

# This document contains the General Terms and Conditions

## **GENERAL TERMS AND CONDITIONS FOR SERVICES**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.0. These Terms and Conditions ('terms and conditions') apply to the supply of our services.
- 1.1. By choosing an ONE service you are confirming that you have read and accepted these General Terms and Conditions and any associated product Terms of Service.
- 1.2. You acknowledge that ONE provides these services in conjunction with ispONE Pty Ltd.
- 1.3. You will be requesting ONE & ispONE ('us') to provide to you a service together with any associated services such as email facilities, personal webspace, and support ('service')
- 1.4. If we choose to provide the services to you, you agree to be bound by these general terms and conditions and you must comply with these general terms and conditions as amended from time to time. We may alter these general terms and conditions at any time, notification to you will be provided on our website.
- 1.5. All access to and use of the ONE website and its services by you is subject to the terms and conditions contained herein and the ONE Privacy Policy. Prior to using or acquiring services from us, you must agree to the terms and conditions contained herein and the specific product terms of use.
- 1.6. Receipt of any services from us under this, or any other agreement between you and us, will constitute evidence that you have read, understood and agree to be bound by the terms and conditions of this agreement.
- 1.7. The terms and conditions of this agreement shall form part of any other agreements between you and us as varied from time to time.

### **2. FEES AND CHARGES FOR POST PAID SERVICES**

- 2.0. From the Commencement Date, you will pay the fees and such other charges relating to the Service or this Agreement at the rates notified by us from time to time ("Fees").
- 2.1. Notices for billing invoices are sent via electronic mail. Requests for paper invoices will incur a charge of \$2.00 (GST inclusive) per invoice sent.
- 2.2. Fees are due and payable 14 days from date of invoice. We may charge a late payment fee of \$10 per late payment, or interest on any overdue Fees at 10% per year from the due date of payment together with any prevailing reminder fee notified by us.
- 2.3. Monthly, weekly and fortnightly access fees are billed in advance including Home Phone Line Rental, while excess usage fees are billed in arrears. For accounts with minimum charges, this amount is payable irrespective of the services being used or not.
- 2.4. Rejected cheques or invalid credit card transactions will be automatically charged back to your account. A charge of \$20.00 is charged for dishonoured cheques while credit card chargeback's will attract a fee as advised by your credit card provider. Any bounced Direct Debit payments will incur a \$10.00 fee. All fees and charges are inclusive of GST.
- 2.5. We reserve the right to modify fees and charges for services and products we provide at any time by notice to you. Your continued use of the service after such notice will constitute acceptance of the variation. Notices under this agreement must be sent by post, unless we

specify an alternative means of giving notice in order to verify your identity. You will be notified via email not less than 14 days prior to any such changes.

- 2.6. You must notify us of any dispute, as soon as practicable but in any event no later than 30 days after issue date of the invoice. A valid notice will contain your full details plus the reasons for disputing the fees or charges. Once we receive a valid request, we will acknowledge and confirm receipt of the notice to you within 48 hours. The minimum time for us to review a disputed bill is 14 days.
- 2.7. You must notify us of any credit request as soon as possible. Full details will be required including the reasons for credit. Once we receive a valid request, we will acknowledge and confirm receipt of the request within 48 hours. All credit on account requests are to be investigated before it can be granted. Approved credit applications will be given by crediting your account. The minimum turnaround of a credit on account is 14 days.
- 2.8. You must notify us of any refund request as soon as possible but in any event no later than 30 days after the date on which the reason for the refund request arose. Full details will be required including the reasons for refund. Once we receive a valid request, we will acknowledge and confirm receipt of the request within 48 hours. All refund applications are to be investigated before it can be granted. The minimum turnaround of a refund application is 14 days. Approved refund applications will be refunded free of interest. If, in our reasonable opinion, you breach any of the terms and conditions in the Agreement or the Acceptable Use Policy, we may suspend your access. You are not entitled to a credit or refund for loss of access during the suspension period.
- 2.9. Fees and charges are payable by Credit Card, Direct Debit, or as specified by us.
- 2.10. If a Credit Card number has been supplied for billing purposes, this is taken as permission to bill this card for any money owing to us. Should this Credit Card number expire or should we otherwise be unable to debit valid charges to this Credit Card number, we may immediately and without notice withdraw your access to the Service. You are responsible for updating or advising us of any changes relating to your Credit Card. A standing Credit Card payment authority may be required if Credit Card payment is elected.
- 2.11. You will pay to us such security deposits as we may require and will pay additional deposits if required by us.
- 2.12. You must pay Fees even if you dispute the Fees. In the event that we decide a dispute in your favour, we will refund to you any excess amount paid by you free of interest.
- 2.13. Multiple log-ins are prohibited on any service or product we provide unless specified. Unauthorised multiple log-ins will result in automatic suspension without notice.
- 2.14. If there are any unauthorised or illegal log-ins to your account, you must pay on demand to us any Fees incurred prior to you giving notice in writing to us in accordance with clause 5.5.
- 2.15. You must pay and will indemnify us against any charges incurred as a result of the use or purported use (whether authorised or unauthorised) of your account including international and local telecommunications charges.
- 2.16. Unless the price for a service is stated on the Agreement to be GST inclusive, if any GST is payable by us on any taxable supply made under this agreement, You must pay to us an additional amount equivalent to the product of the consideration for that supply and the then prevailing GST rate, subject to receipt of a valid tax invoice. If you are GST exempted you are required to send in a notice of exemption from the Australian Tax Office.
- 2.17. You must pay all telecommunications charges (including STD charges if applicable) for use of Service. We do not assess what telecommunications charges apply to the location from which you connect to our point of presence.
- 2.18. Our product list (as amended from time to time) located on our website specifies the amount of data transfer available to you for particular products or services. If you transfer data in excess of these megabyte limits, you will be charged at the rate specified on our website.

- 2.19. If we have suspended or terminated your service for any reason, we reserve the right to charge you a Reconnection Fee before we will reconnect the account or lift the suspension.

### **3. FEES AND CHARGES FOR PRE-PAID SERVICES**

- 3.1. All fees and charges will be paid in advance. The charges will depend on the voucher chosen by you, and the charges for each voucher will be laid out in the relevant pricing tables.
- 3.2. All credits will last for a credit validity period of thirty days unless specified within the pricing table.
- 3.3. If credits are not used by the end of the credit validity period they will be forfeited and your balance will be set to zero, unless the pricing plan specifies that the a roll-over of credit will apply.
- 3.4. If the pricing plan specifies for a roll-over of credit, your credit will roll over for a period of 90 days providing the service is topped up with the minimum value stipulated on the pricing plan before the end of the credit validity period. If the service is not topped up with the minimum value before the end of the credit validity period all credits will be forfeited and the balance on your service will be set to zero.
- 3.5. If you top up with a plan that is different from the one that is currently assigned to your service all remaining credits on your current plan will be forfeited.

### **4. OUR RIGHTS**

- 4.0. We have the right to manage and control access to systems and information stored within our systems, as we deem appropriate. We may vary or suspend the Service (or any part of it) including removal of all or part of the content of web pages hosted on our servers, removal of all or part of the postings on its news service and the blocking of electronic messages through our mail servers. Notwithstanding this right, we do not have the responsibility or capability to edit or review your webpages, postings on news services or electronic messages through our mail servers.
- 4.1. Unless the Service through which you accesses our system is a permanent connection to us, we may disconnect you from our system (forced logout) without notice if there is no use of our system by you for a specified period (which in the case of a dial-up Service is 20 minutes)
- 4.2. We reserve the right to suspend, without prior notice, some or all of the Service, if in our absolute discretion, we consider that you have not complied with one or more of the terms in the Agreement or the Acceptable Use Policy or as otherwise misused or abused the Service.
- 4.3. In the event that we suspend the Service, the Service will be automatically terminated 7 days subsequent to the suspension date if the account has not been reconnected prior to this date.
- 4.4. Special Promotions. We reserve the right to apply special terms and conditions on special promotions applied to its new services, plans, products or offers. You will be advised of these special conditions upon sign up or product purchase. The terms of a promotion will override these terms to the extent of any inconsistency.

### **5. OBLIGATIONS**

- 5.0. You will, at your own cost:
  - a) be responsible for the set-up or configuration of your equipment and obtaining all licences, consents, approvals and rights for access to and use of the Service;
  - b) be responsible for all information retrieved, stored and transmitted through the Service and for managing the use of storage capacity so that it does not exceed the capacity allocated to you and/or cause congestion in our network system;

- c) not intentionally attack, damage or otherwise interfere with our network system and/or the Service or use it to cause harm to any other person including other users of the Service or other Internet service providers;
  - d) not send unsolicited bulk emails to third parties using our network;
  - e) comply with any Laws in connection with the Service;
  - f) not share the Service with any person without the prior written approval from us and will use the Service only for the purpose for which it is subscribed;
  - g) comply with the Acceptable Use Policies
- 5.1. It is your responsibility to keep your details up to date. Accounts may be suspended if we are unable to contact you via the details supplied by you.
- 5.2. It is your responsibility to ensure that the content of your webpages, postings on news services and electronic messages is not illegal, defamatory, offensive or otherwise in breach of the Acceptable Use Policies.

## **6. SECURITY**

- 6.0. As information transmitted through the Internet is generally not confidential, we do not guarantee the protection of your privacy. You will take all necessary measures (including changing your password from time to time) to protect the secrecy of Your User Identification Name ("UIN") and/or password. Change of password over the phone will only be permitted and given to the authorised account holder. Verification of the identity of the account holder will be conducted as required by us. We are not liable for any loss suffered by you or any third party due to any wrongful or fraudulent use of your account by you or any other person.
- 6.1. Where a Userid is necessary to access the Service, You will use only your own Userid.
- 6.2. You do not acquire rights to any mailbox number, the Userid, IP address, circuit reference and any codes assigned to you by us and we reserve the right to change or re-assign the same to you at our sole discretion without being liable to you for any loss suffered by you.
- 6.3. We will not perform system backups on information stored within our system. We are not responsible or obligated to provide historical data or to assist you in downloading, faxing or reading to you any of your electronic mails.
- 6.4. If at any time you request us to reset your password, you must immediately reset that password to a new password.
- 6.5. You must immediately notify us of any unauthorised use of your account or any other breach of security known to you. Your liability only ceases at the time of notice of an unauthorised or illegal account use.
- 6.6. We do not warrant that the Service will be uninterrupted or error free.

## **7. SOFTWARE**

- 7.0. If we provide software for use with the Service, you are responsible for ensuring that it is suitable for your needs (including its compatibility for use with your equipment)
- 7.1. We are not responsible for software not distributed, approved or recognised by us including software downloaded from the Internet. If you use such software in connection with the Service, we will not be liable for any fault, loss and/or damage resulting directly or indirectly from such use.

## **8. CHANGES IN SERVICE**

- 8.0. We require a minimum of 14 days notice before the intended change in service. If we receive a valid request, we will acknowledge and confirm receipt of the requested change of Service within 48 hours. The effective date of such change will be the first day of the next billing month. If we receive the change request earlier than 14 days prior to the end of the current

billing month, the change should be effective from the first day of the next billing month. Change in charges will only be effective from the 1st day of the next billing month. Any fees are payable for the remaining term of the previous plan. No pro-rata refund is applicable for change of plans.

## **9. TERMINATION**

- 9.0. We require a minimum of 30 days notice before the intended account termination date. Once we receive a valid request, we will acknowledge and confirm receipt of termination requests within 2 business days.
- 9.1. We may terminate this Agreement immediately if:
- a) You have breached any provision of this Agreement;
  - b) You have at any time provided any false or incomplete information to us;
  - c) In the opinion by us or any regulatory authority, it is not in the public interest to continue providing the Service to You;
  - d) (where “you” is an individual) if You die or are declared a bankrupt; or (where “you” is a corporation) if You become insolvent, subject to administration or receivership or cease to carry on business or is subject to anything having a similar effect.
  - e) If you are rude or abusive to staff members and it is considered by us that it would not be in the best interests of the welfare of the staff to continue to supply services.
- 9.2. We reserve the right to delete your personal files and email at any time after suspension or termination.

## **10. LIABILITIES OF YOU UPON TERMINATION**

- 10.0. If this Agreement is terminated pursuant to clause 8, you will be liable for all Fees up to and including the expiry date of the relevant Minimum Subscription Period. These Fees are payable by you in accordance with our payment terms as stated in clause 2.
- 10.1. We may use any security deposits paid by you and your Credit Card supplied for billing to offset any amounts due from you under this Agreement or any other agreement between us and you, and any remaining balance will then be refunded to you free of interest.
- 10.2. Indemnities given by you and your obligations of confidentiality survive the termination of this Agreement.

## **11. SUSPENSION OF SERVICE**

- 11.0. We may at any time in our sole discretion suspend any Service, without incurring any liability or prejudicing any of our other rights or remedies, for whatever reason, including:
- a) where we suspect that your account has been hacked or accessed by an unauthorised person or that the security of your account has been compromised in any way; or
  - b) where any Fees payable by you are overdue or any deposit or increase in Fees required by us is not paid by you.
- 11.1. Upon Suspension, the Service will be deemed to be terminated and you will be liable for all Fees up to the date of Suspension and if the Minimum Subscription Period has not expired, you will be liable for all Fees up to the end of the relevant Minimum Subscription Period. You will also be liable for any reminder fees invoiced by us following Suspension and prior to any termination of this Agreement pursuant to clause 8 at rates prescribed by us.
- 11.2. We may, at our discretion, reconnect the Service or service(s), as the case may be, in which event this Agreement will be deemed to continue as if it had not been terminated. We reserve the right to impose on you a reconnection fee before we will reconnect the account or lift the suspension.

## **12. SUPPORT**

12.0. We may, but are not obligated to, provide you with onsite technical support. We do not guarantee such support and will not be liable for any loss or damages to equipment, software, information incurred by you in connection with such support. We reserve the right to impose charges for support services provided to you. Our invoice will be evidence of your request for such services. We will only provide support for equipment, which is approved for use in a public telecommunications network by the relevant statutory authority.

## **13. LIMITATION OF LIABILITY**

13.0. When “you” is a consumer as defined by any relevant law such as the Trade Practices Act 1974 ('Consumer'), then certain terms will be implied into this Agreement for the benefit of the Consumer and, where prescribed by law, those terms cannot be modified or excluded by this Agreement ('Statutory Warranties'). Two of these Statutory Warranties are implied warranties that we will provide services to a Consumer with due care and skill and that any goods supplied to a Consumer in connection with those services will be reasonably fit for the purpose supplied. In all other cases and except where inconsistent with these Statutory Warranties, the provisions of sub-clauses 12.2 to 12.5 and clause 13 apply.

13.1. When “you” is not a consumer, our liability for breach of a Statutory Warranty is limited to (at the election of us):

- a) in the case of services, supplying the services again or the cost of having the services supplied again;
- b) in the case of goods, the lowest of the cost of replacing the goods, acquiring equivalent goods or having the goods repaired.

13.2. Except in relation to breach of a Statutory Warranty, we exclude all liability for:

- a) breaches of any express or implied term, condition or warranty; and
- b) negligence, in connection with its performance of this Agreement. Except in relation to breach of a Statutory Warranty, we are not liable for any loss of information caused as a result of any interruption, suspension, or termination of the Service, or for any information available, received or transmitted through the Service.

13.3. Except in relation to breach of a Statutory Warranty, we are not liable to you for:

- a) any economic loss or damage including any loss of revenue, profits, actual or potential business opportunities, contracts or anticipated savings or profits;
- b) any indirect or consequential loss or damage;
- c) any loss or damage relating to the acts or omissions of any third party including any acts or omissions by a Provider; and
- d) any loss or damage resulting from computer viruses or other defects.

13.4. We make no warranty or representation regarding any advertiser, goods, software or services purchased or obtained through the Service or any transactions entered into through the Service. Your participation in promotions or advertisements is solely between you and such advertiser and we are not liable for any loss or damage incurred as a result of such dealings or the presence of such advertisers on the Service.

## **14. INDEMNITY**

14.0. You indemnify us at all times against all claims, actions, proceedings, costs, expenses (including legal costs on a full indemnity basis), demands, liabilities, losses (whether direct, indirect or consequential) and damages which we may incur arising out of or pursuant to any negligent or illegal act or omission by you, breach by you of the terms of this Agreement or any of our Acceptable Use Policies, or any unauthorised use by you of the Service.

## **15. CONFIDENTIALITY AND PRIVACY**

- 15.0. You must not disclose to any person or use for any purpose any confidential information which comes to your knowledge in connection with the Service or this Agreement.
- 15.1. We may access your content and other parts of the Service as necessary to identify or resolve technical problems or to respond to service complaints.
- 15.2. We comply with the requirements of the Privacy Act. Our privacy policy can be viewed on the policies page of our website. You consent to us dealing with your personal information in the manner described in the Privacy Policy.

## **16. VARIATION AND WAIVERS**

- 16.0. We reserve the right to amend these terms and conditions, any service plans, or Fees at any time upon notice (in such form as may be determined by us) to you. Notice via electronic mail to your electronic mail addresses, by the posting on our website and your continued use of or subscription to the Service will be sufficient notice for this purpose.
- 16.1. Any provision of this Agreement may be waived only if we agree so in writing.
- 16.2. The failure of us to exercise any of our powers, rights or remedies under this Agreement will not constitute a waiver of those powers, rights or remedies.

## **17. ASSIGNMENT**

- 17.0. You must not assign or agree to assign any right and must not delegate performance of any of your obligations under this Agreement. We may assign any of our rights or obligations under this Agreement.

## **18. FORCE MAJEURE**

- 18.0. If we are prevented by reason of any event or circumstance beyond our control and without the wilful default or negligence of us (Force Majeure Event) from performing any of our obligations under this Agreement, we will not be liable to you for not performing, or for the manner of our performance of, such obligation to the extent which, and for the period of time during which, it is so prevented.

## **19. GOVERNING LAW AND JURISDICTION**

- 19.0. This Agreement is governed by the laws in force in Victoria, Australia and both you and we submit to the exclusive jurisdiction of the Victorian courts.

## **20. NOTICES**

- 20.0. Notices sent by you under this Agreement must be in English and in legible writing and may be delivered by hand, by mail, by facsimile, by email or by telephone. Notices delivered by hand, by mail, or by facsimile must be delivered to our address or fax number respectively set out in our information page on our Website.
- 20.1. Notice by you will be deemed given:
  - a) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agreement or representative of us;
  - b) in the case of facsimile, upon receipt by your of an acknowledgment or transmission report generated by the facsimile machine used to send the notice;

## **21. SEVERABILITY**

- 21.0. If any provision of this Agreement is prohibited, invalid or unenforceable that provision will be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement.

## **22. LEGAL COSTS**

22.0. You will be liable for and indemnify us against all costs and expenses (including legal costs on a full indemnity basis) which we may incur or pay in protecting or enforcing any rights under this Agreement (including your failure to pay Fees).

### **23. ENTIRE AGREEMENT**

23.0. This Agreement constitutes the entire agreement between us and you. No understanding, arrangement or provision not expressly set out in this Agreement will bind the parties.

### **24. DEFINITIONS AND INTERPRETATION**

24.0. Words denoting the singular include the plural and vice versa.

24.1. Including and include are not to be treated as words of limitation.

24.2. Definitions are as follows:

"We, Us and Our" means ispONE Pty Ltd ACN 103 220 766 and ONE

"You" means a person whose Application is accepted by ONE. You represent that you are at least 18 years old and that you have the right and ability to enter into this Agreement. "Acceptable Use Policy" means the general use of our Internet services.

"Agreement" means the Application and these terms and conditions as varied by us.

"Application" means the application to us for Service to you, completed in full and accepted by us either by notice in writing or by us providing the Service.

"Billing month" means calendar month or anniversary month as applicable.

"Commencement Date" means the date on which we commence providing the Service to You.

"Law" means any law (including common law), regulation, standard or code of practice including any Law governing the Service or this Agreement.

"Agreement Term" means any minimum period of service as stated in any written information or on our website and selected in the Application.

"Our website" means the website at the URL [www.myONE.com.au](http://www.myONE.com.au) or such other websites as may be notified by us from time to time.

"Products" means the provision of products and items sold by us and any authorised distributors.

"Provider" means any of our infrastructure, service or utilities providers including providers of infrastructure, services or utilities used in providing the Services.

"Service" means the provision of services to access and/or utilise the Internet including services to host webpages on its servers and to provide electronic mail accounts and any other services as may be introduced and provided by us.