

MERIPLEX COLOCATION TERMS AND CONDITIONS

By using Meriplex Communications, Ltd.'s (Meriplex) service, you agree to the terms and conditions set forth herein (the "Terms and Conditions") The terms "customer," "you" or "your" refers to you, your employees, and those you have authorized to use the service provided by Meriplex. These Terms and Conditions apply to Meriplex's Colocation services and products. No representation, warranty, term or condition, other than as specifically set forth in these Terms and Conditions or the Sales Order or purchase order to which these Terms and Conditions are attached or in which these Terms and Conditions are referred to (each, a "Sales Order") shall be binding on Meriplex. In addition to the terms and conditions of this Agreement, the following attached documents are deemed part of this Agreement, in addition to any other attachments agreed to and executed by the Parties incorporating the terms set forth herein: Sales Order Form (including all such forms executed hereafter by Customer for Services (defined below) under this Agreement (together, the "Sales Order Form")) – Attachment A; applicable Service Level Agreement – Attachment B. Both Meriplex and Customer are referred to herein individually as a "Party" and collectively as the "Parties."

The terms in the Sales Order Forms related to the actual rates to be charged and the Services to be performed thereunder shall control as to the engagement described in that Sales Order Form, but additional legal terms may only be added by Amendment to this Meriplex Colocation Terms and Conditions Agreement even if they are to apply only to one Sales Order Form. The terms and conditions set forth in this Agreement and in any Sales Order Form hereunder shall control in the event that there are different or additional terms set forth in any other purchase order submitted by Customer or acceptance form or invoice issued by Meriplex.

1. SERVICES.

Customer agrees to purchase the Internet connectivity services, colocation services, firewall services, and/or any other services offered by Meriplex to Customer described in the attached Sales Order Form or any subsequent Sales Order Form (the "Services"). Meriplex agrees to provide such Services in accordance with the applicable Service Level Agreement ("SLA").

2. CUSTOMER OBLIGATIONS.

a. Customer shall, at its own expense, provide all necessary preparations required to connect to the Services and comply with Meriplex's installation and maintenance specifications for delivery of the Services. Customer shall be responsible for the costs of any relocation or removal of connectivity that results from Customer's actions in addition to the costs for the original circuit until such time as the relocated circuit is active. Additionally, Customer shall provide Meriplex or its agents with reasonable access to Customer's premises to perform any acts required under this Agreement.

b. Unless otherwise agreed in writing by an authorized representative of each Party, if Customer provides its own router in conjunction with the Services (e.g., a remote frame relay or private line connection from Customer's premises to a Meriplex facility), then Customer is fully responsible for the installation, maintenance and configuration of such Customer-provided router. Subject to Meriplex's approval, Customer is required to use a router capable of: (i) dealing with a full Internet routing table; (ii) speaking BGP4 in compliance with the current Internet RFC; (iii) receiving standard BGP communities; and (iv) using such communities to effect Meriplex's routing policy.

c. If Customer multihomes to the Meriplex network, Customer will implement a multihoming configuration agreed to by Meriplex and Customer.

d. Customer shall be responsible for all hardware, software, cabling, services and components not provided by Meriplex, including the selection, use compatibility, monitoring, support and troubleshooting thereof. If such items impair Customer's use of the Services, Customer shall remain liable for payment to Meriplex for the Services. Upon notice from Meriplex that any such component causes or is likely to cause a hazard, interference or obstruction of the Services, Customer shall eliminate such item promptly, and Meriplex may disconnect the Services immediately until such elimination occurs. Meriplex shall not be responsible: (a) for the installation, operation, management or maintenance of any hardware, software, cabling or services not provided by Meriplex in connection with the Services; (b) if any changes in the Services cause hardware, software, configurations, cabling or services not provided by Meriplex to become obsolete or to require modification; (c) if any modification or configuration performed by Customer of Meriplex or Customer provided equipment impairs the performance of Services hereunder; or (d) for the performance or availability of third party services or facilities provided hereunder.

3. COLOCATION SERVICES.

a. Customer may, pursuant to and as described in a particular Sales Order Form, desire to sublease from Meriplex certain space (the "Space") to locate certain equipment (the "Equipment").

b. Customer shall use the Space solely for the location and operation of the Equipment. Customer shall not connect or interconnect the Equipment with any other equipment or services of any third party without Meriplex's prior written consent. Except as set forth in the applicable SLA, the Space is accepted "AS IS" by Customer and Meriplex makes no representation or warranty as to the fitness of the Space for Customer's intended use. Subject to Customer's compliance with all applicable clearance and authorization procedures, access to the Space shall be available twenty-four hours per day, seven days per week, but shall be limited to those employees of Customer identified to and approved by Meriplex in writing. If any employee of Customer causes any damage or threat of damage to any equipment, individuals or the Space, in Meriplex's sole discretion, Meriplex may rescind such employee's right to access to the Space. Meriplex shall have the right to access the Space at any time for any purpose. Meriplex shall have the authority (without subjecting Meriplex to any liability related thereto) to suspend Customer's operations in and around the Space if, in Meriplex's sole reasonable discretion, there arises any hazardous condition, unsafe practice or emergency situation. Meriplex may, upon reasonable notice, require Customer to relocate the Equipment to another space; provided, however, that such other space shall afford reasonably comparable access, environmental conditions and facilities. All reasonable costs of relocating the Equipment in the above circumstance shall be born by Meriplex. Meriplex shall have the right at any time to change or discontinue any aspect or feature of its service, including, but not limited to changes required by changes in government regulations.

c. In accordance with Meriplex's and any other relevant equipment manufacturer's specifications, Customer shall maintain a suitable environment for any Meriplex equipment housed in the Space and/or on premises rented by Customer or under its control. Customer shall be liable for any and all damages to Meriplex-owned or leased property that may be located in such Space, excluding reasonable wear and tear.

d. Neither Customer nor its agents or contractors shall make any alterations or improvements to the Space prior to submitting all plans and specifications for such improvements to Meriplex and receiving Meriplex's prior written consent. All fixtures, alterations, improvements and/or appurtenances attached to or built into, on or about the Space shall be and remain part of the Space and shall not be removed by Customer (unless otherwise directed by Meriplex). Upon termination, expiration or cancellation of any sublease hereunder, except for alterations as described herein, Customer shall return the Space to the manner

in which it existed upon commencement of the sublease, reasonable wear and tear excepted. Customer shall be liable for all damage to the Space and/or Meriplex equipment caused by you, including all costs and expenses required to return the Space and/or Meriplex equipment to its original condition.

e. Customer shall take all actions reasonably necessary to comply with the requirements of any underlying agreement or instrument related to or encumbering the Space upon notice of such requirements. Customer, its employees, agents and contractors shall abide by all applicable laws, regulations, tariffs, rules and policies related to the Space. In the event that any underlying agreement or instrument terminates, the Sales Order Form for Customer's colocation of the Space shall automatically terminate and any Services provided in connection with the Space shall also terminate and Meriplex shall not be liable for any damages related thereto.

f. To secure the payment of the Fees due under this Agreement, Customer hereby grants to Meriplex a continuing security interest in and lien upon the Equipment. In the event that Customer fails to pay Meriplex all undisputed amounts owed under this Agreement when due, Customer agrees that, upon delivery of written notice to Customer and a reasonable period to cure, Meriplex may (a) restrict Customer's physical access to the Space and Equipment; and/or (b) take possession of the Equipment and store it, at Customer's expense, and exercise all remedies available under applicable law, all without being liable for prosecution or for damages.

4. FEES AND PAYMENT.

a. Customer shall pay the fees and charges set forth in the applicable Sales Order Form, which shall include the costs of third party services or products, including increases thereto (collectively, the "Fees"). Recurring monthly Fees shall be invoiced together with any applicable sales, use or other taxes in advance and usage based Fees are billed in arrears. If a Sales Order Form indicates a minimum usage amount, such minimum usage fees shall be billed in advance during the Term of the applicable Sales Order Form. Fees and all applicable taxes shall be paid to Meriplex at such other place as Meriplex may designate in writing. Payments are due net thirty (30) days from the date of Meriplex's invoice and are subject to late charges thereafter, calculated at the lesser of 1.5% interest per month or the maximum rate permitted by law. Meriplex may suspend performance or provision of the Services, terminate this Agreement or suspend payment of credits due Customer under the applicable SLA for late or nonpayment of Fees. You are responsible for and agree to pay all expenses, including but not limited to, reasonable attorneys' fees, court costs, and all other costs incurred by Meriplex in collecting any amounts due and unpaid. If Customer is repeatedly delinquent in its payments, Meriplex may, upon written notice to Customer, modify the payment terms to require full payment before the further provision of any Services or require other assurances to secure Customer's payment obligations hereunder. Customer shall furnish financial information to Meriplex as Meriplex may, from time to time, reasonably request. Such information shall be deemed Confidential Information as defined herein. Any Services upgrades requested by Customer may result in additional fees or other charges. Except as otherwise stated in an executed Sales Order Form for the Services performed thereunder, Meriplex reserves the right to change the Services it offers to its customers generally and the related rates at any time.

b. Customer is responsible for any taxes, duties, fees or surcharges that are imposed or authorized by regulatory and governmental entities, including but not limited to sales, use, gross receipts taxes, surcharges, franchise fees, occupational, excise, universal service (state and federal) taxes and surcharges (but not including any tax directly imposed on Meriplex's net income or gross margin) and shall pay to Meriplex or reimburse Meriplex for amounts paid by Meriplex relating to Services provided to Customer.

c. Billing for Meriplex colocation or Meriplex provided partner services including all associated fees and charges commences upon the delivery of the respective specified products and services. Billing for Meriplex or Meriplex provided third party connectivity services, including all associated fees and charges, commences upon the earlier of (a) delivery of the local loop/Telco connection; or (b) availability of the port circuit at the Meriplex or connectivity partner service point for Customer Provided Access orders.

d. Customer shall be invoiced for the Services on a monthly basis. If you reasonably dispute an invoice(s), you must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within 120 days from the date of the invoice. If the dispute is resolved against you, you shall pay such amounts plus interest from the date originally due.

e. If Customer's Service is disconnected due to nonpayment or late payment by Customer, Customer shall be responsible for all costs incurred by Meriplex resulting from such disconnection in addition to payment for any free months of Service received by Customer. If you discontinue service other than as provided in this Agreement, you are in material breach of this Agreement, or the service is discontinued for account past due, you will be required to pay all outstanding charges and all charges due or to become due over the remaining balance of the current term of the Sales Order. If you want to reconnect, you will be required to pay all outstanding balances and you may be required to pay a reconnect charge or trip charge before re-connection. Such charges include, but are not limited to, charges charged Meriplex by its vendors and your local exchange service provider to re-connect service.

5. LICENSE GRANT.

a. Grant of Rights. Upon payment of all applicable Fees and subject to the terms and conditions of this Agreement, Meriplex grants Customer the nonexclusive, non-transferable right to use the Services and to view the performance data generated and compiled from Meriplex's technology and Services hereunder for the term set forth in the applicable Sales Order Form solely for Customer's own internal business operations.

b. Conditions and restrictions. Other than those rights expressly granted herein, Meriplex grants to Customer no other rights to the Services, express or implied, and Meriplex reserves all rights in the Services not expressly granted herein. Customer agrees that it shall not, nor shall it permit others to: (a) alter, adjust, repair or circumvent any aspect of the Services; (b) copy, modify, decompile, reverse engineer or disassemble the performance data or any part thereof, Meriplex's proprietary technology or the Services provided hereunder; (c) use or allow the use by Customer personnel or third party agents or representatives of, the Services or performance data for the development or modification of new or existing Customer or third party product lines, analysis reports or for public release; or (d) resell, pass-through, sublicense, rent, lease, timeshare or rebrand the Services or otherwise provide the Services to any party not within Customer's enterprise and related personnel. Additionally, Customer shall not use, nor shall it permit others to use the Services: (a) for any unlawful, invasive, infringing, defamatory, fraudulent or obscene purpose; (b) to send unsolicited, bulk email of any kind, regardless of the content or nature of such messages, post the same or similar message to one or more newsgroups or host or accept bulk replies resulting from such unsolicited email; (c) to forge IP address information or mail headers; (d) to send any virus, worm, trojan horse or harmful code or attachment; (e) to alter, steal, corrupt, disable, destroy, trespass or violate any security or encryption of any computer file, database or network; (f) so as to interfere with the use of the Meriplex or connectivity partner network by other customers or authorized users; or (g) in violation of the Acceptable Use Policies of Meriplex or Meriplex's service providers, including its backbone providers. If Customer, or a third party through Customer, violates any of the foregoing prohibitions, Meriplex may immediately suspend the Services and/or terminate this Agreement without further liability or obligation to Meriplex.

6. INTELLECTUAL PROPERTY RIGHTS.

Meriplex reserves all rights not expressly granted herein. Without limiting the generality of the foregoing, Customer acknowledges and agrees that, subject to the license grant set forth in Section 5, Meriplex owns all right, title and interest in and to the specifications, technology, configurations, routing data and performance data related to the Services, including but not limited to any and all modifications and derivative works thereto. Additionally, subject to the license grant set forth in Section 5, Meriplex has all rights to the IP addresses provided hereunder.

7. TERM AND TERMINATION.

a. Term. The term of this Agreement ("Term") shall commence upon Services billing (as described in Section 4) of the initial Sales Order Form and shall terminate on the expiration of the term specified in the last applicable Sales Order Form of this Agreement unless terminated as provided hereunder. The initial term for each Service provided to you by Meriplex shall be specified on the Sales Order for the Service. The term of each Service shall commence on the activation or installation date for the respective Service. Upon expiration of the initial term or any subsequent terms, the term for each respective Service shall automatically renew for consecutive one year terms, or if the initial term is less than one year, the renewal term shall be equal to the initial term. If you desire to terminate the Services upon expiration of the initial term or any subsequent terms, you must send written notice to Meriplex at least thirty (30) days prior to the expiration of the term. Meriplex will also notify you in writing at least thirty (30) days prior to the expiration of the initial term or subsequent terms if Meriplex plans to terminate the Services upon expiration of the term.

b. Termination Other Than for Cause. Either Party may terminate this Agreement or any Sales Order Form hereunder by providing written notice to the other Party at least thirty (30) days prior to the requested termination date; provided, however, that such termination shall not affect Customer's or Meriplex's obligations hereunder, including Customer's payment of Fees for all Services rendered prior to termination and payment of all applicable Termination and Cancellation Fees, and Meriplex's provision of Services through the termination date.

c. Termination for Cause. Either Party may terminate this Agreement or any Sales Order Form hereunder upon written notice if: (a) the other Party materially breaches this Agreement or the applicable Sales Order Form and fails to cure such breach within thirty (30) days following receipt of notice of such breach; (b) the other Party fails to function as a going concern or operate in the ordinary course; (c) there is an assignment by the other Party for the benefit of creditors; (d) there is a voluntary or involuntary bankruptcy filing by or against the other Party; or (e) the other Party breaches the confidentiality restrictions in Section 8. The Parties agree that Customer's sole remedy under the applicable SLA is the provision of credits thereunder, and such remedy may be provided in the period set forth in the applicable SLA. Failure to provide credits within the thirty (30) days set forth in (a) above shall not be deemed a failure to cure as set forth herein.

d. Termination Fees. Except where early termination occurs due to force majeure or termination by Customer for Cause, if Customer terminates this Agreement or a particular Sales Order Form prior to the end of the Term (as set forth in the particular Sales Order Form), Customer shall pay all costs incurred by Meriplex through the lease of equipment and/or the management of Meriplex or Customer Provided Equipment in addition to all amounts then due and unpaid plus the amount Customer would otherwise have had to pay to Meriplex over the remainder of the Term of the terminated Sales Order Form, or over the remainder of the Term for each current Sales Order Form if Customer is terminating this Agreement (the "Termination Fee"), calculated based on the remaining number of months of the Term, at a monthly rate based on the greater of (i) the monthly average billings hereunder during the Term and (ii) the minimum monthly billing tier amount. Customer agrees to pay any Termination Fee within thirty (30) days of the termination date. Customer acknowledges that such Termination Fee is not a penalty but is in the nature of liquidated damages.

e. Cancellation Fees. If Customer terminates or cancels this Agreement or a Sales Order Form at least five (5) days prior to activation of the port circuit at the Meriplex or connectivity partner service point, Customer shall be liable for all costs incurred by Meriplex through the date of Meriplex's receipt of Customer's written notice of cancellation (the "Cancellation Fee"). Customer agrees to pay any Cancellation Fee within thirty (30) days of the cancellation date.

f. Effect of Termination. Termination of this Agreement or any Sales Order Form shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer, including Termination and Cancellation Fees. Upon expiration or termination of this Agreement or any Sales Order Form: (i) the rights granted to Customer under this Agreement or the particular Sales Order Form will cease immediately upon the effective date of such termination and be of no further force or effect; (ii) each party will promptly destroy or return to the other party all Confidential Information belonging to such party and certify in writing to the other party that all such Confidential Information has been so destroyed or returned; (iii) Customer shall immediately surrender to Meriplex, in its original condition, all Space, equipment or other property owned or leased by Meriplex, including any IP space, that has been provided to Customer, and Meriplex or its agents shall have the right to take immediate possession of such equipment and, for such purpose, enter Customer's premises where such equipment is located, free from all claims by Customer; and (iv) if Customer has Equipment on Meriplex's property, Customer shall promptly remove all Equipment and other property as directed by Meriplex and restore the Space to its prior condition. Any Equipment or other property not so removed by Customer may be removed and disposed of by Meriplex and Customer shall be liable for the cost of removal, disposal and restoration of the Space to its original condition. If Customer does not return all Meriplex property in its original condition, in Meriplex's sole discretion, reasonable wear and tear excepted, Customer shall be responsible for the replacement value of such property. Upon expiration or termination of this Agreement, the following Sections will continue and survive in full force and effect: 1-6, 7(d), 7(e), 7(f), 8, 9-12.

8. CONFIDENTIALITY.

a. In connection with this Agreement, the Parties might obtain information of the other Party which is confidential or proprietary in nature ("Confidential Information"). Such Confidential Information shall include, without limitation: (a) any specifications, protocols, router configuration syntax and routing data and tables related to Meriplex's facilities, technology and network services, in addition to any performance data collected and compiled by Meriplex as a result of such technology and services; (b) any processes, methods, ideas, techniques, drawings, works of authorship, SLA, inventions, know-how, software, algorithms and formulae related to the products or services of either Party; (c) information concerning research, development, financials, revenue, profit margins, financial models, procurement, customer lists, investors, employees, third party relationships, forecasts, future product plans and marketing plans of either Party; (d) any other information or material that is proprietary to either Party; (e) any other information that is marked confidential, restricted, proprietary or with a similar designation. Such information shall be deemed Confidential Information, whether or not described as such at the time of communication; (f) business and marketing information, including the identities of customers and prospective customers, customer and prospective customer lists and information, subscriber lists, marketing studies, business plans, unannounced future products and strategies; and, (g) personal information pertaining to current and former employees of Meriplex, you, vendors and consultants and any list of employees, vendors and/or consultants. The Parties agree: (i) to take all reasonable steps necessary to maintain the confidentiality of any such Confidential Information and not to disclose such Confidential Information without the other Party's prior written consent; (ii) to not use or copy any Confidential Information for any purpose other than in direct furtherance of the purposes of this Agreement; and (iii) that their obligations under this Section 8 shall survive the termination of this Agreement for a period of three (3) years. Notwithstanding the foregoing, each Party's confidentiality obligations shall not apply to the extent that disclosed Confidential Information: (1) is already known to the other Party without an obligation of confidentiality; (2) becomes publicly available through no fault of the other Party; (3) is received from a third party rightfully and without restriction; (4) is independently developed without exposure to or use of the Confidential Information; or (5) is required to be disclosed by law, provided the disclosing Party is provided reasonable notice prior to the disclosure and the non-disclosing Party has made a reasonable effort to quash the legal requirement or otherwise prevent disclosure of its Confidential Information through legal means. The terms and conditions of this Agreement shall be deemed to be Confidential Information except that Meriplex may disclose and list Customer as a customer of the Services in connection with Meriplex's advertising, publicity and promotion of the Services. Confidential Information may be in intangible form, such as unrecorded knowledge, ideas, conceptions or information communicated orally or by visual observation, or may be embodied in tangible form, such as documents, notes, memoranda, reports, lists, records, drawings, sketches, formulae, models, training materials, specifications, photographs, graphic representations or other information recorded or communicated by electronic, magnetic, optical or other media.

b. Meriplex shall establish and maintain policies and procedures to comply with this Section and with Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et. seq., and Federal regulations implementing such Act, including to ensure the security and confidentiality of Confidential Information, to protect against any anticipated threats or hazards to the security or integrity of Confidential Information, and to protect against unauthorized access to or use of Confidential

Information. Meriplex also agrees that such policies and procedures will be consistent with Customer's customer information security program. Meriplex agrees to notify Customer of (i) breaches in Meriplex's security that could materially affect Customer or Customer's customers and (ii) the corrective action taken to respond to such breach. Meriplex agrees to permit Customer and Customer's regulators to audit Meriplex's compliance with this Section 8 during regular business hours upon reasonable notice to Meriplex.

c. Each of Meriplex and Customer acknowledges and agrees that the Federal Reserve Board and applicable federal and state licensing or regulatory authorities have the right to request and to review, examine and inspect the books, records and business of Meriplex and Customer regarding and in connection with services Meriplex provides to Customer under this Agreement, and each of Meriplex and Customer agrees to comply with and cooperate with any such regulatory review at its own expense. Each of Meriplex and Customer agrees to notify the other party as soon as reasonably possible of any formal request by any regulatory authority to examine any records maintained by such party; provided that such party is permitted to make such a disclosure under applicable law or regulations. In connection with the services provided hereunder, each of Meriplex and Customer shall make and keep such accounts, correspondence, memoranda, papers, books and other records as, and shall preserve such records for such period of time as, any applicable federal or state regulatory authority may require.

9. WARRANTY AND DISCLAIMER.

a. Subject to the limitations contained herein, Meriplex warrants that its proprietary facilities and technology in the Services will, in all material respects, conform to the requirements of the applicable SLA.

b. Notwithstanding the terms and conditions set forth in Section 7(c)(a) herein, customer's sole and exclusive remedy and Meriplex's entire liability for such breach of the above warranty or any claim related to the Services shall be repair, replacement or crediting of the Services in accordance with the applicable SLA. For equipment provided by Meriplex under the Customer Premise Equipment program, Meriplex's responsibility and any representation or warranty, is hereby expressly disclaimed, whether express or implied, to the maximum amount allowed by law.

c. WITH RESPECT TO THE SERVICES, ANY EQUIPMENT AND/OR THE SUBJECT MATTER OF THIS AGREEMENT, THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF SERVICE, TITLE, AND NON-INFRINGEMENT. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW.

10. LIMITATION OF LIABILITY. Under no circumstances shall Meriplex be liable, either in contract, tort, warranty, strict liability, negligence or under any statute, regulation or any other theory for: (a) unauthorized access, alteration, theft, corruption, or destruction of or to Customer's or its customer's, end user's or business partner's computer files, databases, network, transmission facilities or equipment; or (b) the content, accuracy or quality of the data transmitted through the Services. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT OR ANY SALES ORDER FORM SHALL BE LIMITED TO SIX MONTHS OF FEES PAID BY CUSTOMER TO MERIPLEX UNDER THE SALES ORDER FORM UNDER WHICH THE LIABILITY ARISES, EXCEPT THAT IN THE CASE OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11 NO SUCH LIMIT WILL APPLY. EXCEPT IN THE CASE OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11 HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY THIRD PARTY CLAIM OR FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY BREACH THEREOF, OF ANY NATURE WHATSOEVER (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL), REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, AND EVEN IF ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES.

11. INDEMNITY.

Customer will indemnify and hold Meriplex harmless from and against all loss, liability, damage and expense, including reasonable attorneys fees, caused by Customer's officers, employees, agents, vendors, partners or contractors arising from claims or demands: (a) for damages to property or for injury or death to persons, including without limitation any disability, death or Worker's Compensation benefits; (b) arising from data transmitted, received or stored on or over Meriplex's network by or through Customer; (c) for any damages or loss incurred directly by Meriplex as a result of a failure or modification of any Customer Provided Equipment installed within Meriplex's facilities or on Customer's premises; (d) of infringement of a third party's proprietary rights based on any information, materials or access to property provided by Customer; or (e) relating to the use by Customer or any end user of Customer of any Services provided under this Agreement.

Your use of the service constitutes an acknowledgment and an agreement that the release, indemnification, and limitation of liability provisions contained in these terms and conditions are conspicuous and comply with the express negligence rule.

12. GENERAL PROVISIONS.

a. **Equitable Remedies.** The Parties acknowledge that any threatened or actual breach of a Party's Intellectual Property Rights, Confidential Information and other proprietary rights by the other Party will constitute immediate, irreparable harm, for which equitable remedies may be awarded by a court of competent jurisdiction.

b. **Severability and Waiver.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force. The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of Meriplex's proprietary rights, no action, regardless of form, arising out of this Agreement may be brought by either Party more than one year after the cause of action has accrued.

c. **Entire Agreement.** This Agreement is the entire and complete Agreement between the Parties with respect to the Services and subject matter hereof and supersedes any prior or contemporaneous agreements or understandings between the Parties, whether written or oral. No other act, document, usage or custom shall be deemed to amend or modify this Agreement. Meriplex shall have the right to add to, modify, or delete any provision of these Terms and Conditions at any time. Meriplex will notify you of any change to the Terms and Conditions by e-mail or U.S. Mail. You agree that any one of the foregoing will constitute sufficient notice of such changes. If you do not agree to the changes, you must notify Meriplex in writing of your objection and the impact on your use of the service no later than ten (10) days after our notice of the change to the Terms and Conditions. If we cannot accommodate your objection and the change materially affects your use of our service, we will agree to terminate the service without penalty within forty-five (45) days after our receipt of your objection. If Meriplex does not receive a notice of objection from you within the 10-day period described above, you shall be deemed to have agreed to proposed change(s), which shall thereafter be a part of this Agreement.

d. Assignment. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned, or otherwise transferred, in whole or in part, by Customer, and any such attempted assignment shall be void and of no effect, without the advance written consent of Meriplex, such consent not to be unreasonably withheld or delayed.

e. Force Majeure. Neither Party shall be liable for any delay or failure in performance due to war, acts of terror, riots, embargoes, strikes, accidents, fire, acts of God, supplier or vendor failure, outage or malfunction of local or longhaul telecommunications services, utility outage or other occurrence reasonably beyond such Party's direct control (each, a "Force Majeure Event"). The non-performing Party shall notify the other Party of a Force Majeure Event, and if a Force Majeure Event continues for more than thirty (30) days, Meriplex or Customer may cancel this Agreement with no further liability (except for any amounts due and not paid by Customer) as a result of such Force Majeure Event.

f. Attorneys' Fees. In any action to enforce the terms of this Agreement Meriplex will be entitled to reasonable attorneys' fees and other costs and expenses incurred by it in connection with such action.

g. Successors and Assigns. All provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of Meriplex and Customer.

h. Notices. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (a) on the delivery date if delivered personally to the Party to whom the same is directed; (b) upon receipt of confirmation on the sender's facsimile machine that all pages have been received by the recipient, if sent by facsimile; or (c) one business day after deposit with a commercial overnight carrier, with written verification of receipt. Except as specifically provided in this Agreement, if notice is being sent to Customer, notice shall be sent to the attention of the signatory of this Agreement and the relevant Sales Order Form, or to such other address or individual as the Customer may specify from time to time by written notice to Meriplex. Except as specifically provided in this Agreement, if notice is being sent to Meriplex, notice shall be sent to the addresses set forth below:

If to Meriplex: Meriplex Communications, LTD.
10111 Richmond Avenue
Suite 500
Houston, TX 77042
Attn: General Manager

with copy to: Meriplex Communications, LTD.
10111 Richmond Avenue
Suite 500
Houston, TX 77042
Attn: General Counsel

i. Insurance. During the Term of this Agreement, each party will maintain, at its own expense, commercial general liability insurance with policy limits of not less than One Million Dollars (US \$1,000,000.00) per occurrence.

j. Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of Texas, excluding its conflict of laws provisions.

k. Venue. The Parties hereby irrevocably consent to the sole and exclusive jurisdiction of and venue in the district courts for the Southern District of Texas, in Houston, Texas, or if federal subject matter jurisdiction does not exist, then in the courts of the State of Texas, located in Harris County.

l. VPN. Sales of VPN Services and the related equipment must comply with all U.S. Commerce Department regulations and U.S. State Department restrictions. Certain hardware encryption products may not be exported to certain countries, or may be exported only with individual licenses. Software that contains DES data and/or encryption technology may not be exported outside the United States. Customer is solely responsible for determining compliance and obtaining all required approvals to facilitate the export of any VPN equipment to endpoints outside the United States except as expressly set forth in the Sales Order Form.