

1. Interpretation

“Business Aids” includes all audio, video and written material produced and provided to Resellers for the purpose of marketing On2it Software Products.

“Permanent Client ID” is a personal identification number assigned to each Reseller.

“On2it Software” means On2it Software Limited, a duly incorporated company having its registered office at 89 Waterside Crescent, Gulf Harbour, Auckland, New Zealand.

“Licensed Software Product” includes “GEM Networking” and any subsequent upgrades and any other software owned by On2it Software which may become available for marketing.

“Registered Licence Owner” is the owner of a license of a licensed software product.

2. Authorisation as an Affiliate/Reseller

- 2.1. To become an Affiliate/Reseller, a prospective Affiliate/Reseller must be the Registered Licence Owner of a licensed software product belonging to On2it Software and must file an Affiliate/Reseller Application with On2it Software.
- 2.2. On2it Software reserves the right in its sole and absolute discretion to accept or reject any Application for appointment as an Affiliate/Reseller without having to assign any reason for its acceptance or rejection.
- 2.3. The appointment of an Affiliate/Reseller will be effective only if and when the prospective Affiliate/Reseller receives from On2it Software confirmation that the Registered Owner’s Permanent Client ID is activated as an Affiliate/Reseller.
- 2.4. Nothing expressed or implied in or incorporated into or referred to in these Rules shall be deemed to constitute On2it Software and the Affiliate/Reseller as partners as joint ventures or as employer and employee whether in law or in equity.
- 2.5. On2it Software and the Affiliate/Reseller hereby acknowledge and agree that:
 - 2.5.1. Affiliates/Resellers are independent contractors of On2it Software and are not employees.
 - 2.5.2. Affiliates/Resellers are entitled to market, not sell, On2it Software’s products. Any subsequent purchase that may arise from the marketing of the product(s) by the Affiliate/Reseller is between On2it Software and the buyer of the license. (This is because the end Users buy the software direct from On2it Software Ltd. So the contact of sale is actually between On2it Software Ltd and the end user. Affiliates/Resellers do not purchase and on-sell. They receive commission of sales made direct from On2it Software ltd.)
 - 2.5.3. The Affiliate/Reseller is responsible for bearing all costs and expenses incurred in the conduct of his or her business.
 - 2.5.4. the Affiliate/Reseller is under no obligation to spend a specified time or any set hours acting as an Affiliate/Reseller.

- 2.5.5. the Affiliate/Reseller is under no obligation to solicit orders for the retail sale of On2it Software products with the exception that the Affiliate/Reseller's marketing must result in at least one sale every three months. Failure to do so shall entitle On2it Software to terminate the Affiliate/Reseller's agreement.
- 2.6. Nothing expressed or implied in or incorporated into or referred to in these Rules shall be deemed to constitute the grant to an Affiliate/Reseller of an exclusive territory.
- 2.7. Without limiting the general discretion of On2it Software, to become an Affiliate/Reseller an applicant:
 - 2.7.1. must be the Registered Licence Owner of a licensed software product belonging to On2it Software;
 - 2.7.2. must be at least eighteen (18) years of age;
 - 2.7.3. must not be incapable of managing his or her affairs by reason of mental or other condition;
 - 2.7.4. must not be bankrupt or a party to any arrangement or composition with his or her creditors or any of them or own any property or assets which are the subject of receivership or official management.
 - 2.7.5. must not be in prison or confined to any other corrective institution or subject to a home detention scheme.
 - 2.7.6. must not have been convicted of an offence punishable by a term of imprisonment,
 - 2.7.7. must not previously have been terminated by On2it Software as an Affiliate/Reseller.
- 2.8. In the event that an Affiliate/Reseller is either a limited liability company, incorporated society, partnership, trust or other statutory body:
 - 2.8.1. On2it Software shall only recognise up to two persons specified and identified by On2it Software and shall always describe them by their individual names and not the name of the company, incorporated society, partnership, trust or other statutory body.
 - 2.8.2. Only the persons specified and identified by On2it Software shall be engaged or involved in the day to day activities of the Affiliate/Reseller.
- 2.9. An Affiliate/Reseller may terminate this agreement at any time by giving written notice to On2it Software.
- 2.10. On2it Software reserves the right to terminate the agreement of any Affiliate/Reseller without prior warning if, in the opinion of On2it Software, the Affiliate/Reseller has breached these Rules of Conduct or has otherwise acted in a manner likely to bring On2it Software into disrepute.

3. Responsibilities of an Affiliate/Reseller

- 3.1. Affiliates/Resellers will at all times fully and promptly comply with these Rules of Conduct and any amendment(s) thereof which may, at the discretion of On2it Software, be made from time to time.
- 3.2. Some of the software that may be marketed by Affiliates/Resellers may require an understanding that can only be obtained through sufficient training. Accordingly, On2it Software may require Affiliates/Resellers to undertake some training before they proceed to market particular software. Until such time as On2it Software is satisfied that an Affiliate/Reseller has met with the requirements of such training, On2it may prohibit the Affiliate/Reseller from marketing particular software.

- 3.3. The Affiliate/Reseller shall not:
- 3.3.1. in any way act so as to represent On2it Software or its products in a false and misleading manner or contrary to the directives, explanations and descriptions from time to time issued or made by On2it Software;
 - 3.3.2. in relation to the supply of products, misrepresent the nature of the relationship between On2it Software and its Affiliate/Reseller, as that relationship is explained in the Rules of Conduct or any amendment(s) thereof made from time to time;
 - 3.3.3. make any exaggerated or unwarranted or false claims about On2it Software or any of its products;
 - 3.3.4. in any way misrepresent the use, effectiveness, suitability, price, place of origin source or availability of On2it Software products;
 - 3.3.5. represent that On2it Software products have performance characteristics, accessories, uses, qualities or benefits they do not have;
 - 3.3.6. promote or pass off any non-On2it Software products as On2it Software products;
 - 3.3.7. demand or assert any right to payment from a customer or potential customer;
 - 3.3.8. denigrate, disparage or defame On2it Software, On2it Software staff, or On2it Software products;
 - 3.3.9. use unsolicited telemarketing campaigns, letter box drops, mass mailings or similar promotions without first getting written approval from On2it Software Ltd; (This is just to ensure you get your facts right and don't misrepresent the product by accident. Just email us a copy first, and we'll do our best to reply by return.)
 - 3.3.10. publish or broadcast any advertisement for On2it Software or its products without first getting written approval from On2it Software Ltd; (same comment as above)
 - 3.3.11. make any warranty, representation or guarantee, on behalf of or in the name of On2it Software in relation to On2it Software products;
 - 3.3.12. engage in any conduct or make any statement or representation or use any trade name, associated name, business name or company name (in each case whether registered or not) or other description or do any act, matter or thing which is likely to lead any other person to believe:
 - (a) Affiliates/Resellers are agents or employees of On2it Software ('Agents' is a legal term for someone who may commit a Company legally. 'Affiliates/Resellers' no NOT have this right.)
 - (b) property in or title to On2it Software products prior to their sale vests other than in On2it Software;
 - 3.3.13. deny to any person that the Affiliate/Reseller is entitled to receive commission from On2it Software in respect to On2it Software products successfully marketed by the Affiliate/Reseller; and shall indemnify On2it Software from and against all actions, damages, claims, demands, prosecutions, fines, penalties, and the cost thereof (including On2it Software's actual legal costs) which might be made or brought or sought against or suffered by On2it Software in respect of or arising out of any such misrepresentation or other conduct.
- 3.4. Payment of Income Tax (or any other tax prescribed by law) payable upon the commission received by the Affiliate/Reseller shall be the responsibility of the Affiliate/Reseller.
- 3.5. Affiliates/Resellers are not authorised to, and will not under any circumstances, pledge or purport to pledge the credit of On2it Software or otherwise incur or purport to incur obligations on behalf of or which will otherwise bind On2it Software.

- 3.6. Affiliates/Resellers are not authorised to make any offer of settlement or otherwise bind On2it Software in connection with claims arising from the use or supply of On2it Software products.
- 3.7. Affiliates/Resellers shall comply with all laws, ordinances and regulations concerning or affecting the operation of their agreement and shall indemnify On2it Software from and against all actions, claims, demands, prosecutions, fines, penalties and the costs thereof (including On2it Software's actual legal costs) which might be made or brought against On2it Software in respect of or arising out of any breach of any such laws, ordinances or regulations by the Affiliate/Reseller.
- 3.8. Affiliates/Resellers shall not make any representation or engage in or conduct any activity or do any other act, matter or thing which may bring either them or On2it Software into disrepute.

4. Use of the On2it Software name, trade marks, etc

- 4.1. Affiliates/Resellers acknowledge the exclusive ownership by On2it Software of the trade marks, trade names, insignia, logograms, designs, get-ups and all other industrial and intellectual property used by On2it Software in association with On2it Software products.
- 4.2. An Affiliate/Reseller shall not display the On2it Software name on his or her business vehicles, business premises, business cards, letter heads or telephone listings without On2it Software's written permission.
- 4.3. All On2it Software printed, audio and video material is protected by copyright and may not be reproduced in whole or in part by Affiliates/Resellers or other persons, without On2it Software's written permission.
- 4.4. Any product information, price lists and articles produced by On2it Software may be reprinted by Affiliates/Resellers in newsletters which they publish for the purpose of marketing On2it Software's products provided that each reprint is followed by the statement "Reprinted with the permission of On2it Software".

5. Termination

- 5.1. On2it Software may at its election by notice in writing to a Affiliate/Reseller terminate the Affiliate/Reseller's agreement upon the happening of any one or more of the following:
 - 5.1.1. if in On2it Software's opinion the Affiliate/Reseller has provided false information in his or her Affiliate/Reseller Application;
 - 5.1.2. if the Affiliate/Reseller breaches any of these Rules of Conduct;
 - 5.1.3. if the Affiliate/Reseller or a Director of a corporate Affiliate/Reseller is convicted of an offence punishable by a prison term;
 - 5.1.4. if the Affiliate/Reseller or a Director of a corporate Affiliate/Reseller becomes bankrupt;
 - 5.1.5. if an Order is made or an effective resolution is passed for the winding-up of the Affiliate/Reseller (being a company);
 - 5.1.6. if a receiver or official Manager of the property or assets of the Affiliate/Reseller or of a director of a corporate Affiliate/Reseller or any part thereof, is appointed, or an official Manager is appointed;
 - 5.1.7. if the Affiliate/Reseller or a director of a corporate Affiliate/Reseller makes an assignment for arrangement or composition with his or her creditors or any of them;
 - 5.1.8. if the Affiliate/Reseller or a director of a corporate Affiliate/Reseller is suspended or disbarred from practicing his or her usual trade or profession by any trade or professional associated, institute or society;

- 5.1.9. if the Affiliate/Reseller becomes a protected person or a person in respect of whom an order or direction is in force that his or her estate be subject to management or a welfare guardian is appointed under the Protection of Personal and Property Rights Act 1988 (or any subsequent applicable legislation);
- 5.1.10. if the Affiliate/Reseller becomes incapable of managing his or her affairs by reason of any mental or other condition;
- 5.2. Upon termination of a Affiliate/Reseller's agreement for any cause whatsoever the Affiliate/Reseller shall:
 - 5.2.1. Return in good condition to On2it Software all On2it Software products not belonging to the Affiliate/Reseller, and all On2it Software business aids;
 - 5.2.2. cease to use any and all trade marks, trade names, insignia, logograms, or other industrial and intellectual property belonging to On2it Software used in or related to the marketing of On2it Software's products;
 - 5.2.3. cease to hold himself or herself out as an On2it Software Affiliate/Reseller, and without limiting the generality of the foregoing they shall not be authorised or entitled to:
 - (a) demonstrate On2it Software's products;
 - (b) solicit orders for the sale of On2it Software's products;
 - (c) market On2it Software's products.
- 5.3. In the event that On2it Software terminates a Affiliate/Reseller's agreement pursuant to these Rules the Affiliate/Reseller will have no claim against On2it Software arising out of or in respect of the termination.

6. Resolution of Disputes

- 6.1. Any dispute, controversy or claim arising out of or relating to the contract of which these Rules form a part or breach of these Rules, or the termination of a Affiliate/Reseller's agreement, shall be settled by mediation and the following provisions shall apply:
 - 6.1.1. the mediation shall be conducted in Auckland, New Zealand;
 - 6.1.2. the mediator shall be selected by On2it Software and the Affiliate/Reseller from a panel of mediators nominated by "LEADR New Zealand" (Lawyers Engaged in Alternative Dispute Resolution);
 - 6.1.3. each of the parties shall be entitled to be represented by one duly qualified legal practitioner or other representative in addition to the party himself or herself, or in the case of a corporation an executive of the corporation, whether legally qualified or not.
- 6.2. In the event that the dispute, controversy or claim is not resolved by mediation within 21 days of the appointment of the mediator (or such longer period as is agreed between On2it Software and the Affiliate/Reseller) either party may refer the dispute, controversy or claim to arbitration and the following provisions shall apply:
 - 6.2.1. the arbitration shall be conducted at Auckland, New Zealand;
 - 6.2.2. the arbitration shall be conducted in accordance with the current Rules of Conduct;
 - 6.2.3. the arbitrator shall be selected by On2it Software and the Affiliate/Reseller from a panel of arbitrators nominated by On2it Software. The arbitrator shall be a person other than the Mediator who has conducted the mediation pursuant to Rule 6.1;
 - 6.2.4. each of the parties shall be entitled to be represented by one duly qualified legal practitioner or other representative in addition to the party himself or herself or in the case of a corporation, an executive of the corporation, whether legally qualified or not;

- 6.2.5. examination of witnesses by the parties and by the arbitrator shall be permitted, but compliance with the rules of evidence shall not be required.
- 6.3. The cost of any mediation pursuant to Rule 6.1 or arbitration pursuant to Rule 6.2 shall be borne equally by the Affiliate/Reseller and On2it Software.
- 6.4. A Affiliate/Reseller proposing to exercise his or her rights under Rule 6.1 shall promptly notify On2It Software at its registered office (89 Waterside Crescent, Gulf Harbour, Auckland, New Zealand) by security post. Correspondence should be addressed to the attention of the General Manager.

7. General

- 7.1. On2it Software may amend these Rules of Conduct at any time by publishing the amendment in on its website - www.GEMnetworking.com – and the amendment shall become effective as from the date specified in that publication.
- 7.1.1. Reasonable notice will be given at least one month in advance of publication by email to each Affiliate/Reseller. Acknowledgment of receipt of the email by the Affiliate/Reseller will be deemed to be sufficient proof that such notice has been received.
- 7.2. No waiver by On2it Software or any breach, default or omission by the Affiliate/Reseller or any other Affiliate/Reseller in the performance or observance of any of these Rules of Conduct shall be deemed to be a waiver by On2it Software for any other or subsequent such breach, default or omission.
- 7.3. In the event of the invalidity of one or more of these Rules or part of one of these Rules such invalidity shall not affect the continuing enforceability of any other Rule and this document shall be construed accordingly.
- 7.4. These rules shall be governed and construed in accordance with the law for the time being and from time to time in force in New Zealand.