

## MASTER SERVICES AGREEMENT

<b>By and Between</b>	<b>And</b>
Internap Holding LLC (INAP) 250 Williams Street Suite E-100 Atlanta, Georgia 30303	
<b>(“INAP”)</b>	<b>(“Customer”)</b>

## AGREEMENT, SERVICE SCHEDULES AND ORDERING DOCUMENTS

## Section 1.1      Meaning of Terms

**“Agreement”** means this Master Services Agreement **“MSA”**, the INAP Standard Terms and Conditions (**“Standard Terms”**), the applicable Service Schedules (as defined in Section 1.2), any applicable Sales Order Form (**“Order”**), any applicable SOW (as defined in Section 1.3 below), any applicable SOW Change Order (as defined in Section 1.3 below), and other incorporated attachments, each of which may be updated and modified by mutual written agreement between the Parties from time to time. INAP may change the terms, specifications, or charges for the Services (as defined in Section 1.2 below) for any upcoming renewal term by providing Customer at least sixty (60) days’ written notice. INAP and Customer are sometimes referred to individually in this Agreement as a **“Party”** and collectively as the **“Parties.”** Other capitalized terms are defined in the Definitions section of the Standard Terms. Capitalized terms that are not defined in the Definitions section of the Standard Terms are defined where they first appear in this Agreement. Any capitalized term which is defined in this Agreement shall have the same meaning when used in any Standard Terms, Service Schedule, Order, SOW, and/or SOW Change Orders unless the language or context requires otherwise. The effective date (**“Effective Date”**) of this Agreement shall be the last date that this Agreement is executed by the Parties.

## Section 1.2 Master Services Agreement; Service Schedules and Policies

The purpose of this Agreement is to provide a framework within which Customer may from time to time purchase services from INAP. This Agreement contains general contractual terms for all services to be provided by INAP (the “**Services**”). Additional terms and conditions that apply to each type of Service are set forth in service schedules whether attached hereto or executed by the Parties after the Effective Date (each a “**Service Schedule**”). These additional terms and conditions shall apply only if the specific type of Service covered by the applicable Service Schedule is purchased by Customer. The Standard Terms and the Service Schedules identified on Attachment A are attached to this Agreement and incorporated herein.

In addition to the Service Schedules, the following applies to this Agreement:

- Terms of Use, accessible via <https://www.inap.com/legal> (the “**Terms of Use**”)

Customer shall comply with the Terms of Use and all subsequent versions thereof, which are expressly incorporated herein.

## Section 1.3      Ordering Procedures

Customer may at any time request for INAP to provide a Service by submitting to INAP an Ordering Document as defined below, in a form provided by INAP in accordance with the following procedures:

- a) For Colocation Services, Cloud and Managed Services, and Network Services: Customer may at any time request for INAP to provide Colocation Services, Cloud and Managed Services, and Network Services by submitting to INAP a signed Order in a form provided by INAP.
- b) For Professional Services: The Parties shall execute a Statement of Work (“**SOW**”) that will describe the professional services to be performed by INAP, applicable pricing and other appropriate terms and conditions. Any subsequent changes to the SOW shall be agreed to in writing by both Parties through a change order (“**SOW Change Order**”).

The Order, SOW or SOW Change Order may individually be referred to as an “**Ordering Document**” or collectively “**Ordering Documents**”.

## Section 1.4 Order of Precedence

Each Service Schedule, any Exhibit to a Service Schedule, and all Ordering Documents shall be incorporated into and made part of this Agreement. In the event of any conflict between this Agreement and the terms of any of the Service Schedules, Exhibits and the applicable Ordering Document(s), precedence will be given in the following order: (i) the relevant Ordering Document, (ii) the applicable Service Schedule, but only with respect to the Services specified therein; (iii) the Standard Terms; (iv) this Agreement; and (v) the Terms of Use.

[Remainder of this page left intentionally blank]

IN WITNESS WHEREOF, INAP 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 INAP 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.

**Internap Holding LLC:**

**Customer:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Attachment A

The following Standard Terms and Service Schedules identified on this Attachment A are attached to this Agreement and incorporated herein (check all applicable):

<input checked="" type="checkbox"/>	<b>Standard Terms</b>
<input checked="" type="checkbox"/>	<b>Cloud and Managed Services Schedule</b>
<input checked="" type="checkbox"/>	<b>Colocation Services Schedule</b>
<input checked="" type="checkbox"/>	<b>Network Services Schedule</b>

## INAP Standard Terms and Conditions

1. **Introduction** The following INAP Standard Terms and Conditions (“**Standard Terms**”) apply to Customer’s use of INAP Services. These Standard Terms, the MSA, any Service Schedule, all Ordering Documents, and any exhibits or schedules attached hereto and other documents referenced herein constitute the entire agreement between Customer and INAP (the “**Agreement**”) and replaces all prior oral or written communications between Customer and INAP with regard to the Services. Customer and INAP each is a “**Party**” hereto, and together, are the “**Parties**” to this Agreement.
2. **Definitions** Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Agreement. The following terms shall have the meanings set forth below.
  - 2.1 “**Account Information**” means any valid information, including billing information, contact information, payment information, and such other information that Customer provides to INAP.
  - 2.2 “**Additional Third-Party Terms**” mean any additional third-party terms and conditions applicable to the Services, including but not limited to such third-party terms and conditions incorporated via the Terms of Use. The Additional Third-Party Terms are part of the Standard Terms.
  - 2.3 “**Affiliate**” means, with respect to a Party, a legal entity that is controlled by, controls, or is under common control directly or indirectly with that Party.
  - 2.4 “**Authorized User**” means Customer’s employees and contractors whose duties require use or access to the Service and/or Software, provided that each individual contractor agree in writing to comply with the terms of this Agreement.
  - 2.5 “**Cloud and Managed Services**” means any of the Services specified in the Cloud and Managed Services Schedule or relevant Ordering Documents that Customer has the right to access and use remotely.
  - 2.6 “**Colocation Services**” means any of the Services specified in the Colocation Services Schedule or relevant Ordering Documents that Customer has the right to access and use remotely.
  - 2.7 “**Confidential Information**” means proprietary and/or confidential information of a Party, its Affiliates, Representatives or customers, including, but not limited to, the Services, Software, Documentation, end-user materials, work product, Intellectual Property, proposals, designs, concepts, methodologies, inventions, source or object code, developments, research, programs, databases, referral sources, customers, prospective customers, inventions, developments, “know-how,” procedures, financial information or licensing policies, technical, financial, marketing, staffing, business plans and information, strategic information, proposals, specifications, drawings, documentation, manuals, know-how, pricing information, customer information, procedures, processes, techniques, software code and software programs, that are marked as “confidential” or “proprietary”, or is of such a nature and character that a reasonable person under the circumstances would understand it to be confidential, and all non-public personal data provided by the disclosing Party to the receiving Party in the course of the performance of the Services. Notwithstanding the foregoing, Confidential Information shall not include any information that: (a) was in the public domain prior to disclosure by the disclosing Party; (b) comes into the public domain through no fault of the receiving Party; (c) is authorized for disclosure in writing by the disclosing Party; (d) is disclosed to a Party without restriction by a third party who has a legal right to make such disclosure; and/or (e) the receiving Party independently develops without use of or reference to the Confidential Information of the disclosing Party.
  - 2.8 “**Customer**” has the meaning given in the MSA.
  - 2.9 “**Customer Data**” means all data provided by Customer to INAP in conjunction with Customer’s use of the Services and Software, including any data, text, software, scripts, video, sound, music, graphics, and images that are uploaded or stored in connection with the Services by Customer or its Affiliates.
  - 2.10 “**Customer Offering**” means any services provided by Customer to third parties, that directly utilize the Services for resale. Services purchased by Customer to be resold by Customer as a Customer Offering must be approved in writing in advance by INAP. For Customer Offerings, Customer agrees to the Reseller Addendum located at <https://www.inap.com/legal/qu8mab> (as such link may be updated from time to time) (the “**Reseller Addendum**”).
  - 2.11 “**Customer Portal**” means the Customer-specific Services management portal page, which can be accessed via the Site.
  - 2.12 “**Documentation**” means the instructional manuals and functional specifications related to the Service as delivered by INAP, or related to the features, functions, and use of the Software.
  - 2.13 “**Fees**” mean the fees payable by Customer to INAP as set out in the relevant Service Schedule(s), Exhibit(s), Ordering Document(s), or other charges passed through to Customer, including but not limited to fees payable related to Fixed Rate Billed Services, Usage Based Billed Services, and Variable Billed Services.
  - 2.14 “**Fixed Rate Billed Services**” means those Services provided under the Agreement that are billed based on the fixed rate set forth in the Agreement, Service Schedule, or an applicable Ordering Document.
  - 2.15 “**Intellectual Property**” means intellectual property rights including, but not limited to, patents, patent applications, trade secrets, trademarks, trade names, service marks, logos, moral rights, or any other copyrights inherent thereunder, along with any registrations and applications to register, as applicable in tangible and intangible materials or information which may be continually under development, modification or improvement, including, but not limited to, software, source code, object code, routines, tools, documentation, methodologies, techniques, algorithms, inventions, ideas, databases, and know-how.
  - 2.16 “**INAP Tools**” means any and all processes, materials, software, and products, including Intellectual Property in the foregoing, and any modifications, enhancements, or derivative works thereof, developed or used by or on behalf of INAP in its delivery of the Software or Services that do not contain any of Customer’s Confidential Information, whether or not in existence prior to the Agreement Effective Date.
  - 2.17 “**Network Services**” means any of the Services specified in the Network Services Schedule or relevant Ordering Documents that Customer has the right to access and use remotely.
  - 2.18 “**Order Term**” means the stated term specified on an Ordering Document.
  - 2.19 “**Representatives**” means a Party’s Affiliates, directors, officers, employees, agents, consultants, advisors, and other representatives (including legal counsel and accountants).
  - 2.20 “**Service Level Agreement**” or “**SLA**” means the commitments that INAP may provide to Customer for each of the Services as specified in the relevant Service Schedule.
  - 2.21 “**Services**” has the meaning set forth in the MSA, and includes those services provided by INAP to Customer as further specified in the relevant Services Schedule or Ordering Document. Customer may add, alter, or remove Services during the Term of the Agreement as further set forth herein.
  - 2.22 “**Site**” means the online interface to which INAP provides access to Customer.

- 2.23 **“Software”** means the INAP Tools and any computer programs or applications used by INAP to deliver the Services or accessed by Customer as part of the Cloud and Managed Services.
- 2.24 **“Usage-Based Billed Services”** means those Services provided under the Agreement that are billed based on actual usage of the Services by Customer, the cost for which is generally calculated by multiplying a fixed unit by a rate set forth in the Agreement, Service Schedule, or an applicable Ordering Document.
- 2.25 **“Variable Billed Services”** means those Services provided under the Agreement that are billed based on the cost of another Service, where the cost for Variable Billed Services is calculated by multiplying the cost of such other Service by a variable rate set forth in the Agreement, Service Schedule, or an applicable Ordering Document.

### **3. Services**

- 3.1 **Scope.** INAP will provide Customer the Services as specified in each Service Schedule and Ordering Document, consistent with the Documentation and any relevant SLA. Subject to the terms of this Agreement, INAP grants Customer a nonexclusive, revocable, non-transferable and non-sub-licensable right to access and use the Services set forth in a Service Schedule or Ordering Document during the applicable Order Term for Customer’s internal business purposes, and to use the Services to create, offer, and provide Customer Offerings.
- 3.2 **INAP Obligations.** INAP will provide the Services to Customer according to the specifications and timeframes set forth in the applicable Service Schedule, Ordering Document, SLA, and/or Documentation, beginning on the Service Commencement Date.
- 3.3 **Limitations.** Customer may only access and use the Services subject to any restrictions specified herein and in the applicable Ordering Document(s). Without limiting the foregoing, Customer shall not: (a) circumvent, copy, modify, decompile, reverse engineer or disassemble the Software, INAP Tools, third-party technology or INAP’s proprietary technology used in connection with the Services (“**INAP Technology**”); (b) sublicense, rent or lease the INAP Technology or Services; or (c) copy any features, functions or graphics of the Services or modify or make derivative works based upon the Services.
- 3.4 **Subcontractors.** INAP may use one or more subcontractors to provide the Services or a portion of the Services. Unless otherwise provided in a Service Schedule, Ordering Document, or otherwise agreed in writing, INAP will be solely responsible for any fees or charges incurred through use of subcontractors to the extent required to provide the Services, and subcontracting will not increase the Fees payable under this Agreement. Customer will pay any fees for subcontractors that INAP may retain to provide agreed-upon services in excess of the scope of the Services set forth in the Agreement.

### **4. Customer Obligations**

- 4.1 **Regulatory Compliance.** Customer assumes sole and complete responsibility, at its expense, for ensuring that its Authorized Users comply with and use the Services and Software in compliance with all applicable federal, state and local laws and regulations, including, without limitation, laws relating to confidentiality of consumer information, labor and employment laws, occupational safety laws, and any other relevant federal, state or local laws or regulations.
- 4.2 **Suitability.** Customer is responsible for determining the suitability of the Services and Software for its operations and whether the Software and Services will achieve the results that the Customer desires. The Services and Software are provided as a tool for Customer to use as Customer sees fit in its business. Customer is responsible for ensuring the accuracy of any Customer Data or other data input in to the Services and Software and ensuring and confirming the accuracy of any output and results created by the Software and Services prior to use or dissemination.
- 4.3 **User Control Considerations.** Customer will (a) delegate access to Customer employees via the Site, (b) assign and maintain a secure PIN to control access to sensitive information, including but not limited to, Customer passwords, (c) maintain and change passwords frequently, and promptly upon providing access to INAP or any third party to perform maintenance activities on Customer’s behalf, and (d) provide to INAP a primary notification point of contact to serve as Customer’s authorized representative to make technical and financial decisions.
- 4.4 **Customer Backup and Security Obligations.**
- 4.4.1 **Backup and Continuity of Operations.** Except as otherwise provided in an applicable Service Schedule or Ordering Document, other than responsibility for physical security, 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, and will be solely responsible for determining whether and to what extent a disaster has occurred, and for notice of same to INAP. Customer will be solely responsible for undertaking measures to: (a) prevent any loss or damage to Customer Data; (b) maintain independent archival and backup copies of Customer Data; and (c) ensure the security, confidentiality and integrity of Customer Data.
- 4.4.2 **Account Management.** Customer will use reasonable security precautions for providing access to the Services by its employees or other individuals to whom it provides access, whether in connection with Customer’s internal business purposes or as a Customer Offering. Customer will be solely responsible for ensuring the confidentiality and security of all account usernames and passwords, and for all user conduct in connection with such account credentials. Customer will implement internal protocols and procedures whereby terminated personnel will no longer be able to use any Customer username or password. All passwords used by Customer or its personnel must be smart, secure combinations of characters and not be comprised solely of dictionary words.
- 4.4.3 **Breach Notification.** Notwithstanding Sections 4.4.1 and 4.4.2, INAP will comply with all applicable laws pertaining to data breach and notification of same. Customer will have the right, and hereby undertakes the obligation, to promptly notify INAP of any potential, suspected, or actual security breach concerning the Services or Customer Data about which Customer becomes aware.
- 4.5 **Standard Obligations.** Customer agrees to do each of the following: (a) cooperate with INAP’s investigation of outages, security problems, and any suspected breach of the Agreement; (b) comply with all license terms or terms of use for any software, content, service or website (including Customer Data) which Customer uses or accesses when using the Services; (c) give INAP true, accurate, current, and complete Account Information; (d) keep Customer’s Account Information up to date; (e) 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; (f) use commercially reasonable efforts to prevent unauthorized access to or use of the Services; and (g) where the Customer provides a Customer Offering as permitted under this Agreement, enter into an agreements with Customer’s Authorized Users containing relevant terms of this Agreement and releasing INAP from any and all liability for damages or losses Customer Authorized Users may incur as a result of using the Customer Offering.
- 4.6 **Permitted Use.** Unless otherwise specified in the Agreement, a Services Schedule, or an Ordering Document, Customer will not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, Customer may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act.

### **5. Confidentiality**

- 5.1 **Confidentiality.** During the Term of this Agreement, each Party may have access or have disclosed to it certain Confidential Information of the other Party. Each Party agrees for a period of two (2) years from expiration or termination of the Term, whichever is applicable, to: (a) use the disclosing Party’s Confidential Information solely in connection with its performance under this Agreement; (b) hold the disclosing Party’s Confidential Information in confidence and disclose the disclosing Party’s

Confidential Information only to its Representatives who have a need to know, provided that such Representatives are bound by non-disclosure obligations substantially similar to this Section; (c) protect the disclosing Party's Confidential Information from disclosure in the same manner and to the same duty of care that the receiving Party uses to protect its own Confidential Information of like importance, but in no event less than a reasonable standard of care; and (d) return or destroy the disclosing Party's Confidential Information promptly upon the written request of the disclosing Party at the completion of the Services, except any portion that is required to be retained by law or pursuant to internal document retention policies aimed at legal, corporate governance or regulatory compliance and any such retained Confidential Information shall remain subject to the disclosure and use restrictions set forth herein, notwithstanding any termination of this Agreement.

- 5.2 **Disclosure of Confidential Information.** In the event that the receiving Party is required to disclose any of the disclosing Party's Confidential Information pursuant to an order, subpoena or laws, the receiving Party shall if permitted by the applicable order, subpoena or law: (a) promptly notify the disclosing Party of the terms and the circumstances of any such request; (b) consult with the disclosing Party and cooperate with the disclosing Party's reasonable requests to resist or narrow any such request; (c) furnish only Confidential Information that the receiving Party is legally compelled to disclose; and (d) use reasonable efforts to obtain an order or other reliable assurances that confidential treatment will be accorded the Confidential Information disclosed.
- 5.3 **Ownership of Confidential Information.** As between the Parties, the Confidential Information, including permitted copies, will be deemed the property of the disclosing Party. No Intellectual Property right is licensed, granted, or otherwise transferred by the Agreement, except for the right to use or disclose such information in accordance with the Agreement. Receiving Party shall reproduce in full all confidentiality notices set forth on the Confidential Information.
- 5.4 **Equitable Relief.** The Parties acknowledge that monetary damages may be inadequate to compensate the disclosing Party in the event that the receiving Party (or a Representative of the receiving Party) breaches any provision of this Section and agree that, in addition to any remedies at law, the disclosing Party shall be entitled to seek equitable relief, including injunction and specific performance, without the need to prove actual damages or provide a bond.

## **6. Term and Termination**

- 6.1 **Term of Agreement and Termination.** The term of the Agreement will begin on the date Customer first accepts the Agreement (the "**Effective Date**") and continues for a period to run in parallel with each Ordering Document until the latest date of expiration or termination of all Ordering Documents (the "**Term**").
- 6.2 **Renewal of Order Term.** Except as otherwise provided in an Ordering Document, an Order Term shall automatically renew upon the expiration of the then current Order Term as follows: (a) Orders with an initial Order Term of one year or longer shall automatically renew for additional periods of one year and (b) Orders with an initial Order Term of less than one year shall automatically renew for the same period of time as the initial Order Term. Customer may cancel automatic renewal of an Order Term by providing at least sixty (60) days' notice (but no more than one-hundred twenty (120) days' notice) prior to the expiration of the then current Order Term by submitting a ticket through the Customer Portal. Customer's notice of cancellation described in the preceding sentence does not terminate Services, but instead converts the Order upon the expiration of the existing Order Term to a month-to-month term with an increase of 35% of the Fees.
- 6.3 **Termination or Modification by External Triggers.** INAP may terminate a Service in whole or in part, or modify it or the terms on which it is provided, if all or part of that Service: (a) depends on an agreement between INAP or a INAP Affiliate and a third party, and that third-party agreement or the third party's materials or other input is modified or terminated; (b) becomes illegal or contrary to any law, regulation, guideline or request of any regulatory authority; or (c) becomes subject to a claim or potential claim that it infringes or violates the rights of any third party. INAP will endeavor to provide Customer with reasonable prior notice of any such termination or modification, but may not be able to do so if the triggering event is under the control of a third party. The effective date of the termination or modification as indicated on the notice is the "**Change Date**". If a partial termination or modification in accordance with this clause fundamentally and detrimentally changes the nature of or the rights granted in the Service, Customer may terminate the affected Service by providing INAP with notice no later than thirty (30) days after the Change Date.
- 6.4 **Obsolescence.** INAP may phase out, sunset, retire, or otherwise render obsolete: (a) a prior version of a Service on at least six (6) months' prior notice following the general availability of an update or upgrade, and (b) any Service as a whole on at least six (6) months' prior notice. INAP will have no obligation to provide or support obsolete Services or versions of Services at the end of such notice periods. In the case of a version obsolescence described in (a), the term of the affected Service will continue unless, where the new version is subject to additional charges, Customer terminates the Service by providing INAP with thirty (30) days' notice after the date of INAP's notice. In the case of Service obsolescence described in (b), the Service will terminate after the notice period (except to the extent INAP has granted Customer a perpetual right to use the product).
- 6.5 **Suspension.** INAP may suspend, upon notice, all or part of a Service and Customer's rights in relation to that Service if: (a) INAP has the right to terminate the Service in accordance with these Standard Terms or a Service Schedule for non-payment of Fees; (b) INAP is required to do so by a third-party provider due to Customer's breach of this Agreement; (c) INAP is required to do so by law or regulation or at the request of any relevant regulatory authority; (d) in order to protect INAP's systems and security. Any such suspension may continue until INAP is satisfied that the condition is remedied. Customer shall be responsible for any Fees during any period of suspension permitted by this Section.
- 6.6 **Termination for Breach.** Either Party may terminate the Agreement, upon written notice, if the other Party materially breaches the Agreement and the breach (a) remains uncured thirty (30) days after the date the breaching Party receives a notice from the other Party describing the breach and requiring it to be cured or (b) is incapable of being cured. If the material breach relates solely to one or more Services (but not all the Services), the non-breaching Party only may terminate the relevant Service(s).
- 6.7 **Termination for Insolvency.** INAP may terminate the Agreement, immediately upon written notice to Customer, if the Customer becomes insolvent; is subject involuntarily or voluntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; is dissolved or liquidated or takes any corporate action for such purpose, makes a general assignment for the benefit of credits; or 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.
- 6.8 **Termination for Convenience.** Either Party may terminate this Agreement or any Ordering Document upon sixty (60) days' prior written notice (or thirty (30) days' prior written notice for an Order with an initial Order Term of thirty (30) days) to the other Party.
- 6.9 **Effect of Termination.** Upon termination of the Agreement or any Ordering Document for any reason (a) Customer's and its Authorized Users' licenses to use the Services and Software will immediately and automatically terminate; (b) Customer and its Authorized Users shall cease all access and use of the Services and Software; (c) Customer shall return to INAP any INAP Confidential Information, Intellectual Property or Documentation in Customer's possession; and (d) Customer shall promptly pay all unpaid Fees and all third-party charges incurred by INAP arising from such termination. Upon termination of the Agreement or any Ordering Document prior to the expiration of any outstanding Order Term (a) by Customer under the Section titled Termination for Convenience, or (b) by INAP under the section titled Termination for Breach, Customer shall also pay to INAP all Fees Customer would have had to pay for the remaining Order Term for all terminated Orders (the "**Termination Fee**"). Notwithstanding the above, in the event the Ordering Document is cancelled prior to the Effective Date or other Service Commencement Date, the Termination Fee shall be an amount equal to the recurring Fees for a period of three (3) months plus any additional Fees related to INAP's activation of Services. Customer agrees to pay all amounts owing pursuant to this Section on or before the termination date. If requested by Customer within thirty (30) days from termination date, INAP will make available to Customer a file of the Customer Data in its possession, if any. Rights and obligations which by their nature continue after the termination or expiration of this Agreement shall survive and continue after the termination or expiration of this Agreement, and shall bind the Parties, their successors, heirs and permitted assigns. Customer acknowledges and agrees that: (a) INAP is only agreeing to provide Customer a right to terminate for convenience conditioned upon Customer's payment of the Termination Fee, and that absent payment of the Termination Fee, Customer shall have no right to terminate this Agreement or any Order under Section 6.8 of this

Agreement; (b) INAP will incur considerable consequences and losses in the event Customer terminates this Agreement for convenience prior to the expiration of the Order Term; (c) such consequences and losses would be difficult, if not impossible to estimate; and (d) the Termination Fee is a reasonable pre-estimate of the consequences and losses that INAP would actually incur in the event Customer terminates this Agreement early.

## **7. Fees and Payment**

- 7.1 **Fees.** Customer shall pay INAP any Fees in the amount set forth in the applicable Schedule or Ordering Document. Such Fees do not include any applicable taxes or duties, including without limitation, state and local use, sales, and property taxes and duties.
- 7.2 **Taxes.** All fees, charges and other amounts payable to INAP under the Agreement do not include any sales, use, excise, value added, income or other applicable federal, state, local and foreign taxes, tariffs or duties, payment of which shall be Customer's sole responsibility, excluding applicable taxes based on INAP's net income or taxes arising from the employment or independent contractor relationship between INAP and its personnel ("**Taxes**").
- 7.3 **Usage-Based Billing.** Usage-Based Billed Services will be billed based on amount of consumption by Customer and in intervals set forth in an applicable Service Schedule or Ordering Document. Each unit of a Usage-Based Billed Service consumed by Customer will be rounded up to the next whole unit. A base rate and overage rate for the Services may be established by INAP and communicated to Customer in an applicable Service Schedule or Ordering Document. Customer will be responsible for the tracking and controlling of its usage of the Usage-Based Billed Services, and INAP will have no responsibility to notify Customer pertaining to any usage.
- 7.4 **Variable-Based Billing.** Variable Billed Services will be billed based on the cost of another Service. The cost for Variable Billed Services will be calculated each month and stated on the invoice as a variable fraction of the cost of the other Service.
- 7.5 **Fixed Rate Billing.** Fixed Rate Billed Services will be billed based on costs established by INAP and communicated to Customer in an applicable Service Schedule or Ordering Document.
- 7.6 **Payment Method.** Unless otherwise Specified in the Agreement or an Ordering Document, Customer will pay all Fees using a payment method that is maintained on file with INAP, such as, but not limited to, credit card, ACH electronic funds transfer, wire transfer, check or any such other method as approved by INAP. Customer will be responsible for all fees, including processing fees, associated with making payment via wire transfer to INAP. Subject to applicable law, INAP may, in its sole discretion, impose a processing fee of up to 3% on payments that are made by credit card, or prohibit the Customer from using a credit card to make payments. Customer hereby authorizes INAP to automatically charge Customer's payment method on file on or before the applicable due date of any invoice. If Customer's payment method is a physical check or money order, Customer authorizes INAP to use information from the check to make a one-time electronic transfer from Customer's account as soon as the same day Customer makes payment.
- 7.7 **Time of Payment.** Unless otherwise set forth in an Ordering Document or on INAP's invoice, Customer shall pay each invoice, in full and in cleared funds, for all undisputed amounts within thirty (30) days from the date of each invoice. If Customer fails to pay any Fees within thirty (30) days, INAP (a) shall be entitled to charge interest on the amount unpaid from the due date up to the actual date of payment (both before and after judgment) at one and one-half percent (1.5%) per month or the maximum interest rate permitted by law, whichever is lower; (b) may suspend Customer's access to and use of the Services, Software, and/or Site (including but not limited to suspending physical access to cages, facilities or equipment and/or seizure of equipment); (c) may require Customer to pay and maintain a deposit with INAP; and (d) shall be entitled to recover any costs of collection, including reasonable attorneys' fees. Customer shall pay any Fees in advance as specified on an applicable Ordering Document. Invoicing disputes must be identified in writing prior to the date the applicable invoice is due.
- 7.8 **Service Commencement Date.** Billing for Services commences on the date INAP delivers the Services or as otherwise agreed by the Parties pursuant to an Order ("**Service Commencement Date**"). All Services are deemed accepted upon delivery. For the avoidance of doubt, Services shall be deemed delivered upon INAP's provision of Services to Customer and any delay by the Customer in using or configuring the Services shall not extend the Service Commencement Date.
- 7.9 **Changes to Fees.** Upon the earlier of each anniversary of the Effective Date or the first day of a new calendar year following the Effective Date, not more than once per year, INAP shall be entitled to increase the Fees it charges Customer for Services in accordance with INAP's standard billing procedures and then-current rates. INAP's right to change or increase Fees shall not be limited to renewal terms. Services added to a Customer's account consistent with these Standard Terms shall be subject to adjustment upon the same schedule as all other Services. For avoidance of doubt, this Section is intended to provide consistency across Customer's account and to permit INAP the right to reasonably increase fees on an annual basis.

## **8. Representations and Warranties**

- 8.1 **Limited Warranties.** Each Party represents and warrants that it has full authority to enter into and perform its obligations under the terms of this Agreement and the execution of this Agreement will not conflict with any contract, obligations, or order to which it is subject or bound. Each Party represents and warrants that it will comply with all applicable federal, state, and local laws, rules, and regulations in connection with its performance and obligations under this Agreement.
- 8.2 **Third-Party Products and Services.** Notwithstanding anything to the contrary herein, Customer acknowledges and agrees that INAP makes no representation or warranty, express or implied, as to any third-party hardware, software, products or services included with the Services. INAP assigns to Customer during the Term all assignable warranties and indemnities granted to INAP by such third parties to the extent applicable to Customer's receipt or use of the Services during the Term. To the extent INAP is not permitted to assign any such third-party warranties and indemnities, INAP will use commercially reasonable efforts to enforce such protections on Customer's behalf to the extent it is permitted to do so under the third-party agreements and applicable law.
- 8.3 **Additional Warranties.** Further representations and warranties may be specified in each Service Schedule or an Ordering Document, as appropriate.

## **9. Disclaimers, Limitations of Liability, and Indemnification**

- 9.1 **Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE TOTAL LIABILITY OF INAP TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED IN THE AGGREGATE THE FEES PAID BY CUSTOMER TO INAP FOR THE SERVICES IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE MONTH IN WHICH THE CLAIM AROSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ANY SERVICE 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, OR DIMINUTION IN GOODWILL, OF THE OTHER PARTY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2 **Disclaimer.** EXCEPT AS EXPRESSLY SPECIFIED IN THIS AGREEMENT OR IN AN APPLICABLE SCHEDULE, EACH PARTY DISCLAIMS ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS THE SERVICES ARE BEING PROVIDED OVER THE INTERNET AND ARE SUBJECT TO DELAYS AND OTHER CONDITIONS INHERENT IN THE INTERNET, INAP DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICES WILL BE SECURE, UNINTERRUPTED OR ERROR FREE, OR (B) THE SERVICES WILL BE FREE OF ALL VIRUSES OR OTHER HARMFUL COMPONENTS.

- 9.3 **Mutual General Indemnification.** Each Party shall indemnify, defend, and hold the other Party harmless and pay resulting costs (including damages and reasonable attorneys' fees finally awarded), from and against any liability, loss, expense, or claim asserted by third parties (collectively, the "**Claims**" and individually each a "**Claim**") for the gross negligence or willful misconduct of the indemnifying Party; provided, the Party requesting indemnification gives the indemnifying Party prompt written notice of any such Claim and all necessary information and assistance so that such indemnifying Party, at its option, may defend or settle such claim, and; provided further, that such indemnifying Party does not take any adverse position in connection with such Claim. In the event that any such Claim is the result of, arises out of, or is in connection with the joint or concurrent negligence of both Parties as determined by a court of competent jurisdiction, the liability, loss, expense, or damage of such Claim shall be borne by each Party in proportion to its respective negligence or fault.
- 9.4 **Infringement Indemnification.** Each Party will defend, indemnify, hold the other Party harmless, and pay resulting costs (including damages and reasonable attorneys' fees finally awarded) from a Claim that (a) in the case of INAP, any Services as provided to Customer ("**INAP Material**"), or (b) in the case of Customer, the Customer Data or Customer Intellectual Property ("**Customer Material**" and collectively with INAP Material, the "**Material**") infringes a third party's United States patents, or copyright rights enforceable in a country signatory to the Berne Convention, provided that (i) the indemnified Party promptly notifies the indemnifying Party in writing of the claim; (ii) the indemnified Party cooperates fully and timely with such indemnifying Party in the defense of the Claim; and (iii) such indemnifying Party has sole control of the defense of the Claim and all related settlement negotiations; provided, further, that no settlement shall be entered into by the indemnifying Party prior to the indemnified Party giving its written consent to the terms of such settlement involving un-indemnified or non-monetary claims. Should the use of any indemnifying Party's Material (or any portion thereof) be enjoined, or if in indemnifying Party's opinion are likely to be enjoined, indemnifying Party shall, at its sole option, either (1) substitute a functionally equivalent non-infringing version of the affected portion(s) of indemnifying Party's Material; (2) modify the infringing aspect of such Material so that it no longer infringes but remains a fully functionally equivalent; (3) obtain for the indemnified Party, at the indemnifying Party's expense, the right to continue to use or receive the benefits of the indemnifying Party's use of (as applicable) such Material; or (4) if none of the foregoing is commercially feasible and the Material is INAP's, then Customer shall return the applicable INAP Materials and shall receive a refund for the fees paid by Customer for such INAP Materials. Notwithstanding any provision in this Agreement to the contrary, in no event shall INAP have any duty to indemnify Customer pursuant to this Section in connection with (x) any Service alleged to infringe any third party's United States patent, or copyright rights enforceable in a country signatory to the Berne Convention, as a result of INAP's use of or reliance on any of Customer's Confidential Information, or (y) any product or Customer Offering. Notwithstanding any provision in this Agreement to the contrary, in no event shall either Party have any duty to indemnify the other Party pursuant to this Section with respect to any claim of infringement to the extent that it arises out of: (a) following the designs, specifications, or written instructions of the other Party; (b) the Party seeking indemnification's failure to obtain proper licenses for any Intellectual Property, including but not limited to, hardware, software, tools, or designs provided the other Party for use hereunder; (c) such indemnified Party's use of the indemnifying Party's Material in a manner not reasonably contemplated in this Agreement; or (d) Customer's modification of the Services, or use of the Services in conjunction with (1) hardware, software, systems, or methods not provided by INAP, or (2) any product or Customer Offering. **THE RIGHTS AND REMEDIES PROVIDED IN THIS SECTION SHALL BE EACH PARTY'S EXCLUSIVE REMEDY FOR ANY AND ALL CLAIMS FOR INFRINGEMENT OF THE INFRINGING MATERIAL.**
- 10. Intellectual Property Rights; Data Ownership; Feedback**
- 10.1 **Services.** Customer acknowledges and agrees that, as between the Parties, all Intellectual Property Rights in and to the INAP Confidential Information, INAP Tools, Services, Software, and Documentation are (a) owned exclusively by INAP, its Affiliates or Third-Party Providers, and (b) hereby reserved to INAP unless specifically granted in these Standard Terms or a relevant Schedule. Customer will not remove or conceal any proprietary rights notice in the Services and will include such notices on any copy it is permitted to make.
- 10.2 **Customer Materials.** INAP acknowledges and agrees that, as between the Parties, all Intellectual Property Rights in the Customer Confidential Information and Customer Data are owned by Customer or Customer Affiliates.
- 10.3 **Use of Name.** Subject to Customer's prior approval, Customer hereby grants to INAP a nonexclusive, worldwide, royalty-free, fully paid-up license during the Term to use Customer's trademarks, marks, logos or trade names in connection with INAP's provision of Services to Customer and to be listed as a INAP customer on the Site and in other marketing or promotional materials.
- 10.4 **Feedback.** If Customer provides suggestions, feedback or other input to INAP concerning the functionality and performance of the Services, including identifying potential errors and improvements ("**Feedback**"), then, subject to the terms and conditions of this Agreement, Customer hereby grants INAP and its affiliates a limited, worldwide, non-exclusive, royalty-free, fully paid-up right and license to all Feedback and all Intellectual Property Rights therein (except patent rights and trademark and branding rights) to use, perform, display, reproduce, create derivative works, make, have made, use, sell (directly or indirectly), offer for sale or disposition, import, dispose and otherwise exploit such Feedback for any purpose. The foregoing license shall be fully transferable and sublicenseable. Feedback is provided without warranty of any kind. No compensation will be paid with respect to the use of Feedback.
- 11. Annual Reports** Upon Customer's written request, not more than annually, if applicable INAP will provide Customer with a copy of the report on controls within INAP's organization and systems established by an authorized or recognized standard setting agency.
- 12. Miscellaneous**
- 12.1 **Notices.** All notices, requests, authorizations, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered personally, with written confirmation of receipt; (b) delivered, if sent by a nationally recognized overnight delivery service, in each case to the appropriate addresses set forth in the first paragraph of this Agreement, or to such other addresses as a Party may designate by notice to the other Party; or (c) delivered via the Customer Portal.
- 12.2 **Governing Law and Venue.** This Agreement will be governed in all respects by the laws of the State of Delaware, without regard to conflict of law provisions. Both Parties agree that any claim or dispute between them must be resolved exclusively by a state or federal court located in the State of Delaware, City of Wilmington. Both Parties agree to submit to the personal jurisdiction of the courts located within the State of Delaware, City of Wilmington, for the purpose of litigating all such claims or disputes.
- 12.3 **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 INAP 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.
- 12.4 **No Agency.** The relationship between the Parties created by this Agreement is that of independent contractors, and not joint-venturers, agents, or employees. Except as expressly provided herein, the relationship established between the Parties by this Agreement shall be non-exclusive.
- 12.5 **Severability.** If any provision of this Agreement, or the application of any such provision to any person, entity, or circumstance shall be declared judicially to be invalid, unenforceable, or void, such decision shall not have the effect of invalidating, rendering unenforceable or voiding any portion of the remainder of this Agreement, it being the intent and agreement of the Parties hereto that this Agreement shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal, and enforceable, while preserving its intent or if such modification is not possible by substituting therefore another provision that is valid, legal, and enforceable and that achieves the same objective.



- 12.6 Waiver; Remedies. No delay or failure by either Party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid shall be in writing and signed by the Party waiving a right or provision of this Agreement, but need not be supported by consideration. A valid waiver of any provision of this Agreement with respect to a particular situation or event shall not constitute a waiver of such provision with respect to other situations, events, or agreements. Except where expressly stated as an exclusive remedy, in addition to the remedies expressly available under this Agreement, the Parties shall have any and all additional remedies available to them, whether at law or in equity, and all remedies shall be cumulative. No action under this Agreement may be brought by either Party more than two (2) years after the cause of such action becomes known to such Party.
- 12.7 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 thirty (30) days, either Party may terminate this Agreement.
- 12.8 GDPR and CCPA. INAP may process personal data as part of the Services, to which certain data protection or privacy laws may apply, including the European Union's General Data Protection Regulation ("GDPR") or the California Consumer Privacy Act ("CCPA"). If GDPR and/or CCPA apply, Customer shall inform INAP in writing if it: (a) intends to use or access the Services relating to activities establishing Customer as a "controller," or "processor" in the European Union pursuant to Article 3 of GDPR; (b) intends to use or access the Services relating to activities establishing Customer as a "business" subject to CCPA; or (c) believes that GDPR, CCPA or other data protection or privacy law apply. In the event that GDPR, CCPA, or other data protection or privacy law apply, INAP and Customer will be deemed to have agreed to applicable addenda incorporated via the Terms of Use, in accordance with the terms specified therein.
- 12.9 Export Restrictions. Each Party shall comply with all applicable export control laws and regulations 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. Customer 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.
- 12.10 Insurance. Each Party agrees to keep in full force and effect during the term of any Services covered by this Schedule 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 INAP's.
- 12.11 No Third-Party Beneficiaries. No person or entity, other than the Parties, shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.
- 12.12 Amendment. Any amendment to this Agreement or an Order will only be effective if mutually agreed in writing and executed by the authorized representatives of both Parties.
- 12.13 Interpretation; Conflicting Terms. Neither Party shall be considered the sole drafter of the Agreement so as to give rise to any presumption or convention regarding construction of the Agreement. Conflicts between documents shall be resolved as specified in Section 1.4 of the MSA.
- 12.14 Survival. The terms in Sections 3 – 11, 12.2, and 12.7 will survive termination or expiration of this Agreement.
- 12.15 Entire Agreement. These Standard Terms, including the MSA, any Services Schedules, any Additional Third-Party Terms that are included in the Service Schedules and the Policies contain the entire understanding of the Parties hereto with respect to the subject matter hereof and thereof. There are no agreements, understandings, arrangements, promises, covenants, or undertakings (oral or written) other than those expressly set forth herein and therein. This Agreement executed by the Parties supersede and replace in their entirety any and all other prior and contemporaneous agreements, arrangements, promises, covenants, or undertakings, whether oral, written, or implied, if any, between the Parties hereto with respect to the subject matter hereof or thereof.

*[Remainder of this page left intentionally blank]*

## CLOUD AND MANAGED SERVICES SCHEDULE

This Cloud and Managed Services Schedule is attached and subject to the terms and conditions of the Master Services Agreement by and between INAP and Customer and governs Customer's access to and use of the Software, Managed Services, and Online Services. All capitalized terms not defined in this Cloud and Managed Services Schedule shall have meanings given in the Standard Terms.

### 1. LICENSE TERMS

**1.1 Online Services.** For purposes of this Schedule and the MSA, the term "**Online Services**" shall include, but not necessarily be limited to the products listed in Section 1.1.1 through 1.1.5, as well as online hosting, any hosted or remotely provided Equipment or Software, and any other remotely provided hosted service of INAP. "**Software**" shall have the meaning ascribed in the Standard Terms. "**Equipment**" means any computer or networking equipment, including but not limited to servers, routers, storage devices, or other electronic devices provided or utilized by INAP to provide the Online Services.

**1.1.1 Bare Metal Cloud.** For Customers purchasing the Bare Metal Cloud service ("**Bare Metal Cloud**"), INAP will make available API enabled dedicated servers for Customer configuration and deployment. INAP will monitor the hardware and support all hardware available for bare metal services. Customers may choose to provide their own operating system image or application software licenses and will be solely responsible for, as applicable, obtaining all required licenses, ensuring all such software is up to date with applicable security patches and other security mechanisms, and maintaining compliance with the software vendor and its applicable terms directly.

**1.2 Managed Services.** For purposes of this Schedule, the term "**Managed Services**" shall include, but are not limited to, Shield Security Services ("**Shield Security**") monitoring, patch management, managed firewalls, managed load balancers, managed storage including DAS, NAS, SAN and Object Based Storage, data protection and backup services. INAP is responsible for the installation, configuration and ongoing operational service and support for all managed services. Managed Services may be added to a Customer account through the execution of an Ordering Document specifying the nature and scope of the Managed Services to be provided. For Customers purchasing Shield Security, INAP will design, install, configure, monitor, troubleshoot and maintain the infrastructure, OS Managed Services, Account Security and, if applicable, provide first level support for third-party services that are purchased by Customer from INAP in Shield Security.

**1.3 Access and Rights of Use.** Subject to the terms and conditions of the Agreement, INAP grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable license for Customer and its Authorized Users to access and use the Online Services solely for Customer's internal business purposes during the Term. Customer shall not allow any third party to use or access the Online Services or Equipment without INAP's prior written consent.

**1.4 Documentation.** Subject to the terms and conditions of the Agreement, INAP grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right and license to use and make copies of any INAP Documentation for internal use, archival purposes, and for training and educating Customer's Authorized Users, provided that all proprietary notices of INAP and its licensors, if any, are reproduced. Customer's rights (if any) to use and copy any third-party Documentation will be specified in the applicable Service Schedule.

**1.5 Ownership.** The Online Services and any Software are licensed and not sold to Customer. Customer shall not acquire any rights whatsoever in the Online Services, Software or Site aside from the limited licenses granted under this Agreement and Customer expressly disclaims any other rights. All rights not specifically granted herein are reserved by INAP and its licensors. Nothing herein shall prevent INAP or its licensors, if any, from promoting, providing, licensing or sublicensing the Online Services or providing any services to other parties.

**1.6 Additional Third-Party Terms.** Customer acknowledges and agrees that Customer's use of the Services and Equipment may be subject to Additional Third-Party Terms as follows:

**1.6.1** If the Online Services or Software include proprietary third-party software, such software may be subject to additional or different license terms that are incorporated into Cloud and Managed Services Schedule by reference, or may require Customer to agree to the terms of a separate end user license agreement with the publisher of such third-party software. Any such license terms or end user license agreements shall be incorporated or referenced in the relevant Service Schedule. Customer shall be responsible for any costs and fees, including increases thereto, as a result of any Additional Third-Party Terms.

**1.6.2** If the Online Services or Software include software that is redistributed by INAP under free or open source ("**FOSS**") license terms, the applicable FOSS terms which govern Customer's rights to use the specific items of FOSS software shall be incorporated or referenced in the applicable Service Schedule.

**1.7 Cloud and Managed Services Service Descriptions.** Solely to the extent applicable to the Services actually purchased by Customer in an Ordering Document, the Service Descriptions accessible via <http://www.inap.com/legal/w0ajh14> (the "**Cloud and Managed Services Service Descriptions**"; as such link may be updated from time to time) are incorporated into this Schedule and made a part hereof.

### 2. OBLIGATIONS OF THE PARTIES

**2.1. Service Delivery.** Customer understands and agrees that the Software and Online Services specified in Section 1.1 shall be provided by INAP and/or its licensors according to the applicable Service Schedule or Ordering Document. Customer understands and agrees that the Online Services may be hosted by INAP's trusted third party hosting service provider(s) and made accessible by INAP to Customer via Internet connections outside of INAP's control.

**2.2. Security and Data Protection.** INAP has established and shall use commercially reasonable adequate security programs and procedures relating to the Online Services and Customer Data. Each of Customer and INAP agrees to use its reasonable efforts to prevent unauthorized persons from having access to the Online Services or Site, or any equipment providing the Online Services. Each Party agrees to notify the other Party promptly upon becoming aware of any unauthorized access or use of the Online Services, Site, or Customer Data, by any third party. Except where Customer purchases Managed Services that cover any of the following, Customer shall be responsible for protection of its data against loss, damage or destruction, including, but not limited to, daily back-ups, anti-virus protection and data security measures. Customer shall backup individual computers before any Services are rendered in order to protect against any loss, damage or destruction of data. Except for the provision of Managed Services by INAP to Customer, INAP will have no responsibility or liability for lost, damaged or destroyed data, except in the event of INAP's gross negligence or willful misconduct, in which case Customer's sole and exclusive remedy shall be to require INAP to reload the lost, damage or destroyed data from the backup tapes provided by Customer. Notwithstanding the foregoing, each Party shall have generally accepted industry standard internet security software or tools installed on its infrastructure. Such internet security software shall be up to date within one patch or release. Customer will take reasonable precautions to ensure that (a) no Personal Data is unintentionally transmitted or delivered to INAP, and (b) to the extent any delivery or transmission of Personal Data is required in connection with Services by INAP, all such Personal Data is encrypted (in accordance with generally accepted industry best practice) prior to delivery or transmission to INAP. Customer hereby agrees to indemnify and hold harmless INAP and its directors, officers, agents, employees, members, subsidiaries, and successors in interest from and against any and all damages, losses, liabilities, settlements and expenses (including, without limitation, reasonable costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of this Section by Customer.

**2.3. Access, Availability, and Changes to the Online Services.** INAP shall use commercially reasonable efforts to make the core functions and features of the Online Services and Software available to Customer in accordance with the Service Level Agreement attached hereto as Exhibit A.

**2.4. Upgrades.** INAP may develop and deploy various improvements and/or enhancements (“**Upgrades**”) to the Online Services and Software, which may, in some instances, carry new or additional Fees. During the Term, INAP will make such Upgrades available to Customer. Customer may, but shall be under no obligation to, purchase Upgrades in Customer’s discretion.

**2.5. Installation.** Customer will promptly install any Update provided by INAP, and, at Customer’s option, any Upgrade that INAP makes available to Customer, provided however, Customer may elect to defer installation of major Upgrades until Customer has had sufficient time to test the Update or Upgrade and provide adequate training to its personnel.

### 3. CUSTOMER DATA

**3.1 Customer Data.** Customer is responsible for the accuracy and content of all Customer Data. Customer is also responsible for securing and maintaining all rights in Customer Data to allow INAP to provide the Online Services and Software to Customer without violating any third party’s rights, including any Intellectual Property rights.

**3.2 De-Identified Data Use.** INAP and its licensors may use certain content and transaction information to create information that is de-identified, such that it cannot be identified to the Customer, and which is sometime referred to as “big data” (hereinafter “**Content**”). Content may be used and disclosed consistent with applicable law. Customer grants to INAP and its licensors a non-exclusive right and license to use Content including the right of aggregation with data received from other customers, suppliers and users of INAP services for the general provision of data aggregation and comparison services, statistical analysis, the creation and maintenance of comparative databases, product support and development, system analytics, and benchmarking analysis, so long as INAP does not identify Customer or any individual person associated with Customer and the data remains in an aggregated form. To the extent that the Content has been de-identified, and notwithstanding anything set forth herein to the contrary in this Agreement, INAP may retain such Content, provided that such Content shall be used or disclosed solely for such purposes provided in this Section.

### 4. CUSTOMER’S RESPONSIBILITY FOR USE

**4.1 Primary Obligations.** Unless otherwise specified in an Ordering Document, Customer shall have the sole responsibility for acquiring, installing and maintaining its own technology environment and equipment necessary to properly access, operate and utilize the Online Services and Software, including, without limitation: servers, internet access, LANs and WANs; for any communications or other costs incurred in operating, accessing and using the Online Services and Software; and for any other expenses relating to the foregoing. Customer shall be responsible for selecting and training adequate personnel with the requisite experience necessary to operate Customer’s systems and use the Online Services and Software. Customer shall establish adequate operational back-up systems and procedures to ensure recovery and continuity of its systems and operations in the event of a failure. Customer shall be solely responsible for the security and confidentiality of any usernames or passwords granted to Customer or its Authorized Users to access the Online Services and Software, and shall limit disclosure of such usernames and passwords to its Authorized Users. Customer shall be solely responsible for any authorized or unauthorized access to the Online Services or Software using such usernames and passwords, and any actions taken thereunder. Customer shall limit use of access to the Online Services and Software solely to those of its Authorized Users whose duties require such use and access and shall undertake best efforts to ensure that INAP’s Confidential Information and INAP Intellectual Property are kept secure. Customer shall use its best efforts to ensure that all Authorized Users afforded access to the Services and any other information and materials produced or disclosed in connection therewith protect the same against unauthorized use, dissemination or disclosure. Customer shall have the sole responsibility for maintaining the privacy and security of all Customer Data. Customer agrees to cooperate with INAP as necessary to allow INAP to provide the Online Services and perform its obligations pursuant to this Agreement, and to provide, in a timely manner, such information, including the Customer Data, that is complete and accurate in all respects, as INAP may require in order to provide the Online Services and Software to Customer.

### 5. LIMITED WARRANTIES

**5.1 Representations of INAP.** Limited Warranty. INAP warrants that the Online Services (A) will in all material respects conform to, and the Software will function in substantial conformity with, the applicable Documentation provided by INAP to Customer; (B) shall operate in material conformity with the SLA in Exhibit A; and (C) the Online Services and Documentation as provided by INAP, do not infringe upon any United States copyright, patent, trademark, or trade secret; and the Online Services will meet the terms of the SLA (if applicable) during the Term (the “**Services Warranty**”). Customer’s sole and exclusive warranty for any breach of Section 5.1(C) of this Schedule shall be the indemnification provided by INAP as specified in the Infringement Indemnification Section of the Standard Terms.

**5.2 Pass-Through Warranties.** To the extent INAP is contractually permitted to do so, INAP shall pass-through to Customer any warranties and other obligations of the original manufacturer or vendor of third party materials, accessories, supplies, parts, services and products or any software licensed by a third party, including the right to indemnification from claims related to those products or services.

**5.3 Warranty Remedies.** In the event of any failure by INAP to meet the Services Warranty described in Section 5.1 above, INAP shall, at its option (A) re-perform the Services without additional charge to Customer or (B) refund to Customer the amount paid for such Services or defective parts or materials; provided in either case, INAP is notified in writing via e-mail or otherwise within fifteen (15) days from the date such Services are performed. EXCEPT AS OTHERWISE PROVIDED IN THE SLA, THE FOREGOING SETS FORTH THE EXCLUSIVE REMEDIES AGAINST INAP FOR ANY CLAIM RELATED TO BREACH OF THE WARRANTIES PROVIDED IN THE AGREEMENT OR THIS SCHEDULE. Remedies specified in the SLA shall constitute Customer’s primary and exclusive remedy for any failure by INAP to provide the Online Services or Software in compliance with the SLA.

**5.4 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE ONLINE SERVICES, MANAGED SERVICES, AND SOFTWARE PROVIDED UNDER THIS AGREEMENT ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INAP EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. INAP MAKES NO WARRANTY AND ASSUMES NO RESPONSIBILITY OR LIABILITY REGARDING ANY RELATIONAL DATABASE SERVICE OR SERVERS, OR ANY THIRD-PARTY HARDWARE, EQUIPMENT OR SERVICE WITH WHICH ONLINE SERVICES MAY BE REQUIRED TO COMMUNICATE OR OPERATE, AND DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS THAT THE ONLINE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, SUITABLE FOR CUSTOMER’S INTENDED USE, OR FREE OF MALICIOUS ELEMENTS OR THAT RESULTS WILL BE TIMELY, ACCURATE, OR COMPLETE. THE ONLINE SERVICES AND SOFTWARE ARE NOT A BACKUP SERVICE FOR STORING CONTENT OR OTHER DATA, AND INAP SHALL HAVE NO LIABILITY REGARDING ANY LOSS OF DATA, EXCEPT WHERE MANAGED SERVICES COVERING THESE CLAIMS IS PURCHASED BY CUSTOMER.

### 6. ADDITIONAL TERMS

**6.1 Additional Terms.** Solely to the extent applicable to the Services actually purchased by Customer in an Ordering Document, the Additional Terms incorporated in Exhibit B (the “**Additional Terms**”) are incorporated in this Schedule and made a part hereof.

*[Remainder of this page left intentionally blank]*

**EXHIBIT A**  
**Service Level Agreement**

This Exhibit A is attached to and incorporated into the Agreement and Cloud and Managed Services Schedule. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Agreement and Cloud and Managed Services Schedule.

**1. Network Availability**

**Data Center Network**

“Data Center Network” is the portion of the network extending from the INAP-provided server(s) network interfaces to the connection with the Internet border router. INAP will use commercially reasonable efforts to ensure that the Data Center Network will be available 100% of the time, except as part of scheduled maintenance or as requested by Customer, for solutions where INAP provides the network and any other solution that the Customer selects to deploy a “high availability” network device solution. A “high availability” network device solution means two (2) devices within a single data center (such as a firewall, load balancer or switch) configured in an industry-standard, fail-over configuration. If Customer deploys a non-high availability network device solution (any solution not certified by INAP as high availability), the Data Center Network will be available 99.5% of the time, except as part of scheduled maintenance or as requested by Customer. In the event Cloud and Managed Hosting Services are not provided in accordance with the Service Level during any month of the Order Term, INAP will provide a credit of 5% of the portion of the MRC specified in the Order for each affected device for each 30-minute increment of downtime from the point of violation, up to 100% of such portion of the MRC for the affected device.

**Public Network**

If Customer orders INAP Performance Network Services in connection with the Cloud and Managed Hosting Services provided pursuant to an Order, such INAP Network Services will be governed by the Network Services SLA.

Product Category	Performance Objective	Credit Type	Amount of Credit
Data Center Network Availability (INAP provided network or high availability network device solution)	100% Availability	Non-Proactive	5% of MRC of affected device per 30-minute increment of downtime, up to 100%
Data Center Network Availability (non-high availability network device solution)	99.5%	Non-Proactive	5% of MRC of affected device per 30-minute increment of downtime, up to 100%

**2. Hardware Replacement Metrics**

**Standard Hardware**

“Standard Hardware” means common hardware platforms stocked and supported by INAP and not specifically identified as Custom Hardware on an Order. INAP will use commercially reasonable efforts to replace Standard Hardware within one hour of problem identification by an INAP support engineer, at no additional cost to Customer. In the event Cloud and Managed Hosting Services are not provided in accordance with the foregoing Service Level during any month of the Order Term, INAP will provide a credit of 5% of the portion of the MRC specified in the Order for each affected device for each 30minute increment of downtime beyond the initial one hour from problem identification, up to 100% of such portion of the MRC for the affected device.

Product Category	Performance Objective	Credit Type	Amount of Credit
Standard Hardware	Replace failed Standard Hardware within one hour of problem identification	Non-Proactive	5% of MRC for each 30-minute increment of downtime beyond the initial one hour from problem identification, up to 100% of the MRC for the affected device

**Custom Hardware**

“Custom Hardware” means hardware platforms that are not commonly stocked and supported by INAP and specifically identified as Custom Hardware on an Order. INAP will use commercially reasonable efforts to replace Custom Hardware on a best effort basis by an INAP support engineer.

**3. Support Metrics**

INAP support services will be available 24 hours a day, 365 days a year. Customer may request support by opening a support ticket via the Customer Portal or by calling the NOC at +1 877-843-4662.

**Support Plan**

INAP provides a Support Plan that defines responsibility for hardware maintenance, monitoring and software configuration by INAP engineers. INAP’s Support Plan provides initial installation of a device or virtual instance and ongoing hardware support upon notification by Customer to INAP via a support request of a suspected event. Support Plan does not cover, and INAP is not responsible for, Customer code, software, data or other compiled systems or any other system or service not provided by INAP. Additional support required by Customer needs to be purchased through available additional INAP services.

**Response Times**

INAP uses commercially reasonable efforts to respond to Customer support requests within specified time frames according to the applicable Support Plan. Response is considered the formal acknowledgment by INAP of Customer’s support request and is measured from receipt of request by the NOC. If INAP does not respond to a Base Managed Customer support request within four (4) hours, Customer is entitled to a credit of \$100 per event, up to 100% of such portion of the MRC for the affected device.

Performance Objective	Credit Type	Amount of Credit
Response within four hours of receiving request	Non-Proactive	\$100 per event, up to 100% of MRC for the affected device

#### **4. Credit Requests**

INAP determines and calculates Service Level Credits on a per-occurrence basis. The Service Level Credit is a prorated amount derived from the monthly fee for the affected Service. Customer must request Service Level Credits via the Customer Portal within 30 days of the resolution of the event in question. INAP will apply any earned Service Level Credit to Customer's next monthly invoice.

#### **5. Optional Cloud Services**

##### **Back-Up Services**

Offsite backups and backups of active databases, such as MS-SQL, are not included in Cloud and Managed Services but are available for additional Fees if specified in an Order. INAP's Back-Up Service is designed to enable the restoration of data in the event the original data is lost or corrupted.

*[Remainder of page intentionally blank]*

**EXHIBIT B**  
**Additional Terms**  
**[Attached]**

**BACKUP-AS-A-SERVICE EXHIBIT**

This Backup-as-a-Service Exhibit (“**Exhibit**”) is attached to and hereby becomes a part of the Agreement by and between INAP and Customer.

- 1. Scope.** This Exhibit sets forth the terms and conditions under which INAP will provide to Customer certain managed backup services described in this Exhibit (the “Backup Services”). Capitalized terms not otherwise defined in this Exhibit will have the meaning given to them in the Agreement. In the event of any conflict between the terms and conditions set forth in the Agreement and this Exhibit, the terms and conditions set forth in the Agreement will control.
- 2. The Backup Services.** For the duration of the Order Term, INAP will provide to Customer the ability to connect its existing Veeam instance to a remote INAP data center facility consisting of a computer system, or set of systems, designed to store Customer Data (the “**Backup Repository**”).
  - 2.1. Customer will then configure its local Veeam instance to automatically store an archive of its local data in the Backup Repository.
  - 2.2. Customer must call INAP with Customer’s request to utilize the Backup Repository (a “**Request**”). Such Request will be limited to backing up Customer Data existing in Customer’s Veeam instance before the Request was made.
- 3. Customer Responsibilities.**
  - 3.1. Customer is responsible for (a) for obtaining its own Veeam license, and complying with all obligations thereunder, including payment of all applicable fees; and (b) at all times for ensuring at all times that its Veeam instance is configured completely and correctly. INAP will have no liability or other responsibility under this Attachment for any failure on the part of Customer to perform its obligations in connection with its Veeam instance as set forth in this Section.
  - 3.2. Customer is solely responsible for maintaining the confidentiality of passwords and encryption keys, including restricting the use of passwords and encryption keys by Customer’s designated users. Customer shall be responsible for all use of the Services accessed through Customer’s passwords. EXCEPT AS EXPRESSLY PROVIDED IN THIS EXHIBIT, INAP SHALL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO CUSTOMER TO MONITOR, SUPERVISE OR OVERSEE THE CONTENTS OF FILES STORED IN CONNECTION WITH THE BACKUP SERVICES. INAP IS NOT RESPONSIBLE FOR PROVIDING CUSTOMER WITH PASSWORDS OR ENCRYPTION KEYS IN THE EVENT OF A FORGOTTEN PASSWORD OR ENCRYPTION KEY. WITHOUT THE CORRECT PASSWORDS AND ENCRYPTION KEYS, CUSTOMER’S DATA WILL REMAIN ENCRYPTED AND INACCESSIBLE.
- 4. Service Levels.** INAP will provide the Backup Services, and will offer credits according to Table 1 below in the event any of the credit triggers are met:

**Table 1**

Service Attribute	Credit Trigger	SLA Credit Amount (Percentage of Fees paid for the Backup Services)
Backup Network Reliability	Downtime rendering replication services unavailable for 60 consecutive minutes or longer	5%
Data Storage Reliability	Downtime rendering Customer Data unavailable for 20 consecutive minutes or longer	5%
Support Reliability	60 minutes or longer for first response to request via Customer Portal	5%
Recovery Response Time	20 minutes or longer for first response to request via Customer Portal	5%

*[Remainder of page intentionally blank]*

## SEEDING SERVICE EXHIBIT

This Seeding Service Exhibit (“**Exhibit**”) is attached to and hereby becomes a part of the Agreement by and between INAP and Customer.

1. **Scope.** This Exhibit sets forth the terms and conditions under which INAP will provide to its disaster recovery-as-a-service and backup-as-a-service Customers certain seeding services described in this Exhibit (the “**Seeding Services**”). The Seeding Services are designed as an optional way to improve the speed of transferring large amounts of data into INAP’s environments by providing an offline means to initiate such data transfer. Capitalized terms not otherwise defined in this Exhibit will have the meaning given to them in the Agreement. In the event of any conflict between the terms and conditions set forth in the Agreement and this Exhibit, the terms and conditions set forth in the Agreement will control.
2. **The Services.** Upon receipt of Customer’s signed copy of this Exhibit, and Customer’s activation of a eligible disaster recovery-as-a-service or backup-as-a-service account with INAP, INAP will ship Customer a package which will contain one or more hard drives (the “**Hard Drives**”, e.g. a DART Box™) via courier service, with return shipping labels and zip ties for securing the Hard Drives -return shipping. The date such DART Box arrives at Customer’s location, as reported by the courier service, is the “**Delivery Date**”. Customer will then be able to download Customer’s data to the Hard Drives, repackage them in the DART Box, and return such DART Box to INAP. Upon the return of the zip tie secured, encrypted and password protected Hard Drives to INAP, in accordance with this Exhibit, and the receipt of Customer’s password used to encrypt the Customer data on the Hard Drives via Customer’s secured ticket to INAP, INAP will download the data from the Hard Drives to Customer’s backup storage in the INAP Cloud Backup Repository, which is a computer system, or set of systems, designed to store customer data in a remote INAP data center facility.
3. **Customer Responsibilities.** Customer is responsible (a) for downloading Customer data into the Hard Drives; (b) for encrypting Customer data downloaded to the Hard Drives by following the directions enclosed with the Hard Drives; (c) for transmitting to INAP the password Customer used during the encryption of the data on the Hard Drives; (d) for transmitting the serial number of the zip ties used to secure the Hard Drives for shipping; (e) for returning the Hard Drives to INAP within forty-five (45) days from Delivery Date; (f) for obtaining Customer’s own Veeam license, and for complying with all obligations thereunder, including payment of all applicable fees; and (g) at all times for ensuring that its Veeam instance is configured completely and correctly. Customer must use the shipping labels and zip ties provided to Customer by INAP in the return shipment of the Hard Drives. INAP will have no liability or other responsibility under this Exhibit for any failure on the part of Customer to perform its obligations as set forth in this Section.
4. **Fees.** Customer agrees that if it fails to return any Hard Drive to INAP within 45 days from Delivery Date, it will be required to pay full replacement costs for such Hard Drives of \$700.00 per each individual Hard Drive, or the cost of replacement of each Hard Drive, as determined by INAP in INAP’s discretion. INAP may charge such amount to Customer’s credit card on file, if any.
5. **Liability.** Customer releases INAP from any and all liability (a) for the corruption, deletion or alteration of Customer’s data sent on the Hard Drives; and (b) related to any theft of, hacking of, or electronic or physical compromise or unauthorized access to, the Hard Drives and/or any data contained on the Hard Drives. EXCEPT AS EXPRESSLY PROVIDED IN THIS ATTACHMENT, INAP SHALL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO CUSTOMER TO MONITOR, SUPERVISE OR OVERSEE THE CONTENTS OF FILES STORED IN CONNECTION WITH THE SERVICES. INAP IS NOT RESPONSIBLE FOR PROVIDING CUSTOMER WITH PASSWORDS OR ENCRYPTION KEYS IN THE EVENT OF A FORGOTTEN PASSWORD OR ENCRYPTION KEY. WITHOUT THE CORRECT PASSWORDS AND ENCRYPTION KEYS, CUSTOMER’S DATA WILL REMAIN ENCRYPTED AND INACCESSIBLE.
6. **Acceptance of Inherent Risk.** Customer understands that anytime sensitive information is shipped, there is risk in the sensitive information being lost, damaged, taken or misappropriated by third parties. INAP thus uses tracked shipping services to transfer the Hard Drives and furthermore insures each DART Box. Customer agrees that under no circumstances shall INAP be held responsible for data lost, damaged, taken or misappropriated during the shipping process by third parties, including carriers or couriers.

*[Remainder of page intentionally blank]*

## COLOCATION SERVICES SCHEDULE

This Colocation Services Schedule is attached and subject to the terms and conditions of the Master Services Agreement by and between INAP and Customer and governs Customer's access to and use of the INAP Facility (as defined in the Ordering Document). All capitalized terms not defined in this Colocation Services Schedule shall have meanings given in the Standard Terms.

### 1. ACCESS AND PERMISSIBLE USE

- 1.1 **Right of Use.** Beginning on the date specified in the relevant Ordering Document, INAP hereby grants Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to access the INAP Facility(s) specified in the relevant Ordering Document(s), and an exclusive right to access, construct, install, operate, repair, maintain, replace and remove Customer's information technology hardware and software ("**Customer Equipment**") at the secured Data Center Suite. The term "**Data Center Suite**" means a collective reference to the secured, private data hall, caged colocation space, closet, and/or cabinet as described in the Ordering Document(s).
- 1.2 **Physical Access.** INAP has installed and will maintain security systems to control access to the Facility and Shared Common Space (as defined herein). INAP shall provide Customer with key cards or other such technology to access the Facility, Shared Common Space, multi-tenant data halls, and the Data Center Suite, as appropriate. All such access shall be recorded and maintained by INAP. Customer will have access to the private Data Center Suite, 24-hours a day, 7-days a week, unless otherwise specified in an Ordering Document. Only Customer shall have access to Customer's Data Center Suite, except, in the case of INAP, for maintenance, to ensure security, with prior express consent (including by electronic mail), upon standing consent (e.g. for Remote Hands Services), and in the case of emergency. Customer is responsible for cost to replace lost access cards.
- 1.3 **Non-Interference.** Customer acknowledges that it is not entitled, and does not have a right, to access any other customer's space or facilities within the Facility. Customer covenants to, at all times, and to cause its employees, agents, contractors, subcontractors, permitted licensees, permitted sub-licensees and permitted colocators ("**Authorized Personnel**") to at all times, take all necessary precautions and actions to ensure that no damage to any other customer's equipment results from any access to or actions taken by Authorized Personnel in the Facility or Data Center Suite.

### 2. EQUIPMENT

- 2.1 **Installation of Customer Equipment.** Customer may prepare plans and specifications that identify the proposed layout that Customer desires to install pursuant to each Ordering Document (the "**Installation Proposal**"). Installation Proposals must be submitted to INAP for review and approval a minimum of fourteen (14) days following the execution of an Ordering Document. Customer acknowledges and agrees that any submitted Installation Proposal shall not be binding upon INAP and that INAP may prepare an installation plan without reference to the Installation Proposal. If Customer does not submit an Installation Proposal to INAP within fourteen (14) days of the execution of an Ordering Document, INAP shall prepare an installation plan for the physical location, layout, and the routing of cabling, wire, conduits, and innerducts pursuant to each Ordering Document. INAP shall itself, or through contractors of its choice, perform construction or installation of risers, conduit, innerduct, cabling, electrical wiring, racks and cabinets, that comprise any part of the INAP Network (as defined in the Network Services Schedule). The costs of installing the Equipment, including (but not limited to) constructing walls or cages around the Data Center Suite, installing racks, cabinets, conduit, cabling, electrical wiring and distribution points, and connecting to distribution points and network systems of other providers, will be borne exclusively by Customer. If INAP and Customer agree that INAP will perform any of the work of installing the Equipment, Customer shall pay INAP for the costs thereof at the rates set forth in the applicable schedule, within thirty (30) days following its receipt of INAP's invoice thereof.
- 2.2 **Customer Equipment.** After installation in accordance with Section 2.1, and except as otherwise limited in Section 2.4, Customer may, in Customer's sole discretion, remove, replace, or otherwise modify Customer Equipment within the Data Center Suite in accordance with the terms and provisions of this Schedule, provided that the Customer Equipment does not extend beyond the Data Center Suite and does not interfere with any third-party equipment. Customer shall not make or cause to be made any improvements or alterations of the INAP Facility. The term "improvement or alterations" means structural alterations within the Data Center Suite. Customer shall not replace or install racks, relocate equipment, splice, split, or re-wire cables or electrical wiring, or install new wiring or partitions or dividers which limit, restrict or otherwise affect air movement or any other INAP Facility operations.
- 2.3 **Ownership.** The Equipment shall remain the sole and exclusive property of Customer with right of replacement or removal at all reasonable times. The Equipment shall remain personal property, notwithstanding that it may be or become attached to, or embedded in, realty. The Equipment shall not be considered a fixture of that real property. INAP shall not tamper with, remove or conceal any identifying plates, tags, or labels identifying Customer's ownership interest in the Equipment. Notwithstanding the foregoing, Customer's failure to pay all amounts due and owing to INAP in accordance with the payment terms set forth in the Agreement and Ordering Document will allow, at INAP's sole discretion, to limit, suspend, or otherwise terminate Customer's access to Customer Equipment for as long as Customer is in breach of its payment obligations.
- 2.4 **Additional Equipment.** After installation in accordance with Section 2.1, Customer may add, remove, or modify Customer Equipment; provided, that Customer may not make improvements or alterations of or within the Data Center Suite.

### 3. CONDITIONED SPACE

- 3.1 **Electrical.** INAP hereby acknowledges and agrees that, consistent with the Service Level Agreement attached hereto as Exhibit B, INAP shall be responsible to provide electrical services to designated points for delivery to Customer located in the Data Center Suite as described in the Ordering Document ("**Customer Power Delivery Point**"). Customer shall pay INAP for electrical power as set forth in the relevant Ordering Document. Customer hereby acknowledges and agrees that INAP shall be solely responsible for providing all electrical services and uninterruptible power supply (UPS) systems required for the Equipment located within the Data Center Suite. INAP shall have no liability to Customer for interruptions of electricity or by third party vendors or any other interruptions beyond INAP's direct control. INAP shall provide A and B redundant power. Customer must request the needed power circuits and Customer will be responsible for all cost of installation of such power circuits.
- 3.2 **Conditioned Space.** INAP shall be responsible for providing air conditioning (cooling and humidity control), fire suppression systems, smoke detection systems, water detection systems, and such other systems as are reasonably necessary and appropriate to ensure the environment within the Data Center Suite is controlled consistent with the Service Level Agreement, and in no case less than industry standards for substantially similar hardened, multi-tenant secure colocation data centers.

### 4. OBLIGATIONS OF INAP

- 4.1 **Standard of Performance.** INAP will provide the Services in a competent and workmanlike manner consistent with accepted industry standards and practices of substantially similar providers of substantially similar services (the "**Industry Standard**") and in accordance with all material requirements set forth in the Ordering Document, as applicable.
- 4.2 **General Maintenance.** INAP shall provide for the general maintenance of the INAP Facility, including inspections and any other reasonable measures designed to maintain the safety and utility of the INAP Facility and the requisite temperature, humidity, security, power, and network access. INAP agrees to maintain the INAP Facility in accordance with all applicable local, state and federal rules and regulations. INAP shall perform maintenance duties including, but not limited to, janitorial services (e.g. cleaning and garbage pick-up) and other commercially reasonable general maintenance of the Facility and Data Center Suite, as applicable.



4.3 **Security.** INAP shall use and maintain reasonable and customary security procedures and security measures, including access log information, consistent with standards established by authorized or recognized standard setting organizations (such as the International Auditing and Assurance Standards Board, Statement on Standards for Attestation Agreement Engagements (SSAE) No. 16 (SOC 1, 2, or 3).

4.4 **Non-Interference.** INAP warrants that, subject to the Terms of Use, neither INAP nor any other Customer of INAP's use of the Facility shall interfere with Customer's use of the Data Center Suite or Customer Equipment. In the event there is interference, INAP shall promptly take remedial measures to cure any failures with that portion of the Customer Equipment affected by the interference, until the interference is corrected. To the extent that INAP enters into similar agreements or allows any third party to use any of the Facility in a fashion similar to those identified in the Agreement, INAP shall subject such third party to a non-interference provision, including an order that the operator of the newly-added equipment be shut down where it is causing interference with Customer Equipment, except for intermittent testing, until there is no interference and the parties acknowledge and agree that inclusion of the foregoing sentence will meet this requirement.

4.5 **Compliance with Law.** INAP's performance pursuant to this Agreement shall comply with all applicable laws and regulations.

## 5. CUSTOMER OBLIGATIONS

5.1 **Representations of Customer.** Customer represents and warrants that (a) it has the legal right and authority, and will continue to own or maintain the legal right and authority, during the Term of this Agreement, to use any Customer intellectual property, Customer data, and Customer Equipment contemplated to be used in connection with the Services; (b) the performance of its obligations and use of the Service(s) (by Customer, its customers and users) will not cause a breach of any agreements with any third parties or unreasonably interfere with any other INAP operations or other INAP customers' use of INAP services and, to its knowledge, will not violate any applicable laws or regulations, (c) all equipment, materials and other tangible items used by Customer in connection with any of the Service(s) will be used in compliance with all applicable manufacturer specifications, and (d) Customer has the legal right and authority to enter into the Agreement based on the signature following Customer's name below.

5.2 **Compliance with Law.** Customer will use the Service(s) only for lawful purposes and in accordance with the Agreement.

5.3 **Authorized Users.** Each party shall maintain a list of Authorized Personnel who are authorized by such party to be granted access, at that party's responsibility, to the INAP Facility, Data Center Suite, Customer Office Workspace, Staging Area, and Receiving Area.

5.4 **Restrictions on Use of Service(s).** Customer shall not, without the prior written consent of INAP (which may be withheld in its sole discretion), resell the Service(s) to any unaffiliated third parties.

5.5 **Non-Interference.** Customer warrants that Customer's use of the Facilities shall not interfere with any of INAP's communications equipment, or that of any other users on or in the Facilities, prior to the Effective Date of this Agreement. In the event there is interference, Customer shall promptly take remedial measures to cure any failures with that portion of its Equipment causing the interference, except for intermittent testing, until the interference is corrected. To the extent that INAP enters into similar agreements, or allows any third-party to use any of the Facilities in a fashion similar to those identified in this Agreement, INAP shall subject such third party to a similar non-interference provision, including an order that the operator of the newly-added equipment be shut down where it is causing interference with Customer's Equipment, except for intermittent testing, until the interference is corrected.

5.6 **Construction.** Customer, its employees, contractors or consultants shall not perform any construction or any physical modifications of the Facilities without first obtaining INAP's consent.

5.7 **Wiring.** All wiring installed by Customer shall conform to the existing wiring method used at the Facilities and shall conform to the National Electrical Code. Customer shall obtain, or require its contractors to obtain, any necessary permits from applicable units of local government.

5.8 **Standards.** Customer shall install and maintain Equipment in accordance with industry standard engineering practices and in accordance with the applicable Data Center Suite's rules and INAP's technical standards and equipment installation guidelines, if any, provided that INAP identifies such Data Center Suite's rules, technical standards, and/or equipment installation guidelines to Customer in writing and in a reasonable time in advance of any schedule work or Equipment installation to allow Customer the opportunity to ensure compliance therewith. The Equipment shall be installed, operated and maintained in conformance with 47 C.F.R § 1.1310, regulating radio frequency radiation exposure levels, and in conformance with all applicable rules and regulations established by the FCC and with all other applicable state or local laws, rules and regulations.

5.9 **Facility Damage.** Customer shall take all commercially reasonable precautions to prevent any damage to the Facilities. Upon completion of any construction, maintenance, repair, replacement or removal, or other work on the Facilities by Customer, its agents and employees, Customer shall at its expense restore the Facilities to their original condition and remove all refuse and debris that may accumulate thereon. In the event Customer fails to repair damage to the Facilities within sixty (60) days from the date of removal of the Equipment, Customer shall fully reimburse INAP for any unrepaired property damages resulting from Customer's use of the Facilities.

5.10 **No Liens.** Customer shall not cause any mechanic or materialmen's liens to be placed on the Facilities as a result of Customer's occupancy of the Facilities.

## 6. TERMINATION

6.1 **Premises Upon Termination.** Upon termination of the Agreement by lapse of time or otherwise, Customer shall remove its Equipment, other telecommunications equipment, and any other personal property, and vacate the Facilities and surrender possession of the Facilities to INAP in as good condition as when Customer took possession, including restoring any painted surfaces disturbed by Customer's occupancy to their original condition, excepting that ordinary wear and damage of the Facilities by the elements is excepted by the Parties. Customer shall pay INAP for all costs and fees required to restore the Facilities to their original condition.

6.2 **Effect of Termination.** Upon the effective date of Termination of this Schedule:

6.2.1 Any and all undisputed payment obligations of Customer under this Agreement for Services, equipment or otherwise due through the date of, or arising from, termination will immediately become due, unless termination is due to INAP's breach of the Agreement.

6.2.2 Customer will remove all of Customer's data, Customer Equipment, and other assets from all of INAP's facilities and equipment during the transition period.

6.3 **Holdover.** Notwithstanding anything to the contrary contained in this Schedule, in the event all of Customer's data and other assets are not removed from all of INAP's facilities and equipment within sixty (60) days following the effective date of Termination of this Schedule, INAP 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 INAP'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 INAP's facilities and equipment are not removed within thirty (30) days after the Notice to Quit, INAP has the right, but not the obligation, at Customer's sole cost and expense, to (a) dispose of all of Customer's assets in INAP'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.

7. LIMITED WARRANTIES AND DISCLAIMER

- 7.1 **Limited Warranty.** INAP warrants that the Colocation Services shall operate in material conformity with the SLA in Exhibit A. Customer's sole and exclusive remedy for any breach of the SLA shall be the service credits specified in Exhibit A.
- 7.2 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE COLOCATION SERVICES PROVIDED UNDER THIS SCHEDULE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INAP EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. INAP MAKES NO WARRANTY AND ASSUMES NO RESPONSIBILITY OR LIABILITY REGARDING ANY THIRD-PARTY HARDWARE, EQUIPMENT OR SERVICE WITH WHICH COLOCATION SERVICES MAY BE REQUIRED TO COMMUNICATE OR OPERATE AND DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS THAT THE COLOCATION SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, SUITABLE FOR CUSTOMER'S INTENDED USE, OR FREE OF MALICIOUS ELEMENTS OR THAT RESULTS WILL BE TIMELY, ACCURATE, OR COMPLETE. THE COLOCATION SERVICES ARE NOT A BACKUP SERVICE FOR STORING CONTENT OR OTHER DATA, AND INAP SHALL HAVE NO LIABILITY REGARDING ANY LOSS OF DATA.
- 7.3 **No Advice.** INAP is not responsible for any losses, claims, or damages resulting from any decisions of Customer or an Authorized User accessing the Services through Customer, made in reliance on the Services, including decisions relating to legal, compliance and/or risk management. Customer agrees that it shall remain responsible to exercise independent judgment at all relevant times in relation to the Services.

*[Remainder of this page left intentionally blank]*

**EXHIBIT A**  
**Service Level Agreement**

This Exhibit A is attached to and incorporated into the Agreement and Colocation Services Schedule. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Agreement and Colocation Services Schedule.

**Overview**

Subject to the terms and conditions of the Agreement and the Colocation Services Schedule, INAP will use commercially reasonable efforts to provide the Colocation Services in accordance with the Service Levels set forth below. The Service Levels and Service Level Credits specified below do not apply to any server not maintained by INAP (including any server available through the Internet) or Customer Provided Equipment (“CPE”), or any issues or disruptions arising therefrom.

**Colocation Power**

If Customer has purchased and installed a redundant power solution (“**Redundant Power**”), INAP will use commercially reasonable efforts to ensure that Customer’s power will be available to Customer’s cage, cabinet, rack or suite 100% of the time except as part of scheduled maintenance or as requested by Customer. If Customer has purchased and installed a non-redundant power solution (“**Non-Redundant Power**”), INAP will use commercially reasonable efforts to ensure that power to Customer’s cage, cabinet, rack or suite will not experience an electrical event exceeding 15 minutes except as part of scheduled maintenance, or as requested by Customer. Such Service Level does not apply or extend past the power receptacle at Customer’s cage, cabinet, rack or suite and does not include Customer’s electrical connections within its cage, cabinet, rack or suite. In the event Colocation Services are not provided in accordance with the Service Level during any month of the Order Term, INAP will provide a credit of 5% of the portion of the monthly recurring Colocation Services Fees (“**MRC**”) specified in the Order for the affected Service for each 30-minute increment of downtime from the point of violation, up to 100% of such portion of the MRC for the affected Service.

Product Category	Performance Objective	Amount of Credit
Redundant Power	100% Availability	5% of MRC of affected Service per 30-minute increment over Performance Objective
Non-Redundant Power	<15 Minutes Unavailability per event	5% of MRC of affected Service per 30-minute increment over Performance Objective

**Environmental**

INAP will use commercially reasonable efforts to ensure that the supply inlet air temperature in INAP’s colocation area (“**Environmental Temperature**”) will remain between 65 and 80 degrees Fahrenheit, and relative humidity (“**Environmental Humidity**”) will remain between 20% and 80%. Such commitment does not apply during scheduled maintenance, or as requested by Customer, or to localized conditions within a particular Customer cage, cabinet, rack or suite. CPE must be properly oriented to cold/hot aisles and otherwise comply with facility installation guidelines to be eligible for Service Level Credits related to temperature or humidity violations. In the event Colocation Services are not provided according to the Service Level during any month of the Order Term, INAP will provide a credit of 5% of the portion of the monthly recurring Colocation Services Fees specified in the applicable Order for the affected Service for each 60-minute increment of downtime from the point of violation as determined by INAP, up to 100% of such portion of the monthly recurring Colocation Services Fees for the affected Service.

Product Category	Performance Objective	Amount of Credit
Environmental Temperature	Between 65 and 80 degrees Fahrenheit	5% of MRC of affected Service per 60-minute increment over Performance Objective
Environmental Humidity	Between 20% and 80% relative humidity	5% of MRC of affected Service per 60-minute increment over Performance Objective

**Physical Security**

INAP will use commercially reasonable efforts to ensure that access to Customer’s Space will be monitored and restricted at all times. In the event of any unauthorized access to such Space during any month of the applicable Order Term, INAP will provide a credit of 25% of the portion of the monthly recurring Colocation Services Fees specified during any month of the Order Term for the affected Service for each such occurrence, up to 100% of such portion of the monthly recurring Colocation Services Fees for the affected Service.

Product Category	Performance Objective	Amount of Credit
Physical Security	No unauthorized access	25% of MRC of affected Service per event

*[Remainder of this page left intentionally blank]*

## Network Services Schedule

This Network Services Schedule is attached and subject to the terms and conditions of the Master Services Agreement by and between INAP and Customer and governs Customer's access to and use of the Software and Network Services. All capitalized terms not defined in this Network Services Schedule shall have meanings given in the Standard Terms.

### 1. SERVICES AND TERM

- 1.1 **Term.** The Term of Network Services shall be the term specified in the relevant Ordering Document.
- 1.2 **Description of Services.** INAP provides the following Network Services:
  - 1.2.1 **Performance IP** – INAP Proprietary IP Route Optimization Service
  - 1.2.2 **Metro Connect** – Ethernet Transport Connection within a metro market
  - 1.2.3 **Network Connect** – Ethernet Transport Connection between Metro markets
  - 1.2.4 **Cloud Connection** – Connection from INAP to Cloud Service Providers
  - 1.2.5 **Carrier Connect** – Connection from INAP Colocation to a Single Carrier
  - 1.2.6 **Customer Portals** – Informational and management web sites for CDN, DNS, and Performance IP.
  - 1.2.7 **High Availability DNS (HA DNS)** – Legacy DNS service
- 1.3 **IP Addresses.** IP addresses are not portable and not assigned for independent administration or distribution. Customer understands that IP assignments are not guaranteed and may be modified as required by INAP and/or Internet Corporation for Assigned Names and Numbers (“ICANN”).
- 1.4 **DNS Policy.** Customer is responsible for the registration of all domain names and the coordination of IP addresses with its registrar.

### 2. ADDITIONAL PERFORMANCE NETWORK SERVICES

- 2.1 **Fixed Port Services.** Fixed port service allows Customer access to INAP's network at a predetermined rate. The rate charged for the fixed port service will not fluctuate with use.
- 2.2 **Burstable Port Services.** Burstable port service allows Customer to access INAP's network at up to the selected handoff and the relevant port's capacity. Actual burstable speed is dependent upon Customer's Access type and Service deployment. Recurring charges are based upon Customer's selected burstable service level and monthly sustained use level at the 95th percentile. The procedure used by INAP for 95th percentile billing is to sample the rate of traffic on an interface once every 5 minutes and record these values for one billing period (usually one month, for example 8640 samples for 30 days). At the end of the billing period, the samples are sorted in order from highest to lowest, the top 5% (ex: 432 samples, or the top 36 hours) is removed, and the value immediately under this (the 8208th sample) is the 95th percentile. This process is done twice (2X), once for inbound traffic and once for outbound, and the larger of the two values is what is billed. If during any month, Customer's use exceeds the selected burstable service level, then Customer's invoice shall be adjusted according to the following two (2) step formula:

$$\begin{aligned} &\text{Burstable Port MRC} \div \text{Service Level Mbps} = \text{Price per Mbps} \\ &(\text{Price per Mbps} + \$5) \times \text{Mbps over Service Level} + \text{Burstable Port MRC} = \text{Month's Burstable Port Charge} \end{aligned}$$

### 3. SERVICE CHANGES

- 3.1 **Upgrades.** Upgrading of services to ones of higher capacity is described as a service upgrade where the original service is not considered terminated. The new service must be of equal or longer term to the original Term to avoid early termination charge except that if the access component has the necessary excess capacity, as provisioned, to accommodate the upgraded bandwidth requirement then the new service's term may be coterminous to the original service. New installation charges and execution of a new Ordering Document apply. Access to INAP's network that is considered Off-net may result in a third party early cancellation charges. Any Off-net upgrade considerations should be reviewed by the INAP representative and Customer.
- 3.2 **Moves.** Customer may move its service location, whereby the original service is not considered terminated. Customer must execute a new Ordering Document for service to be established at the new location for a new term equal to or longer in duration to the original Ordering Document. A move or moves may result in different monthly recurring charges. New installation charges apply. Access to INAP's network that is considered Off-net may result in a third party early cancellation charges. Move considerations should be reviewed by the INAP representative and Customer prior to a move request. Any move request must be provided in writing upon sixty (60) days' notice.
- 3.3 **Port Type Change.** In the event Customer purchases either Fixed or Burstable Port (individually “Port Type”) Service with managed security and no physical access component (third party or direct), Customer may change the Port Type to the other Port Type, at equal bandwidth by executing an Ordering Document (collectively “Port Type Change”). The Monthly Recurring Charges rates for the Port Type Change shall remain unchanged.

### 4. LIMITED WARRANTIES AND DISCLAIMER

- 4.1 **Limited Warranty.** INAP warrants that the Network Services (A) will in all material respects conform to, and the Software will function in substantial conformity with, the applicable Documentation provided by INAP to Customer; (B) shall operate in material conformity with the SLA in Exhibit A; and (C) the Network Services and Documentation as provided by INAP, do not infringe upon any United States copyright, patent, trademark, or trade secret; and the Network Services will meet the terms of the SLA (if applicable) during the Term (the “Network Services Warranty”). Customer's sole and exclusive warranty for any breach of Section 4.1(C) of this Schedule shall be the indemnification provided by INAP as specified in the Infringement Indemnification Section of the Standard Terms.
- 4.2 **Pass-Through Warranties.** To the extent INAP is contractually permitted to do so, INAP shall pass-through to Customer any warranties and other obligations of the original manufacturer or vendor of third party materials, accessories, supplies, parts, services and products or any software licensed by a third party, including the right to indemnification from claims related to those products or services.
- 4.3 **Warranty Remedies.** In the event of any failure by INAP to meet the Network Services Warranty described in the Section 4.1 above, INAP shall, at its option (A) re-perform the Services without additional charge to Customer or (B) refund to Customer the amount paid for such Services or defective parts or materials; provided in either case, INAP is notified in writing via e-mail or otherwise within fifteen (15) days from the date such Services are performed. EXCEPT AS OTHERWISE PROVIDED IN THE SLA, THE FOREGOING SETS FORTH THE EXCLUSIVE REMEDIES AGAINST INAP FOR ANY CLAIM RELATED TO BREACH OF THE WARRANTIES PROVIDED IN THE AGREEMENT OR THIS SCHEDULE. Remedies specified in the SLA shall constitute Customer's primary and exclusive remedy for any failure by INAP to provide the Network Services or Software in compliance with the SLA.

4.4 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE NETWORK SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INAP EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. INAP MAKES NO WARRANTY AND ASSUMES NO RESPONSIBILITY OR LIABILITY REGARDING ANY RELATIONAL DATABASE SERVICE OR SERVERS, OR ANY THIRD-PARTY HARDWARE, EQUIPMENT OR SERVICE WITH WHICH NETWORK SERVICES MAY BE REQUIRED TO COMMUNICATE OR OPERATE, AND DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS THAT THE NETWORK SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, SUITABLE FOR CUSTOMER’S INTENDED USE, OR FREE OF MALICIOUS ELEMENTS OR THAT RESULTS WILL BE TIMELY, ACCURATE, OR COMPLETE. THE NETWORK SERVICES AND SITE ARE NOT A BACKUP SERVICE FOR STORING CONTENT OR OTHER DATA, AND INAP SHALL HAVE NO LIABILITY REGARDING ANY LOSS OF DATA.

*[Remainder of this page left intentionally blank]*

## EXHIBIT A Service Level Agreement

This Exhibit A is attached to and incorporated into the Agreement and Network Services Schedule. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Agreement and Network Services Schedule.

### 1. Additional Terms

The following additional terms (“**Additional Terms**”) apply to all Network Services. In the event of any conflict between these Additional Terms and the terms of the Agreement or Network Services Schedule, these Additional Terms shall control.

#### **Bandwidth**

If Customer exceeds the minimum bandwidth commitment in a given calendar month, Customer shall be charged for the excess bandwidth over the minimum bandwidth commitment, at the usage rate reflected in the Order. Such excess bandwidth is calculated by INAP as the difference between the total usage (determined by INAP using the industry-standard 95<sup>th</sup> percentile calculation method) and the minimum bandwidth commitment.

If Customer purchases 40/100GE Services, dual handoff is required and carries a different SLA. If Customer purchases 10/100mb and 1/10GE, Services will have the option of a Single or Dual handoff.

#### **Downtime**

“**Downtime**” is an instance in which a Service covered by the uptime Service Level is completely unavailable for more than downtime (15) consecutive minutes. INAP will monitor Downtime from all multiple private network access point (“**PNAP**”) locations worldwide. Downtime occurs when all queries fail from all PNAP locations.

#### **Local Loop (MAN)**

“**Local Loop**” is a lit connection provided by a third-party carrier that enables INAP to provide Network Services at a Customer’s facility. The Local Loop may consist of a specific rate limited bandwidth service, as defined in the Order, that provides a physical connection from INAP’s PNAP Meet-Me-Room (“**MMR**”) to the Minimum Point of Entry (“**MPOE**”) at the Customer’s facility.

All Local Loops quotes are estimates until a site survey has been completed. Customer is responsible for obtaining the connection from its MMR to the facility’s MPOE unless stated otherwise in the Order. If the site survey identifies any changes from the information in the Order, INAP will provide such changes to Customer in writing, who shall have the option to cancel the Order within ten (10) business days from receipt of notice if the changes require additional charges. INAP will identify the Local Loop installation interval (the “**FOC date**”) once the Local Loop carrier has completed the site survey.

Customer may request that the Local Loop carrier shorten the turn-up interval. In this case, Customer may purchase an expedite quote from INAP that includes the carrier’s expedite fee and estimated timeframe that the Local Loop will be pulled-in. A carrier does not guarantee that it will meet the requested expedited date, nor is the carrier under any obligation to complete the installation in this timeframe. Similarly, INAP is not responsible if the carrier does not meet the expedite date.

Local Loop IP service, IP service that requires a Local Loop, is not included with the Network Services SLA as provided in Section 4 through 6 below.

#### **Customer Portals**

Customer Portals are not included with the Network Services SLA as provided in Section 4 through Section 6 below.

#### **HA DNS**

HA DNS is not included with the Network Service SLA as provided in Section 4 through Section 6 below.

#### **Credits**

All applicable credits under this Service Level Agreement shall be non-proactive and shall be issued upon Customer request.

### 2. Network Services Installation Intervals

Network Services will be considered activated when INAP notifies Customer in writing (or via email) of the availability of the Network Services.

#### **Port Installation Interval Time for Customer Provisioned Access**

INAP will deliver United States (US) Internet Service ports within the installation intervals set forth below. The interval for measuring the fulfillment of a connectivity Order begins upon Order approval and confirmation within INAP’s Order entry system, and when INAP receives Customer’s valid Design Layout Record (“**DLR**”). Order approval confirmation occurs when (i) INAP has received a signed and complete Order, (ii) INAP has approved capacity, and (iii) INAP has approved Customer’s credit. Changes to an accepted Order and any Customer-initiated delays (including those associated with Customer’s Provisioned Access) will place the installation interval on hold. In the event Customer’s Provisioned Access carrier declares a network capacity constraint, INAP will put a hold on the install interval. When INAP is notified that Customer’s Provisioned Access carrier has completed any network augmentations required to relieve the capacity constraint, INAP will resume tracking the interval installation commitment at the point it was put on hold. The interval concludes with the availability of the IP port and the establishment of billing for all contracted Network Services. The Port Install Interval Commitment applies only to the availability of INAP’s IP port and cross-connect; they do not apply to the Local Loop, CPE or any other Customer-provided infrastructure. The Service Level for port installation interval time for Customer Provisioned Access is determined and calculated on a per-install basis.

Product Category	Port Install Interval Commitment for Customer Provisioned Access	Amount of Credit
10/100Mb and 1/10/40/100GE	17 business days to INAP IP port availability	100% of the Port Installation Fee (NRC)

### **Port Installation Interval Commitment for Ethernet**

INAP delivers Ethernet-based Internet Service connectivity services within the installation intervals set forth below. The interval for measuring the fulfillment of any connectivity Order begins upon Order approval and confirmation within INAP's Order entry system. Order approval confirmation occurs when (i) INAP has received a signed and complete Order, (ii) INAP has approved capacity, and (iii) INAP has approved Customer's credit. Changes to an accepted Order and any Customer-initiated delays (including those associated with Customer Provisioned Access) will place the installation interval on hold. The interval concludes once INAP establishes billing for all Network Services. The Port Installation Interval Commitment only applies to local connectivity services and excludes MAN or remote connection Ethernet services. The 10/100Mb and 1/10/40/100GE Ethernet Installation Interval Commitment applies only to installation of the cross connect circuit to installed cabinets and cages and does not apply to Ethernet orders requiring the installation of new cabinets, cages or other similar equipment. INAP determines and calculates the Service Level for installation interval time for Ethernet on a per-install basis.

Product Category	Port Installation Interval Commitment for Ethernet	Amount of Credit
Local Loop	Provided after third party carrier completes site survey	N/A

### **3. General Network Metrics**

#### **Performance Verification and Measurement Methodologies**

INAP measures latency, packet loss and jitter with active monitoring systems that gather performance statistics on a regular basis using IP-based round trip measurements. INAP performs measurements on an ongoing basis to adequately determine a consistent average performance level for all INAP traffic. The sampling rate for performance measurement is no greater than every five minutes. INAP's general network metric measurements will be based on service point-to-service point tests using any or all of INAP's Internet Service backbone networks. Service level thresholds are based on the average monthly latency, jitter and packet loss as calculated among Internet Service points. INAP will post current and previous month's average measurements to the Customer Portal.

#### **Service Levels and Service Level Credits**

Network Services must be connected to a service point in the region where the latency, packet loss or jitter triggering a failure occurs in order to be eligible for Service Level Credit(s). If the average network availability, latency, packet loss or jitter performance objectives fall below the stated Service Levels within the calendar month, INAP shall provide a Service Level Credit as provided below.

Latency	Performance Objective	Amount of Credit
North America	≤ 45 milliseconds	1-day prorated MRPC related to the affected services
North America to Europe	≤ 115 milliseconds	
North America to Japan	≤ 150 milliseconds	
Europe to Japan	≤ 325 milliseconds	
Europe	≤ 25 milliseconds	

Packet Loss	Performance Objective	Amount of Credit
North America	≤ 0.3%	1-day prorated MRPC (defined below) related to the affected services
North America to Europe	≤ 1.0%	
North America to Japan	≤ 1.0%	
Europe	≤ 2.0%	

Jitter	Performance Objective	Amount of Credit
North America	≤ 0.5 milliseconds	1-day prorated MRPC related to the affected services
North America to Europe	≤ 2.0 milliseconds	
North America to Japan	≤ 5.0 milliseconds	

### **4. IP Service Availability Metrics**

#### **Service Point Problem Resolution Time**

The minimum duration of any event that triggers a violation of the 100% Network Services availability is 10 minutes as represented in the table below. An event is (a) a Customer port down in a single handoff situation, or both ports down in a dual handoff situation, or (b) a period of 100% packet loss from the INAP router to the general Internet. INAP will use commercially reasonable efforts to ensure that eligible events are isolated to an area within the service point and affecting Customer's specific resource will be resolved as soon as practical. The IP access port servicing Customer at the INAP service point border router will serve as the demarcation for Network Services availability coverage. INAP will apply any Service Level Credit under this section to Customer's next monthly invoice. INAP determines and calculates the service point problem resolution time Service Level on a per-occurrence basis, commencing upon the earlier of the customer submitting a service request to the NOC. Customer's Service Level Credit is a prorated amount derived from the length of the Service event and Customer's Monthly Recurring Port Charge ("MRPC") for the affected Service.

Length of Event		Amount of Credit for Dual handoff
Less than 10 minutes	None	None
10 minutes to 30 minutes	2 days prorated MRPC	4 days prorated MRPC
31 minutes to 60 minutes	4 days prorated MRPC	8 days prorated MRPC
61 minutes to 6 hours	6 days prorated MRPC	12 days prorated MRPC

More than 6 hours	2 weeks prorated MRPC	4 weeks prorated MRPC
Second qualifying event in same calendar month	Two times the amount listed above for the respective second qualifying event	Two times the amount listed above for the respective second qualifying event

#### **Request for Reasons for Outage**

INAP uses commercially reasonable efforts to ensure that Customers will be sent a written Reason for Outage (“RFO”) on events isolated to INAP’s network as quickly as possible, from the date of Customer’s request. Requests must be made within 60 days of the event. **Denial of Service Response Guarantee**

INAP uses commercially reasonable efforts to respond to Customer’s request for assistance with a DOS attack and begin the diagnostic procedures as soon as reasonably practical and, in any event, in less than ten (10) minutes from the submission of a report of DOS activity to the NOC. Customer must report suspected DOS attacks to the NOC using the Security Request/DOS Attack Report link on the INAP customer portal. Qualifying DOS attacks must be directed toward Customer’s specific resources and result in a demonstrable abnormal increase in bandwidth utilization for the specific port. This guarantee does not include any other type of security event including, but not limited to, attacks directed toward the INAP service point in general. INAP determines and calculates Service Level Credits for INAP’s DOS Response Service Level on a per-occurrence basis, commencing upon a Customer submitting a service request to the NOC. Customer’s Service Level Credit is a prorated amount derived from the length of response time and Customer’s MRPC for the affected service. Customer must request Service Level Credits via the Site within 30 days of the event for which the credit is being requested.

Response Time	Amount of Credit
Less than 10 minutes	None
Greater than 10 minutes	1-day prorated MRPC

#### **5. DNS Services Availability Metrics**

##### **DNS High Availability Problem Resolution Time**

INAP uses commercially reasonable efforts to ensure that INAP’s Managed DNS Services (defined in the Order) are available at all times. A qualifying event of the DNS services means a complete simultaneous failure of all redundant Managed DNS Servers. INAP will apply any Service Level Credit to Customer’s next monthly invoice. Customer’s Services must be using INAP’s Managed DNS servers for primary DNS services in order to be eligible for Service Level Credit(s). INAP determines and calculates DNS High Availability Problem Resolution Time Service Level Credits on a per-occurrence basis, commencing upon the NOC’s initial awareness of an event and ending when the Service has been restored, as measured by monitoring system logs. Where a Service event is due to a qualified High Availability DNS event, Service Level Credits will only be given for the DNS event. Customer’s Service Level Credit is a prorated amount derived from the length of the service event and the Customer’s Monthly Recurring Primary DNS Charge (“MRPDC”).

Product Category	Performance Objective	Amount of Credit
Managed DNS	100% Availability	5% of MRPDC for each 1 minute

#### **6. Additional Network Services**

##### **Managed Router Services – INAP Provided Equipment (“MRS”)**

INAP will provide and manage a router specified in the Order. This Service requires Customer to have an Out-Of-Band (“OOB”) circuit installed that will be connected to the router. Customer will allow INAP to console into router to assist in initial connectivity and ongoing management of the router. No working OOB should void the SLA.

##### **Managed Router Services-Customer Provided Equipment (“MCPE”)**

INAP will manage a Customer provided router specified in the Order. This Service requires Customer to have an OOB circuit installed that will be connected to the router. Customer will allow INAP to console into router to assist in initial connectivity and ongoing management of the router. No working OOB should void the SLA.

##### **MRS/MCPE Installation Intervals**

INAP delivers MRS/MCPE Services connectivity within the installation intervals set forth below. The interval for measuring the fulfillment of any connectivity Order begins upon Order approval and confirmation within INAP’s Order entry system. Order approval confirmation occurs when (i) INAP has received a signed and complete Order and (ii) INAP has approved Customer’s credit. Changes to an accepted Order and any Customer-initiated delays (including those associated with Out-Of-Band Access) will place the installation interval on hold. The interval concludes once INAP establishes billing for all MRS/MCPE Services.

Product Category	Install Interval Commitment for Services	Amount of Credit
MRS	Router shipped within 20 days of Order approval confirmation Service installed within 5 days of OOB circuit in place	100% of the Port Installation Fee (NRC)
MCPE	Service installed within 5 days of OOB circuit in place	100% of the Port Installation Fee (NRC)

##### **MRS/MCPE Hardware Replacement Metrics**

“Standard Hardware” means common hardware platforms stocked and supported by INAP and not specifically identified as Custom Hardware on an Order. INAP will use commercially reasonable efforts to replace Standard Hardware within 48 hours of problem identification by an INAP support engineer, at no additional cost to Customer. In the event MRS Services are not provided in accordance with the foregoing Service Level during any month of the Order Term, INAP will provide a credit of 5% of the portion of the MRC specified in the Order for each affected device for each 48-hour increment of downtime beyond the initial one hour from problem identification, up to 100% of such portion of the MRC for the affected device.



“**Custom Hardware**” means hardware platforms that are not commonly stocked and supported by INAP and specifically identified as Custom Hardware on an Order. INAP will use commercially reasonable efforts to replace Custom Hardware within 48 hours of problem identification by an INAP support engineer, at no additional cost to Customer. In the event MRS Services are not provided in accordance with the foregoing Service Level during any month of the Order Term, INAP will provide a credit of 5% of the portion of the MRC specified in the Order for each affected device for each 48-hour increment of downtime beyond the initial one hour from problem identification, up to 100% of such portion of the MRC for the affected device.

Product Category	Performance Objective	Amount of Credit
Standard Hardware	Replace failed Standard Hardware within 48 hours of problem identification*	5% of MRC for each 48 hour increment of downtime beyond the initial one hour from problem identification, up to 100% of the MRC for the affected device
Custom Hardware	Replace failed custom hardware within 48 hours of problem identification*	5% of the MRC for each 48 hour increment of downtime beyond the initial one hour from problem identification, up to 100% of the MRC for the affected device.

\* If equipment is located in North America. For equipment located in EMEA and APAC the performance objective is to replace within 96 hours of problem identification.

#### **MCPE Hardware Replacement Metrics**

INAP does not replace Customer provided routers.