

## **MASTER SERVICE AGREEMENT**

This MASTER SERVICE AGREEMENT (the "Master Service Agreement") is entered into by and between Masergy Communications, Inc., a Delaware corporation ("Masergy") and its Customer (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 services 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.

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

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. 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 "Sales Agreement" the term "Service Order Form" as used herein shall also include a Sales Agreement), or (ii) assent 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 use of electronic documents and records in connection with the performance of this Master Service Agreement and delivery of the Services by Masergy. 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. 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. 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. Unless otherwise specified, the fees set forth in any Service Order Form do not include applicable Taxes (as defined in Section 3.7), 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 Service Agreement, any Service Order Form(s), the AUP (as defined in Section 1.6), the terms of use (the "Terms of Use") and the privacy policy (the "Privacy Policy"), each of which is incorporated by reference, any applicable SLAs (as defined in Section 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 SLAs, the AUP, the Terms of Use, the Privacy Policy and any Service Description.

- 1.2. If a Service Order Form is accepted by Masergy, Masergy agrees to provide the Services in accordance with this Agreement. In addition to its Affiliates or subsidiaries, Masergy may use contractors in providing the Services and otherwise use third parties (such parties 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). 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.
- 1.3. Upon Customer’s request, Masergy shall provide Customer with Service credits in accordance with the then-current service level agreements (“SLAs”), 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 SLAs, from time to time, effective upon posting of the revised SLAs 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 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, such outage will be referred back to the Customer.
- 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"). 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 or the Installation Date of such Service, as defined in Section 3.4. Unless a Party provides the other Party with written notice, as per the notice provisions of Section 16.7, 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").
- 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 6. 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. **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 current Initial Term or Extension Term. Service charges shall be invoiced monthly in advance, except for charges that are dependent upon usage of Service, which shall be billed in arrears. Customer may reduce CC Services(s), provided that Customer must maintain a minimum of seventy percent (70%) of the contracted amount for CC Service(s) to avoid incurring early termination liability.
- 3.2. Masergy reserves the right, upon thirty (30) days' written notice, to increase the charges for CC Service(s) provided under a Sales Agreement or 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.
- 3.3. 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 or the Installation Date caused by delays in approvals by Customer or third parties under its control.

- 3.4. The Customer may specify the Customer's desired Service delivery date during the Service order process. The Parties agree that an individual site's Initial Term and billing shall start on the date a functioning circuit is prepared to route IP packets from a Masergy hub to an individual Customer site/building point of demarcation (the "Commencement Date"). The installation date for CC Service(s) will be mutually agreed to between Masergy and Customer ("Installation Date"). If the Parties cannot agree to an Installation Date, the Installation Date shall be defined as seven days after the phones and/or devices have been delivered to the Customer and such devices are capable of being registered with Masergy. Customer is responsible for all Recurring Charges and all Non-Recurring Charges specified in the Service Order Form from and after the Commencement Date or the Installation Date. Recurring Charges will be prorated for the first and last month of this Agreement if Service is not provided for a complete month. 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.
- 3.5. All amounts owed by Customer are due and payable upon receipt of Masergy's invoice and shall be past due 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. 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). 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) a late charge equivalent to the lesser of 1.5% per month or the maximum rate permitted by applicable law on past due balances until paid in full; 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). 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.

- 3.6. If Customer elects to upgrade, relocate or otherwise change the place that Services are delivered after commencement of the installation of facilities or the Commencement Date or the Installation 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 Section 6.5 for the disconnection of the old site specified on the Service Order Form.
- 3.7. 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. 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.
- 3.8. If Customer disputes any portion of a Masergy invoice, Customer must (i) pay the undisputed portion of the invoice as set forth in Section 3.5; 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.
- 3.9. 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 Section 3.9 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, 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 Section 4.1 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. 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 Section 16.7 of this Agreement, in any emergency circumstance to the extent necessary to protect Masergy’s equipment, information, or personnel.
- 4.5. 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.
- 4.6. Customer agrees not to use the Portal except as authorized, and not to make it available to any third parties. Customer agrees that its use of the Portal shall be consistent with this Agreement. 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. **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 will 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. 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. 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.
  - 5.4.1. Notwithstanding anything to the contrary in this Agreement, Customer may elect to rent the equipment associated with the Cloud Communications Services as detailed in the Service Order Form. Customer will be responsible for the monthly rental fee for the Initial Term specified on the Service Order Form, and any Extension Term. If the rental equipment portion of any Service Order Form is canceled or terminated before the expiration of the Initial Term, or any Extension Term thereof, Customer will be responsible for one hundred percent (100%) of the monthly rental fee for the rental equipment specified on the Service Order Form for the balance of the then current Term of the related Service Order Form and Customer will own the equipment and be responsible for any required maintenance.

- 5.5. 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, 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.
- 5.6. Masergy will not be responsible for or liable to Customer if the Services or Masergy equipment (a) fails to prevent one or more security breaches or (b) fails to detect a breach of security or other hacking. 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 equipment or the Services will render Customers’ systems invulnerable to security breaches. Customer acknowledges and agrees that it is solely responsible for its network security policy and security response procedures. Customer acknowledges that by enabling remote access, Customer’s network and Resources are at increased risk to hackers and others. Customer agrees to take steps to protect virtual and physical access to Customer’s equipment including its remote computers, to the Software including any profiles provided by Masergy, Customer’s passwords and any wireless or wired Internet connection it uses. Customer acknowledges and agrees that Customer is exclusively responsible for developing any policies for securing all Customer equipment and its Resources. **AT NO TIME SHOULD CUSTOMER DISCLOSE ITS ROOT OR SYSTEM LEVEL PASSWORDS TO MASERGY.** 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 that the remote Resources are available. However, Customer is then responsible for ensuring that any such rights are disabled.

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

- 6.1. 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; (b) any material breach by a Party of this Agreement; or (c) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Customer; 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, as per the notice provisions of Section 16.7, to Customer, or ten (10) days after written notice, as per the notice provisions of Section 16.7, 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.

- 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 Section 6.1 above if such Default continues for more than thirty (30) days after Customer's written notice, as per the notice provisions of Section 16.7, to Masergy.
- 6.5. 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, excluding rental equipment (addressed in Section 5.4.1), 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 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.

6.5.1. Customer will provide written notification of Service termination to Masergy (i.e., electronic mail to disconnect@masergy.com, or by letter as per the notice provisions of Section 16.7) 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.

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

7.1. 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 SLAs, 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. Masergy's cumulative liability under this Agreement shall in no event exceed the amounts actually paid to Masergy by Customer for the Service giving rise to the claim. 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. EXCEPT WITH RESPECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR A PARTY'S LIABILITY UNDER SECTIONS 6.5 AND 16.3, NEITHER PARTY SHALL BE LIABLE TO THE OTHER, WHETHER FOR BREACH OF CONTRACT OR TORT, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, COSTS, EXPENSES OR LIABILITY (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES, COSTS, EXPENSES OR LIABILITY 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).

7.2. 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 DIAL 9-1-1 OR ACCESS 9-1-1 EMERGENCY PERSONNEL THROUGH CLOUD COMMUNICATIONS SERVICES PROVIDED BY MASERGY.

8. **Emergency Services, 9-1-1 Service.**

8.1. Masergy supports 9-1-1 services through its CC Service. The Customer is responsible for registering each individual phone/extension with the Masergy 9-1-1 service through the Masergy 9-1-1 Web interface. Customers who do not register their address with Masergy will be sent to the default emergency call center when they dial 9-1-1. A trained agent at the default emergency call center will ask for the name, telephone number and location of the end user calling 9-1-1, and then contact the local emergency center for such end user in order to send help. Examples of situations where 9-1-1 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 international location, or the end user is located in an area that is not covered by the landline 9-1-1 network.

For purposes of 9-1-1 service, Customer 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 9-1-1 address with Masergy, the call will be transferred to the default emergency response center without a corresponding address.

8.2. Customer acknowledges that 9-1-1 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. **Software and Intellectual Property.** Masergy may make certain software available to Customer in connection with its CC Service (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.

10. **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, cellular 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.

11. **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 federal regulations, telecommunications providers such as Masergy have an obligation to protect the confidentiality of CPNI. By executing a Sales Agreement or 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.

12. **Assignment and Successors in Interest.**

12.1. 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).

12.2. 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.

13. **Regulatory Compliance.**

13.1. This Agreement is subject to all applicable federal, state, and local laws and regulations, rulings, orders, and other actions of government agencies (“Rules”), including, but not limited to: Communications Act of 1934 as amended by the Telecommunications Act of 1996, the rules and regulations of the Federal Communications Commission (“FCC”), and the obtaining and continuance of any required approvals or authorizations with any other governmental agency. 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, the FCC, the United States Congress, any United States Bankruptcy Court, any state public service commission, administrative agency, judicial authority, or any other federal, state, municipal, international, or foreign governmental body or agency (including without limitation federal, state and local 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.

13.2. In the event that any modification required by Section 13.1 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 Section 6.5.

14. **Indemnity.**

14.1. **Customer shall: (i) indemnify and hold harmless Masergy, its principals, officers, directors, agents, and employees (the “Masergy Indemnified Parties”) from and against any liability, loss, cost, damage or expense incurred by the Masergy Indemnified Parties that arises from (a) any Customer Negligence, 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, (1) a violation of the AUP; (2) a failure to pay taxes or fees arising from the use of the Services by Customer or such end user; or (3) the use of the Services to transmit, distribute or store material in violation of a law or regulation, including material protected by patent, copyright, trademark or other intellectual property right without authorization of the owner, or material that is obscene, defamatory, constitutes an illegal threat or harassment, or violates export control laws; and (ii) either defend the Masergy Indemnified Parties against, or pay their reasonable attorney’s fees and court costs incurred in defending against, any third party or government claims or actions arising from any Customer Negligence. “Customer Negligence” shall mean the negligence or intentional misconduct of Customer or Customer’s principals, officers, directors, agents or employees.**

14.2. **Masergy shall: (i) indemnify and hold harmless Customer, its principals, officers, directors, agents, and employees (the “Customer Indemnified Parties”) from and against any liability, loss, cost, damage or expense incurred by the Customer Indemnified Parties that arises from any Masergy Negligence; and (ii) either defend the Customer Indemnified Parties against, or pay their reasonable attorney’s fees and court costs incurred in defending against, any third party or government claims or actions arising from any Masergy Negligence. “Masergy Negligence” shall mean the negligence or intentional misconduct of Masergy or Masergy’s principals, officers, directors, agents or employees.**

14.3. **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 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.**

15. **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.
16. **Miscellaneous.**
- 16.1. **Severability.** If any provision of this Agreement is held by a court to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless remain unimpaired and in effect.
- 16.2. **Relationship of the Parties.** No license, joint venture or partnership, express or implied, is granted by Masergy pursuant to this Agreement. Neither Party may use the other's name, trademarks, trade names or other proprietary identifying symbols without the prior written approval of the other Party.
- 16.3. **Confidentiality.** Each Party agrees to maintain in strict confidence all plans, designs, drawings, trade secrets and other 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 Section 16.3, either Party may disclose information of the other Party to a government authority pursuant to a judicial, legislative, or regulatory subpoena, order or proceeding. In the event of any conflict, inconsistency, or incongruity between the provisions of this Section 16.3 and any separate confidentiality or non-disclosure agreement between the Parties, the provisions of the separate agreement shall in all respects govern and control.
- 16.4. **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.

- 16.5. **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.
- 16.6. **Choice of Laws.** 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.
- 16.7. **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., 2740 North Dallas Parkway, Suite 260, Plano, Texas 75093, Attn: Contract Administration. Notices to Customer must be addressed to the Customer as set forth on the initial Service Order Form or Sales Agreement or such other address as may be designated in writing by the respective Party.
- 16.8. **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.