

**MASTER SERVICE AGREEMENT**

This MASTER SERVICE AGREEMENT (the "Master Service Agreement") is entered into by and between the below named Customer and Masergy Communications, Inc., a Delaware corporation ("Masergy") (each referred to as a "Party" or collectively referred to as the "Parties"), and establishes the terms and conditions under which Masergy will provide services to Customer. More particularly, Masergy will provide Customer with any agreed to data and video network services and managed information technology services (collectively the "IT Service"), as well as any agreed to Unified Communications as a Service ("UCaaS") implemented using session initiation protocol trunking, hosted applications, or hybrid services (the "Cloud Communications Service" or "CC Service", and together with the IT Service, the "Services"). The Services may be provided over Masergy's, or its Affiliates' or subsidiaries' networks, or through resale and shall be deemed to include any provision of equipment, cabling, circuits, facilities, systems or software undertaken by Masergy or on Masergy's behalf.

The following definitions apply to this Master Services Agreement:

1. "Administrative User" has the meaning given in Clause 4.2.1.
2. "Affiliate" has the meaning given in Clause 11.1.
3. "Agreement" has the meaning given in Clause 1.1.7.
4. "Authorized Portal Users" has the meaning given in Clause 4.1.
5. "Chronic Outage" has the meaning given in Clause 6.8.
6. "Cloud Communications Service" or "CC Service" has the meaning given in the Introduction of this Master Service Agreement.
7. "Commencement Date" has the meaning given in Clause 3.6.2.
8. "Contractors" has the meaning given in Clause 1.2.2.
9. "CPNI" means customer proprietary network information.
10. "Customer Network" has the meaning given in Clause 5.7.2.
11. "Default" has the meaning given in Clause 6.1.
12. "ECS" means emergency call services.
13. "Effective Date" means the effective date of this Master Service Agreement, as set out in the introduction of this Master Service Agreement.
14. "Extension Term" has the meaning given in Clause 2.1.
15. "Guest User" has the meaning given in Clause 4.2.2.
16. "IT Service" has the meaning given in the introduction of this Master Service Agreement.
17. "Licensor" has the meaning given in Clause 5.6.2.
18. "Masergy Network" has the meaning given in Clause 5.7.1.
19. "Master Service Agreement" has the meaning given in the introduction of this Master Service Agreement.

20. “Portal” has the meaning given in Clause 4.1.
21. “Privacy Policy” has the meaning given in Clause 1.1.7.
22. “Resources” has the meaning given in Clause 5.6.3.
23. “Service Order Form” has the meaning given in Clause 1.1.2.
24. “Service Outage” has the meaning given in Clause 6.8.
25. “SLA” has the meaning given in Clause 1.3.
26. “Software” has the meaning given in Clause 5.6.2.
27. “Taxes” has the meaning given in Clause 3.9, and includes value added tax or any equivalent tax chargeable in the UK or elsewhere.
28. “Term” has the meaning given in Clause 2.1.
29. “Terms of Use” has the meaning given in Clause 1.1.7.

## 1. **Services and Service Orders.**

### 1.1. **Subscribing to Services.**

- 1.1.1. The Parties anticipate that Customer may, at Customer’s sole discretion, subscribe to Services supplied by Masergy, using written forms or electronic documents specified by Masergy.
- 1.1.2. For each of the specific Services to which Customer subscribes, Customer will (i) execute an attachment to this Master Service Agreement describing the Services in detail and setting forth the price, minimum duration of Service, and any Service-specific terms and conditions (hereinafter a “Service Order Form”), or (ii) assent to the terms of an electronic document delivered to Customer by Masergy containing information set forth in the Service Order Form.
- 1.1.3. Customer consents to the use of electronic documents and records in connection with the performance of this Master Service Agreement and delivery of the Services by Masergy.
- 1.1.4. Each Service Order Form shall be attached to this Master Service Agreement and be identified by letters of the alphabet or numbers or a combination thereof.
- 1.1.5. A Service Order Form shall be effective upon acceptance of the Service Order Form by Masergy; provided, however, that Masergy reserves the right to reject a Service Order Form without liability at any time prior to acceptance by Masergy.
- 1.1.6. Masergy shall accept a Service Order Form: (a) in writing by execution of the Service Order Form; (b) by taking any action to install the Service in reliance upon the Service Order Form; or (c) by delivery of Service.
- 1.1.7. No term or condition hereof shall be modified except by written agreement of both Parties. All correspondence between the Parties shall be in the English Language. As used in this document, the word “Agreement” shall apply to all promises, terms and

conditions of the Parties contained in this Master Service Agreement, any Service Order Form(s), the AUP (as defined in Clause 1.6), and the terms of use (the “Terms of Use”), the latest version of each of which is incorporated by reference and available at [www.masergy.com](http://www.masergy.com) under Policies, any applicable SLA (as defined in Clause 1.3) and any specific Service(s) documentation (a “Service Description”), available upon request. 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 Service Agreement, the SLA, the AUP, the Terms of Use and any Service Description.

## 1.2. Provision of the Services.

- 1.2.1. If a Service Order Form is accepted by Masergy, Masergy agrees to provide the Services in accordance with this Agreement.
- 1.2.2. In addition to its Affiliates or subsidiaries, Masergy may use contractors in providing the Services or otherwise use third parties (such parties while under Masergy’s control referred to herein as “Contractors”), provided that billing for any such Services will be provided by Masergy or an Affiliate or subsidiary of Masergy. Notwithstanding anything to the contrary, Masergy shall: (a) be responsible for ensuring that the Services conform to all applicable terms of this Agreement; and (b) have in place legally binding agreements with such Contractors sufficient to enable Masergy to comply with its obligations under this Agreement (including without limitation, its confidentiality obligations).
- 1.3. Upon Customer’s request, Masergy shall provide Customer with Service credits in accordance with the then-current service level agreement (“SLA”), which are incorporated herein by reference and available at [www.masergy.com](http://www.masergy.com), under Solutions. Masergy reserves the right to amend the SLA, from time to time, effective upon posting of the revised SLA at its web site or by other notice delivered to Customer by Masergy using contact information most recently provided to Masergy by Customer. Outages attributable to Customer ordered local access circuits (circuits not under Masergy’s control) shall not be included in the calculation of Service unavailability. In the event of an outage that Masergy determines is attributable to a Customer ordered local access circuit (circuits not under Masergy’s control), such outage will be referred back to the Customer. Notwithstanding the foregoing, Masergy shall have no liability for the failure of the Internet, local loops, or other circuits or connections not provided by Masergy.
- 1.4. Masergy may substitute, change, or rearrange any equipment, facility or system used in providing Services from time to time, but shall not thereby alter the technical parameters of the Services provided in any adverse material manner. Customer agrees to cooperate in the event that Masergy determines that it is necessary to change a third party service provider.
- 1.5. IP Addresses assigned from a Masergy net-block are non-portable. In the event Customer or Masergy should terminate Service, any and all IP address space allocated by Masergy must be returned to Masergy, and Customer’s right to use such allocated address space shall terminate.

1.6. All use of the Services must comply with the then-current version of Masergy's acceptable use policy ("AUP"), which is incorporated herein by this reference and is available at [www.masergy.com](http://www.masergy.com) under Policies. Masergy reserves the right to amend the AUP from time to time, effective upon posting of the revised AUP at its web site or by other notice to Customer.

## 2. **Term.**

2.1. This Agreement shall be effective as of the Effective Date and shall continue through the expiration of the last Service Order Form(s) that is in effect under this Agreement, unless earlier terminated as provided herein (hereafter the "Term").

2.2. The Initial Term of a particular Service shall mean the minimum term of Service set forth in the Service Order Form, beginning as of the Commencement Date of such Service, as defined in Clause 3.6.2. Unless a Party provides the other Party with written notice, as per the notice provisions of Clause 15.8, not less than sixty (60) days prior to the expiration of the Initial Term or any subsequent renewal term that it intends not to renew a Service, the Service shall automatically renew in increments of one year (each an "Extension Term").

## 3. **Rates and Payments.**

3.1. Customer shall pay Masergy for all charges associated with the Services at the rates and currency set forth in the Service Order Form. Masergy may change the rates for any Extension Term upon ninety (90) days written notice to Customer prior to the expiration of the Initial Term or the current Extension Term.

3.2. Service charges shall be invoiced monthly in advance, except for charges that are dependent upon usage of Service, which shall be billed in arrears.

3.3. Customer may reduce CC Services(s), provided that Customer must maintain a minimum of eighty percent (80%) of the contracted amount for CC Service(s) to avoid incurring early termination liability.

3.4. Masergy reserves the right, upon thirty (30) days' written notice and following reasonable opportunity for Customer to cure within thirty (30) days of such notice to Customer, to increase the charges for CC Service(s) provided under a Service Order Form upon Customer's improper usage of the CC Service(s) for two (2) consecutive months. Improper usage patterns include, but are not limited to, calling patterns where the aggregate minutes of long distance usage per monthly billing cycle for an extension is excessive based on predictive dialing equipment, call center environments, telemarketing use or similar calling patterns. Masergy reserves the right to review and notify Customer to remove these types of calling patterns from Masergy's network.

3.5. In addition to the non-recurring charges and recurring charges set forth in the Service Order Form (the "Non-Recurring Charges" and "Recurring Charges", respectively), Customer is responsible for any additional charges required to complete the construction or provisioning of any local access facilities ("Start-up Charge"), to be agreed to and invoiced upon Customer's approval of such additional charges. Masergy is not responsible for any delay in the Commencement Date caused by delays in approvals by Customer or third parties under Customer's control.

### 3.6. **Service delivery date.**

- 3.6.1. Customer may specify the Customer's desired Service delivery date during the Service order process.
- 3.6.2. The Parties agree that a Service(s)'s Initial Term and billing shall start on the Commencement Date, which is defined as: (a) date a functioning physical circuit is prepared to route IP packets from a Masergy hub to an individual Customer site/building point of demarcation, tested and confirmed by Masergy; or (b) in the case of Service(s) other than a physical circuit provided by Masergy (i.e. CC Services, Network as a Service (NaaS) etc.), the date such Service is made available and Customer is notified that the Service is ready to activate.
- 3.6.3. If Customer and Masergy agree to activate a portion of the contracted Service(s), Masergy will initiate billing for the activated Service(s) effective the date of such activation.
- 3.6.4. Notwithstanding the foregoing or unless otherwise agreed to on the Service Order Form, if within six (6) months of the execution of the Service Order Form by both Parties: (i) Customer has not provided the information required to provision the Service(s); or (ii) there are delays to deliver the Service(s) due to Customer's action or inaction, then Masergy reserves the right to cancel the provision of such Service(s) and invoice Customer a one-time charge of two times (2X) the monthly Recurring Charges of such Service(s).
- 3.6.5. Customer is responsible for all Recurring Charges and all Non-Recurring Charges specified in the Service Order Form from and after the Commencement Date. Recurring Charges will be prorated for the first and last month of the applicable Service, if the Service is not provided for a complete month.
- 3.6.6. Masergy will order all telco lines required for local access to the designated building point of demarcation, unless otherwise agreed to by the Parties. Customer is responsible for the installation, maintenance, and warranty of circuit extension work or line extensions, and any charges associated with such circuit extension work or line extensions. If requested by the Customer, Masergy will request the Local Exchange Carrier (LEC) or other third party provider to extend the circuit from the designated building point of demarcation to the extended delivery point; provided, however, that in some cases Masergy may not be able to provide the line extension. Customer may be billed separately by Masergy or by a third party for fees associated with facilities construction or line extensions, if applicable.

### 3.7. **Payment.**

- 3.7.1. All amounts owed by Customer are due and payable upon receipt of Masergy's invoice and the Customer shall pay each invoice within thirty (30) days after Customer's receipt of the invoice; provided that, if Masergy sends an invoice to Customer by electronic mail, it shall be deemed to have been received on the date sent. Customer shall remit payment as set forth on the invoice.

- 3.7.2. Notwithstanding any contrary language in any purchase order, Automatic Clearing House/Electronic Funds Transfer (ACH/EFT) authorization agreements or similar documents issued by the Customer to Masergy with respect to the Service(s), shall be deemed to be for the Customer's internal use only and the provisions thereof shall have no effect whatsoever upon the terms and conditions of this Agreement or the provision of the Service(s).
- 3.7.3. Masergy reserves the right to recover bank and/or finance fees related to payments when such payments are not made as per the remittance instructions on the invoice.
- 3.7.4. If a payment due by the Customer to Masergy under this Agreement is not received by the due date as set forth above, Customer shall be liable for: (i) interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause will accrue each day at a rate of 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 4%; and (ii) any additional charges or expenses incurred by Masergy in recovering outstanding amounts due under this Agreement (including, without limitation, any legal costs and expenses and/or the cost of engaging a debt recovery agent).
- 3.7.5. If Customer requires that a separate billing entity be billed for Services, for proper accounting of value-added taxes or otherwise, Masergy must be notified at the time the Service Order Form is executed or via other advance written notice as to which billing entity and address Customer would like Masergy to bill. If Masergy is not given such notice, Masergy shall bill Customer at the address first set forth in this Agreement or such other billing address that has been previously provided to Masergy in writing. Notwithstanding the failure of Customer to comply with such notice requirement, Masergy shall revise an invoice to reflect the correct billing entity upon the written request of Customer, solely provided such written request is received within sixty (60) days of the date of such invoice.
- 3.8. If Customer elects to upgrade, relocate or otherwise change the Services delivered after commencement of the installation of facilities or the Commencement Date, Customer shall be responsible for any applicable charges as specified and agreed to in a Service Order Form; provided, however, that Customer shall not be liable for the early termination charges set out in Clause 6.6 for the disconnection of the old site specified on the Service Order Form.
- 3.9. Other than taxes on Masergy's net income, Customer will be responsible for payment of all taxes, fees, charges, surcharges, or withholdings of any nature imposed by any U.S., UK or foreign taxing or government authority based on the provision, sale or use of the Services (hereafter "Taxes") and a regulatory administrative recovery fee to recover expenses incurred by Masergy related to its collection of Taxes and compliance with related regulations. All charges, fees, or quotations for Services are net of applicable Taxes. 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. 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.

- 3.10. If Customer disputes any portion of a Masergy invoice, Customer must: (i) pay the undisputed portion of the invoice as set forth in Clause 3.7; and (ii) submit a written claim to [billing@masergy.com](mailto:billing@masergy.com) regarding the disputed amount and setting forth the particulars thereof within sixty (60) days of the date printed on the invoice giving rise to the claim.
- 3.11. Customer shall provide Masergy with credit information as requested, and delivery of Service is subject to credit approval. Customer hereby consents to Masergy's retrieval of credit information, regarding Customer, from third parties. Masergy may require Customer to make a deposit or pre-payment reasonably acceptable to Masergy as a condition to Masergy's acceptance or continued provisioning of any Service Order Form, or as a condition to Masergy's continuation of Service. Masergy shall hold any deposit or pre-payment provided by Customer under this Clause 3.11 as security for payment of Customer's charges without any responsibility for paying Customer interest on any amounts held. At such time as the provision of all Services to Customer is terminated, the amount of the deposit or pre-payment will be credited to Customer's account, and any credit balance, which may remain, will be refunded.

#### 4. **Intelligent Service Control**

- 4.1. Masergy's Intelligent Service Control ("Portal") is a web-based feature that allows Customer's authorized users ("Authorized Portal Users") to view current network performance, view current invoices, make modifications to current Services, and add additional Services.
- 4.2. Customer must designate Authorized Portal Users into one of the following two (2) categories:
- 4.2.1. "Administrative User", a user with full access to Customer's records with the authority to view network usage, prioritize applications, add, modify, or delete Services, or
- 4.2.2. "Guest User", a user with view or read only capabilities.
- 4.3. Customer agrees to use the Portal and any additional electronic or web-based services offered by Masergy in the future in accordance with this Agreement. Customer agrees that the person using Customer's username and password for the Portal is an Administrative User and has the capacity and authority to make modifications that may increase or decrease the Customer's monthly recurring fees electronically on behalf of Customer. Except as provided in Clause 3.3 above, the Portal will not allow an Administrative User to reduce the monthly billing below the original contracted amount. Customer's password security is the responsibility of the Customer.
- 4.4. Masergy will confirm any additional orders for Services communicated through the Portal by email to the Customer's username.
- 4.5. Masergy may change, modify and/or alter at any time the information or functionality to which Customer will have access through the Portal. Masergy may amend or terminate Customer's access to the Portal upon written notice, as per Clause 15.8 of this Agreement,

in any emergency circumstance to the extent necessary to protect Masergy's equipment, information, or personnel.

- 4.6. Customer shall be responsible for the confidentiality and use of Customer's username, password, and other security data, methods and devices. Customer understands that Customer shall be solely responsible for all information or orders (which shall include the submission of trouble tickets) electronically transmitted or use of any data, information, or Services obtained using Customer's username, password, and other security data.
- 4.7. Customer agrees not to use the Portal except as authorized, and not to make it available to any third parties.
- 4.8. Customer agrees that its use of the Portal shall be consistent with this Agreement.
- 4.9. Customer shall immediately notify Masergy if there is any unauthorized use of Customer's passwords and other security data or any use inconsistent with the terms of this Agreement.
- 4.10. Unless due to the negligence or willful misconduct of Masergy, Masergy shall not be responsible or obligated for any costs, fees, expenses or liabilities accruing as a result of any unauthorized use of Customer's password or other security data prior to receiving written notice of the unauthorized use from Customer.

## 5. **Masergy Equipment, Access and Software.**

- 5.1. 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 construction or installation work being performed by Masergy on Customer's premises.
- 5.2. Customer shall be responsible for obtaining any reasonably necessary access and right-of-way to Customer's premises to the extent determined by Masergy to be appropriate for the provision and maintenance of Services, equipment, facilities and systems hereunder. Upon request, Customer may provide an out-of-band telephone connection from the public switched telephone network (PSTN) to be connected to a modem, provided by Masergy, to allow access to the Services provided under this Agreement for testing/configuration purposes.
- 5.3. Customer shall use reasonable measures to ensure that any facility or equipment of Masergy located at a 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.
- 5.4. All equipment provided by Masergy will remain the property of Masergy and must be returned to Masergy, in substantially the same condition (normal wear and tear excepted) in the event of Service termination.



5.5. Upon Service termination, Masergy reserves the right to invoice Customer for the replacement cost 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, the costs to recondition the equipment will be added to Customer's invoice. 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. In the event that Customer elects to purchase the equipment associated with the Cloud Communications Services, it will be noted on the applicable Service Order Form and Customer will own the equipment and be responsible for any required maintenance; provided, however, that Masergy will warranty the equipment for the Term of this Agreement.

#### 5.6. **Software and Intellectual Property Rights.**

5.6.1. Masergy may make certain Software (as defined below) available to Customer in connection with its CC Service. 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.

5.6.2. 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").

5.6.3. 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, nor Licensor will be liable, unless due to the 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.

#### 5.7. **Network Security and Access.**

5.7.1. **Masergy Network Security.** Masergy acknowledges and agrees that Masergy is responsible for Masergy's data, applications, devices and network, including without

limitation the software, equipment and any Internet connections controlled by Masergy to provide the Software or Services (collectively, the “Masergy Network”). More particularly, Masergy is responsible for the virtual and physical security of the Masergy Network and the development of reasonable physical and virtual security safeguards, policies, and procedures, including, without limitation, the use of industry recognized internet security, intrusion detection, and antivirus software. Masergy agrees to take commercially reasonable steps to protect virtual and physical access to the Software and Services originating from the Masergy Network.

5.7.2. **Customer Network Security.** Customer acknowledges and agrees that Customer is responsible for Customer’s network and Resources, including without limitation the software, equipment, any remote computers and devices, and any wireless or wired Internet connection that Customer uses to access the Software or Services (collectively, the “Customer Network”). More particularly, Customer is responsible for the virtual and physical security of the Customer Network and the development of reasonable physical and virtual security safeguards, policies, and procedures, including, without limitation, the use of industry recognized internet security, and antivirus software. Customer agrees to take commercially reasonable steps to protect virtual and physical access to the Software and Services originating from the Customer Network. Customer may be asked to provide Masergy or its designated third party provider with temporary or guest rights to Resources to assist Masergy in testing; however, Customer is then responsible for ensuring that any such rights are disabled.

5.7.3. **Network Security Risks.** Notwithstanding the foregoing, each Party acknowledges that the Services are provided over the Internet and third party equipment and networks with inherent risks and vulnerabilities. Neither Party will be responsible for nor liable to the other Party if such Party fails to detect or prevent one or more incidents of hacking, intrusion, loss of data, or other security breaches.

5.7.4. Masergy makes no warranty, guarantee, or representation, express or implied, that all security threats and vulnerabilities will be detected or that the performance of the Masergy Network or the Services will render Customers’ systems invulnerable to security breaches.

## 6. **Termination/Remedies.**

6.1. Each of the following events, together with the events set out in Clause 6.5, shall be deemed a “Default” under this Agreement, and the non-defaulting Party may terminate this Agreement or suspend Service in accordance with this Clause 6 upon the occurrence of any of the following: (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 (subject to Clause 6.5) terminate or suspend Service unless a Default of Customer continues for more than thirty (30) days after written notification, as per the notice provisions of Clause 15.8, to Customer, or ten (10) days after written notice, as per the notice provisions of Clause 15.8, 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 by giving written notice to Customer upon any violation by Customer of an applicable law, rule or regulation affecting the use of the Service or performance under this Agreement.

- 6.2. Notwithstanding any other provision of this Agreement, if Masergy cancels or terminates Service due to a Default of Customer, such cancellation or termination shall apply to an individual Service Order Form or this Agreement in its entirety, in Masergy's sole discretion.
- 6.3. 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.
- 6.4. 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 Clause 6.1 above if such Default continues for more than thirty (30) days after Customer's written notice, as per the notice provisions of Clause 15.8, to Masergy.
- 6.5. Without prejudice to any other rights and remedies available to it, either Party may terminate the Agreement at any time with immediate effect on giving notice in writing to the other Party, if that other Party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 6.6. If Service provided pursuant to any Service Order Form 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, specified in any Service Order Form; (ii) all unpaid Recurring Charges for Services specified in any Service Order Form through the date of termination; (iii) one hundred percent (100%) of all Recurring Charges for canceled or terminated Services specified in the related Service Order Form, for the balance of the Initial Term or the current Extension Term of such Service; 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 Clause 6.5. 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.

- 6.7. Customer will provide written notification of Service termination to Masergy disconnect department (i.e., electronic mail to disconnect@masergy.com, or by letter as per the notice provisions of Clause 15.8) and the Service will be terminated the later of: (a) thirty (30) days past the date such written notice was received by the Masergy disconnect department; or (b) the termination date provided by Customer for the applicable Services. Customer acknowledges that third party carriers or service providers may not immediately terminate services upon receipt of a notice of termination from Masergy.
- 6.8. If more than three (3) failures to meet the applicable Service Availability SLA due to a local loop failure (each a “Service Outage”), or more than twenty-four (24) aggregate hours of Service Outages, occurs over any thirty (30) consecutive day period (“Chronic Outage”), Customer shall have the option to either: (a) require Masergy to coordinate a replacement local loop with the local loop provider, and Masergy may elect to utilize a new local loop provider for the replacement local loop at no additional expense to Customer; or (b) terminate the affected circuit provided under this Agreement without liability upon written notice to Masergy; provided, such notice of termination is provided to Masergy within thirty (30) days of the Chronic Outage.
- 6.9. Any termination of this Agreement for any reason shall not relieve Customer of its obligation to pay any charges incurred hereunder prior to such termination, including without limitation, termination liabilities arising under Clause 6.
- 6.10. 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.

## 7. **Warranties and Limitation of Liability.**

- 7.1. Except for Customer’s rights under Clause 6.8, in the event of a Service failure or interruption, Customer’s sole and exclusive remedy shall be limited to credits granted by Masergy for the actual period such Service was unavailable pursuant to the SLA, with such credits being offset against accumulated unpaid charges billed to Customer as of the time the credit is granted. Any net remaining credit will be offset against unpaid charges within the next two complete billing cycles after the credit is granted. Following the termination of this Agreement, any remaining credit will be paid to Customer.
- 7.2. Subject to Clause 7.6, Masergy’s total liability in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, arising under or in connection with this Agreement shall in no event exceed the amounts actually paid to Masergy by Customer for the Service giving rise to the claim in the twelve (12) months prior to the event giving rise to the claim.
- 7.3. Except as expressly set forth herein, there are no warranties or representations made under this Agreement with respect to the Services, Software or otherwise, whether express or implied, including any implied warranties of merchantability, fitness for a particular purpose, title, or noninfringement of intellectual property rights.
- 7.4. Except with respect to a Party’s obligations under Clause 13 (Indemnity) or Clause 15.3 (Confidentiality) or a Party’s liability under Clause 6.5, subject to Clause 7.6 neither Party

shall be liable to the other, whether for breach of contract or tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, for any indirect, incidental, special, punitive or consequential damages, costs, expenses or liability, or for any damages, costs, expenses or liability (whether direct or indirect) that are incurred by a Party due to lost data, latency, loss of connectivity, lost revenues, lost profits, lost customers, loss of goodwill, replacement costs, or loss of access to the Services.

7.5. Masergy will have no liability to Customer (and no liability for service credits) where the claims arise out of, relate to, are caused by the inability of Customer, Customer's end users or any other person or party to access emergency personnel through Cloud Communications Services provided by Masergy.

7.6. Nothing in this Agreement shall limit or exclude either Party's liability for fraud or fraudulent misrepresentation, or personal injury or death caused by its negligence, or for any other liability that cannot be limited or excluded by applicable law.

## 8. **Emergency Call Services.**

8.1. Masergy's CC Service supports emergency call services ("ECS"), e.g., 999 type services. Customer acknowledges that it is responsible for registering the address of each individual phone/extension through the Masergy ECS web interface. Customers who do not register their address with Masergy will be sent to the default emergency call center when they dial the ECS number (e.g., 999). A trained agent at the default emergency call center will ask for the name, telephone number and location of the end user calling emergency service and then contact the appropriate emergency center for such end user in order to send help. Examples of situations where emergency service calls are sent to the default emergency call center include when there is a problem validating an end user's address, the end user is identified with an out of country location or jurisdiction, an invalid location or the end user is located in an area that is not covered by the landline ECS network.

For purposes of ECS, Customers may register an address with Masergy for the outbound calling line ID for either (i) each individual phone line ID or (ii) a single phone line ID if Customer chooses to utilize a single phone line ID for all outbound calls. If the outbound calling line ID does not have a registered ECS address with Masergy, the call will be transferred to the default emergency response center without a corresponding address.

8.2. Customer acknowledges that ECS dialing will not function in the event of a broadband outage, a power outage (unless a backup power source is available) or if Customer's broadband, ISP or CC Service is terminated.

9. **Un-Managed Services for Remote Workers and Mobile Workers.** Remote and mobile workers may be unable to access the voice services provided as part of the CC Service(s) through cable modem networks, DSL networks, mobile data networks or other forms of Internet access. Customer acknowledges that the off-network connections described in the preceding sentence are un-managed services and Masergy does not provide or guarantee availability or quality of the CC Service(s) when provisioned in this manner.

10. **CPNI.** Customer proprietary network information ("CPNI") is information about the quantity, technical configuration, type, destination, location, and amount of use of the CC Service(s) that Masergy, or any party on behalf of Masergy, may provide to Customer. Under applicable laws

and regulations, telecommunications providers such as Masergy have an obligation to protect the confidentiality of CPNI. By executing a Service Order Form, Customer grants permission to Masergy to use Customer's CPNI to evaluate Masergy's existing CC Service(s) and new opportunities to serve Customer better. Masergy may use Customer's CPNI to identify additional communications related services or products that Customer may desire that will complement the CC Service(s) already provided to Customer.

#### **11. Assignment and Successors in Interest.**

11.1. 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 Agreement, "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).

11.2. 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. Regulatory Compliance.**

12.1. All Services provided to Customer are subject to Customer's compliance with applicable laws and regulations in any country in which the Service is provided, any relevant public service commission, administrative agency, judicial authority, or any other local, national, international, or foreign governmental body or agency (including without limitation health, safety and environmental regulatory authorities) having authority over this Agreement, the Parties hereto, the Services, the equipment or any matter related hereto or thereto. Each Party is responsible for complying with all laws and regulations applicable to their activities pertaining to the provision and use of the Services and in performing their obligations under this Agreement. If any applicable present or future regulation or law requires a modification or waiver of any term of this Agreement or a Service Order Form, the Parties will promptly and in good faith undertake the actions required by such regulation or law.

12.2. In the event that any modification required by Clause 12.1 materially increases the cost of Service provided under this Agreement, Customer may terminate the affected Service by written notice sent to Masergy within forty-five (45) days of the effective date of such change, without liability under Clause 6.5.

12.3. The Parties acknowledge and agree that if Customer orders Services from Masergy that require Masergy to process personal data (as defined in the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council) on behalf of Customer, the Parties shall enter into a data processing agreement prior to the commencement of any such processing activities.

**13. Indemnity.**

- 13.1. Customer shall indemnify and hold harmless Masergy from and against any liability or expense arising from a third party claim based on: (a) any Negligence of Customer, or (b) the use or misuse of the Services by Customer or an end user given access to the Services by Customer, including, but not limited to any violation of the AUP or the use of the Services to transmit, distribute or store material in violation of a law or regulation.
- 13.2. Masergy shall indemnify and hold harmless Customer from and against any liability or expense arising from a third party claim based on any Negligence of Masergy.
- 13.3. “Negligence” shall mean gross negligence or intentional misconduct. In the event of a claim subject to indemnification hereunder (each, a “Claim”), 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 the opportunity to assume the control of the defence and settlement of such Claim. 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. 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.

14. **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 applicable laws and regulations (including those of the UK and 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 applicable export and import laws and regulations, and each Party shall be responsible for its compliance with all such laws and regulations.

**15. Miscellaneous.**

- 15.1. **Severability.** If any provision of this Agreement is held by a court or other governmental entity to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless remain unimpaired and in effect.
- 15.2. **Relationship of the Parties.** No licence, joint venture or partnership, express or implied, is granted by Masergy pursuant to this Agreement. Neither Party may use the other’s name, trade marks, trade names or other proprietary identifying symbols without the prior written approval of the other Party.
- 15.3. **Confidentiality.** Each Party agrees to maintain in strict confidence all plans, designs, drawings, trade secrets and other confidential and/or proprietary information of the other Party (the Services shall be deemed proprietary information of Masergy) that are disclosed pursuant to this Agreement and shall not use any such information or materials for any purpose other than in connection with the exercise of its rights and obligations under this Agreement. No obligation of confidentiality shall apply to disclosed information that the recipient: (a) already possessed without obligation of confidentiality; (b) develops independently; (c) rightfully receives without obligation of confidentiality from a third party; or (d) becomes publicly known or available. Notwithstanding this Clause 15.3, either

Party may disclose information of the other Party which is required to be disclosed by law, by any court of competent jurisdiction, or by any regulatory or administrative body. In the event of any conflict, inconsistency, or incongruity between the provisions of this Clause 15.3 and any separate confidentiality or non-disclosure agreement between the Parties, the provisions of the separate agreement shall in all respects govern and control.

- 15.4. **Force Majeure.** Neither Party shall be liable for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by an event of Force Majeure, including but not limited to fire, flood, explosion, accident, war, strike, embargo, governmental requirement, civil or military authority, Act of God, acts or omissions of common carrier, warehouseman, vendors or suppliers, including but not limited to providers of telecommunications services, or any other cause beyond its reasonable control. A failure to pay money by either Party shall not be excused under this provision for a period longer than five (5) days. Any such delay or failure shall suspend this Agreement until the Force Majeure condition ceases and the Term shall be extended by the length of the suspension.
- 15.5. **No Waiver.** The failure by either Party to take action to enforce compliance with any of the terms or conditions of this Agreement, or to give notice of any breach, shall not constitute a waiver or relinquishment of such right.
- 15.6. **Third Party Rights.** Other than as expressly stated in the Agreement, a person who is not a party to the Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 15.7. **Choice of Laws.** This Agreement shall be governed by the laws of England and Wales and each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts except that either Party may apply for injunctive relief to any court of competent jurisdiction. In any action between the Parties to enforce any provision of this Agreement, to the extent that the relevant court does not make any judgment as to costs, 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.
- 15.8. **Notices.** Notices required pursuant to this Agreement shall be in writing, transmitted to the applicable Party's respective address, and will be considered given when (a) delivered and signed for by the recipient if sent by certified or registered mail, return receipt requested; or, (b) signed for by the recipient if sent by overnight courier service. Notices to Masergy must be addressed to Masergy Communications, Inc., Attn: Contract Administration, 2740 North Dallas Parkway, Suite 260, Plano, Texas 75093, USA. Notices to Customer must be addressed to the Customer as set forth on the first page of this Agreement or such other address as may be designated in writing by the respective Party.
- 15.9. **Non-Exclusivity.** The Parties' respective obligations under this Agreement are non-exclusive and nothing herein is intended to restrict Customer as to the purchase, resale or use of any other company's services, even if such services are similar to services provided by Masergy hereunder. Nothing herein is intended to limit Masergy's right to offer its services to other customers or end users, even if such customers compete with Customer. Nothing herein is intended to restrict Customer and Masergy from competing with each other. Nothing herein is intended to restrict solicitation by Masergy or Customer of any



specific or prospective end user customers or restrict solicitation of any general categories of prospective or existing end user customers.

- 15.10. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.