



Terms and Conditions for Network and Device Management System and Services

1. General

a. 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.

b. These Terms and Conditions apply to Meriplex's network and device management system and services ("Services"). 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. The Sales Order and these Terms and Conditions are referred to herein collectively as the "Agreement."

c. This Agreement shall be in effect during the term of the Sales Order unless modified as set forth herein. 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 service term 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 service 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 service upon expiration of the term.

d. You agree not to resell Meriplex's services, nor permit these services to be used by anyone other than your employees, contractors, and agents of your business.

e. Because of variations in the your wiring or network infrastructure, Meriplex cannot guarantee that a particular service or speed will be available until we actually complete the service set-up, even if we believe that it should be available and accept an order for it. All orders are subject to downgrade or cancellation as a result of unforeseen or unknown problems with the wiring or network infrastructure.

f. 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. 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.

g. You are responsible in all respects (including payment obligations) for all use of the services provided to you, including all use under any screen name or password by any person, and all use by others. All use of your account, whether or not authorized by you, shall be deemed your use. Accordingly, you are responsible for protecting the confidentiality of your account passwords.

h. You may not assign your rights or obligations under this Agreement or any Sales Order(s) to any other person or entity, or to a different location, without Meriplex's prior written consent of approval; such consent will not be unreasonably withheld. You agree to pay for any charges associated with the move, assignment or transfer. This Agreement shall apply to any permitted transferees or assignees.

i. The security of your system, computers, network and equipment is your responsibility. You agree that neither Meriplex nor any of Meriplex's authorized vendors, agents or affiliates shall be responsible for any breach or break-in on your system or network.

2. Charges

- a. You agree to pay for your services and all use of your account, including charges for installation and all local, state, and federal fees and taxes. Charges for the service are on the executed Sales Order that has been provided to you. Meriplex's prices, except as provided under an executed Sales Order, are subject to change from time to time; accordingly, Meriplex will notify you of any changes by e-mail or U.S. Mail. You agree that any one of the foregoing will constitute sufficient notice of such changes.
- b. Recurring monthly charges will be billed monthly in advance. Usage charges for services will be billed in the next monthly billing cycle following such use, or as otherwise specified in the price list. All charges are payable on the due date specified on the bill, normally thirty (30) days from the date of billing. Billing for partial months is prorated. You are responsible for all charges respecting the Service, even if incurred as the result of unauthorized use.
- c. Payments must be received by Meriplex on or before the due date stated on the monthly bill, statement or invoice. A late fee may be charged on accounts that are past due. The current late fee is listed in the list of charges or can be provided upon request. Meriplex reserves the right to change the late fee at any time in the future pursuant to Section 1.f above and as permitted by applicable law. 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.
- d. 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 to re-connect service.
- e. Meriplex may charge a service fee for all returned checks and bankcard or charge card charge backs. The current late fee is listed in the list of charges or can be provided upon request.
- f. 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.

3. Equipment and Software

- a. The charges for the service may include rental of the equipment to be operated at the customer's premises to connect to Meriplex's service. If you require additional premise equipment, then Meriplex may provide premise equipment for an additional fee.
- b. You will be responsible for and agree to pay for the cost of any cabling, equipment and/or Third-Party service required to connect Meriplex equipment to your phone system, computer network, and/or communications network.
- c. Meriplex and its authorized representatives may enter your premises with prior notice and during normal business hours and have access to your computers periodically to install, connect, inspect, maintain, repair, or replace its equipment or software, or to disconnect and remove its equipment. If you are not the owner of the premises upon which equipment and software are to be installed, you must obtain the consent of the premises' owner for Meriplex personnel or its authorized representatives to enter the premises with reasonable notice and scheduling. Customer agrees to indemnify and hold Meriplex harmless from and against any claims of the owner or occupants of the premises arising out of Meriplex's entry into the premises or performance under this Agreement.
- d. Meriplex may upgrade, modify, enhance, and/or replace the equipment and/or software from time to time through downloads from the network or otherwise.
- e. Equipment
- i. The rental equipment provided by Meriplex is and shall remain Meriplex's personal property. You shall not acquire an ownership interest in this equipment by virtue of the payments for service unless specifically written in your individual agreement.

ii. You shall not alter, misuse, tamper with or remove Meriplex's equipment, or remove any markings or labels including serial or identity numbers from Meriplex's equipment. You will take all reasonable steps to safeguard Meriplex's equipment from loss or damage, and will not permit anyone other than Meriplex's authorized representative to perform any work on it.

iii. Upon termination of the service, you must return the equipment to Meriplex in the same condition as when it was received, ordinary wear and tear excepted.

iv. If the equipment is damaged, destroyed, lost, or stolen while in your possession, you are liable for the cost of repair or replacement of the equipment. If the equipment is not returned to Meriplex upon termination of the service, you agree to pay Meriplex the equipment's replacement cost without any deduction for depreciation or wear and tear on the physical condition of the equipment.

f. Software

i. If software is provided, Meriplex grants you a limited, non-exclusive license to use the software solely for the purpose of connecting your computers to Meriplex's service. This license will permit such use by you and any person you authorize to use your account, under any password, provided that you shall be responsible for all use of the account. This license will commence upon your acceptance of service, and will terminate immediately upon termination of the service. Meriplex and its licensors retain all rights and interests in and to the software.

ii. You are permitted to make a single copy of any such software solely for back-up purposes, provided that such copy contains the same copyright notices and proprietary markings as the original software. You agree not to copy, and not to permit any other copying, or any translation, reverse engineering, or reverse compiling, disassembly, or modification of, or preparation of any derivative works based on the software.

iii. You agree to destroy all software and any related written material together with any copies promptly upon termination of the service.

4. Customer Conduct

a. You may use the service for lawful purposes only, and in accordance with these Terms and Conditions and Meriplex's Acceptable Use Policy. You shall not upload, post, transmit or otherwise make available any material that violates or infringes in any way upon the rights of others, or that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, or that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense or give rise to civil liability or otherwise violate any law.

b. You may not upload, post, transmit or otherwise make available any material protected by copyright, trademark, patent, trade secret or other proprietary right in a manner that infringes or violates any such right. Meriplex's policy is to terminate any customer's service where there is a repeat infringement after reasonable notification. This policy does not affect any other rights Meriplex may have under law or under any agreement between you and Meriplex. Meriplex also reserves the right to suspend or terminate your service for a single violation of any provision of these Terms and Conditions, Meriplex's Acceptable Use Policy, or its tariffs.

c. You are not being granted any right or license under any copyright, trademark, service mark, patent or other intellectual property right in the information, services, processes, or technology described therein or under any other intellectual property right of Meriplex or its affiliates. Meriplex, its affiliates, and any third party owner of such rights retain all such rights.

d. Meriplex's names and logos and all related product and service names, design marks, and slogans are the trademarks or service marks of Meriplex or one of its affiliates. You must obtain Meriplex's written authorization before using any Meriplex name or mark in any advertising, publicity, or in any other commercial manner.

e. In addition to any specific Customer duties set forth in any applicable Sales Order, Customer agrees to cooperate with Meriplex in connection with performance of the Services by providing (i) timely responses to Meriplex's inquiries and requests for approvals and authorizations, (ii) access to any information or materials reasonably requested by Meriplex which are necessary or useful as determined by Meriplex in connection with providing the Services, including, but not limited to, physical and computer access to Customer's computer systems, and (iii) all Required Consents necessary for Meriplex to provide the Services. "Required Consents" means consents or approvals required to give Meriplex, its Affiliates, and its and their employees, agents or subcontractors the right or license to access premises as necessary to provide the Services and/or to access, use, and/or modify all data and third party products. Customer acknowledges and agrees that the Services are dependent upon the completeness and accuracy of information provided by Customer and the knowledge and cooperation of

the agents, employees, or subcontractors ("Personnel") engaged or appointed by Customer who are selected by Customer to work with Meriplex. Customer will notify Meriplex of all modifications and/or additions made on its network that will directly affect Meriplex's ability to perform its obligations under this Agreement.

f. Customer shall maintain industry standard security policies, practices and procedures, and shall comply with all applicable laws and regulations and with all applicable security rules, programs and procedures.

g. Meriplex will follow all reasonable Customer security rules and procedures, as communicated in writing by Customer to Meriplex from time to time.

h. Customer will notify Meriplex of all modifications and/or additions made on its network that are not directly covered by this Agreement. In such case, Meriplex is relieved of all responsibilities, regarding such modifications unless in Meriplex's judgment it is determined that it is practical for Meriplex to render services and the parties agree on the additional costs.

5. Review and Enforcement

a. If Meriplex finds any violation, it may suspend your service, take other action to prevent you from using certain account privileges, or cancel your account without prior notification. Meriplex may also suspend or cancel your account for violations of these Terms and Conditions or its Acceptable Use Policy. If your service is suspended, you will not be charged for services during the suspension. If your account is canceled, Meriplex may refund any pre-paid fees minus any amount due.

b. You agree that Meriplex shall have the right to take any reasonable and professional action that it deems appropriate to protect its service, its reputation, its facilities, and its equipment.

6. Republication

a. Material posted or transmitted through the Internet may be copied, republished, or distributed by third parties. YOU AGREE TO RELEASE, INDEMNIFY, AND HOLD MERIPLEX HARMLESS FOR ANY HARM RESULTING FROM SUCH ACTIONS.

b. Meriplex will not use your logo, information, or material highlighting the business relationship between Meriplex and you without your prior written consent.

7. Service and Repairs

a. At Meriplex's expense, it will repair or replace damaged equipment, modify software, and otherwise attempt to correct interruptions of the service due to reasonable equipment wear and tear or technical malfunction of the system or network operated by Meriplex. At your expense, Meriplex may repair or replace damaged equipment, modify software, and otherwise attempt to correct interruptions of the service due to your, your agents', contractors and/or your employees' actions or omissions. You are solely responsible for the operation, security, repair, and maintenance of your own equipment and software.

b. Certain Services, such as extended warranty service by manufacturers, are sold by Meriplex as a distributor or sales agent ("Third Party Services").

c. In the case of Third Party Services, the third party shall be the party responsible for providing the services to the Customer and Customer agrees to look solely to the third party for any loss, claims, or damages arising from or related to the provision of such Third Party Services. CUSTOMER HEREBY RELEASES, DEFENDS, INDEMNIFIES, AND HOLDS HARMLESS MERIPLEX AND THE ENTITIES THAT CONTROL, ARE CONTROLLED BY, OR ARE UNDER COMMON CONTROL WITH MERIPLEX ("AFFILIATES") AND THEIR RESPECTIVE EMPLOYEES, AGENTS AND CONTRACTORS FROM ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THE PURCHASE OR PROVISION OF ANY SUCH THIRD PARTY SERVICES. Any amounts, including but not limited to taxes associated with Third Party Services which may be collected by Meriplex will be collected solely in the capacity as an independent sales agent.

d. Where Services are ordered in an additional Sales Order(s), each Sales Order(s) hereby incorporates the applicable terms and conditions found at http://www.meriplex.com/terms_and_conditions.html and constitutes a separate agreement with respect to the Services performed.

e. Meriplex may perform the Services at Customer's place of business, at Meriplex's own facilities, or such other locations as Meriplex and Customer deem appropriate. When the Services are performed at Customer's premises, Meriplex will attempt to

perform such Services within Customer's normal business hours unless otherwise jointly agreed to by the parties. Customer agrees to provide Meriplex access to Customer's staff and any other Customer resources (and when the Services are provided at another location designated by Customer, the staff and resources at such location) that Meriplex determines are useful or necessary for Meriplex to provide the Services. When the Services are provided on Customer's premises or at another location designated by Customer, Customer agrees to maintain adequate insurance coverage to protect Meriplex and Customer's premises

8. Force Majeure

Meriplex is not liable, nor shall any credit allowance or other remedy be extended, for interruption of the service nor for any loss or damage, whether direct, indirect, special, or consequential, that may result from interruption of the service due to circumstances beyond Meriplex's control, including without limitation, acts of God, flood, natural disaster, regulation or governmental acts, fire, civil disturbance, strike or weather.

9. Disclaimer of Warranty; Limitation of Liability

a. **EXCEPT AS SET FORTH IN THE SERVICE LEVEL AGREEMENT PROVIDED TO YOU, OR INCLUDED WITHIN OR ATTACHED TO A SALES ORDER AND SUBJECT TO APPLICABLE LAWS**, YOU AGREE THAT THE SERVICE IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU FURTHER AGREE THAT ALL USE OF THE SERVICE, INCLUDING, BUT NOT LIMITED TO, THE ACCESSING AND USE OF CONTENT, INFORMATION, AND SERVICES, THE EQUIPMENT AND SOFTWARE, THE PURCHASE OF MERCHANDISE AND SERVICES, THE TRANSMISSION OF INFORMATION AND OTHER COMMUNICATIONS BY AND TO YOU, AND THE DOWNLOADING OF COMPUTER FILES IS AT THE YOUR SOLE RISK. Without limiting the foregoing:

i. MERIPLEX MAKES NO WARRANTIES AS TO THE PERFORMANCE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY THAT ANY DATA, FILES, OR OTHER COMMUNICATIONS BY OR TO YOU WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME, THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, OR AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICE.

ii. MERIPLEX DOES NOT WARRANT THE SECURITY OF THE CUSTOMER'S COMMUNICATIONS VIA ITS SERVICES. MERIPLEX DOES NOT WARRANT THAT THIRD PARTIES WILL NOT GAIN UNAUTHORIZED ACCESS TO OR MONITOR THE CUSTOMER'S COMPUTERS OR ONLINE COMMUNICATIONS. YOU AGREE THAT MERIPLEX IS NOT LIABLE FOR ANY SUCH UNAUTHORIZED ACCESS.

iii SOFTWARE AND OTHER CONTENT DOWNLOADED VIA THE INTERNET MAY CONTAIN HARMFUL OR DISABLING FEATURES OR CODES SUCH AS VIRUSES. MERIPLEX DOES NOT WARRANT OR UNDERTAKE TO ENSURE THAT COMPUTER FILES RECEIVED VIA THE INTERNET DO NOT OR WILL NOT CONTAIN ANY VIRUS OR OTHER HARMFUL OR DISABLING CODE OR FEATURE, AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR DAMAGE TO OR LOSS OR DESTRUCTION OF HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM THE SAME.

b. YOU UNDERSTAND THAT THE INSTALLATION, USE, INSPECTION, MAINTENANCE, REPAIR, REPLACEMENT, OR REMOVAL OF THE SERVICE, EQUIPMENT, AND/OR SOFTWARE COULD RESULT IN DAMAGE TO YOUR COMPUTERS, OTHER HARDWARE, SOFTWARE, AND/OR DATA FILES. YOU ARE SOLELY RESPONSIBLE FOR BACKING UP ALL EXISTING COMPUTER FILES PRIOR TO AND DURING THE PERFORMANCE OF ANY OF THE FOREGOING ACTIVITIES. MERIPLEX IS NOT LIABLE FOR AND EXPRESSLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY SOFTWARE, HARDWARE, DATA OR FILES UNLESS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF MERIPLEX OR ITS EMPLOYEES.

c. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL MERIPLEX, ITS EMPLOYEES OR ITS AUTHORIZED AGENTS, CONTRACTORS OR REPRESENTATIVES WHO ARE INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING THE SERVICE, INCLUDING THE CONTENT, THE EQUIPMENT, OR THE SOFTWARE, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICE, ACTION TAKEN TO PROTECT THE SERVICE, OR THE BREACH OF ANY WARRANTY. Company reserves the right to refuse credit allowances for interruptions of Services not within its control or which are the fault of Customer, or if Customer is at the time of such interruption, in default of any of the terms of this Agreement. Company also reserves the right to modify or discontinue, temporarily or permanently, at any time and from time to time, the Services (or any function or feature of the Services or any part thereof) without liability, although Customer's billing will be adjusted appropriately to reflect any such changes. Customer's sole and exclusive remedy and Meriplex's entire liability for direct damages as a result of a breach of any warranty or any claim related to the services shall be the granting of credits pursuant to the foregoing provisions or applicable SLAs as described above. IF, DESPITE THE FOREGOING LIMITATIONS,

COMPANY IS SOMEHOW HELD LIABLE FOR DAMAGES IN EXCESS OF THE FOREGOING, COMPANY'S TOTAL LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS RELATING TO THE SERVICES OR THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF SERVICE FEES PAID DURING THE IMMEDIATELY PRECEDING ONE (1) MONTH PERIOD. CUSTOMER HEREBY RELEASES COMPANY FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THIS LIMITATION.

d. THE CUSTOMER ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION APPLY TO ALL CONTENT AND SERVICES INCLUDED IN, ACCESSIBLE THROUGH, OR PROVIDED BY MERIPLEX, AND ARE FOR THE BENEFIT OF AND MAY BE ENFORCED BY MERIPLEX.

e. Customer understands that Meriplex is not the manufacturer of the Products and other Third-Party Services purchased by Customer hereunder and the only warranties offered are those of the manufacturer, not Meriplex or its Affiliates. In purchasing the Products and other Third-Party Services, Customer is relying on the manufacturer's specifications only and is not relying on any statements, representations, specifications, photographs or other illustrations representing the Products and other Third-Party Services that may be provided by Meriplex or its Affiliates.

f. Customer shall be solely responsible for daily back-up, security, and other protection of its data and software against loss, damage, or corruption. Customer shall be solely responsible for reconstructing data (including but not limited to data located on disk files and memories) and software that may be lost, damaged, or corrupted during the performance of Services. CUSTOMER HEREBY RELEASES AND AGREES TO INDEMNIFY AND HOLD HARMLESS MERIPLEX, ITS AFFILIATES, AND THEIR SUPPLIERS, CONTRACTORS, EMPLOYEES AND AGENTS FROM ALL LIABILITY, INCLUDING THAT ARISING FROM THE SOLE NEGLIGENCE OF MERIPLEX, ITS AFFILIATES AND THEIR SUPPLIERS, CONTRACTORS, EMPLOYEES AND AGENTS, IN CONNECTION WITH THE LOSS, DAMAGE, OR CORRUPTION OF DATA AND/OR SOFTWARE, AND CUSTOMER ASSUMES ALL RISK OF LOSS, DAMAGE, OR CORRUPTION OF DATA AND/OR SOFTWARE IN ANY WAY RELATED TO OR RESULTING FROM THE SERVICES.

10. Release and Indemnification

YOU AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS MERIPLEX FROM AND AGAINST ANY AND ALL LIABILITY, INCLUDING ANY LIABILITY CAUSED BY MERIPLEX'S OWN FUTURE NEGLIGENCE, AND AGAINST ANY AND ALL CLAIMS, COSTS, LIABILITIES OR EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING OUT OF ANY PRODUCT LIABILITY, DEATH, PERSONAL INJURY OR PROPERTY DAMAGE OR DESTRUCTION OCCURRING AT SUCH LOCATION IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES OR RELATED IN ANY WAY TO YOUR USE OF THE SERVICE OR OTHERWISE ARISING OUT OF THE USE OF YOUR ACCOUNT OR THE EQUIPMENT OR THE SOFTWARE; PROVIDED THAT YOU SHALL NOT BE OBLIGATED TO INDEMNIFY MERIPLEX FOR ANY CLAIMS, LIABILITIES, COSTS OR EXPENSES TO THE EXTENT RESULTING FROM THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF MERIPLEX.

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.

11. Privacy and Confidential Information

Meriplex and its affiliates are committed to protecting the privacy and security of its customers. The customer's privacy interests, including its ability to limit disclosure of certain information to third parties, are addressed by, among other laws, the Electronic Communications Privacy Act.

- a. Meriplex uses private information for billing and operations purposes.
- b. Meriplex will not disclose information on a customer's account to any unaffiliated third party for marketing purposes.
- c. Meriplex may disclose customer information without the customer's consent to comply with a subpoena, court order, or legal reporting requirement.
- d. Meriplex may disclose customer information to protect accounts against fraud and unauthorized transactions, to resolve customer disputes, and as necessary to our accountants, attorneys, regulators and auditors.
- e. Each party anticipates that it may be necessary to provide access to information of a confidential nature of such party, the Affiliates, or a third party (hereinafter referred to as "Confidential Information") to the other party in the performance of any Sales Order. Confidential Information includes any information or data in oral, electronic or written form which the receiving

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party knows or has reason to know is proprietary or confidential and which is disclosed by a party in connection with any Sales Order or which the receiving party may have access to in connection with any Sales Order, including but not limited to the terms and conditions of each Sales Order. Confidential Information will not include information which: (a) becomes known to the public through no act of the receiving party; (b) was known to the receiving party, or becomes known to the receiving party from a third party having the right to disclose it and having no obligation of confidentiality to the disclosing party with respect to the applicable information; or (c) is independently developed by agents, employees or subcontractors of the receiving party who have not had access to such information. To the extent practicable, Confidential Information should be clearly identified or labeled as such by the disclosing party at the time of disclosure or as promptly thereafter as possible, however, failure to so identify or label such Confidential Information will not be evidence that such information is not confidential or protectable.

f. Each party agrees to hold such Confidential Information confidential for a period of three (3) years following the date of disclosure and to do so in a manner at least as protective as it holds its own Confidential Information of like kind. Disclosures of Confidential Information will be restricted (i) to those individuals who are participating in the performance of any Sales Order and need to know such Confidential Information for purposes of providing or receiving the Products or Services or otherwise in connection with any Sales Order or these Product/Services Terms and Conditions, or (ii) to its business legal and financial advisors, each on a confidential basis. Upon the written request of a party, the other party will either return or certify the destruction of the Confidential Information of the other party.

g. If a receiving party is required by law, rule, or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority to disclose the Confidential Information, the receiving party will give the disclosing party prompt notice of such request so that the disclosing party may seek an appropriate protective order or similar protective measure.

h. Customer hereby authorizes Meriplex to make inquiries and to receive information about his/her/their credit history from credit reporting agencies or others and to utilize such information in its decision regarding its entry into this Agreement or provision of services hereunder.

12. Entire Agreement

These Terms and Conditions, the customer's Sales Order, and the Acceptable Use Policy constitute the entire agreement between Meriplex and the customer, and supersede all previous written or oral agreements between Meriplex and the customer. Acceptance of Meriplex's service shall constitute acceptance of these Terms and Conditions. This Agreement shall not be construed in favor of, or against, either party.

13. Choice of Law and Forum

This Agreement is to be governed and construed under the laws of the State of Texas, excluding its conflicts of law rules. Subject to the arbitration provisions contained herein, you expressly agree that the exclusive jurisdiction for any claim or action arising out of or relating to this Agreement, or which arises from any use or misuse of Meriplex's or any other web site by you, shall be filed only in the courts of Harris County, Texas. You further agree and submit to the exercise of personal jurisdiction of such courts for the purpose of litigating any such claim or action. Customer waives all rights to bring any claim, suit or proceeding more than one (1) year after the date the cause of action arose.

14. Severability

If any provision of these Terms and Conditions, the customer's Sales Order, or the Acceptable Use Policy is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder shall continue in full force and effect.

15. Termination

Customer may terminate this Agreement and the applicable Sales Order(s) issued under this Agreement only if **Meriplex** breaches a material term of this Agreement and fails to cure such breach no later than thirty (30) days' after receipt of written notice thereof by Customer. For purposes of this Section 15, a breach of a material term means the failure to achieve any of the service level agreements for any three consecutive months in a calendar year during the term of the applicable Sales Order hereunder, as documented by the appropriate written requests for credits within thirty (30) days of the occurrence.

In addition to rights granted to Meriplex in other provisions of this Agreement, Meriplex shall have the right to suspend services or terminate this Agreement and services (i) for Customer's breach of any of the provisions of this Agreement, (ii) for customer's violation of Company's Acceptable Use Policy; (iii) if Meriplex discovers that customer has provided to Company false or materially misleading information; or (iv) if Customer becomes insolvent, ceases operations, is the subject of a



As Modified 10/03/13

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bankruptcy petition, enters receivership or any state of insolvency proceeding, or makes an assignment for the benefit of its creditors.



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16. Acceptable Use Policy

Customer understands and agree that use of services provided pursuant to this Agreement is subject to Meriplex's Acceptable Use Policy, as may be amended from time to time, which can be found at www.meriplex.com, or may be requested by contacting Meriplex at 866.637.4235.

17. Miscellaneous

If Customer gives direction of any modification or addition to the work covered by this Agreement, or any Addendum thereto, the charge for that extra work shall be an additional fee. Customer shall make payments for all "Extra Work" as that work progresses, concurrently with regularly scheduled payments. Meriplex may assign or subcontract without Customer's consent all or any portion of Meriplex's rights or obligations with respect to the sale of Products or the performance of Services or the right to receive payments. The relationship between Meriplex and Customer is that of independent contractors and not that of employer/employee, partnership, or joint venture. No delay or failure by Meriplex to enforce all or any portion of this Agreement shall be interpreted as a waiver of such terms and conditions.