

## Terms and Conditions of Service

Updated January 2005

### Definitions

**Melbourne:** Melbourne Network Solutions Limited, trading as “NorthernColo”, whose registered office is Dewsbury Business Centre, 13 Wellington Road, Dewsbury, WF13 1HF. '

**Customer:** the Customer of Melbourne Network Solutions Limited.

**Services:** services provided by Melbourne either in the direct or indirect control of Melbourne.

### General

This document details the terms and conditions governing the supply of Co-Location service by Melbourne to the Customer. Use of Melbourne's services is subject to the terms listed herein.

### Invoices and Payment

All invoices raised by Melbourne shall become due for payment to be received 7 (seven) days following the date of invoice unless consent is expressly given in writing to the client for an extension of this period.

Invoices for any other service provided by Melbourne which is in excess of 14 (fourteen) days from the date of invoice will be subject to suspension of any further services and may become subject to legal pursuit.

Service charges including but not limited to co-location and dedicated server housing will be invoiced in advance of the month of service and are subject to our standard payment terms.

Bandwidth Charges raised will be invoiced in arrears and are subject to our standard payment terms.

Melbourne reserves the right to raise excess charges for late payment of invoices, including but not limited to reconnection fees on co-located servers, such charges will be payable in full prior to recommencement of any services and a deposit may be required in the case of service charges.

## Termination

If the Customer fails to pay the Fees by the due date, Melbourne may suspend the Services and/or terminate this Agreement forthwith.

The Terms and Conditions of this Agreement shall continue for the initial agreed period (the contract length) and then renew indefinitely until such time as either party notifies the other in writing of termination.

In the event of termination of this Agreement, Melbourne may offer at its sole discretion a proportionate refund of the Fees already paid for the unused period.

Upon termination of this Agreement for whatever reason, Melbourne shall remove the Server from its network without any liability whatsoever.

Upon termination of this Agreement for whatever reason any Fees owed by the Customer to Melbourne shall become immediately payable and due.

Following termination of the Agreement, neither party shall have any further obligation to the other under these Conditions other than any entitlements, rights or obligations provided by law.

If the Customer cancels or delays a request for co-location Service after installation work has started, but before Services are commenced, the Customer shall be liable for any and all installation charges, removal costs and applicable termination fees and shall pay same upon receipt of invoice.

## Risk and Insurance

Any equipment or goods sent by or on behalf of the Customer to Melbourne shall be entirely at the Customer's own risk. It is the responsibility of the Customer to ensure that such items are adequately packaged and insured if necessary. We recommend all customers take out suitable insurance cover for their equipment.

## “Uptime” Guarantee

Melbourne aims to provide a 99.9% "uptime" service level agreement. In the event that Melbourne is unable to provide Services to the Customer for more than 0.1% of any given calendar month, Melbourne will refund the Customer a portion of the Fees at the rate of 5% for every additional 15 minutes of downtime, except where more than 7 days prior notification of the loss of Services has been issued to the Customer (i.e. scheduled maintenance work). The maximum amount refunded shall not exceed the proportionate amount of the Fees applicable for that month.

The Customer will have no recourse to Melbourne if a customer's account is in arrears, Melbourne has suspended or withdrawn services as a result of the customer being in breach of any of the terms in the use of the services, is subject to a wind-up order or has been placed into receivership, or ceased trading.

Melbourne will take no further responsibility or liability for network or service availability. This includes loss of business, custom, loss of data and all service interruptions unless otherwise stated by Melbourne or agreed with the customer in writing.

## Conduct at Co-location Data Centre facility

Customer and its Representatives agree to adhere to and abide by all security and safety measures established by Melbourne and set forth in the Terms and Condition provided by Melbourne to Customer. Customer and its Representatives shall also not do or participate in any of the following:

- misuse or abuse any Melbourne property or equipment or third party equipment
- make any unauthorised use of or interfere with any property or equipment of any other Melbourne customer, or any other data centre tenant.
- harass any individual, including Melbourne personnel and representatives of other Melbourne customers
- engage in any activity that is in violation of the law or aids or assists any criminal activity while on data centre property or in connection with the Data Centre Services.
- that in the construction and maintenance of its equipment the Customer shall cause no material inconvenience to Melbourne or other customers at the site.

## Bandwidth Overages

The customer will agree to a monthly bandwidth transfer quota, expressed in gigabytes per month. Should the customer exceed the agreed amount of transfer, without prior notification, Melbourne reserves the right to charge the customer a price-list rate of £0.75 per gigabyte of data transferred over and above the quota in force. This rate is subject to change, and current rates can be found in the price list.

## Server Visits

Melbourne will provide physical access to the Customer's equipment at the data centre in accordance with our published price list rates. We do not allow unaccompanied access to servers unless otherwise agreed in writing.

## Additional Services

Melbourne will provide "additional services", for example remote reboot switch ports, firewall rules, and server monitoring. The provision of these services will be based on current price-list rates and subject to notes

## Safety

No member employee or agent of Melbourne shall be required to undertake Services which involve risk of personal injury or illness or to breach Health and Safety at Work Regulations.

## Acceptable Use Policy

Acceptable Use Policy below defines the actions which Melbourne considers to be abusive, and thus, strictly prohibited. In using Melbourne's Services you agree to the conditions herein. Should any action be taken by Melbourne in the suspension or the withdrawal of Services the Customer shall forgo any claims against Melbourne in respect of refunds for unused Services and any performance claims against Melbourne.

The examples named are non-exclusive, and are provided for guidance to the Customer. If you are unsure whether any contemplated use or action is permitted, please submit a support request and we will endeavour to assist you.

The Customer shall not participate in or facilitate any of the following:

- Unsolicited e-mail activities
- Illegal pornography
- Impersonated or libellous postings
- Hacking or unauthorised access
- Propagation of viruses or worms
- Terrorism or threat of terrorism
- Denial of Service (DoS) or Distributed Denial of Service (DDos) attacks

The Customer shall not deliberately or maliciously cause or allow to be caused any disruption to Melbourne's Services, its servers, network or other infrastructure, or any other networks or services on the internet.

## Law Enforcement co-operation

Melbourne will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in the investigation of suspected criminal violations. Customers or Users who violate systems or network security may incur criminal or civil liability.

## Limitations

Except as expressly provided in these Conditions, Melbourne gives no warranties of any kind, expressed or implied for services provided to the Customer. Melbourne disclaims any warranty or fitness for a particular purpose. This includes loss of business, custom, loss of data and all service interruptions unless otherwise stated by Melbourne or agreed with the customer in writing.

## Force Majeure

Neither party shall be liable to each other or be deemed to be in breach of the Agreement by reason of any delay in performing or failure to perform any of its obligations in relation to the Services if such failure or delay was beyond that party's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond either party's reasonable control

- act of God, explosion, flood, tempest, fire or accident
- war or threat of war, terrorism, sabotage, insurrection, civil disturbances or requisition
- acts requisitions regulations bye-laws prohibitions or measure of any kind on the part of any governmental parliamentary or local authority
- strikes or other industrial actions or trade disputes (whether involving employees of either the Customer or Melbourne or of a third party)

## Indemnity

The Customer agrees that it shall defend, indemnify, save and hold harmless Melbourne from any and all demands, liabilities, losses, costs and claims, including all legal fees, that may arise or result from any service provided or performed or agreed to be performed by a Customer, its clients, agents, employees or representatives. (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Melbourne's services; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective Product sold via Melbourne's services.

These terms and conditions are subject to English Law. Melbourne reserves the right to revise these terms at any time, giving thirty days written notice.