



MASTER AGREEMENT

This Master Agreement (“Master Agreement”), between the customer named in the Pricing Schedule (“Customer”) and the INNOVATIVE NETWORKS LLC entity, is effective when Pricing Schedule is signed by both Customer and INNOVATIVE NETWORKS LLC, and continues in effect as long as Services are provided under this Master Agreement.

This Master Agreement will apply to all services and equipment Customer buys from INNOVATIVE NETWORKS LLC, now and in the future, that are provided under Pricing Schedules attached to or referencing this Master Agreement (“Services”). Other Services may be provided by signing additional Pricing Schedules at any time. INNOVATIVE NETWORKS LLC standard service offerings are described in Tariffs, Guidebooks, Service Guides and other documents identified in this Master Agreement.

1. INTRODUCTION

1.1 **Overview of Documents.** The terms and conditions governing the Services that INNOVATIVE NETWORKS LLC provides to Customer are set forth in Pricing Schedule, the following additional documents, and any other documents executed by the parties and referencing this Master Agreement (which documents together with this Master Agreement are called “this Agreement”):

(a) **Pricing Schedules.** A Pricing Schedule (including related attachments) identifies the Services INNOVATIVE NETWORKS LLC may provide to Customer, the price (including discounts, if applicable) for each Service, and the term during which such prices are in effect (“Pricing Schedule Term”).

(b) **Acceptable Use Policy.** INNOVATIVE NETWORKS LLC Acceptable Use Policy (“AUP”) applies to Services provided over or accessing the Internet. The AUP may be found at in-networks.com, or other locations INNOVATIVE NETWORKS LLC may designate.

1.2 **Priority of Documents.** The order of priority of the documents that form this Agreement is: Pricing Schedules; this Master Agreement; the AUP.

1.3 **Revisions to Documents.** Subject to Section 8.2(c) (Materially Adverse Change), INNOVATIVE NETWORKS LLC may revise Tariffs, Guidebooks, Service Guides or the AUP (collectively “Service Publications”) at any time.

1.4 **Execution by Affiliates.** An INNOVATIVE NETWORKS LLC Affiliate or Customer Affiliate may sign a Pricing Schedule referencing this Agreement in its own name and such Affiliate contract will be a separate, but associated, contract incorporating the terms of this Master Agreement with respect to that Pricing Schedule. Customer and INNOVATIVE NETWORKS LLC will arrange to have their respective Affiliates comply with this Agreement, regardless of whether an Affiliate has signed a Pricing Schedule.

1.5 **Capitalized Terms.** Capitalized terms not otherwise defined in this Agreement are defined in Section 11 (Definitions).

2. INNOVATIVE NETWORKS LLC DELIVERABLES

2.1 **Services.** INNOVATIVE NETWORKS LLC agrees to either provide or arrange to have an INNOVATIVE NETWORKS LLC Affiliate provide Services to Customer in accordance with this Agreement, subject to availability and operational limitations of systems, facilities and equipment. Where required, an INNOVATIVE NETWORKS LLC Affiliate authorized by the appropriate regulatory authority will be the service provider.

2.2 **INNOVATIVE NETWORKS LLC Equipment.** Services may include use of certain equipment owned by INNOVATIVE NETWORKS LLC that is located at the Site (“INNOVATIVE NETWORKS LLC Equipment”), but title to the INNOVATIVE NETWORKS LLC Equipment will remain with INNOVATIVE NETWORKS LLC. Customer must provide electric power for the INNOVATIVE NETWORKS LLC Equipment and keep the INNOVATIVE NETWORKS LLC Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to INNOVATIVE NETWORKS LLC Equipment (other than ordinary wear and tear) except to the extent caused by INNOVATIVE NETWORKS LLC or its agents.

2.3 **Software.** Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software remains with INNOVATIVE NETWORKS LLC or its supplier. Customer must comply with all such terms and conditions and they take precedence over this Agreement as to such software.

3. CUSTOMER’S COOPERATION

3.1 **Access Right.** Customer will in a timely manner allow INNOVATIVE NETWORKS LLC to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer’s expense, timely access for INNOVATIVE NETWORKS LLC to property that Customer does not control (other than public property) as reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary for Customer’s connection to INNOVATIVE NETWORKS LLC network. Customer must provide INNOVATIVE NETWORKS LLC timely information and access to Customer’s facilities and equipment as INNOVATIVE NETWORKS LLC reasonably requires to provide the Services, subject to Customer’s reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for INNOVATIVE NETWORKS LLC to perform its work according to a mutually agreed schedule.

3.2 **Safe Working Environment.** Customer will ensure that the location at which INNOVATIVE NETWORKS LLC installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. INNOVATIVE NETWORKS LLC does not handle, remove or dispose of Hazardous Materials, and INNOVATIVE NETWORKS LLC has no obligation to perform work at a location that is not a suitable and safe working environment. INNOVATIVE NETWORKS LLC will not be liable for any Hazardous Materials.

3.3 **Users.** "User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement, and Customer agrees that Customer is responsible for Users' use of any Services, unless expressly provided to the contrary in applicable Service Publications.

3.4 **Internet Services.** If a Service is provided over or accesses the Internet, Customer, Customer's Affiliates, and Users must comply with the AUP.

3.5 **Resale of Services.** Customer may not resell the Services to third parties without INNOVATIVE NETWORKS LLC written consent.

4. PRICING AND BILLING

4.1 **Pricing and Pricing Schedule Term; Terms Applicable After End of Pricing Schedule Term.** Unless otherwise stated herein, the Term Start Date shall begin on the later of (1) Cutover of the first Service Component at the first Customer Site or (2) the Effective Date or (3) the date of approval of this Pricing Schedule by an appropriate regulatory body, if regulatory approval is required for this Pricing Schedule for the Service(s). The term of this Pricing Schedule shall be **12 Month** after the Term Start Date ("Pricing Schedule Term"). Unless otherwise stated herein, the Minimum Payment Period for all Service Components included in this Pricing Schedule is **12 Month**.

Rates or discounts under this Pricing Schedule shall be applied on the Term Start Date. Upon the expiration of the Pricing Schedule Term, no rates or discounts provided under this Pricing Schedule will apply to the Service(s).

Upon expiration of the Pricing Schedule Term; Terms Applicable After End of Pricing Schedule Term. Unless a Pricing Schedule states otherwise, the prices listed in a Pricing Schedule are stabilized until the end of the initial Pricing Schedule Term. No promotion, credit or waiver set forth in a Service Publication will apply unless the Pricing Schedule states otherwise. This Agreement and each applicable Service Order shall automatically renew for successive periods of one (1) year and unless otherwise distinguished herein, is also referred to as "Pricing Schedule(s)", unless otherwise stated in these terms and conditions or prior notice of non-renewal is delivered by either Party to the other at least thirty (30) days before the expiration of the then current Pricing Schedule. At the end of the Initial Pricing Schedule Term, Customer will have the option to either: (a) cease using the Service (which will require Customer to take all steps required by INNOVATIVE NETWORKS LLC to terminate the Service and return all Innovative Networks equipment to 55 East Jackson Blvd., STE 415, Chicago IL, 60604); or (b) auto-renew existing services for twelve (12) month service arrangement. Pricing Schedule Initial Term will continue until changed by INNOVATIVE NETWORKS LLC on thirty (30) days' prior notice to Customer.

4.2 **Additional Charges and Taxes.** Prices set forth in a Pricing Schedule are exclusive of, and Customer will pay, all current and future taxes (excluding those on INNOVATIVE NETWORKS LLC net income), surcharges, recovery fees, custom clearances, duties, levies, shipping charges, and other similar charges (and any associated interest and penalties resulting from Customer's failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent Customer provides satisfactory proof of a valid tax exemption prior to the delivery of Services. To the extent Customer is required by law to withhold or deduct any applicable taxes from payments due to INNOVATIVE NETWORKS LLC, Customer will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty, and Customer will furnish INNOVATIVE NETWORKS LLC with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that INNOVATIVE NETWORKS LLC may claim any applicable credit.

4.3 **Billing.** Unless a Pricing Schedule specifies otherwise, Customer's obligation to pay for all Services will begin upon installation and availability of the Services to Customer. INNOVATIVE NETWORKS LLC will invoice Customer for the Services on a monthly basis, or otherwise as specified in the Pricing Schedule. Customer will pay INNOVATIVE NETWORKS LLC without deduction (except for withholding taxes as provided in Section 4.2 – Additional Charges and Taxes), setoff (except as provided in Section 4.5 – Delayed Billing; Disputed Charges), or delay for any reason. At Customer's request, but subject to INNOVATIVE NETWORKS LLC consent (which may be withheld if there will be operational impediments or tax consequences), Customer's Affiliates may be invoiced separately and INNOVATIVE NETWORKS LLC will accept payment from such Affiliates. Customer will be responsible for payment if Customer's Affiliates do not pay charges in accordance with this Agreement. INNOVATIVE NETWORKS LLC may require Customer or its Affiliates to tender a deposit if INNOVATIVE NETWORKS LLC determines, in its reasonable judgment, that Customer or Customer's Affiliates are not creditworthy.

4.4 **Payments.** Payment is due within 30 days after the date of the invoice (unless another date is specified) and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. Customer will reimburse INNOVATIVE NETWORKS LLC for all costs associated with collecting delinquent or dishonored payments, including reasonable attorney's fees. INNOVATIVE NETWORKS LLC may charge late payment fees (a) for Services contained in a Tariff or Guidebook, at the rate specified therein, or (b) for all other Services, at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law for overdue payments.

4.5 **Delayed Billing; Disputed Charges.** Customer will not be required to pay charges for Services invoiced more than 6 months after close of the billing month in which the charges were incurred, except for automated or live operator assisted calls of any type. If Customer disputes a charge, Customer will provide notice to INNOVATIVE NETWORKS LLC specifically identifying the charges and the reason it is disputed within 6 months after the date of the affected invoice or Customer waives the right to dispute the charge (except to the extent applicable law or regulation otherwise requires). Disputed charges may be withheld, but if not paid when due, Customer will

incur late payment fees in accordance with Section 4.4 (Payments); however, to the extent INNOVATIVE NETWORKS LLC determines the charges Customer disputed and withheld were invoiced in error, late payment fees for such charges will be reversed.

4.6 **MARC.** Minimum Annual Revenue Commitment (“MARC”) means an annual revenue commitment of MARC-Eligible Charges set forth in a Pricing Schedule that Customer agrees to satisfy during each 12 consecutive month period of the Pricing Schedule Term. At the end of each such 12 month period, if Customer has failed to satisfy the MARC for the preceding 12 month period, Customer will be invoiced a shortfall charge in an amount equal to the difference between the MARC and the total of the applicable MARC-Eligible Charges incurred during the 12 month period, and payment will be due in accordance with Section 4.4 (Payments).

4.7 **Adjustments to MARC.**

(a) In the event of a business downturn beyond Customer’s control, or a corporate divestiture, merger, acquisition or significant restructuring or reorganization of Customer’s business, or network optimization using other Services, or reduction of INNOVATIVE NETWORKS LLC prices, or force majeure events, any of which significantly impairs Customer’s ability to meet Customer’s MARC, INNOVATIVE NETWORKS LLC will offer to adjust the affected MARC to reflect Customer’s reduced usage of Services (with a corresponding adjustment to the prices or discount available at the reduced MARC level). If the parties reach mutual agreement on a revised MARC, INNOVATIVE NETWORKS LLC and Customer will amend the affected Pricing Schedule prospectively. This Section 4.7 will not apply to a change resulting from Customer’s decision to use service providers other than INNOVATIVE NETWORKS LLC. Customer will provide INNOVATIVE NETWORKS LLC written notice and evidence of the conditions Customer believes will require the application of this provision. This provision does not constitute a waiver of any charges, including monthly recurring charges and shortfall charges Customer incurs prior to amendment of the affected Pricing Schedule.

(b) If Customer, through merger, consolidation, acquisition or otherwise, acquires a new business or operation, Customer and INNOVATIVE NETWORKS LLC may mutually agree to include the new business or operation under this Agreement. Such agreement will specify the impact, if any, of such addition on Customer’s MARC or other volume or growth discounts, and Customer’s attainment thereof.

4.8 **Fraudulent Calls.** Customer shall indemnify and hold Innovative Networks harmless from any and all costs, expenses, damages, claims or actions arising from fraudulent calls of any nature which may comprise a portion of the Switched Services to the extent that the party claiming the call(s) in question to be fraudulent is (or had been at the time of the call) an End User of such Switched Services through Customer or an end user of the Switched Services through Customer's distribution channels. Customer shall not be excused from paying Innovative Networks for Switched Services provided to Customer or any portion thereof on the basis that fraudulent calls comprised as corresponding portion of the Switched Services. In the event Innovative Networks discovers fraudulent calls being made (or reasonably believes fraudulent calls being made), nothing contained herein shall prohibit Innovative Networks from taking immediate action (without notice to Customer) that is reasonably necessary to prevent such fraudulent calls from taking place, including without limitation, denying Switched Services to particular ANIs or terminating Switched Services to or from specific locations. Provided, however, nothing contained herein will impose any obligation on Innovative Networks to take any action with respect to fraudulent calls.

5. **CONFIDENTIAL INFORMATION**

5.1 **Confidential Information.** Confidential Information means: (a) information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, the terms of this Agreement and any pricing or other proposals.

5.2 **Obligations.** Each party’s Confidential Information will, for a period of 3 years following its disclosure to the other party (except in the case of software, which is indefinite): (a) be held in confidence; (b) be used and transmitted between countries only for purposes of using the Services or performing this Agreement (including in the case of INNOVATIVE NETWORKS LLC, the ability to utilize Customer’s Confidential Information in order to detect fraud, check quality, and to operate, maintain and repair the Services); and (c) not be disclosed, except to the receiving party’s employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 5), or to the extent authorized to be revealed by law, governmental authority or legal process (but only if such disclosure is limited to that which is so authorized and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law, governmental authority or legal process).

5.3 **Exceptions.** The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

5.4 **Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business. If Customer does not want INNOVATIVE NETWORKS LLC personnel to comprehend Customer data to which they may have access in performing Services, Customer should encrypt such data so that it will be unintelligible. Until directed otherwise by Customer in writing, if INNOVATIVE NETWORKS LLC designates a dedicated account representative as Customer’s primary contact with INNOVATIVE NETWORKS LLC, Customer authorizes that representative to discuss and disclose Customer’s customer proprietary network information (CPNI) to any employee or agent of Customer without a need for further authentication or authorization.

6. **DISCLAIMERS AND LIMITATIONS OF LIABILITY**

6.1 **Disclaimer of Warranties.** INNOVATIVE NETWORKS LLC MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING. FURTHER, INNOVATIVE NETWORKS

LLC MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT INNOVATIVE NETWORKS LLC'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

6.2 Limitation of Liability.

(a) INNOVATIVE NETWORKS LLC ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR DAMAGES ARISING OUT OF MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS OR DEFECTS IN THE SERVICES, AND NOT CAUSED BY CUSTOMER'S NEGLIGENCE, SHALL IN NO EVENT EXCEED THE APPLICABLE CREDITS SPECIFIED IN A PRICING SCHEDULE, OR IF NO CREDITS ARE SPECIFIED, AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO CUSTOMER FOR THE PERIOD OF SERVICE DURING WHICH SUCH MISTAKE, OMISSION, INTERRUPTION, DELAY, ERROR OR DEFECT IN THE SERVICES OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO INNOVATIVE NETWORKS LLC.

(b) SECTION 6.2(a) WILL NOT APPLY TO:

(i) BODILY INJURY, DEATH, OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY INNOVATIVE NETWORKS LLC NEGLIGENCE;

(ii) BREACH OF SECTION 5 (Confidential Information), SECTION 10.1 (Publicity), OR SECTION 10.2 (Trademarks);

(iii) SETTLEMENT, DEFENSE OR PAYMENT OBLIGATIONS UNDER SECTION 7 (Third Party Claims); OR

(iv) DAMAGES ARISING FROM INNOVATIVE NETWORKS LLC GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(c) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES, OR INCREASED COST OF OPERATIONS.

6.3 **Disclaimer of Liability.** INNOVATIVE NETWORKS LLC WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY INNOVATIVE NETWORKS LLC GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

6.4 **Application and Survival.** The disclaimer of warranties and limitations of liability set forth in this Agreement will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 6 will survive failure of any exclusive remedies provided in this Agreement.

7. THIRD PARTY CLAIMS

7.1 **INNOVATIVE NETWORKS LLC Obligations.** INNOVATIVE NETWORKS LLC agrees at its expense to defend or settle any third-party claim against Customer, its Affiliates, and its and their respective employees and directors, and to pay all compensatory Damages that a court may finally award against such parties to the extent the claim alleges that a Service provided to Customer under this Agreement infringes any patent, trademark, copyright, or trade secret, but not in circumstances where the claimed infringement arises out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any services or products not provided by INNOVATIVE NETWORKS LLC; (c) INNOVATIVE NETWORKS LLC adherence to Customer's or its Affiliate's written requirements; or (d) use of the Service in violation of this Agreement.

7.2 **Customer's Obligations.** Customer agrees at its expense to defend or settle any third-party claim against INNOVATIVE NETWORKS LLC, INNOVATIVE NETWORKS LLC Affiliates, and its and their respective employees, directors, subcontractors, and suppliers, and to pay all compensatory Damages that a court may finally award against such parties to the extent the claim: (a) arises out of Customer's, its Affiliate's, or a User's access to, or use of, the Services and the claim is not the responsibility of INNOVATIVE NETWORKS LLC under Section 7.1; (b) alleges that a Service infringes any patent, trademark, copyright or trade secret, and falls within the exceptions in Section 7.1; or (c) alleges a breach by Customer, its Affiliates, or Users of a software license agreement governing software provided in connection with the Services.

7.3 **Infringing Services.** Whenever INNOVATIVE NETWORKS LLC is liable under Section 7.1, INNOVATIVE NETWORKS LLC may at its option either procure the right for Customer to continue using, or may replace or modify, the alleged infringing Service so that the Service becomes non-infringing.

7.4 **Notice and Cooperation.** The party seeking defense or settlement of a third party claim under this Section 7 will notify the other party promptly upon learning of any claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the other party is prejudiced thereby. The party seeking defense or settlement will allow the other party to control the defense and settlement of the claim and will reasonably cooperate with the defense; but the defending party will use counsel reasonably experienced in the subject matter at issue, and will not settle a claim without the consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required where relief on the claim is limited to monetary damages that are paid by the defending party under this Section 7.

8. SUSPENSION AND TERMINATION

8.1 **Termination of Agreement.** This Agreement may be terminated immediately upon notice by either party if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state insolvency proceeding, or makes an assignment for the benefit of its creditors.

8.2 **Termination or Suspension of Services.** The following additional termination provisions apply:

(a) **Fraud or Abuse.** INNOVATIVE NETWORKS LLC may terminate or suspend an affected Service, and if the activity implicates the entire Agreement, terminate the entire Agreement, immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer: (i) commits a fraud upon INNOVATIVE NETWORKS LLC; (ii) utilizes the Service to commit a fraud upon another party; (iii) unlawfully uses the Service; (iv) abuses or misuses INNOVATIVE NETWORKS LLC network or Service; or (v) interferes with another customer's use of INNOVATIVE NETWORKS LLC network or services.

(b) **Material Breach.** If either party fails to perform or observe any material term or condition of this Agreement, including non-payment of charges (subject to Section 4.5 – Delayed Billing; Disputed Charges), and such failure continues unremedied for 30 days after receipt of notice, the non-breaching party may terminate the affected Service, and if the breach implicates the entire Agreement, terminate the entire Agreement. If Customer is in breach, INNOVATIVE NETWORKS LLC may elect to suspend (and later terminate) the affected Service, and if the breach implicates the entire Agreement, suspend (and later terminate) the entire Agreement.

(c) **Materially Adverse Change.** If INNOVATIVE NETWORKS LLC revises a Service Publication and the revision has a materially adverse impact on Customer, and INNOVATIVE NETWORKS LLC does not effect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to INNOVATIVE NETWORKS LLC, given not later than 90 days after Customer first learns of the revision to the Service Publication. However, a revision to a Service Publication will not be considered materially adverse to Customer if it changes prices that are not fixed (stabilized) in a Pricing Schedule, if the price change was mandated by a governmental authority, or if the change affects a charge imposed under Section 4.2 (Additional Charges and Taxes).

(d) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after receiving notice from INNOVATIVE NETWORKS LLC, INNOVATIVE NETWORKS LLC may suspend the applicable portion of the Service. INNOVATIVE NETWORKS LLC has the right; however, to suspend or terminate the applicable portion of the Service immediately when: (i) INNOVATIVE NETWORKS LLC's suspension or termination is in response to multiple or repeated AUP violations or complaints; (ii) INNOVATIVE NETWORKS LLC is acting in response to a court order or governmental notice that certain conduct must be stopped; or (iii) INNOVATIVE NETWORKS LLC reasonably determines: (a) that it may be exposed to sanctions, liability, prosecution, or other adverse consequences under applicable law if INNOVATIVE NETWORKS LLC were to allow the violation to continue; (b) that such violation may cause harm to or interfere with the integrity or normal operations or security of INNOVATIVE NETWORKS LLC's network or networks with which INNOVATIVE NETWORKS LLC is interconnected or interfere with another customer's use of INNOVATIVE NETWORKS LLC Services or the Internet; or (c) that such violation otherwise presents imminent risk of harm to INNOVATIVE NETWORKS LLC or INNOVATIVE NETWORKS LLC's customers or their respective employees.

(e) **Infringing Services.** If neither of the options described in Section 7.3 (Infringing Services) are reasonably available, INNOVATIVE NETWORKS LLC may terminate the affected Service without liability other than as stated in Section 7.1 (INNOVATIVE NETWORKS LLC Obligations).

(f) **Hazardous Materials.** If INNOVATIVE NETWORKS LLC encounters any Hazardous Materials at the Site where INNOVATIVE NETWORKS LLC is to install, maintain or provide Services, INNOVATIVE NETWORKS LLC may terminate the affected Service or Service Component, or suspend performance until Customer removes and remediates Hazardous Materials at Customer's expense in accordance with applicable law.

8.3 **Withdrawal of Services.** Notwithstanding that a Pricing Schedule may commit INNOVATIVE NETWORKS LLC to provide a Service to Customer for a Pricing Schedule Term, and unless applicable law or regulation mandates otherwise, INNOVATIVE NETWORKS LLC may discontinue providing a Service upon 12 months' notice, or a Service Component upon 120 days' notice, but only where INNOVATIVE NETWORKS LLC generally discontinues providing the Service or Service Component to similarly-situated customers.

8.4 **Effect of Termination.**

(a) Termination by either party of a Service does not waive any other rights or remedies a party may have under this Agreement. Termination or suspension of a Service will not affect the rights and obligations of the parties regarding any other Service.

(b) If a Service or Service Component is terminated, Customer will pay all amounts incurred prior to the effective date of termination. If Customer terminates a Service or Service Component prior to the date Customer's obligation to pay for Services begins as provided in Section 4.3 (Billing), Customer will reimburse INNOVATIVE NETWORKS LLC for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

8.5 **Termination Charges.**

(a) If Customer terminates this Agreement or an affected Service or Service Component pursuant to Sections 8.1 (Termination of Agreement), 8.2(b) (Material Breach), or 8.2(c) (Materially Adverse Change); INNOVATIVE NETWORKS LLC terminates a Service pursuant to Section 8.2(e) (Infringing Services), or INNOVATIVE NETWORKS LLC withdraws a Service pursuant to Section 8.3 (Withdrawal of Services), Customer will not be liable for the termination charges set forth in Section 8.5(b).

(b) If Customer terminates a Service or Service Component other than as set forth in Section 8.5(a), or INNOVATIVE NETWORKS LLC terminates an affected Service or Service Component pursuant to Sections 8.1 (Termination of Agreement), or 8.2(a) (Fraud or Abuse), 8.2(b) (Material Breach), 8.2(d) (Internet Services), or 8.2(f) (Hazardous Materials), Customer will pay applicable termination charges as

follows: (i) if termination occurs before the end of the Minimum Payment Period, Customer will pay 100% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the Minimum Payment Period, plus any waived or unpaid non-recurring charges identified in the Pricing Schedule (including, but not limited to, any and all charges for failure to satisfy a Minimum Retention Period (MRP)), plus any charges incurred by INNOVATIVE NETWORKS LLC from a third party (e.g., not an INNOVATIVE NETWORKS LLC Affiliate) due to the termination, all of which will, if applicable, be applied to Customer's MARC-Eligible Charges; and (ii) if Customer terminates a Pricing Schedule that has a MARC, Customer will pay an amount equal to 100% of the unsatisfied MARC, after applying amounts received pursuant to (i), for the balance of the Pricing Schedule Term.

(c) The charges set forth in Section 8.5(b)(i) will not apply if a terminated Service Component is replaced with an upgraded Service Component at the same Site, but only if (i) the Minimum Payment Period and associated charge for the replacement Service Component are equal to or greater than the Minimum Payment Period and associated charge for the terminated Service Component, and (ii) the upgrade is not restricted in the applicable Service Publication.

9. IMPORT/EXPORT CONTROL

The parties acknowledge that equipment, services, software, and technical information (including technical assistance and training) provided under this Agreement may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all such laws, conventions and regulations. The parties will not use, distribute, transfer, or transmit the equipment, services, software, or technical information (even if incorporated into other products) except in compliance with such laws, conventions and regulations. Customer, not INNOVATIVE NETWORKS LLC, is responsible for complying with such laws, conventions and regulations for all information, equipment and software Customer transmits between countries using the Services.

10. MISCELLANEOUS PROVISIONS

10.1 **Publicity.** Neither party may issue any public statements or announcements relating to the terms of this Agreement or the provision of Services without the prior written consent of the other party.

10.2 **Trademarks.** Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks, or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.

10.3 **Force Majeure.** Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control.

10.4 **Amendments and Waivers.** Any supplement to or modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any breach of this Agreement will not operate as a waiver of any other breach of this Agreement.

10.5 Assignment and Subcontracting.

(a) This Agreement may not be assigned by either party without the prior written consent of the other party (which consent will not be unreasonably withheld or delayed). Customer may, without INNOVATIVE NETWORKS LLC's consent, but upon notice to INNOVATIVE NETWORKS LLC, assign in whole or relevant part, its rights and obligations under this Agreement to an Affiliate, but Customer will remain financially responsible for the performance of such obligations. INNOVATIVE NETWORKS LLC may, without Customer's consent, assign in whole or relevant part, its rights and obligations under this Agreement to an Affiliate, or subcontract to an Affiliate or a third party work to be performed under this Agreement, but INNOVATIVE NETWORKS LLC will in each such case remain financially responsible for the performance of such obligations.

(b) In countries where INNOVATIVE NETWORKS LLC does not have an Affiliate to provide Service, INNOVATIVE NETWORKS LLC may assign its rights and obligations related to a Service to a local service provider, but INNOVATIVE NETWORKS LLC will remain responsible to Customer for such obligations. In certain countries, Customer may be required to contract directly with the local service provider.

(c) Any assignment other than as permitted by this Section 10.5 is void.

10.6 **Severability.** If any portion of this Agreement is found to be invalid or unenforceable or if, notwithstanding Section 10.10 (Governing Law), applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

10.7 **Injunctive Relief.** Nothing in this Agreement is intended, or should be construed, to limit a party's right to seek preliminary or permanent injunctive relief from a court of competent jurisdiction for a breach of any provision of this Agreement.

10.8 **Legal Action.** Any legal action arising in connection with this Agreement must be filed within 2 years after the cause of action accrues or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary.

10.9 **Notices.** All notices required under this Agreement will be delivered in writing to the recipient's contact designated on the cover page of this Master Agreement, or to such other contact as designated in writing from time to time. Notices shall be by internationally recognized overnight courier, certified or registered mail, email, or facsimile and will be effective upon receipt or when delivery is refused, whichever occurs sooner.

10.10 **Governing Law.** This Agreement will be governed by the law of the State of Illinois, without regard to its conflict of law principles, unless a regulatory agency with jurisdiction over the applicable Service applies a different law. The United Nations Convention on Contracts for International Sale of Goods will not apply.

10.11 **Compliance with Laws.** Each party will comply with all applicable laws, regulations, and orders issued by courts or other governmental bodies of competent jurisdiction.

10.12 **No Third Party Beneficiaries.** This Agreement is for the benefit of Customer and INNOVATIVE NETWORKS LLC, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

10.13 **Survival.** The respective obligations of Customer and INNOVATIVE NETWORKS LLC that by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations set forth in Section 5 (Confidential Information), Section 6 (Disclaimers and Limitations of Liability), and Section 7 (Third Party Claims), will survive termination or expiration.

10.14 **Agreement Language.** The authentic language of this Agreement is English. If there is a conflict between this Agreement and any translation, the English version will take precedence.

10.15 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the Services provided under this Agreement. Except as provided in Section 2.3 (Software), this Agreement supersedes all other agreements, proposals, representations, statements or understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon. This Agreement will not be modified or supplemented by any written or oral statements, proposals, representations, advertisements, service descriptions or purchase order forms not expressly set forth in this Agreement.

11. DEFINITIONS

The following terms have the meanings set forth below:

“**Affiliate**” of a party means any entity that controls, is controlled by, or is under common control with, such party.

“**Damages**” means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

“**Effective Date**” means, for any Pricing Schedule, the date on which the last party signs the Pricing Schedule unless a later date is required by regulation or law.

“**MARC-Eligible Charges**” means, unless the applicable Pricing Schedule indicates otherwise, the recurring and usage charges, after deducting applicable discounts and credits (other than outage or SLA credits), that INNOVATIVE NETWORKS LLC charges Customer for the Services identified in the applicable Pricing Schedule as MARC-contributing. The following are not MARC-Eligible Charges: (a) charges for or in connection with Customer’s purchase of equipment; (b) taxes; and (c) charges imposed in connection with governmentally imposed costs or fees (such as USF, PICC, payphone service provider compensation, E911 and deaf relay charges).

“**Minimum Payment Period**” means, in respect to any Service, the minimum period for which Customer is required to pay recurring charges for the Service, as specified in the Pricing Schedules for that Service.

“**Minimum Retention Period**” means, in respect to any Service, the period of time for which Customer is required to maintain service to avoid the payment of certain credits, waived charges, or unpaid amortized charges, all as specified in the Pricing Schedule for that Service.

“**Service Component**” means an individual component of a Service provided under this Agreement.

“**Site**” means Customer’s physical location, including Customer’s collocation space on INNOVATIVE NETWORKS LLC, its Affiliate’s, or subcontractor’s property, where INNOVATIVE NETWORKS LLC installs or provides a Service.

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