

Exhibit A



COLOCATION MASTER SERVICES AGREEMENT

THIS COLOCATION MASTER SERVICES AGREEMENT is effective as of the date of full execution of this Agreement (the "Effective Date") and is by and between IO Phoenix One, LLC, a Delaware limited liability company ("Licensor") and the customer identified below as Customer ("Customer"). In consideration of the respective rights and obligations under this Agreement and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Customer have fully reviewed and agree to all of the terms and conditions of this Agreement.

1. Definitions.

- 1.1 "Agreement" means collectively this Colocation Master Services Agreement and all Attachments thereto, including, without limitation: Attachment A - Services and the Acceptable Use Policy and the Rules and Regulations, both of which are posted at www.io.datacenters.com and may be changed by Licensor from time to time. The terms and conditions of Attachment A shall prevail in the event of any inconsistency between Attachment A and any other portion of this Agreement.
- 1.2 "Data Center" means that certain building located at 615 N. 48th Street, Phoenix, Arizona 85008.
- 1.3 "Data Center Services" means services to be provided by Licensor to Customer under this Agreement.
- 1.4 "Customer Equipment" means Customer's computer hardware, peripheral, and any other tangible equipment or property that Customer places in the Customer Area from time to time pursuant to this Agreement.
- 1.5 "Customer Parties" means Customer, its Representatives, Colo Users (as defined in Section 2.7) and persons to whom Customer resells IP Bandwidth; subtenants, assignees and any other occupant of the Customer Area; and any of their respective affiliates, members, managers, officers, directors, shareholders, agents, employees, invitees, transferees and contractors.
- 1.6 "Customer Area" means the portion of the Data Center identified in (or in the manner set forth in) Attachment A that the Customer has the right to access and use hereunder for the placement of Customer Equipment.
- 1.7 "Hazardous Materials" means any substance referred to or defined in any Law as a hazardous material or substance (or similar term).
- 1.8 "IP Bandwidth" means the IP bandwidth provided by Licensor or a third party service Licensor, which features multi-homed connectivity from two or more connections, unless otherwise specified.
- 1.9 "Law" means any applicable law, rule or regulation.
- 1.10 "Representatives" means the individuals identified and authorized by Customer to have access to the Customer Area in accordance with this Agreement.
- 1.11 "Service Infrastructure" means any PDU, UPS, generator and all other infrastructure used to provide the Data Center Services.
- 1.12 "SLA" means the Service Level Agreement set forth in Section 13.

2. License; Responsibilities.

- 2.1 License. Licensor hereby licenses to Customer the Customer Area to access and use for the purposes set forth herein and will provide to Customer the Data Center Services in accordance with this Agreement. The Customer Area is provided in an "AS-IS" condition. Customer, at Customer's sole cost and expense, shall keep and maintain the Customer Area in good order, condition and repair, reasonable wear and tear excepted. Customer waives the benefit of any applicable Law permitting Customer to make repairs at Licensor's expense.
- 2.2 Customer Responsibilities. Customer shall comply with all terms of this Agreement including, without limitation, the Acceptable Use Policy and the Rules and Regulations. Customer shall not take any action that might affect the Service Infrastructure without Licensor's advance written consent in Licensor's sole discretion. If Customer fails to timely perform any of its responsibilities under this Agreement, in addition to any other rights or remedies available to Licensor under this Agreement and Law, Licensor shall have the right upon reasonable notice to Customer based on the circumstances, but not the obligation, to perform such responsibilities on Customer's behalf and recover from Customer, upon demand, all amounts expended by Licensor in such performance (based on prevailing market rates), plus fifteen percent (15%) of all such amounts for handling, supervision and overhead expenses.

- 2.3 **Licensor Responsibilities.** Licensor will use its commercially reasonable efforts to cause the Data Center to be maintained in efficient working order. Licensor may access the Customer Area at any time it deems appropriate to address maintenance, repair, inspection, operational or safety matters. Should any condition exist that may impair the functionality of the Data Center, Licensor may initiate planned maintenance, which may include disconnection of all or any part of the Data Center. Licensor shall use commercially reasonable efforts to maintain the continuity of the services to one side of an A and B system during planned maintenance. Customer shall ensure that all Customer Equipment is dual corded and correctly attached to the A and B power distribution. Licensor will, to the extent reasonably practicable, give Customer seven (7) business days notice in writing (or such shorter period as may be reasonably necessary), prior to initiating a planned maintenance operation, of the timing and scope of such planned maintenance operation. Licensor will use all reasonable efforts to conduct planned maintenance outages, if any, of the Data Center during the hours of 01:00 a.m. and 06:00 a.m. local time on Monday.
- 2.4 **Remote Hands.** At Customer's request, Licensor may, in its sole discretion and from time to time, perform certain services with respect to the Customer Equipment that does not involve any installation of new equipment or any troubleshooting, diagnostics, systems access or login, testing or heavy physical labor. In such event, Licensor will not have any liability for, and Customer hereby releases Licensor from, any damages arising out of Licensor's actions in response to or failure to act on any Customer request for remote assistance services hereunder. If Customer's requests for remote assistance services hereunder regularly or consistently exceed more than three (3) per month per cabinet, the parties shall negotiate in good faith to determine a mutually acceptable solution.
- 2.5 **Cross Connections.** Customer, at its cost and expense, may request that Licensor complete cross connection(s) to or from third-party carriers within the Data Center (or which serve the Data Center). Licensor shall install cross-connections within ten (10) business days following the receipt by Licensor of (i) a completed Cross Connect Request Form (available from the Licensor's operations center), (ii) the location and tag of the work by the applicable third-party carrier and (iii) if the request is for non-standard cross connections, the receipt of the applicable materials. All points of interconnection, conduit and/or cable routes and other details shall be determined by Licensor in its sole discretion and shall belong to Licensor at all times. The responsibilities of Licensor shall be to run and terminate a physical cable and test the cable to confirm continuity of the physical layer thereof. Customer shall be responsible for the circuit underlying such cross-connection, including the initial turn-up, integration, logical function and other use thereof. Customer expressly recognizes that other than completing the Cross-Connection, Licensor has no responsibility whatsoever for the nature, performance, quality, integration, protocol, timeliness, utility or other features of circuit(s) provided by a third-party carrier or provider, which shall be governed solely by Customer's agreement(s) with such carrier or provider. IN NO EVENT shall any third party carrier be located in any part of the Data Center other than Licensor's designated "meet me room" and all third party carriers must use Licensor's designated "meet me room".
- 2.6 **IP Bandwidth.** If IP Bandwidth services are to be provided by Licensor hereunder to Customer, the following terms and conditions shall apply: Customer shall be responsible for the consumption of IP Bandwidth which is attributable to Customer, or its IP space, including any consumption which occurs as a result of any denial of service attack, virus, Customer system or proxy compromise or otherwise. Customer shall secure its network and related elements at all times from attack, open proxy hijack and/or other abuse. Licensor uses an industry standard 95th percentile analysis to measure usage for IP Bandwidth service which allows Customer to burst beyond a given committed rate. Customer acknowledges and agrees that Licensor does not exercise any control over the content of the information passing through the Internet and Licensor disclaims all responsibility and liability as relates to the content of the information passing through the Internet. IP addresses provided to Customer hereunder shall remain the sole property of Licensor. Licensor grants Customer a nontransferable and non-assignable license to use the IP addresses provided by Licensor during the Term. Licensor shall have the right, from time to time, to require Customer to change its IP addresses.
- 2.7 **Resale/Colocation.** Upon Licensor's approval, Customer may physically collocate the equipment of a third-party (each, a "Colo User") at the Customer Area and resell IP Bandwidth services provided that Customer (a) registers each Colo User, (b) ensures compliance by each Colo User with this Agreement (c) remains responsible and liable for the acts and omissions of each Colo User, and (d) does not solicit for any services which compete with Licensor's business from any customer of Licensor or prospect which Customer learns about as a result of its business dealings with Licensor or access to the Data Center. Customer shall not provide any Data Center Services to a Colo User which Customer has knowledge of having been terminated or refused service directly by Licensor. Licensor shall have the right at any time to provide colocation services to any Colo User. IN NO EVENT shall any colocation be provided in Licensor's designated "meet me room".
- 3.0 **Fees and Billing.**
- 3.1 **Fees.** The License Fees set forth in Attachment A are due and payable in advance on the first day of each month of the Term (as defined in Section 8.1) and any other charges incurred hereunder are due and payable within thirty (30) days from the date of Licensor's invoice. Any payment not made when due shall bear interest at the rate of the lower of one and one half percent (1½%) per month or the highest rate allowed by Law. Licensor reserves the right to pass along to Customer the actual, pro rata increase in the cost of electricity, which increase will be applicable immediately and will be billed on a pass through basis. Upon any Event of Default, as described in Section 8.2, all discounts provided in Attachment A shall be void and the License Fees shall be the amount of License Fees set forth in Attachment A without any discount. All payments hereunder must be made in U.S. dollars by check delivered to Licensor's designated address for payment, by approved credit card or via automated clearinghouse (ACH) pursuant to instructions provided by Licensor. Customer will notify Licensor in writing of any disputed amount within thirty (30) days of Customer's receipt of the subject invoice and pay all undisputed amounts in a timely fashion. All amounts not timely and appropriately disputed shall be deemed final. Charges for partial months shall be prorated. Any annual escalation in License Fees and/or other charges shall be effective upon each anniversary of the Effective Date.
- 3.2 **Taxes.** All payments required by this Agreement are exclusive of all applicable taxes, duties and similar charges, all of which Customer will solely be responsible for and will pay in full, except for taxes based on Licensor's net income.
- 4.0 **Representations and Warranties; Covenants.**
- 4.1 **By Customer.** Customer represents and warrants as of the Effective Date and covenants that during the Term Customer has and shall maintain the following:

- 4.1.1 Customer shall comply with this Agreement and all applicable Laws, and shall not disturb or interfere with any other occupant of the Data Center. Customer shall not cause or permit any Hazardous Material to be brought upon, kept, stored, released, discharged or used in or about the Customer Area or the Data Center.
- 4.1.2 Customer has the legal right to place and use the Customer Equipment without violating, to the best of Customer's knowledge, any intellectual property rights of any third party or any applicable Law. Placement and use of the Customer Equipment shall comply with the material manufacturers' specifications thereof.
- 4.1.3 Customer is duly organized, in good standing and legally qualified to do business in the jurisdiction in which the Customer Area is located (and has all required licenses, permits and other such items) and this Agreement has been fully authorized and no further approvals are required.
- 4.1.4 Licensor may collect and use biometric and other personal information from Customer and its Representatives in connection with providing access to the Data Center pursuant to this Agreement and Customer shall waive any claim related to any such use.
- 4.2 By Licensor. Licensor represents and warrants as of the Effective Date and covenants that during the Term Licensor has and shall maintain the following:
- 4.2.1 Licensor has the legal right and authority to grant to Customer a license for the use of the Customer Area hereunder and provide the Data Center Services to Customer as contemplated by this Agreement. Licensor shall comply with all applicable Laws in its provision of the Data Center Services.
- 4.2.2 Service Level Agreement. Licensor will provide the Data Center Services in accordance with the applicable service levels set forth in Section 13 below (the "SLA"). IN THE EVENT OF A BREACH OF THE SLA, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND LICENSOR'S SOLE AND EXCLUSIVE LIABILITY, SHALL BE FOR LICENSOR TO PROVIDE CUSTOMER THE APPLICABLE SERVICE LEVEL CREDIT(S) OR TERMINATION RIGHT, ALL AS SET FORTH IN SECTION 13 BELOW.
- 4.2.3 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SUBSECTIONS 4.2.1 AND 4.2.2 ABOVE, LICENSOR DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR DOES NOT WARRANT THAT THE DATA CENTER SERVICES PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE.
- 5.0 Limitation of Liability.
- 5.1 Personal Injury. Customer's representatives, and any other persons visiting the Data Center do so at their own risk and Licensor shall not be liable for any harm to such persons, other than caused by Licensor's gross negligence or willful misconduct.
- 5.2 Damage to Customer's Equipment. LICENSOR SHALL HAVE NO LIABILITY FOR ANY DAMAGE TO, OR LOSS OF ANY, OF CUSTOMER'S EQUIPMENT OTHER THAN DUE TO LICENSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND THEN ONLY IN AN AMOUNT EQUAL TO THE THEN CURRENT VALUE OF SUCH CUSTOMER EQUIPMENT.
- 5.3 Consequential Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOST CUSTOMER MATERIALS, LOST PROFITS, LOSS OF BUSINESS, LOSS OF REVENUES, LOSS OF DATA OR INTERRUPTION OR CORRUPTION OF DATA, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 5.4 Maximum Liability. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY ARISING FROM OR RELATED TO THIS AGREEMENT WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, EXCEED FIVE HUNDRED THOUSAND DOLLARS (\$500,000).
- 6.0 Indemnification.
- 6.1 Customer Indemnification. Customer releases and will indemnify and hold Licensor, its affiliates, members, officers, directors, employees, agents, representatives and customers (collectively, the "Licensor Indemnified Parties") harmless from and against any and all costs, liabilities, judgments, actions, losses and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Claims") arising out of any threatened or actual claim, suit, action, arbitration or proceeding made or brought against any Licensor Indemnified Party arising out of or relating to: (a) the actual or alleged breach of this Agreement or applicable Laws by any of the Customer Parties; (b) the actual or alleged negligence or willful misconduct by any of the Customer Parties; (c) Customer's responsibilities under this Agreement, Customer Equipment, Customer materials, Customer's business, and/or the actions (or failure to act) of a Colo User, (d) the transportation, use, storage, generation, manufacture, handling, disposal, release, discharge, spill or leak of any Hazardous Material upon or about the Customer Area or the Data Center by any Customer Party or (e) infringement of any intellectual property rights by Customer (collectively, a "Covered Claim"). The foregoing indemnity includes, without limitation, claims of infringement of any trademark, copyright, patent, trade secrets or nonproprietary rights (including, without limitation, defamation, libel, violation of privacy or publicity), or any injury to or death of any person or damage to any property occurring upon the Customer Area, the Data Center or the land of which the Data Center is a part. Customer is responsible and liable for all acts or omissions of the Customer Parties, and all such acts or omissions will be attributed to Customer for all purposes under this Agreement (to the same extent as if Customer had committed the act or omission). In the event of a Covered Claim, a Licensor Indemnified Party may select its own counsel to participate in the defense of such claim and Customer shall not settle a Covered Claim in a manner that imposes any penalty, liability or limitation on any Licensor Indemnified Party.

- 6.2 **Licensor Indemnification.** Licensor will indemnify and hold Customer, its affiliates, members, managers, shareholders, officers, directors, employees, agents and representatives and licensees (collectively, the "**Customer Indemnified Parties**") harmless for, from and against any and all Claims by any person, entity, governmental authority or other third party arising out of or relating to: (a) the gross negligence or willful misconduct by any of the Licensor Parties; or (b) the transportation, use, storage, generation, manufacture, handling, disposal, release, discharge, spill or leak of any Hazardous Material upon or about the Customer Area or the Data Center by any Licensor Party and any threatened or actual claim, suit, action, arbitration or proceeding made or brought against any Customer Indemnified Party by any person, entity, governmental authority or other third party arising out of or relating thereto. "**Licensor Parties**" means for this Section 6.2 Licensor, its representatives, service providers in their performance of Licensor's obligations hereunder, and their respective managers, officers, directors, agents and employees.
- 7.0 **Insurance.**
- 7.1 **Coverage Requirements.** Customer shall keep in force and effect at all times during the Term: (a) Worker's Compensation Insurance with minimum limits required by Law; (b) Commercial General Liability Insurance with minimum limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate; (c) Commercial Crime Insurance with a minimum limit per event of twenty five thousand dollars (\$25,000); (d) Electronic Data Processing Insurance providing coverage for all risks of loss or damage to equipment, data, media and valuable papers that are in the possession, care, custody or control of Customer pursuant to this Agreement; and (e) Property Insurance, including Extra Expense and Business Income coverage, for all risks of physical loss of or damage to the Customer Area, business personal property or other property that is in the possession, care, custody or control of Customer (such insurance shall have a minimum limit adequate to cover risks on a replacement costs basis).
- 7.2 **Policy and Licensor Requirements.** Within thirty (30) days of execution of this Agreement, Customer shall cause its insurers to issue certificates of insurance evidencing the levels and types of insurance required by this Agreement. Customer shall require its insurers to provide Licensor not less than thirty (30) days' written notice prior to any adverse modification, cancellation, or non-renewal of the policies. When the policy is issued each such insurer shall have at least an A.M. Best rating of A X and replacement coverage shall be sought if the insurer's rating goes below A-VIII. Customer shall cause its insurers to name Licensor and IO Data Centers, LLC as additional insureds on the insurance coverages under Section 7.1(b). Customer shall cause its insurers to waive all rights of subrogation against the Licensor, and its officers, directors and employees and any insured-versus-insured exclusion regarding Licensor.
- 8.0 **Term and Termination.**
- 8.1 **Initial and Renewal Term.** This Agreement shall be effective on the Effective Date and continue through the completion of the time starting on the Billing Commencement Date (as set forth on Attachment A) and continuing through the number of months identified as the Initial Billing Term (as set forth on Attachment A), plus the period of time between the Billing Commencement Date and the first day of the full month following the Billing Commencement Date (the "Initial Term"), unless earlier terminated as provided herein. This Agreement will automatically renew thereafter for additional terms of one (1) year each (each, a "Renewal Term"), unless either party provides the other party with written notice that it will not renew the Agreement no later than ninety (90) days' prior to the end of the Initial Term and no later than thirty (30) days prior to the end of any Renewal Term (as applicable), provided that: the License Fees during any Renewal Term shall be One Hundred and Ten Percent (110%) of the License Fees that were billed immediately prior to such Renewal Term. The "Term" shall mean the Initial Term hereof and any Renewal Term. Notwithstanding anything herein to the contrary, Licensor may terminate this Agreement upon sixty (60) days prior written notice.
- 8.2 **Customer Events of Default.** The following are Customer Events of Default: (a) Customer's failure to pay undisputed License Fees or any other amount due under this Agreement as required pursuant to Section 3.1 or elsewhere herein after five (5) days prior written notice; or (b) Customer's failure to perform any other obligation under this Agreement within fifteen (15) business days after notice of nonperformance.
- 8.3 **Remedies.** Upon a Customer Event of Default (subject to the applicable cure period as set forth in Section 8.2 above), Licensor, may: (a) suspend the provision of some or all Data Center Services; (b) terminate Customer's right to access the Customer Area; (c) recover accrued and unpaid License Fees and other unpaid amounts and any other damages arising from Customer's breach of the License, regardless of whether the License has been terminated, together with applicable late charges (at least \$150.00) and interest at the rate of 18% per annum or the highest lawful rate, whichever is less; (d) recover all reasonable attorneys' fees and other expenses incurred; (e) perform any obligation which Customer has failed to do and recover from Customer, upon demand, the entire amount expended by Licensor (based on prevailing market rates) plus 15% of such amounts for handling, supervision, and overhead; (f) terminate this Agreement and, to the extent not expressly prohibited by applicable Law, accelerate and declare that License Fees reserved for the remainder of the Term shall be immediately due and payable; and/or (g) pursue any other remedies available at Law or in equity. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by Law (all such remedies being cumulative).
- 8.4 **Licensor Breach.** Customer may terminate this Agreement (i) in the event Licensor breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice from Customer specifying the breach. Licensor shall be subject to such remedies as may be available to Customer (subject to the other provisions of this License); provided, in recognition that Licensor must receive timely payments of all License Fees and operate the Data Center, Customer shall have no right of self-help to perform repairs and shall have no right to withhold, set-off, or abate License Fees or other charges, and Customer hereby expressly waives the benefit of any self help Law to the contrary.
- 8.5 **Effect of Termination.** Upon the effective date of any expiration or termination of this Agreement and provided Customer has paid all sums required hereunder, Customer shall have the right and obligation to remove from the Data Center all Customer Equipment within ten (10) days of such expiration or termination and to return the Customer Area to Licensor in the same condition as it was on the Move In Date, normal wear and tear excepted. If for any reason (including failure to pay) Customer does not remove such property within such ten (10) day period of

time, Licensor shall have the option to move such property to secure storage and restore the Customer Area and charge Customer for the cost of such removal, storage and restoration plus fifteen percent (15%) for handling, supervision and overhead expenses.

- 8.6 **Survival.** The rights and obligations of the parties in this Agreement that would by their nature or context be intended to survive the expiration or termination of this Agreement shall so survive.
- 9.0 **Confidential information; Nonsolicitation.**
- 9.1 **Confidential Information.** Each party acknowledges that it will have access to certain confidential information and materials of the other party ("**Confidential Information**"). Confidential Information will include, but not be limited to, information regarding each party's business, plans, customers, technology, products, proprietary software, and customer information. Licensor specifically designates as Confidential Information its prices, rates, quotations and other financial information relating to this Agreement, and its written security procedures, maintenance manuals and other operational documents and procedures as well as information regarding the Customer Area, the Service Infrastructure and the Data Center set up and operation. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by Law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information. Within thirty (30) days after expiration or termination of this Agreement for any reason, each party will return all Confidential Information of the other party in its possession, custody or control at the time of expiration or termination and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal, accounting, or administrative record keeping requirement. Confidential Information shall not include information that is known to the receiving party prior to receipt from the disclosing party or becomes known from a source other than one having an obligation of confidentiality to the disclosing party; (b) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (c) is independently developed by the receiving party without any use of or reliance upon the Confidential Information of the disclosing party.
- 9.2 **Nonsolicitation of Personnel.** Neither party shall solicit, offer work to, employ, or contract with, directly or indirectly, on its own behalf or on behalf of a third party, any of the personnel of the other party or, in the case of Licensor, Licensor's affiliates, during the Term and for twelve (12) months thereafter. For purposes of this paragraph, "personnel" includes any individual a party employs or has employed or retained as an employee or independent contractor and which the other party learns about as a result of its business dealings hereunder or access to the Data Center.
- 9.3 **Remedies.** In the event of any breach of this Section 9, the non-breaching party will be entitled to seek injunctive relief.
- 10.0 **Work.** All of Customer's work in the Customer Area shall comply with the Rules and Regulations and other provisions of this Agreement, and shall be performed in conformity with Licensor's standard construction processes as in effect from time to time. In addition Licensor reserves the right to perform after reasonable notice based on the circumstances, at Customer's sole cost and expense (plus fifteen percent (15%) for handling, supervision and overhead expenses) any portion of Customer's work that Licensor believes affects or may affect the Service Infrastructure. Customer shall keep the Data Center and the Customer Area free from any mechanic's, materialmen's, architect's, engineer's or similar liens or encumbrances, and any claims therefor, in connection with any of Customer's work.
- 11.0 **Substitution.** Licensor shall have the right upon prior approval of Customer, which approval shall not be unreasonably withheld or delayed, to substitute other premises within the Data Center as the "Customer Area" under this Agreement. The substituted premises shall be reasonably comparable to the originally licensed premises and shall be located in the Data Center and no other building. Such substitution shall be affected at Licensor's cost. Licensor shall use commercially reasonable efforts so that the move from shall be affected without materially interrupting the Customer's business. Customer waives all claims against Licensor for any other actual or potential damages in connection therewith including, but not limited to, any claim related to loss of business.
- 12.0 **General provisions.**
- 12.1 **Governing Law; Prevailing Party Fees; Waiver of Jury Trial.** This Agreement is to be construed in accordance with and governed by the laws of the State of Arizona, excluding its conflict of law rules. The parties hereby irrevocably consent to the personal and exclusive jurisdiction and venue of the federal courts of Maricopa County, Arizona. In any litigation related to this Agreement, the prevailing party shall receive reimbursement of its reasonable attorneys' fees and costs from the other party. **THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY CLAIM OR ACTION, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN THE PARTIES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO.**
- 12.2 **Force Majeure.** Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war or terrorism, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental acts, failure of the Internet or casualty or condemnation of the Data Center provided that the affected party: (a) gives the other party prompt notice of such cause, and (b) uses its best reasonable efforts to correct promptly such failure or delay in performance.
- 12.3 **No Lease/Ownership.** Customer shall have rights as a licensee only of the Customer Area and shall not have any rights as a tenant or otherwise under any property law or landlord/tenant laws, regulations or ordinances.
- 12.4 **Suspension; Reliance.** Licensor, in its reasonable discretion, may temporarily suspend or restrict the right of any invitees to the Data Center. Licensor shall be entitled to rely on a verbal or written instruction received or purported to be from a Representative without being required to investigate the validity or content thereof.
- 12.5 **Use of Trade Names, etc.** Neither party may use the name, trade name, logo or trademark of the other party hereto without the prior written consent of an authorized representative of the other party in each instance; provided, however, Licensor may disclose the name of Customer to

any of its agents or third party Licensor that have a reasonable need to know such information to assist Licensor in providing the Data Center Services and, upon the prior approval of Customer, Licensor, may also include the name of Customer in a list of customer references or other similar marketing materials (such approval may be revoked by written notice if Customer determines in its discretion that use of its name adversely affects Customer's brand or reputation). Customer hereby approves the use of Customer's "Mozilla" logo on Licensor's website to indicate Customer is a customer of Licensor subject to: (a) then current trademark usage guidelines available at www.mozilla.com/trademarks; and (b) provided that Customer may revoke such approval if Customer determines that Licensor's use of the Mozilla logo adversely affects Customer's brand or reputation. In addition, Customer agrees to participate in a standard Licensor case study in a manner substantially similar to other customer case studies as displayed on Licensor's website as of the date hereof. Licensor shall obtain Customer's prior approval of the case study (email is acceptable) prior to publication of the case study on Licensor's website.

- 12.6 **Legal Process.** Licensor reserves the right to comply with any and all warrants, court orders, subpoenas, summons and other legal requirements.
- 12.7 **Entire Agreement.** This Agreement, together with the Attachments hereto, sets forth the entire agreement of the parties with respect to the subject matter hereof, and supersedes any prior agreements, promises, representations, understandings and negotiations between the parties with respect to said subject matter. Any modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by authorized representatives of both parties. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be invalid, then to the greatest extent possible, the remaining provisions of this Agreement shall remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party as specifically stated in this Agreement.
- 12.8 **Assignment.** Neither party may assign or transfer its rights hereunder without the prior written approval of the other party, which approval shall not be unreasonably withheld, except as part of a merger, acquisition or financing. In addition, either party may transfer or assign this Agreement and its rights and obligations hereunder to any of its affiliates, parent or subsidiaries, upon written notice.
- 12.9 **Notices.** Any notice or communication required or permitted to be given hereunder (i) shall be made in writing, (ii) may be delivered by hand, mailed by registered or certified mail, return receipt requested, postage prepaid, or sent by recognized overnight courier maintaining proof of delivery (e.g., FedEx or UPS), (iii) shall be sent to the address of the receiving party indicated on the signature page of this Agreement, or at such other address as may hereafter be furnished in writing by either party hereto to the other, and (iv) shall be deemed to have been given as of the date it is actually delivered, or upon which delivery is refused, whichever is earlier.
- 12.10 **Estoppels.** Within ten (10) days after written notice from Licensor, Customer shall execute and deliver to Licensor a statement in writing (which may be relied upon by any prospective purchaser or mortgagee or other like encumbrancer) certifying all matters reasonably requested by Licensor or any current or prospective purchaser, holder of any security document, ground Licensor or master Licensor.
- 12.11 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.
- 12.12 **Relationship of Parties.** Nothing contained in this Agreement shall be deemed to establish any relationship of partnership, joint venture, employment, franchise or other agency or relationship between Licensor and Customer other than that of licensor and licensee. Neither Licensor nor Customer have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.
- 12.13 **No Negative Construction.** Each party acknowledges and agrees that it has reviewed and has had an opportunity to have reviewed by legal counsel this Agreement and it is the parties' intent that this Agreement not be construed against either party as the drafting party.
- 13.0 **Service Level Agreement.** Licensor shall provide the Data Center Services to the SLA and in the event Licensor fails to do so, Licensor shall provide Service Level Credits in accordance with this Section 13.
- 13.1 **Service level Credits.**

Service Level Objective	Service Level Failure	Service Level Credit
Power	Primary Power Failure (A and B) - Where Customer deploys power in an A & B configuration from A and B PDUs, it shall be a Service Level Failure if both electricity feeds A and B fail simultaneously for any amount of time to supply power to any Customer Equipment or across the entire Customer Area.	The Service Level Credit shall equal one (1) month's License Fees for the Customer Area, regardless of the duration of the Primary Power Failure (A and B).
Power	Primary Power Failure (Single Circuit) - Where Customer deploys power from a single PDU, it shall be a Service Level Failure if the single electricity feed fails for any amount of time in excess of 109.5 minutes during any calendar year to supply power to any Customer Equipment or across the entire Customer Area.	The Service Level Credit shall equal the total monthly License Fees of the Customer Area multiplied by ten percent (10%) for each fifteen (15) minutes or portion thereof in excess of the 109.5 minutes during any calendar year.

Service Level Objective	Service Level Failure	Service Level Credit
Temperature	Temperature Failure - It shall be a Service Level Failure if the ambient Air Temperature (as defined in Note 1 below) average, as measured across all measurement points (a "Temperature Reading") is outside a range of seventy two (72) degrees Fahrenheit +/- five (5) degrees Fahrenheit for four (4) hours after a Temperature Reading fell outside a range of seventy two (72) degrees Fahrenheit +/- five (5) degrees Fahrenheit.	The Service Level Credit shall equal the total monthly License Fees of the Customer Area multiplied by five percent (5%) for each Temperature Failure. For purposes of clarification, Customer receives a Service Level Credit after each four (4) hour period during which a Temperature Failure continues.
Temperature	Critical Temperature Failure - It shall be a Service Level Failure if a Temperature Reading is above 87 degrees Fahrenheit.	The Service Level Credit shall equal one month's License Fees for the Customer Area regardless of the duration of the Critical Temperature Failure.
Humidity	Humidity Failure - It shall be a Service Level Failure if the ambient air relative humidity average, as measured across all measurement points (a "Humidity Reading"), is outside the range of forty-five percent (45%), +/- fifteen percent (15%) relative humidity six (6) hours after a Humidity Reading fell outside of forty-five percent (45%), +/- fifteen percent (15%) relative humidity range.	The Service Level Credit shall equal the total monthly License Fees of the Customer Area multiplied by five percent (5%) for each Humidity Failure. For purposes of clarification, Customer receives a Service Level Credit after each six (6) hour period during which a Humidity Failure continues.
Humidity	Critical Humidity Failure - It shall be a Service Level Failure if the Humidity Reading exceeds sixty one percent (61%) and causes water to condense in the Customer Area.	The Service Level Credit shall equal one month's License Fees for the Customer Area regardless of the duration of the Critical Humidity Failure.
IP Bandwidth and Ethernet Transport	IP Bandwidth and/or Ethernet Transport Failure - If Customer takes dual network feed configurations, it shall be a Service Level Failure if both network feeds are unavailable simultaneously for any amount of time to Customer Area.	The Service Level Credit shall equal the total monthly License Fees specific to IP Bandwidth for the Customer Area multiplied by ten percent (10%) for each fifteen (15) minutes or portion thereof.

13.1.1 Air Temperature will be monitored at the midpoint of both the x and y axis of each designated cold aisle in the Customer Area or as otherwise reasonably determined by Licensor.

13.1.2 Humidity will be measured by the humidification control system that pertains to the Customer Area, or as otherwise reasonably determined by Licensor.

13.1.3 As relates to IP Bandwidth, Customer recognizes that the internet is comprised of thousands of autonomous systems and that this SLA covers the provision of access by Licensor to the global internet "cloud". Routing anomalies, asymmetries, inconsistencies and failures, outside of the control of Licensor, can and will occur on other networks. In such instance, Licensor shall use its commercially reasonable efforts to route traffic via an alternative route path, but any such events shall not be deemed to be a Service Level Failure (as described below) for purposes hereof.

13.2 Service Level Failures. Section 13.1 sets forth Customer's sole and exclusive remedy for failures to meet any of the Service Level Objectives for the Data Center Services referenced therein (a "Service Level Failure"). A Service Level Failure begins upon receipt of Licensor from Customer of a detailed report of an incident and ends when the affected service is operational. Customer shall provide the report via email to NOT@aiedatacenters.com or via telephone to Licensor's 24 hour response line. An applicable Service Level Credit allowance shall appear on Customer's next invoice following processing. Service Level Credits shall not have any cash value at the end of the Term or otherwise. Service Level Credits shall be calculated as a rebate of monthly License Fees, as applied specifically to the particular Data Center Service that experienced the Service Level Failure. If the price of the particular Data Center Service which was impacted by a Service Level Failure is not specified in the Customer's Agreement (e.g., due to package pricing), the price will be determined by Licensor using Licensor's then current market pricing for the specific Data Center service. One or more concurrent Service Level Failures shall yield the specific Service Level Credit that is most favorable to Customer. No Service Level Credits will be given for a service interruption: (a) caused by the action or failure to act by Customer; (b) due to failure of equipment provided by Customer; (c) during any period in which Licensor is not given access to the service premises; (d) which is part of a planned service interruption for maintenance, or results from implementation of a Customer order; (e)

due to a force majeure event; (f) for which Customer is entitled to a Service Level Credit for the same or a contemporaneous Service Level Failure; (g) affecting portions of the Customer Area used for office or storage space; or (h) resulting from Customer's breach of this Agreement. Total cumulative Service Level Credits earned in any thirty (30) day period shall not exceed the amount of one (1) month's License Fees for the Customer Area.

13.3 SLA Termination Right. Customer shall have the right, but not the obligation, to terminate this Agreement (without further obligation) in the event that Customer has received Service Level Credits for Primary Power Failure(s) and/or Critical Temperature Failure(s) in an amount exceeding the equivalent to two (2) month's License Fees in any calendar quarter, provided that Customer provides Licensor with written notice of its election to terminate within thirty (30) days of the failure(s) giving rise to such right.

IO PHOENIX ONE, LLC

615 N. 48th Street
Phoenix, Arizona 85008

By: _____

Printed Name: George D. Slessman
Chief Executive Officer

Title: _____

Date: 12/8, 2009

CUSTOMER: MOZILLA CORPORATION

Address: 650 Castro Street, Suite 300
Mountain View, California 94041-2021

By: _____

Printed Name: John D. Guay

Title: CEO

Date: 4 DEC 09, 2009

ORD Number: ORD-01842-S47TCG

i/o DATA CENTERS

License and Master Services Agreement

Attachment A - License Fees

Customer Mozilla Corporation
Initial Billing Term 60 Months
Billing Commencement Date 1/31/2010
Location Phoenix1
Data Center DC1

License Fees

Product ID	Description	Quantity	Base Amount	Monthly Total
<u>Customer DC Area</u>				
200.0	ThermoCabinet	6.00	\$1,500.00	\$9,000.00
<u>Conditioned Power (A/C - System Diverse)</u>				
2.11	30 Amp A/C @ 208v - A+ B Circuit	4.00	\$1,573.00	\$6,292.00
2.12	3 Phase 60 Amp A/C @ 208v - A+ B Circuit	2.00	\$3,158.10	\$6,316.20
<u>Related Data Center Services</u>				
5.3	Internet Bandwidth - 100 Mbps Ethernet	1.00	\$5,500.00	\$5,500.00
4.1	Biometric Enrollment	1.00	\$50.00	\$50.00
<u>Discount</u>				\$17,158.20
Total License Fees				\$10,000.00
<u>Installation Fees and Security Deposits</u>				
Installation Fees:		Security Deposits:		
\$10,000.00				

i/o DATA CENTERS

Details

1. Move in Date: The later of 1/31/2010 or ten (10) days following execution of the Agreement.
2. Installation Fees and one month's License Fees due upon execution of the Agreement.
3. Licensor to deliver one (1) 3 Phase 60Amp A/C @ 208v-PDU Diverse power circuit per ThermoCabinet.
4. Licensor to deliver five (5) 30 Amp 208v-PDU Diverse Circuits to (4) standard Full Cabinets.
5. Customer may not exceed 9KW per standard Full Cabinet.
6. Customer may not exceed 32KW per ThermoCabinet.
7. Customer intra-cage/cabinet communications cabling: NOT INCLUDED; TO BE INSTALLED BY CUSTOMER AT CUSTOMER'S EXPENSE.
8. Customer Equipment: NOT INCLUDED; TO BE PURCHASED AND INSTALLED BY CUSTOMER AT CUSTOMER'S EXPENSE.
9. License Fees shall be subject to three percent (3%) annual compounded increases.
10. Cross Connects to Data Center main distribution point: (6) Cat5e included.
11. In addition to the terms and conditions set forth elsewhere in this Agreement, Licensor hereby grants to Customer a non-transferable, non-exclusive license during the Term to use the ThermoCabinets set forth in Attachment A above (the "ThermoCabs") solely for use in accordance with this Agreement within the Customer Area. This grant is subject to the terms and conditions of this Agreement, including without limitation, compliance with the Rules and Regulations and the payment of License Fees. Customer acknowledges and agrees that the ThermoCab, its design, its pending patent, any modifications or additions and all related materials (collectively, the ThermoCab IP") are proprietary to Licensor and subject to the non-disclosure provisions in Section 9 of this Agreement. Customer further acknowledges and agrees that Licensor owns all right, title and interest in and to the ThermoCabs and the ThermoCab IP. Customer shall not (a) move or relocate any of the ThermoCabs without the prior written approval of Licensor in each instance; (b) alter or modify the ThermoCabs in any manner; or (c) reverse engineer or otherwise copy or use the ThermoCab IP. Nothing herein shall grant any rights to Customer in the ThermoCabs or the ThermoCab IP, other than those rights specifically set forth in this Section. Customer agrees to execute and deliver to Licensor any further documents and instruments, and to do any and all further acts, deemed necessary by Licensor to give full force and effect to this provision and the intentions of the parties with respect thereto.
12. In the event Customer is not then in default under this Agreement, Customer shall have the right to terminate this Agreement at any time after the completion of thirty six (36) months of the Initial Billing Term by providing Licensor at least ninety (90) days prior written notice, provided that Customer pays Licensor at the time of such notice, an amount equal to fifty percent (50%) of the License Fees for the remainder of the Initial Billing Term.