

Master Products and Services Agreement

This Master Products and Services Agreement is by and between ServerCentral, LLC (“Summit”), a Delaware company, and _____ (“Customer”) and is effective as of _____ (the “Effective Date”). Summit and Customer may be collectively referred to as the “Parties” and, individually, as a “Party.”

1. DEFINITIONS

“**Affiliate**” - any Person that, directly or indirectly, controls, is controlled by, or is under common control with, a specified Person.

“**Agreement**” - this Master Products and Services Agreement, together with all Orders and Supplements (as each such term is defined below).

“**Commencement Date**” - the date upon which Summit provisions an ordered Product or Service, as set forth in the applicable Order.

“**Control**,” “**controls**” and “**controlled**,” each as used in the definition of “Affiliate” - the possession, directly or indirectly, of fifty percent (50%) or more of the equity interests of another Person or the power otherwise to direct or cause the direction of the management and policies of such other Person, whether through ownership of voting securities, by contract, or otherwise.

“**Datacenter Facility**” - a location where Summit maintains a presence for the physical housing of computer and/or network equipment.

“**Effective Date**” - the date upon which this Agreement has been executed by both Summit and Customer.

“**Malicious Code**” - any computer virus, Trojan horse, worm, time bomb, or other similar code or hardware component designed to disable, damage, or disrupt the operation of, permit unauthorized access to, erase, destroy or modify any software, hardware, network or other technology.

“**Person**” - an individual or a partnership, corporation, limited liability company, trust, joint venture, association, unincorporated organization, government agency or political subdivision thereof, or other entity.

“**Products**” - the products ordered by Customer, as set forth in one or more Orders.

“**Recurring Charges**” - any recurring (whether monthly recurring, quarterly recurring, etc.) charges set forth in an Order.

“**Summit Network**” - collectively, the fiber optic network, system capacity and related facilities (including, without limitation, routers, switches, and communication channels) owned or controlled by Summit.

“**Summit Website**” - Summit’s website, published at <https://www.SummitHQ.com> or such other URL as Summit may specify from time to time.

“Service Level” or “SLA” - performance target for specific Services provided by Summit, as set forth in an applicable Supplement.

“Services” - the services ordered by Customer, as set forth in one or more Orders.

“Supplement” means a Supplement setting forth the description, terms and conditions and SLAs (if relevant) applicable to any Products and/or Services to be provided under this Agreement, which Supplement (i) is posted on the Summit Website and (ii) may be amended from time to time by Summit in its sole discretion; provided that Summit shall provide Customer notice via e-mail of any such amendment Summit reasonably believes will substantially affect use by Customer of applicable Products and/or Services.

“Support Ticketing System” - Summit’s system for tracking all support requests, and at Summit’s sole discretion, limited requests for purchasing Products or Services.

“Term” - the period of time in which Summit provides Products and/or Services to Customer, as set forth in the applicable Order.

2. PRODUCTS AND SERVICES

2.1 Orders

2.1.1 General. Any and all Products and Services to be provided by Summit under this Agreement shall be set forth in individual order forms (including sales order forms and orders placed via the Summit Website or Summit’s Support Ticketing System), each of which will: (i) describe the Products and/or Services to be provided thereunder and related subject matter, including the Fees (as defined in Section 4.1 below) to be charged therefor, the applicable Commencement Date and Term, and other relevant terms agreed upon by the Parties; and (ii) unless entered into by Customer via the Summit Website or Summit’s Support Ticketing System, be executed by authorized representatives of each Party (each such completed order, as executed by both Parties, or otherwise entered into by Customer via the Summit Website or Summit’s Support Ticketing System, an “Order”). Each Order is hereby incorporated into, and subject to, the terms of this Agreement.

2.1.2 Change Requests. Any change(s) to the nature or scope of any Products or Services to be provided under any Order must be agreed in an amended Order signed by authorized representatives of both Parties. Any such amended Order shall be incorporated into this Agreement and subject to the terms and conditions of the applicable Supplement(s).

2.1.3 Order Terms. The initial Term of each Order shall begin on the Commencement Date for the Products and/or Services ordered thereunder and shall remain in effect until the expiration of the initial Term specified in the Order. If the Order specifies a Term of longer than one (1) month, the Term of such Order will automatically renew for successive twelve (12) month terms unless either Party provides the other Party written notice of non-renewal at least ninety (90) days prior to the end of the then current initial Term or renewal Term. Notwithstanding the foregoing, if the Commencement Date of an Order occurs on a day other than the first day of a month, Customer shall be responsible for

charges beginning on the Commencement Date and Summit will bill for the pro-rata portion of the month in which Service was provided, and the Term will then start on the first day of the subsequent month. By way of example, if an Order with a twelve (12) month Term has a Commencement Date of December 15, 2015, Customer shall be responsible for the pro-rata Recurring Charges beginning on December 15, 2015 to December 31, 2015, and the Term of the Order shall begin on January 1, 2016 and shall continue for a period of twelve (12) months from such date.

2.1.4 Monthly Terms. Each Order for a one (1) month Term shall automatically renew for consecutive one (1) month Terms, unless either Party provides the other Party at least thirty (30) days prior written notice of non-renewal.

2.1.5 Third Party Providers. If Summit is required to procure from a third party any of the Products or Services listed on an Order, Customer hereby agrees that, unless otherwise expressly set forth on such Order or the applicable Supplement(s): (i) it shall be subject to, and shall comply with, any and all terms and conditions specified by such third party licensor, lessor or provider ("Third Party Provider") as Summit may communicate to Customer from time to time or that are otherwise the subject of an agreement between Customer and such Third Party Provider (e.g., an end user license agreement pertaining to third party software provided by Summit); (ii) in the event of any conflict between such terms and conditions specific to the Products or Services provided by such Third-Party Provider and those specific to Products and/or Services provided directly by Summit, the more restrictive terms and conditions shall control; and (iii) in conjunction with any cancellation by Customer of any Products or Services from a Third-Party Provider, Customer will be responsible for all termination charges imposed upon Summit by such Third Party Provider and shall promptly reimburse Summit for such charges upon Summit invoicing Customer therefor.

2.1.6 Datacenter Facilities. Without limiting any other obligations of Customer hereunder, Customer shall comply with any and all security and facility policies, rules and regulations of Summit and/or any Third-Party Provider in connection with the use of any Datacenter Facility.

2.2 Supplements.

2.2.1 General. Each Supplement is hereby incorporated into, and subject to, the terms of this Agreement. Notwithstanding any provision to the contrary, no SLA for any Services is applicable during any trial period with respect to Customer's use of such Services or during initial configuration or implementation of such Services.

2.2.2 Credits. In the event of a failure by Summit to meet any SLA, then subject to the terms and conditions of this Section 2.2 and the relevant Supplement, Summit shall issue to Customer a credit to be applied against future Fees payable by Customer in respect of the Services to which such SLA pertains (each, a "Credit"); provided that under no circumstances shall the aggregate Credits in respect of any one (1) calendar month issued under any individual Supplement exceed the lesser of (i) the total Fees payable for the Services to which the SLA(s) pertain(s) in such calendar month and (ii) such limitations set forth in such Supplement. In addition, Customer shall be entitled to only a single Credit should any one incident result in a failure of more than one SLA under any Supplement,

even if such incident causes the failure of multiple SLAs under such Supplement. Credits are calculated after deduction of all discounts and other special pricing arrangements, and are not applied to Taxes (as defined below), surcharges or similar charges.

2.2.3 Credit Request. To receive a Credit under any Supplement, Customer must (i) notify Summit within five (5) business days from the time Customer becomes eligible to receive such Credit, and (ii) provide Summit any such information as Summit may request regarding the event Customer believes gives rise to the entitlement to such Credit. Customer shall forfeit its right to receive the Credit if it fails to comply with these requirements.

2.2.4 Remedy. UNLESS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING THE APPLICABLE ORDER OR SUPPLEMENT(S), WITH RESPECT TO ANY SPECIFIED SERVICES, ANY CREDITS AWARDED BY SUMMIT HEREUNDER SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE BY SUMMIT TO MEET ANY SLA AND ANY OTHER FAILURE, UNAVAILABILITY, DEGRADATION OR NONPERFORMANCE OF ANY SERVICES, INCLUDING, TO THE EXTENT APPLICABLE, ANY OUTAGES OR NETWORK CONGESTION.

2.2.5 Exclusions. Customer shall not receive any Credit under any Supplement to the extent Summit's failure to meet the applicable SLA is caused by or associated with any of the following, to the extent applicable, or such other exclusions as are set forth in such Supplement:

- (a) a Force Majeure Event (as defined below);
- (b) failure of local access circuits to the Summit Network, unless such failure is caused solely by Summit;
- (c) the SLA was erringly deemed as not fulfilled due to an outage or error of any SLA measurement system;
- (d) scheduled maintenance, emergency maintenance or necessary upgrades; failure, malfunction, degradation, or incorrect or unauthorized installation or operation of any equipment or other technology or services owned by Customer (or any of its End Users (as defined in Section 2.3 below)) or otherwise not provided by or on behalf of Summit;
- (e) acts or omissions of Customer and/or its customers, agents, contractors and/or vendors, including negligence, willful misconduct and any breach of this Agreement; or
- (f) modification, suspension or discontinuation of the relevant Services in accordance with the terms of this Agreement.

2.3 Scope of Use. Except as expressly set forth in this Agreement, (i) the Products and Services are provided only for Customer's internal use, and only for the purposes set forth in this Agreement, and (ii) Customer may not market, sell, license, lease, provide or make available to a third party, or otherwise distribute, directly or indirectly, any Products or Services. In the event this Agreement permits Customer to make available any Products or Services to any third party (each, an "End User"), then Customer shall be responsible for each End User's compliance with all applicable terms of this Agreement and, unless otherwise expressly set forth in this Agreement, Customer shall (a) require each such End User to enter into a written agreement no less protective of the rights of Summit and any applicable Third Party Providers than the terms set forth herein and

in no event conflicting with any terms hereof (each, an "End User Agreement"), (b) enforce such End User's compliance with the terms of such End User Agreement, (c) provide Summit notice of any violation of any End User Agreement that may adversely affect Summit or any Third Party Provider, or any of their respective rights hereunder, promptly after becoming aware of the same, (d) upon termination of any End User Agreement, ensure the End User has ceased use of all Products and/or Services, and (e) provide Summit written notice of any claim, damages, or cause of action brought against Customer by any End User, and/or any subpoena served upon Customer or any officer or employee thereof, which relates to any Products or Services or those portions of any End User Agreement relating to such Products and/or Services.

- 2.4 Suspension.** Summit may suspend its provision to Customer of any or all Products and Services under this Agreement, and may deny access to, and remove, any Customer equipment or other Customer property at, any Datacenter Facility space provided to Customer hereunder, immediately upon notice to Customer (with e-mail notice to suffice) in the event: (i) Customer breaches the Acceptable Use Policy (as defined below) in any material respect and Summit determines in its reasonable discretion that there is potential harm to the Summit Network or any other technology, network or other property employed by Summit or other Summit customers; (ii) of repeated violations of the Acceptable Use Policy by Customer; (iii) Customer fails to cooperate with any inspection or audit as required under Section 3.10; (iv) Summit reasonably believes Customer has used or is using any Products or Services hereunder in any manner that violates any applicable laws or regulations; (v) Customer breaches any of its other material obligations under this Agreement and fails to cure such breach (a) within five (5) days following written notice thereof, if Customer has failed to pay any amounts due under this Agreement, or (b) within thirty (30) days following written notice of any other breaches; or (vi) Customer repudiates any of its obligations under this Agreement before fully performing such obligations. Summit, in its reasonable discretion, may re-enable the affected provision of Products or Services upon its satisfaction that all violations have ceased and with adequate assurance that such violations will not occur in the future. In addition, Summit may modify or suspend the provision of any Products or Services hereunder, if, in Summit's reasonable discretion, such modification or suspension is necessary or advisable to (a) comply with any applicable law or regulation or a request of any governmental or law enforcement authority, (b) preserve the security of the relevant Products or Services, (c) avoid or mitigate an imminent risk of harm or any other situation that may compromise the ability of Summit to deliver any Products or Services, in accordance with the terms of this Agreement, to Customer or any other Summit customers, or (d) eliminate a hazardous condition, and Summit shall provide Customer notice of any such modification or suspension when, and to the extent, reasonably practicable.
- 2.5 Security.** Summit shall use commercially reasonable efforts to employ measures it deems appropriate to endeavor to mitigate security risks with respect to its Products and Services, but does not guarantee that any Products or Services, or the use thereof, or any Customer Data (as defined in Section 3.5.1 below) disseminated or otherwise used in connection therewith, will be secure.

3. GENERAL OBLIGATIONS OF CUSTOMER

- 3.1 Access Methods.** In the event access to any Products or Services requires any distinct usernames and/or passwords (collectively, "Access Methods"), Customer shall ensure the confidentiality of such Access

Methods and shall be responsible for all acts or omissions of all Persons using such Access Methods or otherwise allowed access by Customer to any Products or Services, whether or not authorized by Customer.

3.2 Acceptable Use. In the event Summit provides Customer any Services hereunder, Customer shall at all times comply with and conform its use of the Services to Summit's requirements for acceptable use of Summit's Services, as set forth on the Summit Website, as such requirements may be amended by Summit from time to time ("Acceptable Use Policy").

3.3 Products.

3.3.1 Right to Use During Term. Unless otherwise specified in the applicable Order, Customer shall have the right to use any Products provided by Summit under this Agreement (excluding any Purchased Hardware, as addressed in Section 3.4 below), solely during the Term of the applicable Order, provided that all Fees owed in respect thereof are paid when due.

3.3.2 Summit Equipment. Unless otherwise specified in the applicable Order, Customer agrees: (i) to use any Products comprising hardware or other equipment (excluding any Purchased Hardware, as addressed in Section 3.4 below, "Summit Equipment") only in conformance with the applicable manufacturer's recommendations; and (ii) not to, and not to permit any other Person to, without the prior written consent of Summit, (a) repossess or disable such Summit Equipment, (b) create any lien or encumbrance on such Summit Equipment, or (c) interfere or tamper with, alter, amend, or modify the Summit Equipment or any serial numbers, identity parts, or other similar designations on the Summit Equipment. Without limiting the generality of any other obligation of Customer under this Agreement, Customer shall promptly reimburse Summit for any and all fees, costs and expenses incurred by Summit in connection with Customer's violation of any portion of this Section 3.3.2.

3.3.3 Software. Unless otherwise set forth in the applicable Order, with respect to all Products comprising software ("Software"), Customer agrees not to and not to permit any other Person to, without the prior written consent of Summit: (i) copy, modify, duplicate, decompile, reverse engineer, disassemble or otherwise reduce to a humanly perceivable form, make any attempt to discover the source code of, create derivative works based on, or translate the Software; (ii) remove, obscure or alter in any manner any trademarks, trade names, copyright notices or other proprietary or confidentiality notices or designations, of any Person, contained or displayed in or on the Software; or (iii) without the consent of Summit, upgrade from one version of Software to another. Unless otherwise set forth in any Order or Supplement, any license to any Software hereunder shall be revocable, non-exclusive, non-transferable (except as set forth herein) and non-sublicensable and shall be only for the object code (and not the source code) of such Software. Without limiting the generality of any other obligations of Customer under this Agreement, Customer shall promptly reimburse Summit for any and all fees, costs and expenses incurred by Summit in connection with Customer's violation of any portion of this Section 3.3.3.

3.3.4 Maintenance. Except as set forth in any applicable Order or Supplement, Summit shall have no obligation to provide modifications, upgrades, updates, enhancements, bug fixes, new versions or replacements (collectively, "Updates") to or of any Products or to otherwise maintain or support any

Products. Should Summit provide any Updates, any and all such Updates shall be deemed "Products" under this Agreement and subject to the terms and conditions hereof.

3.4 Purchased Hardware. Unless otherwise set forth in the applicable Order, Summit will use commercially reasonable efforts to provide Customer any hardware or other equipment made available by Summit and ordered by Customer to be purchased under this Agreement ("Purchased Hardware"), pursuant to the terms and conditions of this Agreement. Customer's purchase of Purchased Hardware from Summit via an Order or request for parts shall be governed by the following terms and conditions:

- (a) Unless specified in the applicable Order, pricing for all Purchased Hardware shall be at Summit's then-current list price therefor.
- (b) Customer is responsible for any applicable sales tax in conjunction with the Purchased Hardware.
- (c) In jurisdictions where Summit collects sales tax, Summit shall charge Customer the applicable tax unless a valid certificate of exemption is presented.
- (d) Summit warrants Purchased Hardware shall be free from defects for a period of thirty (30) days from the date of delivery to Customer (the "Summit Hardware Warranty Period").

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN CONJUNCTION WITH DEFECTIVE PURCHASED HARDWARE REPORTED DURING THE SUMMIT HARDWARE WARRANTY PERIOD SHALL BE TO OBTAIN REPLACEMENT PURCHASED HARDWARE (IF AVAILABLE) OR TO REFUND TO CUSTOMER THE AMOUNTS PAID TO SUMMIT FOR SUCH PURCHASED HARDWARE, AT SUMMIT'S REASONABLE DISCRETION.

- (e) Upon expiration of the Summit Hardware Warranty Period, Customer's sole and exclusive remedy for defective Purchased Hardware is to pursue a warranty claim with the original Purchased Hardware manufacturer or reseller (each an "OEM"). Summit agrees to transfer ownership of the Purchased Hardware to Customer and reasonably assist Customer with documentation for OEM warranty claims.
- (f) Customer acknowledges that in cases where the Purchased Hardware is from Summit's stock, the OEM's warranty commencement date will be the date the Purchased Hardware was purchased by Summit, which may result in a shorter warranty period than the OEM would provide to Customer if purchased at retail.
- (g) Purchased Hardware may not be returned to Summit for any reason except in the event (i) a material defect of the Purchased Hardware is reported within the Summit Hardware Warranty Period and (ii) Summit is unable to provide the identical product or a reasonably equivalent product that is satisfactory to Customer.
- (h) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SUMMIT'S TOTAL LIABILITY IN CONJUNCTION WITH PURCHASED HARDWARE PROVIDED BY SUMMIT SHALL BE LIMITED TO THE REPLACEMENT OF, OR REFUND OF THE AMOUNT PAID FOR, ANY DEFECTIVE HARDWARE DURING THE SUMMIT HARDWARE WARRANTY PERIOD, AT SUMMIT'S REASONABLE DISCRETION.
- (i) The failure of, or otherwise defective, Purchased Hardware shall not cause Customer to become eligible for any Credits for any resulting Downtime or other outage or failure.

3.5 Customer Data.

- 3.5.1 General.** As between Summit and Customer, Customer shall own, and shall be and remain wholly responsible for, all data, information and other content used, generated, uploaded, stored and/or transmitted in connection with any Products or Services ("Customer Data"), including ensuring Customer has a valid right to use such Customer Data, ensuring the integrity and security of such Customer Data, backing up and retaining archival copies of all such Customer Data, restoring Customer Data in the event of any loss or impairment thereof, and ensuring such Customer Data complies with all applicable laws and regulations relating thereto (including those related to protection of Customer Data comprising personally identifiable information, the encryption of such Customer Data or the destruction thereof in connection with decommissioned hardware, as applicable). Customer represents and warrants that under no circumstances shall any Customer Data infringe, misappropriate, or otherwise violate any intellectual property, publicity, privacy or other proprietary rights of any Person.
- 3.5.2 PHI.** Without limiting the generality of the foregoing, Customer (i) acknowledges that not all of Summit's Products and Services are designed to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") security standards, (ii) shall not, without the prior written consent of Summit and execution of Summit's HIPAA Addendum to Master Products and Services Agreement, use any Products or Services to create, maintain, receive, transmit, transport, process or store any protected health information, as defined in 45 C.F.R. §164.501, as may be amended or superseded ("PHI"), and (iii) shall use only those Products and/or Services that have been designated by Summit as "HIPAA Compliant" to create, maintain, receive, transport or store any PHI hereunder.
- 3.5.3 Cardholder Data.** Customer is responsible for ensuring that its use of any Product and/or Service to store or process credit card data complies with applicable Payment Card Industry Data Security Standards ("PCI DSS") requirements.
- 3.6 Use of Summit IP Addresses.** Any IP Addresses assigned to Customer by Summit remain the sole property of Summit, and may be used only in connection with and for the duration of the Services purchased. In the event Customer discontinues the use of the Services to which such IP Addresses pertain for any reason, or the applicable Order terminates for any reason, Customer's right to use the IP Addresses shall automatically terminate.
- 3.7 Customer Insurance.** Customer shall have, and maintain at its own expense throughout the term of this Agreement and for two (2) years following the effective date of expiration or termination hereof, insurance coverage acceptable to Summit, which shall at a minimum include any such insurance as required pursuant to the specific Supplement(s) governing the Products and/or Services provided to Customer under this Agreement ("Required Insurance"). The categories of potential Required Insurance are as follows:
- (a) Category A: An "All-Risk Insurance Policy" on personal property of Customer at limits of liability to represent the replacement cost of Customer's personal property situated at each Datacenter Facility;

- (b) Category B: A "Comprehensive General Liability Policy," including products and completed operations insurance, personal injury insurance, and blanket contractual liability insurance on an occurrence basis, with limits of liability of no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, with a maximum Twenty-Five Thousand Dollars (\$25,000) deductible or self-insured retention. The Comprehensive General Liability Policy must include a Primary and Noncontributory Endorsement in favor of Summit;
- (c) Category C: A "Cyber Liability Policy" to provide direct damage insurance and liability insurance to Customer arising out of Customer's operations, with a limit of not less than One Million Dollars (\$1,000,000) per claim and with a maximum Twenty-Five Thousand Dollars (\$25,000) deductible or self-insured retention;
- (d) Category D: "Workers' Compensation Policy," complying with all statutory minimums for those state(s) in which the Services are performed; and
- (e) Category E: "Umbrella or Excess Liability Policy," with a combined single limit of no less than Two Million Dollars (\$2,000,000) per claim and in the aggregate over and above the primary Comprehensive General Liability policy, and primary automobile policy and the Employer Liability section of the Worker's Compensation policy.

Furthermore, notwithstanding any insurance requirements set forth in the applicable Supplement(s), in the event Customer utilizes any Products and/or Services to create, maintain, receive, transmit, transport, process, store, or otherwise utilize either PHI or credit card data, Customer shall have and maintain, in accordance with all applicable terms and conditions hereof, all categories of Required Insurance set forth above.

With respect to each item of Required Insurance, Customer shall name Summit and any applicable Datacenter Facility provider as additional insureds, and each certificate of insurance therefor shall provide that (A) the insurer waives any and all rights of subrogation against Summit, and (B) the insurer will provide written notice to both Customer and Summit at least thirty (30) days prior to any cancellation or material change in the insurance policy. Promptly following the Effective Date (and prior to any use of any Products or Services provided by Summit at any Datacenter Facility), Customer shall deliver to Summit certificates of insurance evidencing the Required Insurance in effect as of the Effective Date. Thereafter, Customer shall provide Summit updated certificates for Required Insurance as such policies become renewed or are modified, promptly following Customer's receipt thereof.

For the avoidance of any doubt, in the event Customer is required to have an item of Required Insurance under more than one Supplement, the limits and deductibles as set forth in this Section 3.7 shall suffice with respect to all such Supplements in the aggregate, rather than on a per Supplement basis. For example, even if three (3) separate Supplements require Customer to have Category C (Cyber Liability Policy) Required Insurance, the limit for such Required Insurance is not less than \$1,000,000 per claim and with a maximum of \$25,000 deductible or self-insured retention.

- 3.8 Malicious Code.** Customer shall use commercially reasonable efforts not to upload any Malicious Code on any Products or Services or other property of Summit, or to otherwise transmit any Malicious Code via the use

of the Summit Network or any Services. In the event Customer does upload or otherwise introduces any Malicious Code into any Products or Services or other property of Summit or otherwise transmits any Malicious Code via the use of the Summit Network or Services, Customer shall, at its sole cost and expense, promptly eliminate such Malicious Code and otherwise be responsible for and remedy any damages, losses or other adverse effects suffered by Summit, any licensors or licensees of Summit, and other Persons, resulting from such Malicious Code.

- 3.9 Connectivity.** Except as expressly set forth in the Order, Customer shall be responsible for all hardware, networks, communication devices, and other technology necessary to enable Customer to access and/or use any Products or Services provided hereunder.
- 3.10 Audit.** Customer shall retain all books and records and other documentation related to its performance under this Agreement for the term of this Agreement and for a period of at least one (1) year following the effective date of expiration or termination hereof. During the term of this Agreement and during the one (1) year period subsequent to the effective date of expiration or termination hereof, Summit and/or its designee shall have the right, upon at least five (5) business days' notice to Customer and during Customer's normal business hours, to inspect and audit all books and records and other documentation, all systems and other technology, and all facilities, of Customer relevant to ascertaining Customer's (and, if applicable, Customer's End Users' or other customers') compliance with the terms and conditions of this Agreement. Without limiting the generality of the foregoing, Customer shall cooperate in good faith with Summit and/or its designee to facilitate Summit's exercise of its rights under this Section 3.10. In the event any inspection or audit reflects that Customer is not in compliance with the terms or conditions of this Agreement, Customer shall, at its sole cost and expense, promptly remedy such non-compliance.

4. INVOICING AND PAYMENT

- 4.1 Fees.** In consideration of Summit's provision of Products and/or Services under this Agreement, Customer shall pay to Summit all such fees and expenses as are (i) specified in the applicable Order(s) or (ii) if Customer has placed the order via the Summit Website or Summit's Support Ticketing System, Summit's then current listed prices for such Products or Services, as such Fees may be increased from time to time in accordance with the terms hereof (collectively, "Fees"). Fees set forth on any Order will remain in effect for one (1) year from the Order Effective Date (as set forth in such Order). Thereafter, the Fees described in such Order will be subject to change, at Summit's reasonable discretion, upon at least sixty (60) days' prior written notice to Customer.
- 4.2 Credit Check.** Customer shall cooperate in good faith with any requests by Summit to assess Customer's creditworthiness, including by providing to Summit financial documentation reasonably requested for such purposes.
- 4.3 Payment.** All invoices must be paid in accordance with the terms set forth in the applicable Order and/or Supplement, without setoff or deduction of any kind, other than portions of the invoice which are subject to a good faith dispute in accordance with the terms of Section 4.6 below. Late payments of any invoices (except any portions thereof which are the subject of a good faith dispute in accordance with the terms of Section 4.6

below) will accrue interest on the unpaid sum as of the date of the invoice at the lesser of (i) the highest legal rate of interest permitted in the State of Illinois and (ii) one and one-half percent (1.5%) per month. Summit may apply any payments received by Summit to Customer's accrued late payment charges prior to any of Customer's outstanding invoices.

- 4.4 U.S. Dollars.** Unless otherwise specified in an Order, all payments by Customer under this Agreement must be made by Customer to Summit in United States of America dollars.
- 4.5 Taxes.** The Fees are exclusive of all international, federal, state and municipal taxes (including sales taxes and withholding taxes), levies, duties or similar charges, however designated, levied or imposed, that may be assessed by any jurisdiction, under current laws or regulations or as a result of any change in laws or regulations following the Effective Date (collectively, "Taxes"). Customer shall be responsible for (and shall promptly pay or reimburse Summit for, as applicable) all such Taxes as may be assessed against Summit, during the term of this Agreement or subsequent to the effective date of expiration or termination hereof, which are levied or imposed by reason of the performance by Summit or Customer or exercise of any rights thereof (including placement, ownership or operation of any Customer equipment at any Datacenter Facility (which equipment shall not be considered a "fixture" or "fitting") under this Agreement); excluding any Taxes based on the net income of Summit.
- 4.6 Disputes.** If Customer wishes to dispute any charges billed to Customer by Summit (a "Disputed Amount"), Customer must (i) pay the undisputed portion of the applicable invoice and (ii) submit a good faith claim regarding the Disputed Amount with such documentation as may reasonably be required to support the claim, within ninety (90) days of Customer's receipt of the initial invoice sent by Summit regarding the Disputed Amount. If Customer does not submit a documented claim within such time period then, notwithstanding anything in this Agreement to the contrary, Customer waives all rights to dispute or otherwise make any claim of any kind with respect to such Disputed Amount.

5. TERM OF AGREEMENT

The term of this Agreement commences on the Effective Date and continues until the last effective date of expiration or termination of all Orders hereunder, unless earlier terminated as provided herein.

6. TERMINATION

- 6.1 For Convenience.** Customer may terminate this Agreement, in whole or in part (including any individual Order and associated Supplement hereunder), for any or no reason, upon at least ninety (90) days prior written notice to Summit; provided that Customer pays the applicable Early Termination Charge defined in Section 7.2 below.
- 6.2 Material Breach.** At any time during the term of this Agreement, either Party may terminate this Agreement, in whole or in part (including any individual Order and associated Supplement), immediately upon written notice to the other Party, if the other Party commits a breach of any of its material obligations under this Agreement and fails to remedy such material breach (i) within five (5) days immediately following written

notice thereof, if such breach is Customer's failure to pay any amounts due under this Agreement, or (ii) otherwise, within thirty (30) days immediately following written notice thereof. Notwithstanding anything in this Agreement to the contrary, any payment required to cure a Customer breach must be remitted to Summit by official bank check or wire transfer. For the avoidance of doubt, a breach of any individual Order and/or Supplement shall be deemed a breach of this entire Agreement.

- 6.3 Insolvency.** At any time during the term of this Agreement, unless prohibited by applicable laws, either Party may terminate this Agreement immediately upon written notice to the other Party if: (i) the other Party (a) becomes insolvent, (b) voluntarily commences any proceeding or files any petition under applicable bankruptcy laws, (c) becomes subject to any involuntary bankruptcy or insolvency proceedings under applicable laws, which proceedings are not dismissed within thirty (30) days, (d) makes an assignment for the benefit of its creditors, or (e) appoints a receiver, trustee, custodian or liquidator for a substantial portion of its property, assets or business; or (ii) the other Party passes a resolution for its winding up or dissolution or a court of competent jurisdiction makes an order for such other Party's winding up or dissolution.
- 6.4 Discontinuation.** In the event Summit discontinues the provision of any Products and/or Services to all of Summit's customers or if, in Summit's reasonable discretion, such discontinuation is necessary or advisable to comply with any applicable law or regulation or a request of any governmental or law enforcement authority, Summit may terminate those Orders and associated Supplements pertaining to such Products and Services and, if reasonably feasible, shall provide Customer at least thirty (30) days prior written notice of such discontinuation. In addition, Summit may terminate this Agreement as to any affected co-location Services or other Services provided at any Datacenter Facility, immediately upon written notice to Customer, if any portion of the Datacenter Facility in which the affected Services are located becomes subject to a condemnation proceeding or is condemned, Summit's possession is otherwise terminated or abated, or Summit cannot provide Customer with the access to the affected Datacenter Facility as contemplated herein for a period exceeding thirty (30) days. In the event any Product and/or Service is discontinued under this Section 6.4, Summit shall refund to Customer any prepaid funds for the time period associated with the discontinued Product and/or Service.

7. CONSEQUENCES OF TERMINATION

- 7.1 Cessation.** Unless otherwise agreed by the Parties, (i) by no later than the effective date of expiration or termination of any Order, Customer shall cease using any and all Products and Services provided under such Order; and (ii) by no later than the effective date of expiration or termination of this Agreement, Customer shall cease using any and all Products and Services provided under this Agreement.
- 7.2 Early Termination Charge.** In the event (i) Customer terminates any Order under this Agreement other than pursuant to Section 6.2 or 6.3, or (ii) Summit terminates an Order in accordance with Section 6.2 hereunder, then, without prejudice to any other rights or remedies of Summit under this Agreement, and in addition to paying to Summit any other amounts due and owing under this Agreement, Customer shall pay to Summit an "Early Termination Charge" comprising all Recurring Charges due in respect of the then current Term of the

Order. Customer acknowledges and agrees that the Early Termination Charge reflects a reasonable estimate of the damages incurred by Summit as a result of an early termination, and is not a penalty.

- 7.3 Repossession.** In the event of termination of any Order(s) pursuant to Section 6.2, Summit may, without prejudice to any other rights or remedies that it may have under this Agreement but subject to the terms of any applicable Supplement, disconnect, repossess and/or distrain any Products or Services that are the subject of the terminated Order(s), as well as any Customer equipment and other Customer property, located in any Datacenter Facility, subject to any rights of Customer's lessors and lienholders which have been disclosed in writing to Summit in advance. All such property shall be deemed abandoned to the extent permissible under applicable laws, and Summit may store, use, sell, destroy or otherwise exploit or dispose of such property.
- 7.4 Survival.** The expiration or termination of this Agreement for any reason will not affect the accrued rights of the Parties or the right of either Party to sue for damages arising from a breach of this Agreement. Notwithstanding expiration or termination of this Agreement, (i) Customer shall remain liable to pay to Summit all Fees and other amounts due or accruing on or prior to the effective date of such expiration or termination, and (ii) the rights and obligations of the Parties set forth in this Agreement which by their terms survive the termination of this Agreement shall remain in full force and effect beyond the effective date of expiration or termination of this Agreement, including Sections 2.1.5, 2.2.4, 3.1, 3.3.2, 3.3.3, 3.4, 3.6, 3.8, 3.10, 4, 6.2, 7, and 9 through 16.

8. REPRESENTATIONS AND WARRANTIES

- 8.1 By Summit.** Summit represents and warrants to Customer that (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization, (ii) it has all requisite power and authority to enter into and perform its obligations and exercise its rights under this Agreement, (iii) its execution and performance of its obligations and exercise of its rights hereunder will not violate any agreement or other obligation by which it is bound, (iv) it will comply with all applicable laws, rules and regulations in connection with the provision of the Products and Services, and (v) this Agreement, when executed by the signatory for Summit identified below, is a legal, valid and binding obligation of Summit.
- 8.2 By Customer.** Customer represents and warrants to Summit that (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization, (ii) it has all requisite power and authority to enter into and perform its obligations and exercise its rights under this Agreement, (iii) its execution and performance of its obligations and exercise of its rights hereunder will not violate any agreement or other obligation by which it is bound, (iv) it will comply with all applicable laws, rules and regulations in connection with the performance of its obligations and exercise of its rights hereunder, including any applicable export control laws and regulations, and (v) this Agreement, when executed by Customer, is a legal, valid, and binding obligation of Customer.
- 8.3 Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, AND SUMMIT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY,

FITNESS FOR A PARTICULAR USE OR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, UNDER THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUMMIT SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE PRODUCTS OR SERVICES, OR THE USE THEREOF, WILL BE AVAILABLE, SECURE, FREE OF DEFECTS, ERRORS OR MALICIOUS CODE, OR UNINTERRUPTED.

9. CONFIDENTIALITY; PUBLICITY; NON-SOLICITATION

- 9.1 Confidential Information.** Subject to Section 9.2, each Party shall treat as confidential (i) the terms and conditions of this Agreement (excluding the existence of this Agreement), and (ii) all confidential or proprietary information, data and materials the receiving Party may receive from the disclosing Party or be given access to by the disclosing Party ("Confidential Information"). Confidential Information shall specifically include all trade secrets and other non-public information, materials, data, know-how, research, systems, plans and procedures of or relating to the disclosing Party, including maps, network routes, methodologies, specifications, locations, business plans and strategies, pricing and other financial information, marketing plans, lists of existing and prospective suppliers and customers, contractual arrangements, employee information, and proprietary technologies and processes, software programs, systems, source code, specifications, inventions, designs, developments, and databases, together with compliance reports, auditor's reports, and related work papers and records. Notwithstanding the foregoing, Confidential Information will not include any information, data or materials (a) that the receiving Party can demonstrate was lawfully received from another source with the right to furnish such information, without restriction or subject to restrictions in which it has conformed; (b) that is or becomes generally available to the public other than as a result of the unauthorized direct or indirect acts of the receiving Party; (c) which the receiving Party can demonstrate was, at the time of disclosure to it, rightfully known to it free of restriction; or (d) which is independently developed by a Party without the use of or referral to any other Party's Confidential Information.
- 9.2 Non-Disclosure.** Except as otherwise expressly provided in this Agreement, the receiving Party shall not, and shall not permit any other Person to, (i) use Confidential Information for any purpose other than the performance of the receiving Party's obligations or exercise of its rights under this Agreement, or (ii) divulge such Confidential Information, without the disclosing Party's prior written consent, except to those employees and independent contractors who have a need to know such Confidential Information for purposes of carrying out the receiving Party's obligations or exercising the receiving Party's rights under this Agreement. The receiving Party shall be responsible for all acts or omissions of its employees and contractors in respect of access to or use of the Confidential Information. Notwithstanding the foregoing, in the event disclosure of Confidential Information is mandated or requested by applicable laws or by an order of a court or any regulatory, governmental or law enforcement agency or other authority, each of competent jurisdiction, then, (a) if not so prohibited by a regulatory, law enforcement or other governmental authority or an order of a court of competent jurisdiction, the receiving Party shall promptly notify the disclosing Party of such requirement, (b) if so requested by disclosing Party, the receiving Party shall use good faith efforts, in consultation with the disclosing Party, to secure confidential treatment of the Confidential Information to be

so disclosed, and (c) the receiving Party shall furnish only that portion of the Confidential Information it is legally required to disclose.

- 9.3 Notice.** The receiving Party shall promptly notify the disclosing Party of any actual or reasonably suspected unauthorized use or disclosure of any Confidential Information and shall fully cooperate with the disclosing Party to remedy and/or mitigate any losses or damages associated therewith.
- 9.4 Publicity.** Neither Party may release a public statement announcing this Agreement or any individual Order (“Press Release”) without the prior written consent of the other Party.
- 9.5 Non-Solicitation.** Each Party agrees that, during the term of this Agreement and for a period of twelve (12) months immediately following the effective date of expiration or termination hereof, it shall not, without the other Party’s prior written consent, knowingly employ, or engage on any other basis, or solicit the employment or other engagement of, any employee, contractor or consultant of the other Party; provided, however, that general advertisements of employment or engagement shall not be considered a violation of the foregoing covenant.
- 9.6 Equitable Relief.** Each Party acknowledges and agrees that the violation of any of its obligations or any of the other Party’s rights as set forth in this Section 9 would cause irreparable harm to the other Party, which harm may not be compensable solely by monetary damages, and that, therefore, in the event of an actual or threatened breach by the other Party of this Section 9, the non-breaching Party shall be entitled to seek injunctive and other equitable relief, without the necessity of proving monetary damages or posting a bond or other security. Any such equitable relief granted shall be without prejudice to any other rights and remedies as the non-breaching Party may have under this Agreement.

10. PROPRIETARY RIGHTS

As between Customer and Summit, all rights, title and interest in and to all Products and Services, all Confidential Information of Summit, and all technology, data, information and other materials utilized by or on behalf of Summit to provide any Products and/or Services under this Agreement, together with all patents, copyrights, trade secrets and other intellectual property rights in or to the foregoing (collectively, “Summit Property”), shall be and remain vested in Summit (or its third party licensors or service providers). Customer shall not do or cause to be done any act contesting or in any way impairing any rights, title or interest in any Summit Property or in any manner represent that it possesses any ownership interest in any Summit Property. Customer shall notify Summit immediately in the event Customer becomes aware of (i) any unauthorized use of any Summit Property, (ii) the loss, theft or other compromise of any Access Method of Customer, and/or (iii) any information relating to any alleged or suspected infringement or other violation of any Summit Property. Notwithstanding the foregoing, Summit shall not have any obligation under this Agreement to investigate, prosecute or otherwise take any action of any violation of which it is notified by Customer, and Customer shall have no right to prosecute or otherwise take any action in respect of such violation.

11. LIMITATION OF LIABILITY

- 11.1 General Limitation.** IN NO EVENT SHALL SUMMIT OR CUSTOMER BE LIABLE UNDER THIS AGREEMENT TO ANY PERSON FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF DATA (INCLUDING CUSTOMER DATA) OR TECHNOLOGY, GOODWILL, CONTRACTS OR LOST BUSINESS OPPORTUNITIES (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE, CONSTRUCTION, INSTALLATIONS, REPAIR, MAINTENANCE, OR OTHERWISE), WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE, AND WHETHER OR NOT ANY SUCH PERSON HAS BEEN ADVISED OF, HAS FORESEEN, OR REASONABLY COULD HAVE FORESEEN SUCH DAMAGES. FURTHER, EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, IN NO EVENT SHALL SUMMIT BE LIABLE HEREUNDER FOR ANY PRODUCTS OR SERVICES OF ANY THIRD PARTY PROVIDER THAT ARE PROCURED OR PROVIDED BY SUMMIT HEREUNDER OR USED BY OR ON BEHALF OF SUMMIT TO PROVIDE ANY PRODUCTS OR SERVICES.
- 11.2 Monetary Cap.** THE LIABILITY OF SUMMIT UNDER THIS AGREEMENT FOR ANY DAMAGES TO OR LOSS OF ANY EQUIPMENT OR OTHER PROPERTY LOCATED ON BEHALF OF CUSTOMER IN ANY DATACENTER FACILITY, OR OTHERWISE USED IN CONNECTION WITH ANY PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT, SHALL NOT EXCEED THE LESSER OF (i) THE ACTUAL CASH VALUE OF SUCH PROPERTY AND (ii) THE CAP (DEFINED BELOW). IN NO EVENT SHALL THE LIABILITY OF SUMMIT UNDER THIS AGREEMENT EXCEED, IN THE AGGREGATE, ONE POINT FIVE TIMES (1.5X) THE TOTAL FEES PAYABLE BY CUSTOMER, WITH RESPECT TO THE SPECIFIC PRODUCTS OR SERVICES GIVING RISE TO SUCH LIABILITY, DURING THE FIRST YEAR OF THE TERM SET FORTH IN APPLICABLE ORDER (THE "CAP").
- 11.3 Exclusions.** NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS SET FORTH IN THIS SECTION 11 SHALL NOT APPLY TO (i) ANY LIABILITY CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY, (ii) ANY LIABILITY OF EITHER PARTY ARISING FROM ITS BREACH OF SECTION 9, (iii) CUSTOMER'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12.2, (iv) SUMMIT'S INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 12.1.1, AND/OR (v) ANY LIABILITY THAT CANNOT BE EXCLUDED UNDER ANY APPLICABLE LAWS. CUSTOMER WAIVES ANY RIGHT TO SEEK INJUNCTIVE RELIEF FOR ANY CAUSE OR MATTER ARISING FROM THIS AGREEMENT, EXCEPT AS PROVIDED IN SECTION 9.6.
- 11.4 Time Limitation.** Customer may not, and hereby waives any right to, bring any claim against Summit arising out of or in connection with this Agreement more than one (1) year after the effective date of expiration or termination of the Order relating to the Products or Services giving rise to such claim.

12. INDEMNIFICATION

12.1 By Summit.

- 12.1.1 Indemnity.** Summit agrees to indemnify, defend and hold Customer and its officers, directors, employees, agents and contractors (collectively, the "Customer Parties") harmless from and against all losses, damages, liabilities, costs and expenses, including reasonable attorney's fees and expenses (collectively, "Losses") incurred or suffered by such Customer Parties arising out of, or in connection with, any claim, demand, proceeding, investigation or cause of action initiated by a third party (each, a "Claim") based upon or arising out of: (i) bodily injury or death, and damage, loss or destruction of any real or tangible personal property, caused by Summit's gross negligence or willful

misconduct; and/or (ii) any allegation that any Products or Services owned by Summit, or Customer's use thereof in accordance with the terms of this Agreement (excluding any Products or Services provided by any Third Party Provider), infringe or otherwise violate any patent, copyright, trade secret or other intellectual property right of any Person. Notwithstanding the foregoing, Summit shall have no obligations under (a) this Section 12.1.1, to the extent the Claim arises from or in connection with the willful misconduct or gross negligence of Customer or any other Customer Parties, or (b) to the extent such Claim is based upon any use by Customer of any Products or Services in violation of any terms of this Agreement, any modification by Customer of any Products or Services, or any combination of any Products, or use of any Services, with any technology or other materials not provided by Summit. THE RIGHTS AND REMEDIES SET FORTH IN THIS SECTION 12.1 CONSTITUTE CUSTOMER'S SOLE RIGHTS AND REMEDIES FOR ANY CLAIMS OF INFRINGEMENT OR OTHER VIOLATIONS OF ANY PROPRIETARY RIGHTS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, AND/OR ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER.

12.1.2 Infringing Items. In the event Summit becomes aware or reasonably suspects that any portion of any Products or Services may infringe or otherwise violate any proprietary rights of any Person, Summit may, to the extent reasonably feasible and in its sole discretion, (i) modify such item so that it is no longer in violation or potentially in violation of such rights, (ii) replace such portion of any Products or Services with items Summit believes to be non-infringing (provided that, no modifications or replacements provided under clauses (i) or (ii) shall adversely affect in any material respect any functionality or feature of the relevant Products or Services) and/or (iii) terminate the Orders or other parts of this Agreement pertaining to such Products and Services, upon notice to Customer, and refund to Customer that portion of any Fees paid prior to the effective date of termination in respect of use of the affected Products and/or Services following the effective date of such termination.

12.2 By Customer. Customer agrees to indemnify, defend and hold Summit and its Third Party Providers and its officers, directors, employees, agents and contractors (collectively, "Summit Parties"), harmless from and against all Losses incurred or suffered by such Summit Parties arising out of, or in connection with, any third party Claim (including any Claim by customers of Customer) based upon or arising out of: (i) bodily injury or death or damage, loss or destruction of any real or personal property (including without limitation the property of Summit), caused by Customer's gross negligence or willful misconduct; (ii) any breach by Customer of any provision of this Agreement; (iii) subject to Section 12.1.1(ii), any use by Customer (or any of Customer's customers, including any End Users, or any Person using Customer's Access Methods), of any Products or Services, or any other act or omission relating thereto; (iv) any End User Agreement; and/or (v) any Customer Data. Notwithstanding the foregoing, Customer shall have no obligations under this Section 12.2 to the extent the Claim arises from or in connection with the willful misconduct or gross negligence of Summit or any other Summit Parties.

12.3 Procedures. The indemnified Party shall use good faith efforts to notify the indemnifying Party of any Claim for which indemnification is sought hereunder as soon as possible after it becomes aware of the Claim and, in any event, within five (5) business days after it becomes aware of the Claim; provided that the failure to provide such notice within such time frame shall not constitute a breach hereof or serve to release the

indemnifying Party from its obligations under this Section unless such failure prejudices the ability of the indemnifying Party to defend the Claim. The indemnifying Party shall be entitled, in its discretion, to have sole conduct and control of all legal proceedings in connection with such Claim and/or the settlement or other compromise thereof. If the indemnifying Party elects to exercise such control, the indemnified Party shall give the indemnifying Party (and any Person acting on behalf of or authorized by the indemnifying Party) all reasonable assistance therewith, at the indemnifying Party's reasonable expense. Notwithstanding the foregoing, (i) the indemnifying Party shall not, without the indemnified Party's prior written consent, agree to any judgment or enter into any settlement or other compromise that adversely affects the interests of the indemnified Party, and (ii) the indemnified Party shall have the right, at its own expense, to participate in the defense of any Claim.

13. FORCE MAJEURE

Neither Party will be considered in breach of this Agreement nor liable under this Agreement for any delays, failures to perform, damages or losses, or any consequence thereof, excluding any failure to pay any amounts due hereunder, caused by or attributable to any cause beyond the reasonable control of the Party claiming relief (each, a "Force Majeure Event"), including but not limited to the action by a governmental authority (such as a moratorium on any activities related to this Agreement or changes in government codes, ordinances, laws, rules, regulations, or restrictions occurring after the Effective Date), third-party labor dispute, flood, earthquake, fire, lightning, epidemic, war, act of terrorism (including cyber terrorism), riot, civil disturbance, act of God, sabotage, fiber cut caused by a third-party or failure of a third party to recognize a permit, authorization, right-of-way, easement, right, license or other agreement obtained by Summit to construct and/or operate any of its facilities or networks.

14. DISPUTE RESOLUTION

- 14.1 Escalation.** In the event of any claim, dispute, controversy, or other matter in question between the Parties arising out of or relating to this Agreement or the breach hereof, excluding any third party claims subject to indemnification pursuant to Section 12, but including any disagreements as to indemnification rights hereunder (each, a "Dispute"), such Dispute shall be referred to senior officers of each Party who must, within fourteen (14) days following such referral, use good faith efforts to attempt to resolve the Dispute. If the Parties cannot resolve any Dispute in accordance with this Section 14.1 within fourteen (14) calendar days, the Parties may seek judicial resolution and remedy of the Dispute.
- 14.2 Limitations.** Customer may not seek judicial resolution and remedy of any Dispute until the Parties have complied with the procedures set forth in Section 14.1.
- 14.3 Contravention of Performance.** Each Party shall continue performing its obligations under this Agreement while any Dispute is being resolved, unless otherwise agreed by the Parties or ordered by a court of competent jurisdiction, except to the extent such obligations are terminated pursuant to the terms of this Agreement.

15. NOTICES

Except as otherwise set forth in this Agreement, all notices, including but not limited to, demands, requests and other communications required or permitted hereunder (not including invoices) must be in writing and will be deemed given: (i) when delivered in person, (ii) one (1) business day after deposit with a nationally renowned (e.g., Federal Express, UPS) overnight delivery service for next day delivery, or (iii) five (5) business days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested. Notices to Summit shall be sent to ServerCentral, LLC 2200 Busse Rd., Elk Grove Village, IL 60007, or such other address for such purposes of which Summit notifies Customer. Notices to Customer for breach or termination of this Agreement shall be sent to such address for Customer set forth on the initial Order by Customer, or such alternative address for such purposes of which Customer provides Summit written notice. In addition, Summit shall have the right to send Customer notices (other than notices for breach or termination) to Customer's email address set forth on Summit's customer contact list. Such email notification shall be deemed delivered on the day sent unless returned to sender.

16. MISCELLANEOUS

- 16.1 Entire Agreement.** This Agreement, together with all exhibits hereto, constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior representations, agreements, negotiations and discussions between the Parties with respect to the subject matter hereof.
- 16.2 Amendments.** Summit may modify, supplement and/or otherwise amend this Agreement from time to time in Summit's discretion, upon written notice to Customer, and such Amendment shall be effective upon such notification. Customer's continued use of any Products and/or Services following such notice by Summit of amendment of this Agreement will be deemed to constitute Customer's acceptance of such amendment. Except as expressly provided for herein, this Agreement may not be modified, supplemented or otherwise amended by Customer except pursuant to the written agreement of each Party.
- 16.3 Assignment.** Neither Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld, except that either Party may assign this Agreement upon notice and without consent to (i) an Affiliate of such Party or (ii) a Person into which it is merged or consolidated or which purchases all of its equity interests or all or substantially all of its assets; provided that the assignee assumes all liabilities hereunder in writing prior to the effectiveness of such assignment. Any assignment or transfer without the required consent will be void and will be considered a material breach of this Agreement. Upon any permitted assignment, the assigning Party will remain jointly and severally responsible for the performance under this Agreement, unless released in writing by the other Party. For the avoidance of doubt, any such assignee must comply with the terms of Section 4.2. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- 16.4 Binding Provisions/Third Party Beneficiaries.** This Agreement is binding upon, and shall inure to the benefit of, the Parties and their respective administrators, legal representatives, successors, heirs and permitted assigns, as applicable. Except as set forth in Section 12, the Parties agree that no provision of this Agreement

is intended, expressly or by implication, to purport to confer a benefit or right of action upon a third party (whether or not in existence, and whether or not named, as of the Effective Date).

- 16.5 Relationship.** Nothing in this Agreement shall constitute or be deemed to establish a partnership, joint venture, association or employment relationship between the Parties, and neither Party shall have the authority or power to bind the other Party, or to contract in the name of the other Party, in any manner or for any purpose.
- 16.6 No Lease.** This Agreement is not intended to and will not constitute a lease or license of any real property or a grant of any other interest in any real property. This Agreement shall be subject and subordinate to any leases or licenses of Summit for any Datacenter Facility.
- 16.7 Severability of Provisions.** Each provision of this Agreement shall be considered separable; and if, for any reason, any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such determination shall not affect the enforceability of the remainder of this Agreement or the validity, lawfulness, or enforceability of such provision in any other jurisdiction. If any court of competent jurisdiction shall deem any provision of this Agreement too restrictive, the other provisions hereof shall stand, and the court shall modify the provisions at issue to the point of greatest restriction permissible by applicable laws.
- 16.8 Waiver.** The failure of a Party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter. No waiver by either Party hereunder shall be effective unless agreed to pursuant to a writing signed by a duly authorized representative of each Party.
- 16.9 Remedies Not Exclusive.** No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.
- 16.10 Attorney's Fees.** If a Party retains counsel for collection or enforcement of the other Party's obligations hereunder or to represent Summit in any bankruptcy, reorganization or receivership proceedings, then the prevailing Party shall promptly reimburse the other Party for all reasonable attorneys' fees, costs and expenses incurred in connection therewith.
- 16.11 Interpretation.** References to sections and exhibits are to sections of, and exhibits to, this Agreement, unless otherwise indicated. Section headings are inserted for convenience of reference only and shall not affect the construction of this Agreement. The singular number shall include the plural, and vice versa. Any use of the word "including" will be interpreted to mean "including, but not limited to," unless otherwise indicated. All references to dollars (including via the symbol "\$") shall refer to the currency United States dollars. References to any Person (including the Parties and any other entities referred to) shall be construed to mean such Person and its successors in interest and permitted assigns, as applicable.

- 16.12 Inconsistency.** In the event of any inconsistency between the terms of the main body of this Agreement and any Order or Supplement hereto, the terms of the main body of this Agreement will govern to the extent of the inconsistency.
- 16.13 Governing Law and Venue.** The validity and effectiveness of this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Illinois, without giving effect to the provisions, policies or principles of any state law relating to choice or conflict of laws. Subject to Section 14, any legal action or proceeding with respect to this Agreement shall be brought exclusively in the Federal or state courts located in Chicago, Illinois, including the United States District Court for the Northern District of Illinois. Each Party waives, to the fullest extent permitted by applicable laws, any objection to the laying of venue in such courts of any legal action or proceeding arising out of or relating to this Agreement and any claim that any such action or proceeding has been brought in an inconvenient forum. EACH PARTY IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. Service of process shall be made in any manner allowed by applicable laws.
- 16.14 Counterparts.** This Agreement may be executed in one or more counterparts, including via facsimile transmission and electronic signature, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same instrument. A complete set of counterparts shall be lodged with each Party.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CUSTOMER

SIGNER: _____

TITLE: _____

DATE: _____

SUMMIT

SIGNER: _____

TITLE: _____

DATE: _____

Address for Notices for Customer

Address for Notices for Summit

2200 Busse Rd.

Elk Grove Village, IL 60007

United States