



STANDARD FORM OF AGREEMENT

ACTIV8ME CONSUMER SERVICES

Activ8me is a registered trademark of Australian Private Networks Pty Ltd (ACN 103 009 552)

279 Dundas Street, Preston Victoria 3072

Telephone: 13 22 88

Website: www.activ8me.net.au

1 Agreement Overview

1.1 Overview

Welcome to Activ8me's Standard Form of Agreement (**SFOA**) for consumer telecommunications services. This SFOA applies to the Activ8me Services shown in the **Services Schedule** to this Agreement, and to any other Activ8me Service that incorporates this SFOA in its Application Form or under its service description on the Activ8me website (www.activ8me.net.au).

1.2 Your agreement with Activ8me

Your **Agreement** with us consists of:

- (a) The Application Form or equivalent ordering process completed by the customer for the Service (**you**);
- (b) Any description, pricing, special offer or other product terms that we specify from time to time as applying to the Service described in the Application Form that you complete. Such provisions are shown in the Service Description and may also be specified in the Application Form or on our website, or otherwise provided to you;
- (c) This Standard Form of Agreement; and
- (d) any other Activ8me documents incorporated by reference or published on our website and applying to our Services, such as our Acceptable Use Policy, and Wholesale Service Provider documents relating to your Service, such as the **nbn**® Fair Use Policy.

1.3 Inconsistency

In the event of inconsistency between the documents comprising your Agreement with us, the document that is listed first in clause 1.2 prevails.

1.4 Dictionary and interpretation

The **Dictionary** at the end of this Agreement contains definitions and rules for interpretation for the Agreement in addition to definitions appearing in other provisions of the Agreement.

2 Supply

2.1 Supply

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

2.2 Eligibility Criteria

You must satisfy the Eligibility Criteria, and continue to do so throughout the Term, to acquire the Service.

2.3 Unavailability and 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. For detrimental changes, clause 16 applies.

2.4 Limitations

Notwithstanding anything else in this Agreement, but subject to applicable consumer protection laws, you acknowledge that:

- (a) The Service is supplied "as is" on the basis of limitations contained in the Service Description, and without warranty of quality or availability.
- (b) Your use of the Service is at your own risk;

- (c) You are using a public, unfiltered internet connection and should take all precautions for the security and filtering (if applicable) of your information;
- (d) You are solely responsible for any loss or damage to your equipment, device or to any information or other data that may result from your use of the Service;
- (e) There may be interruptions, delays, omissions or inaccuracies with the Service, and that it may not be available at some times;
- (f) We and our Network providers need to undertake servicing, planned and unplanned maintenance, repairs and upgrades of the Network and systems from time to time, which may interrupt or limit our Service. We will endeavour to provide advance notice and information by email, SMS and / or on our website.
- (g) Subject to clause 2.4(h), to the extent permitted by law and without excluding, restricting or modifying any rights or remedies to which you may be entitled under the consumer guarantee provisions in Parts 3-2 and 5-4 of the Australian Consumer Law, you must not bring any claim (including any action, suit or proceedings of any nature or kind, whether in contract, tort (including negligence) at common law, in equity, under statute or otherwise however arising), against **nbn**[®], its Related Bodies Corporate or any of their respective Personnel in connection with the supply (or any delay, failure or defect in relation to the supply) of any products or services which are direct or indirect inputs to any products or services which are the subject of this Agreement;
- (h) Clause 2.4(g) does not apply to a claim by you for loss or damage suffered or incurred by you arising from or in connection with:
 - (i) any damage to, or loss of, tangible property to the extent that such losses are caused or contributed to by **nbn**[®], or its Related Bodies Corporate, or any of their respective Personnel or third-party suppliers; or
 - (ii) the death or personal injury of any person to the extent caused or contributed to by:
 - (A) negligent or wilful acts or omissions of NBN Co or its Related Bodies Corporate, or any of their respective Personnel or third-party suppliers; or
 - (B) any equipment or network owned, operated or controlled by **nbn**[®];
- (i) The supplier of the products and services which are the subject of this Agreement may assign the benefit of clauses 2.4 (g) and (h) to **nbn**[®] or its nominee without consent or, to the extent that consent is required, you hereby give that consent. Those clauses survive expiry or termination of this Agreement; and
- (j) There are technical limitations that may affect your performance or speed, which may include but are not limited to; the age and quality of your Wi-Fi router and the hardware that you use. Wireless (Wi-Fi) connections can reduce the performance of your service compared to a wired, ethernet connection. We recommend trying to place your Wi-Fi router as centrally as possible, elevated from the ground and clear of obstructions, outside of closets or closed spaces. Wi-Fi signals can also be interrupted if positioned too close to other devices, such as microwaves, security cameras and cordless telephones. Wi-Fi routers have a limited coverage range, and you should ensure your chosen router has enough range to offer the required WiFi coverage. If you require any assistance getting the optimal performance out of your service, please contact our Support team on 1322 88 and they will be happy to assist finding out what might be causing any problems and suggesting ways to fix them.

2.5 No warranty

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

2.6 Resupply

We resupply the Services under this Agreement using the Activ8me Network and networks and systems supplied by other Wholesale Service Providers including **nbn**[®], Opticomm Ltd, AAPT Limited and Telstra Corporation Limited. 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.

2.7 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.

2.8 Supplier details

This Service is supplied by:

Name: activ8me is a registered trademark of Australian Private Networks Pty Ltd (ACN 103 009 552).

Contact: 13 22 88 (AEDT/AEST VIC Time)

Sales Enquiries Hours: Monday to Friday 8am-8pm, Saturday 8am-5pm

Account Enquiries: **Monday to Friday 8am-5pm**

Customer Care: Monday to Friday 8:00am – 8:00pm, Saturday to Sunday 8:00am – 5:00pm

Australian Private Networks Pty Ltd is responsible for this Service and is not affiliated with or related to any other Wholesale Service Provider whose network or services we use. Wholesale Service Providers are not providing to you, and do not have a contractual relationship with you for the supply of, any products or services. To the extent permitted by law, all liability of a Wholesale Service Provider is excluded and you must not bring any claim against a Wholesale Service Provider in relation to your Service.

3 Term

3.1 Term

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

3.2 Supply after conclusion of Term

Subject to this Agreement, we will continue to supply the Service to you and charges will apply after the Term expires on a month to month basis until you terminate by giving written notice to us, or we cease to make the Service available to you. The termination will take effect on your next monthly anniversary date. If you terminate your Service, you will be required to pay the full month's service fee for your current billing month and any other applicable charges.

4 Ordering and Provisioning

4.1 Connecting or transferring a service

Once we accept an order for a Service from you, we will endeavour to connect or transfer the Service within a reasonable timeframe, but the connection date depends on a number of factors. For a new home broadband service where all equipment is set up and working, we usually activate the service within 48 hours. Connection may take longer where:

- (a) we are transferring, churning or porting your service number from another network and we need to liaise with the previous carrier or another third party;
- (b) we need to arrange for installation of a new connection;
- (c) our Wholesale Service Provider needs to undertake network modification or works;
- (d) the infrastructure or equipment at your premises is not suitable to receive the service, and we, you or our Wholesale Network Provider need to undertake work at your premises;
- (e) we or you need to provide new equipment or facilities; or
- (f) your premises is in a regional, rural or remote area and attendance at the premises is required.

4.2 Customer Service Guarantee

As a telecommunications carrier, we are subject to the Customer Service Guarantee, which is a statutory obligation to compensate you if we miss specified connection dates or repair times for

specific types of services, with permitted exceptions. The CSG should usually be applied to your service by us, without you having to do anything. If you believe that you are entitled to a CSG payment but have not received one, please contact us.

4.3 Order cancellation

After we accept an order for a Service, we may cancel or suspend the order without compensation if we find that it is impractical to provision the Service as ordered for any reason, including under our Eligibility Criteria, or if we need to undertake works that are overly expensive or impractical, or if works are required at your cost and you do not agree to pay for them, or if you withdraw or adjust the order, or if we are unable to process a direct debit. If you have made a payment for the cancelled service, we will refund the payment less any amount payable for work done.

4.4 Works required for connections

Our services pricing and product offers are based on standard connection types. For non-standard connections, or to prepare your premises for a standard connection, we or our Wholesale Service Provider may need to install cables, equipment or infrastructure at or adjacent to your premises, and we may charge you for doing so. While we will generally organise network and cabling works, some non-standard works such as trenching, or equipment housing may need to be provided by you. We will notify you if you need to organise and / or pay for works.

4.5 Cancelling your previous service

If you are transferring, churning or porting your service number from another provider or network, it is your responsibility to arrange cancellation of your previous service, and pay any charges you may receive from the previous provider.

4.6 Installations & Missed Appointments

We will not compensate you for any expenses, costs or claims such as loss of wages, travel expenses and/or communication costs that you claim to incur in dealing with us, including for attending installations and for missed appointments by us, our Wholesale Network Provider or representatives.

5 Your use of the Service

5.1 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.

5.2 No resale or wholesale

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

5.3 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.

5.4 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 any other user's experience of the Service;

- (g) not use the Service in a manner prohibited by this Agreement;
- (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.

5.5 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.

6 Obligations and Conditions

6.1 Acceptable Use

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

6.2 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 the Service or equipment provided as part of the Service.

6.3 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.

6.4 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.

6.5 Limitations of the Service

The following limitations apply to the Service:

- (a) Broadband Plan speeds shown in Activ8me marketing and materials are indicative theoretical maximum speeds only and Activ8me does not warrant that any advertised broadband plan speed will in fact be achieved at any time or under any conditions;
- (b) Activ8me or its Wholesale Service Providers 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 any content accessed or used by you or others using the Service;
- (e) you or others using the Service may incur third party charges by accessing content, services, sites or software of third parties, and we are not liable for such charges;
- (f) If transferring (churning) to Activ8me, features on your previous service might not be carried over, for example call barring. These features may be able to be reinstated by you calling our Customer Care Centre.

7 Changing your Service

7.1 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, and is accepted by our Wholesale Service Provider. 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.

8 Support and Fault Reporting

8.1 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.

8.2 Faults

You must provide all reasonable assistance to enable us, or one of our suppliers, to investigate and repair a Fault (which may include but is not limited to, direct testing using a desktop/laptop attached directly to modem via ethernet cable, speed testing, and/or advance command line tests such as ping and tracer (trace route)). We may also request removal of third-party extenders or third-party software which may impact or alter the performance of a connection in order for us to properly troubleshoot the service. We will report a Fault that arises in or is caused by a Wholesale Service Provider's Network, but we are not responsible for repairing such a Fault. We are not responsible for any Fault that arises in or is caused by equipment (including cabling and connections) that is owned by you or is not provided by us for your use.

8.3 Excluded issues

Faults that we will assist with only include Faults on our Service. Issues that our support desk may not be able to help with include BYO Routers and extenders, security/surveillance systems, Wi-Fi calling issues (customer will need to seek assistance from their mobile provider), install/edit/diagnose potential 3rd Party email applications excluding webmail, logging into streaming applications (i.e. Netflix, Prime, Disney, Kayo, Binge etc), VPNs, 3rd Party home networking devices such as switches, hubs, NAS, in home wiring, wifi printers, scanners etc.

We or our Wholesale Service Provider may charge an incorrect call out fee if you report a Fault, and a representative attends your premises but finds that there is no Fault with the Service.

9 Access to Premises

9.1 Attendance

For us to supply the Service we or our Wholesaler Service Providers may be required to attend and access the site or premises at which the Service will be or is supplied.

9.2 Access

You must provide us and our Wholesale Service Providers with safe and timely access to any site or premises to enable us, our suppliers 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 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.

9.3 Further assurances

You agree to provide such other consents in such form required by us to enable us, our suppliers or a Wholesale Service Provider to access a site or premises for the purposes set out in clause 9.2.

9.4 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 obtain valid consents from the rightful owner, controller or occupier of the site or premises in such form as required by us.

10 Equipment and Software

10.1 Equipment

We may provide you with equipment for use in conjunction with the Service. Unless you buy the equipment from us and have paid for it in full, you must keep this equipment on your premises. Upon request by us, you must provide to us the location of any of our equipment. If you do not report a Fault within 10 days from purchase of equipment, you are deemed to have accepted that it is in good working order at time of purchase.

10.2 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.

10.3 Maintenance

If you require replacement, maintenance or servicing of equipment provided by us or our Wholesale Service Providers, you may let us know. We may offer a Warranty for particular equipment, committing us to replace faulty equipment without charge subject to the conditions of the Warranty. You may also have statutory consumer rights. If no Warranty or statutory consumer right applies, we may offer to replace or repair the equipment for a charge.

10.4 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.

10.5 Return of equipment

Unless a Warranty or statutory consumer right provides otherwise, 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), including packaging, manuals and accessories. 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.

10.6 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.

10.7 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.

10.8 Security interest

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

10.9 Delivery of equipment

If we provide delivery and/or installation of equipment to your nominated premises, you acknowledge that delays or disruptions may occur, and we do not offer compensation or accept liability in such an event (other than under any applicable statutory consumer rights). A delay or disruption does not invalidate an accepted order, which remains binding. We will notify you if we need you to be in attendance and/or give us or our representative access to premises for a delivery or installation. Charges may apply if we attend during a designated time and we are unable to obtain required access.

10.10 Software

You must comply with the terms of any licence for any software provided to you in relation to the Service, by us or our Wholesale Service Providers or another third party. You must not copy, misuse, disassemble, decompile or reverse engineer any software provided to you.

11 Billing

11.1 Commencement

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

11.2 Charges

Depending on the chosen Service and the existing situation at your premises, there may be charges for:

- a) site visit and works at the premises;
- b) extra hardware;
- c) new developments, upgrades or releases;
- d) connection;
- e) disconnection;
- f) reconnection;
- g) early termination;
- h) monthly access / rental;
- i) data used;
- j) calls made;
- k) calls received;
- l) incorrect call-out fees; and
- m) any other services supplied to you under this Agreement.

We or our Wholesale Service Provider may need to visit the premises to determine what additional works are required and what charges will apply.

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.

11.3 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.

11.4 When fees payable

You must pay the fees for each period that the Service is substantially supplied, even if at times:

- (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 we become aware that the Service is unavailable for use for a substantial period, we will provide a discount or credit for the period in which the Service was unavailable for use.

11.5 Payment terms

You will be required to pay your invoices by the due dates for your elected plan for the Service, by direct debit or by credit card or another payment method that we make available. For services that are paid by direct debit, the first debit will apply when your service application is accepted, and subsequent debits will apply monthly in advance, unless a Plan provides otherwise. Post-paid charges will be debited at the next debit date, and will usually be shown on the bill covering that date (so you may not have the opportunity of checking it prior to debit). Payment platform providers' own terms and conditions apply to your usage of their services, and may include merchant fees (eg a 1% fee for Mastercard or Visa). If you cannot pay by a standard method we make available, you must pay invoices within 10 Business Days of the date of the invoice.

11.6 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, or 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.

11.7 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 monthly administration charge.

11.8 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 \$5.00 that will appear on your next monthly invoice to help cover our administrative costs.

11.9 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.

11.10 Early termination fees

You must pay an early termination fee as specified in the Application Form and/or Critical Information Summary if:

- (a) you terminate your Service within the minimum commitment period from the Connection Date shown in your Application Form; or
- (b) We terminate your service due to your breach within the minimum commitment period.

12 Privacy and Personal Information

We will collect, manage, keep and use your Personal Information in accordance with our **Privacy Policy** as posted on our website and updated from time to time, and with Privacy Laws.

13 Complaints and Disputes

13.1 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 Handling Policy as amended from time to time, available on our website at <http://www.activ8me.net.au> or upon request by you.

13.2 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.

13.3 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. 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.

14 Financial Undertaking

14.1 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.

15 Insurance

15.1 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.

16 Variations

16.1 When variation may be made

Activ8me may vary this Agreement (including varying the Service charges, migrating Services on an elected plan or offer to another similar or replacement plan or offer, and adding new types of charges) without sending you an individual notice and with effect immediately or on a later date we notify, subject to the remainder of this clause 16.

16.2 Variations requiring notice

If we vary this Agreement and we think the variation is likely to have a detrimental impact on you (including increasing any Service charges or adding new types of charges), where practicable, we will give you at least 42 days' notice ("**Notice Period**") before the change takes effect. You may terminate the Agreement without an early termination fee, during the Notice Period, if the proposed changes are likely to have a detrimental impact on you.

16.3 Communication and Effect

Any varied Agreement will:

- (a) be published on our website; and
- (b) become effective on the date it is published, or a later date if one is specified.

17 Termination, Cancellation and Suspension of Service

17.1 Suspension, cancellation or termination

You may terminate the Agreement at any time, however you must give us at least 30 days' notice. If your Contracted 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 following the 30 days' notice period.

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 prior notice to you and with immediate effect if you breach the terms of this Agreement or where:

- (a) 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 **nbn**®'s Fair Use Policy;
- (c) we or a Wholesale Service Provider ceases to supply all or part of the Service;
- (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 or any person representing you acts in an abusive, threatening, prejudicial or improper manner towards us or our representative;

- (h) you, being a company, appoint or take steps to appoint a receiver, manager, liquidator or administrator;
- (i) we are unable to provide the Service to you in accordance with the Service Description; or
- (j) you do not pay your invoice by the relevant due date and you have failed to pay after we have provided you with 5 Business Days' notice to pay.

17.2 Rights on termination

On termination of this Agreement for any reason:

- (a) all monies owing to us (including any early termination fees under clause 11.10) 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.

18 Exclusion of Liability

18.1 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.

18.2 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.

18.3 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.

18.4 Service level targets

We will not be under any liability or in breach of this Agreement if we do not meet any service level targets (if any), except to the extent that the targets specify such liability.

18.5 Death and personal injury

Each party indemnifies the other party for Loss or Claim arising from negligence in relation to supplying and receiving Services under this Agreement if it causes personal injury or death.

18.6 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 Consequential Loss being suffered has been brought to the attention of Activ8me.

19 Indemnity

19.1 General Indemnity

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

- (a) any Claim or Loss we suffer relating to:
 - (i) your or another person's 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.

20 GST

20.1 GST payable

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

21 Assignment

21.1 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 requiring your consent.

21.2 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.

22 General Conditions

22.1 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.

22.2 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.

22.3 Non-merger of provisions

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

22.4 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.

22.5 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.

22.6 Agency

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

22.7 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.

22.8 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.

22.9 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.

23 Cooling-off Period

If you are entitled to a cooling-off period because you entered into this Agreement as a result of out-bound telephone marketing or face-to-face contact not at our premises, you may terminate this Agreement by giving us notice within 10 Business Days commencing on the first Business Day after you enter the Agreement, by submitting a cancellation notice.

If you notify termination during the cooling-off period, we may charge you for reasonable costs for damage to equipment or failure to return equipment, and services used by you during and after the cooling-off period.

24 Test or Trial Services

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 a Customer Service Guarantee under the *Telecommunications (Customer Service Guarantee) Standard 2011*;
- (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.

The following Services are governed by this Agreement. The Service Description of each Service is as shown in this Schedule, and as may be further specified to form part of the Service's terms on the Activ8me website.

nbn® FTTP, FTTN, FTTB, FTTC, HFC and Opticomm FTTP, FTTN

These Services are a Layer 2 or Layer 3 (as applicable) virtual connection which carries a high-speed broadband connection via fibre optic, coaxial cable or a combination of fibre optic and copper to your premises from the Wholesale Service Provider's network infrastructure.

nbn® products under this SFOA are compatible with the following **nbn®**-ready equipment:

- Router
- Wireless Router
- Any ethernet network compatible device (e.g. PC, Laptop, SMART television, gaming console, security system)

Opticomm products under this SFOA are compatible with the following Opticomm-ready equipment:

- Router
- Wireless Router
- Any ethernet network compatible device (e.g. PC, Laptop, SMART television, gaming console, security system)

nbn® Fixed Wireless

This Service is a Layer 2 or Layer 3 (as applicable) virtual connection which carries a high-speed broadband connection delivered via an **nbn®** Fixed Wireless tower to an antenna installed at your premises.

nbn® Satellite

The Service is a Layer 2 or Layer 3 (as applicable) virtual connection which carries internet traffic over the **nbn®** Sky Muster® satellite network, and provides internet connectivity via an NTD located at your premises.

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.

Activ8me ADSL products under this Agreement are compatible with the following ADSL-ready equipment:

- Modem
- Modem/Router

Activ8me Phone Line, Internet Phone (VoIP), Fibre Phone (Uni-V)

The Service is a phone line service provided via either copper or your broadband service. The phone line service allows you to make and receive calls to landline and mobile numbers within Australia and overseas.

PSTN products under this Agreement are compatible with the following equipment:

- Telephone handset (PSTN standard compatible)
- Any PSTN standard compatible device (e.g. fax machine, alarm system, EFTPOS)

VoIP products under this Agreement are compatible with the following VoIP-ready equipment:

- VoIP compatible handset
- Router
- Wireless Router

1 Definitions

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

Acceptable Use Policy means the policy of that name that can be viewed at <http://www.Activ8me.net.au> , 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 clause 1 Agreement Overview.

Application Form means the Application Form that you complete for a Service under this Agreement. An Application Form may also include by reference other materials, products, plans, special or short term offers and other terms.

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.

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.

Contracted Term means the fixed initial duration or minimum term of your Agreement with us, if so provided in an Application Form.

Critical Information Summary means a summary of an Activ8me product, its features and monthly charges compiled by us for products and services in connection with this Agreement, made available on our website and as amended from time to time.

Eligibility Criteria means the eligibility criteria applied to a Service application by us or our third-party suppliers which include criteria based on currently available communications technologies and their limitations, your equipment's compatibility with our Services, our agreements with Wholesale Service Providers, network reach and capability, your geographical location and other factors.

Fair Use Policy means the Fair Use Policy issued by nbn® as amended from time to time.

Fault means any service difficulty with the Service that you report to Activ8me.

GST 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.

nbn® means NBN Co Limited (ABN 86 136 533 741).

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

Personal Information has the meaning set out in the *Privacy Act 1988* (Cth).

Personnel means, in relation to a party or a third party, that party's officers, employees, agents, contractors, subcontractors and consultants.

Privacy Laws means the *Privacy Act 1988* (Cth), the Australian Privacy Principles, the *Telecommunications Act 1997* (Cth) and the *Spam Act 2003* (Cth), each as amended or replaced from time to time.

Related Body Corporate has the meaning set out in the *Corporations Act 2001* (Cth).

Service means the service under this Agreement for which you completed an Application Form.

Service Description has the meaning for each Service that is set out in the Services Schedule to this Agreement.

Term means the period from the Connection Date until termination of the Agreement.

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 and includes, but is not limited to, Telstra Corporation Limited, AAPT Limited, Opticomm Ltd, Vocus Group Limited and **nbn**[®].

You or your or **yours** means the customer who is named on the Application Form or otherwise applies for the Service.

2 Interpretation

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.
- (k) If you are made up of more than one person then:
 - (i) your obligations apply to each of those persons jointly and severally; and
 - (ii) 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.