

TERMS OF USE

Current as of 01/11/2021

Application

Please read these Terms carefully before using the Service.

The Service is made available to you subject to these Terms.

By using the Service, you confirm that you have read and understood the Terms, and agree to be bound by them.

Changes in Terms

We reserve the right to amend these Terms by giving you not less than 14 days' notice of the date upon which the amended Terms shall take effect.

You are not required to accept the amended Terms, but if you do not do so, you agree that we may discontinue your use of the Service.

Warranty of Authority

Where the User is a corporation, the person(s) acting on its behalf (and, if more than one person is acting on the corporation's behalf, all such persons jointly and severally) represent and warrant that they are authorised to: (i) accept these Terms on the corporation's behalf; and (ii) bind the corporation to these Terms.

Where the User is natural person, they represent and warrant that they are: (i) at least 18 years of age; and (b) of majority age under the laws of the jurisdiction in which they are situated.

1. The Service

Creation of accounts

You may be required to register an account with IZONE to use the Service.

You must provide IZONE with all details requested to establish an account, including, without limitation, a valid email address and details of the mobile phone, other device, third party site(s) and/or third party service(s) intended to be used by the User to access and/or use the Service.

You represent and warrant that the information you provide us is accurate, complete and current in all respects.

You may not select or use as your username: (i) the name of another person with the intention of impersonating that person; (ii) a name which infringes the Intellectual Property Rights of a third party; or (iii) a name that is otherwise offensive, vulgar or obscene.

IZONE reserves the right to refuse the registration of, or cancel, a username in its discretion.

You shall not: (i) use another User's account or any other person's registration information for the Service; or (ii) access or use the Service using a mobile phone, other device, third party site or third party service not listed on your account and approved by us.

Your right to use the Service shall continue until it is terminated by you or us.

You may terminate the Service by discontinuing your use of the same.

IZONE may terminate your use of the Service at any time for any reason.

Your use of the Service shall terminate automatically if: (i) you breach any term of these Terms; (ii) IZONE publicly posts a written notice of termination on the Service; (iii) IZONE sends a written notice of termination to you; or (iv) IZONE ceases providing access to the Service to you.

Access to the Service

IZONE will use reasonable efforts to ensure that the Service is available twenty-four hours a day, seven days a week.

However, the User acknowledges that the Service may not be free from fault or interruption, and that the Service may be unavailable during scheduled or unscheduled periods for maintenance, upgrades or emergency repairs.

Every reasonable step will be taken by IZONE to minimise such disruption where it is within IZONE's reasonable control.

You agree that IZONE will not be liable to you or any other person for any suspension, modification, discontinuance or lack of availability of the Service whatsoever.

You shall be responsible for obtaining and maintaining any equipment or ancillary services needed to connect to, access or otherwise use the Service, including, without limitation, mobile phones, modems, hardware, iZone hardware, software, data plans, and long distance or local telephone service.

You shall be responsible for ensuring that such equipment or ancillary services are compatible with the Service.

User acknowledgements and obligations

The Service (and the Content) is protected by copyright and other Intellectual Property Rights.



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You acknowledge and agree that IZONE owns all Intellectual Property Rights in and in relation to the Service (and the Content).

In using the Service, you acknowledge and agree that you, at all times:

- i. will use the Service strictly in accordance with these Terms and only for the purposes of its contemplated functionality;
- ii. will not tamper with or modify, or attempt to tamper with or modify, the Service;
- iii. will ensure that your use of the Service does not in any way infringe any third party's Intellectual Property Rights or other rights;
- iv. will comply with all Applicable Laws and reasonable directions from IZONE in relation to the Service;
- v. are solely responsible for the User Data;
- vi. will take reasonable precautions to prevent the transfer to the Service of any information, material or data that contains any virus, trojan, worm or other malware that may damage, or interfere with the operation of, the Service;
- vii. will not breach, or attempt to breach, the security of the Service or otherwise interfere with, or attempt to interfere with, the normal operation of the Service;
- viii. will ensure that, except as expressly authorised by (and subject to any conditions prescribed under) any Applicable Law, you do not, in any form or by any means: a. copy, adapt, reproduce, store, distribute, sell, lease, share, transfer, repurpose for sale, sublicense, print, display, perform, broadcast, publish, communicate to the public, make available to the public or create derivative works of the whole, or any part, of the Service (including all trade-marks); or b. seek to disassemble, or reverse engineer, the Service.

- ix. will not post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain password, account, or private information from any IZONE user;
- x. will not violate the security of any computer network, crack passwords or security encryption codes, transfer or store material that is deemed threatening or obscene, or engage in any kind of illegal activity;
- xi. will not run Maillist, Listserv, any form of auto-responder, or spam through the Service;
- xii. will not use the Service in connection with or to promote any products, services, or materials that constitute, promote or are used primarily for the purpose of dealing in: spyware, adware, or other malicious programs or code, counterfeit goods, items subject to Australian embargo, hate materials or materials urging acts of terrorism or violence, goods made from protected animal/plant species, recalled goods, any hacking, surveillance, interception, or descrambling equipment, cigarettes, illegal drugs and paraphernalia, unlicensed sale of prescription drugs and medical devices, pornography, prostitution, body parts and bodily fluids, stolen products and items used for theft, fireworks, explosives, and hazardous materials, government IDs, police items, unlicensed trade or dealing in stocks and securities, gambling items, professional services regulated by state licensing regimes, non-transferable items such as airline tickets or event tickets, non-packaged food items, weapons and accessories;
- xiii. will not in any manner or for any purpose infringe the rights of any person, including but not limited to intellectual property rights, contract rights, rights of privacy, or rights of personality, or act in any manner inconsistent with these Terms or with any terms or conditions or obligations relating to any third party website, app, API or the like; and
- xiv. will not use the Service in connection with life support systems, or other mission critical applications where human life or property may be at stake. You understand that the Service is not designed for such purposes and that its failure in such cases could lead to death, personal injury, or severe property or environmental damage for which IZONE is not responsible.

[What if I see something on the Service that infringes my copyright?](#)

We respect others' Intellectual Property Rights.

Where IZONE considers any Third Party Data to infringe the User's Intellectual Property Rights, we may delete or disable such infringing Third Party Data and/or terminate the account of the infringing party.

Similarly, where IZONE considers your User Data to infringe another person's Intellectual Property Rights, we may delete or disable such infringing User Data and/or terminate your account.

[Who is responsible for what I see and do on the Service?](#)

You are solely responsible for the User Data.

You represent and warrant to us that the User Data : (i) is accurate and complete in all respects; and (ii) does not infringe the Intellectual Property Rights of any third party.

You agree to indemnify IZONE from and against any liability, cost, expense, loss or damage suffered or incurred arising out of or in connection with: (i) any breach of the warranties set out in the preceding paragraph; or (ii) the publication or transmission of any User Data on or through the Service.

Third Party Data is the sole responsibility of the person from whom it originates.

We take no responsibility for, and make no representation or warranty concerning, such Third Party Data, including its accuracy, adequacy, currency or content.



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To the fullest extent permitted by law, IZONE: (i) takes no responsibility for the accuracy, adequacy, currency or content of, and makes no representation of any kind and does not assume any duty of care in respect of, any Third Party Data; and (ii) expressly disclaims all liability howsoever arising to any person with respect to any Third Party Data and any consequences arising from any use or reliance on such Third Party Data.

The Service may contain links or connections to third party websites or services that are not owned or controlled by IZONE.

When you access third party websites or use third party services, you accept that there are risks in doing so, and that IZONE is not responsible for such risks. We encourage you to be aware when you leave the Service and to read the terms and conditions and privacy policy of each third-party website or service that you visit or utilise.

IZONE is not liable for any loss or damage you suffer or incur that results from your use of any third party websites or third party services.

By using the Service, you release and hold us harmless from any and all liability arising from your use of any third-party website or service. Your interactions with organizations and/or individuals found on or through the Service, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that IZONE shall not be responsible or liable for any loss or damage of any sort incurred as a result of any such dealings.

If there is a dispute between participants using the Service, or between users and any third party, you agree that IZONE is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release IZONE, its officers, employees, agents, and successors from all claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Service.

Will IZONE ever change the Service?

We're always trying to improve the Service, so it may change over time.

We may suspend or discontinue the Service or any part of it at any time and for any reason whatsoever, or we may introduce new features or impose limits on certain features or restrict access to parts or all of the Service. We'll try to give you notice when we make a material change to the Service that would adversely affect you, but this isn't always practical.

Privacy

IZONE takes the privacy of its users very seriously.

For the current IZONE Privacy Policy, please check our website.

User Data

You hereby unconditionally and irrevocably grant IZONE a perpetual, worldwide, royalty-free, non-exclusive licence to use, reproduce, copy, store, modify, adapt, distribute, publish and create derivative works from, the User Data for the Approved Purpose, provided that where the User Data comprises personal information within the meaning of the Privacy Act 1988 (Cth) we will only deal with that personal information in accordance with the Privacy Act 1988 (Cth) and our Privacy Policy.

Support

IZONE may elect to provide you with support or modifications for the Service (collectively, "Support"), in its sole discretion, and may change, reduce or terminate such Support at any time without notice to you. IZONE reserves the right to charge fees for Support.

Fees

The User must pay IZONE all Fees in connection with the Service.

Failure of the User to make payment of all Fees by their due date may cause IZONE, in its discretion, to discontinue the Service.

IZONE is entitled to charge the User interest at the Interest Rate on any overdue Fees, which interest will accrue and be recoverable each day or part thereof that those Fees remain outstanding.

Warranty Disclaimer

IZONE DOES NOT REPRESENT OR WARRANT THAT THE SERVICE IS FREE OF INACCURACIES, ERRORS, BUGS, OR INTERRUPTIONS, OR IS RELIABLE, ACCURATE, COMPLETE, OR OTHERWISE VALID.

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THE SERVICE IS PROVIDED TO, AND IS ACCEPTED BY THE USER, "AS IS".

OTHER THAN THOSE TERMS, CONDITIONS AND WARRANTIES IMPOSED AND REQUIRED TO BE BINDING BY STATUTE (INCLUDING THE COMPETITION AND CONSUMER ACT 2010 (CTH)) WHICH CANNOT LAWFULLY BE EXCLUDED, RESTRICTED OR MODIFIED (EACH, A "STATUTORY TERM"), ALL TERMS, CONDITIONS, WARRANTIES, INDEMNITIES AND STATEMENTS (WHETHER EXPRESS, IMPLIED, WRITTEN, ORAL, COLLATERAL, STATUTORY OR OTHERWISE) WHICH ARE NOT EXPRESSLY SET OUT IN THESE TERMS ARE HEREBY EXCLUDED.

Limitation of Liability

IZONE'S LIABILITY TO THE USER FOR BREACH OF ANY PROVISION OF THESE TERMS, OR ANY STATUTORY TERM, IN RELATION TO THE SUPPLY OF ANY GOODS TO THE USER SHALL BE LIMITED, AT IZONE'S OPTION, AND TO THE FULLEST EXTENT PERMITTED BY LAW, TO ANY ONE OR MORE OF THE FOLLOWING:

- I. THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS;
- II. THE REPAIR OF THE GOODS;
- III. THE PAYMENT OF THE COST OF REPLACING THE GOODS OR ACQUIRING EQUIVALENT GOODS;
- IV. THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED.

IZONE'S LIABILITY TO THE USER FOR BREACH OF ANY PROVISION OF THESE TERMS, OR ANY STATUTORY TERM, IN RELATION TO THE SUPPLY OF ANY SERVICES TO THE USER SHALL BE LIMITED, AT IZONE'S OPTION, AND TO THE FULLEST EXTENT PERMITTED BY LAW, TO ANY ONE OR MORE OF THE FOLLOWING:

- I. THE SUPPLY OF THE SERVICES AGAIN;
- II. THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

IZONE SHALL HAVE NO LIABILITY TO THE USER FOR OR IN CONNECTION WITH ANY INDIRECT, ECONOMIC, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, LOSS OF ACTUAL OR ANTICIPATED PROFIT OR REVENUE, BUSINESS INTERRUPTION OR SHUTDOWN, LOSS OF PRODUCTION, DELAY COSTS, LOSS OF OPPORTUNITY, INCOME OR RENT, FINANCING OR HOLDING COSTS, ARISING OUT OF OR IN CONNECTION WITH THE ACCESS/OR USE OF THE SERVICE.

NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS:

- I. TO THE EXTENT PERMISSIBLE BY LAW, AIRSTREAM WILL ONLY BE LIABLE TO THE USER WHETHER UNDER CONTRACT, IN TORT (INCLUDING NEGLIGENCE), UNDER STATUTE OR OTHERWISE FOR ANY LOSS, DAMAGE OR INJURY TO THE EXTENT AND IN THE PROPORTION TO WHICH SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY IZONE'S FAULT; AND
- II. UNLESS IZONE'S LIABILITY IS LIMITED AS SET OUT IN PARAGRAPH 1 (INCORPORATING SUB-PARAGRAPHS I TO IV) OR PARAGRAPH 2 (INCORPORATING SUB-PARAGRAPHS I AND II) OF THIS "LIMITATION OF LIABILITY" SECTION, IZONE'S MAXIMUM AGGREGATE LIABILITY TO THE USER ARISING OUT OF OR IN CONNECTION WITH THE ACCESS AND/OR USE OF THE SERVICE, WHETHER UNDER CONTRACT, IN TORT (INCLUDING NEGLIGENCE), STATUTE OR OTHERWISE FOR ANY LOSS, DAMAGE OR INJURY (EXCLUDING LOSS OR DAMAGE ARISING FROM ANY FRAUDULENT OR UNLAWFUL CONDUCT ON IZONE'S PART), SHALL BE LIMITED TO THE FEES PAID BY THE USER TO IZONE FOR THE USER'S ACCESS AND USE OF THE SERVICE.

Indemnity

To the maximum extent permitted by law, you agree to hold harmless and indemnify IZONE, and its employees, officers, agents or other partners from and against:

- i. any third party claim arising from or in any way related to your access or use of the Service (including anything you develop using the Service), including any liability, cost, expense, loss or damage (including legal costs and expenses on a solicitor and own client basis) suffered or incurred by us in relation to such claim. IZONE shall use good faith efforts to provide you with written notice of such claim, suit or action.
- ii. any liability, cost, expense, loss or damage of any kind arising from or in connection with:
 - a. a breach by you of any of these Terms; and
 - b. any negligent act or omission by you.

General Terms



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You agree to pay IZONE'S costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees and legal costs on an indemnity basis.

For all purposes of the Terms, you and IZONE shall be and act independently and not as partner, joint venturer, agent, employee or employer of the other. You shall not have any authority to assume or create any obligation for or on behalf of IZONE, express or implied, and you shall not attempt to bind IZONE to any contract.

If any provision of the Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of such documents remain in full force and effect.

You will be responsible for paying (and must indemnify IZONE against), withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with your activity in connection with the Service, provided that IZONE may, in its sole discretion, do any of the foregoing on your behalf or for itself as it sees fit.

You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Service account, in any way (by operation of law or otherwise) without IZONE's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent.

These Terms are governed by and will be construed under the laws of the State of Western Australia, without regard to the conflicts of laws' provisions thereof. Any dispute arising from or relating to the subject matter of these Terms shall be finally settled in Perth, Western Australia, in English. You agree that in all instances any dispute shall be resolved by arbitration by a commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected by a Western Australian court. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the state or federal courts located in, respectively, Perth Western Australia. Any arbitration under these Terms (including any against officers, directors, and employees of IZONE) will take place on an individual basis: class arbitrations and class actions are not permitted. YOU UNDERSTAND AND AGREE THAT BY ENTERING INTO THESE TERMS, YOU AND IZONE ARE EACH WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

IZONE's failure to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. Any notice to IZONE that is required or permitted by these Terms shall be in writing and shall be deemed effective upon receipt, when sent by confirmed e-mail to sales@air-stream.com.au or when delivered by nationally recognized overnight courier or mailed by first class, registered or certified mail, postage prepaid, to IZONE PTY LTD, 9 Geelong Court, Bibra Lake, Western Australia, 6163, Attention: The Directors.

If two or more parties are included within the same defined term in these Terms:

- I. these Terms have separate operation in relation to each of them; and
- II. a liability or obligation of those persons under these Terms is a joint liability or obligation of all of them and a several liability or obligation of each of them.

Any proposed variation to these Terms by the User must be requested in writing. IZONE may refuse any such request without providing reasons either orally or in writing.

Definitions

iZone, us and we means iZone Pty Ltd ACN 606 666 942.

Applicable Laws means any and all statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time which pertain to the Service.

Application means the iZone Controller application and/or such other web-based or mobile applications we agree to give you access to.

Approved Purpose has the meaning set out in Item 3 of the Schedule.

Content means text, graphics, data, articles, photos, images, illustrations and other content associated with the Service, but excluding User Data and Third Party Data.

Fees means the fees payable to IZONE for your access to and use of the Service as set out in Item 1 of the Schedule.

Intellectual Property Rights means all intellectual property rights throughout the world, whether present or future, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), brand names, designs, patents and patentable inventions, semiconductor or circuit layout rights, including the right to apply for registration of any such rights.

Interest Rate means interest rate set out in Item 2 of the Schedule.



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Service means the Website and/or the Application and/or such other features, services or products we agree to give you access to (and includes enhancements or modifications to any aspect of them).

Terms means these Terms of Use (including the Schedule).

Third Party Data means any information, material or data posted, uploaded, shared, stored or otherwise provided through the Service by a third party.

User, you means the person(s) using the Service (and includes the person, firm, corporation, enterprise, corporation or other entity registered to use the Service).

User Data means any information, material or data you post, upload, share, store or otherwise provide through the Service.

Website means iZone.com.au.

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SCHEDULE

ITEM 1:

Fees

The Service is currently free, but we reserve the right to charge for the Service (or any part of it) in the future. We will notify you before the Service you are then using begins carrying a fee, and if you wish to continue using the Service, you must pay all applicable fees for the Service (and do so in accordance with the payment terms specified by us).

ITEM 2:

Interest Rate

2% greater than the prime lending rate then charged by National Australia Bank on overdraft facilities of \$100,000.

ITEM 3:

Approved Purpose (and third party licences)

To enable us to operate the Service, as described in more detail below.

If you store User Data in your own personal IZONE account, in a manner that is not viewable by any other user except you (a "Personal User Submission"), in addition to the purpose above, to display, perform, and distribute your Personal User Submission for the sole purpose of making that Personal User Submission accessible to you and providing the Service necessary to do so.

If you share User Data in a manner that only certain specified users can view (for example, a private message to one or more other users) (a "Limited Audience User Submission"), then in addition to the purposes specified above, to display, perform, and distribute your Limited Audience User Submission for the sole purpose of making that Limited Audience User Submission accessible to such other specified users, and providing the Service necessary to do so. Also, you grant such other specified users a license to access that Limited Audience User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Service.

If you share User Data publicly on the Service and/or in a manner that more than just you or certain specified users can view, or if you provide us (in a direct email or otherwise) with any feedback, suggestions, improvements, enhancements, and/or feature requests relating to the Service (each of the foregoing, a "Public User Submission"), then in addition to the purposes specified above, to display, perform, and distribute your Public User Submission for the purpose of making that Public User Submission accessible to all IZONE users and providing the Service necessary to do so, as well as all other rights necessary to use and exercise all rights in that Public User Submission in connection with the Service and/or otherwise in connection with IZONE's business. Also, you grant all other users of the Service a license to access that Public User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Service.