



This MASTER SERVICES AGREEMENT (this “MSA”) is entered into by and between Cologix Canada, Inc. (“Cologix Canada”), in its own capacity, with offices located at 1601 19<sup>th</sup> Street, Suite 650, Denver, Colorado 80202 and Cologix Canadian Issuer Limited Partnership (“Cologix Canadian Issuer”, and each of Cologix Canada and Cologix Canadian Issuer, collectively referred to as “Cologix”), by its general partner, Cologix Canadian Issuer GP Inc., by Cologix Canada, as manager, with offices located at 1601 19<sup>th</sup> Street, Suite 650, Denver, Colorado 80202, and \_\_\_\_\_ with offices located at \_\_\_\_\_ (“Customer”) as of the latest dated signature below (the “Effective Date”), and consists of and is subject to the general terms and conditions set forth in this MSA and all Schedules and Service Orders (each as defined below) that are attached to this MSA or are subsequently entered into by the parties hereto (collectively, the “Agreement”); provided, however, that it is understood and agreed that (a) this MSA and the related Schedule(s) shall constitute a separate agreement between each of Cologix Canada and Cologix Canadian Issuer, on the one hand, and Customer, on the other hand, as if each of Cologix Canada and Cologix Canadian Issuer had executed a separate document with the Customer consisting of this MSA and such Schedule(s) naming only itself as the applicable Cologix party (a “Separate Agreement”), and (b) neither Cologix Canada nor Cologix Canadian Issuer shall have any liability for the obligations of the other under any such Separate Agreement; and provided further that, with respect to either of Cologix Canada or Cologix Canadian Issuer, only Service Orders between Customer and that particular Cologix party shall be part of the Separate Agreement between Customer and that particular Cologix party, and the term “Agreement” shall be construed accordingly.

1. **Services.** Cologix provides the services (the “Services”), in accordance with the general terms and conditions set forth in this MSA, as well as the terms and conditions set forth on the schedule(s) referencing this MSA, and attached hereto or executed hereafter (each, a “Schedule”). This Agreement shall apply to all Services provided to Customer by Cologix.
2. **Service Orders.** Cologix will perform the Services specified in any written order between Cologix and Customer that is signed by both parties or, with respect to cross-connects only, any email order that is sent by Customer and confirmed by Cologix via email (each, a “Service Order”). Each Service Order shall identify the Services to be provided by Cologix to Customer, the recurring charges and any non-recurring charges for such Services and the term during which such Services are to be provided. Service Orders under this MSA may be entered into and performed by Cologix and/or any of its Affiliates (as defined below), including an Affiliate authorized to provide the Service(s) in a country or jurisdiction other than the country or jurisdiction within which this MSA has been executed. As used herein, “Affiliate” shall mean any entity controlled by, controlling or under common control with the applicable party.
3. **Representations and Warranties.**
  - a. Cologix represents and warrants to Customer that: (i) the Agreement constitutes a valid and binding obligation of Cologix that does not violate any other agreement between Cologix and any other person, (ii) Cologix will provide the Services in compliance with all applicable laws, rules and regulations; and (iii) Cologix will perform the Services in a workmanlike manner.
  - b. Customer represents and warrants to Cologix that: (i) the Agreement constitutes a valid and binding obligation of Customer that does not violate any other agreement between Customer and any other person, (ii) Customer will use the Service(s) in compliance with all applicable laws, rules and regulations; and (iii) Customer will comply with Cologix’s Policies and Procedures: Facility User Guide, as amended from time to time (“Policies and Procedures”), by publishing at [www.cologix.com](http://www.cologix.com) and posting at Cologix’s facilities.

- c. If Customer intends to resell or sublicense the Service(s), Customer further covenants that Customer (i) will not resell or sublicense the Service(s) without Cologix’s prior written consent, (ii) will remain liable for the payment of all charges due under each Service Order and all acts or omissions of any sublicensee of Customer shall be attributable to Customer under the Agreement, and (iii) will indemnify, defend and hold Cologix harmless from claims made against Cologix by any third party to whom Customer resells or sublicenses the Service(s).
- d. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, NO WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY COLOGIX, AND COLOGIX EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CUSTOMER IS SOLELY RESPONSIBLE FOR AND COLOGIX EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND LIABILITIES OF ANY KIND RELATING TO CUSTOMER’S SOFTWARE AND HARDWARE, INCLUDING THIRD-PARTY SOFTWARE AND/OR HARDWARE LICENSED BY CUSTOMER.

**4. Billing; Payment of Invoices; Taxes.**

- a. Cologix will inform Customer in writing, including, without limitation, email communication, that Customer’s ordered Service(s) are available for use by Customer (the “Service Commencement Notice”). Upon receipt of such notice, Customer shall have a period of seventy-two (72) hours (the “Acceptance Period”) to confirm that the Service(s) have been installed and made available to Customer in accordance with the specifications, if any, set forth in the Service Order. Unless Customer delivers written notice to Cologix within such seventy-two (72) hour period that the Service(s) is not installed in accordance with the specifications, if any, set forth in the Service Order (a “Defect Notice”), which Defect Notice shall contain reasonable description of the alleged defects in the Service(s), billing shall commence following the expiration of the Acceptance Period (the “Service Commencement Date”), regardless of whether Customer is prepared to accept delivery of the ordered Service(s). In the event that Customer timely provides a Defect Notice, then Cologix shall correct any deficiencies in the Service(s) and deliver a new Service Commencement Notice to Customer, after which the process stated above will be repeated. Notwithstanding the foregoing, if Customer has not provided Cologix with its final power configuration with respect to the ordered power Service(s) within ten (10) business days of Customer’s execution of the applicable Service Order, Customer acknowledges that Cologix shall have the right to deliver the Service Commencement Notice and commence billing for the Service(s) despite the fact that the power Service(s) are not available to Customer for Customer’s use.
- b. Unless otherwise specified in the applicable Service Order, any non-recurring charges will be invoiced by Cologix following the installation of the Services set forth in the applicable Service Order. Recurring charges will be billed monthly in advance, except for usage-based charges, which are billed in arrears. Billing for partial months will be prorated based on a calendar month.
- c. All amounts payable under the Agreement shall be payable in full within thirty (30) days of the date of invoice (the “Grace Period”), in Canadian dollars, unless otherwise specified in the applicable Service Order. Cologix reserves the right to charge a late fee of 1.5% per month or the maximum rate permitted by law, whichever is less, calculated from the end of the Grace Period. In addition, upon expiration of the Grace Period, Cologix reserves the right to, without limitation, suspend the performance of the Service(s), restrict Customer’s access to the Customer Space (and Customer’s equipment therein), refuse to provide any new Service(s) requested by Customer, and/or exercise any termination rights it has under this MSA. The failure to pay amounts owed

under a Service Order when due shall be considered a material breach of the Agreement.

- d. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount before the expiration of the Grace Period and submit written notice of the disputed amount, within thirty (30) days of the date of the disputed invoice (with details of the nature of the dispute and the Service(s) and invoice(s) disputed). If the dispute is resolved against Customer, Customer shall pay the disputed amount plus interest from the date originally due.
- e. Cologix reserves the right to change Customer's payment terms, including requiring a deposit or another form of security, at any time when Customer's payment history under any Service Order does not conform to this Section 4 or Customer has an Insolvency Event (as defined below). As used herein, "Insolvency Event" means making a general assignment for the benefit of a party's creditors, filing a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization or similar relief or an involuntary petition in bankruptcy or other insolvency protection is filed against the applicable party. The acceptance and deposit by Cologix of any payment from Customer that contains reference of any type that such payment constitutes "payment in full" shall not constitute an accord and satisfaction or a waiver by Cologix of any right(s) it possesses, in law or equity, to collect payment in full from Customer for any and all Services provided to Customer under the Agreement.
- f. All charges for Service(s) are exclusive of applicable taxes and fees. Except for taxes based on Cologix's net income, Customer shall be responsible for all taxes and fees that arise in any jurisdiction, however designated, imposed on, incident to, or based upon the provision, sale or use of the Service(s) (collectively, the "Taxes"). Customer shall indemnify, defend and hold Cologix harmless from payment and reporting of all such Taxes, including costs, expenses, and penalties incurred by Cologix in settling, defending or appealing any claims or actions brought against Cologix related to, or arising from, Customer's non-payment of any such Taxes. If Customer is entitled to an exemption from any Taxes, Customer is required to present Cologix with a valid exemption certificate (in a form reasonably acceptable to Cologix). Cologix will give effect to any valid exemption certificate provided by Customer in accordance with the foregoing sentence to the extent it applies to any Service billed by Cologix to Customer following Cologix's receipt of such exemption certificate.
- g. Customer acknowledges that the Services furnished pursuant to the Agreement may be, in part, delivered through the use of local exchange carrier tariffed rates and other charges of third party providers (the "Third Party Charges"). These charges may increase over time if the local exchange carriers or other third party providers make adjustment to rate structures or the Third Party Charges are adjusted to comply with any regulatory action. Cologix reserves the right to modify its rates for any Services provided under the Agreement to reflect any increases in Third Party Charges applicable to the Services as set forth herein, provided any such increase is made proportionally and made without markup or other administrative charge by Cologix. Prior to making any such increase, Cologix shall deliver notice (which may be sent by email) of such increase to Customer.

##### **5. Term, Termination; Expiration.**

- a. Unless otherwise specified in a Service Order, all Service Orders shall automatically renew for successive terms equal to twelve (12) months in length, except for Service Orders that have month to month terms which automatically renew for successive one-month terms (each a "Renewal Term"), unless either party provides written notice of non-renewal to the other party at least thirty (30) days prior to the end of the then-current term ("Non-Renewal Notice Period"). Cologix may increase any charges payable by Customer to Cologix with respect to any such Renewal Term by providing written notice of the new applicable charges at any time

prior to the end of the then-current term; provided, however, if Cologix delivers such notice during the Non-Renewal Notice Period, Customer shall have thirty (30) days from the date of Cologix's notice to give notice of non-renewal.

- b. Either party may terminate the Agreement or any Service Order, (i) if the other party fails to perform or breaches any material term or condition of the Agreement (other than as provided below) and does not cure such breach within thirty (30) days (ten (10) days for late payment of fees) following the receipt of a written notice from the non-breaching party specifying the nature of the breach in reasonable detail and stating such party's intention to terminate the Agreement and/or Service Order, as applicable; or (ii) the other party has had an Insolvency Event. If Customer terminates the Agreement or any Service Order for convenience prior to the end of the applicable term thereof, then Customer shall be required to provide not less than thirty (30) days' prior written notice to Cologix of such termination, and, prior to the effective date of such termination (and prior to Customer's removal of its equipment and personal property from the applicable Cologix facility), Customer shall pay to Cologix, as liquidated damages, a termination fee in an amount equal to one hundred percent (100%) of the monthly recurring charges due under the terminated Service Order(s) for the remainder of the term of such Service Order(s). In furtherance of the foregoing, Customer hereby expressly waives the application of Article 2125 of the *Civil Code of Quebec*. Notwithstanding the foregoing, Customer's sole remedies for Service outages, failures or defects are contained in any service level agreement(s) ("SLAs") included in any Schedule, if any.
- c. Within five (5) business days following the expiration, or the earlier termination, of the Agreement or any Service Order, Customer shall remove all of its equipment and other personal property (which shall include any hardware or software licensed by Customer from a third party) from Cologix's facility(ies). If Customer fails to remove its equipment or other personal property, Cologix may, without prior notice to Customer, disconnect, remove and dispose of Customer's equipment or other personal property at Customer's expense.
- d. In the event of any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of the Service(s), Cologix and Customer will negotiate, in good faith, regarding how to address the change and, in the event that the parties are unable to reach agreement within thirty (30) days after Cologix's delivery of written notice requesting negotiation, then (i) Cologix may modify the Agreement upon written notice, to the extent necessary to address such change, or terminate the Agreement, and (ii) if Cologix elects to modify the Agreement, Customer may terminate the affected Service(s) by delivering written notice of termination to Cologix no later than thirty (30) days after its receipt of Cologix's notice.

**6. Limitation of Liability.** Except to the extent a party has an indemnification obligation to the other party or has acted with gross negligence or willful misconduct, in no event will either party be liable to the other party for any indirect, consequential, incidental, special or punitive damages, or, without limitation, loss of use, interruption of business, loss of data or loss of profits, arising out of or in any way connected with the Agreement or the Service(s), even if the relevant party has been advised of the possibility of such damages.

**7. Indemnification.** Each party agrees to indemnify the other party, its Affiliates, and their respective officers, directors, members, shareholders, employees, agents, assigns and successors, and shall hold them harmless against any losses, liabilities, damages, costs or expenses (including reasonable attorneys' fees) resulting from a third party claim or a regulatory or statutory violation, arising out of or alleged to have arisen out of, (a) such party's breach of its obligations, representations or warranties under the Agreement, or (b) bodily injury, death or property damage caused by such party. The indemnified party agrees to give prompt written notice to the

indemnifying party of any such claim; provided, that any delay in furnishing such notice shall not discharge the indemnifying party from its indemnification obligation hereunder, except to the extent such delay results in actual prejudice to the indemnifying party. The indemnifying party shall undertake and conduct the defense of any claim so brought. The indemnifying party shall keep the indemnified party advised of the progress of any such claim and the indemnified party shall have the right to participate in such claim at its own expense. If the indemnifying party shall fail to take timely action to defend any such claim then the indemnified party may defend such claim at the indemnifying party's expense. The indemnifying party shall not have the right to settle, compromise or otherwise enter into any agreement regarding the disposition of any claim without the indemnified party's prior written consent, which may not be unreasonably withheld delayed or conditioned, except for a claim solely for monetary damages.

**8. Insurance.** Customer agrees to keep in full force and effect during the term of the Agreement: (a) comprehensive general liability insurance, including contractual liability insurance and defense outside of the limits, in an amount not less than One Million Dollars \$1,000,000 per occurrence and \$2,000,000 aggregate, (b) "Special Causes of Loss" (formerly known as "All Risk") Property insurance covering all of Customer's personal property at full replacement cost, located at any of Cologix's facilities and (c) workers' compensation insurance in an amount not less than that required by applicable law and Employer's Liability with limits of at least Five Hundred Thousand Dollars (\$500,000) each accident, disease each employee, disease policy limit. Customer acknowledges that (x) it retains the risk of loss for, or damage to, its equipment and other personal property located at any of Cologix's facilities and (y) Cologix's insurance policies do not provide coverage for Customer's equipment or other personal property. Customer's general liability policy shall provide Cologix and the Cologix indemnitees additional insured status and coverage and shall be primary and non-contributory to any coverage of additional insureds. Customer's general liability policy, workers' compensation and property policies shall include a provision denying insurer subrogation rights against Cologix and the Cologix indemnitees. Customer shall cause the insurance company issuing such policies to issue a certificate to Cologix confirming that such policies are in full force and effect during the term of the Agreement. Customer shall confirm that before any cancellation or material modification, Cologix will be provided with thirty (30) days prior written notice. Customer shall require any contractor, customer or other third party entering a Cologix facility on Customer's behalf to procure and maintain the same types, amounts and coverage extensions as required of Customer and as required and approved by Cologix, acting reasonably.

**9. Confidential Information.** "Confidential Information" shall mean the content of the Agreement and any related documents, and any and all technical and non-technical information that is provided by one party or its subsidiaries or affiliates to the other party or such other party's subsidiaries or affiliates, whether in graphic, electronic, written or oral form: (a) that is identified by the disclosing party as being proprietary and/or confidential; or (b) that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be recognized by the receiving party as confidential or proprietary and treated as such. For the avoidance of doubt, Cologix's Confidential Information shall include, but not be limited to, pricing and terms relating to the Customer Space and Service(s) and any audit or compliance reports provided by Cologix to Customer. Each party agrees that (i) Confidential Information is confidential and constitutes proprietary information of the disclosing party and (ii) it shall not disclose, and it shall cause its customers, sub-licensees, partners, officers, directors, shareholders, employees, brokers, auditors and attorneys to not disclose any Confidential Information to any other person without first obtaining the prior written consent of the disclosing party; provided, however, the parties shall have no obligation to maintain the confidentiality of information that: (i) was received by it from a third party without an obligation of confidentiality; (ii) is or becomes available to the general public through no breach of this Agreement by the receiving

party or was in the public domain at the time it was communicated to the receiving party by the disclosing party through no breach of an obligation of confidentiality by the receiving party; (iii) is approved in writing for release by the disclosing party, but only to the extent of such authorization; or (iv) is independently developed by the receiving party or was in the receiving party's possession free of any obligation of confidentiality at the time it was communicated to the receiving party. Additionally, each party shall have the right to disclose Confidential Information without the consent of the other party to the extent required, but only to the extent required, by law, oral questions, interrogatories, requests for information or other documents in legal proceedings, subpoena, civil investigative demand, regulatory process or any other similar process ("Legal Disclosure"). If the receiving party or its representatives are requested or required to make a Legal Disclosure, such party shall, to the extent permitted by applicable law, provide the disclosing party with prompt notice of any such request or requirement so that the disclosing party has an opportunity to seek a protective order or other appropriate remedy at its sole expense, or waive compliance with the provisions of this Agreement. If the disclosing party has not secured a protective order or other appropriate remedy, and receiving party or its representative are nonetheless legally compelled to disclose any Confidential Information, receiving party or its Representatives, as applicable, may disclose that portion of the Confidential Information that it reasonably believes is necessary to be disclosed. Each party acknowledges that if it discloses any Confidential Information in breach of this Section 9 that the disclosing party may suffer irreparable harm and that money damages may not be a sufficient remedy. Receiving party further acknowledges that the disclosing party shall be entitled to seek to obtain equitable relief, including injunction and specific performance, without the necessity of posting a bond, in the event of any actual or threatened breach of this Section 9.

**10. Publicity.** During the term of the Agreement, Customer grants Cologix the right to use Customer's logo and name on Cologix's website and promotional materials. Customer shall have the right to require Cologix to terminate any such uses at any time by written notice.

**11. No Broker.** Customer represents and warrants that Customer has not engaged any broker or sales agent in connection with the Agreement or any Customer Space or Services provided by Cologix to Customer hereunder and agrees that Customer shall not retain or engage any broker or agent in connection with any renewal (automatic or otherwise) of the Customer Space and Services provided to Customer under the Agreement. Cologix shall have no responsibility to pay any commissions or other amounts owing to any broker engaged by Customer in violation of the terms of this Section 11.

**12. Relationship of Parties.** Nothing in the Agreement will be construed to imply a joint venture, partnership or agency relationship between the parties, and Cologix will be considered an independent contractor when performing Service(s) under the Agreement.

**13. Assignment and Subcontracting.**

- a. Neither party shall have the right to assign the Agreement without the other party's prior written consent, not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Cologix shall have the right, without the consent of Customer, to assign the Agreement to an Affiliate of Cologix, or to an entity acquiring all or substantially all of the assets or equity of Cologix, or to an entity resulting from a merger, consolidation or other corporate reorganization of Cologix.
- b. Cologix may permit any Affiliate of Cologix, independent contractor, or other third party to perform any of Cologix's obligations hereunder or under any Service Order, provided that Cologix remains primarily liable to Customer for the performance of its obligations hereunder.

**14. No Third Party Beneficiaries.** No provisions of the Agreement are intended to, or shall be construed to, confer upon any person, other than the

parties hereto, any rights, remedies or other benefits under or by reason of the Agreement.

**15. Notices.** All notices required or permitted hereunder must be given in writing and, except for routine notices that the parties agree to send and receive electronically, shall be considered properly given if hand-delivered, mailed first class mail (postage prepaid and return receipt requested) or sent by express overnight courier at the address specified on the first page of this MSA or at such other address as a party may specify in writing pursuant to this Section. All notices shall be deemed given when received.

**16. Governing Law; Consent To Jurisdiction.** The Agreement shall be deemed to be a contract made under, and shall be construed in accordance with, the laws of the Province of Quebec and the federal laws applicable therein (with the exclusion of its conflict of laws provisions). In addition, each party irrevocably elects domicile in the district of Montreal, Canada, where any case of action will be heard.

**17. Force Majeure.** Except with respect to any payment obligations, neither party will be liable for any failure or delay in its performance under the Agreement due to causes beyond its reasonable control. In the event that Cologix is not able to deliver any Service(s) as a result of a force majeure event, Customer shall not be obligated to pay Cologix for the affected Service(s) for so long as Cologix is unable to deliver the affected Service(s).

**18. Waiver.** No waiver will be effective unless documented in a writing signed by an authorized representative of the party against which enforcement of the waiver is sought. The failure of either party to insist upon strict performance of any of the terms or provisions of the Agreement, or the exercise of any option, right or remedy contained herein, shall not be construed as a waiver of any future application of such term, provision, option, right or remedy, and such term, provision, option, right or remedy shall continue and remain in full force and effect.

**19. Survival.** Any term or provision of the Agreement of an ongoing nature and/or which, by their nature and context, should reasonably be expected to survive the expiration or earlier termination of the Agreement, shall so survive such expiration or termination thereof.

**20. Prevailing Party.** In the event of a dispute arising from or related to the Agreement, the substantially prevailing party shall be entitled to recovery of all reasonable costs incurred, including, without limitation, court costs, attorneys' fees and other related costs and expenses.

**21. Counterparts; Electronic Copies.** This MSA and any Schedule or Service Order may be executed in counterparts which, when taken together, shall constitute one and the same document. In addition, each party hereby agrees that facsimile, photographic or electronic copies of any of the foregoing shall be deemed an original thereof. Finally, each party hereby consents to the use of electronic signatures, including via Adobe e-signature or a similar product or service, and acknowledge and agree that no electronic record or signature shall be challenged or denied legal effect or enforceability because it is in electronic form.

**22. Severability.** If any term or provision of the Agreement shall be declared by a court of competent jurisdiction to be invalid, unenforceable or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the parties, the Agreement shall be terminated by the mutual consent of the parties.

**23. Headings.** Headings are for ease of reference only and shall not have any effect upon the construction of the Agreement.

**24. Construction.** The parties agree that each party has reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

**25. Entire Agreement; Modification; Order of Precedence.** The Agreement constitutes the entire agreement between the parties relating to its subject matter and the Agreement supersedes all prior agreements and understandings between the parties, oral or written, with respect to its subject matter and may not be changed unless mutually agreed upon in writing by both parties. In case of a conflict between any of the terms and conditions in this MSA and any other terms and conditions in any Schedule or Service Order, the order of precedence shall be: any Schedule, any Service Order, and this MSA. For the avoidance of doubt, any purchase order sent to Cologix by Customer (for Customer's administrative purposes or otherwise) shall not be binding.

**26. English Language.** The parties confirm that it is their wish that this Agreement, as well as all other documents relating thereto, including all notices, be drawn up in the English language only. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents, y compris tout avis, qui s'y rattachent, soient rédigés en langue anglaise.

**IN WITNESS WHEREOF,** the parties have executed this MSA by their duly authorized representatives.

**COLOGIX CANADA, INC., in its own capacity:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**COLOGIX CANADIAN ISSUER LIMITED PARTNERSHIP,  
by its GENERAL PARTNER, COLOGIX CANADIAN ISSUER GP INC.,  
by COLOGIX CANADA, INC., as manager:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**CUSTOMER:**

\_\_\_\_\_  
(Signature)

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(Name)

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(Title)

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(Date)



## COLOCATION SPACE AND SERVICES SCHEDULE

This COLOCATION SPACE AND SERVICES SCHEDULE (this "Schedule") is entered into by and between Cologix Canada, Inc. ("Cologix Canada"), in its own capacity, with offices located at 1601 19<sup>th</sup> Street, Suite 650, Denver, Colorado 80202 and Cologix Canadian Issuer Limited Partnership ("Cologix Canadian Issuer", and each of Cologix Canada and Cologix Canadian Issuer, collectively referred to as "Cologix"), by its general partner, Cologix Canadian Issuer GP Inc., by Cologix Canada, as manager, with offices located at 1601 19<sup>th</sup> Street, Suite 650, Denver, Colorado 80202, and \_\_\_\_\_ with offices located at \_\_\_\_\_ ("Customer") as of the latest dated signature below (the "Effective Date"), and incorporates and is governed by the terms and conditions of the Master Services Agreement (the "MSA") entered into by the parties. Any terms used herein and not defined herein shall have the meaning given to such terms in the MSA.

1. **Grant of License.** Cologix grants to Customer the right and non-exclusive license to occupy the colocation space identified in the Service Order (the "Customer Space") during the term identified in the Service Order, solely for the Permitted Uses (as defined below). Notwithstanding the foregoing, Customer acknowledges that it does not have, has not been granted and will not hold any real property interest in the Customer Space or the facility and that Customer is a licensee and not a tenant or lessee of the Customer Space. This license shall be subordinate to any lease between Cologix and its landlord.
2. **Use of Customer Space.**
  - a. Customer shall use the Customer Space solely for the purpose of (i) installing Customer's equipment in the Customer Space, (ii) maintaining the equipment, (iii) operating the equipment and (iv) removing the equipment (collectively, the "Permitted Uses"). In connection with the foregoing, Customer shall maintain the Customer Space in an orderly and safe condition, in accordance with nationally published CCOHS standards and other similar, applicable standards, and shall return the Customer Space to Cologix in the same condition (reasonable wear and tear excepted) as when such colocation space was delivered to Customer. Customer shall perform the Permitted Uses at its sole cost and expense.
  - b. Customer will ensure that its officers, employees, technicians, agents, representatives, contractors and visitors who are involved in the installation, operation, maintenance and removal of the equipment, or who are granted access to the Customer Space, comply with the Policies and Procedures.
3. **Cologix Maintenance.** Cologix shall perform janitorial services, environmental systems maintenance, power plant maintenance, fire system maintenance and other actions as are reasonably required to maintain the Customer Space in a condition that is suitable for the placement of communications and networking equipment.
4. **Equipment Cabinets, Racks, Cages and Private Suites.** Cologix will provide equipment cabinets, racks, cages and/or private suites as specified in each Service Order. Any Customer-provided racks shall be subject to Cologix's prior approval.

5. **Power Threshold**
  - a. Total Customer Space size is determined in part by the deployed power density of the facility and the amount of power purchased by Customer.
  - b. Cologix shall exclusively provide any AC or DC power circuits for the Customer Space in accordance with the Service Order. It shall be Customer's responsibility to manage the power draw on each circuit and each fuse, and Cologix shall not be liable for any outage or damage to Customer's equipment or applications should Customer exceed the circuit or fuse rating; provided, however, that Cologix shall have the right, on an ongoing basis, to monitor Customer's power draw pursuant to Section 6 below. In connection with the foregoing, Customer acknowledges and agrees that, pursuant to applicable law, Customer's use of any power circuit is limited to eighty percent (80%) of the fuse rating thereof (the "Power Circuit Threshold"). Customer-provided power strips used for remote control or other additional functionality must be approved for use in advance by Cologix.
  - c. In the event that the rates charged to Cologix for power increase, then Cologix may proportionally increase (without mark-up) the monthly recurring charges it charges Customer in connection with Customer's power usage by delivering written notice of such increase to Customer together with reasonable evidence of the increase in rates charged to Cologix.
6. **Power Models**
  - a. *Per Circuit Model.* To the extent Customer orders power from Cologix on a per circuit basis as set forth in the applicable Service Order, Customer acknowledges and agrees that Customer shall not be permitted to draw power on any such circuit in excess of the Power Circuit Threshold, as measured by Cologix. If at any time Customer exceeds the Power Circuit Threshold, Cologix reserves the right (at any time thereafter) to send a written notice to Customer of such excessive use (each, a "Power Notice") and Customer shall have a period of ten (10) days from receipt of such Power Notice to reduce Customer's power draw below the Power Circuit Threshold. If Customer fails to cure such excessive power use within the ten (10) day period set forth above, then Cologix shall have the right, at its option, to either (i) upon not less than five (5) business days' prior written notice to Customer, terminate the applicable Service Order with Customer if the power being used by Customer in excess of the Power Circuit Threshold is not available at the applicable facility, or (ii) without any additional notice to Customer, immediately begin charging Customer for an additional power circuit at the same configuration as the circuit triggering such excessive power use for the remainder of the term of the applicable Service Order, which additional circuit charge shall be reflected on Customer's next succeeding monthly invoice and shall be payable by Customer to Cologix pursuant to the terms of the Agreement. In addition to the foregoing, if at any time during the term of the Agreement Customer receives three (3) or more Power Notices from Cologix (whether or not Customer has cured the related excessive power use), Cologix shall have the right, without additional notice, to begin charging Customer for an additional power circuit, which additional circuit charge shall be reflected on Customer's next succeeding monthly invoice and shall be payable by Customer to Cologix pursuant to the terms of the Agreement.
  - b. *KW Commitment Model.* To the extent Customer orders power from Cologix on a kW basis as set forth in the applicable

Service Order, Customer acknowledges and agrees that Customer shall not be permitted to exceed Customer's committed kW power usage (as reflected on the Service Order) at any time during the term of such Service Order, as measured by Cologix. If at any time a measure of Customer's power usage by Cologix reflects usage in excess of Customer's kW commitment (as reflected on the Service Order) (any such reading, a "kW Usage Spike"), the level of such kW Usage Spike shall automatically become Customer's new kW commitment for the remainder of the term of such Service Order (subject to any additional intervening kW Usage Spike which shall again set a new kW commitment for Customer). In connection with the foregoing, commencing on the next ensuing monthly invoice, Customer shall be charged for such new kW commitment. In addition, any new kW commitment resulting from a kW Usage Spike in a month shall apply retroactively to all power charges for such month and, in furtherance of the foregoing, Cologix shall have the right to conduct a reconciliation and true-up of charges for such month, taking into account the increased kW commitment. Cologix shall send written notice to Customer of any amounts owed by Customer in connection with such reconciliation and such amounts shall be reflected on the next monthly invoice received by Customer following the date of such reconciliation by Cologix and shall be payable by Customer to Cologix pursuant to the terms of the Agreement.

c. *kW Usage Model.* To the extent Customer orders power from Cologix on a metered kWh basis as set forth in the applicable Service Order, then such power shall be billed as follows: kWh usage-based billing will be metered by Cologix utilizing its Data Center Infrastructure Management ("DCIM") system and shall be invoiced monthly to Customer in arrears at the specific kWh rate set forth in the Service Order. The aggregate of all branch circuits supporting the Customer Space and Services set forth in a Service Order will be totaled and billed by Cologix to Customer for the period from the 21<sup>st</sup> of the previous month through the 20<sup>th</sup> of the current month. In conjunction with each monthly invoice of usage-based billing, Cologix will provide to Customer a system report of utilization to validate the meter reading set forth on the invoice.

**7. Access and Security.**

a. Cologix will provide physical access by Customer to Cologix's facility 24 hours a day, 7 days a week, pursuant to the Policies and Procedures.

b. Unless otherwise agreed in writing by the parties, Cologix retains the right to access the Customer Space at any time and for any reason, including, without limitation, to perform maintenance and repairs, to inspect equipment, to measure power draw and to perform the contracted Service(s).

c. Cologix will provide and maintain in working condition security devices, as described in the Policies and Procedures.

**8. 24x7 Customer Support.** Cologix provides for the coordination and resolution of problems associated with the Service(s) on a 24x7 basis. Support is limited to the product features included in the Service(s) purchased.

**9. Onsite Technical-Support Services.**

a. Upon Customer request, Cologix technicians are available to perform various "Remote Hands" technical tasks on Customer's equipment. Typical activities provided by the Remote Hands services include, without limitation, rebooting or power-cycling

Customer equipment, testing or swapping defective cables, visual reporting on status indicators, reseating or replacement of modular equipment and modem connections for remote access.  
b. Remote Hands services may be purchased in monthly blocks of time or ad hoc.

c. Although Cologix technicians are skilled in troubleshooting and repairing a variety of equipment, prior knowledge of, or training on, a particular system utilized by Customer cannot be guaranteed. Cologix shall not be liable for any losses or damages due to any failure of the equipment or for any loss of data or damages resulting from Remote Hands service.

d. Cologix shall have no liability with respect to any shipment (a shipment may comprise of one or more boxes) from Customer (or a third party on behalf of, or for, Customer) that is received and/or stored by Cologix on Customer's behalf, regardless of the cause of any damage thereto. The receiving and handling of packages by Cologix is being done for convenience purposes only. Customers must provide their own insurance for all equipment being shipped, stored, or otherwise located at the any of the Cologix facilities.

**10. Colocation Service-Level Agreement.**

a. Cologix shall maintain 100% Service availability for redundant power Services and 99.99% Service availability for non-redundant power Services.

b. For any billing month in which Cologix fails to meet the foregoing SLA with respect to power, Customer will, subject to the "Excluded Outages" (as defined below), receive, as its sole and exclusive remedy and Cologix's sole obligation for such failure, credit to its account based on the actual duration of the interruption of such power Service. Cologix's maintenance logs and trouble-ticketing systems will be used for calculating any SLA credits. The amount of credit is stated below as a percentage of the monthly recurring charges due to Cologix for such affected Service for the applicable calendar month.

Services Availability (measured over calendar month)	Redundant Power Credit	Non-Redundant Power Credit
Uptime of 100%	None	None
Uptime of 99.999% - 99.990%	10%	None
Uptime of < 99.990% - 99.900%	25%	10%
Uptime of < 99.900% - 95.000%	50%	25%
Uptime of < 95.000%	100%	50%

c. To request a credit, Customer must deliver a written request to Cologix within thirty (30) days of the end of the month for which a credit is requested.

d. If at any time Customer is in default under the Agreement, Customer will not be entitled to any credit. Customer is limited to receiving an aggregate credit of 100% of the monthly recurring charges due to Cologix for the applicable calendar month for the affected Service.

e. Notwithstanding anything to the contrary set forth herein, credit will not be issued under this SLA for any outage that, as determined by Cologix in its reasonable judgment, results from any of the following: (i) Customer-initiated changes, whether implemented by Customer or Cologix on behalf of Customer; (ii) a violation of the Policies and Procedures in existence as of the date of such circumstances giving rise to such credit; (iii) any





COLOCATION SPACE AND SERVICES SCHEDULE

other event or condition not wholly within the control of Cologix; (iv) viruses; (v) any Cologix scheduled maintenance announced at least forty-eight (48) hours in advance, up to an accumulated total of eight (8) hours per month; (vi) any emergency maintenance announced at least sixty (60) minutes in advance, up to an accumulated total of two (2) hours per month; (vii) any failures that cannot be corrected because Customer is inaccessible; or (viii) Customer exceeding its kW commitment as set forth in the applicable Service Order and/or Customer's power draw on any power circuit exceeding the Power Circuit Threshold therefor (clauses (i) through (viii) above, collectively, the "Excluded Outages").

11. **Anti-Long Straw.**

- a. Customer is required to order and maintain space and power Services from Cologix prior to Customer being permitted to order interconnection Services from Cologix. Such interconnection Services may only be ordered when originating from the same Cologix facility where Customer is physically colocated.
b. Customer shall not be permitted to transport connections to locations outside the Cologix facility for the sole purpose of direct third party network resale or transfer to another party that is not also physically present in the Cologix meet-me-room.
c. Any attempt to achieve connectivity that violates this Section 11, as determined by Cologix, shall be a material breach of the Agreement, entitling Cologix to immediately suspend Customer's Services set forth herein, in addition to all other remedies available to Cologix under the Agreement or at law or in equity, including, but not limited to, the right to immediately begin charging Customer a recurring premium surcharge on the monthly recurring charge for such breaching interconnection Service until the termination of such breach.

12. **Changes.** Cologix reserves the right to relocate, change or otherwise substitute replacement space for the Customer Space, at any time during the term hereof, provided that the replacement space is substantially similar in size and configuration to the original Customer Space. Any related direct out-of-pocket costs shall be at Cologix's sole expense.

13. **Termination of Use.** Cologix shall have the right to terminate Customer's use of the Customer Space or the Service(s) delivered therein in the event that: (a) Cologix's rights to use the facility in which the Customer Space is located terminates or expires for any reason; (b) Customer is in default hereunder; (c) Customer makes any material alterations to the Customer Space without first obtaining the prior written consent of Cologix; or (d) Customer violates the Policies and Procedures. With respect to (b), (c), and (d) above, unless, in Cologix's sole opinion, Customer's actions interfere or have the potential to interfere with other Cologix customers or present significant operational risks, Cologix shall provide Customer with notice and a thirty (30) day opportunity to cure before terminating Customer's right to the Customer Space.

14. **Release of Landlord.** Customer hereby agrees to release Cologix's landlord (and its agents, subcontractors and employees) from all liability relating to Customer's access to, and use and occupancy of, the Customer Space and the facility

in which it is located, except to the extent of any gross negligence or intentional misconduct of such landlord.

IN WITNESS WHEREOF, the parties have executed this Schedule by their duly authorized representatives.

COLOGIX CANADA, INC., in its own capacity:

(Signature)

(Name)

(Title)

(Date)

COLOGIX CANADIAN ISSUER LIMITED PARTNERSHIP, by its GENERAL PARTNER, COLOGIX CANADIAN ISSUER GP INC., by COLOGIX CANADA, INC., as manager:

(Signature)

(Name)

(Title)

(Date)

CUSTOMER:

(Signature)

(Name)

(Title)

(Date)





## NETWORK ACCESS AND SERVICES SCHEDULE

This NETWORK ACCESS AND SERVICES SCHEDULE (this "Schedule") is entered into by and between Cologix Canada, Inc. ("Cologix Canada"), in its own capacity, with offices located at 1601 19<sup>th</sup> Street, Suite 650, Denver, Colorado 80202 and Cologix Canadian Issuer Limited Partnership ("Cologix Canadian Issuer", and each of Cologix Canada and Cologix Canadian Issuer, collectively referred to as "Cologix"), by its general partner, Cologix Canadian Issuer GP Inc., by Cologix Canada, as manager, with offices located at 1601 19<sup>th</sup> Street, Suite 650, Denver, Colorado 80202, and \_\_\_\_\_ with offices located at \_\_\_\_\_ ("Customer") as of the latest dated signature below (the "Effective Date"), and incorporates and is governed by the terms and conditions of the Master Services Agreement (the "MSA") entered into by the parties. Any terms used herein and not defined herein shall have the meaning given to such terms in the MSA.

1. **Cologix Duties and Obligations.** As more particularly set forth in a Service Order, Cologix shall, subject to the terms and conditions hereof, provide Customer with certain network access and services (the "Network Access and Services"). Any and all access to any network(s) via Cologix must be in compliance with all policies and rules of those networks. Cologix exercises no control whatsoever over the content of any information passing through its networks. Cologix makes no guarantee of end-to-end bandwidth. Cologix cannot guarantee the peering sessions between non-Cologix companies (including, without limitation, Cologix's customers and vendors) and/or networks.
2. **Acceptable Use Policy.** Customer represents and warrants to Cologix that it will at all times comply with Cologix's Network Access and Services Acceptable Use Policy, as amended from time to time (the "Network Access and Services AUP"), by publishing at [www.cologix.com](http://www.cologix.com).
3. **Cologix Support Services.**
  - a. All work requested and instructed by Customer to be performed by Cologix on Customer hardware or software used in connection with the Network Access and Services, will be performed as a "Remote Hands" (defined below) service by Cologix on a time and materials basis, at Cologix's then current Remote Hands rates. In addition, any items not specifically listed on a Service Order will be on a time and materials basis.
  - b. As used herein, "Remote Hands" shall mean technical tasks performed by Cologix on Customer's equipment. Typical activities provided by the Remote Hands services include, without limitation, rebooting or power-cycling Customer equipment, testing or swapping defective cables, visual reporting on status indicators, reseating or replacement of modular equipment and modem connections for remote access. Remote Hands services may be purchased in monthly blocks of time or ad hoc.
  - c. Although Cologix technicians are skilled in troubleshooting and repairing a variety of hardware and/or software, prior knowledge of, or training on, a particular system utilized by Customer cannot be guaranteed. Cologix shall not be liable for any losses or damages due to any failure of the equipment or

for any loss of data or damages resulting from Remote Hands service.

4. **24x7 Customer Support.** Cologix provides for the coordination and resolution of problems associated with the Network Access and Service(s) on a 24x7 basis. Support is limited to the product features included in the Network Access and Service(s) purchased.
5. **Service Description.** Cologix provides the following three (3) types of network connectivity Services, as set forth on the applicable Service Order:
  - a. **Metro Connect** – A connection provided between two (2) separate Cologix facilities within the same metropolitan market. Each Service Order will include a Cross-Connect (hereinafter defined) in each Cologix facility to provide a complete end-to-end service. There are two (2) primary architectures for Metro Connect Services, to be identified on the applicable Service Order:
    - (i) A hosted Ethernet solution utilizing shared Cologix equipment to manage connectivity between data centers, available in various speeds.
    - (ii) Passive Wave Fiber, utilizing Dense Wavelength Division Multiplexing ("DWDM") technology providing a single wave of light between the source and destination. In connection with Passive Wave Fiber, Customer must provide its own DWDM capable equipment that conforms to Cologix signal requirements. Speed is determined by the Customer equipment.
  - b. **Cloud Connect/Access Marketplace** – A hosted connection provided between Customer equipment and a Service Provider ("SP") across Layer 2. This Service is purchased as one or more physical Cloud-Connect ports at 1Gb or 10Gb speeds. Customer shall have the ability to allocate Ethernet Virtual Circuits ("EVC") on those ports to one or more SPs. EVC pricing is based on which of the following connection types is provided:
    - (i) **Local** – The SP is located in the same facility or market as the customer's deployment. The Service is provided entirely from Cologix owned equipment.
    - (ii) **Extended** – The SP is located in a remote metropolitan market and/or via a separate network provider and Cologix will extend Service for Customer to that SP utilizing leased or resold network services from a carrier partner.
  - c. **IP Bandwidth** – A public internet bandwidth Service comprised of multiple carriers with diverse upstream feeds served via redundant equipment. Customer has the ability to order non-redundant IP Bandwidth Services (i.e. a single Cross-Connect to half of the redundant equipment) or redundant IP Bandwidth Services (i.e. two (2) Cross-Connects, one to each side of the redundant equipment), in each case as set forth on the Service Order. Customer can purchase this Service in either of two (2) payment models - Burstable or Fixed bandwidth:
    - (i) **Burstable** – Customer commits to a minimum bandwidth but is provided the flexibility to burst over that minimum

at a higher cost per Mb, measured at the 95th percentile as more particularly set forth in Section 6 below.

- (ii) **Fixed** - Customer commits to a fixed bandwidth cap, measured at the 95th percentile, and Cologix limits usage beyond this cap.

As used in this Schedule, a "**Cross-Connect**" shall mean a cable within a Cologix facility that connects customer equipment within a cabinet or cage to equipment outside of that cabinet or cage.

**6. Burstable Billing Calculation and Charges.**

a. For Burstable IP Bandwidth Services, the Total Utilized Bandwidth (defined below) is derived from a 95<sup>th</sup> percentile (95%) calculation as described below. The bandwidth utilized by Customer over and above the committed bandwidth amount set forth in the applicable Service Order (the "**Bursted Bandwidth**"), will be billed by Cologix to Customer at 100% of the committed bandwidth rate set forth in the applicable Service Order pursuant to the calculation set forth below in this Section 6.

b. At the end of each calendar month during the term of a Service Order, Cologix shall calculate the Bursted Bandwidth Charge (defined below) for such calendar month of all circuits for which Customer has ordered Burstable IP Bandwidth Services, pursuant to the following formula:

(i) "**Bursted Bandwidth Charge**" = (Total Utilized Bandwidth – the total committed bandwidth set forth in the applicable Service Order) x (the specified burst rate set forth in the applicable Service Order per Mbps for Circuits (or, if none specified, the committed bandwidth rate set forth in the applicable Service Order per Mbps for Circuits)).

(ii) "**Total Utilized Bandwidth**" shall be calculated as follows: Cologix shall poll the Cologix routers for ingress and egress usage on each respective circuit approximately every five minutes. The ingress and egress numbers for each poll shall be stack ranked. At the end of each calendar month during the term of a Service Order, the top 5% of the aggregate ingress and egress usage numbers shall be discarded. The next highest measurement, the greater of the ingress or egress, shall constitute the Total Utilized Bandwidth for the applicable circuits for the applicable calendar month.

c. Customer shall not receive the benefit of any volume price discounts set forth in a Service Order if the volume threshold is surpassed due to Bursted Bandwidth.

**7. Network Service-Level Agreement.**

a. The purpose of this network service-level agreement (this "**SLA**") is to define the network service levels and operational specifications that Cologix will provide to Customer with respect to each category of Network Access and Services. Specifics as to the Network Access and Services to be provided to the

Customer are set forth in the applicable Service Order, which is incorporated into and made a part hereof.

b. Cologix network environments will be available on a 7 (day) x 24 (hour) x 365 (day) basis, except for Excluded Outages (defined below).

c. Customer will not receive the benefit of the Network SLAs set forth in this Section 7 unless Customer has ordered from Cologix, and actively maintains, redundant, diverse connections to the applicable network Services provided. For further clarity, Cologix does not provide any SLA for single port solutions ordered by Customer.

d. Availability will be calculated monthly using total actual minutes available divided by total possible minutes available, but shall exclude, in all instances, any Excluded Outages. Performance measurements will exclude CPE.

e. Cologix levels for network availability are as follows:

<b>Metro Connect</b>	
<b>Type</b>	<b>Availability</b>
Redundant Ethernet	99.99%
Redundant Passive Wave	99.99%

<b>Cloud Connect / Access Marketplace</b>	
<b>Type</b>	<b>Availability</b>
For Redundant ports with Redundant EVCs only	99.99%

<b>Blended Internet</b>	
<b>Type</b>	<b>Availability</b>
Redundant Fixed	99.99%
Redundant Burstable	99.99%

f. If, as a direct result of Cologix' actions or inactions, the network Service(s) provided by Cologix fail to meet the specified performance levels stated above, then, as Customer's sole and exclusive remedy, and Cologix' sole obligation, for such failure, Customer shall receive a Service credit equal to 10% of the monthly recurring charge for the affected Service (i.e. network Service charge only) for each separate incident up to a maximum of 30% for the affected month in accordance with the Service Order for such affected Service.

g. To request a credit, Customer must deliver a written request to Cologix within thirty (30) days of the end of the month for which a credit is requested. The request must detail the time period of the outage and include all appropriate documentation



NETWORK ACCESS AND SERVICES SCHEDULE

evidencing the outage. Customer shall open a trouble-ticket with Cologix in connection with any such outage.

h. If at any time Customer is in default under the Agreement, Customer will not be entitled to any credit.

i. Notwithstanding anything herein to the contrary, credit will not be issued under this SLA for any outage that, as determined by Cologix in its reasonable judgment, results from any of the following: (i) scheduled maintenance announced at least forty-eight (48) hours in advance; (ii) emergency maintenance (for security or router instability (or related) type patches or modifications); (iii) a violation of the Network Access and Services AUP in existence on the date of such circumstances giving rise to such credit; (iv) any other event or condition not wholly within the control of Cologix; (v) any act or omission, directly or indirectly, of Customer or its employees, agents, contractors or representatives or by Customer's or its employees, agents', contractors' or representatives' equipment; (vi) viruses; (vii) any failures that cannot be corrected because Customer is inaccessible; (viii) any violation by Customer of Cologix security precautions or measures; or (ix) any attack against Customer equipment/servers (clauses (i) through (ix) above, collectively, the "Excluded Outages").

j. In the event that emergency maintenance is required, Cologix will not be obligated to provide advance notice to Customer but shall notify Customer as soon as reasonably possible.

8. **Customer Non-Interference; Indemnification.** Without limiting anything set forth in Section 7 hereof, Cologix shall not be responsible for acts or omissions of Customer or its employees, agents, contractors or representatives that result in failure of, or disruption to, the Services unless such acts or omissions were done in accordance with instructions given to Customer by Cologix. Customer agrees that neither Customer nor its employees, agents, contractors or representative shall attempt in any way to circumvent or otherwise interfere with any security precautions or measures of Cologix relating to the Cologix facilities or any Cologix equipment. Any such attempts may, among other things, cause disruption to the Services. Customer will be responsible for, and will indemnify Cologix for, any damage or service interruptions caused by Customer or its employees, agents, contractors or representatives in violation of these provisions, including, without limitation, any damage to any Cologix provided equipment. Further, Customer will pay Cologix, at Cologix' then current remote hands rates, for all remedial services resulting from Customer's actions.

9. **Anti-Long Straw.** Customer acknowledges the investment Cologix has made in its carrier neutral meet-me-rooms. In connection with the foregoing, Customer agrees that it shall not be permitted to utilize the network Services provided to Customer under this Schedule to transport connections to carriers within a Cologix meet-me-room to locations outside the Cologix facility for the sole purpose of direct third (3<sup>rd</sup>) party network resale or transfer to another party that is not also physically present in the Cologix meet-me-room, in all events without the prior written approval of a Cologix executive. If Customer breaches this Section 9, Cologix shall have the right to immediately suspend the network Services that are the cause of such breach.

IN WITNESS WHEREOF, the parties have executed this Schedule by their duly authorized representatives.

COLOGIX CANADA, INC., in its own capacity:

(Signature)

(Name)

(Title)

(Date)

COLOGIX CANADIAN ISSUER LIMITED PARTNERSHIP, by its GENERAL PARTNER, COLOGIX CANADIAN ISSUER GP INC., by COLOGIX CANADA, INC., as manager:

(Signature)

(Name)

(Title)

(Date)

CUSTOMER:

(Signature)

(Name)

(Title)

(Date)



## HOSTING AND MANAGED SERVICES SCHEDULE

This HOSTING AND MANAGED SERVICES SCHEDULE (this "Schedule") is entered into by and between Cologix Canada, Inc. ("Cologix Canada"), in its own capacity, with offices located at 1601 19<sup>th</sup> Street, Suite 650, Denver, Colorado 80202 and Cologix Canadian Issuer Limited Partnership ("Cologix Canadian Issuer", and each of Cologix Canada and Cologix Canadian Issuer, collectively referred to as "Cologix"), by its general partner, Cologix Canadian Issuer GP Inc., by Cologix Canada, as manager, with offices located at 1601 19<sup>th</sup> Street, Suite 650, Denver, Colorado 80202, and \_\_\_\_\_ with offices located at \_\_\_\_\_ ("Customer") as of the latest dated signature below (the "Effective Date"), and incorporates and is governed by the terms and conditions of the Master Services Agreement (the "MSA") entered into by the parties. Any terms used herein and not defined herein shall have the meaning given to such terms in the MSA.

- 1. Cologix Party Provided Hardware and Software.** Any hardware or software provided by Cologix Party pursuant to a Service Order in connection with hosting and managed services ("Hosting and Managed Services") shall be purchased by Cologix Party for Customer as set forth in the applicable Service Order. Any such Cologix Party-provided hardware and software shall be covered by the original manufacturer's warranty only. If the Service Order stipulates specific hardware or software which is no longer available or supported by Cologix Party, a more current product with equal or better specifications will be substituted and the same shall not constitute a breach or default by Cologix Party under the terms of such Service Order.
- 2. Locations and Access.** Cologix Party reserves the right, from time to time, to make changes as to how and where various Services are distributed from. Therefore, unless otherwise specified in a Service Order, specific locations and access to the Services may be altered, changed, or otherwise modified in Cologix Party's sole discretion and without liability, but subject in all instances to Section 16 hereof.
- 3. Maintenance and Ongoing Services.** Cologix Party shall support any and all hardware and software provided by Cologix, Party as stipulated in the Service Order, which is necessary for Customer to fully access and utilize the Hosting and Managed Services in accordance with any applicable SLA set forth herein. Cologix Party shall deliver or provide access to the Services to Customer, with the functionality and appearance specified in the Service Order. If at any time Customer makes any changes to Cologix Party supplied content, code, software, or hardware, or Cologix Party is denied access to the hardware, software, or related equipment, Cologix Party shall not be responsible for any maintenance, regardless of whether such changes were authorized, inspected, or confirmed by Cologix Party.
- 4. Remote Hands.** Cologix Party may, although it is under no obligation to, assist Customer, by providing remote hands services ("Remote Hands") or technical support, in repairing or remedying any issues with respect to the Services not otherwise covered by an applicable SLA or Service Order. Customer shall pay for any Remote Hands or technical support requested by Customer at Cologix Party's then current rates for such work. Cologix Party makes no guarantee of work performed for Remote Hands or technical support services and shall not be liable for any

losses or damages due to the performance of such Remote Hands services or technical support. All Remote Hands and technical support shall be provided by Cologix Party to Customer on an "As Is" "As Available" basis.

- 5. Access to Cologix Party Equipment.** Customer acknowledges that the use of the Hosting and Managed Services may periodically require updates and/or changes to certain licensed software resident in the Cologix Party equipment used to support the Hosting and Managed Services. If Cologix Party has agreed to provide updates and changes, Cologix Party may perform such updates and changes remotely or on-site, at Cologix Party's sole option. Customer hereby agrees and consents to provide Cologix Party's free access for such updates deemed reasonably necessary by Cologix Party. If for any reason, Cologix Party does not have access to the Cologix Party equipment supporting the Hosting and Managed Services, including that Customer does not provide Cologix Party with access, Cologix Party shall not be liable for any and all maintenance, upgrades, or changes. If Customer denies access for any reason to Cologix Party equipment, and Cologix Party, in Cologix Party's sole discretion, requires access to provide contracted Hosting and Managed Services, maintenance or upgrades, Cologix Party may, in Cologix Party's sole discretion, suspend or terminate Customer Services, and Customer shall owe to Cologix Party what Customer would have otherwise owed Cologix Party for the suspended Hosting and Managed Services if they had not been suspended and/or an amount equal to one hundred percent (100%) of the monthly recurring charges due under the terminated Service Order(s) for the remainder of the term of such Service Order(s).
- 6. Acceptable Use Policy.** Customer represents and warrants to Cologix Party that it will at all times comply with Cologix Party's Hosting and Managed Services Acceptable Use Policy, as amended from time to time (the "Managed Services AUP"), by publishing at [www.cologix.com](http://www.cologix.com).
- 7. Time and Quantity Measured Services.** Any measured services are recorded in whole units (e.g. hours, months, gigabytes, etc.), with partial units rounded up to the next whole unit.
- 8. Preservation of Customer Data.** Customer acknowledges and agrees that, unless stipulated otherwise in a Service Order, (i) Customer is responsible for developing and maintaining procedures (apart from any applicable Hosting and Managed Services) to protect Customer's content, including, without limitation, making appropriate backup copies of Customer content as may be necessary for reconstruction of any data, files, informational materials, or electronic messages; (ii) Cologix Party is not responsible for backup and restoration of Customer content or data; and (iii) Cologix Party's responsibility is limited to the provided Hosting and Managed Services and not ensuring the integrity or completeness of any Customer content, data, or code.

If Customer's Service Order provides for the availability of backup services, Cologix Party is responsible for the requested backup services themselves and not for the completeness or integrity of Customer content. It is Customer's responsibility to ensure that any and all backups occur regularly. Cologix Party is limited to



## HOSTING AND MANAGED SERVICES SCHEDULE

providing the Hosting and Managed Services as stipulated in the Service Order.

9. **Unauthorized Access to Data or Use of the Hosting and Managed Services.** Cologix Party is not responsible for unauthorized access to Customer data or the unauthorized use of the Hosting and Managed Services. Customer is responsible for the use of the Hosting and Managed Services by any Affiliate, employee, sub-contractor, or other party granted access by any of Customer employees, or any person Customer has granted access to the Hosting and Managed Services, and any person who gains access to Customer data or the Services as a result of Customer failure to use reasonable security precautions, even if such use was not authorized by Customer. By using the Hosting and Managed Services to publish, transmit or distribute material or content, Customer (i) represents and warrants to Cologix Party that the material or content complies with the provisions of the Agreement, (ii) authorizes Cologix Party, its agents and Affiliates to reproduce, publish, distribute, and display content solely in accordance with any applicable Service Order and (iii) represents and warrants to Cologix Party that it has the right to provide such authorization to Cologix Party. Customer acknowledges that due to the inherent nature of the Internet and beyond the control of Cologix Party, material posted or transmitted using the Hosting and Managed Services may be copied, republished or distributed by third parties, and agree to indemnify, defend and hold harmless Cologix Party, its agents and affiliates for any harm resulting from such actions.
10. **Monitoring of Content.** Cologix Party shall have no obligation to monitor postings, content or transmissions made in connection with the Hosting and Managed Services. Cologix Party, without Customer's prior approval, will not monitor or grant access to any postings, content, or transmissions unless required by law, valid subpoena, or other legal requirement. Cologix Party may use and disclose such monitoring and postings as required.
11. **Removal of Data.** In the event that Cologix Party becomes aware of any content, code, scripts, software, or other data provided or transmitted by Customer or equipment provided or owned by Customer, which is being used in violation of any applicable law or regulation, including but not limited to the CAN-SPAM Act and the DMCA ("Infringing Material"), Cologix Party reserves the right to remove, destroy, or restrict access to the Infringing Material, solely to comply with applicable law. Customer agrees that it is solely responsible for any and all use of the Hosting and Managed Services provided by Cologix Party, and that Cologix Party may deem it necessary to remove all content or terminate any and all Hosting and Managed Services to Customer if Customer fails to follow any and all applicable laws and regulations. Customer shall hold Cologix Party harmless for any and all good faith efforts by Cologix Party to comply with any and all laws and regulations.
12. **Licensed Software.** Customer agrees that they will not violate the license attributed to any software licensed to Customer in connection with the Hosting and Managed Services (the "Licensed Software"), which license may restrict Customer's ability to (i) copy the Licensed Software (or any upgrades thereto or related written materials), except as permitted by the express written consent of Cologix Party; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or

sublicense the Licensed Software to any third party; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.

13. **Export Laws and Regulations.** Customer acknowledges that any products, software, and/or technical information (including, but not limited to, services and training) provided pursuant to the Agreement may be subject to U.S. export laws and regulations, and any foreign use or transfer of such products, software, and technical information must be authorized under those regulations. Customer agrees that it will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by Cologix Party, Customer also agrees to sign written assurances and other export-related documents as may be required for Cologix Party to comply with U.S. export regulations.
14. **Customer Support.** Cologix Party provides for the coordination and resolution of problems associated with the Hosting and Managed Service(s). Support is limited to the product features included in the Service(s) purchased, as defined in the applicable Service Order.
15. **Service Description.** Cologix Party provides the following Hosting and Managed Services, which, if ordered by Customer, will be set forth in the applicable Service Order:
- a. **FLEXBackup.** Is a Backup-as-a-Service product which is charged to Customer based on committed storage threshold which is set forth in the applicable Service Order (the "Committed Storage Threshold"). All use of the Service by Customer in excess of the Committed Storage Threshold will be charged to Customer at a higher rate per GB until the last day of the month in which either (i) Customer deletes available backups until usage is below the Committed Storage Threshold; or (ii) Customer formally increases the Committed Storage Threshold pursuant to an incremental Service Order such that Customer's use of the Service is no longer in excess of the combined Committed Storage Threshold. The FLEXBackup Service is sold in two types of architectures:
- Single Site* - A single shared physical vault holding Customer encrypted data located in a Cologix Party facility. For the avoidance of doubt, it is Customer's responsibility, and not Cologix Party's, to encrypt the Customer data.
- Replicated* - Two separate physical vaults holding Customer encrypted data located in two separate Cologix Party facilities. For the avoidance of doubt, it is Customer's responsibility, and not Cologix Party's, to encrypt the Customer data.
- Customer's that are "business associates" or "covered entities" under the HIPAA Rules (defined below) shall not be permitted to order FLEXBackup Services.
- b. **FLEXBridge.** Is a layer 2 cross connect from the Hosted and Managed Services environment to the meet-me-





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room located in the facility at the specific connection point identified in the related Service Order or LOA/ CFA.

- c. Load Balancer. Is a physical load balancer managed by Cologix Party, in which load balancing services may be provided by Cologix Party on a single network device shared by multiple customers.
- d. Router. Is a 48-port switch ordered by Customer with respect to which Customer will pay Cologix Party to install within Customer's colocation space ordered at the applicable Cologix Party facility.
- e. FLEXSecurity. This is a network security solution with the following specific options:

*DDOS* - A Distributed Denial of Service ("DDoS") mitigation tool configured and managed by Cologix Party at Customer's reasonable direction communicated in writing to Cologix Party from time to time and subject to Cologix Party's approval.

*Firewall* - A physical firewall configured and maintained by Cologix Party's at Customer's direction.

- f. FLEXServer. This is a dedicated physical server installed by Cologix Party and licensed to Customer pursuant to the specifications agreed by the parties as set forth in the Service Order.

- g. FLEXStorage. This is a Storage-as-a-Service ("SAAS") solution provided in two possible architectures:

*Dedicated* - A dedicated physical Storage Area Network ("SAN") which may be connected to the Customer's environment through the additional purchase of Cologix Party cross-connect Services as set forth in a Service Order.

*Shared* - A shared physical SAN which may be connected to the Customer's environment through the additional purchase of Cologix Party cross-connect Services as set forth in a Service Order.

- h. FlexVirtual Data Center / FLEXVDC. This is a multi-customer third party environment, hosted by Cologix Party within a Cologix Party facility, in which Customer is provided pool of compute resources the amount of which will be mutually agreed between the parties at the time the applicable Service Order is executed.
- i. Private Cloud. Is a single-customer third party environment, hosted by Cologix Party within a Cologix Party facility, in which Customer is provided pool of compute resources the amount of which will be mutually agreed between the parties at the time the applicable Service Order is executed.

### 16. Hosting and Managed Services Service Level Agreement.

- a. Cologix Party shall maintain the availability of the Hosting and Managed Services as set forth in this Section 16. For any billing month in which Cologix Party fails to meet the applicable SLA set forth below with respect to the applicable

Hosting and Managed Service below, Customer will, subject to the "Excluded Outages" (as defined below), receive, as its sole and exclusive remedy and Cologix Party's sole obligation for such failure, credit to its account based on the actual duration of the interruption of such Hosting and Managed Service. Cologix Party's maintenance logs and trouble-ticketing systems will be used for calculating any SLA credits. The amount of credit is stated below as a percentage of the monthly recurring charges due to Cologix Party for such affected Hosting and Managed Service for the applicable calendar month.

- b. FLEXServer Hardware SLA. For any Cologix Party provided hardware relating to a FLEXServer Service ordered by Customer, as set forth in a Service Order, if such hardware device suffers full or partial hardware-level failure, Cologix Party will use commercially reasonable efforts to replace the device, in whole or in part, within four (4) hours after the hardware has been determined by Cologix Party, acting reasonably, to have failed and, if not replaced within such four (4) hour window, Customer shall be entitled to receive credit for such failure to replace pursuant to the below chart, in each case other than in connection with an SLA failure hereunder caused by an Excluded Outage. The replacement and credit set forth herein are Customer's sole and exclusive remedy, and Cologix Party's sole obligation, relating to any such hardware SLA failure. Notwithstanding the foregoing, Customer is fully responsible for the maintenance and management of all Cologix Party provided hardware.

Service	Credit Amount	Maximum Credit
Hardware Replacement	If the Service is unavailable for more than 30 concurrent minutes following the end of the 4 hour window within a calendar month, Customer shall be entitled to a credit of 5% of the monthly recurring charges for each additional concurrent 15 minute period that the Service is unavailable	100%



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- c. Cloud and Hosted Services SLA. With respect to Private Cloud, FlexBackup, FlexStorage and Load Balancer Services ordered by Customer pursuant to a Service Order (each, a "Cloud and Hosted Service"), Cologix Party will use commercially reasonable efforts to ensure that any of such Cloud and Hosted Services will be available for the applicable calendar month (the "Cloud and Hosted Services Availability Threshold") as set forth in the table below. If a Cloud and Hosted Services SLA failure has occurred, as determined by Cologix Party acting reasonably, Customer shall be entitled to receive credit for such failure pursuant to the below chart, other than where such SLA failure was caused by an Excluded Outage. The credit set forth below is Customer's sole and exclusive remedy, and Cologix Party's sole obligation, relating to any such Cloud and Hosted Services SLA failure.

Service	Credit Amount	Maximum Credit
Cloud and Hosted Services	If the Service is unavailable for more than 30 concurrent minutes within a calendar month, Customer shall be entitled to a credit of 5% of the monthly recurring charges for each additional concurrent 15 minute period that the Service is unavailable.	100%

- d. To request a credit, Customer must deliver a written request to Cologix Party within thirty (30) days of the end of the month for which a credit is requested.
- e. If at any time Customer is in default under the Agreement, Customer will not be entitled to any credit. Customer is limited to receiving an aggregate credit of 100% of the monthly recurring charges due to Cologix Party for the applicable calendar month for the affected Hosting and Managed Service.
- f. Notwithstanding anything herein to the contrary, credit will not be issued under this SLA for any outage that, as determined by Cologix Party in its reasonable judgment, results from any of the following: (i) Customer-initiated changes, whether implemented by Customer or Cologix Party on behalf of Customer; (ii) a violation of the Hosting and Managed Services AUP in existence on the date of such circumstances giving rise to such credit; (iii) any other event or condition not wholly within the control of Cologix Party; (iv) any breach of the security of the Cologix Party system on which the Services are hosted, other than to the extent caused by Cologix Party; (v) any Cologix Party scheduled maintenance announced at least forty-eight (48) hours in advance, up to an accumulated total of eight (8) hours per month; (vi) any emergency maintenance announced at least sixty (60) minutes in advance, up to an accumulated total of two (2) hours per month; (vii) any failures that cannot be corrected because Customer is inaccessible; (viii) Customer exceeding the performance parameters of the hardware, software or network in Customer's specific installation; (ix) circumstances beyond Cologix Party's reasonable control, including, without limitation, interruption of

or delay in transportation, unavailability of or interruption or delay in telecommunications; (x) DNS failures or errors outside of the control of Cologix Party; and (xi) failure of access circuits to the Cologix Party network, unless such failure is caused by Cologix Party (clauses (i) through (xi) above, collectively, the "Excluded Outages").

- g. Customer acknowledges that multiple service credits cannot be overlapped on the same Hosting and Managed Service (i.e. failure to meet multiple metrics during the same period of time cannot be stacked).
- 17. **Termination of Use**. Cologix Party shall have the right to terminate Customer's use of the Hosting and Managed Service(s) delivered therein in the event that: (a) Cologix Party's rights to use the facility in which the Customer is located terminates or expires for any reason; (b) Customer is in default hereunder; (c) Customer makes any material alterations to Hosting and Managed Services without first obtaining the prior written consent of Cologix Party; or (d) Customer violates the Policies and Procedures and/or the Hosting and Managed Services AUP. With respect to (b), (c), and (d) above, unless, in Cologix Party's sole opinion, Customer's actions interfere or have the potential to interfere with other Cologix Party customers or present significant operational risks, Cologix Party shall provide Customer with notice and a thirty (30) day opportunity to cure before terminating Customer's Services.
- 18. **HIPAA Compliance**. In connection with Customer's Hosting and Managed Services under this Schedule, if Customer is handling "protected health information" or, if Customer is a "covered entity" or "business associate", in each case, as such term is defined by the rules promulgated under The Health Insurance Portability and Accountability Act of 1996, codified at 45 CFR Parts 160 and 164 (or the Canadian equivalent, as the same may be amended, the "HIPAA Rules"), then the parties acknowledge and agree that Cologix Party may be deemed a business associate of Customer under and pursuant to HIPAA and, consequently, each of Customer and Cologix Party expressly agrees that all of the provisions of Exhibit A hereto shall apply in connection with the Hosting and Managed Services (the "Business Associate Provisions").

**IN WITNESS WHEREOF**, the parties have executed this Schedule by their duly authorized representatives.

**COLOGIX CANADA, INC., in its own capacity:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)





HOSTING AND MANAGED SERVICES  
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**COLOGIX CANADIAN ISSUER LIMITED PARTNERSHIP,  
by its GENERAL PARTNER, COLOGIX CANADIAN ISSUER  
GP INC.,  
by COLOGIX CANADA, INC., as manager:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**CUSTOMER:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)



EXHIBIT A

Business Associate Provisions

1. General. To the extent Customer ("Covered Entity") is handling Protected Health Information (as defined under the HIPAA Rules, "PHI") in connection with its Services under this Schedule, then Cologix may be deemed a business associate of Covered Entity under and pursuant to the HIPAA Rules (a "Business Associate"). The parties agree to the following provisions to satisfy the requirements of the HIPAA Rules, 45 CFR Parts 160 and 164. Capitalized terms used in this Exhibit A but not otherwise defined herein shall have the respective meaning given to such terms under the HIPAA Rules.

2. Obligations and Activities of Business Associate

- a. Business Associate agrees and acknowledges that any Individual's PHI that comes within Business Associate's custody, exposure, possession or knowledge or is created, maintained, retained, transmitted, derived, developed, compiled, prepared or used by Business Associate in the course of or in connection with the performance of legal services for Covered Entity, is confidential and shall remain the exclusive property of Covered Entity and shall be used, disclosed, transmitted and/or maintained solely to perform its obligations under this Agreement and pursuant to the terms of legal representation, as Required By Law, and for the proper management and administration of Business Associate as provided by 45 CFR § 164.504(e)(4).
- b. Business Associate shall make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.524.
- c. Business Associate shall make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.526.
- d. Business Associate shall provide Covered Entity with all information the Covered Entity requires to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- e. Business Associate shall implement administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of Electronic PHI ("ePHI") that it creates, receives, maintains, or transmits on behalf of the Covered Entity, as required by the HIPAA Rules; provided however, Covered Entity shall be responsible for data backup and disaster recovery in case of loss of PHI (see, §3E, below).
- f. Business Associate shall in accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees to the same restrictions, conditions, and requirements that apply to Business Associate with regard to its creation, Use, and Disclosure of PHI.

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g. Business Associate shall make internal practices, books and records, including policies and procedures, relating to the Use and Disclosure of PHI received from, or created or received by Business Associate, on behalf of Covered Entity, available to Covered Entity, or at the request of Covered Entity to the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules.

h. Business Associate shall notify Covered Entity of any Breaches of Unsecured PHI, as required at 45 CFR § 164.410, within twenty (20) days of the date such Breach was discovered or should have been discovered.

3. Obligations of Covered Entity

a. Covered Entity agrees to advise Business Associate, in writing, of any arrangements which may impact the Use and/or Disclosure of PHI by the Business Associate under this Agreement and in the course of Business Associate's legal representation of Covered Entity.

b. Upon Business Associate's request, Covered Entity shall provide Business Associate with its Notice of Privacy Practices and any revisions thereto during the term of this Agreement.

c. Covered Entity will not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under HIPAA.

d. Covered Entity agrees that, in all instances, it will encrypt, at rest and in transmission, any and all PHI that moves through or is stored within any Business Associate facility to which the Underlying Agreement applies.

e. Covered Entity will undertake all responsibility to back-up PHI on a regular basis, will ensure that it has a disaster recovery plan in place to restore any loss of PHI and will employ an Emergency Operation Mode plan with respect to PHI, in each case as required by HIPAA. Covered Entity acknowledges and agrees that the PHI maintained on Business Associate's equipment is not intended to serve as the backup copy. Covered entity acknowledges and agrees that Business Associate shall not be responsible for the foregoing obligations and that Business Associate is relying on Covered Entity's satisfaction of its obligations set forth in this subsection E in connection with Business Associate's execution of this Agreement and the provision by Business Associate of services to Covered Entity under and pursuant to the Underlying Agreement.

4. Termination

a. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days, Covered Entity may terminate Agreement.



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b. Upon the termination of the Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, at the direction of Covered Entity. Business Associate shall request, in writing, PHI that is in the possession of subcontractors or agents of Business Associate, if any. In the event the Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If return or destruction of PHI is infeasible, Business Associate shall extend the protection of this Agreement to such PHI, for so long as Business Associate maintains such PHI. Following the termination of this Agreement, Business Associate shall not disclose PHI except to Covered Entity or as Required by Law.