



ADDITIONAL TERMS AND CONDITIONS

Colocation Services



Thrive Operations Limited

ADDITIONAL TERMS 5: Colocation Services

VERSION 220322

These Additional Terms will apply where You are buying Colocation Services from Thrive. They will apply in addition to the terms set out in the General Terms and Conditions.

1 INTERPRETATION

1.1 In this Schedule, capitalised words shall have the meaning given to them in the General Terms and Conditions. In addition, the following definitions apply to this Schedule:

“Client Area” means that portion(s) of the Data Centre made available to You for the placement of the Client Equipment

“Client Data” means the data inputted by You or your authorised users for the purpose of using the Colocation Services or facilitating Your use of the Services.

“Client Equipment” means the equipment set out in the Project Scope and any additional or replacement equipment which You add by notice in writing Us

“Client Work Area” means that portion(s) of the Data Centre made available to You for the placement of the Client Equipment

“Colocation Handbook” means the handbook issued by Us from time to time detailing the operations of the Data Centre and the Colocation Services

“Colocation Services” means the colocation data centre services described in more detail in the Project Scope and the relevant Service Description

“Data Centre” means Thrive’s UK Data Centre located at 16- 22 Crawley Green Road Luton, LU2 0QX, Unit, Interoute’s UK Data Centre located at A1-A2 Geddings Rd, Hoddesdon EN11 0NT or such other data centre that shall be agreed between the parties

“Our Equipment” means any equipment, systems, cabling or facilities which are owned by Us or licensed to Us and used directly or indirectly in the supply of the Colocation Services

“Representative(s)” means a person(s) appointed by you or (as the case may be) Us under clause 10 of these Additional Terms.

“Service Levels” means the service levels set out in the relevant **Service Description or Project Scope**

“Visiting Party” means any individual who is authorised by Your Representative to visit the **Data Centre and notified to Us**

“Working Day” means **Mondays to Fridays (all inclusive) excluding bank holidays and public holidays and one Business Day comprises 8 hours**

“Working Hours” means **9am to 5.30pm on a Working Day.**

1.2 Unless otherwise specified in this Schedule, all clause references shall be to clauses contained in this Schedule.

2 THE SERVICES

2.1 Throughout the Term We will provide the Colocation Services to You.

2.2 You warrant, represent and undertake that You will not:

2.2.1 access all or any part of the **Colocation Services** in order to build a product or service which competes with the **Colocation Services**;

2.2.2 other than where we agree that you can act as an approved Thrive service reseller or partner license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the **Colocation Services** available to any third party; or

2.2.3 other than where we agree that you can act as an approved Thrive service reseller attempt to obtain, or assist third parties in obtaining, access to the **Colocation Services**, other than as provided under this clause 2.

2.3 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the **Colocation Services** and, in the event of any such unauthorised access or use, promptly notify Us.

2.4 The rights provided under this clause 2 are granted to You only, and shall not be considered granted to any of Your subsidiaries or holding companies. A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

3 YOUR OBLIGATIONS

3.1 You shall:

3.1.1 ensure that any Client Equipment is fit for the purpose of receiving the Colocation Services;
and

3.1.2 deactivate any audible alarms within the Client Equipment.

3.2 You shall notify Thrive of Your Representative(s) on the formation of this Contract

3.3 You shall promptly notify Us where You wish to change your Representative(s).

3.4 Your access to the Data Centres will be limited to Your Representative(s) and Visiting Parties.

3.5 Your Representative(s) and Visiting Parties shall be granted 24 hour, seven days a week access to the Client Equipment for the purposes of repairing and/or maintaining the Client Equipment, and all other access to the Client Equipment shall be provided during Working Hours provided that:

3.5.1 they provide a minimum of 4 hours' notice of an intended visit to the Data Centre in accordance with the Colocation Handbook (save in the case of an emergency where You may give less notice and We shall use all reasonable endeavours to accommodate Your request);

3.5.2 they do not interfere with or impede Our operation of the Data Centre or the interests of any other client in the Data Centre;

3.5.3 they do not remove any property belonging to Us, any other client or any other third party;

3.5.4 they comply with all of Our reasonable instructions in relation to the premises, property or personnel of Thrive, its clients or any other third party;

3.5.5 they do not hold themselves out as being employees, representatives, sub-contractors or agents of Thrive;

3.5.6 they do not access areas of the Data Centre other than the Client Area or the Client Work Area unless they are accompanied by an authorised representative of Thrive; and

3.5.7 they comply with any legal obligations that We are required to comply with for the Data Centre as made known to You before acceptance of your order or as made known to You from time to time thereafter.

- 3.6 You shall use reasonable endeavours to ensure that Visiting Parties comply with the obligations set out under clauses 3.4 and 3.5.
- 3.7 You acknowledge and agree that nothing in this Agreement shall transfer or otherwise convey to You any real property interest in the Data Centre, Client Area, Client Work Area or any of Our Equipment other than a licence to visit and utilise the Data Centre, Client Area, Client Work Area or Our Equipment (if any) solely for the purposes of receiving the Colocation Services in accordance with the Contract.
- 3.8 You agree and acknowledge that You shall at all times remain solely responsible and liable for the lawful operation of the Client Equipment including without limitation the software or data stored on or passing through the Client Equipment and You hereby fully and effectually indemnify Thrive, its subsidiaries, affiliates, officers, partners, employees and agents from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever incurred by it or them and arising from Your breach of this clause or its negligence or other act, omission or default arising from or relating to the matters contained herein.
- 3.9 You acknowledge and agree that it is integral to Our ability to provide the Colocation Services in accordance with the Service Levels that we shall be allowed to undertake maintenance (as more particularly detailed in clause 4.1.1) at such time and such places as We, in our absolute discretion, deem appropriate.
- 3.10 You agree that You will not use the **Colocation Services** in a way which would breach Our instructions to You from time to time relating to health and safety.
- 3.11 If We are unable to perform any of Our obligations in respect of the Contract due to any act or omission by You then We shall have the right to suspend performance of the **Colocation Services** until such time as the said issues are resolved to Our reasonable satisfaction.

4 OUR OBLIGATIONS

4.1 We

- 4.1.1 will, where possible, give You advanced notice of any maintenance and, where possible, schedule such events so as to cause minimum impact to You. Maintenance shall be categorised as follows and, where applicable shall be notified to You in accordance with the times specified below;

Routine Maintenance: ongoing preventative maintenance such as cleaning, replacing light bulbs, any routine maintenance not related to power or cooling, which will not affect the provision of power and cooling to the Client Area meeting the Service Levels. Routine Maintenance is planned and implemented solely by Us acting reasonably without notice to You.

Low-risk Maintenance: preventative maintenance which poses a minor risk (in Our reasonable opinion) to the provision of power and cooling to the Client Area, such as:

- (i) where Data Centre plant and machinery require a part or parts to be replaced or repaired, and undertaking such repair or replacement may cause the resiliency of the Data Centre plant and machinery to be temporarily compromised;
- (ii) any non-routine maintenance not related to power or cooling.

Low-Risk Maintenance is planned and implemented solely by Us acting reasonably without notice to You.

Planned Maintenance: preventative maintenance which may or will temporarily affect the provision of the Colocation Services. Where practicable in Our reasonable opinion, We shall agree a time slot with You in which to carry out Planned Maintenance. In all other cases, We shall give You at least 14 days' prior written notice of the time slot in which the Planned Maintenance shall be carried out.

Emergency Maintenance: any preventative maintenance which, in Our reasonable opinion, is necessary to arrange or procure or otherwise act upon in an emergency for any reason. Emergency Maintenance is implemented solely by Us without notice to You.

- 4.1.2 will act only on the instructions of You in relation to the processing of any data in connection with the Contract;
- 4.1.3 will allow Your authorised Representative and/or any Visiting Parties full access to the Client Equipment, the Client Area and the Client Work Area on not less than 4 hours' notice (save in the case of an emergency where You may give less notice and We shall use all reasonable endeavours to accommodate Your request);

4.2 We have the right to refuse to admit any Client Equipment to the Data Centre where:

- 4.2.1 the Client Equipment is not of a satisfactory quality to receive the Colocation Services and will adversely affect Our Equipment, the equipment of other clients or the operation of the Data Centre; or
- 4.2.2 the Client Equipment has not been Virus checked using up-to-date, industry standard anti-Virus software and tools.
- 4.3 We have the right to electrically safety test any Client Equipment before installation and in co-operation with You routinely thereafter by giving a minimum of 4 weeks notice. You will promptly remove any Client Equipment which fails safety tests from the Data Centre. Any service credits will not apply for the removal of failed Client Equipment.
- 4.4 You may request that We accept delivery of Client Equipment at the Data Centre on a specified date. You shall give a minimum of five Working Days' notice. Upon receipt of Your request, We shall advise You when we are able to accept the Client Equipment on the requested date. Notwithstanding the foregoing, it is agreed that where You have an urgent need to replace faulty Client Equipment, We will not unreasonably refuse to accept delivery, notwithstanding that the required notice has not been given.
- 4.5 You may request that We store Client Equipment and acceptance of such a request shall be at Our discretion. The charges for such storage are detailed in the Quotation and/or Order Confirmation or, in the absence of such charges being specified, Our then current storage charges will apply. We may require the removal of the Client Equipment from storage on five Working Days' written notice to You.

5 DATA BACKUP

- 5.1 You are responsible for the security of Client Data and Your use of the **Colocation Services**. You shall take all reasonable steps to prevent:
 - 5.1.1 any loss of data or damage to data; and/or
 - 5.1.2 any unauthorised access to the **Colocation Services** or use of the **Colocation Services**.
- 5.2 The obligation under clause 5.1 includes, without limitation:
 - 5.2.1 ensuring all passwords are in an appropriately secure format and properly protected against loss or unauthorised access;
 - 5.2.2 taking regular back-ups of all of Your data used with or stored as part of the **Colocation Services**;

5.2.3 employing appropriate security devices including virus checking software; and

5.2.4 having appropriate disaster recovery processes in place.

5.3 Clause 5.2.2 shall not apply where We have agreed to provide data back up services to You as stipulated in an Order Confirmation in which case we will take regular back-ups of your data at the intervals agreed in the Project Scope or relevant Service Description.

6 CHARGES AND PAYMENT

6.1 The charges for the Colocation Services shall be as set out in the Quotation or Order Confirmation. The provisions regarding charges set out in the General Terms and Conditions shall apply to the Colocation Services.

6.2 Should the Colocation Services continue beyond the Initial Term, the charges to be paid by You immediately after the expiry of the Initial Term shall be adjusted by the percentage change in RPI over the previous 12 months. The Charges shall also be adjusted by the percentage change in RPI over the previous 12 months on each subsequent anniversary of the expiry of the Initial Term.

6.3 Where the Price is charged on a power-exclusive basis, We shall be entitled to review and amend the power supply costs on each Anniversary of the Effective Date to set the price for the power supply costs for the forthcoming 12 month period.

6.4 Any initial charges will be invoiced on acceptance of the order. Regular recurring charges will be invoiced quarterly in advance. Any variable charges (including charges for electricity) will be invoiced monthly in arrears.

7 LIABILITY

7.1 Subject to clauses 5.3 and 5.4 of Part 1 in the General Terms and Conditions, Our total liability for all claims arising in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, in connection with the performance or contemplated performance of the Colocation Services giving rise to the claim shall be limited to 200% of the Annualised Charges.

7.2 We have no knowledge of the nature or value of the Client Data and give no warranty or representation regarding security facilities or access save as referred to in this Contract. Our liability is limited in accordance with the terms of the Contract and if You require greater protection then it is Your responsibility to notify Us of this; where We agree to provide enhanced security there may be additional charges to reflect Our increased liability.

7.3 All of clause 5 of the General Terms and Conditions shall apply to the provision of the Colocation Services except for clause 5.5.

8 INDEMNITIES

8.1 You shall indemnify Us against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) that we suffer or incur arising out of or in connection with Your use of the Colocation Services.

9 TERM

9.1 Clause 7.1 of Part 3 in the General Terms and Conditions shall apply to the supply of Colocation Services.

10 MANAGEMENT AND REPORTING

10.1 We and You shall each nominate a Representative who shall be authorised to make decisions relating to the Services who shall be responsible for:

10.1.1 organising, preparing reports for (in the case of Our Representative), attending and preparing minutes of meetings between You and Us to monitor the provision of the Colocation Services as reasonably necessary and in any event not less frequently than once every 6 months; and

10.1.2 providing (subject to the provisions in respect of confidentiality set out in Clause 6 of the General Terms and Conditions) all information and documentation reasonably required by Us or You (as the case may be) for the performance of our duties hereunder.

10.2 Each Party shall inform the other of any change in the identity of its Representative during the course of this Agreement.