



Power, Cooling, Packets & People

Master-TC-Colo-2009-v1.5

COLOCATION MASTER TERMS & CONDITIONS SERVICES AGREEMENT

This Master Services Agreement is entered into between **UNITEDLAYER, LLC.**, a Limited Liability California Corporation with offices at 200 Paul Avenue, Suite 110, San Francisco, California 94124 and 530 W. 6th Street., Suite 903, Los Angeles, California 90014 ("UnitedLayer"), and the party ("Customer") listed below as of the date specified below, for the provision of Colocation, Managed/dedicated servers, IP transit, and or Transport services ("Services"). UnitedLayer and Customer are each referred to as a "Party" and are collectively referred to as the "Parties." The agreement among the Parties consists of this page, the UnitedLayer, LLC. Master Services Agreement Terms and Conditions, "Signed Order Form" ("Signed Order Form") and all Service Level Agreements entered into by the Parties after the date of this Agreement (collectively referred to as the "Agreement").

Date:

«OPPORTUNITY_EST_START_DATE_CLIENT_REQUES»

Company Full Legal Name and UL ID:

«ACCOUNT_NAME» «ACCOUNT_ULID»

Customer Authorized Person:

«CONTACT_FULLNAME»

Address:

«ACCOUNT_FULLBILLINGADDRESS»

Phone:

«CONTACT_PHONE»

Facsimile:

«CONTACT_FAX»

E-mail:

«OPPORTUNITY_EMAIL»

Expected Service Start Date: __«OPPORTUNITY_EST_START_DATE_CLIENT_REQUES»__ and End Date: _____

By your signature and the signature of the representative of UnitedLayer below, you engage UnitedLayer to provide the Services set forth in the Service Level Agreements selected above.

UnitedLayer, LLC.

Customer Full Legal Name:

By: _____

By: _____

Name: _____
[Type or Print]

Name: «CONTACT_FULLNAME»

Title: _____

Title: «CONTACT_TITLE»

COLOCATION MASTER SERVICE AGREEMENT TERMS AND CONDITIONS

Recitals

WHEREAS, UnitedLayer controls a leasehold or ownership in portions of telecommunications Facility described in the Service Order Form(s).

WHEREAS, UnitedLayer operates colocation facility for the placement, operation and interconnection of communication and information technology equipment.

WHEREAS, Customer has requested that UnitedLayer allow them access to certain portions of the facilities as specified on each Service Order Form.

WHEREAS, UnitedLayer is willing to provide specified services to Customer in the form of (i) revocable license to Customer for access and use of the Licensed Area; (ii) non-exclusive access to the colocation facilities; and (iii) the provision of other specified support services, all of the terms and conditions set forth herein and on the Service Order Form(s) hereto and as may be placed by Customer.

1. Grant of License; General Terms of Use.

1.1. **License Grant.** By executing this Agreement, UnitedLayer grants to Customer, on the terms and subject to the conditions set forth in this Agreement, a License for access to and use of the colocation facility for the Permitted Purpose. The license shall be revocable in accordance with the terms of this agreement. Customer acknowledges that other licensees of UnitedLayer will be using the colocation facilities and premises and that UnitedLayer reserve the right to install and maintain conduits, cables and wiring along and adjacent to the ceiling above or below the floor of the Licensed Area.

1.2. **Access to Premises.** During the Term of customer contract whereas customer is current in its payment obligations and has not breached any material term under this Agreement, Customer's Authorized Personnel ("Approved Personnel") who have already received badge access shall be permitted to enter onto the colocation premises for the purpose of adding, maintaining, operating or modifying customer owned and operated equipment on a 24 hours per day and 7 days a week. Customer shall be liable for the actions of any Approved Personnel. Authorized Personnel must carry photo-identification for presentation to UnitedLayer or UnitedLayer's agents, employees, or representatives when entering the Premises including building security personnel. Customer shall keep the list of Approved Personnel updated and accurate. In addition to the Approved Personnel, Customer shall designate one person as the primary account contact and shall provide the contact information for the primary account holder. In no event shall Customer or any agent, representative, contractor or invitee of Customer, including without limitation, Approved Personnel, have the right to access any portion of the premises other than the common access areas and the Customer Licensed Area. UnitedLayer shall have the right to refuse access to the Colocation Premises to anyone at its reasonable and sole discretion if it determines such person presents hazard or security threat to UnitedLayer, its other customers or if the License granted hereunder has been suspended or terminated. Any and all visitors outside of Approved Personnel must be cleared with UnitedLayer two (2) business days in advance of arrival.

1.3. **Resources.** UnitedLayer shall be responsible, at its sole cost and expense, for procuring, configuring, operating, hosting and/or maintaining (as applicable) all facilities, equipment, communications, network infrastructure, devices, computer programs, operating, application and other software, documentation, information and other materials, whether owned, licensed or otherwise, which are necessary and/or appropriate to effectively and properly perform the Services and provide the Deliverables as required hereunder.

1.4. **Use of Subcontractors.** Customer hereby acknowledges that in the course of performing Services hereunder, UnitedLayer, in addition to its own employees, may desire or require the services and assistance of subcontractors, agents and representatives in connection with the Services and/or Deliverables to be provided under this Agreement (each, a "Subcontractor"); provided, however, that (a) UnitedLayer shall be liable for the acts and

omissions of each Subcontractor and (b) the foregoing acknowledgement shall not relieve UnitedLayer of any of its obligations under this Agreement.

2. **Equipment Installation, decommissioning and Removal.**

2.1. Installation. Any delivery, installation, replacement or removal work with respect to Customer's Equipment shall be subject to review and approval by UnitedLayer, such approval not to be unreasonably withheld or delayed. From time to time UnitedLayer may request and Customer shall promptly provide information regarding Customer's Equipment, systems, proposed rack/cabinet layout and interconnections/cross-connect diagrams, and the identification of Customer's suppliers or contractors. All Equipment and Equipment installments shall strictly adhere to the "**Equipment Specifications**" section of the Facility Rules. Approval by UnitedLayer is not an endorsement of Customer's supplier or contractor, and Customer will remain solely responsible for the selection of the supplier or contractor and all payments for construction work. UnitedLayer recommends that Customer account for rack or cabinet height, width, and depth limits, electrical limits, cooling limits, max. ceiling heights, obstructions, such as existing duct work within the Premises and floor load, weight limits when designing Equipment installations. UnitedLayer shall have the right to reject equipment installations or cabinets extending higher than seven feet from the floor due to their potential to restrict the air flow in the Premises or extend too close to existing duct work and ladder racking. Customer shall not make, or cause to be made, any construction changes or material alterations to the interior or exterior portions of the Premises or Licensed Area, including any cabling or power supplies for the Equipment, without obtaining UnitedLayer's written approval for Customer to have the work performed and otherwise complying with the terms of this Agreement. Except as set forth in Section 10 (which is further limited by Section 11), UnitedLayer shall have no responsibility for any loss or damage to Customer's Equipment.

2.2. Decommissioning and Removal. Customer agrees that, upon the expiration or termination of the License, Customer (or, at UnitedLayer's election, the contractor designated by UnitedLayer) shall promptly remove, at Customer's sole cost and expense, all cable, wiring, connecting lines, and other installations, equipment or property installed or placed by or for Customer in the Premises and restore those portions of the Premises damaged by such removal to their condition immediately prior to the installation or placement of such items. If Customer fails to promptly remove all such items pursuant to this Section 2.2, UnitedLayer may, at Customer's expense, remove and store such items and restore those portions of the Premises damaged by such removal to their condition immediately prior to the installation or placement of such items. Any Customer Equipment not claimed by Customer within 60 days of the expiration or termination of the License shall be deemed abandoned and ownership of such equipment shall automatically transfer to UnitedLayer. Notwithstanding anything to the contrary contained in this Agreement, Customer shall not be permitted to remove any Customer Equipment from the Licensed Area at a time when Customer is delinquent in meeting its payment obligations or is in breach of any material term under this Agreement.

2.3. Licensed Area Relocation. UnitedLayer shall not arbitrarily or discriminatorily require Customer to relocate the Equipment to a relocated Licensed Area within the same data center area or different part of the building; however, UnitedLayer shall have the right to relocate the Licensed Area within the Premises upon sixty (60) days' advance written notice to Customer or, in the event of an emergency, as determined by UnitedLayer in its sole discretion, with such notice as UnitedLayer may deem reasonable under the circumstances. Such relocation shall not be effecting an eviction or disturbance of Customer use or possession or giving rise to any claim for setoffs or abatement of Rent due under this Licensing agreement. UnitedLayer shall use commercially reasonable efforts to effect such relocation or reconfiguration in a manner that minimizes to the extent practical any interruption or adverse effect on Customer's telecommunications systems. UnitedLayer understands the need to minimize to the extent practical the disruption of Customer's service and will, to the extent practical, schedule work materially impacting such service during non-business hours and/or other hours designated by Customer. UnitedLayer shall provide Customer no less than thirty (60) calendar days' prior notice of all such relocations or reconfigurations. Following receipt of such notice, if said relocation or reconfiguration requires the movement of any of Customer's equipment or property, Customer shall relocate Customer's equipment or property to a new location within the Datacenter (or within any expansion of the Datacenter located within the Building) which is designated by Landlord and reasonably acceptable to Customer. UnitedLayer shall reimburse Customer for all of the reasonable, out-of-pocket costs actually incurred by Customer in so relocating its equipment or property."

2.4. Compliance with Laws, Facility Rules & Regulations. Each of UnitedLayer and Customer, at its sole cost and expense, shall comply with (a) all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction relating to its specific use or manner of use of the Licensed Area, and (b) all industry standards, practices and procedures. Customer's use of the Licensed Area, installation of Equipment and access to the Premises shall at all times be subject to and conditioned upon the strict adherence to the UnitedLayer's Facility Rules & Regulations.

2.5. Inspections. UnitedLayer may conduct reasonable inspections of the Equipment and Licensed Area as UnitedLayer deems necessary or appropriate. UnitedLayer will use commercially reasonable efforts to give Customer reasonable notice of such inspection, but under no circumstances will UnitedLayer be required to notify Customer or obtain Customer's consent before entering the Licensed Area.

2.6. Damage to Premises. If the Premises are damaged by fire or other casualty, UnitedLayer shall give notice to Customer of such damage as quickly as practicable. UnitedLayer shall have the option to terminate the License due to damage or destruction of the Premises and the License shall terminate as of the date of such exercise or decision as to the affected Licensed Area, and the MRC to be paid by Customer shall be adjusted accordingly. If UnitedLayer does not exercise the right to terminate, then UnitedLayer shall restore the Premises to substantially the same condition it was in prior to the damage, completing the same with reasonable speed considering all of the facts and circumstances. In no event shall UnitedLayer have any obligation to repair or replace Equipment. In the event that UnitedLayer shall fail to complete the repair within a reasonable time period under the circumstances, Customer shall thereupon have the option to terminate the relevant License and applicable Service Order Form(s) with respect to the affected Licensed Area, which option shall be the sole remedy available to Customer against UnitedLayer under this Agreement relating to such failure. If the Licensed Area or any portion thereof shall be rendered unusable by reason of such damage, the MRC for such Licensed Area shall proportionately abate, based on the amount of square footage of the Licensed Area which is rendered unusable, for the period from the date of such damage to the date when such damage shall have been repaired for the portion of the Licensed Area rendered unusable.

3. **Maintenance, Support, Training and Service Levels.**

3.1. Support Services. UnitedLayer shall provide 24/7 customer and technical support services to Customer via e-mail through submissions to support@unitedlayer.com and telephone through calls made to 888-853-7733 extension 2 or via the UnitedLayer's Customer Portal. UnitedLayer strives to respond to support requests in accordance with the provisions of the Service Level Agreements.

3.2. Maintenance. UnitedLayer may suspend the Services to carry out periodic maintenance or upgrade work on the network or its equipment, or to the facility infrastructure and, or equipment ("Scheduled Downtime") as set forth in the applicable Service Level Agreement. UnitedLayer will use commercially reasonable efforts to notify Customer via e-mail or phone pursuant to the information provided on the signature page of the Agreement and the Signed Order Form at least one week in advance of non-emergency maintenance or upgrade work that will occur outside of Scheduled Downtime. Customer is solely responsible for providing UnitedLayer with accurate and current contact information for Customer's designated points of contact. UnitedLayer reserves the right to perform emergency maintenance as needed with no or minimum notice.

3.3. Performance of Services; Service Levels. UnitedLayer shall perform all Services and shall ensure, at all times, that the same are available for access and use by Customer and its designated personnel in accordance with the specifications and service level criteria and performance metrics (the "Service Levels") set forth in the Service Level Agreements.

3.4. UnitedLayer Obligations upon Service Level Failures. With respect to any Service Level failure or upon notice from Customer, UnitedLayer shall (a) perform a post-mortem and/or root-cause analysis to identify the cause of any such deficiency or failure, (b) provide Customer with a report detailing the cause of, and procedure for correcting, such deficiency or failure, and (c) implement such correction procedure if possible.

3.6. Support Response Time. All support requests submitted via phone or email will be responded to within 30 minutes providing the identity of the person assigned to work the ticket and any status information that has been gathered or resolution. Due to the variety of support requests, resolution and repair times vary and are addressed on a case by case basis.

4. Fees and Payment Schedule.

4.1. Invoicing. UnitedLayer shall invoice Customer for fees and charges due and payable for services to be performed for the upcoming month pursuant to each Service Order Form, and for bandwidth usage or overages and metered power usage and additional Services provided in the prior month, via e-mail and/or postal mail on the 1st day of each month. All invoices are payable on the 1st day of the month. Any disputed amounts shall not affect payment of non-disputed amounts.

a) Late Payment. All amounts due and payable under an invoice shall accrue interest at the following rates in the event that such amounts are not paid by the 1st day of the following month (the "Payment Date"):

1. If Customer does not pay any amount due within 30 days after receipt of an invoice, Customer will pay interest at the rate of 5% (or the highest amount permitted by law, whichever is lower) per month or portion thereof on the outstanding balance of any invoice until the date that payment is made. Provided, however, that such rates shall be reduced to the extent necessary to comply with applicable law.

b) Cessation of Services. In the event Customer does not remit payment of all amounts due under an invoice by the Payment Date, UnitedLayer may, at its discretion, cease providing Services to Customer without any notice, including but not limited to, access to the facility, and, or premises.

c) Lien on Customer Equipment. In the event Customer does not remit payment of all amounts due under an invoice by the tenth (10) day following the Payment Date, UnitedLayer may, at its discretion, assert a possessory lien on and maintain possession of all Customer equipment as collateral for amounts owed.

d) Security Deposit. Upon signing and delivery of this Agreement and or the Services Order Form, Customer shall deposit with UnitedLayer as security in the amount of the Security Deposit which shall be specified in the Service Order Form and customarily equal to one month's projected Monthly Recurring Charges. UnitedLayer shall not be required to maintain the Security in a separate account, except as it may be required by law; Customer shall not be entitled to interest on the Security Deposit. In the event that Customer shall transfer all or any part of its interest in the Premises, UnitedLayer may transfer the Security Deposit to such transferee and upon the affirmative assumption of the Security Deposit by the transferee, shall be released by Customer from any and all liability for the return of the Security Deposit.

e) Use and Increase Security Deposit. If Customer fails to pay any amount when due, then UnitedLayer may draw upon the Security Deposit in the amount of payment due but not made. If Customer's actual MRC increase or Customer's required monthly payments are received more than five (5) days after the payment due date for two (2) months during contract term, UnitedLayer in addition to its other remedies hereunder, shall be entitled at its sole discretion to increase the required Security Deposit up to six (6) month's MRC. Within five (5) business days after receipt of written notice of any deficiency in the amount of the Security Deposit (either due to withdrawals by UnitedLayer or an increase in the required amount), Customer shall deposit with UnitedLayer cash or cashier's check in an amount sufficient to restore the Security deposit to its original or required increased amount. Customer's failure to do so shall constitute a material breach hereunder. Within thirty days (30) days after the later of (a) expiration or earlier termination of the Agreement or (b) Customer's vacating the Premises, and provided no default exists hereunder, UnitedLayer shall return the Security Deposit less any portion thereof as UnitedLayer shall have used to satisfy Customer's obligations under this Agreement.

4.2. **Fully-Loaded Charges.** Except as otherwise specifically agreed by Customer, the fees and charges due and payable to UnitedLayer in consideration of the Services and work performed represent fully-loaded costs and expenses and Customer shall not be required to reimburse UnitedLayer for any additional costs or expenses UnitedLayer incurs in performing services and/or complying with its obligations hereunder except for taxable services.

4.3. **Audit Rights.** During the Term and for a period of at least one year thereafter, UnitedLayer shall maintain accurate records sufficient to verify the accuracy of payments due hereunder. Customer shall have the right, at its expense and no more than once per calendar year during the Term and for a period of one year thereafter, to examine and audit such records, to verify the correctness of the amounts paid under this Agreement. In the event that any such audit reveals an overpayment by Customer, then UnitedLayer shall immediately refund or credit to Customer, at Customer's option, the incremental difference between the amount due and the actual amount that was paid, together with interest calculated at the rate of five percent per year (or such lower rate as may be required by law, if applicable).

5. Confidential Information.

5.1. **Non-Disclosure.** Each Party agrees to regard and preserve as confidential all information related to the rights and obligations of the other Party under this Agreement and the business and activities of the other Party, its customers, clients, UnitedLayers, suppliers and other entities with whom such other Party does business, which may be obtained by such Party from any source or may be developed or disclosed as a result of this Agreement, including the economic and financial terms and conditions contained in or otherwise referenced by this Agreement (the "**Confidential Information**"). Each Party agrees to hold the Confidential Information of the other Party in trust and confidence and shall not disclose such information to any person, firm or enterprise, or use (directly or indirectly) any such information for its own benefit or the benefit of any other Party. Even when disclosure is permitted, each Party agrees to limit access to and disclosure of the other Party's Confidential Information solely to its employees on a "need to know" basis for purposes directly related to the performance of the Party's obligations hereunder. Notwithstanding the foregoing, either Party may disclose the other Party's Confidential Information pursuant to applicable law or regulation or compulsion of proper judicial or other legal process; provided, however, that the disclosing Party shall provide prompt notice of the same prior to such required disclosure such that the other Party may seek a protective order or other appropriate remedy to safeguard, restrict and/or limit the disclosure of such Confidential Information. UnitedLayer shall comply with governmental agencies through a court order or Subpoena by doing so it shall release customer data with or without customer's knowledge.

5.2. **Exclusions.** For purposes of this Agreement, Confidential Information includes, without limitation, each Party's trade secrets, proprietary and competitive information, financial information, the specific terms of this Agreement, past and present operations, activities, future plans and strategy; provided, however, that information shall not be considered Confidential Information to the extent, but only to the extent that such information (a) is or becomes publicly available through no fault, default or breach of or by the receiving Party, (b) is or was rightfully acquired by the receiving Party from another without restriction or obligation of confidentiality or (c) if such information is or was independently developed by the receiving Party without use of or reference to Confidential Information of the other Party.

5.3. **Recipients.** Each Party shall, in advance, by agreement, instruction or otherwise, ensure that each individual who obtains or is in a position to obtain Confidential Information of the other Party understands and has agreed to comply with the obligations in this **Article 5** of the Agreement.

5.4. **Equitable Relief.** In the event of a breach or threatened breach of the foregoing confidentiality obligations by one Party, the other shall suffer immediate and irreparable harm for which, money damages shall be impossible to calculate and be inadequate compensation. Accordingly, either Party shall be entitled to an injunction, restraining order or other equitable relief to enforce compliance with the provisions hereof; provided, however, that no specification herein of any particular legal or equitable remedy shall be deemed or construed to prohibit either Party from seeking or obtaining any other remedy under this Agreement, at law or in equity.

6. Term and Termination; Transition Assistance.

6.1. Term. This Agreement shall commence on the Service/Billing Start Date and shall continue thereafter until the latest termination date reflected in the Signed Order Form. The initial term of this agreement shall be for term as set forth in the Signed Order Form. This agreement shall, upon expiration as set forth per Service Order Form, automatically renew for additional one year Term, if the Customer is not then in Default and neither party has provided a 60 days written notice (Certified US Mail) of non-renewal. Except as specifically set forth in the Signed Order Form, UnitedLayer reserves the right to increase pricing by no more than 5% per year for power related charges, and no more than 5% per year for all other products and services.

6.2. Termination for Insolvency. Either Party may immediately terminate this Agreement in the event the other Party (a) admits in writing its inability to pay its debts as they become due, fails to satisfy any judgment against it, or otherwise ceases operations of its business in the ordinary course, (b) is adjudicated bankrupt or becomes insolvent, (c) winds up or liquidates its business voluntarily or otherwise, (d) applies for, consents to or suffers the appointment of, or the taking of possession of by, a receiver, custodian, assignee, trustee, liquidator or similar fiduciary of itself or of all or any substantial portion of its assets, (e) makes a general assignment for the benefit of creditors, (f) commences a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (g) files a petition seeking to take advantage of any other law providing for the relief of debtors, (h) acquiesces to, or fails to have dismissed, within 30 days, any petition filed against it in any involuntary case pursuant to such bankruptcy laws and/or (i) takes any action for the purpose of effecting any of the foregoing.

6.3. Effect of Termination. Upon any termination of this Agreement, within 10 days of the effective date of termination or expiration: (a) UnitedLayer shall return to Customer (or destroy at Customer's request) the Confidential Information of Customer, together with all copies thereof, in UnitedLayer's possession or control, (b) Customer shall return to UnitedLayer (or destroy at UnitedLayer's request) the Confidential Information of UnitedLayer in Customer's possession or control and (c) all rights and licenses granted by either Party to the other herein shall terminate and be of no further force or effect.

6.4. Elective Termination. During the Initial Term and Renewal Period, Customer may only terminate this Agreement or a Service Order Form with UnitedLayer's written acceptance of an elective termination. Customer may request elective termination of the applicable License by submitting to UnitedLayer sixty (60) days prior written notice of Termination. Should UnitedLayer accept the elective termination, Customer shall pay to UnitedLayer by way of liquidated damages and not a penalty, the aggregate Monthly Recurring Services Charges, MRC otherwise due for the remainder of the initial Term or renewal period.

6.5. Contract Expiration. Upon expiration of the contract term specified on the Signed Order Form, UnitedLayer reserves the right to correct pricing for all services to current market rates.

7. Representations, Warranties and Covenants.

7.1. Mutual. Each Party represents, warrants and covenants to the other Party that: (a) it has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it under this Agreement, (b) the execution of this Agreement and performance of its obligations under this Agreement do not and shall not violate any other agreement to which it is a Party, (c) this Agreement constitutes the legal, valid and binding obligation of such Party when executed and delivered and (d) any and all activities it undertakes in connection with this Agreement shall be performed in compliance with all applicable laws, rules and regulations.

7.2. By UnitedLayer. UnitedLayer further represents, warrants and covenants to Customer that (a) its personnel have the proper skill, training and background necessary to accomplish their assigned tasks, and all Services to be rendered under this Agreement shall be performed in a competent and professional manner, by fully qualified personnel, (b) the Services, Deliverables and any and all other information, content, products, services and materials provided by or through UnitedLayer hereunder (collectively the "UnitedLayer Materials") shall conform to and perform in accordance with the applicable Specifications, applicable documentation and/or any other descriptions, requirements and criteria set forth or otherwise referred to in this Agreement and UnitedLayer shall correct and

repair, at no cost to Customer, any defect, malfunction or non-conformity that prevents the same from conforming and performing as warranted hereunder, (c) the UnitedLayer Materials do not and shall not violate any applicable laws, rules or regulations or infringe the rights of any third party, (d) Customer's use and possession of the UnitedLayer Materials shall not be interrupted or disturbed by UnitedLayer or any entity asserting a claim under or through UnitedLayer, and (e) UnitedLayer has obtained or shall obtain and maintain during the Term all rights, licenses, consents and authorizations necessary to perform its obligations as set forth in this Agreement.

8. Indemnification; Insurance; Limitation of Liability.

8.1. By Customer. Customer agrees to defend and/or handle at its own cost and expense any claim or action against UnitedLayer, its officers, directors, employees, representatives, and agents based upon or in connection with any action or claim by a third party arising out of (a) any actual or alleged breach of Customer's representations, warranties and covenants contained in this Agreement and (b) UnitedLayer's provision of Services under this Agreement, but specifically excluding any such claim or action caused by or based upon any unauthorized act or omission of UnitedLayer, its employees, contractors, representatives or agents. Customer agrees to indemnify and hold UnitedLayer harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) associated with any such claim or action. Customer shall solely conduct the defense of any such claim or action and all negotiations for its settlement or compromise; provided, however, that (i) no settlement or compromise affecting the financial or legal obligations of UnitedLayer shall be entered into or agreed to without UnitedLayer's prior written approval unless such settlement contains an unconditional release by the claimant or the plaintiff of UnitedLayer, its officers, directors, employees, representatives, and agents from all liability in respect of such claim or action and (ii) UnitedLayer has the right to participate, at its own expense, in the defense and/or settlement of any such claim or action in order to protect its own interests.

8.2. By UnitedLayer. UnitedLayer agrees to defend and/or handle at its own cost and expense any claim or action against Customer, its officers, directors, employees, representatives and agents based upon or in connection with any action or claim by a third party arising out of (a) any actual or alleged breach of any of UnitedLayer's representations, warranties and covenants contained in this Agreement and (b) any services performed by UnitedLayer pursuant to this Agreement and the UnitedLayer Materials, but specifically excluding any such claim or action caused by or based upon any unauthorized act or omission of Customer, its employees, contractors, representatives or agents. UnitedLayer agrees to indemnify and hold Customer harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) associated with any such claim or action. UnitedLayer shall solely conduct the defense of any such claim or action and all negotiations for its settlement or compromise; provided, however, that (i) no settlement or compromise affecting the financial or legal obligations of Customer shall be entered into or agreed to without Customer's prior approval unless such settlement contains an unconditional release by the claimant or the plaintiff of Customer, its officers, directors, employees, representatives, and agents from all liability in respect of such claim or action and (ii) Customer has the right to participate, at its own expense, in the defense and/or settlement of any such claim or action in order to protect its own interests.

8.3. Limitation of Liability. EXCEPT FOR ANY DAMAGES RESULTING FROM EITHER PARTY'S INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS AGREEMENT, ANY BREACH OF EITHER PARTY'S OBLIGATIONS SET FORTH IN ARTICLE 5, AND/OR THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF EITHER PARTY OR ITS PERSONNEL, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES IN ANY MANNER IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM OR WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.4. Insurance. Customer shall keep in effect such insurance coverage as are set forth below for each Licensed Area. Customer shall maintain, at its expense, commercial general liability insurance for the Licensed Area. Such coverage shall: (a) contain blanket contractual liability coverage that covers Customer's liabilities arising out of this Agreement; (b) have a single limit of not less than one million dollars (\$1,000,000), an aggregate limit of not less than two million dollars (\$1,000,000) and include umbrella or excess liability insurance with a combined single limit

of not less than three million dollars (\$1,000,000); (c) cover any third parties performing work in the Premises; (d) name Customer as insured and UnitedLayer as additional insured (e) be considered primary, regardless of any insurance carried by UnitedLayer. Customer shall maintain "all risk" property insurance in the full replacement value of Customer's Equipment and personal property in the Premises. Customer shall procure and maintain workers' compensation and employer's liability insurance in accordance with the laws of the state in which the Facility is located. Employers liability insurance shall have a limit of not less than: (a) one million dollars (\$1,000,000) Bodily Injury Each Accident; (b) one million dollars (\$1,000,000) Bodily Injury By Disease – Each Person; and (c) one million dollars (\$1,000,000) Bodily Injury By Disease – Policy Limit. Such Insurers shall be authorized to do business in the state in which the Facility is located. Prior to occupying the Licensed Area, Customer shall submit to UnitedLayer evidence that Customer has the insurance policies required hereunder in effect and shall provide to UnitedLayer certificates, with copies of all applicable endorsements attached, to UnitedLayer before the commencement of this License. Customer shall ensure that UnitedLayer receives at least ten (10) days' prior written notice before any policy is cancelled or materially modified. If any work is to be performed for Customer's improvements, the certificate shall be delivered by Customer to UnitedLayer prior to commencement of the improvements. If Customer fails to obtain the necessary coverages, UnitedLayer may obtain such coverages at Customer's expense or Customer will sign a letter Agreement holding UnitedLayer harmless from loss. Customer's property insurance shall include a waiver of subrogation in favor of UnitedLayer.

9. General.

9.1. No Assignment. Customer may not assign, transfer or convey this Agreement, or any rights or obligations hereunder, by merger, share exchange, asset sale, reorganization, operation of law or otherwise, to any other party without UnitedLayer's prior written consent and any attempt to do so shall be void *ab initio*. This Agreement shall be binding upon, and enforceable by, and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

9.2. Relationship; No Third Party Beneficiaries. Each Party is an independent contractor and each Party's personnel are not employees or agents of the other Party for federal, state or other tax purposes or any other purposes whatsoever. Personnel of one Party have no authority to make representations, commitments, bind or enter into contracts on behalf of or otherwise obligate the other Party in any manner whatsoever. Nothing in this Agreement shall be construed or deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership, business entity of any kind, nor constitute one Party an agent of the other Party. There are no third party beneficiaries, actual or intended, under this Agreement.

9.3. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and delivered via facsimile, e-mail or postal to the applicable Party at the facsimile number or the e-mail address set forth on the signature page of the Agreement, unless, by notice, a Party changes or supplements the addressee and addresses for giving notice. All notices shall be deemed given on the date sent.

9.4. Publicity; Press Releases. Neither Party shall be entitled to use the name, service or trademarks, logos or otherwise identify or refer to the other Party in any press releases, publicity, marketing or promotional material without the prior, express approval of such other Party in each instance.

9.5. Dispute Resolution and Jury Waiver. This Agreement and all disputes, claims, actions, suits or other proceedings arising hereunder shall be governed by, and construed in accordance with, the substantive law of the State of California applicable to contracts wholly made and to be performed within the State of California without regard to conflict of laws principals. Each Party irrevocably submits to the sole and exclusive jurisdiction of the courts of the State of California and the Federal courts of the Northern or Southern District of California, situated in the County of San Francisco or County of Los Angeles at the election of UnitedLayer. Each Party irrevocably consents to the exercise of personal jurisdiction over each of the Parties by such courts and waives any right to plead, claim or allege that California is an inconvenient forum. In order to limit the cost of resolving any disputes between the parties, and as a material inducement to each party to enter into this Agreement, to the fullest extent permitted by law, UnitedLayer and Customer each expressly waives its right to trial by jury in any trial held as a

result of a claim arising out of, in connection with, or in any manner related to this Agreement in which UnitedLayer and Customer are adverse parties, including cross-complaint by one against the other.

9.6. Voluntary Arbitration Alternative. Upon the mutual agreement of the Parties, any claim or controversy arising out of or relating to the Agreement, or any breach thereof between the Parties, shall be submitted to arbitration in San Francisco or Los Angeles, California, before an experienced arbitrator selected in accordance with the Rules of the American Arbitration Association, as the exclusive remedy for such claim or controversy. Either party desiring to arbitrate shall give written notice to the other party within a reasonable period of time after the party becomes aware of the need for arbitration. The decision of the arbitrator shall be final and binding. Judgment on any award rendered by such arbitrator may be entered in any court having jurisdiction over the subject matter of the controversy. The fees and costs of the arbitrator shall be paid equally by the Parties.

9.7. Attorney Fees. If either party commences an action or arbitration against the other party arising out of or concerning this agreement or services provided in connection with this agreement, the prevailing party in such litigation or arbitration shall be entitled to reasonable attorney fees and costs not to exceed fifteen thousand dollars (\$15,000) in addition to such other relief as may be awarded. In any instance in which Customer requests Unitedlayer's consent hereunder, Customer shall pay all of UnitedLayer's review, processing fees, and costs as well as any good faith professional attorneys, accountants, engineers or other consultant's fees incurred by UnitedLayer or its landlord relating to such request for consent within ten (10) days after written request by Customer.

9.8. Counterparts and Interpretation. This Agreement may be executed in any number of counterparts, electronically, via facsimile or in portable document format (PDF), all of which taken together shall constitute one single agreement between the Parties. Headings are for convenience only and are not to be considered in construing or interpreting this Agreement. The terms "include," "includes," and "including," whether or not capitalized, mean "include, but are not limited to," "includes, but is not limited to," and "including, but not limited to," respectively and are to be construed as inclusive, not exclusive.

9.9. Consents. Except as specifically set forth in this Agreement, all consents, requests and approvals to be given by either Party under this Agreement shall (a) be in writing and (b) not be unreasonably withheld. Each Party shall make only reasonable requests under this Agreement.

9.10. Amendment; Waiver; Severability. No amendment, modification, waiver or discharge of any provision of this Agreement shall be valid unless made in writing and signed by an authorized representative of the Party against whom enforcement is sought. No failure or delay by either Party to exercise any right or enforce any obligation shall impair or be construed as a waiver or on-going waiver of that or any or other right or power, unless made in writing and signed by both Parties. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the remaining provisions of this Agreement shall be unimpaired and remain in full force and effect.

9.11. Survival. Any provision of this Agreement which, either by its terms or to give effect to its meaning, must survive, including, any and all payments due. Article 4, Article 5, Article 6, Article 7, Article 8, and Article 9 hereof, shall survive the cancellation, expiration or termination of this Agreement.

9.12. Entire Agreement. This Agreement, together with the exhibits hereto which are incorporated herein by this reference, constitutes the entire agreement between the Parties and supersedes any prior or inconsistent agreements, negotiations, representations and promises, written or oral with respect to the subject matter hereof. In the event of a conflict between the Terms and Conditions and any Services, the language of the Service Order Form shall prevail.

9.13. Eminent Domain. In the event of a taking by eminent domain of all or any portion of the Premises so as to prevent, in UnitedLayer's sole reasonable judgment, the utilization by Customer of the Licensed Area, the License shall terminate as of the date of such taking or conveyance with respect to the Licensed Area which is affected by such taking or conveyance, and the MRC to be paid by Customer shall be adjusted accordingly. Customer shall have no claim against UnitedLayer for the value of the unexpired Term of this Agreement or the applicable Service Order affected thereby (or any portion thereof) or any claim or right to any portion of the amount that might be

awarded to the landlord of the Premises or UnitedLayer as a result of any such payment for condemnation or damages.

EXHIBIT A

Service Level Agreement for Colocation, Power and Cooling Services

This Service Level Agreement (“SLA”) is issued in accordance with the Master Terms & Conditions/Services Agreement (the “Agreement”) between UnitedLayer and Customer. Any capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Terms and Conditions of the Agreement.

10. **General**

10.1. In this SLA, the following terms have the following meanings:

- a) “Facility”, “Data Center” or “Premise” means the building in which the datacenters are located.
- b) “Data Center Availability” means all the time in any calendar month the Data Center is available to visit, not to include Scheduled Downtime.
- c) “Data Center Downtime” means any interruption in the Data Center Availability guaranteed in Section 3.1., not to include Scheduled Downtime.
- d) “Force Majeur” means an act of nature (including fire, flood, earthquake, storm, excessive voltage or amperage sags on utility power feeds, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, vandalism or other criminal act, nationalization, government sanction, blockage, or embargo.
- e) “Power” means the physical electricity delivered to the Customer.
- f) “Power Downtime” means any interruption to the Power delivered to the Customer.
- g) “Environment” means the recorded temperature within the Data Center limited to the cold aisle temperature or the ambient temperature at the intake of the Customer’s Equipment.
- h) “Environment Downtime” means a change in the recorded cold aisle or intake temperature that is outside of the 72 to 78 degree (+/- 6 degrees) range maintained within the Data Center guaranteed in Section 14.1.
- i) “Signed Service Order Form” shall mean the proposal for Services executed by both UnitedLayer and Customer.
- j) “Service Outage” shall mean any Data Center, Power or Environment downtime.
- k) “Power Monitoring” UnitedLayer shall monitor and enforce 80% utilization limits based on ANSI/NFPA/NEC 70 standards primary power circuits delivered. UnitedLayer shall monitor and enforce a maximum total of 80% utilization limits on combined primary/secondary circuits delivered.
- l) “Cooling Monitoring” UnitedLayer shall monitor the cold aisle or intake temperature and shall strictly enforce Customer adherence to cold aisle/hot aisle design methods and best practices, including Cabinet level Air Flow design and management.

10.2. This SLA only applies to the Services to the extent that they are provided by means of systems and equipment that are either owned or operated by or on behalf of UnitedLayer.

10.3. UnitedLayer shall not be liable to pay compensation under this SLA where its failure to meet any of its obligations under this SLA is caused by a Force Majeure event, by the performance of routine maintenance, by a failure in any Customer equipment, or by any act or omission of Customer, or third party acting on Customer's behalf.

10.4. Credits and/or other compensation under this SLA shall only be payable where:

- a) Customer is not currently, nor was at the time the Service Outage occurred, in default of any of the terms and conditions of the Agreement and this SLA;
- b) Customer has submitted to UnitedLayer a claim in writing via support@unitedlayer.com identifying the circumstances in which Customer claims that the credit and/or compensation arose;
- c) UnitedLayer has agreed in writing, acting reasonably and without undue delay, to issue such credit and/or other compensation in connection with such claim;
- d) Customer's account is current and Customer has not been in default due to financial and payment history during the Term of the contract;
- e) Customer is not in violation of ANSI/NFPA/NEC 70 power standard codes; and
- f) Customer is not in violation of cold aisle/hot aisle design methods and best practices, including Cabinet level Air Flow design and management. Set forth by UnitedLayer.

All credits and/or other compensation shall be applied towards the Power portion of UnitedLayer's invoice(s) so payable shall be applied to Customer's account to be reconciled following UnitedLayer's agreement to issue such credit and/or other compensation in connection with such claim. All claims and credits will be applied towards Customer's next invoice only. In order to receive credits, Customer must submit a trouble ticket within 48 hours of the Service Outage. All claims for credits and/or compensation must be submitted promptly in writing and within 48 hours from the date of the Service Outage. Claims should be submitted to billing@unitedlayer.com and marked in the subject line with "claim for services credit." Customer's failure to notify UnitedLayer within the period stated above shall result in Customer's waiver of its right to receive any such credit and/or other compensation.

10.5. The maximum monthly credit and/or compensation available under this SLA are limited to an amount not greater than one month's fees. Credit and/or other compensation provided hereunder shall be Customer's sole and exclusive remedy for any Service Outage or any failure to meet the Deliverables.

10.6. UnitedLayer reserves the right to amend the SLA from time to time. UnitedLayer shall give Customer not less than 30 days notice of any changes in the SLA and Customer will be notified by e-mail.

11. Provision of Services

11.1. UnitedLayer will provide Customer with colocation and power services (the "Services") in accordance with the terms and conditions contained herein for the six-month, one-year, two-year or month-to-month term set forth in the Signed Service Order Form.

11.2. UnitedLayer will provide Services by the service commencement date set out in the Signed Service Order Form. If UnitedLayer is unable to commence providing Services by the service commencement date, at Customer's request UnitedLayer will provide a one-time credit to Customer's account in the amount of 10% of the setup fee (non-recurring charge) set out in the Signed Service Order Form.

11.3. UnitedLayer shall charge, and Customer shall be obligated to pay, the fees for the Services set forth on the Signed Service Order Form.

12. Service Levels for Facility & Data Center Availability

12.1. UnitedLayer guarantees an overall Facility and Data Center Availability of 100%.

12.2. UnitedLayer may temporarily suspend access to the Data Center to carry out periodic maintenance or upgrade work (“Scheduled Downtime”).

12.3. Except in the case of an emergency, UnitedLayer will provide Customer with 48 hours notice of Scheduled Downtime.

12.4. UnitedLayer will endeavor not to suspend access to the Data Center Scheduled Downtime more than 12 times in any calendar year and not exceed a total of 12 hours in any calendar year and at Customer’s request, Customer will receive a credit to Customer’s account in the amount of the pro-rated fee for the provision of one day of Services for each additional service suspension for such work. This credit will only apply to monthly recurring fees on power and space within that Data Center.

12.5. UnitedLayer will endeavor to accommodate Customer’s requirements in terms of outage times; however, depending on the circumstances this may not always be possible. Outage times will be quoted in Pacific Time to prevent mistakes being made over the various time zones.

13. Service Levels for Power Availability

13.1. UnitedLayer guarantees an overall Power Availability of 100%.

13.2. If Customer requests a credit for Power Downtime, and such request is validated by UnitedLayer, UnitedLayer shall credit Customer in accordance with the provisions hereunder:

a) If in one calendar month a Customer experiences Power Downtime that is not the result of faulty equipment within the Customer’s cabinet or cage or any form of negligence on the Customer’s part, at Customer’s request, Customer will receive a credit towards the invoice which Customer receives two months following the month in which Power Downtime was reported. For the purpose of determining the amount of any credit, Power Downtime will be deemed to commence when the Power outage is reported on UnitedLayer’s electrical monitoring system. An alert system notifies UnitedLayer support staff immediately when any Power Downtime is reported on the electrical monitoring system and a trouble ticket will be opened within 5 minutes of UnitedLayer’s discovery of Power Downtime if it has not yet been reported by Customer.

13.3. If there is Power Downtime in the aggregate in any calendar month, Customer shall be entitled to a maximum credit of 100% of that month’s invoice for the portion of the invoice that corresponds to Power and Space at the given Data Center in which Power Downtime occurred. Customer will be entitled to a credit of one three hundred sixtieth (1/360) of that month’s invoice for each hour that power is not available.

13.4. If Power Downtime is to occur for more than 72 hours in the aggregate in any calendar month, Customer may give written notice of Customer’s intent to terminate this SLA and any connections or other Services, in which termination will take effect after 30 days.

14. Service Levels for Environment

14.1. The average temperature of the cold aisle in the Data Center will be 72 - 78 degrees Fahrenheit (+/- 6 degrees) at all times. Temperature may be measured at cold aisle points in the Facility of UnitedLayer’s choosing

provided that those points are within 2 feet of computing equipment for an average cabinet/rack location.. Temperature is monitored and recorded electronically and provides audible alerts as well as alerts through a paging system if the threshold listed above is breached. UnitedLayer does not provide any SLA for hot aisle(s) ambient temperature in the Data Center.

14.2. If there is any Environmental Downtime in the aggregate in any calendar month, Customer shall be entitled to a maximum credit of 100% of that month's invoice for the portion of the invoice that corresponds to Space at the given Data Center in which Environmental Downtime occurred. Customer will be entitled to a credit of one three hundred sixtieth (1/360) of that month's invoice for each hour of Environmental Downtime.

14.3. If Environment Downtime is to occur for more than 72 hours in the aggregate in any calendar month, Customer may give written notice of Customer's intent to terminate this SLA and any connections or other Services, in which termination will take effect after 30 days.

CONTACT INFORMATION

1. **Customer Billing Contact:**

NAME: _____

TITLE: _____

ADDRESS: _____

PHONE: _____; FAX: _____

EMAIL ADDRESS: _____

2. **ENGINEERING/OPERATIONS CONTACT:**

NAME: _____

TITLE: _____

ADDRESS: _____

PHONE: _____; FAX: _____

EMAIL ADDRESS: _____

3. **PRIMARY ACCOUNT CONTACT:**

NAME: _____

TITLE: _____

ADDRESS: _____

PHONE: _____; FAX: _____

EMAIL ADDRESS: _____