

TERMS AND CONDITIONS

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS BEFORE YOU SIGN UP FOR THE OPTICS INTERNET ACCESS SERVICE BY INDICATING YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED HEREOF, YOU ARE DEEMED TO ACKNOWLEDGE AND AGREE TO BE BOUND BY ALL THE FOLLOWING TERMS AND CONDITIONS FOR THE USE OF OPTICS INTERNET ACCESS PROVIDED BY OPTICAL COMMUNICATION ENGINEERING SDN BHD ("OCE"). OCE RESERVES THE RIGHT TO UPDATE OR REVISE THE TERMS AND CONDITIONS FROM TIME TO TIME. OCE MAY GIVE NOTICE OF AMENDMENT TO THE CUSTOMER IN SUCH A MANNER AS OCE DEEMS APPROPRIATE. CONTINUATION IN THE ACCESS OR USE OF THE OPTICS INTERNET ACCESS SERVICE SIGNIFIES ACCEPTANCE OF THE CHANGES TO THE TERMS AND CONDITIONS WITH REGARD TO THE OPTICS INTERNET ACCESS SERVICE.

1. The Service

OCE is a company which is involved, amongst others in the provision of multimedia products and services and is desirous at the request of the Customer to provide to the Customer, Optics Internet Access Service on OCE's network which will allow the Customer access to the Internet on the terms and conditions set out herein, as may be amended from time to time by OCE (hereinafter referred to as "the Service").

2. Definitions

"Agreement" means the completed Application Form (and its attachments) and the terms and conditions herein.

"Application Form" means the application form to which these terms and conditions are attached requesting particulars from an applicant offering to become a Customer (hereinafter defined) and furnishing the required and genuine information. Such application form and these terms and conditions shall form the Agreement.

"Customer" under this Agreement shall mean a natural person other than a minor and shall include any corporate body, partnership, associations, company, government and/or non-governmental organization whose application to enter into this Agreement is accepted by OCE and shall include his successor and permitted assigns and is synonymous with the term "subscriber" or "applicant" wherever used in other correspondence or documents.

"Commencement Notice" means the notice issued by OCE to the Customer specifying the date of the commencement of the Service. The Commencement Notice shall also contain the Customer's Internet Protocol (IP) address or login and password, as the case may be.

"Leased Equipment" means the equipment leased from OCE for the provision of the Service to the Customer.

"Minimum Subscription Period" means the minimum period for subscription of the Service by the Customer as specified in Clause 4 herein. The minimum subscription period applicable is twelve (12) months.

"OCE" means Optical Communication Engineering Sdn. Bhd., a company incorporated under the Companies Act 1965 with its business address at No. 19, Jalan Semangat, 46200 Petaling Jaya, Selangor Darul Ehsan.

"MetroFON Internet Access" (or the "Service") means a high speed access service which provides connection to the Internet with speed ranging from 2MB up to 100MB on best effort basis.

"User Account" means an account under the name of the Customer in relation to the Service subscribed by the Customer.

Words and expressions denoting the singular include plural numbers and words and expressions denoting the plural shall include the singular number unless the context otherwise requires.

Words denoting natural persons include bodies corporate, partnership, sole proprietorship, joint ventures and trusts.

The expression "him", "his" or any other expression that appears herein shall be deemed to include the masculine, feminine, plural thereof where the context so admits.

3. Agreement Period

3.1 The Agreement shall commence on the date of signing and/or approval of the Application Form by OCE.

3.2 The period of the subscription of the Service shall commence upon the successful completion of the Internet Access installation and the commencement of the Service, and a notice of its completion and commencement is endorsed by the authorized officer of OCE and acknowledged by the Customer shall be conclusive proof of the commencement date of the Service.

3.3 This Agreement shall automatically continue to be enforceable after the Minimum Subscription Period ("Extended Period" as defined herein) until the said Service is terminated by either Party by giving the other Party thirty (30) days notice in writing as provided under this Agreement.

4. Minimum Subscription

Notwithstanding any provisions to the contrary in this Agreement, the Customer shall subscribe to the Service provided by OCE for a period of not less than the Minimum Subscription Period (as defined herein) commencing from the date specified in the notice of completion referred to in Clause 3.1 above-stated.

5. Application for the Service

5.1 The Customer is required to submit accurate, current and complete information of the Customer for the purpose of subscribing to the Service and the Customer hereby undertakes to update such information in the event of any changes thereto.

5.2 Supporting documents accompanying the Customer's application for subscription to the Service shall be submitted to OCE together with the Application Form. The required supporting documents are as follows: -

For Malaysians: -

- (a) Individual – a copy of the individual's identity card (both sides);
- (b) Sole Proprietor or partnership – a copy of either the Customer's business license, Forms D, B or A; and
- (c) Company – a copy of Form 9, Form 49, Form 24 or Form 13.

For Foreigners: -

- (a) Individual – a copy of the Customer’s passport;
- (b) Company – a copy either the Customer’s Form 70, 80, 80A or 83.

All supporting documents must be duly certified by the authorized representative of the Customer.

6. Service Availability

- 6.1 Upon submitting all of the aforementioned documents, OCE shall register the Customer’s application, verify and confirm the Service availability in the designated address as required by the Customer.
- 6.2 In the event that the service is not available at the designated address, OCE may inform the Customer and the Customer’s application will be kept in OCE’s record pending the availability of the Service in such designated address.

7. Installation Process

- 7.1 Upon verification and confirmation of the aforementioned, the Parties shall fix an appointment date to allow OCE and/or its registered contractor to perform the installation at the Customer’s designated installation address stated in the Application form.
- 7.2 The registered contractor shall then reconfirm the appointment date to ensure the readiness of the Customer in relation to his responsibilities referred to in Clause 12 herein. In the event that the Customer is not ready with the said requirement, OCE may allow the Customer to defer the installation for a period of seven (7) days after which the Customer’s account shall be activated and billed accordingly. Notwithstanding, the aforementioned, in the event that the Customer is not ready with the requirement, the Customer may request OCE to cancel the registration at the Customer’s own cost and reapply for the Service subject to availability of the Service at that point in time.
- 7.3 Upon OCE’s satisfaction that the Customer is ready with all the basic requirements, OCE and/or its contractor shall confirm the appointment date and install the Service at the designated address of the Customer within forty eight (48) hours from the confirmation thereof.

8. Fees

- 8.1 The fees for the Service shall be at the applicable rate indicated in the Application Form or such rates as shall be prescribed by OCE from time to time.
- 8.2 Payment of fees shall accrue from the commencement date. The commencement date shall be the date of Commencement Notice from OCE to the Customer stating the date the Service commences. The Customer shall be liable for and shall promptly pay on demand all charges, fees, rentals, costs or other amounts whatsoever as shown in OCE’s bill notwithstanding that the Customer disputes the same for any reason (s) whatsoever.
- 8.3 In the event the Customer terminates his account any time before the end of month after the Minimum Subscription Period, the Customer shall be liable to pay to OCE the full fees for the Service for the Minimum Subscription Period.
- 8.4 In the event OCE’s staff and/or authorized agents be called upon to attend to a fault at the Customer’s premises, OCE reserves the right to impose charges for the visit if the fault is not attributable to the network.

9. Payment

- 9.1 In the event the amount stated in OCE’s bill or any part thereof remains unpaid after the due date, OCE reserves the right to charge interest on the sums that remain unpaid as aforesaid at the rate specified in OCE’s bill from the due date to the date of full payment.
- 9.2 The billing date will commence from the date the Service is rendered to the Customer.
- 9.3 The Customer hereby acknowledges that non-receipt of statement of account, bill, any notice or correspondence in relation to the Service subscribed shall not be a valid reason for the Customer to refuse, hold back or delay any outstanding payment for the Service.

10. Alteration/Modification

Any alteration to the Service configuration, and/or relocation of the Service based on Customer’s request is chargeable to the Customer at a rate to be specified by OCE from time to time.

11. Change of Service Package Plan

Any request by the Customer for upgrades or downgrades of his package plan shall be subject to OCE’s approval. For any allowable upgrades or downgrades in the Service Package Plan, installation and activation fees may be charged to the Customer at a rate specified by OCE from time to time.

12. Customer’s Responsibilities

The Customer shall: -

- (a) not resell, transfer, assign or sublet the Service to any third party without the prior written consent from OCE;
- (b) be responsible for the set-up or configuration of his own equipment for access to the Service;
- (c) ensure his readiness for installation of the Service on the appointment date referred to in Clause 6 herein;
- (d) comply with all notices or instructions given by OCE from time to time in respect of the Service;
- (e) be solely responsible for obtaining at his own cost, all licenses, permits, consents, approvals, and intellectual property or other rights as may be required for using the Service;
- (f) comply and conform with Internet etiquette that is required by the relevant electronic forums;
- (g) be solely responsible for all information retrieved, stored and transmitted by the Customer through the use of the Service;
- (h) obtain OCE’s prior approval before making any changes to the network configuration and interconnecting the private network to any public network;
- (i) be responsible for ensuring that the Customer’s personal computer is equipped with a network card;
- (j) pay and settle all fees, stamp duty and any other charges due to OCE in accordance with this Agreement;
- (k) provide accurate and complete information in the Application Form and when requested by OCE;
- (l) abide and adhere to the terms and conditions of this Agreement; and
- (m) not to use the Service in any manner, which in the opinion of OCE may adversely affect the use of the Service by other Customers or efficiency or security as a whole; and

13. Prohibited Use

The Customer shall: -

- (a) comply with and not contravene all applicable laws of Malaysia relating to the Service;
- (b) not use the Service for any unlawful purpose including and not limited to criminal purposes;

- (c) not to use the Service to send or receive any message, notice, posting, advertisement that is offensive on moral, religious, racial or political grounds or is defamatory of any person including a company or corporation or is seditious in nature;
- (d) not to author, create or disseminate any computer virus to all or any other system;
- (e) not to infringe any intellectual property rights;
- (f) not to gain unauthorized access to any computer system connected to the Internet or any information regarded as private, confidential or a secret by any other person including the government, any company or corporation; and
- (g) shall use the Service only for the purpose for which it is subscribed, and shall not be allowed to resell, transfer, assign or sublet the Service without the prior written consent of OCE.

14. **Security and Other Features**

- 14.1 The Customer shall take all such measures as may be necessary to protect his own system and network.
- 14.2 The Customer shall be responsible for maintaining the confidentiality of his passwords, if any (including without limitation changing his passwords from time to time) and shall not reveal the same to any other person. Where user identification is necessary to access the Service, the Customer shall use only his user identification.
- 14.3 The Customer shall inform OCE within twenty-four (24) hours if the User Account, user identification or password is stolen or lost. Until such report has been made and received, the Customer shall be responsible for all transactions and access using the User Account, user identification or password by any third party and OCE shall not be held responsible for any prohibited and/or unauthorized use of the Service as provided in this Agreement.

15. **Customer's Equipment Installation**

- 15.1 The Customer shall prepare all applicable Customer's equipment in accordance with any specifications OCE may provide to the Customer in relation to the Service. The Customer shall further ensure that the said Customer's equipment are in good condition and has proper set-up for purposes of installation of additional configuration and installation of software to the said Customer's equipment by OCE.
- 15.2 The installation of software and configuration of the Customer's equipment can be conducted by the Customer themselves as per OCE's guidelines. The Customer acknowledges that such installation shall be at the Customer's own risk.
- 15.3 OCE shall not be liable in any way whatsoever for any loss or damage to any property or injury to any person howsoever caused, whether negligent or otherwise arising out of any installation and/ or configuration where such task is conducted by the Customer and/ or OCE.

16. **Lawful Purpose**

The Customer shall only use the Service for lawful purposes. Transmission of any material in violation of any Federal, State or Local laws and regulations or of any international treaties, conventions, covenants and protocols is prohibited. These include, but shall not be limited to copyrighted material, material legally judged to be threatening or obscene, pornographic, profane, or material protected by trade secrets. These also include links or any connection to such materials. The Customer also warrants that the Customer has the right to use any applicable trademarks that are featured in the Customer's web site.

17. **Suspension of Service**

- 17.1 Without prejudice to any other rights or remedies and notwithstanding any waiver by OCE of any previous breach by Customer, OCE may suspend the Service for a period at OCE's discretion in the event that: -
- (i) any fee and/ or payment due hereunder for the Service provided is not settled in full on due date;
 - (ii) in the event the Customer fails to comply with the terms of this Agreement;
 - (iii) for maintenance of OCE's equipment and telecommunication systems; and
 - (iv) scheduled or unscheduled outages which causes interruption to the Service.
- 17.2 For suspension of the Service due to Clause 17.1(i) and Clause 17.1(ii), OCE may if it deems appropriate at its sole discretion and upon such terms, as it deems proper reconnect the Service, in which event this Agreement shall continue as if the same has not been suspended. OCE shall have the right to impose on the Customer a reconnection fee at a rate as specified by OCE from time to time.

18. **Change of Customer's Details**

The Customer undertakes to inform OCE of any change of the Customer's information provided earlier to OCE within three (3) days of such changes. Failure on the Customer to notify such changes shall constitute a breach of terms and conditions of this Agreement, and OCE reserves the right to suspend or disconnect the Service or terminate this Agreement.

19. **Termination**

- 19.1 Without prejudice to any other rights or remedies of the parties under this Agreement or at law, either party may terminate this Agreement, if the other:
- (i) breaches any term, condition, undertaking or warranty under this Agreement and such breach shall remain unremedied for a period of thirty (30) days after receipt of the written request to remedy the same; and
 - (ii) becomes bankrupt or enters into any composition or arrangement with or for the benefit of creditors or either party or allow any judgement against either party to remain unsatisfied for a period of twenty-one (21) days.
- 19.2 Without prejudice to any other rights or remedies of OCE under this Agreement or at law, OCE may terminate this Agreement by giving the Customer fourteen (14) days notice, in writing, if the Customer:
- (i) fails to comply with OCE's policy(ies) and/ or instruction(s) communicated to the Customer, in writing; and
 - (ii) is in breach of any provision under the Communications and Multimedia Act 1998 or any other rules, regulations, by-laws, acts, ordinances or any amendments to the above.
- 19.3 Notwithstanding the above, OCE may terminate the Service under this Agreement immediately, without penalty, if:
- (i) the Customer fails to make payment of fees, stamp duty (presently RM 10.00), charges and/ or any sum due to OCE within the stipulated time;
 - (iii) the Customer fails to comply with the terms of this Agreement, and OCE, in its sole discretion is of the opinion that such breach shall not be tolerated and shall not fall under provision of Clause 19.1(i) above;
 - (iv) the Customer provided false or incomplete information to OCE; and/ or
 - (v) due to an event of Force Majeure which continues for the period of more than thirty (30) days.
- 19.4 Such termination, as hereinbefore mentioned in Clauses 19.2 and 19.3, shall not prejudice the right of OCE to recover all charges, costs, and interests due and any other incidental damages incurred thereto.

- 19.5 Subject to Clause 4 aforementioned, this Agreement may be terminated by either Party upon thirty (30) days written notice to the other party.
- 19.6 Notwithstanding Clause 19.5 above, this Agreement may be terminated by the Customer upon expiry of the Minimum Subscription Period only.
- 19.7 If the Customer terminates his account within the Minimum Subscription Period, the Customer shall be responsible for fees chargeable for the Service for the remainder of the Minimum Subscription Period.
- 19.8 Upon termination of the Service or the Agreement, all monies owing by the Customer to OCE shall be immediately become due and payable and the Customer shall upon demand by OCE settle all amounts within the time stipulated by such demand. Any statement of account prepared by OCE for the purposes of recovering outstanding monies from the Customer shall be conclusive evidence of the facts stated therein and shall not be disputed by the Customer save and except where there is manifest error or fraud.
- 19.9 Any fee and/ or charge paid shall not be refundable upon termination of the Service by the Customer.
- 19.10 OCE shall not be liable to the Customer for any claim for damages or costs of any nature whatsoever arising out of discontinuance of the Service or termination or expiration of this Agreement in accordance with its terms including but not limited to any claim for loss of profits or prospective profits or for anticipated loss.
20. **Disclaimer**
- 20.1 The Service is provided on an "as is" basis. OCE makes no warranty of any kind, either expressed or implied, disclaims all implied warranties, including, but not limited to warranties of merchantability or fitness including, but not limited to, warranties of accuracy and expressly for a particular purpose.
- 20.2 While every care is taken by OCE in the provision of the Service, OCE shall not be liable for any loss of information howsoever caused whether as a result of any interruption, suspension, or termination of the Service or otherwise, or for the contents, accuracy or quality of information available, received or transmitted through the Service.
- 20.3 The Customer shall be solely responsible, and OCE shall not be liable in any manner whatsoever, for ensuring that in using the Service all applicable laws, rules and regulations for the use of any telecommunications systems, service or equipment shall be at all times complied with.
21. **Indemnity**
- 21.1 The Customer undertakes and agrees to indemnify, save and hold harmless OCE at all times against all actions, claims, proceedings, costs, losses, damages whatsoever including but not limited to libel, slander or infringement of copyright or other intellectual property rights or death, bodily injury or property damage howsoever arising which OCE may sustain, incur or pay, or as the case may be, which may be brought or established against OCE by any person including a company or corporation whomsoever arising out of or in connection with or by reason of the operation, provision or use of the Service and/ or equipment under, by reason of or pursuant to this Agreement and which are attributable to the act, omission or neglect of the Customer, his servants or agents.
- 21.2 OCE shall not be liable for any loss or any damages sustained by reason of any disclosure, inadvertent or otherwise in any information concerning the Customer's account particulars. Neither shall OCE be liable for error, omission, loss or inaccuracy whether or not due to OCE's neglect.
- 21.3 OCE shall use its best endeavour to ensure the continuity and efficiency of the Service at all times but shall not be liable for any loss, damage, consequential or otherwise, arising out of any failure of the Service caused unless such default, error, omission or loss is due to the neglect of OCE. Notwithstanding the aforementioned, the extent of OCE's liability shall be limited to correcting the failure of the Service.
22. **Confidential Information**
- Except with the prior written consent of OCE, the Customer shall not at any time communicate to any person any confidential information disclosed to him for the purpose of the provision of the Service or discovered by him in the course of the provision and performance of the Service.
23. **Compliance with applicable laws**
- The Customer shall comply with and not to contravene all applicable laws of Malaysia relating to the Service including but not limited to the Communications and Multimedia Act 1998 and its subsidiary legislation, other Acts of Parliament, local by-laws, rules and regulations issued by relevant government bodies and/ or authorities.
24. **Variation**
- OCE reserves the right to amend the Terms and Conditions herein contained and/ or the specific terms at any time and the Customer shall be bound by the amended Terms and Conditions. Notice of the amendment may be given by OCE to the Customer in such manner as OCE deems appropriate.
25. **Severability**
- If any provision herein contained should be invalid, illegal or unenforceable under any applicable law, the legality and enforceability of the remaining provisions shall not be affected or impaired in any way and such invalid, illegal or unenforceable provision shall be deemed deleted.
26. **Assignment**
- The Customer shall not assign any of his rights or obligations under this Agreement to any other person whatsoever except with prior approval of OCE. OCE may assign or novate this Agreement or any part thereof to any body corporate that is a parent company, subsidiary or related company of OCE and consent for the abovementioned is hereby given by the Customer.
27. **Binding on Successors**
- The terms and conditions are binding upon the successors, executors, administrators, personal representatives and assigns of the Customer and upon the substitute and assigns of OCE.
28. **Indulgence and waiver**
- 28.1 No delay or indulgence by OCE in enforcing any term or condition of this Agreement or granting of time by OCE to the Customer shall prejudice the rights or powers of OCE under this Agreement or at law.
- 28.2 Failure by OCE to exercise any part or all of its rights under the terms and conditions of this Agreement or any partial exercise shall not act as a waiver of such right nor shall any waiver by OCE of any breach constitute a continuing waiver in respect of any subsequent or continuing breach.
29. **Notice**
- All notices, requests or other communications required or permitted to be given or made hereunder shall be in writing and delivered personally or sent by ordinary post or legible telefax addressed to the Party at his address set out in this

Agreement or to such other address or facsimile number as any Party may from time to time duly notify to the other Party. Such notices, requests or other communications shall be deemed to have been given by facsimile immediately after transmission thereof or if sent by post, forty-eight (48) hours after posting.

30. **Force Majeure**

OCE shall not be liable for any breach of this Agreement arising from causes beyond its control including but not limited to Acts of God, insurrection or civil disorder, war or military operations, acts of terrorism or sabotage, national or local emergency, acts or omissions of government, highway authority or other competent authority, industrial disputes of any kind (whether or not involving OCE employees), fire, lightning, explosion, flood, subsidence, inclement weather, acts or omissions of persons or bodies for whom OCE is not responsible or any other cause whether similar or dissimilar outside OCE's control.

31. **Governing Law**

This Agreement shall be governed and construed in accordance with the laws of Malaysia.

32. **Customer's Warranties and Acknowledgement**

32.1 The Customer hereby warrants that: -

- (i) he has the legal capacity to enter into this Agreement and is not a minor; and
- (ii) if the Customer is a body corporate, it has the required corporate authority to enter, execute and be bound by the terms and conditions of this Agreement.

32.2 The Customer acknowledges that: -

- (i) he has read and fully understood all the terms and conditions herein upon signing the Application Form and agrees to be bound by the same upon OCE accepting the application; and
- (ii) the details and documents provided to OCE together with the Application Form are true, genuine and contain the latest information and allows OCE to conduct independent verification of the same with any organization or body.

32.3 Notwithstanding the above, OCE reserves the right to reject the application or require the Customer to furnish further details or documents as OCE deems fit and necessary without reserving any reason whatsoever.

32.4 The Customer further acknowledges that: -

- (i) It is OCE's policy to use the Customer's data and personal information acquired through the registration process or through the Customer's use of OCE's products and services for its business purposes;
- (ii) OCE may use the Customer's personal information for the internal purposes of customizing advertisements and content on the web site(s) and OCE's partner sites, providing information to the Customer of other products and services available from OCE and its affiliates, processing and fulfilling Customer request for products and services, responding to Customer enquiries, conducting research for improvement of the Service and statistical analysis and the general operation and maintenance of the Service and its related web site(s); and
- (iii) OCE will disclose the Customer's personal information if required to do so by law or in good faith, if such action is necessary to: -
 - (a) comply with any law enforcement agency, court orders or legal process; and/ or
 - (b) protect and defend the rights or property of OCE and its users.