TERMS AND CONDITIONS

These Terms and Conditions, including the Service Level Agreement, attached hereto and incorporated by reference, (collectively the "Terms and Conditions") is entered into between **UNITED PRIVATE CLOUD, LLC.**, a Delaware limited liability company with offices at 200 Paul Avenue, Suite 110, San Francisco, California 94124 and 530 West 6th Street, Suite 903, Los Angeles, California 90014 ("United Private Cloud"), and the party ("Customer") identified in a service order form(s) (as defined below). United Private Cloud and Customer are each referred to as a "Party" and collectively as the "Parties" These Terms and Conditions and all Service Order Form(s) existing or hereafter entered into between United Private Cloud and the Customer are collectively referred to as the "Agreement").

1.   **Definitions.**

   a)   "Acceptable Use Policy" means the acceptable use policy published on United Private Cloud's website, as the same may be amended from time to time.

   b)   "Data Center" means the United Private Cloud's center where it runs Services for Customer.

   c)   "Facility" means the building in which the Data Center is located.

   d)   "Monthly Recurring Charges" or "MRC" means the fixed monthly fees set forth on any Service Order Form.

   e)   "Rules and Regulations" are the rules and regulations published on United Private Cloud's website, as the same may be amended from time to time. The Rules and Regulations are applicable to any Service Order Form that includes colocation Services.

   f)   "Service Order Form" means each service order form now, heretofore, or hereafter entered into between Customer and United Private Cloud.

   g)   "Services" means such as United Private Cloud's Colocation, IP Transit/Transport, Cloud, Disaster Recovery and/or Managed Services ordered by Customer, which are to be provided by United Private Cloud pursuant to a Service Order Form.

2.   **Services, Maintenance, Support, Training, and Service Levels.**

2.1.   Services. Subject to the terms and conditions of the Agreement, United Private Cloud will use reasonable commercial efforts to provide to Customer such Services as may be from time to time set forth and described on each Service Order Form.

2.2.   Support Services. United Private Cloud shall provide 24/7 customer and technical support services to Customer via e-mail through submissions to support@unitedprivatecloud.com and telephone through calls made to 888-853-7733 extension 2 or via United Private Cloud's customer portal. United Private Cloud reserves the right to change its contact information at any time upon notice to the Customer. Support calls for services beyond those specifically set forth herein and in the Service Order Form shall result in additional charges.

2.3.   Additional Charges. All services that are not specifically delineated on a Service Order Form shall be considered additional services for which United Private Cloud may charge an additional fee, including but not limited to set up fees, consulting services, riser fees, cross-connect fees, Meet Me Room connection charges, additional bursting IP services stacking, shipping, and trash removal. Charges for bandwidth usage are billed using the industry standard 95th percentile billing method. Charges from third parties, including but not limited to connection charges, will be passed on to the Customer, and are subject to price changes by the third parties at any time during

the term of this contract. United Private Cloud requires that a support ticket be created within the United Private Cloud customer portal before any support work can begin.

2.4.   Maintenance. United Private Cloud may carry out periodic maintenance or upgrade work on the network or its equipment or to the Facility infrastructure and/or equipment. United Private Cloud will use commercially reasonable efforts to notify Customer via email or phone pursuant to the information provided on the primary account contact at least 48 hours in advance of scheduled maintenance and scheduled downtime. The Customer is responsible for providing United Private Cloud with accurate and current contact information for the Customer's designated points of contact. United Private Cloud reserves the right to perform emergency maintenance as needed with no notice.

2.5.   Use of Subcontractors. Customer hereby acknowledges that in the course of performing Services hereunder, United Private Cloud, in addition to its own employees, may desire or require the services and assistance of subcontractors, agents, and representatives in connection with the Services and/or Deliverables to be provided under the Agreement.

3.   Customer Responsibilities.

Customer shall comply with United Private Cloud's Acceptable Use Policy. Customer shall not use the Services (i) for any purpose other than for Customer's own personal or internal business needs; (ii) in a manner that violates any applicable law or regulation, including export restrictions: (iii) to knowingly or intentionally disseminate or transmit any: unsolicited commercial e-mail messages (SPAM), chain letters, malware, spyware, bots (including spiders and crawlers), or other repetitive or automated information collection or distribution devices (excluding double opt-in email lists); (iv) to create a false identity or otherwise attempt to mislead anyone (including United Private Cloud) as to origin or transmitter of any communication, information or other material; (v) to violate the privacy or breach the security of any other person; or (vi) to access or monitor computer, information or communications devices or resources of United Private Cloud, including but not limited to, engaging in any unauthorized security probing activities or other attempts to evaluate or test United Private Cloud's networks or host system. United Private Cloud will have the right to monitor online conduct, usage, and communications in order to verify compliance with the Agreement and applicable law. Any Service Order Form for colocation services shall be subject to the additional terms and conditions set forth on Exhibit B, the terms of which are incorporated by this reference.

4.   Fees and Payment Schedule.

4.1.   Invoicing. United Private Cloud shall, via e-mail and/or postal mail, invoice Customer for fees and charges due and payable for Services to be performed for the upcoming month pursuant to each Service Order Form, and for bandwidth usage or overages and metered power usage and additional Services provided in the prior month. The first invoice under a Service Order Form shall include (i) the first month's MRC (prorated for any partial first month); plus (ii) set up and other one-time fees, and shall be payable on or before the commencement date of the Services. Thereafter, each invoice is payable on its due date, but in no event, less than five days in advance of the month during which the services shall/will be provided. Customer shall pay all applicable federal, state, and local taxes, arising out of the Agreement (except those based upon United Private Cloud's income). Customer shall pay all property taxes on Customer's equipment.

4.2.   Late Payment. Collection Costs. All amounts not paid when due shall be assessed an administrative fee equal to 5% of the amount past due. In addition, United Private Cloud may charge interest on all due and unpaid fees at the rate of 1.5% per month (or the maximum interest rate permitted by law, whichever is lower). Customer shall pay to United Private Cloud all costs of collection, including attorneys' fees, costs, and expenses incurred in connection therewith.

4.3.   Cessation of Services. In the event Customer does not remit payment of all amounts due under an invoice by the tenth (10) day following its due date, United Private Cloud may, at its discretion and without notice, cease providing Services to Customer, including but not limited to, denying Customer access to the Facility.

4.4.   Security Deposit. Upon signing and delivery of the Service Order Form, Customer shall deposit with United Private Cloud as security for its performance under the Agreement, the amount of the Security Deposit specified in the Service Order Form which is customarily equal to one month's projected Monthly Recurring Charges ("Security Deposit"). United Private Cloud shall not be required to maintain the Security Deposit in a separate account and Customer shall not be entitled to interest on the Security Deposit. If the Customer fails to pay any amount when due, then United Private Cloud may draw upon the Security Deposit in the amount of payment due but not made. If Customer's MRC increases or Customer's required monthly payments are received more than five (5) days after the payment due date for two (2) months during the Term, then in addition to its other remedies hereunder, United Private Cloud shall be entitled at its sole discretion to increase the required Security Deposit in an amount equal to up to six (6) month's MRC. Within five (5) business days after receipt of written notice of any deficiency in the amount of the Security Deposit (either due to withdrawals by United Private Cloud or an increase in the required amount), the Customer shall deposit with United Private Cloud cash or cashier's check in an amount sufficient to restore the Security Deposit to its original or required increased amount. Customer's failure to do so shall constitute a material breach hereunder. Within thirty days (30) days after the later of (a) expiration or earlier termination of the Agreement or (b) Customer's vacating the Facility and provided no default exists hereunder, United Private Cloud shall return the Security Deposit less any portion thereof as United Private Cloud shall have used to satisfy Customer's obligations under the Agreement.

5.   Confidential Information.

5.1.   Non-Disclosure. Each Party agrees to treat as confidential all Confidential Information (as defined below) related to the rights and obligations of the other Party under the Agreement and the business and activities of the other Party, its customers, clients, suppliers, and other entities with whom such other Party does business, which may be obtained by such Party from any source or as a result of or relating to the Agreement, including the economic and financial terms and conditions contained in or otherwise referenced by the Agreement (the "Confidential Information"). Each Party agrees to hold the Confidential Information of the other Party in confidence and shall not disclose such information to any person, firm, or enterprise, or use (directly or indirectly) any such information for its own benefit or the benefit of any other party. Even when disclosure is permitted, each Party agrees to limit access to and disclosure of the other Party's Confidential Information solely to its employees on a "need to know" basis for purposes directly related to the performance of the Party's obligations hereunder. Notwithstanding the foregoing, either Party may disclose the other Party's Confidential Information pursuant to applicable law or regulation or compulsion of proper judicial or another legal process; provided, however, that the disclosing Party shall, unless prohibited by law, provide prompt notice of the same prior to such required disclosure such that the other Party may seek a protective order or other appropriate remedies to safeguard, restrict and/or limit the disclosure of such Confidential Information. Notwithstanding the foregoing, United Private Cloud may, without prior notice to the Customer, comply with requests from governmental agencies. For purposes of the Agreement, Confidential Information includes, without limitation, each Party's trade secrets, proprietary and competitive information, financial information, the specific terms of the Agreement, past and present operations, activities, future plans, and strategy; provided, however, that information shall not be considered Confidential Information to the extent, but only to the extent that such information (a) is or becomes publicly available through no fault, default or breach of or by the receiving Party, (b) is or was rightfully acquired by the receiving Party from another without restriction or obligation of confidentiality or (c) if such information is or was independently developed by the receiving party without the use of or reference to Confidential Information of the other Party. Upon any termination of the Agreement, within 10 days of the effective date of termination or expiration Customer shall return to United Private Cloud (or destroy at United Private Cloud's request) the Confidential Information of United Private Cloud in Customer's possession or control.

5.2.   Equitable Relief. In the event of a breach or threatened breach of the foregoing confidentiality obligations by one Party, the other Party shall suffer immediate and irreparable harm for which, money damages shall be impossible to calculate and be inadequate compensation. Accordingly, either Party shall be entitled to an injunction, restraining order, or other equitable relief to enforce compliance with the provisions hereof; provided, however, that no specification herein of any particular legal or equitable remedy shall be deemed or construed to prohibit either Party from seeking or obtaining any other remedy available under the Agreement.

6. **Term and Termination; Transition Assistance.**

6.1. <u>Term</u>. Each Service Order Form shall be for the contract term specified therein (unless the Agreement is earlier terminated as provided herein); provided, however, that if any Service Order Form commences on a day other than the first day of a month, the number of months in the term shall be counted starting with the first full month following the commencement date. Upon expiration of the term set forth in a Service Order Form, the Service Order Form will automatically renew for successive twelve-month terms (each a "Renewal Term"), unless either party has given notice of non-renewal to the other party at least 60 days prior to the expiration date of the initial term or the then-current Renewal Term, as applicable. At United Private Cloud's option, the term will not automatically be renewed if the Customer is then in default under the Agreement. Unless otherwise provided in the applicable Service Order Form, United Private Cloud reserves the rights to change its prices at any time during any Renewal Term, with or without notice to Customer; provided, however, such changes will be limited to a maximum of 10% in any Renewal Period unless United Private Cloud first gives Customer notice of a higher increase and Customer fails to object to such increase within ten days of such notice. Notwithstanding anything herein to the contrary, throughout the term of this Agreement, changes in charges for power shall not be limited and shall be subject to adjustment in proportion to increases in electricity and other power costs applicable to the Data Center.

6.2. <u>Event of Default by Customer</u>. The occurrence of any one or more of the following shall constitute an **"Event of Default by Customer**" : (a) Customer for any reason fails to pay United Private Cloud any fees, charges or any other amount due under the Agreement within ten (10) days of its due date, b) Customer fails to perform any obligation or covenant set forth in the Agreement and the same is not cured within ten (10) business days following receipt of written notice thereof, or c) Customer admits in writing its inability to pay its debts as they become due, fails to satisfy any judgment against it, ceases operations of its business in the ordinary course, is adjudicated bankrupt or becomes insolvent, winds up or liquidates its business voluntarily or otherwise, applies for, consents to or suffers the appointment of, or the taking or possession by a receiver, custodian, assignee, trustee, liquidator or similar fiduciary of itself or of all or any substantial portion of its assets, makes a general assignment for the benefit of creditors, commences a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), files a petition seeking to take advantage of any other law providing for the relief of debtors, acquiesces to, or fails to have dismissed, within 30 days, any petition filed against it in any involuntary case pursuant to such bankruptcy laws and/or takes any action for the purpose of effecting any of the foregoing.

6.3. <u>Event of Default by United Private Cloud</u>. The occurrence of any one or more of the following shall constitute an **"Event of Default by United Private Cloud"** the Agreement: the failure by United Private Cloud to perform any material obligation or covenant set forth in the Agreement if the same is not cured within thirty (30) days following receipt of written notice thereof; provided, however, that it shall not be an Event of Default by United Private Cloud if such failure is capable of cure and United Private Cloud commences to cure such failure within said 30 days and thereafter diligently prosecutes the curing thereof. Upon the occurrence of an Event of Default by United Private Cloud, Customer may terminate the Agreement upon ten (10) days' notice.

6.4. <u>Remedies upon Event of Default by Customer</u>. Upon the occurrence of an Event of Default by Customer, United Private Cloud shall have the right (a) to discontinue all Services to Customer with or without notice to Customer, (b) to disconnect Customer from its internet, power, and telecommunications services; (c) to remove any Customer equipment from the Data Center and place it in storage at Customer's expense and subject to United Private Cloud's lien rights, and/or (d) upon written notice to Customer, to terminate the Agreement. In the event this Agreement is terminated for any reason other than an Event of Default by United Private Cloud, Customer shall be obligated to pay to United Private Cloud immediately all amounts due to United Private Cloud, including late charges and fees, plus an amount equal to the total MRC charges that Customer would have paid United Private Cloud over the remainder of the term of the Agreement as specified on each Service Order Form.

6.5. <u>Elective Termination</u>. Customer acknowledges, agrees, and covenants that Customer is responsible for full payment of the services for the entire Term regardless of the portion of the services actually consumed. Customer may at its option, terminate any Service Order Form by submitting it to United Private Cloud at billing@unitedlayer.com

sixty (60) days prior written notice of termination of such Service Order Form and payment to United Private Cloud, by way of liquidated damages and not a penalty, of an amount equal to the aggregate MRC that would have been paid over the remainder of the then term (as the same may have been extended under Section 6.1) for such Service Order Form. (e.g. if Customer terminates a Service Order Form fourteen months into a two-year term for any reason other than an Event of Default by United Private Cloud, Customer shall pay to United Private Cloud a termination fee equal to the balance of all MRC for the remaining 10 months of the term).

7.   Representations, Warranties, and Covenants.

7.1. Authority to Execute the Agreement. Each Party represents, warrants, and covenants to the other Party that: (a) it has the full corporate right, power and authority to enter into the Agreement and to perform the acts required of it under the Agreement, (b) the execution of the Agreement and performance of its obligations under the Agreement do not and shall not violate any other agreement to which it is a party, (c) the Agreement constitutes the legal, valid and binding obligation of such Party when executed and delivered and (d) any and all activities it undertakes in connection with the Agreement shall be performed in compliance with all applicable laws, rules, and regulations.

8.   Indemnification; Limitation of Liability.

8.1.   By Customer. Customer agrees to indemnify, defend and/or handle at its own cost and expense any claim or action against United Private Cloud, its parent companies and its affiliates and their successors, and their respective officers, directors, employees, shareholders, representatives, and agents (each an "Indemnified Party") from and against any action or Claims (defined below) by a third party arising out of, or relating directly or indirectly to the Agreement, the License (if any) granted under the Agreement and the use of the Services by Customer or any person or entity acting through or on behalf of Customer, excepting therefrom Claims arising out of the gross negligence or intentional misconduct of United Private Cloud as determined by a court of competent jurisdiction. For purposes of the Agreement, the term **"Claims"** means any and all claims, causes of action (whether based on tort or contract law principles, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and reasonable attorneys' fees and costs). Claims include claims for injury to any persons (including death at any time resulting from that injury), and loss of, injury or damage to, or destruction of real or personal property. The provisions of this section shall survive the expiration or earlier termination of the Agreement. An Indemnified Party shall give Customer prompt notice of any claim asserted or threatened against it and the basis of which the Indemnified Party intends to seek indemnification, but the obligations of the Customer shall not be conditioned upon receipt of such notice except to the extent that Customer is actually prejudiced by such failure to give notice. Customer shall promptly assume the defense of the Indemnified Party with counsel reasonably satisfactory to the Indemnified Party and the fees and expenses of such counsel shall be at the sole cost and expense of Customer. Notwithstanding the foregoing, the Indemnified Party shall be entitled, at its expense, to employ counsel separate from counsel for the Customer and from any other party in such action, proceeding, or investigation. An Indemnified Party may not agree to a settlement of a Claim without the prior written approval of the Customer, which approval shall not be unreasonably withheld. Customer may not agree to a settlement of a Claim against an Indemnified Party unless such settlement includes a full release of the Indemnified Party.

8.2.   By United Private Cloud. United Private Cloud agrees to indemnify, defend and/or handle at its own cost and expense any claim or action against Customer, its officers, directors, employees, representatives, and agents based upon or in connection with any Claim by a third party arising out United Private Cloud's gross negligence or intentional misconduct. The provisions of this section shall survive the expiration or earlier termination of the Agreement. United Private Cloud shall be given prompt notice of any claim asserted or threatened against and the basis on which indemnification is sought. United Private Cloud shall solely conduct the defense of any such claim or action and all negotiations for its settlement or compromise; provided, however, that (i) no settlement or compromise affecting the financial or legal obligations of Customer shall be entered into or agreed to without Customer's prior approval unless such settlement contains an unconditional release by the claimant or the plaintiff of Customer, its officers, directors, employees,

representatives and agents from all liability in respect of such claim or action and (ii) Customer has the right to participate, at its own expense, in the defense and/or settlement of any such claim or action in order to protect its own interests. United Private Cloud shall have no liability for any damage to the Customer's personal property or Equipment.

8.3.   <u>Disclaimer</u>. UNITED PRIVATE CLOUD WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR MULTIPLE DAMAGES, EVEN IF UNITED PRIVATE CLOUD WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

9.   General.

9.1.   <u>Assignment</u>. Customer may not assign, transfer or convey the Agreement, or any rights or obligations thereunder, by merger, share exchange, asset sale, reorganization, operation of law or otherwise, to any other party without United Private Cloud's prior written consent which consent shall not be unreasonably withheld provided that (i) the proposed assignee assumes all of the Customer's obligations under the Agreement, (ii) Customer is in compliance with all of the terms, covenants, and conditions of the Agreement, and (iii) the Tangible Net Worth of the proposed assignee is not less than the Tangible Net Worth of Customer as of the date of the assignment. The term "Tangible Net Worth" means the excess of total assets over total liabilities (in each case, determined in accordance with GAAP) excluding from the determination of total assets all assets which would be classified as intangible assets under GAAP, including, without limitation, goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises. Any assignment of the Agreement without the consent of United Private Cloud shall be void *ab initio*. The Agreement shall be binding upon, and enforceable by, and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. In the event that United Private Cloud assigns its interest in the Agreement, United Private Cloud shall be released from any liability arising thereafter based upon any of the terms, covenants, or conditions, express or implied, which are contained in the Agreement. In such an event, the Customer agrees to look solely to United Private Cloud's successor in interest for any liability under the Agreement after such assignment. Customer agrees to attorn in writing to United Private Cloud's successor in interest if requested to do so.

9.2.   <u>Relationship; No Third-Party Beneficiaries</u>. Each Party is an independent contractor and each Party's personnel are not employees or agents of the other Party for federal, state, or other tax purposes or any other purposes whatsoever. Personnel of one Party have no authority to make representations, commitments, bind or enter into contracts on behalf of or otherwise obligate the other Party in any manner whatsoever. Nothing in the Agreement shall be construed or deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership, business entity of any kind, or constitute one Party an agent of the other Party. There are no third-party beneficiaries, actual or intended, under the Agreement.

9.3.   <u>Notices</u>. Unless otherwise specifically provided herein, all notices required under the Agreement shall be in writing and (unless otherwise provided herein) shall be delivered via personal delivery, facsimile, overnight mail by a nationally recognized overnight service, by U.S. Mail, postage prepaid, to United Private Cloud at 200 Paul Avenue, Suite 110, San Francisco, California 94124, or to Customer at the address set forth on the signature page of the most recent Service Order Form, unless, by notice, a Party changes or supplements the addressee and addresses for giving notice. Notice shall be deemed given on the date it is received if hand-delivered or sent by electronic transmission. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or nationally recognized overnight courier shall be deemed given one business day after delivery of the same to the Postal Service or courier.

9.4.   <u>Publicity; Press Releases</u>. Neither Party shall be entitled to use the name, service or trademarks, logos or otherwise identify or refer to the other Party in any press releases, publicity, marketing, or promotional material without the prior, express approval of such other Party in each instance. Customer authorizes United Private Cloud to use customer's name, logos, and trademarks in publicity, marketing, or promotional material and to release Customer's name to other United Private Cloud potential and current customers.

9.5.   Dispute Resolution, Choice of Law, and Jury Waiver. Each Party agrees that they shall attempt to resolve any dispute arising from the Agreement prior to bringing an action in court. Each Party will designate at least one company employee, capable of negotiating an agreement on behalf of that Party, within three weeks of receipt of written notification of a dispute and those employees will meet at least once in an attempt to resolve the dispute. If no agreement can be reached, both parties agree to meet again within a four-week period after the initial meeting to negotiate in good faith to resolve the dispute. Thereafter, either party may commence a court action. The Agreement and all disputes, claims, actions, suits, or other proceedings arising hereunder shall be governed by, and construed in accordance with, the substantive law of the State of California applicable to contracts wholly made and to be performed within the State of California without regard to conflict of laws principles. Each Party irrevocably submits to the sole and exclusive jurisdiction of the courts of the State of California and the Federal courts of the Northern or Southern District of California, situated in the County of San Francisco or County of Los Angeles. Each Party irrevocably consents to the exercise of personal jurisdiction over each of the Parties by such courts and waives any right to plead, claim or allege that California is an inconvenient forum. In order to limit the cost of resolving any disputes between the parties, and as a material inducement to each party to enter into the Agreement, to the fullest extent permitted by law, United Private Cloud and Customer each expressly waives its right to trial by jury in any trial held as a result of a claim arising out of, in connection with, or in any manner related to the Agreement in which United Private Cloud and Customer are adverse parties, including cross-complaints by one against the other.

9.6.   Limitation of Actions. No action, regardless of form, arising out of or relating to the Agreement may be brought by the Customer more than twelve (12) months from the date on which the cause of action accrues. The parties agree that this section, as to the Customer only, supplants and replaces any and all periods of limitation otherwise provided by law. All periods of limitation otherwise applicable to actions by United Private Cloud remain as provided by law.

9.7 Limitation of Liability.   IN THE EVENT THAT UNITED PRIVATE CLOUD SHALL FAIL TO PERFORM OR FAIL TO HONOR OR PERFORM ANY OBLIGATION OR COVENANT TO BE PERFORMED UNDER THESE TERMS AND CONDITIONS, (INCLUDING, WITHOUT LIMITATION, ANY INDEMNITIES GIVEN BY UNITED PRIVATE CLOUD), UNITED PRIVATE CLOUD'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, SHALL NOT EXCEED THE TOTAL OF ONE MONTH'S MRC UNDER ALL THEN EFFECTIVE SERVICE ORDER FORMS. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR A SERVICE OUTAGE (AS DEFINED IN THE SERVICE LEVEL AGREEMENT) SHALL BE THE CREDIT PROVIDED IN THE SERVICE LEVEL AGREEMENT. UNITED PRIVATE CLOUD SHALL NOT BE LIABLE FOR ANY OTHER TYPE OF DOWNTIME OR CONNECTIVITY FAILURE OR SERVICE INTERRUPTION. UNITED PRIVATE CLOUD SHALL NOT IN ANY CASE BE LIABLE FOR ANY OF THE FOLLOWING: (1) THE USE OR CONTENT OF INFORMATION PASSING OVER ITS NETWORK; (2) UNAUTHORIZED ACCESS OR DAMAGE TO, ALTERATION, THEFT, DESTRUCTION OR LOSS OF, CUSTOMER'S RECORDS, INFORMATION, FILES OR DATA; (3) ECONOMIC, INDIRECT, SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS AND SAVINGS AND ADDITIONAL COSTS, EXPENDITURES OR INVESTMENTS INCURRED IN CONNECTION WITH CUSTOMER'S BUSINESS OR OTHERWISE), EVEN IF UNITED PRIVATE CLOUD IS INFORMED OF THE POSSIBILITY THEREOF; (4) DAMAGES CAUSED BY CUSTOMER; (5) CLAIMS AGAINST CUSTOMER BY ANY OTHER PARTY FOR ANY REASON; OR (6) ANY ACT OR OMISSION OF A THIRD PARTY FURNISHING SERVICES AND/OR PRODUCTS, OR (7) THE INSTALLATION AND /OR REMOVAL OF ANY AND ALL CUSTOMER EQUIPMENT OR SUPPLIES.

UNITED PRIVATE CLOUD SHALL NOT BE LIABLE FOR ANY FAILURE OR DELAY IN PERFORMANCE UNDER THESE TERMS AND CONDITIONS, INCLUDING THE ATTACHED SERVICE LEVEL AGREEMENT AND IN ANY SERVICE ORDER FORM TO THE EXTENT CAUSED BY CAUSES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION: EARTHQUAKES, WEATHER OR NATURAL DISASTERS, FIRE, FLOOD, STORM, COSMIC STORM, SOLAR WIND, LIGHTING, OR OTHER ACTS OF NATURE, DAMAGE TO FACILITIES, SHORTAGES OF MATERIALS OR TRANSPORTATION, ELECTRICAL BLACKOUTS OR BROWNOUTS, EXPLOSIONS, LABOR DISPUTES, THE FAILURE OF

ANY UTILITY PROVIDER TO DELIVER ELECTRICITY OR WATER TO THE FACILITY IN THE QUALITY AND QUANTITY NORMALLY DELIVERED BY SUCH UTILITY, EXCESSIVE VOLTAGE OR AMPERAGE SAGS ON UTILITY POWER FEEDS, THE FAILURE OF CUSTOMER'S EQUIPMENT, WAR, INVASION, ACT OF FOREIGN ENEMIES, HOSTILITIES (WHETHER WAR IS DECLARED OR NOT), CIVIL WAR, REBELLION, REVOLUTION, INSURRECTION, MILITARY OR USURPED POWER OR CONFISCATION, TERRORIST ACTIVITIES, VANDALISM OR OTHER CRIMINAL ACT, NATIONALIZATION, GOVERNMENT SANCTION, EMINENT DOMAIN, BLOCKAGE, OR EMBARGO, OR THE CONDUCT OF THIRD PARTIES (COLLECTIVELY "FORCE MAJEURE").

CUSTOMER AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES ASSUME ALL RISK ARISING IN CONNECTION WITH CUSTOMER'S EQUIPMENT AND CUSTOMER'S USE OF THE FACILITY, INCLUDING, WITHOUT LIMITATION, FALLS, ELECTRIC SHOCKS, AND OTHER PERSONAL INJURY, AND HEREBY RELEASES UNITED PRIVATE CLOUD AND ITS AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM ANY LIABILITY WHATSOEVER ARISING OUT OF ANY DAMAGE, LOSS OR INJURY TO PERSON AND/OR PROPERTY.

9.8.   No Other Warranty. EXCEPT FOR ANY EXPRESS WARRANTIES SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. UNITED PRIVATE CLOUD DOES NOT MAKE ANY OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE OR NON-INFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OR TRADE PRACTICE. UNITED PRIVATE CLOUD EXERCISES NO CONTROL WHATSOEVER OVER THE CONTENT OF INFORMATION PASSING THROUGH ITS NETWORK OR OVER THE INTERNET.

9.9.   Attorney Fees and Costs. If either party commences a legal or administrative action against the other party to enforce the Agreement, the prevailing party in such litigation shall be entitled to collect from the party not prevailing its reasonable attorney fees and costs. In any instance in which Customer requests United Private Cloud's consent hereunder, Customer shall pay, within ten (10) days after invoicing by United Private Cloud,.all of United Private Cloud's review, processing fees, and costs as well as any reasonable professional attorneys, accountants, engineers or other consultant's fees incurred by United Private Cloud or the owner of the Facility relating to such request for consent.

9.10.   Counterparts and Interpretation. The Agreement may be executed in any number of counterparts, electronically, via facsimile or in portable document format (PDF), all of which taken together shall constitute one single agreement between the Parties. Headings are for convenience only and are not to be considered in construing or interpreting the Agreement. The terms "include," "includes," and "including," whether or not capitalized, mean "include, but are not limited to," "includes, but is not limited to," and "including, but not limited to," respectively and are to be construed as inclusive, not exclusive.

9.11.   Amendment; Waiver; Severability. No amendment, modification, waiver, or discharge of any provision of the Agreement shall be valid unless made in writing and signed by an authorized representative of the Party against whom enforcement is sought. No failure or delay by either Party to exercise any right or enforce any obligation shall impair or be construed as a waiver or on-going waiver of that or any or other right or power unless made in writing and signed by both Parties. If any provision of the Agreement is held to be illegal, invalid, or unenforceable, the remaining provisions of the Agreement shall be unimpaired and remain in full force and effect. Notwithstanding the foregoing, the Rules and Regulations and the Acceptable Use Policy may be updated from time to time in writing and/or published on United Private Cloud's website.

9.12.   Survival. The provisions of Article 4, Article 5, Article 6, Article 8, Article 9, and Exhibit B hereof, shall survive the cancellation, expiration, or termination of the Agreement.

9.13.   <u>Entire Agreement</u>. All Service Order Forms preexisting the date hereof shall be governed by these Terms and Conditions. These Terms and Conditions, including the exhibits hereto which are incorporated herein, together with the Service Order Forms, constitute the entire agreement between the parties and supersede any prior or inconsistent agreements, negotiations, representations, and promises, written or oral with respect to the subject matter hereof. In the event of a conflict between the Terms and Conditions and any Service Order Form, the terms of these Terms and Conditions shall prevail. Customer acknowledges, that it has read the Agreement, and agrees to be bound thereto and that these Terms and Conditions together with the exhibits, and the Service Order Forms supersede all previous communications, oral or in writing, relating to the subject matter hereof.

EXHIBIT A

Service Level Agreement

This Service Level Agreement ("SLA") is issued in accordance with the Terms and Conditions (the "Terms and Conditions") between United Private Cloud and Customer.

1.   General

1.1.   In this SLA, the following terms have the following meanings ascribed to them below. Capitalized words not defined below shall have the meanings ascribed to them in the Terms and Conditions.

a)   "CDR" (Committed Data/Information Rate) means the data throughput rate selected by the Customer in the Service Order Form and provided as part of Services.

b)   "Customer Cause" means any Service Outage caused directly or indirectly as a result of any act or omission of Customer or by any third party acting on Customer's behalf including, without limitation, (i) failure to permit entry by United Private Cloud or make facilities or components available to United Private Cloud for testing or repair or otherwise to comply with United Private Cloud's instructions and service requirements, (ii) defect in any Customer equipment which is not managed by United Private Cloud, (iii) improper configuration not performed by United Private Cloud;
(iv) service interruptions requested by Customer, (v) Customer failure to act in a timely and/or proper manner when notified to do so by United Private Cloud, or (vi) transmission of data at a rate in excess of the CDR or the requested burstable port that the Customer is on.

c)   "Customer's Equipment" means all Customer-owned or operated equipment that is colocated at any of United Private Cloud's Data Centers.

d)   "Colocation Services" means those Services set forth under any Service Order Form under which United Private Cloud provides space for Customer's Equipment.

e)   "Data Center Availability" means all the time in any calendar month the Data Center is available to visit.

f)   "Data Center Downtime" means any interruption in the Data Center Availability.

g)   "Defective Hardware" means defective hardware associated with a device, including CPU, memory, and hard drives, but specifically excludes non-RAIDed servers.

h)   "Device" means any shared or dedicated device which is managed by United Private Cloud as provided in the Service Order Form.

i)   "Device Availability" means the ability to access any Device(s) via a remote access protocol normally available on the Device. Device Availability does not apply to any server that is non-RAIDed.

j)   "Device Downtime" means the failure of Device Availability. Device Downtime will be deemed to occur for the period of the outage as reported through United Private Cloud's trouble ticketing system.

k)   "Device MRC" means that portion of MRC for the applicable Device.

l)   "Device Repair or Replacement" has the meaning ascribed to it in Section 5.4 below.

m)   "Environment" means the recorded temperature within the Data Center limited to the cold aisle temperature or the ambient temperature at the intake of the Customer's Equipment. The average temperature of the cold aisle in the Data Center is to be maintained at 72 - 78 degrees Fahrenheit (+/- 6 degrees). The temperature may be measured at cold aisle points in the Data Center of United Private Cloud's choosing. The Environment does not apply with respect to the hot aisle(s) ambient temperature in the Data Center.

n)   "Environment Downtime" means failure to maintain the Environment.

o)   "IP Transit/Transport Services" means wholesale internet bandwidth, the voluntary interconnection of administratively separate Internet networks for the purpose of exchanging traffic between networks (peering services); and/or private links that enable point to point transfer of raw data (layer 2 services) all as set forth in any Service Order Form.

p)   "IP MRC" means that portion of MRC applicable to IP Transit/Transport Services.

q)   "Managed Services" means the delivery, maintenance, and management of shared or dedicated infrastructure used to provide cloud, disaster recovery, storage, backup, network, hosting, and maintaining of equipment, communications, network infrastructure, and devices as set forth in any Service Order Form.

r)   "MRC" has the meaning ascribed to it in the Terms and Conditions.

s)   "Network" means the physical connection between the equipment provided by Customer and either (i) the Internet or (ii) private networks maintained and operated by Customer or Customer's agents.

t)   "Network Availability" means all the time in any calendar month that the Network is available.

u)   "Network Downtime" means any interruption of Network Availability. Network Downtime will be deemed to commence and end as reported on United Private Cloud's monitoring system.

v)   "RAIDed" means a storage configuration for a server that has redundant disks using RAID levels other than 0.

w)   "Power" means the physical electricity delivered to the Customer within the Data Center.

x)   "Power Downtime" means any interruption to the Power delivered to the Customer. Power Downtime will be deemed to commence and end as reported on United Private Cloud's electrical monitoring system.

y)   "Power MRC" means that portion of MRC allocated to Power.

z)   "Scheduled Downtime" means times scheduled by United Private Cloud in advance for periodic maintenance and/or upgrade work during which a Service Outage is planned as an unavoidable requirement to affect the maintenance or upgrade. Except in the case of an emergency, United Private Cloud will endeavor to provide the Customer with 48 hours' notice of Scheduled Downtime. Outage times will be quoted in Pacific Time to prevent mistakes from being made over the various time zones. United Private Cloud will consider Customer' requirements in terms of outage times; however, depending on the circumstances this may not always be possible or practical and the scheduling of outage times will be at United Private Cloud's sole discretion.

aa)   "Scheduled Maintenance" means periodic maintenance or upgrade work on United Private Cloud's network or its equipment, planned to be performed during a network maintenance window, during which no Service Outages are anticipated. United Private Cloud will endeavor to limit Service Outages resulting from Scheduled Maintenance.

bb)   "Service Outage" means any Data Center Downtime, Power Downtime, Environment Downtime, Network Downtime, or Device Downtime.

cc)   "Space" means that area of the Data Center which is allocated to Customer for Customer's equipment for colocation services.

dd)   "Space MRC" means the portion of MRC allocated to Space.

1.2.   This SLA only applies to the Services to the extent that they are provided by means of systems and equipment that are either owned or operated by or on behalf of United Private Cloud. United Private Cloud shall have no liability for the failure of any other systems or services, including but not limited to application systems.

1.3.   In no event shall United Private Cloud have any liability under this SLA, the Terms and Conditions, or any Service Order Form to the extent its failure to meet any of its obligations under this SLA is caused by a Force Majeure Event, the performance of Scheduled Maintenance, Scheduled Downtime or Customer Cause. All credits are subject to Customer meeting each of the requirements of Section 6 below.

2.   PROVISION OF SERVICES

2.1.   United Private Cloud will provide Customer with the services (the "Services") described in each signed Service Order Form. Such Services may include Managed Services, IP Transit/Transport Services, Cloud, Storage, Disaster Recovery Services, and/or Colocation Services.

2.2.   United Private Cloud will provide the service levels set forth below. If United Private Cloud fails to meet those service levels, the Customer's sole remedy is as provided for under this SLA.

3.   SERVICE LEVELS FOR COLOCATION SERVICES

3.1.   Service Level for Data Center Availability.

a)   United Private Cloud endeavors to provide Data Center Availability 100% of the time.

b)   If there is Data Center Downtime in any calendar month, the Customer will be entitled to request a credit equal to one three hundred sixtieth (1/360) of that month's invoice for Space MRC for each hour or partial hour that Data Center Downtime exists.

3.2.   Service Level for Scheduled Downtime.

a)   United Private Cloud endeavors to limit Scheduled Downtime to 12 times in any calendar year.

b)   If Scheduled Downtime exceeds 12 times in any calendar year, Customer will be entitled to request a credit equal to one three hundred sixtieth (1/360) of that month's invoice for Space MRC for each hour or partial hour that Scheduled Downtime is exceeded.

3.3.   Service Level for Power Availability.

a)   United Private Cloud endeavors to provide Power 100% of the time.

b)   If there is Power Downtime in any calendar month and the Customer has a primary and redundant circuit configuration, the Customer will be entitled to request a credit equal to one three hundred sixtieth (1/360) of that month's invoice for Power MRC and Space MRC for each hour or partial hour that Power Downtime exists. If the Customer does not have a primary and redundant circuit configuration, the credit will be reduced by 50%.

3.4.   Service Level for Environment Downtime.

a)   United Private Cloud endeavors to maintain the Environment at the Data Center 100% of the time.

b)   If there is Environment Downtime in any calendar month, the Customer will be entitled to request a credit of one three hundred sixtieth (1/360) of that month's invoice for Space MRC for each hour or partial hour that Environment Downtime exists.

4.   SERVICE LEVELS FOR IP TRANSIT/TRANSPORT SERVICES

4.1.   Service Level for Scheduled Downtime.

a)   United Private Cloud endeavors to limit Scheduled Downtime to 12 times in any calendar year.

b)   If Scheduled Downtime exceeds 12 times in any calendar year, Customer will be entitled to request a credit equal to one three hundred sixtieth (1/360) of that month's invoice for IP MRC for each hour or partial hour that Scheduled Downtime is exceeded.

4.2.   Service Level for Network Availability

a)   United Private Cloud endeavors to provide overall Network Availability 99.99% of the time.

b)   If any incident of Network Downtime in the aggregate in any calendar month exceeds four minutes, the Customer will be entitled to request a credit equal to one three hundred sixtieth (1/360) of that month's invoice for IP MRC for each hour or partial hour that Network Availability was exceeded.

5.   SERVICE LEVELS FOR MANAGED SERVICES

5.1.   Service Level for Scheduled Downtime.

a)   United Private Cloud endeavors to limit Scheduled Downtime to 12 times in any calendar year.

b)   If Scheduled Downtime exceeds 12 times in any calendar year, Customer will be entitled to request a credit equal to one three hundred sixtieth (1/360) of that month's invoice for IP MRC for each hour or partial hour that Scheduled Downtime is exceeded.

5.2.   Service Level for Network Availability

a)   United Private Cloud endeavors to provide overall Network Availability 99.99% of the time.

b)   If any incident of Network Downtime in the aggregate in any calendar month exceeds four minutes, the Customer will be entitled to request a credit equal to one three hundred sixtieth (1/360) of that month's invoice for IP MRC for each hour or partial hour that Network Availability was exceeded.

5.3.   Service Level for Device Availability.

a)   United Private Cloud endeavors to provide Device Availability 100% of the time.

b)   If Device Downtime occurs for reasons other than Defective Hardware, Customer will be entitled to request a credit equal to one three hundred sixtieth (1/360) of that month's invoice for Device MRC (for the specific Device that experienced Device Downtime) for each hour or partial hour that Device Downtime exists.

c)   If Device Downtime occurs as a result of Defective Hardware and United Private Cloud does not restore availability to the applicable Device or a comparable Device within two (2) hours of notification of the failure as reported through United Private Cloud's ticketing system, provided that delay was not caused in whole or in part by Customer, Customer will be entitled to request a credit equal to one three hundred sixtieth (1/360) of that month's invoice for Device MRC (for the specific Device that experienced Device Downtime) for each hour or partial hour of Device Downtime in excess of two (2) hours..

5.4.   Service Level for Device Repairs and Replacement.

a)   United Private Cloud endeavors to repair or replace defective Devices within 72 hours ("Device Repair or Replacement").

b)   If United Private Cloud does not replace or repair a defective Device within 72 hours of the time that United Private Cloud determines the Device to be defective, provided that any delay was not caused in whole or in part by Customer, Customer will be entitled to request a credit equal to one three hundred sixtieth (1/360) of that month's invoice for Device MRC (for the specific Device that required repair or replacement) for each hour in excess of 72 hours that United Private Cloud takes to repair or replace the Device. This Service Level is not in addition to Device Downtime and shall not apply for any time when there is Device Downtime.

5.5   Customer hereby acknowledges that United Private Cloud's ability to provide Device Service and technical support to Customer is contingent upon United Private Cloud's ability to manage, monitor, and/or connect United Private Cloud's network to such Device. **As determined solely by United Private Cloud,** in the event that Customer impairs United Private Cloud's ability to manage, monitor, and/or connect United Private Cloud's Network to any Device through, but not limited to, the installation of software (including, but not limited to, firewall software or load balancing software), or through the configuration of such services, then United Private Cloud shall have no obligation to provide the Services in this SLA and the Service Order Form and Customer shall not be entitled to any Credit and/or other compensation under this SLA with respect to such Services.

6.   Additional Conditions for all Service Levels

6.1.   Credits and/or other compensation under this SLA shall be payable only if all of the following conditions have been met:

a)   Customer was not, at the time of the Service Outage and at the time such credit is to be made, in breach of any of the terms and conditions of the Terms and Conditions, including this SLA;

b)   Customer has submitted to United Private Cloud within seven calendar days of the Service Outage a claim in writing to United Private Cloud at billing@unitedlayer.com identifying the circumstances in which Customer claims that the credit and/or compensation arose and marked in the subject line "claim for services credit". Customer's failure to notify United Private Cloud within the period stated above shall result in Customer's waiver of its right to receive any such credit and/or other compensation;

c)   United Private Cloud has agreed in writing, acting reasonably and without undue delay, to issue such credit and/or other compensation in connection with such claim;

d)   Customer has not on more than two (2) occasions in the twelve (12) month period preceding the Service Outage for which a claim is being made, been more than ten (10) days delinquent in its payment obligations under any Service Order Form.

e)   Customer is not in violation of the Rules and Regulations or, if applicable, the ANSI/NFPA/NEC 70 power standard codes;

f)   Customer was not, at the time of the Service Outage and at the time such credit is to be made, if applicable, in violation of cold aisle/hot aisle design methods and best practices, including cabinet-level airflow design and management set forth by United Private Cloud; and

g)   The Service Outage was not caused directly or indirectly, in whole or in part, by Scheduled Maintenance, Scheduled Downtime, Customer Cause, or a Force Majeure.

6.2.   The maximum monthly credit and/or compensation available under this SLA is limited to an amount not greater than one month's MRC for the applicable Service. **The credits set forth in this SLA shall be Customer's sole and exclusive remedy for any Service Outage or any failure by United Private Cloud to meet its services requirements under the Terms and Condition, including this SLA, and the Service Order Form.**

6.3.   The aggregate of all credits in any month under this Service Level Agreement will be applied towards the invoice which Customer receives two months following the month in which the service level was exceeded. United Private Cloud reserves the right to amend the SLA from time to time. Changes to this SLA shall be effective when the same has been posted to United Private Cloud's website.