

MASTER SERVICES AGREEMENT

Legal

PLEASE READ CAREFULLY: THIS MASTER SERVICES AGREEMENT is between Dakota Cloud Networks, LLC ("**Dakota Cloud**") and the individual or entity ("**Customer**") for certain computer infrastructure and related services provided by Dakota Cloud as ordered or accepted pursuant to the Terms of Service ("**Services**"). The Customer's use of and access to Services is governed by the Master Services Agreement which includes the Terms of Services, Service Level Agreement, Privacy Agreement, IP Address Policy, Acceptable Use Policy and relevant appendices ("**MSA**"). **BY INSTALLING OR USING THE SERVICES, THE CUSTOMER AGREES THAT (1) CUSTOMER HAS ACCEPTED THE MSA IN ITS ENTIRETY, (2) AGREES TO BE BOUND BY THE MSA (AS AMENDED FROM TIME TO TIME AS PROVIDED IN SECTION 19.1 OF THE TERMS OF SERVICE), (3) IF THE CUSTOMER IS AN INDIVIDUAL, THEN THE INDIVIDUAL REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE LEGAL RIGHT TO ENTER INTO THE MSA AND IF THE CUSTOMER IS AN ENTITY, THEN THE INDIVIDUAL WHO AGREES TO THE MSA REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO BIND SUCH ENTITY AND (4) THIS MSA CONSTITUTES A BINDING AND ENFORCEABLE OBLIGATION BETWEEN DAKOTA CLOUD AND CUSTOMER. IF THE CUSTOMER DOES NOT AGREE WITH ALL THE TERMS OF THIS MSA AND DOES NOT AGREE TO BE BOUND BY THIS MSA, PLEASE DO NOT INSTALL OR USE THE SERVICES.**

Terms of Service ("**TOS**")

1. DEFINITIONS.

"Account Information" means billing information, contact information, payment information and such other information defined as "Account Information."

"Affiliate" means any legal entity that a party controls, that controls a party, or that is under common control with a party. For purposes of this definition, "control" shall mean beneficial ownership of the securities entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, of the election of the corresponding management authority) in the entity of (i) more than fifty percent (50%) of the securities or (ii) such lesser percentage of securities as is the maximum ownership permitted in the country where the entity exists.

"Anniversary Billing Date" means the date of the month of the Effective Date except as provided in this definition. For example, if the Effective Date is May 20, then the Anniversary Billing Date is the twentieth of the calendar month. If the Anniversary Billing Date is a date in a calendar month which does not exist in each calendar month, then the Anniversary Billing Date shall be the last date of such month (i.e. if the Anniversary Billing Date is the 30th, then in February, the Anniversary Billing Date shall be either February 28 or 29, depending on the year).

"AUP" means the Acceptable Use Policy.

"Customer" means the individual or entity who agrees to the terms of the MSA by signing the MSA, installing and/or using the Services.

"Customer Content" means all data, software and information, including, without limitation, data text, software, scripts, video, sound, music, graphics and images that are created, uploaded or transferred in connection with the Services by Customer or its Affiliates.

"Customer End User" means a Third Party which is an end user of a Customer Offering.

"Customer Offering" means services created by Customer based in whole or in part on the Services which are used by Third Parties.

"Effective Date" means the date on which the Customer accepts the MSA by signing the MSA, installing and/or using the Services.

"Feedback" means any and all suggestion, comments, improvements, or other feedback about the Services that Customer or any Affiliate provides to Dakota Cloud either directly or indirectly via a Dakota Cloud-controlled web site.

"Flow-Through Provisions" mean the terms of agreements for services provided by Third Parties which are included in the MSA as required by providers of Third Party Services. The Flow-Through Provisions apply only to the relevant services provided by Third Parties. Such services provided by Third Parties are part of the Services and are subject to the terms of the MSA as well as the Flow-Through Provisions.

"Hourly Services" means the Services that Dakota Cloud offers on an hourly basis.

"Initial Term" means the period commencing on the Effective Date until the next Anniversary Billing Date, unless terminated as provided in Section 16.

"IP Address Policy" means the policy governing the use and provision of any IP Addresses.

"MSA" has the meaning set forth in the recitals.

"Order" means an order or statement of work for a Service which may include a new order for a Service or an upgrade or a downgrade of a Service. Orders do not apply to Third Party Services.

"PII" means information that can be used to identify, contact, or locate a single person or that can be used with other sources to uniquely identify a single individual.

"Privacy Agreement" means the terms governing the use of PII.

"Private Network" means the term as described in the AUP.

"Public Network" means the term as described in the AUP.

"Renewal Term" means the period commencing after the last day of the Initial Term or the Renewal Term and extending until the next Anniversary Billing Date unless terminated as provided in Section 16.

"Services" has the meaning set forth in the recitals.

"Service Level Agreement" means the Service Level Agreement which is located at www.dakotacloud.com/about/legal (or such other location as Dakota Cloud may designate from time to time).

"Site" means www.dakotacloud.com (or such other location as Dakota Cloud may designate from time to time).

"SLA Credits" mean the credits for applicable qualifying service downtime as described in the Service Level Agreement.

"Dakota Cloud" has the meaning set forth in the recitals.

"Term" means the term as set forth in Section 16.

"Third Party" means an individual or an entity which is not a Customer, Dakota Cloud, an Affiliate of Dakota Cloud or an Affiliate of Customer.

"Third Party Services" mean services which are provided by Third Parties directly to Customer. The definition of Services does not include Third Party Services.

"TOS" means the terms of service for the Services.

"TPS Agreements" mean agreements for Third Party Services which are directly between the Customer and the provider of the Third Party Services. These agreements are separate and independent from the MSA and Dakota Cloud is not a party to these agreements.

2. DAKOTA CLOUD'S OBLIGATIONS.

2.1 **Provision of Services.** Contingent on Dakota Cloud's acceptance of an Order and subject to the terms of the MSA, Dakota Cloud agrees to use reasonable commercial efforts to provide the Services subject to the terms of Service Level Agreements. Dakota Cloud retains the right to reject the request for Services by any individual or entity in its sole discretion. Dakota Cloud may change, discontinue, add, modify, re-price or remove features or functionality from the Services upon notice to Customer. If Customer continues to use the Services following any such modification, such use will be deemed acceptance of such modification by Customer. The Third Party Services are provided by the relevant Third Parties and Dakota Cloud is not responsible for the provision of Third Party Services.

2.2 **Age.** Customer must be at least 18 years of age or otherwise have the legal capacity to order Services. If Customer is ordering Services on behalf of an employer, company, or other legal entity, Customer represents and warrants that it has the legal right and authority to order Services and be bound to this MSA.

3. PRIVACY.

3.1 **Collection of PII.** The collection and use of PII is governed by the Privacy Agreement.

4. USE OF AND ACCESS TO THE SERVICES.

4.1 **Ordering and Modification of Services.** Customer may order Services and all upgrades to such Services by email or as otherwise designated by Dakota Cloud. Dakota Cloud may accept such Orders in its discretion and shall give notice to Customer of acceptance of such Order by email. For downgrades or cancellation of Services, Dakota Cloud requires a written cancellation notice by email a minimum of 24 hours prior to 00:00:01 CST (GMT-6) on the Anniversary Billing Date for downgrades or discontinuance of Services. The failure to provide the required 24 hours written notice will result in the downgrade or discontinuance of Services being effective on the following Anniversary Billing Date and Customer will be charged for the Services during the relevant Renewal Term. Any Services cancelled prior to such 24 hour period will remain accessible to Customer until the Anniversary Billing Date.

4.2 **Rights to Use Services.** Subject to the terms and conditions of this MSA (including the Term), Dakota Cloud grants Customer a non-exclusive, nontransferable, non-sublicenseable (except to the extent required to exercise rights under Section 4.2(b)), revocable right in the Services solely to: (a) use and access the Services for internal purposes; and (b) use the Services to create, offer and provide the Customer Offerings.

4.3 **Customer Obligations:** Customer agrees to do each of the following: (i) comply with all applicable laws, rules and regulations, including, without limitation, the Foreign Corrupt Practices Act and related international anti-corruption laws and the Digital Millennium Copyright Act and related copyright laws; (ii) pay the fees for the Services when due; (iii) use reasonable security precautions for providing access to the Services by its employees or other individuals to whom it provides access; (iv) cooperate with Dakota Cloud's investigation of outages, security problems, and any suspected breach of the MSA; (v) comply with all license terms or terms of use for any software, content, service or website (including Customer Content) which Customer uses or

accesses when using the Services; (vi) give Dakota Cloud true, accurate, current, and complete Account Information; (vii) keep Customer's Account Information up to date; (viii) be responsible for the use of the Services by Customer and Customer End Users and any other person to whom Customer has given access to the Customer Offering; (ix) comply with the TPS Agreements; (ix) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and immediately notify Dakota Cloud of any known or suspected unauthorized use of Customer's account, the Services or any other breach of security; and (xi) where the Customer provides Customer Offering as permitted under this Agreement, Customer must enter into an agreement with Customer's End User which shall include the relevant terms of this Agreement and release Dakota Cloud from any and all liability for damages or losses Customer's End Users may incur as a result of using the Customer Offering. Customer may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, Customer may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act. Customer may not resell any of the Services alone to any Third Party without first entering into a reseller agreement with Dakota Cloud.

- 4.4 **Special Terms for Third Party Services.** To the extent Customer orders Third Party Services under TPS Agreements, Dakota Cloud is not responsible for such Third Party Services and the provider of the Third Party Service is solely responsible for providing such Third Party Services. However, the Customer also agrees that the following terms of the TOS apply to such Third Party Services: Sections 8, 9, 10, 11, 15 and 16.

5. PAYMENT.

- 5.1 **Fees:** All fees for the provision of Services (except as provided below for Additional Service Fees, Hourly Service Fees and One Time Fees) are due in advance on the first day of the relevant term. For example, the fees for such Services during the Initial Term shall be due on the Effective Date or before the provision of Services. The fees for the Services for Renewal Term would be due on or prior to the Anniversary Billing Date for such Renewal Term. The amount due may be adjusted by addition of Services, upgrade of Services, discontinuance of Services or downgrade of Services and through the use of SLA Credits. The fees for additional or upgraded Services for which the Order is accepted on the Anniversary Billing Date will be due on the Anniversary Billing Date. The fees for additional or upgraded Services for which the Order is accepted after an Anniversary Billing Date will be pro-rated on a calendar day basis to the next Anniversary Billing Date and billed as a one-time pro-rata charge on the next Anniversary Billing Date. Such fees will be due for the following Renewal Terms until cancelled as provided in Section 4.1.
- 5.2 **Additional Service Fees/Hourly Service Fees/One Time Fees:** For fees for additional services such as bandwidth use overages and backup overages, payment shall be due on the next Anniversary Billing Date. For Orders for Hourly Services, Customer shall specify the period of time for which the Hourly Services are requested in minimum increments of one hour and payment shall be due on the next Anniversary Billing Date. One time fees, such as setup fees, bandwidth, storage, administrative fees and late fees, are due and payable when invoiced, and/or as agreed by Dakota Cloud.
- 5.3 **Payment Methods:** The payment shall be made by the credit card maintained on file with Dakota Cloud, ACH or such other method as approved by Dakota Cloud. For methods such as credit card and ACH, the payment of fees shall be automatic on the due date.
- 5.4 **Taxes:** All prices and fees specified in or referred to in this MSA are stated exclusive of any tax, including withholding tax, sales, use, value added, levies, import and custom duties, excise or other similar or equivalent taxes imposed on the supply of Services. Any sales, use, levies, excise, withholding taxes or similar charges, direct or indirect, applicable or to become applicable, which are levied as a result of the supply of the Services shall be paid by the Customer. Neither party shall be liable for the other party's taxes based on income. If withholding tax applies to any payments for Services made under this MSA, the Customer may deduct such taxes and shall pay such taxes to the appropriate tax authority; provided that Customer shall provide Dakota Cloud with an official receipt for any such taxes withheld and must notify Dakota Cloud prior to payment that withholding tax is required to be paid and Customer shall pay to Dakota Cloud any additional amount to ensure that Dakota Cloud receives the full amount of the invoice. If Dakota Cloud has the legal obligation to pay or collect taxes for which Customer is responsible under this paragraph, the appropriate amount shall be charged to and paid by Customer in addition to the amount of the invoice, unless Customer provides Dakota Cloud with a valid tax exemption certificate authorized by the appropriate taxing authority. The parties undertake to cooperate, where possible, to minimize the amount of withholding tax due by making advance clearance applications under the relevant double taxation treaties (where applicable) to the relevant tax authority to reduce the rate of withholding tax or exempt entirely this amount if applicable. In any event, the Customer undertakes to account for any tax withheld to the tax authorities on a timely basis.
- 5.5 **SLA Credits:** SLA Credits, if issued to Customer's account, shall be used only to offset future charges for certain Services as provided in the Service Level Agreement. SLA Credits may not be sold, converted to cash or transferred to Third Parties or Affiliates. SLA Credits shall expire on the termination or expiration of the MSA.
- 5.6 **Additional Fees.** The Customer's failure to pay any fees on the due date shall result in incurring a late fee of \$20. If Dakota Cloud has suspended the Customer's access to the Services over the Public Network as provided in Section 15, the Customer shall incur a \$50 reconnection fee. Such fees shall be due upon receipt, and Dakota Cloud will not reconnect any Services to the Customer until full payment of such fees.
- 5.7 **Refunds & Disputes:** All fees paid for Services to Dakota Cloud are non-refundable. If the Customer believes that the bills are in error, the Customer's sole and exclusive remedy is to seek SLA credits by notice to Dakota Cloud within 30 days of the receipt of the disputed bill. Any invoice not disputed by Customer in accordance with Section 5.7 within 30 days of receipt of the invoice shall be conclusively accepted by Customer as correct. Customer shall not chargeback any credit card payments to Dakota Cloud

and any such chargeback will result in an additional payment to Dakota Cloud of up to \$500 which is a reasonable estimate of Dakota Cloud's additional administrative costs. Customer is responsible for any fees and costs (including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees) incurred by Dakota Cloud in enforcing collection of fees.

6. **OWNERSHIP OF SITE:** Customer hereby acknowledges and agrees that Dakota Cloud (or its licensors) own all legal right, title and interest in and to the Site and the Services provided by Dakota Cloud, including, without limitation, any intellectual property or other proprietary rights which subsist in the Site and Services (whether such rights are registered or unregistered, and wherever in the world those rights may exist). As between Customer and Dakota Cloud, all materials on the Site, including, but not limited to, graphics, user and visual interfaces, images, software, applications, and text, as well as the design, structure, selection, coordination, expression, "look and feel", and arrangement of the Site and its content (except for any Customer Content), and the domain names, trademarks, service marks, proprietary logos and other distinctive brand features found on the Site, are all owned by Dakota Cloud or its licensors.
7. **SECURITY:** Dakota Cloud agrees to maintain reasonable and appropriate measures related to physical security to protect Customer Content. Other than responsibility for physical security, Customer shall be solely responsible for data maintenance, integrity, retention, security, and backup (unless Customer has purchased Dakota Cloud's data backup services) of the Customer Content. Dakota Cloud will take commercially reasonable steps to maintain the confidentiality of the Customer Content in performing data backup services. If Customer transfers or is otherwise involved in the transfer of any Customer Content (whether in connection with its business or otherwise) over the Public Network or Private Networks, then Customer is solely responsible for compliance with any applicable laws, rules and regulations in any and all applicable regions or countries regarding the security, privacy, legality and/or safe handling of such Customer Content.
8. **INDEMNIFICATION BY CUSTOMER:** Customer hereby agrees to indemnify, defend and hold harmless Dakota Cloud and its parents, Affiliates, licensors and providers of Third Party Services, and their respective directors, officers, employees, contractors, agents, successors, and assigns, (collectively, the "Dakota Cloud Parties") (Dakota Cloud and each of the Dakota Cloud Parties an "Indemnified Party"), from and against any and all liability (including, without limitation, attorneys' fees and costs) incurred by the Indemnified Parties in connection with any actual or alleged claim ("Claim") arising out of: (a) Customer's use of the Services or Third Party Services; (b) any breach or alleged breach by Customer of this MSA; (c) any breach or alleged breach by Customer or Customer End Users of a Third Party's rights, including, without limitation, any actual or alleged infringement or misappropriation of a Third Party's copyright, trade secret, patent, trademark, privacy, publication or other proprietary right; (d) any damage caused by or alleged to have been caused by Customer or Customer End Users to the Site or Services; or (e) any actual or alleged violation or non-compliance by Customer or Customer End Users with any applicable law, court order, rule or regulation in any jurisdiction. The counsel which Customer selects for the defense or settlement of a Claim must be approved in writing in advance by Dakota Cloud prior to such counsel being engaged to represent the Indemnified Parties. Customer shall not in any event consent to any judgment, settlement, attachment, or lien, or any other act adverse to the interests of Dakota Cloud or any Dakota Cloud Party without the prior written consent of Dakota Cloud and/or the applicable Dakota Cloud Party(s). Customer and Customer's counsel will cooperate as fully as reasonably required, and provide such information as reasonably requested, by the Dakota Cloud or the Dakota Cloud Parties in the defense or settlement of any such matter.
9. **DISCLAIMER OF WARRANTIES:** EXCEPT AS REQUIRED BY LAW CUSTOMER'S USE OF THE SITE AND SERVICES IS ENTIRELY AT CUSTOMER'S OWN DISCRETION AND RISK. THE SITE AND SERVICES ARE FURNISHED BY DAKOTA CLOUD "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS, STATUTORY OR OTHERWISE, OF ANY KIND. DAKOTA CLOUD; (A) EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE; (B) DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THEIR OPERATION WILL BE TIMELY, UNINTERRUPTED, SECURE, OR ERROR-FREE OR THAT ANY DEFECTS WILL BE CORRECTED; AND (C) DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS OR CONDITIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES IN TERMS OF ITS ACCURACY, RELIABILITY, TIMELINESS, COMPLETENESS, OR OTHERWISE. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR ITS AND CUSTOMER END USERS' USE OF THE SERVICES.
10. **DISCLAIMER OF CONSEQUENTIAL DAMAGES.** EXCEPT AS REQUIRED BY LAW IN NO EVENT WILL DAKOTA CLOUD BE LIABLE TO CUSTOMER, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES IN CONNECTION WITH, ARISING OUT OF, OR RELATING TO, THE USE, OR LOSS OF USE OF, THE SERVICES, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF DATA OR CONTENT, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, SUBSEQUENT OR OTHER COMMERCIAL LOSS, OR FOR ANY OTHER REASON OF ANY KIND, WHETHER BASED ON CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY), EVEN IF DAKOTA CLOUD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
11. **LIMITATION OF LIABILITY.** EXCEPT AS REQUIRED BY LAW DAKOTA CLOUD WILL NOT BE LIABLE TO CUSTOMER FOR DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY RELATED TO THE SITE OR SERVICES. IF, NOTWITHSTANDING THE FOREGOING, DAKOTA CLOUD IS FOUND TO BE LIABLE TO CUSTOMER FOR ANY DAMAGE OR LOSS WHICH ARISES UNDER OR IN CONNECTION WITH THE SERVICES, DAKOTA CLOUD'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY THE CUSTOMER FOR THE SERVICES FOR THE SIX MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO DAKOTA CLOUD'S LIABILITY.
12. **ALLOCATION OF LIABILITY.** THE PARTIES ACKNOWLEDGE THAT THE DISCLAIMER OF WARRANTIES, DISCLAIMER OF CONSEQUENTIAL DAMAGES AND LIMITATIONS OF LIABILITY IN THE MSA AND IN THE OTHER PROVISIONS OF THIS MSA AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH DAKOTA CLOUD WOULD NOT HAVE ENTERED INTO THIS MSA. DAKOTA CLOUD'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THESE LIMITATIONS.
13. **ARBITRATION:** Any controversy or claim arising from the Services or related to this MSA or breach thereof shall be settled by arbitration

in accordance with the commercial arbitration rules of the American Arbitration Association. The number of arbitrators shall be one, and such arbitrator shall be an independent third party mutually agreeable to the Parties. The venue and jurisdiction requirements set forth below apply to any arbitration proceedings. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all claims covered by this arbitration provision. Either party may bring an action in any court of competent jurisdiction to compel arbitration under this MSA, to enforce an arbitration award or to obtain temporary injunctive relief pending a judgment based on the arbitration award. Notwithstanding the provisions of this Section 13, Customer acknowledges that Customer's breach of Sections 4.2, 4.3 or violation of any terms and conditions of the AUP would cause irreparable injury to Dakota Cloud and agrees that in the event of any such breach, Dakota Cloud shall be entitled to seek temporary and preliminary injunctive relief, to the extent allowed under the rules of the American Arbitration Association, without the necessity of proving actual damages or posting any bond or other security.

14. TRADEMARKS. Customer hereby grants to Dakota Cloud a non-exclusive, worldwide, royalty-free, fully paid-up license during the Term to use Customer's trademarks, marks, logos or trade names in connection with Dakota Cloud's provision of Services (including support of Services) to Customer and to be listed as a customer of the Services by Dakota Cloud or its designees. The license granted in this Section 14 will include the right of Dakota Cloud to sublicense its Affiliates and any Third Parties providing all or part of the Services on behalf of Dakota Cloud to achieve the foregoing.

15. SUSPENSION.

15.1 Suspension. Dakota Cloud may suspend provision of Services to Customer without liability if: (i) Dakota Cloud reasonably believes that the Services are being used (or have been or will be used) by Customer in violation of the MSA or any applicable law, court order, rule or regulation in any jurisdiction; (ii) Customer does not cooperate with Dakota Cloud's investigation of any suspected violation of the MSA or any applicable law, court order, rule or regulation in any jurisdiction; (iii) Dakota Cloud reasonably believes that Services provided to Customer have been accessed or manipulated by a Third Party without Customer's consent or in violation of the MSA; (iv) Dakota Cloud reasonably believes that suspension of the Services is necessary to protect Dakota Cloud's network or other Dakota Cloud customers; (v) a payment for the Services is overdue by more than 5 days including the Anniversary Billing Date (and in addition, Dakota Cloud may, in Dakota Cloud's sole discretion, continue to make the Services available through the Public Network and may suspend such access to the Private Network if the fees are not paid within 7 days of the due date); (vi) the continued use of the Services by the Customer may adversely impact the Services or the systems or content of any other Dakota Cloud customer, (vii) Dakota Cloud reasonably believes that the use of the Services by Customer may subject Dakota Cloud, its Affiliates, or any Third Party to liability; or (viii) suspension is required by law, statute, regulation, rule or court order. Dakota Cloud will give Customer reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, unless Dakota Cloud determines, in Dakota Cloud's reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect Dakota Cloud or its other customers from operational, security, or other risk or the suspension is ordered by a court or other judicial body. A violation of the Flow-Through Provision shall be treated the same as a violation of the MSA for this provision. If Dakota Cloud suspends the Customer's right to access or use any portion or all of the Service:

- a. Customer remains responsible for all fees and charges Customer has incurred through the date of suspension;
- b. Customer remains responsible for any applicable fees and charges for any Services to which Customer has continued to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;
- c. Customer will not be entitled to any SLA Credits under the Service Level Agreement for any period of suspension; and
- d. at Dakota Cloud's sole discretion, Dakota Cloud may terminate Customer's access to Customer Content stored in the Services during a suspension, and Dakota Cloud shall not be liable to Customer for any damages or losses Customer may incur as a result of such suspension.

16. TERM.

16.1 Term. Except in the case of Hourly Services which are provided based on the number of hours in the Order or as otherwise agreed to by the parties in writing, the term shall commence on the Effective Date and is automatically renewed each Anniversary Billing Date until terminated as provided below.

16.2 Termination for Convenience. Customer may terminate the MSA for convenience at any time as provided in Section 4.1. If Customer terminates this MSA for convenience, Customer shall pay Dakota Cloud all amounts that would be due within 5 days after such termination. Dakota Cloud may terminate the MSA for convenience upon providing Customer with notice of non-renewal at least 10 days prior to the expiration of the Initial Term or any Renewal Term.

16.3 Termination for Breach. Dakota Cloud may terminate the MSA immediately upon notice if: (i) Dakota Cloud discovers that the information Customer provided to Dakota Cloud about Customer's proposed use of the Services or Account Information was inaccurate or incomplete; (ii) if Customer is an individual, Customer was not at least 18 years old or otherwise did not have the legal capacity to enter into the MSA, install, or accept Services at the time Customer submitted the Order, or if Customer is an entity, the individual submitting the Order for Customer did not have the legal right or authority to enter into the MSA, install or accept Services on behalf of the person represented to be the Customer; (iii) Customer payment of any invoiced amount is overdue, and Customer does not pay the undisputed overdue amount within 5 days of the due date; (iv) Customer use of the Services or Customer End Users use of the Customer Offering in violation of this MSA and fails to remedy any violation within 5 days of Dakota Cloud's written notice; (v) Customer or Customer End User violates the AUP; (vi) Customer's account has been suspended for 30 days or more; (vii) Customer has multiple violations of the MSA; or (viii) Customer fails to comply with any other provision of this MSA and does not remedy the failure within 30 days of Dakota Cloud notice to Customer describing the failure.

Dakota Cloud will give Customer written notice of termination under this paragraph unless Dakota Cloud determines, in Dakota Cloud's reasonable commercial judgment, that a termination on shorter or contemporaneous notice is necessary to protect Dakota Cloud or its other customers from operational, security, or other risks. A breach of the Flow-Through Provision shall be deemed to be a breach of the MSA.

16.4 **Access to Customer Content.** The deletion of Customer Content is automatic upon termination or expiration of the MSA. Consequently, unless Dakota Cloud determines otherwise, Customer will not have access to Customer Content, and Dakota Cloud may immediately erase or delete Customer Content from its computer infrastructure after the effective date of termination or expiration of this MSA.

16.5 **Effect of Termination.** Upon expiration or termination of the MSA, Customer must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to Customer by Dakota Cloud and any other materials provided to Customer by Dakota Cloud in connection with the Services, including pointing the DNS for Customer domain name(s) away from the Services. Dakota Cloud will have no obligation to provide any transition services or access to data except as expressly stated in Section 16.4 above.

17. **U.S. GOVERNMENT CUSTOMERS AND U.S. GOVERNMENT RIGHTS.** Dakota Cloud provides the Services for ultimate federal government end use solely in accordance with the following license rights to use, modify, reproduce, release, perform, display, or disclose: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this MSA. This customary commercial license is provided in accordance with the Federal Acquisition Regulation ("FAR") at 48 C.F.R. 12.211 (Technical Data) and FAR 12.212 (Software) for civilian agencies of the federal government, and, for Department of Defense transactions, the Defense Federal Acquisition Regulation Supplement ("DFARS") at 48 C.F.R. 252.227-7015 (Technical Data - Commercial Items), 48 C.F.R. 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). This U.S. Government Rights clause, consistent with 48 C.F.R. 12.211, 48 C.F.R. 27.212 (federal civilian agencies) or 48 C.F.R. 227.7202-4 (DoD agencies) is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software, computer software documentation or technical data related to the Dakota Cloud Commercial Computer Software and Commercial Computer Software Documentation licensed under this MSA or in any contract or subcontract under which this Dakota Cloud Commercial Computer Software and Commercial Computer Software Documentation is acquired or licensed. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Dakota Cloud to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in writing and agreed to by Dakota Cloud in any applicable contract or agreement

18. **THIRD PARTIES.** Unless otherwise agreed, Dakota Cloud will provide support only to Customer, not to Customer End User, Customer Affiliate, Third Party or Third Party Affiliate to whom Customer provides access to use the Services or the Customer Offering. There are no Third Party beneficiaries to the Agreement, meaning that Third Parties do not have any rights against either Dakota Cloud or Customer under the MSA.

19. **MISCELLANEOUS.**

19.1 **Changes to the MSA.** As noted in the recitals, Dakota Cloud may modify the terms and conditions of this MSA as provided below. Dakota Cloud will notify its Customers of any such modifications and all modifications shall be effective upon notification. If Customer continues to use the Services following any such modification such use will be deemed acceptance of such modification by Customer. Any modifications requested by Customer to any of the terms of the MSA must be approved in writing by Dakota Cloud.

19.2 **Certain Employment Issues.** If Customer's employees or third parties which have been contracted by Customer for rendering contractually agreed services that are in all material respects equivalent to the Services prior to the beginning of this Agreement assert the transfer of their employment relationship or claims thereto against Dakota Cloud under EU Directive 2001/23/EC or similar national legislation, Customer shall use its best efforts to either prevent the transfer of the employment relationship or to hold off such claims. Customer shall hold harmless and indemnify Dakota Cloud from all prosecution costs incurred in connection with the transfer prevention as well as from any compensation payments to the employee and fees for any external legal counsel, as well as any and all incurred costs and financial claims of the employee or third party that arise from or are due to a claim of further employment or re-employment. These expenses include costs or salary, health insurance, social security contributions, voluntary and legal pension contributions, company pension scheme, pension funds and any severance costs in line with Dakota Cloud's standard generally-applicable policy.

19.3 **Notices.** Customer communications regarding the Services should be sent through email except for the following types of notices: for breach, indemnification, or other non-routine legal matters, Customer should send it by electronic mail and first-class United States mail to:

Dakota Cloud Networks, LLC
 C/O Legal Department
 PO BOX 1585
 Fargo, ND 58107
 Email: legal@dakotacloud.com

Dakota Cloud's communications regarding the Services and legal notices will be sent by email or mail. Notices are deemed received as of the time delivered. Notices must be given in the English language.

- 19.4 **Export Matters.** If Customer chooses to use these Services, Customer does so on its own initiative and is responsible for compliance with applicable laws. Customer agrees to comply with all restrictions and regulations of the U.S. Department of Commerce and any other United States or foreign agencies and authorities in connection with Customer's use of these Services and to not, in violation of any laws, transfer, or authorize the transfer, of any Services (a) into any U.S. and/or U.N. embargoed countries or (b) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders or Entity List of proliferation concern, or the U.S. State Department's Debarred Parties List. By using these Services, Customer represents and warrants that Customer is not located in, under the control of, or a national or resident of any such country or on any such list. In addition, Customer may not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations. Customer assumes responsibility for compliance with laws and regulations applicable to export, re-export or import of products, technology or technical data provided hereunder and for obtaining required export and import authorizations. Customer will not transfer to or through the Services any data, materials or other items controlled for export under the International Traffic in Arms Regulations ("ITAR Data") or other applicable laws unless Dakota Cloud has agreed to the transfer and (i) Customer has provided Dakota Cloud not less than 10 days' prior written notice that ITAR Data will be transferred to or through the Services, (ii) Customer has received prior written authorization from the U.S. Government to transfer the ITAR Data to Dakota Cloud, and (iii) Customer agrees to provide Dakota Cloud with all necessary assistance to enable Dakota Cloud to obtain such U.S. Government permission. Customer is responsible, and will reimburse Dakota Cloud, for all costs, expenses or damages incurred by Dakota Cloud in connection with Customer transfer of ITAR Data.
- 19.5 **Assignment/Subcontractors.** Customer may not assign the MSA or Customer rights and/or delegate Customer obligations under the MSA without Dakota Cloud's prior written consent. Any assignment or transfer of the MSA by Customer in violation of this section will be void. Dakota Cloud may assign the MSA to (i) its Affiliates and (ii) any entity as a result of a merger or sale of all or substantially all of the assets of Dakota Cloud to such entity and such entity agrees in writing to be bound by the terms of the MSA. This MSA will be binding on and inure to the benefit of Customer's and Dakota Cloud's respective permitted successors and permitted assigns. However, Dakota Cloud may use Third Parties or Affiliates to provide all or part of the Services. This provision does not apply to the Third Party Services which are governed by separate agreements.
- 19.6 **Force Majeure.** Except for its rights in Sections 15 or 16, neither Dakota Cloud nor Customer will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond either party's control, such as significant failure of a part of the power grid, sabotage, denial of service attack, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry; provided however if the force majeure event continues beyond thirty (30) days, the performing party may terminate the MSA.
- 19.7 **Feedback.** Dakota Cloud shall own all right, title and interest in and to Feedback. Upon providing the Feedback, Customer hereby irrevocably assigns to Dakota Cloud all right, title, and interest in and to the intellectual property rights in the Feedback and agrees to provide Dakota Cloud with any assistance Dakota Cloud may require to document, perfect, and maintain Dakota Cloud's rights in the Feedback.
- 19.8 **Governing Law, Lawsuits.** The MSA is governed by the laws of the State of North Dakota, exclusive of any North Dakota choice of law principle that would require the application of the law of a different jurisdiction, and the laws of the United States of America, as applicable. The application to the MSA of the United Nations Convention on the International Sale of Goods is excluded in its entirety. The exclusive venue for all disputes arising out of the MSA shall be in the state or federal courts in Cass County, North Dakota, and the parties each agree not to bring an action in any other venue. Customer waives all objections to this venue and agrees not to dispute personal jurisdiction or venue in these courts.
- 19.9 **Relationship of the Parties.** The parties' relationship is that of independent contractors and not business partners. Neither of the parties is the agent for the other, and neither party has the right to bind the other on any agreement with a Third Party.
- 19.10 **No Waiver.** Dakota Cloud's failure to exercise or delay in exercising any of its rights under this MSA will not constitute a waiver, forfeiture, or modification of such rights. Dakota Cloud's waiver of any right under this MSA will not constitute a waiver of any other right under this Agreement or of the same right on another occasion. Dakota Cloud's waiver of any right under this MSA must be in writing.
- 19.11 **Survival.** All provisions that by their nature are intended to survive expiration or termination of the MSA shall survive expiration or termination of the MSA.
- 19.12 **Integration.** This MSA is the complete and exclusive agreement between Customer and Dakota Cloud regarding its subject matter and supersedes and replaces any agreement, understanding, or communication, whether written or oral, prior or contemporaneous.
- 19.13 **Severability.** If any part of this MSA is found unenforceable by a court or other tribunal, the rest of the MSA will nonetheless continue in effect, and the parties agree that any court or other tribunal may reform the unenforceable part if it is possible to do so consistent with the material economic incentives of the parties resulting in this MSA.
- 19.14 **Language.** The official language of the MSA shall be the English language and no translation into any other language may be used in its interpretation. All services, support, notices, designations, specifications, and communications will be provided in the English language.

Service Level Agreement ("SLA")

The SLA is incorporated into the MSA and applicable to all Services delivered to Customers. This SLA does not apply to the availability of Third Party Services which are subject to the TPS Agreements. The SLA is binding only on the Customer and Dakota Cloud and does apply to any Third Parties, including Customer End Users. **The issuance of SLA Credits (defined below) is the sole and exclusive remedy of Customer and Dakota Cloud's sole and exclusive obligation, for any failure by Dakota Cloud to satisfy the requirements set forth in the SLA.**

Support

1. Support Requests: Dakota Cloud support will be available 24 hours per day, 7 days per week, year round. You may request support by emailing support@dakotacloud.com.
2. Response Times: We will respond to your support requests made by email within the following time frames, unless a custom response time is agreed to in advance:
 - a. SUPPORT RESPONSIVENESS: Customer questions and support requests will be acknowledged within twenty-four (24) hours. Resolution times are dependent on the particular circumstances and are not guaranteed;
 - b. RESTORE REQUESTS: Customer restore requests will begin within 24 hours provided that the destination location is available and the requested data is available in the backup repository. We will respond to you via email, telephone call, or both depending upon the severity of the situation and consistent with any procedures we have established with you for your account.
3. Remedy: If we fail to meet the response time commitments stated in this "Support" section, you are entitled to a credit of \$25 per event, up to 100% of your monthly recurring fee for the affected hosted system for any calendar month. This credit does not apply for shared web and/or shared email hosting services.

Data Center

4. Power: A/C power to the outbound port on your serving power distribution unit (PDU) will be available 100% of the time.
5. Network: The data center network will be available 100% of the time. "Network" means the portion of the network extending from the outbound port on your edge device to the outbound port on the border router and includes Dakota Cloud managed switches, routers, and cabling. Network availability is defined as the ability to pass TCP/IP traffic with less than 3% packet loss and less than 30ms latency across the Dakota Cloud network infrastructure.
6. Remedy: If Dakota Cloud fails to meet any of the commitments stated in this "Data Center" section and the failure adversely affects your hosted system, you are entitled to a credit in the amount of 5% of your monthly recurring fee for the affected hosted system per half hour of power outage or network downtime, up to 100% of the monthly recurring fee for the affected components for any calendar month. This credit does not apply for shared web and/or shared email hosting services.

Hardware Replacement

For purposes of this section, "hardware" means dedicated server hardware, firewalls, and load balancers, but not Storage Area Networks ("SAN").

7. Hardware Repair or Replacement: Dakota Cloud will begin repairing or replacing failed hardware components provided by Dakota Cloud within four (4) hours of problem identification by Dakota Cloud. This commitment does not include the time required to rebuild your system, such as the time required to configure a replacement device, rebuild a RAID array, reload the operating system, reload and configure applications, and/or restore from backup (if necessary).
8. High Availability Network Device Solution. A "high-availability" network device solution means two devices within a single data center (such as a firewall, load balancer, router, or switch) configured in a fail-over configuration. High availability network device solutions will be available 100% of the time. Dakota Cloud will work with you to test the reliability of the high availability solution as part of the implementation process; proper testing must be completed for this commitment to apply.
9. Remedy: If Dakota Cloud fails to meet the commitments stated in this "Hardware Replacement" section and the failure adversely affects your hosted system, you are entitled to a credit in the amount of 5% of your monthly recurring fee per half hour of downtime (after the one hour from problem identification referenced in section 7), up to 100% of the monthly recurring fee for the affected component for any calendar month. This credit does not apply for shared web and/or shared email hosting services.

Restoration of Backed Up Data

We will back up your data only if you have purchased data backup services, otherwise Customer is solely responsible for ensuring that its data is backed up in the event of an outage. There is no resolution guarantee and no guarantee of backup integrity.

10. Data Backup: Unless a custom backup solution is agreed to in advance, backups will be performed to a shared Managed Backup Infrastructure on a scheduled basis. Backups will be retained for the time agreed in the service description or other written agreement. The default backup schedule is nightly backups with a seven day retention period.
11. Data Restoration:
 - a. LOCAL RESTORES: We will initiate restoration of your data stored onsite within twenty-four (24) hours of the time that you request the restore via email.
 - b. REMEDY: If we fail to restore the data that you have selected for backup in accordance with the standards stated in this "Restoration of Backed Up Data" section, you are entitled to a service credit of \$25 per event, up to 100% of your monthly recurring fee for the affected configuration for any calendar month.

Monitoring

12. **Availability Monitoring:** Dakota Cloud will monitor TCP ports (HTTP, HTTPS, SMTP, POP3, etc.) as requested and paid for by Customer. General server availability is tested every five (5) minutes via ping. You will be alerted via email if port or ping monitors fail.
13. **Fault Monitoring:** Dakota Cloud monitors status events on servers and network devices including network availability, process status, file system and capacity.
14. **Performance Monitoring:** Dakota Cloud monitors key performance metrics for the operating system, select applications and databases.
15. **Notification of Monitoring Alerts:** We will notify you of monitoring alerts within the time frames stated in the "Support" section above.
16. **Remedy:** If we fail to meet the monitoring alert notification commitments stated in this "Monitoring" section, you are entitled to a credit of \$25 per event, up to 100% of your monthly recurring fee for the affected hosted system for any calendar month. This credit does not apply for shared web and/or shared email hosting services.

Limitations on Credits

17. **Cumulative Dollar Amount:** Notwithstanding anything in this SLA to the contrary, the maximum total credit for any calendar month for failure to meet Service Level commitments under this Agreement, shall not exceed 100% of your monthly recurring fee for the affected hosted system. Credits that would be available but for this limitation will not be carried forward to future months.
18. **Maintenance:** You are not entitled to a credit for downtime or outages resulting from Maintenance. "Maintenance" means: A) DAKOTA CLOUD MAINTENANCE WINDOWS: upgrades or repairs to shared infrastructure, such as core routing or switching infrastructure that we scheduled at least 72 hours in advance and that occurs during off peak hours in the time zone where the data center is located; B) SCHEDULED CUSTOMER MAINTENANCE: maintenance of your configuration that you request and that we schedule with you in advance (either on a case by case basis, or based on standing instructions), such as hardware or software upgrades; C) EMERGENCY MAINTENANCE: critical unforeseen maintenance needed for the security or performance of your configuration or Dakota Cloud's network. We require that all servers remain patched to the approved Dakota Cloud patch level.
19. **Force Majeure/Extraordinary Events:** You are not entitled to a credit for downtime or outages resulting from an event of Force Majeure (as described in Section 19.6 of the TOS), denial of service attacks, virus attacks, hacking attempts, and/or any other circumstances that are not within our control.
20. **Your Breach of the Agreement:** You are not entitled to a credit if you are in breach of the Agreement at the time of the occurrence of the event giving rise to the credit until you have cured the breach. You are not entitled to a credit if the event giving rise to the credit would not have occurred but for your breach of the Agreement.
21. **Disabling or Removing of Monitoring or Security Services, Interference with Services:** You must notify us in advance if you plan to disable, block, or remove any monitoring or security element of your hosting service for more than thirty (30) minutes. We will not issue you any credit for events that might have been avoided or mitigated if you had not disabled, blocked or removed our monitoring or security elements, or otherwise interfered with our ability to provide the Services.
22. **Logical Access:** This SLA is contingent on Dakota Cloud having full logical access to your configuration. No credit will be due if the credit would not have accrued but for your restriction of Dakota Cloud's logical access to your configuration.
23. **Data Center Upgrades:** We are constantly upgrading our data center facilities and in order for you to benefit from these upgrades, you agree that we may relocate your servers within our data centers, make changes to the provision of the Services, URLs and your IP addresses and may establish new procedures for the use of the Services. In each case we will give you reasonable advance notice and use all reasonable endeavors to minimize the effect that such change will have on your use of the Services.

Measurement of Time Periods

For the purpose of determining whether a credit is due, time periods will be measured from the time stamp generated by our ticket system, or the time an interruption is recorded in our monitoring system, as applicable. If you contact us by telephone to request support, we will open a ticket. If you contact us by phone, there may be a delay between the time of the call and the time we open a ticket.

Requests

You must request a credit in writing either via email or by postal mail no later than seven (7) days of submission of the initial trouble ticket or support call. We will contact you within 30 days to approve or reject the claim or to request more information. If the claim is approved, the credit will appear on your monthly invoice following approval.

Acceptable Use Policy ("AUP")

General Statement: The purpose of this AUP is to inform all Customers of the acceptable uses of the Services. Dakota Cloud is committed to encouraging the use of the Internet through its Services and Third Party Services, but such use must be consistent with the laws and regulations governing use of the Internet and must protect the right of its other customers to use its Services. The AUP is designed to achieve these goals. Customer agrees to comply with the AUP and is responsible for the use of the Services and Third Party Services by all entities and individuals whom Customer permits to use the Services, Third Party Services or the Customer Offering. In addition to its rights under Section 19.1 of the Terms of Service, Dakota Cloud has the right to change or modify the terms of the AUP at any time. Customer's use of the Services or Third Party Services after changes to the AUP are posted shall constitute acceptance of any changed or additional terms.

Public Network: The Public Network of Dakota Cloud provides public Internet access to Customer servers and data storage services on Dakota Cloud's network. All Customers are granted equal access to the Public Network.

IP Addresses: The IP Address Policy (as described in the Terms of Services) which may be changed from time to time at Dakota Cloud's sole discretion, is incorporated into this MSA by reference. Customer acknowledges and agrees to adhere to the IP Address Policy. All IP Addresses assigned to Customer are owned and managed by Dakota Cloud. Such IP Addresses are non-transferable, and Customer retains no ownership or transfer rights to such IP Addresses. All IP Addresses are assigned by the Dakota Cloud engineering team on a per VLAN, per server basis. Attempted use by Customer of any unallocated IP Address or any IP Addresses on VLANs not assigned to Customer is a violation of this AUP.

Prohibited Uses: The following list provides a number of general prohibited uses of the Services and/or Third Party Services that are violations of this AUP. Please note that the following list does not represent a comprehensive or complete list of all prohibited uses.

1. **Unlawful Activities.** The Services and/or Third Party Services shall not be used in violation of any criminal, civil or administrative violation of any applicable local, state, provincial, federal, national or international law, treaty, court order, ordinance, regulation or administrative rule. This includes, but is not limited to:
 - a) Child pornography
 - b) Unlawful gambling activities
 - c) Threats, harassment and abuse of any individual, organization or business
 - d) Fraudulent activities
 - e) Terrorist websites or other sites advocating human violence and hate crimes based upon religion, ethnicity or country of origin
 - f) Unlawful high yield investment plans, Ponzi schemes or linking to and or advertising such schemes
2. **Child Pornography:** In particular, the Services and/or Third Party Services shall not be used to publish, submit, receive, upload, download, post, use, copy or otherwise produce, transmit, distribute or store child pornography.
3. **Unsolicited Email:** The use of the Services and/or Third Party Services to send or receive mass unsolicited email ("SPAM"). This prohibition includes the direct sending and receiving of such messages, support of such messages via web page, splash page or other related sites, or the advertisement of such services. The falsifying of packet header, sender, or user information whether in whole or in part to mask the identity of the sender, originator or point of origin or knowingly deleting any author attributions, legal notices or proprietary designations or labels in a file that the Customer mails or sends.
4. **Email Bombing:** The sending, return, bouncing or forwarding of email to specified user(s) in an attempt to interfere with or overflow email services.
5. **Proxy Email:** The use of the Services and/or Third Party Services as a proxy email server to forward email to unrelated Third Parties.
6. **UseNet SPAM:** The use of Services to send, receive, forward, or post UseNet unsolicited email or posts. This includes UseNet services located within the Dakota Cloud network or unrelated networks of Third Parties.
7. **Hacking:** The use of the Services and/or Third Party Services or hacking, attacking, gaining access to, breaching, circumventing or testing the vulnerability of the user authentication or security of any host, network, server, personal computer, network access and control devices, software or data without express authorization of the owner of the system or network.
8. **Threatening Material or Content:** The Services and/or Third Party Services shall not be used to host, post, transmit, or retransmit any content or material that harasses, or threatens the health or safety of others. In addition, Dakota Cloud reserves the right to decline to provide Services and/or Third Party Services if the content is determined by Dakota Cloud to be obscene, indecent, hateful, malicious, racist, defamatory, fraudulent, libelous, treasonous, excessively violent or promoting the use of violence or otherwise harmful to others.
9. **Violation of Intellectual Property Rights:** The Services and/or Third Party Services shall not be used to publish, submit/receive, upload/download, post, use, copy or otherwise reproduce, transmit, retransmit, distribute or store any content/material or to engage in any activity that infringes, misappropriates or otherwise violates the intellectual property rights or privacy or publicity rights of Dakota Cloud or any other party, including but not limited to any rights protected by any copyright, patent, trademark laws, trade secret, trade dress, right of privacy, right of publicity, moral rights or other intellectual property right now known or later recognized by statute, judicial decision or regulation.
10. **Distribution of Malware:** The storage, distribution, fabrication, or use of malware, including without limitation, virus software, root kits, password crackers, adware, key stroke capture programs and other programs normally used in malicious activity is prohibited. The use of such programs in the normal ordinary course of business, however, may be requested by Customer and approved by Dakota Cloud on a case by case basis. Example: Security company using the Services to analyze the latest root kit for new security analysis/software.
11. **Phishing:** Any activity designed to collect personal information (name, account numbers, usernames, passwords, etc.) under false pretense. Splash pages, phishing forms, email distribution, proxy email or any activity related to phishing activities may result in the immediate suspension of Customer's account.
12. **Violation of Agreements relating for Third Party Services.** Any activity which violates any TPS Agreements.

13. Denial of Service. Any activity to implement or assist in the implementation of denial of service attack. Dakota Cloud absolutely prohibits the use of Services for the origination, propagation or control of denial of service attacks ("DoS") or distributed denial of service attacks ("DDoS"). Customers may not utilize the Services to perform DoS or DDoS mitigation activities (such as service proxying or data scrubbing) which may result in attracting inbound denial of service attacks toward the Services. Any relation to DoS or DDoS type activity is a direct violation of Dakota Cloud's AUP.

Reporting Violation of the Acceptable Use Policy: Dakota Cloud accepts reports of alleged violations of this AUP via email sent to abuse@dakotacloud.com. Reports of alleged violations must be verified and must include the name and contact information of the complaining party, and the IP address or website allegedly in violation, and a description of the alleged violation. Unless otherwise required by law, such as the DMCA, Dakota Cloud owes no duty to Third Parties reporting alleged violations. Dakota Cloud will review all verified Third Party reports and will take such actions as it deems appropriate in its sole discretion.

Dakota Cloud will comply with and respond to valid (as Dakota Cloud determines in its sole discretion) subpoenas, warrants, and/or court orders. If permitted by applicable law or regulation, Dakota Cloud will forward such subpoenas, warrants, and/or orders to Customer and Customer may respond; however, Dakota Cloud reserves the right to respond to any such subpoena, warrant and/or order if it is the named party in such subpoena, warrant, and/or order.

Disclaimer: Dakota Cloud retains the right, at its sole discretion, to refuse new service to any individual, group, or business. Dakota Cloud also retains the right to discontinue service to Customers with excessive and/or multiple repeated violations.

Privacy Agreement ("PA")

Dakota Cloud considers user privacy paramount, and Dakota Cloud utilizes great care in keeping the information of the users of the Site (including Customers) ("Users" or "You") private and secure. Dakota Cloud adheres to the U.S.-Swiss Safe Harbor Framework as well as the Safe Harbor Principles as agreed to and set forth by the United States Department of Commerce and the European Union ("EU"), <http://export.gov/safeharbor/>. To demonstrate our firm commitment to privacy, the following agreement has been created to explain our policies and procedures in relation to all data collected. In this Privacy Agreement ("PA") we describe the information that we collect; how we use, disclose, and share your information; and how we protect your information. Capitalized terms not defined in the PA are defined in the Terms of Service. This PA does not apply to Third Party Services which are governed by their own privacy policies.

Types of Data Collected

Dakota Cloud collects data related to our users through the following methods:

- Automated means such as communication protocols and cookies
- Online registration and online signup forms
- Sales inquiries and transactions
- Online Customer communications
- Offline communications and interactions
- Third party sources of information

Depending upon the method of collection and use, the data collected may include information about the User from forms, registrations and transactions (such as name, title, address, company, phone number and e-mail address), financial/transaction information (such as credit card, card verification value (cw), and payment information), information about use of Site (such as electronic communications protocols, web pages visited, and cookies) and User preferences and privileges.

Electronic Communications Protocols and Cookies

Dakota Cloud may receive data from you as part of the communication connection itself through the standard electronic greeting between your computer and our servers. This information often consists of network routing (where you came from), equipment information (browser type), internet protocol address, date and time. At this time our server will also query your computer to see if there are "cookies" previously set by dakotacloud.com to facilitate log in or other site navigation procedures. A "cookie" is a small piece of information sent by a web server to store in a web browser so it can later be read back from that browser.

Cookies: Some parts of the Site use cookies (including signup forms) to collect information about visitors' use of the Site and to facilitate return visits. The information collected from cookies is tracked to enhance security and/or to improve the functionality of the Site by avoiding duplicate data entry, facilitating navigation, and increasing the relevance of content.

Cookies on the Site may collect the following information: a unique identifier, User preferences and profile information used to personalize the content that is shown, and User information. Some cookies used by dakotacloud.com may remain on the user's computer after they leave the Site, but the majority is set to expire within thirty ("30") - three hundred sixty five ("365") days. There may be some cookies on certain tools that are of longer duration. Cookies may also be of benefit to you by creating a more streamlined login process, keeping track of shopping cart additions or preserving order information between sessions. In the future, as we enable further customization of the Site, cookies will help in ensuring that information provided to you will be the most relevant to your needs.

Browsers provide you with information and control over cookies. You can set your web browser to alert you when a cookie is being used. You can also get information on the duration of the cookie and what server your data is being returned to. You then have the opportunity to accept or reject the cookie. Additionally, you can set your browser to refuse all cookies or accept only cookies returned to the originating servers. You can generally disable the cookie feature on their browser without affecting their ability to use the Site, except in some cases where cookies are used as an essential security feature or to provide functionality necessary for transaction completion.

Users visiting the website through an IP address that is associated with (a member state of) the European Union ("EU Users") will by default only receive cookies that expire once they leave the website. This may result in reduced website functionality. EU Users may opt-in to the receipt of cookies of a longer duration by giving their consent in a pop-up window or bar shown at the homepage of the website. Following their consent, EU Users will receive all cookies discussed above and full website functionality will be available. EU Users may choose to revoke their consent at any time by deleting all cookies associated with Dakota Cloud through their browser settings (as discussed above).

We may also engage Third Parties to track and analyze non-personally and personally identifiable website data and to serve advertisements. To do so, we may permit Third Parties to place cookies on devices of to Users of our Site, where permitted by law, and, subject to your right to opt-out through the Site "[insert link](#)". We use the data collected by such Third Parties to help us administer and improve the quality of the Site and to analyze Site usage. Such Third Parties may combine the information that we provide about you with other information that they have collected. These Third Parties are required to use your information in accordance with this PA.

Customer is solely responsible for any processing or international transfer of all PII in the Customer Content and agrees to comply with all applicable rules, laws and regulations in any and all applicable regions or countries related to the transfer of such PII. To the extent PII is subject to rules, laws, regulations or the like implementing EU Data Protection Directive 95/46/EC, Dakota Cloud will be considered a "data processor" and will, as such, act on Customer's instructions and implement security measures in accordance with the MSA.

The Data We Collect and How We Use It

Dakota Cloud collects data from users for the following purposes:

- To engage in transactions for service. Name, address, email, purchase details, and credit card/payment information may be collected and stored as part of the transaction history. The majority of the data collected under this category is contact information. Dakota Cloud may need to share some of this data (address, payment) with credit card clearing houses, banking institutions, and other similarly situated Agents, who may require the information in order to complete the transaction (as used here, "Agents" are persons or companies who act on behalf of or under the direction of Dakota Cloud). Dakota Cloud will not transfer information to any of its Agents unless it first either ascertains that the Agent subscribes to the Safe Harbor Principles or is subject to the (E.U.) Directive on Data Protection or another adequacy finding or enters into a written agreement with such Agent requiring that the Agent provide at least the same level of privacy protection as is required by the relevant Safe Harbor Principles.
- To provide future service and support. Information collected for this purpose is both contact data and information related to products and service/support requested. This information is also used to provide service, product update, and similar notices.
- To select content, data may be collected to help create Site content and navigation that is most relevant and user friendly. This includes data collected as a result of site navigation, as well as data provided in forms.
- To respond to user inquiries and requests for information. This data includes registrations for online newsletters, opt-in mailing lists and specific requests for further information.
- To respond to law enforcement organizations, government officials, third parties when compelled by subpoena, court order, or applicable law, or to report or prevent suspected fraudulent or illegal activity in the use of the Services. Dakota Cloud will notify Customer of the information request or submission as, and if, allowed.
- To our contractors who provide services or perform functions on our behalf.
- To our Affiliates, if we do so their use and disclosure of your PII will be subject to this PA.
- If we are acquired by or merged with another company, if substantially all of our assets are transferred to another company, or as part of a bankruptcy proceeding, we may transfer the information we have collected from you to another entity if applicable.
- To provide various Dakota Cloud communities, such as resellers, with relevant product alerts and updates. These updates are related to product releases, prices, terms, special offers and associated campaigns. This data is sent when the program member signs up for the relevant program or online account.
- To better tailor marketing to User needs. We may use information from User purchases and User-specified requirements to provide you with timely and pertinent notices of Dakota Cloud product releases and service developments that address your needs and specified requirements and/or which are similar to products and services previously purchased by the User from Dakota Cloud.
- To better respond to requests for service or quotes for product and equipment purchase. Dakota Cloud will pass contact information to the appropriate Dakota Cloud sales person, or reseller for follow-up related to Dakota Cloud products or services.

Security

Dakota Cloud is concerned with the security of the data we have collected and utilizes commercially reasonable measures to prevent unauthorized access to that information. These measures include policies, procedures, employee training, physical access and technical elements relating to data access controls. In addition, Dakota Cloud uses standard security protocols and mechanisms to facilitate the exchange and the transmission of sensitive data, such as credit card details. Dakota Cloud does not process PII in a way that is incompatible with the purposes for which it has been collected or subsequently authorized by the individual.

In the event that PII is acquired, or is reasonably believed to have been acquired, by an unauthorized person and applicable law requires notification, Dakota Cloud will notify the affected individual of the breach by email or ticket or, if Dakota Cloud is unable to contact the individual by email or ticket on the Customer Portal, then by regular mail. Notice will be given promptly, consistent with the legitimate needs of law enforcement and any measures necessary for Dakota Cloud or law enforcement to determine the scope of the breach and to ensure or restore the integrity of the data system. Dakota Cloud may delay notification if Dakota Cloud or a law enforcement agency determines that the notification will impede a criminal investigation, and in such case, notification will not be provided unless and until Dakota Cloud or the agency determines that notification will not compromise the investigation.

Enforcement

Dakota Cloud encourages individuals covered by this privacy policy to raise any concerns about our processing of personal information by contacting Dakota Cloud at the address below. Dakota Cloud will seek to resolve any concerns.

Policy Updates

If we are going to use your PII in a manner different from that stated at the time of collection, we will notify you via email. In addition, if we make any material changes in our privacy practices that do not affect the PII already stored in our database, we will notify you by email or post a prominent notice notifying users of the change. In some cases, when we post the notice, we will also email users who have opted to receive communications from us, notifying them of the changes in our privacy practices. We may update this policy from time to time to describe how new site features affect our use of your PII and to let you know of new control and preference features that we provide.

Contact Information and Inspection Rights

Questions, concerns or comments about this privacy policy should be addressed to:

Dakota Cloud Networks, LLC
C/O Legal Department
PO BOX 1585
Fargo, ND 58107

If at any time you decide that you no longer desire that we hold, use, correct or supplement any of your PII, receive information regarding any PII processed in relation to you or you wish to change the manner in which your PII may be used, please let us know by contacting us as set forth above.