

**VPLS  
MASTER SERVICES AGREEMENT  
TERMS AND CONDITIONS**

This Master Services Agreement (“MSA”) is entered into as of the Effective Date (date of signature below) by and between VPLS, Inc. and its Affiliates (“VPLS” or “Company”), and Customer (detailed below) and its Affiliates (“Customer” or the “Customer”). This MSA contains the general terms and conditions applicable to the purchases of services from the Company (“Services”). Company and Customer are each referred to as a “Party” and are collectively referred to as the “Parties.” The agreement among the Parties consists of this Agreement (including, without limitation, the VPLS Master Services Agreement Terms and Conditions set forth herein), Service Order Form(s) and all Schedules (as set forth herein) that are applicable to Services purchased pursuant to Service Order Form(s) on, as of or after the date hereof (collectively referred to as the “Agreement”). “Affiliates” shall mean any business entity that is directly or indirectly controlling, controlled by or under common control with a Party.

IN WITNESS WHEREOF, Company and Customer, intending to be legally bound, have caused this Agreement to be executed by their authorized representatives as of the Effective Date. By signing below, each of Company and Customer agree that it has read and fully understands all terms included in the attached documents and agrees and accepts all of the foregoing.

**VPLS**

600 W 7th St., Suite 510, Los Angeles, CA 90017  
Attn: Legal

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Customer:** \_\_\_\_\_

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

1. Scope of Agreement.

- a) General. Subject to the terms and conditions of this Agreement, Company will provide the Services to Customer based on a Service Order Form. Each Service is subject to the Company’s standard operational and service schedules, guides and service level agreements (“SLAs”) applicable to the specific Service and all subsequent versions thereof, which shall be deemed incorporated into this Agreement (collectively, “Schedules”). By using Company’s Services, customers and users consent to be bound by the terms of the Company’s Acceptable Use Policy (“AUP”).
  
- b) Service Delivery. Requests for Services will be made on written quotes or orders of the Company (in such form as provided by the Company) , in each case stating the pricing of the Services requested and (if and as applicable) the term for the Services that are identified on such order. A Service Order Form will be executed and delivered for each type of Services requested. For the purposes of this Agreement, “Service Order Form” means and refers to a written quote or order for Services (in such form as provided by the Company) that has been executed by Customer and accepted by the Company (and incorporating the terms of this MSA). Prior to the Service Commencement Date (defined below), the Company reserves the right to reject a Service Order in its commercially reasonable discretion. The Company’s provision of the Services is subject to the continuing availability of facilities and any end of life discontinuance.). Unless a different date (or range) is communicated by the Company (in writing, which may be through electronic transmittal or other correspondence) after delivery of the applicable Service Order Form, the estimated date or timing by which the Company will install or provide the Service(s) will be such date or timing specified in such Service Order Form.

- c) Service Commencement Date. The Company will notify the Customer the date on which the Service(s) is installed or first provided. Except as provided below in this section, billing will commence on and as of such date (specified in the communication or notice provided by the Company) on which the Service(s) is installed or first provided (such date, the "Service Commencement Date"). Unless Customer notifies Company within three (3) days of the Service Commencement Date that Service is not working properly, the Service will be deemed accepted. The billing for the Service will then commence on (or as of) the Service Commencement Date. In some circumstances, not all of the Services may be delivered on the Service Commencement Date. In these cases, unless the Customer notifies Company within three (3) days of the Service Commencement Date that the portion of the Services installed is not working, the installed portions of the Service will be deemed accepted. The billing for the portion of the Service installed will then commence on the Service Commencement Date. If Company cannot complete installation due to Customer delay or inaction, Company may begin charging Customer for the Service and Customer shall pay such charges on the date that the installation would have been completed except for the Customer delay or inaction.
- d) Relocation. Company may, at its expense and upon ninety (90) days' notice, require Customer to relocate Customer equipment to another space having reasonably comparable access, environmental conditions and facilities. Any such relocation may include, at Company's sole discretion, relocating Customer equipment to a separate facility.
- e) Holdover. Notwithstanding anything to the contrary contained in this Agreement, in the event all of Customer's data and other assets are not removed from all of Evocative's facilities and equipment following the effective date of termination of this Agreement or the Colocation Services, whichever is earlier, Evocative has the right, but not the obligation to provide Customer with written notice to remove all of Customer's data and other assets from all of Evocative's facilities and equipment (the "**Notice to Quit**"). In the event all of Customer's data and other assets are not removed from all of Evocative's facilities and equipment are not removed within thirty (30) days after the Notice to Quit, Evocative has the right, but not the obligation, at Customer's sole cost and expense, to (a) dispose of all of Customer's assets in Evocative's sole discretion, without penalty or claim of damages, and Customer hereby consents to such disposition, if any, (b) immediately remove Customer's assets and storing the Customer assets on-site or off-site, or (c) ship Customer assets to Customer's last known address.

2. Service Levels; Support Services.

- a) Commitments. The Service level commitments ("Service Levels") for Services are stated in the applicable SLA and other Schedules for each Service. Maintenance of the Service may result in limited interruptions of Services. Company may (among other reasons) suspend the Services to carry out periodic or non-routine maintenance or upgrade work on the network or its equipment, or to the facility infrastructure and/or equipment. Company reserves the right to perform emergency maintenance as needed. Periods of force majeure and maintenance (including, without limitation, emergency, routine or any other maintenance performed by Company) are "Excused Outages." Notwithstanding anything contained herein (or in any SLA, Service Order Form or other Schedule) to the contrary, Customer shall not be entitled to any credit or compensation whatsoever in the event of any interruption of Service or failure to meet Service Levels due to or because of Excused Outages.
- b) Credits. If Company does not meet a Service Level applicable service credits will be issued upon Customer's request to Company's Customer Service. Credits must be requested within 30 days after the event-giving rise to the credit. Customer's sole remedies for any outages, failures to deliver or defects in Service are contained in the Service Levels (if any).

3. Fees and Payment Schedule.

- a) Charges. Invoices/rents are delivered monthly. Invoices are due within thirty (30) days of the invoice date (the "Payment Date"). Fixed charges are billed in advance and usage-based charges are billed in arrears; partial months being prorated. Standard charges of Company apply to moves, adds or changes agreed to by Company. Customer agrees to pay all Service charges, even if incurred as the result of unauthorized use. In the event Customer does not remit payment of all amounts due under an invoice by Payment Date, Company may, at its discretion, (i) charge interest on the unpaid amount at the lesser of 1.5% per month or the highest rate allowed by law; (ii) require Customer to pay and maintain a deposit with the Company; and (iii) cease providing Services to Customer without any notice,

including without limitation (if and as applicable, access to the facility, and, or premises). As security for the obligations of Customer under this Agreement, including without limitation amounts owed under this Agreement, Customer agrees and hereby grants to Company a continuing security interest in all of Customer's equipment. Company reserves the right to conduct a review of Customer's credit rating, credit history, and payment history at any time.

- b) Disputes and Related Matters. If Customer disputes an invoice, Customer will pay the undisputed amount by the due date and submit written notice of the disputed amount detailing the nature of the dispute and the invoices disputed. Disputes must be submitted within 30 days of the date of the invoice or the right to dispute is waived. If a dispute is resolved against Customer, Customer will pay the disputed amounts plus interest from the due date within 30 days.
  - c) Changes to Fees. The charges in relation to Services shall increase by five percent (5%) at each twelve (12) month anniversary of the Service Commencement Date. In addition, power prices may increase year over year from a power provider and the Company shall be entitled to charge such power increase to Customer.
4. Taxes and Fees. Except for the net income tax of Company, Customer is responsible for all taxes, fees, surcharges, license fees, foreign withholding (which will be grossed up) and other tax like charges imposed on or incident to the provision, sale or use of Service (whether imposed on Company or its affiliates). Company may recover taxes, fees, and certain costs of administering the same through a percentage surcharge(s) on the Services. Valid exemption certificates will be given prospective effect upon receipt by Company.
5. LIABILITY LIMITATIONS. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE TOTAL LIABILITY OF COMPANY OR CUSTOMER TOGETHER WITH ALL OF THEIR RESPECTIVE AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED IN THE AGGREGATE THE FEES PAID BY CUSTOMER TO COMPANY FOR THE AFFECTED SERVICES IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE MONTH IN WHICH THE CLAIM AROSE. CUSTOMERS SOLE REMEDY FOR FAILURE OR NON-PERFORMANCE OF THE SERVICE OR EQUIPMENT TO MEET THE PERFORMANCE OR SERVICE LEVELS WILL BE TO RECEIVE A CREDIT AS SET OUT IN APPLICABLE SCHEDULE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ANY SCHEDULE, OR ANY OTHER APPLICABLE TERMS, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO THE OTHER FOR INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF DATA, THE COST OF SUBSTITUTE SERVICES OR DIMINUTION IN GOODWILL, OF THE OTHER PARTY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THIS CLAUSE SHALL LIMIT THE LIABILITY OF CUSTOMER TO PAY THE CHARGES.
6. DISCLAIMER. NO WARRANTIES OR REPRESENTATIONS RESPECTING THE SERVICE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
7. Mutual Indemnification. Each Party shall indemnify, hold harmless and defend the other Party against any claims, damages or losses (of any nature whatsoever, including without limitation, attorneys' fees and court costs) related to bodily injury to persons and/or damage to physical property asserted by third parties arising from the gross negligence or willful misconduct of the indemnifying Party.
8. Backup and Continuity of Operations. Except as otherwise provided in an applicable Schedule, Customer shall be solely responsible for data maintenance, integrity, retention, security, and backup of Customer Data. Customer will be solely responsible for the development and implementation of an appropriate disaster recovery plan.
9. Term and Termination
- a) Term. This MSA shall take effect as of the ("Effective Date") and this MSA shall remain in effect until no Service Order Form remains operative between Customer and Company (for the avoidance of doubt, it being understood that this MSA may be terminated as set out in this Agreement) (the "Term"). Each Service Order Form, unless sooner terminated pursuant to this Agreement, shall initially remain operative for the period specified in the Service Order Form (in the case of such Service Order Form, the "Initial Period"). Thereafter, unless otherwise expressly provided in the Service Order Form, each

applicable Service Order Form will automatically renew for successive one year periods (each a "Renewal Period") unless the Customer is then in default or unless either party has given a written notice of cancellation to the other party at least thirty (30) days before expiration of the then operative Initial Period or Renewal Period of the applicable Service Order Form.

- b) Termination. If (i) Customer fails to pay Company any undisputed charges when due and such failure continues for ten (10) days after written notice from Company or (ii) either party fails to observe any other material term of this Agreement and such failure continues for 30 days after written notice from the other party, then the non-defaulting party may terminate this Agreement or any Service Order Form(s), in whole or in part, and subject to the limitations of this Agreement, pursue any remedies it may have at law or in equity. If Company cancels the Agreement or any Service(s) under this section or Customer cancels or terminates Service for convenience, Customer will pay Company a termination charge equal to the sum of (i) all unpaid amounts or non-recurring costs for Services actually provided; (ii) 100 percent of the monthly recurring charges (MRCs) for the Services outlined in the Agreement that remain under the then-current Term; and (iii) to the extent greater than the sum of amounts in clauses (i) and (ii) above, the "out-of-pocket" or other third party costs (if any) incurred by the Company in connection with the cancelled or terminated Service(s).
- c) Termination for Insolvency. Either Party may immediately terminate this Agreement in the event the other Party (a) admits in writing its inability to pay its debts as they become due, fails to satisfy any judgment against it, or otherwise ceases operations of its business in the ordinary course, (b) is adjudicated bankrupt or becomes insolvent, (c) winds up or liquidates its business voluntarily or otherwise, (d) applies for, consents to or suffers the appointment of, or the taking of possession of by, a receiver, custodian, assignee, trustee, liquidator or similar fiduciary of itself or of all or any substantial portion of its assets, (e) makes a general assignment for the benefit of creditors, (f) commences a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (g) files a petition seeking to take advantage of any other law providing for the relief of debtors, (h) acquiesces to, or fails to have dismissed, within 30 days, any petition filed against it in any involuntary case pursuant to such bankruptcy laws and/or (i) takes any action for the purpose of effecting any of the foregoing. Notwithstanding anything contained herein to the contrary, no such termination under this section shall affect the obligations of Customer to pay amounts payable for any Services delivered hereunder or amounts otherwise due or payable to Company hereunder.
- d) Effect of Termination. Upon any termination or expiration of this Agreement, all rights and licenses granted by either Party to the other herein shall terminate and be of no further force or effect; provided, however, that no termination or expiration of this Agreement shall affect the Customer's payment obligations hereunder with respect to Services provided or any amounts that may be otherwise due or payable by Customer hereunder.

## 10. General

- a) General Data Protection Regulation (GDPR) Compliance and California Consumer Privacy Act (CCPA) Compliance. Company is not responsible for either GDPR Compliance or CCPA Compliance with respect to third-party customer data that is being stored and/or utilized by Customer's. Company does not engage in selling, sharing, buying or purchasing of third-party's personal information. The Company will comply with applicable laws pertaining to data breach and notification of same.
- b) Assignment. Neither Party may assign this Agreement without the express written consent of the other Party, and any such assignment shall be void, invalid and shall have no legal effect; provided, however, that Company or Customer may assign this Agreement to a party that succeeds to all or a portion of its assets or business (whether by sale, merger, operation of law or otherwise). This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and permitted assigns.
- c) No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, confers upon any third party any right, benefit or remedy under this Agreement. Customer will be responsible for the use of the Services by Customer and Customer Authorized Users and any other person to whom Customer has given access to the Customer Offering; and use commercially reasonable efforts to prevent unauthorized access to or use of the Services.

- d) Insurance. Each Party agrees to keep in full force and effect during the term of this Agreement the following insurance coverages: (a) Comprehensive general liability insurance in an amount not less than \$2 million general aggregate and \$1 million per occurrence for bodily injury and property damage; (b) Property damage insurance covering the Party's personal and real property, as applicable; (c) Workers' compensation insurance in an amount not less than that required by applicable law; and (d) Automobile liability insurance with a single combined limit of \$1 million. Customer's insurance shall be primary over the Company's and Customer hereby waives its rights against the Company with respect to any claims or damages or losses (including any claims for bodily injury to persons and/or damage to property) which are caused by or result from (i) risks insured against under any insurance policy carried by Customer at the time of such claim, damage, loss or injury, or (ii) risks which would have been covered under any insurance required to be obtained and maintained by Customer under this Agreement had such insurance been obtained and maintained as required.
- e) Confidential Information – "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. 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; (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 any 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. If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide prompt written notice of such requirement, if lawfully permitted, 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.
- f) Intellectual Property - "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, without limitation, 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. As between Customer and Company, all Intellectual Property Rights and all other rights in and to the Services and any deliverables and the materials provided by and used by Company in connection with performing the Services shall be owned by Company. Company hereby grants Customer 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 to make reasonable use of any deliverables and the Services. Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the data provided to the Company by Customer ("Customer Materials"), including, without limitation, all Intellectual Property Rights therein. Company 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.
- g) Limited Representations and Warranties. 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.

- h) Dispute Resolution and Jury Waiver. This Agreement and all disputes, claims, actions, suits or other proceedings arising hereunder shall be governed by, and construed in accordance with, the substantive law of the State of California applicable to contracts wholly made and to be performed within the State of California without regard to conflict of laws principals. Each Party irrevocably submits to the sole and exclusive jurisdiction of the courts of the State of California and the Federal courts of the Northern or Southern District of California, situated in the County of San Francisco or County of Los Angeles at the election of Company. Each Party irrevocably consents to the exercise of personal jurisdiction over each of the Parties by such courts and waives any right to plead, claim or allege that California is an inconvenient forum. To limit the cost of resolving any disputes between the parties, and as a material inducement to each party to enter into this Agreement, fully permitted by law, Company and Customer each expressly waives its right to trial by jury in any trial held because of a claim arising out of, in connection with, or in any manner related to this Agreement in which Company and Customer are adverse parties, including cross-complaint by one against the other.
- i) Force Majeure. Except for payment of fees, neither Party will be liable for any loss, damage or delay resulting from any event beyond such Party's reasonable control or other events of force majeure (other than an event or circumstance that results in Customer not having sufficient funds to comply with an obligation to pay Fees), and delivery and performance dates will be extended to the extent of any such delays. "Force majeure" includes, without limitation, acts of God, strike, lockout or other industrial disturbance, acts of war, blockade, public riot, civil disturbance or unrest, lightning, fire, storm, flood, hurricane, earthquake, tsunami, tornado, explosion, governmental restraint or unavailability of equipment. Each Party will promptly notify the other upon becoming aware that such event has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement. If such event continues for more than ninety (90) days, either Party may terminate this Agreement.
- j) Anti-bribery. Each Party represents, warrants and undertakes that neither it, nor anyone acting on its behalf has or will violate any applicable law related to anti-bribery or corruption.
- k) Trade Sanctions. Each Party represents, warrants and undertakes that neither it, nor anyone acting on its behalf, has or will violate any economic or trade sanctions or restrictions with respect to this Agreement. Each Party further provides its written assurance not to transfer, by electronic transmission or otherwise, any information, software, or materials that are governed by or regulated under such laws to a person or a destination prohibited or restricted under such laws without first obtaining any required governmental documents, approvals and/or authorization and taking any other actions required to comply with export control laws. Each Party further represents and warrants that it is not an entity, nor it is owned 50% or more or otherwise controlled by an entity, or acting on behalf of or at the direction of an entity, identified on any denied or restricted party list administered by the U.S. Government, including the OFAC's Specially Designated Nationals ("SDN") list
- l) Miscellaneous. Notices will be made in writing to the address above. If no Customer address is provided above, Company may provide notices under this Agreement to any address identified in a Service Order Form. Services may be provided by Company or its affiliates and Company may use third parties to provide Services. Any provision of this Agreement which, either by its terms or to give effect to its meaning, must survive shall survive the cancellation, expiration or termination of this Agreement. This Agreement, together with any and all applicable Schedules and Service Order Forms, constitute the entire agreement between the parties respecting the subject matter hereof and can only be modified in a writing signed by both parties. If either party fails to enforce any right or remedy under this Agreement, such failure will not waive the right or remedy. Each party shall comply with all applicable laws, rules and regulations associated respectively with the delivery by Company or Customer's use of Service under the Agreement.