

## MASTER SERVICE AGREEMENT

This Master Service Agreement is entered into by and between Masergy Communications, Inc. (“Masergy”), a Delaware corporation, and 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 (as defined below) to Customer.

### Definitions

“**Acceptance**” shall mean Masergy’s acceptance of a Service Order Form: (a) in writing by execution of the Service Order Form by both parties; (b) by Masergy taking any action to install the Service in reliance upon the Service Order Form; or (c) by Masergy’s delivery of Service.

“**Affiliate**” shall mean, with respect to each Party, any person or entity that controls, is controlled by, or is under common control with such Party. For purposes of this definition, “control” shall mean ownership of fifty percent (50%) or more of the voting control or other voting ownership interest in an entity.

“**Agreement**” shall mean, collectively, this Master Service Agreement, any applicable Product Specific Attachment (“PSA”), each binding Service Order Form, any applicable amendment executed by the Parties (“Amendment”), any applicable Service Level Agreement (“SLA”), the Acceptable Use Policy (“AUP”), and the Privacy Policy (as defined in Section 17.2).

“**Anti-Corruption Laws**” shall mean: (i) the U.S. Foreign Corrupt Practices Act (“FCPA”); (ii) the U.K. Bribery Act 2010; and (iii) any other applicable anti-corruption laws.

“**CC Service**” or “**UCaaS**” shall mean Masergy’s services for unified communications as a service implemented using session initiation protocol trunking, hosted applications, and hybrid services, as more specifically described in the applicable PSA(s).

“**Commencement Date**” shall mean: (i) the date a functioning physical circuit is prepared to route IP packets from a Masergy hub to an individual Service Location point of demarcation, tested and confirmed by Masergy; (ii) in the case of Service(s) other than a physical circuit provided by Masergy (e.g., CC Services etc.), the earlier of: (a) the date Customer is notified that the Service is ready for use; or (b) five (5) business days from the Commencement Date of the last Masergy provided circuit installed at a Service Location, ordered on the same Service Order Form; or (iii) as set forth in the applicable PSA. In the case of a Service renewal, the Commencement Date shall be the effective date of such Service Order Form or as otherwise set forth in the Service Order Form. A single Service Order Form containing multiple Service Locations or Services may have multiple Service Commencement Dates.

“**Confidential Information**” shall mean all information regarding either Party’s business that has been marked or is otherwise communicated as being “proprietary” or “confidential” or which reasonably should be known by the receiving Party to be proprietary or confidential information. Without limiting the foregoing, Confidential Information shall include, even if not marked or otherwise designated as proprietary, the Agreement, all Software (as defined in Section 5.5), promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance), and invoices, as well as the Parties’ communications regarding such items. Confidential Information does not include any data transmitted over or through the Services.

“**Customer**” shall mean the entity named on the Service Order Form.

“**Customer-Provided Equipment** or “**CPE**” shall mean all facilities, equipment, and devices supplied by Customer, or by a party not contracted by Masergy, for use in connection with the Services.

“**Government Entity**” shall mean a government at any level, including national, state, local, or municipal; an instrumentality, board, commission, court, agency, or subdivision, whether civilian or military, of any of the above; a government-owned or government-controlled association, organization, business, or enterprise (including any state-owned enterprise or any entity financed in large measure through public appropriations, performing public functions, or whose officers or directors are appointed by a government body); any political party; and any public international organization, *i.e.* organizations whose members are countries, territories, governments of countries or territories.

“**Government Official**” shall mean: (i) any official, officer, employee (regardless of rank), or person acting on behalf of a Government Entity; or (ii) any political party official or candidate for political office.

“**Indirect Transaction Taxes**” shall mean any relevant value-added tax, goods and services tax, sales, use or consumption, or similar tax, fee, or impost imposed, levied, or assessed by any governmental agency or otherwise payable, but does not include any related penalty, fine or interest thereon.

“**IT Service**” shall mean Masergy’s data and video network services and managed information technology services, as may be further described in the applicable PSA(s).

“**Masergy**” shall mean Masergy Communications, Inc., or its operating Affiliates that provide the Services. References to Masergy in Sections 8 and 15 shall also include its Affiliates and their respective directors, officers and employees.

“**Masergy Equipment**” shall mean any and all facilities, equipment or devices provided by Masergy or its authorized contractors that are used to deliver the Services. Notwithstanding the foregoing, inside telephone wiring within a Service Location, whether or not installed by Masergy, shall not be considered Masergy Equipment.

“**Portals**” shall mean the Masergy’s intelligent service control portal and UCaaS portal. The Portals are web-based features that allows Customer to view available usage, certain performance information, and current invoices, as well as the ability to make modifications to current Service(s) and add or remove Service(s).

“**Product Specific Attachment(s) or PSA(s)**” shall mean the additional terms and conditions, if any, applicable to the Services ordered by Customer under the Agreement.

“**Service(s)**” shall mean each of the services provided by Masergy for which Customer subscribes. All Services provided under the Agreement are for commercial, non-residential use only.

“**Service Location(s)**” shall mean the Customer location(s) where Masergy provides the Services.

“**Service Order Form**” shall mean an order form for the provision of Services to a Service Location(s) on the then-current Masergy form designated for such purpose, or such other form, or in such other manner, as may be agreed upon by the Parties.

“**Termination Charges**” shall mean charges that may be imposed by Masergy upon early termination of Service as specified in this Master Service Agreement, the applicable PSA, or the applicable Service Order Form, including any exhibits, attachments, schedules or addenda thereto.

“**Website**” shall mean the Masergy website where this Master Service Agreement, the PSAs, the Privacy Policy (as defined in Section 17.2), and the AUP (as defined in Section 1.7) are posted. The current URL for the Website is <https://www.masergy.com> (as the same may be updated by Masergy from time-to-time).

## 1. Services and Service Orders

1.1. Orders. Customer may order Services for itself and its Affiliates, provided that Customer shall be fully responsible and liable for all such Affiliates' use of the Services and compliance with the terms of the Agreement. To request Service at a Service Location, Customer may request a Service Order Form from Masergy. If Customer wishes to move forward with the provision of the requested Service(s), Customer shall: (i) sign and return the Service Order Form to Masergy, or (ii) subscribe to Services through the Portals, if applicable. Customer consents to the use of electronic documents and records in connection with the performance of this Agreement and delivery of the Services by Masergy. Each Service Order Form shall be governed by this Master Service Agreement. A Service Order Form shall be effective upon Acceptance.

1.2. Provisioning. The Services may be provided over Masergy's, its Affiliates', or its subsidiaries' networks, or through resale and may include any provision of equipment, cabling, circuits, facilities, systems, or software undertaken by Masergy or on Masergy's behalf. In addition to its Affiliates, Masergy may use contractors or other third parties in providing the Services.

1.3. Access. To deliver Services to Customer, Masergy may require access, right-of-way, conduit, and/or common room space within and/or outside each Service Location and facility containing the Service Location ("Access"). Within each Service Location and facility containing the Service Location, Customer shall be solely responsible for securing and maintaining such Access as Masergy may require to deliver the Services. In the event that Customer fails to secure or maintain such Access, Masergy: (i) may upon thirty (30) days prior written notice cancel or terminate Service at such Service Location and such termination shall be subject to applicable Termination Charges; and (ii) shall be excused from its obligations with respect to the Service(s) at such Service Location (including any obligation to issue service credits) until such time as Customer provides Masergy with the necessary Access. If Masergy is unable to secure or maintain Access outside a particular Service Location or facility and associated property containing the Service Location, which Access is needed to provide Services to such Service Location, Customer or Masergy may cancel or terminate Service at such Service Location, without further liability beyond the termination date, upon a minimum thirty (30) days' prior written notice to the other party.

1.4. Hazardous Materials. If the presence of asbestos or other hazardous materials exists or is detected at a Service Location or within the building where the Service Location is located, Masergy may immediately stop providing or installing Services until such materials are removed. Customer shall be responsible for any additional expense incurred by Masergy as a result of encountering, or in the avoidance of, hazardous materials.

1.5. Service Level Agreement. Masergy shall provide Customer with Service credits in accordance with the PSA applicable to the Service(s) being provided or the then-current SLA, which is available via the Website. Masergy reserves the right to amend the SLA, from time to time, effective upon posting of the revised SLA at its Website or by other notice to Customer. Outages attributable to Customer-provided local access circuits shall not be included in the calculation of Service unavailability. In the event of an outage or other performance issues that Masergy determines are attributable to a Customer-provided service, 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, connections or services not provided by Masergy or its contractors.

1.6. Changes and Substitutions. Masergy may substitute, change, or rearrange any equipment, facility, or system used in providing Services from time to time, including any Masergy Equipment; provided, any such removal or change does not cause a material degradation in the Services. Customer agrees to cooperate in the event that Masergy determines it is necessary to change a third-party service provider; so long as Customer does not incur any additional costs for the affected Service (unless such change is requested by the Customer). Notwithstanding the foregoing, Masergy reserves the right to substitute the type of local access loop connectivity for IT Service(s); provided, there is no change in pricing and the total bandwidth of the local access loop connectivity for the affected Service is equal to or greater than the bandwidth listed on the applicable Service Order Form for such Service.

1.7 Acceptable Use Policy. All use of the Services must comply with the then-current version of Masergy's AUP, which is incorporated herein by reference and is available via the Website. Masergy reserves the right to amend the AUP from time to time, effective upon posting of the revised AUP at its Website or by other notice to Customer.

2. Term. This Master Service Agreement shall be effective as of the date of the Service Order Form (the "Effective Date") and shall continue through the expiration of the last Service Order Form(s) that is in effect under the Agreement, unless earlier terminated as provided herein. The term of a Service shall mean the initial duration of Service at each Service Location set forth in the Service Order Form (hereinafter the "Initial Service Term" or "Initial Term"). Until a Party provides the other Party with written notice not less than thirty (30) days prior to the expiration of the Initial Service Term, an Extension Service Term (as defined below) or any subsequent renewal Initial Service Term (or in the case of an increase in rates under Section 3.1, not more than thirty (30) days after notice of such increase), the Service shall automatically renew in increments of one year (each an "Extension Service Term" and together with the Initial Service Term, the "Service Term").

### 3. Rates and Payments

3.1. Rates Generally. Customer shall pay Masergy for all charges associated with the Services at the rates and currency for the Services set forth in the Service Order Form. Masergy may change the rates for Services for any Extension Service Term upon thirty (30) days (or such longer period as may be required by law) written notice to Customer prior to the expiration of the Initial Service Term or the current Extension Service Term. Customer acknowledges and agrees that such notice requirement may be satisfied by including notice of a monthly recurring service charge modification(s) in a Customer invoice or via other written communication. Service charges shall be invoiced monthly in advance, except for charges that are dependent upon usage of Service, which shall be billed in arrears.

3.2. Reduction of CC Services. 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) under each Service Order Form to avoid incurring early termination liability.

3.3. Non-Recurring Charges; Recurring Charges; Start-up Charges. 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"). Masergy will provide Customer with written notification (email being sufficient) if any Start-up Charges are required. Customer must promptly notify Masergy if it rejects the Start-up Charge, and the affected Service(s) will be cancelled. Otherwise, Masergy will invoice, and Customer shall pay, for such charges. Customer is responsible for all Recurring Charges and all Non-Recurring Charges (excluding Start-up Charges) from and after the Commencement Date. 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. 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.

3.4. Commencement Date. The Parties agree that a Service(s)'s Initial Service Term and billing shall start on the Commencement Date. Any failure on the part of Customer to be ready to receive Service, or any refusal on the part of Customer to receive Service, shall not relieve Customer of its obligation to pay charges for any Service that is otherwise available for use. 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).

3.5. Responsibility for Lines and Extensions. 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.

3.6. Payments Terms. All amounts owed by Customer are due and payable upon receipt of Masergy's invoice and shall be past due thirty (30) days after the date of the invoice. Customer shall remit payment as set forth on the invoice. Notwithstanding any contrary language in any documents issued by the Customer to Masergy with respect to the Service(s), language in such documents shall be deemed to be for Customer's internal use only and the provisions thereof shall have no effect whatsoever upon the terms and conditions of the Agreement or the provision of the Service(s). 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. If a Customer payment is past due, 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 the Agreement (including, without limitation, any legal costs and expenses and/or the cost of engaging a collection agency, attorney, or debt recovery agent). No acceptance of partial payment(s) by Masergy shall constitute a waiver of any rights to collect the full balance owed under the Agreement.

3.7. Separate Billing Entity. If Customer requests that Masergy bill a separate billing entity 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 upon not less than sixty (60) days advance written notice as to which billing entity and address Customer would like Masergy to bill. Masergy may, within its sole discretion, agree to accommodate such a request following receipt of such notice. If no such notice is timely received by Masergy, Masergy shall bill Customer at the address first set forth in the Agreement or such other billing address that has been previously provided to Masergy in writing.

3.8. Upgrades; Relocations; Changes to Services. If Customer elects to upgrade, relocate, or otherwise change the Services 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 new Service Order Form for the applicable Service Location(s); provided, however, that Customer shall not be liable for the Termination Charges set out in Section 7.3 for the disconnection of the original Service Location.

3.9. Taxes and Fees. Other than taxes on Masergy's net income, and unless Customer provides a valid tax exemption certificate prior to the delivery of Services, Customer will be responsible for payment of all taxes, fees, charges, surcharges, withholdings, or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services (*e.g.*, applicable franchise fees, right of way fees, and Universal Service Fund charges) regardless of whether Masergy or its Affiliates pay the fees directly or are required or permitted by law to collect them from Customer (hereafter "Taxes"). Customer shall also be responsible to pay: (1) any Taxes that become applicable retroactively, and (2) an administrative fee which is a monthly charge on Customer's account that helps cover a portion of costs to Masergy to provide Services. The administrative fee is not a tax or charge required by federal, state, or local governments, is not included in the monthly recurring service charge, and will be listed as a separate line item on Customer's monthly invoice. 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.

3.10. Indirect Transaction Taxes. All amounts payable by the Customer pursuant to the terms of the Agreement are exclusive of Indirect Transaction Taxes. If any amounts payable by Customer to Masergy are subject to Indirect Transaction Taxes, Masergy may invoice and charge such Indirect Transaction Taxes to Customer and Customer shall promptly pay the amount thereof to Masergy. If any amounts payable by Customer to Masergy are subject to Indirect Transaction Taxes payable by Customer under a reverse charge, self-assessment, or withholding procedure, the amounts payable by Customer shall not be reduced by such Indirect Transaction Taxes.

3.11. Disputes. If Customer disputes any portion of a Masergy invoice, Customer must: (i) pay the undisputed portion of the invoice as set forth in Section 3.6; and (ii) submit a written claim to [billing@masergy.com](mailto:billing@masergy.com) regarding the disputed amount with: (i) the name and contact details for Customer's employee with authority to resolve the dispute; and (ii) sufficient details supporting Customer's claim within sixty (60) days of the date printed on the invoice giving rise to the claim. The Parties shall negotiate in good faith to resolve any billing dispute submitted by Customer pursuant to this Section. The portion of charges timely disputed will not be considered overdue until Masergy completes its investigation of the dispute, but Customer shall incur related late charges in accordance with Section 3.6 if such dispute is resolved in Masergy's favor. Following Masergy's communication of the results of its investigation of the dispute to Customer, payment of all properly due charges and properly accrued late charges, if any, must be made within ten (10) days of the date of such communication. For avoidance of doubt, under no circumstances may Customer submit a billing dispute to Masergy later than sixty (60) days following the invoice date.

3.12. Credit Approvals and Deposits. Customer shall provide Masergy with credit information as requested, and delivery of Service is subject to credit approval. Customer hereby consents to and authorizes Masergy's inquiry, receipt, and retrieval of credit information regarding Customer from third parties and to enter this information into Customer's records. Masergy, in its sole discretion, may deny the Services based upon an unsatisfactory credit history. Subject to applicable regulations, Masergy may require Customer to make a 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 pre-payment provided by Customer under this Section 3.12 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 any pre-payment remaining will be credited to Customer's account, and any remaining credit balance will be refunded.

#### 4. Intelligent Service Control Portal and UCaaS Portals

4.1. Use of Portal. Customer agrees to use the Portals and any additional electronic or web-based services offered by Masergy in accordance with this Agreement. Customer must designate portal users as either an administrative user with full access to Customer's records, or as a guest user with limited access to Customer's records. Administrative users may add or remove Services or additional Service features. Customer acknowledges and agrees that the person using Customer's username and password for the Portals is an authorized administrative user and such administrative user has the capacity and authority to make modifications that may increase or decrease the Customer's monthly recurring fees electronically on behalf of Customer.

4.2. Changes to Portal; Suspension. Masergy may change, modify, or alter at any time the information or functionality to which Customer will have access through the Portals. Masergy may immediately suspend Customer's access to the Portals in its sole discretion, including without limitation, to address an emergency or threat to the security or integrity of Masergy's equipment, information, systems, or personnel.

4.3. Customer Responsibility. Customer shall be responsible for the security, confidentiality, and use of Customer's username, password, and other security data. 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.

4.4. Restrictions on Use; Disclaimer. Customer agrees not to use the Portals except as authorized, and not to make them available to any third parties. Customer agrees that its use of the Portals shall be consistent with the Agreement. Customer shall immediately notify Masergy if there is any unauthorized use of Customer's account passwords and other security data or any use inconsistent with the terms of the Agreement. Masergy is not responsible for any information provided by Customer to third parties and Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services. MASERGY SHALL NOT BE RESPONSIBLE OR OBLIGATED FOR ANY COSTS, FEES, EXPENSES OR LIABILITIES ACCRUING AS A RESULT OF ANY UNAUTHORIZED USE OF THE PORTALS, CUSTOMER'S ACCOUNT, PASSWORD(S), OR OTHER SECURITY DATA.

## 5. Equipment, Access and Software

5.1. Responsibility for Masergy Equipment. Customer shall provide an adequate, environmentally controlled space and such electricity as may be required for installation, operation, and maintenance of the Masergy Equipment. Customer shall be liable for any damage to, loss of, or maintenance of Masergy Equipment or any other Masergy equipment, facility, or system caused by: (i) acts or omissions of Customer, its Affiliates, or a third party contractor of Customer or its Affiliates; (ii) malfunction or failure of any equipment or facility provided by Customer, its Affiliates, its agents, employees or suppliers; or (iii) by fire, theft, or other casualty at a Service Location, unless caused by the gross negligence or willful misconduct of Masergy.

5.2. Customer Changes to Masergy Equipment; No Liens. Customer shall not move, rearrange, attempt to repair, remove, disconnect, alter, or repair or otherwise tamper with any Masergy Equipment. Customer shall not create or allow any liens or other encumbrances to be placed on any Masergy Equipment arising from any act, transaction, or circumstance relating to Customer.

5.3. Ownership of Masergy Equipment; Return. All Masergy Equipment will remain the property of Masergy and must be returned to Masergy, in substantially the same condition (normal wear and tear excepted), upon termination or expiration of the applicable Service Order Form or Service(s). Masergy reserves the right to invoice Customer for the replacement cost of Masergy Equipment if returned in poor condition, damaged, or destroyed. Until such time as the Masergy Equipment is returned to Masergy, Masergy may continue to invoice Customer for the monthly fee applicable to such Masergy Equipment.

5.4. Customer-Provided Equipment. Unless otherwise set forth in a Service Order Form or applicable PSA, Customer shall have sole responsibility for providing maintenance, repair, operation, and replacement of all Customer-Provided Equipment, inside telephone wiring, and other Customer equipment and facilities on the Customer's side of the point of interconnection between the Masergy Network and Customer-Provided Equipment located at a Service Location. Neither Masergy nor its employees, Affiliates, agents, or contractors shall: (i) have any obligation to install, operate, or maintain Customer-Provided Equipment; or (ii) be liable for any damage, loss, or destruction to Customer-Provided Equipment, unless caused by the gross negligence or willful misconduct of Masergy. Customer-Provided Equipment shall at all times be compatible with the Masergy Network. Except as otherwise provided in a Service Order Form, Customer shall be responsible for the payment of service charges for visits by Masergy's employees, agents, or contractors to a Service Location when the service difficulty or trouble report results from Customer-Provided Equipment or facilities provided by a party not contracted by Masergy.

5.5. Software. The firmware, plug-ins, software, and code included in or associated with any Masergy Equipment or Services, including 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"). Masergy may make certain Software available to Customer in connection with the Services. Customer's use of the Software is subject to the terms of the Agreement and any software license terms that Customer may be required to consent to as a condition to using the Software or the related

Services. Customer agrees and acknowledges that: (i) in order to utilize some Services or portions thereof or access Customer's 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; (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; (v) it is responsible for taking appropriate steps to safeguard its Resources; (vi) it will not sell, lease, license, sublicense, copy, reproduce, modify, distribute, publish, publicly display, or reverse engineer, decompile, or disassemble the Software, attempt to discover the source code for the Software, or otherwise infringe upon the intellectual property rights of its respective owner; (vii) it will not create, write, or develop any derivative software or any other software program based on the Software; and (viii) 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. Customer may not claim title to, or an ownership interest in, any Software (or any derivations or improvements thereto), and Customer shall execute any documentation reasonably required by Masergy, including, without limitation, end-user license agreements, for the Software.

5.6. Updates. Customer acknowledges that the use of Service may periodically require Masergy's provision of, updates or changes to the Software resident in the Masergy Equipment ("Updates"). Masergy may perform such Updates remotely or on-site, at Masergy's sole discretion. Customer hereby consents to, and shall provide free Access for, such Updates. If Masergy has agreed to provide Updates, Masergy will be excused from the applicable performance criteria and credits, and any and all liability and indemnification obligations regarding the applicable Service, to the extent resulting from Customer's failure to allow Masergy to install any Updates.

5.7. IP Addresses. IP addresses assigned from a Masergy net-block are non-portable. Upon termination of a Service, any and all IP address space allocated by Masergy pertaining to such Service shall be retained by Masergy, and Customer's right to use such allocated address space shall terminate.

## 6. Network and Access

6.1. Masergy Network. Masergy Equipment, 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 whether or not located on or at the Service Location(s) (collectively, the "Masergy Network") is and shall remain the property of Masergy regardless of whether installed within, upon, overhead, above, or underground at or near the Service Location and shall not be considered a fixture or an addition to the land or the Service Location(s) located thereon. Customer agrees that it shall take no action that directly or indirectly impairs Masergy's title to the Masergy Network, or any portion thereof, or exposes Masergy to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Nothing in the Agreement shall preclude Masergy from using the Masergy Network for services provided to other Masergy customers. Except for any equipment Masergy obtains from the LEC as set forth in Section 3.5, 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.

6.2. Customer Network. 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"). 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.

6.3. Network Security Risks. Notwithstanding the foregoing, Customer acknowledges that the Services are provided over the internet and third-party equipment and networks with inherent risks and vulnerabilities. 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.

## 7. Termination/Remedies

### 7.1. Termination for Cause.

7.1.1. If either Party is in material breach of the Agreement (including Customer's failure to pay undisputed amounts due under this Agreement) and the breach continues unremedied for thirty (30) days after written notice of breach, the non-breaching Party may terminate for cause any or all Service Order Forms materially affected by the breach. In addition to its other remedies, in the event of a material breach of the Agreement by Customer that is not remedied within the foregoing timeframes, Masergy may suspend Service(s) under the affected Service Order Form(s). For avoidance of doubt, any violation by Customer of an applicable law, rule, or regulation affecting the use of the Service or performance under this Agreement shall be considered a material breach of this Agreement.

7.1.2. Subject to applicable law, either Party may terminate Service(s) immediately upon notice to the other Party if the other Party has become insolvent as defined under Section 1-201(23) of Uniform Commercial Code, institutes or has instituted against it any bankruptcy, reorganization, debt arrangement, or assignment for the benefit of creditors, other proceeding under any bankruptcy or insolvency law or dissolution, receivership, or liquidation proceeding (and if such proceeding is instituted against it, such proceeding is not dismissed within sixty (60) days).

7.1.3. Masergy reserves the right to immediately terminate a Service Order Form or suspend Service in the event of any governmental prohibition or required alteration of the Service, or in any existing or anticipated emergency circumstance, if Masergy determines, in good faith, that no other commercially reasonable actions will adequately protect such people, facilities, or systems.

7.1.4. Masergy may terminate any Service Order Form and/or the Agreement immediately if Customer or its employees, agents, or representatives threaten, harass, or use vulgar or inappropriate language toward Masergy personnel or contractors.

7.2. Termination for Convenience. Notwithstanding any other term or provision in the Agreement and subject to applicable Termination Charges, Customer shall have the right, in its sole discretion, to terminate any or all Service(s) at any time, upon thirty (30) days prior written notice to Masergy.

7.3. Termination Charges. If any Service Order Form or Service provided is canceled or terminated before expiration of the Initial Service Term of such Service, or any Extension Service Term thereof: (i) by the Customer for any reason other than for a material breach under this Agreement by Masergy; or (ii) by Masergy due to a material breach 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: (a) all unpaid Non-Recurring Charges, excluding any waived charges, specified in any Service Order Form; (b) all unpaid Recurring Charges for Services specified in any Service Order Form through the date of termination; (c) 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 Service Term or the current Extension Service Term of such Service; and (d) 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 (c) of this Section 7.3.

7.4. Notice of Termination to Masergy. Customer must provide written notification of Service Order Form or Service termination to Masergy disconnect department (i.e., electronic mail to disconnect@masergy.com, or per the notice provisions in Section 18.6 of this Master Service Agreement) and the Service will be terminated the later of: (i) thirty (30) days past the date such written notice was received by the Masergy disconnect department; or (ii) 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.

7.5. Effect of Termination of Service Order Form. Upon the termination of a Service Order Form or Service for any reason, Masergy shall disconnect the applicable Service and may assess and collect from Customer applicable Termination Charges (unless the Service is terminated by Customer pursuant Section 7.1 above). Termination by either Party of a Service Order Form does not waive any other rights or remedies that it may have under the Agreement.

7.6. Chronic Outage. Unless otherwise set forth in the applicable PSA, 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: (i) 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 (ii) terminate the affected circuit provided under the 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. Except for Customer's rights under this Section 7.6 and unless otherwise set forth in the applicable PSA, 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 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.

## 8. Disclaimers and Limitation of Liability

8.1 DISCLAIMER OF WARRANTIES. 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, AND TO THE MAXIMUM EXTENT ALLOWED BY LAW, MASERGY EXPRESSLY DISCLAIMS SUCH WARRANTIES. Without limiting the generality of the foregoing, and except as otherwise identified in the applicable PSA for the Services provided, Masergy does not warrant that the Services, Masergy Equipment, or Software will be uninterrupted, error free, or free of latency or delay, or that the Services, Masergy Equipment, or Software will meet Customer's requirements, or that the Services, Masergy Equipment, or Software will prevent unauthorized access by third parties. Customer acknowledges and agrees that the Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property, or environment. Notwithstanding anything to the contrary contained in the Agreement, in no event shall Masergy and its agents, suppliers, and licensors be liable for any loss, damage, or claim arising out of or related to: (a) content or data received or distributed by Customer or its users through the Services; (b) any act or omission of Customer, its users, or third parties not under the control of Masergy; (c) interoperability, interaction, or interconnection of the Services with applications, equipment, services, or networks provided by Customer or third parties not under the control of Masergy; or (d) loss or destruction of any Customer hardware, software, files, or data resulting from any virus or other harmful feature or from any attempt to remove it. Customer is solely responsible for backing up its data, files, and software prior to the installation of Service and at regular intervals thereafter.

8.2. GENERAL LIMITATION ON DAMAGES. THE AGGREGATE LIABILITY OF MASERGY AND ITS AGENTS, SUPPLIERS, AND LICENSORS FOR ANY AND ALL LOSSES, DAMAGES, AND CAUSES OF ACTION ARISING OUT OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE PERFORMANCE OF SERVICE, AND NOT OTHERWISE LIMITED HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED DIRECT DAMAGES EQUAL TO THE SUM TOTAL OF PAYMENTS MADE BY CUSTOMER TO MASERGY DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENT FOR WHICH DAMAGES ARE CLAIMED. 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 CC SERVICES PROVIDED BY MASERGY.

8.3. DISCLAIMER OF CERTAIN DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, COVER, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT; PROVIDED, THAT, THE FOREGOING LIMITATION SHALL NOT LIMIT CUSTOMER'S LIABILITY FOR CHARGES OWED FOR THE SERVICES, FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY MASERGY, OR FOR TERMINATION CHARGES.

8.4. Exclusive Remedies. Customer's sole and exclusive remedies are as expressly set forth in the Agreement. In those states where Customer's remedies cannot be so limited, the liability of Masergy is limited to the maximum extent permitted by law.

## 9. Emergency Call Services

9.1. 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 or through Masergy customer support. Customers who do not register their address with Masergy will be sent to the default emergency call center when they dial 9-1-1, and additional charges for 9-1-1 calls will apply. 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.

9.2. 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 and will be handled as described in Section 9.1 above.

9.3. Customer acknowledges that 9-1-1 dialing, or its equivalent in non-United States jurisdictions, 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, internet service provider, or CC Service is terminated.

9.4 CUSTOMER ACKNOWLEDGES AND AGREES THAT NEITHER MASERGY, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, LICENSORS, ATTORNEYS, OR CONTRACTORS WILL BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 (OR ITS

EQUIVALENT IN NON-UNITED STATES JURISDICTIONS) USING THE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS MASERGY, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, LICENSORS, ATTORNEYS, AND CONTRACTORS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES, INCLUDING THOSE RELATED TO 911/E911 CALLING VIA VOICE SERVICE.

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 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. **Use Data.** Customer acknowledges and agrees that Masergy may obtain, derive, or create data and information about the use of the Services by Customer (“Use Data”), excluding any personally identifiable data, and it may utilize Use Data to analyze, improve, support and operate the Services during and after the Term of this Agreement.
13. **Regulatory Compliance**
- 13.1. Each of the Parties agrees to comply with all local, state and federal laws and regulations and ordinances applicable to such Party in the performance of its respective rights and obligations under the Agreement.
- 13.2. The Parties acknowledge that the respective rights and obligations of each Party as set forth in the Agreement are based on applicable law and regulations as they exist on the date of the Agreement’s execution. The Parties agree that in the event of any legislative, regulatory, or judicial order, rule, or regulation, or decision in any arbitration or other dispute resolution proceeding, or other legal or regulatory action that materially affects the provisions of the Agreement or the economic terms of the Agreement, Masergy may, by providing written notice to the Customer, require that the affected provisions of the Agreement be renegotiated in good faith. If Customer refuses to enter such renegotiations, or the Parties are unable to reach resolution on new Agreement terms, Masergy may, in its sole discretion, terminate the Agreement, in whole or in part, upon sixty (60) days written notice to Customer.
14. **Anti-Corruption**
- 14.1 **Anti-Bribery/Anti-Corruption Provisions.**
- 14.1.1 Each Party represents, warrants, and covenants that:
- (a) In carrying out its responsibilities under the Agreement, each Party and each of its shareholders, beneficial owners, Affiliates, officers, directors, employees, and any party acting on its behalf, will comply with all Anti-Corruption Laws and will not offer, promise, give, authorize, solicit, or accept anything of value, directly or indirectly, to or from any person, including any Government Official, in order to improperly influence official action, improperly obtain or retain business, or otherwise obtain an improper advantage.

(b) To the knowledge of each Party, no Government Entity is investigating or has in the past five (5) years conducted, initiated, or threatened any investigation of such Party or any of its beneficial owners, Affiliates, officers, directors, employees, or agents related to any violation of Anti-Corruption Laws.

(c) Neither a Party nor any of its beneficial owners or Affiliates is directly or indirectly owned or controlled, in whole or in part, by any Government Entity or Government Official. No beneficial owner, affiliate, officer, director, or employee of such Party is a Government Official who is in a position to make or influence any action or decision related to the Agreement between Masergy or Customer. Each Party agrees to promptly notify the other Party of any changes to this representation during the term of the Agreement.

14.1.2. Each Party shall immediately inform the other Party if it or any of its owners, Affiliates, officers, directors, employees, or agents learns of or suspects a possible violation of any Anti-Corruption Law related to the Agreement. Each Party shall agree to cooperate in good faith in any anti-corruption-related investigation conducted by the other Party and/or its auditors, attorneys, or representatives related to the Agreement.

14.1.3. In the event a Party believes, in good faith, that the other Party has committed a breach of these Anti-Corruption provisions or violated Anti-Corruption Laws, such Party may immediately terminate the Agreement for cause.

14.2. International Trade Commission Provisions.

14.2.1. Each Party represents, warrants, and covenants that it will comply with all applicable Trade Control laws, regulations, permits, orders and other restrictions, including the United States Department of Commerce's Export Administration Regulations ("EAR"), the U.S. Department of Treasury's Office of Foreign Assets Control's ("OFAC") trade and economic sanctions laws and regulations, and non-U.S. laws and regulations that govern international trade.

14.2.2. Each Party represents and warrants that neither it nor any of its Affiliates or subsidiaries is a person or entity identified on the EAR's denied or restricted party lists (including the Denied Persons List, Entity List, and Unverified List), the Sectoral Sanctions Identifications List, or OFAC's Specially Designated National ("SDN") List, or are parties that are owned 50% or more in the aggregate by an SDN(s) (collectively, "Restricted Parties"). Each Party shall not permit anything to be provided or made available to any Restricted Party; and such Party must not engage in any business relationship with or in a country that is subject to a comprehensive embargo by the United States (currently, Cuba, Iran, North Korea, Syria, and the Donetsk, Luhansk and/or Crimea Regions of Ukraine), including employing or contracting with a person or entity from a U.S. embargoed country, in connection with the Agreement.

15. Indemnity

15.1. Subject to Section 8.3, Customer shall indemnify, defend and hold harmless Masergy, its Affiliates and their respective employees, directors, officers, agents, suppliers, and licensors from and against all damages, losses, liabilities, and expenses (including reasonable attorneys' fees) arising from a claim or demand by a third party ("Claims") based on or arising on account of or in connection with Customer's and its users' use or sharing of the Service provided under the Agreement, including with respect to: (i) any content received or distributed by Customer or its users through the Service; (ii) libel, infringement of copyright, or unauthorized use of trademark, trade name, or service mark arising out of communications via the Service; (iii) for damage arising out of the gross negligence or willful misconduct of Customer; and (iv) 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.

15.2. Subject to Sections 8.3 and any other limitations contained in the Agreement, Masergy shall indemnify, defend and hold harmless Customer from and against all Claims incurred as a result of damage to tangible personal property or real property, and personal injuries (including death) to the extent caused by the gross negligence or willful misconduct of Masergy while working on the Service Locations. For purposes of this Section 15.2, any claims by any end-user of the Services shall not be included in the definition of Claims.

15.3. To the extent a Party may be entitled to indemnification under the Agreement (an “Indemnified Party”), such Indemnified Party shall (a) promptly notify the other Party (the “Indemnifying Party”) in writing of any pending or threatened Claim that gives rise to a right of indemnification (an “Action”), and (b) cooperate in every reasonable way to facilitate the defense or settlement of such Action. The Indemnifying Party shall assume the defense of any Action with counsel selected by the Indemnifying Party. The Indemnified Party may employ its own counsel in any such case and shall pay such counsel’s fees and expenses. The Indemnifying Party shall have the right to settle any Action; provided, however, that to the extent that such settlement requires the Indemnified Party to take or refrain from taking any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such Action without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned, or delayed.

## 16. **Confidential Information; Publicity; Intellectual Property**

16.1. **Disclosure and Use.** All Confidential Information disclosed by either Party shall, during the term of the Agreement and for two (2) years after the expiration or termination thereof (or such longer period as may be required by law), not be disclosed to any third party without the disclosing Party’s express written consent. Notwithstanding the foregoing, such information may be disclosed: (i) to the receiving Party’s employees, Affiliates, contractors, and agents (“Representatives”) who have a need to know for the purpose of performing under the Agreement, using the Services, and rendering the Services (provided that in all cases the receiving Party shall take appropriate measures prior to disclosure to its Representatives designed to protect against unauthorized use or disclosure); or (ii) as otherwise authorized by the Agreement. Each Party’s confidentiality obligations hereunder shall not apply to information that: (a) is already known to the receiving Party without a pre-existing restriction as to disclosure; (b) is or becomes publicly available without fault of the receiving Party; (c) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure or is approved for release by written authorization of the disclosing Party; or (d) is developed independently by the receiving Party without use of the disclosing Party’s Confidential Information. Each Party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case using less than a reasonable degree of care. If either Party is required to disclose Confidential Information pursuant to a judicial order or other compulsion of law, such Party shall be permitted to make such disclosure provided that it: (i) limits the disclosure to only that information which is required to be disclosed by such order or legal requirement, (ii) if permitted, provides the disclosing Party with prompt notice of such order or legal requirement, and (iii) reasonably assists the disclosing Party in obtaining a protective order, if requested and at the disclosing Party’s expense.

16.2. **Publicity.** Neither Party shall issue any publication or press release relating to, or otherwise disclose the existence of, the terms and conditions of any contractual relationship between Masergy and Customer without the prior written consent of the other Party; provided that this restriction will not prohibit Masergy from making internal announcements related to the completion and existence of the contractual relationship contemplated herein. The Agreement provides no right to use any Party’s or its Affiliates’ trademarks, service marks, or trade names, or to otherwise refer to the other Party in any marketing, promotional, or advertising materials or activities.

16.3. **Intellectual Property.** Title and intellectual property rights to (a) the Services and (b) any Software are, in each case, owned by Masergy, its agents, suppliers, or Affiliates or their licensors or otherwise by the owners of such material. The copying, redistribution, bundling, or publication of the Services, in whole or in part, without the express prior written consent of Masergy or other owner of such material, is prohibited.

16.4. Remedies. Notwithstanding any other article of the Agreement, the non-breaching Party shall be entitled to seek equitable relief to protect its interests pursuant to this Section 16, including, but not limited to, injunctive relief.

17. **Prohibited Uses; Masergy Policies; Prohibition on Resale**

17.1. Prohibited Users; Masergy Policies. Customer is prohibited from using, or permitting the use of, any Service: (i) for any purpose in violation of any law, rule, regulation, or policy of any government authority; (ii) in violation of the AUP available on the Website; (iii) for any use as to which Customer has not obtained all required government approvals, authorizations, licenses, consents, or permits; or (iv) to interfere unreasonably with the use of Masergy service by others or the operation of the Masergy Network. Customer is responsible for the compliance of its users with the provisions of the Agreement. Customer acknowledges and agrees that use of the Services, including by Customer, its Affiliates, and any users, shall be subject to the AUP. Notwithstanding anything to the contrary contained in Section 7, Masergy reserves the right to act immediately and without notice to: (i) terminate or suspend the Agreement and/or any Services or Service Order Form(s) if Masergy determines that such use or information is in violation of this Section and such termination will constitute a termination for cause; and (ii) terminate or suspend the Agreement and/or any Services or Service Order Form(s) in the event of fraudulent use of the Services and such termination will constitute a termination for cause. Customer acknowledges and agrees that Masergy is not obligated to detect or report unauthorized or fraudulent use of the Services to Customer.

17.2. Privacy Policy. Masergy will comply with the Masergy Privacy Policy (“Privacy Policy”) which is available at the Website. Masergy is not responsible for any information provided by Customer to third parties and Customer assumes all privacy and other risks associated with providing personally identifiable information to third parties via the Services.

17.3. Prohibition on Resale. Customer may not sell, resell, sublease, assign, license, sublicense, share, provide, or otherwise utilize in conjunction with a third party (including, without limitation, in any joint venture or as part of any outsourcing activity) the Services or any component thereof. For the avoidance of doubt, this prohibition includes Customer bundling the Services with any services or components of Customer that are then sold to end users of any kind.

17.4. Monitoring. Masergy shall have no obligation to monitor postings or transmissions made in connection with the Services, however, Customer acknowledges and agrees that Masergy and its agents shall have the right to monitor any such postings and transmissions from time to time and to use and disclose them in accordance with the Agreement, and as otherwise required by law or government request. Masergy reserves the right to refuse to upload, post, publish, transmit, or store any information or materials, in whole or in part, that, in Masergy’s sole discretion, is unacceptable, undesirable, or in violation of the Agreement.

18. **Miscellaneous**

18.1. Severability. If any provision of the Agreement is held by a court to be invalid, void or unenforceable, the remainder of the Agreement shall nevertheless remain unimpaired and in effect.

18.2. Relationship of the Parties. The Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party. Each Party acknowledges and agrees that any interpretation of the Agreement may not be construed against a Party by virtue of that Party having drafted the provision.

18.3. Force Majeure. Neither Party nor its Affiliates shall be liable for any delay, failure in performance, loss, or damage to the extent caused by an event of force majeure, including but not limited to fire, flood, explosion, accident, war, strike, embargo, power blackout, cable cuts, governmental requirement or acts of regulatory or governmental agencies, civil or military authority, Act of God, unforeseeable third party actions, acts or omissions of common

carrier, warehouseman, vendors or suppliers, including but not limited to providers of telecommunications services, or any other cause beyond the Party's reasonable control. Customer's failure to pay money shall not be excused. Any such delay or failure shall suspend the Agreement, with respect to the affected Service, until the force majeure condition ceases and Masergy shall retain the right to extend the Initial Service Term for such Service by the length of the suspension. For clarity, changes in economic, business, or competitive condition shall not be considered force majeure events.

18.4. No Waiver. The failure by either Party to take action to enforce compliance with any of the terms or conditions of the Agreement, or to give notice of any breach, shall not constitute a waiver or relinquishment of such right.

18.5. Governing Law; Venue. The Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware and the federal laws of the United States without regard to its conflict of law principles. Any claim or controversy arising out of or relating to the Agreement shall be brought exclusively in federal or state court located in Dover, Delaware and the Parties hereby consent to personal jurisdiction and venue in such court. Both Parties hereby waive any right to a trial by jury. To the extent permissible under applicable law, any action against Masergy based on or arising out of the Agreement or any other legal theory must be brought within one (1) year after the cause of action arises or after expiration or termination of the Agreement, whichever is earlier.

18.6. Notices. Except as otherwise identified herein, any notice sent pursuant to the Agreement shall be deemed given and effective when sent by e-mail (confirmed by certified mail), or when delivered by overnight express or other express delivery service, in each case, to the following addresses. Notices to Masergy must be addressed to Masergy Communications, Inc., 2740 North Dallas Parkway, Suite 260, Plano, Texas 75093, Attn: Contract Administration, and notices to Customer must be addressed to the Customer as set forth on the initial Service Order Form, or such other address as may be designated in writing by the respective Party.

18.7. Tariffs. Notwithstanding anything to the contrary in the Agreement, Masergy may be required to file with regulatory agencies tariffs for certain Services. In such event, the terms set forth in the Agreement may, under applicable law, be superseded by the terms and conditions of the tariffs. Without limiting the generality of the foregoing, in the event of any inconsistency between the Agreement and applicable Service Order Forms on one hand, and the relevant tariffs on the other hand, the rates and other terms set forth in the Agreement and applicable Service Order Forms will be treated as individual case-basis arrangements to the maximum extent permitted by law. If Masergy voluntarily or involuntarily cancels or withdraws a tariff under which a Service is provided to Customer, the Service will thereafter be provided pursuant to the Agreement and the terms and conditions contained in the tariff immediately prior to its cancellation or withdrawal. In the event that Masergy is required by a governmental authority to modify a tariff under which Service is provided to Customer in a manner that is material and adverse to the Customer, the Customer may terminate the applicable Service Order Forms upon a minimum thirty (30) days' prior written notice to the other Party, without further liability.

18.8. Consent to Communications from Masergy. Customer acknowledges and agrees that Masergy or third parties acting on Masergy's behalf may call or text Customer at any telephone number that Customer provides to Masergy or that Masergy issues to Customer and may do so for any purpose relating to Customer's account and/or the Services to which Customer purchased. Customer expressly consents to receive such calls and texts and agree that these calls and texts are not unsolicited. Customer acknowledges and agrees that these calls and texts may entail the use of an automatic telephone dialing system and/or artificial or prerecorded messages. Customer may not opt-out of receiving certain communications pertaining to Customer's account, including but not limited to communications regarding emergencies, fraud or other violations of law, security issues, and harm caused to the Masergy Network. Message frequency depends on Customer's activity with the Services. Message and/or data rates may apply.

18.9. Counterparts. The 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.



18.10. Survival. The terms and provisions contained in the Agreement and the Parties' rights and obligations hereunder, which by their nature would extend beyond the termination, cancellation or expiration of the Agreement, shall survive such termination, cancellation or expiration.

18.11. Construction. All correspondence between the Parties shall be in the English language. The article or section headings used herein are for reference only and shall not limit or control any term or provision of the Agreement or the interpretation or construction thereof.

18.12. Assignment and Successors in Interest. Customer shall not assign any right, obligation, or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of Masergy, which shall not be unreasonably withheld. The terms, covenants and conditions contained in the Agreement shall bind and inure to the benefit of the Parties and their respective administrators, successors and assigns.

18.13. No Third-Party Beneficiaries; Independent Contractors. Except as otherwise specifically set forth herein, the Agreement does not expressly or implicitly provide any third party (including users of the Services) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege. The Parties to the Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. The Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party. Each Party acknowledges and agrees that any interpretation of the Agreement may not be construed against a Party by virtue of that Party having drafted the provisions.

18.14. Entire Understanding; Order of Precedence. The Agreement shall supersede any and all prior agreements or understandings with respect to the Services described herein and comprises the full and final agreement of the Parties with respect to the subject matter contained herein. In the event of any conflict between the various documents included in the Agreement, the provisions of the Service Order Form shall in all respects govern and control, followed by, in order, the provisions of the applicable PSA, any amendment, this Master Service Agreement, the SLA, the AUP, and the Privacy Policy. Each Party represents and warrants that the persons who execute the Agreement on its behalf are duly authorized to do so.

18.15. Amendments; Changes to Agreement. The Agreement may not be amended except by a written agreement executed by the Parties; provided, that, notwithstanding the foregoing, Masergy may change or modify this Master Service Agreement, the PSAs, and any related policies (including the AUP and Privacy Policy) from time to time ("Revisions") by posting such Revisions to the Website. The Revisions are effective upon posting to the Website. Customer will receive notice of any Revisions in the next applicable monthly invoice. Customer shall have thirty (30) calendar days from the invoice notice of such Revisions to provide Masergy with written notice that the Revisions adversely affect Customer's use of the Service(s). If, after such notice, Masergy is able to verify such adverse effect but is unable to reasonably mitigate the Revisions' impact on such Services, then Customer may terminate the impacted Service(s) without further obligation (including Termination Charges) to Masergy beyond the termination date. This shall be Customer's sole and exclusive remedy for any Revisions. Customer acknowledges and agrees that terms or conditions contained in any Customer purchase order or similar Customer order form (regardless of whether executed by Masergy), or restrictive endorsements or other statements on any Customer form of payment, shall be void and of no force or effect. Without limitation to the foregoing, if (a) Customer requires Masergy to execute a Customer purchase order or other Customer order form for a Service or as a condition to receiving payment for the same and (b) Masergy executes such purchase order or Customer order form, Customer acknowledges and agrees that (i) Masergy's execution is solely for the purpose of assisting Customer in satisfying its internal procurement requirements and (ii) any terms and conditions contained in such purchase order or Customer order form shall be null and void and of no force or effect.