



# STANDARD FORM OF AGREEMENT

## ACTIV8ME FIBRE BROADBAND

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 (part of this document) (**Agreement Overview**)
- (b) Part B – Application Form – Activ8me Service (**Application Form**)
- (c) Part C – Terms and Conditions (part of this document) (**Terms and Conditions**)
- (d) Part D – Service Description (part of this document) (**Service Description**)
- (e) Part E – Dictionary (part of this document) (**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 operational 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 (including limitations as to quality and use) as set out 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. The Customer Service Guarantee does not apply to the Service.

#### 1.6 Resupply

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

#### 1.7 Change of supplier

We may or our Wholesale Service Providers may change the supplier of the OptiComm Fibre Network used to supply the Service. If this occurs, then the equipment on your premises may need reconfiguration to enable your equipment to access the new OptiComm Fibre 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 from the Connection Date for the period specified in the Application Form (**Term**). Unless terminated by either party on 10 Business Days notice after the end of this period, we will continue to provide the Service to you after the expiration of the initial Term. If you request to cancel your Service your access will be terminated immediately and you will be liable for the full month's access fee for your current billing month and any other applicable usage 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 should not use or rely on the Service for priority assistance, mission critical applications or business 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.

### **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 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 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 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 which is amended from time to time and is available on our website.

### **4.2 Eligibility Criteria**

You agree that you satisfy the Eligibility Criteria at commencement of supply of the Service.

### **4.3 Provide assistance**

You agree to provide any information and reasonable assistance to Activ8me or its 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 Service Providers to enable investigations into activities of an illegal nature, including potential incidences of fraud;

### **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 a liability to us or to any third party.

## **4.6 Your acknowledgment**

You acknowledge that:

- (a) 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;
- (b) Activ8me may disconnect or procure the disconnection of any connections made by you or on your behalf to any Service Provider's Network, systems, equipment, property or facilities in connection with Activ8me's supply of the Services, within a specified timeframe;
- (c) we do not exercise any control over, authorise or make any warranty regarding access of any content used when using the Service;
- (d) we will not be liable for any third party charges which may be incurred by accessing content, services, sites or software of third parties.

## **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. 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 changes 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.

## **6 Support and fault reporting**

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### **6.1 Contact**

You may request support or report a fault by telephone, email or by writing as set out in the Application Form, or 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 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 Service Providers with safe and timely access to any site or premises to enable us and our 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 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 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 provided to you.

#### **8.2 Ownership**

Any equipment supplied by us or our Services Providers will remain the property of us or our Wholesale Service Providers (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 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 Service Providers.

#### **8.5 Return 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), then you will be liable for the costs associated with the repair or replacement of that equipment. You must permit us or our Service Providers to access any site or premises to collect any equipment owned by us or our Service Provider in accordance with clause 7.

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

You must keep any equipment used in conjunction with the Service, including any equipment provided by us or our Service Providers, safe and in a suitable environment and must use the equipment in accordance with the directions of use (fair wear and tear excepted). 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 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 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 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 plan you have chosen.

#### **9.2 Charges**

Details of your fees and charges are set out in the Application Form, and all fees and charges are set out in the Critical Information Summary or as advised by us.

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

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 in advance for your next month's connection and monthly in arrears for any usage incurred (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.

### **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 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 request you to pay in advance the estimated cost of using your Service up to 12 months in advance 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 that you have failed to pay outstanding charges on a previous account.

### **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 Dishonoured payment**

- (a) If you do not pay an invoice by its due date we will charge you a dishonour fee of \$15.00 that will appear on your next monthly invoice.
- (b) 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.

### **9.9 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.

### **9.10 Early termination payments**

If your Service is suspended or cancelled under this clause, you will need to pay any applicable early termination fees in respect of your Service set out 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, then you

will be liable to pay us an administrative fee as specified in the Application Form and/or Critical Information Summary.

## **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 any 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. Activ8me, its agents and Wholesale Service Providers may collect, use and disclose your Personal Information to third parties for the purpose of:

- (a) supplying 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 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, where obliged under our licence conditions;
- (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 the 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 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 at <http://www.activ8me.net.au> or upon request by you.

### **11.2 Billing enquiry**

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



### **11.3 Telecommunications Industry Ombudsman**

If you are not satisfied with our complaints handling procedure, you may contact the Telecommunications Industry Ombudsman (TIO) as a last resort. 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, upon reasonable notice to you seek and you shall provide for the purposes of assessing your creditworthiness or as security against non-payment any financial information and security in such form as required by us (such as guarantee, charge, deposit, debtors insurance, personal guarantees, or related body guarantees).

## **13 Insurance**

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### **13.1 Limitations on policies**

You must 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 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 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 Effect**

Variations will become effective on the date specified in the notice. A notice of variation may be published on our website.

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

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

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 liability to you and without notice if you breach the terms of this Agreement or where:

- (a) a Wholesale Service Provider ceases to supply all or part of the Service to us;
- (b) we are required by law to do so;
- (c) you provide false or incomplete information about you relating to the Service;
- (d) you are unable to pay your debts as and when they fall due;
- (e) you, being a company, appoint or take steps to appoint one or more of a receiver, manager, liquidator or administrator;
- (f) we are unable to provide the Service to you in accordance with the Service Description.
- (g) you do not pay your invoice by the relevant due date and we provide 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 9.11) become due and payable;
- (b) you must immediately stop and procure that any third party stops using the Service; and
- (c) 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 it from your site or premises.

## **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 OptiComm that Activ8me will not make any Claim against OptiComm. (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 OptiComm. under a contract between OptiComm and such a third party.
- (b) Activ8me has undertaken to OptiComm that Activ8me will not make any Claim (and will waive any Claim) against supplier to the OptiComm (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 (including OptiComm) and their personnel.

### **16.3 Limitations on remedies**

You acknowledge that you due to the nature and limitations of the Service under this Agreement, you including 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 (including OptiComm, all Related Bodies Corporate of OptiComm) and all of each of 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 OptiComm, its Related Bodies Corporate, its Wholesale Service Providers and all of each of 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) which are implied or imposed by legislation, regulation, common law which 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 is limited to one or more of the following:

- (a) in the case of goods to 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;  
and

- (b) in the case of services (including the supply of the Services) to the supply of the services again; or the payment of the cost of having the services supplied again.

#### **17.4 Service level targets**

We will not be under any liability under or 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 all Loss to the other party arising from the death or 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.

#### **17.6 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.

#### **17.7 Exclusion**

A party's liability to the other party in respect of any and all Claims and Losses under, arising in connection with this Agreement is reduced proportionally to the extent that:

- (a) the other party has not taken all reasonable steps to minimise and mitigate its own Loss; or
- (b) the party's Loss is caused, or contributed to, by the other party.

### **18 Release and indemnity**

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#### **18.1 General Indemnity**

To the maximum extent permitted by law, you release Activ8me and its personnel from, and must indemnify and hold harmless Activ8me and personnel (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.

### **19 GST**

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#### **19.1 GST payable**

All charges in connection with this Agreement are, unless otherwise specified, exclusive of GST. If GST is payable on a supply, then, then the amount due for that supply will be increased by the amount of GST payable in respect of that supply.

### **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 which can and is 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 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 and the parts of this Agreement which are by their nature intended to survive 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.

### **21.11 Cooling-off Period**

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.

## **21.12 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 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 my Premises which gathers analytical data in relation to the Test or Trial Product; and
- (d) Activ8me may request you to participate in information gathering activities conducted by OptiComm or its nominees in relation to the Test or Trial Product.



## Part D Service Description

### 1 Description

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#### 1.1 The Service

The Service is known as the 'Activ8me Fibre Service'.

The Service is a Layer 3 connection which carries internet traffic over the OptiComm Fibre Network, and provides internet connectivity at the OptiComm Network Termination Device located at your premises.

#### 1.2 Equipment

The following equipment is needed to provide the Service:

- (a) Premises Connection Device
- (b) Wall Outlet
- (c) Network Termination Device with one active Ethernet port
- (d) Power Supply Unit
- (e) Note: this does not include a cable to connect your computer to the Network Termination Device

#### 1.3 Prohibitions

You must not use the Service to:

- (a) download or upload data 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.
- (b) otherwise use the Service 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 OptiComm Network, or the user experience of other customers subscribed to the Service.

#### 1.4 Usage

We will provide you with access to your daily usage online to enable you to monitor your usage relative to your plan.



## 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.

**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, savings, opportunity or goodwill), even if the possibility of such a loss being suffered has been brought to the attention of the relevant party.

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

**CPE** means the equipment installed at the End User's premises necessary to enable the End User to obtain access to the Fixed Line Network.

**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).

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

**DNS** means domain name system.

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

**End User** means either;

(a) a person who is not a Reseller and who acquires the Service, or a service substantially derived from the Service, from Customer or a Reseller; or

(b) Customer to the extent that it uses the Service itself.

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

**Fibre** means the fibre optic network and associated services owned and operated by OptiComm.

**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.

**Kbps** means kilobits per second, and for the avoidance of doubt 1 Kbps = 1,000 bits per second

**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.

**Mbps** means megabits per second, and for the avoidance of doubt, 1 Mbps = 1,000,000 bits per second

**Network** means any telecommunications network, systems, equipment, facilities or cabling controlled by Activ8me, or Wholesale Service Providers, including the OptiComm Fibre Network.

**OptiComm** means the fibre wholesale service provider supplying a fibre broadband service to the premises.

**OptiComm Equipment** means any equipment that is installed, operated or controlled by OptiComm, any Related Body Corporate of OptiComm or any supplier to OptiComm, and which is used in connection with the supply of the Services, including the NTD's.

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

**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.

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

**Reseller** means a person who acquires the Service, or a service substantially derived from the Service, from Customer or a Reseller of Customer, for the purpose of reselling, or transforming and then selling, the Service to Resellers or End Users.

**Service** means the service set out in Part D – Service Description for Activ8me Fibre Services.

**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 whom we acquire services which are used to provide the Service (including any third party supplier).

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

## **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.