

**Reflected Networks**  
**Master Products and Services Agreement**

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**MASTER PRODUCTS AND SERVICES AGREEMENT**

\_\_\_\_\_ (“Customer”),  
a \_\_\_\_\_(entity type) in the State of \_\_\_\_\_.

*These General Terms and Conditions together with all Order Form(s), Supplements and other addenda and service-specific terms and conditions attached hereto from time to time constitute the **Master Products and Services Agreement** (“Agreement”) which is effective*

*as of \_\_\_\_\_ (“Effective Date”) (the date of execution by both parties below) by and between **Reflected Networks, Inc.** (“RN” or “Reflected”) a Delaware corporation, and Customer. RN and Customer are collectively referred to as the “Parties” or individually as a “Party”.*

*When first-person pronouns are used in this Agreement, (Us, We, Our, Ours, etc) these provisions are referring to Reflected Networks, Inc. Additionally, when the terms “Website” or “Site” are used, these terms refer to any site published by Us, unless a site specifically exempt from this policy.*

*As Our Customer, and user of the Site and Products or Services, this Agreement will refer to You through any second-person pronouns, such as “Your,” “Yours,” “You,” etc.*

**1. DEFINITIONS**

- *“Acceptable Use Policy”* – RN’s guidelines for acceptable uses of RN’s service, set forth on the RN Website and updated from time to time.
- *“Anti-SPAM Policy”* – RN’s policy on SPAM generated thru the use of RN’s Products or Services, set forth on the RN Website and updated from time to time.
- *“Commencement Date”* - the date upon which RN provisions 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 RN Network, if outside a Datacenter Facility.
- *“Datacenter Facility”* – A location where RN maintains a presence for the physical housing of computer and/or network equipment.
- *“Online/Phone Order”* – any order for Products or Services placed by telephone or email to RN which requires only verbal/written consent, and accepted by RN. These orders are limited in scope to on-demand remote hands services and spare parts provided by RN to Customer at Customer’s request.
- *“Order Form”* - any mutually executed sales order (“Sales Order”), schedule (“Schedule”), or statement of work (“Statement of Work”) to these

General Terms and Conditions and respective service-specific terms and conditions, 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 RN (including, without limitation, co-location, bandwidth, managed services including remote hands, computer hardware, and hosting) to Customer.
- *“RN Network”* - collectively, the fiber optic network, system capacity and related facilities (including, without limitation, routers, switches and communication channels) owned or controlled by RN.
- *“RN Website”* –RN’s company website, published at <http://www.reflected.net>.
- *“Service Level Agreement”* – a set of terms and performance guarantees which apply to specific services provided by RN to Customer, contained in a Supplement (defined below).
- *“Supplement”* – a set of terms and conditions specific to certain services provided by RN which govern Customer’s use of Products or Services.
- *“Term”* - the period of time in which RN provides Products or Services to Customer pursuant to an Order Form.

**2. STRUCTURE OF AGREEMENT**

**2.1. Order Forms.** From time to time, the Parties will execute one or more Order Forms for RN to provide Products or Services, each of which shall be governed by, and automatically incorporated by reference into, this Agreement and shall be subject to these General Terms and Conditions.

**2.2. Supplements.** RN may provide Supplements which contain supplemental terms and conditions specific to certain services provided by RN to Customer which include any Service Level Agreement applicable to the services described therein. Any Supplement, when executed by the Parties, shall be governed by, and automatically incorporated by reference into, this Agreement and shall be subject to these General Terms and Conditions.

**3. INVOICING AND PAYMENT**

**3.1.** If a non-recurring installation charge or setup fee (“Installation Charge”) is specified in an Order Form, RN 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, as specified on 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 RN and

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paid by Customer within thirty (30) days of such invoice.

3.2. If a recurring charge ("Recurring Charge") (e.g. Monthly Charge, Quarterly Charge, Annual Charge, etc.) is specified in an Order Form, RN 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. RN will begin to invoice the Recurring Charge on the Commencement Date. Invoices for partial months will be pro-rated.

3.3. If a prepayment ("Prepayment") is specified in an Order Form, RN 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. If an operation and maintenance charge ("O&M Charge") is specified in an Order Form, RN 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. If applicable, RN 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.

3.6. 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 state of Illinois or (ii) one and one-half percent (1.5%) per month. RN may apply any payments received by RN to any one of Customer's then outstanding charges.

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

3.8. For Services ordered through Sales Orders, the initial rates and fees for such Services will be listed on the Sales Orders. In the event that Customer places an order for Services from RN using a method acceptable to RN other than a Sales Order, including the RN Website or Support Ticketing System, the initial rates and fees for such Services will be RN's then-current list price for such Services. The rates and fees for Services ordered by Customer on an Order Form or Online/Phone Order will remain in effect for one year from the date of the Order. Thereafter, rates and fees will be subject to change, at RN's reasonable discretion, upon sixty (60) days' prior written notice. Notwithstanding the foregoing, there are no restrictions on RN's right to modify its rates and fees for Services as to Orders not in effect prior to such changes.

3.9. If Customer wishes to dispute any charge billed to Customer by RN (a "Disputed Amount"), Customer must submit a good faith claim regarding the Disputed Amount with documentation as may reasonably be required to support the claim within

ninety (90) days of receipt of the initial invoice sent by RN regarding the Disputed Amount. If Customer does not submit a documented claim within ninety (90) days of receipt of the initial invoice sent by RN regarding such Disputed Amount, notwithstanding anything in this Agreement to the contrary, Customer waives all rights to dispute such Disputed Amount and Customer waives all rights to file a claim thereafter of any kind relating to such Disputed Amount (and Customer also waives all rights to otherwise claim that it does not owe such Disputed Amount or to seek any set-offs or reimbursements or other amounts of any kind based upon or relating to such Disputed Amount).

#### **4. 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 pay all taxes, governmental fees, and third-party charges related to the ownership and operation of Customer's Equipment and the activities of Customer at each Datacenter Facility. Without limiting the foregoing, Customer is responsible for timely paying in full all sales, use, transfer, privilege, excise, and all other taxes and duties, whether international, national, state or local, however designated, now in force or enacted in the future, which are levied or imposed by reason of the performance by RN or Customer under this Agreement or by Customer with respect to its operations and use of the Datacenter Facility and Customer's Equipment, including any leasehold/license pass thru items, if any ("Taxes"); but the term "Taxes" will exclude income taxes on RN's profits which may be levied against RN. The rates and fees on an Order Form (as well as the list prices for the Online/Phone Orders) are exclusive of the Taxes, which Customer will also be responsible for paying at the same time it pays the amounts listed on the Orders. Any applicable Taxes that RN must collect and remit which must be paid directly to RN will be stated separately on each invoice. In addition, Customer's Equipment will not be construed to be fixtures, and Customer is responsible for preparing and filing any necessary return with, and paying any and all Taxes separately levied or assessed against Customer's equipment to any governmental, quasi-governmental or tax authorities by the date such payments are due.

#### **5. TERM OF AGREEMENT AND TERMINATION**

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

5.2. 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

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Term set forth on an Order Form, such Order Form will renew for successive twelve (12) month terms unless otherwise specified on that Order Form, or, written notice of non-renewal is provided by either Party upon at least thirty (30) days prior written notice.

5.3. Notwithstanding anything in this Section 5 to the contrary, each Order Form which contains a one (1) month Term shall renew for consecutive one (1) month Terms, unless written notice of non-renewal is provided by either Party, upon at least thirty (30) days prior written notice.

5.4. RN may terminate this Agreement as to any affected co-location services if any portion of the Datacenter Facility in which the affected co-location services are located becomes subject to a condemnation proceeding or is condemned, RN's possession is otherwise terminated or abated, or RN cannot provide Customer with the access to the affected Datacenter Facility as contemplated herein for a period exceeding thirty (30) days.

## **6. REVISIONS TO THIS AGREEMENT**

### **REVISIONS TO USER AGREEMENT:**

RN may modify the terms of this Agreement, in its sole discretion. Notice of such modification may be effected by e-mailing You that a modification has occurred. Your continued use of the Services after the effective date of any such notice constitutes Your acceptance of such changes. However, You will have 30 days within which to object in Writing to any modifications of this Agreement. If You have just cause to dispute a modification and both Parties are unable to agree to new terms within 30 days of the dispute (the "Negotiation Period") then You may terminate this Agreement, and any applicable Sales Orders without incurring an early termination penalty. However, You must exercise Your right to terminate this Agreement and any applicable Sales Orders by providing written notice (which notice shall include date of termination) to Relected within thirty (30) days of expiration of the Negotiation Period. Your failure to object in writing shall constitute your assent to such modifications.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1. **Warrants.** RN 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, RN 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 EITHER PARTY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH AN ORDER FORM, EXCLUDING EARLY TERMINATION CHARGES, IS LIMITED TO AN AMOUNT EQUAL ONE POINT FIVE TIMES (1.5X) THE TOTAL CHARGES PAYABLE BY CUSTOMER DURING THE TERM SET FORTH THEREIN. THE TOTAL LIABILITY OF RN 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 RN, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF DATA OR TECHNOLOGY.*

8.2. You agree to defend, indemnify, and hold Reflected and its Affiliates harmless from and against any and all claims and liabilities, including reasonable attorneys' and experts' fees, related to or arising from (a) any breach of Your covenants under this Agreement; (b) Your use of the Services; (c) all

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conduct and activities occurring under Your user ID and password; (d) any item or service sold or advertised in connection with Your Content or Your information and data; (e) any defamatory, libelous or illegal material contained within Your Content or Your information and data; (f) any claim or contention that Your Content or Your information and data infringes any third party's patent, copyright or other intellectual property rights or violates any third party's rights of privacy or publicity; (g) any third party's access or use of Your Content or Your information and data; (h) any violation of the applicable Acceptable Use Policy. In the event of a claim under this section, Reflected shall be permitted to select legal counsel to provide a defense to such claim. Reflected reserves the right, at its own expense, to participate in the defense of any matter otherwise subject to indemnification from You, but shall have no obligation to do so. You shall not settle any such claim or liability without the prior written consent of Reflected, which shall not be unreasonably withheld.

8.4. Customer agrees that RN is not responsible for loss or damage to equipment and property stored or installed in a RN site. Customer agrees to maintain insurance coverage on equipment and property stored or installed at each RN site which covers any type of loss and includes a waiver of subrogation clause. RN shall not be liable for damage to, or loss of any of Customer equipment resulting from any cause, other than RN's negligence or willful misconduct and then only in an amount not to exceed the replacement value of the damaged equipment, not to exceed the limits set forth in Section 8.1.

8.5. Customer shall have no right or interest in any RN-supplied equipment other than the right to use such equipment during the specified term while payments are current. Customer shall be liable to RN for any damage to such equipment caused by Customer or Customer's representatives, agents or employees.

**9. INTELLECTUAL PROPERTY RIGHTS**

All Services provided by RN may only be used for lawful purposes.

9.1. As between You and RN, RN acknowledges that it claims no proprietary rights in or to the content (including without limitation, text, software, music, sound, audio visual works, motion pictures, photographs, animation, video and graphics) supplied by You for use on Your web site(s) ("Your Content"). You hereby grant to RN a non-exclusive, worldwide and royalty-free license to copy, make derivative works, display, perform, use, broadcast and transmit on and via the Internet Your Content, solely for the benefit of You and to enable RN to perform its obligations in this Agreement.

9.2. In connection with performance of the Services and at the sole discretion of RN with no

obligation, RN may provide You with certain materials, including, without limitation, computer software (in object code or source code form), data, documentation or information developed or provided by RN or its suppliers under this Agreement, electronic mail addresses and other network addresses assigned to You, and other know-how, methodologies, equipment, and processes used by RN to provide You with the Services ("Host Materials"). Subject to the terms and conditions of this Agreement,

RN hereby grants You a limited, revocable, non-transferable, non-exclusive license to use the Host Materials solely in connection with the Services. This license terminates when this Agreement terminates. As between You and RN, You acknowledge and agree that RN owns all right, title, and interest or otherwise has acquired all applicable licenses for the Host Materials, and all copyright, trade secret, patent, trademark and other intellectual property rights therein. Any use of the Host Materials is not licensed and strictly prohibited. You agree that You will not upload, transmit, reproduce, distribute or in any way exploit any Host Materials obtained through the Services without first obtaining the express written permission to do so from RN.

9.3. This Agreement does not constitute a license to use RN's trade names, service marks or any other trade insignia. Any use of any of RN's trade names, service marks or any other trade insignia shall be subject to RN's prior written consent.

9.4. As a specific matter – You are not permitted to register any Uniform Resource Locator (URL) or world wide web address that contains any of Our trademarks or URLs or that contain any terms that are confusingly similar to Our trademarks or Our URLs.

9.5. You may not register any URLs or world Wide Web addresses that consist of, or contain, common or likely misspellings of Our trademarks or Our URLs.

9.6. In the event that You wish to register a URL and You are unclear as to whether the URL would be considered to be a violation of this provision, You are invited to contact Us. Upon receipt of Your request, We will issue a determination to within thirty (30) days as to whether the URL would be a violation of this Agreement.

9.7. In the event that You do not receive a response from Us within thirty (30) days, You should consider registration of the URL to be a violation of this Agreement and You should not register the URL.

9.8. If You violate this Agreement, You will immediately transfer the offending URL to Us upon

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demand, and You agree to pay Us five thousand dollars (\$5000) in stipulated liquidated damages for each URL registered in violation of this Agreement.

9.9. You specifically agree to pay these liquidated damages. In agreeing to pay these liquidated damages, You acknowledge that this amount is not a penalty, and that the actual damages are uncertain and difficult to ascertain, but that this amount represents the parties' good faith attempt to calculate an appropriate compensation based on anticipated actual damages.

9.10. If We are required to enlist the assistance of an Attorney or other person to collect any liquidated damages or any other amount of money from You, or if We are required to seek the assistance of an Attorney to pursue injunctive relief against You, or if We are required to file an ICANN complaint against You in order to bring about the transfer of an offending URL to Us from You, then You additionally agree that You will reimburse Us for all fees incurred in order to collect these liquidated damages, or in order to seek injunctive relief from You, or in order to file and prosecute an ICANN complaint.

9.11. You understand that even a nominal amount of damages may require the expenditure of extensive legal fees, travel expenses, costs, and other amounts that may dwarf the liquidated damages themselves. You agree that you will pay all of these fees and costs.

9.12. You further agree that You will not use any of RN's trademarks, trade names, or service marks as metatag keywords in any website operated by You, and You will not purchase Our marks and/or trade names via Google® AdWords or any other pay-per-click or similar advertising medium.

9.13. DMCA COMPLIANCE

We respect the intellectual property of others, and We ask Our customers to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please provide Our Designated Copyright Agent with the following information:

- A. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest.
- B. A description of the copyrighted work or other intellectual property that you claim has been infringed.
- C. A description of where the material that you claim is infringing is located on the Services.

D. Your physical address, telephone number, and email address.

E. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and.

F. A statement by You, made under penalty of perjury, that the above information in Your Notice is accurate and that You are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

You may send Your Notice of Claimed Infringement to:

Lawrence G. Walters, Esq.  
Walters Law Group  
195 W. Pine Ave.  
Longwood, FL 32750-4104  
Fax: (407) 774-6151  
E-mail: Notice@DMCANotice.com

NOTE: Please do not send other inquiries or information to Our Designated Agent.

Notice and Take Down Procedures We implement the following "notice and takedown" procedure upon receipt of any notification of claimed copyright infringement. RN reserves the right at any time to disable access to, or remove any material or activity accessible on or from Our servers, or any materials claimed to be infringing, or materials which appear, based on facts or circumstances to be infringing. It is Our firm policy to terminate the account of repeat copyright infringers, when appropriate, and We will act expeditiously to remove access to all material that infringes on another's copyright, according to the procedure set forth in 17 U.S.C. §512 of the Digital Millennium Copyright Act ("DMCA"). Our DMCA Notice Procedures are set forth in the preceding paragraph. If the notice does not comply with §512 of the DMCA, but does comply with three requirements for identifying sites that are infringing according to §512 of the DMCA, We shall attempt to contact or take other reasonable steps to contact the complaining party to help that party comply with the notice requirements. When the Designated Agent receives a valid notice, We will expeditiously remove and/or disable access to the infringing material and shall notify the affected user. At that point, You, the Client, may utilize the following counter-notification procedure.

9.14. DMCA Counter-Notification Procedure If the Recipient of a Notice of Claimed Infringement ("Notice") feels that the Notice is erroneous or false,

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and/or that allegedly infringing material has been wrongly removed in response to a Notice as outlined above, the Recipient is permitted to submit a Counter-notification pursuant to Section 512(g)(2) and (3) of the DMCA. A counter-notification is the proper method for the Recipient to dispute the removal or disabling of material pursuant to a Notice. The information that a Recipient provides in a counter-notification must be accurate and truthful, and the Recipient will be liable for any misrepresentations which may cause any claims to be brought against Us relating to the subject content To submit a counter-notification, please provide Our Designated Copyright agent the following information:

- A. A specific description of the material that was removed or disabled pursuant to the Notice.
- B. A description of where the material was located within the Site or the Content before such material was removed and/or disabled. Please provide the specific URL if possible.
- C. A statement reflecting the Recipient's belief that the removal or disabling of the material was done so erroneously. For convenience, the following format may be used:  
"I swear, under penalty of perjury, that I have a good faith belief that the referenced material was removed or disabled by the service provider as a result of mistake or misidentification of the material to be removed or disabled."
- D. The Recipient's physical address, telephone number, and email address.

Written notification containing the above information must be signed and sent to:

Lawrence G. Walters, Esq.  
Walters Law Group  
195 W. Pine Ave.  
Longwood, FL 32750-4104  
Fax: (407) 774-6151

Alternately, to email the above information, You must electronically sign the email and send it to: Notice@DMCANotice.com Do not send any other information or material to the DMCA Agent. After receiving a DMCA-compliant counter-notification, Our Designated Copyright Agent will forward it to Us, and We will then provide the counter-notification to the entity who first provided the Notice concerning material in the Recipient's Content. Additionally, within ten to fourteen (10-14) days of Our receipt of the counter-notification, We will replace or cease disabling access to the disputed material provided that We or Our Designated Copyright Agent have not received notice from the entity who first provided the Notice that such entity has filed a legal action

pertaining to the disputed material. The Site reserves the right to modify, alter or add to this policy, and all users should regularly check back regularly to stay current on any such changes.

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**10. CONFIDENTIALITY; PUBLICITY**

10.1. **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 that the Receiving Party either knows or reasonably should know to be confidential to the Disclosing Party 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 or third parties identified within an Order hereunder 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.

10.2. **Publicity.** Notwithstanding anything herein to the contrary, neither party may release a public statement announcing the Agreement ("Press Release") without the prior written consent of the other party.

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**11. ASSIGNMENT**

Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld, except that either party may assign this Agreement upon notice and without consent to a person, firm, corporation, partnership, association, trust or other entity (i) that controls, is controlled by or is under common control with

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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, the assigning party will remain jointly and severally responsible for the performance under this Agreement, unless released in writing by the other party, and this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

## **12. 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 RN to construct and operate its facilities or network.

## **13. 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, RN shall have the right to send Customer notices to Customer's email address as contained on RN's customer contact list. Such email notification is deemed delivered on the day sent unless returned to sender.

## **14. MISCELLANEOUS**

**14.1. Governing Law; Jurisdiction.** This Agreement will be interpreted and construed in accordance with the internal laws of the State of New York without giving effect to its principles of conflicts of laws. Any legal proceeding arising out of, or relating to this Agreement, will be brought in a United States District Court, or absent federal court jurisdiction, in a state court of competent jurisdiction.

**14.2. 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.

**14.3. 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.

**14.4. 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 be deemed to constitute a partnership, joint venture or agency agreement between them.

**14.5. 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.

**14.6. 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.

**14.7. 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.

**14.8. 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.

**14.9. 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.

**14.10. Precedence.** Except as may be set forth herein, this Agreement supersedes all previous and contemporaneous written and oral representations, understandings, or Agreements related to the subject matter herein and shall prevail notwithstanding any variance with terms and conditions of any Order Form submitted, unless otherwise agreed to in writing by both Parties.

## **15. ACCEPTABLE USE**

**15.1. Acceptable Use; SPAM.** Customer will at all times comply with and conform its use of the Service to RN's Acceptable Use Policy and Anti-SPAM Policy set forth at the RN Website, as updated from time to time, subject to notice to Customer of any material changes.

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15.2 You agree to comply with the content and acceptable use provisions found in this Agreement. RN reserves the right to modify this Agreement at any time by posting the modified policy on its web Site. You agree to monitor Swift will's home page for any changes to this Agreement.

15.3 RN may, at its sole discretion, immediately terminate Your access to the Services, and terminate this Agreement for cause, if Your conduct violates the acceptable uses outlined below, or if any of Your end users' or downstream customers' conduct violate such acceptable uses. You agree that RN will not be responsible in any way for any losses or damages caused to You or your business by such a termination.

15.4 We will not actively monitor the content of the web sites being hosted by Us, although We, at Our sole discretion, may elect to electronically monitor Our network and may disclose any content or records concerning Your account as necessary to satisfy any law, regulation, or other legal/governmental request or to properly operate Our network and protect any of Our customers. RN will investigate complaints of a violation of a third party right or of any portion of this Agreement. RN will cooperate with those attempting to minimize Internet abuse and reserves the right to institute "filters" or other mechanisms for that purpose. RN will cooperate with law enforcement authorities and will notify such authorities if it suspects that You or any of Your end users are engaged in illegal activities.

**15.5. Specific Requirements for Service Provider and User-Generated Content Subscribers**

15.5.1. If You use RN's Services for any site, sub-domain, page or business model that allows Your end users or customers to control or upload material to Internet space assigned to You by RN, You shall be deemed to be acting as a "Service Provider" with respect to such services and/or customers. Service Providers include but are not limited to Clients which; a) resell bandwidth as hosts to third parties; b) operate user-generated content sites such as forums, "tube" sites, review sites, and online classified advertising sites; c) operate search engines; or d) operate peer-to-peer file sharing networks. Clients acting as a Service Provider for third party users shall comply with the following provisions: You shall notify RN of all domains, web pages or IP addresses for which You are acting as Service Provider. You shall comply with 17 U.S.C. §512 of the DMCA by properly designating an agent for receipt of copyright infringement notices, and You shall publish a link on the home page of any website for which You are a Service Provider to a DMCA Notice and Takedown Policy, identifying the

website's designated agent and associated contact information. You shall provide RN with a current link to Your DMCA Notice and Takedown Policy and further advise RN of any changes to Your Designated Agent contact information. This shall be a continuing obligation for as long as You are a Client of Ours.

15.5.2. It is the policy of RN to provide any infringement notices it receives relating to Service Provider Subscribers, directly to the Subscriber's Designated DMCA Agent, and to further notify any copyright claimants of the identity and contact information for the Service Provider Subscriber's Designated DMCA Agent. Failure to maintain compliance with this section shall constitute a material breach of this Agreement.

15.6. In keeping with Our DMCA policies and obligations set forth above, You understand, agree, and expressly allow RN to access and subsequently disable public access to any files or data residing on Your server, disk, partition, or otherwise under Your control as Our customer when such files or data, in Our discretion; 1), have been identified in a substantially compliant DMCA notice under 17 U.S.C. § 512; or 2) when We become aware of facts or circumstances indicating that such files or data are infringing on the copyrights of third parties. Given that Our customers may employ various methods of securing files in conjunction with Our Services, and in an attempt to avoid material disruption of Our customers' Services, You agree that You will provide Us with Your preferred procedure for disabling access to material identified under this provision. If We forward You a DMCA Notice received by Our Designated Agent and which concerns content under Your control, You are obligated under this Agreement to immediately disable or remove access to such content. Irrespective of the above, We reserve the right to disable or remove access to such content, in Our discretion, and without claim of damage or injury by You. While We will attempt to simply disable access to such content without fully deleting it, We make no warranties concerning harm or injury to the content. It is therefore in Your best interest to promptly respond to any DMCA Notices You may receive. Should You or Your website's users feel that such DMCA Notice was erroneously or improperly sent, You must follow the Counter-Notification procedure set forth above, and wait the required period of time, before We allow public access to the content to resume.

15.7. To the extent applicable to Your site, You warrant and represent that: 1) Your Content complies with Title 18, U.S.C. s. 2257 and 28 C.F.R. s. 75 et seq., as amended; 2) all performers depicted in the Your Content were over the age of eighteen (18) when the content was created; 3) Your Content



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does not contain any images which constitute child pornography, obscenity, bestiality, actual depictions of violence, or activities otherwise illegal in the United States of America; and 4) all representations and reproductions of any aspect of the likeness of actual people in the Your Content have been duly authorized and permitted by the persons depicted.

15.8. At any time, We may, at Our sole discretion, require a copy of any and all legal documentation showing rightful ownership, or licensed distribution for any item or file displayed on Your website so as to resolve any copyright or other legal claims that may arise. If You are unable to provide ownership or licensing information to the complaining party and/or Us, then You must remove the objectionable material or face having the applicable pages taken down by Us.

15.9. You acknowledge and expressly agree that RN will not be liable to You or any of Your end users for any action RN takes to remove or restrict access to the Services for any alleged violation of this Agreement, or exercising its rights as a Good Samaritan under the Telecommunications Act of 1996, Section 230 of the Communications Decency Act, or under the Digital Millennium Copyright Act of 1998.

15.10 You may not: Use the Service in connection with unlawful contests, lotteries, or gambling; pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise). Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others. Publish, post, upload, distribute, traffic or disseminate any defamatory, obscene, or otherwise unlawful, illegal, or objectionable (in our discretion) content, such as child pornography. Publish, post, upload, distribute or disseminate any topic, name, material or information that incites discrimination, hate or violence towards one person or a group because of their belonging to a race, a religion or a nation. Upload, or otherwise make available (i.e. via linking or hot-linking) files or products that contain images, photographs, software or other material protected by intellectual property laws, including, by way of example, and not as limitation, copyright, patent or trademark laws (or by rights of privacy or publicity) unless You own or control the rights thereto or have received all necessary consents to do same. Upload or provide files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another's property. Use meta tag searches on the site. Download any file posted by another user of a Service that you know, or reasonably should know, cannot be legally distributed in such manner. Falsify or delete any author

attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded. Restrict or inhibit any other user from using and enjoying the Services. Violate any code of conduct or other guidelines which may be applicable for any particular Service. Harvest or otherwise collect information about others, including e-mail addresses, except as needed to operate Your site and as permitted in Your site's privacy policy (if any). Violate any applicable laws, policies, or regulations. Create a false identity for the purpose of misleading others. Any fraudulent, deceptive or unfair transactions or trade practices are strictly forbidden. You agree to fully comply with the United States Federal Trade Commission ("FTC") statutes and regulations (if You do business in the United States or with United States based customers), and any related rules, policies, and advisory opinions issued by the FTC. Use, download or otherwise copy, or provide (whether or not for a fee) to a person or entity any directory of users of the Services or other user or usage information or any portion thereof. Use the Service for any public IRC interconnections. i.e. hosting an IRC daemon or reselling / providing shell services where IRC clients and or bots are utilized. Use the service for a primary business of email services. This may include free email services to the public, opt-in lists, double opt-in, or any matter of regular bulk email services. Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCd. Run any type of web spider or on Our servers. Run any software that interfaces with an IRC (Internet Relay Chat) network. Run any torrent application, tracker, or client. You may link to legal torrents off-site but may not host or store them on Our servers. Run any gaming servers such as counter-strike, half-life, battlefield1942, etc.

Examples of unacceptable material further includes:

- . Bank Debentures/Bank Debenture Trading Programs
- . Bruteforce Programs/Scripts/Applications
- . File Dump/Mirror Scripts (similar to RapidShare)
- . Forums and/or websites that distribute or link to warez/pirated/illegal content
- . Fraudulent Sites
- . Hacker focused sites/archives/programs
- . Hateful/Racist/Harassment oriented sites
- . High-Yield Interest Programs (HYIP) or Related Sites
- . Image Hosting Scripts
- . Virtual currency exchanges
- . IP Scanners
- . IRC Scripts/Bots
- . Illegal gambling sites
- . Mail Bombers/Spam Scripts
- . MUDs/RPGs/PPBGs
- . Pirated Software/Warez

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- . Proxy Scripts/Anonymizers
- . Site offering or promoting illegal sale/purchase of controlled substances
- . Sites promoting illegal activities
- . File Archive/Backup/Site Mirroring (i.e. using Your account solely as a storage or backup service) Any customer granted Root access shall not:
  - . Modify or distribute the system kernel in any way, shape or form;
  - . Update/create/delete accounts created and maintained by the Us;
  - . Change the partitioning or mount points of any drive;
  - . Create/update/delete any system file without previous written permission;
  - . Create .rhosts or /etc/.host.equiv files;
  - . Implement any procedure or process that would allow one to login as root without using the root password;
  - . Create suid scripts or programs without written permission;
  - . Alter the system kernel;
  - . Apply operating system and application patches to software not installed and solely maintained by You;
  - . Change the root shell;
  - . Alter /etc/fstab or /etc/vfstab;
  - . Modify the decode or root alias in the /etc/aliases file;
  - . Change the "identity" of the system;
  - . Modify the system in any manner that restricts or alters access to the system by Us;
  - . Create/update/delete all aspects of Your user accounts. This may include modifying home directory permissions, user passwords, etc;
  - . Modify, existing data in the following configuration files: o /etc/aliases, /etc/group, /etc/rc.local, etc/sendmail.cf file and root crontab.
  - . Install software on the server if the installation would violate any restrictions found herein. You must also hold a license for software installed or otherwise used with Your account, and You agree to provide Us with a copy of the license upon demand. You agree that We are under no duty to monitor the content appearing on any Internet space or server assigned to You. Our abuse department may contact you regarding Your use of the Services. You must respond to any such communication within forty-eight (48) hours from the date and time of the communication or face possible suspension and/or termination. RN reserves the right to immediately suspend or terminate the account of any customer violating the above-referenced Acceptable Use Policy, without notice, if in Our discretion, it appears that illegal activity is being facilitated or if the public welfare is in danger. You agree that RN will not be responsible in any way for any losses or damages caused to You or your business by such a termination.

15.11. RN takes the issue of child pornography very seriously, and any potential harm to minors is

strictly prohibited. Content that is or may be perceived to be child pornography will be immediately removed upon notification or detection by us. Additionally, any account whose website(s) hosts, advertises, or links to child pornography will be terminated immediately and without notice to You. Consistent with federal law, RN will cooperate with law enforcement authorities and will notify such authorities if it suspects that You or any of Your downstream customers or end users are engaged in such illegal activities. We report suspected child pornography to the National Center for Missing and Exploited Children.

15.12. Section 230 Notice: You acknowledge Your responsibility to prevent minors under Your care from accessing harmful or inappropriate material on Your site. You agree not to allow minors to view any such site, and agree to take responsible measures to prevent them from doing so. Numerous commercial online safety filters are available which may help users limit minors' access to harmful or inappropriate material. Pursuant to 47 U.S.C. §230(d), You are hereby informed that You can research such services at websites such as: [www.getwise.org](http://www.getwise.org) or [http://www.child-internet-safety.com/internet\\_filters.php](http://www.child-internet-safety.com/internet_filters.php), among others. Please note that RN makes no representation or warranty regarding any of the products or services referenced on such sites, and recommend that the user conduct appropriate due diligence before purchasing or installing any online filter. You agree to take particular steps to prevent minors from viewing Your Site if your computer can be accessed by a minor. Finally, You agree that if You are a parent or guardian of a minor child, it is Your responsibility, not Ours, to keep any age-restricted content on Our Site from being displayed or accessed by Your children or wards. Pursuant to the Communications Decency Act ("CDA"), 47 U.S.C. §230(c)(1), and court decisions interpreting the scope of the CDA, You acknowledge and understand that RN operates as the provider of an interactive computer service. Thus, We are immune from, and cannot be held responsible for, claims arising from the publication of Your content (including third-party content). We do not create such content, and We are not responsible for the publication of remarks or communications of third-parties that may arguably rise to the level of being actionable under federal or state laws including, but not limited to, the publication of material that might be considered defamatory, or violative of privacy or publicity rights. Note, that federal law allows RN to remove any content found to be offensive, defamatory, obscene or otherwise violative of Our policies, without impacting Our status as an interactive computer service. Nothing contained in this paragraph is intended to limit or alter the immunity from claims provided by Section 230 of the Communications Decency Act. Nothing contained in this Agreement is

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intended to limit or alter the immunity from claims provided by Section 230 of the Communications Decency Act, and no third parties are intended to benefit from this User Agreement between You and Us.

15.13. We respect the intellectual property rights of all parties, and have adopted a policy regarding termination of repeat copyright infringers under the Digital Millennium Copyright Act. Copies of Our Repeat Infringer Policy are available on request to our customers or subscribers.

#### **16. RESTRICTIONS**

**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.

#### **17. EARLY TERMINATION CHARGES**

17.1. If an Order Form 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 RN.

17.2. **Early Termination Charge.** For service terminated prior to the end of the Term, an 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 (the "Early Termination Charge").

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 RN as a result of an early termination, and is not a penalty.

Notwithstanding the foregoing, RN 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.

shall be effective for the term of this Agreement and for a period of two (2) years following the termination of this SLA or any extension hereto. Solicitation does not include advertisements in the general media and, except to the extent an individual was specifically encouraged to respond to such advertisements, there shall be no restriction on the hiring of individuals so responding.

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**18. Non-Solicitation.** Each party agrees not to solicit any employee of the other party or any of its affiliates for employment, or encourage any employee of the other party or any of its affiliates to leave his or her employment, without the expressed written consent of the other party or its affiliates. The above limitation

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**19. ENTIRE AGREEMENT; AMENDMENT;  
EXECUTION**

This Agreement, including all Order Forms, Supplements 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.

**REFLECTED NETWORKS**

**CUSTOMER**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

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

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

**Address notices for Reflected Networks:**

**Address notices for Customer:**

Reflected Networks, Inc.  
738 Main Street PMB 195  
Waltham MA, 02451

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