

ONEbroadband Terms of Service

Introduction

- A. You wish to access ONEtelecom's ADSL service as advertised or viewed at www.onetelecom.com.au ("**Service**").
- B. ONEtelecom agrees to provide the Service to you on the terms and conditions outlined in this Agreement or as varied by notice from time to time and set out at the following Internet address www.onetelecom.com.au/terms ("**Terms and Conditions**").
- C. You acknowledge that your Application for ADSL Broadband services from ONEtelecom and the physical activation of those services as detailed in the application, bind you to ONEtelecom's Terms and Conditions for ADSL connection.

1. Provision of Service

- 1.1 ONEtelecom will provide the Service and, if applicable, the Hardware to you in accordance with this Agreement.
- 1.2 If you pay ONEtelecom's administration costs, you can change your Service to another ADSL plan.

2. Fees

- 2.1 You must pay ONEtelecom the Fees by the Payment Dates.
- 2.2 ONEtelecom may vary the Fees. Any variation to the Fees will take effect on the first Payment Date after the date on which ONEtelecom gives notice and as set out in www.onetelecom.com.au.
- 2.3 If you fail to pay the Fees by the Payment Date (or if your cheque is not accepted or your credit card declines), then, without limiting any other rights that ONEtelecom has under this Agreement, including the right to terminate the Agreement, ONEtelecom may:
 - (1) suspend your Service until it receives payment of the Fees; and
 - (2) charge Interest on the Fees payable.
- 2.4 If ONEtelecom suspends your Service, and you wish to be reconnected, you must pay the Reconnection Fee.

3. Hardware

- 3.1 If you paid the Hardware Fee, you own the Hardware.
- 3.2 If you have not paid the Hardware Fee, then you must return the Hardware to ONEtelecom within 2 weeks of termination or expiry this Agreement.
- 3.3 If any part of the Hardware is faulty at installation, ONEtelecom will dispatch new Hardware to your premises and resume possession of the replaced Hardware. Where ONEtelecom determines that the replaced Hardware is not defective, you will be liable for all costs incurred by ONEtelecom under this clause.

4. Access to Network

- 4.1 You are responsible for any access to the Network through your User ID, whether the access was made by you or not.

4.2 In using the Service, you must not;

- (1) damage, interfere or modify the Network or any network connected to the Network;
- (2) give anyone else access to the Network;
- (3) breach any law;
- (4) use Incompatible Products; or
- (5) infringe or interfere with any else's rights, including privacy and intellectual property rights.

4.3 You must:

- (1) comply with ONEtelecom's Acceptable Usage Policy;
- (2) comply with all reasonable directions and instructions of ONEtelecom in relation to your use of the service including any 'take down' notices brought to your attention by ONEtelecom;
- (3) provide all information and assistance as is reasonably required by ONEtelecom in order to enable ONEtelecom to comply with its obligations with its agreements with third party carriers and suppliers; and
- (4) provide reasonable and safe access to your premises for any maintenance or repair services by ONEtelecom or its agents or suppliers.

5. Disconnection from Network Access

5.1 In order for ONEtelecom to provide fair access to all of its customers, ONEtelecom may automatically disconnect the Service when your:

- (1) breach ONEtelecom's Acceptable Usage policy.

5.2 ONEtelecom does not guarantee that your Network access will be free from any other disruption but will, in good faith, make reasonable endeavours to allow you continuous access to the Service.

6. Suspend/Alteration of the Service

6.1 Subject to requirements under the *Privacy Act 1988*, ONEtelecom may suspend or alter the Service or release any information, including your personal information, at any time in its sole discretion, with or without notice when:

- (1) there is an emergency;
- (2) any third party, including without limitation any of ONEtelecom's suppliers, carriers or contractors does any act or omission that affects the Service;
- (3) it is reasonably likely that an act or omission by you will impair or adversely effect the quality or operation of the ONEtelecom's operations or the Network;
- (4) you are in material default under this Agreement or ONEtelecom's Acceptable Usage Policy;
- (5) the Network or any of ONEtelecom's facilities need to be repaired, modified or upgraded;
- (6) ONEtelecom thinks that suspension or alteration is necessary to prevent or stop any unauthorised access to the Network, unlawful acts or infringement of anyone else's rights;
- (7) directed by the Australian Broadcasting Authority under a 'take down notice'; or

- (8) there is any order, judgement, decree, determination or otherwise of any governmental agency that your access to the Service relates to material that is illegal, offensive, objectionable or in breach of a third party's rights.

6.2 You must continue to pay the Fees if ONEtelecom suspends your Service.

6.3 Without limitation on any of ONEtelecom's other rights, ONEtelecom may suspend the Service if you do not pay any Fees by their Payment Date.

7. Your Responsibility

7.1 You are responsible for:

- (1) informing yourself and seeking independent advice about your and ONEtelecom's rights and obligations under this Agreement;
- (2) being aware of any changes or variations that ONEtelecom may make to the Terms and Conditions of which ONEtelecom has notified you as contained in the following website; www.onetelecom.com.au
- (3) implementing appropriate anti-virus systems;
- (4) all telecommunication expenses incurred by you in relation to the Service;
- (5) screening against any content or material that you find offensive or disturbing; and
- (6) acquiring any training or equipment needed to access the Service.

8. Acknowledgement

8.1 You acknowledge and agree that:

- (1) your access to the Service:
 - (a) will prevent you from using products or services that are incompatible with the Network;
 - (b) may cause disruption to other telecommunications services, including telephone lines; and
 - (c) will depend on Network availability (e.g. if the Network is busy);
- (2) ONEtelecom's obligation to provide the Service is subject to your meeting the Technical Requirements; and
- (3) ONEtelecom may disclose your personal information to its suppliers and contractors for the purpose of providing your Service.

9. Password

9.1 You must:

- (1) protect the confidentiality of your password; and
- (2) not disclose or allow anyone else to use your password.

10. Liability

10.1 You access the Service at your own risk, and without limitation, ONEtelecom is not liable to you for any loss, cost, damage, injury or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect, of:

- (1) any defect, error, deficiency or discrepancy in the Service including their form, content and timeliness of delivery;
- (2) viruses transmitted through the Network;
- (3) any material or content accessed through the Service, even if the material or content is obscene, offensive or pornographic;
- (4) suspension, disruption or cancellation of the Service; or
- (5) any telecommunications expenses incurred by you in relation to the Service.

11. Warranty

11.1 To the extent that implied terms and can be lawfully excluded, ONEtelecom excludes all implied terms from this Agreement.

11.2 In relation to implied terms that cannot lawfully be excluded, ONEtelecom limits its liability to:

- (1) providing the Service again; or
- (2) paying the cost of having the Service provided again.

12. Indemnity and Release

12.1 You indemnify ONEtelecom for any loss, damage, cost, expense or claim arising from your breach of this Agreement.

12.2 You release ONEtelecom from any liability arising from:

- (1) disruption of the Service;
- (2) cancellation of the Service;
- (3) suspension of the Service to a particular IP Address;
- (4) cancellations or refusals to provide Incompatible Products; and
- (5) possible breaches of the *Telecommunications Act (Customer Service Guarantee) Standard 2000*.

13. Transmission Speed

13.1 You acknowledge that:

- (1) the Transmission Speed is the maximum theoretical speed attainable through the Service at ideal conditions;
- (2) the actual transmission speed may be less than the Transmission Speed because of many factors including without limitation Network congestion and third party carriers; and
- (3) ONEtelecom does not warrant that you will be able to obtain Transmission Speed at all times while accessing the Service.

14. Privacy

- 14.1 ONEtelecom will treat your personal information in accordance with its Privacy Policy viewable at: www.myone.com.au/policy

15. Force Majeure

- 15.1 ONEtelecom is not liable for any delay or failure to perform an obligation (other than to pay money) under this Agreement caused by:

- (1) an act of God;
- (2) war, riot, insurrection, vandalism, terrorism or sabotage;
- (3) strike, lockout, ban, limitation of work or other industrial disturbance;
- (4) power failures, communications failures, viruses, hacker attacks; or
- (5) any law, rule or regulation

(the "Event").

- 15.2 The performance of the ONEtelecom's obligations are suspended for the period of delay caused by the Event.

16. Term

- 16.1 The term of this Agreement is for the Minimum Term or, if renewed under clause 17, the Renewal Term, unless terminated earlier in accordance with clause 18.

17. Renewal

- 17.1 If, 1 week before the end of the Minimum Term or Renewal Term (whichever is applicable), you do not notify ONEtelecom that you wish to stop the Service, the Agreement continues for the Renewal Term.
- 17.2 If you notify ONEtelecom within one week before the end of the Minimum Term or Renewal Term (whichever is applicable) that you do not wish to continue the Service, the Agreement ends at the end of the Minimum Term or Renewal Term (as the case may be).

18. Termination

- 18.1 ONEtelecom may terminate this Agreement at any time after 1 month notice.
- 18.2 ONEtelecom may terminate this Agreement if you have breached this Agreement and have not remedied that breach within 2 weeks notice from ONEtelecom.
- 18.3 If:
- (1) ONEtelecom terminates this Agreement under clause 18.2; or
 - (2) you terminate this Agreement before the end of the Minimum Term or Renewal Term (as the case may be)

you must pay ONEtelecom the Early Termination Fee and all Fees payable for the balance of the Minimum Term or Renewal Term within 2 weeks of this Agreement terminating.

19. Severability

19.1 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

20. Entire understanding

20.1 This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement.

21. Assignment

21.1 You must not assign any of your rights or obligations under this Agreement.

21.2 ONEtelecom may assign its rights and obligations under this Agreement at any time after 1 month notice.

22. Variation

22.1 ONEtelecom may provide notice of its wish to vary the Agreement ("**ONEtelecom Variations**")

22.2 If you do not agree to ONEtelecom variations, you must notify ONEtelecom within 1 week of ONEtelecom providing notice. If you do not notify ONEtelecom, you are deemed to have accepted the ONEtelecom variations.

22.3 Notwithstanding your notice that you do not accept ONEtelecom variations, ONEtelecom variations take effect during the next Renewal Term after the date of ONEtelecom's notice under clause 22.1.

22.4 Except as provided under this clause or clause 2.2, the Agreement may only be varied by agreement in writing of the parties.

23. Notice

23.1 ONEtelecom must provide notice to you at the following website www.onetelecom.com.au

23.2 You must provide notice to ONEtelecom at GPO Box 2223, Melbourne 3001

24. Governing Law

24.1 This Agreement is governed by the law of the Australian Capital Territory and both parties agree to submit to the jurisdiction of the Australian Capital Territory.

25. Definitions

25.1 In this Agreement:

- (1) **Agreement** means this document, including any schedule or annexure to it;
- (2) **Download Limit** means the download limit for each Session as specified in the Service Schedule;
- (3) **Early Termination Fee** means the fee payable by you to ONEtelecom as specified in the Service Schedule;
- (4) **Fees** means the fees payable for the Service as specified in the Service Schedule;

- (5) **Hardware** means the hardware that ONEtelecom will provide to you as specified in the Service Schedule.
- (6) **Idle Time Limit** means the idle time limit for each time that Network access is idle as specified in the Service Schedule;
- (7) **Incompatible Products** means products or services that prevent or hinder ONEtelecom's ability to provide the Service to you;
- (8) **Interest** means the interest payable on any late Fees calculated at the rate of 2% above the cash rate set by the Reserve Bank and published in the Australian Financial review on the Payment Date;
- (9) **Payment Dates** means the dates on which the Fee is due as specified in the Service Schedule;
- (10) **Minimum Term** means the period specified in the Service Schedule;
- (11) **Network** means the telecommunications systems that is accessed through the Service including all links, cables, radio, microwave and other transmission media and equipment, switches, software and related items owned and operated by ONEtelecom, Telstra or any other carrier or supplier of telecommunications services to ONEtelecom;
- (12) **Reconnection Fee** means the fee payable to reconnect to the Service as specified in the Service Schedule.
- (13) **Renewal Term** means the period for which the parties can renew the Agreement as specified in the Service Schedule;
- (14) **Session** means each time that you access the Network;
- (15) **Technical Requirements** means the technical specifications that you must meet in order to access the Service as specified in the Service Schedule;
- (16) **Acceptable Usage Policy** means ONEtelecom's Acceptable Usage Policy at the following web address and as amended from time to time www.myone.com.au/policy
- (17) **Transmission Speed** means the maximum transmission speed available under the Service as prescribed in the Service Schedule;
- (18) **User ID** means the logon identification provided by ONEtelecom for access to the Network; and
- (19) **Your Email** means the email address that ONEtelecom provide you as part of the Service.