

## **MASTER SECURITY SERVICES AGREEMENT**

This Master Security Services Agreement (this “Agreement”) is entered into by and between Masergy Communications, Inc., a Delaware corporation (“Masergy”) and its Customer, and sets forth the terms and conditions under which Masergy shall provide and Customer shall procure certain network security monitoring and associated services, (herein referred to as the “Service(s)”).

### **1 SECURITY SERVICES AND SERVICE ORDERS**

Customer may, at Customer’s sole discretion, subscribe to Services supplied by Masergy, using written forms or electronic documents specified by Masergy. For each of the specific Services to which Customer subscribes, Customer will (i) execute an attachment to this Master Security Services Agreement describing the Service in detail and setting forth the price, minimum duration of Service and any Service-specific terms and conditions (hereinafter a “Service Order Form” or “Statement of Work”, the term “Service Order Form” as used herein shall also include a Statement of Work), or (ii) consent to the terms of an electronic document delivered to Customer by Masergy containing information set forth in the Service Order Form. Customer consents to the terms of electronic documents and records in connection with the performance of this Master Security Services Agreement and delivery of the Services by Masergy. Each Service Order Form shall be attached to this Master Security Services Agreement and be identified by letters of the alphabet or numbers or a combination thereof. A Service Order Form shall be effective upon execution by both parties. Unless otherwise specified, the fees set forth in any Service Order Form do not include applicable taxes, duties, or similar fees that may be imposed by any government. No term or condition hereof shall be modified except by written agreement of both parties. As used in this document, the word “Agreement” shall apply to all promises, terms and conditions of the parties contained in this Master Security Services Agreement, any Service Order Form(s), and any specific Service(s) documentation (a “Service Description”), available upon request; each of which is incorporated by reference. This Agreement shall supersede any and all prior agreements or understandings with respect to the Service described herein and comprises the full and final agreement of the parties. In the event of any conflict between the various documents included in this Agreement, the provisions of the Service Order Form shall in all respects govern and control, followed by, in order, the provisions of this Master Security Services Agreement and any Service Description.

### **2 TERM**

- 2.1 This Agreement shall be effective as of the execution date of the initial Service Order Form by both parties and shall continue through the expiration of the last Service Order Form that is in effect under this Agreement, unless earlier terminated as provided herein (hereafter the “Term”). The Initial Term of a particular Service shall mean the minimum term of Service as set forth in the Service Order Form and shall commence on the earlier of: (i) the date Masergy confirms the Service has been delivered and is fully operational; or (ii) seven (7) days following Customer’s receipt of the equipment listed in the applicable Service Order Form (the “Commencement Date”). The Service shall automatically renew for additional one year terms (each an “Extension Term”) unless a party provides the other party with written notice pursuant to Section 12.9 at least sixty (60) days prior to the expiration of the Initial Term or the then current Extension Term that such party intends not to renew a Service.
- 2.2 Any termination of this Agreement shall not relieve Customer of its obligation to pay any charges incurred hereunder prior to such termination, including without limitation, termination liabilities arising under Section 3. The terms and provisions contained in this Agreement and the parties’ rights and obligations hereunder, which by their nature would extend beyond the termination, cancellation or expiration of this Agreement, shall survive such termination, cancellation or expiration.

### **3 CHARGES AND FEES/TERMINATION**

- 3.1 Masergy shall invoice Customer for all Services hereunder as described in a Service Order Form and billing for such Services shall start on the Commencement Date. If Customer subscribes to other Masergy services, Masergy reserves the right to invoice for all Masergy services (including Services procured herein) under a single invoice. All amounts will be due upon receipt. Customer agrees to pay a late payment charge on any amount which remains unpaid thirty (30) days after the date of such invoice, at the rate of one and one-half percent (1.5%) per month for each month that such amount remains unpaid. If Customer disputes any portion of an invoice, Customer must (i) pay the undisputed portion of the invoice as set forth herein; and (ii) submit a written claim to [billing@masergy.com](mailto:billing@masergy.com) regarding the disputed amount and setting forth the particulars thereof for any disputed amounts withheld within thirty (30) days from the invoice date. If Customer pays an invoice, and subsequently chooses to dispute any amount, Customer must give Masergy written notice within sixty (60) days of the date printed on the invoice giving rise to the claim.
- 3.2 Travel and Other Expenses. Subject to pre-approval by Customer, upon invoice from Masergy, Customer agrees to pay for any reasonable and necessary travel or other out-of-pocket expenses incurred by Masergy or its personnel in connection with the performance of Services.
- 3.3 Taxes. Customer agrees to pay any sales, use, excise or similar taxes applicable to the Services or relating to any equipment purchased from Masergy. If Customer is required by applicable law to make any deduction or withholding from any payment due hereunder to Masergy then the gross amount payable by Customer to Masergy will be increased so that, after any such deduction or withholding for taxes, the net amount received by Masergy will not be less than Masergy would have received had no such deduction or withholding been required.
- 3.4 Default. Each of the following events shall be deemed a “Default” under this Agreement, and the non-defaulting party may terminate this Agreement or suspend Service upon: (a) any failure of Customer to pay any undisputed amounts as provided in this Agreement; or (b) any material breach by a party of this Agreement; provided, however, that Masergy will not terminate or suspend Service unless a Default of Customer continues for more than thirty (30) days after written notification to Customer, or ten (10) days after written notice in the case of failure to pay money. Notwithstanding the foregoing, Customer shall also be in Default, and Masergy shall have the right to immediately terminate or suspend Service upon any violation by Customer of an applicable law, rule or regulation affecting the use of the Service or performance under this Agreement.
- 3.5 Masergy reserves the right to immediately suspend or terminate Service in the event of any governmental prohibition or required alteration of the Service, or in any existing or anticipated emergency circumstance where injury to people or damage to property is reasonably possible, if Masergy determines, in good faith, that no other commercially reasonable actions will adequately protect such people, facilities or systems.
- 3.6 Customer may cancel or terminate this Agreement without payment of any liquidated damages charges or other termination charge of any kind or amount due to a Default of Masergy as described in Section 3.4 above if such Default continues for more than thirty (30) days after Customer’s written notice to Masergy.
- 3.7 If Service provided pursuant to this Agreement is canceled or terminated before expiration of the Initial Term of such Service, or any Extension Term thereof: (a) by the Customer for any reason other than for a Default under this Agreement by Masergy; or (b) by Masergy due to a Default by Customer of this Agreement, Customer agrees to pay Masergy the following sums, which shall become due and owing as of the effective date of cancellation or termination and be payable within thirty (30) days thereafter: (i) all unpaid non-recurring charges, excluding any waived charges; (ii) all unpaid recurring charges for Services through the date of termination; (iii) one hundred percent (100%) of all recurring charges for canceled or terminated Services for the balance of the then current Term of the Service Order Form; and (iv) all fees related to the canceled or terminated Services that Masergy is charged by any and all

third parties that Masergy is unable to avoid after using commercially reasonable efforts, including without limitation, all termination charges due to any and all third party service providers; provided, however, that such third party fees will not be separately charged if they are included in fees paid pursuant to subsection (iii) of this Section 3.7. The parties agree that this paragraph constitutes liquidated damages (and not a penalty) and further agree that this paragraph sets forth the parties' mutual agreement on a reasonable estimate of Masergy's actual damages in the event of an early cancellation or termination by Customer, which damages would otherwise be difficult or impossible to ascertain.

- 3.8 Customer will provide written notification of Service termination to Masergy (i.e., electronic mail to [disconnect-security@masergy.com](mailto:disconnect-security@masergy.com), or by letter as per the notice provisions of Section 12.9) and the Service will be terminated the later of: (a) thirty (30) days past the date such written notice was received by Masergy; or (b) the termination date provided by Customer for the applicable Services.

#### **4 WARRANTIES**

4.1 Services. Masergy warrants that all Services provided under this Agreement shall be performed in compliance with Masergy's written specifications for the Services and as further specified in an agreed-to Service Order Form. Masergy's sole liability for failure to perform its obligations as set forth in a Service Order Form shall be to re-perform its obligations under such Service Order Form, provided that Customer shall have the right to terminate this Agreement if Masergy is unable to perform its obligations with respect to such Service Order Form following thirty (30) days written notice from Customer.

4.2 MASERGY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, INCLUDING ANY WARRANTIES OF WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY SERVICES OR EQUIPMENT. FURTHER, REPRESENTATIVES OF MASERGY ARE NOT PERMITTED TO MAKE PROMISES, WARRANTIES OR AGREEMENTS WITH RESPECT TO THE SCOPE OF SERVICES OR THE RESULTS THEREOF, WHICH ARE NOT EXPRESSED IN THIS AGREEMENT. MASERGY DOES NOT WARRANT OR GUARANTY THAT THE SERVICES WILL IDENTIFY OR PREVENT ALL VULNERABILITIES, THREATS, OR INTRUSIONS AND CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE MERELY A TOOL FOR CUSTOMER TO USE IN ORDER TO ASSIST IN SUCH IDENTIFICATION AND PREVENTION EFFORTS.

#### **5 MAINTENANCE**

CUSTOMER IS SOLELY RESPONSIBLE FOR MAINTENANCE OF ITS INFORMATION SYSTEMS INCLUDING WITHOUT LIMITATION, RESPONSIBILITY FOR ANY AND ALL DATA OR INFORMATION OF CUSTOMER STORED IN OR ON ANY EQUIPMENT UPON WHICH, OR IN CONNECTION WITH, THE SERVICES ARE PERFORMED. CUSTOMER SHALL BE RESPONSIBLE FOR MAKING "BACK-UP" OR SECURITY COPIES OF SUCH CUSTOMER DATA OR INFORMATION.

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

6.1 No Indirect Damages. Masergy's liability, and Customer's sole remedy, for any breach by Masergy of any provision of this Agreement, including without limitation, breach of any warranty herein, shall be for direct damages only and, in any event, shall not exceed the amounts actually paid to Masergy by Customer under this Agreement. IN NO EVENT SHALL MASERGY BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF STORED MEMORY OR DATA OR LOSS OF PROFITS, REVENUES OR GOODWILL, REGARDLESS OF WHETHER MASERGY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MASERGY SHALL NOT BE LIABLE FOR CLAIMS BASED ON MODIFICATIONS OR ADAPTATIONS PERFORMED BY ANYONE OTHER THAN MASERGY.

6.2 Internet Use. Customer assumes total responsibility for its and its users' use of the Internet. Masergy specifically disclaims any warranties, endorsements or representations regarding any merchandise, information, software, products, data, files, or services provided through the Internet.

## **7 NON-SOLICITATION OF EMPLOYEES**

Each party agrees that, for a period of two (2) years after the execution date of this Agreement, neither such party nor such party's representatives or agents shall directly or indirectly initiate any discussions or negotiations regarding the hiring of any officer or employee of the other party so employed at the time without the prior written consent of the other party. For purposes of this Section 7, general solicitations of employment not targeted at employees or officers of a party shall not be deemed to be restricted hereunder.

## **8 INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

8.1 Intellectual Property. Customer agrees that all inventions, ideas or processes developed or conceived by Masergy or any employee, agent or contractor of Masergy contained in any Customer-purchased Masergy equipment or in connection with the performance of Services shall be the sole property of Masergy.

8.2 Confidentiality. Each party shall retain in strict confidence the terms and conditions of this Agreement and all information and data relating to the other party's business, employees, development plans, programs, documentation, techniques, trade secrets, systems, security, know-how and the like and shall not, unless otherwise required by law, disclose such information to any third party without the other's prior written consent. In the event of any conflict, inconsistency, or incongruity between the provisions of this Section 8.2 and any separate confidentiality or non-disclosure agreement between the parties, the provisions of the separate agreement shall in all respects govern and control.

8.3 Exclusions. Notwithstanding anything to the contrary in this Agreement, Masergy shall have the right to compile and distribute statistical analyses and reports utilizing aggregated data derived from information and data obtained from Customer, other Masergy customers, and other sources for use in global threat correlation. Such reports and analyses are for the mutual benefit of all Masergy customers and shall be appropriately edited and shall not identify Customer or any employee or business partner of Customer.

8.4 Software and Intellectual Property. Masergy may make certain software available to Customer in connection with its Services ("the Software"). Customer's use of this Software is subject to any software license terms that Customer may be required to consent to as a condition to using the Software. CUSTOMER ACKNOWLEDGES THAT MASERGY AND MASERGY'S THIRD-PARTY SOFTWARE SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THOSE ARISING FROM COURSE OF DEALING AND USAGE OF TRADE WITH RESPECT TO ANY SOFTWARE.

## **9 MASERGY EQUIPMENT, ACCESS AND SOFTWARE**

9.1 Customer shall be liable for any damage to Masergy's equipment, facility, or system caused by; (a) negligent or willful acts or omissions of Customer or otherwise attributable to Customer; or (b) malfunction or failure of any equipment or facility provided by Customer or its agents, employees or suppliers. Customer shall remove any existing hazardous materials or condition prior to any work being performed by Masergy on Customer's premises.

9.2 Customer shall use reasonable measures to ensure that any facility or equipment of Masergy located at Customer's premises is not rearranged, moved, removed, disconnected, altered, or repaired without Masergy's prior written consent. Customer shall not create or allow any liens or other

encumbrances to be placed on any Masergy equipment, facility or system arising from any act, transaction or circumstance relating to Customer.

- 9.3 All equipment provided by Masergy is and will remain the property of Masergy. At any time during the Term of this Agreement, Masergy may, upon reasonable notice to Customer, upgrade, remove or change the Masergy provided equipment in its sole discretion in connection with providing the Services. In the event of Service termination, all equipment provided by Masergy must be returned to Masergy, in substantially the same condition (normal wear and tear excepted). Upon Service termination, Masergy reserves the right to invoice Customer for the current list price of the equipment; provided, however, if the equipment is returned to Masergy as provided herein, Masergy shall credit Customer's account for the amount invoiced for said equipment. If the equipment is returned to Masergy in poor condition or missing pieces, a credit equal to the difference between the current list price of the equipment and the reconditioned price will be applied to Customer's account. If Customer fails to return the equipment within six (6) months from the date of termination, Customer will own the equipment and will be responsible for any required maintenance.
- 9.4 The firmware, plug-ins and software included in or associated with any Masergy provided equipment or Services, all updates, upgrades, patches, and bug fixes thereto (collectively, the "Software"), and all intellectual property rights therein, are owned by Masergy or its suppliers or licensors (each of such suppliers and licensors shall be referred to herein as a "Licensor"). Customer agrees and acknowledges that (i) in order to utilize some Services or portions thereof or access its data, applications, devices and network (collectively, the "Resources"), Customer may be required to first download, or to permit to be downloaded, Software; (ii) the IT environment is very dynamic and always changing with updates and upgrades to hardware, application software, firmware, operating systems, etc.; (iii) any device onto which such Software cannot be downloaded, or does not otherwise function properly, may be unable to utilize some or all of the Services or access some or all of the Resources; (iv) downloading and installing any Software will require system memory, disk space and may negatively impact the processing speed of Customer's Resources for which neither Masergy, or Licensor will be liable, unless due to the gross negligence or willful misconduct of Masergy or Licensor; (v) it is responsible for taking appropriate steps to safeguard its Resources; (vi) it will not reproduce, modify, distribute, publicly display, or reverse engineer, decompile or otherwise attempt to discover the source code for the Software, or otherwise infringe upon the intellectual property rights of its respective owner; and (vii) changes to any other software, hardware or the combination thereof associated with the Services by Customer may render partially or fully unavailable the Service that was previously available.

## **10 INDEMNIFICATION**

- 10.1 Indemnity by Masergy. Subject to the limitations of Section 6, Masergy hereby agrees to indemnify and defend Customer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, representatives and agents (collectively, the "**Customer Indemnified Parties**"), from and against, and hold the Customer Indemnified Parties harmless from, any and all claims, suits, liabilities, losses, damages, costs and expenses (including without limitation, attorneys' fees and costs and expenses incurred in investigation, defense or settlement) (collectively, "**Claims**"), asserted by any third party against or incurred by the Customer Indemnified Parties in connection with such Claims, to the extent such Claims arise from any Masergy Negligence. "Masergy Negligence" shall mean the gross negligence or intentional misconduct of Masergy or Masergy's principals, officers, directors, agents or employees.
- 10.2 Indemnity by Customer. Customer hereby agrees to indemnify and defend Masergy, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, representatives and agents (collectively, the "**Masergy Indemnified Parties**"), from and against, and hold the Masergy Indemnified Parties harmless from, any and all Claims asserted against or incurred by the Masergy Indemnified Parties, including any Claims of Customer, to the extent such Claims arise out of or

directly result from (i) Customer Negligence; or (ii) the misuse of the Services by Customer or a user who is given access to the Services by Customer. "Customer Negligence" shall mean the gross negligence or intentional misconduct of Customer or Customer's principles, officers, directors, agents or employees.

- 10.3 In the event of a Claim subject to indemnification hereunder, the indemnified party shall: (a) promptly notify the indemnifying party of the Claim; (b) provide the indemnifying party with reasonable cooperation and assistance, at the indemnifying party's expense, to defend such Claim; and (c) allow the indemnifying party control of the defense and settlement of such Claim, provided that the indemnified party shall be entitled to participate in the defense of such Claim and to employ counsel at its own expense to assist in the handling of such Claim and the indemnifying party must obtain the prior written approval from a duly authorized signatory of the indemnified party prior to entering into any settlement affecting the indemnified party's rights.

## **11 IMPORT AND EXPORT RESTRICTIONS**

The parties acknowledge that the Services and certain equipment, software and technical data to be provided hereunder may be subject to import, export and re-export controls under the U.S. Export Administration Regulations and certain regulations under the Office of Foreign Assets Control of the U.S. Department of Commerce and regulations of other countries or governments. Neither party shall export or re-export any Services, Software, technical data or intellectual property, or undertake any transaction in violation of any such export and import laws and each party shall be responsible for its compliance with all such laws.

## **12 GENERAL**

- 12.1 Entire Agreement. This Agreement, which Agreement expressly incorporates any and all attached and executed Exhibits, supersedes any prior agreements between the parties with respect to the subject matter hereof. This Agreement and any further agreements or Exhibits contemplated herein shall constitute the entire agreement of the parties regarding the subject matter hereof. No provisions of any Customer purchase order shall apply to the subject matter hereof.
- 12.2 Relationship of Parties. At all times during the Term of this Agreement, Masergy and all employees, agents and contractors of Masergy are, and shall at all times be, independent contractors with respect to Customer. Nothing in this Agreement shall be construed to create any partnership, joint venture, agency or similar relationship between Customer and Masergy or any employee, agent or contractor of Masergy. Masergy and its employees, agents and contractors are free to provide the Services or other similar services to others during the Term of this Agreement.
- 12.3 Assignment. Neither party may assign this Agreement without the prior written consent of the other party (which consent shall not be unreasonably withheld or unduly delayed), except that either party may assign this Agreement and have its rights and obligations assumed hereunder: (a) to any Affiliate of said party; (b) pursuant to any sale or transfer of the majority of the stock or controlling interest of such party; (c) pursuant to any sale or transfer of substantially all of the assets of said party related to this Agreement; or (d) pursuant to any merger, restructuring or reorganization. As used in this Section, "Affiliate" shall mean any person or entity which Controls, is Controlled by, or is under common Control with another (with "Control(s)" and "Controlled" meaning ownership of 50% or more of the voting control of any person or entity). The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the parties and their respective administrators, successors and assigns.
- 12.4 Written Modification. This Agreement may not be added to, modified, superseded or otherwise altered except by a written instrument signed by all the parties hereto.
- 12.5 Severability. If any provision of this Agreement is held by a court to be illegal, invalid or unenforceable, the remainder of this Agreement shall nevertheless remain unimpaired and in effect.

- 12.6 Non-Waiver. The waiver by a party hereto of any default hereunder shall not be deemed to be a waiver of subsequent defaults of the same or different kind. The failure of any party to act or to enforce any of its rights shall not in and of itself be construed as a waiver.
- 12.7 Governing Law. This Agreement shall be governed by the laws of the State of Texas and the federal laws of the United States without regard to their choice of law provisions. In any action between the parties to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to whatever other relief a court may award.
- 12.8 Headings. The captions or headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions hereof.
- 12.9 Written Notice. Any notice or communication hereunder or in any agreement entered into in connection with the transactions contemplated hereby must be in writing and given by (a) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; (b) signed for by the recipient if sent by overnight courier service; or, (c) by delivering the same in person to the party as acknowledged by written signature. Such notice shall be deemed received on the date on which it is hand delivered or on the date received. Notices to Masergy must be addressed to Masergy Communications, Inc., Attn: Contract Administration, 2740 North Dallas Parkway, Suite 260, Plano, Texas 75093. Notices to Customer must be addressed to the Customer as set forth on the first page of the initial Service Order Form or Statement of Work or such other address as may be designated in writing by the respective party.