



Terms of Service

These Terms of Service (as revised from time to time by Us upon written notice to You) apply to Our provision of and Your use of the products and/or services under the Customer Agreement. A current copy of Our Terms of Service is available upon request or at www.ivrnet.com.

1.0 DEFINITIONS

“Affiliate” of a party means any entity under common control of, or controlled by, that party. In our case it also means any entity that we authorize to offer any Service or part of any Service.

“Agreement” means these Terms of Service and any written agreement between You and Us regarding the Services.

“Charges” means the rates and charges in the applicable Service Schedule and/or Price Book.

“Claims” means any claim, demand, liability, damage, loss, suit, action or cause of action and all related costs and expenses.

“Colocation/Internet Data Centre Services (IDCS)” allows You to physically place a server(s) at one of Our data centre facilities.

“Confidential Information” means Our or Your confidential technical and business information, including without limitation, information relating to inventions or software, research and development, future product specifications, engineering processes, network architecture, costs, profit or margin information, and marketing and business plans. “Confidential Information” does not include information which is or becomes publicly known otherwise than by reason of breach of the Agreement or has been independently developed outside the scope of the Agreement.

“Content” means information made available, displayed or transmitted in connection with a Service including, among other things, all trade-marks and domain names as well as the contents of any bulletin boards or chat forums, and all updates, upgrades, modifications and other versions of any of the foregoing. It also includes information made available by means of an HTML “hot link”, a third party posting or similar means.

“Facilities” means any facilities, equipment, or software provided in connection with Our delivery of the Services or Your use of the Services.

“Force Majeure Event” means any event beyond the reasonable control of a party.

“Mean Time to Restore” is defined as the net elapsed time from the time a particular trouble ticket is opened to the time service is restored to normal operating performance. Mean Time to Restore (MTTR) is the average for all tickets over a one-month period for an individual service.

“Personal Information” is information about an identifiable individual that is recorded in any form, but does not include aggregated information that cannot be associated with a specific individual.

“Price Book” means Our standard price book(s) containing service descriptions, specifications, pricing and discounts for the Services.

“Service Schedule” means Our standard service schedule issued for each Service or Service bundle that You ask Us to provide to You under the Agreement.

“Services” or “Service” means any product and/or service provided by Us to You under the Agreement.

“Shared Hosting” is a service geared to businesses, self-employed individuals or organizations that want to create a corporate web presence but do not want to own or maintain their own web server.

“Term” means the Initial Term and any renewal term(s).

“User” means any person You permit to access or use the Services.

“We”, “Us” and “Our” means Ivrrnet Inc., its Affiliates, and its and their employees, directors, officers, agents, representatives, subcontractors, interconnection service providers and suppliers.

“You” and “Your” mean the company or other corporate entity or organization or individual whose name appears on the Agreement as the recipient of the Services.

“Your Location” means Your business address or location for the purposes of the Service delivery.

2.0 OUR RESPONSIBILITIES

- 2.1 We will provide the Service to You in accordance with the applicable Service Schedule and/or Price Book: (a) where applicable services and technology exist; (b) where We are permitted by law to provide service; and (c) where Services continue to be an Ivrrnet supported service.

3.0 YOUR RESPONSIBILITIES

- 3.1 You will not resell the Services (or otherwise make the Service available to third parties for value) unless You have entered into a written reseller agreement with Us.
- 3.2 You and Users will cooperate with Us to provide and maintain the Services. This includes, among other things, providing and maintaining Your Locations and Your Facilities in accordance with any of Our specifications.
- 3.3 Your and Users’ use of the Services and Content will comply with the Agreement, all applicable laws, regulations and written and electronic instructions for use, and will not interfere with Our ability to provide the Services to You or others. If such use does not comply, or if We receive notice from anyone that Your or Users’ use of the Services or Content may violate any laws or regulations, We may immediately: (a) terminate the Agreement or the affected Service or Service Schedule; (b) suspend the affected Service; and/or (c) remove or require You to remove Your and Users’ Content from the Services. Our actions or inaction under this section will not constitute review or approval of Your or Users’ use of the Services or Content. We will use reasonable efforts to notify You before taking action under this section.
- 3.4 You must request service credits in writing within 30 days of the last day in the calendar month in which the failure occurred.
- 3.5 You must complete a Customer Agreement: Change Request form for any changes regarding current services.

4.0 SERVICE LEVEL AGREEMENT (SLA)

- 4.1 You must request service credits in writing within 30 days of the last day in the calendar month in which the failure occurred.
- 4.2 This SLA is only applicable to those customer sites where applicable Ivrrnet service and technology exist, and where Ivrrnet is permitted by law, to provide service.
- 4.3 In the event of the failure of Ivrrnet to meet multiple service level component metrics in a one month period, the highest service credit will apply, not the sum of multiple service credits.
- 4.4 The total amount that may be credited to You under this agreement in any given month is limited to 25% of Your monthly fee for the affected service.
- 4.5 If the service installation charge (NRI) has already been waived under a prior agreement or promotion, a service credit for provisioning on time delivery will not be provided.
- 4.6 You shall ensure that all Your provided equipment on its premises that connects to the services will perform according to published technical specifications for such equipment, and will conform to interface requirements as set in Our applicable interface specifications.
- 4.7 Changes to business, technology improvements and changes to Our services may result in a revision to components of these terms. We reserve the right, at any time, to change existing measurement tools or implement new measurement tools used in connection with the measurement of the service level component metrics, provided that any such change or implementation will have the effect of meeting or exceeding the service level component metrics set out in this SLA.
- 4.8 Shared hosting is when You create Your website and transfer it to Our web servers. Depending on the size and functionality of the web site, various web hosting options are available to accommodate disk space and monthly transfer. Shared web hosting is considered to be unavailable if Our hosted web site cannot be accessed (i.e. viewed) from the Internet due to problems on Our network or hosting servers.
- 4.9 If you provide servers that are collocated at Our Internet Data Centre they are considered unavailable if Internet connectivity is interrupted or if there is a server outage caused by Our environmental failures in power and air conditioning. It does not include problems with hardware, software and operating systems that You owned and installed, or any problems resulting from Your actions.
- 4.10 Calculation of the Service Availability objectives will be based on troubles reported by You using Our trouble ticketing system where no less than 20% of End-Users are affected. Service Outage Time begins when You report the trouble and release the affected components to Us and ends when We notify You that the problem has been resolved and the components are available to You to use.
- 4.11 If We are unable to meet the Service Availability metric as defined above for the service during any one-month measurement period (as confirmed by Us), You (upon written request to Us) will be provided with a Service Credit based on the total monthly recurring charges for the affected Service and calculated as shown in the table below. The Service Credit shall be applied to the next available billing.

Availability (%)	Service Credit
99.01 – 100.0	0%
98.01 - 99.00	10%
< 98.00	25%

- 4.12 On Time Delivery is the activation of services on or before the Commit date provided by the Network Specialist assigned to Your order. Commit date refers to the date scheduled for the final test and activation of the services ordered. This is either the date Our field technician is scheduled to come activate the service with the network specialist or the date scheduled with Your technician to work with the network specialist to complete the activation.
- 4.13 Excluded items: “Test and inquiry” trouble tickets. “No Trouble Found” trouble tickets. Outages where no trouble ticket has been established. Disaster recovery activities. The failure of Your premise equipment (including but not limited to routers and integrated modems) not supplied by Us as part of the service. Outages during any period when You have released service to Us for the purpose of rearrangement for the implementation of a customer order. Negligence of Your or parties authorized by You other than Us. Outages due to labour difficulties, government orders, civil commotion, acts of God and other circumstances beyond Our reasonable control. Scheduled maintenance windows; We execute scheduled enhancements to its systems and network between the hours of 12AM and 7AM (Mountain Standard Time) on Sunday mornings. Measurements during this period are excluded from the Service Level Agreement. The Standard Service Levels cover the portion of the Service that is controlled by Us. For example, problems beyond Our interconnection at the Internet Network Access Points (NAPs) are not applicable. The provisioning process must be completed (i.e. domain name approved, accounts created, etc.) and the services declared operational in order for the Service Level Agreement to apply. Outages due to software and hardware defects of access devices and systems not under Our control which provide service to and from Our defined Internet Services.

5.0 FACILITIES

- 5.1 Each of us will continue to own our respective Facilities. Neither You nor We will create any liens or encumbrances on the other’s Facilities.
- 5.2 You will not make any change or repair to Our Facilities, connect any of Your Facilities to Our Facilities, or allow access to Our Facilities without Our written permission. As long as the Services do not change, We can, without notice to You, move the Services to Our own Facilities, or to a new technology.

Terms of Service

- 5.3 We grant You a personal, non-transferable and non-exclusive license to use, in object code form, any software provided by Us under the Agreement, but only if: (a) You use the software solely in connection with the Services and in accordance with the applicable written and electronic documentation ("Documentation"); (b) You do not reverse engineer the software to derive its source code; (c) You do not copy or download the software, except as permitted in the Documentation; and (d) You comply with any additional terms and conditions that are provided with any third party software.
- 5.4 We can make any routine and unscheduled maintenance, inspections, tests, and adjustments necessary to investigate, modify, repair, or maintain the installation or operation of Our Facilities managed by Us. Except in cases of emergency, We will give You reasonable notice of any maintenance activities. You will make available to Us any of Your Facilities that we may need for Our maintenance activities.
- 5.5 Upon termination of the Agreement for any reason, You will provide us access to Your Facilities, to allow removal of Our Facilities.

6.0 TERM & TERMINATION

6.1 Termination for Cause

- 6.1.1 We may terminate the Agreement immediately by giving You notice in writing if We suspect that You are using the Service for fraudulent or illegal purposes.
- 6.1.2 We may terminate the Agreement immediately by giving You notice in writing, in the event that You present an abnormal risk of loss (including without limitation, incurring a significant amount of billable charges for which You have not been credit approved), as determined by Us in our sole discretion.
- 6.1.3 If either of us breaches any material term or condition of the Agreement and the breach is not remedied within 30 day after receipt of written notice, the other may terminate the Agreement or the affected Service or Service Schedule for cause. Either of us can terminate the Agreement immediately if: (a) the other party breaches its obligations under Section 7 (Confidential Information) or Section 11.2; (b) any proceeding under bankruptcy, creditor protection or similar laws is commenced by or against the other party; or (c) a receiver is appointed for the other party.

7.0 CONFIDENTIAL INFORMATION

- 7.1 Each of us will keep confidential for three years after disclosure of the other's Confidential Information (except software that will be kept confidential for an indefinite period), using at least the same precautions each of us uses to safeguard our own valuable information.
- 7.2 Each of us will use the other's Confidential Information solely to fulfill our obligations under the Agreement. In Our case this includes the ability to monitor and record Your transmissions in order to detect fraud, check quality, and to operate, maintain and repair the Services.
- 7.3 Neither of us will disclose the other party's Confidential Information except to: (a) employees, agents, contractors and Affiliates on a need-to-know basis, provided that such agents, contractors and Affiliates are not direct competitors of the disclosing party and agree in writing to use and disclosure restrictions as restrictive as those contained in this section; or (b) to the extent required by law, with prior advance written notice.
- 7.4 Unless You consent in writing or disclosure is made pursuant to a legal requirement, all information held by Us regarding You, other than Your name, address, listed telephone number, domain name or "IP" number, may not be disclosed to anyone other than (a) a person who (in Our reasonable judgment) is seeking the information as Your agent, (b) another telecommunications service provider for the purpose of the efficient and cost-effective provision of telecommunications services, (c) a company involved in supplying You with telephone or telephone directory related services, or (d) an agent retained by Us in the collection of Your account, provided disclosure is made on a confidential basis and the information is required for, and is to be used only for, the stated purpose.
- 7.5 We will only use Personal Information that We collect in accordance with the principles in Our Privacy Policy, a current copy of which is available at www.ivrnet.com or upon request.

8.0 LIMITATION OF LIABILITY

- 8.1 For the purposes of all exclusive remedies and limitations of liability in the Agreement: (a) "We" or "Us" will include Ivrnet Inc., its Affiliates, and its and their employees, directors, officers, agents, representatives, subcontractors, interconnection service providers and suppliers; and (b) "You" will include You, Your Affiliates, and Your and their employees, directors, officers, agents, and representatives.
- 8.2 THE ENTIRE LIABILITY THAT EITHER OF US WILL HAVE TO THE OTHER, AND THE OTHER'S EXCLUSIVE REMEDIES, FOR ANY CLAIMS ARISING IN CONNECTION WITH ANY SERVICE OR OBLIGATIONS UNDER THE AGREEMENT SHALL BE:
- (A) FOR BODILY INJURY OR DEATH TO ANY PERSON, OR REAL OR TANGIBLE PROPERTY DAMAGE, CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ONE OF US, THE OTHER'S RIGHT TO PROVEN DIRECT DAMAGES;
- (B) FOR DAMAGES OTHER THAN THOSE ABOVE AND NOT EXCLUDED UNDER THE AGREEMENT, THE LIABILITY OF EACH OF US IS LIMITED TO PROVEN DIRECT DAMAGES OF THE OTHER, NOT TO EXCEED PER CLAIM (OR IN THE AGGREGATE DURING ANY 12 MONTH PERIOD) AN AMOUNT EQUAL TO THE AMOUNT PAYABLE BY YOU FOR THE AFFECTED SERVICE DURING THE THREE MONTHS PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED. THIS DOES NOT LIMIT YOUR RESPONSIBILITY FOR THE PAYMENT OF ALL PROPERLY DUE CHARGES UNDER THE AGREEMENT; AND
- (C) FOR ERRORS AND OMISSIONS IN DIRECTORY LISTINGS, A REFUND OR CREDIT OF ANY CHARGES ASSOCIATED WITH SUCH LISTINGS FOR THE PERIOD DURING WHICH THE ERROR OR OMISSION OCCURRED.

8.3 EXCEPT FOR YOUR SECTION 10 (INDEMNITY) OBLIGATION, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS.

8.4 WE WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: (A) FACILITIES, EQUIPMENT, SOFTWARE APPLICATIONS, SERVICES, OR CONTENT PROVIDED BY YOU, USERS OR THIRD PARTIES; (B) SERVICE INTERRUPTIONS, ERRORS, DELAYS OR DEFECTS IN TRANSMISSION; (C) UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF YOUR, USERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS BY ANY MEANS (INCLUDING WITHOUT LIMITATION VIRUSES); OR (D) ANY ACT OR OMISSION OF YOU, USERS OR THIRD PARTIES.

8.5 THE LIMITATIONS OF LIABILITY IN THE AGREEMENT WILL APPLY: (A) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE; AND (B) WHETHER OR NOT DAMAGES WERE FORESEEABLE, THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THE AGREEMENT.

8.6 NEITHER PARTY WILL BE LIABLE FOR A FORCE MAJEURE EVENT, EXCEPT THAT YOUR OBLIGATIONS TO PAY FOR CHARGES INCURRED FOR SERVICES RECEIVED BY YOU SHALL NOT BE EXCUSED.

9.0 WARRANTIES

9.1 UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, WE MAKE NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTIES AS TO MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES REGARDING ANY SERVICE, PRODUCT OR FACILITIES PROVIDED BY US TO YOU (INCLUDING WITHOUT LIMITATION, THOSE RELATING TO: (A) NETWORK TRANSMISSION CAPACITY; (B) WHETHER DATAQ WILL BE TRANSMITTED IN AN UNCORRUPTED FORM; (C) THE SECURITY OF ANY TRANSMISSION OR NETWORK; (D) THE FAULT TOLERANCE OF THE SERVICE; OR (E) THE RELIABILITY OR COMPATIBILITY OF THE FACILITIES, EQUIPMENT OR SOFTWARE OF THIRD PARTIES WHICH MAY BE UTILIZED BY US IN PROVIDING, OR BY YOU IN USING, THE SERVICE), WHETHER EXPRESS OR IMPLIED IN LAW OR IN FACT.

10.0 INDEMNITY

10.1 You will INDEMNIFY and hold Us harmless against any and all Claims relating to: (a) Your unlawful or improper use of the Services, Our Facilities or Your Facilities; (b) Your failure to comply with the terms and conditions of the Agreement; (c) property damage, personal injury or death Claims caused by Your acts or omissions or arising from Your operation of Your Facilities or Your use of the Services; or (d) Your or Users' Content.

11.0 GENERAL PROVISIONS

11.1 You are not entitled to property rights in dial numbers, and in some cases, "IP" numbers or domain names assigned to You. We may change any numbers or domain names assigned to You, if We are required to do so by any legal or regulatory authority.

11.2 No public statements or announcements can be made about the Agreement without our respective prior mutual consent. Neither of us will use the other's trade names, logos, or trademarks (collectively "Marks") without the other's prior written consent. This written consent can be revoked at any time.

11.3 Unless otherwise expressly provided in the Agreement, any change to the Agreement must be in writing and signed by our respective representatives. Any waiver will not operate as a waiver of any other breach of the Agreement.

11.4 You may not assign the Agreement without Our prior written consent, which consent will not be unreasonably withheld or delayed.

11.5 If any portion of the Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect.

11.6 Any legal action arising in connection with the Agreement must be brought within two years after the cause of action arising.

11.7 Any notices to the other party will be in writing and either mailed by certified or registered mail, sent by express courier or hand delivered and addressed to each party at the address set out in the Agreement, or such other address that a party indicates in writing. Unless otherwise provided in the Agreement, all notices to Us shall be directed to: Suite U, 1338 36th Avenue N. E., Calgary, Alberta, T2E 6T6, Attention: President.

11.8 The laws in effect in Alberta will apply to the Agreement. The parties agree that the jurisdiction and venue in the courts of Alberta is appropriate and You agree that You will bring legal proceedings only in Alberta.

11.9 Our respective obligations, which by their nature would continue beyond the termination or expiration of the Agreement or any Service Schedule, including but not limited to, obligations regarding confidentiality publicity and trade-marks, and limitations of liability, will survive such termination or expiration.

11.10 THE AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SERVICES. THE AGREEMENT SUPERSEDES ALL PRIOR AGREEMENTS, PROPOSALS, REPRESENTATIONS, STATEMENTS OR UNDERSTANDINGS, WHETHER WRITTEN OR ORAL.

11.11 The parties confirm that it is their wish that the Agreement, as well as all other documents relating thereto, including all notices, be drawn up in the English language only. Les parties aux présentes confirment leur volent, que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.