

**AS REFERENCED BY AN ORDER FORM OR OTHER DOCUMENT SIGNED BY CUSTOMER, THIS MASTER SERVICES AGREEMENT (THE "AGREEMENT") AND TERMS OF SERVICE IS MADE EFFECTIVE AS OF THE DATE INDICATED ON THE ORDER FORM OR OTHER DOCUMENT SIGNED BY CUSTOMER, AUTHORIZING YOURNET CONNECTION TO PROVIDE SERVICES FOR CUSTOMER, ORDER GOODS AND SERVICES FROM OTHER THIRD PARTY PROVIDER(S) ON CUSTOMERS BEHALF, OR TO PERFORM ROUTINE OR NON-ROUTINE MAINTENANCE ON CUSTOMERS EQUIPMENT AS REQUESTED IN WRITING BY CUSTOMER.**

## 1. OVERVIEW.

1.1 *General.* This Agreement states the terms and conditions by which YNC will deliver and Customer will receive any or all of the services provided by YNC, including facilities, bandwidth, managed services and professional services. If Customer purchases any equipment from YNC (as indicated in the Order Form(s) described below), the terms and conditions by which Customer purchases and YNC sells such equipment are stated in Addendum A attached hereto. Only this Section 1.1 and Addendum A shall apply to the purchase and sale of equipment. The specific services and/or products to be provided hereunder are identified in the Order Form(s) submitted by Customer and accepted by YNC and described in detail in the Specification Sheets and Statements of Work attached to each Order Form. Each Order Form (with the attached Specification Sheet(s) and Statement(s) of Work) submitted, accepted and executed by both parties is hereby incorporated by reference into this Agreement. This Agreement is intended to cover any and all Services ordered by Customer and provided by YNC. In the event that any terms set forth herein apply specifically to a service not ordered by Customer, such terms shall not apply to Customer.

### 1.2 *Definitions.*

(a) "Customer Area" means that portion(s) of the Internet Data Center(s) made available to Customer for the placement of Customer Equipment and/or YNC Supplied Equipment and use of the Service(s).

(b) "Customer Equipment" means the Customer's computer hardware, not including stored data, and other tangible equipment placed by Customer in the Customer Area. The Customer Equipment shall be identified on YNC's standard customer equipment list completed and delivered by Customer to YNC, as amended in writing from time to time by Customer.

(c) "Customer Registration Form" means the list that contains the names and contact information (e.g. pager, email and telephone numbers) of Customer and the individuals authorized by Customer to enter the Internet Data Center(s) and Customer Area, as delivered by Customer to YNC and amended in writing from time to time by Customer.

(d) "Customer Technology" means Customer's proprietary technology, including Customer's Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the term of this Agreement by Customer.

(e) "YNC Supplied Equipment" means the computer hardware, software and other tangible equipment and intangible computer code contained therein to be provided by YNC for use by Customer as set forth on the Order Form(s).

(f) "YNC Technology" means YNC's proprietary technology, including YNC Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by YNC or licensed to YNC from a third party) and also including any derivatives, improvements, enhancements or extensions of YNC Technology conceived, reduced to practice, or developed during the term of this Agreement by either party that are not uniquely applicable to Customer or that have general applicability in the art.

(g) "Initial Term" means the minimum term for which YNC will provide the Service(s) to Customer, as indicated on the Order Form(s). Except as otherwise expressly provided in this Agreement, YNC is obligated to provide and Customer is obligated to pay for each Service through its Initial Term and any Renewal Term.

(h) "Internet Data Center(s)" means any of the facilities used by YNC to provide the Service(s).

(i) "Professional Services" means any non-standard professional or consulting service provided by YNC to Customer as more fully described in a Statement of Work.

(j) "Renewal Term" means any service term following the Initial Term, as specified in Section 2.2.

(k) "Representatives" mean the individuals identified in writing on the Customer Registration Form and authorized by Customer to enter the Internet Data Center(s) and the Customer Area.

(l) "Rules and Regulations" means the YNC general rules and regulations governing Customer's use of Services, including, but not limited to, online conduct, and the obligations of Customer and its Representatives in the Internet Data Centers.

(m) "Service(s)" means the specific service(s) provided by YNC as described on the Order Form(s).

(n) "Service Commencement Date" means the date YNC will begin providing the Service(s) to Customer, as indicated in a Notice of Service Commencement delivered by YNC to Customer.

(o) "Service Level Warranty" is described and defined in Section 5.2 below.

(p) "Specification Sheet" means the detailed description for each Service, other than Professional Services, ordered by Customer that is attached to an Order Form(s).

(q) "Statement of Work" means the detailed description(s) of the Professional Services attached to (an) Order Form(s).

(r) "Work," means any tangible deliverable provided by YNC to Customer as described in the Statement of Work for any Professional Service.

## 2. DELIVERY OF SERVICES; TERMS; FEES.

### 2.1 *Delivery of Services.*

(a) *General.* By submitting an Order Form, Customer agrees to take and pay for, and, by accepting the Order Form, YNC agrees to provide, the Service(s) during the Initial Term and for any Renewal Term, as specified in paragraph 2.2(b) below.

(b) *Delivery of Supplemental Services.* The purpose of this provision is to enable YNC to provide Customer with certain limited services and equipment needed by Customer on a "one-off" or emergency basis ("Supplemental Services") where such services are not included within the scope of the Services as described in the Specification Sheets and/or Statement of Work. Supplemental Service may include, as an example, a request from Customer to YNC via telephone that YNC immediately replace a problem Customer server with an YNC server for a temporary period of time. YNC shall notify Customer of the fees for any Supplemental Services requested by Customer and obtain Customer's approval prior to providing such services. In the event YNC reasonably determines that Supplemental Services are required on an emergency basis, YNC may provide such services without the consent of Customer, thereafter provide notice of the services to Customer and bill Customer a reasonable fee for such services. Customer agrees to pay YNC the fees charged by YNC for Supplemental Services. Customer will be charged for Supplemental Services in the invoice issued the month following delivery of the services. YNC will use commercially reasonable efforts to provide Supplemental Services, provided that YNC has no obligation to determine the need for or provide Supplemental Services. All Supplemental Services provided pursuant to this paragraph 2.1(b) are provided on an "as-is" basis and exclude warranties of any kind, whether express or implied.

### 2.2 *Term.*

(a) *Term Commencement.* The term for each Service will commence on the date YNC begins providing each Service to Customer.

(b) *Renewal Term(s).* **EACH SERVICE WILL CONTINUE AUTOMATICALLY FOR ADDITIONAL TERMS EQUAL TO THE INITIAL TERM ("RENEWAL TERM")**

**UNLESS CUSTOMER NOTIFIES YNC IN WRITING AT LEAST THIRTY (30) DAYS PRIOR TO THE END OF THE INITIAL TERM OR A RENEWAL TERM, AS APPLICABLE, THAT IT HAS ELECTED TO TERMINATE SUCH SERVICE, IN WHICH CASE SUCH SERVICE SHALL TERMINATE AT THE END OF SUCH TERM.** The termination of any Service will not affect Customer's obligations to pay for other Service(s). Notwithstanding the foregoing, YNC may change or increase the prices it charges Customer for any Service at any time after the Initial Term effective thirty (30) days after providing notice to Customer. This paragraph 2.2(b) does not apply to YNC Supplied Equipment which is only provided for the Initial Term.

## 3. FEES AND PAYMENT TERMS.

3.1 *Fees and Expenses.* Customer will pay all fees due according to the prices and terms listed in the Order Form(s). The prices listed in the Order Form(s) will remain in effect during the Initial Term indicated in the Order Form(s) and will continue thereafter, unless modified in accordance with Section 2.2. Customer also agrees to reimburse YNC for actual out-of-pocket reasonable expenses incurred in providing Professional Services to Customer.

3.2 *Payment Terms.* Prior to the Service Commencement Date for each Service, Customer will be billed an amount equal to all non-recurring charges indicated in the Order Form and the monthly recurring charges for the first month of the term. Monthly recurring charges for all other months will be billed in advance of the provision of Services. All other charges for Services received and expenses incurred for Professional Services during a month (e.g., bandwidth usage fees, travel expenses) will be billed at the end of the month in which the Services were provided. Payment for all fees is due upon receipt of each YNC invoice. All payments will be made in the United States in U.S. dollars.

3.3 *Late Payments.* Any payment not received within thirty (30) days of the invoice date will accrue interest at a rate of one and one-half percent (1 ½%) per month, or the highest rate allowed by applicable law, whichever is lower. YNC may suspend any service for late payment without notice. In the event YNC suspends any service for late payment no credit shall be made for the time period that any service was suspended. If Customer is delinquent in its payments, YNC may, upon written notice to Customer, modify the payment terms to require full payment before the provision of all Services and YNC Supplied Equipment or require other assurances to secure Customer's payment obligations hereunder.

3.4 *Taxes.* All fees charged by YNC for Services are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the transaction and/or the delivery of Services, all of which Customer will be responsible for and will pay in full, except for taxes based on YNC's net income.

## 4. CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY OWNERSHIP; LICENSE GRANTS.

### 4.1 *Confidential Information.*

(a) *Nondisclosure of Confidential Information.* Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party ("*Confidential Information*"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or

that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to, YNC Technology, Customer Technology, and the terms and conditions of this Agreement. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information, at least as stringent as it takes to protect its own Confidential Information.

(b) *Exceptions.* Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

#### 4.2 Intellectual Property.

(a) *Ownership.* Except for the rights expressly granted herein and the assignment expressly made in paragraph 4.4(a), this Agreement does not transfer from YNC to Customer any YNC Technology, and all right, title and interest in and to YNC Technology will remain solely with YNC. Except for the rights expressly granted herein, this Agreement does not transfer from Customer to YNC any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. YNC and Customer each agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party.

(b) *General Skills and Knowledge.* Notwithstanding anything to the contrary in this Agreement, YNC will not be prohibited or enjoined at any time by Customer from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including, without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another customer of YNC.

#### 4.3 License Grants.

(a) *By YNC.* YNC hereby grants to Client a nonexclusive, royalty-free license, during the term of this Agreement, to use the YNC Technology solely for purposes of using the Service(s). Customer shall have no right to use the YNC Technology for any purpose other than using the Service(s).

(b) *By Customer.* Customer agrees that if, in the course of performing the Service(s), it is necessary for YNC to access Customer Equipment and use Customer Technology, YNC is hereby granted and shall have a nonexclusive, royalty-free license, during the term of this Agreement, to use the Customer Technology solely for the purposes of delivering the

Service(s) to Customer. YNC shall have no right to use the Customer Technology for any purpose other than providing the Service(s).

#### 4.4 Professional Services; Assignments and License.

(a) *Assignment of Work.* Effective at the time YNC receives full and final payment for the Professional Service, YNC assigns to Customer all right, title and interest, including all intellectual property rights, in the Work, provided, however, that such assignment does not include the YNC Technology.

(b) *License Grant.* Commencing at the time YNC receives full and final payment for the Work, YNC grants to Customer a non-exclusive, non-transferable, royalty free, perpetual license to use the YNC Technology incorporated into the Work solely in connection with the use of the Work as a whole. To the extent that Customer or its employees or contractors participate in the creation or development of YNC Technology, Customer, on behalf of itself and its employees and contractors, hereby assigns to YNC all right, title and interest, including all intellectual property rights in, the YNC Technology.

### 5. YNC REPRESENTATIONS AND WARRANTIES.

#### 5.1 General.

(a) *Authority and Performance of YNC.* YNC represents and warrants that (i) it has the legal right to enter into this Agreement and perform its obligations hereunder, and (ii) the performance of its obligations and delivery of the Services to Customer will not violate any applicable U.S. laws or regulations, including OSHA requirements, or cause a breach of any agreements with any third parties. In the event of a breach of the warranties set forth in this paragraph 5.1(a), Customer's sole remedy is termination pursuant to Section 10 of the Agreement.

(b) *Year 2000 Performance Compliance.* YNC warrants that none of the computer hardware and software systems and equipment incorporated into or utilized in the delivery of the Services contains any date dependent routines or logic which will fail to operate correctly after December 31, 1999, by reason of such date dependence; provided, however, that no representation or warranty is made as to the adequacy of any Customer or third party service provider hardware or software used in connection with the Services. In the event of any breach of the warranties under this paragraph 5.1(b), Customer's sole remedy is termination pursuant to Section 10 of the Agreement.

5.2. *Service Level Warranty.* In the event that Customer experiences any of the service performance issues defined in this Section 5.2 as a result of YNC's failure to provide bandwidth or facility services, YNC will, upon Customer's request in accordance with paragraph 5.2(d) below, credit Customer's account as described below (the "Service Level Warranty"). The Service Level Warranty shall not apply to any services other than bandwidth and facility services, and, shall not apply to performance issues (i) caused by factors outside of YNC's reasonable control; (ii) that resulted from any actions or inactions of Customer or any third parties; or (iii) that resulted from Customer's equipment and/or third party equipment (not within the sole control of YNC).

(a) *Service Warranty Definitions.* For purposes of this Agreement, the following definitions shall apply only to the Services (not including Professional Services).

(i) "Downtime" shall mean sustained packet loss in excess of fifty percent (50%) within SAVVIS'S' U.S. network for fifteen (15) consecutive minutes due to the failure of SAVVIS to provide Service(s) for such period. Downtime shall not include any packet loss or network unavailability during YNC'S' or SAVVIS'S' scheduled maintenance of the Internet Data Centers, network and Service(s).

(ii) "Excess Latency" shall mean transmission latency in excess of one hundred twenty (120) milliseconds round trip time between any two points within SAVVIS'S' U.S. network.

(iii) "Excess Packet Loss" shall mean packet loss in excess of one percent (1%) between any two points within SAVVIS'S' U.S. network.

(iv) "Performance Problem" shall mean Excess Packet Loss and/or Excess Latency.

(v) "Service Credit" shall mean an amount equal to the pro-rata monthly recurring connectivity charges (i.e., all monthly recurring bandwidth-related charges) for one (1) day of Service.

(b) *Downtime Periods.* In the event Customer experiences Downtime, Customer shall be eligible to receive from YNC a Service Credit for each Downtime period. Examples: If Customer experiences one Downtime period, it shall be eligible to receive one Service Credit. If Customer experiences two Downtime periods, either from a single event or multiple events, it shall be eligible to receive two Service Credits.

(c) *Performance Problem; Packet Loss and Latency.* In the event that YNC discovers or is notified by Customer that Customer is experiencing a Performance Problem, YNC will take all actions necessary to determine the source of the Performance Problem.

(i) *Time to Discover Source of Performance Problem; Notification of Customer.* Within two (2) hours of discovering or receiving notice of the Performance Problem, YNC will determine whether the source of the Performance Problem is limited to the Customer Equipment and the YNC equipment connecting the Customer Equipment to the YNC LAN. If YNC determines that the Customer Equipment and YNC connection are not the source of the Performance Problem, YNC will determine the source of the Performance Problem within an additional two (2) hour period. In any event, YNC will notify Customer of the source of the Performance Problem within sixty (60) minutes of identifying the source.

(ii) *Remedy of Packet Loss and Latency.* If the source of the Performance Problem is within the sole control of YNC, YNC will remedy the Performance Problem within two (2) hours of determining the source of the Performance Problem. If the source of and remedy to the Performance Problem reside outside of the YNC LAN or WAN, YNC will use commercially reasonable efforts to notify the party(ies) responsible for the source of the Performance Problem and cooperate with it (them) to resolve such problem as soon as possible.

(iii) *Failure to Determine Source and/or Remedy.* In the event that YNC (A) is unable to determine the source of the Performance Problem within the time periods described in subsection (i) above and/or; (B) YNC is the sole source of the Performance Problem and is unable to remedy such Performance Problem within the time period described in subsection (ii) above, YNC will deliver a Service Credit to Customer for each two (2) hour period in excess of the time periods for identification and resolution described above.

(d) *Customer Must Request Service Credit.* In order to receive any of the Service Credits described in this Section 5.2, Customer must notify YNC within seven (7) days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer's right to receive a Service Credit.

(e) *Remedies Shall Not Be Cumulative; Maximum Service Credit.* The aggregate maximum number of Service Credits to be issued by YNC to Customer for any and all Downtime periods and Performance Problems that occur in a single calendar month shall not exceed seven (7) Service Credits. A Service Credit shall be issued in the YNC invoice in the month following the Downtime or Performance Problem, unless the Service Credit is due in Customer's final month of Service. In such case, a refund for the dollar value of the Service Credit will be mailed to Customer. Customer shall also be eligible to receive a pro-rata refund for (i) Downtime periods and Performance Problems for which Customer does not receive a Service Credit and (ii) any Services YNC does not deliver to Customer for which Customer has paid.

(f) *Termination Option for Chronic Problems.* Customer may terminate this Agreement for cause and without penalty by notifying YNC within five (5) days following the end of a calendar month in the event either of the following occurs: (i) Customer experiences more than fifteen (15) Downtime periods resulting from three (3) or more nonconsecutive Downtime events during the calendar month; or (ii) Customer experiences more than twentyfour (24) consecutive hours of Downtime due to any single event. Such termination will be effective thirty (30) days after receipt of such notice by YNC.

(g) THE SERVICE LEVEL WARRANTY SET FORTH IN THIS SECTION 5.2 SHALL ONLY APPLY TO THE BANDWIDTH AND FACILITIES SERVICE(S) PROVIDED BY YNC AND, DOES NOT APPLY TO (I) ANY PROFESSIONAL SERVICES; (II) ANY SUPPLEMENTAL SERVICES; AND (III) ANY SERVICE(S) THAT EXPRESSLY EXCLUDE THIS SERVICE LEVEL WARRANTY (AS STATED IN THE SPECIFICATION SHEETS FOR SUCH SERVICES). THIS SECTION 5.2 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE BY YNC TO PROVIDE SERVICE(S).

5.3 *Service Performance Warranty.* YNC warrants that it will perform the Services in a manner consistent with industry standards reasonably applicable to the performance thereof.

5.4 *Selection of YNC Supplied Equipment; Manufacturer Warranty.* Customer acknowledges that it has selected the YNC Supplied Equipment and disclaims any statements made by YNC. Except with respect to any express warranties for Service(s) related to YNC Supplied Equipment, Customer acknowledges and agrees that its use and possession of the YNC Supplied Equipment by Customer shall be subject to and controlled by the terms of any manufacturer's or, if appropriate, supplier's warranty, and Customer agrees to look solely to the manufacturer or, if appropriate, supplier with respect to all mechanical, service and other claims, and the right to enforce all warranties made by said manufacturer are hereby, to the extent YNC has the right, assigned to Customer solely for the Initial Term.

5.5 *No Other Warranty.* EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. YNC DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. YNC DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

5.6 *Disclaimer of Actions Caused by and/or Under the Control of Third Parties.* YNC DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM YNC'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH YNC WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, YNC CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, YNC DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

## 6. CUSTOMER OBLIGATIONS.

### 6.1 *Warranties of Customer.*

(a) *General.* Customer represents and warrants that (i) it has the legal right and authority, and will continue to own or maintain the legal right and authority, during the term of this Agreement, to place and use any Customer Equipment as contemplated under this Agreement; (ii) the performance of its obligations and use of the Services (by Customer, its customers and users) will not violate any applicable laws, regulations or the Rules and Regulations or cause a breach of any agreements with any third parties or unreasonably interfere with other YNC customers' use of YNC services, and (iii) all equipment, materials and other tangible items placed by Customer at Internet Data Centers will be used in compliance with all applicable manufacturer specifications.

(b) *Breach of Warranties.* In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, YNC will have the right, in its sole reasonable discretion, to suspend immediately any related Services if deemed reasonably necessary by YNC to prevent any harm to YNC and its business. YNC will provide notice and opportunity to cure if practicable depending on the nature of the breach. Once cured, YNC will promptly restore the Service(s).

6.2 *Compliance with Law and Rules and Regulations.* Customer agrees that it will use the Service(s) only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all applicable laws and regulations and the Rules and Regulations, as updated by YNC from time to time. The Rules and Regulations are incorporated herein and made a part hereof by this reference. YNC may change the Rules and Regulations upon fifteen (15) days' notice to Customer, which notice may be provided by posting such new Rules and Regulations at the YNC Web site [www.YNC.net](http://www.YNC.net). Customer agrees that it has received, read and understands the current version of the Rules and Regulations. The Rules and Regulations contain restrictions on Customer's and Customer's users' online conduct (including prohibitions against unsolicited commercial email) and contain financial penalties for violations of such restrictions. Customer agrees to comply with such restrictions and, in the event of a failure to comply, Customer agrees to pay the financial penalties in accordance with the Rules and Regulations. Customer acknowledges that YNC exercises no control whatsoever over the content of the information passing through Customer's site(s) and that it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations and the Rules and Regulations.

6.3 *Access and Security.* Except with the advanced written consent of YNC, Customer's access to the Internet Data

Centers will be limited solely to the Representatives. Representatives may only access the Customer Area and are prohibited from accessing other areas of the Internet Data Center(s) unless accompanied by an authorized YNC representative.

6.4 *Restrictions on Use of Services.* Customer shall not, without the prior written consent of YNC (which may be withheld in its sole discretion), resell the Services to any third parties or connect Customer Equipment directly to anything other than the YNC network, equipment and facilities.

6.5 *Relocation of Customer Equipment.* In the event that it becomes necessary to relocate the Customer Equipment to another Customer Area or Internet Data Center operated by YNC, Customer will cooperate in good faith with YNC to facilitate such relocation, provided that such relocation is based on reasonable business needs of YNC (including the needs of other YNC customers), the expansion of the space requirements of Customer or otherwise. YNC shall be solely responsible for any costs and expenses incurred by YNC in connection with any such relocation and will use commercially reasonable efforts, in cooperation with Customer, to minimize and avoid any interruption to the Services

### 6.6 *YNC Supplied Equipment.*

(a) *Delivery and Term.* On or prior to the Service Commencement Date, YNC shall deliver to Customer, at the designated Customer Area, the YNC Supplied Equipment. Customer shall have the right to use the YNC Supplied Equipment for the Initial Term set forth in the Order Form and any additional period agreed to in writing by YNC. Customer shall not remove any YNC Supplied Equipment from the Customer Area(s) without the prior written consent of YNC.

(b) *Title.* The YNC Supplied Equipment shall always remain the personal property of YNC. Customer shall have no right or interest in or to the YNC Supplied Equipment except as provided in this Agreement and the applicable Order Form and shall hold the YNC Supplied Equipment subject and subordinate to the rights of YNC. Customer agrees to execute UCC financing statements as and when requested by YNC and hereby appoints YNC as its attorney-in-fact to execute such financing statements on behalf of Customer. Customer will, at its own expense, keep the YNC Supplied Equipment free and clear from any liens or encumbrances of any kind (except any caused by YNC) and will indemnify and hold YNC harmless from and against any loss or expense caused by Customer's failure to do so. Customer shall give YNC immediate written notice of any attachment or judicial process affecting the YNC Supplied Equipment or YNC's ownership. Customer will not remove, alter or destroy any labels on the YNC Supplied Equipment stating that it is the property of YNC and shall allow the inspection of the YNC Supplied Equipment at any time.

(c) *Use, Maintenance and Repair.* Customer will, at its own expense, keep the YNC Supplied Equipment in good repair, appearance and condition, other than normal wear and tear, and, if not included in the Services, shall obtain, pay for and keep in effect through the Initial Term a hardware and software maintenance agreement with the manufacturer or other party acceptable to YNC. All parts furnished in connection with such repair and maintenance shall be manufacturer authorized parts and shall immediately become components of the YNC Supplied Equipment and the property of YNC. Customer shall use the YNC Supplied Equipment in compliance with the manufacturer's or supplier's suggested guidelines.

(d) *Upgrades and Additions.* Customer may affix or install any accessory, addition, upgrade, equipment or device on to the YNC Supplied Equipment (other than electronic data) ("Additions") provided that such Additions (i) can be removed without causing material damage to the YNC Supplied Equipment; (ii) do not reduce the value of the YNC Supplied Equipment and (iii) are obtained from or approved in writing by YNC and are not subject to the interest of any third party other than YNC. Any other Additions may not be installed without YNC's prior written consent. At the end of the Initial Term, Customer shall remove any Additions which (i) were not provided by YNC and (ii) are readily removable without causing material damage or impairment of the intended function, use, or value of the YNC Supplied Equipment, and restore the YNC Supplied Equipment to its original configuration. Any Additions, which are not so removable, will become the property of YNC (lien free).

## 7. INSURANCE.

7.1 *YNC Minimum Levels.* YNC agrees to keep in full force and effect during the term of this Agreement: (i) comprehensive general liability insurance in an amount not less than \$1 million per occurrence for bodily injury and property damage and (ii) workers' compensation insurance in an amount not less than that required by applicable law. YNC agrees that it will ensure and be solely responsible for ensuring that its contractors and subcontractors maintain insurance coverage at levels no less than those required by applicable law and customary in YNC's and its agents' industries.

7.2 *Customer Minimum Levels.* In order to provide customers with physical access to facilities operated by YNC and equipment owned by third parties, YNC is required by its insurers to ensure that each YNC customer maintains adequate insurance coverage. Customer agrees to keep in full force and effect during the term of this Agreement: (i) comprehensive general liability insurance in an amount not less than \$2 million per occurrence for bodily injury and property damage and (ii) workers compensation insurance in an amount not less than that required by applicable law. Customer agrees that it will ensure and be solely responsible for ensuring that its agents (including contractors and subcontractors) maintain insurance coverage at levels no less than those required by applicable law and customary in Customer's and its agents' industries.

7.3 *Certificates of Insurance; Naming YNC as an Additional Insured.* Prior to installation of any Customer Equipment in the Customer Area, Customer will (i) deliver to YNC certificates of insurance which evidence the minimum levels of insurance set forth above; and (ii) cause its insurance provider(s) to name YNC as an additional insured and notify YNC in writing of the effective date thereof.

## 8. LIMITATIONS OF LIABILITY.

8.1 *Personal Injury.* EACH REPRESENTATIVE AND ANY OTHER PERSON VISITING AN INTERNET DATA CENTER DOES SO AT ITS OWN RISK. YNC ASSUMES NO LIABILITY WHATSOEVER FOR ANY HARM TO SUCH PERSONS RESULTING FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF YNC.

8.2 *Damage to Customer Equipment.* YNC ASSUMES NO LIABILITY FOR ANY DAMAGE TO, OR LOSS OF, ANY CUSTOMER EQUIPMENT RESULTING FROM ANY CAUSE OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF YNC. TO THE EXTENT YNC IS LIABLE FOR ANY DAMAGE TO, OR LOSS OF, CUSTOMER EQUIPMENT FOR ANY REASON, SUCH LIABILITY WILL BE LIMITED SOLELY TO THE THEN-

CURRENT REPLACEMENT VALUE OF THE CUSTOMER EQUIPMENT, EXCLUDING LOST DATA, SOFTWARE AND FIRMWARE.

8.3. *CONSEQUENTIAL DAMAGES WAIVER.* EXCEPT FOR A BREACH OF SECTION 4.1 ("CONFIDENTIAL INFORMATION") OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

8.4. *Basis of the Bargain; Failure of Essential Purpose.* The parties acknowledge that YNC has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

## 9. INDEMNIFICATION.

9.1. *Indemnification.* Each party will indemnify, defend and hold the other harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") resulting from any claim, suit, action, or proceeding (each, an "Action") brought by any third party against the other or its affiliates alleging (i) the infringement or misappropriation of any intellectual property right relating to the delivery or use of the Service(s) (but excluding any infringement contributorily caused by the other party); (ii) personal injury caused by the negligence or willful misconduct of the other party; and (iii) any violation of or failure to comply with the Rules and Regulations. Customer will indemnify, defend and hold YNC, its affiliates and customers harmless from and against any and all Losses resulting from or arising out of any Action brought against YNC, its affiliates or customers alleging any damage or destruction to the Customer Area, the Internet Data Centers, YNC equipment or other customer equipment caused by Customer, its Representative(s) or designees.

9.2 *Notice.* Each party's indemnification obligations hereunder shall be subject to (i) receiving prompt written notice of the existence of any Action; (ii) being able to, at its option, control the defense of such Action; (iii) permitting the indemnified party to participate in the defense of any Action; and (iv) receiving full cooperation of the indemnified party in the defense thereof.

## 10. TERMINATION.

10.1. *Termination For Cause.* Either party may terminate this Agreement if: (i) the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within five (5) days after receipt of written notice from YNC; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing. Customer may also terminate this Agreement in

accordance with the terms set forth in paragraph 5.2(f) ("Termination Option For Chronic Problems") of this Agreement.

10.2 *Termination for Convenience.* In the event that Customer terminates this Agreement during the Term, Customer shall be liable to YNC for the dollar difference between what the Customer is currently paying for any Service and the rate for the payment plan that could have been completed during the time the Service was actually in service, and Customer's Charges for each month the Service was provided. In addition, if nonrecurring charges were waived at the time of installation, Customer shall be liable for such charges. Such sum is immediately due and payable.

10.3 *No Liability for Termination.* Neither party will be liable to the other for any termination or expiration of any Service or this Agreement in accordance with its terms.

10.4 *Effect of Termination.* Upon the effective date of termination of this Agreement:

(a) YNC will immediately cease providing the Service(s);

(b) any and all payment obligations of Customer under this Agreement for Service(s) provided through the date of termination will immediately become due;

(c) within thirty (30) days of such termination, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement; and

(d) within five (5) days of such termination Customer shall (i) remove from the Internet Data Centers all Customer Equipment (excluding any YNC Supplied Equipment) and any other Customer property; (ii) deliver or make available all YNC Supplied Equipment to an authorized representative of YNC, and (iii) return the Customer Area to YNC in the same condition as it was on the Service Commencement Date for the Customer Area, normal wear and tear excepted. If Customer does not remove the Customer Equipment and its other property within such five-day period, YNC will have the option to (i) move any and all such property to secure storage and charge Customer for the cost of such removal and storage, and/or (ii) liquidate the property in any reasonable manner.

10.5 *Customer Equipment as Security.* In the event that Customer fails to pay YNC all amounts owed YNC under this Agreement when due, Customer agrees that, YNC may (i) restrict Customer's physical access to the Customer Area and Equipment; and/or (ii) take possession of any Customer Equipment and store it, at Customer's expense, until taken in full or partial satisfaction of any lien or judgment, all without being liable to prosecution or for damages.

10.6 *Survival.* The following provisions will survive any expiration or termination of the Agreement: Sections 3, 4.1, 4.2, 4.4, 5.5, 6.6(d), 8, 9, 10 and 11 (excluding 11.2).

## 11. MISCELLANEOUS PROVISIONS.

11.1 *Force Majeure.* Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the

Internet (not resulting from the actions or inactions of YNC), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If YNC is unable to provide Service(s) for a period of thirty (30) consecutive days as a result of a continuing force majeure event, Customer may cancel the Service(s).

11.2 *No Lease; Agreement Subordinate to Master Lease.* This Agreement is a services agreement and is not intended to and will not constitute a lease of any real property. Customer acknowledges and agrees that (i) it has been granted only a license to occupy the Customer Area and use the Internet Data Centers and any equipment provided by YNC in accordance with this Agreement; (ii) Customer has not been granted any real property interest in the Customer Space or Internet Data Centers; (iii) Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations, or ordinances; and (iv) this Agreement, to the extent it involves the use of space leased by YNC, shall be subordinate to any lease between YNC and its landlord(s).

11.3 *Marketing.* Customer agrees that during the term of this Agreement YNC may publicly refer to Customer, orally and in writing, as a Customer of YNC. Any other reference to Customer by YNC requires the written consent of Customer.

11.4 *Government Regulations.* Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

11.5 *Non-Solicitation.* During the Term of this Agreement and continuing through the first anniversary of the termination of this Agreement, Customer agrees that it will not, and will ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by YNC or contracted by YNC to provide Services to Customer.

11.6 *No Third Party Beneficiaries.* YNC and Customer agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or the customers of Customer.

11.7 *Severability; Waiver.* In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement 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.

11.8 *Assignment.* Customer may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Customer may not otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of YNC, and any attempted assignment or delegation without such consent will be void. YNC may assign this Agreement in whole or part. YNC also may delegate the performance of certain Services to third parties, including YNC's wholly owned subsidiaries, provided YNC controls the delivery of such Services to Customer and

remains responsible to Customer for the delivery of such Services. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

11.9 *Notice.* Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email, confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed on the Order Form or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered, mailed, emailed, faxed or sent, whichever is earlier.

11.10. *Relationship of Parties.* YNC and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between YNC and Customer. Neither YNC nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

11.11 *State of Jurisdiction.* This Agreement is made and entered into in the State of Illinois and shall in all respects be interpreted, enforced and governed by and under the laws of the State of Illinois.

11.11. *Entire Agreement; Counterparts; Originals.* This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Any additional or different terms in any purchase order or other response by Customer shall be deemed objected to by YNC without need of further notice of objection, and shall be of no effect or in any way binding upon YNC. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Once signed, any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile) is considered an original. This Agreement may be changed only by a written document signed by authorized representatives of YNC and Customer in accordance with this Section 11.11. For purposes of this Agreement, the term "written" means anything reduced to a tangible form by a party, including a printed or hand written document, e-mail or other electronic format.

11.12 *Interpretation of Conflicting Terms.* In the event of a conflict between or among the terms in this Agreement, the Order Form(s), the Specification Sheet(s), the Statement(s) of Work, and any other document made a part hereof, the documents shall control in the following order: the Order Form with the latest date, the Statement of Work, Specification Sheets, the Agreement and other documents.

THIS MASTER SERVICES AGREEMENT AND TERMS OF SERVICE INCORPORATES ANY OR ALL OF THE FOLLOWING DOCUMENTS USED TO SPECIFY PERFORMANCE AND OBLIGATIONS OF EACH PARTY.

- Order Form(s)
- Specification Sheet(s)
- Statement(s) Of Work (if applicable)
- Registration Form
- Addendum A - Equipment Purchase Terms and Conditions (if applicable)

## ADDENDUM A

### EQUIPMENT PURCHASE TERMS AND CONDITIONS

1. **SHIPPING AND HANDLING.** All equipment purchased by Customer (the "Equipment") is provided FOB Schaumburg, Illinois. Shipment will be made as specified by Customer and Customer is solely responsible for all expenses in connection with the delivery of the Equipment. The Equipment will be deemed accepted by Customer upon receipt.

2. **PURCHASE PRICE AND TAXES.** Customer shall pay to YNC the purchase price set forth in the applicable Order Form ("Purchase Price") for each item of Equipment. Customer hereby grants and YNC reserves a purchase money security interest in the Equipment and the proceeds thereof as a security for its obligations hereunder until payment of the full Purchase Price to YNC. The Purchase Price is due and payable prior to delivery of the Equipment. Customer shall pay all taxes and other governmental charges assessed in connection with the rental, use or possession of the Equipment including, without limitation, any and all sales and/or use taxes and personal property taxes (other than taxes on YNCS' net income).

3. **TITLE.** Customer shall acquire title to the Equipment upon full payment of the purchase price(s) set forth herein. Notwithstanding the foregoing, YNC and any licensor of rights to YNC shall retain title to and rights in the intellectual property (whether or not subject to patent or copyright) and content contained in the materials supplied under the terms of this Agreement.

4. **SELECTION OF EQUIPMENT; MANUFACTURER WARRANTY.** Customer acknowledges that is has selected the Equipment and disclaims any statements made by YNC. Customer acknowledges and agrees that use and possession of the Equipment by Customer shall be subject to and controlled by the terms of any manufacturer's or, if appropriate, supplier's warranty, and Customer agrees to look solely to the manufacturer or, if appropriate, supplier with respect to all mechanical, service and other claims, and the right to enforce all warranties made by said manufacturer are hereby, to the extent YNC has the right, assigned to Customer. THE FOREGOING WARRANTY IS THE EXCLUSIVE WARRANTY AND IS IN LIEU OF ANY ORAL REPRESENTATION AND ALL OTHER WARRANTIES AND DAMAGES, WHETHER EXPRESSED, IMPLIED OR STATUTORY. YNC HAS NOT MADE NOR DOES MAKE ANY OTHER WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR OF NONINFRINGEMENT OF THIRD PARTY RIGHTS AND AS TO YNC AND ITS ASSIGNEES, CUSTOMER PURCHASES THE EQUIPMENT "AS IS".

5. **LIMITATION OF LIABILITY.** YNCS' entire liability for any damages which may arise hereunder, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including YNCS' negligence, or otherwise, shall be limited to the Purchase Price paid by Customer for the Equipment. IN NO EVENT WILL YNC BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF BUSINESS OR PROSPECTIVE BUSINESS OPPORTUNITIES, PROFITS, SAVINGS, INFORMATION, USE OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF YNC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. **GOVERNING LAW; DISPUTE RESOLUTION.** This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Illinois (except that body of law controlling conflicts of law) and specifically excluding from application to this Agreement that law known as the United Nations Convention on the International Sale of Goods. The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement. Failing such amicable settlement, any controversy, claim, or dispute arising under or relating to this Agreement, including the existence, validity, interpretation, performance, termination or breach thereof, the parties to this Agreement hereby consent to jurisdiction and venue in the courts of the state of Illinois and in the U.S. District Courts in the City of Chicago, Illinois.

7. **MISCELLANEOUS.** THE ABOVE TERMS AND CONDITIONS ARE THE ONLY TERMS AND CONDITIONS UPON WHICH YNC IS WILLING TO SELL THE EQUIPMENT AND SUPERSEDE ALL PREVIOUS AGREEMENTS, PROMISES OR REPRESENTATIONS, ORAL OR WRITTEN.