



EQUINIX

Agreement Number: 00107381.0

**EQUINIX PROFESSIONAL SERVICES AGREEMENT**  
**UNITED STATES**

THIS EQUINIX PROFESSIONAL SERVICES AGREEMENT UNITED STATES ("PSA") is entered into between **EPS Enterprises, Inc. ("Equinix")** and the undersigned customer ("**Customer**") (each a "**Party**" and together the "**Parties**") for the provision of cloud consulting and similar professional services ("**Services**") set forth in sales order(s) (including any attached statements of work or other description of service) between the Parties (each an "**Order**"). This PSA and all Orders shall together constitute the "**Agreement**" and the PSA shall become effective upon the full execution of the PSA by the Parties ("**Effective Date**"). For the purposes of this PSA, colocation, interconnection, network or managed services which may be described in an Order are not included within the scope of Services which are governed by this PSA and are instead governed by the applicable Master Country Agreement or other similar agreement between the Parties, and for the avoidance of doubt such products cannot be ordered pursuant to this PSA.

**1. ORDERING AND PROVISION OF SERVICES.** The specific Services to be provided hereunder will be identified in an Order. An Order will be accepted and executed by the Parties and will incorporate this PSA by reference. Equinix will not be bound by (a) any Equinix-issued Order until it is accepted by Equinix or (b) any Customer-issued purchase order forms.

**2. PAYMENT TERMS AND TAXES.**

**2.1. Fees and Payment.** Customer will pay Equinix for all Fees for Services according to the prices and terms listed in an Order. Customer also agrees to reimburse Equinix for actual out-of-pocket, reasonable expenses incurred in providing the Services to Customer, all in accordance with an Order or which are otherwise approved by Customer. Customer will pay in full all invoices from Equinix in the currency stipulated in an Order within thirty (30) days of the date of invoice. Unless otherwise stated in an Order, Equinix will invoice for Fees on or after the applicable payment milestone (or if there are no payment milestones stated, upon completion of the Services). Interest shall be charged on past due amounts at the lower of (i) one and a half percent (1.5%) per month; or (ii) the highest rate permitted by applicable law. If Customer fails to pay an invoice when due, Equinix will so notify Customer and, if Customer fails to remit payment before the due date specified in the notice, Customer will be responsible for all collections costs including reasonable attorneys' fees.

**2.2. Taxes.** All amounts payable by Customer to Equinix under this Agreement exclude Taxes. Customer shall be responsible for Taxes related to the Services and Taxes imposed, levied or assessed thereon by any governmental or other authorities. If Customer is required to make any deduction, withholding or payment for Taxes in any jurisdiction on amounts payable to Equinix, such amounts will be increased such that after making such deduction, Equinix receives an amount equal to what it would have received if such deduction, withholding or payment had not been made.

**3. INTELLECTUAL PROPERTY.**

**3.1. Customer Content and Materials.**

**3.1.1.** Any Customer Content and/or Customer Materials supplied by Customer to Equinix in connection with this Agreement shall remain the sole and exclusive property of Customer. Except for the rights expressly granted under Section 3.1.2, this Agreement does not transfer to Equinix (nor create any implied license to) any Customer Content or Customer Materials, and all right, title and interest in and to Customer Content and Customer Materials will remain solely with Customer.

**3.1.2.** Customer hereby grants to Equinix a worldwide, non-exclusive, royalty-free, fully paid-up license to use, copy, modify, enhance, create derivative works of and otherwise use the Customer Content and Customer Materials solely in connection with the provision of the Services.

**3.2. Equinix Materials.**

**3.2.1.** Any Equinix Materials used by Equinix in performance of the Services shall remain the sole and exclusive property of Equinix. Except for the rights expressly granted under Section 3.2.2, this Agreement does not transfer to Customer (nor create any implied license to) any Equinix

Materials, and all right, title and interest in and to Equinix Materials will remain solely with Equinix. It is expressly understood that Equinix shall continue to own the Equinix Materials and any modifications, improvements or enhancements thereto or works derivative thereof.

**3.2.2.** Upon Equinix's receipt of full and final payment of Fees due from an Order, Equinix grants to Customer a worldwide, non-exclusive, royalty-free, fully paid-up, revocable license to use the Equinix Materials and the Deliverables in the form delivered to the Customer as part of the Services only for Customer's internal business operations.

**3.3. General Skills and Knowledge.** Subject to Equinix's confidentiality obligations set forth in this Agreement, Equinix will not be prohibited or enjoined from utilizing any skills or ideas, concepts, processes, techniques, expertise and know-how 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 Equinix.

**3.4. Infringement Remedies.** In the event that some or all of the Equinix Material(s) furnished to Customer is the subject of a third party claim that it infringes, or is reasonably believed by Equinix to infringe, such third party's intellectual property rights, Equinix shall, at Equinix's option and expense, either: (a) modify or replace the Equinix Material to make it non-infringing, or (b) procure for Customer a license to continue using the Equinix Material, or (c) require return of the infringing Equinix Material and all rights thereto from Customer. If Equinix determines that it is unfeasible to implement (a) or (b) on commercially reasonable terms and therefore implements (c), then Customer shall have the right to terminate this Agreement and be entitled to recover the pro rata fees paid by Customer for that portion of the Equinix Material adversely affected by the infringement. This Section 3.4 states Equinix's entire liability and Customer's exclusive remedy for infringement.

**4. TERM AND TERMINATION.**

**4.1. Term.** The term of this Agreement shall commence on the Effective Date and continue thereafter until terminated in accordance with the Agreement ("**Term**"). A termination of this Agreement shall terminate all Orders between Customer and Equinix. In addition to the termination rights set forth in the GTCs, if there are no outstanding Orders in effect, either Party may terminate this Agreement for convenience by providing at least thirty (30) days prior written notice to the other Party with thirty (30) days prior written notice.

**4.2. Termination.**

**4.2.1. Termination of Agreement.** Either Party may terminate this Agreement if the other Party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days (ten (10) days in the case of a failure to pay Fees) after receipt of written notice.

**4.2.2. Effect of Termination.** Termination of this Agreement shall not limit either Party from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Customer of its obligation to pay all charges that accrued prior to such termination. Equinix will cease providing the Service(s) on or before the effective date of termination of

this Agreement and Customer will be obligated to pay for Service(s) provided through the effective date of termination. In addition, each Party will return all Confidential Information of the other Party in its possession within thirty (30) days of such termination 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.

## **5. WARRANTIES AND LIMITATIONS.**

**5.1. Warranties.** Each Party warrants that it will comply with all applicable laws and regulations in connection with this Agreement. Equinix warrants that the Services will (a) be provided in a professional manner in accordance with Equinix's standard procedures, (b) be performed by appropriately knowledgeable and skilled personnel, and (c) conform to the standards generally observed in the industry for similar services.

**5.2. Limitations on Warranty.** EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, EQUINIX DOES NOT MAKE AND HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING BUT NOT LIMITED TO EXPRESS, IMPLIED AND STATUTORY WARRANTIES THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EQUINIX MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE COMPATIBILITY OF SOFTWARE OR EQUIPMENT OR ANY RESULTS TO BE ACHIEVED THEREFROM. In the event of a breach of the foregoing warranties, Customer's sole and exclusive remedy shall be to terminate the affected Services pursuant to the termination provisions of the Agreement and recover any fees paid to Equinix for the affected Service.

## **6. LIMITATION OF LIABILITY.**

**6.1.** SUBJECT TO SECTION 6.3, IN NO EVENT WILL EITHER PARTY, NOR ITS RESPECTIVE EMPLOYEES, OFFICERS, AFFILIATES, SUBCONTRACTORS, AGENTS OR SUPPLIERS, BE LIABLE TO THE OTHER PARTY FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF REVENUES (EXCEPT THAT CUSTOMER SHALL BE LIABLE FOR ANY FEES OR OTHER AMOUNTS OWED TO EQUINIX UNDER THIS AGREEMENT); (IV) LOSS OF DATA OR INTERRUPTION OR CORRUPTION OF DATA; (V) LOSS OF ANTICIPATED SAVINGS OR OF THE USE OF MONEY; (VI) ANY CONSEQUENTIAL OR INDIRECT DAMAGES; OR (VII) ANY INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES (IF APPLICABLE), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6.2.** SUBJECT TO SECTIONS 6.1 AND 6.3, EQUINIX'S TOTAL LIABILITY TO CUSTOMER IN THE AGGREGATE FOR ANY AND ALL CLAIMS ARISING FROM OR RELATED TO AN ORDER WILL, IN THE AGGREGATE, BE LIMITED TO THE GREATER OF THE (I) TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO EQUINIX UNDER AN ORDER; OR (II) FIFTY THOUSAND US DOLLARS (US\$50,000) (OR THE LOCAL CURRENCY EQUIVALENT).

**6.3.** THE LIMITATIONS SET FORTH IN THIS SECTION 6 (INCLUSIVE), WILL APPLY TO ALL CLAIMS AND CAUSES OF ACTION, REGARDLESS OF WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY.

**7. CONFIDENTIALITY.** Neither Party will use or disclose Confidential Information from the disclosing Party without its prior written consent, except where (i) if in the opinion of counsel, the disclosure is required by applicable law or regulation (including securities laws regarding public disclosure of business information) or by an order of a court or other governmental body having jurisdiction after taking steps to maintain its confidentiality where practicable; (ii) it is reasonably necessary to be disclosed to that Party's, or its Affiliates', employees, officers, directors, attorneys, accountants and other advisors; or (iii) it is necessary for a Party to exercise its rights and perform its obligations under this Agreement. In any case, the disclosing Party shall ensure that disclosure shall not be broader than necessary, and that the recipient agrees prior to receipt to keep the information confidential to the same extent as under this Agreement (except that such agreement need not be obtained for disclosures to a court, regulator or arbitrator). Information is not deemed

Confidential Information if it (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 confidential, except through a breach of this Agreement by the receiving Party; or (iv) is independently developed by the receiving Party.

**8. COOPERATION.** Customer shall fully cooperate with Equinix as reasonably necessary in order for Equinix to provide the Services, including, without limitation (a) performing any Customer specific responsibilities identified in an Order in a timely manner and by any specific date identified for doing so in an Order, (b) providing Equinix with all information reasonably required by Equinix in order to provide the Service; (c) making available any Customer personnel and/or systems (if applicable) to permit Equinix to provide the Services; and (d) designating at least one (1) suitably experienced employee or consultant, reasonably acceptable to Equinix, to act as a project manager in connection with an Order. The name of each project manager shall be provided to Equinix upon request and will have the authority to act on behalf of Customer with respect to this Agreement and an Order.

**9. FORCE MAJEURE.** Except for Customer's obligation to pay Fees and other amounts owed under this Agreement, neither Party will be responsible or in any way liable to the other Party, and neither Party will have any termination or other rights, arising out of or relating to a Force Majeure Event. A "Force Majeure Event" is a failure by the other Party to perform any of its obligations under this Agreement if such failure is caused by events or circumstances beyond its reasonable control, including, but not limited to, acts of God, war, labor strike, terrorist act, fire, flood, earthquake, health epidemic or any law, order, regulation or other action of any governing authority or agency.

## **10. DATA PROTECTION AND PRIVACY.**

**10.1. "Business Contact Information" or "BCI"** means business contact data containing personal information (e.g. first and last name, business phone numbers, emails and addresses) of Customer's (including its Affiliates, agents' and/or third-party consultants', contractors' or partners') employees (collectively, "Customer Representatives"), and whose use, processing or transfer is regulated by applicable data protection and privacy laws or regulations as 'personal data'.

**10.2.** Equinix will process BCI as Data Controller (as defined under European data protection and privacy laws or regulations, or local equivalent thereof) for the following purposes: (i) the provision of Services; (ii) account administration, billing and accounting reconciliation; (iii) operational maintenance and support activities; (iv) security and secure access to any Equinix facilities; (v) fraud detection and prevention; and, (vi) subject to BCI having been previously anonymized, customer and market analysis and reporting.

**10.3.** On the basis of Equinix's legitimate interest, Equinix will communicate to Customer by voice, letter or e-mail for the purposes of keeping it informed of products and services that may be of interest, and Equinix will do so appropriately in compliance with applicable data protection and privacy laws or regulations.

**10.4.** Enquiries concerning the use, processing and/or transfer of BCI, in particular access, rectification and deletion requests, by Customer Representatives, should be submitted to [PrivacyOffice@eu.equinix.com](mailto:PrivacyOffice@eu.equinix.com).

**10.5.** Equinix will retain BCI for no longer than necessary to fulfil the above-listed purposes for which BCI are processed.

**10.6.** Transfers of BCI for the purposes set out above under section 10.2 to the United States or to any other country located outside the European Economic Area (EEA) that is not deemed a country of adequate protection, are legitimized as and where required in accordance with applicable data protection and privacy laws or regulations in order to afford such transfer of BCI an adequate level of protection. These measures include (i) the entry into appropriate inter-company data transfer agreements based on the European Standard Contractual Clauses (also known as EU Model

Clauses); and/or (ii) the implementation of Binding Corporate Rules as defined under applicable European regulations; and/or (iii) equivalent means of compliance.

10.7. If and where relevant under applicable law, Customer undertakes to inform Customer Representatives (i) that their BCI may be collected, used, processed and transferred by virtue of the performance of, and in accordance with, the Agreement; and (ii) of their rights regarding the processing of their BCI in accordance with this Section.

**11. GOVERNING LAW AND SUBMISSION TO JURISDICTION.** This Agreement will be governed in all respects by the internal laws of the State of California without regard to its conflicts of law provisions. The parties each irrevocably agree to the exclusive jurisdiction of the courts of San Francisco, California, and waive any right to bring any action against the other party in any other jurisdiction or courts. If any legal action is brought by either party arising from, or related to, the subject matter of this Agreement, the prevailing party will be entitled to an award of its reasonable attorneys' fees and costs.

**12. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes and replaces all prior or contemporaneous discussions, negotiations, proposals, understandings and agreements, written or oral, as well as any industry custom. Each Party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in this Agreement, but nothing in this Section 12 shall limit or exclude a Party's liability for fraud. An Order may not be modified or amended except in a writing signed by a duly authorized representative of each Party.

**13. NOTICES.** All legal notices, consents, or approvals required by this Agreement will only be effective if in writing and sent by (i) certified or registered mail, postage prepaid; (ii) overnight delivery requiring a signature upon receipt; (iii) delivery by hand; or (iv) facsimile (promptly confirmed by mail), to the Parties at the respective addresses set forth below or as otherwise designated in writing by the Parties. Notices, consents and approvals under this Agreement will be deemed effective on the date of receipt.

**14. CONSTRUCTION.** Each Party agrees that it has reviewed this Agreement, and this Agreement shall not be interpreted more strictly against the drafting Party. The section headings and captions are for convenience only and will not be used to construe this Agreement. If any provision of this Agreement is adjudged by a court to be invalid, illegal or unenforceable, it will not affect the validity, legality, or enforceability of the other part(s) of the same provision or of the other provisions in this Agreement.

**15. INTERNATIONAL SECURITY CONCERNS.** Customer represents, warrants and covenants that Customer: (i) is compliant with applicable Sanction Laws; (ii) is not listed, or owned or controlled by an entity or person, on the U.S. Department of Treasury list of Specially Designated Nationals, or located in or organized under the laws of a country subject to U.S. or E.U. embargo (collectively, "**Restricted Persons**"); (iii) is not providing services in connection with this Agreement to Restricted Persons; and (iv) will not use the Services, or allow them to be used, for any purposes prohibited by applicable Sanction Laws, including nuclear, chemical, or biological weapons proliferation or development of missile technology. Notwithstanding any other provision in this Agreement, Equinix reserves the right to terminate this Agreement immediately upon written notice to the Customer if Equinix reasonably determines that Customer is not in compliance with this Section 15 or is causing Equinix to be exposed to violations under Sanction Laws.

## **16. GENERAL.**

16.1. Except where otherwise expressly stated herein, and subject to the limitations in Section 6, the rights and remedies provided for herein are cumulative and not exclusive of any rights or remedies that a Party would otherwise have.

16.2. The Parties are independent contractors, and this Agreement does not establish any relationship of partnership, joint venture, employment,

franchise or agency between them. Each Party shall be solely responsible for the supervision, daily direction and control of its employees and payment of their salaries (including withholding of appropriate payroll taxes), worker's compensation, disability, and other benefits. Neither Party may bind the other or incur obligations on the other's behalf without the other's prior written consent.

16.3. There are no third party beneficiaries to this Agreement.

16.4. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving Party.

**17. SUBCONTRACTING; ASSIGNMENT.** Equinix may permit any other Equinix Affiliate, independent contractor or other third party, to perform any of Equinix's obligations hereunder, provided that Equinix remains primarily liable for the performance of its obligations. Either Party may transfer this Agreement or any of its rights and obligations hereunder to an Affiliate with notice to the other Party, and in all such events the person or entity to whom this Agreement is assigned must agree in writing to be bound by all of the terms of this Agreement. This Agreement will be binding upon and inure to the benefit of all successors and permitted transferees of the Parties, who will be bound by all of the obligations of their predecessors or transferors.

**18. SURVIVAL.** Sections 2, 3, 5, 6 and this Section 18 shall survive the termination or expiry of this Agreement. Section 7 will survive for three (3) years after the termination or expiry of this Agreement.

**19. CONFLICTS.** In the event of ambiguity, conflict or inconsistency between this PSA and an Order, the terms thereof shall be given a descending order of precedence as follows (i) an Order, and (ii) this PSA.

**20. PUBLICITY.** Neither Party grants the other Party the right to use its trademarks, service marks, trade names, copyrights, other intellectual property rights or other designations in any promotion, publication or press release without the prior written consent of the other Party in each case. Notwithstanding the foregoing, either Party may publicly use the other Party's name and logo to refer to the other Party as a vendor or customer as the case may be, such use to comply with any applicable usage guidelines that are published or made available by the other Party upon request.

**21. DEFINITIONS.** Capitalized terms used herein but not otherwise defined will have the meaning ascribed to them in this Section 21.

**Affiliate:** Any entity controlling, controlled by, or under common control with a Party, where the term "control" and its correlative meanings, "controlling," "controlled by," and "under common control with," means the legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting equity interests in an entity.

**Confidential Information:** Non-public information disclosed between the Parties, including (a) information identified by the disclosing Party, in writing or orally, as confidential at the time of disclosure; (b) information containing the disclosing Party's customer lists, customer information, technical information, pricing information, financial position, trade secrets, customer communications or proposals, benchmarking information, satisfaction surveys, or information relating to its business planning or business operations.

**Customer Content:** Any and all content, artwork, logos, graphics, video, text, data, software and other materials provided to Equinix by or on behalf of Customer.

**Customer Materials:** Customer's technology, methodologies, 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 Materials conceived, reduced to practice, or developed during the term of this Agreement by Customer.

**Deliverables:** Any tangible deliverable described in an Order and provided by Equinix to Customer.

**Equinix Materials:** Equinix's technology, methodologies, 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, creative content, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by or licensed to Equinix by a third party) and also including any derivatives, improvements, enhancements or extensions of Equinix Materials conceived, reduced to practice, or developed during the term of this Agreement by Equinix.

**Fees:** Charges and fees for Services charged to Customer by Equinix, exclusive of Taxes.

**Sanction Laws:** All applicable sanction or embargo laws and regulations from time to time, including trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC") and any other enabling legislation or executive order relating thereto.

**Taxes:** Sales, use, transfer, privilege, excise, consumption tax, Value Added Tax ("VAT") or Goods and Services Tax ("GST") as applicable, and other similar taxes and duties, whether foreign, national, state or local, however designated, levied or imposed (whether as a deduction, withholding or payment) now in force or enacted in the future, which apply to the Services performed by Equinix for Customer or to Customer for its operations and use of the Services, but excluding taxes on Equinix's net income.

**Customer to complete:**

*Customer warrants and represents that the individual signing below has full authority to execute this Agreement on behalf of Customer.*

Customer Name:

COUNTY OF MONTEREY, CA

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Street address for notices:

\_\_\_\_\_  
\_\_\_\_\_

Attn.: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile number: \_\_\_\_\_

Electronic mail address: \_\_\_\_\_

**Equinix to complete:**

*Equinix warrants and represents that the individual signing below has full authority to execute this Agreement on behalf of Equinix.*

EPS Enterprises, Inc.

Authorized Signature: \_\_\_\_\_

Printed Name: Ryan Malloy

Title: SVP GSE

Street address for notices:

One Lagoon Drive  
Redwood City, California 94065, USA  
Phone: +1650-598-6000  
Facsimile number: +1 650-618-1857  
ATTN: Deputy General Counsel