

## **SUPPLEMENTAL TERMS AND CONDITIONS OF SERVICE: DATA CENTRE SERVICES**

### **GENERAL**

(1) These Data Centre Services Supplemental Terms and Conditions supplement and (unless expressly stated otherwise) incorporate the terms and conditions set out in the General Terms and Conditions in respect of the Data Centre Services to be provided by FyfeWeb to the Customer under a Data Centre Services Contract. These Data Centre Services Supplemental Terms and Conditions apply only to the supply by FyfeWeb of the Data Centre Services and the Customer's use of those Services. Any other Products supplied by FyfeWeb to the Customer remain subject to the Contract Terms applicable to those Products.

(2) The additional definitions set out in clause 15 shall apply in these Data Centre Services Supplemental Terms and Conditions. Any defined terms in the General Terms and Conditions or the Proposal will have the same meaning in these Data Centre Services Supplemental Terms and Conditions unless stated otherwise.

(3) In consideration of the Customer's obligations to FyfeWeb and subject to the terms of the Contract, FyfeWeb agrees from the Commencement Date to:

(a) unless otherwise agreed by FyfeWeb in writing (including where FyfeWeb agrees to perform Additional Services which may modify or supplement any of the following):

- (1) install, connect and maintain the power supply to the Equipment at the Location;
- (2) supply racking and cabling for the Equipment in the Location in the quantities and at the price specified in the Proposal;
- (3) provide internet connectivity through our own core network or another available internet service provider which provides connectivity at the Facility and shall provide the Connectivity Service. The Customer shall, and shall ensure that users of the Equipment shall, make their own arrangements for internet access in order to access the Equipment. FyfeWeb shall supply Burstable Bandwidth Connectivity Services;

(b) provide the Additional Services (if any).

(4) FyfeWeb shall provide the Data Centre Services and the Additional Services (if any), with reasonable care and skill. The Facility shall be equipped with access security, climate control, fire detection and prevention, and managed power supply with UPS and generator back-up.

(5) FyfeWeb shall not be responsible for providing, or liable in respect of, any Out-of-Scope Activities.

(6) FyfeWeb is not liable for nor obliged to perform any Excluded Services. Where FyfeWeb performs any Excluded Services, FyfeWeb shall charge, and the Customer shall pay, the relevant Additional Services Fees in respect of that work.

**NOT PROTECTIVELY MARKED**

Copyright © FyfeWeb Ltd. 2023. All Rights Reserved.

## **PRICING**

(7) Subject to clause 58(2) of the General Terms and Conditions

- (a) at any time by giving the Customer seven (7) days written notice, increase its prices to take account of any increase in the cost to FyfeWeb of supplying the services (including, but not limited to, any change in power consumption rates), and such increased prices ruling at the date of supply of the Services by FyfeWeb shall be substituted for the previous contract price; and
- (b) at any time after the first anniversary of the Commencement Date, increase the Charges by giving to the Customer not less than (7) days' written notice, provided that the increases shall be no more frequent than once in any 1-month period.

## **CUSTOMER OBLIGATIONS**

(8) The Customer agrees with FyfeWeb:

- (a) that, subject to the Contract Terms, the Customer shall be entitled to install Equipment at the Location;
- (b) to ensure that all the Equipment is clearly labelled as belonging to the Customer;
- (c) to maintain the Equipment to a standard which ensures that at all times the Equipment is safe and complies with all applicable health and safety standards and all statutory or other legal requirements;
- (d) to comply with FyfeWeb's health and safety instructions issued from time to time including, in particular, those relating to:
  - (1) the condition of the Location, including those instructions relating to the disposal of rubbish and hazardous material. The Customer is to ensure that the Location is kept safe and tidy at all times. To the extent the Customer fails to comply with the obligations set out in this clause 8(d)(1), FyfeWeb may by notice in writing (specifying the matter to be rectified) require the Customer to remedy the same within two (2) days of the date of such notice. In the event that FyfeWeb considers the condition of the Location to be unsafe for FyfeWeb's Personnel (or the Personnel of other customers) it may suspend provision of the Data Centre Services and/or the Additional Services (if any) until its instructions have been fully complied with by the Customer. In the event that the Customer has not complied with a notice given by FyfeWeb pursuant to this clause 8(d)(1), FyfeWeb may itself, without prejudice to its other rights or remedies, remedy the condition of the Location including, but not limited to, the removal or disposal of any unsafe materials or rubbish at the Customer's expense; and
  - (2) any installation and/or cabling works. To the extent that the Customer and/or its Personnel are found to be engaging in works which FyfeWeb considers to be being conducted in an unsafe manner or creating an unsafe environment, FyfeWeb may immediately require the Customer to stop such works until such works or environment are made safe;
- (e) not to replace or move the Equipment or to make any modification, alteration or addition to the same which results in material changes to the floor loading, heat output, power consumption and environmental conditions of the Equipment and the Location;
- (f) not to make or permit any person other than FyfeWeb (or persons approved by FyfeWeb) to make any connection or disconnection of the Equipment or any part of the power supply within the Facility. For the avoidance of doubt, the Customer shall

**NOT PROTECTIVELY MARKED**

Copyright © FyfeWeb Ltd. 2023. All Rights Reserved.

not permit any person other than FyfeWeb (or persons approved by FyfeWeb) to connect or disconnect the Equipment to any other power supply other than the Sockets;

- (g) not to install Equipment which occupies more than the space available in their allocation or the Location itself;
- (h) unless otherwise agreed in writing with FyfeWeb, to install the Equipment in the Location at its own expense in accordance with an installation plan and timetable agreed with FyfeWeb;
- (i) not to cause any injury or damage to, and in the case of equipment, interference with, any person or property including (without limitation) the Facility and any equipment owned by FyfeWeb or third parties which may from time to time be located in the Facility;
- (j) that if any interference occurs between the Equipment and the equipment of a third party, the same shall be resolved by FyfeWeb in such manner as FyfeWeb directs and in accordance with which the Customer shall comply. Should, following an investigation carried out by FyfeWeb, it be established that the interference is caused by the Equipment, the Customer shall be responsible for the cost of FyfeWeb's investigation and the cost of repairing or replacing any damaged equipment belonging to the Customer himself or any third party and shall pay such sums on demand to FyfeWeb or such third party as FyfeWeb may specify;
- (k) to inform FyfeWeb immediately if any of its Equipment is subject to interference or is malfunctioning;
- (l) to provide at no charge training for FyfeWeb and its Personnel to the extent agreed with FyfeWeb from time to time to enable FyfeWeb to perform its obligations under the Contract;
- (m) to provide FyfeWeb from time to time upon request with a list of its Personnel who are authorised to have access to the Equipment in the Facility for the purposes of inspecting and maintaining the Equipment;
- (n) at the termination of the Contract (or the relevant part of it) to remove the Equipment from the Facility and on demand pay all outstanding, and other reasonable costs and expenses incurred by or on behalf of FyfeWeb relating to the disconnection and removal of the Equipment;
- (o) to provide all necessary access to Equipment, information, facilities and authorisations necessary to enable FyfeWeb to fulfil its obligations under the Contract and to provide such co-operation as FyfeWeb may reasonably require in connection with the provision of the Data Centre Services and the Additional Services (if any);
- (p) where, as part of the use or operation of the Equipment, the Customer makes use of or possesses any data, documents, programs, equipment or other information and materials owned or supplied by a third party, to have and maintain at all times (at the Customer's own expense) all necessary approvals and permissions including any consents and approvals necessary for FyfeWeb to provide the relevant services;
- (q) that it shall not use the Data Centre Services and/or the Additional Services (if any), to store, distribute or transmit through the relevant services anything which is:
  - (1) a virus, malware, ransomware or other software/code which is malicious to computer systems and computer networks
  - (2) unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
  - (3) facilitates, promotes or supports illegal activity;
  - (4) Hacked Materials (as defined in these data centre services supplemental terms)
  - (5) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity; or

**NOT PROTECTIVELY MARKED**

- (6) in violation or infringing upon the rights, or is harmful or detrimental to the reputation of FyfeWeb or any other person; or
- (7) unless as otherwise agreed in writing, to provide the Data Centre Services and/or the Additional Services (if any) directly or indirectly to third parties.

## **OUR RIGHTS**

(9) FyfeWeb shall be entitled, without liability, to:

- (a) subject to giving not less than seven (7) days' prior written notice to the Customer, move the Equipment to a different location within the Facility (which shall then become the "Location" for the purposes of the Contract). The costs and expenses incurred by FyfeWeb in moving and installing the Equipment shall be borne by FyfeWeb and the Customer accepts that its use of the Equipment may therefore be interrupted. FyfeWeb will use its reasonable endeavours to cause minimum disruption to the operation of the Equipment by endeavouring to make the relocation outside of Normal Working Hours; and
- (b) temporarily disconnect the power supply or network connectivity to the Equipment for the purpose of investigating and rectifying any reported problems or carrying out maintenance relating to the Equipment, the Location, the Facility or other equipment in the Facility or moving the Equipment to a different location pursuant to clause 9(a) Where reasonably practicable (emergencies excluded), FyfeWeb will give advance notice of such disconnection and use its reasonable endeavours to cause minimum disruption to the operation of the Equipment by endeavouring to make the disconnection outside of Normal Working Hours.

## **CUSTOMER ACCESS RIGHTS**

(10) Subject to clause 11, FyfeWeb shall permit the Customer's Personnel (including any Personnel of any third party telecommunications carrier or maintenance supplier) to access the Facility and the Location for the purpose of assessing, inspecting, installing, moving, repairing and/or maintaining the Equipment provided that the Customer has given FyfeWeb as much written notice (including by email) as is reasonably practicable under the circumstances of the name of such person and the date and time when access is required.

(11) FyfeWeb reserves the right (on reasonable grounds), without liability, to:

- (a) refuse any person entry to the Facility; and
- (b) request any person leave the Facility at any time.

(12) FyfeWeb will not be responsible for the consequences of any refusal or delay by FyfeWeb to permit entry or of any request by FyfeWeb for a person to leave the Facility where such decision has been made on reasonable grounds.

## **ADDITIONAL SPACE**

(13) Should the Customer require additional space for any equipment, the Customer may request permission to install additional equipment in the Facility and shall give written notice of such request to FyfeWeb and shall give notice to FyfeWeb of the power and other technical requirements for such additional equipment.

**NOT PROTECTIVELY MARKED**

Copyright © FyfeWeb Ltd. 2023. All Rights Reserved.

(14) FyfeWeb shall consider any such request and if agreement is reached (included in respect of associated Charges), FyfeWeb shall designate a further part of the Facility for additional equipment and the relevant provisions of the Contract shall be amended accordingly and the provisions of the Contract shall apply equally to such further part.

## DEFINITIONS

(15) In these Data Centre Services Supplemental Terms and Conditions, the following additional definitions apply:

- (a) “Hacked Materials”: means Content, materials, knowledge, credentials or any other information or materials which is obtained through, including without limitation: security breaches, intrusions, unauthorised access or interception or access which exceeds given authorisation (i.e. from an insider) of a facility, person, computer system, network or electronic devices
- (b) “Additional Services”: means the services (if any) in addition to the Basic Services which FyfeWeb agrees to provide to the Customer (which may include amongst other services the Enhanced Back-up Service and/or the Enhanced Connectivity Service) and which are set out in the Proposal, or otherwise agreed in writing by the parties.
- (c) “Additional Services Fees”: means the fees payable by the Customer in consideration for the provision of any Additional Services which shall be calculated by reference to the relevant information set out in the Proposal or as otherwise notified to the Customer by FyfeWeb in writing.
- (d) “Facility”: means the building designated by FyfeWeb from time to time for the provision of the Data Centre Services.
- (e) “Burstable Bandwidth”: means the provision of an internet connection which is provided on a flexible basis to temporarily increase internet bandwidth beyond their committed rate to accommodate short-term spikes in traffic.
- (f) “Data Centre Services”: means the services described in clause 3
- (g) “Connectivity Service”: means the service (if any) to be provided by FyfeWeb as part of the Additional Services which shall supply Burstable Bandwidth Connectivity Services on an Uncontended basis as further described in the Proposal.
- (h) Equipment: means (unless otherwise agreed in writing between the parties) the Customer’s equipment installed by the Customer in the Location from time to time and excluding, for the avoidance of doubt, FyfeWeb’s property.
- (i) Excluded Services: means any services which FyfeWeb is not obliged to provide under the Contract, including any services which are explicitly detailed as excluded from the Services in the Proposal.
- (j) “General Terms and Conditions” means the Customer Terms and Conditions of FyfeWeb from time to time, as available at <https://fyfeweb.com/legal>.
- (k) Location: means such part or parts of the Facility specified in the Proposal or as shall have otherwise been designated by FyfeWeb for the installation of the Equipment, as the same may be changed under clause 14.
- (l) “Out-of-Scope Activities”: means any activities specified in writing by FyfeWeb (including in the Proposal) as being “out of scope”.
- (m) “Sockets”: the power sockets in the Location which are approved by FyfeWeb in writing for the Customer’s use.
- (n) “Uncontended”: means that bandwidth in the relevant internet connection will not be shared with any third parties.
- (o) Virus: means anything (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software,

**NOT PROTECTIVELY MARKED**

Copyright © FyfeWeb Ltd. 2023. All Rights Reserved.

hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things and devices.

**NOT PROTECTIVELY MARKED**

Copyright © FyfeWeb Ltd. 2023. All Rights Reserved.