

# LOGIN, LLC.

## Master Service Agreement

This Master Service Agreement (this “Agreement”) between Login, LLC (“Company”) and the Customer which is the signatory to each applicable Service Contract defined below (“Customer”) and is entered into and effective as of the later of the dates set forth on the signature page to the Service Contract(s). Any capitalized terms not defined herein shall have the meanings set forth in Appendix A.

### 1. Overview.

1.1 General. This Agreement states the terms and conditions by which Company delivers and Customer accepts the specific services, managed services, and/or products to be provided hereunder are set forth in each ordering document signed both by the Company and the Customer (each a “Service Contract”). Each Service Contract shall contain, at a minimum, the specific services and products, term, Service Activation Date, and pricing. Upon execution of the Service Contract by both Customer and Company, this Agreement shall be automatically incorporated into the Service Contract. If Customer purchases any equipment from Company (as indicated in any Service Contract), then the terms and conditions set forth in Schedule A shall govern all such purchases. In case of any conflicts between the Service Contract and this Agreement, the Service Contract will control.

### 2. Delivery of Services; Terms; Fees.

#### 2.1 Term.

(a) Term Commencement. This Agreement shall continue in full force and effect until the termination of the Service Contract. The initial term for Service Contracts with a single location will commence on the service activation date and shall continue for the entire initial term as set forth in the Service Contract, and each renewal term. If initially contracted services or products are to be installed at more than one location, then the Customer’s obligation to pay for each individual location shall begin when that location is activated, and the initial term of the Service Contract shall commence when the final location of the initial Service Contract is activated. Any services requested by Customer and provided by Company subsequent to the execution of the original Service Contract will be known as supplemental Services, and shall be governed by all terms and conditions of the Service Contract and this Agreement, including but not limited to the applicable initial term and/or renewal term, however the Company in its sole discretion may, upon 30 days written notice, release Customer from individual service upgrades which were upgraded through usage and not through formal written addition to the Service Contract.

(b) Renewal Term. Each term of each Service will renew automatically for additional terms equal in length to twelve (12) months (each a “Renewal Term”) unless Customer notifies Company in writing not less than thirty (30) calendar days prior to the end of the Initial Term (or any subsequent Renewal Term, as applicable), that it wishes to terminate such Service. The termination of any individual Service will not affect Customer’s obligations to accept and pay for all other contracted Services.

(c) Early Termination. Customer acknowledges that actual damages resulting from an early termination of this Agreement or any Service Contract for default by Customer are very difficult to estimate. Accordingly, in the event of any termination by Customer for default or any other reason, Customer agrees that a reasonable estimate of early termination damages are, and that Customer shall pay Company as liquidated damages and not a penalty, seventy-five percent (75%) of the undiscounted monthly fee set forth in the Service Contract (the net60 rate and not the LPP rate or the net30 rate) together with the net60 rate (not the LPP or net30 rate) for any supplemental Services added to this Agreement for each Service at the time of such termination multiplied by the total number of months remaining in the then current term for each such Service. Further, to the extent not included in the foregoing, Customer remains liable for any termination or other fees (including telco fees) of all third parties contracted by the Company on behalf of Customer, as set forth in Section 3.1 and any Service Contract, and any accrued but unpaid monies, along with collection costs and attorneys' fees regardless of whether suit is filed.

(d) Late Termination. Customer acknowledges that its facilities that are scheduled to be used elsewhere may not be available to allow Customer to remain month-to-month beyond its scheduled date of termination of Service. Accordingly, Customer realizes that the actual costs to Company to provide such Service beyond the termination of Service may be significantly higher, and Customer therefore agrees that should it use the Service after termination without a new Service Contract, Customer shall pay the then-current monthly rate for such expired Service multiplied by three (3).

### **3. Fees and Payment Terms.**

3.1 Fees and Expenses. Customer will pay all fees due in full according to the prices and terms listed in all Service Contracts. Further, Customer shall pay Company for all fees or costs for any third party services that Company procures on behalf of Customer and are listed on each Service Contract. The prices listed in the Service Contracts will remain in effect during the Initial Term indicated in the Service Contracts, and pricing for each Renewal Terms shall be at Company's then-current pricing.

3.2 Payment Terms. On the Service Activation Date for each Service, Company shall bill Customer for all non-recurring fees indicated in the Service Contract, prorated monthly recurring fees for the actual turn up month and the monthly recurring fees for the first full month of the term. Company shall invoice Customer for the monthly recurring fees for all subsequent months on or about the first day of the month in which such Services were provided. All other fees for Services received and expenses incurred for Services during a month (e.g., professional services) will be invoiced at the beginning of the month following the month in which the Services were provided. All payments will be made in U.S. dollars without offset or deduction.

3.3 Timing of Payments and Discounts. There are three tiers of pricing categories: 1) Net60, which applies to Net Monthly Payments received by the Company more than 30 days after the invoice date and no discounts are earned or applied, 2) Net30, which applies to Net Monthly Payments received by the Company within 30 days after the invoice date and by virtue of the timing of the payment a discount from the Net60 rate is earned by the Customer, and 3) the Login Payment Plan ("LPP") which includes an additional discount for Customers who formally enroll in and utilize an ACH collection method whereby the Company receives the Net Monthly Payment by

the tenth day of the month (or the next business day if the tenth day is not a business day) through an automated collection system where the Customer automatically and electronically transmits its entire Net Monthly Payment through to the Company or a method whereby the Company automatically receives the Net Monthly Payment by the tenth day of the month (or the next business day of the tenth day is not a business day) through an automated collection system where the Company automatically and electronically charges a Customer account. Customers who enroll in the LPP but whose Net Monthly Payment fails for any reason to be processed into the Company's account by the tenth day of the month (or the next business day if the tenth day is not a business day) shall not be entitled to the LPP discounted rate, but such customers may re-enroll in the LPP for the following month however not more than two such enrollments may occur in any calendar year; all LPP Customers are responsible for ensuring sufficient funds are available and all aspects of the electronic programs are properly established in order to qualify for the LPP rate. Any payment not received within thirty (30) calendar days of the date of the invoice will not have earned any discounts and will automatically be rated at the Net60, will not be entitled to the Net30 rate or the LPP rate, and additionally will accrue interest at a rate of one and one-half percent (1½%) per month compounded annually, or the highest rate allowed by applicable law, whichever is lower. If Customer does not make any Net Monthly Payment within 60 days after the invoice date, Company may, upon written notice to Customer, modify the payment terms to require full payment before the provision or continued use of all Services (both currently contracted and scheduled future provisioned) and Company Supplied Equipment, or require other assurances to secure Customer's payment obligations hereunder. Customers more than 60 days past due are also subject to immediate disconnection and such disconnection shall constitute Early Termination on the part of the Customer as per Section 2.1(c). If any Net Monthly Payment remains unpaid more than 60 days after the invoice date, the Company may retain, and the Customer hereby consents to said retention, any Customer property including servers, phone numbers ported into Company's system, or any other physical, electronic or virtual property until the accounts are paid in full as set forth herein. If any Net Monthly Payment remains unpaid more than 120 days after the invoice date, the Company may also assume ownership of said Customer property or sell it and apply the liquidation value to the unpaid invoice. Customer hereby authorizes Company or its designee to charge Customer's credit or debit card on a recurring basis for any recurring fees consistent with this Agreement and the applicable Service Contract using the information Customer previously provided to Company.

3.4 Taxes. All fees charged for Services are exclusive of all taxes, levies, tariffs, duties, and similar fees now in force, enacted or imposed in the future on the transaction and/or the delivery of Services, all of which Customer will be responsible for (including new/future taxes imposed upon the Company) and will pay in full, except for taxes solely based on Company's net income.

#### 4. Confidential Information.

##### 4.1 Confidential Information.

(a) Nondisclosure of Confidential Information. Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, vendors, employees, customers, technology, products, and other information held in confidence by the other party (collectively, "Confidential Information"). Confidential

Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to, the terms and conditions of this Agreement. During the pendency of this Agreement and for a period of two years after any termination of this Agreement, each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or to the limited extent required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to such party's attorneys, accountants and other advisors as reasonably necessary), any Confidential Information of the other party. Each party will take reasonable precautions to protect the confidentiality of the Confidential Information of the other party that are at least as stringent as it takes to protect its own Confidential Information.

(b) Exceptions. Information will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

(c) Privacy. Each party shall comply with its obligations arising from applicable data protection and privacy laws to the extent applicable to this Agreement and the Services provided. Further, each party has implemented and shall maintain an information security program including reasonable administrative, technical and physical measures designed to secure and protect the confidentiality, integrity and availability of all personal data and personal information (as defined under applicable privacy laws) while in such party's possession against unauthorized, unlawful or accidental access, disclosure, transfer, destruction, loss or alteration. Further, Customer acknowledges and agrees that Company's then-current privacy policy located at <https://www.loginbusiness.com/privacy-policy/> applies to all processing of personal data and personal information in connection with delivery of the Services.

## **5. Company Representations and Warranties.**

5.1 Authorities and Performance of Company. Company warrants that (i) it has the legal right to enter into this Agreement and perform its obligations hereunder (ii) it will provide and perform the Services in a manner consistent with industry standards and the requirements set forth in the applicable Service Contract. Customer acknowledges and agrees that Customer is not a telecommunications carrier, as Company purchases Internet Bandwidth and other services from licensed carriers, and connects these to Customer's network.

5.2 Disclaimer of Third Party Actions. Customer acknowledge and agrees that Company does not and cannot control the flow of data to or from the Company Network or within

any portion of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof). Although Company will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, Company cannot guarantee that such events will not occur. Accordingly, except to the extent of the express warranties set forth in any attached Schedule A, Company disclaims any and all liability resulting from, or related to, such events.

5.3 Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 5.1, THE SERVICES ARE OTHERWISE PROVIDED ON AN "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS, AND COMPANY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF QUALITY, PERFORMANCE, NONINFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMPANY DOES NOT WARRANT THAT THE VOICE OR CONNECTIVITY OR DATA CENTER SERVICES PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE, THAT DEFECTS WILL BE CORRECTED; OR THAT THE SERVICES ARE FREE FROM ANY HARMFUL COMPONENTS, INCLUDING, WITHOUT LIMITATION, VIRUSES. COMPANY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE INFORMATION (INCLUDING ANY INSTRUCTIONS) CONTAINED WITHIN THE SERVICES IS ACCURATE, COMPLETE, OR USEFUL. CUSTOMER ACKNOWLEDGES THAT ALL USE OF THE SERVICES IS AT CUSTOMER'S AND ITS END USER'S SOLE RISK. COMPANY DOES NOT WARRANT THAT USE OF THE SERVICES IS LAWFUL IN ANY PARTICULAR JURISDICTION, AND COMPANY SPECIFICALLY DISCLAIMS SUCH WARRANTIES. BY ACCESSING OR USING THE SERVICES, CUSTOMER REPRESENTS AND WARRANTS THAT ITS ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE CUSTOMER ACCESSES OR USES THE SERVICES. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO CUSTOMER TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO CUSTOMER AND THIS AGREEMENT.

## 6. Customer Obligations.

### 6.1 Warranties of Customer.

(a) General. Customer represents and warrants that (i) it has the legal right and authority, and will continue to own or maintain the legal right and authority, during the term of this Agreement, to use any Customer Equipment as contemplated under this Agreement; and (ii) the performance of its obligations and use of the Services by Customer, including, without limitation, all content and data transmitted by and through the Services, does not and will not violate, infringe upon, or misappropriate any applicable intellectual property rights, privacy rights, laws, regulations or the AUP or cause a breach of any agreements with any third parties, or unreasonably interfere with use of the services offered by the Company to third parties.

(b) Breach of Warranties. In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Company will have the right, in its sole discretion, to suspend immediately any of the Services if deemed reasonably necessary by Company to prevent harm to Company or its business. If practicable and depending on the nature of the breach, Company may in its sole discretion choose to provide notice of the breach and an opportunity to cure.

6.2 Compliance with Law and AUP. Customer shall use the Service(s) only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all applicable laws and regulations and the AUP, as updated by Company from time to time. The AUP is incorporated herein and made a part hereof by this reference. Company may change the AUP by posting such changes to the Company web site located at <https://www.loginbusiness.com/acceptable-usage-policy/>. Customer agrees that it has received, read and understands the current version of the AUP. The AUP contains restrictions on Customer and Customer's users' online conduct (including, but not limited to, prohibitions against unsolicited commercial email). Customer shall comply with such restrictions and, in the event of a failure to comply, Customer will be subject to immediate suspension or termination of Services. Notwithstanding any suspension or termination of the Service due to violation of this Section 6.2, Customer shall continue to pay its committed monthly Service Charge and all other charges as set forth on all Service Contracts. Customer will provide Company with twenty-four (24) hour contact information for notification of AUP violations, which notification shall be sent by sending an email to [support@loginbusiness.com](mailto:support@loginbusiness.com) (or other methods that may be provided by the Company) for the original and any subsequent changes. Customer acknowledges that Company exercises no control over the content of the information passing through Customer's Services and that it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all applicable laws and regulations and the AUP.

6.3 Restrictions on Use of Services. Customer shall not, without the prior written consent of Company (which may be withheld in its sole discretion), resell, lease, rent, or otherwise sublicense the Services, in whole or in part, to any third parties.

#### 6.4 Company Supplied Equipment or Service

(a) Delivery and Term. On or prior to the Service Activation Date, if required, Company shall deliver to Customer, at the designated Customer Location, any contractually obligated Company Supplied Equipment. Customer shall have the right to use the Company Supplied Equipment for the Initial Term set forth in the Service Contract and any additional period agreed to by Company as defined in this Agreement. Customer shall not remove or alter in any manner any Company Supplied Equipment without the prior written consent of Company. Customer will not remove, alter or destroy any labels on the Company Supplied Equipment stating that it is the property of Company. If in the course of installing, maintaining, operating or repairing the Services, it is necessary for Company to access the Customer Equipment or Customer Location, then Customer shall allow reasonable access to Company Supplied Equipment for Company employees and/or designated authorized agents. The Customer must provide prior written notice and obtain written approval from Company (which written notice and/or approval may occur electronically through Company's support/ticketing platforms) before moving any

Company Supplied Equipment from the address listed on the applicable Service Contract that accompanies the Company Supplied Equipment.

(b) Title. The Company Supplied Equipment shall always remain the sole property of Company. Customer shall have no right or interest in or to the Company Supplied Equipment except for the usage rights as expressly provided in this Agreement and the applicable Service Contract. Customer shall use and possess the Company Supplied Equipment subject and subordinate to the rights of Company. Customer will, at its own expense, keep the Company Supplied Equipment free and clear from any liens or encumbrances of any kind and will indemnify and hold Company harmless from and against any loss or expense caused by Customer's failure to do so. Customer shall give Company immediate written notice of any attachment or judicial process affecting the Company Supplied Equipment or Company's ownership.

(c) Use, Maintenance and Repair. Customer will, at its own expense, keep the Company Supplied Equipment in good repair, appearance and condition, other than normal wear and tear. Customer shall use the Company Supplied Equipment in a commercially reasonable manner. The Customer will be responsible for any reasonable assistance requested by Company in the repair process (i.e. boxing equipment up and shipping it to Company or providing access to the equipment for Company or third party personnel).

(d) Upgrades and Additions. Customer may not affix or install any accessory, addition, upgrade, equipment or device on to the Company Supplied Equipment (other than electronic data) unless expressly approved in writing by Company.

(e) Customer Obligations. Customer warrants that Customer will provide always current address information for billing and E911 services. Customer must keep this information current with Company, and Customer accepts all liabilities and risks in the event of Customer's failure to do so. Without limiting the foregoing, Customer acknowledges that Internet delivery of telecommunications service may, like cellular telephone service, not be available 100% of the time and Customer shall keep a "hardline" or "landline" for facsimile, alarm monitoring and/or failsafe E911 usage, and Company hereby disclaims all responsibility and liability in connection with any downtime caused by circumstances outside Company's exclusive control.

(f) Loss or Damage. Customer shall reimburse Company, on a time and materials basis as documented in an invoice, for the entire cost to repair and/or replace Company Supplied Equipment in the event of (a) misuse, (b) failure to exercise reasonable care, (c) damage, (d) theft or (e) disaster.

6.5 Customer Events of Default. Customer's failure to perform any other obligation under this Agreement within five (5) business days after notice of nonperformance shall be considered a material breach.

## 7. Limitations of Liability.

7.1 Damage to Customer Equipment. Company is not liable for any damage to, or loss of, any Customer Equipment resulting from any cause other than from the willful misconduct of Company. Further, to the extent Company is liable for any damage to, or loss of, Customer

Equipment, such liability will be limited solely to the then-current replacement value of the Customer Equipment, excluding lost data, software and firmware.

7.2 Consequential Damages Waiver. To the fullest extent permitted by applicable law, in no event will the Company be liable or responsible to the Customer or any other party for any special, incidental, punitive, indirect, exemplary, or consequential damages, including, but not limited to, lost revenue, lost profits, business interruption, replacement goods, loss of technology, rights or services, loss of data, corruption of data, loss of good will, or interruption or loss of use of service, materials or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise.

7.3 Basis of the Bargain; Failure of Essential Purpose. The parties acknowledge that Company has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

7.4 Disclaimer of Third Party Damages. Without limiting anything else herein, Company is not liable for any damages whatsoever caused by third parties or due to circumstances outside its reasonable control.

7.5 Personal Injury. Customer's representatives, and any other Customer invitees visiting the Data Center (i) are subject to all Company visitor policies; and (ii) do so at their own risk, and Company shall not be liable for any harm to such representatives or invitees.

7.6 Maximum Liability. IN NO EVENT WILL COMPANY'S AGGREGATE LIABILITY TO CUSTOMER OR CUSTOMER PARTIES ARISING FROM OR RELATED TO THIS AGREEMENT WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, EXCEED THE AMOUNT PAID BY CUSTOMER TO COMPANY UNDER THE SERVICE CONTRACT GIVING RISE TO SUCH LIABILITY IN THE THREE (3) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE. All claims must be made no later than thirty (30) days of the date of the claim event, and a one year statute of limitations shall apply to all causes of action in any lawsuits brought by Customer against the Company or any of its employees, agents, affiliates, directors or shareholders.

## **8. Indemnification.**

8.1 Indemnification. Customer hereby releases and will indemnify, defend, and hold Company, its affiliates, members, shareholders, officers, directors, employees, agents, representatives and customers (collectively, the "Login Indemnified Parties") harmless for from and against any and all costs, liabilities, judgments, actions, losses and expenses (including, but not limited to, reasonable attorneys' fees and expenses) arising out of any threatened or actual claim, suit, action, arbitration or proceeding made or brought against any Login Indemnified Party arising out of or relating to: (a) the actual or alleged breach of this Agreement, the applicable Service Contract, AUP, or applicable Laws by any of the Customer Parties; (b) the actual or alleged negligence or willful misconduct by any of the Customer Parties; (c) Customer's responsibilities



under this Agreement, Service Contract, AUP, Customer Equipment, Customer materials, Customer's business, and/or the actions (or failure to act) of any Customer end user; or (d) the transportation, use, storage, generation, manufacture, handling, disposal, release, discharge, spill or leak of any Hazardous Material upon or about the Customer Area or the Data Center by any Customer Party (collectively, a "Covered Claim"). The foregoing indemnity includes, without limitation, claims of infringement of any trademark, copyright, patent, trade secrets or nonproprietary rights (including, without limitation, defamation, libel, violation of privacy or publicity), or any injury to or death of any person or damage to any property occurring upon the Customer Area, the Data Center or the land of which the Data Center is a part. Customer is responsible and liable for all acts or omissions of the Customer Parties, and all such acts or omissions will be attributed to Customer for all purposes under this Agreement (to the same extent as if Customer had committed the act or omission). In the event of a Covered Claim, a Login Indemnified Party may select its own counsel at Customer's expense to participate in the defense of such claim, and Customer shall not settle a Covered Claim in a manner that imposes any penalty, liability, equitable or declaratory relief, or limitation on any Login Indemnified Party without Company's express written consent.

8.2            Notice. Customer's indemnification obligations hereunder shall be subject to: (i) receiving prompt written notice of the existence of any Action; (ii) being able to, at its option, control the defense of such Action; (iii) permitting the indemnified party to participate in the defense of any Action; and (iv) receiving full cooperation of the indemnified party in the defense thereof.

## 9.        Termination.

9.1            Termination for Cause. In addition to the other provisions of this Agreement, A party may elect in writing, and allowing thirty (30) days' notice, to terminate this Agreement if: (i) the other party materially breaches any provision of this Agreement or any Service Contract; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) calendar days of filing.; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) calendar days of filing.

9.2            Effect of Termination. Upon the effective date of termination of this Agreement:

(a)            Company will cease providing the Services after the notice of termination;  
and

(b)            any and all payment obligations of Customer under this Agreement for Services provided through the date of termination will immediately become due. If Customer fails to pay such amounts on the date due, then Company shall impose the late fees set forth in Section 3.3; and

(c) within thirty (30) calendar days of such termination, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information, except as required to comply with any applicable legal or accounting record keeping requirement; and

(d) Customer will remove, package and ship (shipping charges will be paid by Company) (such removal and packaging to be undertaken in a commercially reasonable manner) all Company Supplied Equipment back to Company within fifteen (15) calendar days of effective date of termination. If Customer fails to do so, Company will have the right to (a) charge the Customer and the Customer will pay the fair market value of the Company Supplied Equipment and (b) recover and take possession of such Equipment, and for this purpose may enter any premises of Customer where such equipment is located during normal working hours to remove Company Supplied Equipment. Customer will promptly surrender the Company Supplied Equipment to Company in as good order and condition as originally delivered, reasonable wear and tear excepted.

9.3 Survival. The rights and obligations of the parties in this Agreement that should by their nature or context be intended to survive the expiration or termination of this Agreement shall so survive.

## **10. Miscellaneous Provisions.**

10.1 Force Majeure. Except for Customer's obligation to make payments to Company, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or omissions of Company), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

10.2 Marketing. Customer agrees that, during the term of this Agreement, Company may publicly refer to Customer and use Customer's name and logo, orally and in writing, as a customer of Company. Customer must receive express written permission from Company prior to publicly referring to Company as an entity supplying services to Customer.

10.3 Government Regulations. Customer will not export, re- export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

10.4 VoIP. If Company provides a telephone system, the Company will configure it according to the call-routing flow provided by Customer. Once the initial call-routing flow has been provided by Customer to Company, no changes may be requested until the initial configuration is complete. The initial configuration will be provided by the Company at no charge. Subsequent reconfigurations will be provided by the Company at a reasonable charge. The Company may limit or prohibit international calling without a separate agreement and/or deposit.

Customer is responsible for all charges incurred as a result of the use of the telephones, without any exceptions, even if the Customer did not authorize said use.

10.5 Colocation. If Customer contracts for a locked cabinet or partition, Customer must designate no more than two customer representatives authorized to access the cabinet or partition. Each said Customer representative shall submit a background check form authorizing a complete investigation by Company including criminal background check. Further, each Customer representative shall physically come to the Company and register for multi-factor physical access controls, including biometric iris scanning, receive training on Company procedures for access, and sign for documentation of facility access procedures. Customer will then have access to the cabinet or partition seven days a week, 365 days per year, 24 hours per day. Installation of new equipment must be accomplished during normal business hours with reasonable notice to the Company.

10.6 Law Enforcement. The Company maintains a law enforcement policy by which it will cooperate with validly issued subpoenas and warrants. Customer may review a copy of the policy upon request. Customer agrees to reimburse Company for reasonable legal expenses incurred by Company for responding to subpoenas and warrants related to the Customer.

10.7 DMCA. Company cooperates with DMCA takedown notices that Company determines in its sole discretion are sworn to by live human beings (not automated), the items are clear violations of copyright law, and are not covered by fair use. Customer agrees to reimburse Company for reasonable legal expenses in analyzing or responding to DMCA notices related to Customer.

10.8 No Third Party Beneficiaries. Company and Customer agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement, including but not limited to the insurance providers for either party or the customers of Customer.

10.9 Governing Law; Dispute Resolution. This Agreement is made under and will be governed by and construed in accordance with the laws of the State of Arizona and the County of Pima (except that body of law controlling conflicts of law). The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims related to this Agreement. Failing such amicable settlement, any controversy, claim, or dispute arising under or relating to this Agreement, under any legal theory including tort, contract, equity or other including but not limited to the existence, validity, interpretation, performance, termination or breach thereof, shall be settled in either the state or federal courts located in Pima County, Arizona, and the case shall be tried to a court sitting without a jury. Each party recognizes that it is waiving its rights to have a jury hear any matters connected to the case, that this is a waiver of substantial rights, and that serious consideration has been given to this point including consultation with legal counsel if deemed appropriate. The prevailing party in any dispute hereunder shall be entitled to recover attorneys' fees and expenses.

10.10 Severability; Waiver. If any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to the law, then the remaining provisions of this Agreement will remain in full force and effect. The waiver of any breach or default of this Agreement will not

constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

10.11 Assignment. Upon the prior written notice to Company, Customer may assign this Agreement in whole as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets provided the assignee's financial condition and credit rating is comparable to or better than that of Customer and (as would be reasonably determined) the proposed assignee is not one of the Companies major competitors. Customer remains responsible for all obligations hereunder even after assignment. Customer may not otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Company, and any attempted assignment or delegation without such consent will be void. Customer agrees to reimburse Company for reasonable expenses including attorneys' fees related to the evaluation of any request by Customer for assignment. Company may assign this Agreement in whole or part. Company also may delegate the performance of certain Services to third parties, including Company's wholly owned subsidiaries, provided Company controls the delivery of such Services to Customer and remains responsible to Customer for the delivery of such Services. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

10.12 Notice. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email, confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed on the Service Contract or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered, mailed, emailed, faxed or sent, whichever is earlier.

10.13 Relationship of Parties. Company and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Company and Customer. Except as specifically set forth in Section 3.1, neither Company nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

10.14 Entire Agreement; Originals. This Agreement, including the AUP, all Appendices, Attachments, Exhibits, Service Contracts, and/or Schedules are incorporated herewith by reference only if the incorporation is expressed in writing. This group of documents constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Any additional or different terms in any purchase order or other response by Customer shall be deemed objected to by Company without need of further notice of objection, and shall be of no effect or in any way binding upon Company. Except as expressly provided herein, this Agreement may be changed only by a written document referring specifically to this Section 10.14 that is signed by an executive officer of Company and Customer in accordance with this Section 10.14. An electronic version of this Agreement shall constitute an original. The then current version of this Agreement will be presented to Customer after execution of the Service Contract, and said version shall control, except where the Company has reserved the right to revise or amend certain portions

hereof, and if the Company does so, the revised or amended version shall control. This Agreement is deemed executed upon execution of any Service Contract which incorporates this Agreement.

This Agreement is integrated with the following documents:

- Any Service Contracts which incorporate this Agreement.
- Schedule A attached hereto - Equipment Purchase Terms and Conditions (if applicable)
- Appendix A attached hereto - Definitions

## **SCHEDULE A**

### **EQUIPMENT PURCHASE TERMS AND CONDITIONS**

#### **(INCORPORATED INTO MASTER SERVICE AGREEMENT)**

1. **SHIPPING AND HANDLING.** All equipment purchased by Customer from Company (“Equipment”) is provided FOB vendor facility. Shipment will be made as specified at the time or order and Customer is solely responsible for all expenses in connection with the delivery of the Equipment. The Equipment will be deemed accepted by Customer upon shipment. Promptly following receipt of the Equipment, Customer shall deliver the Hand Receipt to Company.

2. **PURCHASE PRICE AND TAXES.** Customer shall pay to Company the purchase price set forth in the applicable Service Contract (“Purchase Price”) for each item of Equipment. Customer hereby grants and Company reserves a purchase money security interest in the Equipment and the proceeds thereof as security for its obligations hereunder until payment of the full Purchase Price to Company. The Purchase Price is due and payable within thirty (30) calendar days of shipment of the Equipment. Customer shall pay all taxes and other governmental charges assessed in connection with the sale, use or possession of the Equipment including, without limitation, any and all sales and/or use taxes and personal property taxes (other than taxes based solely on Company’s net income).

3. **TITLE.** Customer shall acquire title to the Equipment upon full payment of the Purchase Price set forth in the applicable Service Contract. Notwithstanding the foregoing, Company and any licensor of rights to Company shall retain title to and rights in the intellectual property (whether or not subject to patent or copyright) and content contained in the materials supplied under the terms of this Agreement.

4. **SELECTION OF EQUIPMENT; MANUFACTURER WARRANTY.** Customer acknowledges that it has selected the Equipment and disclaims any statements made by Company. Customer acknowledges and agrees that use and possession of the Equipment by Customer shall be subject to and controlled by the terms of any manufacturer’s or, if appropriate, supplier’s warranty, and Customer agrees to look solely to the manufacturer or, if appropriate, supplier with respect to all mechanical, service and other claims, and the right to enforce all warranties made by said manufacturer are hereby, to the extent Company has the right, assigned to Customer. **THE FOREGOING WARRANTY IS THE EXCLUSIVE WARRANTY AND IS IN LIEU OF ANY REPRESENTATION AND ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY. COMPANY HAS NOT MADE NOR DOES MAKE ANY OTHER WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, QUALITY, PERFORMANCE OR NONINFRINGEMENT. CUSTOMER PURCHASES THE EQUIPMENT SOLELY ON AN “AS IS” BASIS.**

5. **LIMITATION OF LIABILITY.** Company’s entire liability for any damages which may arise in connection with the Equipment, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including Company’s negligence, or otherwise, shall be

## **SCHEDULE A**

limited to the Purchase Price paid by Customer for the Equipment. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF BUSINESS OR PROSPECTIVE BUSINESS OPPORTUNITIES, PROFITS, SAVINGS, INFORMATION, USE OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

1. MISCELLANEOUS. THE ABOVE TERMS AND CONDITIONS ARE THE ONLY TERMS AND CONDITIONS UPON WHICH COMPANY IS WILLING TO SELL THE EQUIPMENT AND SUPERSEDE ALL PREVIOUS AGREEMENTS, PROMISES OR REPRESENTATIONS, ORAL OR WRITTEN.

SCHEDULE A

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**CONFIDENTIAL – DO NOT DISCLOSE**

v8-2025-05-08

## **APPENDIX A**

### **DEFINITIONS**

#### **(INCORPORATED INTO MASTER SERVICE AGREEMENT)**

1. “AUP” means Company’s acceptable use policy as found at <http://www.login.com/aup.html> governing customer’s use of services, including, but not limited to, online conduct, and the obligations of Customer and any subordinated users.

2. “Company Network” means the telecommunications network and the linkages between one of the following, as applicable, (i) the Customer port on the Company equipment, the Company equipment, any directly connected network maintained by any third party telecommunications service provider utilized by Company; (ii) the Customer port on the equipment maintained by any third party telecommunications service provider utilized by the Company and their network; or (iii) the Company POP and any directly connected network maintained by any third party telecommunications service provider utilized by the Company and their network. The Company network does not include equipment located at Customer’s premises (including Company supplied network) whether or not provided by Company, telephone circuits or networks between a Company POP and Customer’s location, inactive POPs, or any networks, network equipment, or telephone circuits other than described above that is not owned or controlled by Company.

3. “Company Point of Presence,” “Company POP,” or “POP” means a single defined location within the Company Network used in the provision of the Services.

4. “Company Supplied Equipment” means the hardware, software and other tangible equipment and intangible computer code contained therein provided by Company for use by Customer as per the terms of this Agreement.

5. “Cross Connect” means a physical cable, wire, fiber optics or other such material that is used to connect a Customer Location with a Company POP when both are located in the same physical building or the extension of a Local Access Circuit within the Company POP from the Minimum Point of Entry to the Company equipment in the same physical building.

6. “Customer Area” means the physical location where Customer Equipment is located.

7. “Customer Equipment” means the Customer’s computer hardware, not including stored data, and other tangible equipment.

8. “Customer Location” means the physical location designated by the Customer.

9. “Data Center” means the physical location where the servers are located.

10. “Eligible Customer” means any Customer which has purchased Service, but excludes any Customer (i) whose connection terminates at a Company POP which is inactive, (ii)

## **APPENDIX A**



whose connection terminates at a non-Company POP, (iii) who is blocking or who during the period in question has blocked Company from sending ICMP traffic or other traffic monitoring request to the Customer Equipment or Company Supplied Equipment, (iv) which has does not provide, or during the period in question, has not provided the necessary access to personnel and facilities of Customer to enable Company to perform comprehensive service troubleshooting, (v) whose account is or, during the period in question, was not in good financial standing with Company, (vi) whose account is or, during the period in question, was in violation of the AUP and/or (vii) who does not open a support ticket to report any specific service performance issue.

11. “Initial Term” means the minimum term for which Company will provide the Service to Customer, as indicated on the Service Contract.

12. “Local Access Circuit” means a leased circuit from a third party for the purpose of connecting a Customer Location with a Company POP.

13. “Login Payment Plan” or “LPP” means the earned discount program which includes the highest for customers who formally enroll in and utilize an ACH collection method whereby the Company receives the net monthly payment by the tenth day of the month (or the next business day if the tenth day is not a business day) through an automated collection system where the customer automatically and electronically transmits its entire net monthly payment through to the Company or a method whereby the Company automatically receives the net monthly payment by the tenth day of the month (or the next business day if the tenth day is not a business day) through an automated collection system where the Company automatically and electronically charges a customer account. Customers who enroll in the LPP but whose net monthly payment fails for any reason to be processed into the Company’s account by the tenth day of the month (or the next business day if the tenth day is not a business day) shall not be entitled to the LPP discounted rate, but such customers may re-enroll in the LPP for the following month however not more than two such enrollments may occur in any calendar year; all LPP customers are responsible for ensuring sufficient funds are available and all aspects of the electronic programs are properly established in order to qualify for the LPP rate.

14. “monthly payment” means the total amount due every month as set forth on the Service Contract if the Customer earns no discounts, as adjusted by the discount earned by the Customer.

15. “net monthly payment” means the monthly payment plus any incidental charges included on any invoice, including but not limited to domain names, move/add/change charges, service fees, interest calculations, etc.

16. “Services” means the specific professional services and/or managed services provided by Company as described on the applicable Service Contract.

17. “Service Activation Date” means the later of: (i) the date on which the Company delivers the Services ready for use; or (ii) the date upon which the Customer has requested activation of the Services as specified on the applicable Service Contract.

## APPENDIX A

18. “Service Charge” means the monthly Service fees charged by the Company for any Services excluding any one-time fees, Company Provided Equipment charges, Telco Fees, or other similar charges.

19. “Telco Fees” means the monthly fees for any Local Access Circuit, Cross Connect or other similar charges.

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