



IT Service & Support

General Terms and Conditions

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1 The Agreement

1.1 The Parties

- 1.1.1 Host One ABN 20 270 257 856 (hereinafter referred to as "Host One", "us", "our") and the Customer (being an entity subscribing to Host One for the provision of network, Internet or telephony services) agree that by accessing our services, you (hereinafter referred to as "The Customer", "you" and "your") accept, without limitation or qualification, the terms and conditions contained within the Standard Form of Agreement.

1.2 What is the Standard Form of Agreement?

- 1.2.1 The Standard Form of Agreement (or SFOA) sets out the standard terms and conditions of our services and products we offer. The SOFA is made up of:
- a) General Terms and Conditions
 - b) Service Descriptions
 - c) Your Application

1.3 Access to the SFOA Document

- 1.3.1 The Standard Form of Agreement is available via our website or from our office. If you require assistance in reading this document please contact our office.

1.4 Changes to the SFOA

- 1.4.1 You agree to be bound by our SOFA as displayed at the Host One web site.
- 1.4.2 You understand that SFOA can be amended from time to time and you should visit the Host One web site (www.hostone.com.au) regularly to be aware of any changes.

1.5 Your Rights

- 1.5.1 Telecommunications Legislation requires Host One to supply telecommunications services to you on the terms and conditions of a "Standard Form of Agreement".
- 1.5.2 Under Australian Telecommunications legislation you and we must comply with our Standard Form of Agreement unless you and we have agreed differently.

2 Definitions

"**Agreement**" means this agreement for the provision of the Supplies by Host One to you, which includes this Standard Form of Agreement, the Service Descriptions and your Application.

"**Application**" means each application form completed by you and sent to Host One requesting the Services. An Application may include a physical document, online application or scanned and email to us.

"**Charges**" means the charges payable by you to Host One for the Goods and Services as specified on your Application, the Host One website, Quotes or other means.

"**Commencement Date**" means the date when the Service is delivered for your use. This is the first date used for billing purposes.

"**Early Termination Fee**" means the Charges that are specified as "Early Termination Fee".

"**Goods**" means any goods we supply to you, including goods supplied in connection with any Services.

"**GST**" means Goods and Services Tax (Act 1999).

"**Service Desk**" means the contact point for Faults, which you may contact by dialling the telephone number or submitting and email to a specified address in an applicable Service Description Schedule; the standard support hours are 0800HRS to 1700HRS (GMT+8).

"**Systems Maintenance**" means maintenance carried out by Host One, where notice has been provided to you by email or posting a notice on the Host One website prior to the scheduled event occurring.

"**Service**" means the services acquired from Host One as described by the Service Descriptions document for that particular service.

"**Service Guarantee**" means guarantee that it will meet the Service Level for a particular Service as described in the Service Description.

"**Service Level**" means the actual number of hours during a calendar month that a Service is available to you.

"**Standard Form of Agreement**" means this document entitled "Standard Form of Agreement" and includes our Policies.

"**Summary Standard Form of Agreement**" means the written summary of the terms and conditions of this Standard Form of Agreement.

"**Suspension**" means that the goods or Service delivery and we temporarily cease providing the benefit to you. For example; Broadband Service Suspension will result in the internet not working. Email Service Suspension will prevent email from being delivered.

"**Telecommunications Company**" means any licensed carrier or carriage Service provider as defined by the Telecommunications Act 1997 other than Host One.

"**Telephone Line**" means any telephone line used to provide the Services.

"**Term**" means, in respect of a Service, the contract period specified in the Application for that Service.

"**TIO**" means the Telecommunications Industry Ombudsman.

"**Website**" means the Host One website located at www.hostone.com.au

3 Our Services

3.1 Applying for the Service

- 3.1.1 You may make an Application for supply of one or more goods and services by:
- a) Completing an online Application located at **Error! Hyperlink reference not valid.**
 - b) Email or physical delivery of the completed application to us.

Our SFOA is enforceable:

- a) if you apply online, the date you submit the Application;
- b) if you sign an Application, the date you sign the Application;
- c) if you apply by email or some other form of delivery, the date on the Application.

3.2 Assessing Your Application

- 3.2.1 When you request Host One to supply the Service to you, we will decide whether to accept your application and to supply the Service to you based on:
- a) the particular terms for that Service;
 - b) your eligibility for that Service;
 - c) its availability to your premises;
 - d) you meeting our credit requirements;
 - e) the accuracy of the information provided to Host One by you and
 - f) your prior conduct or history in respect of any previous supply agreements;
- 3.2.2 We reserve the right to check your details with credit referencing bodies/associations as outlined in section 6.
- 3.2.3 We may refuse your Application for any reason, without being obliged to provide any reason to you.

3.3 Provisioning Your Service

- 3.3.1 Subject to acceptance under clause 3.2.1, the commencement of the Service is the date on which the Service is made available for use.
- 3.3.2 Upon our acceptance of your Application, or, applicable, execution of this Agreement by Host One and you, a contract is formed and you become bound by this Agreement and the Term and charges associated with the Service. The contract between Host One remains in force until it is terminated in accordance with this Agreement.
 - 3.3.2.1 Under the Telecommunications Legislation, we are required to connect some Services within particular timeframes, unless you have waived your Customer Service Guarantee rights under clause 7.15. For other Services we will try to connect the Service within a reasonable industry timeframe.
- 3.3.3 We will retain control and decide the route and technical means that we use to provide the Service.
- 3.3.4 You must reasonably co-operate with Host One you allow us to connect and supply the Service to you safely and efficiently.
- 3.3.5 You agree that, if you use the online Application system and provide incorrect information which is actioned by a Carrier, that you will be liable for a resubmission payment to Host One.
- 3.3.6 To maintain the quality of services provided to our customers, we may also prioritise the delivery of network traffic that is latency, rate or jitter sensitive in preference to traffic that is not, as determined in our absolute discretion.
- 3.3.7 Any general statements, maps or other indicators of Service availability are only a guide and you must not rely upon such statements, maps or other indicators as a commitment to provide the Services to a particular physical location.
- 3.3.8 The Goods and Services are provided on an 'as- is' basis.
- 3.3.9 A delay may occur between the Acceptance and Provisioning of the Service. We are not and will not be responsible for any delays associated with provision of a Service, nor any inability by Host One to provide the Service to you.
- 3.3.10 Where delay occurs in provisioning your Service, this does not constitute a breach of our contract with you or your contract with us.
- 3.3.11 We may, without liability, terminate the Contract or provisioning of the Service at any time prior to the Commencement Date, if we reasonably determine that it is not technically or operatively feasible or commercially viable to supply the Service to you.

3.4 Connection, Transmission and Reception Speeds

- 3.4.1 Any connection, reception and transmission speeds indicated refer to the maximum theoretical speeds achievable with the Supplies under ideal conditions, and you acknowledge that the actual achieved speeds may be substantially different from the theoretical speeds.
- 3.4.2 You acknowledge and agree that the maximum theoretical speed may be reduced by factors including but not limited to:
- a) your location and distance from the telephone exchange or network point of interconnect;
 - b) the length, configuration and condition of your copper or fibre line;
 - c) the number and type of other services being used by other customers inside and outside the Host One network;
 - d) electrical interference from outside sources;
 - e) the configuration of the wiring within your premises;
 - f) the software configurations and applications on your computer;
 - g) your equipment and software

4 Service Usage

4.1 Your Responsibilities

- 4.1.1 You must provide true, current accurate and complete information as prompted by the registration form. You further agree to keep Host One current on any changes in that information.
- 4.1.2 You are responsible for all acts or omissions that occur under your account or password, including the content of transmissions through the Services and maintaining the confidentiality of your password.
- 4.1.3 You will not publish, distribute or disseminate defamatory or otherwise unlawful material through the use of the Service.
- 4.1.4 You will not use the Service to threaten, harass, stalk, abuse, or otherwise violate the legal rights (including rights of privacy) of others.
- 4.1.5 You will not use the Service to infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy.
- 4.1.6 You will comply with Australian law regarding the transmission of technical data exported from Australia through Host One.
- 4.1.7 You must ensure that your use of the Service does not expose any minor to material that is unsuitable for minors and you will indemnify Host One for any liability we incur as a result of your breach of this clause. You may obtain advice on available content filtering software which may be of assistance to you from the following web page: <http://www.commsalliance.com.au/>
- 4.1.8 You acknowledge that it is your sole responsibility to comply with any rules imposed by any third party whose content or Service you access using the Services.

- 4.1.9 You will not resell the Service for commercial purposes without the express written consent of Host One.
- 4.1.10 You acknowledge that we may take all reasonably necessary steps to ensure the efficient operation of the Services.
- 4.1.11 You are responsible for backup of all information or content associated with the Service.
- 4.1.12 Your failure to observe any of the foregoing limitations may result in civil or criminal liability, and the immediate termination of your Service.

4.2 Responsible Usage

- 4.2.1 You must comply with rules regulations and acceptable usage policies that are in force for each system you access. If you act recklessly or irresponsibly or your actions endanger our network or systems, your access may be suspended or terminated at any time, without notice.

4.3 Secure Usage

- 4.3.1 We require that you take responsibility for maintaining the security of your Service. Protection of the security aspects of your Service, like accounts and passwords, are your responsibility.

4.4 Unlawful Usage

- 4.4.1 Our Services may only be used for lawful and authorised purposes. Storage, transmission or distribution of any material in violation of Commonwealth or State legislation is prohibited. This includes copyright material, material legally judged as threatening or obscene, or material protected by trade secret.
- 4.4.2 You must not use, or allow any other person to use, the network and systems for any activities of an illegal or fraudulent nature, including any activities prohibited under the Telecommunications Act 1989 (Cth) or under other applicable state and/or Commonwealth Laws.
- 4.4.3 You may not use the Service to send, allow to be sent, or assist in the sending of Spam or otherwise or breach the Spam Act 2003.

4.5 Alleged Copyright Infringement Notices

- 4.5.1 Where Host One is provided with reasonable evidence from copyright owners or their agents that alleges that you may be using the Service unlawfully we will:
- a) Send you an Alleged Copyright Infringement Notice (ACIN) by email. This email will contain the reference to specific alleged copyrighted content or unlawful activity.
 - b) Request that you remove the alleged copyrighted content and or cease the alleged unlawful activity within 72 hours.
- 4.5.2 Where the provision of alleged copyrighted content or unlawful activity has not ceased after 72 hours from the receipt of the notice, ZettaNet will limit your Services in order to enforce the restriction of the dissemination of alleged copyrighted content or the activity.
- 4.5.3 If you provide reasonable evidence to suggest the unauthorised use of your Service or a breach and subsequent resolution of your own policies resulted in the issue of the notice from the copyright holder we may waive the ACIN.
- 4.5.4 Where we issue you with more than three ACIN's within a 30 day period you will be classified as a repeat offender and your Service will be terminated under clause 4.9.1.

4.6 Unauthorised Usage

- 4.6.1 Any attempt to access or modify unauthorised computer system information or to interfere with normal system operations, whether on the equipment of ours or any computer system or network that is accessed by our services, may result in the suspension or termination of your access. Unauthorised activities include, but are not limited to, guessing or using passwords other than your own, accessing information that does not have public permission, and accessing any system on which you are not welcome.
- 4.6.2 Any attempt to disrupt or interfere with users, services or equipment, may result in the termination or suspension of your access. Disruptions include, but are not limited to, distribution of unsolicited advertising or spamming, monopolisation of services, denial of service, propagation of, or transmission of information or software which contains, computer worms, trojan horses, viruses or other harmful components, using the network to make unauthorised entry to any other machine accessible via our network, sending harassing or threatening e-mail, and forgery or attempted forgery of e-mail messages and Usenet news postings.
- 4.6.3 You will be held liable for, and indemnify Host One for, all costs and damages, attributable to your unauthorised activities or disruptions.

4.7 Service Cancellation

4.7.1 Customers are required to provide Host One thirty (30) days written notice should they wish to cancel their Service.

4.7.2 Valid forms of written cancellation include;

- a) Completion of a cancellation request form on the Host One website.
- b) Email to support@hostone.com.au
- c) Host One Support Portal

In all cases you will be issued with a unique Ticket Number acknowledging receipt of the cancellation request. This provides proof of submission and receipt by Host One.

If we do not receive notification from you prior to the end of your monthly billing period, the Service will continue and an invoice will be issued for the next billing period in accordance with our Service Description.

4.7.3 Where your Service is still within a minimum contract period you will be liable for an Early Termination Fee as per clause 4.10.

4.8 Service Suspension

4.8.1 Without limiting the generality of any other Clause in this Agreement we may Suspend your Service if:

- a) your nominated payment method is refused or dishonoured, or you fail to pay the amount specified on any due date specified in the bill
- b) your usage breaches conditions under section 4.

4.9 Service Termination

4.9.1 Without limiting the generality of any other Clause in this Agreement, we may terminate your Agreement after providing notice in writing of seven days if:

- a) you have provided Host One with false or misleading information or you have not provided Host One with any information that we have reasonably requested for the purposes of this agreement.
- b) your Service or Account has been Suspended for seven days and you have failed to pay the amount specified on any due date specified in the bill;
- c) we discover or reasonably believe that you are a minor or do not believe you have the authority to enter into this agreement;
- d) we believe you are about to or may become or are in jeopardy of becoming subject to any form of insolvency or administration;
- e) you being a partnership, dissolve, threaten or resolve to dissolve or are in jeopardy of dissolving;
- f) you unlawfully use the Service;
- g) you are classified as an alleged repeat copyright offender as per clause 4.5.4.

4.9.1 We may terminate this Agreement (otherwise than under Clause 4.9.1) for any reason on thirty (30) days' notice in writing to you (unless the applicable Service Schedule specifies a longer notice period, in which case that longer notice period must be provided), in which case Clauses 5.4.1 will apply.

4.10 Early Termination Fee

4.10.1 You will be liable for an Early Termination Fee where you elect to Cancel your Service or your Service is Terminated by Host One prior to the minimum contract period specified in the Service Description or Proposal (for bespoke services).

4.10.2 Where an Early Termination Fee is specified as “prorated on the remaining contract value” then fee can be calculated as per the following formula:

Early Termination Fee = (Contract Term – Completed Contract Months) x Monthly Value

4.10.3 You acknowledge that the Termination Fee represents a genuine pre-estimate of the loss Host One will suffer and is not a penalty.

4.11 Systems Maintenance

4.11.1 Our goal is to provide a fault free Service although we cannot guarantee this. We will endeavour to conduct all scheduled maintenance, however we may be required to suspend supply of our Services during normal working hours in order to carry out emergency repairs on our systems.

4.12 Fault Reporting & Resolution

4.12.1 Customers may report Service faults by:

- a) Telephone contact to the Host One Service Desk on 08 9200 4930
- b) Email to support@hostone.com.au

4.12.2 Each fault will be assigned a unique ticket number. Please use this ticket number when referring to your query.

4.12.3 Issuing of this ticket number is an acknowledged acceptance of the fault report.

4.12.4 The Service Desk team will use best efforts to identify and resolve the fault.

4.12.5 Where the issue cannot be resolved by the Service Desk they will follow a procedure to escalate the ticket to a technical expert for further investigation.

4.12.6 When a ticket has been resolved or closed you will receive an email notifying them of the status change of the ticket.

4.12.7 If you ask us to come to your premises to repair a fault and it turns out to be caused by your equipment you may be charged a callout fee.

4.12.8 It is your responsibility to maintain and repair any equipment which you own. You are also responsible for any of our equipment on your premises and you must pay us for any loss or damage to our equipment.

4.13 Our Equipment

- 4.13.1 Title in the Host One equipment is not transferred to you and at all times is retained by Host One. You hold the Host One Equipment as Bailee for Host One.
- 4.13.2 Risk in the Host One Equipment shall pass to you upon delivery of the Host One Equipment to you.
- 4.13.3 You are responsible for any damage to, or destruction or theft of the Host One Equipment, except to the extent it is caused by Host One. You must keep the Host One Equipment in good repair and condition, excluding fair wear and tear and shall not sell, assign or permit any charge, lien, mortgage or encumbrance to be created in relation to it.
- 4.13.4 Unless otherwise agreed, you must:
- a) allow ZettaNet or its representative to Service, modify, maintain, repair or replace the ZettaNet Equipment; and
 - b) Do all things reasonably required by ZettaNet to make clear the identity of the owner of the ZettaNet Equipment.

4.14 Service Changes

- 4.14.1 We may withdraw any plans or account types packages at any time, such changes will take effect from the end of current contract period.
- 4.14.2 Customers may transfer/migrate from any plan to another plan. Fees and a new contract period will commence once provision for the Service has been completed.

4.15 Service Level Agreement

- 4.15.1 We will use reasonable endeavours to ensure the availability and other characteristics of the Service, and to ensure provisioning, installation, response and rectification times will be met.
- 4.15.2 You acknowledge that we do not warrant the availability or other characteristics of the Service or that any target provisioning, installation, response or rectification times will be met.
- 4.15.3 We will set minimum performance targets and provide Service Level Rebates if specific Services fail to meet specified targets.
- 4.15.4 The Service Level Rebates available for specific Services are detailed in the Service Description.
- 4.15.5 Where the Service is unavailable due to scheduled Systems Maintenance then this period is exempt from Service Level Rebates.
- 4.15.6 Where the Service is unavailable due to events beyond our control then this disruption period is exempt from Service Level Rebates. These include the following events:
- a) Interruption of the Service due to any Telecommunications Company circuits or failure of any Telecommunications Company services;
 - b) Interruption of the Service due to your applications, your equipment, or your facilities;
 - c) Where you cause an interruption of the Service due to your acts or omissions, or any use of the Service authorised by you;
 - d) Where the Service is interrupted due to force majeure;
 - e) Where we are requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts rectification of a fault or Service difficulty; and
 - f) Where we are prevented from connecting a specified Service, or rectifying a fault or Service difficulty, because we are unable to obtain lawful access to land or a facility.
 - g) Damage to our network, equipment or facilities not caused by Host One.
 - h) Planned or Unplanned speed degradation (Not Service Loss), unless otherwise specified in a Service Description.
- 4.15.7 A Service Level Rebate is not redeemable for cash, nor are they transferrable to another Customer or subscription.
- 4.15.8 A Service Level Rebate is capped at the relevant specified percentage of the Charges for the Individual Service for that month as outlined in the Service Description. You must claim any Service Level Rebate in writing within 10 working days of the event resolution by submitting a Service Rebate Application which is available on the Host One website.
- 4.15.9 Where a Service Level Rebate is deemed to apply, we credit your account with the assessed amount in the following month.
- 4.15.10 You will not be entitled to a Service Level Rebate where your account is overdue or managed within a payment plan. Rebates cannot be used to offset overdue amounts.
- 4.15.11 Subject to paragraphs 4.15.12 and 4.15.13, we will be liable to pay damages to you under section 118A of the Consumer Protection Act only if the End User has made a claim against you for breach of the Customer Service Guarantee and you, acting reasonably, have paid

that claim. The amount of damages payable by we will reflect the proportionate contribution of Host One to your failure to comply with the Customer Service Guarantee.

4.15.12 In relation to contributory payments under Section 118A of the Consumer Protection Act, you acknowledge, to the extent this information is relevant under section 118A of the Consumer Protection Act, that the following are elements to be considered when determining liability:

- a) the extent to which you fail to take advantage of any available exemptions from compliance with the Customer Service Guarantee (or where entitled to do so under the Customer Service Guarantee, fails to extend guaranteed maximum rectification periods);
- b) requirements of good engineering practices;
- c) requirements for reasonable use of the Service; and
- d) the diagnostic information provided by you to us at the time the fault giving rise to the claim was notified by you to us.

4.15.13 To the extent that we are liable to make contribution payments to you under section 118A of the Consumer Protection Act, the amount of Host One's contribution to each payment made by you to End Users for breach of the Customer Service Guarantee will be reduced by the total amount of credits or rebates payable under this Schedule in relation to the matter that gave rise to Host One's liability to make contributions to you under Section 118A of the Consumer Protection Act.

4.16 Support Services

4.16.1 Our Services include a Service Desk support during commissioning of the Services. Once you have successfully connected to the Internet through Host One and/or gained any additional Services you have purchased from us, we have fulfilled our support obligations to you.

4.16.2 Additional support may be provided, although it may be at an additional cost to you in the event that the reported problem is due to faults in your software or hardware.

4.16.3 We cannot provide free support for:

- a) faults that are outside our system.
- b) requirements outside the specification of the Service.
- c) people and organisations that do not have existing Agreement with us.

4.16.4 Where we provide you with a reference to a third party (i.e. IT consultant, other carrier) for support services we make no undertakings or guarantees in regards to their ability to undertake the specified work. You will be responsible for the direct commercial relationship with this third party.

5 Billing and Payments

5.1 Billing

- 5.1.1 We may bill you for:
- a) recurring or fixed charges, in advance;
 - b) variable charges, in arrears, including but not limited to excess traffic usage charges;
 - c) installation or set-up charges, before installation occurs;
 - d) any equipment you purchase from us, on or after delivery;
- 5.1.2 We will bill you in accordance with the billing period described in the Service Description.
- 5.1.3 We will provide you with reasonable information on your use of our services via the Host One website.
- 5.1.4 Bills will be calculated by reference to data recorded, logged or received by our systems and our Suppliers and you acknowledge that in calculating charges we need only look at that data as logged or received by Host One or our Suppliers.
- 5.1.5 Bills may include charges from previous billing periods where these have not been remitted.
- 5.1.6 We may reissue any invoice if any error is discovered. If you have overpaid as a result of a billing error, your account will be credited with the overpayment or, if you have stopped acquiring the Service from Host One we will refund the overpayment within 30 days.
- 5.1.7 Subject to clause 5.2.1, you must pay each amount billed by the due date specified in the bill and in the manner specified in the Service Description or your Application.
- 5.1.8 Bills and receipts will be available in an electronic document format and distributed to you via email.

5.2 Billing Disputes

- 5.2.1 Where you dispute the bill sent to you by Host One please provide a written notice to us within 14 days of the issue date. You will need to specify:
- a) The specific line items in dispute.
 - b) Reasons for disputing each of the charges.
- 5.2.2 We will assess the validity of these claims and provide a written response within 10 business days.
- 5.2.3 Where a billing dispute is found to be in our favour you will be required to pay the outstanding amounts by the due date. Where this due date has passed, you will be obliged to pay all outstanding monies within 2 business days.

5.3 Payments

- 5.3.1 You are responsible for and must pay for all use of the Service, even unauthorised use.
- 5.3.2 We reserve the right to charge you all fees specified in this agreement, unless otherwise agreed in writing by you and Host One.
- 5.3.3 You may elect to have your bills paid by way of:
- a) An accepted credit card
 - b) EFT
 - c) Direct Deposit
- 5.3.4 Accepted payment types vary for each good and Service. Please see the Service Description for accepted payment types for each good and Service.
- 5.3.5 You are responsible for ensuring there are sufficient funds available in your nominated credit card or direct debit account at any time we bill the account.
- 5.3.6 Dishonour fees and any other charges, expenses or losses resulting from Host One attempting to debit the credit card or direct debit account will be borne solely by you.
- 5.3.7 You hereby authorise Host One to charge any excess usage of their account where this feature forms a part of your Service.
- 5.3.8 Where you provide a credit card for payment of reoccurring goods and services, you authorise Host One to debit this card for the fees and on a frequency as set out in your Application.
- 5.3.9 We will notify you by email if your credit card is due to expire in the next billing period.
- 5.3.10 In addition to fees and charges you incur in the normal use of your Service, we may charge you an administration fee which may include cancellation fees, relocation fees and/or payment dishonour fees. These charges are outlined in our Pricing Schedule.
- 5.3.11 All administration, registration and set-up fees are non-refundable.
- 5.3.12 Customers may exchange or receive a refund for equipment which has not been opened or used and has been returned to us within 30 days of purchase.
- 5.3.13 To request a copy of a tax invoice please contact Customer Service on support@hostone.com.au.
- 5.3.14 We reserve the right to suspend or terminate your Service without notice upon rejection of any card, cheque or direct debit charges or if your card issuer (or its agent or affiliate) seeks return of payments previously made to Host One when we believe you are liable for the charge. Such rights are in addition to and not in lieu of any other legal rights or remedies available to Host One.
- 5.3.15 If you do not pay our bills on time for two months in a row, we may require you to provide us with an authority to directly debit your credit card or bank account with the amount of all future bills. You must not cancel such a direct debit authority unless you pay us extra charges as determined reasonably by us.
- 5.3.16 You shall pay the Host One for all costs actually incurred by the Host One in the recovery of any monies owed by you to Host One under this Agreement including recovery agent costs, repossession costs, location search costs, process server costs and solicitor costs on a solicitor/client basis.

5.4 Refund Policy

- 5.4.1 If we terminate this Agreement under Clause 4.9.1, you will not be entitled to a refund in respect of the Goods or Services.
- 5.4.2 If we terminate this Agreement under Clause 4.9.2 we will provide you with a refund in respect of the Supplies for which you have paid in advance but which have not been supplied by Host One, calculated at the applicable monthly rate.
- 5.4.3 If you validly terminate this Agreement as a result of our breach, your only remedy will be:
- a) In respect of Services or Other Services, subject to clause 5.4.5 a refund for the services for which you have paid in advance but which have not been supplied by us, calculated at the applicable monthly rate; and/or
 - b) In respect of Goods, a refund of the amount you have paid for the Goods;
- 5.4.4 If you request a change in an applicable Service Schedule for the Services (for example, if you select a different Service plan) such that the new Charges for the Services payable each Due Date ("New Charges") differ from the previous Charges payable each Anniversary Date ("Previous Charges"), then:
- 5.4.5 Each Service is billed in monthly blocks from the relevant Service Anniversary Date. If we terminate that Service pursuant to clause 4.9.2, you terminate that Service pursuant to clause 4.7.1, we will refund you for any unused portion of that Service that you have paid for in advance in full monthly blocks. However, if you have used any part of any full monthly block for that Service we will not provide a refund in respect of that month.

6 Consumer Credit

6.1 Supply to Credit Reporting Agency

6.1.1 Giving information to a Credit Reporting Agency (Section 18E(8)(c) Privacy Act 1988). You agree that Host One may give certain personal information about you to a credit reporting agency

6.2 Access to Credit Information

6.2.1 Access to Commercial Credit Information (Section 18L(4) Privacy Act 1988) You agree that Host One may obtain information about me/us from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing your application for consumer credit.

6.2.2 Access to Consumer Credit Information (Section 18K(1)(b), Privacy Act 1988). You agree that Host One may obtain a consumer credit report containing information about you from a credit reporting agency for the purpose of assessing your application for commercial credit.

6.3 Exchange of Credit Information

6.3.1 Exchange of Credit Worthiness Information (Section 18N, Privacy Act 1988). You agree that Host One may exchange information with those credit providers named in this application or named in a consumer credit report issued by a credit reporting agency for the following purposes;

- a) to assess an application by you for credit
- b) to notify other credit providers of a default by you
- c) to exchange information with other credit providers as to the status of this loan where I am in default with other credit providers
- d) to assess your credit worthiness

You understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

6.4 Consumer Credit Reports

6.4.1 Agreement to a credit provider being given a consumer credit report by a credit reporting agency to assess a guarantor (Section 18K 1(c) Privacy Act 1988). You agree the Host One may obtain from a credit reporting agency a consumer credit report containing information about you for the purpose of assessing whether to accept you as a guarantor for credit applied for by, or provided to, the borrower(s) [named in the Application]. You agree that this agreement commences from the date of this agreement and continues until the credit covered by the borrower(s) application ceases.

6.4.2 Agreement to a credit provider disclosing a report including a consumer credit report to potential or existing guarantor (Section 18K (1) Privacy Act 1988). You agree that Host One may give to a person who is currently a guarantor, or whom you indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of [name of prospective guarantor] deciding whether to act as a guarantor, or to keep [name of existing guarantor] informed about the guarantee. You understand that the information disclosed can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act, and includes a credit report.

7 Personal Information

7.1 Collection, Use and Disclosure

7.1.1 We may collect use and disclose personal information about you for the purposes of:

- a) verifying your identity
- b) assessing your eligibility for our Services
- c) assisting you to subscribe to the service of any Host One Entity
- d) providing the services you require from Host One Entity
- e) administering and managing those services, including billing
- f) debt collection
- g) conducting appropriate checks for credit-worthiness and for fraud; determining whether to provide to you (or to cease or limit the provision to you of) trade, personal or commercial credit and the ongoing credit
- h) management of your account
- i) researching and developing our products and services and the products
- j) providing your Personal Information to the manager of the Integrated Public
- k) reporting to credit reporting agencies if you fail to make payments due under this SFOA by the applicable due dates.

7.1.2 We may be permitted or required by applicable laws to collect, use or disclose personal information about you (which may include, for example, numbers called, time of call, location of call), including to:

- a) the operator of the Integrated Public Number Database (IPND), which is an industry wide database of all public number customer data,
- b) emergency services organisations,
- c) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

7.2 Opting-out

7.2.1 If you wish to only receive communications that are account-related or legally required, you may request not to receive other communications (that is, you may 'opt out'). You will need to contact Service Desk to make a request to opt-out. We will not charge you for processing a request to opt-out.

7.3 Gaining Access to Your Personal Information

7.3.1 If you are an individual, you are entitled to:

- a) gain access to your personal information held by Host One, unless we are permitted or required by any applicable law to refuse such access, and
- b) Correct any personal information held by Host One.

7.4 Providing Your Personal Information

7.4.1 If you do not provide part or all of the personal information we request, then we may refuse to supply, or limit the supply to you of, personal credit or the Service.

8 Miscellaneous

8.1 Notices

8.1.1 All notices and changes shall be in writing and shall be hand delivered, or sent by post, or facsimile, or email to the parties hereto at their respective addresses.

8.2 Assignment

8.2.1 You agree not to assign, transfer, or re-sell any of the services provisioned by Host One under this Agreement or any rights given by the use of this Service, unless prior written permission from an authorised officer from Host One.

8.2.2 For the avoidance of doubt, Host One has the right to assign our benefits and obligations of this Agreement to any third party.

8.2.3 You undertake to do all things necessary to ensure the transfer of your obligations to Host One's assignee, including executing new direct debit forms if necessary.

8.3 Our Rights

8.3.1 We reserve the right to remove any information or materials, in whole or in part, that we, in our sole discretion, deem to be offensive, obscene, indecent, or otherwise inappropriate regardless of whether such material or its dissemination is unlawful.

8.3.2 We are under no obligation to monitor transmissions or published content on the Services.

8.3.3 However, we or our agents have the right to monitor such transmissions or published content from time to time.

8.3.4 For broadband services in which we use Shaping' as a method of quota enforcement, we may apply additional access constraints to services in which customers download more than the allowance specified in the Service description.

8.4 Liability

8.4.1 Our liability is limited to refunding, resupplying, repairing or replacing the relevant goods or unused portion of services where the goods or services are not of a kind ordinarily required for personal, domestic or household use or consumption and where it is fair and reasonable to do so.

8.4.2 We shall not be held liable in any way or by any means for any direct or indirect, special or consequential damages, resulting from the use or the inability to use the Services or from any goods or Service purchased or obtained or message received or transaction entered into through Host One or from unauthorised access to or alteration of your transmission or data to your e-mail address, even if we have been advised of the possibility of such damages.

8.4.3 We are not liable for any delay or failure to perform resulting directly or indirectly from any causes beyond our reasonable control..

8.4.4 Nothing in this Agreement removes or limits our liability for death, personal injury caused by our negligence, our fraud or anything that we cannot limit or exclude by law. Your statutory rights are not affected.

8.5 Costs

- 8.5.1 Host One has the right to recover reasonable costs reasonably incurred from you for any costs incurred for damages and/or repairs and/or maintenance and/or loss of business caused by, or resulting from, any of the activities listed in clauses 4.1.1 through to 4.6.3 inclusive.

8.6 Precedence

- 8.6.1 Where any conflict or inconsistency exists in the documents and/or schedules the following precedence is in effect:
- a) Your Application
 - b) Service Descriptions
 - c) These Terms and Conditions
 - d) Pricing Schedule

8.7 Warranties

- 8.7.1 We expressly disclaim all warranties of any kind whether express or implied. We make no warranties that Services will meet your requirements, or that Services will be uninterrupted, secure, or error free, or the results that may be obtained from the use of Services, or to the accuracy or reliability of any communication or transmission of data, or the accuracy of any information obtained through Services or that defects in the software will be corrected.
- 8.7.2 We make no warranty regarding any goods or Service purchased or obtained through Service or any transaction entered into through Services. We take no responsibility for the deletion or failure to store E-mail or SMS messages. No advice or information, whether oral or written, obtained by you from Host One or through Services shall create any warranty by Host One.
- 8.7.3 Some jurisdictions do not allow the exclusion of certain warranties, so some of the above disclaimer of warranties may not apply.

8.8 Indemnification

You agree to indemnify Host One, its parents, subsidiaries, representatives and employees from any claim or demand, including solicitors' fees, arising out of your use of the Service, including any violation of this Agreement by you or any other person using your account, or any claim of libel, defamation, violation of rights of privacy or publicity, loss of Service by other customers and infringement of intellectual property or other rights.

8.9 Disclaimer

One of the Services that we offer is the option to replicate your data in a data centre located in a different geographical region (**Data Replication Service**). The purpose of this Service is to act as a last line of defence in case of an atypical event which affects the facility which is the primary location of your data storage. An atypical event may include (but is not limited to) natural disasters, acts of God, acts of war, and acts of terror (**Atypical Event**). If you elect not to purchase the Data Replication Service, then you expressly acknowledge that you hold Host One harmless against any damage that accrues to you or your data or otherwise and which is caused directly or indirectly by an Atypical Event.

8.10 Complaints Procedure

8.10.1 We are committed to resolving customer complaints quickly and in a satisfactory manner. If you have a complaint, we request that you:

- a) Contact support@hostone.com.au or lodge a request via our support portal or call 08 9200 4930. A ticket number will be created and assigned to your complaint.
- b) If you are not satisfied with our review and response to your complaint you may either contact the Office of Fair Trading in your state or territory, or as a last resort, the Telecommunications Industry Ombudsman.

8.11 Customer Service Guarantee

8.11.1 The Customer Service Guarantee (CSG) as part of the Telecommunications Act 1999 prescribes mandatory performance standards for certain telephone services. We will comply with such standards to the extent that they apply to the Services offered.

8.12 Waiving Your CSG Rights

8.12.1 Under Part 5 of the Telecommunications Standard 2000 (No 2) (Available at <http://www.acma.gov.au>) Host One is allowed to propose that you waive your rights under the Customer Service Guarantee. This means that Host One is not required to meet performance standards as set out by the Customer Service Guarantee.

8.12.2 Host One may provide incentives on some Services in return for you agreeing to waive your protections and rights under the Customer Service Guarantee.

8.12.3 In accepting the incentive provided with the Service you will be specifically agreeing to waive the following CSG protections:

- 1) The provision of written information;
 - a) Provide you with written information, at least every two years about
 - b) The performance standards that apply under these standards
 - c) The obligations of the provider under these standards
 - d) Your entitlements to damages under the Act for contravention of the performance standards
 - e) On request, provide information to you about a performance standard
- 2) Guaranteed maximum connection periods;
 - a) The CSG prescribes maximum timeframes within which Service connection should occur
- 3) Guaranteed maximum rectification periods;
 - a) The CSG prescribes maximum timeframes within which Service faults should be rectified
- 4) Making and changing appointments; The CSG requires carriage Service providers to;
 - a) Make appointments with customers at times that are convenient for You
 - b) Make appointments with customers that are either for a particular time of the day or nominate a five hour period during which the appointment will occur

c) Change appointments by giving at least 24 hours' notice or by obtaining Your agreement to change

- 8.12.4 If you agree to waive your rights under the Customer Service Guarantee you will not be able to claim compensation from Host One for its failure to meet these performance standards.
- 8.12.5 Your rights in clause 7.15.3 shall be waived from the acceptance of your application as specified in clause 3.3.2.
- 8.12.6 If you choose to no longer waive your rights.

8.13 Governing Law

8.13.1 This Agreement shall be deemed to have been made in Perth, Australia, and it shall be governed and interpreted according to the laws, including conflict of laws, applicable in the State of Western Australia. Each of the parties submits to the jurisdiction of the Courts of Western Australia.

8.14 Legal Capacity

- 8.14.1 You confirm that you are at least 18 years old and that you have the legal capacity to enter into this agreement.
- 8.14.2 For a company, partnership or trust, you are authorised to enter into this agreement on behalf of your organisation.

8.15 Goods and Services Supplied

8.15.1 The goods and services supplied by Host One are detailed in Service Description Schedule.

Contract Acceptance: SFOA General Terms and Conditions

Prepared by: Host One, David Cherny, 08 9200 4930, david@hostone.com.au

Prepared for: Majors Group, Michael Crookes 0409992002, michael@majorsgroup.com.au

Expires: XX/XX/XXXX

Please sign and initial all pages and send back to Host One for commencement.

Signed on behalf of Majors Group

Full Name: Michael Crookes
Position: General Manager
Signature: _____
Date: _____
Witness Name: _____
Witness Signature: _____

