

**Last Updated:** January 25, 2012

THIS MASTER SERVICES AGREEMENT ("*Agreement*") between Rattan Networks, Ltd., dba Falling Rock Networks, ("*Falling Rock*") and Customer is made effective as of the date of the Falling Rock signature on each Order Form or upon the initial delivery of the ordered product and/or service by Falling Rock, whichever is earlier.

## 1. OVERVIEW.

1.1 *Scope.* This Agreement states the terms and conditions by which: (i) Falling Rock will contract with the Customer, from time to time, during the term of this Agreement, for the delivery to and receipt by the Customer of any or all of the services offered by Falling Rock, and (ii) Customer may purchase products from Falling Rock. The specific services and/or products to be provided hereunder are identified in the Order Form(s) submitted by Customer. Order Form(s) shall be binding only upon acceptance by Falling Rock which is described in detail in the Specification Sheets and/or Statements of Work attached to each Order Form. Each Order Form (with the attached Specification Sheet(s) and Statement(s) of Work) submitted, accepted and executed by Customer and Falling Rock hereby incorporates by this reference the terms and conditions of this Agreement and, for the purposes of each Order Form. This Agreement is intended to cover any and all services and/or products ordered by Customer and provided by Falling Rock. In the event that any terms set forth herein apply specifically to a service not ordered by Customer, such terms shall not apply to Customer, unless and until such service is ordered by Customer.

### 1.2 *Definitions.*

(a) "Affiliate" means a company which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another company.

(b) "Customer" means collectively the individual or legal entity signing the Order Form accepted by Falling Rock and that individual's or legal entity's Affiliate(s).

(c) "Customer Area" means that portion(s) of the Internet Data Center(s) made available for the placement of Customer Equipment and/or Purchased Equipment and/or Rental Equipment by Falling Rock and use of the Service(s).

(d) "Customer Equipment" means the Customer's computer hardware, not including stored data, and other tangible equipment placed by Falling Rock in the Customer Area and identified on Falling Rock's standard customer equipment list completed and delivered by Customer to Falling Rock, as amended in writing from time to time by Customer.

(e) "Customer Registration Form" means the list that contains the names and contact information (e.g. pager, email and telephone numbers) of the Representatives, as delivered by Customer to Falling Rock and amended in writing from time to time by Customer pursuant to Falling Rock's standard operating procedures.

(f) "Customer Technology" means Customer's proprietary technology, including Customer's Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the term of this Agreement by Customer.

(g) "Falling Rock Marks" means any registered or unregistered names, marks, brands, logos, designs, slogans, trademarks, trade dress and any other designations Falling Rock uses in connection with their services and products.

(h) "Falling Rock Technology" means Falling Rock's proprietary technology, including Falling Rock services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world

(whether owned by Falling Rock or licensed to Falling Rock from a third party) and also including any derivatives, improvements, enhancements or extensions of Falling Rock Technology conceived, reduced to practice, or developed during the term of this Agreement by Falling Rock that are not uniquely applicable to Customer or that have general applicability in the art.

(i) "Initial Service Term" means the minimum term for which Falling Rock will provide the Service(s) to Customer, as indicated on the Order Form(s).

(j) "Internet Data Center(s)" means any of the facilities used by Falling Rock to provide the Service(s).

(k) "Order Form" means a written order from Customer to Falling Rock for Services, in a form designated by Falling Rock and signed by an authorized representative of Customer.

(l) "Professional Services" means any professional or consulting service provided by Falling Rock to Customer as more fully described in a Statement of Work or Specification Sheet.

(m) "Purchased Equipment" means any hardware or other products (including, if applicable, associated licensed software) purchased by Customer from Falling Rock.

(n) "Renewal Service Term" means any service term following the Initial Service Term, as defined in Section 2.2 (c).

(o) "Rental Equipment" means the computer hardware, associated licensed software and other tangible equipment and intangible computer code contained therein provided by Falling Rock for use by Customer for a monthly recurring fee as set forth on the Order Form(s).

(p) "Representatives" mean the individuals identified in writing on the Customer Registration Form and authorized by Customer to permit changes to be made to the Customer Equipment or Purchased Equipment or Rental Equipment.

(q) "Rules and Regulations" means the Falling Rock general rules and regulations governing Customer's use of Service(s) including, but not limited to, online conduct, and the obligations of Customer and its Representatives in the Internet Data Centers. The current Rules and Regulations are attached hereto as Attachment A and are incorporated herein by this reference.

(r) "Service(s)" means the specific service(s) provided by Falling Rock to Customer as described on the Order Form(s), excluding Supplemental Services.

(s) "Service Commencement Date" means the date Falling Rock has completed the installation for a Service and will begin providing such Service to Customer, as set forth in a written notice delivered by Falling Rock to Customer.

(t) "Service Credit" means a payment credit to be issued by Falling Rock to Customer under the terms of the Service Level Agreement.

(u) "Service Level Agreement" means the service level agreement described in Attachment B to this Agreement and incorporated herein by this reference.

(v) "Specification Sheet" means the detailed description for each Service, other than Professional Services, ordered by Customer which is attached to (an) Order Form(s).

(w) "Statement of Work" means the detailed description(s) of the custom or non-standard Professional Service attached to (an) Order Form(s).

(x) "Supplemental Services" means the services described in Section 2.1 (b).

(y) "Work" means any tangible deliverable provided by Falling Rock to Customer as described in the Statement of Work for any Professional Service.

## 2. DELIVERY OF SERVICES; TERMS; FEES.

### 2.1 *Delivery of Services.*

(a) *General.* By submitting an Order Form, Customer agrees to pay for, and, by accepting the Order Form, Falling Rock agrees to provide, the ordered

Service(s) during the Initial Service Term and for any Renewal Service Term, as specified in Section 2.2 (c) below.

(b) *Delivery of Supplemental Services.* The purpose of this provision is to enable Falling Rock to provide Customer with certain limited services and equipment needed by Customer on an emergency basis (“Supplemental Services”) where such services are not included within the scope of the Services that Customer has purchased. Supplemental Services may include, as an example, a request from Customer to Falling Rock via telephone that Falling Rock immediately replace a problem Customer server with a Falling Rock server for a temporary period of time. Falling Rock shall obtain Customer’s approval prior to providing such services. Customer agrees to pay Falling Rock the fees charged by Falling Rock for Supplemental Services based on Falling Rock’s then current rates for time and materials and set forth in the invoice issued following delivery of the Supplemental Services. Falling Rock will use commercially reasonable efforts to provide Supplemental Services, provided that Falling Rock has no obligation to determine the need for or provide Supplemental Services.

## 2.2 Term.

(a) *Term of Agreement.* This Agreement shall commence on the Effective Date and continue thereafter until the expiration or non-renewal of the last Service term, unless earlier terminated in accordance with this Agreement.

(b) *Service Term Commencement.* The term for each Service, other than Professional Services, will commence on the Service Commencement Date. The term for Professional Services will commence on the date set forth in the applicable Statement of Work or upon the initial delivery of such Professional Services, whichever is earlier.

(c) *Renewal Service Term(s).* Each monthly recurring Service, other than the provisioning of Rental Equipment, will continue automatically on a month to month basis or a longer Customer designated time period, with either Agreement term being denoted as a Renewal Service Term, unless (i) Customer notifies Falling Rock in writing at least thirty (30) days prior to the end of the Initial

Service Term or a Renewal Service Term, as applicable, that it has elected to terminate such Service, or (ii) Falling Rock notifies Customer in writing at least thirty (30) days prior to the end of the Initial Service Term or a Renewal Service Term, as applicable, that it has discontinued the Service; in either case such Service shall terminate at the end of such term. The termination of any Service will not affect Customer’s obligations to pay for and receive other Service(s).

## 3. FEES AND PAYMENT TERMS.

3.1 *Fees and Expenses.* Customer will pay Falling Rock for all fees according to the prices and terms listed on the Order Form(s). The prices listed on the Order Form(s) will remain in effect during the Initial Service Term indicated in the Order Form(s) and will continue thereafter, unless modified as provided herein. Falling Rock may change or increase the prices it charges Customer for any Service at any time after the Initial Service Term effective thirty (30) days after providing notice to Customer. In the event that such price increase is more than ten percent (10%) for any Service or such increase is not the first increase for such Service during a specific Renewal Service Term, Customer shall have the right to terminate such Service by delivering written notice to Falling Rock within thirty (30) days of the date of such notice of the price increase from Falling Rock. In the event Customer is enrolled in a month to month Renewal Service Term, then Customer will be obligated to pay Falling Rock 110% of the aggregate Service fee specified in the monthly Falling Rock invoice within 30 days of the date of such invoice for each month of the month to month Renewal Service Term. Both parties agree that the additional 10% fee will constitute an uncertainty surcharge fee and not a penalty. Customer also agrees to reimburse Falling Rock for reasonable actual out-of-pocket, pre-approved, expenses incurred in providing Professional Services to Customer.

3.2 *Payment Terms.* Monthly recurring charges will be billed in advance of the provision of Services. Non-recurring charges and all other charges for Services received, including, but not limited to, Supplemental Services, and expenses incurred for Professional Services during a month (e.g., bandwidth usage fees, travel expenses) will be billed in arrears. Customer will be invoiced monthly on the first billing cycle after the Service Commencement Date. Customer shall pay to Falling Rock the purchase price set forth in the

applicable Order Form for each item of Purchased Equipment. Customer hereby grants and Falling Rock reserves a purchase money security interest in the Purchased Equipment and the proceeds thereof as security for its obligations hereunder until payment of the full purchase price to Falling Rock. Payment for all fees is due within thirty (30) days from receipt of each Falling Rock invoice. All payments will be made in the United States in U.S. dollars.

**3.3 Late Payments.** If Customer is delinquent in its payments, or if Customer does not meet Falling Rock's reasonable credit standards, Falling Rock may require other assurances to secure Customer's payment obligations hereunder. If Customer is delinquent in its payments more than two (2) consecutive times, any late payments will accrue interest at a rate of one percent (1%) per month.

**3.4 Taxes.** All fees for Services are exclusive of all taxes and similar fees now in force or enacted in the future or imposed on the transaction and/or the delivery of Services, all of which Customer will be responsible for and will pay in full, other than taxes based on Falling Rock's net income. Customer also agrees to pay all taxes and other governmental charges assessed in connection with the sale, use or possession of the Purchased Equipment including, without limitation, any and all sales and/or use taxes and personal property taxes (other than taxes based on Falling Rock's net income).

#### 4. CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY OWNERSHIP; LICENSE GRANTS.

##### 4.1 Confidential Information.

(a) *Nondisclosure of Confidential Information.* Falling Rock and Customer each acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party ("*Confidential Information*"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential. Confidential Information will also include, but not be limited to, Falling Rock

Technology, Customer Technology and non-public information relating to the customers of either party. Falling Rock and Customer each agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law, or to that party's independent contractors, attorneys, accountants and other advisors as reasonably necessary), any of the other's Confidential Information and will take reasonable precautions to protect the confidentiality of such information, which precautions, in any event, will be at least as stringent as it takes to protect its own Confidential Information. Falling Rock may require, as a condition of gaining access to any Falling Rock facility, that employees and other visitors of Customer seeking such access execute a non-disclosure agreement which is consistent with Customer's confidentiality obligations under this Section 4.

(b) *Exceptions.* Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that, unless restricted by order of a governmental agency or otherwise restricted by law, the receiving party provides reasonable notice to the other party of the required disclosure so as to permit the other party to respond to such request for disclosure.

##### 4.2 Intellectual Property.

(a) *Ownership.* Except for the rights expressly granted herein and the assignment expressly made in Section 4.4 (a), this Agreement does not transfer to Customer any Falling Rock Technology, and all right, title and interest in and to Falling Rock Technology will remain solely with Falling Rock. Except for the rights expressly granted herein, this Agreement does not

transfer from Customer to Falling Rock any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. Falling Rock and Customer each agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party.

(b) *General Skills and Knowledge.* Notwithstanding anything to the contrary in this Agreement and excluding Customer's Confidential Information and technology, Falling Rock will not be prohibited or enjoined at any time by Customer from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including, without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another customer of Falling Rock.

(c) *Use of Falling Rock Marks.* Customer may refer to Falling Rock's products and services in writing by the associated Falling Rock Marks, provided (i) Customer has obtained Falling Rock's prior written consent to such use, which consent may be withheld at Falling Rock's sole discretion; (ii) such reference to Falling Rock and Falling Rock Marks is truthful and not misleading; and (iii) such reference complies with the then-current Falling Rock Trademark and Logo Policies located at <<http://www.fallingrocknetworks.com/>>.

#### 4.3 License Grants.

(a) *By Falling Rock.* Falling Rock hereby grants to Customer a nonexclusive, royalty-free and royalty-based license(s) (depending on the Falling Rock Technology), without rights to sublicense, during the Initial Service Term and any renewal Service Term, to use the Falling Rock Technology, which Customer gains access to through the provision of the Service(s), solely for purposes of using the Service(s) and no other purpose.

(b) *By Customer.* Customer agrees that if, in the course of performing the Service(s), it is necessary for Falling Rock to enter the Customer Area, access Customer Equipment and use Customer Technology, Falling Rock is hereby granted and shall have a nonexclusive, royalty-free license, during the

Initial Service Term and any Renewal Service Term, to enter the Customer Area and use the Customer Technology solely for purposes of providing the Service(s) to Customer and no other purpose.

#### 4.4 Professional Services; Assignments and License.

(a) *Assignment of Work.* Effective at the time Falling Rock receives full and final payment for the Professional Service, Falling Rock assigns to Customer all right, title and interest, including all intellectual property rights, in the Work, provided, however, that such assignment does not include Falling Rock Technology.

(b) *License Grant.* Commencing at the time Falling Rock receives full and final payment for the Work, Falling Rock grants to Customer a non-exclusive, non-transferable (except as permitted under Section 11.9), royalty free, perpetual license to use the Falling Rock Technology incorporated into the Work solely in connection with the use of the Work as a whole, subject to Section 4.2 (a). To the extent that Customer or its employees or contractors participate in the creation or development of Falling Rock Technology, Customer, on behalf of itself and its employees and contractors, hereby assigns to Falling Rock all right, title and interest, including all intellectual property rights, in and to the Falling Rock Technology, excluding Customer Technology.

#### 5. FALLING ROCK REPRESENTATIONS AND WARRANTIES.

5.1 *General.* Falling Rock represents and warrants that (i) it has the legal right to enter into this Agreement and perform its obligations hereunder, and (ii) the performance of its obligations and delivery of the Services to Customer will not violate any applicable laws or regulations. In the event of a breach of the warranties set forth in this Section 5.1, Customer's sole remedies are (i) the right to receive Service Credits under the terms of the Service Level Agreement incorporated herein by this reference to the extent such breach results in Downtime or Performance Problems as those terms are defined in the Service Level Agreement, and (ii) the right to terminate the Services and this Agreement, including all outstanding Order Forms, pursuant to Section 10 of this Agreement.

5.2 *Service Level Agreement.* Falling Rock warrants that it will perform the Services in a professional and

workmanlike manner consistent with industry standards reasonably applicable to the performance thereof. In the event that Customer experiences any Downtime and/or Performance Problems, as those terms are defined in the Service Level Agreement incorporated herein by this reference, as a result of Falling Rock's failure to provide the Services, Customer may be eligible to receive Service Credits from Falling Rock and terminate the Services in accordance with the terms set forth in the Service Level Agreement. Customer's rights to receive Service Credits and terminate the Services and/or this Agreement and all outstanding Order Forms under the terms of the Service Level Agreement are Customer's sole and exclusive remedies for any failure by Falling Rock to provide the Services and for Falling Rock's failure to meet any warranty set forth in this Section 5.2 and the Service Level Agreement (see Attachment B).

**5.3 No Other Warranty.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, INCLUDING THE SERVICE LEVEL AGREEMENT, CUSTOMER'S USE OF THE SERVICES AND SUPPLEMENTAL SERVICES IS PROVIDED "AS IS" AND AT ITS OWN RISK. FALLING ROCK, FALLING ROCK'S SUPPLIERS AND SUBCONTRACTORS, IF ANY, DO NOT MAKE, AND HEREBY DISCLAIM, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FALLING ROCK, FALLING ROCK'S SUPPLIERS AND SUBCONTRACTORS, IF ANY, DO NOT WARRANT THAT THE SERVICES OR THE SUPPLEMENTAL SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

**5.4 Disclaimer of Actions Caused by and/or Under the Control of Third Parties.** FALLING ROCK DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM FALLING ROCK'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). FALLING ROCK CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, FALLING ROCK, FALLING ROCK'S SUPPLIERS AND SUBCONTRACTORS, IF ANY, DISCLAIM ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

**5.5 Medical Life Support; Aircraft Service and Nuclear Applications.** THE SERVICES, SUPPLEMENTAL SERVICES, RENTAL EQUIPMENT AND PURCHASED EQUIPMENT DELIVERED UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN MEDICAL LIFE SUPPORT SYSTEMS AND SERVICES, ON-LINE CONTROL OF AIRCRAFT, AIR TRAFFIC, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATIONS; OR IN THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF ANY NUCLEAR FACILITY. FALLING ROCK, FALLING ROCK'S SUPPLIERS AND SUBCONTRACTORS, IF ANY, DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSE. Customer represents and warrants that it will not use the Services, Supplemental Services, Rental Equipment and Purchased Equipment for such purposes.

## 6. CUSTOMER OBLIGATIONS.

### 6.1 Warranties of Customer.

(a) *General.* Customer represents and warrants that throughout the term of this Agreement: (i) it will have the legal right and authority to place and use any Customer Equipment as contemplated under this Agreement; (ii) the performance of its obligations and use of the Services and Supplemental Services (by Customer, its customers and users) will not violate any applicable laws, regulations, the Rules and Regulations or Falling Rock's operating procedures, or unreasonably interfere with other Falling Rock customers' use of Falling Rock services; (iii) all equipment, materials and other tangible items placed by Customer at Internet Data Centers will be used in compliance with all applicable manufacturer specifications and industry standards, including, but not limited to, those relating to proper installation and ventilation; and (iv) it will comply with the terms and conditions of all licenses for software included in the Rental Equipment and Purchased Equipment.

(b) *Breach of Warranties.* In the event of any breach of any of the foregoing warranties or other representations of Customer set forth herein, in addition to any other remedies available at law or in equity, Falling Rock will have the right to suspend immediately any related Services and/or restrict Customer's access to the Internet Data Center(s), if deemed reasonably necessary by Falling Rock to prevent any harm to Falling Rock, its employees and its business. Falling Rock will, if practicable depending on the nature of the breach, and without in any way limiting any other rights and remedies it has in law or in

equity, provide notice and opportunity to cure. Once the breach is cured, Falling Rock will promptly restore the Service(s), unless Falling Rock has taken action under Section 10.

**6.2 Compliance with Laws and Rules and Regulations.** Customer agrees that it will use the Services and Supplemental Services only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all applicable laws and regulations, Falling Rock operating procedures and the Rules and Regulations, as updated by Falling Rock from time to time. Falling Rock may change the Rules and Regulations upon two (2) calendar days' prior written notice to Customer. Customer agrees to comply with the restrictions on Customer's and its users' online conduct contained in the Rules and Regulations and, in the event of a failure to comply, in addition to any other remedy Falling Rock may have in law or in equity, Customer agrees to pay for Falling Rock's administrative costs in accordance with the Rules and Regulations. Customer acknowledges that Falling Rock exercises no control whatsoever over the content of the information passing through Customer's site(s) or shared or processed on equipment under the control of Falling Rock on behalf of Customer, and that it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations and the Rules and Regulations.

**6.3 Access and Security.** Except with the advance written consent of an Falling Rock authorized representative, Customers will not have physical access to the Internet Data Centers. Representatives may only access the Customer Area through multi-homed gigabit Ethernet connections (access to Falling Rock's network through multiple internet providers via numerous Internet connections) and are prohibited from accessing other areas of the Internet Data Centers. Customer's access to the Internet Data Centers is subject to the security provisions contained in the Rules and Regulations and Customer agrees to comply with such security requirements. Notwithstanding the foregoing, Falling Rock may refuse Customer access to the Internet Data Center(s) for any reasonable reason, including anticipated breach of this Agreement.

**6.4 Restrictions on Use of Services.** Customer shall not resell the Services to any third parties or connect Customer Equipment directly to anything other than the Falling Rock network, equipment and facilities, except: (i) through third party services made available by Falling Rock; or (ii) with the prior written consent of Falling Rock (which may be withheld in its sole discretion). Customer agrees that, to the extent it uses the Services to provide services to its customers or users, Customer will disclaim in writing any liability whatsoever by Falling Rock, its suppliers or subcontractors to Customer's customers or users.

**6.5 Relocation of Customer Equipment.** In the event that it becomes necessary to relocate the Customer Equipment to another Customer Area or Internet Data Center operated by Falling Rock within the same geographic area, Customer will cooperate in good faith with Falling Rock to facilitate such relocation, provided that such relocation is based on reasonable business needs of Falling Rock, the expansion of the space requirements of Customer or otherwise. Falling Rock shall be solely responsible for any costs and expenses incurred by Falling Rock in connection with any such relocation and will use commercially reasonable efforts, in cooperation with Customer, to minimize and avoid any interruption to the Services. Falling Rock agrees not to relocate Customer Equipment without Customer's prior consent, which consent shall not be unreasonably withheld.

**6.6 Rental Equipment.**

(a) **Delivery and Term.** On or prior to the Service Commencement Date, Falling Rock shall deliver to Customer, at the designated Internet Data Center, the Rental Equipment. Customer shall have the right to use the Rental Equipment for the Initial Service Term set forth in the Order Form and any additional period agreed to in writing by Falling Rock. Customer shall not remove any Rental Equipment from the Customer Area(s) without the prior written consent of Falling Rock.

(b) **Title and Lien.** The Rental Equipment shall always remain the personal property of Falling Rock. Customer shall have no right or interest in or to the Rental Equipment except as provided in this Agreement and the applicable Order Form and shall hold the Rental Equipment subject and subordinate to the rights of

Falling Rock. Falling Rock shall have a lien on all Purchased Equipment until the Customer pays for the Purchased Equipment in its entirety. Falling Rock shall have a lien on Customer Equipment up to the value of Customer's unpaid fees. Customer agrees to execute UCC financing statements as and when requested by Falling Rock and, in the event such UCC financing statements are not executed by Customer, Customer hereby appoints Falling Rock as its attorney-in-fact to execute such financing statements on behalf of Customer. Customer will, at its own expense, keep the Rental Equipment free and clear from any liens or encumbrances of any kind (except any caused by Falling Rock) and will indemnify and hold Falling Rock harmless from and against any loss or expense caused by Customer's failure to do so. Customer shall give Falling Rock immediate written notice of any attachment or judicial process affecting Customer's Equipment and/or Purchased Equipment and/or Rental Equipment or Falling Rock's rights therein. Customer will not remove, alter or destroy any labels on the Customer Equipment and/or Purchased Equipment and/or Rental Equipment indicating Falling Rock's rights and shall allow the inspection of the Customer Equipment and/or Purchased Equipment and/or Rental Equipment by Falling Rock or persons authorized by Falling Rock at any time.

(c) *Use, Maintenance and Repair.* Customer will, at its own expense, keep the Rental Equipment in good repair, appearance and condition, other than normal wear and tear, and, if not included in the Services, shall obtain, pay for and keep in effect through the Service Term therefor a hardware and software support and maintenance agreement with Falling Rock. All parts and updates furnished in connection with such repair and maintenance shall immediately become components of the Rental Equipment and the property of Falling Rock. Customer shall use the Rental Equipment in compliance with the manufacturer's or supplier's suggested guidelines.

(d) *Upgrades and Additions.* Customer may affix or install any accessory, addition, upgrade, equipment or device onto the Rental Equipment ("Additions"), provided that, such Additions: (i) can be removed without causing material damage to the Rental Equipment; (ii) do not materially reduce

the value of the Rental Equipment; (iii) are obtained from or approved in writing by Falling Rock; and (iv) are not subject to the interest of any third party other than Falling Rock, its suppliers or licensors, if any. Any other Additions may not be installed without Falling Rock's prior written consent. At the end of the Initial Service Term or additional rental period agreed to by Falling Rock, or this Agreement, as applicable, Customer or Falling Rock shall remove any Additions which were not provided by Falling Rock and are readily removable without causing material damage or impairment of the intended function, use, or value of the Rental Equipment, and restore the Rental Equipment to its original configuration. Any Additions, which are not so removable, will become the property of Falling Rock (lien free).

#### 6.7 *Purchased Equipment.*

(a) *Risk of Loss; Shipping and Handling.* All Purchased Equipment is provided FOB equipment manufacturer or supplier facility, as applicable. Risk of loss passes to Customer upon delivery of the Purchased Equipment into the custody of the carrier or, if there are subsequent carriers, to the first carrier, for transportation to the named place of destination. Shipment will be made as specified by Customer and Customer is solely responsible for all expenses incurred in connection with the delivery of the Purchased Equipment. The Purchased Equipment will be deemed accepted by Customer upon shipment.

(b) *Title.* Customer shall acquire title to the Purchased Equipment upon full payment of the purchase price(s) set forth in the Order Form. Notwithstanding the foregoing, Falling Rock and any licensor of rights, as applicable, shall retain title to and rights in the intellectual property, software (whether or not subject to patent or copyright) and content contained in the Purchased Equipment.

#### 7. LIMITATIONS OF LIABILITY.

7.1 *Personal Injury.* EACH REPRESENTATIVE AND ANY OTHER PERSON VISITING AN INTERNET DATA CENTER DOES SO AT HIS OR HER OWN RISK. FALLING ROCK ASSUMES NO LIABILITY WHATSOEVER FOR ANY HARM TO SUCH PERSONS RESULTING FROM ANY CAUSE OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF FALLING ROCK.

**7.2 Damage to Customer Equipment.** FALLING ROCK ASSUMES NO LIABILITY FOR ANY DAMAGE TO, OR LOSS OF, ANY CUSTOMER EQUIPMENT RESULTING FROM ANY CAUSE OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF FALLING ROCK. TO THE EXTENT FALLING ROCK IS LIABLE FOR ANY DAMAGE TO, OR LOSS OF, CUSTOMER EQUIPMENT FOR ANY REASON, SUCH LIABILITY WILL BE LIMITED SOLELY TO THE THEN-CURRENT REPLACEMENT VALUE OF THE CUSTOMER EQUIPMENT, EXCLUDING LOST DATA, SOFTWARE AND FIRMWARE.

**7.3 LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, ALL LIABILITY OF FALLING ROCK, FALLING ROCK'S SUPPLIERS AND SUBCONTRACTORS UNDER THIS AGREEMENT (INCLUDING ALL RELATED ORDER FORMS) OR OTHERWISE SHALL BE LIMITED TO THE SUM OF THE CASH PAYMENTS FALLING ROCK RECEIVES FROM THE CUSTOMER 6 MONTHS PRIOR TO THE INCIDENT GIVING RISE TO FALLING ROCK'S LIABILITY.

**7.4 CONSEQUENTIAL DAMAGES WAIVER.** IN NO EVENT WILL FALLING ROCK BE LIABLE OR RESPONSIBLE FOR ANY TYPE OF INCIDENTAL, EXEMPLARY, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

**7.5 Basis of the Bargain; Failure of Essential Purpose.** The parties acknowledge that Falling Rock has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

**7.6 WAIVER OF CONSUMER RIGHTS. CUSTOMER WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF**

**CUSTOMER'S SELECTION, CUSTOMER VOLUNTARILY CONSENTS TO THIS WAIVER.**

**8. INDEMNIFICATION.**

**8.1 Indemnification.** Falling Rock and Customer will each indemnify (the "Indemnifying Party"), defend and hold the other (the "Indemnified Party") harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") resulting from any claim, suit, action, or proceeding (each, an "Action") brought by any third party against the Indemnified Party or its affiliates alleging (i) the infringement or misappropriation of any intellectual property right relating to the delivery or its use of the Service(s) (but excluding any infringement contributorily caused by the Indemnified Party); (ii) personal injury caused by the negligence or willful misconduct of the Customer; (iii) personal injury caused by the gross negligence or willful misconduct of Falling Rock; and (iv) any violation of or failure to comply with the Rules and Regulations. Customer will indemnify, defend and hold Falling Rock, its Affiliates and customers harmless from and against any and all Losses resulting from or arising out of (i) any breach by Customer of Section 6.4 of this Agreement, and (ii) any damage or destruction to the Customer Area, the Internet Data Center(s), Falling Rock equipment or other customer equipment or business caused by the negligence or willful misconduct of Customer or its Representative(s).

**8.2 Indemnification Notice and Cooperation.** Each of Falling Rock's and Customer's indemnification obligations hereunder shall be subject to: (i) receiving prompt written notice of the existence of any Action or Loss; (ii) being able to, at its option, control the defense of such Action; (iii) permitting the Indemnified Party to participate in the defense of any Action; and (iv) receiving full cooperation of the Indemnified Party in the defense thereof. Customer shall not enter into a settlement of any Action imposing liability or restrictions on Falling Rock without the prior written approval of an authorized representative of Falling Rock.

**9. TERMINATION.**

**9.1 Termination For Cause.** Falling Rock or Customer may terminate this Agreement and all outstanding Order Forms if: (i) the other party breaches any

material term or condition of this Agreement and fails to cure such breach within fifteen (15) calendar days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within five (5) days after receipt of written notice from Falling Rock; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing. Customer and Falling Rock may also terminate this Agreement in accordance with any other express terms regarding termination set forth in this Agreement.

#### 9.2 *Liability for Termination.*

(a) Falling Rock will not be liable to the Customer for any termination or expiration of any Service or this Agreement in accordance with its terms. Customer will subject to an early termination fee when terminating for convenience the applicable Service(s) as specified in the Order Form(s) or this Agreement.

(b) Termination of this Agreement is without prejudice to any other right or remedy of the parties. Termination of this Agreement for any cause does not release either party from any liability which, at the time of termination, has already accrued to the other party, or which may accrue in respect of any act or omission prior to termination or from any obligation which is expressly stated to survive the termination.

9.3 *Effect of Termination.* Upon the effective date of termination of this Agreement:

(a) Falling Rock will immediately cease providing the Service(s);

(b) any and all payment obligations of Customer under this Agreement for Service(s) provided through the date of termination will immediately become due;

(c) within fifteen (15) calendar days of such termination, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement; and

(d) subject to Section 9.4 of this Agreement, within ten business (10) days of such termination Falling Rock shall (i) remove from the Internet Data Center(s) all Customer Equipment (excluding any Rental Equipment) and any other Customer property; and (ii) remove Additions from all Rental Equipment in accordance with Section 6.6(d) and deliver or make available all Customer Equipment to Customer. If Falling Rock removes the Customer Equipment and its other property from the Internet Data Center and Customer does not pick up this equipment within five (5) business days of being notified by Falling Rock, then Falling Rock may move any and all such property to storage and charge Customer for the cost of such removal and storage. If Customer does not remove the Customer Equipment and its other property from storage within thirty (30) days of the date of termination, then Falling Rock may liquidate the property in any reasonable manner and retain the proceeds.

9.4 *Customer Equipment as Security.* In the event that Customer fails to pay Falling Rock all amounts owed Falling Rock under this Agreement when due, Customer agrees that, upon delivery of written notice to Customer, Falling Rock may restrict Customer's physical access to the Customer Area and Equipment.

9.5 *Survival.* Sections 3, 4, 5.3, 5.4, 5.5, 6, 7, 8, 9, 10.5, 10.7, 10.8, 10.15 and 10.16 will survive termination of this Agreement. Reference to a particular section (e.g., section 7) includes the subsections contained within that section (e.g., subsections 7.1-7.6).

#### 10. MISCELLANEOUS PROVISIONS.

10.1 *Force Majeure.* Except for the obligation to make payments for Services rendered, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of terrorism, acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act

or failure of the Internet (not resulting from the actions or inactions of Falling Rock), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If Falling Rock is unable to provide Service(s) for a period of seven (7) consecutive days as a result of a continuing force majeure event, Customer may cancel the Service(s).

**10.2 No Lease; Agreement Subordinate to Master Lease.** This Agreement is a services agreement and is not intended to and will not constitute a lease of any real property. Customer acknowledges and agrees that (i) it has been granted only a license to occupy the Customer Area with Customer Equipment and/or Purchased Equipment and/or Rental Equipment and use the Internet Data Center(s) in accordance with this Agreement; (ii) Customer has not been granted any real property interest in the Customer Area or Internet Data Center(s); (iii) Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations, or ordinances; and (iv) this Agreement, to the extent it involves the use of space leased by Falling Rock, shall be subordinate to any lease between Falling Rock and its landlord(s).

**10.3 Marketing.** Any reference to Customer by Falling Rock requires the written consent of Customer.

**10.4 Government Regulations.** Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the United States in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

**10.5 Non-Solicitation.** During the term(s) of this Agreement and continuing through the first anniversary of the termination of this Agreement, Customer agrees that it will not, and will ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons

employed by Falling Rock or contracted by Falling Rock to provide Services to Customer.

**10.6 No Third Party Beneficiaries.** Falling Rock and Customer agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or the customers of Customer.

**10.7 Governing Law; Dispute Resolution.** This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Texas (except that body of law controlling conflicts of law) and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods. The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement. Failing such amicable settlement, any controversy, claim, or dispute arising under or relating to this Agreement, including the existence, validity, interpretation, performance, termination or breach thereof, shall finally be settled by arbitration in accordance with the Arbitration Rules (and if Customer is a non-U.S. entity, the International Arbitration Rules) of the American Arbitration Association ("AAA"). There will be three (3) arbitrators (the "Arbitration Tribunal"), the first of which will be appointed by the claimant in its notice of arbitration, the second of which will be appointed by the respondent within thirty (30) days of the appointment of the first arbitrator and the third of which will be jointly appointed by the party-appointed arbitrators within thirty (30) days thereafter. The language of the arbitration shall be English. The Arbitration Tribunal will not have the authority to award punitive damages to either party. Each party shall bear its own expenses, but the parties will share equally the expenses of the Arbitration Tribunal and the AAA. This Agreement will be enforceable, and any arbitration award will be final, and judgment thereon may be entered in any court of competent jurisdiction. The arbitration will be held in Austin, Texas, USA. Any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration, each party waives any right to a jury trial. Notwithstanding the foregoing, claims for preliminary injunctive relief, other pre-judgment remedies, and claims for Customer's failure to pay for Services in

accordance with this Agreement may be brought in a state or federal court in the United States with jurisdiction over the subject matter and parties.

10.8 *Time to Bring Claims.* Any initial demand for arbitration pursuant to this Agreement, and any legal action arising under this Agreement, must be initiated within one year after the cause of action arises.

10.9 *Severability; Waiver.* In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

10.10 *Assignment.* Customer or Falling Rock may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets, provided that, in the case of Customer, such assignment shall become effective only upon written notice to Falling Rock. Customer may not otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Falling Rock, and any attempted assignment or delegation without such consent will be void. Falling Rock may assign this Agreement in part and/or delegate the performance of certain Services to third parties, provided Falling Rock controls the delivery of such Services to Customer and remains responsible to Customer for the delivery of such Services. Notwithstanding the foregoing, Falling Rock shall be entitled to assign this Agreement in part and shall not be required to control and shall not remain responsible for the delivery of such Services in the case of a partial assignment of this Agreement in connection with the sale of a division or business unit of Falling Rock which provides the Services being assigned. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

10.11 *Notice.* Any notice or communication required or permitted to be given hereunder may be delivered by hand, emailed (provided receipt is confirmed), deposited with a nationally recognized

overnight courier, confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed below the signature for such party on this Agreement or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered, mailed, faxed or sent, whichever is earlier.

10.12 *Relationship of Parties.* Falling Rock and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Falling Rock and Customer. Neither Falling Rock nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

10.13 *Entire Agreement; Counterparts Originals; Periodic Modification of Agreement by Falling Rock.* This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between Customer and Falling Rock with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter, and each party hereby disclaims any other representations and warranties made by itself or any of its officers, directors, employees, agents, financial and legal advisors or other representatives with respect to the execution and delivery of this Agreement or the transactions contemplated herein, notwithstanding the delivery or disclosure to any other Party or any Party's representatives of any documentation or other information with respect to any one or more of the foregoing. Any additional or different terms in any purchase order or other response by either party shall be deemed objected to by the other party without need of further notice of objection, and shall be of no effect or in any way binding upon the other party. This Agreement may be executed by both parties signing an Order Form referencing this Agreement. Once signed, any reproduction of the Order Form made by reliable means (e.g., photocopy, facsimile) is considered an original. For purposes of this Agreement, the term "written" means anything reduced to a tangible form by a party, including a printed or handwritten document,

e-mail or other electronic format. Falling Rock may at any time, at its sole discretion, revise or otherwise update this Agreement by posting an amended Agreement on the Falling Rock website; any changes that Falling Rock makes to this Agreement will be effective immediately upon posting. Please check this Agreement periodically for changes made by Falling Rock; Customer will be able to determine if this Agreement has changed since Customer's previous visit by viewing the "Last Updated" information that appears at the top of this Agreement. Customer's continued use of the Falling Rock Services following the posting of Falling Rock's updated Agreement constitutes acceptance of this Agreement.

10.14 *Interpretation of Conflicting Terms.* In the event of a conflict between or among the terms in this Agreement, the Order Form(s), the Specification Sheet(s), the Service Level Agreement, the Statement(s) of Work, and any other document made a part hereof, the documents shall control in the following order: this Agreement, the Order Form with the latest date, the Rules and Regulations with the latest date, the Statement of Work, Specification Sheets, the Service Level Agreement and other documents.

10.15 *Drafting Party.* Notwithstanding the fact that this Agreement has been drafted or prepared by one of the parties, each of the parties confirms that each of them and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the

parties, and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any person.

10.16. *Translation.* In the event this Agreement is translated into any language other than the English language, the meanings contained in the English language version shall control and be used in any interpretation or dispute related to this Agreement.

11.17 *Section Headings.* When a reference is made in this Agreement to Sections such reference shall be to a Section of this Agreement, unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." No provision of this Agreement shall be deemed to be construed to require either party or their Affiliates to take any action that would violate applicable Law. References to dollar amounts herein shall not be deemed an admission that such amounts are material.

10.18 *Equitable Actions.* The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and in accordance with its terms, the Parties are entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

This Agreement incorporates the following documents:

- Order Form(s)
- Specification Sheet(s)
- Statement(s) of Work (if applicable)
- Registration Form (if applicable)
- Attachment A                      Falling Rock Rules and Regulations
- Attachment B                      Falling Rock Service Level Agreement

**ATTACHMENT A**  
**FALLING ROCK RULES AND REGULATIONS**

**Last Updated:** December 29, 2011

These Rules and Regulations cover (1) Falling Rock's customer's ("Customer") (and the Customer's customers, agents and users) use of and access to Falling Rock's facilities (e.g., Internet Data Centers); (2) Customer's (and its customers, agents and users) use of the Falling Rock online services; and (3) Falling Rock's maintenance of the services it provides to its Customers.

**ACCESS TO INTERNET DATA CENTERS**

Except with the advance written consent of a Falling Rock authorized representative, Customers will not have physical access to the Internet Data Center(s). Representatives may only access the Customer Area through multi-homed gigabit Ethernet connections (access to Falling Rock's network through multiple internet providers via numerous Internet connections) and are prohibited from accessing other areas of the Internet Data Centers. Customer's access to the Internet Data Centers is subject to the security provisions contained in these Rules and Regulations and Customer agrees to comply with such security requirements. Notwithstanding the foregoing, Falling Rock may refuse Customer access to the Internet Data Center(s) for any reasonable reason.

**USE OF INTERNET DATA CENTER FACILITY**

*Customer Conduct When Physically and Remotely Accessing the Internet Data Center(s).* Customer and its Representatives agree to adhere to and abide by all security and safety measures established by Falling Rock at various points. Customer and its Representatives shall also not do or participate in any of the following:

- misuse or abuse any Falling Rock property or equipment or third party equipment;
- make any unauthorized use of or interfere with any property or equipment of any other Falling Rock Customer;
- harass any individual, including Falling Rock personnel and representatives of other Falling Rock Customers; and
- engage in any activity that is in violation of the law or aids or assists any criminal activity in connection with the Internet Data Center Services.

**Website Transfer**

Falling Rock will exert good faith efforts to help move Customer's website to be hosted by Falling Rock. However, Falling Rock will not make guarantees regarding the availability, possibility, or time required to complete an account transfer. Each hosting company is configured differently, and some hosting platforms save data in an incompatible or proprietary format, which may make it extremely difficult if not impossible to migrate some or all account data.

**Dedicated Internet Protocol ("IP") Address Allocation**

Any dedicated IP order in addition to ones provided with a hosting package may be subject to IP Justification. Justification practices are subject to change to remain in conformity with policies of the American Registry for Internet Numbers (ARIN). Falling Rock reserves the right to deny any dedicated IP request based on insufficient justification or current IP utilization.

### **Falling Rock's Obligation to Defamatory Material**

Texas and U.S. federal law regulates websites hosted by Falling Rock. Content appearing on websites hosted by Falling Rock may contain allegedly defamatory material. Pursuant to 47 USCS § 230(c) (Protection for private blocking and screening of offensive material), Falling Rock will generally only remove website content material which has been found to be defamatory by a court, as evidenced by a court order. Falling Rock generally is not in a position to investigate and validate or invalidate the veracity of individual defamation claims, which is why Falling Rock relies on the legal system and courts to determine whether or not material is indeed considered defamatory. Falling Rock will disable access to the material in any case in which a court order indicates material is defamatory, libelous, or slanderous in nature. Similarly, in any case in which a U.S. court has placed an injunction against specified content or material, Falling Rock will comply and remove or disable access to the material in question.

The language of 47 USCS § 230(c) states, in part, that interactive computer service providers, such as Falling Rock, are merely republishers and not the publisher of content. Falling Rock simply provides a hosting platform and space on which to host content, and any creation or publication of content on our services is the sole responsibility of the third-party user which creates or publishes the content. Therefore, Falling Rock views itself as not being held liable for any allegedly defamatory, offensive or harassing content published on sites hosted under Falling Rock's service(s). See Chi. Lawyers' Comm. for Civ. Rights Under the Law, Inc. v Craigslist, Inc. (2006, ND Ill) 461 F Supp 2d 681, affd (2008, CA7 Ill) 519 F3d 666, 36 Media L R 1609 (Near-unanimous case law holds that 47 U.S.C.S. § 230(c) affords immunity to interactive computer services (ICSs) against suits that seek to hold an ICS liable for third-party content.)

If in doubt regarding the acceptability of your site or service, please contact Falling Rock at support@fallingrocknetworks.com and a Falling Rock team member will be happy to assist you.

### **Online Customer Content**

Customer acknowledges that Falling Rock exercises no control whatsoever over the content of the information passing through Customer's site(s) and that it is the sole responsibility of Customer to ensure that the information Customer and its users transmit and receive complies with all applicable laws and regulations and Falling Rock Rules and Regulations.

Unacceptable Material on all shared and dedicated, Customer Equipment, Purchased Equipment and/or Rental Equipment includes:

- IRC Scripts/Bots;
- Pirated Software/Warez;
- Proxy Scripts/Anonymizers;
- IP/port/vulnerability Scanners;
- Mail Bombers/Spam Scripts;
- Bruteforce Programs/Scripts/Applications;
- Escrow/Bank Debentures;
- Hacker focused sites/archives/programs;
- Sites promoting illegal activities;
- High-Yield Interest Programs (HYIP) or Related Sites;

- Investment Sites (FOREX, E-Gold Exchange, Second Life/Linden Exchange, Ponzi, MLM/Pyramid Scheme);
- Sale of any controlled substance without prior proof of appropriate permit(s);
- Forums and/or websites that distribute or link to warez/pirated/illegal content;
- Bank Debentures/Bank Debenture Trading Programs;
- Fraudulent Sites (Including, but not limited to sites listed at aa419.org & escrow-fraud.com);
- Prime Banks Programs;
- Lottery/Gambling Sites; and
- MUDs/RPGs/PBBGs

### **Child Pornography Strictly Forbidden**

Potential harm to minors is strictly forbidden, including but not limited to child pornography or content perceived to be child pornography:

- Any site found to host child pornography or linking to child pornography will be suspended immediately without notice;
- Resellers: Falling Rock will suspend the site in question and will notify you so you may terminate the account. Falling Rock will further monitor your activity; more than one infraction of this type may result in the immediate termination of your account;
- Direct customers: Your services will be terminated with or without notice; and
- Violations will be reported to the appropriate law enforcement agency.

### **Falling Rock's No Spam Policy**

Any Falling Rock Customer who sends out spam will have their account terminated with or without notice. Falling Rock will not tolerate the sending of unsolicited e-mail, bulk emailing, and spam. "Safe lists", purchased lists, and selling of lists will be treated as spam.

Sites advertised via SPAM (Spamadvertised) may not be hosted on Customer Equipment and/or Purchased Equipment and/or Rental Equipment. This provision includes, but is not limited to SPAM sent via fax, phone, postal mail, email, instant messaging, or usenet/newsgroups. No organization or entity listed in the Register of Known Spam Operations ("ROKSO") at the url, <<http://www.spamhaus.org/rokso/>>, may be hosted on Falling Rock servers. Any account which results in Falling Rock's IP space being blacklisted will be immediately suspended and/or terminated.

Any mailing list shall comply with all guidelines set forth by the United States government. These guidelines can be found at the url, <<http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus61.shtm>>.

Falling Rock reserves the right to require changes or disable as necessary any web site, account, database, or other component that does not comply with these rules and regulations, or to make any such modifications in an emergency at its sole discretion.

Falling Rock reserves the right to charge the holder of the account used to send any unsolicited e-mail a clean-up fee or any charges incurred for blacklist removal. This cost of the clean-up fee is entirely at the discretion of Falling Rock.

### **Other Prohibited Activities**

Customer will not, and will not permit any persons using Customer's online facilities and/or services, including, but not limited to, Customer's website(s) and transmission capabilities, to do any of the following prohibited activities:

- engage in any activities or actions that infringe or misappropriate the intellectual property rights of others, including, but not limited to, using third party copyrighted materials without appropriate permission, using third party trademarks without appropriate permission or attribution, and using or distributing third party information protected as a trade secret information in violation of a duty of confidentiality;
- engage in any activities or actions that would violate the personal privacy rights of others, including, but not limited to, collecting and distributing information about Internet users without their permission, except as permitted by applicable law;
- send, post or host harassing, abusive, libelous or obscene materials or assist in any similar activities related thereto;
- intentionally omit, delete, forge or misrepresent transmission information, including headers, return mailing and IP addresses;
- engage in any activities or actions intended to withhold or cloak Customer's or its Users' identity or contact information;
- use the Falling Rock connectivity services for any illegal purposes, in violation of any applicable laws or regulations or in violation of the rules of any other service providers, web sites, chat rooms or the like; and
- assist or permit any persons in engaging in any of the activities described above.

If Customer becomes aware of any prohibited activities, Customer will use best efforts to remedy such prohibited activities immediately, including, if necessary, limiting or terminating the user's access to Customer's online facilities.

### **Third Party Complaint Process.**

Falling Rock routinely receives (at support@fallingrocknetworks.com) written complaints ("Complaints") from third parties regarding forbidden online content and prohibited activities allegedly being conducted by a Customer or its Users. Due to the nature of Falling Rock's business, in Falling Rock's experience, most legitimate complaints and actual prohibited activity is conducted by Users of Falling Rock's Customers, not by Falling Rock's Customers themselves. Falling Rock requires its Customers to use policies similar to these Rules and Regulations and will work with its Customers to resolve violations. Falling Rock will take the following actions to document and resolve each Complaint received by Falling Rock related to a Customer or its Users.

First Complaint. Upon receipt of the initial complaint from a third party regarding a violation of Falling Rock's Rules and Regulations by a Customer or its user, Falling Rock will send written correspondence ("First Correspondence") to the complaining third party that describes Falling Rock's policies related to the prohibited activity and lists the contact information for the Customer and encloses a copy of the original complaint received by Falling Rock. Falling Rock will also deliver notice of the complaint to the Customer by



sending a copy of the same First Correspondence to the Customer via e-mail to its abuse address so that Customer can identify and remedy the Prohibited Activity. Falling Rock's goal is to put the complainant directly in touch with the party in the best position to remedy the problem, Falling Rock's Customer who has the relationship with the alleged violator.

Second Complaint. Upon receipt of a second complaint after the date of the First Correspondence related to the same or similar violation of Falling Rock's Rules and Regulations in the First Correspondence that clearly indicates, according to Falling Rock, that the violation of Falling Rock's Rules and Regulations continued after the date of the First Correspondence, Falling Rock will then send a second correspondence ("Second Correspondence") with a copy of the second complaint to the Customer and request that Customer respond in writing to Falling Rock with an explanation and timeline of the actions to be taken by Customer to remedy alleged violated of Falling Rock's Rules and Regulations. In the event that Customer does not respond to the Falling Rock's Second Correspondence and provide an adequate solution, solely determined by Falling Rock, to remedy the alleged violation of Falling Rock's Rules and Regulations within ten (10) business days of receiving the Second Correspondence, Falling Rock may terminate or suspend Falling Rock's connectivity service to its Customer.

### **Suspension and Termination of Service.**

Falling Rock reserves the right to suspend and/or terminate a Customer's Service at any time for any material failure of Customer, Customer's Representatives or its Customer's users to comply with these Rules and Regulations.

### **Monitoring**

Falling Rock Services may be monitored for all lawful purposes, including assurance that use by Falling Rock's Customers are authorized, for management of the system, to facilitate protection against unauthorized access, and to verify security procedures, survivability, and operational security. During monitoring, information may be examined, recorded, copied and used for authorized purposes. Customer's use of Falling Rock's Services constitutes consent to monitoring for these purposes.

### **Refusal of Services and Service Termination**

Falling Rock reserves the right to refuse Service to anyone. Any material, in Falling Rock's judgment, is obscene, illegal, threatening, or violates Falling Rock's Master Service Agreement in any manner (collectively "Inappropriate Conduct") may be removed from our servers (or otherwise disabled), with or without notice.

Failure to respond to email from Falling Rock within 48 hours regarding what Falling Rock deems to be Inappropriate Conduct may result in the suspension or termination of Services. All Inappropriate Conduct issues must be dealt with via trouble ticket/email.

### **Backups and Data Loss**

Your use of Falling Rock's Service is at your sole risk. If purchased, our backup service runs once a week, overwrites any of our previous backups made, and only one week of backups are kept. Falling Rock is not responsible for files and/or data residing on your account. You agree to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on Customer Equipment and/or Purchased Equipment and/or Rental Equipment.

### **Inode Cap**

An inode is a data structure on a traditional Unix-style file system, such as a Unix File System or UFS. An inode stores all the information about a regular file, directory, or other file system object, except its data and name. Every file (a webpage, image file, email, etc.) on your account uses up to 1 inode.

Customer's use of more than 250,000 inodes on any shared account may potentially result in a warning first, and if no action is taken future suspension. Customer accounts found to be exceeding the 100,000 inode limit will automatically be removed from Falling Rock's backup system to avoid over-usage; however, databases will still be backed up.

Sites that slightly exceed Falling Rock's inode limits are unlikely to be suspended; however, accounts that constantly create and delete large numbers of files on a regular basis, have hundreds of thousands of files, or cause file system damage may be flagged for review and/or suspension.

### **Bandwidth Usage**

Falling Rock Customers are allocated a monthly bandwidth allowance. This allowance varies depending on the hosting package Customer purchases. Falling Rock reserves the right to suspend the account until the start of the next allocation, suspend the account until more bandwidth is purchased at an additional fee, suspend the account until you upgrade to a higher level of package, terminate the account and/or charge you an additional fee for the overages in the event Customer's usage exceed the bandwidth allotted by Falling Rock. Unused transfers in one month cannot be carried over to the next month.

### **Reseller Has Sole Responsibility for Reseller Customers**

Falling Rock will hold any reseller responsible for any of their Customer's actions that violate U.S. law, the Agreement and these Falling Rock Rules and Regulations. Falling Rock does not provide support to reseller's customers. Resellers are responsible for supporting their clients. If a reseller's client contacts Falling Rock, Falling Rock reserves the right to place the client account on hold until the reseller can assume their responsibility for their client. All support requests must be made by the reseller on their clients' behalf for security purposes. Resellers are also responsible for all content stored or transmitted under their reseller account and the actions of their clients'.

### **Dedicated Customer Equipment and/or Purchased Equipment and/or Rental Equipment**

Falling Rock reserves the right to reset the password on dedicated Customer Equipment and/or Purchased Equipment and/or Rental Equipment if the password on file is not current so that we may do security audits as required from time to time. It is the responsibility of the Customer to ensure that there is a valid email address and current root password on file for Customer's dedicated Customer Equipment and/or Purchased Equipment and/or Rental Equipment to prevent downtime from forced password resets. Falling Rock reserves the right to audit Customer Equipment and/or Purchased Equipment and/or Rental Equipment as needed and to perform administrative actions in the Falling Rock Internet Data Center.

### **Law Enforcement Disclosure**

Falling Rock cooperates fully with law enforcement agencies. Falling Rock may disclose any Customer information to law enforcement agencies without further consent or notification to the Customer upon lawful request from such agencies.

## **EQUIPMENT AND CONNECTIONS**

Customer Equipment must be configured and run at all times in compliance with the manufacturer's specifications, including power outlet, power consumption and clearance requirements. Customer must use its best efforts to provide Falling Rock with at least 48 hours prior notice any time it intends to connect or disconnect any Customer Equipment and/or Purchased Equipment and/or Rental Equipment.

## **Scheduled Maintenance**

Falling Rock will conduct routine scheduled maintenance of its Internet Data Centers and Internet Data Center Services according to the maintenance schedule posted on Falling Rock's website at <http://www.fallingrocknetworks.com/>. In the event a mission critical maintenance situation arises, Falling Rock may be required to perform emergency maintenance at any time. During these scheduled and emergency maintenance periods, Customer Equipment and/or Purchased Equipment and/or Rental Equipment may be unable to transmit and receive data, and Customer may be unable to access the Customer Equipment and/or Purchased Equipment and/or Rental Equipment. Customer agrees to cooperate with Falling Rock during the scheduled and emergency maintenance periods.

## **Supplemental Services**

Subject to the terms and conditions set forth in the Agreement between Falling Rock and the Customer, Falling Rock may, from time to time, provide Customer with certain limited services and equipment needed and requested by Customer on a "one-off" or emergency basis ("Supplemental Services") where such services are not included within the scope of the Services purchased by Customer. Customer will be charged for all Supplemental Services provided to Customer. Falling Rock has no obligation to determine the need for or provide Supplemental Services. All Supplemental Services are provided on an "as-is" basis and exclude warranties of any kind, whether express or implied.

## **Revision of Falling Rock Rules & Regulations**

Falling Rock may at any time, at its sole discretion, revise or otherwise update these rules and regulations by posting an amended rules and regulations on the Falling Rock website; any changes that we make to these rules and regulations will be effective immediately upon posting. Please check these rules and regulations periodically for changes made by Falling Rock; Customer will be able to determine if these rules and regulations have been changed since your previous visit by viewing the "Last Updated" information that appears at the top of these rules and regulations. Your continued use of the Falling Rock Services following the posting of Falling Rock's updated rules and regulations constitutes acceptance of these rules and regulations.

**ATTACHMENT B**  
**FALLING ROCK SERVICE LEVEL AGREEMENT**

**Last Updated:** January 24, 2012

1. *Service Level Goal; Service Level Agreement.* Falling Rock shall use all reasonable commercial efforts to ensure that the Falling Rock network is operating and available to Customers approximately 99.97% of the time in any calendar month. In the event that the Falling Rock network is not available for more than fifteen (15) consecutive minutes and/or Customer experiences any of the service performance issues defined below due to Falling Rock's failure to provide Services, Customer will be eligible to receive the Service Credits described below (the "Service Level Agreement").

2. *Definitions.* The following definitions shall apply to the Service Level Agreement.

2.1 "Downtime" shall mean sustained packet loss in excess of fifty percent (50%) within Falling Rock's network for fifteen (15) consecutive minutes due to the failure of Falling Rock to provide Service(s) for such period. Downtime shall not include any packet loss or network unavailability during Falling Rock's scheduled maintenance of the Internet Data Centers, network and Service(s), as described in the Falling Rock Rules and Regulations.

2.2 "Excess Latency" shall mean transmission latency: (i) in excess of one hundred twenty (120) milliseconds round trip time between any two points within Falling Rock's U.S. network; or (ii) in excess of five hundred (500) milliseconds round trip time between any two points within Falling Rock's global network.

2.3 "Excess Packet Loss" shall mean packet loss in excess of one percent (1%) between any two points within Falling Rock's network.

2.4 "Performance Problem" shall mean Excess Packet Loss and/or Excess Latency.

2.5 "Service Credit" shall mean an amount equal to the pro-rata monthly recurring connectivity charges (i.e., all monthly recurring bandwidth-related charges) for one (1) day of Service.

3. *Downtime Periods.* In the event Customer experiences Downtime, Customer shall be eligible to receive from Falling Rock a Service Credit for each Downtime period. Examples: If Customer

experiences one Downtime period, it shall be eligible to receive one Service Credit. If Customer experiences two Downtime periods, either from a single event or multiple events, it shall be eligible to receive two Service Credits.

4. *Performance Problem; Packet Loss and Latency.* In the event that Falling Rock discovers or is notified by Customer that Customer is experiencing a Performance Problem, Falling Rock will take all actions necessary to determine the source of the Performance Problem.

4.1 *Time to Discover Source of Performance Problem; Notification of Customer.* Within two (2) hours of discovering or receiving notice of the Performance Problem, Falling Rock will determine whether the source of the Performance Problem is limited to the Customer Equipment and the Falling Rock equipment connecting the Customer Equipment to the Falling Rock local area network ("LAN"). If Falling Rock determines that the Customer Equipment and Falling Rock connection are not the source of the Performance Problem, Falling Rock will determine the source of the Performance Problem within an additional two (2) hour period. In any event, Falling Rock will notify Customer of the source of the Performance Problem within sixty (60) minutes of identifying the source.

4.2 *Remedy of Packet Loss and Latency.* If the source of the Performance Problem is within the sole control of Falling Rock, Falling Rock will remedy the Performance Problem within two (2) hours of determining the source of the Performance Problem. If the source of and remedy to the Performance Problem reside outside of the Falling Rock LAN or wide area network ("WAN"), Falling Rock will use commercially reasonable efforts to notify the party(ies) responsible for the source of the Performance Problem and cooperate with such party(ies) to resolve such problem as soon as possible.

4.3 *Failure to Determine Source and/or Remedy.* In the event that Falling Rock: (i) is unable to determine the source of the Performance Problem within the time periods described in subsection 4.1 above and/or; (ii) is the sole source of the

Performance Problem and is unable to remedy such Performance Problem within the time period described in subsection 4.2 above, Falling Rock will deliver a Service Credit to Customer for each two (2) hour period in excess of the time periods for identification and resolution described above.

5. *Customer Must Request Service Credit.* In order to receive any of the Service Credits described above, Customer must notify Falling Rock within seven (7) days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer's right to receive a Service Credit.

6. *Remedies Shall Not Be Cumulative; Maximum Service Credit.* The aggregate maximum number of Service Credits to be issued by Falling Rock to Customer for any and all Downtime periods and Performance Problems that occur in a single calendar month shall not exceed seven (7) Service Credits. A Service Credit shall be issued in the Falling Rock invoice in the month following the Downtime or Performance Problem, unless the Service Credit is due in Customer's final month of Service. In such case, a refund for the dollar value of the Service Credit will be mailed to Customer. Customer shall also be eligible to receive a pro-rata refund for (i) Downtime periods and Performance Problems for which Customer does not receive a Service Credit and (ii) any Services Falling Rock does not deliver to Customer for which Customer has paid.

7. *Termination Option for Chronic Problems.* Customer may terminate this Agreement for cause and without penalty by notifying Falling Rock within five (5) days following the end of a calendar month in the event either of the following occurs: (i) Customer experiences more than eight (8) Downtime periods resulting from three (3) or more nonconsecutive Downtime events during the calendar month; or (ii) Customer experiences more than four (4) consecutive hours of Downtime due to any single event. Such termination will be effective thirty (30) days after receipt of such notice by Falling Rock.8. *SERVICE LEVEL EXCLUSIONS.* THE SERVICE LEVEL AGREEMENT DOES NOT APPLY TO ANY SERVICE(S) THAT EXPRESSLY EXCLUDE THIS SERVICE LEVEL AGREEMENT (AS STATED IN THE SPECIFICATION SHEETS FOR SUCH SERVICES) AND ANY PERFORMANCE ISSUES: (I) CAUSED BY FACTORS OUTSIDE OF FALLING ROCK'S REASONABLE CONTROL; (II) THAT RESULTED FROM ANY ACTIONS OR INACTIONS OF CUSTOMER OR ANY THIRD PARTIES; OR (III) THAT

RESULTED FROM CUSTOMER'S EQUIPMENT AND/OR THIRD PARTY EQUIPMENT (NOT WITHIN THE PRIMARY CONTROL OF FALLING ROCK). THIS SERVICE LEVEL AGREEMENT STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE BY FALLING ROCK TO PROVIDE SERVICE(S).9. *Periodic Modifications to this Service Level Agreement.* Falling Rock may at any time, at its sole discretion, revise or otherwise update this Service Level Agreement by posting an amended Service Level Agreement on the Falling Rock website; any changes that Falling Rock makes to this Service Level Agreement will be effective immediately upon posting. Please check this Service Level Agreement periodically for changes made by Falling Rock; Customer will be able to determine if this Service Level Agreement has changed since Customer's previous visit by viewing the "Last Updated" information that appears at the top of this Service Level Agreement. Customer's continued use of the Falling Rock Services following the posting of Falling Rock's updated Service Level Agreement constitutes acceptance of this Agreement.