

MASTER SECURITY SERVICES AGREEMENT

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

1 SECURITY SERVICES AND SERVICE ORDERS

Customer may, at Customer’s sole discretion, subscribe to Services supplied by Masergy, using written forms or electronic documents specified by Masergy. For each of the specific Services to which Customer subscribes, Customer will (i) execute an attachment to this Master Security Services Agreement describing the Service in detail and setting forth the price, minimum duration of Service and any Service-specific terms and conditions (hereinafter a “Service Order Form” or “Statement of Work”, the term “Service Order Form” as used herein shall also include a Statement of Work), or (ii) consent to the terms of an electronic document delivered to Customer by Masergy containing information set forth in the Service Order Form. Customer consents to the terms of electronic documents and records in connection with the performance of this Master Security Services Agreement and delivery of the Services by Masergy. Each Service Order Form shall be attached to this Master Security Services Agreement and be identified by letters of the alphabet or numbers or a combination thereof. A Service Order Form shall be effective upon execution by both Parties. Unless otherwise specified, the fees set forth in any Service Order Form do not include applicable Taxes (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. All correspondence between the Parties shall be in the English language. As used in this document, the word “Agreement” shall apply to all promises, terms and conditions of the Parties contained in this Master Security Services Agreement, any Service Order Form(s) and any specific Service(s) documentation (a “Service Description”), available upon request; each of which is incorporated by reference. This Agreement shall supersede any and all prior agreements or understandings with respect to the Service described herein and comprises the full and final agreement of the Parties. In the event of any conflict between the various documents included in this Agreement, the provisions of the Service Order Form shall in all respects govern and control, followed by, in order, the provisions of this Master Security Services Agreement, and any Service Description.

2 TERM

- 2.1 This Agreement shall be effective as of the execution date of the initial Service Order Form by both Parties and shall continue through the expiration of the last Service Order Form that is in effect under this Agreement, unless earlier terminated as provided herein (hereafter the “Term”). The Initial Term of a particular Service shall mean the minimum term of Service as set forth in the Service Order Form, and shall commence on the earlier of: (i) the date Masergy confirms the Service has been delivered; or (ii) seven (7) days following Customer’s receipt of the equipment listed in the applicable Service Order Form (the “Commencement Date”). The Service shall automatically renew for additional one year terms (each an “Extension Term”) unless a Party provides the other Party with written notice pursuant to Section 12.7 at least sixty (60) days prior to the expiration of the Initial Term or the then current Extension Term that such Party intends not to renew a Service.
- 2.2 Any termination of this Agreement shall not relieve Customer of its obligation to pay any charges incurred hereunder prior to such termination, including without limitation, termination liabilities arising under Section 4. 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 PAYMENT

- 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.
- 3.2 Customer is responsible for all recurring charges and non-recurring charges specified in the Service Order Form from and after the Commencement Date. Service charges shall be invoiced monthly in advance. 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.
- 3.3 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 Customer to Masergy with respect to the Service(s), such authorization agreements or similar documents shall be deemed for 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). Masergy reserves the right to recover bank and/or finance fees related to payment when such payments are not made as per the remittance instructions on the invoice. If a payment due by Customer to Masergy under this Agreement is not received by the due date set forth above, Customer shall be liable for: (i) a late payment charge equivalent to the lesser of 1.5% per month or the maximum rate permitted by applicable law on any 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 set forth on the initial Service Order Form or such other 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.
- 3.4 If Customer disputes any portion of an invoice, Customer must (i) pay the undisputed portion of the invoice as set forth in Section 3.3; and (ii) submit a written claim to billing@masergy.com regarding the disputed amount and setting forth the particulars thereof for any disputed amounts withheld within sixty (60) days of the date printed on the invoice giving rise to the claim.
- 3.5 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 3.5 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.
- 3.6 If Customer elects to upgrade, relocate or otherwise change the place that Services are delivered, 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 4.5 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 Travel and Other Expenses. Subject to pre-approval in writing or via email by Customer, upon invoice from Masergy, Customer agrees to pay for any reasonable and necessary travel or other out-of-pocket expenses incurred by Masergy or its personnel in connection with the performance of Services.

4 TERMINATION/REMEDIES

- 4.1 Default. Each of the following events shall be deemed a "Default" under this Agreement, and the non-defaulting Party may terminate this Agreement or suspend Service upon: (a) any failure of Customer to pay any undisputed amounts as provided in this Agreement; or (b) any material breach by a Party of this Agreement; provided, however, that Masergy will not terminate or suspend Service unless a Default of Customer continues for more than thirty (30) days after written notification to Customer, or ten (10) days after written notice in the case of failure to pay money. Notwithstanding the foregoing, Customer shall also be in Default, and Masergy shall have the right to immediately terminate or suspend Service upon any violation by Customer of an applicable law, rule or regulation affecting the use of the Service or performance under this Agreement.
- 4.2 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.
- 4.3 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.
- 4.4 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 4.1 above if such Default continues for more than thirty (30) days after Customer's written notice to Masergy.
- 4.5 If Service provided pursuant to this Agreement is canceled or terminated before expiration of the Initial Term of such Service, or any Extension Term thereof: (a) by the Customer for any reason other than for a Default under this Agreement by Masergy; or (b) by Masergy due to a Default by Customer of this Agreement, Customer agrees to pay Masergy the following sums, which shall become due and owing as of the effective date of cancellation or termination and be payable within thirty (30) days thereafter: (i) all unpaid non-recurring charges, excluding any waived charges; (ii) all unpaid recurring charges for Services through the date of termination; (iii) one hundred percent (100%) of all recurring charges for canceled or terminated Services for the balance of the then current Term of the Service Order Form; and (iv) all fees related to the canceled or terminated Services that Masergy is charged by any and all third parties that Masergy is unable to avoid after using commercially reasonable efforts, including without limitation, all termination charges due to any and all third party service providers; provided, however, that such third party fees will not be separately charged if they are included in fees paid pursuant to subsection (iii) of this Section 4.5. 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.

- 4.6 Customer will provide written notification of Service termination to Masergy (i.e., electronic mail to disconnect-security@masergy.com, or by letter as per the notice provisions of Section 12.7) and the Service will be terminated the later of: (a) thirty (30) days past the date such written notice was received by Masergy; or (b) the termination date provided by Customer for the applicable Services.

5 WARRANTIES AND LIMITATION OF LIABILITY

- 5.1 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 EXPRESSED 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 OBLIGATIONS UNDER SECTION 9 (INDEMNITY) OR SECTION 7.2 (CONFIDENTIALITY) OR A PARTY'S LIABILITY UNDER SECTION 4.5, 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, LOST REVENUES, LOST PROFITS, LOST CUSTOMERS, LOSS OF GOODWILL, REPLACEMENT COSTS OR LOSS OF ACCESS TO THE SERVICES). MASERGY SHALL NOT BE LIABLE FOR CLAIMS BASED ON MODIFICATIONS OR ADAPTATIONS PERFORMED BY ANYONE OTHER THAN MASERGY.
- 5.2 MASERGY DOES NOT WARRANT OR GUARANTY THAT THE SERVICE WILL IDENTIFY OR PREVENT ALL VULNERABILITIES, THREATS, OR INTRUSIONS AND CUSTOMER ACKNOWLEDGES THAT THE SERVICE IS A TOOL FOR CUSTOMER TO USE IN ORDER TO ASSIST IN SUCH IDENTIFICATION AND PREVENTION EFFORTS.
- 5.3 Internet Use. Customer assumes total responsibility for its and its users' use of the Internet. Masergy specifically disclaims any warranties, endorsements or representations regarding any merchandise, information, software, products, data, files, or services provided through the Internet.
- 5.4 NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY IN FRAUD, OR PERSONAL INJURY OR DEATH CAUSED BY ITS NEGLIGENCE.

6 NON-SOLICITATION OF EMPLOYEES

Each Party agrees that, during the Term of this Agreement and for a period of six (6) months thereafter, neither such Party nor such Party's representatives or agents shall directly or indirectly initiate any discussions or negotiations regarding the hiring of any officer or employee of the other Party so employed at the time without the prior written consent of the other Party. For purposes of this Section 6, general solicitations of employment not targeted at employees or officers of a Party shall not be deemed to be restricted hereunder.

7 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 7.1 Customer agrees that all inventions, ideas or processes developed or conceived by Masergy or any employee, agent or contractor of Masergy contained in any Masergy equipment or in connection with the performance of Services shall be the sole property of Masergy.
- 7.2 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 7.2, 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 7.2 and any separate confidentiality or non-disclosure agreement between the Parties, the provisions of the separate agreement shall in all respects govern and control.

- 7.3 Exclusions. Notwithstanding anything to the contrary in this Agreement, Masergy shall have the right to compile and distribute statistical analyses and reports utilizing aggregated data derived from information and data obtained from Customer, other Masergy customers, and other sources for use in global threat correlation. Such reports and analyses are for the mutual benefit of all Masergy customers and shall be appropriately edited and shall not identify Customer or any employee or business partner of Customer.
- 7.4 Software and Intellectual Property. Masergy may make certain software available to Customer in connection with its Services (“the Software”). Customer’s use of this Software is subject to any software license terms that Customer may be required to consent to as a condition to using the Software. CUSTOMER ACKNOWLEDGES THAT MASERGY AND MASERGY’S THIRD-PARTY SOFTWARE SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THOSE ARISING FROM COURSE OF DEALING AND USAGE OF TRADE WITH RESPECT TO ANY SOFTWARE.
- 7.5 Personal Data. For purposes of this Agreement, the term “Personal Data” has the meaning set forth in the EU Directive 95/46/EC as follows: “any information relating to an identified or identifiable natural person (‘data subject’); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or one or more factors specific to his physical, physiological, mental, economic, cultural or social identity”. Masergy warrants and represents that the Services provided under this Agreement do not download, collect or store Personal Data as a function of the Service. To the extent Customer provides Masergy with Personal Data, Masergy shall only process such Personal Data solely at the direction of Customer, in accordance with Customer’s written instructions and in accordance with all applicable privacy and data protection regulations.

8 MASERGY EQUIPMENT, ACCESS AND SOFTWARE

- 8.1 Customer shall be liable for any damage to Masergy’s equipment, facility, or system caused by; (a) negligent or willful acts or omissions of Customer or otherwise attributable to Customer; or (b) malfunction or failure of any equipment or facility provided by Customer or its agents, employees or suppliers. Customer shall remove any existing hazardous materials or condition prior to any work being performed by Masergy on Customer’s premises.
- 8.2 Customer shall use reasonable measures to ensure that any facility or equipment of Masergy located at Customer’s premises is not rearranged, moved, removed, disconnected, altered, or repaired without Masergy’s prior written consent. Customer acknowledges that the equipment and systems provided by Masergy have been developed using proprietary technology and trade secrets and Customer shall not (and shall not allow third parties to) disassemble or reverse engineer any equipment or system provided by Masergy and shall not otherwise attempt to recreate or develop functionally similar equipment or systems (or allow third parties to do so). 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.
- 8.3 All equipment provided by Masergy is and will remain the property of Masergy. At any time during the Term of this Agreement, Masergy may, upon reasonable notice to Customer, upgrade, remove or change the Masergy provided equipment in its sole discretion in connection with providing the Services. In the event of Service termination, all equipment provided by Masergy must be returned to Masergy, in substantially the same condition (normal wear and tear excepted). If the equipment has

not been returned to Masergy within thirty (30) days of Service termination, Masergy reserves the right to invoice Customer a rental fee of one thousand (\$1,000) USD per device each month until the equipment is returned to Masergy. If the equipment is returned to Masergy in poor condition or missing pieces, the cost to recondition the equipment will be added to the Customer's invoice.

- 8.4 The firmware, plug-ins and software included in or associated with any Masergy provided equipment or Services, all updates, upgrades, patches, and bug fixes thereto (collectively, the "Software"), and all intellectual property rights therein, are owned by Masergy or its suppliers or licensors (each of such suppliers and licensors shall be referred to herein as a "Licensor"). Customer agrees and acknowledges that (i) in order to utilize some Services or portions thereof or access its data, applications, devices and network (collectively, the "Resources"), Customer may be required to first download, or to permit to be downloaded, Software; (ii) the IT environment is very dynamic and always changing with updates and upgrades to hardware, application software, firmware, operating systems, etc.; (iii) any device onto which such Software cannot be downloaded, or does not otherwise function properly, may be unable to utilize some or all of the Services or access some or all of the Resources; (iv) downloading and installing any Software will require system memory, disk space and may negatively impact the processing speed of Customer's Resources for which neither Masergy, or Licensor will be liable, unless due to the gross negligence or willful misconduct of Masergy or Licensor; (v) it is responsible for taking appropriate steps to safeguard its Resources; (vi) it will not reproduce, modify, distribute, publicly display, or reverse engineer, decompile or otherwise attempt to discover the source code for the Software, or otherwise infringe upon the intellectual property rights of its respective owner; and (vii) changes to any other software, hardware or the combination thereof associated with the Services by Customer may render partially or fully unavailable the Service that was previously available.
- 8.5 Masergy Network Security. Masergy acknowledges and agrees that Masergy is responsible for Masergy's data, applications, devices and network, including without limitation the software, and equipment (collectively, the "Masergy Network"). More particularly, Masergy is responsible for the virtual and physical security of the Masergy Network and the development of reasonable physical and virtual security safeguards, policies, and procedures, including, without limitation, the use of intrusion detection, and antivirus software. Masergy agrees to take commercially reasonable steps to protect virtual and physical access to the Masergy Network.
- 8.6 Customer Network Security. Customer acknowledges and agrees that Customer is responsible for Customer's network and Resources, including without limitation the software, equipment, any remote computers and devices, and any wireless or wired Internet connection that Customer uses to access the Software or Services (collectively, the "Customer Network"). More particularly, Customer is responsible for the virtual and physical security of the Customer Network and the development of reasonable physical and virtual security safeguards, policies, and procedures, including, without limitation, the use of industry recognized internet security, and antivirus software. Customer agrees to take commercially reasonable steps to protect virtual and physical access to the Software and Services originating from the Customer Network.

9 INDEMNITY

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

9.2 **Indemnity by Customer.** Customer hereby agrees to indemnify and defend Masergy, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, representatives and agents (collectively, the “**Masergy Indemnified Parties**”), from and against, and hold the Masergy Indemnified Parties harmless from, any and all Claims asserted by any third party against or incurred by the Masergy Indemnified Parties, including any Claims of Customer, to the extent such Claims arise out of or directly result from (i) Customer Negligence; or (ii) the misuse of the Services by Customer or a user who is given access to the Services by Customer. “Customer Negligence” shall mean the gross negligence or intentional misconduct of Customer or Customer’s principles, officers, directors, agents or employees.

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

10 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.

11 COMPLIANCE WITH LAWS

11.1 In the course of performance of its obligations under this Agreement, each Party agrees to comply with applicable laws and ordinances, and all rules and regulations thereunder.

11.2 This Agreement is entered into for the benefit of the Parties alone, and the Contracts (Rights of Third Parties) Act is hereby expressly excluded.

11.3 To the extent that they may apply to the Agreement, the non-mandatory provisions of the Commercial Agents (Council Directive) Regulations 1993 (as amended) are hereby excluded.

12 MISCELLANEOUS

12.1 **Relationship of 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.

12.2 **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party (which consent shall not be unreasonably withheld or unduly delayed), except that either Party may assign this Agreement and have its rights and obligations assumed hereunder: (a) to any Affiliate of said Party; (b) pursuant to any sale or transfer of the majority of the stock or controlling interest of such Party; (c) pursuant to any sale or transfer of substantially all of the assets of said Party related to this Agreement; or (d) pursuant to any merger, restructuring or reorganization. As used in this 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). The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the Parties and their respective administrators, successors and assigns.

- 12.3 **Severability.** If any provision of this Agreement is held by a court or other governmental entity to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless remain unimpaired and in effect.
- 12.4 **Non-Waiver.** The failure by either Party to take action to enforce compliance with any of the terms and conditions of this Agreement, or to give notice of any breach, shall not constitute a waiver or relinquishment of such right.
- 12.5 **Governing Law.** This Agreement shall be governed by the laws of England and Wales and each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts except that either Party may apply for injunctive relief to any court of competent jurisdiction. In any action between the Parties to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover its legal fees and court costs from the non-prevailing Party in addition to whatever other relief a court may award.
- 12.6 **Headings.** The captions or headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions hereof.
- 12.7 **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., Attn: Contract Administration, 2740 North Dallas Parkway, Suite 260, Plano, Texas 75093, USA. Notices to Customer must be addressed to the Customer as set forth on the initial Service Order Form or such other address as may be designated in writing by the respective Party.
- 12.8 **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.