

## Master Service Agreement (MSA)

This agreement ("**Agreement**") effective as of the execution and delivery of Service Order Form ("Order"), is made between: Carbon60 Networks Inc. with its principle place of business at 1725 16<sup>th</sup> Avenue, Suite 100, Richmond Hill, Ontario, Canada L4B 0B3 (the "**Company**") and the Customer.

In consideration of the mutual promises and covenants made herein, the parties agree as follows:

### 1. Entire Agreement

This Agreement, including any and all documents incorporated herein by reference, constitutes the entire Agreement between the Customer and Company. This Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between Company and the Customer (the "**Parties**").

### 2. Governing Law

This Agreement shall be interpreted in accordance with and be governed in all respects by the laws of the Province of Ontario and the laws of Canada applicable therein. The courts of Ontario shall have exclusive jurisdiction to entertain any action or proceeding brought by the parties in connection with this Agreement or any alleged breach of this Agreement.

### 3. Services

Subject to the terms and conditions of this Agreement, Company will provide the services (the "**Services**") specified in the Order and incorporated into this Agreement by reference. Services shall be delivered in accordance with the description of the Services as set out in the Service Portfolio or Order. Services shall be in accordance with the Service Level Agreement ("SLA") attached hereto as Exhibit 'C' throughout the Recurring Services Term. Additional Services may be agreed to by both parties through the execution of additional Order forms, each of which shall be incorporated into this Agreement by reference and shall be effective as of the date provided thereon. Except as expressly amended by an additional Order(s), all terms and conditions of this Agreement shall remain in full force and effect. The Acceptable Use Policy ("**AUP**") is attached as Exhibit B hereto and the Service Level Agreement ("**SLA**") related to the Services is attached as Exhibit C hereto.

### 4. Fees and Payment

#### 4.1 Payment Date and Billing Information

The Customer agrees to pay Company the one time and recurring fees for Services based on the rates identified in the Order. The Customer is fully responsible to ensure payment of any and all amounts due are paid on time. Invoices are provided via email or, upon written request, via fax or mail. Dollar amounts and costs indicated on the Order are in Canadian currency unless otherwise stated. The Customer is responsible for keeping its contact and billing information up-to-date and accurate, including but not limited to a properly functioning and reachable email address and telephone number. In consideration for Company's delivery of the Services, Customer shall pay the fees as follows:

- (a) any Total Monthly Recurring Fee set out in the Order on a monthly basis in advance on immediate receipt of invoice, invoicing to commence on the commencement of the Recurring Services Term (as defined in Section 5.1 hereof). Any partial months shall be invoiced on a prorated basis;
- (b) any Total One Time Fees set out in the Order on receipt of invoice;
- (c) any Professional Service Fee set out in the Order on receipt of invoice; and
- (d) any Overage Fee or other fees on immediate receipt of invoice.

#### 4.2 Overdue Accounts

Fees are payable by Customer within thirty (30) calendar days of invoice date. All fees not paid within thirty (30) days of their due date are subject to a late charge calculated at a rate of 2% per month (12%/year). Returned checks will also be charged a \$100 NSF fee. Company may suspend Services with ten (10) days written notice to the Customer if the Customer has any balance forty five (45) days or more days past due. In the event of suspension of Services, the Term shall, subject to any right of termination contained herein, be extended by an amount of time equal to that of the suspension. Company may terminate this Agreement with ten (10) days' notice to the Customer if the Customer has any balance seventy-five (75) days or more past due.

#### 4.3 Other Charges

The Customer will pay all sales, excise and other value-added taxes, duties or levies of any kind whatsoever imposed by any authority, government agency or commission in connection with Company's Services as provided under this Agreement. The Company reserves the right to charge the Customer a standard hourly rate of \$150/hour to cover professional services provided the Customer beyond those specified in the Order. Notwithstanding anything else contained herein, Customer shall indemnify Company and hold Company

harmless against any liability that Company has for any additional taxes (including for greater certainty any interest, penalties, fines, or other similar charges) arising as a result of or in connection with any delay or failure by Customer, for any reason: (a) to charge, collect and/or remit to the relevant taxation authority any taxes due under or in relation to this Agreement; or (b) to file any tax or information return with the relevant taxation authority in connection with the charging, collection and/or remittance of taxes.

#### 4.4 Credit

Company may at any time perform a credit analysis of Customer. Customer shall provide any credit information reasonably requested by Company. Following such credit analysis, Company may, in its sole discretion, require Customer to pay the total fees, or any portion thereof, in advance of providing Services and/or require other assurances to secure Customer's payment obligations under this Agreement.

#### 4.5 Renewal

Company may increase the fees for any Renewal Term upon 30 days notice prior to the commencement of such Renewal Term. In any case, Company has the right to increase the fees by the national Consumer Price Index on each annual anniversary during the Term.

#### 4.6 Disputes

Notwithstanding the foregoing, fees reasonably disputed by Customer (along with late fees attributable to such amounts) shall not be due and payable if, and only if, Customer:

- (a) pays all undisputed fees on or before the date specified in section 4.1 hereof;
- (b) presents a written statement of any billing discrepancies to Company in reasonable detail together with appropriate supporting documentation no later than ten (10) days after the date of such invoice; and
- (c) negotiates in good faith with Company for the purpose of resolving such dispute within ten (10) days of submitting such written statement to Company. In the event such dispute is mutually agreed upon and resolved in favour of Company, Customer agrees to pay Company the disputed fees together with any applicable late fees within five (5) days of the resolution. In the event such dispute is mutually agreed upon and resolved in favour of Customer, Customer will receive a credit for the disputed fees and any applicable late fees actually invoiced. In the event the dispute is not resolved in such thirty (30) day period, either party may apply to a court of competent jurisdiction for resolution.

## 5. Term

#### 5.1 Term

The term of any Order (the "Term") shall commence on the date of this Agreement and shall include the Recurring Services Term (as defined herein). The term for the recurring services ("Recurring Services Term") shall begin on the date on which Customer is notified that the operating system has been installed and the Service is ready to accept Customer's data (the "Recurring Services Notice"). The duration of the Recurring Services Term shall be as stated on each individual Order. Throughout this Agreement, both the Term and the Recurring Services Term may be collectively referred to as the "Term". Invoicing will be in accordance with the payment provisions set out in Section 4 hereof. To align with the Company's standard billing cycle, the first invoice will include a prorated portion to align with the first day of the following month and the recurring portion of the Order for the next period.

#### 5.2 Acceptance

Customer has three (3) business days to test the Services, and notify Company in writing if the Service is in material non-compliance with the applicable technical specifications set forth in the Order. If no written notice is received from Customer within three (3) business days or if Customer accepts the Service in writing within that three (3) business day period, the Recurring Services Term shall be the date of the Recurring Services Notice. If Customer delivers notice within the three (3) business day period of material non-compliance with the applicable technical specifications set forth in the Order, Company shall promptly take such reasonable action as is necessary to correct any such non-compliance in the Services and shall notify Customer in writing when such service is ready and available for use, thereby initiating the procedure and timelines set out in this Section 5.2 for such services.

## 6. Renewal Term

The Recurring Services Term shall automatically renew for additional successive terms equal to the initial Recurring Services Term (the "Renewal Term") unless either party delivers to the other party written notice of its intention not to renew the Agreement no less than ninety (90) days prior to the expiration of the then current Term.

## 7. Customer Obligations

### 7.1 Services Contingent

Company's obligations to initiate delivery of and continue to perform the Services shall be contingent upon Customer fulfilling the following obligations at its sole cost and liability:

- (a) timely payment of all fees;
- (b) complete and maintain throughout the Term accurate contact and authorized user information as well as any form required for the ongoing delivery of Services such as credit application forms and IP Justification Forms, as may be applicable;
- (c) comply throughout the Term with the AUP;
- (d) provide Company throughout the Term with a valid and subsisting right to transmit the Customer Software and Custom Applications, if any, over those Company controlled IP Addresses assigned to Customer by Company;
- (e) to not exercise or otherwise make use of any administrative access rights to the Customer System without first following the procedure set forth in Section 16;
- (f) Customer shall apply and keep any Custom Applications updated with the latest release of security related patches available from its software vendors and shall within 7 days of the information being published or becoming available, adhere to security advisories as from time to time provided/published by (i) Company, (ii) security related web sites, including, but not limited to CERT and Bugtraq, and (iii) the vendors of the Custom Applications;
- (g) Customer shall test all patches applied to the Customer System by Company for compatibility with all Custom Applications within the time limits specified by Company, and;
- (h) provide Company with the Customer Hardware and Customer Software, if any, upon request by Company and assign to Company any maintenance agreements for Customer Hardware and Customer Software with, if necessary, the vendor's approval, or obtain the vendor's consent permitting Company to act as Customer's agent under such maintenance agreement.

## 8. Termination of Agreement

### 8.1 Termination

Upon the termination or expiration of this Agreement, the Company will not be liable to the Customer for any damages, expenditures, loss of profits, or prospective profits of any kind or nature sustained or arising out of or alleged to have been sustained or to have arisen out of such termination or expiration.

### 8.2 Company's Termination for Material Breach or Insolvency

Notwithstanding anything to the contrary contained in the Agreement, Company may, at its option and in addition to any other rights and remedies available at law or equity, terminate the Agreement:

- (a) anytime during the suspension period referenced in section 4.2 hereof upon thirty (30) days prior notice;
- (b) immediately upon the actual breach or documented threatened breach of the warranty contained in Section 7.1(c), 7.1(f), 7.1(g) or 9.3, hereof;
- (c) upon thirty (30) days prior written notice and opportunity to cure upon the actual breach or documented threatened breach of any warranties or obligations, other than breach of Section 7.1(a), 7.1(c), 7.1(f), 7.1(g), 7.1(h) or 9.3, contained in Sections 7 and 9; or
- (d) upon Customer becoming insolvent or bankrupt or making an assignment for the benefit of creditors or appointing (or having appointed) a receiver or trustee in bankruptcy or upon any proceeding in bankruptcy, receivership or liquidation being instituted against Customer and continuing for thirty days without being dismissed.

### 8.3 Customer's Termination

Customer may terminate the Agreement upon Company's failure to cure a material breach within thirty (30) days of Company receiving written notice of such breach.

### 8.4 SLA not Material

For the purposes of Section 8.3, a failure to achieve the SLA shall not be deemed a material breach of the Agreement.

### 8.5 Termination Policy

On termination or expiration of this Agreement, all rights, benefits and obligations under this Agreement terminate other than the Customer's responsibilities to pay all outstanding fees. Customer shall cease using the Services and applicable obligations on the part of the Company will cease (including that the Company will disconnect Customer's access to the Services). Furthermore, the Company shall have no responsibility for the

restoration of Services. All Custom Applications, Customer Software and customer owned data will be deleted. The Customer may request a copy of the Custom Applications, Customer Software and/or customer owned data at any time prior to termination or during the Transition Assistance as per Section 8.6. The Customer will cover all costs associated with the software and/or data recovery and/or restoration of Services at the Company's standard business rates.

## **8.6 Transition Assistance**

Upon the natural expiration of this Agreement and a deposit equal to the last month of Services fees, save and except in the event Customer's account is not current at the time of termination, the Company will, upon thirty (30) days prior written request, continue to provide the Services and will provide the other professional services referred to in this section 8.6 (the "**Transition Assistance**") for as long as the Transition Assistance is requested and paid for by Customer, up to a maximum of 90 days after the last day of the Term (the "Transition Period"). The Company will co-operate with Customer to assist in a transition of the Services to Customer and/or other service providers, but shall in no event be required to disclose any Company Confidential Information or intellectual property. All services provided by the Company and agreed to in writing by the Customer during the Transition Period which are incremental to the standard Services provided by the Company hereunder shall be paid for on a time-and-materials basis by Customer at the Company's standard business rates.

## **9. Warranty / Limitation of Liability**

### **9.1 Warranty and Disclaimer**

SUBJECT TO THE QUALIFICATIONS AND LIMITATIONS CONTAINED HEREIN, THE COMPANY WARRANTS THAT THE SERVICES WILL, IN ALL MATERIAL RESPECTS, CONFORM TO THE DESCRIPTION OF SERVICES PROVIDED IN THE SERVICES PORTFOLIO. EXCEPT AS SET EXPRESSLY FORTH IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW THE COMPANY MAKES NO WARRANTIES, GUARANTEES, REPRESENTATIONS OR ENDORSEMENTS, EXPRESS OR IMPLIED, AS TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR CONDITION OF MERCHANTABILITY QUALITY OR FITNESS FOR PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM A STATUTE OR CUSTOM OR A COURSE OF DEALING OR USAGE OF TRADE, AND ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS, ENDORSEMENTS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED AND EXCLUDED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. MAINTENANCE AND SYSTEM REPAIRS, UPGRADES AND RECONFIGURATIONS MAY TEMPORARILY IMPAIR SERVICES. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. CUSTOMER EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH COMPANY USES COMMERCIALY REASONABLE EFFORTS TO IMPLEMENT THE SERVICES TO PROTECT CUSTOMERS DATA, COMPANY DOES NOT PROVIDE OR GUARANTEE ABSOLUTE SECURITY.

### **9.2 Limitation of Liability**

EXCEPT FOR CLAIMS ARISING FROM SECTIONS 9.3, 9.4 OR 10 HEREOF, NEITHER PARTY SHALL BE LIABLE IN CONNECTION WITH ANY SINGLE EVENT OR SERIES OF EVENTS FOR ANY SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOST BUSINESS REVENUE, LOST OR DAMAGED DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, FOR ANY CLAIM ARISING UNDER THIS AGREEMENT, REGARDLESS OF CAUSE OF ACTION. FURTHERMORE, CUSTOMER AGREES THAT CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR COMPANY'S FAILURE TO PROVIDE THE SERVICES IN ACCORDANCE WITH THE APPLICABLE SLA SHALL BE AS SET OUT IN SUCH SLA. EXCEPT FOR LIABILITY OR BREACH RELATED TO BODILY INJURY, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR UNAUTHORIZED USE OR DISCLOSURE OF CUSTOMER'S CONFIDENTIAL INFORMATION BY AN AUTHORIZED AGENT OF THE COMPANY, THE COMPANY SHALL IN NO EVENT BE LIABLE TO THE CUSTOMER FOR AN AMOUNT GREATER THAN THE AMOUNT PAID BY THE CUSTOMER TO COMPANY FOR THE SERVICES IN THE SIX (6) MONTHS PRIOR TO NOTICE OF THE CLAIM. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS AGREEMENT CONSTITUTE AN ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN THE PARTIES AND THAT IN THE ABSENCE OF SUCH DISCLAIMERS, EXCLUSIONS AND LIMITATIONS: (A) THE FEES AND OTHER TERMS IN THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT; AND (B) COMPANY'S ABILITY TO OFFER AND CUSTOMER'S ABILITY TO PURCHASE SERVICES OR ANY PORTION THEREOF UNDER THIS AGREEMENT WOULD BE IMPACTED.

### 9.3 Intellectual Property Indemnity

If either party (the "Indemnitee") promptly notifies the other (the "Indemnitor") of a claim against the Indemnitee that any of the Services or Customer supplied hardware, software or data, as the case may be, infringes a presently existing proprietary right of a third party, and if the Indemnitee specifies in such notice that the claim is based to any extent upon an alleged infringement enforceable in Canada of any portion of the Indemnitor's properties (Services or Customer supplied hardware, software or data, as the case may be), the Indemnitor, with respect to and to the extent of the portion of the claim pertaining to the Indemnitor's properties, shall indemnify and defend such claim at its expense and pay any costs or damages that may be incurred or finally awarded against the Indemnitee. THIS SECTION SETS FORTH THE COMPLETE LIABILITY OF THE PARTIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

### 9.4 PIPEDA and CASL Indemnity.

Notwithstanding any limitation of liability otherwise contained in the Agreement, Customer agrees that it shall indemnify, defend and hold Company, its officers, directors, employees and contractors harmless from any and all claims, costs, liabilities and damages which arise from or relate to Customer's failure to comply in the conduct of its business with the Canada Anti-Spam Law ("CASL") and/or the Personal Information Protection and Electronic Documents Act or other similarly applicable federal or provincial/state statute.

### 9.5 Customer Representations & Warranties

Customer represents and warrants at its sole cost and liability that:

- (a) Customer is the true and lawful owner or licensee of the Customer Software and Custom Applications and has the full right and ability to use such Customer Software and Custom Applications as contemplated in this Agreement;
- (b) Customer's use of Company controlled IP Addresses or use of the Services including any data transmitted, stored or received on the Services will not (i) violate any applicable laws, regulations or Company policies, (ii) cause a breach of any agreement with any third parties, or (iii) interfere with other Company customer's use of any Company services or Company's network;
- (c) Customer has, where applicable, obtained all necessary consents to conduct its business in compliance with the Canada Anti-Spam Law ("CASL") and the Personal Information Protection and Electronic Documents Act or other similarly applicable federal or provincial/state statute, and;
- (d) Customer has the right to place Customer Hardware, if any, in the Facility for the purposes of receiving the Services as contemplated herein.

## 10. Confidentiality of Customer and Personal Information

### 10.1 Confidential Information

- (a) Confidential Information. The parties acknowledge that it will be necessary for each of them to disclose or make available to each other information and materials, including but not limited to business information concerning a party and its clients, specifications, research, software, trade secrets, discoveries, ideas, know-how, designs, drawings, flow charts, data, marketing plans and financial or business information that is disclosed whether orally visually or in a material form, (collectively the "Confidential Information") that may be confidential or proprietary or may contain valuable trade secrets, and that such information may already have been disclosed prior to the Commencement Date. Prior to disclosure, the disclosing party shall use reasonable efforts to designate all Confidential Information by marking the information with the word "Confidential" or similar wording. However, Customer and Company agree that, even if not so marked, the Order, the Services Portfolio, any Custom Application, any Customer Hardware, Customer Software, information concerning Company's facilities and all documents, descriptions and embodiments of any of them, shall be deemed Confidential Information.
- (b) Exceptions. Information will not be considered to be Confidential Information if it:
  - (i) is already, or otherwise becomes, publicly known by third parties as a result of no act or omission of the receiving party;
  - (ii) is lawfully received, after disclosure hereunder, from a third party having right to disseminate the information without restriction on disclosure;
  - (iii) is furnished to others by the disclosing party without restriction on disclosure; or
  - (iv) can be shown by the receiving party to have been independently developed by such party prior to the execution of this Agreement.
- (c) Injunctive Relief. The parties agree that any breach by either party or any of its officers, directors, or employees, of any provisions of this Section 10.1 may cause immediate and irreparable injury to the other

party and that, in the event of such breach, the injured party will be entitled to seek injunctive relief as well as any and all other remedies at law or in equity.

## **10.2 Customer Data**

As between the Company and Customer, Customer owns and retains all right, title and interest in all intellectual property rights pertaining to the Customer's software and data ("Customer Data"), subject only to the Company's right to access and use the Customer Data for the benefit of the Customer in connection with providing Services pursuant to this Agreement. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right to use the Customer Data. Customer represents that it has and will have the right to provide Customer Data to the Company in connection with the Services pursuant to this Agreement, including, but not limited to, obtaining applicable consents from identifiable individuals.

## **11. Force Majeure**

The Company shall not be liable for any delay or failure in performance of Services due to events beyond the Company's direct control, including war, riot, embargoes, strikes, casualties, accidents, fire, earthquake, flood, acts of God, government intervention or action, supplier or vendor failure.

## **12. Acceptable Use Policy**

The Customer agrees that the Company reserves the right to amend the terms of the AUP from time to time. The Customer will receive (30) thirty days' notice of any such change. Unless the Customer notifies the Company in writing that such a change materially restricts their ability to do business within fourteen (14) days of notification, the Customer's continued use of the Company's Services after modification of the Acceptable Use Policy constitutes Customer's acceptance of the modifications.

## **13. Unlawful Use of Services**

The Company will employ the systems described in the Services Portfolio to guard the security of the Services. However, the Customer acknowledges that it accepts all risk to itself of any unauthorized or illegal use of the Company's Services or any inter-connected network by the Customer or third parties. The Company provides no warranties, makes no representations, and accepts no liability for the unauthorized or illegal access or interference with the Customer's Services.

## **14. IP Addresses**

The Company assigns IP (Internet Protocol) addresses to the Customer as part of the Services. The Customer has no right to use IP addresses not assigned to it by the Company, to move IPs between different servers or accounts or to use IP addresses in any manner not authorized by the Company. The Company maintains control of all IP addresses that are assigned to the Customer and reserves the right to change or remove them at its discretion with sixty (60) days written notification to the Customer. Customer acknowledges that IP addresses are assigned to Customer as part of the Services and are not transferrable and control of the IP addresses remains with Company and no right, title or interest in or to the IP addresses passes to Customer. Customer agrees that any renumbering required of IP addresses upon termination or expiration of this Agreement is the sole and exclusive responsibility of Customer. Customer acknowledges the allocation of public IP addresses governed by the policies of the American Registry of Internet Numbers (ARIN). These policies dictate that name-based hosting must be used whenever possible. The Company reserves the right to periodically review IP address usage and revoke authorization to use those IP addresses not being utilized or where name-based hosting could be used.

## **15. The Company Administrative Access and Administrative Tools**

The Company retains the right to administrative access to any and all devices on its network for the purposes of management, maintenance, inventory and activities related to the delivery of Services. To facilitate this, all devices must have functioning Company administrative privileges and agents, including a functioning Company monitoring agent, an administrative agent and an inventory agent. Administrative privileges and agents may be added, removed or modified by the Company at any time. The Customer will not tamper, hinder, delete or in any way change the functioning of these administrative tools. Any tampering or removal of the tools used by the Company to manage the Service constitutes a material breach of this Agreement. Customer agrees that it shall not have administrative access to the Services, or any part thereof, unless specifically agreed to by Company, such administrative access to be subject to the following conditions:

- (a) the SLA shall be suspended upon Customer being granted administrative access to the Services;
- (b) Company shall not be liable for, and makes no guarantees whatsoever, express or implied, with regard to the Services performed during the period of time in which the SLA is suspended;

- (c) the SLA and any liability incurred by Company under this Agreement shall be reinstated only upon verification by Company of the operational status of the Services following the conclusion of Customer's administrative access; and
- (d) any corrective action deemed necessary and undertaken by Company resulting from Customer's administrative access shall be charged, and paid for by Customer, at Company's then prevailing hourly rates.

## **16. No Solicitation**

Unless otherwise agreed in writing by the parties, during the Term of this Agreement and for a period of six (6) months following its termination for any reason each party agrees not to solicit for employment any current employee of the other party. This restriction does not prevent the hiring of such employees who respond to indirect, passive solicitation such as advertising, job boards, or web sites.

## **17. Data Backups and Archiving**

If included on the Order as part of the Service, Company will employ the systems described in the Services Portfolio to help protect the reliability of its backup and archiving services, and will provide Customer with logs of all backup processes upon request. However, due to the technical limitations regarding backups on live servers and the possibility of data corruption on backup or restore, the Company cannot guarantee all or any data can be restored from any particular backup.

## **18. Rights to Intellectual Property**

Customer hereby grants Company a non-exclusive, non-sublicenseable, royalty free, worldwide license to use Customer's trademarks, service marks, trade names, logos, or other commercial or product designations (collectively the "Marks") for the purposes of marketing and promoting Customer's services to the public. Customer may terminate Company's right to use the Marks, in whole or in part, if the usage of such Marks does not adhere to Customer's then current standards for such Marks. Neither party will acquire any right, title or ownership interest in and to any intellectual property owned or licensed by the other party in connection with the Services. Also, in the context of software provided by the Customer to the Company as part of its Services, the Customer will ensure that it is and remains compliant with all applicable third-party software licensing agreements.

## **19. Headings**

Headings are used throughout this Agreement for convenience only and no provision, term or condition of this Agreement shall be construed by reference to any heading of this Agreement.

## **20. Assignment**

Neither this Agreement nor any rights hereunder may be assigned by the Customer, without the prior written consent of the Company, such consent not to be unreasonably withheld. Customer may not re-sell any of the Services provided hereunder without the express prior written consent of the Company. The Company may assign this Agreement or any rights hereunder only upon the sale of all or substantially all of the Company's assets to a third-party.

## **21. Survivability**

Termination of this Agreement by either Party shall not affect the rights and obligations of the Parties that accrued prior to the effective date of the termination. The following sections shall survive termination or expiration of this Agreement: Sections 2, 4.3, 4.6, 7, 8, 9, 10, 14, 16, 17 and 19.

## **22. Severability and Waiver**

Either party's failure to insist on or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision, term, condition or right of that party contained in this Agreement. If any provision of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction, the offending provision will be severed but the remaining provisions will continue in full force without being impaired or invalidated in any way. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

## **23. Modifications**

The Company shall not be bound by any representations or statements by its employees or agents whether oral or in writing. This Agreement may be modified only by mutual written agreement of the Parties.

## **24. Relationship of Parties**

No agency, partnership, joint venture, or employment relationship is created by this Agreement and neither party has the power to bind the other party.

## 25. Definitions

- (a) "Services" shall mean those services described in the Services Portfolio attached hereto as agreed to in an Order.
- (b) "Custom Application" means those computer programs, including documentation relating thereto, all updates and new releases thereof, owned by or licensed to Customer by a third party which Customer installs and manages on the Services and are not provided by Company.
- (c) "Customer Hardware" means the computer systems, peripherals, terminals, communications equipment and all other related hardware products owned or leased by, or otherwise under the control of Customer that have been specifically approved by Company for inclusion as part of the Services.
- (d) "Customer Software" means the computer programs, including documentation relating thereto, all updates and new releases thereof, owned by or licensed to Customer by a third party which are installed on the Services and managed by Company.



## Exhibit B

### Acceptable Use Policy (AUP)

#### 1. Prohibited Conduct

##### 1.1 System Abuses

The Customer may not use the Company's network or Services in any way that adversely affects any other clients of Company. This includes but is not limited to: a) gaining or attempting to gain unauthorized access to servers or services. Such attempts include: "Internet scamming" (tricking other people into releasing their passwords), password robbery, security hole scanning, port scanning, probing, monitoring or testing for system or network vulnerabilities; b) introducing viruses, Trojan horses, trap doors, back doors, Easter eggs, worms, time bombs, packet bombs, cancel bots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; c) intentionally omitting, deleting, forging or misrepresenting transmission information, including headers, return addressing information and IP addresses; d) engaging in any of the foregoing activities using the service of another provider but channeling such activities through a Company account or re-mailer or using a Company account as a mail drop for responses to Unsolicited Commercial E mail ("**UCE**") or hosting a website that is advertised via UCE or otherwise requiring return transit through the Company's network; e) using IP addresses which were not assigned by the Company; or f) running Internet Relay Chat ("**IRC**") servers, bots or clients.

##### 1.2 Sending Unsolicited Commercial Email or SPAM

The Customer may not send SPAM or UCE over the Company's network. This includes third party "opt-in" lists. The Company's services must not be used to send UCE and will not host sites or information advertised in UCE. The Customer must also not host a publicly-accessible "open relay" SMTP or anonymous re-mailer service. The Customer is responsible for the actions of its users and must take all reasonable precautions to secure its applications against SPAM exploits. Moreover, any Customers processing outbound mailing lists are required to maintain an abuse@ email address for each associated domain. Messages must also adhere to the Canada Anti-Spam Law..

##### 1.3 Posting of Illegal Content

The Customer must not include content or have links to content that: a) is unlawful; b) defames or promotes injury or physical harm against any group or individual; c) promotes or teaches illegal activities; d) exploits or depicts children in any negative/sexual way; e) infringes on copyright, patents, trademarks, trade secrets, or other intellectual property including pirated computer programs, cracker utilities, warez and software serial numbers or registration codes; f) violates any law, statute, ordinance or regulation governing the Customer's business or activities, including without limitation the laws and regulations governing export control, unfair competition, false advertising, consumer protection, issuance or sale of securities, trade in firearms, privacy, data transfer and telecommunications.

#### 2. AUP Monitoring

The Company cannot monitor or control all the activities of the Customers. The Company exercises no control over Customer content and does not actively screen or censor the activities or content of Customers but may do so for the purpose of enforcing this AUP. The Customer, not the Company, assumes all responsibility and liability relating to its Internet activities and maintaining compliance with the AUP.

#### 3. AUP Violations

If a Customer is found, in the Company's reasonable determination, to be in violation of this AUP, the Company will make reasonable commercial efforts to notify the Customer. During this period, Services may, at Company's sole discretion, be terminated or suspended from the offending IP address(s) to prevent, in the Company's reasonable judgment, further serious AUP violations such as, but not strictly limited to, child pornography, network attacks or significant volumes of SPAM. If not resolved to the Company's reasonable satisfaction after three (3) business days then the Company may and without further notice to the Customer terminate all Services under any and all Agreements then in effect with the Customer. No refunds or fees shall be repayable to the Customer in the event of such termination or during any period of suspension and any outstanding fees will remain due.

## Exhibit C

### Service Level Agreement (SLA)

The purpose of this Service Level Agreement is to set forth the service levels at which Company is to provide certain Services to Customer. Customer agrees that the remedies set out herein are the sole and exclusive remedy for Company's failure to meet an SLA. This SLA applies only while Customer accounts are in good standing.

The System Availability SLA and the Application Availability SLA are mutually exclusive. Company shall be subject to, and Customer shall benefit from, only the System Availability SLA unless and until such time as Customer complies with the Application Availability SLA Conditions set out at Section 2.1 below.

#### 1. System Availability SLA

The Company will make commercially reasonable efforts to maintain availability of the datacenter systems, network systems, storage systems, and computing systems that make up the Customer's hosting infrastructure (i.e. the "**System**") 100% of the time in any given month. If the Customer experiences availability of the System less than 99.95% in any given month the the Company will credit the Customer 10% of the monthly fee otherwise payable for the affected Service for missing the associated uptime objective and another 5% for each 60 minutes of additional downtime up to a maximum of 100% of Customer's monthly fee for the affected Service. System downtime is measured from the time a service impacting System failure is detected to the time it is resolved as measured by the monitoring system. Credits shall not be provided to the Customer if System downtime is the result of: a) SLA Suspensions as per Section 4 of this SLA; b) circumstances beyond the Company's reasonable control, including but not limited Force Majeure Events; or c) a breach by the Customer of this Agreement or the Company's AUP.

#### 2. Application Availability SLA

This Application Availability SLA applies to the Customer's production website(s) or application(s) fully managed by Carbon60 and listed below by its domain or sub-domain name and its hosting tier:

- Tier 1 if the website or application, utilizing Carbon60's "multi-origin" cloud hosting infrastructure located in geographically diverse Carbon60 data centres and Akamai's Edge Routing service, can respond to end user requests ; or
- Tier 2 if the website or application, utilizing Akamai's Edge Routing Service in a single location, can respond to end user requests.
  - *Specify domain or sub-domain name and tier (e.g. www.domainname.com – Tier 1)*
  - *Specify domain or sub-domain name and tier (e.g. my.domainname.com – Tier 2)*

If the Customer's Application(s) experiences Availability (as defined below) less than 99.99% for Tier 1 Applications or 99.9% for Tier 2 Applications in any given month, Company will credit the Customer 10% of the monthly fee otherwise payable for the affected Service for missing the associated uptime objective and another 10% for each additional thirty (30) minutes of downtime up to a maximum of 100% of Customer's monthly fee for the affected Service.

Application downtime will be measured and reported by a third party global availability monitoring system ("**Global Monitoring System**") using a test script ("**Synthetic Transaction**"). "Availability" is defined as the ability of the Application(s) to respond to a Synthetic Transaction from the Monitoring System from one or more remote checkpoints.

Credits shall not be provided to the Customer if downtime is the result of: a) SLA Suspensions as per Section 4 of this SLA; b) circumstances beyond the Company's reasonable control or Force Majeure Events; c) a breach by the Customer of this Agreement or the Company's AUP; or d) the Customer does not comply with the conditions in Section 2.1 below.

##### 2.1 Application Availability SLA Conditions

The Customer agrees to the following conditions related to the application availability SLA. If any of these conditions are not met then the application availability SLA is suspended and no credits will be payable for the month in which conditions are breached or any succeeding month until the conditions are met to the Company's reasonable satisfaction. Customer is responsible for all costs associated with maintaining these SLA conditions.

The application SLA conditions are:

- Customer is subscribed to Global SLA Monitoring for each Application.
  - A Synthetic Transaction approved by both parties is in place for each Application.
- The solution architecture for each Application has no single points of failure as approved by the Company
- Infrastructure storage, compute, network capacity on production systems maintained at < 80% of utilization as measured during the course of normal usage over the trailing 90 days.
- Customer’s application is running on OS or supporting software services no more than one major release out of date and is patched for known critical vulnerabilities
- Regular maintenance windows are scheduled for the Application(s)

### 3. Service Desk SLO

The Company will make commercially reasonable efforts to provide technical support services to Customer 24/7/365 (“Service Desk”). The Customer will use the Service Desk as the central point of contact for all technical support related to its Services. Customers may call the Service Desk but are strongly encouraged to use the online customer service portal to submit any service requests to the Service Desk. All requests to the Support Desk and Support Desk activities are logged to the Company’s internal support systems. To access the Service Desk, Customers must: 1) know their account and user credentials; and 2) provide a clear and specific description of the incident, problem or request, including information regarding any error messages that was received.

The Service Desk uses the following guidelines to prioritize requests and respond to, and begin resolving any incident or request.

REQUESTS		
Priority	Criteria	Response Time
1 - Urgent	<ul style="list-style-type: none"> <li>▪ Urgent Change Requests involving security issues</li> <li>▪ Application hot fixes to stabilize environment</li> </ul>	15 Minutes
2 - Standard	<ul style="list-style-type: none"> <li>▪ Standard Change Requests               <ul style="list-style-type: none"> <li>○ User / Password / Permission Changes</li> <li>○ DNS / Firewall / Load Balancer Changes</li> <li>○ System Upgrades / Patching</li> <li>○ Performance / Security Testing</li> </ul> </li> </ul>	1 Hour
3 - Normal	<ul style="list-style-type: none"> <li>▪ A request for technical information or advice about the Company’s services or procedures</li> <li>▪ Sales, Billing Questions</li> </ul>	24 Hours

INCIDENTS		
Priority	Criteria	Response Time
1 - Critical	<ul style="list-style-type: none"> <li>▪ Production system is malfunctioning and business transactions are failing or significantly degraded</li> </ul>	15 Minutes
2 - High	<ul style="list-style-type: none"> <li>▪ Complete or partial failure of service on a non-production system</li> </ul>	30 Minutes

3 - Normal	<ul style="list-style-type: none"> <li>▪ Minor disruption to the business if the workload is unavailable for a short period of time</li> </ul>	1 Hour
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## 4. SLA Suspension(s)

### 4.1 Customer SLA Suspension

The Customer agrees that from time to time it is necessary for the Company to temporarily suspend Services for technical reasons as it relates to infrastructure DEDICATED TO THE CUSTOMER, including but not limited to, system maintenance and upgrades. The timing of which will be determined by the Customer as it relates to Infrastructure not shared with any other Company customer. Such local SLA suspensions will not be deemed a service interruption for the purpose of calculating service availability or SLA credits as per this SLA. Such local SLA Suspensions will be initiated by the Company and approved by the Customer. The Company's standard windows for scheduling Customer SLA Suspensions are Tuesday 22:00 to Wednesday 06:00 and Saturday 22:00 to Sunday 06:00 Eastern Time.

### 4.2 Global SLA Suspension

The Customer also agrees that from time to time, it is necessary for the Company to temporarily suspend Services for technical reasons as it relates to infrastructure SHARED BETWEEN CUSTOMERS, including without limitation: core network and facility maintenance. Provided the Company provides the Customer with reasonable advance notice, no less than ten (10) business days, of the temporary suspension of Services, such global suspensions will not entitle the Customer to service credits and will not be deemed an interruption of Services for the purpose of calculating service availability as per this SLA. Global SLA Suspensions are typically conducted Sunday between 02:00 to 05:00. However, this cannot be guaranteed because of limitations related to the potential requirements of vendors and expert sub-contractors. The Company will use commercially reasonable efforts to minimize downtime as a result of global service suspensions.

### 4.3 Emergency Service Suspension

Company reserves the right to schedule Emergency Maintenance when deemed necessary in its sole discretion. For the purposes hereof, 'Emergency Maintenance' shall be defined as maintenance performed on one side at a time of any redundant system. Company shall, whenever possible, provide notice to Customer of all Customer affecting Emergency Maintenance. Such Emergency Maintenance will not entitle the Customer to credits and not be deemed an interruption of the Services for the purpose of calculating service availability as per the SLA. The Company will use commercially reasonable efforts to minimize the duration of such a suspension.

### 4.4 Other SLA Suspensions

An SLA Suspension will also happen or be deemed to have happened when a Force Majeure event or any other service impacting event or condition beyond the Company's direct control exists, including but not limited to:

- Acts or omissions of Customer or Customer's employees, agents, contractors, vendors, or third parties;
- Customer is notified by the Company in writing to modify their use of the Service so as to be consistent with the standards of IT professionals and the Customer has not complied;
- Downtime caused by the Customer's application (As revealed through analysis by the Company, the Customer, or expert third party);
- Downtime caused by a Denial of Service (DoS) or Distributed Denial of Service (DDoS) event;
- Downtime caused by bugs or application incompatibility with third party software (As revealed through analysis by the Company, the Customer, or expert third party);
- The Customer has any balances thirty (30) or more days overdue.
- Customer has been granted Administrative access to the Environment.

Such SLA suspensions will not be deemed a service interruption for the purpose of calculating service availability or SLA credits as per this SLA.

## 5. Service Credits

- The amount and method of calculation of Service Credits is described above in connection with each Service Level description.
- Service Credits are Customer's sole and exclusive remedy for any violation of this SLA.

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- The Service Credits awarded in any billing month shall not, under any circumstance, exceed Customer's monthly Service fees.
- For Services purchased as part of a suite, the Service Credit will be based on the pro-rata portion of the cost of the Service, as determined by the Company in its reasonable discretion.
- To request a service credit, customers must create a Service Request ticket within 30 days of the event.