

Master Services Agreement

This Master Services Agreement (this "**Agreement**"), dated as of the Effective Date, is by and between VPLS, INC. and/or its Affiliates (the "**Service Provider**") and you (the "**Customer**").

WHEREAS, Customer desires to retain Service Provider to provide Services upon the terms and conditions hereinafter set forth, and Service Provider is willing to perform such services.

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. **DEFINITIONS**

"**Action**" has the meaning set forth in Section 11.1.

"**Affiliates**" means any business entity in which VPLS, INC. has an ownership interest or an affiliation. As of the Effective Date, Affiliates include VPLS Solutions LLC.

"**Authorized Service Recipients**" means the Affiliates of Customer as may be notified by Customer to Service Provider from time to time, or the Persons identified as such in a Statement of Work.

"**Agreement**" has the meaning set forth in the preamble.

"**Change Order**" has the meaning set forth in Section 5.2.

"**Confidential Information**" means any information that is treated as confidential by a party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

"**Customer**" has the meaning set forth in the preamble.

"**Customer Contract Manager**" has the meaning set forth in Section 4.1(a)

"**Customer Materials**" any documents, data, know-how, methodologies, software and other materials provided to Service Provider by Customer, including computer programs, reports and specifications.

"Deliverables" means all documents, work product and other materials that are delivered to Customer hereunder or prepared by or on behalf of Service Provider in the course of performing the Services, including any items identified as such in a Statement of Work.

"Disclosing Party" means a party that discloses Confidential Information under this Agreement.

"Effective Date" means the date listed on the Statement of Work as the effective date.

"Intellectual Property Rights" means all (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Key Personnel" means any Service Provider Personnel who is identified as being key in a Statement of Work.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"Losses" mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"Permitted Subcontractor" has the meaning set forth in Section 3.1(d).

"Person" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

"Pre-Existing Materials" means all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, provided by or used by Service Provider in connection with performing the Services, in each case developed or acquired by the Service Provider prior to the commencement or independently of this Agreement.

"Project" means a project as described in a Statement of Work.

"Project Milestone" means an event or task described in a Statement of Work which shall be completed by the relevant date set forth in the Statement of Work.

"**Receiving Party**" means a party that receives or acquires Confidential Information directly or indirectly under this Agreement.

"**Service Provider**" has the meaning set forth in the preamble.

"**Service Provider Contract Manager**" has the meaning set forth in Section 2.2(c).

"**Service Provider Equipment**" means any equipment, systems, cabling or facilities provided by or on behalf of Service Provider and used directly or indirectly in the provision of the Services.

"**Service Provider Personnel**" means all employees and Permitted Subcontractors, if any, engaged by Service Provider to perform the Services.

"**Service Provider Proposal**" means Customer's Request for Proposal for the Services and Service Provider's response, attached as Exhibit A, describing how Service Provider proposes to carry out the Services.

"**Services**" mean any professional or other services to be provided by Service Provider under this agreement, as described in more detail in the Statement of Work(s), and Service Provider's obligations under this Agreement.

"**Statement of Work**" means each Statement of Work, Scope of Work, Service Order, or Quote entered into by the parties and attached to this Agreement.

"**Term**" has the meaning set forth in Section 6.

2. SERVICES

2.1 Service Provider shall provide the Services to Customer and the Authorized Service Recipients as described in more detail in each Statement of Work in accordance with the terms and conditions of this Agreement.

2.2 Each Statement of Work shall include the following information, if applicable:

(a) a detailed description of the Services to be performed pursuant to the Statement of Work;

(b) the date upon which the Services will commence and the term of such Statement of Work;

(c) the names of the Service Provider Contract Manager and any Key Personnel;

(d) the fees to be paid to Service Provider under the Statement of Work;

(e) payment schedules;

(f) procedures for the testing and acceptance of the Services and Deliverables by Customer; and

(g) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such Statement of Work.

3. SERVICE PROVIDER'S OBLIGATIONS

3.1 The Service Provider shall:

(a) before the date on which the Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant Laws applicable to the provision of the Services;

(b) comply with, and ensure that all Service Provider Personnel comply with, all rules, regulations and policies of Customer that are communicated to Service Provider in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Customer to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;

(c) obtain Customer's written approval, which consent shall not be unreasonably withheld or delayed, prior to entering into agreements with or otherwise engaging any Person, including all subcontractors and Affiliates of Service Provider, other than Service Provider's employees to provide any Services and Deliverables to Customer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). Customer's approval shall not relieve Service Provider of its obligations under the Agreement, and Service Provider shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Service Provider's own employees. Nothing contained in this Agreement shall create any contractual relationship between Customer and any Service Provider subcontractor or supplier; and

(d) require each Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property assignment or license provisions of this Agreement, and, upon Customer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Customer.

3.2 Service Provider is responsible for all Service Provider Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

3.3 Service Provider shall use reasonable efforts to meet any performance dates specified in a Statement of Work, and any such dates shall be estimates only.

4. CUSTOMER'S OBLIGATIONS

4.1 Customer shall:

(a) cooperate with Service Provider in all matters relating to the Services and appoint a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Customer with respect to matters pertaining to this Agreement (the "**Customer Contract Manager**");

(b) provide, subject to Section 3.1(c), such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Service Provider for the purposes of performing the Services;

(c) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of this Agreement;

(d) provide such information as Service Provider may reasonably request in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects;

(e) obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services, to the extent that such licenses, consents and Law relate to Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;

(f) keep and maintain the Service Provider Equipment in good condition, and shall not dispose of or use Service Provider Equipment other than in accordance with Service Provider's written instructions or authorization.

4.2 If Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer, any Authorized Service Recipient or their agents, subcontractors, consultants or employees outside of Service Provider's reasonable control, Service Provider shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

5. CHANGE ORDERS

5.1 If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other in writing. Service Provider shall, within a reasonable time after such request, provide a written estimate to Customer of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the fees and other charges for the Services arising from the change;
- (c) the likely effect of the change on the Services; and
- (d) any other impact the change might have on the performance of this Agreement.

5.2 Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 16.10.

6. TERM

This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Statements of Work. Thereafter, this Agreement shall automatically renew for successive one-year periods unless: (a) a Statement of Work has a month-to-month term, (b) Customer notifies Service Provider in writing of its desire not to renew this Agreement at least 30 days prior to expiration of the then-current term; or (c) unless sooner terminated pursuant to Section 13.

7. FEES AND EXPENSES; PAYMENT TERMS

7.1 In consideration of the provision of the Services by the Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the applicable Statement of Work. Payment to Service Provider of such fees and the reimbursement of expenses pursuant to this Section 7 shall constitute payment in full for the performance of the Services, and, Customer shall not be responsible for paying any other fees, costs or expenses.

7.2 Terms of Payment. Except for usage-based Services, which are billed in arrears, the Services are billed one (1) month in advance and the first billing cycle may include a partial month and full month of Services. All fees and charges are payable for the duration of the Term, regardless of whether Customer actually uses the Services. Monthly fees are billed on the first (1st) of each month, and due to be paid within ten (10) days. Notwithstanding the above, if Customer has credit terms with Service Provider, then payment is due within thirty (30) days of receipt of an invoice by Customer. Charges for non-recurring services are due and payable within ten (10) days of receipt of an invoice by Customer. All payments shall be

made in U.S. currency without any deduction or offset except as specifically provided in writing by Service Provider.

7.3 Taxes and Other Fees. Customer shall be responsible for all sales, use and excise taxes, Universal Service Fund (“USF”) fees, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; *provided, that*, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Service Provider's income, revenues, gross receipts, personnel or real or personal property or other assets.

7.4 Third-Party License Fees. Customer shall be responsible for all Third-Party License Fees set forth in the Statement of Work. Third Party License Fees may increase year over year from the Vendor therefore VPLS will provide notice of any fee increase from the Vendor and applicable effective date. Customer will be responsible for the increased fees unless otherwise terminated prior, in which no early termination fee shall apply.

7.5 Service Charge. If Customer does not pay the amount due five (5) days after such payment is due, Customer will pay a late payment charge equal to ten percent (10%) of the amount due plus interest at the rate of one and one half percent (1.5%) per month or such other rate or rates as may be permitted under applicable law.

7.6 Disputed Payments. In the event Customer in good faith disputes any of Service Provider’s charges, Customer shall (a) promptly pay all undisputed and disputed charges and (b) notify Service Provider in writing of any such disputed amounts within thirty (30) days from when payment was due, identifying in reasonable detail its reasons for the dispute and the nature and amount of the dispute. All amounts not timely and appropriately disputed shall be deemed final and not subject to further dispute. Service Provider will review the amounts in dispute within (10) business days after receipt of notice of dispute. If Service Provider determines that Customer was charged or billed in error, a credit for the amount in charged or billed incorrectly will be made to Customer's next payment.

7.7 Suspension or Termination of Services. If payment in full for Services performed under any Statement of Work (other than for payments validly disputed by Customer in good faith) is not received on its due date, Service Provider shall have the right to suspend Services until such time as Customer has paid such charges in full, including any late fees. Service Provider shall give Customer written notice of its right to suspend Services and provide Customer seven (7) day advance notice from delivery before such suspension. Following such payment, Service Provider shall immediately reinstate the Services. Failure by Customer to pay for such Services within seven (7) days after any suspension shall be deemed to constitute a termination of the Services. At such termination, all remaining payments to Service Provider under the relevant Statement of Work shall be due immediately. No cancellation or termination under this Section shall relieve Customer from its obligations to pay for Services under any Statement of Work not so cancelled or terminated.

8. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

8.1 As between Customer and Service Provider, all Intellectual Property Rights and all other rights in and to the Deliverables (except for any Confidential Information of Customer or Customer Materials) and the Pre-existing Materials shall be owned by Service Provider. Service Provider hereby grants Customer and the Authorized Service Recipients a license to use all such rights free of additional charge and on a non-exclusive, worldwide, and royalty-free basis to the extent necessary to enable the Customer and the Authorized Service Recipients to make reasonable use of the Deliverables and the Services.

8.2 Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Customer Materials, including all Intellectual Property Rights therein. Service Provider shall have no right or license to use any Customer Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to Customer. All other rights in and to the Customer Materials are expressly reserved by Customer.

9. CONFIDENTIAL INFORMATION

9.1 The Receiving Party agrees:

(a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; *provided, however*, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its and its Affiliates, and their officers, employees, consultants and legal advisors who have a "need to know", who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 9;

(b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of Customer, to make use of the Services and Deliverables; and

(c) to promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

9.2 If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide prompt written notice of such requirement so that the Disclosing Party may seek a protective order or other remedy. If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

10. REPRESENTATIONS AND WARRANTIES

10.1 Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;

(b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and

(d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

10.2 Service Provider represents and warrants to Customer that:

(a) it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement;

(b) it is in compliance with, and shall perform the Services in compliance with, all applicable Laws;

(c) the Services and Deliverables will be in conformity in all material respects with all requirements or specifications stated in this Agreement and the applicable Statement of Work for a period of 30 days after delivery to Customer. In the event of Service Provider's breach of the foregoing warranty, Service Provider's sole and exclusive obligation and liability and Customer's sole and exclusive remedy shall be as follows:

(i) The Service Provider shall use reasonable efforts to cure such breach; provided, that if Service Provider cannot cure such breach within a reasonable time (but no more than 30 days) after Customer's written notice of such breach; Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 16.4.

(ii) In the event the Agreement is terminated in accordance with this Section 10.2(c), Service Provider shall within 30 days after the effective date of termination, refund to Customer any fees paid by the Customer as of the date of termination for such Service or Deliverable less a deduction equal to the fees for receipt or use of such Deliverables or Service up to and including the date of termination on a pro-rated basis.

(iii) The foregoing remedy shall not be available unless Customer provides written notice of such breach within 30 days after delivery of such

Service or Deliverable to Customer or with respect to changes made by any Person other than Service Provider or at Service Provider's direction.

10.3 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 10, (A) EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND (B) SERVICE PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

11. INDEMNIFICATION

11.1 Service Provider shall defend, indemnify and hold harmless Customer and its officers, directors, employees, agents, successors and permitted assigns (each, a "**Customer Indemnitee**") from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") arising out of or resulting from bodily injury, death of any person or damage to real or tangible, personal property resulting from the willful, fraudulent or grossly negligent acts or omissions of Service Provider or Service Provider Personnel; and

11.2 Customer shall defend, indemnify and hold harmless Service Provider and its officers, directors, employees, agents, successors and permitted assigns from and against all Losses arising out of or resulting from any third party Action arising out of or resulting from bodily injury, death of any person or damage to real or tangible, personal property resulting from the grossly negligent or willful acts or omissions of Customer.

11.3 The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any Action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any Action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified party's failure to perform any obligations under this Section 11.3 shall not relieve the indemnifying party of its obligations under this Section 11.3 except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

12. LIMITATION OF LIABILITY

12.1 EXCEPT AS OTHERWISE PROVIDED IN SECTION 12.3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE

WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 EXCEPT AS OTHERWISE PROVIDED IN SECTION 12.3, IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE SUM OF ALL PAYMENTS MADE BY CUSTOMER TO SERVICE PROVIDER DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

12.3 The exclusions and limitations in Section 12.1 and Section 12.2 shall not apply to:

- (a) a party's indemnification obligations under Section 11 (Indemnification);
- and
- (b) damages or liabilities to the extent covered by a party's insurance.

13. TERMINATION; EFFECT OF TERMINATION

13.1 Customer may terminate this Agreement or any Statement of Work, in whole or in part, by providing 30-day written of desire not to renew at least 30 days prior to expiration of the then-current term pursuant to Section 6.

13.2 Termination within Initial 30 Days. Customer may terminate this Agreement within the initial 30 days by providing Service Provider with written notice within the initial 30 days. Service Provider does not offer any refunds and Services will be terminated at the end of the 30-day term, and any obligation of Customer for future payments will be cancelled. Such early termination is conditioned on Customer returning any Service Provider Equipment that was provided to Customer under this Agreement and/or Statement of Work.

13.3 Termination after Initial 30-Days. Notwithstanding Section 13.2, If Customer terminates this Agreement or Statement of Work before the agreed upon term's expiration, Customer will pay Service Provider: (i) a termination fee that includes all non-reoccurring charges and costs reasonably incurred by Service Provider; and (ii) the full remaining monthly payments due and payable within five (5) days after termination.

13.4 Default. Either party may terminate this Agreement without penalty, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party:

- (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach pursuant to Section 10.2(c).
- (b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding

under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

13.5 Upon expiration or termination of this Agreement for any reason:

(a) Service Provider shall (i) promptly deliver to Customer all Deliverables (whether complete or incomplete) for which Customer has paid and all Customer Materials, (ii) promptly remove any Service Provider Equipment located at Customer's premises, and (iii) provide reasonable cooperation and assistance to Customer upon Customer's written request and at Customer's expense in transitioning the Services to an alternate Service Provider.

(b) Each party shall (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information, (ii) permanently erase all of the other party's Confidential Information from its computer systems and (iii) certify in writing to the other party that it has complied with the requirements of this clause.

13.6 The rights and obligations of the parties set forth in this Section 13.6 and Section 1, Section 8, Section 9, Section 10, Section 12, Section 13.5, Section 14, and Section 16, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

14. NON-SOLICITATION

14.1 During the Agreement's term under Section 6 and for a period of twelve (12) months thereafter, neither party shall, directly or indirectly, in any manner solicit or induce for employment any person who performed any work under this Agreement who is then in the employment of the other party without the prior written consent of the other party. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this Section 14.1, and the hiring of any such employees or independent contractor who freely responds thereto shall not be a breach of this Section 14.1.

15. FORCE MAJEURE

15.1 The Service Provider shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Service Provider including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts,

riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of thirty (30) days, Customer shall be entitled to give notice in writing to Service Provider to terminate this Agreement.

16. MISCELLANEOUS

16.1 Each party shall, upon the reasonable request, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

16.2 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

16.3 Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

16.4 All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated on the applicable Statement of Work.

16.5 For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, Exhibits and Statements of Work refer to the Sections of, and Schedules, Exhibits and Statements of Work attached to this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules, Exhibits and Statements of Work referred to herein

shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

16.6 This Agreement, together with all Schedules, Exhibits and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule, Exhibit or Statement of Work, the following order of precedence shall govern: (a) first, this Agreement, exclusive of its Exhibits and Schedules; (b) second, the applicable Statement of Work; (c) third, any Exhibits and Schedules to this Agreement.

16.7 Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, that, upon prior written notice to the other party, either party may assign the Agreement to an Affiliate of such party or to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation or acquisition. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

16.8 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

16.9 The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

16.10 This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16.11 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually

acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

16.12 This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of California.

16.13 Mediation and Arbitration.

(a) Mediation. The parties shall mediate any dispute or claim between them arising out of this Agreement. The mediation shall be held prior to any court action or arbitration. The mediation shall be confidential and in accordance with applicable sections of the California Evidence Code. In the event the parties are not able to agree on a mediator within thirty (30) days of the first party seeking mediation, the presiding judge of the Superior Court of the county in which venue would lie for the filing of a complaint for relief in such dispute shall have jurisdiction to appoint a mediator. In the event the mediator determines that a second mediation is necessary, it shall be conducted in accordance with this paragraph. Should either party attempt an arbitration or a court action before attempting to mediate, that party shall not be entitled to recover attorney fees that might be otherwise available to it in a court action or arbitration and the party who is determined by the arbitrator or judge to have resisted mediation may be sanctioned by the arbitrator or judge. Mediation fees, if any, shall be divided equally between the parties. Any such mediation shall occur in Orange County, California.

(b) Arbitration. In the event of any claim, dispute or controversy arising out of or relating to the interpretation, performance and/or breach of this Agreement (except for claims for injunctive relief), the parties agree that any claim, dispute and/or controversy which would otherwise require or allow resort to any court or other governmental dispute resolution forum between the parties whether based on tort, contract, statutory or equitable law, or otherwise, shall be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act, in conformity with the procedures of the California Arbitration Act. (Cal. Code Civ. Proc. § 1280 et. seq., including Section 1283.05 and all of the Acts, other mandatory and permissive rights to discovery). However, in addition to requirements imposed by law, any arbitrator herein shall be a retired California Superior Court judge and shall be subject to disqualification on the same grounds as would apply to a judge of such court. Such arbitration shall occur in Orange County, California. To the extent applicable in civil actions in California courts, the following shall apply and be observed:

- (i) all rules of pleading (including the right of demurrer);
- (ii) all rules of evidence; and

(iii) All rights to resolution of the dispute by means of motions for summary judgment, judgment on the pleadings, and judgment under Code of Civil Procedure Section 631.8.

Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including but not limited to notions of "just cause") other than such controlling law. All communications during or in connection with the arbitration proceedings are privileged in accordance with California Civil Code Section 47(b). Awards shall include the arbitrator's written reasoned opinion.

16.14 Jurisdiction and Venue. In the event that Section 16.13 is unenforceable, the parties agree to submit to the jurisdiction of the federal and state courts of the State of California in the County of Orange in any action arising out of a dispute under or in connection with this Agreement or any transaction contemplated by this Agreement. Each party further agrees that personal jurisdiction may be effected upon him, her, or it by service of process by registered or certified mail addressed as provided in the Statement(s) of Work attached hereto, and that when service is so made, it shall be as if personal service was effected within the State of California.

16.15 Each party acknowledges that a breach by a party of Section 8 (Intellectual Property Rights; Ownership) or Section 9 (Confidentiality) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

16.16 Counterparts / PDF Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall, when taken together, constitute a single document. The parties agree that they may rely on the facsimile or electronic signature of any party with respect to this Agreement or any waiver, amendment, supplement or consent relating thereto, with the same effect as if such signature was an original.

16.17 Electronic Signature. The parties also agree that this Agreement may be executed by electronic signature. By selecting the "Sign Contract" button, Customer is signing this Agreement electronically. Customer agrees that his, her or its signature is the legal equivalent of Customer's manual signature on this Agreement. By selecting the "Sign Contract" button, Customer consents to be legally bound by this Agreement. Customer also agrees that no certification authority or other third party verification is needed to validate your E-signature and that the lack of such certification or third party verification will not in any way affect the enforceability of your E-signature or any resulting contract between Customer and Service Provider. The person who selects the "Sign Contract" button also represents that he or she is authorized to sign on behalf of Customer to enter into this Agreement. If the "Sign

Contract" button is selected, a Signatory Page will be included with a copy of this Agreement indicating that the Customer signed the Agreement, the Customer was duly authorized to sign, and the execution date of the Agreement.

16.18 Recording and Monitoring Calls. Customer understands, consents to and authorizes Service Provider, or its Affiliates, without further notice or warning and in its discretion, to monitor or record telephone conversations that Customer, or anyone acting on Customer's behalf, has with Service Provider, or its Affiliates, for quality control and training purposes, or for its own protection. Customer acknowledges and understands that, while Customer's communications with Service Provider may be overheard, monitored, or recorded without further notice or warning, not all telephone lines or calls may be recorded by Service Provider, and Service Provider does not guarantee that recordings of any particular telephone calls, or other electronic communication, will be retained or retrievable.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SERVICE PROVIDER

By _____

Name:

Title:

CUSTOMER

By _____

Name:

Title:

EXHIBIT A

ACCEPTABLE USE POLICY

VPLS, INC. and its affiliates (collectively, "Company") created this Acceptable Use Policy ("AUP") to provide its customers and users a clear understanding of the responsible use of Company's networks, systems, services, websites and products (collectively "Services"). By using Company's Services, customers and users consent to be bound by the terms of this AUP.

Company's AUP applies to all of its customers and users. Such users includes (a) those who have access to some of the Services but do not have accounts, and (b) those who pay service fee to subscribe to the Services.

Company reserves the right in its sole discretion to remove any content for any reason, including but not limited to, your violation of any laws or the terms and conditions of this AUP. Your violation of this AUP may result in the suspension or immediate termination of either your account or other actions as detailed below.

The AUP below describes certain actions relating to the content and operation of the Website which Company considers to be inappropriate and thus prohibited. The examples identified in this list are provided as examples only for your guidance. If you are unsure whether any contemplated use or action is permitted, please contact the Company.

Actions which Company considers inappropriate and grounds for removal of offending material or termination of access to the Website include, but are not limited to, the following:

- Using Services to sell any goods or services that are unlawful in the location at which the content is posted or received or the goods or services delivered;
- Using Services to post any content that is obscene, lewd, lascivious, pornographic, contains nudity or sexual acts, excessively violent, harassing, or otherwise objectionable;
- Using Services to harm, or attempt to harm, minors in any way, including, but not limited to child pornography;
- Using Services to transmit any material (by e-mail, uploading, posting or otherwise) that threatens or encourages bodily harm or destruction of property;
- Using Services to post any content that advocates, promotes or otherwise encourages violence against any governments, organizations, groups or individuals or which provides instruction, information, or assistance in causing or carrying out such violence;
- Using Services to post any content that holds Company, its employees or owners up to public scorn or ridicule or would in any way damage or impair Company's reputation or goodwill;

- Using Services to post any content that violates any copyrights, patents, trademarks, trade secrets, or other intellectual property rights of others;
- Failing to obtain all required permissions when using Services to receive, upload, download, display, distribute, or execute programs or perform other works protected by intellectual property laws including copyright and patent laws;
- Deleting or altering author attributes, copyright notices, or other copyright management information, unless expressly permitted in writing by the author or owner;
- Adding, removing or modifying identifying network header information in an effort to deceive or mislead;
- Attempting to impersonate any person by using forged headers or other identifying information (the use of anonymous remailers or nicknames does not constitute impersonation);
- Using Services to make fraudulent offers to sell or buy products, items, or services, or to advance any type of financial scam such as “pyramid schemes,” “ponzi schemes,” and “chain letters;”
- Using Services in a tortious manner, including the posting of libelous, defamatory, scandalous, threatening, harassing or private information without the permission of the person(s) involved, or posting content that is likely to cause emotional distress;
- Introducing viruses, worms, Trojan horses, malware or other harmful code on the Internet;
- Using Services to transmit any unsolicited commercial or unsolicited bulk e-mail. Violations of this type will result in the immediate termination of the offending account;
- Using the Services for any kind of IRC (Internet Relay Chat) on Company's servers;
- Using Services for any activity which affects the ability of other people or systems to use Services or the Internet (this includes “denial of service” attacks against another network host or individual user); or
- Using Services to hack, breach, or test the vulnerability of user authentication or security of any software or hardware without express authorization of the owner.

Company takes no responsibility for any material created or accessible on any website, e-mail transmission, newsgroups, or other material created or accessible over or through the Services. Company is not obligated to monitor or exercise any editorial control over such material, but reserves the right to do so. In the event that Company becomes aware that any such material may violate this AUP and/or expose Company to civil or criminal liability, Company reserves the right to block access to such material and suspend or terminate any customer or user creating, storing or disseminating such material. Company further reserves the right to cooperate with legal

authorities and third parties in the investigation of alleged wrongdoing, including disclosing the identity of the customer or user that Company deems responsible for the alleged wrongdoing.

Company requests that anyone who believes that there is a violation of this AUP direct the information to the Abuse Department at abuse@vpls.net. If available, please provide the following information:

- The IP address used to commit the alleged violation;
- The date and time of the alleged violation, including the time zone or offset from GMT;
- Evidence of the alleged violation;

Company may revise in its sole discretion this AUP, without prior notice. Any such changes shall be posted by Company on its website. You shall be responsible for periodically reviewing the online AUP to apprise yourself of any changes thereto. You agree to be bound by all such changes.

EXHIBIT B

PRIVACY POLICY

Please visit <https://www.vpls.com/privacy-policy/>

EXHIBIT C

SERVICE LEVELS AGREEMENT

This Service Level Agreement (“SLA”) applies to the network connectivity services (“Network”), power (“Infrastructure”), Cloud Services (“Cloud”), Cloud Backup and Replication (“Cloud Backup”) provided by VPLS Inc. (herein referred to as VPLS or Provider), to Customer and does not apply to Third Parties including Customer End Users. This SLA applies to service orders with **contracted terms** and not month-to-month Service Orders. This SLA is subject to, and hereby incorporates by reference; the terms and conditions as outlined in the Master Service Agreement set out in each service order between VPLS and the Customer.

1) DEFINITIONS

In this SLA, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“SLA Covered Services Unavailability” shall mean any time when the SLA Covered Services are unavailable to the Customer, but does not include Planned Downtimes and times when the SLA Covered Services are unavailable or otherwise affected by Extenuating Circumstances.

“Extenuating Circumstances” shall mean (i) any acts or omissions or acts of negligence of the Customer or any other end-user; (ii) the conditions of the Customer’s equipment, facilities, or applications; (iii) faults in or failures of the Customer’s equipment, network, email servers, computers, or software; (iv) faults or failures caused by the Customer’s Internet Service Provider or any other third parties that host the Customer’s e-mail delivery systems or websites, including network outages (other than the Provider Network); (v) external causes, such as vandalism, theft, etc., including non-published and vicious virus attacks on software; (vi) acts of God, Force Majeure, or other situations beyond the control of the Provider; and/or (vii) a customer’s circumvention or other interference with the reasonable security precaution relating to the SLA Covered Services.

“Planned Downtime” shall mean any time when the SLA Covered Services are unavailable because of (i) Service Change; (ii) Urgent Maintenance Activities, and/or (iii) any other scheduled maintenances or upgrade activities that may or may not be periodic, and that may be notified to the Customer at least 24 hours in advance.

“Point of Demarcation” shall mean the physical point at which the Provider Network ends and the private network of the Customer begins.

“Urgent Maintenance Activities” shall mean maintenance activities required by applications or systems that cannot, in the Provider’s sole and reasonable discretion, be postponed until the next regular, available or convenient maintenance. This may include but are not limited to restarting applications, rebooting servers, applying patches or fixes, reconfiguring storage allocation, reloading data, and making DNS or firewall changes to close security holes. The Provider is not obliged to but shall use its best effort to serve advance notice in connection with the Urgent Maintenance Activities to the Customer. It is agreed that if it is not possible under such

circumstance, the Provider may undertake the Urgent Maintenance Activities without advance notice to the Customers.

“Service Change” shall mean any change in the SLA Covered Services infrastructure or in the manner they are provided.

“Provider Network” shall mean the physical communications infrastructure and supporting hardware, software and firmware owned, managed or operated by the Provider and providing the related Provider’s service(s) to the Customer’s Point of Demarcation(s). This shall not include the Customer’s equipment, telephone circuits provided by telephone companies or other common carriers, any external Internet Service Provider or an Internet exchange point or any network equipment not owned or controlled by or on behalf of the Provider.

“VPLS’ support ticketing system” shall mean <https://my.krypt.com> / <https://my.vpls.net> / <https://my.hidefservers.com> / <https://my.vplssolutions.com> / <https://connect.vpls.com/support>

2) NETWORK AND INFRASTRUCTURE

2.1 Network consists of a permanently connected internet access circuit, with speeds ranging from 1 megabit per second to 1 Gigabit per second, for dedicated circuits that directly connect Customer’s dedicated, cloud, or collocated server to VPLS’s network equipment (provided that such speeds are not affected by Customer’s facilities or by traffic characteristics beyond VPLS’s network).

2.2 This SLA covers the following: (i) VPLS’s switch/router nodes which connect directly to Customer’s dedicated, cloud, or collocated server, and (ii) supporting VPLS systems which provide domain name routing and other functions which enable Customer to logically interact with the network.

3) PARAMETERS AND CREDITS

3.1 Network Monitoring and Maintenance

All Network and Infrastructure parameters are monitored by VPLS 24 hours a day, 7 days per week. VPLS will inform Customer of all scheduled maintenance which could reasonably be expected to cause significant degradation in the Network or Infrastructure at least one (1) day prior to the planned maintenance, provided Customer maintains current and accurate contact information with VPLS. In the event of an emergency maintenance a one (1) hour notice will be provided.

3.2 Network Availability

In the event Network is not continuously available (100% up time) as measured on a monthly basis, Customer becomes eligible for a credit as set forth below. “Network

Unavailability” shall mean the number of minutes that Network is unavailable for Customer’s use, but does not include any unavailability (i) continuing for sixty (60) minutes or less, or (ii) which is otherwise stated in the Exclusions below. For each cumulative hour of Network Unavailability, or additional fraction thereof, Customer shall be entitled to a credit of 5% of the service’s monthly fee not to exceed 100% of the service’s monthly recurring fee. Network Unavailability excludes interruptions caused by DDoS or other malicious attacks whether the customer or any customer is the target or source.

3.3 Infrastructure Outage

In the event of the failure of the Internet Data Center’s Infrastructure including Power, UPS, PDU, and HVAC systems that results in Infrastructure to not be continuously available (100% up time) for Customer’s use, Customer shall be entitled to a service credit of 5% of the service’s monthly fee not to exceed 100% of the service’s monthly recurring fee for each hour that Infrastructure is interrupted during any twenty-four (24) hour period (which no credit shall be pro rated if the outage is less than one hour), for any single power outage (whether the outage is continuous or there are brief periods of service followed by further interruptions related to the same initial cause).

3.4 Cloud Services

VPLS Cloud Services platform consists of host compute nodes, local disk storage appliances, SAN storage devices and network connectivity. Cloud Services cover all Cloud Servers, Cloud Pool and Cloud Backup service plans which are covered by 99.99% Service Level Agreements for availability. Cloud Backup includes Nimble Storage Replication as a Service, Managed Cloud Backup, Veeam Cloud Connect, and Cloud Replication with Zerto. Availability is defined as access to the service and not the accuracy of the data stored. In the event the Cloud Services does not meet the Service Level Agreement, the Customer shall be entitled to the following service credit and/or compensation:

Availability per Month	Days of Service added to the end of the Service term (or monetary credit equal to the value of days of service for monthly post-pay billing customers), at no charge to Customer
< 99.99% - >= 99.5%	3 Days
< 99.5% - >= 95.0%	7 Days
< 95.0%	15 Days

3.5 Cloud Backup Restore and Disaster Recovery as a Service

VPLS offers clients two types of restore services, Cloud Backup Restore which is not covered by SLA’s and is considered to be “Best Effort” and Disaster Recovery as a Service (DRaaS) which is covered by SLA’s. “Best Effort” Cloud Backup Restore means the customer has not pre-purchased resource reservation for vCPU and Memory from VPLS on a monthly basis. When the customer calls in to activate the Disaster Recovery Plan

(DRP) if one is in place, VPLS cannot guarantee when the virtual machines will be able to be brought up online due to but not limited to

- i. the size of the data
- ii. the availability of resources
- iii. the number of virtual machines that needs to be restored

When DR is activated for Best Effort customers the following service rates apply along with a one-time service fee per instance for activating DR of \$1500.00

Resource	Unit	Cost (USD) per hour
1 vCPU	Per-vCPU-hour	0.1644
1GB Memory	GB-hour	0.1233
1GB Bronze Storage	GB-hour	0.0008
1GB Silver Storage	GB-hour	0.0016
1GB Gold Storage	GB-hour	0.0033
1GB Platinum Storage	GB-hour	0.0066
1GB Bandwidth	GB	0.06

DRaaS customers are defined as customers that are paying a reservation fee each month for vCPU and Memory resources that will be utilized over a period of one month should the customer need to activate DR for that month or billing period whichever is longer for no additional charge. If DR is still activated after the initial “free” period, the customer will be billed a reduced rate per hour for resources consumed. The reservation fee guarantees the following Service Level Agreement for recovery which is counted from the time the customer calls into VPLS Technical Assistance Center and activates the DRP. The DRP will include a prioritized list of VM’s the customer wishes to spin up.

DRaaS customers also receive two DR tests per calendar year. One of the two tests will include up to five (5) VM’s while the second test can include all VM’s protected by DRaaS. Customers may activate the DRP one time per month before incurring a per DR activation fee of \$1500.00.

Service Type	Recovery Time
Nimble Storage Replication as a Service	30 minutes per VM restoring into VMware vCenter 60 minutes per VM restoring into VMware vCloud Director
Managed Cloud Backup	60 minutes per 100GB of data
Veeam Cloud Connect – Backup	60 minutes per 100GB of data
Veeam Cloud Connect – Replication	30 minutes per VM
Cloud Replication with Zerto	15 minutes per VM or Virtual Protection Group

DRaaS Reduced Service Rates

Resource	Unit	Cost (USD)
1 vCPU	Per-vCPU-hour	0.0274
1GB Memory	GB-hour	0.0205

1GB Bronze Storage	GB-hour	0.0001
1GB Silver Storage	GB-hour	0.0003
1GB Gold Storage	GB-hour	0.0005
1GB Platinum Storage	GB-hour	0.0011
1GB Bandwidth	GB	0.01

3.6 Support Service Response Time

Average response time for feedback to the Customer after the Customer contacts the Provider via VPLS' support ticketing system/Month) (hereinafter referred to as the "Mean Time to Response per Month")

Mean Time to Response per Month	Days of Service added to the end of the Service term (or monetary credit equal to the value of days of service for monthly post-pay billing customers), at no charge to Customer
≥ 240 Minutes	3 Days

It is agreed that in no event shall the maximum compensation per month prescribed in this Clause exceed [50] % of the service fee for the SLA Covered Services and/or in no event shall the aggregate maximum number of service credit described here above exceed [fifteen] days.

4) DEDICATED SERVER HARDWARE REPLACEMENT

VPLS will replace any affected server or component within four (4) business hours of diagnosing the problem and receiving confirmation from the customer to power down the server for maintenance. All communication must be in written format through VPLS' support ticketing system. VPLS will issue a credit of 5% of the service's monthly fee not to exceed 100% of the service's monthly recurring fee for each hour (60 minutes) of additional downtime. In the event adequate hardware cannot be procured, a comparable hardware upgrade will be offered in which case no credit will be issued. VPLS releases all liability related to customer's data

IN NO EVENT SHALL VPLS BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND OR CHARACTER HOWEVER CAUSED INCLUDING, VPLS' OWN NEGLIGENCE (INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR INFORMATION, LOST PROFITS, INCIDENTAL, INDIRECT, DIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR HARDWARE FAILURE), REGARDLESS OF THE FORM OF ACTION.

5) CUSTOMER'S OWN OBLIGATION

The Customer is responsible for not allowing any circumvention or other interference with all reasonable security precautions relating to the SLA Covered Services. The Customer shall provide

the Provider with advance notice of any change in configuration that could interfere with the SLA Covered Services.

When the Customer experiences the SLA Covered Services Unavailability and the Customer believes that the fault and/or such failure is not in or due to its own network, Internet service provider, or other system host, then the Customer must report to the Provider within 4 hours of its occurrence, so that the Provider can discuss the issue with the Customer and try to resolve the SLA Covered Services Unavailability immediately.

The Provider shall not be responsible for any damages arising from the Customer's failure to provide the Provider with advance notice of any change in configuration that could interfere with the SLA Covered Service and for any damages arising from the Customer's failure to report to the Provider within 4 hours of any occurrence of the SLA Covered Services Unavailability that the Customer believes that such fault and/or failure is not in or due to its own network, Internet service provider, or other system host as mentioned in the afore paragraphs.

6) CREDIT APPROVAL PROCESS

As a condition to Customer's rights under this SLA, Customer shall deliver notice to VPLS within four (4) hours of the occurrence of any SLA Covered Services Unavailability following the procedure below:

- a. The Customer identified as the "account owner" must report an Outage Claim in VPLS' support ticketing system with IP address, date and time, error messages, logs, trace routes or MTR report from multiple sources and a full description of the interruption for each affected service. Incomplete or duplicate reports will automatically be closed with no credits issued.
- b. Outage Claim must be reported within four (4) hours of the occurrence.
- c. VPLS will review the Outage Claim against active maintenances from third party service providers or Master Landlord.
- d. Customer agrees to pay all invoices while the Outage Claim is under review
- e. The credits made available to the Customer under this SLA will be provided to Customer on its next bill, or as promptly thereafter as it can only be provided after the qualification for the credit and its amount are determined by VPLS. In no event shall the total of any credits established under this SLA exceed the total monthly recurring charge for each service. Notwithstanding anything to the contrary in this SLA, the credits shall be the sole remedy to Customer. If Customer does not deliver the Outage Claim in the time period specified above and for each affected service, Customer shall not be entitled to any credits hereunder for the applicable failure.

Notwithstanding anything to the contrary herein, Customer shall not be entitled to any credits hereunder if Network or Infrastructure failures or issues of any kind are caused by

- Acts or omissions of Customer, Master Landlord or any third party outside of VPLS's reasonable control or other Extenuating Circumstances

- Customer's on-premises equipment and Point of Demarcation (whether or not provided by VPLS)
- Interconnections between VPLS's network and any third party Provider Network such as third party service providers performing maintenances, enhancements, updates
- VPLS network and infrastructure maintenance, Planned Downtime, Urgent Maintenance Activities
- Force majeure events
- Casualty
- Customer's who are not current on their payments will be ineligible for credits
- Any Customer who violates our Master Service Agreement (MSA) or Acceptable Use Policy (AUP) Exhibit A
- Customer's local access to the Internet

EXHIBIT D

MANAGED SERVICES - SERVICE LEVELS AGREEMENT

This Managed Services - Service Level Agreement (“SLA”) applies to Desktop, Server, Network, Firewall, and Security Monitoring services provided by VPLS Inc. (herein referred to as VPLS or Provider), to Customer and does not apply to Third Parties including Customer End Users. This SLA applies to service orders with **contracted terms** and not month-to-month Service Orders. This SLA is subject to, and hereby incorporates by reference; the terms and conditions as outlined in the Master Service Agreement set out in each service order between VPLS and the Customer.

1) DEFINITIONS

In this SLA, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“**SLA Covered Services Unavailability**” shall mean any time when the SLA Covered Services are unavailable to the Customer, but does not include Planned Downtimes and times when the SLA Covered Services are unavailable or otherwise affected by Extenuating Circumstances.

“**Business Hours**” will mean **Monday through Friday 8:00 am to 6:00pm Pacific Standard Time** excluding Federal holidays.

“**On Call Support**” will mean support outside of regular business hours, including weekends and holidays with response to Critical Issues being within 2 hours.

“**Planned Downtime**” shall mean any time when the SLA Covered Services are unavailable because of (i) Service Change; (ii) Urgent Maintenance Activities, and/or (iii) any other scheduled maintenances or upgrade activities that may or may not be periodic, and that may be notified to the Customer at least 24 hours in advance.

“**Urgent Maintenance Activities**” shall mean maintenance activities required by applications or systems that cannot, in the Provider’s sole and reasonable discretion, be postponed until the next regular, available or convenient maintenance. This may include but are not limited to restarting applications, rebooting servers, applying patches or fixes, reconfiguring storage allocation, reloading data, and making DNS or firewall changes to close security holes. The Provider is not obliged to but shall use its best effort to serve advance notice in connection with the Urgent Maintenance Activities to the Customer. It is agreed that if it is not possible under such circumstance, the Provider may undertake the Urgent Maintenance Activities without advance notice to the Customers.

“**VPLS’ support ticketing system**” shall mean <https://my.krypt.com> / <https://my.vpls.net/> / <https://my.hidefservers.com> / <https://my.vplssolutions.com> / <https://connect.vpls.com/support>

“Severity/Priority Levels”

VPLS will assign the following Severity / Priority levels to a ticket submitted. Phone calls will be logged into a ticket and assigned a Severity / Priority accordingly.

“**Urgent/Critical**” service request/trouble ticket has a major business impact affecting multiple users and one or more of the following characteristics:

- Access to Customer’s network or systems is not available to multiple end-users
- Critical Systems are not available to multiple end-users
- Normal business operations cannot be conducted.
- The incident cannot be circumvented

“**High**” service request/trouble ticket has one or more of the following characteristics:

- The incident has substantial business impact.
- Normal business operations are severely impeded.
- The application/system functions, but usability is severely limited for multiple end-users.
- The application/system has experienced continual or repeated incidents.

“**Medium**” service request/trouble ticket has one or more of the following characteristics:

- The incident has limited business impact.
- Normal business operations are minimally impeded.
- The end-user can run the application but has lost some functionality.
- The incident is not continual or repeated.

“**Low**” service request/trouble ticket has one or more of the following characteristics:

- The incident has no business impact.
- Normal business operations are not impeded.
- The end-user can run the application.
- The request is an end-user inquiry only.
- Long term projects or task assignments

2) SERVICE LEVEL AGREEMENTS

Service Level Category	Service Level
Priority Response Time	<p><u>Urgent</u>: Response within 1 hour, resolution within 4 hours. Must be called in to VPLS vTAC.</p> <p><u>High</u>: Response within 2 hours, resolution within 2 business day. Must be called in to VPLS vTAC.</p> <p><u>Medium</u>: Response within 4 hours, resolution within 4 business days.</p> <p><u>Low</u>: Response within 1 business day, resolution as scheduled.</p>

	Measurement Window: Monthly
Managed Desktop / Managed Virtual Desktop	<ul style="list-style-type: none"> • Unlimited Phone Support • Unlimited Remote Support • Advanced Performance Monitoring • Configuration Management • Microsoft Office Suite Support • Monthly OS Patch Management • Monthly Microsoft Office Suite Patch Management • Real Time Desktop Optimization
Managed Server	<ul style="list-style-type: none"> • Unlimited Phone Support • Unlimited Remote Support • Advanced Performance Monitoring • Configuration Management • Service Availability Monitoring • Monthly OS Patch Management • Event Log Management and Monitoring • Drive Space Monitoring • Printer Setting Management • Real Time Server Optimization • User Account Administration • File Sharing Permission Administration • Security Administration • License and Asset Management
Managed Network / Managed Firewall	<ul style="list-style-type: none"> • 24x7 Network Monitoring • Router and Switch Management • Telco Support and Vendor Management • VPN Management • Firewall and Security Policy Management • Asset Lifecycle Management
Managed Anti-Virus	<ul style="list-style-type: none"> • Anti-Virus / Malware Management
Managed SIEM	<ul style="list-style-type: none"> • 24x7 Monitoring and Alerting • Remediation Services • Monthly Vulnerability Scanning • Asset Tracking Up to Purchased License Limit • File Integrity Monitoring on Critical Servers

In the event of an occurrence that falls outside the scope of these service offerings, or a physical visit by a support representative of VPLS is required, a regular hourly fee of \$150.00 will be charged per man hour and minimum 2-hour charge during Regular Business Hours. An extended hourly fee of \$225.00 will be charged per man hour for After-Hours (after 6:00 M-F), weekend (12:00 am Sat – 8:00 am Mon) or holiday support. Drive time will be billed in half-hour increments at the rate specified previously for locations outside of a 50 mile geographical radius from VPLS headquarters located at 1744 West Katella Ave Suite 200, Orange, CA 92867.

3) SCOPE OF SERVICES

- a. Systems Administration: Active Directory, User & Policy Management. VPLS shall provide Customer with: maintenance of user accounts, properties, groups, containers, and memberships; maintenance and enforcement of Active Directory based login policies, accounts policy, screensavers, desktop look & feel, program access, application installation & usage permissions, and Windows system settings access; any other Active Directory (“AD”) related maintenance tasks.
- b. Systems Administration: Policy Enforcement. VPLS will maintain and enforce login policies, account policies, screensavers, desktop look & feel, program access, application installation & usage permissions, Windows system settings access, and all other GPO-based policies.
- c. Systems Administration: Email Administration. All Email is serviced by Google Apps and VPLS will only escalate and report issues to Google Support.
- d. Systems Administration: File & Permissions. VPLS will maintain file shares, user and group file and print permissions and DFS/replication.
- e. Systems Administration: Additional Server Roles & Services. VPLS will manage and maintain all other Windows Server role configurations, including those for IIS, DHCP, DNS, NPAS, FTP, Terminal Services, and other services provided natively by Windows Server.
- f. Systems Administration: System Troubleshooting. VPLS shall discover and repair Windows Server OS problems as required
- g. Systems Administration: Major System Outage Recovery. In the event of a Major Outage, VPLS will provide to Customer labor related to the reparation of a failed Server to a stable, usable state, upon the condition that the Customer has reliable, restorable backup copies of data and of the Server itself. Failure to provide a valid backup may result in the inability to restore data, and may result in additional charges at the standard rate for non-standard recovery procedures.
- h. Systems Administration: Backup Maintenance. VPLS shall reactively investigate and repair backup software issues if the backup application is able to provide backup status notifications. VPLS will monitor and remediate issues with backup jobs failing if escalated by the Customer. Customer will continue to configure and maintain backup jobs for new and existing Virtual Machines or Servers.
- i. Systems Administration: Server Capacity Monitoring & Remediation: VPLS will monitor key performance metrics to detect issues on Servers, and will attempt to automatically remediate such issues before they become user impacting.
- j. Systems Administration: VPLS will configure new SSL VPN users on the FortiGate Firewalls and delete any terminated employees.
- k. Network Engineering: 24x7 Monitoring – VPLS will remotely monitor key network metrics and proactively identify potential failures before disruptions to critical operations occur. VPLS’ network monitoring tools will monitor up/down/unreachable notification, latency, graph traffic for historical trend analysis per switch/router port, CPU, Memory performance metrics, temperature, fan speed, power supply status, and more.
- l. Network Engineering: Router and Switch Management – VPLS will manage switch and router configuration and perform quarterly configuration audits.
- m. Network Engineering: Telco Support and Vendor Management – VPLS will escalate circuit down issues to telecom or Internet Service Provider (if access is granted). When any

issues arise with the hardware, VPLS will contact respective parties to troubleshoot, resolve or provide an alternative solution.

n. Network Engineering: Firmware Management – VPLS will provide quarterly firmware patching cycle.

o. Network Engineering: Switch, Router, Firewall Policy Management – VPLS will manage and maintain switch and router authentication, security, and network policies and routine perform quarterly policy audits

p. Network Engineering: Asset Lifecycle Management – VPLS will handle life-cycle management including planning, design, acquisition, inventory tracking, management of licenses, service and support contracts.

q. Network Engineering: Firewall VPN Monitoring and Configuration - VPLS will monitor remote endpoints for any site to site VPN tunnel to ensure tunnel connectivity. VPLS will configure and manage site to site or client-based VPN configurations.

r. Network Engineering: Firewall IPS Management – VPLS will configure and manage IPS policies and rules.

s. Network Engineering: Security Event Log Analysis – VPLS will monitor firewall event log for brute force attacks, scanning, intrusions and alarms.

t. Network Engineering: Wireless Configuration Management - VPLS will provide configuration changes such as adding new wireless network, quality of service settings, network settings such as DHCP, NTP, DNS, certificates, and access control lists.

u. Network Engineering: Wireless Scheduled Access Point Firmware Management – VPLS will routinely update Wireless Access Point Controller and Access Points on a semi-annual basis. Only Cloud and Light Weight Access Points will be updated. Standalone Access Points are not covered.

v. Network Engineering: Wireless Channel and Radio Management - VPLS will periodically tune and set power, channel and radios settings for optimal performance based on Customer's feedback on performance. A routine site survey should be performed although this is not covered under the Scope of Services.

w. Network Engineering: VPLS will provide Network Engineering resources for all Change Requests. Networking Engineering Change Requests must be scheduled in advance with at least 48 hours' notice.

x. Project-Based Services: All work not defined above will be scoped out in a new fixed price Scope of Work for Professional Services. For example, Project-Based Services can be for:

- Implementing new Wireless access points
- Installation of new server compute resources or additional storage arrays
- Upgrading hypervisor hosts to latest Windows version with extended After Hours work

y. VPLS will support any hardware and software with current and active manufacturer's support.

4) SLA CREDITS

Upon any failure with respect to the SLA, VPLS will provide a 10% credit to the client's account. It is agreed that in no event shall the maximum compensation per month prescribed in this Clause exceed [50] % of the service fee for the SLA Covered Services and/or in no event shall the aggregate maximum number of service credit described here above exceed [fifteen] days.

5) CUSTOMER'S OWN OBLIGATION

The Customer is responsible for not allowing any circumvention or other interference with all reasonable security precautions relating to the SLA Covered Services. The Customer shall provide the Provider with advance notice of any change in configuration that could interfere with the SLA Covered Services.

When the Customer experiences the SLA Covered Services Unavailability and the Customer believes that the fault and/or such failure is not in or due to its own network, Internet service provider, or other system host, then the Customer must report to the Provider within 4 hours of its occurrence, so that the Provider can discuss the issue with the Customer and try to resolve the SLA Covered Services Unavailability immediately.

The Provider shall not be responsible for any damages arising from the Customer's failure to provide the Provider with advance notice of any change in configuration that could interfere with the SLA Covered Service and for any damages arising from the Customer's failure to report to the Provider within 4 hours of any occurrence of the SLA Covered Services Unavailability that the Customer believes that such fault and/or failure is not in or due to its own network, Internet service provider, or other system host as mentioned in the afore paragraphs.

6) CREDIT APPROVAL PROCESS

As a condition to Customer's rights under this SLA, Customer shall deliver notice to VPLS within four (4) hours of the occurrence of any SLA Covered Services Unavailability following the procedure below:

- a. The Customer identified as the "account owner" must report an Outage Claim in VPLS' support ticketing system with IP address, date and time, error messages, logs, trace routes or MTR report from multiple sources and a full description of the interruption for each affected service. Incomplete or duplicate reports will automatically be closed with no credits issued.
- b. Outage Claim must be reported within four (4) hours of the occurrence.
- c. VPLS will review the Outage Claim against active maintenances from third party service providers or Master Landlord.
- d. Customer agrees to pay all invoices while the Outage Claim is under review
- e. The credits made available to the Customer under this SLA will be provided to Customer on its next bill, or as promptly thereafter as it can only be provided after the qualification for the credit and its amount are determined by VPLS. In no event shall the total of any credits established under this SLA exceed the total monthly recurring charge for each

service. Notwithstanding anything to the contrary in this SLA, the credits shall be the sole remedy to Customer. If Customer does not deliver the Outage Claim in the time period specified above and for each affected service, Customer shall not be entitled to any credits hereunder for the applicable failure.

Notwithstanding anything to the contrary herein, Customer shall not be entitled to any credits hereunder if Network or Infrastructure failures or issues of any kind are caused by

- Acts or omissions of Customer, Master Landlord or any third party outside of VPLS's reasonable control or other Extenuating Circumstances
- Customer's on-premises equipment and Point of Demarcation (whether or not provided by VPLS)
- Interconnections between VPLS's network and any third party Provider Network such as third party service providers performing maintenances, enhancements, updates
- VPLS network and infrastructure maintenance, Planned Downtime, Urgent Maintenance Activities
- Force majeure events
- Casualty
- Customer's who are not current on their payments will be ineligible for credits
- Any Customer who violates our Master Service Agreement (MSA) or Acceptable Use Policy (AUP) Exhibit A
- Customer's local access to the Internet

7) NATURE OF THIS AGREEMENT

This Agreement is intended to cover the maintenance of computer operating systems and software only. It is not intended to cover any hardware, materials, equipment, consumables, hardware failures, troubleshooting or replacements, or any labor related to projects other than the proper maintenance of operating systems and software. Provider offers other services, including hardware-related labor. Any labor provided outside the scope of this Agreement will be charged at a customer agreed upon rate in a separate Service Order.