



Master Products and Services Agreement

This Master Products and Services Agreement (the "Agreement") by and between:

	VELOCITY SERVERS INC. "ColoCrossing"	
Address:	8185 Sheridan Drive Williamsville NY 14221	Address:
Contact:		Contact:
Telephone:	(800) 518-9716	Telephone:
Fax:	(716) 335-9628	Fax:
E-Mail:		E-Mail:

This Agreement (which includes and incorporates by reference **Sales Orders** attached and any *Service Agreement Addendums*) sets forth the terms under which the parties agree that ColoCrossing shall provide certain services to Customer according to the following specifications:

GENERAL TERMS AND CONDITIONS-AII SERVICES

- Services.** ColoCrossing agrees to supply the Services in accordance with the terms of this Agreement. Customer agrees to receive the Services from ColoCrossing in accordance with the terms of this Agreement.
- Other Services.** Upon written request by Customer, ColoCrossing may at its option, provide Customer with technical and non-technical support, such as equipment reboots, troubleshooting, Domain Name Server (DNS) and other support ("Other Services"), in connection with Customer's use of the Customer Space and Bandwidth Services. Unless the parties agree otherwise, Customer shall pay for such Other Services in accordance with the Technical Support Services section of this Agreement.
- Term.** The Term of this Agreement shall commence five (5) days after the "Effective Date" or the day the Customer connects to the ColoCrossing Network, whichever is first, and shall continue thereafter for the Term specified in the Service Table of the sales order, unless terminated by either party as permitted by this Agreement. This contract shall automatically renew for a period of subsequent two (2) year periods unless written notice is provided by either party to the other at least 60 days prior to the expiration date, in which case the contract shall expire on said expiration date. Should the customer, upon written notice to ColoCrossing, elect to not renew for a two year term and instead, renew monthly on a month to month basis, a 20% increase shall be imposed on and added to the customer's monthly recurring fee beginning at the initiation of the renewal period..
- Payment.**
 - Customer shall pay ColoCrossing the One-Time Install Fees and Recurring Monthly Fees specified in the Service Table of the sales order contract, as well as any charges for Other Services and the cost (on an estimated or actual basis) of supplying electrical power to the Customer Space in excess of 5.0 amps for octals, 10 amps for quarter cabinets, or 20 amps for half, full or custom cages (the "Additional Power"). Upon 30 days or greater written notice prior to the end of the Term, ColoCrossing may change any fees payable under this Agreement. Customer shall pay all taxes levied against or upon the services stipulated in the Service Table of the sales order contract (as amended by the parties from time to time) or otherwise provided by ColoCrossing under this Agreement (not including taxes based on ColoCrossing's income).
 - All One-Time Install Fees shall be payable in advance. All Recurring Monthly Fees shall be payable monthly in advance. Monthly Fees for Internet Traffic and charges for Other Services, which are not billed as Recurring Monthly Fees, shall be payable monthly in arrears.
 - Except for the First Payment shown in the Service Table of the sales order contract, which must be paid by Customer to ColoCrossing before commencement of the Term, all amounts shall be payable on the 15th of the month in which an invoice is received, which invoices shall be issued on the first day of each month. Customer shall pay by pre-authorized payment to a Customer credit card, paypal, wire transfer or by check drawn on immediately available funds and remitted to ColoCrossing at the address set forth above. A 3.5% service charge shall be imposed and added to the customer monthly recurring charge for all invoices paid via credit card or paypal.
 - Any payment not made when due shall be subject to interest of two percent (2%) per month compounded monthly (equivalent to a yearly interest rate of 26.86%).
 - If Customer's traffic usage fails to meet or exceed the amount specified as the Minimum Commitment in the Bandwidth Pricing section of the Service Table of the sales order contract, Customer shall be billed for the amount of the Minimum Commitment.

- 4.6 ColoCrossing reserves the right at any time to require a security deposit, the amount of which is based upon one (1) month's estimated or current usage.
5. Termination. Either party may terminate this Agreement on 30 days written notice if the other party becomes the subject of any voluntary proceedings under any bankruptcy or insolvency laws, or becomes the subject of any involuntary proceedings under any bankruptcy or insolvency laws which are not dismissed or withdrawn within 60 days after filing. ColoCrossing may terminate this Agreement on 30 days written notice if the Customer commits a material default (which shall include without limitation any failure to make any payment when due) and fails to rectify such default within ten (10) days after being given notice of such default by the other party. Customer, upon providing Seller 90 days written notice, may terminate this agreement without cause after twelve (12) months from the execution date of the sales order.
 6. If Customer is in Default. If Customer is in default of any of its obligations under this Agreement, then ColoCrossing may in its sole discretion do any or all of the following: (i) without notice suspend access to the Customer Space or the Premises, (ii) if Customer's default is non-payment of any sums due to ColoCrossing, exercise all the rights and remedies of a secured party under applicable law including, without limitation, with the minimum notice (if any) required by law, ColoCrossing may seize the Equipment and sell the Equipment to third parties in satisfaction of any Customer indebtedness owing to ColoCrossing as well as any costs (including reasonable legal fees) incurred by ColoCrossing in exercising any remedy under this Agreement, and (iv) if ColoCrossing terminates this Agreement in accordance with Section 5, after such termination is effective, remove the Equipment from the Customer Space, store the Equipment at another location at Customer's expense, and license the Customer Space to a third party.
 7. Credit Authorization. Customer hereby authorizes ColoCrossing and gives consent to ColoCrossing under applicable privacy laws for ColoCrossing to obtain credit information and bank and other financial references regarding Customer for the purposes of assessing Customer's credit worthiness, and Customer shall promptly execute and deliver to ColoCrossing such further documents and assurances and take such further actions as ColoCrossing may from time to time reasonably request in order to carry out the intent and purpose of this Section.
 8. Limitation of Liability. CUSTOMER ACKNOWLEDGES THAT COLOCROSSING PERMITS OTHER LICENSEES TO INSTALL THEIR EQUIPMENT IN THE PREMISES. COLOCROSSING SHALL HAVE NO LIABILITY FOR ANY DAMAGES, COSTS, OR LOSSES INCURRED BY CUSTOMER (OR ITS CLIENTS) CAUSED BY SUCH OTHER LICENSEES' ACTS, EQUIPMENT, OR FAILURES TO ACT. THE LIMIT OF COLOCROSSING'S LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR BY STATUTE OR OTHERWISE TO CUSTOMER (OR ITS CLIENTS) CONCERNING PERFORMANCE OR NON-PERFORMANCE IN ANY MANNER RELATED TO THIS AGREEMENT, FOR ANY AND ALL CLAIMS SHALL NOT, IN THE AGGREGATE, EXCEED THE TOTAL FEES PAID BY CUSTOMER TO COLOCROSSING UNDER THIS AGREEMENT IN THE IMMEDIATELY PRECEDING 2 MONTHS FROM THE DATE THE CLAIM AROSE. IN NO EVENT SHALL COLOCROSSING BE LIABLE FOR ANY LOST PROFITS, SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.
 9. Force Majeure. Neither party shall be liable for any delay, interruption or failure in the performance of its obligations if caused by acts of God, war, declared or undeclared, fire, flood, storm, slide, earthquake, or other similar event beyond the control of the party affected ('Force Majeure'). If any Force Majeure occurs, the party claiming the Force Majeure shall promptly notify the other. The party claiming the Force Majeure shall use commercially reasonable efforts to eliminate or remedy the Force Majeure. This Section shall not apply to or excuse a failure to make any payment to ColoCrossing when due.
 10. Reselling. Upon prior written approval of ColoCrossing which shall not be unreasonably withheld or delayed, Customer in the normal course of its business may resell to its clients use (subject to all the terms of this Agreement) of the Customer Space and Bandwidth Services provided by ColoCrossing to Customer pursuant to this Agreement, except that Customer shall not allow such clients to interconnect with other users in the Premises. Such clients shall be deemed to be Customer's contractors to the extent they or their representatives are present at the Premises. Customer shall act as the single point of contact with ColoCrossing with respect to Customer's clients. Customer shall remain responsible for all fees or other costs under this Agreement incurred by Customer's clients, both with or without the consent of Customer. Customer either shall cause such clients to be covered by Customer's insurance coverages as required by this Agreement or shall cause such clients to obtain such insurance independently. Any act or omission of any such client that would be a breach of this Agreement if committed by Customer shall be deemed a breach of this Agreement by Customer. Customer agrees to defend, indemnify and hold harmless ColoCrossing, and its officers, directors and employees (collectively, the 'Indemnities'), from any and all liabilities, costs and expenses, including reasonable legal fees, related to or arising from (i) any act or omission of any such client that would be a breach of this Agreement if committed by Customer, and (ii) any claim by any such client arising from use of the Premises, services provided by ColoCrossing under this Agreement or otherwise from performance or non-performance by a party in any manner related to this Agreement.
 11. Miscellaneous.
 - 11.1 Notices. Every notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing to the party at the address first set forth above for such party and shall be deemed to have been delivered and given for all

purposes (i) on the delivery date, if delivered personally; (ii) one business day after deposit with a commercial overnight carrier, with written verification of receipt, if sent by courier; (iii) upon completion of transmission, if sent via facsimile with a confirmation of successful transmission; and (iv) if sent by email.

- 11.2 Compliance With Laws. Customer shall comply with all applicable laws, regulations, and ordinances.
- 11.3 Assignment. Customer may not assign this Agreement or any of its rights or obligations or the license hereunder, without the prior written consent of ColoCrossing.
- 11.4 Survival. The provisions set forth in Sections 4, 6, 8, 9, 10 (indemnity obligations only), 11, 22, 23 and 26 (indemnity obligations only) of this Agreement shall survive termination or expiration of this Agreement.
- 11.5 Reservation of Rights. ColoCrossing reserves all rights not specifically granted herein.
- 11.6 Entire Agreement. This Agreement supersedes all previous Agreements and Service Agreement Addendums between the parties. This Agreement, and any subsequent Service Agreement Addendums constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals and prior discussions and writings between the parties with respect thereto.
- 11.7 Warranty. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, COLOCROSSING MAKES NO REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES ALL IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE OR NON-INFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.
- 11.8 Modifications. This Agreement may not be altered, amended or modified, except in writing and signed by both parties.
- 11.9 No Waiver. No failure or delay in enforcing any right or exercising any remedy shall be deemed a waiver of any right or remedy.
- 11.10 Severability and Reformation. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, such portion shall be reformed to the minimum extent necessary in order for this Agreement to remain in effect in accordance with its terms as modified by such reformation.
- 11.11 Remedies not Exclusive. The remedies available to the parties under this Agreement are cumulative and not exclusive to each other, and any such remedy shall not be deemed or construed to affect any right which either of the parties is entitled to seek at law, in equity or by statute.
- 11.12 Relationship. The relationship of ColoCrossing to Customer shall be that of an independent contractor, and neither ColoCrossing nor any employee of ColoCrossing shall be deemed to be an agent or employee of Customer.
- 11.13 Choice of Law and Attornment. This Agreement shall be governed and interpreted by the laws of the State of New York, without regard to its conflicts of law provisions.
- 11.14 Further Assurances. Each of the parties shall promptly execute and deliver to the other at the cost of the other such further documents and assurances and take such further actions as the other may from time to time request in order to more effectively carry out the intent and purpose of this Agreement and to establish and protect the rights, interests and remedies intended to be created in favor of the other.
- 11.15 Liens and Encumbrances. Customer (and its clients) shall not have the power, authority or right to create and shall not permit any lien or encumbrance, including without limitation, tax liens, mechanics' liens, builders liens or other license or encumbrances with respect to work performed, in connection with the Equipment or use of the Customer Space.
- 11.16 Disputes. In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, then the dispute shall be referred to arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.
- 11.17 Order of Precedence. In the event of a conflict between the sales order contract and these terms and conditions, the sales order contract shall take precedence.
- 11.18 Indemnification. Customer shall indemnify, defend and hold ColoCrossing its affiliates, officers, directors, licensees, licensors, and vendors harmless from any and all claims, losses, damages and expenses, including, without limitation, reasonable attorney's fees and court costs, or liabilities arising from or related to (i) Service Misuse or a violation of any other provision of this Agreement; (ii) any claim of infringement of any intellectual property or other proprietary interest based on the possession or use of any Service(s), software or equipment furnished to Customer or Customer's end-user(s) and/or customer(s); (iii) any claim that Content, or the manner in which Customer or Customer's customer(s) and/or end user(s) make use of the Service(s), constitutes an infringement of any patent, copyright, trademark, trade secret, or other right of any third party; (iv) any acts or omissions of Customer, its employees, agents, contractors, invitees, licensees, visitors, and/or customer/end-users; and/or (v) any injury or damage to the person, property, or business of ColoCrossing its employees, agents, contractors, invitees, licensees, visitors, and/or customer(s)/end-user(s).

- 11.19 Confidentiality. Each Party agrees that the terms of this agreement and all information furnished to it by the other Party, including maps, pricing, financial terms, network routes, design information, methodologies, specifications, locations or other information to which it has access under this Agreement, are deemed the confidential and proprietary information or trade secrets (collectively referred to as "Proprietary Information") of the Disclosing Party and will remain the sole and exclusive property of the Disclosing Party (the Party furnishing the Proprietary Information referred to as the "Disclosing Party" and the other Party receiving the Proprietary Information referred to as the "Receiving Party"). Each Party shall treat the Proprietary Information that the Receiving Party either knows or reasonably should know to be confidential to the Disclosing Party and the contents of this Agreement in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under this Agreement, neither Party may directly or indirectly disclose the same to anyone other than its employees identified within an Order hereunder on a need to know basis and who agree to be bound by this term and condition, without the written consent of the Disclosing Party. Information will not be deemed Proprietary Information if it (i) becomes publicly available other than through the actions of the Receiving Party; or (ii) is independently developed by the Receiving Party; or (iii) becomes available to the Receiving Party without restriction from a third party. If the Receiving Party is required by a governmental or judicial law, order, rule, regulation or permit to disclose Proprietary Information, it must give prompt notice to the Disclosing Party to minimize such disclosure and disclosure after such notice shall not be a breach thereof.
- 11.20 Privacy Policy. Please refer to ColoCrossing's Privacy Policy located on our website for further terms and conditions.

CO-LOCATION TERMS AND CONDITIONS

12. Grant of License. Subject to the terms of this Agreement, ColoCrossing hereby grants to Customer, as of the Effective Date, a nonexclusive license to install, operate, replace, remove and maintain communications equipment, cabling, connections, associated hardware and accessories (the "Equipment") in the Co-location Space specified in the Service Table of the Sales Order Contract (the "Customer Space"), in the Premises during the Term. The license granted in this Agreement is a license of space only, and does not create an ownership interest or property rights of any nature in ColoCrossing's real or personal property.
13. Installation and Requirements. Customer shall be responsible for the delivery and installation of the Equipment and the connection of the Equipment to telecommunications lines and power. Except with ColoCrossing's prior written approval and subject to the terms of this Agreement, Customer may only install or remove Equipment upon reasonable prior written notice to ColoCrossing and during business days between 8:00 a.m. and 5:00 p.m. Customer shall only install or place Equipment in the Customer Space. ColoCrossing reserves the right to approve of Customer's technicians and other contractors. During the Term of this Agreement, Customer shall immediately notify ColoCrossing of any space, power or other requirements associated with the installation or operation of the Equipment. ColoCrossing shall have no duty to monitor, maintain or care for the Equipment unless otherwise agreed.
14. Maintenance and Use of Premises. Customer, at its own cost and expense, shall protect, maintain and keep in good order the Customer Space and any Equipment in such space. Customer shall ensure that neither Customer nor its employees, agents, contractors or invitees damage any part of the Premises or any property located in or about the Premises, or interfere, or allow the Equipment to constitute a hazard to or to interfere with, ColoCrossing or any other user of the Premises or any equipment owned or used by ColoCrossing or any other user of the Premises. Customer shall not make any alterations or installations of any kind to the Premises without the prior written consent of ColoCrossing.
15. Immediate Threats. If, in the determination of ColoCrossing, acting reasonably, the Equipment or customer poses an immediate threat to the physical integrity of the Premises or the physical integrity or performance of the equipment of ColoCrossing or any other user of the Premises, or poses an immediate threat to the safety of any person, then ColoCrossing may perform such work and take such other actions that it may consider necessary without prior notice to Customer and without liability for damage to the Equipment or for any interruption of Customer's (or its clients') businesses. As soon as practicable after performing such work, ColoCrossing shall advise Customer in writing of the work performed or the action taken.
16. Intervention. If any part of the Equipment is not placed and maintained in accordance with this Agreement, and Customer fails to correct the violation within 7 days after receipt of written notice thereof from ColoCrossing, then ColoCrossing may, at its option, without further notice to Customer, correct the deficiency at Customer's expense without liability for damages to the Equipment or interruption of Customer's (or its clients') businesses. As soon as practicable thereafter, ColoCrossing shall advise Customer in writing of the work performed or action taken. Customer shall immediately reimburse ColoCrossing for all expenses reasonably incurred by ColoCrossing associated with any work or action performed by ColoCrossing with respect thereto.
17. Relocation. Customer shall, at ColoCrossing's expense, relocate the Equipment to other space within the Premises upon ColoCrossing's written request and within 15 days of such request.
18. Periodic Inspections. ColoCrossing reserves the right (upon reasonable prior notice to Customer) to make periodic inspections of any part of the Customer Space or Equipment; provided that Customer shall have the right to have one or more of its employees or representatives present during any such inspection.
19. Access. Subject to the terms of this Agreement and compliance with payment terms under Item 4.3, Customer shall have access to the

Premises during the Term. Customer shall cause its employees, agents, contractors or invitees who have access to the Premises to conform to all ColoCrossing rules and regulations (as amended by ColoCrossing from time to time). Failure to comply with the payment terms may result in denial of access as set forth in Item 6.

20. Co-location facility Rules and Regulations. ColoCrossing may vary these rules and regulations from time to time in its sole discretion, and Customer shall comply with all other reasonable security requirements that ColoCrossing may impose from time to time, provided that Customer has been given 30 days notice in writing.
 - 20.1 All Customer employees, agents, contractors or invitees ("Customer Persons") having access to the Premises must be approved in advance by ColoCrossing. Approval by ColoCrossing does not release Customer from its responsibilities pursuant to this Agreement, nor by approving such Customer Persons does ColoCrossing waive its right to be indemnified by Customer.
 - 20.2 Customer must provide ColoCrossing with particulars, including a current photograph of each Customer Person, before that Customer Person is given access to the Premises
 - 20.3 No more than three Customer Persons shall be authorized to have access to the Premises at any time.
21. Removal of Equipment. Upon termination or expiration of the Term of this Agreement, unless prohibited by ColoCrossing as permitted by this Agreement, Customer shall remove the Equipment from the Premises. Unless the Parties otherwise agree in writing, in the event the Equipment has not been removed within 5 days following the termination or expiration, ColoCrossing shall have the right to remove, relocate, or otherwise store the Equipment at Customer's expense without liability to Customer. If after 30 days of such storage by ColoCrossing Customer has not retrieved the Equipment and paid any indebtedness owing to ColoCrossing, then ColoCrossing may exercise all the rights and remedies of a secured party under applicable law including, without limitation, ColoCrossing may sell the Equipment to third parties and use the proceeds of such sale to satisfy any such indebtedness as well as any costs (including reasonable legal fees) incurred by ColoCrossing in exercising any remedy under this Agreement.
22. Security. As continuing security for the obligations of Customer to ColoCrossing as set out in this Agreement, Customer hereby grants to ColoCrossing a security interest in the Equipment of Customer now located or hereafter located in the Customer Space and all proceeds therefrom in the event of a disposition thereof in accordance with the terms of this Agreement.
23. Ownership of Equipment. Customer represents and warrants that it either owns all Equipment or has all necessary rights to locate the Equipment in the Premises.
24. Consent to Video Monitoring. Customer acknowledges, agrees and hereby consents under applicable privacy laws that ColoCrossing may monitor the Premises by way of closed circuit television or other monitoring device for the purposes of maintaining the safety and security of the Premises, any equipment in the Premises, and any persons using or present in the Premises from time to time.

BANDWIDTH TERMS AND CONDITIONS

25. Bandwidth Services. ColoCrossing shall provide to Customer the Internet Connectivity, IP Addresses and Internet Traffic services (collectively, the "Bandwidth Services"), as specified in the Service Table of the Sales Order Contract (as amended by the parties from time to time). ColoCrossing shall provide Bandwidth Services in accordance with this Agreement, including the Service Level Agreement contained herein. Customer shall comply (and shall cause its clients to comply as if those clients were the Customer) with the Acceptable Uses Policy (as amended by ColoCrossing from time to time) contained herein. ColoCrossing shall have the right, but not the obligation, without prior notice, to monitor online conduct and communications, in order to verify compliance with this Agreement and applicable law. The security for transmissions made using the Bandwidth Services is the responsibility of Customer. Customer's sole remedy for any interruption of Bandwidth Services shall be to receive refunds in accordance with the Service Level Agreement. Customer agrees to defend, indemnify and hold harmless ColoCrossing, and its officers, directors and employees (collectively, the "Indemnities"), from any and all liabilities, costs and expenses, including reasonable legal fees, related to or arising from any action or claim by a third party against the Indemnities asserting an intellectual property right violation or any other third party claims which concern Customer's (or its clients') use of the Bandwidth Services (including without limitation transmission of any message, information, software or other materials, or service interruptions).
26. IP Addresses. Any IP Addresses allocated to Customer by ColoCrossing must be maintained by Customer in an efficient manner as deemed by ARIN and utilized at 80% within 30 days of assignment by ColoCrossing to Customer. Failure to comply with this Section may result in the revocation of IP Addresses by ColoCrossing after five days notice to Customer.
27. Traffic Billing.
 - 27.1 For purposes of billing, traffic is measured as of the last day of each month.
 - 27.2 Traffic is measured using MRTG.
 - 27.3 Real-time access to MRTG data is available via a Web interface.
 - 27.4 Traffic data is captured on the ColoCrossing switch associated with the customer connection.
 - 27.5 All BGP customers shall be charged based on the 95th percentile method.

TECHNICAL SUPPORT AND SERVICES PRICING

Network Operations Support (remote hands)		
Network Operations Support (8am – 5pm, Mon – Fri)	\$125.00/hour	billed in 15 minute increments
Network Operations Support (Outside Business Hours)	\$125.00/hour	billed in 15 minute increments

Network Operations Support (remote hands)

<u>24 hr. systems monitoring</u>	\$100.00/month/IP
<u>Primary & secondary DNS</u>	\$50.00/year/domain
<u>Domain name changes</u>	\$10.00/domain
<u>Other</u>	
<u>Additional Access Cards (key included)</u>	\$50.00/card

ACCEPTABLE USES POLICY (AUP)

Customer agrees to use Bandwidth Services only for lawful purposes, in compliance with all applicable law. Specific activities that are prohibited include, but are not limited to:

- Threatening harm to persons or property or otherwise harassing behavior.
- Violating United States export control laws for software or technical information.
- Misrepresenting or fraudulently representing products/services using Customer's account.
- Transmission, distribution or storage of any material in violation of any applicable law or regulation.
- Transmission, distribution or storage of any material protected by copyright, trademark, trade secret or other intellectual property right without proper authorization, and material that is obscene, defamatory, an invasion of privacy or constitutes an illegal threat, or is otherwise illegal.
- Facilitating, aiding, or encouraging any of the above activities, whether using ColoCrossing's network or service by itself or via a third party's network or service.
- Interference with a third party's use of ColoCrossing's network or service, or ability to connect to the Internet or provide services to Internet users.
- Transmission, distribution or storage of any material that is slanderous or libelous.
- Transmission, distribution or storage of any material that is considered child pornography or otherwise prohibited by law.

Email

Sending unsolicited email messages, including, without limitation, commercial advertising and informational announcements, is explicitly prohibited. Customer shall not use another site's mail server to relay email without the express permission of the site. It is strictly forbidden to send out unsolicited email from any other network that advertises, promotes or in any way points to a location inside ColoCrossing network. It is also strictly forbidden to be involved in the distribution of tools designed for the aiding of Unsolicited Bulk Email (UBE). A Customer's connectivity may be terminated without delay if the Customer has been documented on a recognized SPAM abuse list or if the Customer has previously been denied access from another provider due to AUP violations.

System and Network Security

Customer is prohibited from utilizing ColoCrossing services to compromise the security or tamper with system resources or accounts on computers at the Premises or at any third party site.

Specific activities that are prohibited include, but are not limited to:

- Use or distribution of tools designed for compromising security.
- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
- Deliberate attempts to overload a system and broadcast attacks.
- Forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting.
- Intentionally or negligently transmitting files containing a computer virus or corrupted data.

Violation

ColoCrossing, in its sole discretion, shall determine what action shall be taken in response to a violation on a case-by-case basis. Violation of

this AUP could also subject Customer to criminal or civil liability. ColoCrossing may block access at the router level to Customer's Equipment involved. If ColoCrossing believes, in its sole discretion, that a violation of this AUP has occurred, such action may also include, but is not limited to, temporary or permanent blocking of access to the equipment, and the suspension or termination of Customer's Services under this Agreement. ColoCrossing may involve and shall also fully cooperate with law enforcement authorities (including compliance with court orders) in investigating suspected lawbreakers.

Reporting Copyright Violations.

ColoCrossing complies with the Digital Millennium Copyright Act ("DMCA"). ColoCrossing encourages Users to report an alleged copyright infringement involving a user by sending a notice that complies with the DMCA to:

DMCA Notices
 325 Delaware Avenue
 Suite 300
 Buffalo, NY 14202

Telephone Number of Designated Agent: 800.518.9716
 Facsimile Number of Designated Agent: 716.335.9628
 Email Address of Designated Agent: dmca@colocrossing.com

1. For your complaint to be valid under the DMCA, you must provide the following information when providing notice of the claimed copyright infringement. (For more details on the information required for valid notification, see 17 U.S.C. 512(c)(3).):

- A physical or electronic signature of a person authorized to act on behalf of the copyright owner
- Identification of the copyrighted work claimed to have been infringed
- Identification of the material that is claimed to be infringing or to be the subject of the infringing activity and that is to be removed or access to which is to be disabled as well as information reasonably sufficient to permit ColoCrossing to locate the material
- Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address
- A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law
- A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed
- You should be aware that, under the DCMA, claimants who make misrepresentations concerning copyright infringement may be liable for damages incurred as a result of the removal or blocking of the material, court costs, and attorneys fees.

2. ColoCrossing reserves the right to suspend or terminate any customer pursuant to any valid DMCA complaint. Furthermore, ColoCrossing, in its sole discretion, may suspend or terminate, without notice, any User that ColoCrossing determines is a repeat copyright infringer.

ColoCrossing reserves the right to modify this AUP at any time without notice.

Customer is responsible for all use of the Bandwidth Services by itself, its employees, agents, contractors, invitees and clients, whether such use is with or without the consent of Customer.

SERVICE LEVEL AGREEMENT (SLA)

ColoCrossing has implemented a high-availability Internet Transit network infrastructure, available within secure Co-location facilities. This has been accomplished by the following:

- 1) All Customer connections make use of Cisco's HSRP (hot standby router protocol)
- 2) Multiple upstream providers
- 3) Fully redundant internal backbone network
- 4) All network devices have onsite spares
- 5) All key network components are monitored 24x7

What is covered by ColoCrossing's 100% Uptime SLA

- ColoCrossing Bandwidth
- ColoCrossing Power
- Cross Connections to ColoCrossing Bandwidth Network

What is covered by ColoCrossing's 4-hour hardware replacement Guarantee

- ColoCrossing Owned Equipment

What is not covered by ColoCrossing's guarantee or SLA

- Cross connections to 3rd parties
- Hardware owned by customer

Service Level Agreement Terms for Onsite Co-location Customers

ColoCrossing shall provide 100 % uninterrupted transit to the Internet to all co-location customers who have purchased said service from ColoCrossing. Should transit to the Internet become unavailable for a cumulative period up to one hour in any one calendar month, Customer shall receive a refund equivalent to one day of Customer's pro-rated Recurring Monthly Fees for that month. Customer shall receive an additional refund of one day of the pro-rated Internet Connectivity Recurring Monthly Fees for each additional hour, or portion thereof, of unavailability. ColoCrossing guarantees that customers who purchase redundant power configurations (described as "A+B redundant circuits") shall receive 100 % uninterrupted access to electrical service. Should both sides of a redundant power configuration experience a failure and become unavailable for a cumulative period up to one hour in any one calendar month, Customer shall receive a refund equivalent to one day of Customer's pro-rated Recurring Monthly Fees for that month. Customer shall receive an additional refund of one day of the pro-rated Electrical Recurring Monthly Fees for each additional hour, or portion thereof, of unavailability. All refund calculations shall be based on unavailability in one-hour increments. The above agreement does not cover outages caused by equipment and/or events not under the direct control of ColoCrossing or caused by individuals not directly employed by ColoCrossing. This Service Level Agreement does not cover outages due to scheduled or emergency network and/or facility maintenance, which shall be broadcast to all customers in advance, and shall not exceed 20 minutes per month.

Any and all refunds to Customer shall not exceed 50% of the Customer's Recurring Monthly Fees for the month in which the refund is paid.

Performance Guarantee

ColoCrossing shall maintain its network in such a manner as to provide to all customers the best possible performance to the Internet. In order to achieve this ColoCrossing makes the following guarantees to all onsite Internet customers:

- 100% guaranteed uninterrupted transit to the Internet
- Zero packet loss internal to ColoCrossing network

In addition to the above performance guarantees ColoCrossing shall take all possible measures to insure all Customer traffic reaches its destination in a timely fashion comparable and within reason to any other carrier in the area. These measures include the manipulation of routing tables so as to direct traffic to the Internet using its best possible upstream link.

By signing below, each party acknowledges that it has read, understands, and agrees to the terms of this Co-location and Bandwidth Services Agreement.

Agreed to by:

COLOCROSSING	CUSTOMER
By:	By:
(Signature)	Signature)
(Name typed or printed)	(Name typed or printed)
(Title)	(Title)
(Date)	(Date)

