



Colocation Terms of Use

This Colocation Terms of Use (hereinafter referred to as “Agreement” or “TOU”) is entered into by you (“Customer”), as evidenced by use of the Colocation Services (specified on the corresponding Colo Sign-Up Form), and The Internet Store, Inc. doing business as Cruzio, Cruzio Internet, Cruzioworks, and Gatespeed (hereinafter referred to as “Cruzio Internet”). The terms contained in this Agreement apply to Customer and their Colo Associates (defined below), representatives, employees, contractors, agents, invitees, etc., using the Data Center and/or any Colocation Services. In addition, Customer's online facilities, and those utilizing such online facilities, are subject to the terms of this Agreement. Cruzio Internet reserves the right to apply and enforce these terms so as to maintain the integrity, reliability and legality of the Data Center and Colocation Services. Cruzio Internet reserves the right to revise the terms in this Agreement at anytime without notice. Use of the Colocation Services following a change to these terms constitutes agreement to the new terms. By signing this TOU physically or electronically, or by accessing the Data Center and using the Colocation Services, Customer also agrees to the terms of the Cruzio Internet Master Services Agreement and the Cruzio Internet Coworking Terms of Use, all of the provisions of which are hereby incorporated by reference in this Agreement as though fully stated in this Agreement.

For the purpose of this TOU, the following terms have the following definitions and meanings:

Project: includes the Facility and the land upon which they are located, along with any improvements thereon.

Facility: includes Data Center, Common Areas, and the building

Common Area: all areas excluding offices and suites but within the Project, including but not limited to interior utility raceways and installations within the Project, excluding offices and suites, that are provided and designated by Cruzio Internet for the general non-exclusive use of Cruzio Internet, Customer and other customers for the Project including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, roadways, walkways, driveways, and landscaped areas

Data Center: room labeled “Data Center” within the Facility used to provide Colocation Services

Colocation Services: services detailed on the corresponding Service Order or Colo Sign-Up Form

Colo Associates: Customer's representatives, employees, contractors, customers, agents, invitees, and users on Customer's account. Any and all Colo Associates will abide by the terms and conditions in this Agreement

Customer Equipment: the computer equipment, software, networking hardware, or other materials placed by or for Customer in Cruzio Internet's Data Center

1. Building Rules

Cruzio Internet and the Data Center exist inside 877 Cedar, which means that Customer and Colo Associates must abide by the rules of the building. A copy of the building rules is available upon request. The building rules might change with time; continued use of the Colocation Services construes acceptance of the revised rules. Membership is terminable by Cruzio Internet without notice if building rules are violated.

2. Access

2.1 Only Customer and those individuals identified to Cruzio Internet in writing by Customer as its Colo Associates may access the Data Center. Customer may not allow any person other than its Colo Associates to access the Data Center or the Facility (i.e. no “tag alongs”). Cruzio Internet reserves the right to deny or restrict access to any Customer or Colo Associates that violate this Agreement and/or payment responsibilities.

2.2 Cruzio Internet may restrict access to the Data Center or the Facility for maintenance or repair, in an emergency and/or response to a governmental request.

2.3 Customer and its Colo Associates agree to adhere at all times to any reasonable security measures which may be established by Cruzio Internet with respect to the Data Center, Customer Equipment and all other equipment contained in the Data Center.

2.4 Customer acknowledges that Cruzio Internet is using closed circuit TV/audio and other surveillance measures.

2.5 By signing this TOU, Customer also agrees to the terms of the General Parking Agreement. Customer shall park in parking spaces marked “Cruzio” unless otherwise arranged with Cruzio Internet. A copy of the General Parking Agreement is available by request. Terms set forth in the General Parking Agreement may change with time. Continued use of the parking lot constitutes agreement to the terms in the General Parking Agreement.

2.6 This Agreement is not intended to and will not constitute a lease of or tenancy or other interest in the Data Center or other Cruzio Internet premises, the Cruzio Internet equipment or any other real or personal property. Customer shall not assign any interest in this Agreement or otherwise transfer or sublicense any part of the Colocation Services

provided thereof or permit the use of the Facility by any party other than Customer, Customer's guests and Colo Associates.

3. Term

See corresponding Service Order and/or Colo Sign-Up Form. The Services will continue according to the terms detailed for Supplement Agreements in the Cruzio Internet Master Services Agreement, Section 3.1, Term.

4. Payment Obligations

4.1 Customer is responsible for all Colocation Services on their account. Payment is due in full on the first day of each month. Late fees may apply if payment is not received by Cruzio Internet within five (5) days of the due date. Account is in default if payment is not received within fifteen (15) days of the due date and access to the Data Center may be suspended. Such interruption does not relieve Customer from past due and ongoing charges. Customer's account may be closed if payment is not received within twenty five (25) days of its due date and access will be terminated. Customer may be sent to a third party collections agency if payment is not received within sixty (60) days of the due date.

4.2 Customer is required to have a current credit card or automated electronic funds transfer from a bank account (hereinafter referred to as "ACH") on-file with Cruzio Internet. Customer hereby authorizes Cruzio Internet to charge the credit card or ACH on-file for any and all amounts owed to Cruzio Internet under this Agreement if Cruzio Internet is unable to collect owing amounts from Customer by other means. Payments by check, money order, or cashier's check should be made payable to Cruzio and delivered to 877 Cedar St. #150, Santa Cruz, CA 95060.

4.3 Any and all Service charges and fees accrued on Customer's account, whether applied by Customer, their Colo Associates, or other agents, are payable in full by Customer when balance is due. Customer is responsible for all Services on their account, including Services added by their Colo Associates.

5. Service Level Agreement

5.1 This Service Level Agreement (SLA) is only applicable to Colocation Services.

5.2 Cruzio Internet guarantees that its network will be available one hundred percent (100%) of the time in a given month, excluding scheduled maintenance or a force majeure event (as defined in the Cruzio Internet Master Services Agreement). This includes the network, infrastructure systems and all hardware components. Any hardware component failure will be fixed at no cost to the Customer. Network uptime includes functioning of all network infrastructure including routers, switches and cabling, but does not include services or software running on Customer's server. Network downtime exists when Customer is unable to transmit and receive data and is measured from the time the trouble ticket is opened. A credit of five percent (5%) of the monthly fee for each thirty (30) minutes of downtime, up to 100% of the monthly service fee for the affected server. All credits must be requested in writing by emailing office@cruzio.com within sixty (60) days of the date the downtime occurs or any claim for an allowance is waived.

5.3 Bandwidth usage will be calculated by Cruzio Internet using the 95th percentile of samplings taken at five (5) minute intervals on a monthly basis. Samples are taken by Cruzio Internet via SNMP from the Cruzio Internet switch or router port Customer is directly connected to and are the greater of input or output bits per second. 95th percentile is determined by sorting the sample data from smallest to largest and discarding the top five percent (5%) percent, with the remaining largest sample designated as the 95th percentile.

6. Effect of Termination

Upon termination of this Agreement:

- (i) Cruzio Internet will cease providing the Colocation Services.
- (ii) All Customer payment obligations under this Agreement, including but not limited to monthly service fees through the end of the term will become due in full immediately.
- (iii) Within five (5) days, Customer will remove all of Customer Equipment and any other property from the Facility and return the Data Center to Cruzio Internet in the same condition as it was prior to Customer installation.

If Customer does not remove such property within the five (5) day period, Cruzio Internet, at its option and at Customer's expense, may remove and store any and all such property, return such Customer Equipment to the Customer, or dispose of such equipment without liability for any related damages. In addition, Cruzio Internet reserves the right to hold any Customer Equipment until it has received payment in full.

7. Use of Data Center

7.1 Customer and Colo Associates shall:

- (i) Comply with the terms in this Agreement, law, and Cruzio Internet's rules and restrictions.

- (ii) Present and deposit photo identification to the satisfaction of Cruzio Internet.
- (iii) Respect the property and observe the rights of other customers.
- (iv) Not enter restricted areas.

7.2 Customer shall make all installations and repairs which require Cruzio Internet's support or supervision only during Cruzio Internet's normal business hours unless otherwise arranged with Cruzio Internet.

7.3 Customer must keep the Data Center clean at all times. Customer may not store any paper products, cardboard, boxes or other materials in the Data Center. All empty boxes, crates and trash will be removed from the Data Center or discarded per Cruzio Internet's instructions. No flammable materials may be stored in the Data Center.

7.4 Customer may not bring, or make use of, any of the following into the Data Center:

- (i) Food or drink, or other liquids.
- (ii) Alcohol, illegal drugs or other intoxicants.
- (iii) Ignited or previously ignited tobacco products.
- (iv) Electro-magnetic devices.
- (v) Explosives or pyrotechnics.
- (vi) Radioactive materials.
- (vii) Weapons.
- (viii) Photographic or recording equipment.
- (ix) Chemicals or hazardous materials.
- (x) Any other material reasonably determined by Cruzio Internet to be inconsistent with the operation of the Data Center.

7.5 Smoking is not permitted at any time in or near the Data Center. Smoking outside of the Facility shall be in designated areas only.

7.6 Children under the age of sixteen (16) are not permitted in the Data Center.

7.7 In the event a convenience outlet is provided, Customer shall only use such outlet on a temporary basis and shall not use it for production.

7.8 Customer will be responsible for maintaining insurance coverage from all losses and damages for Customer Equipment and that of its Colo Associates located in the Data Center, and personal liability insurance for bodily injury and death for Customer and Colo Associates while present at the Data Center.

8. Equipment and Connections

8.1 All Customer Equipment must be certified by Underwriters Laboratories (UL Certified) and comply with local building code and applicable regulations of the Federal Communications Commission.

8.2 Customer must follow hot and cold aisle designations.

8.3 Cruzio Internet grants Customer the right to operate Customer Equipment in the Data Center as specified on the corresponding Service Order or Colo Sign-Up Form. Customer Equipment must be configured and run at all times in compliance with the manufacturer's specifications, including electrical load, clearance and weight load requirements.

8.4 Cruzio Internet makes available certain tools and equipment for the temporary use by Customer at the Data Center. This equipment is provided in an "AS-IS" condition without any warranties of any kind. Customer may borrow and/or use any Cruzio Internet property or equipment, at its own risk, subject to:

- (i) The prior review and approval of Cruzio Internet
- (ii) Any terms of use which Cruzio Internet places on such use.

Any Cruzio Internet tool which Customer fails to return to its designated place shall be billed to Customer at replacement cost.

8.5 Customer may not place equipment in the Data Center which is materially damaged, is of disputed title or otherwise subject to dispute.

9. Misconduct

Customer and its Colo Associates may not engage in the following activities (Cruzio Internet reserves the right to exclude anyone from the Facility who violates the following):

- (i) damage, deface, misuse or abuse any property or equipment in the Data Center
- (ii) act in a careless or reckless manner or otherwise threaten the orderly operation of the Data Center
- (iii) make unauthorized contact or interference with any property or equipment of Cruzio Internet or any other customer of Cruzio Internet
- (iv) use fraud, artifice or subterfuge to gain access to any area of the Data Center to which they are not authorized
- (v) harass, threaten or harm any individual, including Cruzio Internet personnel and representatives or other customers of Cruzio Internet

- (vi) engage in any activity that is in violation of the Law, or aid others in criminal activity while at the Data Center or in connection with the Colocation Services
- (vii) allow unauthorized access to the Data Center.

10. Security

10.1 Customer shall cause all doors to the Facility to be closed and securely locked before leaving the Project. Doors will never be propped open or left ajar. Customer assumes full responsibility for protecting the Project and their own belongings from theft, robbery and pilferage, which includes keeping doors locked and secured. Customer assumes full responsibility for ensuring Colo Associates and guests abide by these terms and for escorting guests off Project. Failure to secure the Facility may result in charges.

10.2 Certain areas of the Project are monitored 24/7 by a video security system. Customer agrees that Customer may be recorded while on the Project and that Cruzio Internet will monitor these images and may use them for any legal purpose.

11. Insurance

Cruzio Internet carries Liability and Business Personal Property insurance; Customer and Colo Associates shall not be named as an additional insured therein. It is strongly suggested, but not required, that Customer provide insurance coverage naming Customer and Colo Associates as an additional insured against claims for bodily injury, personal injury, and equipment and personal or property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Project and all areas appurtenant thereto. The limit said Customer insurance shall not limit the liability of Customer or relieve Customer of any obligation hereunder.

12. Damages

12.1 Customer shall be responsible for any and all damage caused by them, Customer's guests, and Colo Associates. Customer will be billed for any damages caused by them, Customer's guests, or their Colo Associates. Customer shall replace any fixtures, equipment, or supplies missing from the Facility following the use of the Data Center. Customer is responsible for any loss or damage to the Data Center, Common Areas, Facility, or Project. This includes all damages to any equipment, fixtures, surfaces, including the ceiling, floors and floor finishes, restroom and plumbing, or other property. Customer agrees and acknowledges that Customer's liability for loss or damages is not limited to the amount of the deposits received by Cruzio Internet; additional fees may be applied at Cruzio Internets' discretion including, but not limited to non refundable charges for damages, cleaning, materials/equipment, overages, etc.

13. Indemnification

13.1 Customer agrees to indemnify Cruzio Internet from any and all claims and liabilities arising from the use of the Data Center by Customer and Colo Associates.

14. Limitation of Liability

14.1 Cruzio Internet's liability to Customer for damages arising from accessing the Project for any reason and under any theory of law whatsoever is limited to the replacement value of the damage, or the total amount paid by Customer to Cruzio Internet for one (1) month's service, whichever is lower. Cruzio Internet will not be liable for any failure to perform or damages caused by acts of God, force majeure (as defined in the Cruzio Internet Master Services Agreement) or other unforeseen event reasonably beyond Cruzio Internet's control including but not limited to power failures and Internet interruptions.

14.2 Cruzio Internet shall have no liability whatsoever for:

- (i) Any damaged, lost, and/or stolen property or items in or on the Project belonging to Customer, Colo Associates, or Customer's guests.
- (ii) Theft or vandalism to property or items in or on the Project belonging to Customer, Colo Associates, or Customer's guests.
- (iii) Any personal injuries or death arising out of any matter relating to the use of the Project.

Customer, Colo Associates, and Customer's guests release Cruzio Internet from any and all liability for loss or damages to such property. Customer, Colo Associates, and Customer's guests hereby waive on behalf of their insurance carriers all rights of subrogation against Cruzio Internet.

Customer Name/Customer Representative (PRINT)

Signature

Date