



MASTER SERVICES AGREEMENT

1 AGREEMENT

1.1 **Parties.** This Master Services Agreement is between **Colohouse, LLC.** (acting on behalf of itself and to the extent applicable its owners, subsidiaries, sub-contractors, and its affiliated entities) ("**Service Provider**") and the customer identified under the Service Order ("**Customer**"), each a "**Party**", together the "**Parties**".

1.2 This Agreement governs all orders executed by Customer and Service Provider ("**Service Order(s)**") providing for Customer's access to and use of any service provided by Service Provider ("**Service**"). The Agreement consists of the Service Order; this Master Service Agreement ("**MSA**"); the applicable service addendum(s) in respect of the ordered Service including any applicable Service Level Agreement contained therein ("**Service Addendum**"); together with Service Provider's Privacy Policy, Acceptable Use Policy and any other applicable policies as made available at <https://colohouse.com/colohouse-policies> (collectively the "**Agreement**"). Service Addendums for anticipated Services are incorporated herein by reference. If any terms of this Agreement are in direct conflict with other Agreement terms, the terms of the Service Order shall prevail to the extent required to resolve the conflict, followed by the Service Addendum, and then the Master Service Agreement.

1.3 Service Provider may, at its option, permit Customer to add additional Services pursuant to the terms of this Agreement. Unless otherwise specified by Service Provider or this Agreement, the price of such additional Services shall be at the Service Providers then standard rates.

2 INVOICING AND PAYMENT.

2.1 **CHARGES.** The charges for the Services are summarized in the Service Order, and are subject to the further terms of this Agreement including any additional fees and charges set out therein (the "**Charges**"). All or a portion of the Charges may be invoiced to the Customer under the name of the Service Provider affiliate that actually performs a particular Service. Consolidated invoices shall be provided at Service Provider's discretion where possible. Customer shall pay Charges in U.S. dollars for all Services.

2.2 **INCREASES IN CHARGES.** Charges for all Services are subject to an annual inflationary price escalator of the greater of five percent (5%) or the U.S. CPI rate (as published by the U.S. Bureau of Labor Statistics) effective from January 1 of each year, such an increase not to take effect in the first 6 months of an Initial Term. Service Provider may elect to pass through to Customer any cost increases of third-party products or services the Customer receives as part of the Services (including but not limited to power cost increases and software license fees), as well as increased costs due to regulatory changes applicable to the Services (e.g. the application of a levy or additional tax). Service Provider will notify Customer of any such increased costs as soon as practically possible and such increases will be borne and paid for by the Customer and will be invoiced as Charges by the Service Provider in the month immediately following the price increase. For the avoidance of doubt, Service Provider may increase Charges at any time on 30 days' prior notice to Customer in relation to Services with a flexible monthly or 30-day Term.

2.3 **PAYMENT TERMS.** Monthly recurring Charges will accrue and be invoiced to Customer in advance at the beginning of the month for which the Charges relate. Non-recurring Charges will accrue upon execution of the Service Order. All payments for Charges are due upon delivery of invoice to Customer.

2.4 **SECURITY DEPOSIT.** Customer may be required to pay to Service Provider a security deposit. If Customer defaults under this agreement Service Provider may, without notice to Customer and without prejudice to Service Provider's other remedies, apply part or all of the security deposit toward the cure of Customer's default. Service Provider may co-mingle the security deposit with its own funds. Customer shall not be entitled to receive interest on the security deposit.

2.5 **TAXES.** Customer shall pay applicable taxes imposed by any taxing authority with respect to the Services, excluding any tax on Service Provider's net income.

2.6 **BILLING DISPUTES.** If Customer believes an invoice contains a Charge that is not consistent with the terms of this Agreement, Customer shall notify Service Provider of the suspected error within sixty (60) days of the date of the disputed invoice. Service Provider shall have no obligation to make any billing adjustment or refund for any errors for which Customer has not provided Service Provider timely notice. Disputed charges to the extent found to be in error shall not incur late fees.

2.7 **NON-PAYMENT, NO SET-OFF OR ABATEMENT.** Service Provider reserves the right to suspend Customer's account and any active Service in the event Customer fails to pay any undisputed Charges in accordance with the Agreement. Customer acknowledges its obligation to resolve any bona fide dispute expeditiously and to pay any undisputed portion of the Fees pending resolution of such dispute. The right of Service Provider to any payment provided for under this Agreement shall not be subject to any abatement, reduction, set off, defense, counterclaim or recoupment of any amount due or alleged to be due by reason of any past, present

or future claims of the Customer. Service Credits shall be subject to the further terms below. Service Provider will not issue refunds for any unused Services.

2.8 **MERCHANT FEES, LATE CHARGES AND COLLECTION COSTS.** Customers paying invoices via credit card or other payment method that incur merchant fees, shall be charged an additional 3% convenience fee (or if such merchant fee exceeds 3% of the balance of the payment, the cost of the full transaction fee, verification or hold amount) for using such payment method. Customer acknowledges that it is not a consumer for the purposes of receiving Services hereunder and that the addition of a convenience fee is therefore not prohibited by applicable law. Charges not in dispute which are not paid by Customer within thirty (30) days of Service Provider's invoice shall accrue a late fee which shall accrue daily at the rate of one and one-half percent (1.5%) per month until paid. Customer shall pay Service Provider's reasonable costs of collection, including reasonable attorneys' fees, incurred by Service Provider in collecting any Charges payable to it by Customer.

2.9 **OVERAGES AND ADDITIONAL CHARGES.** To the extent applicable to the Services and in the event that the Customer's usage of or access to the Services in any billing period exceed the usage allotment set forth in the applicable Service Order ("**Overage**"), including the usage allotment of electrical power, network bandwidth, the number of subscriptions and/or the allotment of any third-party products/services (each an "**Overage Product**"), the Charges invoiced by Service Provider to the Customer for the monthly period in which the Overage occurred shall be adjusted on a non-prorated basis accordingly to reflect the Overage in accordance with Service Providers then current unit price of such Overage Product. If Service Provider, during an investigation or trouble shooting of any issue related to the Services, determines in its reasonable opinion that the issue is caused by the Customer or related to a solution and/or service not included under the Services or attributable otherwise than to Service provider, then Service Provider reserves the right to pause work on the issue until the Customer has agreed to pay any Charges in respect of the appropriate additional costs relating to any associated engineering time or other costs incurred. Customer shall be invoiced and liable to pay the Charges outlined in the Acceptable Use Policy referred to in Section 4, for any non-compliance; this includes any corrective or investigative work undertaken by Service Provider in respect of Spam complaints, IP Blacklists or DDOS attacks derived from Customer's services at a rate of \$250 per hour (minimum one (1) hour charge applies). Overage Charges and additional Charges considered in this section may be invoiced in arrears separately to Customers regular monthly invoices.

3 TERM AND TERMINATION OF SERVICES PURSUANT TO A SERVICE ORDER.

3.1 **TERM.** The term of Services provided pursuant to each Service Order shall be for the period specified in the applicable Service Order for such Services or in the absence of any such period being specified a period of one year (the "**Initial Term**"). Unless otherwise agreed, the Initial Term of each Service Order shall be deemed to commence from the Service Commencement Date as notified to Customer by Service Provider and indicated on your first invoice. Upon expiry of the Initial Term, the Service Order shall automatically renew (i) for a subsequent one (1) month term for all Services initiated on a flexible monthly or 30-day Initial Term, or (ii) a further twelve (12) month term for all other Services (the Initial Term and each subsequent term, collectively the "**Term**") unless written notice of termination is provided by either party 30 days prior to the expiry of the then current Term.

3.2 **TERMINATION.** Either Customer or Service Provider may terminate the Services pursuant to a Service Order for cause if: (1) the other party breaches a material term or condition of this Agreement or the Service Order and fails to cure the breach within thirty (30) days after receipt of written notice of the breach; (2) the other party fails to cure a payment default within five (5) days after written notice by Service Provider of the default; (3) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (4) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors if such petition or proceeding is not dismissed within sixty (60) days of filing.

3.3 **EARLY TERMINATION FEE.** Except in the event of termination by Customer pursuant to section 3.2 or at the end of the Term by providing notice in accordance with section 3.1, Customer shall pay Service Provider, as liquidated damages and not as a penalty, an early termination fee equal to one hundred percent (100%) of the Charges for the remaining portion of the Term.

3.4 **HOLD OVER.** Upon termination of the services by either party for any reason, Service Provider shall cease providing the Service pursuant to the affected Service Order. Customer's obligations, including without limitation, to pay sums due and protect proprietary information, shall survive. Where applicable, in the event Customer notifies Service Provider that the services are still required by Customer following expiry of the term, Service Provider shall, at its discretion, continue to provide the Services on a flexible monthly Term chargeable at a 'hold over' rate of

one hundred and twenty five percent (125%) of the Charges and Customer shall be liable to pay such hold-over rates as Charges.

4 ACCEPTABLE USE OF SERVICES AND LAW ENFORCEMENT ACTIVITIES.

Services shall be subject to Service Provider's Acceptable Use Policy at all times which can be found at <https://colohouse.com/colohouse-policies>. Customer shall not use any Service in a manner prohibited by law or that Service Provider reasonably determines may adversely affect a Service, Service Provider's systems, Service Provider suppliers or other Customers, the integrity and operation of Service Provider's business, or Service Provider's ability to provide Services to other Service Provider customers. Service Provider may terminate or suspend any Service without notification if Service Provider determines to its reasonable satisfaction that Customer has used the Service to engage in any prohibited activity or a situation exists which may result in a similar threat (e.g. a denial-of-service attack). Any such Service Provider action shall not be deemed to be a Service Interruption. Service Provider may cooperate with law enforcement agencies in any investigation related to the use of a Service Provider Service and investigate any complaint or reported violation of law or Service Provider's policies and take any action it deems is reasonably appropriate as a result of such investigations.

5 EMERGENCY AND SCHEDULED MAINTENANCE.

In the event of any change in Service Provider standard scheduled maintenance window, Service Provider will provide reasonable notice by email to Customer of scheduled maintenance affecting the Services and will use reasonable efforts to notify Customer of emergency maintenance affecting the Services, provided that Service Provider may perform emergency maintenance at any time, without advance notice to Customer. During scheduled and emergency maintenance periods, Service Provider's Services may be unavailable to Customer. Service unavailability during maintenance periods shall not be considered a Service Interruption for purposes of service level provisions outlined in the Service Addendum. Customer is responsible for maintaining up to date contact information in accordance with Section 15 below.

6 DISCLAIMER OF WARRANTY.

SERVICE PROVIDER PROVIDES THE SERVICES "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED AND DOES NOT PROVIDE A WARRANTY OR GUARANTEE THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. SERVICE PROVIDER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING ANY WARRANTIES THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. CUSTOMER ACKNOWLEDGES AND AGREES THAT SERVICE PROVIDER PROVIDES NO WARRANTY, EXPRESS OR IMPLIED FOR ANY THIRD-PARTY MANUFACTURED OR DEVELOPED PRODUCT, TECHNOLOGY, SOFTWARE OR SERVICE AND WILL HAVE NO LIABILITY WHATSOEVER TO CUSTOMER FOR ANY DEFECTS IN THE SAME, OR FOR THE UNAVAILABILITY OF UPDATES, PATCHES OR REPAIR IN RESPECT OF ANY SUCH DEFECTS.

7 LIMITATIONS OF LIABILITY.

7.1 The provision of the Services by Service Provider is subject to the limitations on liability outlined in this Section and sets out the Parties' entire liability arising out of or in connection with the Agreement. Customer acknowledges and agree that the Charges for the Services under the Agreement are based upon this allocation of risk.

7.2 **CUSTOMER'S EXCLUSIVE REMEDY FOR ANY FAILURE OF SERVICE PROVIDER'S OBLIGATIONS PURSUANT TO THIS AGREEMENT SHALL BE THE REMEDIES SET FORTH IN SECTION 3.2 ABOVE AND ANY SERVICE CREDIT DUE PURSUANT TO ANY APPLICABLE SERVICE LEVEL AGREEMENT SET FORTH IN THE APPLICABLE SERVICE ADDENDUM FOR SUCH SERVICE. CUSTOMER ACKNOWLEDGES THAT, WHERE APPLICABLE, A SERVICE CREDIT IS CUSTOMERS SOLE AND EXCLUSIVE REMEDY IN RESPECT OF ANY BREACH OF A COLOHOUSE SERVICE LEVEL AGREEMENT.**

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

7.4 **IN NO EVENT SHALL SERVICE PROVIDER LIABILITY TO ANY CUSTOMER OR ANY THIRD PARTY IN ANY CIRCUMSTANCE EXCEED THE AMOUNT OF CHARGES CUSTOMER ACTUALLY PAID TO SERVICE PROVIDER FOR SERVICES IN THE MONTH PERIOD DIRECTLY PRIOR TO THE ACTION GIVING RISE TO THE ALLEGED LIABILITY.**

8 CUSTOMER OBLIGATIONS.

8.1 **END USER LICENCE TERMS.** Customer agrees: it will not copy any license keys or otherwise decrypt or circumvent any license keys with respect to software provided by Service Provider or used in connection with the Services nor reverse engineer, decompile, or disassemble any such software or code, except to the extent such activity is expressly permitted by the manufacturer or developer of the software or code or applicable law; it will not use license keys provided by Service Provider on a second system or through any other service provider; it will not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on or during the use of any such software or service; to observe the terms of any license or applicable end user subscriber agreement for the software or other products made available to Customer; and, assist and enable Service Provider access to systems in order to verify compliance with this section. Service Provider will not have any liability to Customer or any other party resulting from Customer's violation of any license agreements or end user subscriber agreements that govern such software or products and Customer will be solely responsible for any additional software or products that Customer installs or uses in connection with the Services. Additional restrictions may apply to any Microsoft software provided to Customer in connection with the Services. Customer agrees to comply with all applicable Microsoft Corporation licensing terms. Customer's own Microsoft licenses must be maintained under Microsoft's Software Assurance Program. In the event Customer's Software Assurance expires, Customer must either (i) renew its compliance with the Software Assurance Program, (ii) purchase a valid Microsoft license from Service Provider; or (iii) remove the expired license from the Services. Customer shall reimburse Service Provider any costs incurred as a result of Customer's non-compliance with this clause.

8.2 **EXPORT, SANCTIONS.** Customer's use of the Services must be in compliance with applicable laws. Without limiting the foregoing statement, Customer agrees to comply with all restrictions and regulations of the U.S. Department of the Treasury, Commerce, Foreign Affairs, or any other domestic or foreign agency or authority in connection with Customer's use of the Services, and to not, in violation of any laws, transfer or authorize the transfer of any Services into any U.S., U.N., or any other applicable domestic or foreign governing agency or authority's embargoed countries. Customer represents and warrants that it is not located in, under the control of, or a national or resident of any such country or using the Services for a purpose that is otherwise prohibited in accordance with any such list.

8.3 **ANTI-CORRUPTION.** The Customer will comply with all applicable anti-corruption laws of the United States and other countries, including the United States Corrupt Practices Act, the Canadian Criminal Code and Corruption of Foreign Public Officials Act and the U.K. Bribery Act 2010. Neither the Customer nor any of its representatives shall, directly or indirectly, offer or pay anything of value (including gifts, travel, entertainment expenses and charitable donations) to any official or employee of any government, government agency, political party or public international organization, or any candidate for political office, to (i) improperly influence any act or decision of such official, employee or candidate for the purpose of promoting the business interests of the other party in any respect, or (ii) otherwise improperly promote the business interests of the other party in any respect.

8.4 **IP ADDRESSES.** Customer acknowledges it has no right, title or interest in or to any network address or identifier (IP address and host name) ("Identifier") assigned to the Customer by Service Provider as part of the Services and that the Identifier may be determined by a third-party authority. Service Provider may, on reasonable notice to the Customer, change or require the Customer to update the Identifier.

8.5 **INSURANCE.** Service Provider will maintain insurance aligned with its potential liabilities under this Agreement. Customer acknowledges and agrees that insurance covering Customer losses, including losses related to interruption of business or cybercrime, is Customer's responsibility.

9 **USE OF NAME AND MARKS.** Neither party will, without the prior written consent of the other party, use any trademark, service mark, brand name, copyright, patent or any other intellectual property of the other party or its respective affiliates. Service Provider's and Customer's name and trademarks are proprietary and nothing herein constitutes a license authorizing its use by the other party.

10 **INDEMNIFICATION.** Customer shall indemnify and hold Service Provider harmless from and against any claims, damages, losses, liability, and expenses (including reasonable attorneys' fees) arising as a result of any content or software introduced, or allowed to be introduced, to Service Provider hardware or network that breaches any third party intellectual property rights or that is a violation of the Service Provider Acceptable Use Policy whether such content or software is introduced by Customer, its employees or contractors, anyone using the Services by or through Customer, or anyone authorized or permitted by Customer to access the Service Provider facilities.

11 **CONFIDENTIALITY.** Customer acknowledges that the following Service Provider information is Service Provider proprietary information "Proprietary Information" whether or not reduced to writing and whether or not specifically identified as "proprietary" or "confidential."

(a) All information obtained by Customer as a result of access to the Service Provider colocation facilities, including without limitation information which

could facilitate a security breach or disruption of or endanger Service Provider facilities, operations or systems;

- (b) All Service Provider pricing and other provisions of this Agreement except to the extent information is posted by Service Provider on areas of its website which are publicly accessible without restriction; and
- (c) any audit, compliance, certification or security reports provided to Customer.

Customer shall not disclose any Proprietary Information or use it for its own benefit except as required to perform its obligations under this Agreement. Customer shall limit disclosure of Proprietary Information only to its employees and consultants having the need to know and shall take all reasonable steps to prevent any inadvertent or wrongful disclosure or use by such employees and consultants.

- 12 PCI COMPLIANCE.** Service Provider acknowledges that it is responsible for the security of cardholder data to the extent that Service Provider has control of that data, and is responsible for the physical security of the systems that house cardholder data stored there by the customer. The customer acknowledges that they are responsible for determining the PCI DSS requirements applicable to them and their unique workloads.
- 13 TRANSFER; ASSIGNMENT.** Customer may resell the Services to third parties, provided always that Customer's reselling of the Services will not create a relationship between Service Provider and any other person, nor will any other person be entitled to exercise any rights or remedies under the Agreement. Customer will remain liable to the Service Provider as primary account holder at all times. Customer may not assign or transfer its rights and obligations under this Agreement without the prior written consent of Service Provider, which consent Service Provider may condition on Customer's agreement to remaining bound by the Agreement to pay Service Provider for Services utilized by Customer's assignee or transferee. Service Provider may assign or transfer its rights and obligations under this Agreement without Customer's consent.
- 14 PRIVACY NOTICE.** Service Provider will hold certain Customer personal information as reasonably required to provide the contracted Services and to collect fees owed. Service Provider will never disclose such information to any third party except as reasonably required by law (as evidenced by an order of a court or other competent jurisdiction) and to debt collection services if needed. Further details of Service Providers use of personal information and Customer's associated rights are outlined in Service Provider's Privacy Policy as made available on its website.
- 15 NOTICES.** Notices and other communications between Service Provider and Customer related to this Agreement or a Service governed by it may be delivered by email. Communications may be directed to Service Provider at legal.notices@colohouse.com . Customer shall provide Service Provider with a valid email address to be used by Service Provider for communications related to this Agreement and shall update that address as needed. Service Provider shall fulfill its notice obligations by providing Customer with notice at the email address most recently provided to Service Provider by Customer for use in providing notices pursuant to this Agreement.
- 16 DISPUTE RESOLUTION.** This Agreement shall be governed by the laws of the state of New York. The location of any legal proceeding arising out of or related to the Services or this Agreement shall be in New York City, New York. The prevailing party in any legal proceeding arising out of or related to this Agreement shall be entitled to recover its reasonable attorneys' fees and court costs incurred in the proceeding, including in any appellate proceedings.
- 17 FORCE MAJEURE.** Service Provider shall not be in default under any provision of this Agreement or be liable for any delay, failure of performance or interruption of any Service resulting, directly or indirectly, from causes beyond Service Provider's reasonable control, including but not limited to any of the following: earthquake, lightning or other acts of God; fire or explosion; electrical faults; vandalism; cable cut; water; fire; fire suppression activities, flood; weather conditions; action of any governmental or military authority; national emergency; insurrection; riot; war; acts of terrorism or civil disturbance; strikes; lockouts; work stoppages or other labor difficulties; supplier failure; shortage; or telecommunication or other Internet provider failure.
- 18 SEVERABILITY.** If any part of this Agreement is found to be unenforceable or unlawful, then that provision shall be deemed severable and shall not affect the validity and enforceability of any remaining provisions of the Agreement.
- 19 ENTIRE AGREEMENT.** This Agreement, including all referenced documents, constitutes the entire agreement and understanding between the parties. It supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to its subject matter.