



MASTER PRODUCTS AND SERVICES AGREEMENT

_____ (“Customer”)
a _____ corporation

These General Terms and Conditions together with all Order Form(s), Exhibits and other addenda attached hereto from time to time constitute the **Master Products and Services Agreement** (“Agreement”) which is effective as of _____ (“Effective Date”) (the last date of execution below) by and between **StreamGuys Network** (“SGN”), a Sole Proprietorship, and Customer. SGN and Customer are collectively referred to as the “Parties” or individually as a “Party”.

I. DEFINITIONS

- “Commencement Date” - the date upon which SGN begins provisioning an ordered Product or Service as more fully described in the relevant Order Form.
- “Customer Location” - a location designated in an Order Form for connection to the SG Network.
- “SG Network” - collectively, the fiber optic network, system capacity and related facilities (including, without limitation, routers, switches and communication channels) owned or controlled by SGN.
- “Order Form” - any, mutually executed, product order (“Product Order”), service order (“Service Order”), schedule (“Schedule”), or statement of work (“Statement of Work”) to these General Terms and Conditions and respective Supplement, detailing the Products or Services, the Term, Customer charges, the estimated Commencement Date and any other relevant terms agreed upon by the Parties.
- “Products or Services” - the products or services provided by SGN (including, without limitation, Co-location, Bandwidth, Managed Services, and Hosting) to Customer.
- “Term” - the period of time in which SGN provides Products or Services to Customer pursuant to an Order Form.
- “Bandwidth” - the amount of bits/second transferred over the SG Network from and to Customer’s server(s).
- “Burst” - the amount of Bandwidth in excess of Customer’s committed level as further defined below.

2. STRUCTURE OF AGREEMENT

From time to time, the Parties will execute one or more Supplement(s) and Order Forms for SGN to provide Products or Services, each of which shall be automatically incorporated into this Agreement and shall be subject to these General Terms and Conditions.

3. INVOICING AND PAYMENT

3.1. **Installation Charge.** If a non-recurring installation charge or setup fee (“Installation Charge”) is specified in an Order Form, SGN will invoice Customer for and Customer will pay such Installation Charge, upon the effective date of the Order Form (“Order Form Effective Date”). If the Installation Charge is “estimated”, Customer shall pay an initial amount, so specified in such Order Form, on the Order Form Effective Date and the remaining balance of the “actual” Installation Charge upon the Commencement Date. The balance of the actual Installation Charge will be invoiced by SGN and paid by Customer within thirty (30) days of such invoice.

3.2. **Recurring Charge.** If a recurring charge (“Recurring Charge”) (e.g. Monthly Charge, Quarterly Charge, Annual Charge, etc.) is specified in an Order Form, SGN will invoice Customer for and Customer will pay Recurring Charge in advance for each period and within thirty (30) days from the date of such invoice. SGN will begin to invoice the Recurring Charge on the Commencement Date. Invoices for partial months will be pro-rated.

3.3. **Prepayment.** If a prepayment (“Prepayment”) is specified in an Order Form, SGN will invoice Customer for and Customer will pay such Prepayment upon the Order Form Effective Date. If a Prepayment is for a portion of a Term, the amount of such Prepayment will be applied as a credit to the final Recurring Charges at the end of such Term.

3.4. **O&M Charges.** If an operation and maintenance charge (“O&M Charge”) is specified in an Order Form, SGN will invoice Customer for and Customer will pay such O&M Charge beginning on the Commencement Date in advance of each month during the Term and within thirty (30) days from the date of such invoice.

3.5. **Additional Charges.** If applicable, SGN will invoice Customer and Customer will pay such invoices for any additional charges for Products or Services which are more fully described in the respective Order Form.

Customer Initials: _____



Master Product & Services Agreement

3.6. Late Payments. All invoices must be paid in accordance with their terms without setoff or deduction, and late payments will accrue interest on the unpaid sum as of the date of the invoice at the lesser of (i) the highest legal rate of interest permitted in the Illinois or (ii) one and one-half percent (1.5%) per month. SGN may apply any payments received by SGN to any one of Customer's then outstanding charges.

3.7. U.S. Dollars. Unless otherwise specified, all payments must be made by Customer to SGN in United States of America dollars.

3.8. Consumer Price Index. The Recurring Charge and O&M Charge may be increased (but never decreased) each year during the Term by the percentage increase, if any, in the Consumer Price Index – Urban Wage Earners and Clerical Workers (U.S. City Average, All Items, Base 1982-1984 equals 100) as published by the US Department of Labor, Bureau of Labor Statistics (the "Index"). The Index for the calendar month which is four (4) months prior to the Commencement Date will be compared with the Index for the calendar month which is four (4) months prior to each anniversary of the Commencement Date during the Term and the Recurring Charge will be increased in accordance with the percentage increase, if any, between such Indexes.

3.9. Rental Allocation Schedule. The value of any and all Prepayments and/or Installation Charges together with the value of any and all Recurring Charges are subject to Section 1.467-1(c) (2) (ii) (A) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986. Accordingly, the values will be allocated as set forth in an exhibit to the applicable Order Form in accordance with Treas. Reg. Section 1.467-2(c). Each exhibit shall be prepared by SGN and appended to the related Order Form, within thirty (30) days after the Commencement Date. The value of any and all Prepayments and/or Installation Charges will be treated as the "principal balance of a Section 467 loan" within the meaning of Treas. Reg. 1.467-1(e)(2). The Parties agree to utilize such allocation for all tax purposes unless otherwise required by applicable law.

4. APPLICABLE TAXES

4.1. Applicable Taxes : Each Party is fully responsible for the payment of any and all taxes required by law to be paid by that Party. Customer will be invoiced by SGN any and all of the following:

- *Taxes and fees associated with the Products or Services which SGN is legally required or permitted to collect from Customer. Such taxes and fees may include, but are not limited to, any sales, use, transfer, gross receipts, federal excise, privilege, property, occupational and similar taxes and surcharges. Alternatively, Customer will provide SGN with a certificate evidencing Customer's exemption from payment of or liability for the above taxes.*
- *Taxes and fees, other than those described above, imposed on SGN by a state or local jurisdiction, including but not limited to right-of-way, franchise, privilege, property, and occupational taxes based upon the gross revenues received from or by Customer or assets of SGN made available to Customer. Notwithstanding the foregoing, Customer is not obligated to pay any fee or tax which it otherwise pays directly to a state or local jurisdiction with respect to the gross revenues received from or by Customer or assets of SGN made available to Customer.*

4.2. Assessments : Customer is solely responsible for calculating and remitting any and all assessments, including but not limited to franchise fees, license fees, right-of-way fees, taxes and any other assessment against Customer for Customer's use of the Products or Services (collectively, "Assessments") with respect to providing service to end-user customers or to the extent Customer is required to calculate such Assessments. Assessments may be made by any governmental, quasi-governmental agency or regulatory body and SGN will not direct or notify Customer to pay any Assessments, and is not directly or indirectly responsible in any way for Customer's remittance of Assessments.

5. TERM

5.1. Effective Date -This Agreement commences on the Effective Date, herein, and continues through the latest expiration of all Order Form Term(s) subject to this Agreement, unless earlier terminated as provided herein.

5.2. Commencement Date -The Term for each Order Form shall begin on the Commencement Date of the related Product or Service and shall remain in effect until the expiration of the period so specified. Upon the expiration of a Term set forth on an Order Form, and provided that no other Customer charge is fully prepaid (except for Installation Charges), such Order Form will renew, either (i) on a month-to-month basis (with respect to Order Forms for Products or Services, except Bandwidth), or (ii) for another full Term (with respect to an

Customer Initials: _____



Master Product & Services Agreement

Order Form for bundled Bandwidth and Colocation services), unless terminated by either Party, upon at least thirty (30) days prior written notice.

6. DEFAULT

Events of Default : the occurrence of which gives the non-defaulting Party the right to terminate the Agreement or affected Order Form(s) by written notice following the expiration of any stated cure periods and pursue its remedies under the Agreement:

- *Customer fails to fully pay any of the payments (including Early Termination Charges) required hereunder within five (5) days after receipt of written notice of such failure;*
- *Except as provided in clause (a), above, the breach of any material term or condition of this Agreement (including Order Forms) and such breach remains uncured thirty (30) days after delivery to the breaching Party of written notice of such breach. If the breach is of a nature or involves circumstances reasonably requiring more than thirty (30) days to cure, the time period may be extended provided the breaching Party proceeds diligently to cure the breach;*
- *the application for or consent to the appointment of a receiver, trustee or similar officer for it or any substantial part of its property or assets, or any such appointment is made without such application or consent by such Party and remains undischarged for a period of sixty (60) days;*
- *the filing of a petition in bankruptcy or a general assignment for the benefit of creditors;*
- *Customer defaults under the terms of any other agreement or Order Form between the parties whether such other agreement is executed prior or subsequently to the execution of this Agreement.*

If Customer is in default, as set forth above, then, after expiration of the cure period, SGN may, in addition to any other remedies that it may have under this Agreement or by law, disconnect and/or repossess any Products or Services.

7. REPRESENTATIONS AND WARRANTIES

7.1. **Warrants:** SGN warrants that any Products and Services to be provided to Customer will be at a professional level of quality conforming to generally accepted industry standards and in compliance in all material respects with all applicable laws and regulations. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SGN DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.2. Each Party represents and warrants to the other that (i) it is duly organized, validly existing and in good standing under the laws of the state of its organization, (ii) it has all requisite power and authority to enter into and perform its obligations under this Agreement and all Order Forms, (iii) it will comply with all applicable federal, state and local laws, statutes, rules and regulations in connection with the provision and use of the Products and Services and (vi) this Agreement and all Order Forms, when executed, are the legal, valid and binding obligation of such Party.

8. LIMITATION OF LIABILITY; INDEMNIFICATION

8.1. THE TOTAL LIABILITY OF CUSTOMER FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH AN ORDER FORM, EXCLUDING EARLY TERMINATION CHARGES, IS LIMITED TO AN AMOUNT EQUAL TO THE TOTAL CHARGES PAYABLE BY CUSTOMER DURING THE TERM SET FORTH THEREIN. THE TOTAL LIABILITY OF SGN FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH AN ORDER FORM IS LIMITED TO AN AMOUNT EQUAL TO THE TOTAL CHARGES PAYABLE BY CUSTOMER DURING THE FIRST YEAR OF THE TERM SET FORTH THEREIN. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, REVENUE OR LOST BUSINESS OPPORTUNITIES (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE), WHETHER FORESEEABLE OR NOT, EVEN IF A PARTY HAS BEEN ADVISED BY THE OTHER PARTY OF THE POSSIBILITY OF THE DAMAGE AND EVEN IF A PARTY ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION WILL APPLY TO CLAIMS OF CUSTOMER, WHETHER OCCASIONED BY ANY CONSTRUCTION, INSTALLATIONS, RELOCATIONS, SERVICE, REPAIR OR MAINTENANCE PERFORMED BY, OR FAILED TO BE PERFORMED BY SGN, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING BREACH OF CONTRACT, BREACH OF

Customer Initials: _____



Master Product & Services Agreement

WARRANTY, NEGLIGENCE, OR STRICT LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF DATA OR TECHNOLOGY.

8.2. SGN agrees to indemnify, defend and hold Customer, its officers, directors, employees, agents and contractors harmless from and against all loss, damage, liability, cost and expense (including reasonable attorney's fees and expenses) by reason of any claims or actions by third parties for (i) bodily injury or death, and damage, loss or destruction of any real or tangible personal property, which third party claims arise out of or relate to SGN's gross negligence or willful misconduct or (ii) infringement or misappropriation by SGN of any intellectual property rights under this Agreement.

8.3. Customer agrees to indemnify, defend and hold SGN, its officers, directors, employees, agents and contractors harmless from and against all loss, damage, liability, cost and expense (including reasonable attorney's fees and expenses) by reason of any claims or actions by third parties for (i) bodily injury or death or damage, loss or destruction of any real or personal property (including without limitation the property of SGN), which third party claims arise out of or relate to Customer's gross negligence or willful misconduct, (ii) infringement or misappropriation by Customer of any intellectual property rights under this Agreement, or (iii) Customer's or its customer's use of the Products or Services, including without limitation, defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity, or spamming or any other tortuous or illegal conduct.

9. CONFIDENTIALITY; PUBLICITY

9.1. **Confidentiality.** Each Party agrees that the terms of this Agreement and all information furnished to it by the other Party, including maps, pricing, financial terms, network routes, design information, methodologies, specifications, locations or other information to which it has access under this Agreement, are deemed the confidential and proprietary information or trade secrets (collectively referred to as "Proprietary Information") of the Disclosing Party and will remain the sole and exclusive property of the Disclosing Party (the Party furnishing the Proprietary Information referred to as the "Disclosing Party" and the other Party referred to as the "Receiving Party"). Each Party will treat the Proprietary Information and the contents of this Agreement in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under this Agreement, neither Party may directly or indirectly disclose the same to anyone other than its employees on a need to know basis and who agree to be bound by the terms of this Section, without the written consent of the Disclosing Party. Information will not be deemed Proprietary Information if it (i) becomes publicly available other than through the actions of the Receiving Party; (ii) is independently developed by the Receiving Party; or (iii) becomes available to the Receiving Party without restriction from a third party. If the Receiving Party is required by a governmental or judicial law, order, rule, regulation or permit to disclose Proprietary Information, it must give prompt written notice to the Disclosing Party of the requirements of such disclosure and cooperate fully with the Disclosing Party to minimize such disclosure, and disclosure after such notice shall not be a breach hereof.

9.2. **Publicity.** Notwithstanding anything herein to the contrary, Customer acknowledges and agrees that upon execution of the Agreement and subsequent Order Forms, SGN may release a public statement announcing the Agreement without further consent from Customer ("Press Release"). Any Press Release may include the identity of Customer, and other general terms such as the duration, scope and total value of the Agreement. SGN agrees to provide Customer with a copy of the proposed release and Customer will have five (5) business days to review and comment. Customer's failure to provide SGN with comments or objections within this timeframe will not prohibit SGN from issuing the Press Release.

10. ASSIGNMENT

Customer shall not assign or transfer its rights or obligations under this Agreement without SGN's prior written consent, which consent may not be unreasonably withheld, except that Customer may assign this Agreement upon notice and without SGN's consent to a person, firm, corporation, partnership, association, trust or other entity (i) that controls, is controlled by or is under common control with Customer or (ii) into which it is merged or consolidated or which purchases all or substantially all of its assets; provided that the assignee assumes all liabilities hereunder in writing prior to the effectiveness of such assignment. Any assignment or transfer without the required consent will be void and will be considered a material breach of this Agreement. Upon any permitted assignment, Customer will remain jointly and severally responsible for the performance under this Agreement,

Customer Initials: _____



Master Product & Services Agreement

unless released in writing by SGN, and this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

11. FORCE MAJEURE

Neither party will be considered in breach of this Agreement nor liable under this Agreement for any delays, failures to perform, damages or losses, or any consequence thereof, caused by or attributable to an event of "Force Majeure," which is defined as any cause beyond the reasonable control of the party claiming relief, including without limitation the action by a governmental authority (such as a moratorium on any activities related to this Agreement or changes in government codes, ordinances, laws, rules, regulations, or restrictions occurring after the Effective Date), third-party labor dispute, flood, earthquake, fire, lightning, epidemic, war, act of terrorism, riot, civil disturbance, act of God, sabotage, fiber cut caused by a third-party or failure of a third party to recognize a permit, authorization, right-of-way, easement, right, license or other agreement obtained by SGN to construct and operate its facilities or network.

12. NOTICES

All notices, including but not limited to, demands, requests and other communications required or permitted hereunder (not including invoices) must be in writing and will be deemed given: (i) when delivered in person, (ii) one (1) business day after deposit with an overnight delivery service for next day delivery, or (iii) three (3) business days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, and addressed to the recipient Party at the address set forth on the signature page hereof. In addition, SGN shall have the right to send Customer notices, other than notices for default or termination, to Customer's email address as contained on SGN's customer contact list. Such email notification is deemed delivered on the day sent unless returned to sender.

13. MISCELLANEOUS

13.1 **Governing Law.** This Agreement will be interpreted and construed in accordance with the internal laws of the State of Illinois without giving effect to its principles of conflicts of laws.

13.2 **Survival.** The Parties' respective representations, warranties, and covenants, together with obligations of indemnification, confidentiality and limitations on liability will survive the expiration, termination or rescission of this Agreement and continue in full force and effect.

13.3 **No Third-Party Beneficiaries.** The covenants, undertakings, and agreements set forth in this Agreement are solely for the benefit of and enforceable by the Parties or their respective successors or permitted assigns.

13.4 **Relationship of the Parties.** The relationship between the Parties hereunder is not that of partners or agents for one another and nothing contained in this Agreement may not be deemed to constitute a partnership, joint venture or agency agreement between them.

13.5 **Remedies Not Exclusive.** Except as otherwise expressly provided, the rights and remedies set forth in this Agreement are in addition to, and cumulative of, all other rights and remedies at law or in equity.

13.6 **Headings; Separability.** The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof. In the event any term of this Agreement is held invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will be in any way affected.

13.7 **No Implied Waiver.** No failure to exercise and no delay in exercising, on the part of either Party, any right, power or privilege hereunder will operate as a waiver, except as expressly provided herein.

13.8 **Counterparts.** This Agreement may be executed in counterparts, including by facsimile transmission, each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

13.9 **Changes Prior to Execution.** Each Party represents and warrants that any changes to this Agreement made by it were properly marked as changes and that it made no changes to the Agreement that were not properly identified as changes.

14. BANDWIDTH SERVICES

14.1 Subject to the terms and conditions contained herein, SGN will provide to Customer connectivity of its server(s) to the Network to enable the transfer of Bandwidth on terms specified in an Order Form. The Term shall be specified on each Order Form and shall begin on the Commencement Date specified therein.

14.2 **Billing for Burst Bandwidth** will follow the "95th percentile" rule: Usage samples will be collected and

Customer Initials: _____



Master Product & Services Agreement

sorted from highest to lowest and the top 5% discarded. The next highest sample (the 95th percentile number) will then be used as the basis in computing the charge for the month for incremental Bandwidth beyond the committed level. Charges for Burst Bandwidth will be billed after the end of the month.

14.3 Acceptable Use; SPAM. Customer will at all times comply with and conform its use of the Service to SGN's Acceptable Use Guidelines and Anti-SPAM Policy set forth at the SGN website, as updated from time to time, subject to notice to Customer of any material changes. In the event Customer violates the SGN Acceptable Use Guidelines where SGN determines in its reasonable discretion that there is potential harm to its Network or business, SGN shall have the right to immediately suspend Service. In other cases of violation of the SGN Acceptable Use Guidelines and SGN Anti-SPAM Policy, SGN will provide notice and opportunity to cure, to the extent SGN deems reasonably appropriate, depending on the nature of the violation, the availability of the Customer and whether or not there has been a repeat violation. SGN, in its reasonable discretion, shall re-enable the Service upon satisfaction that all violations have ceased and with adequate assurance that such violations will not occur in the future.

14.4 Illegal Use. Customer will cooperate in any investigation of Customer's alleged illegal use of SGN's facilities or other networks accessed through the SGN Network. If Customer fails to cooperate with any such investigation, SGN may suspend Customer's Service. Additionally, SGN may modify or suspend Customer's Service in the event of illegal use of the SGN Network or as necessary to comply with any law or regulation, including the Digital Millennium Copyright Act of 1998, 17 U.S.C. 512, as reasonably determined by SGN.

14.5 Other Networks. Customer is responsible for paying any fees, obtaining any required approvals and complying with any laws or usage policies applicable to transmitting data beyond the SGN Network and/or through other public and private networks. SGN is not responsible or liable for performance or non-performance of such networks or their inter-connection points.

15. RESTRICTIONS

15.1 Government Regulations. Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by any government within whose jurisdiction Customer operates or does business.

15.2 Indemnity Clauses: Customer hereby indemnifies SG against any harm or claims arising out of acts of omission of any customers of Customer or any third parties using Customer's equipment or service that is subject of this Agreement.

16. SGN EQUIPMENT

Customer shall have no right or interest in any SGN-supplied equipment other than the right to use such equipment during the specified term while payments are current. Customer shall be liable to SGN for any damage to such equipment caused by Customer or Customer's representatives, agents or employees. SGN shall not be liable for damage to, or loss of any of Customer equipment resulting from any cause, other than SGN's negligence or willful misconduct and then only in an amount not to exceed the replacement value of the damaged equipment.

17. EARLY TERMINATION CHARGES

17.1 If an Order Form for Bandwidth is terminated prior to expiration by reason of: (i) Customer termination ("Termination for Convenience"), if such termination is not an exercise of Customer's rights or remedies under the Agreement, or (ii) a Customer Event of Default for failure to pay any payment, as provided, herein, then, in addition to all other sums due and owing, Customer agrees to pay an "Early Termination Charge" to SGN.

17.2 Early Termination Charge will be calculated as an amount equal to the aggregate of (i) all remaining Recurring Charges until the end of the Term or (ii) twelve (12) months, whichever is lesser.

17.3 Recurring Charges If the Recurring Charges (or a component of the Recurring Charges) are fully prepaid, the Early Termination Charge is equal to the unamortized portion of such prepayment as of the date of termination.

17.4 Customer acknowledges and agrees that the Early Termination Charge reflects a reasonable estimate of the damages incurred by SGN as a result of an early termination, and is not a penalty. Notwithstanding the foregoing, SGN may seek all other available remedies in law and in equity in the case of Customer's default resulting from any reason, other than nonpayment.

Customer Initials: _____



Master Product & Services Agreement

18. ENTIRE AGREEMENT; AMENDMENT; EXECUTION

This Agreement, including all Order Forms, Exhibits and addenda attached hereto is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior negotiations, understandings and agreements, whether oral or written. This Agreement may be amended only by a written instrument executed by the Parties. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same instrument. This Agreement may be executed by facsimile. The Parties have executed this Agreement as of the last date of execution below.

STREAMGUYS NETWORK

CUSTOMER

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address notices for StreamGuys:

StreamGuys
PO Box 828
Arcata, CA 95518

Address notices for Customer:

Customer Initials: _____



Appendix A

Appendix A: Bandwidth Service Level Agreement (SLA)

The Bandwidth Service Level Agreement (“SLA”) is provided to Customers who purchase SGN Co-location and Bandwidth services (without Managed Services). SGN will use commercially reasonable efforts to minimize Excess Packet Loss and Latency and to avoid Downtime, as more fully set out below.

A-1. Packet Loss and Latency. SGN monitors the aggregate packet loss and transmission latency within its LAN and WAN. SGN does not monitor the packet loss or transmission latency of specific customers. After discovering or being notified by Customer of packet loss in excess of one-half percent (0.5%) (“Excess Packet Loss”) or transmission latency (“Latency”) based on SGN’s measurements in excess of 3 milliseconds from a SGN router to any of SGN’s transit carriers, SGN will use commercially reasonable efforts to determine the source of such Excess Packet Loss or Latency and to correct such problem to the extent that the source of the problem is on the SGN Network.

A-2. Remedy for Failure. If two (2) hours after being notified of any Excess Packet Loss or Latency on the SGN Network, SGN fails to remedy such Excess Packet Loss or Latency, SGN will credit Customer’s account the pro-rata Bandwidth charges for such continuous Excess Packet Loss or Latency that follows the initial two (2) continuous hours, provided that all such credits will not exceed an aggregate maximum credit of Bandwidth charges otherwise due from Customer for one (1) calendar month for failures in any one (1) calendar month.

A-3. Inability to Access the Internet (Downtime). SGN guarantees 100% connectivity from the SGN Network to the Internet without Downtime. “Downtime” shall be defined as Customer experiencing sustained packet loss in excess of fifty percent (50%) based on SGN’s measurements. If Customer experiences Downtime, then SGN will credit a Customer’s account the pro-rata Bandwidth charges for such Downtime, provided that all such credits will not exceed an aggregate maximum credit of Bandwidth charges otherwise due from Customer for one (1) calendar month for failures in any one (1) calendar month.

A-4. Customer Request Credit. Customer must notify SGN within five (5) business days from the time Customer becomes eligible to receive a credit under this Appendix to receive such credit. Failure to comply with this requirement will forfeit Customer’s right to receive a credit.

A-5. Limitation on Remedies. If Customer is entitled to multiple credits under this Section 5, such credits shall not be cumulative beyond a total of credits for one (1) calendar month in any one (1) calendar month in any event. SGN will not apply a credit under A.2 for any Excess Packet Loss or Latency for which Customer received a credit under Section A.3. Sections A.2, A.3 and A.4 above state Customer’s sole and exclusive remedy for any failure by SGN to provide Bandwidth or adequate service levels, including but not limited to any outages or SGN Network congestion. SGN’s suspension or modification of Bandwidth in accordance with the terms of this Agreement shall not be deemed to be a failure of SGN to provide adequate service levels under this Agreement. In no event shall Customer be entitled to any credit on its Bandwidth charges to the extent that the latency or Downtime is caused by Customer attempting to exceed the maximum bandwidth of Customer’s connection to the SGN Network or otherwise violating the terms of this Agreement.

Customer Initials: _____