

CONDITIONS OF SERVICE - ADAMMAX

1. ABOUT

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

2. APPLICATION

We will supply the AdamMax 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:

AdamMax Base Station	means the base station which is situated within the AdamMax Enabled Area that relates to your premises and transmits the AdamMax Service.
AdamMax Enabled Area	means any area that has the capability for us to provide the AdamMax Service (such areas are set out on our website).
AdamMax Service	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 AdamMax Service Plan.
AdamMax Service Plan	means the AdamMax Service Plan selected by you in your Application.
Agreement or our Agreement	means the agreement between you and us for the AdamMax Service, comprising the terms stated in your Application Form, the Standard Form of Agreement, these Conditions of Service and Schedule of Fees and Charges.
Internet Service	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.

Off-Peak	means any downloads between the hours of midnight and 8 am.
Our Network	means the infrastructure used and maintained by us to provide you with your AdamMax 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 AdamMax Service.
Peak	means any downloads between the hours of 8 am and midnight.
Shaped Services or Shaping	means the controlled reduction in speed of an AdamMax Service to 64/64kbps.
we, our or us	means Adam Internet Pty Ltd.
you or your	means the current account holder for the AdamMax Service.

4. COMMENCEMENT OF ADAMMAX SERVICE

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

5. ADAMMAX 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 AdamMax Service in accordance with the AdamMax 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 AdamMax 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 ADAMMAX SERVICE

6.1 You acknowledge and agree that:

- (a) the speed and performance of your AdamMax Service is dependant on the number of other customers utilising Our Network within the AdamMax 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 AdamMax 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 AdamMax 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 AdamMax 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) no service level commitment is available with the AdamMax Service (such as the Customer Service Guarantee). 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 AdamMax Service which develops a fault;
- (f) the AdamMax 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 AdamMax Service through third party supplier networks or other third party carriers and carriage service providers. Any failure of the AdamMax 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; and
- (g) we may:
 - (i) limit the performance of the AdamMax 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 AdamMax 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 AdamMax Service.

7. USE OF ADAMMAX SERVICES

7.1 You acknowledge and agree that:

- (a) your use of the AdamMax Service is subject to our Acceptable Use Policy;
- (b) upon reaching your allocated data allowance in accordance with your AdamMax 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 AdamMax 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 Bi-Monthly Newsletter 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 AdamMax Service is being used contrary to our Agreement;
- (e) your AdamMax Service is not a portable service. Your AdamMax Service will be automatically cancelled if you move to another location (even if you keep the same number). If this occurs, a cancellation and/or relocation fee as set out in the Schedule of Fees and Charges will apply;
- (f) notwithstanding clause 7.1(e), if you require a new AdamMax Service when you relocate to another area, we cannot guarantee reconnection unless your new location is within an AdamMax Enabled Area. If your new location is capable of receiving an AdamMax Service, we will reconnect your AdamMax Service at that location, subject to you paying us a relocation fee as set out in the Schedule of Fees and Charges. For the avoidance of doubt, if you relocate to a location that is not within an AdamMax Enabled Area, our Agreement, and your obligations (including but not limited to your obligation to pay the Fees), will continue until the Term expires. You may be eligible to obtain one of our other comparable Internet services, such as AdamDirect ADSL2+, subject to our acceptance of your Application for that alternative service. If we accept your Application, we will waive your obligation to pay out the remainder of your AdamMax Term, however 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;
- (g) any stated transmission speeds for the AdamMax Service refer to the maximum theoretical throughput speed under ideal conditions;
- (h) customers applying for AdamMax Service Plans with download/upload speeds of 512k/128kbps or 12228kbps/1024Kbps services will achieve these speeds. 12228kbps/1024kbps is the maximum possible speed of an AdamMax service. Speeds are expected to range between 4000kbps/1000kbps and 12228kbps/1024kbps. As the distance of your premises from the AdamMax Base Station increases, the speed will decrease accordingly. This decrease is affected by the quality of your Customer Equipment, including the wireless broadband receivers and/or internal wiring of your home. It is impossible for us to determine the attainable speed prior to your service being active.

- (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 (unless we have received written notice from you of a legitimate dispute of those Fees or other amounts prior to the Due Date); 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 Where it is possible and within our scope of WiMAX connectivity (e.g. your premises are located within an AdamMax Enabled Area), we will connect you to AdamMax. Where AdamMax is not available, we will either reject your Application or suggest an alternative Internet Service.
- 8.2 If you have selected an AdamMax Service Plan, your connection will be subject to an early disconnection fee as set out in our Schedule of Fees and Charges if you choose to cancel the AdamMax Service within six (6) months of the commencement date (except where you terminate for any of the reasons set out in clause 14.1(b) of the Standard Form of Agreement).
- 8.3 Data is calculated monthly, in accordance with your AdamMax Service Plan. Peak, Off-Peak and upload data are treated as separate entities and the allocated data allowance is calculated based on whichever is greater.
- 8.4 We provide a 'value guarantee' that preserves the value of your Internet Service throughout the term of your contract. For an administration fee (detailed in our Schedule of Fees and Charges) you may retain your current contract period but move to a plan of lesser than or equal to monetary value of your current plan. Or alternatively, if in contract, you can change to a plan that is greater in monetary spend for free. If out of contract you can change up or down in spend free of charge provided that there is no change in speed required.
- 8.5 We provide the ability to purchase Data Blocks to 'top-up' the data allowance of your AdamMax 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.
- 8.6 To begin receiving the AdamMax 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 ADAMMAX SERVICE

- 9.1 In order to terminate your AdamMax Service you must provide notice of this intent 5 business days before the intended termination date. You will be responsible for all charges during this notice period. Our services cannot be provided pro-rata nor are they refundable. If you are still in contract, your remaining contract commitment becomes payable at the time of termination, as do any termination fees 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 AdamMax Service if:
- (a) you send or receive content, data and other material via Our Network other than for your own personal or business use; or
 - (b) you resell, onsell or wholesale any part of the AdamMax Service (including transit or aggregate traffic), without our written consent.

10. FEES

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