

**SERVERVAULT CORP.
MASTER SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT (“Agreement”) is entered into as of _____, 200_ (the “Effective Date”) by and between SERVERVAULT CORP., a Delaware corporation with a principal address at 1506 Moran Road, Dulles, Virginia 20166 (“ServerVault”), and _____, a _____ corporation with a principal address at _____ (“Client”).

NOW WHEREFORE, in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. PURPOSE OF AGREEMENT. ServerVault provides professional services (the “Managed Services”), Internet connectivity services (the “Connectivity Services”), the use of ServerVault Furnished Equipment (the “Capital Services”), space in its premises to store and operate any Client Furnished Equipment and/or ServerVault Furnished Equipment (the “Infrastructure Services”), and consulting services (the “Consulting Services”) (each a “Service” and collectively, the “Services”). ServerVault desires to provide certain of such Services to Client and Client desires to receive and compensate ServerVault for such Services.

2. DEFINITIONS. As used in this Agreement:

2.1 Agreement means this Master Services Agreement (“MSA”) and all amendments, exhibits, Service Level Agreements, Contracts and any and all other documents attached hereto or referred to herein, each of which is hereby incorporated herein by reference. In the event of any conflict or inconsistency between the terms of a Contract and the terms of this Agreement, the terms of the Contract shall take precedence and govern to the extent of such inconsistency.

2.2 Service Level Agreement (“SLA”) means the document (other than the Contract) providing certain specifications for performance of the Services. In the event of a conflict or inconsistency between the SLA and this MSA, the SLA shall take precedence and govern over this MSA. In the event of a conflict or inconsistency between a Contract and the SLA, the Contract shall take precedence and govern over the SLA.

2.3 Client Space means that portion(s) of the Internet Data Center(s) for the placement of ServerVault Furnished Equipment or Client Furnished Equipment for use of the Services.

2.4 Client means that person, organization or entity named herein for receipt of the Services. Client may have Users that it serves through its use of or access to the Services, but such Users are not, and shall not be construed as being, clients, customers or users of ServerVault. ServerVault’s responsibility under this Agreement extends only to the Client named herein (*i.e.*, no third party beneficiaries).

2.5 ServerVault Furnished Equipment (SVE) means any equipment or software dedicated by ServerVault to the performance of any Services for Client under a Contract. SVE is owned by ServerVault and all support and maintenance of SVE is ServerVault’s responsibility.

2.6 Client Furnished Equipment (CFE) means any equipment or software owned and/or furnished by the Client and inspected, approved and installed by ServerVault for use in the performance of Services. Client retains title in and to the CFE and ServerVault shall be a bailee of such equipment on Client's behalf. During the Term of the Agreement, Client shall be solely responsible for the purchase and maintenance of any and all third party hardware and software operating, program or maintenance and support licenses or agreements related in any way to the CFE. Notwithstanding the foregoing, ServerVault shall have the right to utilize any such third party maintenance and support arrangements on Client's behalf.

2.7 Client Technology means Client’s proprietary technology, including Client’s Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), trade secrets and any related intellectual property rights throughout the world (whether owned by Client or licensed to Client from a third party).

2.8 Contract means the written agreement provided by ServerVault for execution by Client for the provision of specific Services to the Client, which spells out many of the specifications applicable to such Services. Contracts and Contract Modifications are collectively referred to herein as “Contract(s).”

2.9 Internet Data Center(s) means any of the facilities used by ServerVault to provide the Service(s).

2.10 ServerVault Technology means ServerVault’s proprietary technology, including ServerVault Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related

intellectual property rights throughout the world (whether owned by ServerVault or licensed to ServerVault from a third party) and also including any derivatives, improvements, enhancements or extensions of ServerVault Technology conceived, reduced to practice, or developed during the Term of this Agreement by either party or that have general applicability in the industry.

2.11 *Services* means the Services as defined in Sections 1 and 3 hereof, the Service Level Agreement and/or the Contracts.

2.12 *Client in Good Standing* is a Client whose account(s) is/are paid in full in accordance with the payment terms of this Agreement (i.e., not past due in any manner) and which is not in violation of any terms and conditions of this Agreement, as amended from time to time hereunder. To be in Good Standing, Client must also be in strict compliance with all elements of ServerVault's Acceptable Use Policy (AUP), further defined in Section 14 hereof.

2.13 *User* means any person, organization or entity that Client permits to receive the benefits of, or access to, the Services. Users are not parties to this Agreement and take no rights or benefits hereunder.

2.14 *Work* means any tangible deliverable provided by ServerVault to Client as described in any Contract.

3. SERVICES.

3.1 *Services.* The provision of Services pursuant to this Agreement shall be initiated by a Contract and a Service Level Agreement issued to Client describing the requested Services. Each Contract will contain the prices, initial terms and other information applicable to the Services. No Contract shall be effective until accepted by ServerVault in writing. Upon execution by both parties, each Contract becomes subject to and incorporated by reference into this Agreement. The terms of this Agreement, the SLA, the Contracts and any Contract Modifications shall establish the rights and obligations applicable to the delivery of Services to Client.

3.2 *Service Level Agreements.* ServerVault will provide the Services in accordance with the service level commitments contained in the Service Level Agreement ("SLA") attached hereto or otherwise incorporated herein by reference. If the parties amend a Contract by adding or deleting Services, such amendment shall serve to automatically amend the SLA so as to add or delete the applicable Services.

3.3 *Contract Modifications.* The provision of Services pursuant to this Agreement shall be modified by Contract Modifications describing the requested changes to the Services. Each Contract Modification will contain the prices and other information applicable to such Contract revision. No Contract Modification shall be effective until accepted by ServerVault in writing. Each Contract Modification executed by both parties is automatically incorporated into the Agreement, and all terms, conditions and covenants of the original Agreement shall remain in full force and effect unless and to the extent specifically excluded or modified by the terms of the Contract Modification. The terms of the original Agreement, as amended by such Contract Modification, shall control the Services to Client as of the effective date of such Contract Modification.

4. TERM.

4.1 *Term of Agreement.* This Agreement shall commence on the Effective Date set forth above and shall continue thereafter for so long as any Contract is in force (the "Term of the Agreement").

4.2 *Term of Contract.* The term of each Contract may commence on the Activation Date or such other date as specified in the Contract and shall continue thereafter for the period indicated in the Contract (the "Initial Term"). If an Activation Date is not specifically defined in a Contract, the Activation Date shall be deemed to be the date of execution of such Contract by Client.

4.3 *Renewal of Contract.* At the end of the Initial Term, each Contract shall immediately and automatically renew for additional periods equal to the Initial Term (each a "Renewal Term" and collectively with the Initial Term, the "Contract Term") unless and until either party provides the other party with at least thirty (30) days written notice of non-renewal prior to the end of the Initial Term or Renewal Term then in effect, in which case such Contract shall expire at the end of such Contract Term (a "Contract Expiration"). Expiration of any Contract under this paragraph shall not affect Client's obligation to pay for any and all Services received through such date of Contract Expiration and any and all other amounts otherwise due under the expired Contract and any and all other Contracts.

5. PRICING AND PAYMENT TERMS.

5.1 *Payment Terms.* Client shall pay all fees due according to the prices and terms listed in the Contract(s). The full amount of the initial set-up costs set forth in a Contract, plus charges for the first billing period of Services, are due and payable to ServerVault upon its acceptance of such Contract. Monthly recurring charges for all other months ("Monthly

Recurring Fees”) shall be billed by ServerVault and paid by Client in advance of the provision of Services. All other charges for Services received and expenses incurred during a month, including but not limited to Consulting Services, bandwidth usage fees and travel expenses, will be billed after the end of the month in which such Services were provided and are due and payable by Client within thirty (30) days of the date of each ServerVault invoice relating thereto. Any change by Client in equipment specifications after any applicable SVE has been ordered by ServerVault shall subject Client to whatever penalties or restocking fees are incurred by ServerVault on Client’s behalf.

5.2 Place and Manner of Payment. All payments shall be made to ServerVault’s principal place of business in U.S. dollars unless otherwise specified in the Contract or the actual ServerVault invoice itself.

5.3 Credit Cards and Checks. For accounts that are paid by credit card, Client hereby authorizes ServerVault to charge recurring billings on the recurring billing date (and any final unpaid charges after Contract end), unless and until Client gives ServerVault at least ten (10) days prior written notice of the withdrawal of such authority, or until thirty (30) days following the expiration or termination of a Contract, whichever comes first. A fee of four percent (4%) may be assessed by ServerVault (and shall be paid by Client) for each payment made with a credit card. ServerVault shall have the right to impose a charge for any check, credit card payment or other instrument that is returned, declined or charged-back for any reason by a financial institution or intermediary.

5.4 Taxes. All fees charged by ServerVault for Services are exclusive of all taxes, fees and assessments now in force or enacted in the future imposed on the transaction and/or the delivery of Services, all of which Client shall be responsible for and shall pay in full, except for taxes based on ServerVault’s net income.

5.5 Pricing Disputes. Client must notify ServerVault in writing of any disputed charges within thirty (30) days of the date of the billing for such charges, with an explanation of the basis for such dispute. If Client does not notify ServerVault within that time period, Client shall have irrevocably waived any right to dispute such amounts, either directly or as a set-off, recoupment or defense against future payments or in any action or collection effort by ServerVault. The validity of any such dispute shall also be contingent upon Client’s timely payment of all undisputed ServerVault charges. Client shall remain in Good Standing during the pendency of any payment dispute lodged in accordance herewith.

5.6 Collection; Suspension of Services; Rights to CFE.

(a) **Payment Defaults; Services Suspension.** All invoices more than thirty (30) days past due shall automatically accrue interest from the due date equal to the lesser of (i) 2.0% per month on the past due amount; or (ii) the highest legal rate of interest permitted by law. Without terminating the Agreement, and without waiver or prejudice to any other rights or remedies available hereunder, ServerVault at its option may suspend, interrupt or withdraw Services (a “Suspension”) on any account that is past due by more than forty-five (45) calendar days, by disabling telnet/ftp access and/or disabling the connection to any or all Client servers, any adverse impacts of which are hereby waived and released by Client. In the event of such Suspension, Client must pay ServerVault a reconnection fee of \$1,000 as a condition of reactivation of the Services, in addition to full payment of the balance due on the account (including for the period of Suspension). Reactivation of Services will only be performed during ServerVault’s regular business hours (Monday through Friday, 9:00 a.m. to 6:00 p.m. Eastern Time). As a further condition to such reactivation, ServerVault may, at its option upon written notice to Client, modify the payment terms to require full advance payment for all Services and SVE or require other assurances, including but not limited to a deposit of up to three (3) months of recurring fees, to secure Client’s payment obligations hereunder.

(b) **Rights to CFE; Subordination to Equipment Lender.** Client hereby acknowledges and agrees that, except as otherwise expressly provided herein, under no circumstances (including termination of this Agreement, regardless of cause) shall ServerVault be required to return any CFE to Client, or to any assignee or creditor thereof, unless and until all undisputed fees and charges owed to ServerVault have been fully paid. In addition to such possessory interest, if Client’s account is not paid in full within forty-five (45) days of a Suspension or termination of this Agreement, ServerVault shall have all rights and remedies available to it under the Uniform Commercial Code and applicable statutory and common law, which rights and remedies shall be cumulative. Any deficiency or other unpaid amounts remaining after the exercise of such remedies shall remain Client’s sole responsibility. Notwithstanding the foregoing rights and interests of ServerVault, if Client finances any CFE with a third party (an “Equipment Lender”), ServerVault (i) hereby consents to Client’s assignment to such Equipment Lender of the right to acquire title to such CFE, and (ii) hereby subordinates its possessory interest in and to such CFE to the Equipment Lender’s security interests therein, so as to give the Equipment Lender’s security interests priority over ServerVault’s interests therein under this Agreement and applicable law.

(c) **Shipping Material and Costs.** Following the initial installation of any CFE, ServerVault shall make available to Client the original shipping boxes and material in which the CFE was received. If Client has not made arrangements, at its expense, for the return of such material, ServerVault may dispose thereof. Client shall remain responsible for providing acceptable shipping boxes and material, and for payment of all shipping and delivery costs, related to the return of CFE to the original manufacturer (e.g., for warranty or service claims) and to Client upon termination of this Agreement or the

applicable Contract. Client shall be subject to storage charges at the rate of fifty dollars (\$50.00) per day for any CFE for which acceptable return arrangements have not been made within thirty (30) days of such termination.

5.7 Price Modifications. The prices listed in the Contract(s) shall remain in effect throughout the Contract Term unless modified as set forth herein (a "Price Modification"). ServerVault may increase the prices it charges Client for any Service at any time after the Initial Term of the Contract authorizing such Service, upon thirty (30) days written notice to Client (the "Initial Pricing Notice"). If during such 30-day notice period, Client objects to such price increase in writing ("Objection Notice"), the parties shall seek in good faith during the thirty (30) day period following such Objection Notice, to agree to a price adjustment, which may include other adjustments in the Services. If the parties are unable to so agree during such 30-day period, ServerVault may, at the end of such period, impose a price increase not to exceed the amount set forth in the Initial Pricing Notice (the "Final Pricing Notice"). Within ten (10) days following the Final Pricing Notice, Client may terminate the Contract subject to the price increase (a "Contract Termination") upon thirty (30) days written notice of termination (a "Contract Termination Notice"); *provided, however, that* ServerVault may withdraw its proposed price increase during such 30-day termination notice period and retain the Contract in full force and effect at the original Contract price. Time is of the essence with regard to a Price Modification, and if Client fails to deliver an Objection Notice or a Contract Termination Notice within the applicable periods, the Price Modification shall take effect, the Contract shall be amended accordingly and Client's Contract Termination right hereunder shall expire and be void.

6. CONFIDENTIALITY; INTELLECTUAL PROPERTY OWNERSHIP; LICENSE GRANTS.

6.1 Confidential Information.

(a) **Nondisclosure of Confidential Information.** Each party acknowledges that it will have access to certain non-public confidential information of the other party concerning the other party's business, plans, customers, technology and products, including third party information held in confidence by such other party ("Confidential Information"). Confidential Information shall include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be reasonably expected to be confidential. Confidential Information shall also include, but not be limited to, ServerVault Technology and Client Technology. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by or required to achieve the purposes of this Agreement, nor disclose to any third party (except as required by law), any of the other party's Confidential Information without such party's prior written consent, and will take reasonable precautions to protect the confidentiality of such information, at least as stringent as it takes to protect its own Confidential Information. This includes terms of this MSA, the SLA, Contract and pricing and payment terms contained therein.

(b) **Exceptions.** Information will be deemed not to be Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party, directly or indirectly, from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party, directly or indirectly, from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party without use of the Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

6.2 Intellectual Property.

(a) **Ownership.** Except for the rights expressly granted herein, this Agreement does not transfer from ServerVault to Client any ServerVault Technology, and all right, title and interest in and to such ServerVault Technology is hereby retained solely by ServerVault. Except for the rights expressly granted herein, this Agreement does not transfer from Client to ServerVault any Client Technology, and all right, title and interest in and to such Client Technology is hereby retained solely by Client. ServerVault and Client each agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party.

(b) **General Skills and Knowledge.** Notwithstanding anything in this Agreement to the contrary, ServerVault shall not be prohibited, restricted or enjoined at any time by Client from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including without limitation, information publicly known or available or that has been or could reasonably be acquired in similar work performed for another client of ServerVault.

6.3 License Grants.

(a) **By ServerVault.** Subject to the terms and conditions hereof, ServerVault hereby grants to Client a nonexclusive, royalty-free license, during the Term of the Agreement, to use the ServerVault Technology solely on the SVE or

CFE provided and solely for purposes of using the Service(s). Client shall have no right to use the ServerVault Technology for any purpose other than using the Service(s).

(b) **By Client.** Client agrees that if, in the course of performing the Service(s), it is necessary for ServerVault to access SVE or CFE in order to use Client Technology, ServerVault is hereby granted and shall have a nonexclusive, royalty-free license, during the Term of the Agreement, to use the Client Technology solely for the purposes of delivering the Service(s) to Client. ServerVault shall have no right to use the Client Technology for any purpose other than providing the Service(s).

(c) **Software License Restrictions.** Except as provided in Sections 6.3(a) and (b) above, each party agrees that it will not, and will not permit others to, directly or indirectly:

(i) Copy the software provided by the other party, except as necessary to install on SVE or CFE and for internal archival purposes during the Term of the Agreement. In the event Client makes any copies of the software provided by ServerVault, Client shall reproduce all proprietary notices on such copies, which shall remain the property of ServerVault and subject to the terms hereof;

(ii) Reverse engineer, decompile, disassemble, modify or otherwise attempt to derive source code from the software provided by the other party;

(iii) Sell, lease, license, transfer, give possession of, allow access to or sublicense the software provided by the other party or the Documentation to others, except as provided in Section 5.6(b) above;

(iv) Write or develop any derivative or other software programs, based, in whole or in part, upon the software provided by the other party, the Documentation or any Confidential Information of ServerVault.

6.4 Professional Services; Assignments and License. Commencing upon the date of receipt by ServerVault of full and final payment for any Work provided to Client hereunder, and solely for the Term of the Agreement, ServerVault grants to Client a non-exclusive, non-transferable, royalty free license to use the ServerVault Technology incorporated into the Work solely in connection with the use of the Work as a whole. To the extent that Client or its employees or contractors participate in the creation or development of any ServerVault Technology, Client, on behalf of itself and all of such employees and contractors, hereby assigns to ServerVault all right, title and interest in and to such ServerVault Technology and agrees to take all proper acts as ServerVault deems necessary to secure, perfect or confirm ServerVault's ownership thereof.

7. SERVICE LEVELS AND INTERRUPTIONS. During the Contract Term, ServerVault shall provide for network performance, hardware performance and software performance in accordance with the then-current terms of any mutually agreed SLA, unless Client is not in Good Standing or is otherwise in payment default or breach of this Agreement, any Contract or the SLA. SLA performance penalties do not apply and will not be awarded during any period in which Client is not in Good Standing.

8. USER CONTENT AND CONDUCT. Client is solely responsible for the content and effects of any and all postings, data, materials, links, displays or transmissions created or made available by or through use of the Services (the "Content"), or any other use of the Services by Client or its Users. Client represents and warrants that neither it nor any User will use the Services for unlawful or wrongful purposes (including without limitation, infringement of copyright or trademark, misappropriation of trade secrets, wire fraud, invasion of privacy, pornography, obscenity, defamation, and illegal use, transportation or sale of gambling, tobacco, controlled substances and/or firearms), or to interfere with or disrupt other network users, network services or network equipment. Disruptions include, without limitation, distribution of unsolicited advertising or chain letters, harassment of other network users, wrongly impersonating another user, falsifying one's network identity for improper or illegal purposes, sending unsolicited mass or bulk e-mailings, propagation of computer viruses, and/or using the network or the Services to make unauthorized entry to any other machine or location. Storage of any files or software which can cause intentional disruption of service will be viewed as invoking such functionality. ServerVault may suspend or terminate Services immediately, without prior notice to Client, if ServerVault believes, in good faith, that Client or a User is utilizing the Services for any such illegal or disruptive purpose. Client shall defend, indemnify, and hold harmless ServerVault (and all officers, directors, employees, representatives, parent, affiliates and agents thereof) from and against any and all liabilities, judgments, claims, damages, settlements, expenses and costs (including reasonable attorneys' fees and court costs) arising out of or relating to any such claims relating to Client's or User's use of the Services, including, but not limited to, any use of the Services by any person without Client's consent or authority.

9. TERMINATION.

9.1 Termination of Agreement For Cause. Subject to the provisions of Section 11 below, either party may terminate this Agreement if: (a) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary act or

proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; (b) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary act or proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing; or (c) the other party materially breaches any material term or condition of this Agreement or a Contract and fails to cure such breach within thirty (30) days after receipt of written notice of the same by the terminating party, except in the case of Client's failure to pay fees, which must be cured within five (5) days after receipt of written notice from ServerVault. Client's material uncured breach of any Contract may be deemed by ServerVault to be a breach of all Contracts and this Agreement.

9.2 Expiration of Agreement. This Agreement shall expire of its own terms only upon the expiration or termination of all Contracts entered into hereunder in accordance with the Contract Expiration provisions of Section 4.3 and/or the Contract Termination provisions of Section 5.7 above.

9.3 Effect of Expiration or Termination. Upon the effective date of any expiration or termination of any Contract(s), or, if applicable, of this Agreement:

(a) ServerVault will immediately cease providing the Service(s) specified in such Contract(s) or Agreement;

(b) (i) If the termination of this Agreement or any Contract(s) is due to a material uncured breach by Client (including but not limited to termination of an SLA for cause, violation of an Acceptable Use Policy or payment default under Section 5), (A) any and all payment obligations of Client under this Agreement or such Contract(s) for Services provided, including any excess bandwidth charges or other fees, charges or penalties levied upon ServerVault by a third party provider, and (B) all Monthly Recurring Fees for Services to-be-provided through the balance of all remaining Contract Term(s) shall, after discounting back to the effective date of such termination at an annual rate of six percent (6%), accelerate and become immediately due and payable without further action by ServerVault. ServerVault shall be excused from providing any further Services to Client under such Contracts and the accelerated Monthly Recurring Fees for the balance of such Term(s) shall constitute liquidated damages to ServerVault; or

(ii) If the termination is due to any material uncured breach by ServerVault following compliance with Section 11 below and Section 9.1(c) above, any and all payment obligations of Client under this Agreement for Services only through such date of termination shall immediately become due and payable;

(c) Within thirty (30) days of any such termination of this Agreement, or earlier upon written request, each party shall return all Confidential Information of the other party in its possession and shall not make or retain any copies of such Confidential Information in any form or media; and

(d) Within fifteen (15) days of such expiration or termination, the Client shall return any ServerVault equipment that was supplied to the Client in fulfillment of any terminated work orders. If equipment is not returned within fifteen (15) days, Client shall be liable for the full market value of said equipment to ServerVault.

9.4 Survival. The following provisions shall survive any expiration or termination of this Agreement and/or any Contracts: Sections 4, 5, 6, 8, 9, 10, 11, 12, 13 and 15.

10. REPRESENTATIONS AND WARRANTIES.

10.1 By ServerVault.

(a) **Limited Warranty.** ServerVault will provide the Services hereunder in good faith and in accordance with sound professional standards. Except to the extent otherwise provided in a Contract, the foregoing limited warranty is in lieu of and exclusive of all other representations and warranties of any kind whatsoever.

(b) **Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY STATED IN SECTION 10.1(a) ABOVE, SERVERVAULT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR AMOUNT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, NON-INTERFERENCE, INFORMATIONAL CONTENT, NETWORK PERFORMANCE AND SYSTEM INTEGRATION AND ANY AND ALL WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. Except as otherwise provided in this Agreement, any written materials by ServerVault, or information on ServerVault's web site, shall be for informational purposes only and, whether delivered or disseminated before or after the date of this Agreement, shall not create any express or implied warranties, guaranty of performance or contractual obligations. CLIENT SPECIFICALLY AGREES THAT SERVERVAULT'S SERVICES ARE AVAILABLE TO CLIENT AND ITS

USERS “AS IS” AND “AS AVAILABLE,” AND THAT CLIENT SHALL NOT MAKE ANY REPRESENTATIONS OR CREATE ANY CONTRACTUAL OBLIGATION TO ITS USERS INCONSISTENT WITH THIS SECTION.

10.2 By Client. Client represents and warrants that: (i) it has the legal right and authority and shall continue to have the legal right and authority during the Term of the Agreement to enter into and fulfill its obligations hereunder, and (ii) the use of the Services by Client and its Users will not violate any applicable laws, ordinances or regulations and the Services will only be used for lawful purposes.

11. EXCLUSIVE PERFORMANCE REMEDY. Notwithstanding any other provision of this Agreement, the SLA or a Contract, in the event that ServerVault materially fails to perform one or more Services, or should one or more Services materially fail to comply with any specification under the SLA (collectively, a “Services Failure”), before undertaking any other right or remedy with regard to such Services Failure, including any attempt to terminate this Agreement or any Contract as a result thereof, the Client shall give ServerVault prompt written notice of such Services Failure (the “Failure Notice”) via certified mail, overnight express delivery or facsimile. Upon receipt of such Failure Notice, ServerVault shall have thirty (30) days to cure the Services Failure and/or take such reasonable steps as necessary to prevent its recurrence. If after such period ServerVault has failed to cure or prevent future Services Failures, Client may (a) to the extent such deficient Service is technically and practically divisible from other Services, as determined by ServerVault in its reasonable discretion, secure an alternative provider for the deficient Service and withdraw such Service from the applicable Contract (with all other provisions of such Contract remaining in effect except for an equitable reduction in fees commensurate with the savings resulting to ServerVault from such withdrawal, and (b) to the extent such Services Failure is so significant as to constitute a material breach of the Contract or this Agreement, Client may invoke the provisions applicable to a breach termination under Section 9.1(c) above, for which an additional notice period but no additional cure period shall apply. The provisions of this Section 11 shall constitute Client’s exclusive remedy for any failure or nonperformance by ServerVault of any one or more Service(s).

12. LIMITATIONS OF LIABILITY AND DAMAGES. IN NO EVENT SHALL SERVERVAULT BE LIABLE UNDER OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF DATA, LOSS OF PROFITS, COST OF COVER OR ANY OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY, SUFFERED OR INCURRED BY CLIENT RELATING TO THE SERVICES AND/OR THIS AGREEMENT, EVEN IF SERVERVAULT HAS BEEN ADVISED OF, OR IS AWARE OF, THE POSSIBILITY OF SUCH DAMAGES, INCLUDING ANY LOSSES CAUSED BY ANY INTERVENING CRIMINAL ACT OF A THIRD PARTY. SERVERVAULT’S DAMAGES UNDER OR RELATED TO THIS AGREEMENT, REGARDLESS OF CAUSE, SHALL BE LIMITED TO THE TOTAL COMPENSATION RECEIVED BY SERVERVAULT HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE ACCRUAL OF ANY SUCH ACTION OR CLAIM.

13. INDEMNIFICATION. Each party (the “indemnifying party”) shall indemnify and hold harmless the other party (the “indemnified party”), and the other party’s directors, officers, employees, agents, independent contractors and representatives (the “related parties”), from and against any and all costs, liabilities, losses and expenses, including but not limited to, reasonable attorneys’ fees (collectively, “Losses”), resulting from any claim, suit, action, or proceeding (each, an “Action”) brought by any third party against the indemnified party and/or the related parties arising out of the indemnifying party’s actions or omissions and alleging (a) the infringement or misappropriation of any intellectual property right by the indemnifying party relating to the delivery or use of the Services (but excluding any infringement materially contributed to by the indemnified party); (b) any breach of any right or duty to such third party by the indemnifying party, whether based on breach of contract, tort, strict liability, common law, statutory or other legal basis; and (c) any violation of or failure by such indemnifying party to comply with any applicable laws. Notwithstanding the foregoing, Client shall indemnify, defend and hold ServerVault and its related parties harmless from and against any and all Losses resulting from any damage or destruction to the Client Space, the Internet Data Centers, ServerVault Equipment or other client equipment caused by Client or by any related party, invitee or User thereof. In claiming any indemnification hereunder, the indemnified party shall provide the indemnifying party with written notice of any claim subject to indemnification hereunder.

14. ACCEPTABLE USE POLICY. Execution of this Agreement by Client constitutes agreement to the terms of the ServerVault Acceptable Use Policy, the current version of which is attached as Appendix 1 hereto, including any and all revisions thereto posted from time to time on ServerVault’s website located at www.servervault.com. The Client also agrees to abide by the Acceptable Use Policies of ServerVault’s bandwidth providers, a list of which is available upon request. In the event that ServerVault is notified that a bandwidth provider is considering taking action against ServerVault (termination of service or “throttling”) due to AUP violations of Client or any User, ServerVault may terminate Client’s Services without notice. Upon any such termination, Client shall be responsible for any and all fees due through the balance of the Contract Term(s) of all Contracts hereunder, which shall accelerate and become immediately due and payable, as well as all excess bandwidth charges and any other fees, charges or penalties levied by bandwidth provider(s) on ServerVault.

15. MISCELLANEOUS.

15.1 *Independent Contractor.* The relationship of ServerVault and Client under this Agreement is that of independent contractors and not employer-employee, partners, joint venturers or co-owners. Neither party has the authority to contract for or bind the other.

15.2 *No Lease; Agreement Subordinate to ServerVault Lease.* This Agreement is a services agreement and is not intended to and will not constitute a lease of or any interest in any real property. Client acknowledges and agrees that (a) it has only been permitted to utilize the Client Space, the Internet Data Centers, ServerVault Equipment and any CFE in accordance with this Agreement; (b) Client has not been granted any real property interest in the Client Space or Internet Data Centers; (c) Client has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations or ordinances; (d) this Agreement, to the extent it involves the use of space owned or leased by ServerVault, shall be subordinate to any lease between ServerVault and its landlord(s); and (e) the expiration or termination of any such lease shall terminate this Agreement as to such property, subject to Client retaining any rights or claims it may have against ServerVault arising from the expiration or termination of such lease. Client hereby waives and releases any claims or rights to make a claim that it may have against the landlord(s) under any lease by ServerVault with respect to any equipment or property of Client located in the premises demised to ServerVault by such landlord(s).

15.3 *Notices.* Any notice hereunder shall be in writing and shall be given by registered, certified or express mail, or reliable overnight courier (such as FedEx) addressed to the addresses in this Agreement, or by facsimile if proper receipt is confirmed by telephone within 24 hours. Notice shall be deemed to be given upon the earlier of actual receipt (or confirmation of facsimile) or three (3) days after it has been sent by mail or the equivalent, properly addressed and with postage prepaid. Either party may change its address for such notices by means of notice to the other party given in accordance with this paragraph.

15.4 *Assignment.* Client may not assign this Agreement without the written consent of ServerVault, in whole or in part, either voluntarily or by operation of law, and any attempt to do so shall be void and a breach of this Agreement.

15.5 *Force Majeure.* Except for the obligation to make payments hereunder, neither party shall be considered in breach of this Agreement for any failure or delay in its performance under this Agreement to the extent such failure or delay is due to flood, extreme weather, telecommunications, internet or electrical outages, fire or other natural calamity, acts of government agency, war, riot, civil unrest, work stoppages or strikes, or similar causes beyond that party's control, provided that the delayed party uses reasonable efforts to (a) notify the other party of the circumstances causing the delay, and (b) to resume performance as soon as possible after such cause has ceased or subsided.

15.6 *Governing Law; Jurisdiction and Venue; Attorneys' Fees.* This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia (excluding principles of conflicts of law) and specifically excluding any application of the U. N. Convention on the International Sale of Goods. For all disputes arising out of or related to this Agreement, the SLA or any Contracts, the parties irrevocably consent to the exclusive personal jurisdiction of the Commonwealth of Virginia and exclusive venue of any state court located in Loudoun County, Virginia and the U. S. District Court for the Eastern District of Virginia, Alexandria Division. ALL SUCH ACTIONS SHALL BE TRIED BY THE COURT SITTING WITHOUT A JURY AND THE PARTIES IRREVOCABLY WAIVE THEIR RIGHTS TO A TRIAL BY JURY. Client's address for purposes of service of process shall be the last address designated for notices under this Agreement. In connection with all actions or proceedings in which ServerVault prevails against Client, ServerVault shall be awarded (either in that action or by way of a separate action) its costs and expenses of litigation, including reasonable attorneys' fees and court costs, through trial and all appeals.

15.7 *Injunctive Relief.* Except as otherwise provided herein, the parties hereby acknowledge and agree that in the event of any uncured breach of this Agreement, the parties would be irreparably harmed and could not be made whole by monetary damages. Each party hereto agrees (i) not to assert by way of defense or otherwise that a remedy at law would be adequate, and (ii) in addition to any other remedy to which the parties may be entitled, that the remedy of specific performance of this Agreement is appropriate in any action in court.

15.8 *Headings.* The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

15.9 *Entire Agreement; Waiver.* This Agreement (including SLA and Contracts) constitutes the entire agreement between ServerVault and Client with respect to the subject matter hereof. All prior agreements, representations and statements with respect to such subject matter are merged into and superseded hereby. Any failure of either party to exercise or enforce its rights under this Agreement or Contracts shall not act as a waiver of continuing or subsequent breaches.

15.10 Severability. In the event any provision of this Agreement is determined to be unenforceable, that provision shall be enforced to the maximum extent permissible under applicable law, and the other provisions of this Agreement shall remain in full force and effect.

15.11 Non-Solicitation. During the Term of the Agreement and for a period of one (1) year thereafter, Client shall not solicit or hire the services of any employee, contractor or subcontractor of ServerVault, without the prior written consent of ServerVault.

15.12 Substitution. ServerVault may substitute, change or modify the SVE at any time, but shall not thereby substantially diminish the technical parameters of the Services.

15.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

15.14 No Third Party Beneficiaries. Except as expressly provided in this Agreement, there are not intended to be, and shall not be deemed to be, any third party beneficiaries to this Agreement, including but not limited to the insurance providers for either party, the Users and/or the clients of Client.

15.15 Amendment. This Agreement may be modified only by a further writing executed by both parties.

16. CLIENT CONTACTS. Client authorizes these specific individuals to act on its behalf in connection with the matters listed. Client shall be responsible for keeping the following information current and hereby waives any right or claim against ServerVault resulting from an incorrect or outdated Client contact. ServerVault will not take any direction from individuals not listed here. PLEASE PRINT CLEARLY.

AUTHORIZED BILLING CONTACT

Name: _____
Phone: _____ Fax: _____
Email: _____

IN WITNESS WHEREOF, the parties to this Agreement have read the foregoing terms and conditions and all other documents incorporated herein and agree to such terms as of the Effective Date.

SERVERVAULT CORP.

CLIENT

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address for Notices:
1506 Moran Road
Dulles, VA 20166
Attn:
Fax: 703-652-5907

Address for Notices:

Attn: _____
Fax: _____

Appendix 1

ServerVault Acceptable Use Policy

As a provider of Internet related services, ServerVault provides unlimited access to the Internet for its customers. However, that access is not regulated or controlled in any manner. When customers disseminate information through the Internet, they also must keep in mind that ServerVault does not review, edit, censor, or take responsibility for any information its customers may create. Accordingly, ServerVault has developed the following rules comprising an Acceptable Use Policy (the "Rules"). Complaints regarding customers violating the Rules may be sent to abuse@ServerVault.com.

The Rules are designed to enhance the quality of our Internet services and to protect our customers, and the Internet community as a whole, from illegal, irresponsible, or disruptive Internet activities. These Rules apply to all customers of ServerVault, and their employees, agents, contractors, and/or other users, who obtain services from ServerVault directly or through access to or use of the Internet. ServerVault hopes and expects that common sense and good judgment will guide all of our customers' and users' Internet activities.

When users place information on the Internet, they have the same liability as other authors for copyright infringement, defamation, and other harmful speech. For these reasons, customers are in violation of the Rules when they, their affiliates or subsidiaries engage in the following activities:

Posting or Transmitting Content. Customer acknowledges that ServerVault exercises no control over the content of the information passing through Customer's site(s) and that it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations and these Rules. Pornography is not permitted.

Spamming. Unsolicited commercial email (UCE) or unsolicited bulk email (UBE), known as "spamming", is a prohibited activity at ServerVault, and, in some cases, is a violation of the law in the Commonwealth of Virginia. Customers may not run an open mail relay of any kind (SMTP relay, web-to-mail gateway scripts, unauthenticated proxies, etc.) as this configuration can be used as a platform for spamming by outside parties. Furthermore, the practice of "spam-vertizing", or sending UCE/UBE from a third-party organization for the purposes of advertising a resource that it hosted at ServerVault is prohibited by our policy. ALL MAILING LISTS WHICH RELATE TO RESOURCES HOSTED AT SERVERVAULT MUST BE OF A "DOUBLE OPT-IN" TYPE WHICH REQUIRES A CONFIRMATION EMAIL FROM THE MAILING LIST SUBSCRIBER TO BE SENT AFTER THEY HAVE RECEIVED AN EMAILED NOTIFICATION THAT THEY HAVE ATTEMPTED TO SUBSCRIBE TO THE MAILING LIST. "OPT-OUT", "SINGLE OPT-IN", AND MAILING LISTS THAT HAVE BEEN PURCHASED FROM A THIRD-PARTY ARE FORBIDDEN. Proof of compliance may be required by ServerVault at any time and will be required should ServerVault receive any SPAM complaints regarding one of its clients. Unsolicited, commercial mass e-mailing (known as "spamming") is a prohibited practice at ServerVault and is a violation of the law of the Commonwealth of Virginia. All non-European traffic passes through servers located in ServerVault's Virginia location, and Customer is responsible for complying with Virginia law.

Illegal/Unauthorized Access to Other Computers or Networks. The illegal or unauthorized accessing (often known as "hacking" or "cracking") of computers or networks carries potential civil and criminal penalties under both federal laws and the laws of most states. The ServerVault network may not be used to circumvent the user authentication or security of any host, network, or account, either on the ServerVault network or elsewhere. Probing the security of other hosts in any form is also prohibited.

Intellectual Property. Customer and its users may not engage in any activities or actions that infringe or misappropriate the intellectual property rights of others, including, but not limited to, using third party copyrighted materials without appropriate permission, using third party trademarks without appropriate permission or attribution, and using or distributing third party information protected as a trade secret in violation of a duty of confidentiality.

Privacy. ServerVault supports the right to privacy on the Internet. Customers may not engage in any activities or actions that would violate the personal privacy rights of others, including but not limited to:

- collecting and distributing information about Internet users without their permission, except as permitted by applicable law;
- sending, posting, or hosting harassing, abusive, libelous, or obscene materials or assisting in any similar activities related thereto;
- or intentionally omitting, deleting, forging, or misrepresenting transmission information, including headers, return mailing, and Internet protocol addresses.

Abuses of System and Network Resources. Any activities which adversely affect the ability of other customers or systems to use ServerVault services or the Internet are prohibited, including but not limited to:

- denial of services (DoS) attacks against another network host or individual user;
- permitting use of mail services, mail forwarding capabilities, POP accounts, or autoresponders other than for the customer's own use;
- subverting, attempting to subvert (probe or scan), or aiding others to subvert the security of the ServerVault system, facilities, and/or equipment;
- or providing passwords or other similar security related information to others.

Other Activities. Whether lawful or unlawful, activities that ServerVault determines to be harmful to its customers, operations, or reputation, including any activities that restrict or inhibit any other user from using and enjoying the service or the Internet, are prohibited and are a violation of the Rules.

ServerVault will cooperate fully with investigations of violations of systems or network security by Customer at other sites, including investigations by law enforcement authorities involving suspected criminal violations.

Please be aware that ServerVault reserves the right to revise, amend, or modify this AUP, our Master Services Agreement and our other policies and agreements at any time and in any manner without notice. ServerVault reserves the right to cancel any account we find in violation of any of the above activities.