



## HOSTING AND MANAGED SERVICES SCHEDULE

This HOSTING AND MANAGED SERVICES SCHEDULE (this "Schedule") is made between Cologix Canada, Inc. with offices located at 225 E. 16th Avenue, Suite 900, Denver, CO 80203 ("Cologix") and \_\_\_\_\_ with offices located at \_\_\_\_\_ ("Customer") as of the latest dated signature below and incorporates and is governed by the terms and conditions of the Master Services Agreement (the "MSA") entered into by the parties. Any terms used herein and not defined herein shall have the meaning given to such terms in the MSA.

- 1. Cologix Provided Hardware and Software.** Any hardware or software provided by Cologix pursuant to a Service Order in connection with hosting and managed services ("Hosting and Managed Services") shall be purchased by Cologix for Customer as set forth in the applicable Service Order. Any such Cologix-provided hardware and software shall be covered by the original manufacturer's warranty only. If the Service Order stipulates specific hardware or software which is no longer available or supported by Cologix, a more current product with equal or better specifications will be substituted and the same shall not constitute a breach or default by Cologix under the terms of such Service Order.
- 2. Locations and Access.** Cologix reserves the right, from time to time, to make changes as to how and where various Services are distributed from. Therefore, unless otherwise specified in a Service Order, specific locations and access to the Services may be altered, changed, or otherwise modified in Cologix' sole discretion and without liability, but subject in all instances to Section 16 hereof.
- 3. Maintenance and Ongoing Services.** Cologix shall support any and all hardware and software provided by Cologix, as stipulated in the Service Order, which is necessary for Customer to fully access and utilize the Hosting and Managed Services in accordance with any applicable SLA set forth herein. Cologix shall deliver or provide access to the Services to Customer, with the functionality and appearance specified in the Service Order. If at any time Customer makes any changes to Cologix supplied content, code, software, or hardware, or Cologix is denied access to the hardware, software, or related equipment, Cologix shall not be responsible for any maintenance, regardless of whether such changes were authorized, inspected, or confirmed by Cologix.
- 4. Remote Hands.** Cologix may, although it is under no obligation to, assist Customer, by providing remote hands services ("Remote Hands") or technical support, in repairing or remedying any issues with respect to the Services not otherwise covered by an applicable SLA or Service Order. Customer shall pay for any Remote Hands or technical support requested by Customer at Cologix' then current rates for such work. Cologix makes no guarantee of work performed for Remote Hands or technical support services and shall not be liable for any losses or damages due to the performance of such Remote Hands services or technical support. All Remote Hands and technical support shall be provided by Cologix to Customer on an "As Is" "As Available" basis.
- 5. Access to Cologix Equipment.** Customer acknowledges that the use of the Hosting and Managed Services may periodically require updates and/or changes to certain licensed software resident in the Cologix equipment used to support the Hosting and Managed Services. If Cologix has agreed to provide updates and changes, Cologix may perform such updates and changes remotely or on-site, at Cologix' sole option. Customer hereby agrees and consents to provide Cologix free access for such updates deemed reasonably necessary by Cologix. If for any reason, Cologix does not have access to the Cologix equipment supporting the Hosting and Managed Services, including that Customer does not provide Cologix with access, Cologix shall not be liable for any and all maintenance, upgrades, or changes. If Customer denies access for any reason to Cologix equipment, and Cologix, in Cologix' sole discretion, requires access to provide contracted Hosting and Managed Services, maintenance or upgrades, Cologix may, in Cologix' sole discretion, suspend or terminate Customer Services, and Customer shall owe to Cologix what Customer would have otherwise owed Cologix for the suspended Hosting and Managed Services if they had not been suspended and/or 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).
- 6. Acceptable Use Policy.** Customer represents and warrants to Cologix that it will at all times comply with Cologix's Hosting and Managed Services Acceptable Use Policy, as amended from time to time (the "Managed Services AUP"), by publishing at [www.cologix.com](http://www.cologix.com).
- 7. Time and Quantity Measured Services.** Any measured services are recorded in whole units (e.g. hours, months, gigabytes, etc.), with partial units rounded up to the next whole unit.
- 8. Preservation of Customer Data.** Customer acknowledges and agrees that, unless stipulated otherwise in a Service Order, (i) Customer is responsible for developing and maintaining procedures (apart from any applicable Hosting and Managed Services) to protect Customer's content, including, without limitation, making appropriate backup copies of Customer content as may be necessary for reconstruction of any data, files, informational materials, or electronic messages; (ii) Cologix is not responsible for backup and restoration of Customer content or data; and (iii) Cologix' responsibility is limited to the provided Hosting and Managed Services and not ensuring the integrity or completeness of any Customer content, data, or code.  
  
If Customer's Service Order provides for the availability of backup services, Cologix is responsible for the requested backup services themselves and not for the completeness or integrity of Customer content. It is Customer's responsibility to ensure that any and all backups occur regularly. Cologix is limited to providing the Hosting and Managed Services as stipulated in the Service Order.
- 9. Unauthorized Access to Data or Use of the Hosting and Managed Services.** Cologix is not responsible for unauthorized access to Customer data or the unauthorized use of the Hosting and Managed Services. Customer is responsible for the use of the Hosting and Managed Services by any Affiliate, employee, sub-contractor, or other party granted access by any of Customer employees, or any person Customer has granted access to the



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Hosting and Managed Services, and any person who gains access to Customer data or the Services as a result of Customer failure to use reasonable security precautions, even if such use was not authorized by Customer. By using the Hosting and Managed Services to publish, transmit or distribute material or content, Customer (i) represents and warrants to Cologix that the material or content complies with the provisions of the Agreement, (ii) authorizes Cologix, its agents and Affiliates to reproduce, publish, distribute, and display content solely in accordance with any applicable Service Order and (iii) represents and warrants to Cologix that it has the right to provide such authorization to Cologix. Customer acknowledges that due to the inherent nature of the Internet and beyond the control of Cologix, material posted or transmitted using the Hosting and Managed Services may be copied, republished or distributed by third parties, and agree to indemnify, defend and hold harmless Cologix, its agents and affiliates for any harm resulting from such actions.

10. **Monitoring of Content.** Cologix shall have no obligation to monitor postings, content or transmissions made in connection with the Hosting and Managed Services. Cologix, without Customer's prior approval, will not monitor or grant access to any postings, content, or transmissions unless required by law, valid subpoena, or other legal requirement. Cologix may use and disclose such monitoring and postings as required.
11. **Removal of Data.** In the event that Cologix becomes aware of any content, code, scripts, software, or other data provided or transmitted by Customer or equipment provided or owned by Customer, which is being used in violation of any applicable law or regulation, including but not limited to the CAN-SPAM Act and the DMCA ("Infringing Material"), Cologix reserves the right to remove, destroy, or restrict access to the Infringing Material, solely to comply with applicable law. Customer agrees that it is solely responsible for any and all use of the Hosting and Managed Services provided by Cologix, and that Cologix may deem it necessary to remove all content or terminate any and all Hosting and Managed Services to Customer if Customer fails to follow any and all applicable laws and regulations. Customer shall hold Cologix harmless for any and all good faith efforts by Cologix to comply with any and all laws and regulations.
12. **Licensed Software.** Customer agrees that they will not violate the license attributed to any software licensed to Customer in connection with the Hosting and Managed Services (the "Licensed Software"), which license may restrict Customer's ability to (i) copy the Licensed Software (or any upgrades thereto or related written materials), except as permitted by the express written consent of Cologix; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software to any third party; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.
13. **Export Laws and Regulations.** Customer acknowledges that any products, software, and/or technical information (including, but not limited to, services and training) provided pursuant to the Agreement may be subject to U.S. export laws and regulations, and any foreign use or transfer of such products, software, and technical information must be authorized under those regulations. Customer agrees that it will not use, distribute, transfer, or transmit the products, software, or technical information (even if

incorporated into other products) except in compliance with U.S. export regulations. If requested by Cologix, Customer also agrees to sign written assurances and other export-related documents as may be required for Cologix to comply with U.S. export regulations.

14. **Customer Support.** Cologix provides for the coordination and resolution of problems associated with the Hosting and Managed Service(s). Support is limited to the product features included in the Service(s) purchased, as defined in the applicable Service Order.
15. **Service Description.** Cologix provides the following Hosting and Managed Services, which, if ordered by Customer, will be set forth in the applicable Service Order:
  - a. **FLEXBackup.** Is a Backup-as-a-Service product which is charged to Customer based on committed storage threshold which is set forth in the applicable Service Order (the "Committed Storage Threshold"). All use of the Service by Customer in excess of the Committed Storage Threshold will be charged to Customer at a higher rate per GB until the last day of the month in which either (i) Customer deletes available backups until usage is below the Committed Storage Threshold; or (ii) Customer formally increases the Committed Storage Threshold pursuant to an incremental Service Order such that Customer's use of the Service is no longer in excess of the combined Committed Storage Threshold. The FLEXBackup Service is sold in two types of architectures:

*Single Site* - A single shared physical vault holding Customer encrypted data located in a Cologix facility. For the avoidance of doubt, it is Customer's responsibility, and not Cologix's, to encrypt the Customer data.

*Replicated* - Two separate physical vaults holding Customer encrypted data located in two separate Cologix facilities. For the avoidance of doubt, it is Customer's responsibility, and not Cologix's, to encrypt the Customer data.

Customer's that are "business associates" or "covered entities" under the HIPAA Rules (defined below) shall not be permitted to order FLEXBackup Services.
  - b. **FLEXBridge.** Is a layer 2 cross connect from the Hosted and Managed Services environment to the meet-me-room located in the facility at the specific connection point identified in the related Service Order or LOA/ CFA.
  - c. **Load Balancer.** Is a physical load balancer managed by Cologix, in which load balancing services may be provided by Cologix on a single network device shared by multiple customers.
  - d. **Router.** Is a 48-port switch ordered by Customer with respect to which Customer will pay Cologix to install within Customer's colocation space ordered at the applicable Cologix facility.



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- e. FLEXSecurity. This is a network security solution with the following specific options:

*DDoS* - A Distributed Denial of Service (“DDoS”) mitigation tool configured and managed by Cologix at Customer’s reasonable direction communicated in writing to Cologix from time to time and subject to Cologix’s approval.

*Firewall* - A physical firewall configured and maintained by Cologix at Customer’s direction.

- f. FLEXServer. This is a dedicated physical server installed by Cologix and licensed to Customer pursuant to the specifications agreed by the parties as set forth in the Service Order.

- g. FLEXStorage. This is a Storage-as-a-Service (“SAAS”) solution provided in two possible architectures:

*Dedicated* - A dedicated physical Storage Area Network (“SAN”) which may be connected to the Customer’s environment through the additional purchase of Cologix cross-connect Services as set forth in a Service Order.

*Shared* - A shared physical SAN which may be connected to the Customer’s environment through the additional purchase of Cologix cross-connect Services as set forth in a Service Order.

- h. FlexVirtual Data Center / FLEXVDC. This is a multi-customer third party environment, hosted by Cologix within a Cologix facility, in which Customer is provided pool of compute resources the amount of which will be mutually agreed between the parties at the time the applicable Service Order is executed.

- i. Private Cloud. Is a single-customer third party environment, hosted by Cologix within a Cologix facility, in which Customer is provided pool of compute resources the amount of which will be mutually agreed between the parties at the time the applicable Service Order is executed.

**16. Hosting and Managed Services Service Level Agreement.**

- a. Cologix shall maintain the availability of the Hosting and Managed Services as set forth in this Section 16. For any billing month in which Cologix fails to meet the applicable SLA set forth below with respect to the applicable Hosting and Managed Service below, Customer will, subject to the “Excluded Outages” (as defined below), receive, as its sole and exclusive remedy and Cologix’ sole obligation for such failure, credit to its account based on the actual duration of the interruption of such Hosting and Managed Service. Cologix’ maintenance logs and trouble-ticketing systems will be used for calculating any SLA credits. The amount of credit is stated below as a percentage of the monthly recurring charges due to Cologix for such affected Hosting and Managed Service for the applicable calendar month.

- b. FLEXServer Hardware SLA. For any Cologix provided hardware relating to a FLEXServer Service ordered by Customer, as set forth in a Service Order, if such hardware device suffers full or partial hardware-level failure, Cologix will use commercially reasonable efforts to replace the device, in whole or in part, within four (4) hours after the hardware has been determined by Cologix, acting reasonably, to have failed and, if not replaced within such four (4) hour window, Customer shall be entitled to receive credit for such failure to replace pursuant to the below chart, in each case other than in connection with an SLA failure hereunder caused by an Excluded Outage. The replacement and credit set forth herein are Customer’s sole and exclusive remedy, and Cologix’ sole obligation, relating to any such hardware SLA failure. Notwithstanding the foregoing, Customer is fully responsible for the maintenance and management of all Cologix provided hardware.

<u>Service</u>	<u>Credit Amount</u>	<u>Maximum Credit</u>
Hardware Replacement	If the Service is unavailable for more than 30 concurrent minutes following the end of the 4 hour window within a calendar month, Customer shall be entitled to a credit of 5% of the monthly recurring charges for each additional concurrent 15 minute period that the Service is unavailable	100%

- c. Cloud and Hosted Services SLA. With respect to Private Cloud, FlexBackup, FlexStorage and Load Balancer Services ordered by Customer pursuant to a Service Order (each, a “Cloud and Hosted Service”), Cologix will use commercially reasonable efforts to ensure that any of such Cloud and Hosted Services will be available for the applicable calendar month (the “Cloud and Hosted Services Availability Threshold”) as set forth in the table below. If a Cloud and Hosted Services SLA failure has occurred, as determined by Cologix acting reasonably, Customer shall be entitled to receive credit for such failure pursuant to the below chart, other than where such SLA failure was caused by an Excluded Outage. The credit set forth below is Customer’s sole and exclusive remedy, and Cologix’ sole obligation, relating to any such Cloud and Hosted Services SLA failure.

<u>Service</u>	<u>Credit Amount</u>	<u>Maximum Credit</u>
Cloud and Hosted Services	If the Service is unavailable for more than 30 concurrent minutes within a calendar month, Customer shall be entitled to a credit of 5% of the monthly recurring charges for each additional concurrent 15 minute period that the Service is unavailable.	100%



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- d. To request a credit, Customer must deliver a written request to Cologix within thirty (30) days of the end of the month for which a credit is requested.
  - e. If at any time Customer is in default under the Agreement, Customer will not be entitled to any credit. Customer is limited to receiving an aggregate credit of 100% of the monthly recurring charges due to Cologix for the applicable calendar month for the affected Hosting and Managed Service.
  - f. Notwithstanding anything herein to the contrary, credit will not be issued under this SLA for any outage that, as determined by Cologix in its reasonable judgment, results from any of the following: (i) Customer-initiated changes, whether implemented by Customer or Cologix on behalf of Customer; (ii) a violation of the Hosting and Managed Services AUP in existence on the date of such circumstances giving rise to such credit; (iii) any other event or condition not wholly within the control of Cologix; (iv) any breach of the security of the Cologix system on which the Services are hosted, other than to the extent caused by Cologix; (v) any Cologix scheduled maintenance announced at least forty-eight (48) hours in advance, up to an accumulated total of eight (8) hours per month; (vi) any emergency maintenance announced at least sixty (60) minutes in advance, up to an accumulated total of two (2) hours per month; (vii) any failures that cannot be corrected because Customer is inaccessible; (viii) Customer exceeding the performance parameters of the hardware, software or network in Customer's specific installation; (ix) circumstances beyond Cologix' reasonable control, including, without limitation, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications; (x) DNS failures or errors outside of the control of Cologix; and (xi) failure of access circuits to the Cologix network, unless such failure is caused by Cologix (clauses (i) through (xi) above, collectively, the "Excluded Outages").
  - g. Customer acknowledges that multiple service credits cannot be overlapped on the same Hosting and Managed Service (i.e. failure to meet multiple metrics during the same period of time cannot be stacked).
17. **Termination of Use.** Cologix shall have the right to terminate Customer's use of the Hosting and Managed Service(s) delivered therein in the event that: (a) Cologix's rights to use the facility in which the Customer is located terminates or expires for any reason; (b) Customer is in default hereunder; (c) Customer makes any material alterations to Hosting and Managed Services without first obtaining the prior written consent of Cologix; or (d) Customer violates the Policies and Procedures and/or the Hosting and Managed Services AUP. With respect to (b), (c), and (d) above, unless, in Cologix' sole opinion, Customer's actions interfere or have the potential to interfere with other Cologix customers or present significant operational risks, Cologix shall provide Customer with notice and a thirty (30) day opportunity to cure before terminating Customer's Services.
18. **HIPAA Compliance.** In connection with Customer's Hosting and Managed Services under this Schedule, if Customer is handling "protected health information" or, if Customer is a "covered entity"

or "business associate", in each case, as such term is defined by the rules promulgated under The Health Insurance Portability and Accountability Act of 1996, codified at 45 CFR Parts 160 and 164 (or the Canadian equivalent, as the same may be amended, the "HIPAA Rules"), then the parties acknowledge and agree that Cologix may be deemed a business associate of Customer under and pursuant to HIPAA and, consequently, each of Customer and Cologix expressly agrees that all of the provisions of Exhibit A hereto shall apply in connection with the Hosting and Managed Services (the "Business Associate Provisions").

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

COLOGIX:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

CUSTOMER:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)





EXHIBIT A

Business Associate Provisions

1. General. To the extent Customer (“Covered Entity”) is handling Protected Health Information (as defined under the HIPAA Rules, “PHI”) in connection with its Services under this Schedule, then Cologix may be deemed a business associate of Covered Entity under and pursuant to the HIPAA Rules (a “Business Associate”). The parties agree to the following provisions to satisfy the requirements of the HIPAA Rules, 45 CFR Parts 160 and 164. Capitalized terms used in this Exhibit A but not otherwise defined herein shall have the respective meaning given to such terms under the HIPAA Rules.

2. Obligations and Activities of Business Associate

- a. Business Associate agrees and acknowledges that any Individual’s PHI that comes within Business Associate’s custody, exposure, possession or knowledge or is created, maintained, retained, transmitted, derived, developed, compiled, prepared or used by Business Associate in the course of or in connection with the performance of legal services for Covered Entity, is confidential and shall remain the exclusive property of Covered Entity and shall be used, disclosed, transmitted and/or maintained solely to perform its obligations under this Agreement and pursuant to the terms of legal representation, as Required By Law, and for the proper management and administration of Business Associate as provided by 45 CFR § 164.504(e)(4).
- b. Business Associate shall make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy the Covered Entity’s obligations under 45 CFR § 164.524.
- c. Business Associate shall make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 CFR § 164.526.
- d. Business Associate shall provide Covered Entity with all information the Covered Entity requires to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- e. Business Associate shall implement administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of Electronic PHI (“ePHI”) that it creates, receives, maintains, or transmits on behalf of the Covered Entity, as required by the HIPAA Rules; provided however, Covered Entity shall be responsible for data backup and disaster recovery in case of loss of PHI (see, §3E, below).
- f. Business Associate shall in accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees to the same restrictions, conditions, and requirements that apply to Business Associate with regard to its creation, Use, and Disclosure of PHI.

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- g. Business Associate shall make internal practices, books and records, including policies and procedures, relating to the Use and Disclosure of PHI received from, or created or received by Business Associate, on behalf of Covered Entity, available to Covered Entity, or at the request of Covered Entity to the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the HIPAA Rules.
- h. Business Associate shall notify Covered Entity of any Breaches of Unsecured PHI, as required at 45 CFR § 164.410, within twenty (20) days of the date such Breach was discovered or should have been discovered.

3. Obligations of Covered Entity

- a. Covered Entity agrees to advise Business Associate, in writing, of any arrangements which may impact the Use and/or Disclosure of PHI by the Business Associate under this Agreement and in the course of Business Associate’s legal representation of Covered Entity.
- b. Upon Business Associate’s request, Covered Entity shall provide Business Associate with its Notice of Privacy Practices and any revisions thereto during the term of this Agreement.
- c. Covered Entity will not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under HIPAA.
- d. Covered Entity agrees that, in all instances, it will encrypt, at rest and in transmission, any and all PHI that moves through or is stored within any Business Associate facility to which the Underlying Agreement applies.
- e. Covered Entity will undertake all responsibility to back-up PHI on a regular basis, will ensure that it has a disaster recovery plan in place to restore any loss of PHI and will employ an Emergency Operation Mode plan with respect to PHI, in each case as required by HIPAA. Covered Entity acknowledges and agrees that the PHI maintained on Business Associate’s equipment is not intended to serve as the backup copy. Covered entity acknowledges and agrees that Business Associate shall not be responsible for the foregoing obligations and that Business Associate is relying on Covered Entity’s satisfaction of its obligations set forth in this subsection E in connection with Business Associate’s execution of this Agreement and the provision by Business Associate of services to Covered Entity under and pursuant to the Underlying Agreement.

4. Termination

- a. Upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach. If Business Associate does not cure the breach within thirty (30) days, Covered Entity may terminate Agreement.



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b. Upon the termination of the Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, at the direction of Covered Entity. Business Associate shall request, in writing, PHI that is in the possession of subcontractors or agents of Business Associate, if any. In the event the Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If return or destruction of PHI is infeasible, Business Associate shall extend the protection of this Agreement to such PHI, for so long as Business Associate maintains such PHI. Following the termination of this Agreement, Business Associate shall not disclose PHI except to Covered Entity or as Required by Law.