

# Terms & Conditions

## 1) Defined Terms:

**'Alarm Signals'** means a readily recognized and readable signal received from a Customer's alarm system by the Onwatch alarm monitoring equipment.

**'Monitoring Centre'** means the operations room located in Onwatch premises in which the alarm monitoring equipment is set up.

**'Communication Link'** means a suitable transmission technology whereby Alarm Signals can be transmitted to the OAMS from the alarm system at the Customer's Monitored Premises. These include but are not limited to: PSTN phone line; GSM; and GPRS.

**'Customer'** means a person or legal entity that agrees to use the OAMS either; (i) by providing Onwatch with Customer details and Customer Instructions, or (ii) by acceptance of the terms and conditions of the OAMS by payment of the Onwatch invoice, or (iii) by notification the Customer's Alarm Monitoring Service has been assigned to Onwatch and the Customer has accepted such assignment.

**'Customer Instructions'** means directions provided by a Customer and agreed to by Onwatch for the Onwatch Monitoring Centre to follow when the Onwatch Monitoring Centre receives an Alarm Signal from the Customers alarm system

**'Customer's Monitored Premises'** means the address of the premises on which the alarm system that is to be monitored by the OAMS is located.

**'Initial Period'** means the first period a Customer agrees to use the OAMS

**'Key Contact'** means the party nominated by a Customer as the party who holds a key to the Customer's Monitored Premises.

**'Licence'** means the licence issued to Onwatch to operate the OAMS.

**'OH& S Regulations'** means Occupational Health and Safety Regulations that apply to a Customer's Monitored Premises.

**'Onwatch Alarm Monitoring Centre'** means the premises from which Onwatch is authorised in terms of its Licence to provide the OAMS.

**'Onwatch Alarm Monitoring Service (OAMS)'** means the service provided by Onwatch in accordance with the Licence issued to Onwatch to monitor alarm systems.

**'Parties'** means Onwatch Pty Limited (Onwatch) and Customer(s).

**'Priority Contacts'** means the contacts nominated by a Customer in the Customer Instructions.

## 2) Onwatch Obligations

– To monitor the alarm system located at Monitored Premises according to a Customer's Instructions.

– To operate the Onwatch Alarm Monitoring Centre 24 hours a day 7 days a week for the purposes of monitoring Alarm Signals and taking the appropriate action as per a Customer's Instructions on receipt of Alarm Signals.

– To maintain a log containing details of Alarm Signals received from the Customer's Monitored Premises and record actions taken by Onwatch staff in response to Alarm Signals received.

## 3) Onwatch Response Procedures:

On receiving Alarm Signals Onwatch will follow the Customer Instructions and, where applicable, will use all reasonable endeavours to notify the relevant Customer's Priority Contacts as specified in the Customer's Instructions, provided that:

- Where the first Priority Contact is unable to be contacted in person, Onwatch will attempt to notify the next Priority Contact in the priority order as specified in the Customer's Instructions;
- Where Onwatch has attempted to notify Priority Contacts as per the Customer's Instructions without success, Onwatch shall if applicable and as soon as practical notify the Police, Fire, Medical and/or patrol authorities as specified in the Customer's Instructions and in accordance with the relevant authority's operating procedures and any laws or regulations governing those authorities;
- Where the Customer's Instructions specifies Onwatch is to notify the Police and the Police require a Key Contact to attend at the Monitored Premises, Onwatch will communicate to the Priority Contact the requirement for the Key Contact to make contact with the Police. Onwatch accepts no responsibility should the Priority Contact fail to notify the Key Contact following a request from Onwatch;
- Where the Customer's Instructions specifies Onwatch contact a nominated patrol company and request the nominated patrol company to dispatch a patrol vehicle, Onwatch will make this request to the patrol company. Onwatch accepts no responsibility should the nominated patrol company fail to act on the Onwatch request. Onwatch accepts no responsibility should the patrol company fail to report the correct information back to Onwatch when inspecting the premise.
- Customer consents to the Police, Fire, Medical and patrol authorities using force if necessary to enter the Customer's Monitored Premises at the Customer's cost. Onwatch shall not be held responsible for or be held liable for any costs, damages or loss caused by these authorities in respect of the Monitored Premises or otherwise.
- All patrol companies used by Onwatch for patrol attendances are licensed independently owned third-party security providers and are not employed by and do not act as employees or agents of Onwatch.
- In accordance with OH&S Regulations any patrol attending the Customer's Monitored Premises, is not allowed to scale fences, gates, or other obstructions to obtain entry into Monitored Premises.
- Where a gate is kept locked a key must be supplied to the nominated patrol company to permit entry if required in response to Alarm Signals received by Onwatch.

#### **4) Monitoring Fees**

A Customer has one of two methods for payment of the quarterly monitoring fees throughout the Term:

- **Direct Debit.** Payments are debited quarterly in advance or as arranged with Onwatch. Delivery to Onwatch of an executed Direct Debit authority form, if this method is to be used, is required prior to Onwatch accepting responsibility for monitoring of a Customer's alarm system.

– **Credit Card.** Payments are debited quarterly in advance or as arranged with Onwatch. Delivery of an executed Credit Card authority form, if this method of payment is to be used, is required prior to Onwatch accepting responsibility for monitoring of a Customer's alarm system. The monitoring fee will remain the same for the Term unless the Government imposes any additional taxes, charges and/or fees during the Term, which shall be passed on to the Customer.

#### **5) Patrol Charges**

Where a patrol company response is required by a Customer, the Customer is directly liable for payment of all charges relating to this service and indemnifies Onwatch against any liability in relation to patrol company costs for services provided in accordance with the Customer's Instructions to Onwatch.

#### **6) Telephone Recordings**

Onwatch Monitoring Centre records all conversations on a call logger for security purposes. All rights to recorded conversations shall vest in Onwatch and under no circumstances shall any Customer have rights in or to such recorded conversations. Customer consents to the use by Onwatch of these conversations in any legal proceedings, use by Onwatch for training purposes and the disclosure by Onwatch of these conversations and recordings to any Police, law enforcement body, or Government investigatory body as may be required.

#### **7) Customer Obligations**

- To pay each Onwatch invoice on or before the due date. If a monitoring account remains unpaid for 14 days or more after the due date Onwatch reserves the right to disconnect the OAMS. Each Customer is directly liable for all expenses reasonably incurred in the recovery of any outstanding invoice;
- The Customer understands it is their responsibility to ensure the account is paid within 14 days from the due date;
  
- To maintain at the Customer's cost a Communication Link to the auto-dialler in the Customer's alarm system for the communication of Alarm Signals to the Onwatch Alarm Monitoring Centre;
  
- To notify the Onwatch Alarm Monitoring Centre immediately if equipment is faulty, develops a fault or causes false alarms as Onwatch can only respond to intelligible Alarm Signals that are received by the alarm monitoring equipment at the Onwatch Alarm Monitoring Centre;
  
- To immediately advise the Onwatch Alarm Monitoring Centre in writing when any information relating to the Customer's details or Customer's Instructions require changing;
  
- To advise the Onwatch Alarm Monitoring Centre in writing if the Customer's Monitored Premises are sold and no longer require the OAMS;
  
- To notify the Onwatch Alarm Monitoring Centre if there is any fault or disruption with the telephone service that could prevent Onwatch from providing the OAMS effectively.
  
- To remember the voice-code password as this is a critical requirement in verifying the identity of Priority Contacts by the Onwatch Alarm Monitoring Centre during responses to alarm signals for a Customer's Monitored Premises.

– To advise the Onwatch Monitoring Centre in writing of changes to opening and closing times and regular unscheduled openings (**Schedules**). Should these Schedules not reflect the actual opening and closing times or regular unscheduled openings, Onwatch reserves the right to amend the Customer's Schedules.

## **8) Liability**

### **Exclusion of Liability**

To the fullest extent permitted by law Onwatch shall not be liable to a Customer for any:

- (a) indirect or consequential loss or damage.
- (b) loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity,
- (c) loss or damage (of any type), death, injury sustained, suffered or incurred by a Customer, to the extent that this is a result of a breach by a Customer of the OAMS terms and conditions or any negligent act or omission by a Customer.
- (d) any loss or damage that arises where a Customer is in default of the Customer's payment obligations for payment of fees for the OAMS.

### **Limitation of Liability**

Onwatch maximum liability whether under the law of contract, tort, equity, statute law or otherwise in relation to any single claim by a Customer during any 12 month period is limited to 90% of the fees paid to Onwatch for the OAMS during the 12 month period immediately prior to the event that is the subject of the claim. For the purposes of calculation of liability fees paid to Onwatch by the claiming Customer in relation to a Customer's alarm systems other than the alarm system that is the subject of a claim shall not be taken into account.

## **9) Force Majeure**

Non-performance by Onwatch shall be excused and shall incur no liability to the extent that performance by Onwatch is rendered impossible by strike, fire, war, flood, government acts, orders, restrictions, lock out, machinery or equipment failure, network and related infrastructure failure, failure of a Customer's alarm system, an act of God, or any other reason where failure to perform is beyond the control of Onwatch.

## **10) Term and Termination**

### **Term**

Onwatch shall provide the OAMS for the Initial Period or if no Initial Period for a minimum term of one year and thereafter the Term shall be for a minimum of six (6) months. The Customer may terminate after the Initial Period or minimum term by giving written notice to Onwatch with such notice to be for the equivalent period as the Customer's billing period. Provided however where a Customer's billing period is less than 90 days, 90 days notice in writing is required after the end of the Initial Period or minimum term in the absence of an agreed Initial Period. Notice in writing shall be:

- by post addressed to :**Onwatch, P.O. Box 555, Double Bay NSW 1360**
- by email to: **accounts@onwatch.com.au**, or
- by facsimile to the fax number: **1300 657 374**.

### **Termination**

Onwatch may terminate the OAMS immediately if a Customer;

- Breaches any of the express or implied terms on which Onwatch provides the OAMS;

- In the sole opinion of Onwatch commits or is deemed by Onwatch to have committed an act of insolvency or is placed in receivership, administration or liquidation, or becomes subject to a scheme of arrangement;
- Does not maintain a Communication Link for delivery of the OAMS;
- Fails to pay an invoice or the payment facility is rejected.

### **Early Termination Payment**

Without limitation, in the event of a Customer without due cause terminating the OAMS prior to the expiry of the Initial Period or minimum term the terminating Customer shall pay to Onwatch an Early Termination Payment being a sum equal to all remaining monitoring fees which would otherwise have been payable during the Initial Period or minimum term. This Early Termination Payment will be calculated by taking the months paid away from the number of months in the Initial Period or minimum term plus any outstanding amounts, and this will be required to be paid in 14 days from the date the Customer is invoiced following Early Termination.

If the Customer does not pay the Termination Payment within 14 days:

- The terminating Customer will be required to pay all expenses reasonably incurred including all legal costs by Onwatch in obtaining payment; and
- The terminating Customer shall indemnify Onwatch against all costs, expenses, claims or damages arising out of or incidental to the early termination.
- This clause shall survive termination of the Onwatch Alarm Monitoring Service.

### **11) General**

Any waiver by Onwatch of any default or breach of the OAMS terms and conditions shall not affect the rights of Onwatch in respect of any further or continuing default or breach by a Customer.

Acceptance of the OAMS Terms and Conditions shall be binding on successors, substitutes, executors and administrators and assigns of the Parties hereto.

Where there is more than one Customer, then the liability shall be joint and several.

These OAMS Terms and Conditions shall be governed by and construed in accordance with the laws of the State in which the Customer's Monitored Premises are located, and the Parties submit to the exclusive jurisdiction of the Courts of that State and of the Commonwealth of Australia.

Onwatch reserves the right to assign the OAMS at any time, and the Customer hereby grants its unequivocal approval to any said assignment, and undertakes to be bound to continue using the OAMS in accordance with its terms and conditions after an assignment irrespective of who the assigned party may be.