Background

These Terms of Service ("TOS") of Layered Technologies, Inc. and any of its subsidiaries (collectively "Layered Tech") govern the devices (any CPU based hardware platform), IP addresses (any publicly routable IPv4 32-bit or IPv6 128-bit Internet Protocol address), and services (any other Layered Tech offering), provided, managed, or assigned to a Client "Client" by Layered Tech (collectively, "Services"), as described in a Service Schedule, Service Commitment Communication or other Order Form (collectively, "Service Schedule") accepted by Client. No terms or conditions different from those contained herein shall apply unless separately agreed with Layered Tech in writing. Layered Tech may modify this TOS at any time, in its sole discretion. Any modifications are effective upon posting of the revisions on http://www.datapipe.com. BY REGISTERING FOR AND USING THE SERVICES, CLIENT ACKNOWLEDGES THAT CLIENT HAS READ THE TOS AND THE ACCEPTABLE USE POLICY (AUP) AND AGREES TO BE BOUND BY THE TOS AND THE AUP. The AUP is located at https://www.rackspace.com/information/legal/aup.

Terms and Conditions

Term

This TOS will continue as long as Client has active services with Layered Tech.

Services, Charges and Invoicing

Client will pay all amounts owed under each Service Schedule and all other amounts owed to Layered Tech by the due date of the invoice. All fees and charges are payable for the duration of the Service Schedule term, regardless of whether Client actually use any of the Services.

If after the end of a Service Schedule term the Service Schedule does not indicate an automatic renewal term of one year or greater and therefore becomes a month to month term then Layered Tech, at its sole discretion, may charge the then current standard Layered Tech rates for such Services (i.e., not subject to the fees, or discounts for such fees, established by the applicable Service Schedule).

All Charges are exclusive of taxes and other fees. Client is responsible for paying all federal, state, and local sales, use, value added, excise duty and any other taxes or fees assessed with respect to the Charges, other than taxes based on Layered Tech net income. Unless otherwise stated on a Service Schedule, Client's Services come with a set bandwidth allotment of 2000 GB per device per calendar month. If Client exceeds this allotment, Client will be charged overage bandwidth at a rate of $0.50 per gigabyte. Bandwidth is billed in arrears, and Client will receive a bill for any overage bandwidth the month following the month that the overage occurred. **It is Client's responsibility to monitor its bandwidth usage and to pay for all overages. If Client is a**

reseller, it is Client's responsibility to monitor the bandwidth usage of Client's customers, and Client is solely responsible for any and all overages incurred by them.

Any shared storage or backup service comes with a set data storage allotment for each calendar month. If this allotment amount is exceeded, Layered Tech will contact Client via email to notify Client of the overage. To have Client's storage allocation increased, no action is required. Layered Tech will automatically increase Client's allotted storage 72-hours after the initial notification to accommodate Client's increased storage needs. The increase will provide up to an additional 10GB of storage capacity beyond Client's then-current storage amount. If Client does not want a storage allocation increase, Client must notify Layered Tech within 72-hours of receiving the notification and reduce Client's storage usage to a level below Client's set data storage allotment.

Layered Tech will have the right in its sole discretion at any time to substitute certain Services, or the means of delivery of certain Services, provided to Client under a Service Schedule with comparable services. From time to time Layered Tech may remove equipment from service due to age, irreparability, or other factors. Except in the event of an emergency, Layered Tech will strive to provide Client with at least thirty (30) days' notice before replacing equipment.

Charges not paid by the due date are subject to an interest rate that is the lower of one and one-half percent (1.5%) per month or the highest rate permitted under applicable law, beginning on the first day after the due date until the relevant amounts are fully paid. Services interrupted for non-payment are subject to a $25 suspension fee, per device. All amounts past due, including the suspension fee, must be paid before devices are reinstated. Services cancelled for non-payment are subject to a $100 reactivation fee, per device. Layered Tech does not guarantee the availability of the same device upon reactivation. All amounts past due, including the reactivation fee must be paid before Services are reactivated.

Payment

Client will pay all charges for the first month of Services and charges for any setup fees in advance of the first day the Services are provided. Client will pay all subsequent charges for Services in their entirety in advance of each renewal date of the Services. If Client pays for the Services by credit card, debit card, or Paypal, Client authorizes Layered Tech to charge Client's credit card, debit card or Paypal to pay for any charges that may apply to Client's account. **Client will immediately notify Layered Tech of any changes to Client's credit card account, debit card account, or Paypal information (including changes to Client's account number, Client's billing address, cancellation of Client's account, expiration of Client's account, or any information that may prohibit Layered Tech from properly charging Client's account).**

Disputes

All amounts not timely and appropriately disputed within thirty (30) days after the due date will be deemed final and not subject to further dispute. In the event Client disputes any charges

invoiced by Layered Tech, Client will pay the undisputed portion of the charges and notify Layered Tech in writing about the disputed amount. In such written notice, Client will identify in reasonable detail Client's reasons for the dispute along with the nature and amount of the dispute. If Client were billed in error, Layered Tech will issue a credit for the amount billed incorrectly within sixty (60) days after it determines that an error has been made. Credits issued have no cash value and will be applied against current invoices or future services. In the event that Layered Tech determines that the amount was billed correctly, Client will pay the applicable disputed amount within fifteen (15) business days after Layered Tech confirms to Client that the amounts were properly charged, together with interest accrued since the due date.

Failure to Pay

Failure to fully pay Client's fees for Services and applicable taxes when due shall be a material breach of this TOS, justifying Layered Tech to temporarily deny service or terminate this Agreement. Client is responsible for any costs that Layered Tech incurs in collecting amounts from Client, including reasonable attorneys' fees, court costs and collection agency fees.

Termination

If Client terminates services governed by this TOS, or if Layered Tech terminates such services because of Client's breach, before the end of the term set forth in a Services Schedule, Client will be required to pay immediately and without setoff or delay all charges, fees and costs accrued before the termination date, all monthly recurring fees for each month remaining in the term and any other amounts that Client owes to Layered Tech under the Service Schedule or this TOS including, but not limited to, bandwidth overage charges.

Terminations must be submitted in writing no less than ten (10) business days prior to the renewal date of the service to be effective for the next service month. To provide Client's notice of termination, Client must login to the Client portal, submit a cancellation ticket to the billing department and fill out the corresponding cancellation form (if available) to initiate the cancellation of Client's Service. If the cancellation form is not available, a ticket submitted to the billing department with reasonable detail is acceptable notification of termination.

If Client has located any equipment in a Layered Tech facility, Client will, at its expense, immediately vacate and surrender the space and remove all of its equipment upon termination of this TOS or applicable Service Schedule. If Client has not either removed its equipment from the space or entered into an arrangement with Layered Tech to do so within thirty (30) days following the effective date of termination, Client will be deemed to have abandoned such equipment and any data thereon and have conveyed all its right, title and interest therein to Layered Tech. Layered Tech may charge, and Client will pay, a storage fee for such equipment from the time of termination to the time the equipment is removed by client or deemed to be abandoned. Data may be permanently deleted from abandoned equipment by Layered Tech in its discretion or as required by law.

Modification of Terms

Any terms and conditions set forth in a Master Services Agreement, Enterprise Hosting Agreement or Service Schedule agreed to by Client and Layered Tech will take precedence over the terms of this TOS.

Use of Services

By using the services, Client agrees to be bound by the terms of this TOS and any modifications to this TOS. Layered Tech may terminate Client's account without notice for any violation of this TOS.

Password Security/Order Validity

It is Client's sole responsibility to monitor use of Client's user ID and password ("Access Codes") for all purposes, including, but not limited to, ordering from Layered Tech's website and customer support portal. Client accepts all responsibility for the security of Client's Access Codes and utilization of the secure areas of Layered Tech's website.

Support Services and Boundaries

Layered Tech provides 24/7/365 technical support based on the management level purchased. We limit our technical support to our area of expertise. The following are our guidelines when providing support:

- Layered Tech provides support related to Client's Services. Layered Tech does not provide support for application specific issues, such as any programming, HTML, third party applications or any other such issue.
- Layered Tech does not provide technical support for Client's customers.

We encourage Client to check our knowledge base in the Client portal (login via https://my.layeredtech.com/login.php).

Customer Representations

Client warrants, represent, and covenants to Layered Tech that: (a) Client is at least 18 years of age; (b) Client possess the legal right and ability to enter into this TOS; (c) Client will use the Services only for lawful purposes and in accordance with this TOS and the AUP applicable Policies and Procedures; (d) Client will not transmit, retransmit or store material in violation of any federal or state laws or regulations (nor permit third parties to do so) (e) Client's content does not and will not infringe or violate any right of any third party (including any intellectual property rights) or violate any applicable law, regulation or ordinance; (f) Client is not located in, under the control of, or a national or resident of any country or territory to which export is prohibited under the laws of any country in which Layered Tech operates; (g) Client is not on

the US Treasury Department List of Specially Designated Nationals or the US Commerce Department's Table of Deny Orders; and (h) Client will notify Client's end users of and make commercially reasonable efforts to ensure that Client's end users comply with the applicable Policies and Procedures. "Policies and Procedures" means the then current Layered Tech guidelines and instructions, as amended from time to time, that provide operating requirements, and performance requirements and other obligations of each party with respect to the Services, including, without limitation, this TOS and the AUP.

Publicity

Layered Tech will be permitted to use Client's name and logo in any media, for the purpose of identifying Layered Tech's customers or issuing press releases, with Client's consent, which Client will not unreasonably withhold.

IP Addresses

Layered Tech will maintain and control ownership of all Internet Protocol ("IP") numbers and addresses that Layered Tech may assign to Client. Layered Tech may, in its sole discretion, change or remove any and all IP numbers and addresses at any time.

Third Party Products

Layered Tech may provide Client with access to third party software and/or services ("Third Party Products") through reseller relationships that Layered Tech has established with certain commercial vendors ("Third Party Vendors"). Unless otherwise notified, product support for Third Party Products is provided by Layered Tech and not by the Third Party Vendor. USE OF THIRD PARTY PRODUCTS IS AT CLIENT'S SOLE RISK AND THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND FROM LAYERED TECH OR ANY THIRD PARTY VENDOR, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, CORRESPONDENCE TO DESCRIPTION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER LAYERED TECH NOR ANY THIRD PARTY VENDOR WILL BE RESPONSIBLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OR INABILITY TO USE ANY THIRD PARTY PRODUCT. CLIENT AGREES TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENT FOR THIRD PARTY PRODUCTS. CLIENT SHALL BE FULLY LIABLE TO THIRD PARTY VENDORS AND LAYERED TECH FOR ANY IMPROPER USE OF THIRD PARTY PRODUCTS OR VIOLATIONS OF THIRD PARTY VENDOR LICENSE AGREEMENTS AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENTS.

Client shall not (a) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any Third Party Product; or (b) reverse engineer, decompile, or

disassemble any Third Party Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

If Microsoft software is included in the Services, Client agrees to the Client License Terms for Microsoft software that appears at www.rackspace.com/layered-tech/legal/microsoft-license-agreement, or such other URL as designated by Layered Tech from time to time, as amended from time to time, and Client agrees that if Client resells the Services, Client will require each of Client's customers and their users to agree to those terms.

Limitation and Exclusion of Liability

LIMITATIONS

CLIENT ASSUMES TOTAL RESPONSIBILITY AND RISK FOR CLIENT'S AND CLIENT'S END USERS' USE OF THE SERVICES PROVIDED BY LAYERED TECH. CLIENT ACKNOWLEDGES THAT THE INTERNET (1) CONTAINS MATERIALS THAT MAY BE OFFENSIVE TO SOME PEOPLE AND (2) IS ACCESSIBLE BY PERSONS WHO MAY ATTEMPT TO BREACH THE SECURITY OF LAYERED TECH'S AND/OR CLIENT'S NETWORK FACILITIES AND THE DATA CONTAINED THEREIN. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LAYERED TECH, ITS AFFILIATES, SUBSIDIARIES, EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, AGENTS, OTHER REPRESENTATIVES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, LOST OR STOLEN CONTENT, LOSSES ARISING FROM THE FAILURE TO FURNISH SERVICES OR THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES ARISING FROM OR RELATED TO THE SERVICES OR PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, WHETHER ARISING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY) EVEN IF LAYERED TECH HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. THE LIABILITY OF LAYERED TECH AND ITS SUPPLIERS TO CLIENT FOR ANY REASON AND UPON ANY CAUSE OF ACTION IS LIMITED TO THE AMOUNT CLIENT ACTUALLY PAID TO LAYERED TECH UNDER THIS TOS DURING THE ONE (1) MONTH IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ACCRUED. THE PARTIES HEREBY WAIVE ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE THEM OF AN ADEQUATE REMEDY OR CAUSE THIS TOS TO FAIL OF ITS ESSENTIAL PURPOSE.

Disclaimed Warranties

Layered Tech exercises no control over, and accepts no responsibility for, the content of the information passing through Layered Tech host computers, network hubs and points of presence, or the Internet. USE OF THE SERVICES OR ANY INFORMATION THAT MAY BE OBTAINED THEREFROM IS AT CLIENT'S OWN RISK. ALL SERVICES PERFORMED UNDER THIS TOS ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE INCLUDING ANY FAILURE BECAUSE OF COMPUTER HARDWARE OR COMMUNICATION SYSTEMS. LAYERED TECH DOES NOT MAKE AND DISCLAIMS, AND CLIENT WAIVES ALL RELIANCE ON, ANY REPRESENTATIONS OR WARRANTIES, ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. LAYERED TECH DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. NO ADVICE OR INFORMATION GIVEN BY LAYERED TECH, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL CREATE A WARRANTY.

Interruption of Service

Layered Tech and its suppliers are not liable for any temporary delay, outages or interruptions of the Services, except as set forth in the LT Service Level Agreement. Further, Layered Tech is not liable for any delay or failure to perform its obligations under this TOS, where the delay or failure results from any "act of God" or other cause beyond its reasonable control (including any mechanical, electronic, communications or third-party supplier failure).

Indemnification

Except to the extent attributable to the gross negligence or willful misconduct of Layered Tech, Client will indemnify, defend and hold Layered Tech, its employees, officers, directors, partners, representatives and affiliates harmless from and against any and all loss, liability, damage and expense (including reasonable attorneys' fees) arising out of any expense, demand, claim, suit or judgment relating to: (a) Client's or Client's customers' violation of the Policies and Procedures; (b) Client's or Client's customers' use or alteration of the Services; (c) claims that Client, Client's customers or Client's services violate or have violated applicable law or the rights of a third party; and (d) claims by users of Client's services.

Miscellaneous Provisions

Governing Law: This TOS specifically excludes from application to this TOS that law known as the United Nations Convention on the International Sale of Goods. Exclusive venue for all disputes arising out of or relating to this TOS shall be the state and federal courts in Dallas, Texas, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto.

Severability and Partial Invalidity: In the event any provision of this TOS is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this TOS will remain in full force and effect.

Waiver: The waiver of any breach or default of this TOS will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

Assignment: Client may not sell, assign or transfer Client's rights or delegate Client's duties under this TOS either in whole or in part without the prior written consent of Layered Tech (except pursuant to any merger, reorganization or consolidation, provided that the transferee

agrees to be bound by all of the terms and conditions of this TOS and the Service Schedules), and any attempted assignment or delegation without such consent will be void. Layered Tech may assign this TOS in whole or part.

Relationship of the Parties: Client and Layered Tech are independent contractors and this TOS will not establish any relationship of partnership, joint venture, employment, franchise or agency between Client and Layered Tech.

Survival: The Sections titled "Services, Charges and Invoicing", "Payment", "Failure to Pay", "Termination", "Limitations", "Disclaimed Warranty", "Interruption of Service", "Indemnification", and "Miscellaneous Provisions" will survive termination or expiration of this TOS.