



## GENERAL TERMS AND CONDITIONS FOR THE DELIVERY OF SERVICES (PHILIPPINES)

These GENERAL TERMS AND CONDITIONS FOR THE DELIVERY OF SERVICES (PHILIPPINES) (“**Terms and Conditions**”) (including all Schedules, Annexures and Attachments hereto, which form an integral part of these Terms and Conditions) are incorporated into and deemed a material part of the Service Order entered into between you and us on the Effective Date.

### 1. GENERAL.

1.1 Definitions. Capitalized terms used herein but not otherwise defined, shall have the meanings ascribed to them in Article 11 of these Terms and Conditions.

1.2 Services. Digital Edge is a provider of colocation and associated interconnect services which provides our customers with, among other things, physical space and cabinets with power, or a private cage with power, in a secure environment to deploy the customers’ computing, network, storage and IT infrastructure. We may, at our discretion, make available, on agreed terms, and subject to Applicable Law, certain domestic and/or international connectivity services in addition to the provision of colocation services to our customers.

1.3 Service Orders. You may purchase certain Services from us pursuant to a Service Order, such Services to (i) be provided exclusively within the territory of the Republic of the Philippines, such Service Order must incorporate and be deemed to be subject to these Terms and Conditions as such Terms and Conditions may expressly amended by the provisions of such Service Order. These Terms and Conditions (as may be amended shall form an integral payment of any such Service Order.

1.4 Additional Services. You may request Additional Services during the Service Term through (i) a new Service Order, which will be effective when signed by Digital Edge and the Customer or (ii) by placing an online order via our Customer Portal (“**Online Order**”), which will only be effective if we accept the Online Order in accordance with our then-current ordering procedures or by providing the Service(s) to you. Unless otherwise stated in the Service Order, each Additional Services ordered by you will supplement rather than replace the original Service Order to which it relates and shall be co-terminus therewith.

1.5 Change Orders. If you request a change to an existing Service Order (other than for Additional Services), we will prepare a change order (“**Change Order**”) which will be effective when signed by both Parties. Change Orders will amend existing Service Orders but will not replace them, unless specifically provided in the Change Order.

1.6 No Obligation. We have no obligation to execute, or to amend, any Service Order, including any Change Order, with you

1.7 Credit Approval and Deposits: We may require that our acceptance of any Service Order be subject to the successful completion of a credit check. You hereby

authorize us to obtain, and upon request shall assist us in obtaining, information about you or your Affiliates’ financial condition from third parties, including banks, credit reporting agencies, and other businesses that provide like information. Service Orders may contain additional terms and conditions covering security deposits or other forms of security required to assure timely payment of the Fees. Upon our request, you will make a deposit or provide other security for the payment of the Fees or any other charges, as specified by us, (i) as a condition to our acceptance of any Service Order, or (ii) in the event you fail to comply with the payment terms set forth in Article 3.2 twice in any twelve (12) month period, as a condition to our continuation of delivery of any Services. The deposit or other security will be held by us as security for payment of the Fees or other charges properly due under the Service Order. When the provision of Services to you is properly terminated in accordance with the Service Order, the amount of the deposit will be credited to your account and any remaining credit balance will be refunded to you, without interest, within thirty (30) days of such termination. You acknowledge and agree that any failure by you to comply with any request made by us under this Article 1.7 shall constitute a Default.

1.8 Customer Portal. We will provide you with an account and password to access our Customer Portal. You are responsible for maintaining the confidentiality of your account and password and for restricting and granting access thereto. You will be responsible and liable for all activities that occur under your account (including all payments owed for any Service Order placed thereunder) regardless of whether such activities are done by you or any other third party. We do not have any obligation to verify that anyone using your account and password has your authorization.

### 2. SERVICES.

2.1 Service Term. The Initial Term for each Service shall be set forth in the applicable Service Order. At the end of the Initial Term and each Renewal Term (as hereafter defined), the Service Term will automatically renew on the same terms and conditions for successive one (1) year periods (each a “**Renewal Term**”), unless either Party notifies the other Party in writing of its intention not to renew ninety (90) days prior to the expiration of the then applicable Service Term.

2.2 Services. We will provide the Services to you in accordance with the terms of the Service Order and these Terms and Conditions. We will perform or shall procure to

be performed such janitorial services, preventive maintenance and other actions as are reasonably required to maintain the Colocation Space and Colocation Area in good condition and suitable for the placement of communications, computing, storage, and other IT related equipment, as well as the stable functionality of the Network Services (if applicable). We shall endeavor to give you at least seven (7) days' advance written notice of any Planned Maintenance Event.

**2.3 Delivery.** We shall use reasonable efforts to deliver and make available to you the Services on or before the Requested Delivery Date set forth in the Service Order. Unless otherwise set forth in the Service Order, if we fail to complete the delivery of the Services within thirty (30) days of the Requested Delivery Date, you will be entitled to terminate the affected Service Order without liability, provided you exercise this right in writing prior to our delivering you an In-Service Notification.

**2.4 Testing and Acceptance.** Unless otherwise provided in the applicable Product Guide or Service Order, upon receipt of an In-Service Notification, you will have five (5) calendar days to test the Services and notify us in writing of your acceptance or rejection of the Service. You may reject an In-Service Notification only (i) on the basis that the agreed technical specifications for the Service, as set forth in the Service Order and/or the applicable Product Guide, have not been met and (ii) by providing reasonable detail of the deficiencies and/or defects of the Services. Upon receipt of your rejection of the In-Service Notification, we shall remedy the deficiency and deliver a new In-Service Notification to you and the procedures set forth in this Article 2.4 will be repeated. Your failure to reject an In-Service Notification within the foregoing time-period(s) will be deemed to constitute your acceptance of the Services.

**2.5 Remote Hands and Accompanied Access.** Our Services may include performing certain limited "remote hands" services on your Customer Equipment or providing third parties "accompanied access" to / from your Colocation Space upon your request. You agree to pay the Fees set out in the Service Order for such Services (if any), or if not specified in the Service Order, at our standard rate as in effect from time to time. The additional charges shall be invoiced at the time such services are performed by us. In no event shall we be responsible for the repair, configuration or tuning of your Customer Equipment.

**2.7 Access.** You will be permitted reasonable access to the Colocation Space and Common Areas, twenty-four (24) hours per day, three hundred sixty-five (365) days per year, subject to all rules, regulations and access requirements imposed by us governing such access. You shall abide by any posted or otherwise communicated Policies relating to use of, access to, or security measures respecting the Colocation Space and the IDC Facilities. If you permit or allow unauthorised parties to gain access to the Colocation Space or the IDC Facilities, you will be responsible for any damages incurred as a result thereof. Furthermore, you will be responsible for replacing any security devices lost or stolen after delivery thereof to you or your Authorized Persons.

**2.8 Use.** You may only use the Colocation Space for placement, operation, and maintenance of your Customer Equipment. Such equipment may be interconnected to other of our Service(s) or, with our prior written permission, to the facilities of other third parties' equipment and networks in our IDC Facilities, via a Digital Edge installed and managed Cross-Connect(s), only.

**2.9 Approved Works.** Except for the installation, operation, maintenance and uninstalling of your Customer Equipment (which includes Customer Cabling), you will not carry out any unauthorized works within the Colocation Space without our prior written approval, which shall not be unreasonably withheld. Such works shall never involve structural modifications. You will be responsible for the prompt satisfaction, payment, or settlement of any liens for any provider of work, labor, material, or services claiming by, through or under you and immediately remove such liens from the record. You and/or your Associated Entities shall perform all work in a safe and workmanlike manner consistent with generally accepted industry standards, as well as our Health and Safety Policies and Procedures from time to time. Our authorized representatives shall have the authority, without subjecting us to any liability, to suspend your work in and around the Colocation Space, if, in our sole discretion, any hazardous conditions arise, or any unsafe practices are being followed by you or your Associated Entities.

**2.10 Colocation Space.** In all circumstances, you shall maintain the Colocation Space in a clean, orderly, and safe condition, and shall return the Colocation Space to us at the conclusion of the Service Term in the same condition (reasonable wear and tear excepted) as when such Colocation Space was initially delivered by us to you.

**2.11 Customer Equipment.** Unless otherwise expressly provided in a Service Order (and then only to the extent otherwise expressly provided), you will be responsible for configuring, providing, placing, installing, upgrading, adding, maintaining, repairing, and operating your Customer Equipment, including installing any Customer Cabling, which actions you may engage in only to the extent permitted by, and subject to, the terms and conditions of the relevant Service Order and these Terms and Conditions. You represent, warrant and covenant that you have obtained and will maintain throughout the Service Term the legal right and authority (including regulatory consents) to operate, configure, provide, place, install, upgrade, add, maintain, and repair your Customer Equipment.

**2.12 Sublicense of Colocation Space.** Unless otherwise stated in the Service Order, you may sublicense all or a portion of the Colocation Space to your customers or end-users only under the following conditions: (i) all Sublicensees requiring access to the Colocations Space shall be registered by you with us as an Authorized Person and shall be subject to and abide by all of our Policies, (ii) you agree to indemnify, defend and hold us harmless from all claims brought against us by your Sublicensees, or by any third-party arising from any act or omission of your Sublicensees; (iii) each Sublicensee shall be considered your agent and all acts and omissions and usage of any portion of the IDC Facilities by them shall be attributable to

you for the purpose of the Service Order and these Terms and Conditions; and (iv) any such sublicense by you shall not relieve you of your obligations under any Service Order or these Terms and Conditions.

**2.13 Change in Location or Configuration.** We reserve the right at our own expense to change the location or configuration of the Services, including the Colocation Space, provided, however that we shall not arbitrarily or discriminatorily require such a change. We will work together with you in good faith to minimize any disruption in your business that may be caused by any such change or relocation.

**2.14 No Lease.** You acknowledge and agree that the Service Order and these Terms and Conditions together constitute a *services agreement* and do not constitute a lease or sublease of real property. You acknowledge and agree that you have been granted only a limited and non-exclusive license to use the Colocation Space and Common Areas in accordance with the Service Order and these Terms and Conditions. These Terms and Conditions and any Service Order is expressly made subject and subordinate to the terms and conditions of any underlying ground or facilities lease or other superior right by which we have an acquired interest in the IDC Facilities.

**2.15 Representatives.** Each Party shall be responsible and liable for all acts or omissions of their employees, contractors and Affiliates (and in your case, your Associated Entities) in connection with a Service Order, and all such acts or omissions will be attributed to such Party for all purposes under the Service Order and these Terms and Conditions (to the same extent as if such Party had committed the act or omission), including for purposes of determining such Party's responsibility, liability and indemnification obligations under the Service Order and/or these Terms and Conditions.

### **3. FEES AND PAYMENT.**

**3.1 Invoicing.** Unless otherwise provided in the Service Order, invoicing for each Service will commence on its Commencement Date. Any fixed NRC and MRC component of the Fees shall be billed in advance while any variable component of the Fees will be billed in arrears.

**3.2 Payment Terms.** You will pay all amounts due by the Due Date. If you dispute in good faith any portion of an invoice, you must pay the undisputed portion and submit a written claim for the disputed amount together with all information relevant to the dispute (including invoice number and the reason for the dispute) prior to the Due Date. You waive the right to dispute any charge not disputed within ninety (90) days of the receipt of the first invoice containing the disputed charge.

**3.3 Interest and Set-Off.** Any amounts due but not paid by you (or properly disputed under Article 3.2) by the Due Date shall accrue interest at the Interest Rate from the day following the Due Date to the date of actual payment. Any amount properly disputed pursuant to Article 3.2, but subsequently found to be properly payable by you, shall likewise accrue interest at the Interest Rate from the day

following the original Due Date until paid. We may set-off any amounts we may owe you or your Affiliates against any amount due by you under a Service Order which are not otherwise paid or disputed by the Due Date. Notwithstanding the above, you agree not to assert any legal or equitable right to set-off any amounts due by you under a Service Order against any amounts we or our Affiliates may owe you or your Affiliates.

**3.4 Fee Increase.** After each twelve (12) months of the Service Term, we may increase the MRC component of the Fees in respect of a Service by up to three percent (3%) to reflect our increases in direct costs of providing the Services (except where our direct electrical supply costs increase by more than three percent (3%) in a particular twelve (12) month period, in which case we may increase the MRC for Colocation Space above three percent (3%). If requested by you, we will provide you with supporting documentation evidencing the increase in our electrical supply costs. We will notify you of any such increase in the invoice immediately prior to the increase taking effect.

**3.5 Responsibilities.** You are responsible for all Fees incurred for the Services, whether incurred by you, your Associated Entities, or any third-party gaining access to your account, even if such Fees and/or other charges were incurred due to fraudulent or unauthorized use of the Service (unless such fraud or unauthorized use is caused by our intentional or negligent acts or omissions).

### **3.6 Taxes and Regulatory Fees.**

(i) All charges set forth in a Service Order exclude any applicable Taxes and Regulatory Charges. You will be responsible for these. To the extent you are exempt from payment of any of these, you will need to provide us a valid exemption certificate. We will give effect to all valid exemption certificates in the next billing cycle following receipt of the certificate, but only to the extent we are permitted to do so under Applicable Law(s). If your exemption certificate is or becomes invalid during an applicable Service Term, you shall immediately notify us of the change and will be responsible for any resulting penalties or late charges levied against us.

(ii) If you are or were required by Applicable Law(s) to make any deduction or withholding from any payment due to us, then the gross amount payable by you to us will be increased so that, after any such deduction or withholding, the net amount received by us is not less than would have been received if no such deduction or withholding were required. You agree to indemnify and hold us harmless for any interest or penalties levied by a Governmental Authority due to your failure to properly deduct or withhold any such amounts.

### **4. SUSPENSION/TERMINATION.**

**4.1 Suspension:** We may immediately suspend a Service or a portion thereof (including discontinuing the supply of power) and deny you access to the IDC Facilities (hereafter a "**Suspension**") if: (i) we are compelled to do so by a Governmental Authority, (ii) you fail to pay an invoice when due and fail to cure such non-payment within ten (10)

days of written notice by us; or (iii) if you have violated any Applicable Law(s) or engaged in conduct in violation of the Service Order or these Terms and Conditions that we reasonably believe will result in material harm to us, our IDC Facilities, Our Networks, or any third-party using or providing services to us in connection therewith. To the extent allowed by Applicable Law(s), we will provide you with prompt written notice along with the reason for our decision to suspend your use of the Services under this Article 4.1.

#### 4.2 Effect of Suspension.

(i) A Suspension by us will not affect either Parties' accrued rights or obligations in respect of the suspended Service and you will continue to be responsible for the Fees accruing during any such Suspension.

(ii) If a Suspension continues for more than thirty (30) days due to your inability to cure the reason for the Suspension (except for late payment, which you will have only an additional ten (10) days to cure), then we may treat this as a Default.

(iii) Unless we have subsequently terminated a Service Order pursuant to Article 4.3, we will resume any discontinued Services within twenty-four (24) hours after we are reasonably satisfied that you have cured the breach(es) which gave rise to the Suspension, and we may charge you a reinstatement fee equal to the direct out-of-pocket expenses incurred by us to discontinue and then to resume the Service(s).

#### 4.3 Termination.

(i) Either Party may terminate a Service Order in accordance with Article 2.2, Article 5.4, Article 10.7, or if the other Party is in Default.

(ii) We may additionally terminate all or a portion of a Service Order pursuant to Article 7.2.

(iii) You may additionally terminate a Service Order pursuant to Article 2.4 or in the event of a Chronic Service Outage.

#### 4.4 Effect of Termination.

(i) The termination of a Service Order will not affect (i) a Parties' accrued rights or obligations in respect of the terminated Service Order or (ii) other Service Orders (other than for Additional Services) which may still be in effect between the Parties at the time of termination.

(ii) Upon a termination of a Service Order, all your rights with respect thereto will immediately terminate and you shall cease using the terminated Services and return or destroy any of our Confidential Information and associated documentation in relation thereto.

(iii) In the event you terminate a Service Order pursuant to Articles 4.3 (i) or 4.3 (iii) and you are otherwise not in breach of the Service Order or these Terms and Conditions, (a) we shall refund to you any amounts that have been paid

in advance by you for the Services you have not received under that Service Order as of the date of termination and (b) you shall be released from any and all further payment obligations that would have arisen after the termination date in respect of that Service Order.

(iv) If you terminate a Service Order other than pursuant to Articles 4.3 (i) or 4.3 (iii), or if we terminate a Service Order due to your Default or pursuant to Article 5.4, then you will be liable for (a) an amount equal to the total of any and all waived installation charges as reflected on the terminated Service Order(s), (b) an amount equal to one hundred percent (100%) of the Fees payable for the unexpired remainder of the Service Term(s) of the terminated Service Order, plus (c) any documented third party charges or expenses not covered by (a) and (b) above incurred by us in respect of the terminated Service Order. You agree that the foregoing is a reasonable estimate of our losses and represents liquidated damages rather than a penalty.

(v) Prior to the expiration or earlier termination of a Service Order, you shall promptly remove your Customer Equipment and other tangible items of any kind belonging to you or an Associated Entity which is in the Colocation Space (excluding any Facilities or other equipment or property owned, leased, or licensed to you, by us or our third-party vendors). If you fail to remove any such property (including due to our refusal to allow its removal due to any outstanding payments owed by you), we will be entitled to pursue all available legal remedies against you, including (i) immediately removing any or all such property and storing it at your expense at an on-site or off-site location; (ii) shipping such property to you to the address set forth in the Service Order at your risk and expense; or (iii) liquidating such property in any commercially reasonable manner and charging you for all costs associated with the liquidation.

(vi) Notwithstanding the foregoing, you acknowledge and agree that we shall be entitled to retain your Customer Equipment until you pay all outstanding amounts owed to us under all Service Orders. If such charges are not paid within thirty (30) days after the end of a Service Term, we may dispose of the Customer Equipment in accordance with provisions set forth in Article 4.4(v).

### 5. COMPLIANCE WITH LAW(S).

5.1 During the term of any Service Order, both Parties agree to, and agree to ensure that their directors, officers, employees, agents, and third-party intermediaries (each a "**Company Representative**") shall, comply with all Applicable Law(s) in respect of the performance of their rights and obligations under that Service Order and these Terms and Conditions. Specifically, you and your Company Representatives and Associated Entities agree to comply with all Applicable Law(s) regarding the (i) use or resale of all or part of the Services, and (ii) installation and use of any Customer Equipment in conjunction with the Services.

5.2 Each Party and their Company Representatives (i) shall comply with all Applicable Law(s) regarding anti-bribery and anti-corruption, including those laws which may have extra-territorial effect, and (ii) represent, warrant, and

covenant that they have not and will not take any action in furtherance of an unlawful offer, promise, or payment to or for the benefit of any person or Government Official in connection with any Service Order or these Terms and Conditions.

5.3 Each Party represents, warrants, and covenants that: (i) it is and will continue to be compliant with all Sanction Law(s); and (ii) is not listed, or owned or controlled by an entity or person, on the U.S. Department of Treasury list of Specially Designated Nationals or located in or organized under the laws of a country subject to U.S. or E.U. embargo. In the case of Customer, you additionally represent, warrant and covenant that you and your Sublicensees will not use the Services, or allow them to be used, for any purposes prohibited by applicable Sanction Law(s), including, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

5.4 Each Party reserves the right to immediately terminate any Service Order upon written notice to the other Party if they reasonably determine that the other Party is not in compliance with Articles 5.2 and 5.3, provided that, prior to exercising any such termination right, such Party must first provide written notice to the other Party setting forth in reasonable detail the grounds for such termination and the non-terminating Party shall have five (5) calendar days to dispute the alleged non-compliance and provide documentary evidence demonstrating compliance. Without limiting the foregoing, nothing herein shall prevent a Party from exercising its termination rights pursuant to this Article 5.4, provided such Party acted reasonably, in good faith and on an informed basis under advice of legal counsel.

## 6. CONFIDENTIALITY.

6.1 Each Party shall keep confidential and not disclose the Confidential Information of the other Party and shall take reasonable measures to protect such Confidential Information from any unauthorized use, reproduction, publication, disclosure, or distribution.

6.2 Confidential Information may be disclosed only to the receiving Party's Company Representatives on a need-to-know basis, provided such Company Representatives are bound by confidentiality terms no less restrictive than those set forth in this Article 6 and acknowledge the confidential nature of the Confidential Information.

6.3 The receiving Party shall promptly notify the disclosing Party of any known or suspected unauthorized use or disclosure of the Confidential Information and shall cooperate with the disclosing Party in any litigation brought by the disclosing Party against third parties to protect its rights.

6.4 If the receiving Party is required by Applicable Law(s) to disclose any Confidential Information, then, to the extent permitted by Applicable Law(s), the receiving Party will notify the disclosing Party promptly in writing to allow the disclosing Party to take steps to protect the confidentiality of its Confidential Information.

6.5 If a Party is in material breach of this Article 6, the

non-breaching Party may, without limiting its other rights and remedies under any Service Order or these Terms and Conditions, seek immediate injunctive relief.

## 7. INTELLECTUAL PROPERTY.

7.1 License. Our Technology shall remain our property or that of our licensors. Solely as necessary for your use of the Services during the Service Term, we grant you a personal, non-transferable, and non-exclusive license to use and to permit your Sublicensees to use, in object code form, all software and associated written and electronic documentation and data furnished by us pursuant to a Service Order and these Terms and Conditions.

7.2 Remedies. Should any part of the Services be the subject of an infringement claim, we may, at our option: (i) obtain the right for you to continue using the affected part of the Services; or (ii) modify the affected part of the Services so that it is non-infringing; or (iii) replace the affected part of the Services with one that is functionally equivalent and non-infringing. If these alternatives are not available, we may notify you of this fact and terminate the infringing Services without termination liability to either Party.

## 8. INDEMNITY AND LIABILITY.

8.1 Each Party agrees to indemnify, defend, and hold harmless the other from all liability, damages, costs, and expenses (including reasonable attorneys' fees and expenses) for claims brought by third parties for personal injury or damage to tangible property resulting from such Party's gross negligence or willful misconduct.

8.2 Furthermore, you agree to indemnify, defend, and hold us harmless from all liability, damages, costs and expenses (including reasonable attorneys' fees and expenses) for (i) any claim by any of your Associated Entities or any of your Company Representatives other than a claim based on our gross negligence or willful misconduct, and (ii) any third-party claim resulting from your failure to obtain or maintain the required licenses and consents pursuant to Article 2.11.

8.3 LIMITATION OF LIABILITY. EXCEPT FOR LIABILITY ARISING UNDER ARTICLE 6 OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THE PERFORMANCE OR FAILURE TO PERFORM A SERVICE ORDER OR UNDER THESE TERMS AND CONDITIONS (INCLUDING DAMAGES RELATING TO LOST PROFITS OR REVENUES, LOSS OF GOODWILL, CUSTOMERS, OR DATA OR THE COST OF REPLACEMENT SERVICES) (COLLECTIVELY REFERRED TO AS "EXCLUDED DAMAGES"), WHETHER THE EXCLUDED DAMAGES ARE CAUSED BY THE ACTS, OMISSIONS, NEGLIGENCE, OR WILFUL MISCONDUCT OF A PARTY, A PARTY'S EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH EXCLUDED DAMAGES.

8.4 EXCEPT FOR LIABILITY ARISING UNDER ARTICLES 8.1 AND 8.5, OUR TOTAL LIABILITY TO YOU WITH RESPECT TO ALL CLAIMS ARISING FROM OR RELATED TO A SERVICE ORDER (INCLUDING UNDER THESE TERMS AND CONDITIONS) SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY YOU UNDER THE SERVICE ORDER TO WHICH THE CLAIM RELATES DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH IN WHICH THE CLAIM FIRST OCCURRED. AS A FURTHER LIMITATION, OUR MAXIMUM LIABILITY FOR ANY CLAIM RELATING TO SERVICES OFFERED OR PROVIDED BY US (I) FOR A NON-RECURRING CHARGE ONLY, OR (II) AS REMOTE HANDS SERVICES, SHALL NOT EXCEED THE AMOUNT OF THE FEES CHARGED FOR SUCH SERVICES TO YOU ON THE OCCASION GIVING RISE TO THE CLAIM.

8.5 NOTHING IN THE SERVICE ORDER OR THESE TERMS AND CONDITIONS SHALL BE CONSTRUED AS LIMITING THE LIABILITY OF A PARTY FOR: (I) PERSONAL INJURY OR DEATH RESULTING FROM THAT PARTY'S NEGLIGENCE; (II) FRAUD OR FRAUDULENT MISREPRESENTATION; (III) WILFUL MISCONDUCT; OR (IV) ANY OTHER LIABILITY (E.G., GROSS NEGLIGENCE) THAT CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW.

8.6 EXCEPT AS EXPRESSLY SET FORTH IN A SERVICE ORDER, WE MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO THE CONDITION, QUALITY, FITNESS FOR USE OR FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OF THE SERVICES. WE DO NOT WARRANT OR REPRESENT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR FREE FROM DEFECT.

8.7 IF YOU HAVE CHOSEN TO CLAIM FOR A SERVICE CREDIT OR RIGHT TO TERMINATE UNDER THE APPLICABLE SERVICE LEVEL AGREEMENT, IF ANY, OUR SOLE LIABILITY AND YOUR SOLE REMEDY FOR DAMAGES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION RELATING TO THE FURNISHING OF OR THE FAILURE TO FURNISH SERVICES (INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, FAILURE TO TRANSMIT OR ESTABLISH CONNECTIONS, FAILURE TO SATISFY SERVICE LEVEL AGREEMENTS OR SPECIFICATIONS, DELAYS, ERRORS OR OTHER DEFECTS) IS LIMITED TO ANY APPLICABLE SERVICE CREDIT DUE AND/OR YOUR RIGHT TO TERMINATE A PARTICULAR SERVICE UNDER THE APPLICABLE SERVICE LEVEL AGREEMENT.

8.8 THE PARTIES WAIVE THE RIGHT TO BRING ANY CLAIM AGAINST THE OTHER ARISING OR IN ANY WAY RELATING TO A SERVICE ORDER MORE THAN ONE (1) YEAR AFTER THE DATE THE SERVICE ORDER TO WHICH THE CLAIM RELATES EXPIRES OR IS EARLIER TERMINATED.

8.9 The Parties acknowledge and agree that the terms and limitations set forth in this Article 8 are reasonable and are a material inducement for each Party to enter into each Service Order.

## 9. INSURANCE.

9.1 Each Party will maintain, or cause one of its Affiliates to maintain on its behalf, at its own expense, the types of insurance that is customary and appropriate during the Service Term, which at a minimum shall consist of: (i) Commercial General Liability Insurance in an amount not less than one million U.S. Dollars (\$1,000,000) or the local currency equivalent, per occurrence for bodily injury, death and property damage, which policy will include contractual liability coverage (ii) Workers' Compensation and employer's liability insurance in an amount not less than that prescribed by Applicable Law; and (iii) umbrella or excess liability insurance with a combined single limit of no less than two million U.S. Dollars (\$2,000,000) or the local currency equivalent or such other amounts as required by Applicable Law, whichever is greater.

9.2 If requested by us, you agree to furnish us with a certificate of insurance evidencing the minimum levels of insurance set forth herein and, to the extent requested, name us and our landlord as an additional insured.

9.3 Both Parties agree to notify the other Party of any non-renewal, cancellation, reduction in policy limit or other material change in the coverage above at least forty-five (45) days prior to any such change.

## 10. MISCELLANEOUS PROVISIONS.

10.1 Trademarks. Neither Party may use the other Party's trademark in any manner or refer to the other Party by name or identifiable description in any marketing, promotional, or advertising materials or activities, without the prior written consent of the other Party. Notwithstanding the foregoing, we may provide prospective customers with a list of our current customers, which may include your name and logo, along with a generic description of the type of services provided to you.

10.2 Publicity. Neither Party will issue a press release or public statement about any Service Order (including these Terms and Conditions), except as: (i) required by Applicable Law, or (ii) agreed in writing between the Parties.

10.3 Network Security. You are responsible for maintaining the security of your own network from unauthorized access through the Internet or otherwise. We will not be liable for unauthorized access to your network or other breaches of your network security, unless the same is caused by our gross negligence or willful misconduct.

10.4 Facilities. Unless otherwise provided in a Service Order, title to the Facilities used to provide the Services shall remain with us or our authorized vendors. You shall not, and shall not permit others to, rearrange, disconnect, remove, repair, attempt to repair, or otherwise tamper with

any component of the Facilities without our prior written consent. You will ensure the Services and Facilities are not used for any purpose other than that for which we provide them.

**10.5 Relationship of Parties.** You acknowledge and agree that we are acting as an independent contractor, and no Service Order nor these Terms and Conditions establishes any other type of relationship between the Parties, such as a partnership, joint venture, employer/employee, franchise, or other type of agency.

**10.6 Third Party Beneficiaries.** No one that is not a Party a Service Order, shall have any rights under that Service Order, including in respect of these Terms and Conditions as incorporated into that Service Order. To the maximum extent allowed by law, any law giving rights to third parties is hereby excluded without the need to refer to the specific act, law, code, or regulation granting such rights.

**10.7 Force Majeure.** In the event that either Party is prevented from performing or is unable to perform any of its obligations under any Service Order or these Terms and Conditions (other than a payment obligation) due to a Force Majeure Event, such Party shall give prompt written notice to the other Party and its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such Force Majeure Event. If the period of non-performance due to a Force Majeure Event exceeds a continuous period of ninety (90) days after the occurrence of such event, then either Party may terminate the affected Service Order (as applicable) in accordance with Article 4.3(i) of these Terms and Conditions.

**10.8 Regulatory Changes.** If there are any changes in Applicable Law(s) that materially increases our costs of providing, or materially hinders our ability to deliver, the Service(s), we both agree to negotiate in good faith on how best to address such a situation. If we are unable to reach an agreement within thirty (30) days of our written notice to you describing the impact of the change of Applicable Law(s) on our cost or ability to provide the Services, then we may terminate the affected Service(s) or Service Order(s) upon ninety (90) days advance written notice to you without further future liability in relation to such Service(s) or Service Order(s).

**10.9 Notice.** Any notice required or permitted under the any Service Order or these Terms and Conditions may be delivered by hand, sent by overnight courier, or email (with confirmation of delivery and followed up by registered post), at the notice address given in the relevant Service Order or at such other address as may hereafter be furnished by either Party to the other by notice in accordance herewith, with a copy to the address(es) set forth in the Service Order. Such notice or communication will be deemed to have been given as of the date it is delivered or emailed, as applicable, unless (in respect of email only), the sender receives a notification of failure of the email transmission in which case such delivery date will be deemed to be the date on which the registered post has been received by the recipient.

**10.10 Assignment.** Neither Party may assign, novate, or transfer any Service Order (including these Terms and Conditions) without first obtaining the other Party's written consent, except that we may assign, novate, or transfer to our Affiliates, or as part of a corporate reorganization, consolidation, merger, or sale of substantially all our assets by providing written notice to you of any such assignment, novation, or transfer. The Service Order(s) (including these Terms and Conditions) will bind and inure to the benefit of each Party and each Party's successors and permitted assigns.

**10.11 Personal Information.**

(i) You confirm that you have read and understood, and agree to our Privacy Policy, which may be updated by us from time to time.

(ii) You expressly consent that we may, during the Service Term of any Service Order and to the extent consistent with applicable Privacy Law(s) and our Privacy Policy (a) collect and process Personal Information related to you and your Associated Entities, including transfers between Affiliates and transfers between countries, as required for (1) the provision of the Services, account administration, customer service, technical support, billing and reconciliation, operational maintenance and support, fraud detection and prevention, as required by Applicable Law(s) in our reasonable interpretation, and (2) to communicate with you via email, phone or mail about products and services or events which may be of interest to you; and (b) make such information available to our Affiliates, employees, agents, contractors and others who provide products or services to you (such as our advisers and contractors), and to regulatory authorities and potential purchasers of us.

(iii) You acknowledge and understand that in order for us to provide the Services to you, Personal Information may be transferred to countries outside the jurisdiction in which you reside or have contracted with us, including to the United States of America, Singapore and/or Hong Kong. You represent and warrant that you have provided proper notices to and obtained (or will obtain) the necessary consents for such transfer of Personal Information from your Associated Entities (including your employees) about how their Personal Information may be used, stored, and disclosed to service providers (such as us) by you.

**10.12 Policies.** You and your Associated Entities will comply with our then-current Policies in respect of the Services and IDC Facilities, which are incorporated herein by this reference and considered a material part of each Service Order. We may reasonably modify our Policies at any time, and any modification by us to the Policies will be effective upon written notice to you or upon publication to the Customer Portal. If any change to our Policies materially adversely affects your ability to use the Services, you may terminate the affected Services without liability by providing us with written notice of termination, provided (i) such notice is provided to us within thirty (30) days of the change of Policy, (ii) sets forth the specific change(s) that you reasonably believe adversely affects your ability to use the Services and (iii) we have not elected to reinstate the

original version of the Policy provision in question within five (5) business days of receipt of your notice of termination.

**10.13 Conflicting Terms.** If there are any conflicts between the terms comprising set out in a Service Order and these Terms and Conditions, precedence is given to the conflicting term in the following order of preference: (i) the Service Order, (ii) these Terms and Conditions, (iii) one or more Service Level Agreement(s) referenced in the Service Order (unless the Service Level Agreement explicitly states that it is intended to modify the conflicting terms, (in which case the conflicting terms of the Service Level Agreement will take precedence, but the modification will only apply for that Service Level Agreement or Service Order), and (iv) any additional terms or documents attached hereto or incorporated by reference in any of the foregoing documents.

**10.14 Severability.** If any provision of a Service Order or these Terms and Conditions is held to be unenforceable for any reason, it shall be modified rather than voided to achieve, to the fullest extent possible, the intent of the Parties and all other provisions of the Service Order and these Terms and Conditions shall be deemed valid and enforceable.

**10.15 Governing Law / Dispute Resolution.** Each Service Order and these Terms and Conditions shall be governed by the laws of the Philippines, without reference to its conflict of law provisions and both Parties irrevocably submit to the exclusive jurisdiction of the courts of Philippines.

**10.16 Electronic Signature:** A Party's Electronic Signature constitutes that Party's signature as if it had manually signed the same. No certification authority or other third-party verification is necessary to validate a Party's Electronic Signature, and the lack of such certification or verification will not in any way affect the enforceability of this any Service Order or these Terms and Conditions or any other document signed pursuant thereto.

**10.17 Counterparts / Amendment:** Any Service Order, and these Terms and Conditions and any other document signed pursuant thereto may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Each Service Order, and these Terms and Conditions may be amended only in writing signed by a duly authorized representative of each of the Parties.

**10.18 Entire Understanding:** Each Service Order (and these Terms and Conditions, as incorporated therein) is the entire understanding of the Parties in relation to the subject matter hereof. Neither Party has acted in reliance on any statement, representation, assurance, or warranty (whether made negligently or innocently) other than those contained in a Service Order or these Terms and Conditions. All prior written and oral agreements, understandings, communications, and practices between the Parties are superseded to the extent they relate to this a Service Order and these Terms and Conditions.

**10.19 Survival.** Any provisions of any Service Order, and these Terms and Conditions and any other document signed pursuant thereto which by their nature are intended to survive expiration or termination such Service Order or these Terms and Conditions or any other document signed pursuant thereto (including but not limited to confidentiality, indemnities, limitation of liability, governing law, dispute resolution, payment obligations accrued, and audit rights, if any) shall survive such expiration or termination.

**10.20 No Waiver.** Any failure or delay by a Party in exercising any right or remedy under any Service Order, or these Terms and Conditions shall not operate as a waiver of that right or remedy.

**10.21.** Each Party represents and warrants that it has the authority to bind its Affiliates in accordance with the terms of each Service Order and these Terms and Conditions (including any attachments thereto) where such Affiliates place or benefit from Services under a Service Order.

## **11. DEFINITIONS AND INTERPRETATION.**

The following definitions shall apply to each Service Order and these Terms and Conditions:

**"Accompanying Person"** means a person (other than an employee of ours) who is accompanied by an Authorized Person while at an IDC Facility.

**"Additional Services"** means additional Services ordered by you through an additional Service Order which augments an existing Service Order (e.g., ordering of Cross-Connects, additional power, etc.) and will supplement, rather than replace, and be co-terminus with, the original Service Order to which it relates.

**"Affiliate"** means an entity that, directly or indirectly controls, is controlled by or is under common control with a Party, where the term 'control' 'controlling,' 'controlled by,' and 'under common control with,' means the legal, beneficial, or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting equity interests in an entity.

**"Applicable Law(s)"** means all laws, legislation, regulations, or binding rules or requirements of any relevant Governmental Authority that are applicable to the procurement, provision and use of any part of a Service.

**"Associated Entities"** means all individuals, companies, or other entities of any type which employs, contracts with, or is otherwise associated or affiliated with you, including your Authorized Persons and Accompanying Persons. Without limiting the foregoing, each of your Sublicensee shall be an Associated Entity in respect of the IDC Facilities in which they have installed their Customer Equipment.

**"Authorized Person"** means each person who is then included in the most recent list of Authorized Persons given to us by you in accordance with our Data Center Policy.

**"Chronic Service Outage"** means the number of consecutive events entitling you to terminate an affected

Service as set forth in the Service Level Agreement (if any).

**“Colocation Area”** means the specific area(s) or space(s) within an IDC Facility which is designated by us for the provision of Colocation Space generally to our customers.

**“Colocation Space”** means the area(s) or space(s) (including any cabinets, cages, suites, or rooms) in the Colocation Area which is dedicated to you for use in accordance with a Service Order and these Terms and Conditions.

**“Commencement Date”** means the date you: (i) have accepted or are deemed to have accepted the In-Service Notification in accordance with Article 2.5, or (ii) begin using the Services, whichever is earlier.

**“Common Areas”** mean the areas and facilities within or immediately adjacent to the IDC Facilities that are designated by us as Common Areas, which can be used (in accordance with our Policies) by all occupants of the IDC Facilities on a non-exclusive basis, including but not limited to, parking areas, pedestrian sidewalks, lunchrooms, breakrooms, trash enclosures, loading bays, elevators, and the like.

**“Company Representative”** has the meaning ascribed to it in Article 5.1.

**“Confidential Information”** means any information, disclosed by or on behalf of a Party to the other Party that by its nature indicates an intent that it not be disclosed to a third-party, including: (i) any business-related materials, trade secrets, know-how, formulas, processes, algorithms, ideas, strategies, inventions, network configurations, system architecture, designs, flow charts, drawings, proprietary information, current or future plans, financial, and all other non-public information, and (ii) any information, material or data provided by third-party vendors of the disclosing Party. Information shall not be Confidential Information: (a) if such information is known to the receiving Party prior to disclosure by the disclosing Party, (b) after such information comes into the public domain without breach by the receiving Party, (c) after such information comes lawfully into the possession of the receiving Party from a third-party, or (d) if such information is developed by the receiving Party independently of any disclosure by the disclosing Party.

**“Cross-Connect”** means a physical or wireless interconnection within an IDC Facility that (i) exits your Colocation Space and (ii) connects you to (a) another one of our customers (b) a telecommunications provider or (c) another third-party in the same IDC Facility.

**“Customer”, “you”, “your” or “yours”** means the specific legal entity that has entered into a Service Order agreeing to acquire Services from Digital Edge.

**“Customer Cabling”** means a physical interconnection, including cable, connections, and other wiring, that (i) does not exit your Colocation Space, (ii) does not connect you to another one of our customers, and (iii) interconnects (a)

your Customer Equipment or (b) your Customer Equipment to our DMARC Equipment that is exclusively installed by us in your Colocation Space for your sole use.

**“Customer’s Equipment”** means all network and/or computer equipment (including Customer Cabling) that is located in the Colocation Space, regardless of whether such equipment is owned, leased, licensed or otherwise obtained for use by you or your Associated Entities (but this does not include, for the avoidance of doubt, any Cross-Connects, DMARC Equipment or other equipment or Facilities that is provided by us and that is located in your Colocation Space).

**“Customer Portal”** means our customer care website accessible via the Internet at a location designated by us, which we have the right to change from time to time.

**“Customer Requirements Document”** means a document, provided in a form and format designated by us, setting forth the technical particulars of your requirements in order to use the Services (e.g., port assignments, rack configuration, Authorized Persons, etc.), such document to be completed by you and agreed to by us at or subsequent to the time the relevant Service Order is entered into by the Parties.

**“Default”** means: (i) in the case of your failure to pay any amount by the Due Date, your continued failure to pay such amount within ten (10) days after receipt of written notice from us specifying such breach, (ii) in the case of any other material breach of the Service Order or these Terms and Conditions, when the breaching Party has failed to cure such material breach within thirty (30) days after receipt of written notice, provided that if the breach is of a nature that cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to cure within said time period and thereafter diligently pursues such cure to completion, but not to exceed sixty (60) days, or (iii) either of the following occur (1) a Party making a general assignment for the benefit of its creditors, files a voluntary petition in bankruptcy or any petition or answer seeking, or consenting to reorganization, liquidation, dissolution, or similar relief, or (2) an involuntary bankruptcy petition or other insolvency protection against a Party is filed and not dismissed within thirty (30) days of its filing. Furthermore, a Default will be deemed to have occurred if you breach a Service Order or these Terms and Conditions and in our reasonable judgment, such a breach (i) materially interferes with our operation or maintenance of the IDC Facilities or our other customers’ use thereof, and you fail to cure such breach within one (1) hour of being notified of the same; or (ii) has the potential to materially interfere with our operation or maintenance of the IDC Facilities or our other customers’ use thereof and you fail to cure such breach within forty-eight (48) hours of being notified of the same.

**“Digital Edge”, “we”, “us” or “our”** means the specific Digital Edge legal entity that has entered into this a Service Order agreeing to provide Services to Customer pursuant to the terms thereof and these Terms and Conditions.

**“DMARC Equipment”** means the (i) patch panels, DSX panels for Cat5e, Cat6, twisted pair, co-axial, single and multi-mode fiber, or (ii) other appropriate point of demarcation equipment provided by us to you in connection with a Service Order.

**“Due Date”** means thirty (30) calendar days from the invoice date, unless otherwise expressly provided for in an individual Service Order, such modification to only apply in respect of that individual Service Order.

**“Effective Date”** means the date on which both parties’ authorized signatories have duly signed the Service Order to which these Terms and Conditions are incorporated.

**“Electronic Signature”** means a signature that consists of one or more letters, characters, numbers, or other symbols incorporated in, attached to, or associated with a human readable electronic version of a document.

**“Facilities”** shall mean the racks, cabinets, Cross-Connects, DMARC Equipment, PDUs, telecommunications network, network components, and mechanical and electrical equipment owned, operated, and maintained by us or our Affiliates, including any cabling, risers, cable-trays, etc. For the avoidance of doubt, Facilities does not include: (i) your Customer Equipment; or (ii) facilities not owned, controlled, and operated by us, such as your Customer Cabling and/or any third-party network or equipment that is not within the definition of a “Service” hereunder.

**“Fees”** means charges for the Services, including monthly recurring charges (MRC), both fixed and variable, and non-recurring charges (NRC), as stated in the Service Order, or if not specified in the Service Order, at our standard rate in effect at the time of delivery of the Services.

**“Force Majeure Event”** means an event or circumstance, beyond a Party’s reasonable control, including acts of God, war, labor strike, terrorist act, fire, flood, earthquake, any law, order, regulation or other action of any governing authority or agency thereof, including a significant failure of the internet or part of the power grid.

**“Governmental Authority”** means any governmental or quasi-governmental body of competent jurisdiction, whether foreign or domestic or local or federal, including any department, agency, commission, bureau or other administrative or regulatory bodies, courts, public utilities, and communications authorities.

**“Government Official”** means any: (i) employee of, or person acting in an official capacity for, any: (a) Government Authority, or (b) company wholly or partially controlled by a Government Authority (for example, a state-owned oil company), (ii) political party or any official of a political party, (iii) candidate for political office, (iv) officer or employee of a public international organization, such as the United Nations or the World Bank, or (v) immediate family member (meaning a spouse, dependent child, parent or household member) of any of the above.

**“HVAC”** means Heating, Ventilation and Air Conditioning.

**“IDC Facilities”** means the premises owned or leased by us in which the Colocation Space and other Services are provided to you pursuant to a Service Order.

**“Initial Term”** means the minimum term that you have contracted to receive and pay for the Services, as set forth in the applicable Service Order.

**“In-Service Notification”** means a written notification sent by us via email to your authorized contact as set forth in your Service Order and/or Customer Requirements Document informing you that the Services have been installed and tested by us and are ready for your testing in accordance with Article 2.5. For the avoidance of doubt, unless an early delivery date has been requested by you and agreed to by us, the Parties agree the In-Service Notification will not be delivered by us to you earlier than five (5) days prior to the Requested Delivery Date.

**“Interest Rate”** means one-point-five percent (1.5%) per month or the highest rate permitted by law, whichever is lower.

**“Network Services”** means the connectivity services (other than Cross-Connect Services) provided by Digital Edge or its Affiliates to you whereby your Customer Equipment is connected to End-User(s) via either Cross Link, EPIX, internet access, last mile, IP transit, point-to-point WAN, wavelengths, MPLS, and/or dark fiber services depending on your connectivity requirements, as more specifically set forth in the Service Order. In the event Network Services are part of a Service Order, the additional terms and conditions set forth in Annex hereof shall apply to those Network Services.

**“Our Technology”** means our proprietary technology and trade secrets, including Services, software, hardware, designs, algorithms, user interface designs, architecture, class libraries, object code and documentation (both in printed and electronic format), network designs, know-how, business methods and any related intellectual property rights throughout the world (whether owned by us or licensed to us by a third party).

**“Parties”** mean both of Customer and Digital Edge.

**“Party”** means either of Customer and Digital Edge.

**“Personal Information”** means any information that may identify an individual, including names, addresses, telephone numbers, electronic addresses, passwords, credit card numbers or other account data, customer proprietary network information, or any information regarding an individual that is protected under any Privacy Law(s) applicable to the Services or Service Order.

**“Planned Maintenance Event”** means any preventative, routine or scheduled maintenance which is performed by or on our behalf to any portion of the IDC Facilities, including the power supply, HVAC, or any other part, which we or our agents reasonably believe is reasonably necessary to prevent or remedy a defect.



“**Policies**” means the procedures, rules, regulations, security practices and policies adopted by us in respect of our IDC Facilities and/or the Services, including but not limited to our Data Center Policies, Security Policies and Privacy Policies, as they may be amended by us from time to time. Current versions of all our Policies can be found at [www.digitaledgedc.com](http://www.digitaledgedc.com) and/or on the Customer Portal.

“**Privacy Law(s)**” means all Applicable Law(s) that relates to the security and protection of Personal Information, data privacy, or cross-border flow of data.

“**Product Guide**” means the written service description setting forth the specifications, features, functions, and interoperability of our Services generally.

“**Regulatory Charges**” mean any regulatory fees, assessments, contributions fees, charges, or surcharges whether now or hereafter enacted by a Governmental Authority, however designated, imposed on or based on the provision, sale or use of the Services.

“**Requested Delivery Date**” means the date set forth in the Service Order on which the parties have agreed we will deliver to you.

“**Sanction Laws**” means all Applicable Laws relating to sanction or embargo and regulations in force from time to time, including, but not limited to, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control (OFAC) and any other U.S. enabling legislation or executive order relating thereto.

“**Services**” means the product and services (including but not limited to the Colocation Space, Additional Services and Network Services) ordered by you pursuant to a Service Order.

“**Service Level Agreement(s)**” means the document(s) so entitled

- (a) attached to a Service Order, or
- (b) where no such document is attached to a Service Order, provided at Attachment 2 to these Terms and Conditions,

setting forth the specific set of service and technical quality criteria in respect of one or more of the Services, which outlines the specific remedies in the event of a failure to achieve those metrics.

“**Service Order**” means the document prepared and issued by us and accepted by you setting forth, among other things, the type and quantity of the Services to be delivered by us to you, along with any Service Level Agreement (if applicable).

“**Service Term**” means the duration of the Services, as defined in the relevant Service Order, and calculated from the Commencement Date until such date on which your right to use the Services is properly terminated in accordance with that Service Order and these Terms and Conditions.

“**Sublicensee**” means any person or entity making use of the Services or any portion thereof through you in accordance with a Service Order and these Terms and Conditions, including your Affiliate(s), end-users or any third-party.

“**Taxes**” means VAT, GST, consumption tax, use, excise, access, bypass, franchise or other like taxes, fees, charges, or surcharges whether now or hereafter enacted by a Governmental Authority, however designated, imposed on or based on the provision, sale or use of the Services.



## ATTACHMENT 1 Additional Terms and Conditions for Network Services

The following additional terms and conditions are applicable only to Network Services. These additional terms and conditions are supplemental to and should be read in conjunction with the Terms and Conditions.

1. **Definitions.** Terms used herein but not otherwise defined shall have the same meanings ascribed to them in the General Terms and Conditions.

**"Customer Premises"** means the location or locations occupied by Customer or Customer's End Users (as applicable) to which the Network Services are delivered.

**"End User"** means any person or entity deriving or making use of the Network Services through Customer including but not limited to, Customer, Customer's Affiliate, or a customer of Customer.

**"Network Facilities"** means any and all property supplied by us or our Affiliates that are used to deliver the Network Services, including but not limited to all terminal and other equipment, wires, fiber optic cables, lines, circuits, radio links, ports, routers, switches, cabinets, racks, private rooms and the like, including Supplier-Provided CPE installed on or at Customer Premises. Network Facilities shall not include any devices owned, leased, or otherwise obtained by Customer from a third-party.

**"Our Network"** shall mean the telecommunications network and network components owned, operated, and maintained by us or our Affiliates, including PoPs. Our Network does not include Customer Networking Equipment, local data links between a PoP and Customer's location or any networks or network equipment not owned or controlled by us or our Affiliates.

**"Point of Presence" or "PoP"** means a data center or similar space owned or leased by us or any of our Affiliates for the purpose of, among other things, locating and collocating communications equipment and to which the Our Network is directly connected.

**"Supplier-Provided CPE"** means our hardware and/or software provided by us and placed at the Customer Premises and/or placed at our PoP to operate the Network Services ordered by Customer pursuant to a Service Order.

2. **Equipment.**

(a) If requested by Customer, we may, at our option, and in our discretion upon an additional charge to Customer, install certain communications equipment in connection with the Network Services which is provided by Customer or third parties with whom Customer has a contractual relationship (such equipment, "**Customer Networking Equipment**"). Customer must ensure that any Customer Networking Equipment is connected and used in accordance with any instructions, safety and security procedures applying to the use of that equipment. Customer must also ensure that any Customer Networking Equipment is technically compatible with the Network Services and approved for that purpose under Applicable Law(s).

(b) Equipment may also be furnished by us, our Affiliate(s) or licensor(s) or our designated third-party vendor(s) (as applicable) for use at Customer's Premises as part of any Network Services. Any Supplier-Provided CPE shall be identified in the applicable Service Order, together with associated pricing and shipping information. Upon termination of the relevant Service Order, Customer shall return the Supplier-Provided CPE to us or our Affiliate or third-party vendor(s), as determined in our sole discretion (at our cost unless otherwise specified in the Service Order).

(c) Ownership of any intellectual property rights in any Supplier-Provided CPE, software, operating manuals, and associated documentation, made available as part of any Network Services or otherwise generated by or for us in connection with a Service Order and these Terms and Conditions, shall remain the property of Digital Edge or its licensors. We will grant you a personal, non-transferable, and non-exclusive license to use and to permit your End-Users to use, in object code form, all software and associated written and electronic documentation and data furnished by us pursuant to a Service Order or these Terms and Conditions ("**Software**"), solely as necessary for receipt of the Network Service and solely in accordance with the Service Order and these Terms and Conditions and the applicable written and electronic documentation. The term of any license granted by us pursuant to this Section is co-terminus with the Service Term for the Network Services with which the Software is associated.



(d) We shall not be responsible for any damage to the Customer Networking Equipment, including any network equipment, computer and other equipment provided, owned and/or controlled by the Customer (if any) that are connected and/or used for implementing the Network Services for the Customer's needs. In the event of any damage to Supplier-Provided CPE, which damage occurs due to direct or indirect acts or omissions of the Customer, Customer shall be liable for all costs for repairing or replacing the damaged Supplier-Provided CPE.

3. Application of Tariffs. In the event we are required to file tariffs for the Network Services with a Governmental Authority, the terms set forth in the applicable tariff shall govern our delivery of, and your consumption or use of, such Network Services to the extent required by Applicable Law(s). In the event that any change to the terms and conditions and/or the Fees results from such application of tariffs and such change has a materially adverse effect on Customer, then Customer shall have a right to terminate the affected Network Services upon thirty (30) days written notice (such notice to be given within thirty (30) days after notice of such tariff or effect is provided to Customer by us or is posted on our website).

4. Customer Premises. Customer will allow us access to and use of the Customer Premises to the extent required by us for the installation, connection, inspection and scheduled or emergency maintenance or removal of the Network Facilities relating to the Network Services. We shall have a right to inspect any Customer Premises to ensure that Customer and/or any End User is complying with all Applicable Law(s) regarding the Network Services and use of the Network Facilities. Any such inspection or non-inspection however shall not relieve Customer of any of its duties under a Service Order or these Terms and Conditions nor shall it cause us to waive any of our rights hereunder or impose any duty, obligation, or liability onto us. Customer represents that Customer has obtained or will obtain on a timely basis all permissions and consents from third parties necessary to allow us access as set forth herein. Customer will be responsible for providing and maintaining at its own expense power, heating, ventilation, and air conditioning as necessary to maintain the proper environment for the Network Facilities on the Customer Premises. Customer will provide, and will ensure we are provided, a safe place to work and comply with Applicable Law(s) regarding the working conditions on the Customer Premises. You will provide the correct Customer Premises contact details and address(es) for installation and provision of the Network Services in the applicable Service Order. We will not be liable for any delays in the installation or provision of the Network Services resulting from Customer's error, discrepancy, change, or relocation relating to the Customer Premises. To the extent Customer changes the supplied Customer Premises contact details, addresses or specifications, Customer will communicate such changes in the format prescribed by us with our prior written consent (not to be unreasonably withheld). If you fail to meet your obligations regarding the Customer Premises hereunder and, as a result, we are unable to install or continue the delivery of the Network Services, then notwithstanding the absence of Network Services, you will still be responsible for the Service Fees for such Network Services.

5. Services Provided by our Affiliates. If a Service Order provides for the provision of Network Services in a jurisdiction other than a jurisdiction within which we are authorized to provide services, such Network Services may be provided to Customer and/or to its End User by our Affiliate and we may coordinate or manage that Affiliate's Network Services in that jurisdiction. If a Service Order requires the delivery of Network Services in a jurisdiction where, in order for such Network Services to be delivered, additional terms must be added to the Service Order, the Parties shall incorporate such additional terms in the Service Order (preserving to the fullest practicable extent the existing agreement between the Parties as recorded in the Service Order (which incorporate these Terms and Conditions)).

6. Services Provided by Third Parties. The Network Services may be provided in conjunction with other foreign-end administrations, underlying or interconnecting third-party carriers, local loop providers or any other authorized providers (collectively or individually "**Third-Party Service Providers**"). Our obligations under the Service Order and the Terms and Conditions do not apply to the lines, facilities, or services provided by any Third-Party Service Provider unless otherwise expressly specified as part of a Service Order.

7. Use of the Services. Customer is prohibited from marketing and/or re-branding the Network Services as its own product and services and reselling it to third parties. Without limiting the foregoing, and to the extent allowed by Applicable Law(s), Customer may use the Network Services in combination with its own product and services to provide services to its End-Users. Customer shall not use the Network Services nor allow the Network Services to be used to transmit, distribute or store contents or messages (including e-mail messages) which are illegal, potentially harmful (including but not limited to viruses, worms, password-cracking programs or Trojan horses); or fraudulent or misleading (including but not limited to false, deceptive, or misleading statements, claims, or representations), as determined by us in our sole reasonable discretion, or to transmit or distribute unsolicited e-mail messages where such e-mail messages could reasonably be expected to provoke complaints (SPAM). Violation of this Section 7 shall be treated as



a Default and we may, at our option, suspend or terminate the Network Services if Customer or its End Users do not comply with this Section 7.

8. Acceptable Use Policy. Customer's use of the Network Services shall at all times comply with our then-current Acceptable Use Policy ("**AUP**"), as amended by us and communicated in writing to Customer from time to time or which is available on the Customer Portal and our web site ([www.digitaledgedc.com](http://www.digitaledgedc.com)). Customer hereby expressly acknowledges that it has reviewed, understands, and accepts our AUP and our rights as set out therein.

9. Internet Access and Content. We provide only access to the Internet. We do not operate or control the information, services, opinions, or other content of the Internet (collectively, "**Internet Content**"), and we make no warranties or representations regarding Internet Content. Customer agrees that it shall make no claim whatsoever against us or our Affiliates relating to Internet Content or respecting any information, product, services, or software ordered through the Internet. We reserve the right to take such measures as may be reasonably necessary, in our sole discretion, to ensure security and continuity of service over Our Network, including but not limited to identification and blocking or filtering of Internet traffic sources which we deem to pose a security or operational risk or a risk of violation of our AUP. You acknowledge and agree that we do not own or control third-party networks, and we are not responsible or liable for any filtering or access restrictions imposed by such third-party networks or for the performance (or non-performance) of such third-party networks or within interconnection points between Our Network and such third-party networks.

10. Regulatory and Legal Changes. In the event of any change in Applicable Law(s) that materially increases our costs or adversely affects our delivery of the Network Services, the Parties agree to negotiate regarding the rates to be charged to Customer to reflect such increase in cost or the revisions to applicable Service Order(s) necessary to equitably adjust for such adverse effect. In the event that the Parties are unable to reach agreement within thirty (30) days after our delivery of written notice requesting negotiation, then (i) we may pass such increased costs through to Customer upon thirty (30) days' notice and/or revise the Service Order as appropriate to equitably adjust for such adverse effect, and (ii) you may terminate the affected Service Order in relation to the Network Services without termination liability by delivering written notice of termination no later than thirty (30) days after the effective date of any such rate increase and/or revision of the Service Order.

11. Export Control. The Parties acknowledge that products, software, and technical information (including but not limited to the Network Services) provided under the Service Order may be subject to export control and sanctions laws and regulations of the U.S. and other countries, and any use or transfer of the products, software, or technical information must comply with all applicable regulations. The Parties will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with all applicable export control and sanctions regulations. If requested by either Party, the other Party agrees to sign written assurances and other export-related documents as may be required to comply with all applicable export regulations.



**ATTACHMENT 2  
Service Level Agreement**

*This Service Level Agreement (“SLA”) sets forth the measurable performance levels (“Service Levels”) of the Services provided by us to you under a Service Order for Colocation Space and the specific remedies available to you if we fail to achieve them. The Service Levels set forth in this SLA are site dependent due to certain design, construction, and operational considerations. Please refer to the data center classifications at the end of this SLA for further details. Terms used but not otherwise defined herein shall have the same meaning ascribed to them in the GTC.*

*To receive a service credit hereunder, you must notify our Infrastructure Operations Centre by email to the address indicated below within seventy-two (72) hours of the first occurrence of the incident affecting the Service. A Service Level violation will be measured from the time that you notify us of such violation until such time as the Service Level in question is restored to the parameters set forth herein but will not include any testing period required to be performed by you. For the avoidance of doubt, our internal records shall serve as the final source of reference when any discrepancies arise between your and our records in respect of a Service Level violation.*

*Any service credit confirmed due by us shall be reflected in your first full invoice following the month in which we verified the reported incident. Except for your right to terminate a Service in the event of a Chronic Outage (as set forth below), the service credit(s) shall be your sole remedy for us not meeting the Service Levels described herein. You agree that under no circumstances will any damages accrue to you due to our failure to achieve a Service Level nor will such failure constitute a breach of the Agreement.*

*The total amount of service credits per month shall not exceed your Monthly Recurring Charges (MRC) for the affected Services or Affected Service Units (as hereafter defined). Notwithstanding anything herein to the contrary, you will not be entitled to receive a service credit if our failure to meet a Service Level is attributable to (1) your actions or inaction or those of your Associated Entities, (2) a Force Majeure Event, or (3) a Planned Maintenance Event.*

Chronic Outage Termination Right.

*If three (3) events of the same Service Level, e.g., Power, Ambient Temperature, or Relative Humidity, entitling you to a service credit occur with respect to a particular Service within a consecutive ninety (90) day period, you may terminate the affected Service immediately (without being liable for early termination fees) upon written notice to us in accordance with the terms of the Agreement, provided such notice is provided within thirty (30) days of the last event giving rise to your right to terminate.*

Contact Information.

*Technical issues, emergency fault reporting, and service credit claims:*

- Infrastructure Operations Centre: [support@digitaledge.com](mailto:support@digitaledge.com)
- Customer Portal: <https://portal.digitaledge.com>

**POWER GUARANTEE**

1. Redundant Power Guarantee: 100% Availability.

The AC and/or DC power to your cabinet(s) or private cage shall be available 100% of the time measured over any rolling twelve-month period subject to (a) your Customer Equipment having dual independent power supplies connected, at the same time, to two different power circuits provided by us and, for private cage, (b) your Customer Equipment utilizing, at the same time, both power feeds/buses provided by us. For the avoidance of doubt, the AC and/or DC power will only be considered unavailable if (i) both power circuits for cabinet(s), or (ii) both power feeds/buses for private cage, are unavailable at the same time.

2. Non-Redundant Power Guarantee: 99.99% Availability.

The AC and/or DC power provided to your cabinet(s) or private cage shall be available not less than 99.99% of the time measured over any rolling twelve-month period if you utilize (i) a single power circuit for your cabinet(s) or (ii) a single power feed/bus to your private cage.

3. Service Credits:

Subject to the exceptions set forth herein, whenever the availability of the AC and/or DC power to your cabinet or private cage is less than the applicable Service Level over any rolling twelve-month period, you may request a service credit for the aggregate down-time greater than the Service Level. Upon verification by us of our failure to meet the applicable Service Level, we will credit your account accordingly, and the measuring twelve-month period will begin again.

4. Service Credit Amounts:

*Service credits will be calculated by reference to the proportionate daily applicable MRC per the Affected Service Unit (as defined below) for each full hour of downtime which is beyond the Service Level. For purposes of this paragraph, the Affected Service Unit shall mean (a) the specific cabinet which is affected by the Service Level violation where such cabinet is not in a private cage; or (b) the specific power circuit affected by the Service Level violation where such circuit is provided to a private cage in proportion to the total number of power circuits supplied to that private cage.*

Exceptions and Qualifications:

*Notwithstanding the foregoing, if your Customer Equipment caused a circuit breaker activation due to excessive power draw, the interruption to power supply shall NOT be considered a downtime for purposes of this SLA or a failure by us to deliver the contracted Services.*

**AMBIENT TEMPERATURE GUARANTEE**

1. Ambient Temperature Guarantee:

Over a 24-hour period at normal load, we will maintain an average ambient temperature range within the cold aisles of the Colocation Area of (a) Celsius 25 ± 3 degrees and (b) not to exceed Celsius 30 degrees during power transition from utility to backup power (hereafter, "**Temperature Range**"), at not less than 99.99% of the time measured over any rolling twelve-month period.

2. Service Credits:

Subject to the exceptions set forth herein, whenever the average ambient temperature within the cold aisles of the Colocation Area is outside of the Temperature Range for the specified Service Level time-period, you may request a service credit. Upon verification by us of our failure to achieve the Service Level, we will credit your account accordingly, and the measuring twelve-month period will begin again.

3. Service Credit Amounts:

*Service credits will be calculated by reference to the proportionate daily applicable MRC for the affected Colocation Space (i.e., space + power only) for each full hour the Temperature Range is outside of the committed Service Level time-period.*

Exceptions and Qualifications:

1. When the IT power load of a data center is operating at less than its designed capacity, the average ambient

temperature may be lower than the defined Temperature Range but in no event shall it be lower than Celsius 18 degrees.

2. We do not warrant temperatures within your cabinets or private cage.
3. For private cage, we may separately agree with you in a Service Order to provide the Ambient Temperature Guarantee but only if (i) we are responsible for the design of the private cage and the layout of your Customer Equipment and (ii) you provide accurate power consumption information for all Customer Equipment installed within the private cage.
4. Only our installed and operated temperature sensors will be used to measure the ambient temperature within the cold aisles of the Colocation Area.
5. *The foregoing Service Level does not apply if you change your Customer Equipment configuration outside of our reviewed and recommended power specifications.*

### RELATIVE HUMIDITY GUARANTEE

1. Relative Humidity Guarantee:

For Class A data centers only:

Over a 24-hour period at normal load, we will maintain the average relative humidity range within the Colocation Area of 50% ± 20% (hereafter, "**Humidity Range**") at not less than 99.99% of the time measured over any twelve-month period.

2. Service Credits:

Subject to the exceptions set forth herein, whenever the average relative humidity is outside the Humidity Range for the specified Service Level time-period, you may request a credit. Upon verification by us of our failure to achieve the Service Level, we shall credit your account accordingly, and the measuring twelve-month period will begin again.

3. Service Credit Amounts:

*Service credits will be calculated by reference to the proportionate daily applicable MRC for the Colocation Space (i.e., space + power only) for each full hour that the Humidity Range is outside the committed Service Level time-period.*

Exceptions and Qualifications:

1. We do not warrant the humidity levels within your cabinet or private cage.
2. For private cage, we may separately agree with you in a Service Order to provide the foregoing Relative Humidity Guarantee, but only if (i) we are responsible for the design of the private cage and the layout of your Customer Equipment within the private cage and (ii) you provide accurate power consumption information for all Customer Equipment installed within the private cage.
3. Only our installed and operated humidity sensors will be used to measure the relative humidity of the Colocation Area.
4. Service Levels do not apply if you change your Customer Equipment configuration outside of our reviewed and recommended power specifications.



5. Humidity sensor readings will be taken outside of installed cabinets and no less than 12 inches from the air-intake side of the cabinet(s) and between 2 to 5 feet from the floor level.