

## MASTER SERVICES AGREEMENT

### General Terms and Conditions

This **Master Services Agreement** is made and entered into as of \_\_\_\_\_, 201\_\_\_\_, by and between Internap Corporation, on behalf of itself and its subsidiaries (“**INAP**”), and \_\_\_\_\_ (“**Customer**”) is comprised of (a) these General Terms and Conditions and (b) one or more of the following Service Level Agreements (collectively, the “**SLA(s)**”). These General Terms and Conditions and the SLA(s) collectively are referred to as the “**Agreement**”.

*[Check all that apply.]*

- Attachment 1:** \_\_\_\_\_ - **Metro Connect Services SLA**  
**Attachment 2:** \_\_\_\_\_ - **Hosting and Cloud Services SLA**  
**Attachment 3:** \_\_\_\_\_ - **Colocation Services SLA**  
**Attachment 4:** \_\_\_\_\_ - **IP and CDN Services SLA**

**1. SERVICES.** INAP will provide Customer the services described in the applicable SLA(s) (the “**Services**”) and set forth in each INAP sales order, application program interface, solutions documentation or desktop application (collectively, an “**Order**”). Customer shall comply with all applicable laws, rules and regulations relating to its receipt or use of the Services. Unless otherwise set forth in this Agreement or an Order, Customer is solely responsible for all costs and expenses to provide all equipment, hardware, cabling and software required to access or receive the Services.

#### **2. LICENSE GRANT**

**2.1 License Grant.** Subject to the terms of this Agreement, INAP grants Customer a nonexclusive, revocable, non-transferable and non-sub-licensable right and license to use the Services set forth in an Order during the applicable Order Term (defined in Section 6.1). Customer shall comply with INAP’s Acceptable Use Policy (“**AUP**”) and all subsequent versions, incorporated herein and set forth at <http://www.internap.com/acceptable-use-policy>. If Customer, or a third party through Customer, violates any of the foregoing prohibitions, INAP may suspend the Services (as provided in Section 5) and/or terminate this Agreement or any Order(s) (as provided in Section 7.3).

**2.2 Limitations.** Customer may only access and use the Services subject to any restrictions specified herein and in the applicable Order(s). Without limiting the foregoing, Customer shall not: (a) circumvent, copy, modify, decompile, reverse engineer or disassemble third party technology or INAP’s proprietary technology used in connection with the Services (“**INAP Technology**”); (b) sublicense, rent or lease the INAP Technology or Services; (c) copy any features, functions or graphics of the Services or modify or make derivative works based upon the Services; or (d) disclose or publish performance benchmark results or test results to non-affiliated third parties with respect to the Services, without INAP’s prior written consent in each instance.

#### **3. INTELLECTUAL PROPERTY RIGHTS**

**3.1 Reservation of Rights.** INAP (or its licensors) retains title to the Services and the INAP Technology and all modifications, alterations, derivative works and enhancements and all intellectual property rights contained within. INAP grants no license, right or intellectual property right in any INAP trademark, trade name or service mark.

**3.2 Customer Content.** Customer owns all data, imagery, information and other content transmitted by or on behalf of Customer in connection with the Services (“**Customer Content**”) and Customer has sole responsibility for Customer Content and its intellectual property ownership and right to use. Customer grants to INAP the non-exclusive right and license to receive, retrieve, process, transmit, copy and store any Customer Content reasonably necessary to perform the Services.

#### **4. FEES AND PAYMENT**

**4.1 Service Commencement Date.** Billing for Services commences on the date INAP delivers the Services (“**Service Commencement Date**”). All Services are deemed accepted upon delivery. For the avoidance of doubt, Services shall be deemed delivered upon INAP’s provision of Services to Customer and any delay by the Customer in using [or configuring] the Services shall not extend the Service Commencement Date.

#### **4.2 Fees.**

(a) **Payment of Fees.** Except as otherwise provided herein, Customer shall pay all fees, charges, Taxes, duties, surcharges, expenses, disconnect and third party service charges owing as reflected on an invoice (collectively, “**Fees**”) in U.S. dollars to the designated address within 30 days following the invoice date. If an Order has a term of one month or less, Customer shall pay all Fees upon receipt of invoice. If Customer is purchasing Hosting Services as defined in Attachment 2- Hosting and Cloud SLA, Customer shall pay all Fees for such Services upon receipt of invoice.

(b) **Timing of Payment; Late Fees.** Except as provided in Section 4.2(c), Fees are due in full as and when stated, without rights of setoff. Undisputed Fees not received when due bear interest at the lesser of the maximum amount allowable by law or 1½% per month commencing with the payment due date. If Customer is late in paying any undisputed Fees, INAP may, in its discretion: (i) require a deposit or other undertaking or security to ensure that Customer satisfies its payment obligations, regardless of whether Customer has cured the late payment and (ii) suspend Services (as provided in Section 5) and/or terminate this Agreement or any Order(s) (as provided in Section 7.3). INAP will continue to charge Customer for Services during any period of suspension. Customer is liable for all costs of collection, including, without limitation, attorneys’ fees and costs.

(c) **Disputed Fees.** Except as provided in the next sentence, in the event Customer disputes an invoice, it shall pay the Fees in full and file a separate dispute with INAP. In the event that an invoice exceeds the monthly recurring charges (“**MRC**”), Customer may withhold the disputed portion that exceeds the MRC. In the event of a billing dispute, Customer shall provide a summary of the dispute together with supporting documentation in the Customer portal. Following receipt of such notice and documentation, INAP will, acting reasonably, investigate and make a determination on the alleged dispute. For any sums found to be owed to INAP, Customer shall pay such amount within 10 days from the receipt of notice from INAP regarding the determination of the dispute. For any sums found to be owed to Customer, INAP will either issue Customer a credit on the next invoice or provide Customer with a refund (if Customer is no longer receiving Services from INAP). Customer waives any billing dispute not made in writing with all supporting documentation within 30 days from the date of receipt of invoice.

**4.3 Taxes and Pass Through Charges.** Excluding taxes based on INAP’s net income, Customer is responsible for paying all federal, state, local and foreign sales, withholding, value added, use, property, excise, service and other taxes, and all duties and customs fees (“**Taxes**”) and any rate increases for third party services and products including power, local loop charges and cross connects relating to Customer’s receipt or use of the Services, whether or not INAP initially invoices Customer for such amounts. INAP will pass through Taxes and any such rate increases and Customer shall indemnify for any losses or liabilities incurred by INAP for any Taxes or rate increases paid by INAP on behalf of Customer.

**5. SUSPENSION OF SERVICES.** In the event (a) Customer fails to timely pay any undisputed Fees when due; (b) Customer, or a third party through Customer, violates the AUP; or (c) INAP reasonably believes that Customer’s use of the Services, violates any applicable law, rule or regulation, INAP may, in its sole discretion, suspend any Services immediately without

notice and Customer will remain liable for Fees for Service during any period of suspension.

## 6. TERM

**6.1 Term.** The term of this Agreement (“**Term**”) shall commence on the Effective Date (which shall mean the date entered in the recital paragraph of these General Terms and Conditions or, in the absence of signature of this Agreement, the last signature date on a corresponding Sales Order) and shall expire at the date of termination or expiration of the last Order. The term of each Order (“**Order Term**”) commences on the Service Commencement Date and continues for the stated term; provided that some Services may be provided on a monthly or hourly basis, as more fully described in the Order or SLA.

**6.2 Renewal of Term.** Except as otherwise provided in an Order, an Order Term shall automatically renew upon the expiration of the then current Order Term as follows: (a) Orders with an initial Order Term of one year or longer shall automatically renew for additional periods of one year and (b) Orders with an initial Order Term of less than one year shall automatically renew for the same period of time as the initial Order Term.

**6.3 Cancellation of Auto-Renewal.** Except as otherwise provided in an Order, Customer may cancel automatic renewal of an Order Term by providing at least 60 days (but no more than 120 days) notice prior to the expiration of the then current Order Term. Customer’s notice of cancellation described in the preceding sentence does not terminate Services, but instead converts the Order upon the expiration of the existing Order Term to a month-to-month term with an increase of 35% of the Fees. To be effective, Customer must submit a non-renewal ticket through the Customer portal.

## 7. TERMINATION

**7.1 Termination upon Expiration.** Except as provided in an Order or herein, Customer may disconnect Services and terminate an Order upon the expiration of the Order Term by providing at least 60 days’ notice (or 30 days’ in the case of an Order with an initial Order Term of 30 days) prior to the expiration of the Order Term. To be effective, Customer must submit a disconnect ticket through the Customer portal. Notwithstanding the above, hourly Services have no term commitment and may be terminated at any time by either party.

**7.2 Termination for Convenience.** Either party may terminate this Agreement or any Order by written notice to the other party at least 90 days before the requested termination date. If Customer wishes to terminate as provided in the preceding sentence, it must pay INAP as liquidated damages a Termination Fee and any other amounts payable by Customer pursuant to Section 7.4. The “**Termination Fee**” shall be equal to 100% of the Fees Customer would have had to pay for the remaining Order Term for all terminated Orders. Customer acknowledges and agrees that: (a) INAP is only agreeing to provide Customer a right to terminate for convenience conditioned upon Customer’s payment of the Termination Fee, and that absent payment of the Termination Fee, Customer shall have no right to terminate this Agreement or any Order under this Section 7.2; (b) INAP will incur considerable consequences and losses in the event Customer terminates this Agreement for convenience prior to the expiration of the Order Term; (c) such consequences and losses would be difficult, if not impossible to estimate; and (d) the Termination Fee is a reasonable pre-estimate of the consequences and losses that INAP would actually incur in the event Customer terminates this Agreement early. Notwithstanding the above, the Termination Fee shall be an amount equal to three months MRC plus additional Fees related to INAP’s activation of Services in the event the Order is cancelled prior to the Service Commencement Date.

### 7.3 Termination for Cause.

(a) **Material Breach.** Except as provided in Section 7.3(b), either party may terminate this Agreement or any Order if the other party materially breaches this Agreement or such Order, as applicable, and fails to cure the breach within 30 days following receipt of written notice from the non-breaching party (excluding any breaches relating to the payment of Fees, which shall not

require further notice as to due date). Either party may terminate this Agreement for cause immediately if the other party files for bankruptcy, becomes insolvent or makes an assignment for the benefit of creditors, or if a trustee is set up to administer a substantial portion of the other party’s assets or business.

(b) **Following Suspension of Services.** In the event that Customer’s Services are suspended for failure to timely pay any undisputed Fees pursuant to Section 5, INAP may, without further notice and obligation to Customer, terminate this Agreement and any Orders. In the event that Customer’s Services are suspended for any other reason pursuant to Section 5 and such suspension continues for more than 10 days, INAP may, without further notice and obligation to Customer, terminate this Agreement and any Orders.

(c) **Chronic Trouble.** INAP will be considered to have materially breached an Order (but not this Agreement) and Customer may terminate the applicable Order for cause if Customer experiences “chronic trouble” under an applicable SLA. “**Chronic trouble**” means Customer has experienced more than three Events with the same Service, as determined by INAP acting reasonably, within a 60-day period (measured from the date of the first Event). An individual “**Event**” means failure to satisfy the corresponding Service Level (defined in Section 9.1) in an SLA.

**7.4 Consequences of Termination.** Upon termination of this Agreement or any Order for any reason (other than termination by Customer under Section 7.3 or termination upon expiration of an Order Term pursuant to Section 7.1), Customer shall immediately pay to INAP: (a) all third party charges incurred by INAP arising from such termination; (b) all unpaid Fees and (c) the Termination Fee. Customer agrees to pay all amounts owing pursuant to this Section 7.4 on or before the termination date. If requested by Customer within 30 days from termination date, INAP will make available to Customer a file of the Customer Content in its possession, if any. Rights and obligations which by their nature continue after the termination or expiration of this Agreement, including, but not limited to, Sections 3, 4.2, 4.3, 7.2, 7.4, 8, 10.2, 11 and 12, shall survive and continue after the termination or expiration of this Agreement, and shall bind the parties, their successors, heirs and permitted assigns.

## 8. CONFIDENTIALITY

**8.1 Confidentiality.** Each party (the “**Receiving Party**”) acknowledges that it will have access to Confidential Information of the other party (the “**Disclosing Party**”). “**Confidential Information**” means this Agreement and other information that is of value to Disclosing Party, including information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy and is treated as confidential. INAP’s Confidential Information includes, without limitation, information received from others that INAP has agreed to keep confidential. The Receiving Party agrees to use the Confidential Information of the Disclosing Party solely for purposes of performing its obligations and exercising its rights under this Agreement. The Receiving Party agrees to discuss the Confidential Information of the Disclosing Party only with, and to transmit the Confidential Information only to, those officers, employees and consultants of the Receiving Party who have a need to know the Confidential Information for the purposes set forth herein.

**8.2 Security Precautions.** The Receiving Party shall take commercially reasonable security precautions to prevent unauthorized use and disclosure of the Confidential Information of the Disclosing Party and shall use at least the same degree of care the Receiving Party employs with respect to its own Confidential Information, but in no event less than a reasonable standard of care.

**8.3 Duration and Exceptions.** The obligations in this Section 8 shall continue for the Term and for three years thereafter, except that obligations with respect to Confidential Information that consist of trade secrets shall continue for so long as such information constitutes a trade secret under applicable law, but in no event less than the Term and for a period of three years thereafter. The Receiving Party’s obligations with respect to Confidential

Information of the Disclosing Party shall not apply to the extent such Confidential Information: (a) is previously known to the Receiving Party without restriction on disclosure; (b) ceases to be confidential except by reason of a breach of this Agreement by the Receiving Party; (c) is independently developed by the Receiving Party without reference to Confidential Information of the Disclosing Party; or (d) was received from a third party without obligations of confidence and without breach of this Agreement. In addition, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent such disclosure is required by applicable law or by any governmental authority, provided the Receiving Party notifies the Disclosing Party, if permitted by law, of the applicable legal requirements before such disclosure so as to enable the Disclosing Party to obtain such protection as may be available to preserve the confidentiality of such information.

**8.4 Separate Agreement.** If the parties have executed a separate non-disclosure agreement, the term of that separate agreement shall control.

## 9. SERVICE LEVEL MATTERS

**9.1 Service Levels and Service Level Credits.** Subject to any limitations set forth herein and in the SLA, INAP may change the performance objectives in the applicable SLA (“**Service Levels**”) in its discretion provided that if such changes have a material adverse impact on Customer’s Service Levels or Service Level Credits, Customer may terminate this Agreement or the applicable Order for convenience as contemplated by Section 7.2 and will not be required to pay the Termination Fee. In the event INAP does not meet a Service Level in the applicable SLA, as Customer’s sole and exclusive remedy, and INAP’s sole liability for not meeting the performance objective, INAP shall provide the Service Level Credits in the manner specified in the SLA (“**Service Level Credits**”).

**9.2 Service Level Policies.** INAP will process Service Level Credits for Events as set forth in the applicable SLA. If an Event has occurred which qualifies for a Service Level Credit and such Event is not covered by a proactive Service Level Credit, Customer must open a ticket with INAP’s Network Operations Center providing the details pertaining to the Event within 30 days of the occurrence. If Customer does not open such ticket within the required time period, Customer forfeits any right to claim that a Service Level Credit is due. For the purpose of calculating whether a Service Level Credit may be due, and the duration of an Event, and unless otherwise set forth in an SLA, INAP will calculate time periods beginning from the earlier of (a) the time stamp of the alert in INAP’s monitoring systems; or (b) the time stamp of the Customer-submitted ticket and continuing until INAP has resolved the Event. Unless otherwise noted, the performance objective will be based on the full calendar month of Service since the last renewal period in which the Event occurs.

The maximum Service Level Credits that may be earned for any calendar month shall not exceed 100% of the portion of the MRC of the affected Services stated in the Order. Any excess Service Level Credits are forfeited and shall not be carried over to future months.

Customer must bring any disputes relating to INAP’s determination of Service Levels or Service Level Credits within 30 days from the date of an Event relating to Service Levels or Service Level Credits.

**9.3 SLA Exclusions.** Service Levels and Service Level Credits apply only to Customer and not to any customers of Customer or to any other party. Customer is not entitled to any Service Level Credit if Customer (a) has not paid all undisputed Fees due, (b) is in breach of this Agreement or the AUP, or (c) has failed to provide INAP appropriate access to enable INAP to provide Services. In addition, INAP shall have no liability to provide the Services in accordance with any applicable Service Level or to provide any Service Level Credits if the failure to provide the Services in accordance with the Service Level is due, to any of the following:

(a) **Maintenance.**

(i) **INAP Internal Maintenance.** Repairs, upgrades and modifications to shared core infrastructure scheduled for off-peak hours in the applicable region if INAP provides notice at least 24 hours in advance.

(ii) **Customer Maintenance.** Repairs, upgrades, scheduled or Customer-requested service interruptions or modifications to a Customer Service, scheduled in advance or in connection with a previously-agreed upon routine schedule.

(b) **Extraordinary Events.** Service interruption resulting from denial of service attack, virus attacks, hacking attempts or any other similar attacks.

(c) **Activation Date.** Events occurring before the Service Commencement Date.

(d) **False Failures.** Erroneously reported outage or issue, failures reported as a result of outages or errors of an INAP measurement system or failures resulting from Service monitoring or testing performed to simulate a failure.

(e) **Customer Provided Equipment.** Matters caused by or related to Customer Provided Equipment failure, malfunction or configuration changes.

(f) **Non-Standard Configuration.** Matters caused by a Customer-requested non-standard or unsupported configuration.

(g) **External Network Conditions.** Matters caused by general network conditions outside the reasonable control of INAP, including but not limited to DNS issues outside the direct control of INAP.

(h) **Non-impacting Failure.** Matters caused by a failure of a Service or feature that does not result in downtime of a guaranteed Service (by way of example only: reporting, dashboard, FTP upload or statistics generation). This includes outages or downtime associated with Customer’s designated non-production (staging, testing or development) Service that is unrelated to hardware or network failures.

(i) **Expected Performance.** Matters caused by usage patterns or traffic that exceeds the Service procured by Customer.

(j) **Customer Acts.** Matters caused by Customer acts (or acts of others engaged or authorized by Customer), including without limitation, any negligence or willful misconduct.

## 10. DISCLAIMER

**10.1 Third Party Products and Services.** Notwithstanding anything to the contrary herein, Customer acknowledges and agrees that INAP makes no representation or warranty, express or implied, as to any third party hardware, software, products or services included with the Services. INAP assigns to Customer during the Term all assignable warranties and indemnities granted to INAP by such third parties to the extent applicable to Customer’s receipt or use of the Services during the Term. To the extent INAP is not permitted to assign any such third party warranties and indemnities, INAP will use commercially reasonable efforts to enforce such protections on Customer’s behalf to the extent it is permitted to do so under the third party agreements and applicable law.

**10.2 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 10, INAP MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE SERVICES. INAP EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OF TRADE AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. INAP DOES NOT WARRANT THAT THE SERVICES ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE SERVICES WILL BE UNINTERRUPTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO PORTIONS OF THE ABOVE EXCLUSIONS MAY NOT APPLY, BUT ONLY TO THE EXTENT NECESSARY TO BRING THE EXCLUSION INTO COMPLIANCE.

## 11. LIMITATION OF LIABILITY

**11.1 Disclaimer.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST REVENUE AND

LOST PROFITS), REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, AND EVEN IF ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES. INAP shall not be liable, in contract, tort or any other theory for: (a) unauthorized access, alteration, theft, corruption or destruction of or to Customer's or its customers', end users' or other parties' computer files, databases, network, transmission facilities or equipment; or (b) the content, accuracy or completeness of any Customer Content transmitted through the Services.

**11.2 Cap on Liability.** INAP'S TOTAL LIABILITY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING FROM OR OUT OF THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO INAP DURING THE SIX MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO CUSTOMER'S FIRST CLAIM.

## 12. MISCELLANEOUS PROVISIONS

**12.1 Governing Law; Venue.** This Agreement shall be governed by the laws of the state of Georgia, without regard to its conflict of laws principles. Any and all claims arising out of or relating to this Agreement shall be brought in a state or federal court of competent jurisdiction in Atlanta, Georgia. Customer consents to the personal and subject matter jurisdiction of the state and/or federal courts located in Atlanta, Georgia and waives (a) any objection to jurisdiction or venue, or (b) any defense claiming lack of jurisdiction or improper venue, in any action brought in such courts.

**12.2 Force Majeure.** Neither party will be liable for any loss, damage or delay resulting from any event beyond such party's reasonable control or other events of force majeure (other than an event or circumstance that results in Customer not having sufficient funds to comply with an obligation to pay Fees), and delivery and performance dates will be extended to the extent of any such delays. "Force majeure" includes, without limitation, acts of God, strike, lockout or other industrial disturbance, acts of war, blockade, public riot, civil disturbance or unrest, lightning, fire, storm, flood, hurricane, earthquake, tsunami, tornado, explosion, governmental restraint or unavailability of equipment. Each party will promptly notify the other upon becoming aware that such event has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement. If such event continues for more than 30 days, either party may terminate this Agreement.

**12.3 Assignment.** Either party may assign its rights, duties and obligations hereunder, without approval of the other party, to a party that succeeds to all or substantially all of its assets or business (whether by sale, merger, operation of law or otherwise), so long as the assignee agrees in writing to be bound by this Agreement. INAP may also assign its rights, duties and obligations hereunder, without approval of Customer, to a party in the business of providing the Services so long as the assignee agrees in writing to be bound by this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

**12.4 No Waiver; Severability.** The failure on the part of either party to exercise any right or remedy hereunder will not operate as further waiver of such right or remedy in the future. The provisions of this Agreement are severable. If any provision is determined invalid, illegal or unenforceable, in whole or in part, then such provision shall be modified so as to be enforceable to the maximum extent permitted by law. If such provision cannot be modified to be enforceable, the provision shall be severed from this Agreement to the extent unenforceable. The remaining provisions and any partially enforceable provisions shall remain in full force and effect.

**12.5 Injunctive Relief.** The parties acknowledge that a threatened or actual breach of Section 8, or a party's intellectual property rights, will result in immediate, irreparable harm, and equitable relief may be obtained by the non-breaching party from a court of competent jurisdiction subject to the provisions of Section 12.1.

**12.6 Notices.** Notices or other communication must be in writing (which for purposes of notices of termination or non-renewal means submission via electronic communication in the Customer portal) and delivered by mail (first class, postage prepaid or overnight courier) as specified on the signature page or to such other address or individual as a party may specify in writing. INAP may also deliver notice electronically to the email address noted on the signature page. Notices are effective (a) three business days after deposit in the mail, (b) the next day if delivered by commercial overnight courier, and (c) the same day if delivered electronically.

**12.7 Insurance.** Each party shall maintain commercial general liability, property and casualty and business interruption insurance with individual policy limits of not less than \$1,000,000 per occurrence. Customer's insurance shall be primary over INAP's. Customer waives and shall require its insurers to waive any rights of subrogation against INAP, its agents, directors and employees.

**12.8 No Third Party Beneficiaries.** No person or entity, other than the parties shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

**12.9 Marketing.** Customer agrees that INAP may reference Customer's entering into this Agreement and its status as a Customer in its marketing materials and in sales presentations.

**12.10 Amendment.** Any amendment to this Agreement or an Order will only be effective if mutually agreed in writing and executed by the authorized representatives of both parties.

**12.11 Interpretation; Conflicting Terms.** Neither party shall be considered the sole drafter of this Agreement so as to give rise to any presumption or convention regarding construction of this Agreement. In the event of any conflict between this Agreement and an Order, the terms of the Order shall control. In the event of a conflict between these General Terms and Conditions and an SLA, the terms of the SLA shall control. In the event of a conflict between this Agreement and a Customer's purchase order, the terms of this Agreement shall control.

**12.12 Recording of Calls.** Customer acknowledges that in the performance of the Services, INAP may have access to and or collect 'personal data' (as defined in the EU Data Privacy Directive) regarding Customer's employees. Any calls placed to INAP customer support are subject to recording for quality assurance and employee training purposes. Any personal data collected via such calls may be stored on INAP's servers which may be located in the United States. Customer warrants that it has obtained consent, as necessary, from its employees for the collection, use, and transfer of "personal data" in such fashion.

**IN WITNESS WHEREOF**, the undersigned parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the Effective Date. This Agreement may be executed in duplicate and either copy or both copies are considered originals.

<b>(CUSTOMER NAME)</b>	<b>Internap Corporation</b>
<b>Signature:</b>	<b>Signature:</b>
<b>Name:</b>	<b>Name:</b>
<b>Title:</b>	<b>Title:</b>
<b>Email:</b>	<b>Email:</b>
<b>Signature Date:</b>	<b>Signature Date:</b>
<b>Address for Notice Purposes:</b>	<b>Address for Notice Purposes:</b> Internap Corporation 1 Enterprise Ave North Secaucus, NJ 07094 Attention: General Counsel