



## Master Services Agreement

**THIS MASTER SERVICES AGREEMENT** (this “**Agreement**”) is entered into by and between Wow Technologies, Inc., a Washington corporation (“**Wowrack**”) and Customer (“**Customer**”) identified in any Order (as defined below) referencing this Agreement, and provides as follows:

- 1. Agreement and Online “Click to Accept” Acceptance.** This Agreement includes and incorporates by reference all of the following: (1) any Wow Technologies, Inc. Service Contract (a “**Service Contract**”); (2) any separate written or online purchase order (each, a “**Purchase Order**”); (3) any mutual exchange of e-mails confirming an order of Products or Services (an “**E-Mail Exchange**”); (4) any privacy policy included herein or posted on [www.wowrack.com](http://www.wowrack.com) (the “**Privacy Policy**”); (5) any usage policy included herein or posted on [www.wowrack.com](http://www.wowrack.com) (the “**Usage Policy**”); (6) any rules and regulations all rules and regulations for any data center usage imposed by Wowrack or any data center owner in which the Infrastructure (as defined below) is located or posted on [www.wowrack.com](http://www.wowrack.com) (the “**Rules and Regulations**”); (7) any service level agreement incorporated herein or posted on [www.wowrack.com](http://www.wowrack.com) (the “**SLA**”); (8) any other policies, rules or regulations as Wowrack may impose from time to time; and (9) all Exhibits to this Agreement. If Customer is considering this Agreement and the purchase of Wowrack Products and Services online, then by clicking the “accept” button for this Agreement, Customer agrees to be bound by the terms and conditions of this Agreement. If Customer does not agree with the terms and conditions of this Agreement, Customer must select the “decline” button and Customer may not use the Products or Services.
- 2. Applicability and Orders.** This Agreement applies to any provisioning of Products or Services (as defined below) by Wowrack, whether pursuant to a Service Contract, Purchase Order, or E-Mail Exchange. For purposes of this Agreement, all Service Contracts, Purchase Orders, or E-Mail Exchanges entered into from time to time by Customer and Wowrack are herein referred to collectively as the “**Orders**”. Each Order shall be provided pursuant to Wowrack’s standard service offering for such Product or Service, as shown on [www.wowrack.com](http://www.wowrack.com). In the event of any conflict between this Agreement and the Orders, the terms of the Orders shall control. All Orders must be in writing and signed by Customer and Wowrack, except that E-Mail Exchanges shall constitute an Order for purposes of this Agreement. Under no circumstances will any Order survive the expiration or earlier termination of this Agreement.
- 3. Products and Services.** Wowrack agrees to provide the products and/or services described in this Agreement and in the Orders (the “**Products**” and “**Services**”).
- 4. Term.** This Agreement shall have a term (the “**Term**”) that commences on the date of the first Order between Wowrack and Customer (the “**Effective Date**”) and will terminate on the date the last Order between Wowrack and Customer expires or is terminated, unless this Agreement is terminated earlier as set forth herein. Unless otherwise stated therein, each Order will have an initial term of one (1) year commencing on the date of the Order. All Orders will renew automatically for additional terms equal in length to the initial term, unless either party notifies the other party in writing at least ninety (90) days prior to the end of the then-current term that it does not desire for the Order to be automatically renewed, in which event the Order will terminate at the end of such then-current term. Orders for Products and Services that are ancillary to an existing Order (as determined by Wowrack in its sole discretion) that has a different initial or renewal term shall have an initial or renewal term that is the same as the then-existing remaining initial term or renewal term of the existing Order. Notwithstanding anything herein to the contrary, no Order will survive the termination of this Agreement.
- 5. Charges and Payment.** Customer shall pay all Monthly Recurring Charges described in the Orders monthly in advance on the first business day of each calendar month of the Term. Customer will pay all Non-Recurring Charges described in the Orders within thirty (30) days of the date of the invoice for such Non-Recurring Charges. The Monthly Recurring Charges, the Non-Recurring Charges, any other Charges for Products or Services, and any other charges that become due under this Agreement or any Order are sometimes hereinafter referred to as the “**Charges**”. Charges for any partial month shall be prorated. Charges for any renewal term shall be the greater of (a) the then current Charges described in the applicable Order; or (b) Wowrack’s then current standard Charges. If the Charge for a Product or Service is not



specifically set forth in an Order, then the Charges shall be at Wowrack's then-current standard rates for such Product or Service. Each Order may specify the date for which Monthly Recurring Charges under such Order will commence, and if no date is specified, the Monthly Recurring Charges shall commence immediately. Unless otherwise specified in an Order, Wowrack may include Taxes in its charges, but Customer is responsible for paying Taxes on Products and Services.

**6. Late Fees, Interest and Disputes.** If any amount due under this Agreement is not received by its respective due date, in addition to its other available remedies, Wowrack may impose a late charge equal to five percent (5%) of the amount due. In addition, any past due amounts will accrue interest at the lesser of one and a half percent (1.5%) per month or the highest rate permitted by applicable law. If Customer reasonably disputes a Charge, Customer agrees to pay the undisputed balance to Wowrack according to the terms outlined in this Section. All disputes or requests for billing adjustments must be submitted in writing by the due date and submitted with payment of undisputed amounts due in order to be considered a valid dispute. Customer is responsible for paying all Charges even if such Charges are the result of an unauthorized use of the Products or Services by an employee or customer of Customer, any person to whom Customer has given access to the Services, any person who gains access to the Services as a result of Customer's failure to properly secure the Services, or any other third party acting by or under Customer. In the event Customer disputes a Charge, and the dispute is resolved against Customer, then Customer will pay the disputed amount together with interest at the rate set forth above from the date the Charge was originally due.

**7. Wowrack Reserved Rights.** Wowrack reserves the right to add, modify or eliminate Products or Services at any time. Wowrack also reserves the right to cause any Products or Services to be delivered or performed by third party providers. Wowrack will endeavor to invoice Customer on a monthly basis, but reserves the right to bill at such later time or times as may be reasonably necessary in the discretion of Wowrack. Wowrack reserves the right to change its standard Charges at any time. Wowrack reserves the right to make changes to its policies, the Usage Policy, and the Rules and Regulations from time to time at its reasonable discretion. Changes to the Agreement will be effective as to Customer upon notice to Customer, or upon posting on [www.wowrack.com](http://www.wowrack.com) or at the data center where the Infrastructure is located.

**8. Network and Infrastructure.** As used herein, "**Network**" shall mean all Wowrack network infrastructure, including network hardware such as routers, firewalls, switches and cabling that is essential to the provisioning of Services hereunder. The space in which the Products and Services are offered, together with all infrastructure and building systems, and power capacity and systems relating thereto are collectively hereinafter referred to as the "**Infrastructure**". Wowrack reserves the right to expand, contract or change the definitions of Network or Infrastructure at any time during the term of this Agreement. If specified in an Order or if access is a standard part of a Services offering, subject to this Agreement, Customer will have key card access to the Network and Infrastructure twenty-four (24) hours per day, three hundred sixty-five (365) days per year. Customer shall not use the Network and Infrastructure for any other purpose. Customer shall not use the Network or Infrastructure, or allow access thereto or use thereof, except in accordance with the terms of this Agreement. Neither Customer nor its employees, agents, contractors or invitees (each, a "**Customer Authorized Person**") shall damage any part of the Network and Infrastructure or any property or equipment located in or about the Network and Infrastructure, or allow any debris or supplies to be left in or about the Network and Infrastructure. Customer shall not maintain or permit any nuisances with respect to the Network and Infrastructure. Neither Customer nor its Customer Authorized Persons shall permit any explosive, toxic, flammable or combustible material or any hazardous or toxic materials, as defined under applicable law, to be located in or about the Network and Infrastructure, except in compliance with all applicable law. Customer is responsible for all costs associated with the clean up or remediation of such materials.

**9. Domain Names.** If Customer registers, renews, or transfers a domain name through Wowrack, Wowrack will submit the request to its domain name services provider (the "**Registrar**") on behalf of Customer. Wowrack's sole responsibility is to submit the request to the Registrar. Wowrack is not responsible for any errors, omissions, or failures of the Registrar. Customer is responsible for the ongoing relationship with the Registrar.

**10. "As Is" Network and Infrastructure and No Representations.** The use of the Network or Infrastructure, and/or the installation of Customer Equipment (as defined below) by Customer or by Wowrack at Customer's request, at the Network



and Infrastructure shall be conclusive evidence that Customer accepts the Network and Infrastructure “as is and with all faults”, and that the Network and Infrastructure is suitable for the use intended by Customer and is in satisfactory condition. Customer acknowledges that no representation has been made by Wowrack as to the fitness of the Network and Infrastructure for Customer’s intended purpose. Customer acknowledges that Wowrack has made no warranties, whether express, implied, oral, or written, relating to this Agreement, including but not limited to, any implied warranty of merchantability or fitness for a particular purpose, except as specifically set forth herein. All Services are provided or performed on an “as is”, “as available” basis, and Customer’s use of the Network, Infrastructure, Products and Services is solely at its own risk.

**11. Compliance with Laws and Agreement.** Customer represents and warrants to Wowrack that Customer is and will remain at all times during the Term in full compliance with all applicable law. Customer acknowledges that Wowrack reserves the right to cooperate at all times during the term of this Agreement with law enforcement or other governmental agencies, that Wowrack has no obligation to inform Customer of any ongoing subpoenas or other investigative inquiries of such agencies, and that Wowrack has no liability to Customer for any such cooperation or such failure to inform Customer. At all times during the Term, Customer agrees to comply with this Agreement.

**12. Customer Authorized Persons.** Customer assumes full responsibility and liability for all acts or omissions of Customer’s Authorized Persons while using or physically located in or around the Network and Infrastructure. Prior to any access to the Network and Infrastructure by a Customer Authorized Person, Customer shall deliver a written request to Wowrack, specifying: (a) the names and addresses of each proposed Customer Authorized Person; (b) a summary of the qualifications and experience of each Customer Authorized Person; (c) a description of the services to be performed by such Customer Authorized Person; (d) the planned dates and times of such activities; and (e) that Customer has provided each Customer Authorized Person with a copy of Wowrack’s policies, the Usage Policy, and the Rules and Regulations. Customer shall cause each Customer Authorized Person to agree to comply with such policies, said Usage Policy and Rules and Regulations. No Customer Authorized Person can bring any other individuals into a Wowrack data center (each a “**Data Center**”), or otherwise in or around the Network or the Infrastructure, without Wowrack’s consent. Customer may provide Wowrack with a list of Customer Authorized Persons for pre-approval. Wowrack shall have the right to disapprove of or restrict any Customer Approved Person’s access to the Network and Infrastructure at any time and for any reason.

**13. No Liens.** Customer shall pay all costs and charges: (a) for work done by Customer or any Customer Authorized Person on or about the Network and Infrastructure; and (b) for all materials furnished by Customer for or in connection with such work. Customer shall keep any Data Center and the Network and Infrastructure free and clear from all mechanics’ liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work done by or on behalf of Customer or any Customer Authorized Person, and shall indemnify Wowrack against and hold Wowrack, Wowrack’s landlord, and any mortgagee or holder of a deed of trust or similar encumbrance on the Network and Infrastructure or Data Center, harmless from any loss or damage associated therewith. If any such lien is filed at any time against the Network and Infrastructure or Data Center, or any part thereof, Customer will immediately give Wowrack notice of such occurrence and shall remove, discharge or bond any such lien within thirty (30) days of its filing. If Customer fails to remove, discharge or bond at 150% of such lien within such time period (or such shorter period as may be required by a mortgagee or holder of a deed of trust or similar encumbrance on the Network and Infrastructure or Data Center, notice of which shorter period is given to Customer), Wowrack shall have the right, but not the obligation, to remove, discharge or bond such lien at Customer’s cost, and Customer shall reimburse Wowrack for such costs upon invoice therefor. Nothing contained in this Agreement shall be deemed to constitute a consent or agreement of Wowrack to subject the Network and Infrastructure or any Data Center to liability under any mechanics’ or other lien law. Customer expressly disclaims any right, title, or interest in or to any of Wowrack’s equipment or property, or in that of any of Wowrack’s affiliates, customers, agents or customers, whether located in the Data Center, within the Network and Infrastructure or elsewhere.

**14. Carrier Neutral Provisions.** Wowrack has already contracted with a carrier or carriers for the provision of connectivity to the Network and Infrastructure. This Agreement do not always include the provision of local access. If Customer’s desire to have separate network agreements with telecommunications carriers, Customer must enter into



separate agreements with such providers (provided, however, that each such carrier must also negotiate access to the Network and Infrastructure with Wowrack and the owner of the Data Center. If Customer desires to interconnect or cross-connect with any other user of the Data Center, the Network and Infrastructure, Customer must enter into separate agreements with such user. All such agreements must be subject to this Agreement, and all connections with such carriers or users must be made by Wowrack. Wowrack reserves the right to charge Customer for Wowrack's actual, documented reasonable costs incurred in facilitating any such connection. All such connection services shall be provided under the direction of Wowrack's personnel. Unless otherwise specified in the Orders, Wowrack reserves the right to prohibit certain carriers from entering the Network and Infrastructure, or to change carriers or remove carriers from the Network and Infrastructure, in its sole discretion.

**15. Taxes.** Customer will pay all taxes, governmental fees, and third-party charges related to the ownership and operation of Customer Equipment, Customer's usage of the Network and Infrastructure, and the activities of Customer at the Network and Infrastructure. Without limiting the foregoing, Customer is responsible for timely paying in full all sales, use, transfer, privilege, excise, and all other taxes and duties which are levied, assessed or imposed by reason of the performance by Wowrack or Customer under this Agreement or by Customer with respect to its operations and use of the Data Center, Network and Infrastructure and Customer Equipment ("**Taxes**"); but the term "Taxes" excludes any income taxes on Wowrack's profits.

**16. Wowrack Indemnification.** Wowrack will indemnify defend and hold harmless Customer and its affiliates, owners, officers, directors, employees, contractors and agents (collectively, the "**Customer Parties**") from any and all third party actions, liability, damages, costs and expenses (including reasonable attorneys' fees and expenses) arising from personal injury or property damage resulting solely from the gross negligence or willful misconduct of Wowrack. Customer hereby waives and releases all claims against Wowrack, its agents, employees, officers, directors, affiliates, and owners (collectively, the "**Wowrack Parties**"), and agrees that the Wowrack Parties shall not be liable for injury to person or damage to property sustained by Customer or any Customer Parties occurring in or about the Data Center, the Network and Infrastructure or otherwise relating to this Agreement, except such injury or damage resulting solely from the gross negligence or willful misconduct by Wowrack.

**17. Customer Indemnification.** Customer will indemnify defend and hold harmless the Wowrack Parties, as well as Wowrack's landlord and Wowrack's landlord's lender, from any and all third party actions, liability, damages, costs and expenses (including reasonable attorneys' fees and expenses) arising from or relating to (a) personal injury or property damage resulting from any act of Customer, any Customer Party, or any other person accessing the Data Center, Network and Infrastructure due to the actions of Customer; (b) any claim by Customer, Customer Parties or any of Customer's Authorized Persons other than a claim based solely on the gross negligence or willful misconduct of Wowrack; (c) any claim by a customer or end-user of Customer relating to, or arising out of, Customer's or any of its customers' services or the Services provided under this Agreement (including claims relating to interruptions, suspensions, failures, defects, delays, impairments or inadequacies in any of the aforementioned services, including the Services from Wowrack); (d) any claim that Customer has failed to fulfill a contractual obligation with a third party; and (e) any claim resulting from Customer's failure to obtain any consents required to be obtained by Customer hereunder; and (f) any claim by a party claiming by through or under Customer or any Customer Authorized Person to the extent that such claim, if sustained, would result in any greater obligation or liability of Wowrack to such party than Wowrack has undertaken to Customer under this Agreement.

**18. Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOSS OF BUSINESS, LOSS OF REVENUES, LOSS OF DATA, SERVICE INTERRUPTION, OR TRANSMISSION PROBLEMS OR CORRUPTION OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY OTHER TYPE OF DAMAGES OTHER THAN DIRECT DAMAGES (AND WITH DIRECT DAMAGES, ONLY TO THE EXTENT PERMITTED IN THIS AGREEMENT). NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, WOWRACK'S TOTAL LIABILITY IN THE AGGREGATE (INCLUDING ATTORNEYS' FEES) ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT WILL BE LIMITED TO, AND WILL NOT EXCEED, THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR RECURRING CHARGES FOR THE MONTH



IMMEDIATELY PRIOR TO THE MONTH IN WHICH THE FIRST CLAIM BROUGHT BY CUSTOMER AGAINST WOWRACK RELATING TO THIS AGREEMENT AROSE. AS A FURTHER LIMITATION, WOWRACK'S MAXIMUM LIABILITY RELATING TO ANY SERVICE THAT HAS A NON-RECURRING CHARGE WILL EQUAL THE AMOUNT OF THE NON-RECURRING CHARGE FOR SUCH SERVICE ON THE OCCASION GIVING RISE TO THE CLAIM. THE LIMITATIONS SET FORTH IN THIS SECTION APPLY TO ANY CLAIMS AND CAUSES OF ACTION WHATSOEVER, REGARDLESS OF THE FORMS OF THE ACTIONS, AND WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY.

**19. Service Level Terms.** Wowrack guarantees that the Services will be provided in accordance with the Wowrack's then-current SLA, as the same is posted on [www.wowrack.com](http://www.wowrack.com) from time to time.

**20. Insurance.** Unless Wowrack otherwise agrees, Customer agrees to maintain, at Customer's expense (a) Commercial General Liability Insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, death and property damage, which policy will include contractual liability coverage related to this Agreement; and (b) Workers' Compensation and employer's liability insurance in an amount not less than that prescribed by applicable law. Prior to any use of the Network and Infrastructure or delivery of Customer Equipment to the Network and Infrastructure, Customer will furnish Wowrack with certificates of insurance that evidence the minimum levels of insurance set forth herein and which name Wowrack and the owner of the Data Center (and any other party specified by Wowrack) as an additional insureds. In addition, Customer will cause its insurance company to notify Wowrack of any non-renewal, cancellation, reduction in policy limit or other material change in Customer's coverage at least forty-five (45) days prior to such change in coverage. Customer shall also provide evidence of such insurance covering each Customer Authorized Person before such Customer Authorized Person is allowed into the Network and Infrastructure. Wowrack will not have any obligation to insure any property belonging to or in the possession of Customer. Customer will ensure that each insurance policy of Customer required under this Agreement, will provide that the underwriters waive all rights of subrogation against the Wowrack Parties in connection with any liability or damage covered by Customer's insurance policies.

**21. Confidentiality.** Wowrack and Customer agree that if either party (the "**Disclosing Party**") provides confidential or proprietary information ("**Confidential Information**") to the other party (the "**Recipient Party**"), such Confidential Information shall be held in confidence, and the Recipient Party shall afford Confidential Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall be not less than reasonable care) in order to avoid disclosure to or unauthorized use by any third party. This Agreement, including its existence and all of the terms, conditions and provisions, constitutes Confidential Information. In addition, notwithstanding anything in this Agreement to the contrary, (i) this Agreement will be deemed Confidential Information of each party; and (ii) the design of the Network and Infrastructure, the Products and Services provided and equipment used at the Network and Infrastructure and the configuration, interconnection, switching and routing of cables, equipment, networks and services at the Network and Infrastructure will be considered Confidential Information of Wowrack. All information disclosed by either party to the other in connection with or pursuant to this Agreement shall also be deemed to be Confidential Information, provided that written information is clearly marked in a conspicuous place as confidential or proprietary, and verbal information is indicated as being confidential or proprietary when given or promptly confirmed in writing as such thereafter. All Confidential Information, unless otherwise specified in writing, shall remain the property of the Disclosing Party, shall be used by the Recipient Party only for its intended purpose. All Confidential Information, including all copies thereof, shall be returned to the Disclosing Party or destroyed after the Recipient Party's need for it has expired or upon the request of the Disclosing Party. Confidential Information shall not be reproduced except to the extent necessary to accomplish the purpose and intent of this Agreement, or as otherwise may be permitted in writing by the Disclosing Party. The foregoing provisions of this Section shall not apply to any Confidential Information which: (i) becomes publicly available other than through disclosure by the Recipient Party; (ii) is required to be disclosed by any governmental authority, applicable law or by court order; (iii) is independently developed by the Recipient Party; (iv) becomes available to the Recipient Party without restriction from a third party; or (v) becomes relevant to the settlement of any dispute or enforcement of either party's rights under this Agreement in accordance with its terms and conditions. If any Confidential Information is required to be disclosed pursuant to this Section, the party required to make such disclosure shall immediately inform the other party of the requirements of such disclosure and take all reasonable protective measures to preserve the confidentiality of such Confidential Information





as fully as possible in the context of such permitted disclosure. Each party is responsible for ensuring that any Confidential Information of the other party that the first party discloses is kept confidential by the person receiving the disclosure. Notwithstanding the foregoing, (i) Wowrack may issue a press release announcing Customer's entry into the Network and Infrastructure without obtaining Customer's consent; and (ii) either party may publicly refer to the other party, orally and in writing, as a customer or vendor of services of or to the other party, as the case may be, without obtaining consent from such party. Notwithstanding the foregoing, either party may disclose Confidential Information to its employees or agents, its legal, financial, and accounting advisors, and to its lenders with a need to know such Confidential Information, provided that the Disclosing Party notifies any recipient of its confidential and proprietary nature.

**22. Default, Remedies and Termination.** It shall be a default under this Agreement if a party fails to perform its obligations under this Agreement, and then fails to cure such failure within ten (10) days (for monetary defaults) or thirty (30) days (for non-monetary defaults). Upon a default by Customer, Wowrack shall have all rights and remedies under applicable law or in equity, including, without limitation, the following: (a) the right to suspend or refuse to continue to provide any Products or Services without any liability to Customer for loss or damage until the default is cured in full; (b) the right to terminate any Order or this Agreement by notice to Customer; (c) the right to demand, and receive from Customer upon demand, the entire Charges due Wowrack for the unexpired Term, together with all costs, attorney's fees, and damages which may have been suffered or incurred by Wowrack as a result of Customer's default. In addition, Wowrack may terminate this Agreement and any Orders with Customer, effective immediately upon notice, if Customer becomes the subject of a bankruptcy proceeding or other insolvency proceeding. Upon any termination, Customer will remain liable to Wowrack for any accrued amounts owed prior to the effective date of termination. Customer expressly waives all legal notice to vacate the Network and Infrastructure after expiration of cure period.

**23. Effect of Termination.** Upon expiration or termination of an Order (or a portion thereof), with respect to the Network and Infrastructure covered by that Order, the license and all other rights of Customer with respect to such Network and Infrastructure, and the right to receive Services associated with such Network and Infrastructure, will terminate, and Customer will, subject to the terms of this Agreement, immediately remove all of Customer Equipment and other property belonging to Customer or Customer's Authorized Persons, but excluding any wiring, cable or other equipment or property owned, leased or licensed by Wowrack, from such Network and Infrastructure, no later than the effective date of such termination. Customer shall surrender the Network and Infrastructure in good condition, reasonable wear and tear excepted. If Customer fails to remove any such property by the effective date of termination, Wowrack will be entitled to pursue all available legal remedies against Customer, including one or more of the following remedies: immediately removing any or all such property and storing it at Customer's expense at an on-site or off-site location, shipping such property to Customer at Customer's expense, or liquidating such property in any commercially reasonable manner and charging Customer for all costs associated with the liquidation. In the event of any such liquidation, Wowrack shall not be responsible for data privacy or security associated with any content located on Customer's property. If Customer has not removed its equipment, due to no fault of Wowrack, by such 30<sup>th</sup> day following such expiration or termination, Customer shall be liable for continued Charges at the Network and Infrastructure, prorated to the date of removal. Upon expiration or termination of this Agreement, Customer shall promptly discontinue use of the Services and relinquish use of the IP addresses and server names assigned to Customer by Wowrack in connection with the Services, including pointing any DNS for Customer's domain name(s) away from Wowrack.

**24. Wowrack's Security Interest.** In addition to any other remedies available under this Agreement or applicable law, Customer grants Wowrack a security interest in all Equipment now or hereafter located at the Network and Infrastructure, to secure payment of all amounts and satisfaction of all obligations due under this Agreement. Furthermore, effective upon Customer's failure to comply with this Agreement, Customer authorizes Wowrack (in addition to any other remedies available under this Agreement or applicable law) to file one or more financing statements, and Customer will sign such financing statements, and take such other actions as Wowrack reasonably requests, to perfect or continue such security interest.



**25. Representations.** Each party represents, warrants and covenants that as of the Effective Date, and as of the date of commencement of each Service to be provided hereunder, that: (a) it has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement; (b) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; (c) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body of any country or any contract or other agreement the party is subject to; (d) it is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the applicable law of its state of incorporation; (e) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement; (f) its execution of and performance of this Agreement will not result in a breach of any agreement it may have with third parties or a violation of applicable law; (g) it is qualified to do business in all jurisdictions where such qualification is required by applicable law; and (h) it shall perform its obligations under this Agreement and use the Network and Infrastructure in a manner consistent with applicable law, and shall not use, or knowingly permit the Network and Infrastructure to be used, for any illegal purpose or in any other unlawful manner. Customer represents and warrants that it is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons.

**26. Provisions Specific to Colocation Customers.** If Customer uses Wowrack's colocation Services and Products, then the following additional terms and conditions shall apply:

a. Wowrack, either directly or through its underlying provider, hereby grants a license to Customer to use the Infrastructure for the purpose of allowing Customer to install and operate its telecommunications equipment (the "**Customer Equipment**") in the Infrastructure (the "**Colocation Services**"). The Colocation Services shall be provided at locations to be determined by Wowrack.

b. Customer shall use the Network, Infrastructure and any Services for the sole purpose of installing, connecting, and operating Customer's network and computer equipment, wiring and cross-connects (whether owned, leased, licensed or otherwise obtained for use by Customer) located within the Licensed Racks. Before installation, Customer must submit to Wowrack, for its approval (which approval shall not be unreasonably withheld or delayed), all engineering plans and specifications pertaining to Customer Equipment to be installed.

c. Except as otherwise specified in the Orders, Customer will be responsible at its own expense, for configuring, providing, placing, installing, upgrading, adding, maintaining, repairing, and operating Customer Equipment, subject to this Agreement and the Orders. Customer shall maintain and keep in good order Customer Equipment. Customer has obtained or will obtain all necessary consents, licenses, permits and other approvals, both governmental and private, as may be necessary to permit Customer to perform its obligations under this Section. Customer shall furnish to Wowrack for its advance approval all engineering plans and specifications pertaining to Customer Equipment to be installed in the Infrastructure. Except as specifically provided in any Orders, Wowrack has no duty to monitor, maintain, or care for Customer Equipment. Customer shall be responsible for any correction, adjustment, change in use, maintenance or repair that Wowrack determines is necessary to eliminate any potentially unsafe or undesirable conditions. If Customer fails to rectify any condition to Wowrack's satisfaction within ten (10) days after notice from Wowrack, Wowrack may arrange for the required maintenance and/or repair. Customer shall reimburse Wowrack for all of Wowrack's costs relating thereto together with an additional fee of twenty (20%) percent of such costs. Upon sixty (60) days prior written notice or, in the event of an emergency, Wowrack may require Customer to relocate Customer Equipment to a location determined by Wowrack. Customer shall notify Wowrack before commencing any installation, interconnection, addition, upgrade, modification or alteration within or about the Network and Infrastructure or to Customer Equipment. Customer shall furnish and keep current a list of Equipment (the "**Customer Equipment List**") as a means for Wowrack to identify all Customer Equipment installed in the Infrastructure. Customer will provide to Wowrack its Customer Equipment List after installation of Customer Equipment and will maintain a current list with Wowrack as changes occur. Wowrack reserves the right to verify installation of Customer Equipment on Customer Equipment List. Customer must provide Wowrack with written notice of all removals of Customer Equipment.



d. Wowrack shall connect Customer Equipment to Wowrack's Network and Infrastructure. Wowrack shall provide the connectivity from Wowrack's network port to the meet-me room or other interconnect point within the Network and Infrastructure. Wowrack's network port shall be the demarcation point for such connection and shall establish each party's operational and maintenance responsibilities. Customer is responsible for the service from the demarcation point to Customer's network, including but not limited to interface cabling. Wowrack shall only be responsible for the connection from the demarcation point to the Wowrack network.

e. Customer Equipment shipped to the facility must be labeled as belonging to Customer. Customer must inform Wowrack of pending shipments in advance. Customer must coordinate with Wowrack to coordinate any special Customer Equipment or needs for delivery, including inside delivery.

f. Customer agrees not to alter, tamper with, adjust, or repair any equipment or property not belonging to Customer, and agrees not to erect signs or devices on the exterior of the cabinets, cages, or make any construction changes or material alterations to the interior or external portions of the Infrastructure.

g. Customer may sublicense (but may not assign, delegate or otherwise transfer) its rights as a colocation customer of Wowrack to its customers (each, a "**Sublicensee**"). Prior to any sublicense to a Sublicensee, (i) Sublicensee must execute, and Customer will ensure that each Sublicensee executes, an agreement with Wowrack (the "**Sublicensee Terms**") acceptable to Wowrack in its sole discretion, and (ii) Customer shall provide Sublicensee with a copy of all policies, the Usage Policy and the Rules and Regulations. If Sublicensee fails to execute the Sublicensee Terms, Sublicensee shall have no right to sublicense, and any sublicense arrangement or agreement between Sublicensee and Customer will be null and void. Notwithstanding any sublicensing, Customer will remain fully responsible to Wowrack for the performance of all of Customer's obligations under this Agreement. In no event will Wowrack be deemed to be providing any Services to Sublicensee. A Sublicensee has no right to sublicense, delegate, assign or otherwise transfer its rights hereunder to any other person or entity without Wowrack's consent, which consent may be withheld for any reason whatsoever.

h. Customer shall at all times limit its power usage to eighty percent (80%) of any applicable power circuit. Wowrack reserves the right to require Customer to reduce power consumption on any applicable power circuit where the eighty percent (80%) level is exceeded.

i. Customer shall comply with any facility floor load maximums, as advised by Wowrack or the owners of the building in which a Wowrack facility is located from time to time. Wowrack reserves the right to require Customer to relocate any racks in any case where a facility floor load maximum is exceeded.

j. Wowrack reserves the right to relocate a Customer and any Customer Equipment at any time on thirty (30) days notice at Wowrack's expense. In the event of any such relocation, Wowrack will cooperate with Customer in taking steps to ensure that Customer's connectivity and services are not materially affected.

**27. Provisions Specific to Dedicated Server Customers.** If Customer uses Wowrack's dedicated server Services and Products, then the following additional terms and conditions shall apply:

a. Wowrack's "Dedicated Server Service" refers to the equipment, facilities, programming, data files, software, services and resources provided by Wowrack to enable Customer to outsource its data and internet requirements with access through the Wowrack Network and Infrastructure.

b. Customer shall provide to Wowrack, in the format and within the timeframe set forth in the schedule provided by Wowrack for implementing the Dedicated Server Service, any material that is required for customization of Customer's Dedicated Server Service, including, as such is applicable, computer files, images, logos, icons and other information (the "**Dedicated Server Material**"). Wowrack shall not be liable for any delay due to Customer's inability to respect the timeframe indicated in any implementation schedule or to perform one of the covenants of this Agreement. To





the best of Customer's knowledge the Dedicated Server Material is free from any design and operational defect as well as from any virus. Customer warrants and represents to the best of Customer's knowledge that the Dedicated Server Material does not infringe on any third party patent, copyright, trademark or trade secret. Customer shall provide, upon request, the proof of its right or title to or interest in any patent, copyright, trademark or other intellectual property right related to the Dedicated Server Material.

c. Customer shall provide to Wowrack, administrative access (or root access) to Customer's operating system on the servers related to the Dedicated Server Service.

d. Wowrack will promptly replace any faulty hardware that has a material and adverse effect on the Products or Services with functionally equivalent hardware.

e. Wowrack will contract with third-party vendors to procure the requisite number of server-side licenses as enumerated in the Master Hosting Services Form. Such licenses will be owned and maintained by Wowrack unless separately agreed to by Wowrack and Customer in writing. Customer agrees to adhere to the terms and conditions of the manufacturer's software license agreement (available upon request.) Wowrack provides no warranties or guarantees with respect to third party software.

f. The Dedicated Server Service may only be used for lawful purposes and the content of the Dedicated Server Material shall comply with all applicable laws. Customer shall not knowingly post, permit access or display information containing any defamatory, offensive, threatening, obscene or otherwise illegal content or material protected by copyright, trade secret, patent or any other intellectual property laws. Wowrack reserves its right to terminate the Agreement and cease providing the Dedicated Server Service in the event that it determines that the Dedicated Server Material violates the terms of this Agreement.

g. Wowrack reserves the right to relocate a Customer and any Customer Equipment at any time on thirty (30) days notice at Wowrack's expense. In the event of any such relocation, Wowrack will cooperate with Customer in taking steps to ensure that Customer's connectivity and services are not materially affected.

**28. Provisions Specific to Managed Services Customers.** If Customer uses Wowrack's managed services Services and Products, then the following additional terms and conditions shall apply:

a. Wowrack "**Managed Services**" refers to the operation and maintenance of a Customer's infrastructure, equipment, facilities, programming, data files, software, services and resources, as specified in an Order. Managed Services may include improving the performance, availability and security of Customer's applications, including leased hardware and software and managed services for security, server availability, storage, backup and recovery services, server management and maintenance services, software upgrades and patches, hardware upgrades and replacements, data recovery services, load balancing services, backup services, monitoring, optimization, storage, professional services, capacity management services, network intrusion detection, firewalls, VPN services, and vulnerability scanning.

b. Wowrack will monitor the network, physical infrastructure and servers and applications on a 24 x 7 basis.

c. Wowrack will provide professional services on a time and materials basis. Professional services can include project management of the installation and configuration of a Customer's new environment, application consulting and management, security consulting, engineering services, network consulting, storage consulting, server clustering and Customer-caused fault repair.

d. Customer shall provide to Wowrack, in the format and within the timeframe set forth in the schedule provided by Wowrack for implementing the Managed Hosting Service, any material that is required for Wowrack to perform the Managed Services, including, as such is applicable, computer files, images, logos, icons and other information (the



"Managed Hosting Material"). Wowrack shall not be liable for any delay due to Customer’s inability to respect the timeframe indicated in any implementation schedule or to perform one of the covenants of this Agreement. To the best of Customer’s knowledge the Managed Hosting Material is free from any design and operational defect as well as from any virus. Customer warrants and represents to the best of Customer’s knowledge that the Managed Hosting Material does not infringe on any third party patent, copyright, trademark or trade secret. Customer shall provide, upon request, the proof of its right or title to or interest in any patent, copyright, trademark or other intellectual property right related to the Material.

e. Customer acknowledges and agrees that: (i) the performance of the Managed Services is subject to industry best practices, the technical limitations of the devices being managed and the equipment and infrastructure of Customer; (ii) certain Managed Services may expose vulnerabilities and could result in the disruption of services in some circumstances.

f. Wowrack will contract with third-party vendors to procure the requisite number of server-side licenses. Such licenses will be owned and maintained by Wowrack unless separately agreed to by Wowrack and Customer in writing. Customer agrees to adhere to the terms and conditions of the manufacturer’s software license agreement (available upon request.) Wowrack provides no warranties or guarantees with respect to third party software.

g. The Service may only be used for lawful purposes and the content of the Managed Hosting Material shall comply with all applicable laws. Customer shall not knowingly post, permit access or display information containing any defamatory, offensive, threatening, obscene or otherwise illegal content or material protected by copyright, trade secret, patent or any other intellectual property laws. Wowrack reserves its right to terminate the Agreement and cease providing the Service in the event that it determines that the Managed Hosting Material violates any applicable law or regulation.

h. If back-up services are included in the Managed Services offering or are included on an Order, Wowrack will use reasonable efforts to comply with Customer’s back-up preferences. Under no circumstances will Wowrack have any liability or responsibility for the loss of back-up data, content, or other information, unless caused by the negligence or willful misconduct of Wowrack. In addition, Customer grants to Wowrack a non-exclusive royalty-free, worldwide right and license to digitize, convert, make copies of, and archive Customer’s data, content and information for the purpose of performing their obligations under this Agreement.

i. Under no circumstances is Wowrack liable or responsible for security breaches, viruses, hacked servers, worms, lost or stolen data, or corrupted data, unless caused by the negligence or willful misconduct of Wowrack.

**29. Miscellaneous.**

a. Except where otherwise expressly stated in this Agreement, all notices, consents, or approvals required by this Agreement will only be effective if in writing and sent by (i) certified or registered air mail, postage prepaid, or (ii) overnight delivery, to the parties at the respective street addresses, facsimile numbers, or (iii) electronic mail addresses, to the address set forth below:

Wowrack: Wow Technologies, Inc.  
12201 Tukwila International Blvd, Suite #100  
Seattle, WA 98168  
Fax: 866-969-8878  
e-mail: \_\_\_\_\_ [Please provide]

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



or such other addresses or facsimile numbers as may be designated in writing by the respective parties. Notices, consents and approvals will be deemed effective on the date of receipt.

b. This Agreement will be governed in all respects by the internal laws of the State of Washington, without regard to principles of conflicts of laws. Jurisdiction and venue for all purposes related to this Agreement shall be in the state and federal courts of the State of Washington. Neither party will have any claim against the other party arising under or in any way relating to this Agreement unless the party asserting such claim gives written notice of such claim to the other party not later than six months after the date this Agreement expires or is early terminated. This Agreement shall not be governed by the United Nations Convention on the International Sale of Goods.

c. In the event of any dispute relating to this Agreement, for thirty (30) days Wowrack and Customer shall attempt to resolve such dispute. If such dispute shall not be resolved in writing within such thirty (30) day period, the dispute shall be resolved by arbitration as follows: the party desiring arbitration (the "**First Party**") shall give notice to that effect to the other party, and shall in such notice appoint a person as arbitrator on its behalf. Within fifteen (15) days after its receipt of such notice, the other party by notice to the First Party shall appoint an arbitrator on its behalf, if the second arbitrator shall not be so appointed within such fifteen (15) days, the First Party may give a second notice to the other party demanding that the other party appoint an arbitrator within ten (10) days of its receipt of such second notice and if the other party shall not do so within such ten (10) day period, then the arbitrator appointed by the First Party shall appoint the second arbitrator. The two arbitrators appointed pursuant to the above shall try to appoint the third arbitrator. If, within twenty (20) days after the appointment of the second arbitrator, they shall not have agreed upon the appointment of the third arbitrator, either of the parties upon notice to the other party may request such appointment by the Office of the American Arbitration Association (the "**AAA**") closest to the Property, or in its absence, refusal, failure or inability to act, may apply to the presiding judge of the King County Superior Court (the "**Court**") for the appointment of such third arbitrator and the other party shall not raise any question as to the Court's power and jurisdiction to entertain the application and make the appointment. Each arbitrator shall be a qualified person who shall have at least ten (10) years experience in a calling connected with the matter of the dispute. The arbitration shall be conducted in accordance with the then prevailing, rules of the AAA, under the auspices of the office of the AAA closest to the Property, The arbitrators shall render their decision and award in writing upon concurrence of at least two (2) of their members, within thirty (30) days after the appointment of the third arbitrator. Such decision and award shall be binding and conclusive on the parties, shall constitute an "award" of the arbitrators within the meaning of the AAA rules and applicable law, and counterpart copies thereof shall be delivered to each of the parties. In rendering such decision and award, the arbitrators shall not add to, subtract from, or otherwise modify the provisions of this Agreement and shall apply applicable law. Judgment may be had under the decision and award of the arbitrators so rendered in any court of competent jurisdiction. Each party shall pay the fees and expenses of the arbitrator appointed by or for it. The fees and expenses of the third arbitrator, and all other expenses of the arbitration (other than the fees and disbursements of attorneys or witnesses for each party), shall be borne by the parties equally.

d. Except as may be specifically otherwise agreed by an affiliate or subsidiary of a party, neither party's directors, officers, affiliates, subsidiaries, employees, or contractors will have any liability to the other party with respect to this Agreement.

e. This Agreement as described in Section 1 above constitutes the complete and entire agreement between the parties with respect to the subject matter hereof. Each party hereby warrants and represents that the person signing this Agreement has full authority to execute this Agreement for the party on whose behalf he or she is signing. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be amended only in writing by an instrument signed by all parties. Each party acknowledges and agrees that it has reviewed, and has had an opportunity to have reviewed, this Agreement, and it is the parties' intent that this Agreement will not be construed against either party. All section headings and captions are for convenience and reference only, and will not be used to construe this Agreement. If any provision of this Agreement is adjudged by a court or arbitrator to be invalid, illegal or unenforceable, the same will not affect the validity,



legality, or enforceability of the portion of the provision, if any, that is not invalid, illegal or unenforceable, the application of such provision in any other circumstances, or the validity, legality, or enforceability of any other provision of this Agreement. All terms and conditions of this Agreement will be construed to be enforceable to the fullest extent permissible under applicable law, and, when necessary, the court or arbitrator in any action between the parties is requested to reform any and all terms or conditions to give them as much effect as possible.

f. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party and clearly understood by the waiving party to be such a waiver.

g. Sections 5-6, 8-10, 13, 15-18, 20-25 and 28 of this Agreement will survive the termination of this Agreement. In addition, all provisions of this Agreement that can only be given proper effect if they survive the termination of this Agreement will survive the termination of this Agreement. This Agreement will be valid as to any obligation incurred prior to termination of this Agreement.

h. This Term does not establish any relationship of partnership, joint venture, employment, franchise or agency between Wowrack and Customer. Neither Wowrack nor Customer has the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Except as specifically provided herein, neither Customer nor Wowrack grants the other the right to use its trademarks, service marks, trade names, logos, copyrights, or other intellectual property rights or other designations in any promotion, publication, or press release without the prior written consent of the other party in each case. Any intellectual property developed by Wowrack during the performance of the Services shall belong to Wowrack unless Wowrack has otherwise agreed with Customer in advance in writing that Customer shall have an interest in such intellectual property.

i. This Agreement does not provide and is not intended to provide any third party beneficiaries, including but not limited to Customer's end users or customers, with any remedy, claim, reimbursement, cause of action or other right or privilege.

j. This Agreement, and the rights of Customer hereunder, are, without any further action by any party, subject and subordinate to the leases for the Network and Infrastructure and all superior instruments to such leases (including, without limitation, mortgages or ground leases for the Network and Infrastructure and the Data Centers, including, without limitation, all rights of access and maintenance granted to the owner of a Data Center. This Term is a services agreement and is not intended to and will not constitute a lease of any real or personal property. Customer acknowledges and agrees that (i) if it is a colocation customer, it has been granted only a license to use the Network and Infrastructure in accordance with this Agreement; (ii) Customer has not been granted any real property interest in any portion of the Network and Infrastructure (including, without limitation, the Network and Infrastructure); (iii) Customer has no rights as a tenant or otherwise under any real property or landlord/tenant applicable law; (iv) Customer has no right, title or interest in or to the Network, the Infrastructure, or any equipment or property located in the Data Center other than Customer Equipment. Wowrack hereby reserves, with respect to the Network and Infrastructure, all rights not specifically granted to Customer in this Agreement, including, without limitation, the right (i) of access to and use of the Network and Infrastructure for its own use or the use of others; (ii) to grant additional licenses to other persons or co-location customers for the use of portions of the Network and Infrastructure; and (iii) to exercise or grant other rights not inconsistent with the rights granted in this Agreement.

k. Wowrack may assign, delegate or transfer its rights and obligations under this Agreement and any Order to any person or entity, and in the event of any such assignment, transfer or delegation, and the assumption by the transferee of the obligations of Wowrack hereunder, Wowrack will be released from any further liability or obligation under this Agreement. Except as otherwise expressly set forth herein, Customer will not assign, delegate, transfer or sublicense any of its rights under this Agreement. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of all successors and permitted assigns of Wowrack and Customer.



l. Wowrack will not be responsible or in any way liable or responsible for any loss or damage to any party, and Customer will not have any termination or other rights (including any rights to a credit under the Service Level Agreement set forth above), arising out of or relating to a Force Majeure Event. As used herein, a “**Force Majeure Event**” shall mean any failure by Wowrack to perform its obligations under this Agreement or any other interruption of Services provided hereunder if such failure or interruption is caused by events or circumstances beyond Wowrack’s control, including, without limitation, acts of God, war, labor strike, terrorist act, fire, flood, earthquake, any applicable law or other action of any governing authority or agency thereof, interruption in traffic or transportation, interruption or delay in telecommunication or third party services, in the ability to obtain raw material or supplies, inability to obtain third party software and hardware, failure of a carrier to provide telecommunications services to the Network and Infrastructure, failure of the primary power supply to the Network and Infrastructure, scheduled and emergency network maintenance or software / hardware upgrades, Network or Internet security breaches including virus/worm attack, denial of service & misuse of service by authorized/unauthorized users, DNS or email issues beyond direct control of Wowrack, failure of Customer's own equipment, inaccessible servers or accounts due to Customer password change, or failure or interruption of the internet.

m. Each party hereto shall indemnify the other for any brokerage or similar fees payable to brokers retained by said party that relate to the subject matter of this Agreement.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]**





IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**WOWRACK:**

**Wow Technologies, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CUSTOMER:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_