use Policy and may not be possible.

### **6 Support and fault reporting**

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#### **6.1 Contact**

You may request support or report a fault by telephone, email or in writing as set out in the Application Form, or as notified to you on our website from time to time.

#### **6.2 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 Wholesale Service Provider's Network, or equipment that is owned by you or is not provided by us for your use.

### **7 Access to premises**

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#### **7.1 Acknowledgment**

You acknowledge that for us to supply the Service we may be required to attend and access the site or premises at which the Service will be or is supplied.

## **7.2 Access**

You must provide us and our Wholesale Service Providers with safe and timely access to any site or premises to enable us or our Wholesale Service Providers to enter and do anything necessary in respect of that site or premises to:

- (a) supply and install the Service;
- (b) deliver, install, connect, inspect, reposition, modify, replace, maintain, repair, service, disconnect and remove any equipment used for in or in connection with the Service (including any equipment or other items owned or controlled by a Wholesale Service Provider); and
- (c) exercise any of our rights or perform any of our obligations.

## **7.3 Further assurances**

You agree to provide such other consents in such form required by us to enable us or a Wholesale Service Provider to access a site or premises for the purposes set out in clause 7.2.

## **7.4 Consent**

To the extent that any site or premises is not owned, controlled or occupied by you, you must notify us of this fact and provide valid consents from the rightful owner, controller or occupier of the site or premises in such form as required by us.

# **8 Equipment and software**

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## **8.1 Equipment**

We may provide you with equipment for use in conjunction with the Service. Unless paid for in full, you will be required to keep this equipment on your premises. Upon request by us, you must provide to us the location of any equipment we have provided to you.

## **8.2 Ownership**

Any equipment supplied by us or our Wholesale Services Providers will remain our property or our Wholesale Service Provider's property (as the case may be) unless paid for in full.

## **8.3 Maintenance**

If you require maintenance or servicing of equipment provided by us or our Wholesale Service Providers, then you must let us know.

## **8.4 No marking equipment**

You must not interfere with, alter or deface any labelling, identification or trademark affixed to any equipment provided by us or our Wholesale Service Providers.

## **8.5 Return of equipment**

You will be liable for the costs associated with the repair or replacement of equipment if, in our reasonable opinion, any equipment is not returned to us in the same condition as when it was supplied (fair wear and tear excepted). You must permit us or our Wholesale Service Providers to access any site or premises to collect any equipment owned by us or our Wholesale Service Provider in accordance with this Agreement.

## **8.6 Obligations in relation to equipment**

You must keep any equipment supplied to you under this Agreement, including any equipment provided by our Wholesale Service Providers, safe and in a suitable environment and must use the equipment in accordance with the directions of use. 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.

## **8.7 Equipment not supplied by us**

We are not liable for the operation or compatibility of any equipment relating to the Service that is not supplied by us.

## **8.8 Security interest**

You must not mortgage or grant a charge, lien or encumbrance over any equipment owned by us or our Wholesale Service Providers.

## **8.9 Software**

You must comply with the terms of any licence for any software provided to you in relation to the Service (including any software provided by any third party to enable us to provide the Service to you). You must not, disassemble, decompile or reverse engineer any software provided by us or our Wholesale Services Providers.

## **9 Billing**

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### **9.1 Commencement**

We will charge you for your use of the Service on and from the Connection Date in accordance with the service that you have chosen.

### **9.2 Charges**

Depending on the chosen service there may be charges for:

- a) site visit
- b) extra hardware
- c) new developments charge
- d) connection;
- e) disconnection;
- f) reconnection;
- g) early termination
- h) monthly access / rental;
- i) data used;
- j) calls made;
- k) calls received; and
- l) any other services supplied to you under this Agreement.

Subject to any change or variation pursuant to this Agreement, applicable fees and charges are identified in the Application Form and/or the Critical Information Summary.

Data usage may be charged at different peak and off-peak rates as set out in the Application Form and/or the Critical Information Summary.

You may also be charged by third party suppliers for calling certain numbers or accessing phone features not listed in our rates schedule. We are not responsible for these charges, which will be billed as pass-through charges from third party suppliers.

Bundling is only available on certain Activ8me internet plans. If you cancel or change one of your bundled services, you may no longer receive the monthly or other discount and the bundle plan rates will revert to our standard rates.

### **9.3 Monthly invoices**

You will be invoiced monthly for your service and any other charges (if applicable). We will use reasonable endeavours to:

- (a) process invoices at the start 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.

### **9.4 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 or credit for the period in which the Service was suspended or unavailable for use at our own discretion.

#### **9.5 Payment terms**

You will be required to pay your invoices for your elected plan for the Service by direct debit or by credit card on the due dates. If you pay your monthly invoice via Visa or MasterCard, a merchant fee of 1% of the total monthly invoice will be charged. There is no merchant fee for payments made by AMEX card. If you cannot pay by direct debit or credit card, you must pay all fees and charges set out in any invoice within 10 business days of the date of the invoice.

#### **9.6 Prepayment**

In certain circumstances, we may ask you to pay in advance the estimated cost of using your Service for a period of up to 12 months or any other time frame as determined by us. We will only ask you to do this if you elect not to pay by direct debit, you have no credit record or if we have reason to believe in our absolute discretion that you are at risk of defaulting in payment.

#### **9.7 Paper based invoices**

A tax invoice for all payments direct debited by us from your bank account or credit card is available to you on our website under 'My Account', which can be accessed with your username and password. If you request to receive your invoice by pre-paid post, we will charge you a \$2.00 administration charge.

#### **9.8 Late or Dishonoured payments**

If you do not pay an invoice by its due date or your cheque or Direct Debit payment is dishonoured, we will charge you a late payment / dishonour fee of \$15.00 that will appear on your next monthly invoice to help cover our administrative costs.

#### **9.9 Indemnity**

You will indemnify us against all Losses, including all legal costs and other expenses incurred by us (on an out of pocket basis) in connection with any demand, action, or other proceeding taken for recovery of any debt owing by you to us.

#### **9.10 Early termination fees**

You must pay:

- (a) An early termination fee as specified in the Application Form and/or Critical Information Summary if your Service is terminated within the minimum commitment period from the Start Date nominated by you in the Application Form; and
- (b) any applicable early termination fees in respect of your Service, as set out in the Application Form and/or Critical Information Summary, if your Service is suspended or cancelled under this clause.

### **10 Privacy and Personal Information**

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#### **10.1 Warranty**

You warrant that all information you have and will provide to us will comply with Privacy Laws.

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

We will keep and use your Personal Information in accordance with our privacy policy available on our website and Privacy Laws. Activ8me, its agents and Wholesale Service Providers may collect, use and disclose your Personal Information to third parties for the purpose of:

- (a) supplying and billing the Service;
- (b) keeping you informed about upgrades, maintenance and features of our services or the services of our Wholesale Service Provider;
- (c) conducting research in order to provide a better service to you;
- (d) enabling our Wholesale Service Providers to seek feedback about the nature of the Service;
- (e) referring any debts owed by you to a debt collection agency; and

- (f) promotional and marketing purposes.

### **10.3 Disclosure**

Without limiting clause 10.2, 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 the Service to you;
- (b) credit providers or credit reporting agencies for the purposes permitted under the Privacy Laws, including, but not limited to, 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, where obliged to do so under our licence conditions or any applicable law including but not limited to the *Telecommunications (Interception and Access) Act 1979* (Cth);
- (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 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 Privacy Laws or other laws.

## **11 Complaints and disputes**

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### **11.1 Complaints procedure**

If you have a complaint in relation to the Service, you may complain to us by telephone or in writing in accordance with our complaints procedure as amended from time to time. A copy of our Complaints Procedure is available on our website at <http://www.activ8me.net.au> or upon request by you.

### **11.2 Billing enquiry**

If you have an enquiry about our charges or any invoice we send to you, you may contact us by telephone or email in the first instance. You must provide details of your bill and the charges the subject of your enquiry to us.

### **11.3 Telecommunications Industry Ombudsman**

If you have made a complaint to us and it is unresolved, you can lodge a complaint with the Telecommunications Industry Ombudsman (TIO) at [tio.com.au](http://tio.com.au). The TIO is an independent body and is provided as a free service. The TIO will only proceed with your complaint if you have first tried to resolve it with us.

## **12 Financial undertaking**

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### **12.1 Financial security**

We may from time to time and upon reasonable notice to you, at our absolute discretion require you to provide us with financial information. We may ask you for a security deposit, a charge or bank guarantee or to make prepayments for your Service if we are concerned about your creditworthiness or your usage exceeds a reasonable amount as determined by us in any billing period. If you do not provide the requested security, we may refuse to provide the Service to you or provide the Service to you on a restricted basis.

## **13 Insurance**

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### **13.1 Limitations on policies**

You will not take out any insurance policies for Consequential Loss or business interruption arising in connection with Claims, Loss, failure or non-performance of the Products without first, notifying Activ8me so that Activ8me can obtain prior written consent for the insurance from its Wholesale Service Providers if required, and secondly, obtaining Activ8me's consent.

## **14 Variations**

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### **14.1 When variation may be made**

Activ8me may vary this Agreement (including varying the service charges and adding new types of charges) without notice and with immediate effect if the change will have no more than a minor detriment to you or you agree to the variation.

### **14.2 Changes requiring notice**

If we change this agreement (including varying any service charges or add new types of charges) and the change could be reasonably expected to have a detrimental impact on you, where practicable, we will give you at least 42 days notice ("**Notice Period**"). You may terminate the Agreement if the proposed changes are likely to have a detrimental impact on you at any time during the Notice Period.

### **14.3 Communication and Effect**

Variations will:

- (a) be published on our website; and
- (b) become effective on the date specified.

## **15 Termination, cancellation and suspension of Service**

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### **15.1 Suspension, cancellation or termination**

You may terminate the Agreement at any time, however you must give us written notice and if your Contract Term has not expired you will be liable for an early termination fee plus any other monies owing. The cancellation will take effect on your next monthly anniversary date.

We may (whether on our own or at the request of a Wholesale Service Provider) immediately suspend or cancel the Service or immediately terminate this Agreement without notice to you and with immediate effect if you breach the terms of this Agreement or where:

- (a) if in our reasonable opinion use of your Service is causing degradation or detriment to the Activ8me network, or other users;
- (b) you are in breach of Activ8me's Acceptable Use Policy or nbnco's Fair Use Policy;
- (c) a Wholesale Service Provider ceases to supply all or part of the Service to us;
- (d) we are required by law to do so;
- (e) you provide false or incomplete information about you in relation to the Service;
- (f) you are unable to pay your debts as and when they fall due;
- (g) you, being a company, appoint or take steps to appoint a receiver, manager, liquidator or administrator;
- (h) we are unable to provide the Service to you in accordance with the Service Description; or
- (i) you do not pay your invoice by the relevant due date and you have failed to pay after we have provided you with 10 business days notice to pay.

### **15.2 Rights on termination**

On termination of this Agreement for any reason:

- (a) all monies owing to us (including any early termination fees under clause 9.10) become due and payable; and
- (b) you must immediately return to us at your expense and risk all equipment supplied by us or our Wholesale Service Providers or enable us to collect such equipment from your site or premises.

### **15.3 Service Cancellation**

Your service will continue to renew automatically on a month to month basis after your Contract Term has been completed, and you will continue to be charged for the service, until you give us written notification that you wish to cancel the service. The cancellation will take effect on your next monthly anniversary date.

## **16 Liability of Wholesale Service Providers**

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### **16.1 Undertakings given by us to Wholesale Service Providers**

- (a) Activ8me has undertaken to Wholesale Service Providers that it will not make any Claim against them (including their Related Bodies Corporate and their personnel) or any third party suppliers arising from or in connection with any failure by that third party to supply such facilities or services to the Wholesale Service Providers under a contract between the Wholesale Service Providers and such third party.
- (b) Activ8me has undertaken to Wholesale Service Providers that it will not make any Claim (and will waive any Claim) against a supplier to the Wholesale Service Providers (and their personnel).

### **16.2 Release of Wholesale Service Providers**

You acknowledge and agree to release, discharge and waive any Claims against any Wholesale Service Provider and their personnel.

### **16.3 Limitations on remedies**

You acknowledge that due to the nature and limitations of the Service under this Agreement, you will not have any recourse to Activ8me's Wholesale Service Providers in relation to any Claim, including for the purposes of the Australian Consumer Law as set out in *Schedule 2 to the Competition and Consumer Act 2010* (Cth).

### **16.4 Exclusion of liability of Wholesale Service Providers**

- (a) Subject to clause 18, you acknowledge that our Wholesale Service Providers and their Related Bodies Corporate and their personnel are not liable to you (to the maximum extent of the law) arising from or the provision of the Service and any equipment provided to you.
- (b) Activ8me holds the exclusions set out in this clause on trust for the benefit of its Wholesale Service Providers, their Related Body Corporates and their respective personnel and those persons may rely on the benefit of this clause in any Claim you may have against them.

## **17 Exclusion of liability**

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### **17.1 Exclusion**

Unless expressly stated otherwise in this Agreement, and to the extent permitted by law, our liability in respect of any and all Claims and Losses arising in connection with the supply of the Service or this Agreement is excluded.

### **17.2 Law**

Nothing in this Agreement limits the application of any laws (including any condition, guarantee, warranty, rights or remedies) that are implied or imposed by legislation, regulation, common law and that cannot be lawfully excluded.

### **17.3 Sole remedy**

Where a condition, warranty or guarantee is implied or imposed by law and a party cannot exclude that condition, warranty or guarantee, then to the extent permitted by law, our liability for failing to comply with the condition, warranty or guarantee is limited to one or more of the following:

- (a) in the case of goods, we will repair or replace the goods or pay for this to be done; and
- (b) in the case of services (including the supply of the Services), we will resupply the services or pay for this to be done,

where the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption and where it is fair and reasonable to do so.

### **17.4 Service level targets**

We will not be under any liability for or in breach of this Agreement if we do not meet any service level targets (if any).

## **17.5 Death and personal injury**

Each party indemnifies the other party for negligence in relation to supplying Services under this Agreement if it causes personal injury or death.

## **17.6 Consequential loss**

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

## **18 Indemnity**

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### **18.1 General Indemnity**

You indemnify Activ8me against (and must pay Activ8me for):

- (a) any loss or damage we suffer relating to:
  - (i) your use (or attempted use) of the Service;
  - (ii) equipment used in connection with the Service.
- (b) any costs (including legal costs) relating to your breach of this Agreement.

## **19 GST**

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### **19.1 GST payable**

Unless otherwise stated and where permitted by law, all charges in connection with this Agreement are inclusive of GST.

## **20 Assignment**

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### **20.1 Assignment by us**

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.

### **20.2 No assignment by you**

Your rights under this Agreement are personal. You must not assign or novate all or part of your rights and obligations under this Agreement.

## **21 General conditions**

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### **21.1 Severance**

This Agreement 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.

### **21.2 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.

### **21.3 Non-merger of provisions**

A provision of this Agreement intended to operate after its conclusion will remain in full force and effect.

### **21.4 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.

## **21.5 Jurisdiction**

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

## **21.6 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.

## **21.7 Agency**

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

## **21.8 Survival**

Each person's accrued rights and obligations are not affected by the termination of this Agreement and the parts of this Agreement that by their nature are intended to survive the termination of this Agreement will do so.

## **21.9 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.

## **21.10 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 or subcontractors without obtaining your prior written consent.

## **22 Cooling-off Period**

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If you are entitled to a cooling-off period, you may terminate this agreement at any time by giving us notice within 10 days commencing on:

- (a) if you entered into this agreement as a result of telephone marketing or face-to-face contact, the day on which you received this agreement and the accompanying cancellation notice in the prescribed form; or
- (b) if you applied for the Service through our website, the day on which you entered into the agreement.

If you terminate during the cooling-off period, we may charge you for reasonable costs for equipment retained or services used by you.

## **23 Test or Trial Services**

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If you participate in the use of test or trial services, you agree that:

- (a) the Test or Trial Product will be supplied on a limited test basis only, cannot support the supply of Priority Services and is not a standard telephone service that is subject to customer service guarantees for the purposes of the TCPSS Act;
- (b) owing to the limited test basis on which Test or Trial Products will be supplied, the supply of the Test or Trial Product may be immediately interrupted, suspended or terminated without notice;
- (c) Activ8me may install testing equipment at our Premises which gathers analytical data in relation to the Test or Trial Product; and

Activ8me may request you to participate in information gathering activities conducted by its Wholesale Service Providers or their nominees in relation to the Test or Trial Product.



## Part D Service Description

### 1 Description

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#### 1.1 The Service

Activ8me ADSL.

The Service is a Layer 2 or Layer 3 (as applicable) virtual connection which carries internet traffic over the ADSL Network, and provides internet connectivity via your copper telephone lines at your premises using an ADSL modem.

#### 1.2 Prohibitions

You must not use the Service:

- (a) for any illegal activity; or
- (b) for an application that, in our reasonable opinion the Service was not to be used for; or
- (c) for an application that, in our reasonable opinion, unreasonably degrades the Service, the Network, or the user experience of other customers subscribed to the Service; or
- (d) other than in compliance with our Acceptable Use Policy which is available on our website at <http://www.activ8me.net.au> or upon request by you



## Part E Dictionary

### 1 Dictionary

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#### 1.1 Definitions

The following definitions apply to the Agreement in addition to words defined elsewhere:

**Acceptable Use Policy** means the policy that can be viewed at <http://www.Activ8me.net.au> , and as amended by Activ8me from time to time.

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

**Agreement** has the meaning set out in Part A – Agreement Overview.

**Application Form** means the Application Form in Part B.

**Business Day** means any day from Monday to Friday inclusive which is not a declared public holiday in the state or territory where the relevant transaction or work is to be performed.

**Business Hours** means 8.30am to 5.00pm on any Business Day

**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.

**Connection Date** means the date that the Service is installed and connected.

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

**Contract Term** means the fixed duration of your agreement with us.

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

**Critical Information Summary** means a summary of the product, its features and monthly charges compiled by us for products and services in connection with this Agreement (as amended from time to time).

**Customer Service Guarantee** means the Telecommunications (Customer Service Guarantee) Standard 2000 (No 2).

**Eligibility Criteria** means the eligibility criteria provided by us or our third party suppliers which includes criteria based on your geographical location and other factors.

**Fair Usage Policy or FUP** means the current version of the Fair Usage Policy issued and enforced by the nbn Co. and varied from time to time

**Fault** means any service difficulty reported by Customer to Activ8me

**GST** means has the same meaning as set out in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means any patent, copyright, design, trade name, trade mark, service mark or other intellectual property right (whether registered or not) including ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, tracings, diagrams and models.

**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.

**Network** means any telecommunications network, systems, equipment, facilities or cabling controlled by Activ8me, or its Wholesale Service Providers.



**Notice Period** has the meaning in clause 14.2 of this Agreement.

**Personal Information** has the meaning set out in Privacy Laws.

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

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

**Service** means the service set out in Part D – Service Description.

**Service Description** has the meaning set out in Part D – Service Description.

**TCPSS Act** means the Telecommunications (Consumer Protection and Service Standards) Act 1999.

**Term** means the period from the Connection Date as specified in the Application Form.

**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.

**Wholesale Service Provider** means any third party supplier from which we acquire services used to provide the Service (including any third party supplier) and includes, but is not limited to, OptiComm and NBN Co.

**You** or your or **yours** means the customer who fills out the application for the Service.

## **2 Interpretation**

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### **2.1 Rules**

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.

### **2.2 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.