



# Cruziointernet

877 Cedar Street, Suite 150 • Santa Cruz, CA 95060

P: 831.459.6301 • F: 831.460.2839 | [cruzio.com](http://cruzio.com)

## Enterprise Internet Terms of Use

This Enterprise Internet Terms of Use (hereinafter referred to as “Agreement”) is entered into by you and your corporate subsidiaries, corporate parents, affiliates, employees, agents, representatives, and other related personnel (collectively “Customer”) and The Internet Store, Inc. doing business as Cruzio, Cruzio Internet, Cruzioworks, Cruzio Media, and Gatespeed (hereinafter referred to as “Cruzio Internet”). Cruzio Internet reserves the right to revise the terms in this Agreement at anytime without notice. Use of the Enterprise Internet Service (defined below) following a change to these terms constitutes agreement to the new terms. By signing this Agreement, physically or electronically, or by accessing or using the Enterprise Internet Service, Customer also agrees to the terms of the Cruzio Internet Master Services Agreement, all provisions of which are hereby incorporated by reference into this Agreement as though fully stated in this Agreement.

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

**Enterprise Internet Service:** Cruzio Internet shall provide Customer with a connection to the Internet via wireless Point of Presence (PoP) and/or other means detailed on the corresponding Service Order

**Customer Premise Equipment (CPE):** equipment that is provided and owned by Cruzio Internet in or on the Service Premises

**Service Premises:** Customer’s property that houses CPE

### 1. Access

1.1 Customer grants permission to Cruzio Internet and its agents to access customer property for installation, maintenance and operation of the Service and will provide reasonable access to Service Premises. Cruzio may disturb the ground to the extent reasonably necessary to construct, repair, and maintain the Service.

Facilities will be constructed and maintained by Cruzio and its agents in a commercially reasonable manner. Except in an emergency, Cruzio will make reasonable attempts to advise the Owner in advance of intended construction, repair or maintenance activities, to perform such activities within the hours of 8am and 6pm and, where possible and practical, to accommodate the Owner’s requests for rescheduling of such activities.

1.2 In addition to the local access provider charges set forth on the corresponding Service Order, Customer shall be responsible for all additional local service provider charges related to Customer’s Enterprise Internet Service, including but not limited to, costs of relocation of Enterprise Internet Services once installed, local service provider charges arising as a result of rescheduling of appointments by local service provider representatives, and all local service provider charges incurred for maintenance diagnostics that are determined to be caused by equipment not owned by or actions not authorized by Cruzio Internet. Local service shall be provided pursuant to the applicable tariffs.

1.3 Installation charges vary depending on antenna requirements and maximum radio throughput. Additional charges may apply for special installation engineering and/or expedited licensing.

1.4 Installation includes radios, antennas, and the port at the Cruzio Internet PoP. The interface provided is Ethernet. Customer is responsible for providing (or purchasing from Cruzio Internet) a compatible router. All CPE included with the installation remains the property of Cruzio Internet.

### 2. Term

Service start date shall be the day that Enterprise Internet Services are first delivered. Enterprise Internet Services will continue according to the terms detailed for Supplement Agreements in the Cruzio Internet Master Services Agreement, Section 3.1, Term.

### 3. Payment Obligations

3.1 Customer is responsible for all Enterprise Internet 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 may be suspended. Such interruption does not relieve Customer from past due and ongoing charges. Account may be closed if payment is not received within twenty five (25) days of its due date. Customer may be sent to a third party collections agency if payment is not received within sixty (60) days of due date.

3.2 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.

3.3 Any non-recurring fees detailed on the corresponding Service Order are due before installation.

#### 4. Service Level Agreement

This Service Level Agreement (SLA) is only applicable to Enterprise Internet Services classed as Enterprise-grade. Enterprise Internet Services classed as Business-grade are not covered by this SLA. Check corresponding Service Order for clarification.

**Outage:** Customer is temporarily unable to utilize the Enterprise Internet Service and a trouble ticket has been opened as a direct result of such problem (excludes force majeure events as defined in the Cruzio Internet Master Services Agreement and scheduled maintenance)

##### 4.1 Service Level Agreement Criteria:

(i) Network Availability: Cruzio Internet's network is guaranteed to be available and capable of forwarding IP packets 99.99% of the time, averaged over a calendar month excluding force majeure events and scheduled maintenance. Cruzio Internet's IP network includes the customer access port (the port on the Cruzio Internet aggregation router upon which the customer's circuit terminates) and the Cruzio Internet IP backbone network. The Cruzio Internet IP backbone includes Cruzio Internet owned and controlled routers and circuits, including any transit connections. Cruzio Internet's Network Availability guarantee does not include the customer's Local Area Network (LAN), Customer Premise Equipment (router or CPE), interconnections to or from and within other Internet Service Provider (ISP) networks, or Cruzio Internet dialup, broadband or hosting services.

(ii) Latency: The Cruzio Internet network is guaranteed to have an average round trip packet transit time within the Cruzio Internet backbone network over a calendar month of 65ms or less.

(iii) Bandwidth Guarantee: Cruzio Internet guarantees, for periods when the Enterprise Internet Service is available, that full port-to-port (customer premise border to the Cruzio Internet Gateway Border) circuit bandwidth is available for the Customer's use at all times excluding a force majeure event and scheduled maintenance. 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 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%), with the remaining largest sample designated as the 95th percentile.

(iv) Packet Loss Guarantee: The Cruzio Internet network is guaranteed to have a maximum average packet loss of one percent (1%) or less during any calendar month.

4.2 Customer shall be eligible to receive a pro-rated credit of amounts pre-paid, if any, in the event that Customer experiences an Outage. In the event of an Outage, Cruzio Internet will respond within thirty (30) minutes after receiving notification of the Outage from Customer and a trouble ticket is opened. After receiving notification of the Outage from Customer, Cruzio Internet shall begin work to restore the Enterprise Internet Service on its failed system. If Cruzio Internet fails to respond to a notification from Customer within thirty (30) minutes, Outage is said to have begun regardless of factors outlined in subsection 4.3 (i) below. Cruzio Internet shall maintain a twenty-four (24) hours a day, seven (7) days a week point-of-contact for Customer to report system issues and open a trouble ticket.

4.3 In the event that Cruzio Internet is unable to restore a portion of the Enterprise Internet Service as required hereunder, or in the event of an Outage, Customer shall be entitled to a credit for the prorated monthly recurring charges for the affected Enterprise Internet Services for all Outages in excess of five (5) minutes. Credit allowances, if any, shall be deducted from the charges payable by Customer hereunder and shall be expressly indicated on a subsequent bill to Customer. An Outage begins when Cruzio Internet is notified or becomes aware of the failure, whichever occurs first. An Outage ends when the affected line and/or associated station equipment is fully operative, subtracting any delay time associated with Cruzio Internet's ability to access the Service Premises.

(i) Credit Allowances do not apply to Outages caused by:

- (a) The negligence or acts of Customer and/or End User or its agents.
- (b) Failure of power.
- (c) Failure or malfunction of non-Cruzio Internet equipment or software.
- (d) Circumstances or causes beyond the control of Cruzio Internet or its agents including frequency conflicts.
- (e) Any period in which Cruzio Internet is not given access to CPE or the Service Premises

(f) A planned service Outage, unscheduled emergency maintenance, scheduled maintenance, alteration or implementation as described herein.

(ii) Customer must request in writing a credit allowance for an Outage within sixty (60) days of the date an Outage occurs or any claim for an allowance is waived. Unless otherwise specifically stated, Outages are not aggregated for purposes of determining the credit allowance.

(iii) Credit for Outages:

- Five (5) minutes or less - No credit
- Between five (5) minutes and one (1) hour - two percent (2%) of monthly service fees of the affected Enterprise Internet Services.
- Each hour above one (1) hour - An additional two percent (2%) of the monthly service fees of the affected Enterprise Internet Services, capped at fifty percent (50%) of the monthly service fees for any single Service Outage.
- All Outage Credits are capped at one hundred percent (100%) of the monthly service fees for all Outages to that same Enterprise Internet Services in any month.

**4.4 Chronic Issue:** Four (4) or more related creditable Outages of over one (1) hour (pursuant to Section 3 above) occurring over any thirty (30) consecutive day period.

Whenever a Customer reports to Cruzio Internet (or vice versa) that an Enterprise Internet Service has a Chronic Issue, Cruzio Internet shall perform a detailed investigation and report the findings to the Customer. Customer's right to receive credits shall not apply, however, in the event that any trouble is caused or contributed to, directly or indirectly, by any act or omission of Customer and/or End User, affiliates, agents or representatives. Once an issue is identified as a Chronic Issue, the Customer as its full, complete, and sole remedy, shall have the option to either

(i) Obtain Outage credits as set forth above.

(ii) Terminate the affected Enterprise Internet Services provided under this Agreement without liability, for the unexpired duration of the term, upon written notice to Cruzio Internet.

## **5. Equipment and Software**

**5.1** According to the terms outlined in this Agreement, Cruzio Internet is responsible for maintaining and operating CPE. If Customer has not purchased CPE, Cruzio Internet shall retain title to CPE and Customer shall promptly return all CPE to Cruzio Internet and/or promptly provide Cruzio Internet with reasonable access to Service Premises in order to recover the CPE, upon termination of this Agreement. For CPE owned by Cruzio Internet but in or on Service Premises, Customer shall protect Cruzio Internet's title and keep the CPE free from any and all claims, liens, encumbrances, and legal processes. The CPE is property of Cruzio Internet and is not to be regarded as part of the real estate on which it may be situated. If requested by Cruzio Internet, Customer will, at Customer's expense, furnish a landlord or mortgagee waiver with respect to the CPE. Also, Cruzio Internet may file UCC-1 Financing Statement of security interests with the California Secretary of State for all CPE in Customer's Service Premises. The CPE shall not be removed from any location without the written consent of Cruzio Internet. Customer shall, upon Cruzio Internet's request, affix and maintain plates, tags or other identifying labels, showing ownership of the CPE in a prominent position on the CPE. The use of the CPE by Customer shall conform with all applicable laws, insurance policies, and warranties of the manufacturer or supplier of the CPE. Cruzio Internet shall have the right to inspect the CPE on the Service Premises.

**5.2** Cruzio Internet shall not be responsible for the installation, operation, or maintenance of equipment or software (including, without limitation, cabling) not provided by Cruzio Internet as CPE (collectively, "non-Cruzio Internet equipment or software"). Impairment of Customer's use of the Enterprise Internet Service due to non-Cruzio Internet equipment or software shall not relieve Customer of its payment obligation hereunder. Cruzio Internet shall not be responsible for any changes in the Enterprise Internet Service which may cause non-Cruzio Internet equipment or software to become obsolete, to require modification or alteration, or otherwise affect performance of equipment to be used as a gateway to the Enterprise Internet Service.

**5.3** Customer shall make no repair, addition, alteration or attachment to the CPE which interferes with the normal operation or maintenance thereof, or which results in the creation of mechanic's or materialman's lien. Any damage done to CPE by Customer shall be repaired or replaced immediately at Customer's sole cost and expense, normal wear and tear accepted.

## **6. Workers' Compensation**

Cruzio Internet shall carry Workers' Compensation insurance to protect its employees during installation and maintenance of work. Workers' Compensation shall cover the entire liability of Cruzio Internet's employees as determined by California Laws.

## **7. Limitation of Liability**

7.1 Cruzio Internet's liability to Customer for damages 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, or by a negligent or willful act of Customer.

7.2 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.
- (ii) Theft or vandalism to property or items in or on the Project belonging to Customer.
- (iii) Any personal injuries or death arising out of any matter relating to the use of the Project.

Customer releases Cruzio Internet from any and all liability for loss or damages to such property. Customer hereby waives on behalf of their insurance carriers all rights of subrogation against Cruzio Internet.

## **8. Indemnification**

8.1 Customer agrees to protect, indemnify, defend, save and hold harmless Cruzio Internet and its officers and employees from any and all suits, proceedings, claims, liabilities, expenses, including reasonable attorneys' fees, damages, or rights of action caused by, arising from, or relating to damage to real or tangible personal property or personal injuries (including death) arising out of the gross negligence or willful misconduct of the Defending Party.

8.2 These indemnifications will survive this Agreement.

## **9. Disclaimer of Warranties**

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, CRUZIO INTERNET MAKES NO WARRANTIES REGARDING THE SERVICES OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT AND MAKES NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY PERSON ASSOCIATED WITH CRUZIO INTERNET SHALL CREATE A WARRANTY IN ANY WAY WHATSOEVER RELATING TO CRUZIO INTERNET AND/OR CRUZIO INTERNET'S ENTITIES, ASSOCIATES, AFFILIATES, LICENSORS, AND LICENSEES, AS APPLICABLE. CRUZIO INTERNET AND CRUZIO INTERNET'S ENTITIES, ASSOCIATES, AFFILIATES, LICENSORS, AND LICENSEES DISCLAIM ANY WARRANTIES FOR SERVICES, INFORMATION, DATA OR GOODS RECEIVED THROUGH OR ADVERTISED ON CRUZIO INTERNET'S SITE AND SERVICES OR RECEIVED THROUGH ANY LINKS PROVIDED BY CRUZIO INTERNET'S SITE AND SERVICES. CUSTOMER AGREES THAT USE OF THE CRUZIO INTERNET WEBSITE AND THE SERVICE IS ENTIRELY AT CUSTOMER'S OWN RISK WITH RESPECT TO ANY AND ALL MATTERS CONCERNING THE SERVICE AND CUSTOMER'S USE OF THE SERVICE. CRUZIO INTERNET EXERCISES NO CONTROL WHATSOEVER OVER THE CONTENT, INCLUDING USER CONTENT, OF THE INFORMATION PASSING THROUGH ITS SYSTEMS. THE CRUZIO INTERNET SITE AND THE SERVICE ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND.

## **10. Disclosure**

Cruzio Internet reserves the right at all times to disclose any information about Customer, Customer's participation in and use of Cruzio Internet products and/or Services as Cruzio Internet deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, at Cruzio Internet's sole discretion. Unless Customer provides a directive in writing prior to Service Start Date, Cruzio Internet reserves the right to use Customer's name and site photographs in training, technical and marketing materials.

## **11. Confidentiality**

Customer acknowledges and agrees that during their use of the Services they may be exposed to Confidential Information. "Confidential Information" shall mean all information, in whole or in part, that is disclosed by Cruzio Internet, a customer, or any participant or user of the Services or any employee, affiliate, or agent thereof, that is nonpublic, confidential or proprietary in nature. Confidential Information also includes, without limitation, information about business, sales, operations, know-how, trade secrets, technology, products, employees, customers, marketing plans, financial information, Services, business affairs, any knowledge gained through examination or observation of or access to 877 Cedar St., computer systems and/or books and records of Cruzio Internet, any analyses, compilations, studies or other documents prepared by Cruzio Internet or otherwise derived in any manner from the Confidential Information and any information that Customer is obligated to keep confidential or know or have reason to know should be treated as confidential. Customer's participation in and/or use of the Services obligates them to maintain all Confidential Information in strict confidence; not to disclose Confidential Information to any third parties;

not to use the Confidential Information in any way directly or indirectly detrimental to Cruzio Internet, or any participant or user of the Services. All Confidential Information remains the sole and exclusive property of Cruzio Internet or the respective disclosing party. Customer acknowledges and agrees that nothing in this Agreement or Customer's participation or use of the Services will be construed as granting any rights to them, by license or otherwise, in or to any Confidential Information or any patent, copyright or other intellectual property or proprietary rights of Cruzio Internet. The terms in this section shall survive this Agreement.

\_\_\_\_\_  
Customer Name/Customer Representative (PRINT)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date