



## PACKETFABRIC'S TERMS AND CONDITIONS

These online terms and conditions ("**Terms and Conditions**") attached to and are incorporated into the Order entered into by and between PacketFabric, Inc. ("**PacketFabric**") and the customer executing the Order ("**Customer**") PacketFabric and Customer may be referred to individually as "**Party**" and collectively as "**Parties**." These Terms and Conditions apply to Customer's access to and use of the Services. Capitalized terms are defined in Section 11 at the end of this document.

### 1. ORDERING AND PROVISIONING SERVICES

**1.1 Service Term.** The Service Term for each Service commences on the Billing Start Date and continues for the Initial Period, unless terminated or renewed in accordance with these Terms and Conditions. Customer may cancel an Order containing a Port Service within 24 hours of placing the Order without incurring any charges. Customer may cancel an Order within 24 hours of placing the Order without incurring any charges. Cancellations made after the initial 24-hour period are subject to Section 8.1 below.

**1.2 Provisioning of Core Services.** Upon full execution of the Order, Customer is responsible for activating its account in the Portal in order to receive the Services. Customer may need to obtain cross-connect services from the data center provider in order to make use of the Services. The ordering, payment and disconnection of cross-connects is Customer's responsibility and will not alter the Billing Start Date for the Services. The Billing Start Date for a Port Service is 15 days after PacketFabric accepts the Order, or the date the Services are available for Customer's use, whichever occurs earlier. For the avoidance of doubt, the Billing Start Date is when the cross-connect is complete. The Billing Start Date for any other Core Service is the date of which that Service is provisioned.

**1.3 Provisioning of Type 2 Services.** Delivery of Type 2 Services is dependent on the underlying provider; PacketFabric will work with Customer and the underlying provider to coordinate desired delivery timelines but is not responsible for any delays caused by the underlying provider. Where an Order also includes Type 2 Services, the Billing Start Date for any Core Services dependent on Type 2 Services will be the same date as the associated Type 2 Services. The Billing Start Date for Type 2 Services is the date the Services are available for Customer's use.

**1.4 Automatic Renewal of Orders.** After the Initial Period, the Service Term for each Service will automatically extend on a month-to-month basis at PacketFabric's then-current published month-to-month rates, unless either Party provides the other with 30 days' prior written notice of cancellation.

**1.5 Service Level Agreement ("SLA").** PacketFabric will provide the Core Services in accordance with the SLA, which is incorporated into these Terms and Conditions and is available at [packetfabric.com/legal](http://packetfabric.com/legal)

**1.6 PacketFabric Affiliates.** If an Order requires the provision of Services outside the United States ("**US**") additional terms and conditions may apply which will attach as an [Addendum](#) to these Terms and Conditions.

### 2. INVOICING AND PAYMENT

**2.1 Fees.** Fees are as set forth in the Order, and may be comprised of a monthly recurring charge ("**MRC**") and/or a one-time, non-recurring charge ("**NRC**") and/or variable usage charges. PacketFabric reserves the right to invoice MRC monthly in advance, and the NRC when the Order is accepted. Customer is responsible for payment of all usage charges incurred on its account. All charges are payable within 45 days of the date of invoice. Invoices will be delivered electronically to the email address Customer specifies on the Order or in the Portal. Any invoice disputes must be submitted within 60 days of the date of invoice. Customer is responsible for any bank handling or transfer charges incurred in making the payment.

**2.2 Late Payments.** If Customer does not pay all undisputed amounts by the due date, PacketFabric may charge Customer interest (calculated on a daily basis) on any unpaid amounts at a monthly rate of 1.5%. Under no circumstances will the interest charged by PacketFabric exceed the maximum amount chargeable by law.

**2.3 Credit Procedures.** Customer authorizes PacketFabric to conduct an initial credit checks on Customer. If Customer is repeatedly late in paying invoices, or if a single invoice is more than 60 days past due, PacketFabric may require prepayment as a condition to continuing to provide the Services to Customer, in an amount not to exceed three months estimated charges. Additionally, PacketFabric may set a credit limit on Customer's account; if Customer exceeds its credit limit, PacketFabric may restrict Customer's ability to order new Services and/ or require prepayment from Customer. PacketFabric may also communicate with credit reporting agencies about Customer's delayed payments.

**2.4 Taxes.** Customer must pay all Taxes in respect of the Products and Services. Unless expressly stated otherwise, the charges for the Products and Services are exclusive of any Taxes. If Customer is required to make a Tax Withholding by law, Customer must pay PacketFabric an additional amount so that, after making any Tax Withholding, PacketFabric is entitled to receive an amount equal to the payment which would have been due if no Tax Withholding had been required.

### 3. CUSTOMER RESPONSIBILITIES.

**3.1 Compliance.** Customer is solely responsible for obtaining all licenses, approvals, and regulatory authority for its business operations and use of the Services. Customer shall comply with all applicable laws, rules, and regulations relating to Customer's use of the Services, including PacketFabric's [Acceptable Use Policy](#) attached to and incorporated herein.

**3.2 Equipment and Cross-Connects.** Customer's equipment used in connection with any Service shall not: (a) interfere with or impair service over any facilities and equipment of PacketFabric and its suppliers; (b) impair the privacy of any data carried over the Services; or (c) create hazards to the employees of PacketFabric or the public. Customer must: (i) establish and maintain all cabling at third-party sites (including all cross-connects) from the Service demarcation point to Customer's own equipment and comply with any requirements of the third-party site provider in relation to that cabling; and (ii) uninstall cross connects from the Customer's equipment to the demarcation point at Customer's cost at the date the Service is terminated.

**3.3 Use of the Services.** Customer is responsible for all information and data transmitted or accessed using the Service, and is responsible for any of its Users who have access to the Service. Customer must not resell a Service to any third-party without PacketFabric's consent (which PacketFabric may give in its sole discretion and subject to certain conditions). The Parties acknowledge that Customer may order a Service which is classified as a US telecommunications service. Customer certifies that more than 10 percent of the traffic to be transmitted over any regulated telecommunications Service within the United States is and will be interstate in nature.

**3.4 PacketFabric's Policies.** Customer agrees and will ensure that any of Customer's Affiliates, Users and any individuals who receive Services connected with these Terms and Conditions are aware and consent to PacketFabric's collection, use and disclosure of information about Customer and each of them in accordance with PacketFabric's policies referenced and attached to these Terms and Conditions.

**3.5 Indemnification.** Customer will indemnify, defend and hold PacketFabric and its Affiliates harmless from and against third-party claims that arise or are alleged to have arisen as a result of negligent or intentional acts or omissions of Customer or its Users or breach by Customer of any term of these Terms and Conditions. PacketFabric will give Customer prompt notice of third-party claims against PacketFabric or its Affiliates, and cooperate in the investigation, settlement and defense of such claims.

#### **4. PACKETFABRIC'S RESPONSIBILITIES.**

**4.1 Compliance.** PacketFabric has obtained all licenses, approvals, and regulatory authority for its business operations and supply of its Services, which includes compliance with relevant data protection and secrecy laws regarding Ethernet transmission of data.

**4.2 Customer's Data.** Customer may place an Order for Services involving Ethernet transmission of Customer's data, which could include text, sound, video, or image files, and software all of which are generated by, or on behalf of, Customer through use of the Service (collectively referred to as "**Customer's Data**"). In order for Customer's Data to be transmitted to a recipient, it must contain routing instructions such as IP addresses and packet header information which PacketFabric's system uses to create a communication channel between the sender and the recipient of such Customer's Data. PacketFabric does not access Customer's Data, nor does it utilize technology to intercept, record or capture Customer's Data. The Customer's routing instructions used to route the Customer's Data is deleted immediately after the communication channel between the sender and recipient is terminated. Given that PacketFabric does not have access to Customer's Data, Customer is solely responsible for its content, protection, and encryption. **PacketFabric does not assume any obligations with respect to Customer's Data other than as expressly set forth in these Terms and Conditions or as required by applicable law.**

**4.3 Customer's Personal Information.** As provided in Section 6, PacketFabric offer Customer the ability to manage and order Services via its Portal. Customer's use of such Portal will require Customer to input Customer's authorized representatives, contact information, and billing information. If Customer uses the Portal to manage or order Services, the Portal will also contain Customer's proprietary network information, see CPNI below. PacketFabric will adhere to all security and privacy laws required for such information in accordance with its [Data Process Addendum](#).

**4.4 Customer Proprietary Network Information.** One of the telecommunications laws PacketFabric must adhere to for Services within the United States involves PacketFabric's protection of certain usage-related information about the Customer known as customer proprietary network information ("**CPNI**") under US federal law. Under US federal law, Customer has the right, and PacketFabric has the duty, to protect the confidentiality of Customer's CPNI. PacketFabric agrees to use CPNI only in accordance with US law. PacketFabric currently provides Customer a dedicated account representative assigned to its account. Customer agrees that the PacketFabric dedicated account representative or its delegate may use any means to provide CPNI to any representative of Customer. Customer authorizes PacketFabric to share CPNI with other PacketFabric Affiliates for any lawful purpose, including without limitation for provisioning, supporting billing and collecting charges for the Services and to develop, identify, offer, and provide products and services that may benefit Customer; provided those Affiliates first agree to observe the confidentiality of the information in accordance with Section 10.1.

**4.5 Law Enforcement.** PacketFabric may be required by law, regulation, court order, subpoena, civil investigative demand or other similar law enforcement process to intercept data beyond what is provided for in this Section.

#### **5. INTELLECTUAL PROPERTY.**

**5.1 Intellectual Property Rights.** Except as expressly set forth in these Terms and Conditions, these Terms and Conditions do not grant either Party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the Parties, Customer owns all Intellectual Property Rights in Customer's Data, and PacketFabric owns all Intellectual Property Rights in the Services and Portal.

**5.2 Customer Feedback.** PacketFabric may use any feedback or suggestions about the Services provided to PacketFabric by Customer without obligation to Customer, and Customer hereby irrevocably assigns to PacketFabric all right, title, and interest in such feedback or suggestions.

**5.3 IP Indemnification.** PacketFabric will indemnify, defend and hold Customer and its Affiliates harmless from third-party claims that PacketFabric's Products and/or Services infringe the intellectual property rights of a third-party. If PacketFabric reasonably believes that a claim under this Section may bar or materially impair Customer's use of the Product and/or Services, PacketFabric will seek to: (i) obtain the right for Customer to keep using the Product and/or Services; or (ii) modify or replace the Product and/or Service(s) with a functional equivalent and notify Customer to stop use of the prior version of the Product and/or Services. If these options are not commercially reasonable, PacketFabric may terminate the Services and then refund any advance payments under the applicable Order and/or accept return of the Product and grant Customer a refund for the purchase price paid by Customer of the relevant Product depreciated on a five-year straight- line basis. The infringement indemnity set forth in this Section states PacketFabric's entire liability and obligation and Customer's sole remedy for any claim of infringement of the intellectual property rights of a third-party. The foregoing indemnity does not apply to the extent the claim arises out of any modification of any Product or Services provided by PacketFabric, relates to services or materials provided by a third-party, or is caused, or contributed to, by Customer. Customer agrees to defend, indemnify and hold PacketFabric harmless from and against any and all damages that a court may award against PacketFabric in any suit that alleges that a Service infringes any intellectual property rights of a third-party due to any of the exceptions in the preceding sentence caused by the Customer or its Users. Customer will give PacketFabric prompt notice of third-party claims against Customer or its Affiliates, and cooperate in the investigation, settlement and defense of such claims.

**6. PORTAL; API.** PacketFabric provides Customer a license to use PacketFabric's proprietary platform to electronically perform various administrative functions relating to the Services ("**Portal**"). Customer may designate which Users are allowed to perform which functions, via various access levels and permissions on the Portal account. Customer acknowledges that Users who are authorized to make modifications or add Services via the Portal or application program interface ("**API**") may incur additional Fees. PacketFabric will provide a confirmation receipt for any modified or additional Orders for Services placed via the Portal or API. Customer is solely responsible for establishing and maintaining the security and confidentiality of its usernames, passwords, and other security data. Customer agrees to immediately notify PacketFabric if there is any unauthorized use of Customer passwords or other security data, or any use inconsistent with the terms of these Terms and Conditions. PacketFabric may change or discontinue any API for the Services from time to time, but will use commercially reasonable efforts to continue supporting the previous version of any API changed. PacketFabric reserves the right to deactivate Customer's access to the Portal in the event no activity has been logged for at least six (6) months.

## 7. SUSPENSION OF SERVICE.

**7.1 Immediate and Temporary Suspension.** In the event that Customer's use of the Service (i) poses an immediate and severe security risk to the Services or any third-party, (ii) could subject PacketFabric, its Affiliates, or any third-party to immediate liability, or (iii) in PacketFabric's reasonable judgement, could be fraudulent, PacketFabric may suspend Customer's access to or use of all or any portion or all of the applicable Service(s) immediately upon notice to Customer. PacketFabric will remove the suspension promptly after the cause(s) of the suspension have been removed.

**7.2 Suspension if Customer fails to Cure Default.** PacketFabric may suspend Customer's access to or use of all or any portion of the applicable Service(s) upon notice to Customer in accordance with these Terms and Conditions, and Customer's failure to cure within the required period if: (i) Customer is in breach of these Terms and Conditions; or (ii) Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding. If PacketFabric suspends Customer's right to access or use any portion or all of the Services, (a) Customer remains responsible for all fees and charges incurred during the period of suspension; and (b) Customer will not be entitled to any service credits under the Service Level Agreement for any period of suspension. PacketFabric will remove the suspension promptly after the cause(s) of the suspension have been removed.

## 8. DEFAULT AND TERMINATION.

**8.1 Termination by Customer for Convenience.** Customer may terminate a Service for convenience at any time during its Service Term, subject to the early termination charge, if any, specified below; however, Customer must pay all amounts due and owing before the termination is effective. When requesting to disconnect a Service, Customer is responsible for delivering a disconnect completion notice for any and all cross-connects related to that Service; Customer will continue to be charged for the Service until the related cross-connect is disconnected.

(a) Month-to-Month Order. An Order having a one-month Initial Period, or in month-to-month renewal status, may be terminated or reduced anytime, with 30 days' notice, without any early termination charge.

(b) Orders of more than one month. If Customer terminates or reduces the quantities of an Order prior to the end of the Initial Period, Customer shall pay an early termination charge equal to 50% of all MRCs for Core Services for the remainder of the Initial Period, and 100% of all MRCs for Type 2 Services for the remainder of the Initial Period.

**8.2 Termination by Either Party for Breach.** If a Party commits a material breach of these Terms and Conditions and does not remedy the breach within 30 days of receiving a written notice to do so (15 days in the event of a non-payment breach), then the other Party may terminate these Terms and Conditions. In the event PacketFabric terminates these Terms and Conditions due to Customer's uncured breach, PacketFabric reserves the right to assess an early termination charge calculated in accordance with Section 8.1 above.

## 9. WARRANTIES; LIMITATION OF LIABILITY.

**9.1** PACKETFABRIC MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO ANY SERVICE PROVIDED OR PRODUCT DELIVERED HEREUNDER. PACKETFABRIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, PERFORMANCE OR INTEROPERABILITY OF THE SERVICE WITH ANY CUSTOMER-PROVIDED EQUIPMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

**9.2** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, ANY LOSS OF REVENUE, PROFITS (EXCLUDING FEES UNDER THESE TERMS AND CONDITIONS), SALES, DATA, DATA USE, GOODWILL, OR REPUTATION, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

**9.3** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY, NOR ITS AFFILIATES, ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY CUSTOMER FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THIS LIMITATION PROVIDED IN THIS SECTION DOES NOT APPLY TO EITHER PARTY'S INDEMNITY OBLIGATIONS NOR CUSTOMER'S OBLIGATION TO PAY THE FEES UNDER AN ORDER.

**9.4** THE LIMITATIONS IN THIS SECTION APPLY ONLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL SURVIVE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDIES PROVIDED IN THE AGREEMENT. Each Party shall use commercially reasonable efforts to mitigate any damages for which the other Party may be liable under these Terms and Conditions.

## 10. GENERAL TERMS.

**10.1 Confidential Information.** Each Party must treat as confidential information: (a) the terms of these Terms and Conditions; and (b) all information provided by the other Party in relation to these Terms and Conditions, including PacketFabric's technical, operational, billing, pricing and commercial information in relation to the supply of Services. A Party must not disclose the other Party's confidential information to any person except: (a) to its Affiliates and its and their respective employees, officers, directors, representatives and professional advisors on a 'need to know' basis provided those persons first agree to observe the confidentiality of the information; (b) with the other Party's prior written consent; (c) if required by applicable law, any regulatory authority or stock exchange; or (d) if the confidential information is independently developed by the receiving Party, is lawfully received by the receiving Party free of any obligation to keep it confidential or is in the public domain, other than by a breach of this Section, Customer acknowledges and agrees that PacketFabric may disclose Customer's confidential information to third parties as necessary to provide the Services, which may also involve PacketFabric disclosing, transferring, storing and making Customer's confidential information accessible outside the United States, subject to and in accordance with applicable law.

**10.2 Notices.** Legal notices or requests for written consent shall be in writing and delivered by hand, courier, overnight delivery service, or registered or certified mail return receipt requested. Any such notice shall be deemed given when received or refused and shall be sent to PacketFabric at 9920 Jefferson Blvd., Culver City, CA 90232 Attn: Legal Department; with an e-mail copy (not official notice) to: [legal@packetfabric.com](mailto:legal@packetfabric.com). For notice to Customer, the notice address shall be that address specified by Customer in the Portal.

(a) For all other notices (including, for example, operational notices or service alerts) the Parties agree that electronic notices issued via the Portal are sufficient, and shall constitute written notice. For notices delivered by Customer to PacketFabric via the Portal, the notice must comply with any posted notice requirements, which may be updated from time to time. For notices delivered by PacketFabric to Customer via the Portal, PacketFabric will rely on the account administrator information supplied by Customer and Customer is solely

responsible for updating such information as required. Notices are deemed effective on the date such notice is made available to the Party via the Portal, whether or not the Party has actually read such notice.

**10.3 Modifications.** PacketFabric may modify its policies referenced and attached to these Terms and Conditions at any time by posting a revised version on the legal information section of the Portal or by notifying Customer in accordance with subsection 10.2. Modified terms that are required by law will be effective immediately and by continuing to use the Services Customer will be bound by such modified terms. All other modified terms will only be effective upon renewal (including automatic renewal) of an existing Order or placement of a new Order. If the Services are to be provided in a jurisdiction where, in order for the Order to be enforceable or consistent with local law or operational practice, additional terms must be added to these Terms and Conditions or existing terms amended, those additional or amended terms will be set out in an addendum to these Terms and Conditions. Except as set forth in the preceding sentences of this Section, any amendment must be in writing, signed by both Parties, and expressly state that it is amending these Terms and Conditions.

**10.4 Assignment.** These Terms and Conditions shall be binding on the Parties and their respective Affiliates, successors, and assigns. Either Party may assign these Terms and Conditions upon written notice, without the other Party's prior written consent: (a) in connection with the sale of all or substantially all of its assets; (b) to the surviving entity in any merger or consolidation; or (c) to an Affiliate. Any other assignment will require the prior written consent of the other Party.

**10.5 Severability.** If any part of these Terms and Conditions is held unenforceable, the rest remains in full force and effect.

**10.6 Waiver.** Failure to enforce any provision of these Terms and Conditions will not constitute a waiver.

**10.7 No agency.** Customer and PacketFabric are independent contractors. These Terms and Conditions does not create an agency, partnership, or joint venture.

**10.8 No third-party beneficiaries.** There are no third-party beneficiaries to these Terms and Conditions.

**10.9 Remedies cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in these Terms and Conditions, the rights and remedies of the Parties are cumulative hereunder and are in addition to and not a substitute for all other remedies contained in these Terms and Conditions or as otherwise available at law or in equity.

**10.10 Applicable law and venue.** These Terms and Conditions is governed by and shall be construed in accordance with the laws of the State of New York (except that body of law controlling conflict of laws) and the United Nations Convention on the International Sale of Goods will not apply. Any suit or proceeding arising out of or relating to these Terms and Conditions will be brought in the applicable federal or state court located in the county of New York, state of New York, and each Party irrevocably submits to the jurisdiction and venue of such courts.

**10.11 Import and Export Restrictions.** The Parties acknowledge that the Products and Services may be subject to import, export and re-export controls under the U.S. Export Administration Regulations and certain regulations under the Office of Foreign Assets Control of the U.S. Department of Commerce and regulations of other countries or governments. Neither Party shall export or re-export any Services, software, technical data or intellectual property, or undertake any transaction in violation of any such export and import laws, and each Party shall be responsible for its compliance with all such laws.

**10.12 Publicity; Use of Name and Marks.** Neither Party will issue any press releases or announcements, or any marketing, advertising, or other promotional materials, related to these Terms and Conditions without the prior written approval of the other Party. Neither Party will use the name or marks of the other Party or any of its Affiliates for any purpose without the other Party's prior written consent. Notwithstanding this Section, either Party may use the other Party's name and logo to list the other Party as a vendor or customer, as the case may be, on a Party's websites or other marketing collateral listing other customers or vendors, as the case may be. Any such permitted use shall comply with any applicable usage guidelines that are published or made available by the other Party upon request, and shall not be considered an endorsement.

**10.13 Entire Agreement.** These Terms and Conditions supersedes all prior or contemporaneous representations, understandings, agreements, or communications between the Parties, whether written or verbal, regarding the subject matter of these Terms and Conditions.

**10.14 Survival.** The expiration or termination of these Terms and Conditions shall not relieve either Party of those obligations that by their nature are intended to survive, including, without limitation, confidentiality, indemnification, limitation of liability, payment and governing law/venue.

**10.15 Force Majeure.** Neither Party will be liable for any failure in performance due to causes beyond its reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services).

**10.16 Translation.** Any local language translation (where applicable) exists for reference purposes only, and only the English version will be legally binding. If there is any inconsistency between the two versions, the English version shall control. All communications and notices to be made or given pursuant to these Terms and Conditions must be in the English language.

**10.17 Order of Precedence/Construction.** To the extent reasonably feasible, the provisions of these Terms and Conditions and the provisions of any Order shall be read together and interpreted so as to avoid any conflict between them. In the event of a conflict, precedence will be given to the Order, but solely with respect to the Products or Services covered by that Order.

## 11. Definitions.

**"Acceptable Use Policy"** means the policy that is attached to an incorporated into these Terms and Conditions as may be amended by PacketFabric from time to time, a copy of which is available at [packetfabric.com/legal](https://packetfabric.com/legal)

**"Affiliates"** means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a Party. As used in this definition, "Control" means control of greater than fifty percent of the voting rights or equity interests of a Party.

**"Billing Start Date"** means the date on which PacketFabric may commence charging Customer for the Service and also denotes the commencement of the Initial Period.

**"Core Services"** means all PacketFabric Services except Type 2 Services.



**"Data Processing Addendum"** means the policy, as reference in Section 3.4, which is attached to and incorporated herein. Due to changes in law and advances in technology, it may be necessary for PacketFabric to amend this policy from time to time, which is available at [packetfabric.com/legal](http://packetfabric.com/legal)

**"Initial Period"** means the minimum period for which Customer must acquire a Service, as set out or referred to in an Order.

**"Intellectual Property Rights"** means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

**"Optional Third-Party Services"** means services made available to Customer by any third-party on the Portal.

**"Order"** means an order that identifies the Products and/or Services that Customer requests PacketFabric to provide.

**"Port Service"** means a physical port on equipment owned by PacketFabric that provides direct connectivity to Customer's equipment.

**"Privacy Policy"** means PacketFabric's privacy policy, referred to in Section 3.4, as amended by PacketFabric from time to time, which is attached to and incorporated into these Terms and Conditions and is available at [packetfabric.com/legal](http://packetfabric.com/legal)

**"Service"** means any service provided by PacketFabric under these Terms and Conditions. Services do not include Optional Third-Party Services.

**"Service Term"** means the Initial Period and any renewal periods thereafter. Service Term is identified by Service on an Order, and for avoidance of doubt, an Order can include Services with different Service Terms.

**"Taxes"** means taxes, levies, imposts, duties, excise and charges, deductions or withholdings, however described, imposed by law or a government authority or agency, including but not limited to any foreign federal, state or local tax authority, the Federal Communications Commission, state public utilities commissions, and the Universal Service Administrative Company, and additionally including any related interest, penalties, fines or other charges or expenses, but excluding income tax or capital gains tax.

**"Tax Withholding"** means a deduction or withholding for or on account of Taxes from a payment.

**"Type 2 Services"** means services procured by PacketFabric from a third-party service provider on Customer's behalf, including, for example, local access services from a Customer premise location to a PacketFabric point-of-presence (POP), cross-connects within a data center, or other network service provider offers integrated into the Portal.

**"User"** means anyone, including a Customer Affiliate, who uses or accesses any Service purchased by Customer under these Terms and Conditions, including accessing Customer's account on the Portal.

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