



MASTER SERVICES AGREEMENT

This **Master Services Agreement**, dated as of _____ is made and entered into between TeraGo Networks Inc. (“**TeraGo**”) whose principal place of business is located at 55 Commerce Valley Drive, West, Suite 800, Thornhill, Ontario, L3T 7V9 and _____ (“**Customer**”) as set out in the Services Order Form.

In consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the parties hereto agree to be bound by the terms and subject to the conditions of this Agreement. This Agreement consists of this cover page, the terms and conditions on the following pages, the following exhibits and schedules which are incorporated by reference into this Agreement and any other written agreement between TeraGo and the Customer regarding the Services.

1. **EXHIBIT A – ORDER FORM(S):** *Establishes the overall framework and summary for the engagement between TeraGo and the Customer, including Customer billing and the Services to which the Customer wishes to subscribe, together with pricing, applicable one-time fees, quantities and associated term length, and applicable site level forms which are attached as Schedules to the Order Form(s). Orders may be amended or replaced, depending on the circumstances of the Customer requirements and upon written agreement from TeraGo.*
2. **EXHIBIT B – CREDIT APPLICATION FORM:** *Provides additional background information on the Customer necessary for TeraGo to conduct appropriate credit inquiries.*
3. **EXHIBIT C – SERVICE LEVEL AGREEMENT:** *Sets out the service level commitments of TeraGo for the Services to which the Customer wishes to subscribe.*
4. **ACCEPTABLE USE POLICY:** *Sets out the policy in which usage of the Services provided to the Customer by TeraGo shall be subject to. TeraGo’s Acceptable Use Policy is available at www.terago.ca. The Customer shall not use or permit usage of any Service for any improper use. TeraGo may change its Acceptable Use Policy from time to time. It is the responsibility of the Customer to access and inform itself, from time to time, as to the provisions of TeraGo’s Acceptable Use Policy. The Customer acknowledges having read and accepted TeraGo’s Acceptable Use Policy prior to executing this Agreement.*

TERMS AND CONDITIONS

These Terms and Conditions (as may be revised from time to time by TeraGo upon written notice to the Customer) apply to TeraGo’s provision, and the Customer’s use, of the Services under the Agreement.

1. Definitions

Capitalized terms and acronyms in this Agreement have the following meaning:

“**Activation**” means that a Service has been installed or initiated in accordance with the requirements of the related Order Form;

“**Affiliate**” means with respect to either party, any other entity controlling, controlled by or under common control of a party, where “control” means the holding of more than fifty percent (50%) of equity ownership;

“**Agreement**” means collectively, this Master Services Agreement, TeraGo’s Acceptable Use Policy, the SLA, the terms of each Order Form accepted by TeraGo, any additional service terms and conditions, schedules or exhibits;

“**Charges**” means the fees and charges in the applicable Order Form;

“**Confidential Information**” means information disclosed by the Customer or TeraGo to the other party that is designated at the time of disclosure as confidential (or like designation), is disclosed in circumstances of confidence or would be understood by the Customer and TeraGo, exercising reasonable business judgment, to be confidential.

“Confidential Information” shall not include information that: (a) is known by the receiving party or is otherwise generally available to the public prior to the receipt thereof; (b) becomes known or generally available to the public (other than by act of the recipient) after its disclosure; (c) is disclosed or made available in writing to the recipient by a third party without imposition of similar confidentiality obligations; or (d) is required to be disclosed in compliance with any applicable law (including securities law and regulations), under any applicable stock exchange rules, under

TeraGo Networks Inc.
55 Commerce Valley Drive West, #800,
Thornhill, Ontario L3T 7V9
P: 1-866-TeraGo-1 (1-866-837-2461) F: 1-905-707-6212



order of a court of competent jurisdiction or other similar requirement of a governmental agency, provided that the disclosing party is provided with immediate notice of such requirement (where practicable) so as to enable the disclosing party, if it so chooses, to seek to obtain a judicial or other applicable order prohibiting or limiting the disclosure required;

“**Content**” means information made available, displayed or transmitted in connection with a Service;

“**Customer Equipment**” means all material, equipment and software placed by or for the Customer in a colocation space provided by TeraGo and excludes all TeraGo Equipment;

“**Force Majeure Event**” has the meaning ascribed to such term in Section 12.1;

“**Order Form**” means an order submitted by the Customer for Services under this Agreement, in the form provided for in Exhibit A and to be updated from time to time upon addition to or change of Services;

“**Service Interruption**” has occurred when a Customer reports that it has no access to Services. Service Interruption shall not include (a) scheduled or Emergency Maintenance (as defined in the SLA), (b) interruption resulting from any acts or omissions of the Customer, Users or other third parties, or (c) interruption resulting from problems related to a Force Majeure Event or otherwise outside of TeraGo’s control and responsibility, including but not limited to problems related to the Customer’s Local Area Network (LAN), Customer’s equipment or any failure caused by power outages, problems in the Customer’s location, denial of service attacks, or outages or problems occurring outside of TeraGo’s network;

“**Services**” means the services TeraGo shall provide to the Customer according to the applicable Order Form;

“**SLA**” means the Service Level Agreement that forms part of the Agreement;

“**TeraGo Equipment**” means all material, equipment and software provided by TeraGo, including any equipment or software set out in the Order Form, and any other equipment used in the provision of the Services; and

“**Users**” means any person the Customer permits to access or use the Services.

2. Ordering Services

2.1 **Procedures for Order Services.** The Customer may at any time, and from time to time, order any of the Services offered for sale by TeraGo at the particular time pursuant to the following procedure:

- (a) The Customer initiates the Service order process by contacting TeraGo, either verbally or in writing (including by email or fax), requesting the Service(s) required by the Customer.
- (b) Upon receipt of a request for the Services from the Customer, TeraGo shall assemble and provide (including by email or fax) the Customer with an Order Form (which shall include a quote for the Service).
- (c) If, upon receipt of the Order Form from TeraGo, the Customer finds the Order Form acceptable, the Customer shall execute the Order Form, subject to the terms and conditions of this Agreement and return the Order Form to TeraGo.
- (d) The Order Form, this Agreement and any applicable quotes shall become a binding agreement upon execution of the Order Form by the parties.

2.2 **Co-Operation of Customer.** Upon execution of an Order Form and this Agreement, the Customer shall take all reasonable action necessary to give effect to each Order Form and the Agreement.

3. Term and Termination

3.1 **Service Term.** The term of this Agreement begins on the date of the first Order Form that is executed for a Service and will continue so long as any Order Form remains in effect, subject to earlier termination in accordance with this Section 3. Unless otherwise stated in the Agreement, the term for each Service is as set forth in the applicable Order Form (the “**Initial Service Term**”), beginning on Activation of each Service. The Service Term shall automatically renew for successive one (1) year periods (the “**Renewal Service Term**”), unless either party terminates such Service by providing written notice of such intention no later than ninety (90) days prior to the end of the Initial Service Term or any Renewal Service Term, as the case may be. For clarity, written notice received within (or inside of) the ninety (90) day period prior to the end of the Initial Service (or Renewal Term), will mean that termination will be effective ninety (90) days after the following or next Renewal Term. The Initial Service Term and any Renewal Service Term(s) are collectively referred to as the “**Service Term**”.



3.2 **Termination by TeraGo.** Without incurring liability, TeraGo may terminate the Agreement or suspend, restrict or terminate any or all Services, upon prior written notice (and failure to cure, if applicable) set out in parentheses after each ground for termination, if the Customer:

- (a) fails to pay any Charge when due, including upon any invoice not paid within thirty (30) days after the invoice due date (five (5) business days' notice);
- (b) violates or breaches any of the provisions of the Agreement, other than (a) above (thirty (30) days' notice);
- (c) becomes bankrupt or insolvent (no notice required);
- (d) does not provide a reasonable security deposit or letter of credit, if and as requested (five (5) business days' notice); or
- (e) where any law, order or commercially unreasonable impediment prohibits TeraGo from furnishing such Services (the lesser of thirty (30) days' notice or as long as compliance allows).

If TeraGo terminates this Agreement or one or more Services pursuant to this Section 3.2 (excluding paragraph (e) above), Section 6.4 or Section 6.5, the Customer shall pay to TeraGo, as liquidated damages and not as a penalty, and in addition to any validly incurred Charges to the date of termination, an amount which is equal to the sum of all remaining fees for the Term(s) as set out in the relevant Order Form(s).

3.3 **Termination by Customer for Cause.** Without incurring liability, the Customer may terminate the applicable Service(s) upon thirty (30) days' prior written notice, if TeraGo violates any of the material provisions of the Agreement, unless TeraGo cures its violation within the thirty (30) day notice period.

3.4 **Termination by Customer without Cause.** If the Customer terminates this Agreement or one or more Services for any reason other than as permitted under Section 3.3, the Customer shall pay to TeraGo, as liquidated damages and not as a penalty, and in addition to any validly incurred Charges to the date of termination, an amount which is equal to the sum of all remaining fees for the Term(s) as set out in the relevant Order Form(s) and Section 3.1.

- (a) **Termination by TeraGo without Cause.** Notwithstanding any other provision herein contained in this Agreement, TeraGo shall have the right to terminate this Agreement without cause at any time without incurring any liability there, (i) with at least thirty (30) days' prior written notice of such termination, or (ii) immediately upon giving notice.

3.5 **Disputes.** The Customer shall give notice of all invoice inquiries within ninety (90) days of the invoice date and, with such notice, provide any supporting documentation. Failure to do so shall constitute acceptance of accuracy of entire contents of the invoice, and the Customer will have no further right to challenge the accuracy of any portion of the invoice. The Customer agrees and acknowledges that the undisputed portion of any disputed invoice and all subsequent invoices shall be paid by the Customer on a timely basis or the Service(s) may be terminated by TeraGo.

4. Service Obligations and Warranties

4.1 TeraGo will deliver Services in a professional manner in accordance with industry standards applicable to the Services, and the Services will conform to the specifications set out in the applicable Order Form. Service levels and related support and maintenance terms shall be as provided in the SLA.

4.2 In the event of the interruption, failure or breakdown in the Services, or of the loss or spoiling of the Customer's programs, data or Content, TeraGo makes no warranty that any of them will be restored. The Customer assumes full responsibility for backing up its own programs, data and Content.

4.3 TeraGo's obligations under this Agreement do not extend to any relocation, maintenance, repair, rearrangement, alteration, modification or adjustment which becomes necessary due to, resulting from or in any way related to, damage, misuse or failure on the part of the Customer.

4.4 EXCEPT AS SET OUT IN THIS AGREEMENT, TERAGO MAKES NO REPRESENTATIONS, WARRANTIES, COVENANTS OR GUARANTEES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TERAGO MAKES NO REPRESENTATIONS, WARRANTIES, COVENANTS OR GUARANTEES RELATING TO: (A) NETWORK TRANSMISSION CAPACITY; (B) WHETHER DATA OR CONTENT WILL BE TRANSMITTED IN AN UNCORRUPTED FORM; (C) THE SECURITY OF ANY TRANSACTION, COMMUNICATION, FACILITY OR SERVICE; (D) THE FAULT TOLERANCE OF THE SERVICES OR THE SUITABILITY OF SAME FOR CERTAIN ACTIVITIES; (E) THE COMPATIBILITY OF THE SERVICES OR THE FACILITIES (INCLUDING TERAGO EQUIPMENT) OR SOFTWARE WITH THE CUSTOMER'S



USE, INCLUDING THE CUSTOMER'S CONTENT, DATA, PROGRAMS OR TRANSMISSIONS; OR (F) FREEDOM FROM ERROR, NON-INTERRUPTION, NON-INTERFERENCE OR NON-INFRINGEMENT.

4.5 **Use of Subcontractors.** TeraGo may engage subcontractors or third parties to assist TeraGo to provide the Services, provided, however, that TeraGo is and will remain fully responsible and liable to Customer for the performance of its obligations under this Agreement.

5. **Property and Equipment**

5.1 **Title and Care.** The parties agree that all title and ownership of TeraGo Equipment shall at all times remain with TeraGo or its subcontractors, as the case may be. The Customer shall at all times be responsible to TeraGo for all loss and/or damage to the TeraGo Equipment, except where directly caused by weather factors, by the negligence of TeraGo or where the Customer has no means of access to or control over such TeraGo Equipment. The Customer shall return any TeraGo Equipment upon the termination of the related Services or termination of the Agreement in the same condition in which they were furnished to the Customer, reasonable wear and tear excepted. If applicable, the Customer shall allow or secure permission for TeraGo to remove any TeraGo Equipment from the property and premises of the Customer and any customer or landlord of the Customer upon the termination of the related Services or termination of the Agreement. TeraGo Equipment shall not be encumbered, loaned, leased or sold by the Customer.

5.2 **Customer Platform.** The Customer shall be responsible for procuring and maintaining the platform elements, including any equipment, hardware and computing environment, as may be designated by TeraGo from time to time in an applicable Order Form or otherwise ("**Customer Platform**"), in accordance with the applicable provider's specifications.

5.3 **Limited Software License.** To the extent that TeraGo provides software in relation to the Services or associated hardware or TeraGo Equipment, TeraGo grants the Customer a temporary non-exclusive and non-transferable license to such software for the sole purpose of enabling the Customer to use in object code form such software or hardware, as the case may be, for its own internal business purposes in accordance with this Agreement, provided that the Customer (a) uses the software solely in connection with the Services and in accordance with the applicable written and electronic documentation ("**Documentation**"), (b) does not reverse engineer the software to derive its source code, (c) does not copy or download the software, except as permitted in the Documentation, and (d) complies with any additional terms and conditions that are provided with any third-party software.

5.4 **Equipment Leased by Customer.** The Customer's rights and interests in any TeraGo Equipment leased from or through TeraGo will be set out in the applicable Order Form.

5.5 **Rights to Service Specifics.** The Customer obtains no proprietary right or interest in, or any right to the use of, any specific type of facility, service, equipment, number, domain, process or code associated with the Services. As between the Customer and TeraGo, all right, title and interest to such items remain at all times solely with TeraGo.

5.6 **Replacement/Alteration of Equipment.** TeraGo may, at its own cost, in instances necessitated for reasons critical to the performance of TeraGo's network or important to quality or consistency of its provisioning of the Services, in TeraGo's absolute discretion and without notice to the Customer, make changes to or replace the TeraGo Equipment and any other equipment used in connection with the provision of the Services, provided that the quality is not materially adversely affected. In other instances, where in TeraGo's opinion the TeraGo Equipment or any other equipment used in connection with the provision of the Services should be changed or replaced, TeraGo agrees to consult with the Customer and TeraGo and the Customer, acting reasonably, will mutually agree on a schedule for the replacement of such equipment.

6. **Service Use**

6.1 **Emergency or Maintenance.** The Customer agrees that it may be necessary for TeraGo or a TeraGo subcontractor to temporarily suspend service for technical or maintenance reasons. Such suspension of service will not be a Service Interruption.

6.2 **Interconnection.** The Customer may choose to interconnect Services with services or facilities of other communications carriers, and with private systems, including the Customer Platform, where those services and facilities are compatible with the Services and applicable product and industry standards. The Customer is solely responsible for such third-party relationships, including but not limited to interconnection, interoperation, maintenance and performance.

6.3 **Compliance with Laws and Policies.** TeraGo shall at all times provide the Services in compliance with all applicable laws.



The Customer shall be responsible for the Customer's and Users' use of the Services and content. The Customer acknowledges that TeraGo does not own or have any control over the Content accessible or that may be available to or by the Customer or its Users through the use of the Services. The Customer's and Users' use of the Services and Content shall, at all times, comply with this Agreement, all applicable laws and all applicable policies, including TeraGo's Acceptable Use Policy (available at www.terago.ca), and the Customer shall not use nor permit usage of any Service for any improper use. Customer will promptly notify TeraGo of any unauthorized use of the Services, security breaches of the Services or any other breaches in compliance with this section. The Customer represents to TeraGo that it will not use any of the Services to process any European personal data that is subject to the General Data Protection Regulations (GDPR) of the European Union and if it is doing so, it will promptly notify TeraGo in writing. The Customer shall be responsible for any incremental costs and expenses TeraGo may incur to facilitate its provisioning of, or the Customer's use of the Services to comply with GDPR.

6.4 **Resale.** Unless otherwise agreed upon or specifically set out in an Order Form, the Customer shall not resell the Services or TeraGo Equipment (or otherwise make the Services or TeraGo Equipment available to third parties for value). If the Customer has resold Services or TeraGo Equipment without the consent of TeraGo, TeraGo shall have the right to (a) suspend Services or invoke return of the TeraGo Equipment, as applicable, (b) terminate this Agreement or the applicable Service(s) and (c) apply a premium to all resold Services or TeraGo Equipment.

6.5 **Suspension or Termination due to Improper Use.** Unless otherwise required by law or regulatory authority, TeraGo may, acting reasonably and without incurring liability: (a) cancel a request for Services; (b) suspend or terminate a Service(s) and/or the Agreement; (c) temporarily block Service(s) to Customer premises; (d) remove any materials on any website, electronic mail transmission, news group, or other material created or accessible over or through the Services; or (e) cooperate with law enforcement or the appropriate legal authorities, if TeraGo deems such action necessary to prevent improper use, to protect against fraud or the commission of suspected illegal activities, to otherwise protect its personnel, agents, facilities or services, to prevent the Customer's or Users' use of the Services from interfering with any TeraGo Equipment or TeraGo's ability to provide the Services to the Customer or others or otherwise to remedy a breach of this Agreement or a violation of the Acceptable Use Policy by the Customer. TeraGo will use reasonable efforts to provide notice to the Customer before taking action under this Section.

7. Limitation of Liability

7.1 EXCEPT IN RESPECT OF AMOUNTS OWING UNDER THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHATSOEVER, WHETHER ARISING IN NEGLIGENCE, TORT, STATUTE, EQUITY, CONTRACT, COMMON LAW OR ANY OTHER CAUSE OF ACTION OR LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUE, LOSS OF DATA, LOST BUSINESS, FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF THE SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

7.2 TERAGO SHALL, UNDER NO CIRCUMSTANCES, BE LIABLE TO THE CUSTOMER FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: (A) FACILITIES, EQUIPMENT, SOFTWARE, APPLICATIONS, SERVICES OR CONTENT PROVIDED BY THE CUSTOMER, USERS OR THIRD PARTIES; (B) SERVICE INTERRUPTIONS, DEGRADATION, ERRORS, DELAYS OR DEFECTS IN TRANSMISSION (OTHER THAN AS SPECIFIED IN THE SLA); (C) UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION OR LOSS OR DESTRUCTION OF THE CUSTOMER'S, USERS OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS BY ANY MEANS (INCLUDING, WITHOUT LIMITATION, VIRUSES); OR (D) ANY ACT OR OMISSION OF THE CUSTOMER, USERS OR THIRD PARTIES.

7.3 IN THE EVENT THAT TERAGO IS FOUND LIABLE IN ANY MANNER, THE CUSTOMER AGREES, ACKNOWLEDGES AND CONFIRMS THAT TERAGO'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE PROVISION OF THE SERVICES AND RELATED EQUIPMENT, AND THE CUSTOMER'S EXCLUSIVE REMEDY, SHALL BE LIMITED TO THE FEE PAID BY THE CUSTOMER FOR THE APPLICABLE SERVICE(S) DURING THE 6 MONTHS PRIOR TO THE INCIDENT AT ISSUE, AND THAT THIS LIMITATION IS FAIR AND REASONABLE IN THE COMMERCIAL CIRCUMSTANCES OF THIS AGREEMENT AND THAT TERAGO WOULD NOT HAVE ENTERED INTO THIS AGREEMENT BUT FOR THE CUSTOMER'S AGREEMENT TO LIMIT TERAGO'S LIABILITY IN THE MANNER, AND THE EXTENT, PROVIDED FOR HEREIN.



8. Indemnity

8.1 The Customer shall indemnify and save TeraGo, its Affiliates and each of their directors, officers, employees and agents harmless from and against all loss, liability, cost or damages of any type and expense, including reasonable legal fees (of a counsel which TeraGo may select on its own) and disbursements, relating to (a) injury or death or damage or loss of physical property caused by the Customer's acts or omissions, (b) infringement of third party intellectual property right or right of privacy in connection with the use of the Service(s) or otherwise, where the infringement arises from the Customer's unauthorized modification, or combination or connection of the Service(s) or TeraGo Equipment or the Customer's other acts or omissions specifically relating to its use of the Service or transmissions, information, data, content or programs thereon or associated therewith, (c) TeraGo's required compliance with privacy laws as a result of the needs or requirements of the Customer, including the General Data Protection Regulations (GDPR) of the European Union, as may be amended from time to time, (d) the Customer's Content, business practices, operations or conduct, including but not limited to claims for libel, slander, harassment, improper use of the Service(s) or related facilities, and whether attributable to the Customer or the Customer's agents, contractors or Users.

9. Confidential Information

9.1 Each party agrees not to disclose the Confidential Information of the other party without the other party's written consent, except as required to be disclosed in compliance with any applicable law (including securities law and regulations), under any applicable stock exchange rules, under order of a court of competent jurisdiction or other similar requirement of a governmental agency, and agrees to take such care to protect the confidentiality of the Confidential Information as would be taken by a reasonable party to protect its own confidential information from disclosure (and which will be no less than reasonable care). However, a party may also disclose the Confidential Information to third parties (e.g. Affiliates and subcontractors) who have a need to know for purposes of carrying out or enforcing this Agreement and who are bound by confidentiality terms substantially the same and as protective as those of this Agreement.

9.2 Unless the Customer consents in writing or disclosure is made pursuant to a legal or regulatory requirement, all information regarding the Customer, other than the Customer's name, address, listed telephone number, domain name or "IP" number, may not be disclosed to anyone other than (a) a person who (in TeraGo's reasonable judgment) is seeking the information as the Customer's agent, or (b) an agent retained by TeraGo in the collection of the Customer's account, provided disclosure is made on a confidential basis and the information is required for, and is to be used only for, the stated purpose.

10. Intellectual Property

10.1 **No Infringement of Intellectual Property.** Customer represents and warrants that (i) it owns all right, title and interest to, or have appropriate license or other rights to use, all data and content accessed or transmitted using the Services by Customer ("**Customer-Provided Materials**"), and (ii) neither the Customer-Provided Materials nor Customer's use of the Services, will infringe the intellectual property or other proprietary rights of TeraGo or any third party.

10.2 **TeraGo Intellectual Property.** Customer acknowledges that all right, title and interest in any and all technology, including without limitation the hardware and software provided or made available by TeraGo in connection with the Services and any trademarks or service marks of TeraGo or third parties whose products or services are utilized in connection with TeraGo's provision of the Services (other than Customer-Provided Materials) (collectively, the "**TeraGo Intellectual Property**") is vested in TeraGo and/or in TeraGo's licensors. Customer shall have no right, title, claims or interest in or to the TeraGo Intellectual Property, and Customer may not use the TeraGo Intellectual Property or related documentation except as expressly provided herein, nor copy, modify or translate the TeraGo Intellectual Property or related documentation, or decompile, disassemble or reverse engineer the TeraGo Intellectual Property, or grant any other person or entity the right to do so. Unless otherwise expressly stated in this Agreement, Customer is not authorized to distribute or to authorize others to distribute the TeraGo Intellectual Property in any manner without the prior written consent of TeraGo.

10.3 **Customer Intellectual Property.** TeraGo acknowledges that all right, title or interest in any and all technology that is part of or provided with the Customer-Provided Materials, and any and all trademarks or service marks of Customer or third parties whose products or services comprise all or a part of the Customer-Provided Materials (collectively, the "**Customer Intellectual Property**") is vested in Customer and/or in Customer's licensors. Unless otherwise expressly stated in this Agreement, TeraGo shall have no right, title, claims or interest in or to the Customer Intellectual Property. Other than to the extent necessary or appropriate to provide the Services or as otherwise permitted under this Agreement, TeraGo shall not use, copy, modify, distribute or translate Customer Intellectual



Property or related documentation, or decompile or disassemble or reverse engineer the Customer Intellectual Property, or grant any other person or entity the right to do so. Unless otherwise expressly stated in this Agreement, TeraGo is not authorized to distribute or to authorize others to distribute the Customer Intellectual Property in any manner without the prior written consent of Customer.

11. Invoicing and Payment

11.1 **Pricing.** Prices stipulated in the Order Form are quoted in Canadian dollars exclusive of applicable taxes. Customer shall be responsible for the timely payment of all fees and applicable taxes including withholding taxes where applicable. Prices may include certain third-party costs including software licensing, energy or utility usage costs, equipment, and or professional services as required by the Customer. Such additional third-party costs may be subject to increases that are not within the control of TeraGo and will be charged at current market prices to the Customer.

11.2 **Invoicing.** The Customer shall be invoiced thirty (30) days in advance (the "**Billing Date**") for all Service(s) provided under this Agreement with payment due within thirty (30) days of the Billing Date (the "**Payment Due Date**"). When any payment falls due on a day other than a business day (Monday to Friday excluding statutory holidays), the Payment Due Date shall be the following business day. Payments will be credited to the account of the Customer as of the date the payment is received by TeraGo. Monthly recurring Charges for Service(s) will not be considered in arrears until the business day following the first calendar day of the month when Service(s) are provided. The Customer shall be responsible for and will reimburse TeraGo for any Charges or banking fees incurred by TeraGo as a result of NSF cheques or payments delivered by the Customer. In the event of non-payment of an invoice, TeraGo may suspend any or all Service(s) after providing the Customer with five (5) Business Days prior written notice. Suspended Service(s) shall be restored to the Customer upon payment in full to TeraGo of all amounts owing plus all costs and expenses incurred by TeraGo relating to the suspension and restoration of such Service(s). The foregoing right of suspension shall be in addition to any other rights or remedies TeraGo may have under this Agreement or at law.

11.3 **Interest.** Without prejudice to the right of TeraGo to receive payment when due, TeraGo may assess a late payment charge of 1.5% per month or fraction of a month (equivalent to 18% per annum) on the unpaid balance. The late payment charge provides for recoupment of administration and carrying charges relating to amounts that are owed to TeraGo and are in arrears.

12. General Provisions

12.1 **Force Majeure.** Neither party will be liable for any event beyond its reasonable control, including but not limited to acts of God, inclement weather including lightning, fibre cuts, labour disputes, riots or civil disputes, war or armed conflict, power failure, denial of service attacks or similar attacks, service interruptions attributable to third party carriers, Tier 1 Internet failure, any law, governmental order, decision or regulation, or order of any court of competent jurisdiction (in each case, a "**Force Majeure Event**"). In the case of any such event, performance requirements and timelines will be suspended during such period (except that the Customer's obligation to pay for Charges incurred for Services received shall not be excused), provided that the party relying on such Force Majeure Event uses all commercially reasonable efforts to alleviate the impediment.

12.2 **Security Deposit.** If at any time during the term of this Agreement there is an adverse change in the Customer's financial position, business prospects or payment history, TeraGo may require that the Customer provide TeraGo with a security deposit or increase the amount of a security deposit, as the case may be, as security for the full and faithful performance of the Customer of the terms, conditions and covenants of the Agreement. In the event that the Customer does not comply with TeraGo's requirements, TeraGo reserves the right to suspend Services without further notice until TeraGo's requirements are met. The Customer agrees and acknowledges that TeraGo may conduct any credit enquiries necessary to review the Customer's payment history.

12.3 **Currency.** Unless otherwise indicated on an Order Form, all monetary references in this Agreement and all pricing and payments will be in Canadian currency.

12.4 **Changes to Terms and Conditions or Amendment.** TeraGo may by notice to the Customer change the provisions of any of the Terms and Conditions provided that the changes are reasonable and applicable generally to all of the customers of TeraGo and do not change any provision that applies only to the Customer. TeraGo will periodically update the SLA and will distribute the updated version to its customers. Changes made by TeraGo which will result in improvements to the level of service provided under the SLA will be made at the sole discretion of TeraGo in order to ensure that TeraGo may continue to meet its service level commitments.

All other amendments to this Agreement, Order Forms, the SLA or other schedules or exhibits shall be in writing duly executed by each party in the same manner and with the same formality as this Agreement.



12.5 **Future Regulation.** In the event that this Agreement or any part or provision thereof, the provision of any Services or the Services should become subject to regulation or approval by any authority having lawful jurisdiction, then the Customer shall co-operate with TeraGo to make reasonable amendments to this Agreement, Order Forms, the SLA or other schedules or exhibits, as applicable, and to obtain any required approvals with respect to the provision of the Services in order to comply with applicable regulatory requirements and to allow the continued supply of the Services by TeraGo to the Customer under circumstances as close as practicable to those then provided.

12.6 **Assignment.** The Customer shall not assign this Agreement, in whole or in part, or any rights or obligations thereafter, without the prior written consent of TeraGo, which consent shall not be unreasonably withheld. Any attempted assignment without such prior written consent shall be void.

12.7 **Relationship.** The relationship between TeraGo and the Customer is that of independent contractors, and there is no agency, partnership, joint understanding or joint venture agreement between the parties to this Agreement.

12.8 **TeraGo Subsidiaries.** RackForce Networks Inc. and CodeNinja Ltd. (d/b/a "BoxFabric") are wholly owned subsidiaries of TeraGo and any references in any documents to such entities shall be deemed to be read as "TeraGo".

12.9 **Entire Agreement.** This Agreement constitutes the entire subject matter agreement between TeraGo and the Customer. This Agreement supersedes all prior negotiations, proposals, agreements, representations, warranties, whether oral or written, on such subject matter.

12.10 **Enurement.** This Agreement shall be binding upon and enure to the benefit of TeraGo and the Customer and their respective successors and permitted assigns.

12.11 **Governing Law.** This Agreement shall be governed by and interpreted according to the laws of the Province of Ontario and the laws of Canada applicable therein. The parties attorn to the exclusive jurisdiction of the courts in the Province of Ontario in respect of all matters arising out of or in connection with this Agreement.

12.12 **Interpretation.** In this Agreement, the headings are for convenience of reference only and shall not affect its construction or interpretation. Words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, societies and corporations. Singular words include the plural and vice-versa and "including" means including without limitation.

12.13 **Waiver.** No waiver of any term or provision or of any breach or default shall be valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any other terms or provision or any subsequent breach or default of the same or similar nature.

12.14 **Notice.** All notices provided for shall be given in writing and transmitted by personal delivery, prepaid first class registered or certified mail to the Customer's address as identified in the Order Form, and to TeraGo at:

55 Commerce Valley Drive West, Suite 800, Thornhill, Ontario, L3T 7V9
Attention: Legal Department

12.15 **Severability.** The invalidity, illegality or unenforceability of any one or more provisions of this Agreement shall not affect or impair any other provisions of this Agreement.

12.16 **Order of Precedence.** In the event of conflict between the Terms and Conditions of this Agreement and the terms of any Order Form, Schedule, Exhibit, the Terms and Conditions of this Agreement shall prevail unless the Order Form expressly states that it is amending the Terms and Conditions of this Agreement.

12.17 **Counterparts.** The Order Form may be signed in counterparts by facsimile transmission or .PDF, each of which shall be deemed to be an original, but all of which, taken together, shall constitute but one and the same instrument and shall be deemed to bear the date as of the date of execution on the Order Form.

12.18 **Survival.** Sections 7 *Limitation of Liability*, 8 *Indemnity*, 9 *Confidential Information*, 10 *Intellectual Property*, 11 *Invoicing and Payment* and 12 *General Provisions* shall survive the termination and expiration of this Agreement.

12.19 **Time.** Time shall be of the essence in this Agreement.

12.20 **Language of Agreement.** TeraGo and the Customer confirm that they wish to have this Agreement written in English only. Les parties aux présentes confirment leur volonté que cette convention soit rédigée en langue anglaise seulement.