



MASTER SERVICE AGREEMENT

THIS AGREEMENT is between Standard Broadband a division of Data Matters Inc with offices located at 8250 Lawson Road, Milton, ON, L9T 5C8 Canada and (“DMi”) and _____
_____ (“The Customer”).

DMi and The Customer agree to the following:

1. PROVISION OF SERVICES

- a) DMi agrees to provide to you such Services as You order and pay for in accordance with and subject to your compliance with the Agreement. For present purposes, “**Services**” means such Internet access, sharepoint, web hosting, virtual private server, exchange hosting, CRM, and other remotely provided services as DMi may offer from time to time.

2. LAWFUL USE OF THE SERVICES

- a) You agree to use all Services provided to You hereunder only for Your lawful, appropriate, and permitted internal purposes hereunder. In no event may You resell the Services. In addition, You may not use the Services if You are a competitor of DMi (as determined by DMi in its sole discretion). In the event that your use of the Services violates any law, rule or regulation or this Agreement, DMi shall have the right to immediately terminate this Agreement and pursue any and all its other remedies.

3. Term

- a) **Master Service Agreement Term:** The term of the Master Service Agreement will begin on the date that the Customer or DMi signs the Master Service Agreement whichever is later. The agreement will expire or terminate on the date that the last remaining Service Schedule expires or terminates.
- b) **Term of Each Service Schedule:** Each service will be provide for the period set out in the Service Schedule (“Initial Service Term”)
- c) **Renewal Term(s):** Unless the Customer or DMi provide notice to the other as described in Section 3(d), each Service Schedule will automatically be renewed for the same term as the Initial Service Term on the same terms and conditions set in place by the Service Schedule.
- d) **Notice of Non-Renewal:** Either party may send to the other party written notice, at least 60 days in advance of the expiration of the Service Schedule that it does not intend to renew a Service Schedule. As a result that Service Schedule will expire and services provided will be terminated at the end of the Service Term.

4. Termination

- a) **Early Termination by Customer:** Customer may terminate a Service it has requested under a Service Schedule (“**Terminated Service**”) at any time before the end of the relevant Service Term by giving notice of termination to DMI at least 30 days before the proposed early termination date. If Customer terminates a Service under this Section, the Customer shall pay to DMI all Fees and Taxes due for the Terminated Service up to the date of termination. Customer shall also pay DMI (i) the termination charges specified in the relevant Service Schedule, or if not specified, an amount equal to 25% of the remaining monthly Fees for the Terminated Service that would have been payable to the end of the Service Term (collectively, the “**Termination Fees**”), plus Taxes on the Termination Fees. The Termination Fees are liquidated damages and consideration for the Services, and are not a penalty.
- b) **Termination for Cause:** Either party may terminate this Agreement or any Service Schedule or DMI may suspend the Services in whole or in part, by giving notice in writing to the other party, upon the occurrence of any of the following: (i) the other party materially defaults with respect to a material obligation under this Agreement or any Service Schedule and does not remedy that default within 30 days after receiving written notice of the default. For greater clarity, Customer’s failure to pay any invoiced Fees or Taxes when due is a material default with respect to a material obligation and in this respect, Customer shall only have fifteen (15) days after receiving written notice to remedy such default. If DMI materially defaults with respect to a material obligation in the provision of a Service, Customer shall only be entitled to terminate the Service Schedule for that Service; or (ii) the other party enters into a compulsory or voluntary liquidation, or compounds with or convenes a meeting of its creditors or has a receiver appointed over all or any part of its assets or takes or suffers any similar action in consequence of a debt, or ceases for any reason to carry on business.
- c) **Charges Payable:** On the termination of this Agreement or a Service Schedule for any reason, all payments required to be made to DMI by the Customer under the Agreement or that Service Schedule, as applicable, shall be due and payable immediately. If DMI terminates this Agreement or a Service Schedule under Section 4(b)(i) or (ii), the Customer shall in addition pay to DMI Termination Fees. Termination of a Service Schedule or this Agreement shall not relieve the Customer from any liability, including amounts owing, which accrued before the termination is effective. Customer is not required to pay Termination Fees if Customer terminates this Agreement or a Service Schedule under Section 4(b).
- d) **Additional Termination Rights:** DMI may terminate this Agreement immediately with notice in the event of a change of Control of the Customer. “**Control**” means control, as defined in Section 2(3) of the *Canada Business Corporations Act*, and includes control “directly or indirectly in any manner whatever”, as defined in Section 256(5.1) (Control in fact) of the *Income Tax Act* (Canada). There also may be additional rights of termination for a Service set out in the applicable Service Schedule.
- e) **Month to Month Service Termination:** Any services provided by DMI to The Customer on a month to month basis may be terminated with 30 days written notice to DMI.

5. Hardware, Equipment, and Software

- a) You are responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access the Services. DMI makes no representations, warranties, or assurances that your equipment will be compatible with DMi services.

6. Indemnification

- a) You shall indemnify, defend and hold harmless DMi (and its subsidiaries, affiliates, officers, employees, agents, partners, mandataries, vendors and licensors) of any and all Claims (including third party Claims) arising as a result of or in relation to any breach of this Agreement or fault by You, or in relation to any activities conducted by You through the Services, or otherwise in relation to Your products or services.

7. Customer Obligations

- a) In addition to any other obligations of the Customer under this Agreement, the Customer shall be solely responsible for use of the Services by any of its employees, officers, directors, agents, customers and users of the Services (collectively, "End Users"), and take all necessary measures to ensure that the End Users use the Services in accordance with the terms and conditions of this agreement.

8. Service Obligations

- a) **Service Commitments:** DMI shall provide each Service in accordance with this Agreement, including the relevant Service Schedule, and any service level agreements that may be specified in that Service Schedule.
- b) **Disclaimer:** Customer acknowledges that DMI does not warrant (i) uninterrupted or error-free Services, or (ii) the content, availability, accuracy or any other aspect of any information including all data, files and all other information or content in any form, accessible or made available to or by the Customer or its End Users through the use of the Services. During a Service Term, DMI may migrate a Service to an alternative service or technology as long as the alternative service or technology provides similar functionality as the Service. The definition of "Service" includes the alternative service. DMI shall not be responsible if any changes in the Services affect the performance of equipment, hardware or software other than DMI Provided Equipment or cause it to become obsolete or require modification or attention. DMI shall provide the Customer with 60 days notice of any such change. Customer acknowledges that DMI may interrupt the Services, from time to time and as may be specified in the Service Schedules, in order to provide maintenance in respect of the Services.
- c) **WAIVER:** THE WARRANTIES PROVIDED IN THIS AGREEMENT REPLACE ALL OTHER WARRANTIES AND CONDITIONS. THE CUSTOMER WAIVES AND DMI DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AVAILABILITY OR RELIABILITY OF THE SERVICES.

9. Limitation of Liability

- a) DMI PROVIDES SERVICES ON AN "AS IS", "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTIES, CONDITIONS OR REPRESENTATIONS ALL OF WHICH ARE DISCLAIMED, WAIVED AND EXCLUDED. YOU EXPRESSLY AGREE THAT ANY AND ALL USE OF SERVICES IS AT YOUR RISK AND PERIL. ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR LEGAL, WHETHER ARISING BY LAW, CONTRACT, STATUTE, USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR WHETHER ARISING AS RESULT OF THE NATURE OF THIS AGREEMENT OR IN CONFORMITY WITH USAGE, EQUITY OR LAW, OR OTHERWISE, INCLUDING ANY AND ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF TITLE, OWNERSHIP (INCLUDING BUT NOT LIMITED TO THE WARRANTY THAT THE RELEVANT PROPERTY IS FREE OF ANY OTHER RIGHTS OR CHARGES), NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR OR GENERAL PURPOSE, QUALITY AND WORKMANSHIP, ARE HEREBY DISCLAIMED, WAIVED AND EXCLUDED.
- b) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANYTHING CONTRARY IN THIS AGREEMENT, YOU AGREE THAT DMI'S (AND THAT OF ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS) TOTAL MAXIMUM AGGREGATE CUMULATIVE LIABILITY, FOR ALL PAST, PRESENT OR FUTURE CLAIMS, DEMANDS, FINES, PENALTIES, ACTIONS, CAUSES OF ACTIONS, REQUESTS, LAWSUITS, JUDGMENTS, DAMAGES, LIABILITIES COSTS, EXPENSES, PREJUDICES OR LOSSES, INCLUDING REASONABLE ATTORNEYS FEES ("CLAIMS") ARISING AS A RESULT OF OR IN RELATION TO THIS AGREEMENT, SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES AND SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED, IN THE AGGREGATE FOR ALL CLAIMS BY ANY AND ALL PERSONS, 50% OF ALL FEES ACTUALLY PAID TO DMI BY YOU UNDER THIS AGREEMENT.
- c) DMI AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR DAMAGES FOR LOST PROFITS, GAINS OR OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE, REGARDLESS OF WHETHER DMI HAS BEEN ADVISED OF SUCH DAMAGES OR THEIR POSSIBILITY.

- d) You agree that your recourses and remedies and DMi's (and its SUBSIDIARIES', AFFILIATES', OFFICERS', EMPLOYEES', AGENTS', PARTNERS', MANDATARIES', VENDORS' AND LICENSORS') liability hereunder may be further limited by the Service Level Agreement.
- e) You are fully responsible for the content of the information and data passing through DMi's network or using the Services and for all activities that You conduct with the assistance of the Services.

10. Force Majeure

- a) If there is a default or delay in a party's performance of its obligations under this Agreement (except for the obligation to pay Fees), and the default or delay is caused by circumstances beyond the reasonable control of that party including fire, flood, earthquake, elements of nature, acts of God, explosion, power failure, war, terrorism, revolution, civil commotion, acts of public enemies, law, order, regulation, ordinance or requirement of any government or its representative or legal body having jurisdiction, or labor unrest such as strikes, slowdowns, picketing or boycotts, then that party shall not be liable for that default or delay, and shall be excused from further performance of the affected obligations on a day-by-day basis, if that party uses commercially reasonable efforts to expeditiously remove the causes of such default or delay in its performance.

11. Payments and Invoices

- a) DMi will provide all customers with a monthly account statement via e-Mail in PDF format.
- b) DMi's billing policy is as follows and will apply to all customers unless authorized by the CFO or CEO of Data Matters in an amendment this agreement.
 - a. Customers with less than \$250.00 in monthly billing will be required to pay by credit card.
 - b. Customers with billing in excess of \$1000.00 monthly will be required to pay on NET-30 terms by corporate cheque.
 - c. All credit card payments will be processed on the 1st of the month.
 - d. Should your cheque not be cleared by the financial institution an NFS fee will be applied. The fee will be \$50.00 (fifty).
 - e. You will have a maximum of fifteen (15) days to clear up any outstanding payments for either NFS Cheque or declined Credit Card. After fifteen (15) days, DMi may elect to suspend your account until full payment has been made on your account. After (45) days DMi shall have the right, without limitation to immediately terminate this Agreement and all associated Service Schedules.
 - f. In the event of a late or NFS cheque DMi reserves the right to request payment by means of a Cashier's Cheque or other certified funds.

Signature Block

Data Matters Inc	<CUSTOMER NAME>
Signature:	Signature:
Name:	Name:
Title:	Title:
I am authorized to bind the Corporation to the terms and conditions in this Agreement.	I am authorized to bind the Corporation to the terms and conditions in this Agreement.
Date:	Date:

Appendix A – Customer Contacts

Main Business Contact(s): Authorized signing office able to bind the client.

Name: _____
Title: _____
Phone: _____
Email: _____

Billing Contact(s): Customer contact for Accounts Payable communication.

Name: _____
Title: _____
Phone: _____
Email: _____

Technical Contact(s): Customer technical contact to manage any technical issues, initial configuration and implementation as well receives communications about network maintenance and outages.

Name: _____
Title: _____
Phone: _____
Email: _____