



# VAULTAS

YOUR DATA. YOUR DATA CENTER.

Minneapolis, MN | St. Cloud, MN | Alexandria, MN | Milwaukee, WI  
[www.vaultas.com](http://www.vaultas.com)

## Vaultas Alexandria, LLC

### Master Services Agreement (MSA)

This Master Services Agreement (the "Agreement") is entered into by \_\_\_\_\_ ("Customer") and Vaultas Alexandria, LLC ("Vaultas") and covers all orders and transactions between the parties. It becomes effective upon the last date of signature below ("Effective Date") and shall govern all Services from the Effective Date through the last date any Service Term is in effect (the "Term").

#### 1. **Service Orders: Commencement**

"Service" means Vaultas' s standard usage-based and dedicated data center, server, hosted server, data storage, or other misc. IT based services, tech support, network and telecommunications products offered by Vaultas under the terms of this Agreement. Customer may order Service from Vaultas by submitting a Service Order that includes, at a minimum, the requested location(s), Service type and rates, plus the number of months the Service is requested ("Service Term"). If no Service Term is stated, it is deemed to be twelve (12) months. A Service Term begins on the applicable Service Commencement Date, and upon expiration shall automatically renew for twelve (12) months unless Customer submits a renewal Service Order or either party terminates via thirty (60) days' written notice to the other party. Vaultas may adjust the rates for month-to-month Service via written notice to Customer. All Services ordered under this Agreement are subject to availability, credit approval and Vaultas acceptance (as indicated by Vaultas' s written (including electronic means) acceptance of the Service Order). The parties have consented and agreed to conduct some transactions electronically via e-mail. Customer should print and retain a copy of every electronic transaction. Non-recurring charges for other ancillary services, including but not limited to new order installation, order changes, order expedite and reconfiguration may apply. In the event that an extended demarcation is necessary an additional charge may apply. The commencement date for each Service will be the date upon which Vaultas notifies Customer that the Service is available for Customer's use; provided, however, that Customer does not notify Vaultas that the Service is not operational (for reasons not caused by Customer, Customer's subcontractors and/or other third parties contracted for by Customer) within five (5) days from Vaultas' s notice to Customer ("Service Commencement Date"). In that case, further testing shall be done by Vaultas and a new notice shall be delivered to Customer. If Customer uses the Service for any purpose other than testing following Vaultas' s notice, then the Service Commencement Date will be deemed to have occurred. Vaultas reserves the right to increase the service rate by up to 3% annually based on the current CPI (Consumer Price Index) for the Alexandria Region from the previous quarter closest to the contracts annual anniversary date. Vaultas also has



no control over utility power rates and reserves the right to pass through any utility power rate increases on an annual basis.

## **2. Payment: Credit Terms**

Billing shall commence on the Service Commencement Date. The first invoice may be prorated to include the first partial month and the second full month of Service. Invoices are due and payable in US Dollars within ten (10) days of the date on the invoice. If Customer in good faith disputes any portion of any Vaultas invoice, Customer shall submit to Vaultas full payment of the undisputed portion of the invoice and written documentation identifying and substantiating the disputed amount. If Customer does not dispute an invoice within thirty (30) days following the date on the applicable invoice, Customer shall have waived its right to dispute that invoice. Vaultas may apply a late charge equal to 1.5%, or the maximum rate permitted by applicable law, whichever is less, of any unpaid balance per month. Vaultas may offset any amounts owed by Vaultas to Customer against any amounts owed to Vaultas by Customer. Customer shall provide credit references when requested and authorize named references to release credit information and history. If Vaultas determines at any time during the Term that there has been a material and adverse change in Customer's financial condition, business prospects or payment history, Vaultas may require a reasonable deposit or other form of security, or suspend and/or terminate Services hereunder. Vaultas may establish a credit limit for Customer ("Credit Limit") that may be adjusted via notice to Customer. In the event the Credit Limit is exceeded, upon Vaultas request Customer shall within one (1) business day provide the amount of MRC and/or unbilled usage charges exceeding the Credit Limit or, at Vaultas' s option, a deposit. In the event Customer does not respond to Vaultas' s request, Vaultas reserves the right to suspend Services without notice until Vaultas' s requirements are met and/or Termination of Services hereunder.

## **3. Taxes Fees: Surcharges**

Vaultas includes charges for taxes, fees and surcharges in the invoice. Customer will be taxed at the authorized rate specified by the applicable federal, state, county or city taxing authority.

## **4. Service Level Agreement**

Vaultas' s current Service Level Agreement ("SLA") for Services is binding and incorporated herein to the extent Customer orders those Services. Vaultas shall publish its most recent SLA on its web site at <http://www.Vaultas.com/policies>. Vaultas reserves the right to modify the SLAs from time to time effective upon e-mail notice to Customer. It is the customer's responsibility to check, review and verify the current SLA provisions by reviewing the information on the company web site. The SLAs set forth Customer's sole remedies for any claim relating to a Service including any failure to meet any guarantee set forth in the SLA. Vaultas' s records and data shall be the basis for all SLA calculations and determinations. The maximum amount of credit in any calendar month under an SLA shall not exceed the Monthly Fee and/or Set up Fee, which, absent the credit, would have been charged for Vaultas Service that month.



## **5. Acceptable Use**

Use of Services must comply with the then-current version of Vaultas' s Acceptable Use Policy ("Policy" or "AUP"), which a current version readily available for examination on Vaultas' s web site found at <http://www.Vaultas.com/policies> and customer information section. Vaultas' s Use of Service requirements as represented by the company are hereto and made a part of this Agreement. Vaultas reserves the right to amend the Policy from time to time, effective upon e-mail notice to Customer. Customer may not use the Service in any manner that interferes with the operation of Vaultas' s network or the use of Vaultas' s network by its other customers nor may Customer use the Service for any unlawful purpose or in any unlawful manner. Vaultas reserves the right to suspend the Service or terminate this Agreement effective upon notice for a violation of the Policy or this Section.

## **6. Construction: Governing Law**

In the event of a conflict between a provision of this Agreement, Service Addendum, or SLAs, the conflict shall be resolved by reference to the documents in this order of priority: (a) Agreement; (b) Service Addendum; (c) SLAs. This Agreement shall be governed by the laws of the State of Minnesota without regard to its principles of choice of law. The parties consent to the exclusive jurisdiction of the courts of Douglas County and consent to waive their right to a jury trial.

## **7. Termination**

- a. Termination by Customer for Cause. If Vaultas fails to perform a material obligation under this Agreement and does not remedy such failure within sixty (60) days following written notice from Customer ("Vaultas Default"), Customer may terminate the affected Service or this Agreement without further liability except for the payment of all accrued but unpaid charges. If Vaultas is unable to provide Service(s) for ninety (90) consecutive days due to a Force Majeure event as defined in Section 14, Force Majeure, Customer may terminate the affected Service(s) without liability.
- b. Termination by Customer for Convenience. Customer may, without cause, terminate this Agreement or any Service upon thirty (30) days written notice to Vaultas, provided the following: (i) If Customer terminates any Service prior to its Service Commencement Date, Customer shall reimburse Vaultas for all costs of the implementation of such Service; (ii) If Customer terminates any Service prior to end of its Service Term, Customer shall pay the following: (a) all unpaid charges for Services rendered; (b) the monthly recurring fee due through the remainder of the Service Term; (c) any third party fees due through the remainder of the Service Term; and (d) a pro-rata payback of all charges previously waived by Vaultas. If Services were purchased in a multiple product offering, the termination charge shall be 100% of the monthly recurring charges for multiple products for the remainder of the Service Term. The aforementioned payment is a genuine pre-estimate of liquidated damages that Vaultas will suffer and not a penalty.



- c. Termination by Vaultas. Vaultas may terminate this Agreement or any Service with no further liability if (i) Customer fails to make payment as required under this Agreement and such failure remains uncorrected for five (5) days following written notice from Vaultas, (ii) Customer fails to perform any other material obligation under this Agreement and does not remedy such failure within thirty (30) days following written notice from Vaultas, or (iii) Customer violates Section 5, Acceptable Use (hereinafter collectively referred to as "Customer Default"). In the event of a Customer Default, Vaultas shall have the right to (iv) suspend Service(s) to Customer; (v) cease accepting or processing orders for Service(s); if applicable; and/or (vi) terminate this Agreement or any Service. If this Agreement is terminated due to a Customer Default, Customer shall remain liable for charges outlined in Section 7.B herein. Customer agrees to pay Vaultas' s reasonable expenses (including attorney and collection agency fees). In the event of bankruptcy or insolvency of Customer, or if Customer makes any assignment for the benefit of creditors or take advantage of any act or law for relief of debtors, then Vaultas shall have the right to terminate this Agreement without further obligation or liability on its part. The services would need to continue during bankruptcy or re-organization if allowed by court, trustee actions and/or law.

## **8. Indemnity**

Each party shall indemnify the other from any claims by third parties and expenses (including attorney's fees and associated costs) for damage to tangible property, personal injury, or death caused by that party's negligence or willful misconduct. Customer agrees to indemnify and hold harmless Vaultas from any losses, damages, costs or expenses resulting from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to content of any communication transmitted via the Services hereunder, and from any and all claims relating to Customer's use of Services hereunder. Customer shall make no claim against Vaultas regarding said content, or respecting any information, product, service, software or other item(s) ordered through or provided by virtue of the Internet.

## **9. Insurance**

Throughout the term of this Agreement, customer shall obtain and maintain at its own expense the following insurance with insurance companies authorized to do business in the State of Minnesota: (i) all risk property insurance covering the Equipment; (ii) Commercial General Liability (including products and completed operations liability and broad form property damage) insurance covering the Equipment and the contractual liability of Customer under this Agreement in the form and with insurers reasonably satisfactory to Vaultas and with a minimum limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for personal injury, bodily injury and property damage; (iii) Worker's Compensation coverage of \$100,000/\$500,000/\$100,000; (iv) Employer's Liability with a minimum amount of One Million Dollars (\$1,000,000.00); (v) Proof of commercial auto insurance; and (vi) excess liability, umbrella form, with respect to Commercial General Liability, Employer's Liability and Automobile Liability with a minimum of One Million Dollars (\$1,000,000.00).



Such insurance policies shall, without limitation, cover claims resulting from the operations of subcontractors and Customer shall require any and all subcontractors to procure and maintain in good standing the same types of insurance required by Customer specifically including contractual indemnification in favor of Vaultas and Customer.

Property and liability policies to be carried by Customer under this Agreement shall name Vaultas as an additional insured. A certificate of such insurance shall be delivered to Vaultas within ten (10) days after execution of this Agreement by Customer. Renewals thereof shall be delivered to Vaultas at a minimum of ten (10) days prior to the expiration of any such policies. Each policy shall contain an endorsement requiring thirty (30) days written notice from the insurance company to Vaultas prior to cancellation or material change to the policy.

Further, Customer waives and will require all of its insurers to waive all rights of subrogation against Vaultas, its directors, officers, and employees, agents or assigns, whether in contract, tort (including negligence and strict liability) or otherwise.

#### **10. Limitation of Liability**

Vaultas will not be liable to Customer or any third party for any indirect, consequential, incidental, reliance, special, exemplary, or punitive damages (including lost profits and lost revenues). In no event will Vaultas be liable to Customer for any amount in excess of the aggregate amount Vaultas has collected from Customer.

#### **11. Disclaimer of Warranties**

UNLESS OTHERWISE SPECIFIED HEREIN, Vaultas MAKES NO WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE, OF ANY SERVICE PROVIDED HEREUNDER.

#### **12. Assignment**

Neither party may assign this Agreement without the express written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign all its rights and obligations hereunder to any purchaser or other acquirer of substantially all of such party's assets or equity. No such assignment of obligations shall relieve the assignor of any liability or obligation hereunder unless otherwise agreed to in writing by both parties.

#### **13. Confidential Information**

Neither party shall disclose any information disclosed and deemed confidential by the other party (hereinafter referred to as "CI"). All information concerning Vaultas' s traffic distributions, network maps, pricing and financial information as well as the terms of this Agreement are hereby deemed to be CI. CI may not be disclosed to any person or entity except for the recipient's employees, contractors, consultants, lenders and/or financial advisors who have a need to know and are under a duty of non-disclosure with respect to such CI. The recipient shall use the CI only for the purposes of this Agreement and shall



protect it from disclosure using at least the same degree of care used to protect its own CI, but in no event less than a reasonable degree of care. The term "CI" does not include any information which: (i) was already known by the receiving party (ii) becomes publicly known through no wrongful act of the receiving party; or (iii) is independently acquired without violating any of the obligations under this Agreement. Further, the recipient may disclose CI pursuant to a judicial or governmental request, requirement, or order. CI shall remain the property of the disclosing party and shall be returned to the disclosing party or destroyed upon request of the disclosing party. Customer acknowledges that money damages may be an inadequate remedy for the injuries and damage that would be suffered by Vaultas in the case of Customer's breach of this Section 12.

#### **14. Use of Name**

Each party may use the other's name and logo in sales presentations or promotions, or during calls with financial analysts, industry analysts or investors during the Term, but only for the purpose of identifying Customer as a Vaultas customer and identifying Vaultas as a supplier to Customer. Without the other party's prior written consent, neither party shall refer to itself as an authorized representative of the other party or use the other party's logos, trademarks, service marks, carrier identification codes (CICs), or any variation thereof in any advertising or other promotional materials, or in any activity using or displaying the other party's name or service(s) to be provided hereunder. Each party agrees to change or correct at its own expense any material or activity the affected party determines to be inaccurate, misleading or otherwise objectionable under this section.

#### **15. Force Majeure**

Neither party shall be deemed in default of this Agreement if and to the extent that such party's performance is delayed or prevented due to Force Majeure. "Force Majeure" means an occurrence that is beyond the reasonable control of the party affected and occurs without its fault or negligence, including acts of God, fire, explosion, vandalism, terrorism, cable cuts not caused by Vaultas or its subcontractor, flood, storm, or other similar catastrophe, any law, order, regulation, direction, action or request of any governmental entity or court or civil or military authority having jurisdiction over either party, national emergencies, insurrections, riots, wars, or the strikes, lock outs and/or work stoppages of third parties.

#### **16. Services Are Not For Resale**

Customer will represent that it is not a presently nor intends to be a carrier, reseller or shared tenant service provider registered with the FCC and the Services are not for resale. As used herein, "resale" does not include Customer's use of the Services for connectivity required to provide non-telecom services to its customers. If customer is acting as a "reseller", Vaultas has the right to terminate this Agreement with a (30) day notice to the customer.

#### **17. Subject to Laws**

Both parties shall comply with and give all notices required by all applicable federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority. Both





parties agree to obtain and maintain all certifications, permits, licenses, approvals or authorizations required by any regulatory or governmental entity. Each party shall indemnify and hold harmless the other from all claims, losses, demands, causes of action, including all related costs and expenses arising from the other party's violation of this section.

## **18. Notices**

All notices shall be in writing and shall be deemed to have been duly given and effective as of the date of confirmed delivery or confirmed fax transmission. If mailed, notice shall be sent first class, postage prepaid, certified or registered mail, return receipt requested or overnight mail service sent to the parties' respective address, below. To be effective, written notice of any material breach (except Customer payment default) must prominently state that the correspondence is a formal notice of breach and must be sent via certified mail, registered mail or overnight mail service.

## **19. Entire Agreement**

This Agreement constitutes the entire agreement for Services between Vaultas and Customer; incorporates all Services ordered or active as of the Effective Date; and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. There are no oral agreements between the parties. No party is entering into this Agreement in reliance on, and this Agreement shall not be contradicted or supplemented by, any prior or contemporaneous (i) condition, discussion, promise, statement, understanding, or undertaking; (ii) letter of intent, commitment or approval; or (iii) other agreement or document.

## **20. Miscellaneous**

Vaultas may perform system maintenance upon written notice to Customer and shall perform such maintenance between midnight and 5 a.m. local time. In no event shall interruption for system maintenance constitute a failure of performance by Vaultas. The waiver of either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach or violation hereof. Vaultas needs protection so that it is not affected due to negligence in Vaultas' s performance of maintenance and possible prolonged loss of services or serious service interruptions? This Agreement shall not create any agency, employment, joint venture, partnership, representation or fiduciary relationship between the parties. Neither party shall have the authority, nor shall any party attempt, to create any obligation on behalf of the other party. The covenants and understandings contained in this Agreement with respect to payment of amounts due, confidentiality, liability and indemnification shall survive any termination of this Agreement. This Agreement may be modified or supplemented only by an instrument in writing executed by each party. Services may be provided by an Affiliate. For purposes of this Agreement, "Affiliate" of a party shall mean any entity controlled by, in control of or under common control of a party hereunder.

This Agreement, including any terms and conditions, supplements, amendments, addenda, riders and/or exhibits that are attached hereto and incorporated herein, constitutes the entire Agreement by Vaultas and Customer pertaining to the subject matter hereof. Any and all



Services pertaining to the subject matter hereof and active as of the Effective Date shall be governed by the terms and conditions herein.

**To be effective, this Agreement and any changes to this Agreement must be in writing and signed by an authorized representative of each party.**

**Vaultas Alexandria, LLC**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Full Business Address:

**PO BOX 189**

**Elk River, MN 55330**

**Attn: John Unger**

**Phone: 320.759.5801**

**Fax: 320.759.5810**

**ABC-xyz Company**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Full Business Address:

\_\_\_\_\_  
**Attn:**

**Phone:**

**Fax:**