

# GENERAL TERMS AND CONDITIONS

## 3. ORDERING A NEW SERVICE

In submitting this order, You acknowledge and agree that:

**3.1** Unless the Agreement stipulates otherwise, the Fees and Charges are calculated on the basis that Your PoP, premises or site has an existing and appropriate access connection to the upstream carrier's network (eg, copper access when ordering a copper service, fibre access when ordering a fibre service, etc).

**3.2** Where an existing and appropriate access connection to the upstream carrier's network does not exist for a specific service:

- We may incur costs in order to determine whether the service can be supplied, and at what cost;
- We may incur costs which have been invoiced to Us by the upstream carrier in order to determine whether the service can be supplied and at what cost, including:
  - Service Qualification
  - Feasibility Studies
  - Special Linkage Charges
  - Commercial Works
  - Fee for Service Charges
  - Miscellaneous Charges (including such costs as inability to gain access, etc)

**3.3** Upon determining the cost to connect to the upstream carrier's network for a specific service, We shall liaise with You, and the You may then choose to either proceed with, or cancel, the order for that specific service.

**3.4** Some of the costs set out in clause 3.2 may be incurred if You delay or place the order on hold, or even if You subsequently choose not to proceed with the ordered service after We have determined what the cost of connecting to the upstream carrier's network is, and We may invoice You and You will pay Us for these costs, separate to this order, and irrespective of whether this order is provisioned, delivered or completed in part or in its entirety.

**3.5** Regardless of whether any specific service included in the order is cancelled in accordance with 3.3, You shall not have the right to cancel any other services contained in the order, or the order as a whole.

## 4. CONDITIONS OF CONNECTION AND SERVICE

**4.1** You must provide appropriate telecommunications software and hardware for connection to Our network.

**4.2** You are responsible for payment of any costs associated with the data communications line (telephone line or similar link) used for connection to Our network, and agree to maintain these throughout the term of the Agreement.

**4.3** You shall be responsible for implementing and maintaining network security at Your site.

**4.4** We will, at Your request, endeavour to implement access restrictions to Your network via the connection and in accordance with any of Your specifications which we have approved.

**4.5** You acknowledge that to the extent permitted by law We do not make any representations or warranties concerning the fitness for purpose or effectiveness of any access restrictions or Our network security or the Your network security.

**4.6** You acknowledge that Our network is not a completely secure and confidential method of communication and You transmit data on Our network at Your own risk. Without being in any way liable, We shall endeavour to ensure that all data transmitted on Our network is transmitted to the person to whom it is addressed.

**4.7** You acknowledge the use of the Service by You (which includes the contents thereof and any storage or use of information) is at Your own risk.

**4.8** You acknowledge that We do not warrant that the Service will be uninterrupted or error free, nor do We make any warranty as to the results obtained from the use of the Service.

**4.9** You acknowledge that any electronic material accessed by You through Our network is varied, and that We will not be liable for or responsible to You or any other person for the nature and content of that electronic material or Your use of that electronic material. You must ensure that use of the Services does not include access to illegal material, or expose any minor to material that is unsuitable for minors. You will indemnify us for any liability we incur as a result of Your breach of this clause.

**4.10** You acknowledge that Our network may be provided by Our Supplier.

**4.11** Depending on the type of Service, We may not guarantee that connections using the Service achieve any specific speed at any given time as variables such as signal strength, distance from exchange, traffic and load have an effect on the connection speed.

## 5. ORDERING A NEW SERVICE

5.1 We will use all reasonable endeavours to provide the Service on the Commencement Date. In many cases We will rely on third parties to provide or supply equipment, access, circuits or cross-connects and therefore We will not be liable for any delay in installing the services. The dates specified in the Order Form are approximate. We will keep You informed of progress of Your Service.

## 6. PROVISION OF THE SERVICE

6.1 We will provide a standards based interface for connection to Our IP Network (AS 9268) for delivery of the Service:

- Electrical Fast Ethernet as per IEEE 802.3u ("100BASE-TX")
- Optical Gigabit Ethernet as per IEEE802.3z ("1000BASE-S/LX")
- Electrical Gigabit Ethernet as per IEE 802.3ab ("1000BASE-T")

6.2 Additional Interfaces will be considered on a per request basis, and may incur additional charges.

6.3 We maintain and operate Our network under the Autonomous System Number AS9268. You connect directly to this network via one of the standard Interconnect types.

6.4 You will exchange route information with Us via the Border Gateway Protocol version 4 (BGP).

6.5 We will supply a full global BGP routing table to You or a default route as specified in the Order Form.

6.6 The global routing table is large and constantly growing. If You elect to receive a full table We will advise You to ensure Your equipment is capable of supporting the current table and its future growth.

6.7 If required, we will:

- supply and install the Customer Premises Equipment at Your Premises;
- connect You or allow You to connect to the upstream carriers network;

We may provide Your Service by means of a wireless system and because of technical and regulatory limitations on that wireless system You may not be able to obtain access to the network even though You are within the coverage area because of interference from other telecommunication services or terrain or other circumstances or an interference mechanism impacting on the reception of communication signals between Your modem and the network. We will do everything possible to recover the service but we do not take any responsibility for the loss of service.

## 7. SCHEDULED MAINTENANCE

7.1 We require from time to time the ability to perform maintenance on the network. We shall provide via email (to the technical and administrative contact listed on the Order Form) as much notice as possible.

## 8. ROUTE ANNOUNCEMENT, REGISTRATION & FILTERING

8.1 You are to announce all routes for which You want to receive International and Domestic IP Traffic by way of Border Gateway Protocol Version 4 (BGP).

8.2 We will in all cases filter prefixes and AS numbers We receive from You.

8.3 You are required to register with Our NOC all routes and downstream AS numbers for which You wish to receive traffic from Us. We will update filters Our own filters (and advise Our upstream providers) within 24 hours; and where urgent We will use reasonable endeavours to update Our filters (and advise Our upstream providers) within 60 mins.

8.4 We may be required to update filters with some of Our transit providers. We make no guarantee that those providers will update their filters within the timeframe listed above.

8.5 By requesting the registration of a route or AS, You warrant that You are the owner or leaseholder of those resources, or is authorised by the owner or leaseholder to use that resource.

8.6 If We receive a complaint about Your use of an Internet resource (such as IP block or AS number) We will resolve all such complaints in the favour of the organisation listed in the APNIC WHOIS database. In the event of a dispute, the onus is on You to prove ownership of the resource. If You are unable to do this, any decision taken by Us to not route will not be considered a breach of any SLA or covenant of this Agreement.

8.7 We will typically supply IP Address blocks or AS numbers to You. Price for IP address is on a monthly basis and all IP addresses remain the property of Us at all times.

## 9. FAULT REPORTING & RESPONSE TIMES

9.1 If You rely on Customer Premises Equipment ("CPE") supplied by Us, You must specifically ensure that the CPE is receiving clean power and cooling as required to be operational.

**9.2** Before reporting a fault to Us, You must take all reasonable steps to ensure that the fault is not a fault in any of Your equipment or within Your administrative domain.

**9.3** As soon as You have confirmed the fault is related to the Service supplied by Us, that fault must be reported to Us in accordance with the procedures set out in the Service Description & SLA.

**9.4** If We determine, in Our absolute discretion, the fault is attributable to Your equipment then We may invoice You a reasonable amount (not to exceed \$500) for the time spent diagnosing the fault.

## **10. YOUR RIGHTS & OBLIGATIONS**

**10.1** We grant to You a non-exclusive right to install, inspect, operate, repair and maintain Your Equipment in the Colocation Space.

**10.2** You shall have reasonable access to the Colocation Space for the purpose of utilising Your rights set out in clause 10.1, including:

- 24hour access to the place where the Colocation Space is located, and
- Access granted via Our security system to Your representatives named on the Order Form.

**10.3** You shall have the right to pass through Our Facility to access the Colocation Space solely for the purpose of utilising Your rights set out in clause 10.1.

**10.4** You must ensure that the Colocation Space is kept clean and tidy and that no flammable materials are taken into Our Facility.

**10.5** You must inform Us immediately upon becoming aware of any damage to the Colocation Space, any equipment or facilities of third parties, or Our Facility which includes Our equipment and cabling.

**10.6** You must satisfy yourself as to the adequacy of Our Facility, the Colocation Space, power supply, ventilation and levels of electromagnetic emission prior to signing the Agreement.

**10.7** You acknowledge that Your equipment is not covered by Our insurance, and You must effect and maintain during the term of the Agreement insurances for the full value of Your Equipment, as well as the damage Your equipment may do to Our Facility, Our equipment, or any equipment or facilities of third parties. Proof of insurance policies must be provided to Us upon request.

**10.8** You must not use the Colocation Space for any purpose other than installing, inspecting, maintaining, repairing and operating Your equipment.

**10.9** You must not damage the Colocation Space or Our Facility or any equipment located in the Colocation Space. The cost for repair of any damage to the Colocation Space or Our Facility caused by You, or your employees and/or contractors, will be Your responsibility.

**10.10** Except as expressly permitted by Us, You must not install fixtures or fittings in the Colocation Space or Our Facility.

## **11 OUR RIGHTS & OBLIGATIONS**

**11.1** We shall provide to You the Colocation Services in accordance with any applicable laws and on the terms and conditions contained in the Order Form.

**11.2** We shall take reasonable care not to damage or interfere with any of Your equipment and not unreasonably interfere with Your use of and access to the Colocation Space.

**11.3** We shall use Our best endeavours to maintain and keep or to ensure that Our Supplier maintains and keeps the Colocation Space in good and safe condition and repair.

**11.4** We or Our Supplier may access and use for Our or its own purposes, and for the provision of services to other customers, other space within Our Facility that is not allocated as part of the Colocation Services to You.

**11.5** We may grant additional licences to other customers for the use of space in the OTW Facility that is not allocated to You.

**11.6** We or Our Supplier may enter and pass through the Colocation Space provided that such access does not unreasonably interfere with the use of the Colocation Space by You.

## **12. GENERAL**

**12.1** The Agreement is made subject and subordinate to the terms and conditions of any underlying ground or facilities lease or licence or other superior rights by which We have acquired an interest in Our Facility, including the rights of Our Supplier.

**12.2** Your rights are conditional upon the owner of Our Facility giving and continuing to give its consent, if required, to the granting and continuation of Your rights under this Agreement.

**12.3** You must not do or fail to do anything that may invalidate, or breach the terms of any agreement between Us and the owner, lessor or licensor of Our Facility, which could affect Our right to use or occupy Our Facility.

**12.4** Nothing in this Agreement creates any tenancy between Us and You, nor does it confer upon You any right or interest in the land by way of occupation rights, licence, easement, rights of way or otherwise.

**12.5** Nothing in this Agreement prohibits Us from selling or otherwise transferring Our interest in Our Facility.

**12.6** This Agreement shall automatically terminate when We cease to have a right to use Our Facility.

**12.7** We shall use reasonable endeavours to assist You to novate this Agreement to, or enter into a new agreement with, any new owner, lessee or licensee of what was previously Our Facility.

## **16 CUSTOMER PREMISES EQUIPMENT**

**16.1** You must care for and maintain the Customer Premises Equipment and must only use the Customer Premises Equipment in connection with the Services and in accordance with any manufacturers specification and recommendations and any instructions that We give to You either directly, by email or by notice on Our website.

**16.2** If You do not own the premises or must for any other reason give notice to or obtain the permission of any other person before We may install the Customer Premises Equipment, You warrant to Us that before the installation commences You have given that notice or obtained that permission in writing and You agree You will provide a copy of the written notice or permission to us as requested.

## **17 DATA USAGE AND DOWNLOAD SPEEDS**

**17.1** The Order Form may state a limit on the amount of data You can receive at high speed over the network within a specified period (the Data Limit).

**17.2** Unless otherwise agreed in writing, We will notify You by email when You have exceeded 85% of the Data Limit and 100% of the Data Limit.

**17.3** If You exceed the Data Limit You will be billed in accordance with details set out in the Order Form.

## **18 YOUR OBLIGATIONS**

**18.1** You must not use or attempt to use the Service:

- for any activities which breach any laws, infringe a third party's rights, or breach any standards, content requirements or codes promulgated by any relevant authority including activities which will require Us to take remedial action under any industry code which We have from time to time been directed to comply with or to which We subscribe;
- in any way interferes with other users or sends unsolicited or unwelcome electronic mail messages to anyone;
- to transmit, publish or communicate any material which is or is likely to be defamatory, offensive, indecent, abusive, menacing or unwanted; or
- to gain unauthorised access to any computing, information or communications devices or resources including, without limitation, machines accessible via the internet and the accounts or materials of other persons stored on or passing over the network.

**18.2** You must not resell, share or otherwise distribute all or any part of the Services to any third party without Our prior written consent.

**18.3** You must not send or disclose any information that would allow a person to use the Services to anyone other than to Us or store them in any form whether coded or uncoded in a location where it is capable of being read by anyone other than You.

**18.4** A static IP address is provided to each Service. You must not configure Your network to use a static IP address that has not been assigned to You.

## **19 DEFINITIONS**

*Agreement*; means the entire agreement between You and Us, constituted as specified in clause 2.1, regarding the provision of a service.

*Annexures*; means documents annexed to the Agreement which have been signed by You and Us, and which may have the effect of modifying a clause or term of the Agreement.

*Colocation*; means the provision of colocation, or *tele-housing* services in a facility owned or leased by Us or Our Supplier.

*Colocation Space*; means the space described as such in the Order Form, and which is located within Our Facility or within the Facility of Our Supplier and allocated to You.

*Commencement Date* means the date for commencement of the services stated in the Order Form.

*Commercial Works*; has the definition given by the relevant upstream carrier. The relevant definition at the time may be provided by Us to You, at Your request, where these charges are likely to be incurred.

*Customer Premises Equipment*; means any equipment which we own but must install on Your premises in order for You to receive and make use of the service.

*Fees and Charges* means the fees and charges set out in the Order Form.

*Fee for Service Charges*; has the definition given by the relevant upstream carrier. The relevant definition at the time may be provided by Us to You, at Your request, where these charges are likely to be incurred.

*Feasibility Studies*; has the definition given by the relevant upstream carrier. The relevant definition at the time may be provided by Us to You, at Your request, where these charges are likely to be incurred.

*IP Transit Services*; means a standards based interface for connection to Our network for delivery of the Service, which will be delivered at the speed specified in the Order Form, at the location specified in the Order Form.

*Master Services Agreement*; means the version of the document entitled "Master Services Agreement" in effect at the time.

*Minimum Term*; means a set period of time for which You and We agree that the contract should remain in effect and that cannot be terminated without paying a termination fee.

*Miscellaneous Charges*; includes all other charges from the upstream carrier not specifically identified in clause 3.2, but may also have a definition given by the relevant upstream carrier. The relevant definition at the time may be provided by Us to You, at Your request, where these charges are likely to be incurred.

*Order Form* means the form signed by You in which these Terms and Conditions form an annexure.

*Our Facility*; means a facility owned or leased by Us at which we make available the Colocation Services.

*PoP*; means a point of presence, site, premises or other location, of Yours.

*Private IP*; means the Services on the Order Form.

*Service*; means, the service described in the service description, and specified in the Order Form and any related goods or services which we supply to You in connection with the service including IP Transit Services.

*Service Description/Schedule*; means, the document entitled "Service Description" or "Service Schedule" which describes the nature of a service being purchased and any specific terms which apply to services of that type.

*Service Qualification*; has the definition given by the relevant upstream carrier. The relevant definition at the time may be provided by Us to You, at Your request, where these charges are likely to be incurred.

*Special Linkage Charges*; has the definition given by the relevant upstream carrier. The relevant definition at the time may be provided by Us to You, at Your request, where these charges are likely to be incurred.

*Us, We*; means Cloudfarm Pty Ltd, or a related party as per the Corporations Act 2001 (Cth), being the supplier of the service in the relevant service description. (Us, Our, We and other similar language is to be construed accordingly)

*You*; means the person who fills out the Order Form, or the entity or person on whose behalf the person who fills in the Order Form was acting. (Your, Yours and other similar language is to be construed accordingly).

# SPECIAL CONDITIONS

## 20. HANDSET EQUIPMENT

### 20.1 Definitions

*Handset Equipment* means any handset equipment which We supply to You in connection with the Service.

*PPSA* means the Personal Property Securities Act 2009 (Cth).

*PPSR* means the Personal Property Securities Register established pursuant to the PPSA.

*Security Interest* means an interest in personal property provided for by a transaction that, in substance, secures payment of money or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property), and also includes a transaction which the PPSA treats as a security interest whether or not the transaction concerned, in substance, secures payment or performance of an obligation.

## 20.2 Title and risk in the Handset Equipment

- (a) The Handset Equipment remains Our property (or the property with a party with whom We have a contract) although it is provided to You on Your premises in accordance with the Agreement for the sole purpose of using the Services. All right, title and interest in the Handset Equipment provided by Us will remain exclusively with Us (or the party with whom we have a contract) and You will not obtain any rights, title or interest over the Handset Equipment until the date that is 36 months after the date of the Agreement, provided You have paid all amounts owing to Us in relation to the Services under the Agreement.
- (b) Until all right, title and interest in the Handset Equipment has passed to You pursuant to clause 20.2(a), You acknowledge and agree that You:
  - (i) hold the Handset Equipment as bailee only; and
  - (ii) irrevocably authorise Us to enter any premises where the Handset Equipment is kept and, if necessary, use Your name and to act on Your behalf to recover the Handset Equipment.
- (c) We are not liable for any loss or damage or deterioration of the Handset Equipment after You receive it.
- (d) From the date you receive the Handset Equipment, You must acquire and maintain all necessary insurance for the Handset Equipment.

## 20.3 Security Interest

- (a) You acknowledge that, by virtue of the Agreement, We have a Security Interest in the Handset Equipment for the purposes of the PPSA and to the extent applicable the PPSA applies.
- (b) You acknowledge and agree that We may do anything reasonably necessary, including but not limited to registering any Security Interest which We have over the Secured Property on the PPSR, in order to perfect the Security Interest and comply with requirements of the PPSA.
- (c) You agree to do all things reasonably necessary to assist Us to undertake the matters set out in clause 20.3(b) (including but not limited to obtaining consents, signing and producing documents, getting documents completed and signed and supply information).
- (d) Both You and We agree that neither party nor any receiver is obliged to give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (e) The parties agree that the following provisions of the PPSA are excluded:
  - (i) to the extent permitted by section 115(1) of the PPSA: sections 125, 132, 142 and 143 of the PPSA; and
  - (ii) to the extent permitted by section 115(7) of the PPSA: sections 129, 132, 133, 134, 135, 136 and 137 of the PPSA.
- (f) You must give Us written notice of any change to Your name, address or other details set out in this Agreement within 5 Business Days after the date of such change.