



Master Services Agreement

This MASTER SERVICES AGREEMENT (this "MSA") is entered into by and between Cologix Canada, Inc. with offices located at 156 Front Street West, Suite 401c, Toronto, Ontario M5J 2N1 ("Cologix") and _____ with offices located at _____ ("Customer") as of the latest dated signature below (the "Effective Date"), and consists of and is subject to the general terms and conditions set forth in this MSA and all Schedules and Service Orders (each as defined below) that are attached to this MSA or are subsequently entered into by the parties hereto (collectively, the "Agreement").

1. **Services.** Cologix provides the services ("Services"), in accordance with the general terms and conditions set forth in this MSA, as well as the terms and conditions set forth on the schedule(s) referencing this MSA, and attached hereto or executed hereafter (each, a "Schedule"). This Agreement shall apply to all Services provided to Customer by Cologix.
2. **Service Orders.** Cologix will perform the Services specified in any written order between Cologix and Customer that is signed by both parties or, with respect to cross-connects only, any email order that is sent by Customer and confirmed by Cologix via email (each, a "Service Order"). Each Service Order shall identify the Services to be provided by Cologix to Customer, the recurring charges and any non-recurring charges for such Services and the term during which such Services are to be provided. Service Orders under this MSA may be entered into and performed by Cologix and/or any of its Affiliates (as defined below), including an Affiliate authorized to provide Service(s) in a country or jurisdiction other than the country or jurisdiction within which this MSA has been executed. As used herein, "Affiliate" shall mean any entity controlled by, controlling or under common control with the applicable party.
3. **Representations and Warranties.**
 - a. Cologix represents and warrants to Customer that Cologix: (i) has the authority to enter into the Agreement and the Agreement constitutes a valid and binding obligation of Cologix that does not violate any other agreement between Cologix and any other person; (ii) will provide the Services in compliance with all applicable laws, rules and regulations; and (iii) Cologix will perform the Services in a workmanlike manner.
 - b. Customer represents and warrants to Cologix that Customer: (i) has the authority to enter into the Agreement and the Agreement constitutes a valid and binding obligation of Customer that does not violate any other agreement between Customer and any other person, (ii) will use the Service(s) in compliance with all applicable laws, rules and regulations; and (iii) will comply with Cologix's Policies and Procedures: Facility User Guide, as amended from time to time ("Policies and Procedures"), by publishing at www.cologix.com and posting at Cologix's facilities. In addition to the foregoing, Customer hereby represents, warrants and covenants to Cologix that if Customer is handling "protected health information" or, if Customer is a "covered entity", in each case, as such term is defined by The Health Insurance Portability and Accountability Act of 1996 (or the Canadian equivalent, as the same may be amended, "HIPAA"), then, to the extent any data is moving through a Cologix facility, Customer will, at all times during the term of this MSA, ensure that such data is encrypted in both storage and flight as required pursuant to all applicable HIPAA regulations.
 - c. If Customer intends to resell or sublicense the Service(s), Customer further covenants that Customer (i) will not do any of the foregoing without Cologix's prior written consent, (ii) Customer will remain liable for the payment of all charges due under each Service Order and all acts or omissions of any sublicensee of Customer shall be attributable to Customer under the Agreement, and (iii) will indemnify, defend and hold Cologix harmless from claims made against Cologix by any third party that Customer resells or sublicenses the Service(s).

- d. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, NO WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY COLOGIX, AND COLOGIX EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CUSTOMER IS SOLELY RESPONSIBLE FOR AND COLOGIX EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND LIABILITIES OF ANY KIND RELATING TO CUSTOMER'S SOFTWARE AND HARDWARE, INCLUDING THIRD-PARTY SOFTWARE AND/OR HARDWARE LICENSED BY CUSTOMER.

4. Billing; Payment of Invoices; Taxes.

- a. Cologix will inform Customer in writing, including, without limitation, email communication, that Customer's ordered Service(s) are available for use by Customer ("Service Commencement Notice"). Upon receipt of such notice, Customer shall have a period of seventy-two (72) hours to confirm that the Service(s) is properly functioning. Unless Customer delivers written notice to Cologix within such seventy-two (72) hour period that the Service(s) is not properly functioning, billing shall commence following the date of the Service Commencement Notice ("Service Commencement Date"), regardless of whether Customer is prepared to accept delivery of the ordered Service(s). In the event that Customer notifies Cologix within the time period stated above that the Service is not functioning properly, then Cologix shall correct any deficiencies in the Service(s) and deliver a new Service Commencement Notice to Customer, after which the process stated above will be repeated. Notwithstanding the foregoing, if Customer has not provided Cologix with its final power configuration with respect to the ordered Service(s) within ten (10) business days of Customer's execution of the applicable Service Order, Customer acknowledges that Cologix shall have the right to deliver the Service Commencement Notice and commence billing for the Service(s) despite the fact that the Service(s) are not available to Customer for Customer's use.
- b. Unless otherwise specified in the applicable Service Order, any non-recurring charges will be invoiced by Cologix following the installation of the Services set forth in the applicable Service Order. Recurring charges will be billed monthly in advance, except for charges that are dependent upon usage of Services, which are billed in arrears. Billing for partial months will be prorated based on a calendar month.
- c. All amounts payable under the Agreement shall be payable in full within thirty (30) days of the date of invoice (the "Grace Period"), in Canadian dollars, unless otherwise specified in the applicable Service Order. Cologix reserves the right to charge a late fee of 1.5% per month or the maximum rate permitted by law, whichever is less, calculated from the end of the Grace Period. In addition, upon expiration of the Grace Period, Cologix reserves the right to, without limitation, suspend the performance of the Service(s), restrict Customer's access to the Customer space and equipment, refuse to provide any existing Service(s) and/or new Service(s) requested by Customer, and/or exercise any termination rights it has under this MSA.
- d. If Customer reasonably disputes an invoice, Customer must pay the undisputed amount before the expiration of the Grace Period and submit written notice of the disputed amount, within thirty (30) days of the date of the disputed invoice (with details of the nature of the dispute and the Service(s) and invoice(s) disputed). If the dispute is resolved against Customer, Customer shall pay the disputed amount plus interest from the date originally due.
- e. Cologix reserves the right to change Customer's payment terms, including requiring a deposit or another form of security, at any time when Customer's payment history under any Service Order does not conform to this Section 4 or Customer has an Insolvency Event (as

defined below). As used herein, "Insolvency Event" means making a general assignment for the benefit of a party's creditors, filing a voluntary petition in bankruptcy or any petition or answer seeking, consenting to, or acquiescing in reorganization or similar relief or an involuntary petition in bankruptcy or other insolvency protection is filed against the applicable party. The acceptance and deposit by Cologix of any payment from Customer that contains reference of any type that such payment constitutes "payment in full" shall not constitute an accord and satisfaction or a waiver by Cologix of any right(s) it possesses, in law or equity, to collect payment in full from Customer for any and all Services provided to Customer under the Agreement.

- f. All charges for Service(s) are exclusive of applicable taxes and fees. Except for taxes based on Cologix's net income, Customer shall be responsible for all taxes and fees that arise in any jurisdiction, however designated, imposed on, incident to, or based upon the provision, sale or use of the Service(s) (collectively, the "Taxes"). Customer shall indemnify, defend and hold Cologix harmless from payment and reporting of all such Taxes, including costs, expenses, and penalties incurred by Cologix in settling, defending or appealing any claims or actions brought against Cologix related to, or arising from, Customer's non-payment of any such Taxes. If Customer is entitled to an exemption from any Taxes, Customer is required to present Cologix with a valid exemption certificate (in a form reasonably acceptable to Cologix). Cologix will give effect to any valid exemption certificate provided by Customer in accordance with the foregoing sentence to the extent it applies to any Service billed by Cologix to Customer following Cologix's receipt of such exemption certificate.

5. Term, Termination; Expiration.

- a. Unless otherwise specified in a Service Order, all Service Orders shall automatically renew for successive terms equal to twelve (12) months in length, except for Service Orders that have month to month terms which automatically renew for successive one-month terms (each a "Renewal Term"), unless either party provides written notice of non-renewal to the other party at least thirty (30) days prior to the end of the then-current term ("Non-Renewal Notice Period"). Cologix may increase any charges payable by Customer to Cologix during any Renewal Term by providing written notice of the new applicable charges at any time prior to the end of the then-current term; provided, however, if Cologix delivers such notice during the Non-Renewal Notice Period, Customer shall have thirty (30) days from the date of Cologix's notice to give notice of non-renewal.
- b. Either party may terminate the Agreement or any Service Order, (i) if the other party fails to perform or breaches any material term or condition of the Agreement (other than as provided below) and does not cure such breach within thirty (30) days (ten (10) days for late payment of fees) following the receipt of a written notice from the non-breaching party specifying the nature of the breach in reasonable detail and stating such party's intention to terminate the Agreement and/or Service Order, as applicable; or (ii) the other party has had an Insolvency Event. Other than as expressly provided in the Agreement, neither party shall have the right to terminate the Agreement or any Service Order during a term. If Customer terminates the Agreement or any Service Order for convenience prior to the end of the applicable term thereof, then Customer shall be required to provide not less than thirty (30) days' prior written notice to Cologix of such termination, and, prior to the effective date of such termination (and prior to Customer's removal of its equipment and personal property from the applicable Cologix facility), Customer shall pay to Cologix, as liquidated damages, a termination fee in an amount equal to one hundred percent (100%) of the monthly recurring charges due under the terminated Service Order(s) for the remainder of the term of such Service Order(s). The failure to pay amounts owed under a Service Order when due shall be considered a material breach of the Agreement. Notwithstanding the

foregoing, Customer's sole remedies for Service outages, failures or defects are contained in any service level agreement(s) ("SLAs") included in any Schedule, if any.

- c. Within five (5) business days of expiration, or the earlier termination, of the Agreement or any Service Order, Customer shall remove all of its equipment and other personal property (which shall include any hardware or software licensed by Customer from a third party) from Cologix's facility(ies). If Customer fails to remove its equipment or other personal property, Cologix may, without prior notice to Customer, disconnect, remove and dispose of Customer's equipment or other personal property at Customer's expense.
- d. In the event of any change in applicable law, regulation, decision, rule or order that materially increases the costs or other terms of delivery of the Service(s), Cologix and Customer will negotiate, in good faith, regarding how to address the change and, in the event that the parties are unable to reach agreement within thirty (30) days after Cologix's delivery of written notice requesting negotiation, then (i) Cologix may modify the Agreement upon written notice, to the extent necessary to address such change, or terminate the Agreement, and (ii) if Cologix elects to modify the Agreement, Customer may terminate the affected Service(s) by delivering written notice of termination to Cologix no later than thirty (30) days after its receipt of Cologix's notice.

6. Limitation of Liability. Except where a party has an indemnification obligation to the other party or where such party has acted with gross negligence or willful misconduct, in no event will either party be liable to the other party for any indirect, consequential, incidental, special or punitive damages, including, without limitation, loss of use, interruption of business, loss of data or loss of profits, arising out of or in any way connected with the Agreement or the Services, even if the relevant party has been advised of the possibility of such damages.

7. Indemnification. Each party agrees to indemnify the other party, its Affiliates, and their respective officers, directors, members, shareholders, employees, agents, assigns and successors, and shall hold them harmless against any losses, liabilities, damages, costs or expenses (including reasonable attorneys' fees) resulting from a third party claim, arising out of or alleged to have arisen out of, (a) such party's breach of its obligations, representations or warranties under the Agreement or (b) bodily injury, death or property damage caused by such party. The indemnified party agrees to give prompt written notice to the indemnifying party of any such claim; provided, that any delay in furnishing such notice shall not discharge the indemnifying party from its indemnification obligation hereunder, except to the extent such delay results in actual prejudice to the indemnifying party. The indemnifying party shall undertake and conduct the defense of any claim so brought. The indemnifying party shall keep the indemnified party advised of the progress of any such claim and the indemnified party shall have the right to participate in such claim at its own expense. If the indemnifying party shall fail to take timely action to defend any such claim then the indemnified party may defend such claim at the indemnifying party's expense. The indemnifying party shall not have the right to settle, compromise or otherwise enter into any agreement regarding the disposition of any claim without the indemnified party's prior written consent, which may not be unreasonably withheld, except for a claim solely for monetary damages.

8. Insurance. Customer agrees to keep in full force and effect during the term of the Agreement: (a) comprehensive general liability insurance, including contractual liability insurance, in an amount not less than One Million Dollars \$1,000,000 per occurrence, providing for the investigation, defense and satisfaction (by settlement or otherwise) of any claim under the Agreement, (b) "Special Causes of Loss" (formerly known as "All Risk") Property insurance covering all of Customer's personal property located at any of Cologix's facilities and (c) workers' compensation insurance in an amount not less than that required by applicable law and Employer's Liability

with limits of at least Five Hundred Thousand Dollars (\$500,000). Customer acknowledges that (x) it retains the risk of loss for, or damage to, its equipment and other personal property located at any of Cologix's facilities and (y) Cologix's insurance policies do not provide coverage for Customer's equipment or other personal property. Customer's general liability policy shall indicate that insurer provides the primary, non-contributory insurance for any claims under the Agreement. Each of Customer's general liability policy and property insurance policy shall include a provision denying insurer subrogation rights against Cologix and the Cologix indemnitees. Customer shall cause the insurance company issuing such policies to issue a certificate to Cologix confirming that such policies are in full force and effect and provide coverage to Cologix and the Cologix indemnitees as additional insureds and confirming that before any cancellation or material modification, the insurance company will provide Cologix with thirty (30) days prior written notice. Customer shall require any contractor, customer or other third party entering a Cologix facility on Customer's behalf to procure and maintain the same types, amounts and coverage extensions as required of Customer.

9. Confidential Information. "Confidential Information" means Cologix's pricing and terms of Service and any reports or other documents provided by Cologix to Customer with respect to Cologix's business or operations. Customer agrees that it (i) will not disclose the Confidential Information to any third party except as required by law and (ii) Customer will take reasonable precautions to protect the confidentiality of such Confidential Information. In the event that Customer is required by law to make any disclosure of any Confidential Information, Customer must first give written notice of such requirement to Cologix, and must permit Cologix to intervene in any relevant proceedings to protect its interests in the Confidential Information. Customer acknowledges and agrees that damages at law would be an insufficient remedy to Cologix in the event that any of the covenants contained in this Section are violated. Accordingly, in addition to any other remedies or rights that may be available to Cologix, Cologix shall also be entitled, upon application to a court of competent jurisdiction, to obtain injunctive relief to enforce the provisions of this Section, and in any proceeding in which Cologix attempts to specifically enforce any or all such covenants, Customer hereby waives the defense that an adequate remedy at law exists.

10. Publicity. During the term of the Agreement, Customer grants Cologix the right to use Customer's logo and name on Cologix's website and promotional materials. Customer shall have the right to require Cologix to terminate any such uses at any time by written notice.

11. Relationship of Parties. Nothing in the Agreement will be construed to imply a joint venture, partnership or agency relationship between the parties, and Cologix will be considered an independent contractor when performing Service(s) under the Agreement.

12. Assignment. Customer may not assign the Agreement without Cologix's prior written consent.

13. No Third Party Beneficiaries. No provisions of the Agreement are intended to, or shall be construed to, confer upon any person, other than the parties hereto, any rights, remedies or other benefits under or by reason of the Agreement.

14. Notices. All notices required or permitted hereunder must be given in writing and, except for routine notices that the parties agree to send and receive electronically, shall be considered properly given if hand-delivered, mailed first class mail (postage prepaid and return receipt requested) or sent by express overnight courier at the address specified on the first page of this MSA or at such other address as a party may specify in writing pursuant to this Section. All notices shall be deemed given when received.

15. Governing Law; Consent to Jurisdiction. The Agreement shall be deemed to be a contract made under, and shall be construed in accordance with, the laws of the Province of Ontario. In addition, each party hereby consents to the jurisdiction of any court empowered to enforce the Agreement located in Toronto, Canada.

16. Force Majeure. Except with respect to any payment obligations, neither party will be liable for any failure or delay in its performance under the Agreement due to causes beyond its reasonable control. In the event that Cologix is not able to deliver any Service(s) as a result of a force majeure event, Customer shall not be obligated to pay Cologix for the affected Service(s) for so long as Cologix is unable to deliver the affected Service(s).

17. Waiver. No waiver will be effective unless documented in a writing signed by an authorized representative of the party against which enforcement of the waiver is sought. The failure of either party to insist upon strict performance of any of the terms or provisions of the Agreement, or the exercise of any option, right or remedy contained herein, shall not be construed as a waiver of any future application of such term, provision, option, right or remedy, and such term, provision, option, right or remedy shall continue and remain in full force and effect.

18. Survival. Any term or provision of the Agreement of an ongoing nature and/or which, by their nature and context, should reasonably be expected to survive the expiration or earlier termination of the Agreement, shall so survive such expiration or termination thereof.

19. Prevailing Party. In the event of a dispute arising from or related to the Agreement, the substantially prevailing party shall be entitled to recovery of all reasonable costs incurred, including, without limitation, court costs, attorneys' fees and other related costs and expenses.

20. Counterparts; Electronic Copies. This MSA and any Schedule or Service Order may be executed in counterparts which, when taken together, shall constitute one and the same document. In addition, each party hereby agrees that facsimile, photographic or electronic copies of any of the foregoing shall be deemed an original thereof. Finally, each party hereby consents to the use of electronic signatures, including via Adobe e-signature or a similar product or service, and acknowledge and agree that no electronic record or signature shall be challenged or denied legal effect or enforceability because it is in electronic form.

21. Severability. If any term or provision of the Agreement shall be declared by a court of competent jurisdiction to be invalid, unenforceable or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the parties, the Agreement shall be terminated by the mutual consent of the parties.

22. Headings. Headings are for ease of reference only and shall not have any effect upon the construction of the Agreement.

23. Construction. The parties agree that each party has reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

24. Entire Agreement; Modification; Order of Precedence. The Agreement constitutes the entire agreement between the parties relating to its subject matter and the Agreement supersedes all prior agreements and understandings between the parties, oral or written, with respect to its subject matter and may not be changed unless mutually agreed upon in writing by both parties. In case of a conflict between any of the terms and

conditions in this MSA and any other terms and conditions in any Schedule or Service Order, the order of precedence shall be: any Schedule, any Service Order, and this MSA. For the avoidance of doubt, any purchase order sent to Cologix by Customer (for Customer's administrative purposes or otherwise) shall not be binding.

IN WITNESS WHEREOF, the parties have executed this MSA by their duly authorized representatives.

COLOGIX:

(Signature)

(Name)

(Title)

(Date)

CUSTOMER:

(Signature)

(Name)

(Title)

(Date)