

## CONDITIONS OF SERVICE - WiMAX

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### 1. ABOUT

These terms are product specific terms which apply to our WiMAX Service (**Conditions of Service**).

### 2. APPLICATION

We will supply the WiMAX Service to you pursuant to the terms and conditions set out in these Conditions of Service which form part of and must be read subject to our Standard Form of Agreement found at <http://www.adam.com.au/legal>. To the extent of any inconsistency between these Conditions of Service and the Standard Form of Agreement, these Conditions of Service will prevail.

### 3. DEFINITIONS

Capitalised terms have the meaning set out in our Standard Form of Agreement unless specific to these Conditions of Service, in which case the following definitions apply:

<b>AdamMax</b>	means Adam Internets network used to provide the WiMAX Service.
<b>AdamMax Base Station</b>	means the base station which is situated within the WiMAX Enabled Area that relates to your premises and transmits the WiMAX Service.
<b>WiMAX Enabled Area</b>	means any area that has the capability for us to provide the WiMAX Service (such areas are set out on our website).
<b>WiMAX Service</b>	means an Internet Service which is delivered by wireless broadband technology, known as the "World Interoperability for Microwave Access" service, in accordance with the specifications in your WiMAX Service Plan.
<b>WiMAX Service Plan</b>	means the WiMAX Service Plan selected by you in your Application.
<b>Agreement or our Agreement</b>	means the agreement between you and us for the WiMAX Service, comprising the terms stated in your Application Form, the Standard Form of Agreement, these Conditions of Service and Schedule of Fees and Charges.
<b>Internet Service</b>	means the Internet connectivity service which is provided to you by us on the terms and conditions set out in our Agreement in relation to such service.

**Network Prioritisation** means that the provision of services will occur across Our Network in a prioritised order, such order to be determined by us in our sole discretion.

**Our Network** means the infrastructure used and maintained by us to provide you with your WiMAX Service. Our Network does not include the computer networks that make up the Internet or other Customer Premises Equipment, for example, the aerial on your premises which receives the signal for the WiMAX Service.

**Shaped Services or Shaping** means the controlled reduction in speed of a WiMAX Service.

**we, our or us** means Adam Internet Pty Ltd.

**you or your** means the current account holder for the WiMAX Service.

#### 4. COMMENCEMENT OF WIMAX SERVICE

Our Agreement commences when we accept your Application and continues until terminated in accordance with our Agreement ('**Term**').

#### 5. WIMAX SERVICE CONDITIONS

5.1 During the Term, and provided that you are not in default of your obligations set out in our Agreement, we will provide to you the WiMAX Service in accordance with the WiMAX Service Plan you have selected in your Application.

5.2 You acknowledge and agree that all equipment and hardware which we provide to you as part of our Agreement (for example, the aerial), is compatible with similar services provided by other providers. Title and risk to such equipment and hardware passes to you upon installation, however payment remains a debt due to us until paid in full.

5.3 The connection, configuration and installation of any Customer Equipment or other items required to receive the WiMAX Service which are not a part of our Agreement (for example, equipment which we do not provide to you) will be at your sole responsibility and cost.

5.4 You agree to indemnify us against all losses, expenses, damages and costs (including reasonable legal fees) (**Loss**) incurred by us to the extent that the Loss arises in connection with the installation of any equipment in accordance with your Application (for example, an aerial) on or around the nominated premises, and the installation of equipment:

- (a) is not authorised by the owner of the property on which the installation occurs; or
- (b) causes damage to the premises (other than damage caused by our negligent acts or omissions when installing the equipment).

#### 6. LIMITATIONS OF WIMAX SERVICE

6.1 You acknowledge and agree that:

- (a) the speed and performance of your WiMAX Service is dependent on the number of other customers utilising Our Network within the WiMAX Enabled Area at the same time, and the distance of your premises from the AdamMax Base Station;
- (b) without excluding the warranties implied by law into this Agreement, we do not warrant, and have not represented, that the WiMAX Service is or will be free of errors, defects or interruptions, or that it will be available at all times. You acknowledge that there will be variations in capacity and quality of service and you acknowledge that regardless of any faults or interruptions, you are responsible for maintaining your monthly commitments;
- (c) if a fault, error, defect or interruption to the WiMAX Service is caused by Customer Equipment or is located in the premises at which you nominate in your Application, then we will charge you a fee for service at the rate set out in our Schedule of Fees and Charges;
- (d) you will direct all services and performance enquiries related to the WiMAX Service to us. Furthermore, prior to lodging a fault, we will conduct an AdamMax fault checklist that you must confirm with us at lodgement. Should a fault be found to be related to this checklist (e.g. customer error), a fault lodgement fee as set out in our Schedule of Fees and Charges will apply;
- (e) Without excluding the warranties implied by law into this Agreement, no guarantee is offered in respect of the time to provision services, detect faults, or to repair or restore a WiMAX Service which develops a fault. However, in certain circumstances you will be entitled to claim a pro-rata refund of Fees applicable to the period of an Interruption, in accordance with clause 15.3 of our Standard Form of Agreement;
- (f) the WiMAX Service may rely upon the operation of third party networks operated by third party carriers and third party services provided by other carriage service providers. We are unable to guarantee the operation of or the use of the WiMAX Service through third party supplier networks or other third party carriers and carriage service providers. Any failure of the WiMAX Service caused by a third party network or third party service is beyond our control, and we will not be responsible to, or liable to you, for any such failures except as described in clause 15 of our Standard Form of Agreement; and
- (g) subject to your rights under clause 3.4 of our Standard Form of Agreement, we may:
  - (i) limit the performance of the WiMAX Service from time to time;
  - (ii) effect Network Prioritisation;
  - (iii) cease or interrupt the service to troubleshoot or conduct maintenance or upgrade the network or infrastructure through which the WiMAX Service is provided; and
  - (iv) update Our Network, which may require you to update your Customer Equipment at your cost to continue to receive the WiMAX Service.

## **7. USE OF WIMAX SERVICES**

### **7.1 You acknowledge and agree that:**

- (a) your use of the WiMAX Service is subject to our Acceptable Use Policy;
- (b) upon reaching your allocated data allowance in accordance with your WiMAX Service Plan, we will implement Shaped Services. This Shaping will occur across Our Network, based on Network Prioritisation;
- (c) any data supplied over and above the monthly data allowance in your WiMAX Service Plan shall be considered as 'free added value' and does not carry with it any monetary value nor an obligation to maintain, increase or otherwise define its scope, amount or duration. Any changes to the 'free added value' shall be notified via our Website and the change effected 21 days later;
- (d) you must adopt reasonably appropriate measures to ensure the security of your account information, password and your data and advise us in a timely manner if you have reason to suspect that the WiMAX Service is being used contrary to our Agreement;
- (e) your WiMAX Service is not a portable service. Your WiMAX Service will be automatically cancelled if you move to another location (even if you keep the same number). If this occurs, an exit fee and/or relocation fee may apply, as set out in the Schedule of Fees and Charges;
- (f) notwithstanding clause 7.1(e):
  - (i) if you require a new WiMAX Service when you relocate and your new location is within a WiMAX Enabled Area, we will reconnect your WiMAX Service at that location, subject to you paying us a relocation fee as set out in the Schedule of Fees and Charges;
  - (ii) if you relocate to a location that is not within a WiMAX Enabled Area you may be eligible to obtain one of our other comparable Internet services, such as ADSL2+, subject to our acceptance of your Application for that alternative service. If we accept your Application you will be required to enter into a new agreement with us, pay a relocation fee and any applicable Adam plan change costs as set out in our Schedule of Fees and Charges;
  - (iii) if you relocate and
    - (A) elect not to obtain a WiMAX Service or alternative Adam Internet service from us at your new address; or
    - (B) we are unable to supply, or do not accept your Application for, a WiMAX Service or alternative Adam Internet service at your new address;

your Agreement with us will terminate. If this occurs during a Fixed Term, you will be liable to pay an exit fee as set out in the Schedule of Fees and Charges;
- (g) any stated transmission speeds for the WiMAX Service refer to the maximum theoretical throughput speed under ideal conditions;
- (h) 12000k/1000k is the maximum possible speed of a WiMAX service. Attainable speeds are determined by a number of factors including distance from your connecting tower, obstructions in the line of sight to your connecting tower, network congestion and user hardware/software. It is impossible for Adam

Internet to determine the attainable speed prior to your service being active. Based on a sample of existing WiMAX customers, the average connection speed obtained is between 4000k/1000k and 8000k/1000k.

- (i) tools provided to you by us to check for WiMAX capability, monitor your usage or any other services that we may choose to provide you from time to time are a guide only and must not be relied upon as a commitment or authoritative in nature;
- (j) should you default on your scheduled monthly payment, a late payment fee as detailed in our Schedule of Fees and Charges will be charged and if we are unable to secure a suitable payment, your service will be restricted without further notice;
- (k) should your account remain unpaid 7 days after we give you a notice demanding payment of overdue Fees and any administrative fees, your service will be suspended. Should your account remain unpaid 28 days after the Due Date your service will be disconnected (provided that we have given you 7 days prior notice of the impending disconnection and unless we have received written notice from you of a legitimate dispute of those Fees or other amounts); and
- (l) debt recovery services will be used to recover any outstanding amount and will incur a fee as detailed in our Schedule of Fees and Charges. You acknowledge that you will be liable for any financial institution charges and collection fees, including but not limited to solicitors' costs or fees associated with any collection agent appointed by us.

## **8. NETWORK ACCESS AND TRANSFERS**

- 8.1 Data is calculated monthly, in accordance with your WiMAX Service Plan.
- 8.2 We provide a 'value guarantee' that preserves the value of your Internet Service throughout the term of your contract. For an administration fee or contract extension (detailed in our Schedule of Fees and Charges) you will have the opportunity to upgrade your plan when we change our plan offerings. This does not apply to plans that are specified as only being available to new customers.
- 8.3 We provide the ability to purchase Data Blocks to 'top-up' the data allowance of your WiMAX Service Plan. Data Blocks will expire at the end of the billing month they are purchased in and will not carry forward to the next month.
- 8.4 To begin receiving the WiMAX Service, an onsite appointment will be necessary for installation. You will be contacted by an Adam Internet representative to organise a suitable time. You will need to be at the nominated premises on the day. If you are not at the nominated premises during the appointment window, a Change of Appointment Fee will apply as set out in our Schedule of Fees and Charges.

## **9. TERMINATION OF WIMAX SERVICE**

- 9.1 In order to terminate your WiMAX Service you must provide notice of this intent 7 business days before the intended termination date. You will be responsible for all charges during this notice period. If you are still in contract, you may be required to pay an exit fee as detailed in our Schedule of Fees and Charges.
- 9.2 In addition to our rights contained in the Standard Form of Agreement, we may suspend, limit or cancel your WiMAX Service if you resell, onsell or wholesale any part

of the WiMAX Service (including transit or aggregate traffic), without our written consent.

**10. FEES**

We will charge you for the WiMAX Service at the rates for the WiMAX Service Plan as set out in our Schedule of Fees and Charges.