



## IC2 HOLDINGS, INC. Master Service Agreement

<b>Customer:</b>			
<b>Contact Person:</b>	<b>Phone:</b>	<b>Fax</b>	
<b>Technical Contact:</b>	<b>Phone:</b>	<b>Email:</b>	
<b>Billing Address:</b>			
<b>City:</b>	<b>State:</b>	<b>Zip Code:</b>	

### Terms

This Agreement has been entered into on this \_\_\_\_\_ day of \_\_\_\_\_ between \_\_\_\_\_ ("Customer"), a \_\_\_\_\_, and IC2 Holdings, Inc., a California corporation.

#### Services to be Provided:

IC2 Holdings shall provide to the Customer all services, as shown on the attached "Service Order", upon the terms and conditions set forth in this Agreement.

**Billing:** All invoices will be mailed or E-mailed around the 1st of the month for the next month's service, and are due upon receipt but no later than the due date shown on the invoice. Customer accepts responsibility for all applicable excise, sales, use, and other taxes and fees, surcharges, and charges applicable to the Service Order. Any balance not paid by the due date, unless customer has previously made payment arrangements approved by IC2 Holdings, shall be assessed a late payment fee of 1.5% per month, or the highest rate allowed by law, whichever is less. In order to maintain uninterrupted service, payments must be received by the due date. IC2 Holdings shall charge a \$50 returned check fee, and also charge a \$25 fee if the billing credit card is denied. It is the Customer's responsibility to notify IC2 Holdings of any changes in the billing address, Email, or credit card used for billing.

**Receipt and Holding of Customers Equipment:** IC2 Holdings will receive delivery of and hold any customer hardware shipped to the Data Center. Hours for receiving shipments shall be Monday-Friday from 8:00am to 6:00pm Pacific Standard Time. IC2 Holdings shall provide this service at no cost to customers. Any shipment to be received outside of the above hours shall be charged a 1 time fee of \$250 and shall be scheduled and approved with the IC2NET NOC before arrangements are made. Shipments delivered after hours without approval may be turned away or may not have IC2 Holdings personnel on site to receive it.

**Removal of Equipment:** Any customer wishing to remove hardware from the Data Center must provide written/email or verbal notification to a member of the IC2NET Data Center Team prior to removal. Permission shall not be unreasonably withheld. This rule is to protect the possible removal of hardware without the approval of any specific client in an effort to protect every tenant.

Violation of this notification rule may result in suspension of services and/or the suspension of un-escorted access privileges

**Service Commencement Date:** Is defined as the date that services are available for use by Customer. IC2 Holdings will determine availability of services at its sole discretion.

**Collocation Customers:** IC2 Holdings will provide to Customer physical access to the facilities in the form of: (a) access control cards through facility's security system, (c) key to lock on the server cabinet or cages specified in Service Order at the collocation facility. If bills are not paid by the due date, and overdue balances are not paid in full within 5 business days of written notification as stated in Billing Section, Customer may lose access privileges and Customer's property will be held as security against money owed. If services are terminated by IC2 Holdings or discontinued all equipment installed by Customer within the premises shall remain the personal property of Customer and Customer shall have sixty (60) days following termination or expiration of this Agreement to remove its equipment. Any equipment not so removed shall be deemed abandoned by Customer. Any equipment shall not be removed until all monies owed by customer are paid. Shared Cabinet users will only be allowed escorted access to protect all tenants' hardware.

**Collocation Power:** Power delivered to each cabinet shall be in the agreed upon amperage with 1 feed connected to PDU's in each cabinet, called the "A" power feed. Customers who wish to run dual power supplies will need to purchase a "B" feed for their second power connection at the then applicable rates. Customers are not allowed to plug both power supplies into the same power feed.

Power delivered to any cabinet must only be used for equipment in that same cabinet.

**Price Changes:** In the event of any change in applicable law, regulation, decision, rule, order, business condition or unforeseen circumstance that changes the costs or delivery of service, IC2 Holdings may adjust the prices it charges accordingly, and shall provide Customer thirty (60) days prior written notice indicating the revised pricing and the date such pricing is to take effect. Failure by Customer to cancel the Service within the thirty (60) day period will be considered acceptance of the price change.

**Cancellation Penalty:** In the event of early termination, Customer shall pay IC2 Holdings fifty percent (50%) of Customer's then current IC2 Holdings Base Monthly Fees multiplied by the number of months remaining in the Term. It is considered "early termination" if Customer terminates this Agreement (other than for breach by IC2 Holdings or due to a price increase notice) prior to the expiration of the Term or if IC2 Holdings terminates this agreement for

breach by Customer of any provision of this Agreement, including failure to pay any invoice when due in addition to any other amounts due and owing. No cancellation penalty shall be due or owing if the termination is due to (a) IC2 Holdings breach of this Agreement; or (b) condemnation of the IC2 Holdings facility; or (c) due to a price increase notification. If customer disconnects colo services all equipment must be immediately removed as of the last date payment has been made for; equipment needs to be removed during business hours 8:00am-5:00pm pst Monday-Friday with escorted access.

**Disclaimer of Liability:** IC2 Holdings CANNOT CONTROL THE FLOW OF DATA TO OR FROM IC2 Holdings NETWORK AND THE INTERNET. IC2 Holdings DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM LOSS OF DATA, IMPAIRMENT OR DISRUPTION OF SERVICE DUE TO THIRD PARTIES OR FORCES NOT UNDER IC2 Holdings DIRECT CONTROL. INCLUDING, WITHOUT LIMITATION ACTS OF ANY GOVERNMENTAL BODY, WAR, INSURRECTION, SABOTAGE, EMBARGO, FIRE, FLOOD, STRIKE OR OTHER LABOR DISTURBANCE, INTERRUPTION OF OR DELAY IN TRANSPORTATION, UNAVAILABILITY OF OR DELAY IN TELECOMMUNICATIONS OR THIRD PARTY SERVICES, FAILURE OF THIRD PARTY SOFTWARE. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS IC2 Holdings EXERCISES NO CONTROL OVER THE NATURE, CONTENT OR RELIABILITY OF INFORMATION DELIVERED OVER THE INTERNET.

**Indemnification:** Both Parties shall indemnify and hold harmless each other, its subsidiaries and affiliates, against all losses, claims, damages, loss of revenue, expenses and liabilities (including attorneys' fees and court costs) arising out of or relating to: (i) claims for libel or slander, and/or infringement of copyright in connection with the material transmitted by Customer over IC2 Holdings facilities; or (ii) personal injury or property damage (including any damage to the facilities or equipment of IC2 Holdings, any connecting carrier, or any other third party), caused by an act, error or omission of either party, its employees, agents, subcontractors or customers of either party ("Users"), or any condition created by either party or its employees, agents or users or the malfunction of either party's equipment; or (iii) any breach of any representation, warranty or covenant made by either party herein; or (iv) claims by the Users or any other third parties with whom either party conducts business (to the extent that such claims arise out of operations or activities hereunder). Subject to the Insurance section below, IC2 Holdings shall indemnify and hold harmless Customer for claims of property damage or bodily injury caused by the negligence or willful misconduct of, or breach of this Agreement by, IC2 Holdings, its employees, agents or contractors.

**LIMITATION ON LIABILITY:** EACH PARTY'S TOTAL LIABILITY HEREUNDER IS LIMITED TO THE AMOUNT OF FEES PAYABLE TO IC2 HOLDINGS DURING THE TERM OF THE AGREEMENT.

In addition, IC2 HOLDINGS will not be responsible for any damages or claims, including but not limited to:

- ❑ Any violation of patent or trademark law by the Customer, or any third party through the use of IC2 HOLDINGS's services or otherwise.
- ❑ lost commissions or other revenue.
- ❑ other claims, based on the results to be achieved under this Agreement, delays, non-deliveries, wrong deliveries, interruptions to the Customer's services, unauthorized access, theft or destruction of the Customer's data caused by the acts and omissions of the Customer and its employees, of a customer of the Customer, or of any other third party.
- ❑ claims arising out of any illegal activities of which the Customer has engaged, including but not limited to: Unfair and deceptive business practices; Misrepresentation of services or products; Theft; and Inclusion of illegal material on the Customer's dedicated server.
- ❑ notwithstanding anything to the contrary in this Agreement or the Exhibits or Appendices hereto, in no event will either party be liable to the other party for special, indirect or consequential damages, under any theory of recovery.

**Acceptable Use Policy:** The Customer represents and warrants that neither it nor any User will use the services for unlawful 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 tobacco, controlled substances and 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, repeated harassment of other network users, wrongly impersonating another user, falsifying one's network identity for improper or illegal purposes, sending unsolicited mass e-mailings, propagation of computer viruses, using the network to make unauthorized entry to any other machine accessible location, via the network, and distributing of tools designed for compromising security (i.e. including, but not limited to, password guessing programs, cracking tools or network probing tools). IC2 HOLDINGS may suspend or terminate the Services immediately, without prior notice to the Customer, if IC2 HOLDINGS believes, in good faith, that the Customer or a User is utilizing the Services for any such illegal or disruptive purpose. The Customer shall defend, indemnify, and hold harmless IC2 HOLDINGS from and against all liabilities, judgments, claims, damages, settlements, expenses and costs (including reasonable

attorneys' fees and litigation expenses) arising out of or related to any and all claims by third parties that Customer, or its employees, agents, contractors, subcontractors or Users are using the Service in violation of this Acceptable Use Policy. See Appendix A.

**Governing Law/Venue:** This agreement shall be governed by and interpreted in accordance with the laws of the State of California including all matters of construction, validity, performance and enforcement, without giving effect to principles of conflict of laws. Any action brought to enforce the terms and conditions of this Agreement shall be brought in any court of competent jurisdiction in Orange County, California.

**Assignment:** This Agreement shall be binding to both Parties and their respective successors and assigns. Neither Party shall transfer or assign any rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that either party may assign this Agreement to a successor of the assigning company's business.

**Severability:** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, then such provision shall be disregarded and the remaining provision of this Agreement shall remain in full force and effect.

**Modifications:** This Agreement may be modified only in writing, signed by both parties.

**Term:** The initial term of this agreement shall be one year from the service commencement date unless otherwise noted on the service order form. This agreement shall **automatically renew on a month-to-month basis** until terminated in writing by either party 30 days prior to the expiration of initial or successive terms subject to the Cancellation and Termination sections of this agreement, or otherwise as noted and agreed to by both parties on the Service Order Form. This means customer is responsible for a full month of service with no pro-rate of charges should a requested disconnect occur after the first of any month; the full balance owed shall be due and payable for that entire month. Month-to-Month contracts receive no pro-rate of monthly fees- 30 day minimum billing.

**Technical Support:** IC2 HOLDINGS will provide basic technical support for the duration of this Agreement. Customer is responsible for its own software and equipment, including but not limited to FTP, encoding software, computers, and servers. Requests for support that are not covered under this agreement, or determined by IC2 HOLDINGS not to be due to IC2 HOLDINGS's services may be billed at the hourly rate of \$85.00 per hour during business hours, and \$150.00 per hour outside of business hours, local IC2 HOLDINGS time.

**Maintenance:** Customers will be notified in advance of the maintenance schedule, normally performed during hours of lowest network activity. Maintenance may cause a temporary disruption in services that is not applicable for credits.

**Broadband Service Level:** IC2 HOLDINGS broadband services will be available 99.95% of the time. If IC2 HOLDINGS fails to meet this during any given calendar month, Customer's account will be credited on a pro-rata basis upon customer request to [noc@ic2net.net](mailto:noc@ic2net.net) ; IC2 HOLDINGS will calculate the downtime, if any, in a calendar month. "Downtime" consists of the number of minutes that the IC2 HOLDINGS broadband service is unavailable to Customer. This will not include unavailability continuing for one hour or less or if Customer fails to inform IC2 HOLDINGS within five days, nor any unavailability resulting from (a) network or system maintenance; (b) Customer's applications, or equipment; (c) acts or omissions of Customer, or user of the service authorized by Customer; (d) reasons of Force Majeure; (e) technical problems outside the direct control of IC2 HOLDINGS, (f) Termination due to contract breach by Customer. In no case shall the total amount credited in a given month exceed the Customer monthly service fees to IC2 HOLDINGS.

### SERVICE LEVEL AGREEMENT

Network Availability	99.5%-local loops provided by a third party 99.95%-IC2 Holdings on-net facilities
Latency	1-way transmissions between on-net facilities shall be less than 50milliseconds
Packet Loss	less than 1%
MTTR	2 hours for on-net IC2 Holdings facilities 4 hours for third party services 12 hours for fiber cuts

Credit for service outages shall be as follows:

1. Any outage customer will be credited the pro-rated monthly service fee for the actual time service was unusable.
2. In no case will credits given to customer exceed the monthly rate paid for services under this contract for any 30 day period.

**Relationship of Parties:** IC2 HOLDINGS and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between IC2 HOLDINGS and Customer. Neither IC2 HOLDINGS nor Customer will have the power to bind the other or incur obligations on the other's behalf

without the other's prior written consent, except as otherwise expressly provided in this Agreement.

**Liens and Encumbrances:** Customer shall not, and has no power, authority or right, to create, and shall not permit, any lien or encumbrance, including, without limitation, tax liens and mechanics' liens, on IC2 HOLDINGS equipment, space or premises.

**Insurance:** IC2 HOLDINGS shall not insure or be responsible for any loss or damage to property of any kind owned or leased by Customer or its employees, servants or agents. Any policy of insurance covering the property owned or leased by Customer against loss by physical damage shall provide that the underwriters have given their permission to waive their rights of subrogation against IC2 HOLDINGS, its affiliates and their directors, officers, partners, and employees, as well as their subsidiaries, and their respective directors, officers, partners, and employees.

Customer must provide a General Business policy showing also insured as the following:

1. Pacific Property Partners, LLC.
2. IC2 Holdings, Inc.

**Reactivation:** If services are terminated due to a breach of this agreement customer may request reactivation. Upon IC2 HOLDINGS's discretion, services may be reinstated for a minimum \$200 service fee in addition to a possible deposit for services by Customer.

**Entire Agreement:** This Agreement sets forth the entire understanding and agreement of the Parties and supersedes all prior oral and written agreements and understandings between the Parties. Customer is not relying on any affirmation of fact, promise, description, sample or model from any person or entity, nor any other oral or written representation other than what is contained in this Agreement, receipt of a copy of which is hereby acknowledged.

#### BURSTABLE USAGE BILLING

Burstable Usage Pricing: A burstable usage circuit is provisioned as a fill circuit giving the customer the ability to use the entire port. For burstable usage pricing, the monthly recurring charge represents a static port charge for customers. A Usage Charge will be applied to the invoice the following month based on the actual usage for the preceding month and can vary from month to month. The usage charge is determined by multiplying the Mbps Port Usage amount by the Per Meg Base Rate. To determine the monthly Mbps Port usage amount, IC2NET shall reconcile Customer's usage at the end of each month. The Mbps Port Usage amount in a given month shall be the higher of either inbound or outbound traffic measured at the 95<sup>th</sup> percentile (95%) (removing the top 5% of total traffic readings). To attain the traffic measurements described in the preceding sentence, the Customer's traffic will be sampled every one (1) minute as determined by IC2NET network readings. Customer will be billed a usage charge equal to the usage charge X the rate per Mbps. If the customer agrees to a minimum Mbps Port Usage charge and uses less than the commitment level, no extra charges will be billed. If the usage is more than the commitment level, a usage charge will appear on the invoice the following month.

Customer agrees that they have been given a copy of the Data Center Rules and understand their obligations under those rules. Each of the parties to this Agreement represents and warrants that it has full power to enter into this Agreement.

**Customer:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_