

# ONEmobile broadband Terms of Service

## Introduction

- A. You wish to access ONEtelecom's 3G wireless broadband service as advertised or viewed at [www.onetelecom.com.au](http://www.onetelecom.com.au) ("**Service**").
- B. The Service allows you to access the Internet and related data services from your computer via a wireless connection.
- C. ONEtelecom agrees to provide the Service to you on the terms and conditions set out in this Agreement as may be varied from time to time and published at ("**Terms and Conditions**").
- D. You acknowledge that your Application for Wireless services from ONEtelecom and the physical activation of those services as detailed in the application, bind you to ONEtelecom's Terms and Conditions for a Wireless connection.

## 1. Provision of Service

1.1 ONEtelecom will provide the Service and the Hardware (if applicable) to you in accordance with this Agreement.

1.2 Upon payment of any administrative fee notified by ONEtelecom, you may change the Service you access to another 3G Wireless Broadband Plan.

## 2. What do you need to access the Service?

2.1 To access the Service you need:

- (1) Equipment that complies with the Technical Requirements; and
- (2) An Approved USB Wireless Modem; and
- (3) An Approved SIM Card.

## 3. USB Wireless Modem

3.1 Subject to the 3G Wireless Broadband Plan you select:

- (1) an Approved USB Wireless Modem may be supplied to you by ONEtelecom to access the Service; or
- (2) you may be required to purchase an Approved USB Wireless Modem from ONEtelecom to access the Service.

3.2 If an Approved USB Wireless Modem is supplied to you by ONEtelecom, you agree:

- (1) ONEtelecom owns the Approved USB Wireless Modem.
- (2) You will take reasonable care of the Approved USB Wireless Modem.
- (3) If the Approved USB Wireless Modem is damaged in any way, you will pay all costs incurred by ONEtelecom in its repair or replacement under this clause, unless ONEtelecom determines in its sole discretion that the damage was caused by fair wear and tear.

- (4) If the Approved USB Wireless Modem is lost or stolen, you will pay all costs incurred by ONEtelcom in its replacement under this clause.
- 3.3 If you purchase an Approved USB Wireless Modem from ONEtelcom to access the Service, you will be responsible for the equipment from the time you receive it.
- 3.4 Subject to clause 7 of this Agreement, ONEtelcom may require you to return the Approved USB Wireless Modem if:
- (1) ONEtelcom supply you with a replacement; or
- (2) ONEtelcom no longer provides the Service to you (including upon termination, suspension or alteration of the Service or your access to the Service).
- 3.5 If the Approved USB Wireless Modem is not received by ONEtelcom within 14 days' of a request by ONEtelcom for its return, you will pay the Return Fee.
- 4. SIM card**
- 4.1 ONEtelcom will supply you with an Approved SIM Card to access the Service.
- 4.2 If an Approved SIM Card is supplied to you by ONEtelcom, you agree:
- (1) You will take reasonable care of the Approved SIM Card.
- (2) If the Approved SIM Card is damaged in any way, you will pay all costs incurred by ONEtelcom in its repair or replacement under this clause.
- (3) If the Approved SIM Card is lost or stolen, you will pay all costs incurred by ONEtelcom in its replacement under this clause.
- 4.3 You must:
- (1) Keep the Approved SIM Card secure;
- (2) Not remove the Approved SIM Card from the USB Wireless Modem (unless instructed to do so by ONEtelcom);
- (3) Only use the Approved SIM Card to access the Service;
- (4) Not use the Approved SIM Card to access any other services (including voice calls or MMS). If you do so, ONEtelcom may charge you at prevailing rates for your access to any other services and your access to any other services will be included in your Data Allowance;
- (5) Not interfere with or impair the operation of the Approved SIM Card;
- (6) Not duplicate the identity of the Approved SIM Card (including for the purpose of back up).
- 4.4 If you remove the Approved SIM Card from the Approved USB Modem or use it in another modem, ONEtelcom may cancel your access to the Service without notice.
- 4.5 ONEtelcom may require you to return the Approved SIM Card if:
- (1) ONEtelcom issue you with a replacement; or
- (2) ONEtelcom no longer provides the Service to you (including upon termination, suspension or alteration of the Service or your access to the Service).

4.6 If the Approved SIM Card is not received by ONEtelecom within 14 days' of a request by ONEtelecom for its return, you will pay the Return Fee.

## **5. Fees**

5.1 You must pay ONEtelecom the Fees by the Payment Date.

5.2 Notwithstanding any other clause in this Agreement, ONEtelecom may vary the Fees at any time during the term of this Agreement without notice. Any variation to the Fees will take effect on the first Payment Date after the date on which ONEtelecom gives notice as published at [www.onetelecom.com.au](http://www.onetelecom.com.au).

5.3 You must pay the Fees by the Payment Method unless otherwise agreed by ONEtelecom.

5.4 If you fail to pay the Fees by the Payment Date (or if your cheque is dishonoured or your credit card declined) , without limiting any other rights that ONEtelecom has under this Agreement, including the right to terminate the Agreement, ONEtelecom may:

(1) suspend your access to the Service until it receives payment of the Fees; and

(2) charge Interest on the Fees payable.

5.5 If ONEtelecom suspends your access to the Service under this clause and you wish to be reconnected, you must pay the Fees, the Reconnection Fee and any Interest.

## **6. Goods and services tax**

6.1 Unless expressly excluded, the Fees and any other consideration to be paid under this Agreement include any GST.

6.2 To the extent that any supply made under or in connection with this Agreement is a taxable supply and the consideration for that supply expressly excludes GST, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

6.3 To the extent that 1 party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

## **7. Hardware**

7.1 You will own the Hardware upon payment of the Hardware Fee.

7.2 If you have not paid the Hardware Fee, then you must return the Hardware to ONEtelecom within 14 days of termination or expiration of this Agreement.

7.3 If any part of the Hardware is faulty at installation, you may request ONEtelecom to provide you with new Hardware. ONEtelecom will resume possession and ownership of the replaced Hardware. If ONEtelecom determines that the replaced Hardware is not faulty, you will pay all costs incurred by ONEtelecom under this clause.

## **8. Access to Network**

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

8.2 In using the Service, you must not:

- (1) Damage, interfere or modify the Network or any network connected to the Network;
- (2) Give any other person access to the Network;
- (3) Breach any law;
- (4) Use Incompatible Products; or
- (5) Infringe or interfere with any other person's rights, including privacy and intellectual property rights.

8.3 You must:

- (1) Comply with the 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.

8.4 You may not access the Service or the Network overseas.

## **9. Disconnection from Network Access**

9.1 In order for ONEtelecom to provide fair access to all of its customers, ONEtelecom may immediately and without notice disconnect the Service if you breach the Acceptable Usage Policy in any way.

9.2 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.

## **10. Suspend/Alteration of the Service**

10.1 Subject to 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 affect the quality or operation of the ONEtelecom's operations or the Network;
- (4) you breach this Agreement or the 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 any other person's rights;
- (7) directed to by the Australian Broadcasting Authority under a 'take down notice'; or
- (8) there is any order, judgement, decree, determination or otherwise of any court or 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.

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

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

## 11. Your Responsibility

11.1 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 by publishing at [www.onetelecom.com.au](http://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.

## 12. Acknowledgement

12.1 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 mobile services; 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 you meeting the Technical Requirements;
- (3) ONEtelecom may disclose your personal information to its suppliers and contractors for the purpose of providing you with access to the Service; and
- (4) ONEtelecom will communicate with you using Your Email. You agree to monitor Your Email regularly to retrieve and review ONEtelecom communications.

### **13. Password**

13.1 You must:

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

### **14. Liability**

14.1 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 claim (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 in 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;
- (5) inferior operation of the Service caused by congestion on the Optus 3G/HSPA network or any other reason; or
- (6) any telecommunications expenses incurred by you in relation to the Service.

### **15. Warranty**

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

15.2 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.

### **16. Indemnity and Release**

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

16.2 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 allow the use or your use of any Incompatible Products; and

- (5) possible breaches of the *Telecommunications Act (Customer Service Guarantee) Standard 2000*.

## **17. Transmission Speed**

17.1 You acknowledge that:

- (1) the Transmission Speed is the maximum theoretical speed attainable at ideal conditions;
- (2) the actual 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 any time while accessing the Services.

## **18. Network Coverage**

18.1 You acknowledge that:

- (1) the Service is only available in areas covered by the Optus 3G/HSPA network;
- (2) you are responsible for enquiring whether coverage is available in the area in which you want to use the Service. ONEtelecom's wireless coverage locator is published at [www.onetelecom.com.au](http://www.onetelecom.com.au).

18.2 In areas that the Service is available, ONEtelecom does not guarantee that:

- (1) The Service is available in each place within an area covered by the Optus 3G/HSPA network;
- (2) 'Drop-outs' will not occur;
- (3) There will be no delays in transferring data when switching between bearer networks;
- (4) There will be no congestion on the Optus 3G/HSPA network.

## **19. Privacy**

19.1 ONEtelecom will treat your personal information in accordance with its Privacy Policy as published at [www.myone.com.au/policy](http://www.myone.com.au/policy)

## **20. Force Majeure**

20.1 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;

(an "Event").

20.2 The performance of ONEtelecom's obligations is suspended for the period of delay caused by an Event.

## **21. Term**

21.1 The term of this Agreement is for the Minimum Term or, if renewed under clause 22, the Renewal Term, unless terminated earlier in accordance with clause 23.

## **22. Renewal**

22.1 If, at least 30 days before the end of the Minimum Term or Renewal Term (whichever is applicable), you do not notify ONEtelecom that you do not wish to continue the Service, this Agreement continues for the Renewal Term.

22.2 If you notify ONEtelecom at least 30 days before the end of the Minimum Term or Renewal Term (whichever is applicable) that you do not wish to continue the Service, this Agreement ends at the end of the Minimum Term or Renewal Term (as the case may be).

## **23. Termination**

23.1 ONEtelecom may terminate this Agreement at any time after 1 months' notice to you.

23.2 ONEtelecom may terminate this Agreement if you have breached this Agreement and have not remedied that breach within 14 days notice from ONEtelecom requiring you to remedy the breach.

23.3 If:

- (1) ONEtelecom terminates this Agreement under clause 23.2; 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 the Renewal Term (whichever is applicable) within 14 days of this Agreement terminating.

## **24. Severability**

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

## **25. Entire understanding**

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

## **26. Assignment**

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

26.2 ONEtelecom may assign its rights and obligations under this Agreement at any time after 1 months' notice to you.

## 27. Variation

- 27.1 ONEtelecom may provide notice of its wish to vary any of the Terms and Conditions of this Agreement (“**CE Variations**”)
- 27.2 If you do not agree to the CE Variations, you must notify ONEtelecom within 7 days of ONEtelecom providing notice. If you do not notify ONEtelecom, you are deemed to have accepted the CE Variations.
- 27.3 Notwithstanding your notice that you do not accept CE Variations, CE Variations take effect during the next Renewal Term after the date of ONEtelecom’s notice under clause 27.1.
- 27.4 Except as provided under this clause or clause 5.2, this Agreement may only be varied by agreement in writing of the parties.

## 28. Notice

- 28.1 Any notice which ONEtelecom must give under this Agreement may be:
- (1) published at [www.onetelecom.com.au](http://www.onetelecom.com.au) and will be treated as given to you on the date that it is published; or
  - (2) sent by email to Your Email and will be treated as given to you on the date that it is sent.
- 28.2 You must provide notice to ONEtelecom at GPO Box 2223, Melbourne 3001

## 29. Governing Law

- 29.1 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.

## 30. Definitions

- 30.1 In this Agreement:
- (1) **Acceptable Usage Policy** means ONEtelecom’s Acceptable Usage Policy as amended from time to time and published at [www.myone.com.au/policy](http://www.myone.com.au/policy);
  - (2) **Additional Download Fee** means the fee payable by you as specified in the Service Schedule for all data uploaded or downloaded by you in a Session in excess of the Download Limit;
  - (3) **Additional Time Fee** means the fee payable by you as specified in the Service Schedule for all time in excess of the Session Time Limit;
  - (4) **Agreement** means this document, including the Service Schedule and any other schedule or annexure to it;
  - (5) **Approved SIM Card** means the SIM Card approved by ONEtelecom and supplied to you by ONEtelecom;
  - (6) **Approved USB Wireless Modem** means a USB Wireless Modem approved by ONEtelecom;
  - (7) **ONEtelecom** means the internet service provided by ispONE and includes ONEtelecom ADSL Broadband;

- (8) **Data Allowance** means the maximum data that you may upload or download each calendar month as specified in the Service Schedule;
- (9) **Download Limit** means the maximum data to be uploaded or downloaded in each Session as specified in the Service Schedule;
- (10) **Early Termination Fee** means the fee payable by you to ONEtelcom as specified in the Service Schedule;
- (11) **Fees** means all fees payable by you to ONEtelcom for the Service as specified in the Service Schedule and includes the Monthly Fee, Additional Time Fee and Additional Download Fee;
- (12) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;
- (13) **Hardware** means the hardware that ONEtelcom will provide to you as specified in the Service Schedule and may include the Approved USB Wireless Modem;
- (14) **Hardware Fee** means the fee payable by you to ONEtelcom specified in the Service Schedule;
- (15) **Incompatible Products** means products or services that prevent or hinder ONEtelcom's ability to provide the Service to you;
- (16) **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;
- (17) **IP Address** means the internet protocol address assigned to identify your computer on the Network;
- (18) **Minimum Term** means the period specified in the Service Schedule;
- (19) **Monthly Fee** means the fee payable by you each calendar month for the Service during the Minimum Term or Renewal Term (whichever is applicable) as specified in the Service Schedule;
- (20) **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 ONEtelcom, ispONE, Telstra, Optus or any other carrier or supplier of telecommunications services to ONEtelcom;
- (21) **Payment Date** means the dates on which Fees are due and payable to ONEtelcom as specified in the Service Schedule;
- (22) **Payment Method** means the method of payment set out in the Service Schedule and if more than one method of payment, any one of the methods set out in the Service Schedule;
- (23) **Privacy Policy** means ONEtelcom's Privacy Policy as amended from time to time and published at [www.onetelecom.com.au](http://www.onetelecom.com.au);
- (24) **Reconnection Fee** means the fee payable to reconnect to the Service as specified in the Service Schedule;
- (25) **Renewal Term** means the period for which the parties can renew the Agreement as specified in the Service Schedule;
- (26) **Return Fee** means the fee determined by ONEtelcom from time to time and published at [www.onetelecom.com.au](http://www.onetelecom.com.au);
- (27) **Session** means each time that you access the Network;

- (28) **Session Time Limit** means the time specified in the Service Schedule and is the maximum time that you may access the Network each Session;
- (29) **Technical Requirements** means the technical specifications that you must meet in order to access the Service as specified in the Service Schedule;
- (30) **Transmission Speed** means the maximum transmission speed available under the Service as specified in the Service Schedule;
- (31) **User ID** means the logon identification provided by ONEtelcom for access to the Network; and
- (32) **Your Email** means the email address that ONEtelcom provide you as part of the Service;
- (33) **3G Wireless Broadband Plan** means a plan published at [www.onetelecom.com.au](http://www.onetelecom.com.au) for the provision of access to the ONEtelcom wireless broadband service.