

Terms and Conditions



PLEASE READ THIS DOCUMENT CAREFULLY AS IT CONTAINS IMPORTANT CUSTOMER INFORMATION

By subscribing to CipherTel's Services, you acknowledge that you accept these terms and conditions. CipherTel may revise these terms and conditions from time to time, by posting a new version on the web site www.ciphertel.com.

Your access to the Service is subject to these terms and conditions and any other instructions we give you, whether through our website or otherwise. These terms and conditions revoke any earlier versions.

1. Terms and Conditions Application

Our Terms and Conditions is the contract that applies when we supply you with communications services - internet access, email and related services, web hosting, domain name registration, VOIP telephony - and related goods (e.g. modems).

Our internet services are supplied to you on the Terms and Conditions policy, our Acceptable Use Policy, Our Privacy Policy and the terms of your Internet Service Plan and the terms of any offers you choose to take up.

2. Charges

You agree to pay to us the Services Fee in accordance with this Agreement.

Our charges are set out in our Schedule of Plans, and our Offers or Quotations. You are responsible for all charges incurred for the use of your service, whether or not you personally incurred those charges. All charges must be paid by the due date.

Payment is by credit card or direct debit, unless agreed otherwise in writing. If you do not pay your bill by the due date we may charge you a late fee, suspend or cancel the service, engage a mercantile agent, institute legal proceedings against you and on-sell any unpaid amounts to a third party. Any credits or prepayments standing on your account will be applied to any unpaid balance of your Internet Service Agreement.

You agree to pay the Services Fee by direct debit under the Direct Debit Agreement. We have the right to decline any other method of payment.

3. Additional Charges

If any one of the following circumstances applies, we may charge you and you will be required to pay to us a fee of \$25.00 to cover our administrative costs in that circumstance:

- a) if we cannot effect a direct debit that is payable under this Agreement because you have given incorrect bank account details to us, if there are insufficient funds in your bank account at the time when payment is due, or if you have not informed us about any changes to bank account details;
- (b) if your Services have been Suspended and require re-activation;
- (c) if you have terminated this Agreement and you wish to reinstate it; or
- (d) if you want us to send to you duplicate copies of our invoices in hard copy or soft copy.

4. Payment by due date

It is your responsibility to pay all Services Fees and any other moneys that are payable under the Agreement by the due date specified in an invoice, even if the charges are the result of unauthorised access to your Service. If Services Fees are not received by the due date we reserve the right to charge you interest at a rate being 2% higher than the advertised rate charged by the Westpac Bank for its business overdraft accounts.

5. Enforcement Expenses

You must pay to us any expenses, costs, or disbursements properly and reasonably incurred by us in recovering any outstanding moneys that you owe to us under this Agreement, including any bank dishonour fees, debt collection fees, and legal fees on a solicitor and client basis.

6. Services

We provide a comprehensive suite of Internet Services and Internet related applications comprising Internet Access, Web Hosting and Registration of Domain Names

We will provide the Services in accordance with our Privacy Policy and Our Internet Acceptable Use Policy ("**Policy**") which sets out the rules which apply to the use of our dial-up, broadband, fibre and radio frequency internet connection services ("**Internet Services**"), including your responsibilities, and permitted and prohibited uses of those services.

7. Services for personal use

The Services are provided exclusively for personal use and must not be used for business or commercial purposes without the prior written consent of CipherTel. If you use the Services for business or commercial purposes:

- (i) you do so entirely at your own risk, and we give no warranty as to the fitness of the Services for such purposes; and
- (ii) we will not be liable to you for, and hereby exclude all liability to you in respect of, any damage or loss suffered by you as a result of your use of the Services, including, without limitation, any consequential and indirect losses, and any loss of profits, business opportunities, goodwill, reputation, revenue or anticipated savings, any wasted expenditure, and any loss of data, and whether the same be incurred as a result of our negligence or otherwise.

This clause shall not be used as a basis for inferring that any other exclusion clause in this Agreement should be given a more limited operation than it would have had but for the existence of this clause.

8. Use by children

If you allow a person under the age of 18 to use the Services then you alone are legally responsible for supervising that person's usage, particularly so as to ensure the suitability of the content transmitted to and seen by that person.

9. Unauthorised Equipment

You must not connect any unauthorised equipment to the Services.

10. Your Equipment and computer

It is your responsibility to ensure that Your Equipment meets the specifications that are required to connect to the Services, including any software and hardware requirements. Our minimum system requirements are out lined in Our Critical Information Summary and Application form for the service you have requested.

- (b) you should ensure that your computer meets the requirements set by us including any hardware and software needed to use the Services;
- (c) prior to installation, you must ensure that you have all original operating system installation media; and
- (d) it will be your responsibility to create a backup of all essential files in case of loss or corruption of data.
- (e) If you have problems connecting Your Equipment after talking to us, we may recommend that a Professional Install be undertaken.

11. Speeds

The speeds that are specified in your Service Plan are stated in Mbps and comprise the peak achievable Download and Upload rates (**Peak Rates**).

While we will use our best endeavours to enable you to obtain Peak Rates, we are unable to give to you a warranty that you will be able to obtain Peak Rates whenever you use the Service.

Different speeds will be obtained at different times, depending on backhaul capacity, the number of customers sharing the local connection, the number of customers using the network at a particular time, the hardware and software which you are using, general internet congestion, and any inherent limitations of the site from which you are seeking to download data.

12. Outages

Network Outages may occur from time to time that may result in Downtime. In the case of scheduled maintenance Outages, you will be notified through your Default E-mail Address no later than 7 days prior to a scheduled Outage.

In the case of emergency maintenance, we will notify you about any Outage as soon as is practically possible and we will use our best endeavours to restore Services that have been interrupted by:

- (i) a System-Wide Outage, within 12 hours;
- (ii) a Community-Wide Outage, within 24 hours; and
- (iii) an Individual Outage within 48 hours,
of initial report.

The restoration of Services resulting from Outages, where possible, will be kept within indicated times, but may vary in the event of exceptional circumstances.

13. Continuity of Services

(a) You agree that we shall not be liable to you, or to anyone else for any loss, damage, injury or expense which may be caused as a result of any interruption to the Services.

(b) The exclusion of liability includes liability for negligence.

(c) While we cannot warrant that we can supply a connection to any particular internet site, we shall use our best endeavours to make the Services available at least 99 per cent of the time, averaged over a quarterly period.

14. Usage Limits

You must use your Internet Service in accordance with any download or capacity limits stated in the specific plan that you subscribe to for the use of that Service. You cannot manipulate or bypass content usage limits by any means including connecting multiple modems to the Internet Service.

- (a) If during any calendar month you reach your Download Limit, then your Downloads for the balance of that calendar month will be downloaded at connection speeds simulated to dial-up speeds.
- (b) If you wish to find out how much data you have Downloaded during any calendar month, you may do so by contacting CipherTel and speaking to one of our customer service staff.
- (c) You agree that it is your responsibility to keep the amount of your Downloads in check. We are not required to give you prior notification if you are close to reaching your Download Limit.

15. Monitoring

Where it is necessary in order to comply with statute law or a court order, we may monitor data accessed by you or transmitted by you while using the Services.

16. Usage Responsibilities

You are responsible for your actions on our network and systems you access through your Internet Service. You agree that you will not use, attempt to use or allow your Internet Service to be used to:

- (a) store, send or distribute any content or material which is restricted, prohibited or otherwise unlawful under any applicable Commonwealth, State or Territory law, or which is likely to be offensive or obscene to a reasonable person;
- (b) store, send or distribute confidential information, copyright material or other content which is subject to third party intellectual property rights, unless you have a lawful right to do so;
- (c) do anything, including store, send or distribute material which defames, harasses, threatens, abuses, menaces, offends, violates the privacy of, or incites violence or hatred against any person, or class of persons, or which could give rise to civil or criminal proceedings;
- (d) make inappropriate contact with children or minors who are not otherwise know to you.
- (e) do any other act or thing which is illegal, fraudulent or otherwise prohibited under any applicable Commonwealth, State or Territory law or which is in breach of any code, standard or content requirement of any other competent authority;
- (f) do anything, including store, send or distribute material, which interferes with other users or restricts or hinders any person from accessing, using or enjoying the Internet, our Services, Network or systems;
- (g) engage in any misleading or deceptive business or marketing practice;
- (h) forge header information, email source address or other user information;
- (i) access, monitor or use any data, systems or networks, including another person's private information, without authority or attempt to probe, scan or test the vulnerability of any data, system or network;
- (j) compromise the security or integrity of any network or system including our Network;
- (k) access, download, store, send or distribute any viruses or other harmful programs or material;
- (l) use another person's name, username or password or otherwise attempt to gain access to the account of any other Customer;
- (m) resell the Internet Service to other users or provide users with the Customer's username and password;
- (n) tamper with, hinder the operation of or make unauthorised modifications to any network or system; or
- (o) authorise, aid, abet, encourage or incite any other person to do or attempt to do any of the above acts.

17. Spam

In this section "Spam" includes one or more unsolicited commercial electronic messages with an Australian Link for purposes of the Spam Act 2003, and derivations of the word "Spam" have corresponding meanings. You may not use the service to

- (a) send or distribute unsolicited advertising, bulk electronic messages or spam or overload any network or system including our Network and systems;
- (b) distribute any software designed to harvest email addresses; or
- (c) otherwise breach the Spam Act 2003 or the Spam Regulations 2004 of the Commonwealth.

18. Loss of Legitimate Email

We offer anti-spam and Virus filtering services and software to customers. These filtering services are an effective means of reducing the amount of Spam you receive however they will not eliminate all spam and there is a risk that legitimate email might occasionally be incorrectly classified as spam and therefore lost.

19. Security

You are responsible for maintaining the security of your Internet Service, including protection of account details, passwords and protection against unauthorised usage of your Service by a third party. We recommend that you take appropriate security measures such as installation of a firewall and use up to date anti-virus software. You are responsible for all charges incurred by other persons who you allow to use your Internet Service, including anyone to whom you have disclosed your password and account details.

20. Minimise Risk of Breach

You agree to use your reasonable best endeavors to secure any device or network within your control against being used in breach of clauses 9 and 10 above by third parties, including where appropriate:

- (a) the installation and maintenance of antivirus software;
- (b) the installation and maintenance of firewall software; and
- (c) the application of operating system and application software patches and updates

We may scan any IP address ranges allocated to you for your use with the service in order to detect the presence of open or otherwise misconfigured mail and proxy servers.

21. Copyright

It is your responsibility to ensure that you do not infringe the intellectual property rights of any person in relation to any material that you access or download from the Internet and copy, store, send or distribute using your Internet Service.

You must not use your Internet Service to copy, adapt, reproduce, distribute or otherwise make available to other persons any content or material which is subject to copyright or do any other acts in relation to such copyright material which would infringe the exclusive rights of the copyright owner under the Copyright Act 1968 (Cth) or any other applicable laws.

You acknowledge and agree that we have the right to immediately cease hosting and to remove from our Network or systems any content upon receiving a complaint or allegation that the material infringes copyright or any other intellectual property rights of any person.

22. Content in Personal Web Space

You acknowledge that we will remove content in a personal web space that does not comply with the rules of the Internet Industry Association. This may include content which is or would be classified R, RC or X by the Classifications Board.

23. Regulatory Obligations of Service Providers

If we have reason to believe you have used your Internet Service to access child pornography or child abuse material, we are required by law to refer the matter to the Australian Federal Police. Commonwealth legislation allows the Australian Communications and Media Authority ("ACMA") to direct us to remove from our Network and servers any content which is classified, or likely to be classified, as 'prohibited' content. We also co-operate fully with law enforcement and security agencies, including in relation to court orders for the interception or monitoring of our Network and systems. CipherTel may take these steps at any time without notice to you. You must not hinder or prevent us from taking all steps necessary to comply with any direction from ACMA or any other law enforcement or security agency.

24. Our Right to Suspend the Service

We may suspend the Service to you without notice if you are in breach of the provisions of this policy. We will however first make reasonable attempts to contact you and give you opportunity to address the problem.

Our right to suspend the Service applies regardless of whether the breach is committed intentionally, through misconfiguration, or by other means not authorised by the customer, including, but not limited to, through a Trojan horse or Virus. Bankruptcy or Liquidation are also grounds for suspension and termination of Services.

25. Our right to terminate the Service

If the service is suspended and the grounds upon which it was suspended are not corrected by you within seven days, we may terminate the Service. In the event the service is terminated under this clause you may apply for a pro rata refund of any prepaid charges for the service, but we will have the right to levy all contract charges and any reasonable fee for costs incurred as a result of the conduct that resulted in the suspension or termination.

26. Transfer of Service and Disconnection Fees

If you move from the Premises and wish to continue to receive the Service at your new address or otherwise want to receive the Service at an alternative address you should contact us by either telephone on 08 97 915226 or by email at support@ciphertel.com. We will terminate the Service at the Premises and advise you whether you are able to receive the Service at your new premises. If you are able to receive the Service at your new premises, subject to you either committing to a new Minimum Period or paying a Re-Connection Fee, we will arrange to activate the service at your new premises to enable you to receive the Service.

If, for reasons outside of our control, you are unable to receive the Service at your new premises we will refund any Charges that you pre-paid for the period you were without the Service as a result of the termination. Unless the Minimum Period has expired, we will charge you the cancellation fees as per the Critical Information Summary associated to your service at the time of application.

If you are able to receive the Service at your new address but, for whatever reason, decide not to do so then you will remain liable for the cancellation fees as per the Critical Information Summary associated to your service at the time of application.

27. Email addresses after termination of service

If your internet service is terminated for any reason you will be given the option to continue to retain your CipherTel or gateway email address you specified at activation of your service. If you do not wish to retain your email address no fee will be incurred for email address deactivation. If you do wish to retain your email address an annual fee for email hosting is payable.

28. General Internet Support Facilities

We agree to provide to you a Support Service from 8.30 am to 5.00 pm Monday to Friday, excluding scheduled WA public holidays. Support hours are liable to change at any time.

If you are experiencing any difficulty with your access to the internet, you can contact our Support Service:

(a) by phone on 08 97 915226

(b) by e-mail on support@ciphertel.com

29. Limits to the Support Service

We encourage you to make use of the Support Service for genuine service issues. As our Support Service technicians are trained to solve broadband, wimax, fibre internet issues, we ask that you acknowledge that:

- (a) we cannot offer support for networking multiple PC's;
- (b) we cannot offer support for general software issues; and
- (c) we cannot offer support for general hardware not supplied by CipherTel.

30. Complaints and Disputes

If you have any concerns about the service we are providing to you, you should contact us immediately on 1300 309 500. We will endeavor to resolve any problem or complaint via our complaints handling procedures. The Telecommunications Industry Ombudsman (TIO) – free call 1800 062 058 is available as a last resort to resolve disputes that cannot be resolved with us. The office of Fair Trading in each State or Territory may also investigate consumer complaints about telecommunication services.

31. Policy Variations

We may vary this Policy by posting the revised Policy on ciphertel.com. We may also give notice to you of any variation to this Policy by email to the email address notified by you or otherwise in accordance with the notice provisions of your service agreement with us. Your continued use of your Internet Service after such posting or notice will constitute acceptance of the variation.