



MASTER SERVICE AGREEMENT

This Business Markets Master Service Agreement ("Agreement") is made this ____ day of _____, 2015 ("Effective Date") by and between **CROSSLINK NETWORKS, LLC** ("CLN") and _____ ("Customer"). This Agreement provides the general terms and conditions applicable to Customer's purchase of communications services ("Service") from CLN and CLN's provision of Service(s) to Customer.

1. Service Delivery. Requests for Services will be on CLN orders ("Orders") stating the pricing and term ("Service Term") for which Services are requested. The Service will continue on a month to month basis at the expiration of the Service Term at CLN's then current rates. CLN will try, but is not obligated, to provide Services by requested or otherwise committed delivery dates. Should CLN determine to accept Orders, the Service Term will commence when the Service is installed ("Service Commencement Date"). Unless Customer notifies CLN within 3 days of the Service Commencement Date that Service is not working properly, the Service will be deemed accepted and billing will commence on the Service Commencement Date. Customer will at its expense provide suitable access to non-CLN facilities or power required for Service delivery or removal of equipment. Title to all equipment and software provided by CLN remains with CLN. CLN's then current Acceptable Use and Privacy Policies (available at www.crosslinknetworks.com) apply to Customer's use of Service. CLN shall notify Customer of any changes to CLN's Acceptable Use and Privacy Policies prior to instituting any changes. Changes to CLN's Acceptable Use and Privacy Policies shall be ineffective until Customer is notified.

2. Charges. Invoices are delivered monthly. Fixed charges are billed in advance and usage-based charges are billed in arrears, partial months being prorated. CLN's standard charges apply to moves, adds or changes agreed to by CLN. Payment is due upon Customer's receipt of invoices and is past due 30 days after the invoice date ("Payment Deadline"). Past due amounts bear interest at the lesser of 5% per month or the highest rate allowed by law. If payment is not received within 60 days after invoice, CLN may give 48 hour notice to suspend service. If service is suspended, Customer will need to pay past due, current fees, and reconnect charge of \$100.00 to restore services. Customer agrees to pay all Service charges, even if incurred as the result of unauthorized use.

3. Taxes and Tax Like Fees. Except for CLN's net income tax, Customer is responsible for all taxes, fees, surcharges, license fees and other tax like charges imposed on or incident to the provision, sale or use of Service (whether imposed on CLN or its affiliates). Such charges may be billed as cost recovery fees. Valid exemption certificates will be given prospective effect upon receipt by CLN.

4. Maintenance. Maintenance of the Service may, but ordinarily will not, result in limited Service interruptions. Customer will not attempt maintenance of the Service. Customer is responsible for the costs of maintenance required by acts or omissions of Customer. CLN may, from time to time, need to perform maintenance on CLN-owned equipment located at a Customer site. Customer agrees to provide identified CLN staff with physical access to such equipment, subject to any relevant Customer policies.

5. Termination. If (i) Customer fails to pay CLN any undisputed charges when due and such failure continues for 5 business days after written notice from CLN or (ii) either party fails to observe any other material term of this Agreement, including CLN's failure to meet the specified service level guarantee pursuant to Section 8 of this Agreement, then the non-defaulting party may terminate this Agreement or any Order, 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 Customer terminates Service for convenience, Customer will pay CLN a termination charge equal to the sum of: (a) all unpaid amounts for Service actually provided; and, (b) 100% of the remaining monthly recurring charges (if any) for months 1-12 of the Service Term. If Customer or CLN terminates Service for cause, Customer will pay CLN all unpaid amounts for Service actually provided.

6. Indemnification. CLN shall indemnify, defend with counsel acceptable to Customer, and hold harmless Customer and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with CLN's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of Customer. CLN's obligation to defend and indemnify shall not be excused because of CLN's inability to evaluate Liability or because CLN evaluates Liability and determines that CLN is not liable to the claimant. CLN must respond within 30 days, to the tender of any claim for defense and indemnity by Customer, unless this time has been extended by Customer. If CLN fails to accept or reject a tender

of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due CLN under and by virtue of this Agreement as shall reasonably be considered necessary by Customer, may be retained by Customer until disposition has been made of the claim or suit for damages, or until CLN accepts or rejects the tender of defense, whichever occurs first. With respect to third party claims against CLN, CLN waives any and all rights of any type to express or implied indemnity against the Indemnitees. In the event that CLN or any employee, agent, or subcontractor of CLN providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of Customer, CLN shall indemnify, defend, and hold harmless Customer for the payment of any employee and/or employer contributions for PERS benefits on behalf of CLN or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Customer.

7. Insurance. Before fully executing this Agreement, CLN, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by CLN and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, CLN shall provide proof satisfactory to Customer of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the Customer. CLN shall maintain the insurance policies required by this section throughout the term of this Agreement. CLN shall not allow any subcontractor to commence work on any subcontract until CLN has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to Customer. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. CLN shall maintain all required insurance listed herein for the duration of this Agreement.

7.1 Workers' Compensation.

7.1.1 General Requirements. CLN shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CLN. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, CLN may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of Customer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by CLN, its employees, agendas, and subcontractors.

7.1.2 Submittal Requirements. To comply with Subsection 7.1, CLN shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in this section; and
- b. Waiver of Subrogation Endorsement as required by this section.

7.2 General Liability Insurance.

7.2.1 General Requirements. CLN, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement.

7.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. No endorsement shall be attached limiting the coverage.

7.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

b. Customer, its officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of work or operations performed by or on behalf of CLN.

c. CLN hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. CLN agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

d. For any claims related to this Agreement or the work hereunder, CLN's insurance covered shall be primary insurance as respects the Customer, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Customer, its officers, officials, employees, or volunteers shall be excess of CLN's insurance and shall not contribute with it.

7.2.4 Submittal Requirements. To comply with Subsection 7.2, CLN shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

7.3 All Policies Requirements.

7.3.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

7.3.2 Verification of Coverage. Prior to beginning any work under this Agreement, CLN shall furnish Customer with complete copies of all Certificates of Liability Insurance delivered to CLN by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If Customer does not receive the required insurance documents prior to CLN beginning work, it shall not waive CLN's obligation to provide them. The Customer reserves the right to require complete copies of all required insurance policies at any time.

7.3.3 Deductibles and Self-Insured Retentions. CLN shall disclose to and obtain the written approval of Customer for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the Customer, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Customer, its officers, employees, and volunteers; or CLN shall provide a financial guarantee satisfactory to the Customer guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7.3.4 Wasting Policies. No policy required by this Section 7 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

7.3.5 Endorsement Requirements. Each insurance policy required by Section 7 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the Customer.

7.3.6 Subcontractors. CLN shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

7.4 Remedies. In addition to any other remedies Customer may have if CLN fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Customer may, at its sole option exercise any of the following remedies, which are alternatives to other remedies Customer may have and are not the exclusive remedy for CLN's breach:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- b. Terminate this Agreement.

8. Service Levels. The following detailed service parameters are the responsibility of CLN in the ongoing support of this Agreement. The following Services are covered by this Agreement; ***Manned telephone support, Monitored email support, -Remote assistance using Remote Desktop and a Virtual Private Network where available,-Planned or Emergency Onsite assistance not covered by this Agreement (moves/changes out of scope),-Monthly system health check***

Customer responsibilities and/or requirements in support of this Agreement include: Payment for all support costs at the agreed interval, Reasonable availability of customer representative(s) when resolving a service related incident or request.

CLN responsibilities and/or requirements in support of this Agreement include: Meeting response times associated with service related incidents, appropriate notification to, and approval from, Customer for all scheduled maintenance. Assumptions related to in-scope services and/or components include: Changes to services will be communicated and documented to all stakeholders. Coverage parameters specific to the service(s) covered in this Agreement are as follows: Telephone support: 8:30 A.M. to 5:00 P.M. Monday – Friday, Calls received out of office hours will be forwarded to an answer phone service for dispatch, Email support: Monitored 8:00 A.M. to 5:00 P.M. Monday – Friday, Emails received outside of office hours will be collected, however no action can be guaranteed until the next working day. Service Levels generally do not apply to services provided directly to Customer by third parties, during periods of force majeure, physical damage caused by third parties unassociated with CLN including fiber cuts, or during approved Service maintenance (“Excused Outages”). Outages shall consist of a disruption in Service. If CLN does not meet a Service Level (based on CLN’s or Customer’s records) applicable service credits will be issued upon Customer’s request to CLN Customer Service. Credits must be requested within 30 days after the event giving rise to the credit. **CLN guarantees Service levels of 99.99% not to exceed the specified Outages as specified in Appendix 1, attached hereto and incorporated herein by reference). Response time to repair is 2-3 hours. Actual data transfer rates may vary as measured between NIC at your location and CLN router, -depending upon several factors including line quality and loop length. Minimum service speeds are subject to 10%-20% protocol overhead. Actual transfer rates above 80% of the listed minimum transfer rate will be considered acceptable. CLN makes no guarantees regarding the availability of networks until the service is established. Someone from Customer location must be available for troubleshooting and connection setup. Customer has the sole responsibility for any local network infrastructure at the Customer’s installation premises.**

9. Assignment. Customer may not resell the Services or assign its rights or obligations under this Agreement or any Order without the prior written consent of CLN, not to be unreasonably withheld. Nothing in this Agreement, express or implied, confers upon any third party any right, benefit or remedy under this Agreement.

10. Entire Agreement. This Agreement, including any Service Schedule(s) and Customer Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements, understandings, proposals, or representations relating to the Service, which are of no further force or effect.

11. Attorneys’ Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

12. Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

13. Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

14. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

15. Conflict of Interest. CLN may serve other clients, but none whose activities within the corporate limits of Customer or whose business, regardless of location, would place CLN in a “conflict of interest,” as that term

is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.* CLN shall not employ any Customer official in the work performed pursuant to this Agreement. No officer or employee of Customer shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* CLN hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of Customer. If CLN was an employee, agent, appointee, or official of Customer in the previous twelve months, CLN warrants that it did not participate in any manner in the forming of this Agreement. CLN understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and CLN will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and CLN will be required to reimburse Customer for any sums paid to CLN. CLN understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

16. Miscellaneous. CLN may provide notices under this Agreement to any address listed below or any address identified in an Order. Notices to CLN will be made in writing to the address below. Services may be provided by CLN or its affiliates. This Agreement is the entire agreement between the parties respecting the subject matter hereof and can only be modified in a writing signed by both parties. Neither party will be liable, nor will any remedy provided by this Agreement be available, for any failure to perform due to causes beyond such party's reasonable control. If either party fails to enforce any right or remedy under this Agreement, such failure will not waive the right or remedy. This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law's provisions.

Appendix 1 – Service Level Availability Table

Availability %	Downtime per year	Downtime per Month (30 day period)	Downtime per week	Downtime per day
99.99%	52.56 minutes	4.38 minutes	1.01 minutes	8.66 seconds

CLN will measure downtime as Customer equipment being unable to connect to CLN equipment.

Signature Page

Crosslink Networks, LLC ("CLN")

Address:

1499 Doolittle Dr.

San Leandro, CA. 94577

Attn: Legal

By _____

Name _____

Title _____

_____ ("Customer")

Address:

Attention: _____

By _____

Name _____

Title _____

Customer Billing Information

Contact: _____

Address: _____

Phone Number: _____

E Mail Address: _____

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