

## 1 ABOUT THESE TERMS AND CONDITIONS

- 1.1 These are the terms and conditions which apply to these Services provided by Us to You, and will apply unless varied expressly in writing by Us.
- 1.2 Our Master Services Agreement applies to this Order. The current version is available on Our website at [www.upti.com.au/master-services-agreement](http://www.upti.com.au/master-services-agreement)
- 1.3 By signing this Order Form You:
- Confirm You have accessed and read the Master Services Agreement,
  - Accept and agree to be bound by the terms of the Master Services Agreement, and
  - Agree that the terms of the Master Services Agreement shall hereafter apply to all services We provide to You, subject to clause 1.4 below.
- 1.4 Where there is any inconsistency between these Terms and the Master Services Agreement, or any other part of the Agreement, the documents and terms are to be interpreted and applied in the following order:
- Any express written agreement between the parties,
  - The Order Form, including any Annexures
  - The Service Description/Schedule (if any)
  - The Master Services Agreement
- 1.5 No clause in these Terms shall be interpreted to exclude a written variation to these Terms which expressly supersedes any given clause.
- 1.6 The meaning of words commencing with a capital letter have the meaning given to that term in the Master Services Agreement or clause 3 (Definitions) below.
- 1.7 Each contract will comprise the Agreement to the exclusion of any purchase order, quote, confirmation, terms and conditions of any other document issued or provided by You. If there are any special conditions which You require to be included as part of this Agreement, You must ensure these are noted in the Order, otherwise they shall not apply.

## 2 THE AGREEMENT

- 2.1 The Agreement consists of:
- The Order Form, including any Annexures
  - These Terms
  - The Service Description/Schedule (if any)
  - The Master Services Agreement

## 3 DEFINITIONS

*AdHoc and PrePaid Services* means the IT Services or other services provided by Us to You as described in the Order Form including where applicable access to Our network (including computer resources, disk storage and computer communication facilities) and the Internet.

*Agreement* means an entire agreement between You and Us, constituted as specified in clause 2.1, regarding the provision of a Service, or, in the case of Hardware & Software Sales, a supply.

*auDA Publish Policies* means those specifications and policies maintained and published by auDA on their website <http://www.auda.org.au>

*Certificate Authority* means the entity that issues digital certificates, such as SSL Certificates.

*Colocation* means the provision of colocation, or telehousing services in a facility owned or leased by Us.

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

*Commencement Payment* means the Payment required prior to Project Commencement unless otherwise agreed upon by You and Us.

*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.

*Completion* means after the process in clause 12.5 of the IT Services Annexure.

*Completion Payment* will be required upon Project Completion and will be initiated by Our Senior Technical or Project Management resources. Completion payments may be applied to halted or cancelled projects in order for Us to recover costs already incurred.

*Content Category* means the lower-level classification of web page contents under the Content Group.

*Content Group* means the classification of web page contents based upon Web content viewing suitability of three major groups of customers: enterprises, schools and home/families.

*Credit Account Application* means the document titled "Credit Account Application" in effect at the time.

*Deliverable* means the tasks listed in the Project Description that are of technical or consultative nature and are required to complete the project. In some instances the Deliverable will have more than once sub task or tasks not listed but are all required to complete the deliverable as a whole.

*Domain Names* means a Domain Name registered with a registry operator.

*End User or End User of the Service* means the user of an active Service. Depending on the Service, this may be You, a customer of Yours, or both.

*Excluded Items Rate* means, for Managed Services and IT Services, the hourly rate described as "Excluded Items Rate" on the Service Order Form. Where no rate is not stipulated on the Order Form, the Excluded Items Rate shall be \$250 per hour (ex GST).

*Exclusion* means, for IT Services, aspects of the project that are not Our responsibility, and where the onus is on You to ensure that these exclusions are not a cause for project delay or failure. Exclusions can be covered by Us, however they would be subject to approval and will incur additional charges.

*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.

*Hosted PBX* means the Hosted PBX Service or other services provided by Us to You as described in the Order Form including where applicable access to Our network (including computer resources, disk storage and computer communication facilities) and the Internet.

*IaaS* means the Infrastructure-as-a-Service Service or other Services provided by Us to You as described in the Service Order Form.

*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 Service Order, at the location specified in the Service Order.

*Managed Services* means the Services or other services provided by Us to You as described in the Order Form including where applicable access to Our network (including computer resources, disk storage and computer communication facilities) and the Internet.

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

*Miscellaneous Charges* includes all other charges from the upstream carrier not specifically identified in clause 7.2 of the Voice Annexure, 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.

*Nominated Excluded Items Hourly Rate* means, for Hosted Services, Our nominated excluded items hourly rate in place at the time. As this rate can change, You may contact Us to find out what this is at the time it is relevant to You.

*PaaS* means the Platform-as-a-Service Service or other Services provided by Us to You as described in the Service Order Form.

*Project Commencement* will take place based on the availability of Us to begin the project deliverables, or as agreed upon by You and Us.

*Project Completion* will take place when all project deliverables have been met and confirmed, as determined by Our senior technical or project management resources assigned to the project.

*Project Failure* means the cancellation of the project, and can be instigated by either party once a Project Pause or Halt is incurred. Project cancellation will result in any outstanding costs to be invoiced to You.

*Project Halt* occurs when the project is unable to progress any further due to various circumstances or non-payment. Written communication between the key contacts is required.

*Project Pause* can be initiated by either party where there is due cause based on extended delays, major faults, unexpected issues or environmental issues. Written communication between the key contacts is required.

*Project Value* Means the value of the fixed price project determined to cover all the deliverables and associated costs as set out in the project description. For Time and Materials projects, this is the estimated number of hours required to complete the project along with any expenses incurred to meet the deliverables defined in the project description.


*Projects & Professional Services* means the Services or other services provided by Us to You as described in the Order Form including where applicable access to Our network (including computer resources, disk storage and computer communication facilities) and the Internet.

*Public Holidays* means all gazetted national holidays.

*Rate Plan* means the collection of rates and charges associated with a particular telephony product. Your Rate Plan should be included with Your Service Order Form. If no Rate Plan is included with Your Service Order Form, Our standard rate plan for that Voice Service type applies.

*Reasonable Period of Time* means, for IT Services, a period of time, determined by Us, but in consultation with You, and determined relative to such things as the nature of the fault, and its impact upon You or the Services.

*Reseller Agreement* means, the document entitled "Reseller Agreement" or "Referrer Partner Agreement" which describes the conditions of reselling the Service.

Initial:  <sup>DS</sup>

*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.

*SSL Certificate* means a certificate to validate a website's identity and encrypt information website visitors send to, or receive from, the website.

*Standard Rate* means:

- for Managed Services and IT Services, the hourly rate described as "Standard Rate" on the Service Order Form. Where no rate is not stipulated on the Service Order Form, the Standard Rate shall be \$150 per hour (ex GST) and
- for Hosted Services, the standard hourly rate for support in place at the time. As this rate can change, You may contact Us to find out what this is at the time it is relevant to You.

*Supply* means the supply described in the supply description, and specified in the Order Form and any related goods or supply which We supply to You in connection with the supply.

*Supported Guest Operating Systems* means, for Hosted Services, those systems specified by VMWare as being supported. For an up-to-date list of the systems supported at any given time, refer to [www.VMWare.com](http://www.VMWare.com).

*Unlimited Rate Plan* means a Rate Plan that includes free outbound calls to all standard Australian local, national and mobile numbers.

*Voice Services*; means the Voice (PSTN / ISDN ReBill) Services or other services provided by Us to You as described in the Service Order Form. These Services may include:

- PSTN Services
- Basic Rate Interface, which consists of two B channels and one D channel and
- Primary Rate Interface, which consists of 30 B-channels and one D-channel.

*WHOIS* The WHOIS service allows internet users to search a domain name and find out the identity and contact details of the registrant. The public WHOIS service is a standard feature of domain name systems around the world. For more information, contact auDA.

ANNEXURE: PRIVATE IP, INTERNET TAIL, IP  
TRANSIT & MANAGED SECURITY

2

CONDITIONS OF CONNECTION AND  
SERVICE

## PRIVATE IP &amp; INTERNET TAIL

2.1

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

## 1 ORDERING A NEW SERVICE

2.2

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.

In submitting this Service Order Form, You acknowledge and agree that:

2.3

Other than to the extent that You have ordered Managed Security Services from Us, You shall be responsible for implementing and maintaining network security at Your site.

- 1.1 Unless the agreement stipulates otherwise, the fees and charges quoted are 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).

2.4

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.

- 1.2 Where an existing and appropriate access connection to the upstream carrier's network does not exist for a specific Service:

2.5

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 network security.

- 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)

2.6

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.

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

2.7

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.

- 1.4 Some of the costs set out in clause 1.2 above 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

PRIVATE IP CONDITIONS OF CONNECTION  
AND SERVICE


- 1.5 Regardless of whether any specific Service included in the order is cancelled in accordance with 1.3 above, You shall not have the right to cancel any other services contained in the order, or the order as a whole.

3.1

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.

3.2

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.

Initials: 



- 4 INTERNET TAIL CONDITIONS OF CONNECTION AND SERVICE
- 4.1 No Service Level Guarantee is offered in respect of the Service, however in the event of a fault We will use reasonable endeavours to address the fault within a reasonable period.
- 4.2 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
- IP TRANSIT
- 5 ORDERING A NEW SERVICE
- 5.1 We will use all reasonable endeavours to provide the Service on the commencement date specified in the Service Order. 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 Service Order are approximate. We will keep You informed of progress of Your Service throughout provisioning.
- 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 Service Order.
- 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.
- 7 ROUTE ANNOUNCEMENT, REGISTRATION & FILTERING
- 7.1 You are to by way of Border Gateway Protocol Version 4 (BGP) announce all routes for which You want to receive International and Domestic IP Traffic.
- 7.2 We will in all cases filter prefixes and AS numbers We receive from You.
- 7.3 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 24hours; and where urgent We will use Our best efforts to update Our filters (and advise Our upstream providers) within 60 mins.
- 7.4 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.
- 7.5 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.
- 7.6 Should 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. Should You be 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.
- 7.7 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.
- 8 FAULT REPORTING & RESPONSE TIMES
- 8.1 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.
- 8.2 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.
- 8.3 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.

- 8.4 If We determine 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.
- MANAGED SECURITY
- 9 CONDITIONS OF CONNECTION AND SERVICE
- 9.1 You acknowledge the use of the Service by You is at Your own risk.
- 9.2 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.
- 9.3 No Service Level Guarantee is offered in respect of the Service, however in the event of a fault We will use reasonable endeavours to address the fault within a reasonable period.
- 10 PROVISION OF THE SERVICE
- 10.1 Prior to the commencement of the Service, a design phase will be undertaken in a project-managed, collaborative manner between You and Us. It may include, but is not limited to, setting the policy and rules in relation to the following:
- Managed Firewall security policy
  - Antivirus filtering rules
  - Default filtering behaviour for files larger than 10MB
  - Default treatment of emails tagged as spam
  - Content Groups and Content Category customisation: predefined and dynamic rules
  - Granular customisation for specific entries
  - Business Reporting templates
  - Customer Representatives.
- 10.2 Provisioning will take approximately 20 Business Days from the conclusion of the design phase.
- 11 FIREWALL
- 11.1 We will only be responsible for protection between the public internet and Your network. Protection inside Your network will be Your responsibility and We take no responsibility for risks and attacks from traffic within Your network.
- 12 CONTENT FILTERING
- 12.1 Content filtering is applied on a reasonable- effort basis. We do not guarantee all content within the filtered categories will not pass through the Service.
- 12.2 Antispam filtering may tag spam emails in the subject header and forward it to Your internal mail server. You are responsible for Your treatment of emails tagged as spam, and store or open such emails at Your own risk.
- 12.3 You acknowledge that Content Groups and Content Categories will be updated from time to time. Your content filtering policies should be based on the classification of Content Groups and Content Categories.
- 12.4 You may apply to allow a limited number of specific sites within an otherwise filtered Content Category. You may request additional entries, and We will consider such request, however an additional charge may apply.
- 13 OTHER MANAGED SECURITY FEATURES
- 13.1 Cloud De-Militarised Zone (DMZ), where provided, is contained within Our hosted cloud services platform and cannot be extended beyond that point to include other network endpoints such as data centre collocated or on- site infrastructure.
- 13.2 Two-factor Authentication, where provided, may be provided, using physical or mobile application security tokens.
- 13.3 If Weekly Detailed User Reporting is made available, individual user statistics are only included when integrated with Active Directory. Where no Active Directory integration is in place, the Detailed User Reporting is based on IP Address only.
- 13.4 Default Internet Data Pack port speed is 100Mbps, regardless of the maximum throughput based on the Service tier. Unlimited data pack is available at any speed up to the maximum throughput of the Service tier.
- 13.5 The Antivirus will only scan files up to 10MB in size. Files larger than 10MB may be allowed with a notification to You. You are responsible for Your treatment of those files and store or open such files at Your own risk.
- 14 LICENCE
- 14.1 You are responsible for complying with the licence terms of all security products installed on Your network and maintaining valid licences.
- 15 LIMITATIONS

- 15.1 You understand and accept that We do not guarantee that the Service will:
- Protect against all unauthorised access to the network
  - Remove or correctly identify all viruses;
  - Screen, block or correctly identify all spam;
  - Detect and remove all types of attacks or correctly identify all attacks;
  - Block all websites You ask Us to block;
  - Block all network activity You ask Us to block or correctly detect and protect against network activity that You deem suspicious;
- 15.2 You are solely responsible for Your connection to the Service if You connect via public Internet access or BYO network.
- 15.3 We provide no guarantee in relation to latency or bandwidth.