

## **TERMS AND CONDITIONS**

By using the service(s) of Meriplex, 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(s) provided by Meriplex, and you may be referred to herein each as a "Party" and collectively as the "Parties".

### **SECTION 1. DEFINITIONS**

In these Terms and Conditions, the following terms will have the following meanings:

- 1.1 "Acceptable Use Policy" means the document attached hereto as Exhibit "A".
- 1.2 "Agreement" means these Terms and Conditions, together with: (i) Exhibit "A" entitled Acceptable Use Policy; (ii) any other schedule or an exhibit attached hereto; (iii) any Sales Order (as hereinafter defined at Section 1.9) issued under this Agreement; and (iv) any other document incorporated herein by reference; and (v) any amendments to (i)-(iv).
- 1.3 "Affiliate" means (i) any entity that directly or indirectly owns a majority interest in either Party; (ii) any entity in which a Party directly or indirectly owns greater than a 50% interest; and (iii) a parent company of any Party.
- 1.4 "Business Day" means Monday through Friday unless it is a national holiday.
- 1.5 "Customer Data" means the electronic data, files, and records of Customer and customers of Customer, which are received, processed, or stored by Meriplex as part of the Services.
- 1.6 "Intellectual Property" or "Intellectual Property Rights" means all proprietary material and intellectual property rights, whether owned or held for use under license, including but not limited to: (i) trademarks; (ii) patents; (iii) trade secrets; (iv) copyrights; (v) mask works or integrated circuit topographies; (vi) industrial designs; and/or (vii) other intellectual property rights in each case including all registrations of, and applications to register, any of the foregoing with any government authority and any renewals or extensions thereof; and the goodwill associated with each of the foregoing.
- 1.7 "Meriplex" means Meriplex Solutions, LLC and Meriplex Communications, Ltd.
- 1.8 "Notice" means any writing tendered by one Party to another under this Agreement and in compliance with Section 19.9.
- 1.9 "Sales Order" means a document issued under and pursuant to these Terms and Conditions setting forth the Services to be purchased, a detailed description of the Services, terms of the Sales Order(s), pricing and payment terms, escalation and change management procedures, and any other relevant matter, which is necessary for the individual transaction to be adequately described.
- 1.10 "Service(s)" means the tasks to be performed and the services to be provided by Meriplex, including, but not limited to, IP Intranet, Internet access, colocation services, cloud computing services, network and data management services, MPLS data connectivity, Voice Over Internet Protocol ("VoIP") services and products, MSP services, MSSP services, professional services, and such other services and related products as the Parties may agree upon, all as more specifically defined in a Sales Order issued under this Agreement.
- 1.11 "Service Level Agreement" means the quality and volume of specific deliverables and service level requirements, including performance metrics applicable to the Services, as set out or referenced in a Sales Order (as defined herein at Section 1.9) issued under this Agreement.
- 1.12 "Statement of Work" means a document that includes a proposed scope, implementation plan, training plan, general assumptions, project management methodology, and responsibilities for the respective Sales Order.
- 1.13 "Third-Party Services" means any specified equipment, software, hardware, or service that is not owned, manufactured, developed, or provided by Meriplex.

### **SECTION 2. SCOPE**

2.1 Meriplex will provide the Services as mutually agreed upon in writing between the Parties pursuant to mutually executed Sales Orders.

2.2 With the exception of a conflict under Section 19.14, these terms and conditions of this Agreement shall apply to all Customer purchases of Services from Meriplex under a Sales Order.

2.3 Non-Exclusive. This Agreement is not an exclusive dealing agreement or a requirements contract.

### **SECTION 3. ORDERING SERVICES AND/OR PRODUCTS**

3.1 Ordering Process. Customer will order Services through a Sales Order. This Agreement shall be applicable to and govern all Sales Orders executed by Customer and Meriplex during the term of the Sales Orders, whether or not this Agreement is referenced by the Sales Order; provided, however, that in the event of conflict or inconsistency between a provision of this Agreement and a provision of a Sales Order issued hereunder and signed or otherwise accepted by the Parties, the provision of such Sales Order shall govern, but only to the extent of the subject matter in conflict.

3.2 Cancellation and Delay of Sales Order.

3.2.1 No Party may modify or cancel a fully-executed Sales Order without a written agreement signed by the Parties.

3.2.2 Customer may not, without good cause, delay the scheduled date for delivery, customization, assembly, or installation of any or all Services under a Sales Order without penalty. In the event of any delay, Customer shall provide thirty (30) days' Notice (as defined in this Agreement at Section 19.9) to Meriplex. Any delay of more than thirty (30) days is subject to the terms of Section 7.3 of this Agreement. Meriplex has sole discretion to determine what constitutes good cause.

3.3. Affiliates. Meriplex agrees that Customer's Affiliates will have the right to execute a Sales Order under this Agreement, and shall otherwise receive the benefits, and accept the obligations of this Agreement, to the same extent as Customer. Accordingly, in such case, all references in this Agreement to Customer shall be deemed to be references to such Affiliate for such purposes; provided, however, Customer shall remain responsible for payment and to ensure Affiliate is aware of and complies with the performance obligations of this Agreement.

### **SECTION 4. DURATION**

4.1 Term and Renewal of Agreement. This Agreement shall be in effect during the term of any Sales Order.

4.2 Term of Sales Order. Except as otherwise set forth in a Sales Order, the term of each Sales Order shall commence on Acceptance (as defined in this Agreement at Section 8) of the installation and/or activation for the respective Services and shall remain in force until, as applicable, all Services have been performed or upon expiration of a fixed term set forth in a particular Sales Order. Such term shall automatically renew for consecutive one (1) year terms unless a Party provides Notice of non-renewal to the other Parties no less than ninety (90) days and no more than one hundred fifty (150) days prior to the expiration of such term or renewal term.

### **SECTION 5. PRICES/PAYMENT AND AUDIT RIGHTS**

5.1 Prices. Customer shall pay Meriplex the prices set forth in Sales Orders (collectively, the "Prices"), or as otherwise mutually agreed to by the Parties in writing, including but not limited to any associated taxes, regulatory fees, and administrative fees and costs. Sales Order Prices reflect the Customer's current environment only at the time of pricing and reflects the minimum monthly recurring fees under the applicable Sales Order. Additional systems will be billed at the rates specified in the Sales Order. All amounts referred to in this Agreement are in U.S. dollars and are payable in U.S. dollars. Meriplex may increase the prices charged for Services under any Sales Order(s) by up to five (5%) annually to account for inflation and other related increases in industry costs.

5.2 Invoices. Unless otherwise set forth in an applicable Sales Order, Customer shall pay Meriplex for each invoice issued in accordance with a Sales Order relating to the fees and expenses identified in the applicable Sales Order.

5.3 Collection Expenses. Customer is responsible for and agrees to pay all costs and expenses including, but not limited to, reasonable attorneys' fees, court costs, expert fees and costs, and all other costs incurred by Meriplex in collecting any amounts due and unpaid, whether disputed or undisputed ("Collection Expenses").

5.4 Time for Payment. Customer shall pay each invoice within thirty (30) days of receipt or as otherwise agreed in the Sales Order. Each invoice shall be consistent with this Agreement and the applicable Sales Order issued for the Services being purchased from Meriplex. Invoices shall include local, state, and federal fees and taxes, and administrative fees and costs. 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 Sales Order. Customer is responsible for all charges respecting the Services, even if incurred as the result of unauthorized use.

5.5 Late Charges. A late fee may be charged monthly on accounts that are past due. The late fee will be calculated at the lesser of one-and-a-half-percent (1.5%) per month of the past due amount or the maximum rate permitted by law. Meriplex may also, in its discretion, charge a service fee for all returned checks and bankcard or charge card charge backs, not to exceed Fifty Dollars (\$50) per return or charge back. Any credit due to Customer for failure to meet a service level guaranty set forth in a Sales Order, will be applied to fees due from Customer for Services and will not be paid to Customer as a refund.

5.6 Invoicing and Payment Errors. In the event that Meriplex invoices Customer for an incorrect amount or Customer pays Meriplex an incorrect amount, the Parties agree to cooperate and promptly rectify the error by refunding the mistaken overpayment



or paying the mistaken underpayment, as appropriate. If Customer reasonably disputes an invoice(s), Customer must timely pay the undisputed amount and timely submit 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 one hundred twenty (120) days from the date of the invoice. Any dispute that is not timely submitted is waived. If a dispute is resolved against Customer, Customer shall pay such amounts plus applicable late charges. All undisputed amounts must be paid in accordance with Section 5.4 above.

## **SECTION 6. INDEPENDENT CONTRACTOR**

6.1 Meriplex is an independent contractor. Meriplex understands and agrees that neither it nor its employees are employees of Customer or entitled to any employment-related benefits from Customer.

6.2 Each Party is responsible for compliance with all applicable laws involving its respective employees or agents, including, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payments of wages.

6.3 All persons employed by Meriplex to perform Services for Customer pursuant to any Sales Order are under the sole and exclusive direction and control of Meriplex. Nothing herein precludes Meriplex from using subcontractors for Services.

6.4 The use of the term "personnel" when used all inclusively in this Agreement is deemed to refer to person(s) under the direction of Meriplex who are performing Services and shall not be construed to mean or imply that any contractor or subcontractor used by Meriplex has any status as an employee of Meriplex.

6.5 Neither Party is authorized to act for or on behalf of the other Party in any way. Neither Party undertakes by this Agreement or otherwise to perform or discharge any liability or obligation of the other Party, whether regulatory or contractual, or to assume any responsibility whatsoever for the conduct of the business or operations of the other Party. Nothing contained in this Agreement is intended to give rise to a partnership or joint venture between the Parties or to impose upon the Parties any of the duties or responsibilities of partners or joint venturers.

6.6 Meriplex and its employees agree to follow all reasonable Customer security rules and procedures that are communicated in writing by Customer to Meriplex from time to time.

## **SECTION 7. DELIVERY, SUSPENSION OR EXTENSION**

7.1 Delivery Schedule. The applicable delivery requirements and schedule will be set out in each Sales Order. Meriplex agrees to inform Customer of constraints that could adversely impact the delivery schedule set out in any applicable Sales Order issued hereunder.

7.2 Risk of Loss/Title. Risk of loss for and title to, including financial responsibility for damage or loss to equipment purchased or leased from Meriplex by Customer, shall pass to Customer at the time the equipment is delivered to the delivery location set out in the applicable Sales Order.

7.3 Extension, Delay or Suspension. Any or all deliverables under an accepted Sales Order may be extended, delayed or suspended, in whole or in part, for good cause, and only for such period of time as may be necessary, and on terms that are mutually agreeable to Customer and Meriplex confirmed in a writing signed by the Parties. Where a Party requests an extension by reason of a *Force Majeure* Event (as defined in this Agreement at Section 19.5), the other Party shall not unreasonably refuse to agree to a reasonable extension.

7.4 Rights of Parties. Where there is an extension, delay, or suspension under Section 7.3 of this Agreement, all terms and conditions of this Agreement shall continue in full force and effect. No Party shall be entitled to make any claim for damages by reason of any such delay, suspension, or extension except as may be mutually agreed upon in a Sales Order.

## **SECTION 8. INSTALLATION, VERIFICATION AND ACCEPTANCE**

8.1 Installation, Verification and Acceptance Software. Meriplex agrees to perform any required installation of software on Customer equipment in a workmanlike manner and in accordance with the Service Level Agreement set forth in an applicable Sales Order. Upon completion of installation, Meriplex shall perform verification tests for the software in accordance with the applicable Sales Order and Customer shall have the option of witnessing the verification tests. When Meriplex has completed the verification tests in accordance with the applicable Sales Order, Meriplex agrees to present to Customer a project completion and acceptance form for review and execution by Customer which shall not be unreasonably withheld or delayed or take greater than five (5) Business Days from date of receipt to be returned to Meriplex. Subject to Section 9.2, if Customer provides Meriplex with a written rejection Notice for non-compliance with the Sales Order, Meriplex will investigate and assist Customer to resolve the complained-of noncompliance with the Third-Party Services provider.

8.2 Acceptance Process for On-Going Services. Unless otherwise set out in the applicable Sales Order, for on-going or subscription-based Services (collectively, the "On-Going Services"), Customer shall provide Meriplex with written Notice specifying acceptance of the On-Going Services, or deficiencies noted, within ten (10) Business Days from the activation of the On-Going Services. If such Notice of acceptance or deficiencies is not provided by Customer to Meriplex within ten (10) Business Days from

activation of the On-Going Services, Customer shall be deemed to have accepted the respective Services. If Customer timely provides Meriplex with Notice of deficiencies, then no later than thirty (30) calendar days following receipt of such Notice, Meriplex shall, at its sole expense, take such steps as are commercially reasonable and cooperate with Customer to try to resolve such deficiencies as quickly and efficiently as practicable. If Meriplex is unable to satisfactorily remedy the deficiencies in accordance with the applicable Sales Order/Service Level Agreement in the time period required, then Customer shall have the right to reject the Services and shall not be liable for any charges or fees related thereto, and shall promptly receive a refund of any monies paid in advance for the rejected Services.

**8.3 Installation Acceptance.** Meriplex agrees to perform in a workmanlike manner any required Services involving a one-time setup or installation for Services or equipment purchased by Customer from Meriplex and in accordance with the Statement of Work or descriptions set forth in or attached to an applicable Sales Order. Upon completion of installation or set-up, Meriplex agrees to perform verification tests for the Services in accordance with the applicable Sales Order and Customer shall have the option of witnessing the verification tests. When Meriplex has completed the verification tests in accordance with the applicable Sales Order, Meriplex agrees to present to Customer a project completion and acceptance form for review and execution by Customer which shall not be unreasonably withheld or delayed or take greater than five (5) Business Days from date of receipt to be returned to Meriplex. If Customer provides Meriplex with a rejection Notice for non-compliance with the Sales Order, then no later than thirty (30) calendar days following receipt of such Notice, Meriplex shall, at its sole expense, take such steps as are necessary and cooperate with Customer to try to resolve such deficiencies as quickly and efficiently as practicable. If Meriplex is unable to satisfactorily remedy the deficiencies in accordance with the applicable Sales Order/Service Level Agreement in the time period required, then Customer shall have the right to cancel the Services, and in such instance, Meriplex shall refund any amounts paid in advance by Customer for such Services.

**8.4 Customer's Premises.** Meriplex may perform the Services at Customer's place of business, at Meriplex's own facilities, or such other locations as Meriplex deems appropriate.

**8.4.1** When the Services are performed at Customer's premises, Meriplex agrees, in addition to other obligations under this Agreement, to attempt to perform such Services within Customer's normal business hours, unless otherwise mutually agreed by the Parties. Customer agrees to provide Meriplex access to Customer's premises, Customer's staff, and any other Customer resources (and when the Services are provided at another location designated by Customer, the premises, the staff, and resources at that location) that Meriplex and Customer mutually determine are useful or necessary in order for Meriplex to provide the Services.

**8.4.2** In accordance with Meriplex's specifications and any other relevant equipment manufacturer's specifications, Customer shall maintain a suitable environment for any Meriplex equipment housed in the Space (as defined in Section 11.7) 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 due to Customer's negligence or willful misconduct, excluding reasonable wear and tear.

**8.4.3** 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.

**8.4.4** Unless otherwise agreed to in writing by an authorized representative of each Party, if Customer provides its own router in conjunction with the Services (e.g., a remote MPLS 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. Customer is responsible for any damages to Meriplex's equipment that is a result of the Customer's use of its own 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. If Customer multi-homes to the Meriplex network, Customer will implement a multi-homing configuration agreed to by Meriplex and Customer.

**8.4.5** 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 thirty (30) days' 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: (i) for the installation, operation, management or maintenance of any hardware, software, cabling, or services not provided by Meriplex in connection with the Services; (ii) if any changes in the Services cause hardware, software, configurations, cabling, or services not provided by Meriplex to become obsolete or to require modification; (iii) if any modification or configuration performed by Customer or Customer-provided equipment impairs the performance of Services hereunder; or (iv) for the performance or availability of Third-Party Services or facilities provided hereunder.

## **SECTION 9. WARRANTIES AND LIMITATIONS**

### **9.1 Services Warranty.**

9.1.1 Meriplex agrees that any personnel who may be assigned by Meriplex to perform the Services will possess the necessary skills, expertise, and experience to provide the Services in accordance with the provisions of this Agreement.

9.1.2 If, in Customer's exercise of good faith and reasonable judgment, any employee, contractor, or agent of Meriplex performing Services on Customer's premises displays behavior that is disruptive to Customer's operations, Customer shall provide Meriplex with Notice, identifying the date of the incident and the identity of the alleged Meriplex employee, contractor or agent (if any) and the behavior in question. Upon receipt of such Notice, Meriplex will investigate, and within five (5) Business Days, notify Customer of the results of its investigation and the actions, if any, Meriplex has taken, or will take, to address the situation, which may include replacing the individual in question.

## 9.2 Third-Party Services.

9.2.1 Customer understands that Meriplex is not the manufacturer of equipment or hardware, or the developer of software provided by Third-Party Services (as defined in this Agreement in Section 1.13) and that the only warranties offered on Third-Party Services are solely those of the manufacturer, developer or Third-Party Services provider, not Meriplex or its Affiliates. In purchasing Third-Party Services, Customer is relying on the manufacturer's or developer's specifications only, and is not relying on any statements, representations, specifications, photographs, or other illustrations representing Third-Party Services that may be provided by Meriplex or its Affiliates. Customer is bound by the terms contained in Meriplex's contracts with the applicable Third-Party Services providers, including any limitations, warranties, remedies, and liabilities.

9.2.2 In the case of Third-Party Services, the Third-Party Services provider shall be solely responsible for delivery of such Third-Party Services to the Customer, and Customer agrees to look solely to such third-party for any loss, claims, or damage arising from or related to the provision of such Third-Party Services. **CUSTOMER HEREBY AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS MERIPLEX, ITS AFFILIATES, AND ALL RESPECTIVE EMPLOYEES, AGENTS, AND CONTRACTORS FROM ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THE PURCHASE AND 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 or distributor for the Third-Party Services provider.

## 9.3 Disclaimer of Warranties.

**9.3.1 EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, THE SERVICES ARE 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, IMPLIED WARRANTIES OF MERCHANTABILITY, OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, CUSTOMER AGREES THAT ALL USE OF THE SERVICE, INCLUDING, BUT NOT LIMITED TO, 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 CUSTOMER AND THE DOWNLOADING OF COMPUTER FILES IS AT CUSTOMER'S SOLE RISK.**

**IN ADDITION TO AND WITHOUT LIMITING THE FOREGOING:**

**9.3.1.1. 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 CUSTOMER 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 SERVICES.**

**9.3.1.2 MERIPLEX NEITHER ENDORSES NOR WARRANTS, NOR SHALL IT BE RESPONSIBLE IN ANY MANNER FOR, ANY MERCHANDISE OR SERVICES ORDERED THROUGH THE INTERNET, OR ANY SECURITIES TRADING OR OTHER COMMERCIAL TRANSACTIONS, WHETHER OR NOT SUCH MERCHANDISE OR SERVICES OR THE PROVIDERS OF ANY TRANSACTIONAL SERVICES ARE PROMOTED OR MARKETING ON THE INTERNET. MERIPLEX DOES NOT WARRANT THE LEGALITY OF ANY PRODUCTS OR SERVICES ORDERED OR ACCESSED THROUGH THE INTERNET. CUSTOMER ACCEPTS SOLE RESPONSIBILITY FOR ENSURING THAT ALL INTERNET TRANSACTIONS IN WHICH IT ENGAGES COMPLY WITH APPLICABLE LAW.**

**9.3.1.3 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. CUSTOMER AGREES THAT MERIPLEX IS NOT LIABLE FOR ANY SUCH UNAUTHORIZED ACCESS.**

**9.3.1.4 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 WILL NOT CONTAIN ANY VIRUS OR OTHER HARMFUL OR DISABLING CODE OR FEATURE, AND MERIPLEX EXPRESSLY DISCLAIMS ANY LIABILITY FOR**



**DAMAGE TO OR LOSS OR DESTRUCTION OF HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM SAME.**

**9.3.1.5 CUSTOMER UNDERSTANDS THAT THE INSTALLATION, USE, INSPECTION, MAINTENANCE, REPAIR, REPLACEMENT OR REMOVAL OF THE SERVICES, EQUIPMENT, AND SOFTWARE COULD RESULT IN DAMAGE TO CUSTOMER'S COMPUTERS OR OTHER HARDWARE, INCLUDING SOFTWARE AND DATA FILES. CUSTOMER IS SOLELY RESPONSIBLE FOR BACKING UP ALL EXISTING COMPUTER FILES PRIOR TO 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.**

**9.4 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT, INCLUDING BUT NOT LIMITED TO A BUSINESS ASSOCIATE AGREEMENT (BAA), IN NO EVENT WILL MERIPLEX OR ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS (COLLECTIVELY, THE "MERIPLEX PARTIES") BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS OR REVENUES ARISING OUT OF THE INSTALLATION OR USE OF, OR INABILITY TO USE, ANY SERVICE, OR ANY ACTION TAKEN TO PROTECT THE SERVICE, OR THE BREACH OF ANY WARRANTY RELATED TO THIS AGREEMENT, ANY SALES ORDER, SERVICES, EQUIPMENT, OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE, INCLUDING WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION, INCLUDING ANY LOSS CAUSED BY THE SOLE OR CONCURRENT NEGLIGENCE OF THE MERIPLEX PARTIES.**

**CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND THE MERIPLEX PARTIES' ENTIRE LIABILITY FOR DIRECT DAMAGES TO CUSTOMER ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SERVICES, INCLUDING BUT NOT LIMITED TO BREACH OF ANY WARRANTY OR ANY CLAIM RELATED TO THE SERVICES OR THE NEGLIGENCE OF THE MERIPLEX PARTIES, WILL BE THE GRANTING OF SERVICE CREDITS PURSUANT TO THIS AGREEMENT OR THE APPLICABLE SLAS. IF THE MERIPLEX PARTIES ARE SOMEHOW HELD LIABLE FOR DAMAGES IN EXCESS OF THE LIMITATIONS IN THIS SECTION 9.4, THE MERIPLEX PARTIES' TOTAL LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS RELATING TO THE SERVICES OR THIS AGREEMENT (INCLUDING ANY ANCILLARY AGREEMENT SUCH AS A BUSINESS ASSOCIATE AGREEMENT) HOWEVER ALLEGED OR ARISING, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, BREACH OF CONTRACT, OR ANY OTHER CLAIM WHETHER IN TORT, CONTRACT, OR EQUITY (UNLESS OTHERWISE PROHIBITED BY LAW) SHALL NOT EXCEED THE AMOUNT OF "RECURRING SERVICE FEES" PAID BY CUSTOMER TO MERIPLEX DURING THE IMMEDIATELY PRECEDING ONE (1) MONTH PERIOD. CUSTOMER HEREBY RELEASES THE MERIPLEX PARTIES FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THIS LIMITATION. FOR THE PURPOSES OF THIS AGREEMENT, THE TERM "RECURRING SERVICE FEES" MEANS FEES FOR WHICH THERE IS A SUBSCRIPTION IN PLACE FOR SERVICE WITH A SUBSCRIPTION TERM EQUAL TO OR GREATER THAN ONE (1) YEAR AND THE CUSTOMER IS BEING CHARGED ON AN ONGOING BASIS FOR SUCH SERVICE RATHER THAN AS A ONE-TIME PURCHASE.**

**9.5 APPLICABILITY OF LIMITATIONS TO MERIPLEX. UNLESS EXPLICITLY STATED TO THE CONTRARY, THE LIMITATIONS ON LIABILITY, RELEASES, WAIVERS, AND INDEMNITIES IN THIS AGREEMENT THAT PROTECT MERIPLEX ARE BUSINESS UNDERSTANDINGS AMONG THE PARTIES HERETO AND SHALL APPLY TO ALL LEGAL THEORIES OF RECOVERY AGAINST MERIPLEX, UNLESS OTHERWISE PROHIBITED BY LAW, INCLUDING BREACH OF CONTRACT OR WARRANTY, BREACH OF FIDUCIARY DUTY, TORT (INCLUDING NEGLIGENCE), STRICT OR STATUTORY LIABILITY, OR ANY OTHER CAUSE OF ACTION, PROVIDED THAT THESE LIMITATIONS ON LIABILITY, RELEASES, WAIVERS, AND INDEMNITIES WILL NOT APPLY TO ANY LOSSES OR DAMAGES THAT MAY BE FOUND BY A TRIER OF FACT TO HAVE BEEN CAUSED BY MERIPLEX'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CUSTOMER AGREES THAT IT WILL NOT SEEK DAMAGES IN EXCESS OF THE CONTRACTUALLY AGREED-UPON LIMITATIONS DIRECTLY OR INDIRECTLY THROUGH SUITS AGAINST OTHER PARTIES WHO MAY JOIN MERIPLEX AS A THIRD-PARTY DEFENDANT.**

**9.6 EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT OR A SALES ORDER, THE PARTIES EACH ACKNOWLEDGE AND AGREE THAT THE PROVISIONS OF SECTION 9.2, 9.3, 9.4, AND 9.5 APPLY TO ALL CONTENT, PRODUCTS, AND SERVICES INCLUDED IN, ACCESSIBLE THROUGH, OR PROVIDED BY MERIPLEX PURSUANT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO SALES ORDER, AND MAY BE ENFORCED BY ANY PARTY HERETO.**

## **SECTION 10. DOCUMENTATION**

**10.1 Documentation.** Any documentation provided to Customer per the terms of a Sales Order, will be provided in English and, unless otherwise set out in a specific Sales Order, Meriplex hereby grants Customer a fully paid-up, royalty free, non-exclusive, and perpetual worldwide license authorizing Customer to use the documentation. Such use shall be limited to Customer's reasonable requirements. For the avoidance of doubt, Meriplex and its suppliers retain all title and Intellectual Property Rights to the documentation, but all documentation provided as a deliverable pursuant to a Sales Order shall be governed by Section 11 of this Agreement, unless otherwise specified in the Sales Order.



## SECTION 11. GENERAL SERVICES

11.1 Early Discontinuance of Services. If Customer discontinues Services other than as permitted by this Agreement or a Sales Order, or the Services are discontinued by Meriplex as permitted under this Agreement, then Customer shall not be relieved of any obligations under the Sales Order relating to the discontinued Services. Customer shall not be entitled to a re-start of the Services unless and until Customer has paid all amounts past due and a reasonable reconnect charge or trip charge relating thereto, plus any applicable amounts charged to Meriplex by its vendors and/or Customer's local exchange service provider.

11.2 Customer Cooperation. 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 such information or materials as Customer and Meriplex determine are necessary or useful in connection with providing the Services; and (iii) all required third-party Required Consents (as defined in this Section 11.2) necessary for Meriplex to provide the Services. Customer agrees its cooperation is a material requirement and prerequisite to Meriplex's performance. "Required Consents" means consents or approvals required to enable 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 necessary data and third-party products. Customer acknowledges and agrees that the Services are dependent in part upon the completeness and accuracy of information provided by Customer and the knowledge and cooperation of the agents, employees, or subcontractors appointed by Customer to engage with Meriplex. Customer will timely 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.

11.3 VoIP Service Provisions. Meriplex's VoIP Services are provided as an ancillary service to Customer's primary local and long distance service. Such VoIP Services do not replace the Customer's local and 1+ service provider. If Customer submits a written request to Meriplex along with a letter of agency, Meriplex, at its election, may act on behalf of the Customer to secure local and 1+ services from local exchange carriers and/or Interexchange carriers. The respective provider shall be instructed to invoice VoIP Services directly to Customer, but Meriplex shall act as Customer's one point of contact and, as such, interface with these providers on Customer's behalf.

11.4 No Resale/Assignment. Customer agrees not to resell Meriplex's Services or to permit such Services to be used by anyone other than Customer's employees, guests, contractors, agents, and customers of Customer's business. Customer may not assign its rights or obligations under this Agreement or any Sales Order to any other person or entity without Meriplex's prior written consent, which shall not be unreasonably withheld.

11.5 Service Changes. At any time upon ninety (90) days' written Notice to Customer, Meriplex shall have the right to change or discontinue any aspect or feature of its Services including, but not limited to, changes required by changes in government regulations. Meriplex agrees to provide Notice to Customer of any change and Customer agrees that such Notice will constitute sufficient notice of such changes. If Customer does not agree to such changes, Customer shall, no later than ten (10) days after receipt of such Notice, notify Meriplex in writing of its objection, which objection shall specifically set forth the reasons therefor. If Meriplex cannot accommodate Customer's objection and such Service change materially affects Customer's use of the Services, Customer may, within ten (10) days after Notice of Meriplex's inability to accommodate the objection (the "Notice of Non-Accommodation"), terminate the Services without further liability or penalty no later than ten (10) days following Customer's receipt of the Notice of Non-Accommodation.

Notwithstanding any other provision herein, Meriplex shall have the right to add to, modify/amend, or delete any provision of these Terms and Conditions at any time and for any reason. Customer is responsible for periodically checking the Meriplex Solutions website to review the latest version of these Terms and Conditions. Customer agrees that updating the Terms and Conditions on such website will constitute sufficient notice of any such amendment.

11.6 Security. During the term of this Agreement or any Sales Order, Customer shall (i) maintain industry standard security policies, practices, and procedures; (ii) comply with all applicable laws and regulations; (iii) be responsible for protecting the confidentiality of its screen names and passwords; and (iv) be responsible in all respects (including payment obligations) for all use of the Services, whether or not authorized by Customer. The security of Customer's computers, system, network, and equipment is Customer's responsibility. Customer agrees that neither Meriplex nor any of Meriplex's authorized vendors, agents, or Affiliates shall be responsible for any breach or break-in on Customer's system network.

11.7 Colocation Services. Customer may, pursuant to and as described in a particular Sales Order Form, "sublease" from Meriplex certain space (the "Space") in which to locate certain equipment owned by Customer (the "Equipment"). **THIS PROVISION DOES NOT CONSTITUTE A LEASE OF ANY REAL OR PERSONAL PROPERTY OR A GRANT OF ANY OTHER REAL PROPERTY INTEREST. CUSTOMER ACKNOWLEDGES AND AGREES THAT FOR "SUBLEASED" COLOCATION SPACE AND SERVICES PROVIDED IN ANY JURISDICTION, CUSTOMER IS GRANTED ONLY A LICENSE TO USE THE SPACE IN ACCORDANCE WITH THIS AGREEMENT.**

11.7.1 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 Service Level Agreement, 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 (24)

hours per day, seven (7) 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, Meriplex in its sole discretion may rescind such employee's right to access 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 discretion, there arises any imminently hazardous condition, unsafe practice, or an emergency situation. Meriplex shall have the authority (without subjecting Meriplex to any liability related thereto) to suspend Customer's operation in and around the Space upon forty-eight (48) hours' Notice to Customer, if, in Meriplex's sole discretion, there arises any non-imminently hazardous condition or unsafe practice or condition, and waiting forty-eight (48) hours before taking action is not likely to (a) cause harm or damage to any person or property and/or (b) the condition or practice is not likely to become materially worse such that the cost or effort to resolve it is caused to be greater by the forty-eight (48) hour postponement of action. Meriplex may, upon Notice, require Customer to relocate the Equipment to another space within a reasonable time based upon the reasons for such relocation; provided, however, that such other space shall afford reasonably comparable access, environmental conditions, and facilities. Meriplex shall have the right at any time to change or discontinue any aspect or feature of its Services including, but not limited to, changes required by changes in government regulations.

11.7.2 Neither Customer, nor its agents, nor its contractors shall make any alterations or improvements to the Space without (a) submitting all plans and specifications for such improvements to Meriplex and (b) receipt of Meriplex's written consent. Meriplex's written consent shall not unreasonably be withheld, conditioned, or delayed. 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 use of the Space 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 Customer, including all costs and expenses required to return the Space and/or Meriplex equipment to its original condition.

11.7.3 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 delivered to Customer prior to occupancy of the Space, and Customer acknowledges that its use of the Space is subject and subordinate to any such underlying agreement or instrument. 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 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.

11.7.4 In the event that Customer fails to pay Meriplex any undisputed amounts owed for the use of the Space under a Sales Order when due, Customer agrees that Meriplex may restrict Customer's physical access to the Space and Equipment without being liable for prosecution or for damages.

## 11.8 Restrictions on Use of Services.

11.8.1 Customer may use the Services for lawful purposes only and in accordance with this Agreement and Meriplex's Acceptable Use Policy. Customer shall not upload, post, transmit or otherwise make available any material that violates or infringes in any way upon the Intellectual Property Rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, or material that is obscene, indecent, constitutes hate speech, is offensive or objectionable as would be perceived by reasonable persons under the circumstances, or material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable law. Customer may not link personal home pages to material or content that violates the standards of conduct in this Agreement or the Acceptable Use Policy. Meriplex may remove content that in its reasonable judgment violates this provision or require that Customer remove such content.

11.8.2 Customer may not upload, post, transmit, or otherwise make available in a manner that infringes or violates any such right, any material protected by copyright, trademark, patent, trade secret, or other proprietary right, without permission or consent of the owner of such rights. Meriplex reserves the right to terminate applicable Services if Customer fails to cease such infringing activities. This policy does not affect any other rights Meriplex may have under law or under any agreement with Customer.

11.8.3 Customer may use, copy, and distribute the information found on Meriplex's websites for lawful personal, internal, noncommercial, educational purposes only. All copies of such information must bear any copyright, trademark, or other proprietary notice located thereon or under the terms and conditions of use of the website, which pertains to the information being copied. Except as authorized in this Agreement or in a Sales Order, Customer is not being granted any Intellectual Property Rights 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, except as set forth in this Agreement or a Sales Order. Meriplex, its Affiliates, and any third-party owner of such rights retain all such rights.

11.8.4 Customer shall not post or transmit any unsolicited bulk e-mail (i.e., SPAM); breach, or attempt to breach security of another user or attempt to gain access to any other person's computer, software, or data without the knowledge and consent of such person; or use Meriplex's equipment or Services in any attempt to circumvent the user authentication or security of any other person's host, network, or account without the knowledge and consent of such person; or use or distribute tools designed



for compromising any other person's security without the knowledge and consent of such person; restrict, prohibit, or otherwise interfere with the ability of any other person to use or enjoy the Services including, but not limited to, posting or transmitting any information or software that knowingly contains a virus or similar harmful feature; or use an unassigned IP address or client ID.

#### 11.9 Data Back-up and Archive.

11.9.1 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.

11.9.2 If Customer purchases from Meriplex data back-up or archive services pursuant to a particular Sales Order, then Meriplex agrees to provide the requested services, which shall include the following:

(a) maintain, update, and execute commercially reasonable data back-up procedures consistent with generally accepted data processing industry standards in relation to any hosted Services wherein Customer Data is to be stored;

(b) provide an initial full back-up of Customer Data, and then provide daily back-ups of the Customer Data. Meriplex will store Customer Data files online for Customer during the term of an applicable Sales Order and, upon the written request of Customer, for a reasonable time thereafter. Upon the written request of Customer, Meriplex will locate and transfer these Customer Data files to Customer's computer system in the electronic format requested by Customer in order to enable Customer to process and use the Customer Data independent of the Meriplex Service; and

(c) storage of program files and maintenance of commercially reasonable business continuity plans providing for continued operation in the event of an occurrence affecting, disrupting, or adversely impacting Meriplex's business operations.

#### 11.10 Cloud Services.

11.10.1 Meriplex's Obligations. In connection with a Sales Order for Meriplex Cloud Servers with a Managed Service Level, Meriplex agrees to provide the following Services:

(a) Live Support. Meriplex live support will be available to Customer twenty-four (24) hours per day, seven (7) days a week, year round. Customer may request support by opening a support ticket, or by calling the Meriplex Network Operations Center.

(b) Monitoring and Response. Meriplex agrees to provide the following monitoring and response services:

i. Availability Monitoring. Meriplex agrees to monitor up to two (2) TCP ports (HTTP, HTTPS, SMTP, POP3, etc.) per server for service availability. General server availability shall be tested every one (1) minute via ping. Customer will be alerted via ticket if port or ping monitors fail three (3) consecutive times. Customer may also configure monitoring for one (1) URL's content. Port and URL content checks shall be performed every five (5) minutes.

ii. Fault Monitoring. Meriplex agrees to monitor status events on servers and network devices including network availability, and back-up success/failure.

iii. Notification of Monitoring Alerts. Meriplex agrees to notify Customer of monitoring alerts immediately.

(c) Data Back-up and Archive. Meriplex agrees to maintain, update, and execute commercially reasonable data back-up procedures consistent with generally accepted data processing industry standards. Meriplex agrees to provide an initial full back-up of Customer Data, and then provide daily back-ups of the Customer Data. Meriplex will store Customer Data files online for Customer during the Term and, upon the written request of Customer, for a reasonable time thereafter. Upon the written request of Customer, Meriplex will locate and transfer these Customer Data files to Customer's computer system in the electronic format requested by Customer in order to enable Customer to process and use the Customer Data. Meriplex agrees to store program files and maintain commercially reasonable business continuity plans providing for continued operation in the event of an occurrence affecting, disrupting, or adversely impacting Meriplex's business operations. Meriplex agrees to retain online transaction history for Customer, in accordance with the applicable Sales Order.

(d) Documentation. Meriplex agrees to provide Customer with one copy of its then current Documentation, and when applicable, from time-to-time, provide Customer with updates to such Documentation; provided, however, that Meriplex agrees not to modify the Documentation in a manner which would have a materially adverse effect on the provision or functionality of the Services.

11.10.2 Customer Obligations. Customer shall (a) use reasonable security precautions in light of Customer's use of the Cloud Services, including encrypting any Personal Information (as defined in this Agreement, at Section 12.2.4) transmitted to or from, or stored on, the Meriplex Services that the Customer uses; (b) cooperate with Meriplex's reasonable investigation of outages and/or security problems; (c) keep Customer's billing contact and other account information up to date; and (d) notify Meriplex as soon as reasonably practical of any unauthorized use of Customer's account or any other breach of security discovered by Customer.

11.10.3 IP Addresses. Upon expiration or termination of the Sales Order for Cloud Services, Customer shall discontinue use of such Services and relinquish use of the internet protocol addresses and server names assigned to Customer by Meriplex in connection with such Services, including pointing the Domain Name Servers for Customer's domain name(s) away from Meriplex Services. Customer agrees that Meriplex may, in its discretion, modify the Domain Name Service records and zones on Meriplex's Domain Name Servers and services.

11.10.4 Services Optimization and Repairs. Meriplex may establish new procedures for Customer's use of the Services as Meriplex deems necessary for the optimal performance of the Services. Customer also agrees that Meriplex may migrate Customer's data, without interruption of the Services, if Meriplex determines in its reasonable judgment that such server migration is required to remediate Services degradation.

11.10.5 Other Repairs. At Meriplex's sole expense, it shall repair or replace damaged equipment, modify software, and correct interruptions of the Services due to equipment wear and tear or malfunction of the system or network operated by Meriplex. Meriplex shall repair or replace damaged equipment, modify software, and otherwise attempt to correct interruptions of the Services due to the actions or omissions of Customer or of Customer's agents, contractors, or employees; provided, however that Customer shall reimburse Meriplex for the reasonable and necessary direct costs associated therewith. Customer is solely responsible for the operation, security, repair, and maintenance of Customer's own equipment and software.

## **SECTION 12. CONFIDENTIALITY AND OWNERSHIP**

12.1 Confidentiality. Each Party acknowledges that in the course of performing its obligations under this Agreement, each Party may come to have access to the other Party's Confidential Information (as defined below at Section 12.2.3), and accordingly the Parties each agree to treat such Confidential Information in accordance with this Section 12.

12.2 Definitions. For the purpose of this Agreement:

12.2.1 "Disclosing Party" means the party disclosing Confidential Information.

12.2.2 "Receiving Party" means the party receiving Confidential Information.

12.2.3 "Confidential Information" means all oral, written or machine-readable data and information of value to the Disclosing Party that is not generally known to competitors of the Disclosing Party and is proprietary and/or confidential to the Disclosing Party and its Affiliates. "Confidential Information" includes, but is not limited to, technical information, Intellectual Property, business plans, current and future services and products, sales information, customer information, pricing, pricing information, research and development, general business operations, trade secrets, and Personal Information (as hereinafter defined at Section 12.2.4) of employees, customers, and potential customers of the Disclosing Party or its Affiliates. "Confidential Information" also means the Receiving Party's subcontractors, customers, clients, information retrieval and delivery systems, business relationships or associations, any lists, directory assistance listings, source code, object code, algorithms, plans, written materials or information, or any other confidential, secret, or proprietary aspect of the Receiving Party's affairs. The Receiving Party hereby acknowledges the confidentiality of the Confidential Information. Confidential Information shall not include information of the Disclosing Party and/or its Affiliates that:

(a) is or becomes part of the public domain through no wrongful act of the Receiving Party or its Affiliates, agents, employees, contractors, or subcontractors;

(b) is disclosed with the written consent and authorization of the Disclosing Party;

(c) is independently developed by the Receiving Party without a breach of this Agreement, provided that the independent development is verified to the Disclosing Party, acting reasonably;

(d) the Receiving Party can establish, by documented and competent evidence, was in its possession prior to the date of disclosure; and

(e) is received by the Receiving Party without obligation of confidence from a third-party whom the Receiving Party had no reason to believe was not lawfully in possession of such information, free of any obligation of confidence.

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 shall not be evidence that such information is not confidential or protectable.

12.2.4 “Personal Information” means information about an identifiable individual, including without limitation any information defined or deemed as such pursuant to any applicable laws or regulations related to privacy or data protection.

12.3 Obligations of Non-Disclosure. The Receiving Party and its officers, employees, contractors, and agents at all times shall:

12.3.1 treat the Confidential Information as strictly confidential, and shall not disclose or permit the disclosure of the Confidential Information to any person, corporation or organization whatsoever without first obtaining written permission from the Disclosing Party, save and except to those officers and employees of the Receiving Party with a need-to-know, and upon whom confidentiality obligations as required by Section 12.3 of this Agreement have been imposed;

12.3.2 not make use of the Confidential Information other than as required for the sole and exclusive purpose of performing the Services;

12.3.3 take all reasonable precautions against the Confidential Information being accessed, used, acquired by, or disclosed to any unauthorized person or persons, which precautions shall involve the same degree of care that the Receiving Party uses in preserving the confidentiality of its own confidential information, which shall in no event be less than reasonable care, and shall include, without limitation:

- (a) restrictions upon personnel permitted access to the Confidential Information;
- (b) restrictions upon time and place of access, possession, and method of reproduction of the Confidential Information; and
- (c) restrictions upon how, when, and under what conditions the Confidential Information, in any form, may be disposed of or destroyed;

12.3.4 observe and abide by any reasonable directions provided by the Disclosing Party in writing with respect to safeguarding or ensuring the confidentiality of such Confidential Information; provided however, that the provision of, or lack of provision of, directions by the Disclosing Party shall in no way reduce the obligation of the Receiving Party to safeguard and ensure the confidentiality of the Confidential Information in accordance with this Agreement;

12.3.5 upon request, promptly return to the Disclosing Party or provide confirmation of destruction of, all copies of the Confidential Information, all Confidential Information contained in any retrieval system or database, and any and all tangible material relating to the Confidential Information including, but not limited to, all copies, notes, computer disks, tapes, and compact disks, whether such material was made or compiled by the Receiving Party or furnished by the Disclosing Party;

12.3.6 not copy, reproduce in any form, store or retain in a retrieval system or database, the Confidential Information without the prior written consent of the Disclosing Party, except for such copies and storage as may be reasonably required internally for the purpose of performing the Services in respect of this Agreement; and

12.3.7 ensure that any Confidential Information is retained only for such time as it is required for the purpose of performing the Services in respect of this Agreement and, once it is no longer required, subject to Subsection 12.3.5 of this Agreement, is disposed of, destroyed, or erased, as applicable, in a manner appropriate to the sensitivity of the Confidential Information.

12.4 Disclosure Compelled by Law. The Obligations of Non-Disclosure set out in Section 12.3 of this Agreement do not apply to Confidential Information that the Receiving Party is lawfully required to disclose pursuant to an order of a court or other authority of competent jurisdiction; provided however, that, before making such disclosure, the Receiving Party shall promptly provide the Disclosing Party with Notice of the requirement to disclose, if legally permissible, and shall reasonably cooperate with the Disclosing Party in its actions to secure the confidential treatment of the Confidential Information, or actions taken by the Disclosing Party to challenge, narrow, or restrict such order, the costs of which shall be the responsibility of the Disclosing Party.

12.5 Confidentiality Personnel. The Receiving Party represents and warrants that appropriate confidentiality obligations have been, or shall be prior to receipt of any Confidential Information by such Party, imposed upon each officer, employee, agent, and contractor of the Receiving Party who may have access to, or be in possession of, Confidential Information during the course of this Agreement, that are consistent with, or more stringent than, the confidentiality obligations contained in this Agreement. The Receiving Party shall inform the Disclosing Party of all of its officers, employees, agents, and contractors who may have access to, or be in possession of, Confidential Information upon request by the Disclosing Party.

12.6 Privacy. Meriplex and its Affiliates are committed to protecting the privacy interests of the Customer. The Customer's privacy interests, including Customer's ability to limit disclosure of its Confidential Information and all other non-confidential information of



Customer and its customers (collectively, "Customer Information") to third-parties is addressed by, in addition to this Section 12, Title II of the Electronic Communications Privacy Act (18 U.S.C. Sections 2701-2712) (collectively, the "Privacy Act"). Meriplex agrees not to disclose any Customer Information to any third-parties, except in compliance with the Privacy Act.

12.7 Credit Check. Notwithstanding any provision in this Section 12 to the contrary, Customer hereby authorizes Meriplex to make reasonable and necessary inquiries and to receive information about Customer's credit history from recognized credit reporting agencies and to utilize such information in Meriplex's decision regarding its acceptance of a Sales Order.

12.8 PCI Compliance. Meriplex agrees to hold all Customer Information in trust and confidence and to treat all Customer Information as strictly confidential and shall provide security provisions, at a minimum, in accordance with the Payment Card Industry Data Security Standards (the "PCI Standards") as promulgated by the PCI Security Standards Council, and, at least to the same extent that Meriplex provides security for its own proprietary, sensitive, and confidential information, digitally stored files, data, and programs, and as otherwise required by the laws, rules, regulations, and orders of any governmental authority having relevant jurisdiction including, without limitation, the provisions of any data protection law.

12.9 No License in Confidential Information. This Agreement shall not be construed as granting or conferring any rights by license or otherwise in the Confidential Information disclosed pursuant to this Agreement. All Confidential Information in whatever form (including, but not limited to, information in computer software or held in an electronic storage media) shall be and remain the property of the Disclosing Party. The Receiving Party shall not possess or assert a lien or any other right in the Confidential Information.

12.10 Equitable Remedies. In the event of a breach, or a threatened breach, of any of the provisions of this Section 12, the Receiving Party acknowledges and agrees that the harm suffered by the Disclosing Party would not be compensable by monetary damages alone and, accordingly, the Disclosing Party, in addition to other available legal or equitable remedies, shall be entitled to seek injunctive relief against such breach or threatened breach, and the Receiving Party shall not challenge such application for injunctive relief on the basis that there is another adequate remedy available at law or that the Disclosing Party will not suffer imminent or irreparable injury. This provision does not affect any other remedies available to the parties to this Agreement.

12.11 Intellectual Property. Except as expressly provided in this Agreement or a Sales Order, no licenses, express or implied, under any patents, copyrights, or other proprietary rights are granted by either Party to the other hereunder.

12.12 Pre-existing Intellectual Property. Subject to the other provisions of this Agreement, each Party will retain ownership of all right, title, and interest in and to any Intellectual Property it owned prior to this Agreement going into effect, including, without limitation, all copyright, patent, trademark, service mark and trade secret rights, technical documents, technical data, computer programs, documentation and engineering materials (collectively, the "Pre-existing Intellectual Property"). Unless expressly stated herein, nothing in this Agreement will be deemed to imply a transfer of ownership of the Pre-existing Intellectual Property.

12.13 Customer Intellectual Property. Except for the expressly stated license(s) granted hereunder, if any, Customer owns all right, title and interest in and to all technology, property or Intellectual Property independently developed by Customer, and any Intellectual Property developed by Customer, which does not constitute Joint Property as set out in Section 12.15 of this Agreement.

12.14 Meriplex Intellectual Property. Meriplex owns all right, title, and interest in and to all technology, property, or Intellectual Property independently developed by Meriplex.

12.15 Joint Intellectual Property. Intellectual Property jointly developed by the Parties shall be Intellectual Property which the Parties agree is jointly owned pursuant to a separately documented and mutually agreed-upon joint development agreement.

12.16 Non-Solicitation/Non-Hire of Meriplex Employees. Customer agrees that it shall not solicit any Meriplex employee to leave his or her employment with Meriplex, and that Customer shall not hire any Meriplex employee who became known to Customer through Meriplex's performance of this Agreement, except as permitted herein, for a period of not less than one (1) year after the last day such employee works with Customer. If Customer violates this provision, Customer is obligated to pay Meriplex for Meriplex's reasonable costs to hire and/or train a qualified replacement for such individual and to pay any other direct damages caused by Customer's violation, and Meriplex may obtain such injunctive relief as is appropriate in the circumstances. For the avoidance of doubt, this provision shall not apply to any Meriplex employees covered by this provision who make unsolicited responses to general recruitment advertising by Customer.

## **SECTION 13. SOFTWARE LICENSES**

### **13.1 Software Tools**

13.1.1 Ownership of Software Tools. Customer acknowledges and agrees that any software supplied by and used by Meriplex solely for use by Meriplex in order to perform Services pursuant to a Sales Order, as opposed to software being licensed by Customer for Customer's use (hereinafter "Software Tools"), is the Intellectual Property of Meriplex or its suppliers.

13.1.2 Software Tools License. The terms of Customer's rights to any Software Tools shall be as set forth in the applicable Sales Order. Without Meriplex's prior written consent, Customer may not copy the Software Tools for any purpose.

13.1.3 Other Restrictions. Customer is permitted to make a single copy of any such software solely for back-up purposes, provided that such copy contains all of the same copyright notices and proprietary markings as the original software. Customer shall not, by any means whatsoever (including, but not limited to, manual, mechanical, or electrical means), reverse engineer, copy, permit others to copy, translate, reverse compile, decompile, create Derivative Works, disassemble, modify, or derive source code from any Software Tools, or attempt to do any of the foregoing to or from the software. For purposes of this Agreement, the term "Derivative Works" means any and all copies, adaptations, compilations, translations, or works based upon, utilizing, or incorporating any portion of the source code or object code including, without limitation, the structure, organization, sequence, workflow and/or subroutines found in or which are part of the source code or object code. Any Derivative Works created by Customer in violation of this Agreement shall be the sole Intellectual Property of Meriplex.

### 13.2 Software Product License.

13.2.1 Ownership of Software. Customer acknowledges and agrees that any software supplied by Meriplex for use by Customer is the Intellectual Property of Meriplex and/or its suppliers. The software contains material that is protected or may in the future be protected by United States Copyright and/or Patent Law and trade secret law, and by international treaty provisions. All rights not granted to Customer herein are expressly reserved by Meriplex. Customer may not remove any proprietary notice of Meriplex from any copy of the software.

13.2.2 License Grant. Subject to the terms and conditions set forth in this Agreement or a Sales Order, Meriplex grants Customer a nonexclusive, worldwide, revocable license (the "License") to use any software provided by Meriplex to Customer under a Sales Order in object code form only, including all associated software, documentation, manuals, materials, data, codes, tool-kits, copyrights, trademarks, specifications and all other information, consultations and materials relating thereto or contained therein, solely for the purposes and subject to the restrictions set forth in an applicable Sales Order. Such license shall, unless otherwise set forth in the applicable Sales Order, commence upon Customer's acceptance of the installation and Services associated therewith, and shall terminate immediately upon expiration or termination of such Sales Order. Subject to the license grant associated with the software, Meriplex and its licensors retain all rights and interests in and to such Software.

13.2.3 Other Restrictions. Customer shall not, by any means whatsoever (including, but not limited to, manual, mechanical, or electrical means), reverse engineer, decompile, create Derivative Works, disassemble or derive source code from any software, or attempt to do any of the foregoing. Customer agrees to destroy all software and any related written material together with any copies promptly upon termination of the Services.

13.2.4 Derivative Works. Any Derivative Works created by Customer in violation of this Agreement shall be the sole Intellectual Property of Meriplex.

## **SECTION 14. INDEMNITY**

**14.1 GENERAL INDEMNIFICATION FROM THIRD-PARTY CLAIMS. CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS MERIPLEX AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, AND SUBCONTRACTORS (COLLECTIVELY, THE "MERIPLEX INDEMNIFIED PARTIES"), FROM AND AGAINST ANY THIRD-PARTY CLAIM, LAWSUIT, INVESTIGATION, LOSS, PENALTY, DAMAGE, EXPENSE, CAUSE OF ACTION, SUIT, JUDGMENT, OR LIABILITY, INCLUDING ALL REASONABLE COSTS AND EXPENSES OF LITIGATION INCLUDING, WITHOUT LIMITATION, COURT COSTS, AND ATTORNEYS' FEES, (COLLECTIVELY, THE "CLAIMS"), INCLUDING ANY CLAIMS RESULTING FROM THE SOLE OR CONCURRENT NEGLIGENCE OF THE MERIPLEX INDEMNIFIED PARTIES, TO THE EXTENT DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATED IN ANY WAY TO THIS AGREEMENT OR CUSTOMER'S USE OF THE SERVICES OR OTHERWISE ARISING OUT OF THE USE OF CUSTOMER'S ACCOUNT OR THE EQUIPMENT OR THE SOFTWARE; PROVIDED, HOWEVER, THAT CUSTOMER SHALL NOT BE OBLIGATED TO INDEMNIFY MERIPLEX FOR ANY CLAIMS TO THE EXTENT RESULTING FROM THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF MERIPLEX.**

**MERIPLEX SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CUSTOMER AND ITS AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, AND SUBCONTRACTORS, FROM AND AGAINST ANY THIRD-PARTY CLAIMS, TO THE EXTENT SUCH CLAIMS DIRECTLY OR INDIRECTLY ARISE OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF MERIPLEX IN THE PROVISION OF SERVICES.**

14.2 If any third-party Claim is commenced against an indemnified party, Notice thereof shall be given to the indemnifying party as promptly as practicable. If, after such Notice, the indemnifying party so elects in a Notice promptly delivered to the indemnified party, but in no event less than fifteen (15) Business Days after Notice is received, the indemnifying party shall immediately take control of the defense and investigation of such Claim and employ and engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, all at the indemnifying party's sole cost and expense. The indemnified party shall cooperate in all reasonable respects with the indemnifying party and its attorneys in the investigation, trial, and defense of such Claim and any appeal arising therefrom; provided however, that the indemnified party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such Claim and any appeal arising therefrom. No settlement of a Claim that (i) involves an admission of fault by the indemnified party, (ii) imposes on the indemnified party any obligations to take any affirmative acts, (iii) restricts the indemnified party's actions or (iv) includes a remedy or provisions applicable to the indemnified party in any way, other than solely the payment of money damages, by the indemnifying party shall be entered into without the written consent of the indemnified party. If the indemnifying party does not assume full control over the defense of a Claim as provided in this





Section 14.2, the indemnifying party may participate in such defense at its sole cost and expense, and the indemnified party shall have the right to defend the Claim in such manner as it may deem appropriate, at the sole cost and expense of the indemnifying party.

## SECTION 15. INSURANCE

15.1 Required Insurance. Each Party shall maintain during the term of this Agreement such public liability, automobile, and workers' compensation insurance as will adequately protect Meriplex and Customer from all claims for damages, including claims for personal injury (including death) or damage to property, which may arise or result from performance under any Sales Order. This insurance shall include, but is not limited to: (i) Worker's Compensation and related insurance as prescribed by the law of the state in which the work is performed; (ii) employer's liability insurance with limits of at least One Million Dollars (\$1,000,000) for each occurrence; (iii) comprehensive general liability insurance with limits of at least One Million Dollars (\$1,000,000) for each occurrence, with a Two Million Dollar (\$2,000,000) annual policy aggregate; (iv) comprehensive motor vehicle liability insurance, with limits of at least One Million Dollars (\$1,000,000) for each occurrence and, in relation to Services, Meriplex shall obtain (v) Professional Liability (Errors and Omissions) with limits of at least Two Million Dollars (\$2,000,000) for each occurrence and (vi) Umbrella or excess liability with a coverage limit of at least Four Million Dollars (\$4,000,000) per occurrence. Umbrella or excess liability policy must provide coverage in excess of employer's liability and commercial general liability and automobile liability.

## SECTION 16. TERMINATION

16.1 Material Breach. It is agreed and understood between the Parties that the occurrence of any of the following constitutes a material breach of this Agreement and/or any applicable Sales Order:

16.1.1 A Party fails to comply with any material term or condition of this Agreement or Sales Order, and any such failure (if susceptible to cure) is not remedied to the other Party's satisfaction within thirty (30) days after receipt by the breaching Party of Notice thereof; provided, however, Meriplex's failure to achieve the applicable SLA for a particular service shall not be a material breach for purposes of this subsection 16.1.1;

16.1.2 Any material representation or warranty made by the Customer is false;

16.1.3 A Party files a petition in bankruptcy, or an appointment for a receiver is filed against it; or

16.1.4 A Party fails to comply with any law applicable to its obligations hereunder or the subject matter of this Agreement.

16.2 Non-Payment. Meriplex may, as determined by Meriplex in its sole discretion, suspend or terminate this Agreement and/or any applicable Sales Order in the event of non-payment by Customer of undisputed amounts when due for Services accepted per the terms of Section 5 of this Agreement and Customer has not cured such non-payment within fifteen (15) calendar days of receipt of a Notice from Meriplex notifying Customer of such non-payment and stating that this Agreement and/or any applicable Sales Order will be suspended or terminated if payment of such amount(s) is/are not made within ten (10) calendar days from such Notice. If Meriplex elects to suspend Services, Meriplex may thereafter terminate this Agreement and/or any applicable Sales Order without further notice to Customer. Upon the termination of this Agreement and/or any applicable Sales Order by Meriplex, Customer shall be liable for all amounts due for Services provided under this Agreement and/or any applicable Sales Order and Customer shall also be responsible for all Collection Expenses (as defined in this Agreement at Section 5.3), if any, incurred by Meriplex.

16.3 Termination Fees. Except where otherwise provided in this Agreement or a Sales Order, or due to a *Force Majeure* Event (as defined in this Agreement at Section 19.5), or in the event of a material breach of this Agreement or a Sales Order by Meriplex pursuant to Section 16.1, if Meriplex terminates this Agreement or a Sales Order for breach by Customer, or Customer terminates this Agreement or a particular Sales Order prior to the end of the term of a Sales Order, in addition to any actual out-of-pocket costs incurred by Meriplex in disconnecting Services and all monies due and unpaid for Services rendered (excluding any prepayments for Services not yet rendered), Customer shall be responsible for one hundred percent (100%) of the amounts that Customer was obligated to pay to Meriplex over the remainder of the applicable term of the terminated Sales Order(s) (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. Such Termination Fee shall be in lieu of all other damages or losses stemming from such early termination. Customer agrees to pay such Termination Fee within thirty (30) days of receipt of an invoice from Meriplex. The Parties each acknowledge that such Termination Fee is not a penalty but is in the nature of liquidated damages. It is understood and agreed that the actual damages to Meriplex arising as a result of termination are incapable of precise determination, and it is agreed that this Termination Fee is a reasonable estimate of the loss Meriplex will suffer as a result of termination of this Agreement or any Sales Order pursuant to this provision.

16.4 Effect of Termination. Termination of this Agreement or any Sales Order shall neither limit a 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 prior to the effective date of the termination including, if applicable, Termination Fees. Upon expiration or termination of this Agreement or any Sales Order: (i) the rights granted to Customer under this Agreement or the particular Sales Order shall cease immediately upon the effective date of such termination and be of no further force or effect; (ii) each Party shall 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 accordance with this Agreement, all Space, equipment or other property owned or leased by Meriplex, including any virtual 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 upon twenty-four (24) hours' Notice, free from all claims of wrongful entry by Customer; and (iv) if Customer has its equipment on Meriplex's property, Customer shall promptly remove all of its equipment and other property as directed by Meriplex. Any Customer equipment or other property not so removed by Customer within a reasonable time after receipt of Notice by Meriplex to remove such equipment may be removed and disposed of by Meriplex and Customer shall be liable for the cost of removal, disposal and restoration of the Space in accordance with this Agreement. 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.

## SECTION 17. DISPUTE RESOLUTION

17.1 Procedure. The Parties agree to use the following dispute resolution procedure with respect to any dispute, controversy, or claim (each a "Dispute") arising out of or relating to this Agreement or a Sales Order.

17.2 Negotiation. Upon the written Notice of a Dispute with request for a meeting, each Party agrees to appoint a representative to meet within thirty (30) days of the written request to negotiate a resolution of any Dispute ("Business Meeting"). If the matter is not resolved in the Business Meeting, the Parties agree to litigate as set forth in Section 19.7 of this Agreement.

17.3 Limitation Period. A PARTY SHALL NOT BE LIABLE FOR ANY CLAIM ARISING UNDER THIS AGREEMENT BROUGHT MORE THAN ONE YEAR OR ANY SUCH GREATER MINIMUM PERIOD OF TIME ALLOWED BY THE LAW AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

## SECTION 18. EQUIPMENT

18.1 On-Premise. If a Sales Order includes equipment to be operated at the Customer's premises to connect to Meriplex's Services, such equipment shall be included in the price of the Services. If Customer requires additional on-premise equipment, then Meriplex may provide on-premise equipment for an additional fee.

18.2 Cabling. Meriplex or its authorized agents shall install any cabling necessary to connect Services to its equipment upon at least twenty-four (24) hours prior Notice. Customer shall be responsible for and agree to pay for the cost of any cabling, equipment and/or Third-Party Services required to connect Meriplex's equipment to its phone system, or local computer network.

18.3 Access. Meriplex and its authorized agents may enter Customer's premises upon twenty-four (24) hours prior Notice during normal business hours and have access to Customer's computers periodically to install, connect, inspect, maintain, repair, or replace equipment or software, or to disconnect and remove Meriplex equipment. If Customer is not the owner of the premises upon which equipment and software are to be installed, Customer shall obtain the consent of the premises' owner for Meriplex personnel to enter the premises with reasonable Notice and scheduling. Additionally, in such case, **CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD MERIPLEX HARMLESS FROM AND AGAINST ANY CLAIMS OF THE OWNER AND/OR OTHER OCCUPANTS OF THE PREMISES FOR TRESPASS OR UNAUTHORIZED ENTRY.**

18.4 Upgrades. Meriplex may upgrade, modify, enhance, and replace the equipment and software from time-to-time through downloads from the network or otherwise.

18.5 Rental Equipment. The rental equipment provided by Meriplex is and shall remain Meriplex's personal property. Customer shall not acquire an ownership interest in this equipment by virtue of the payments for service, unless specifically written in Customer's individual Master Service Agreement or Sales Order.

18.6 No Alteration. Customer shall not alter, misuse, tamper with, or remove Meriplex's equipment, or remove any markings or labels from Meriplex's equipment, including serial or identity numbers. Customer 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 Meriplex's equipment.

18.7 Equipment Return. Upon termination of the Services, Customer must return Meriplex's equipment to Meriplex in the same condition as when it was received, ordinary wear and tear excepted.

18.8 Cost of Repair. If Meriplex's equipment is damaged, destroyed, lost, or stolen while in Customer's possession, Customer is liable for the cost of repair or replacement of the equipment. If Meriplex's equipment is not returned to Meriplex upon termination of the Services, Customer agrees to pay Meriplex the equipment's replacement cost without any deduction for depreciation or wear and tear on the physical condition of the equipment, or Customer agrees to provide Meriplex with equipment in working order of similar make, model and specifications as equipment provided for use with the Services.

18.9 Primary Purpose. It is agreed that the primary purpose of this Agreement is the provision of Services, and that the provision of any equipment or goods hereunder is incidental to the provision of Services. The Parties agree that the U.C.C. is not applicable to the transactions contemplated by this Agreement.

## **SECTION 19. GENERAL PROVISIONS**

19.1 Exhibits. The Exhibits listed below are attached hereto and are incorporated into this Agreement by reference and deemed to be a part hereof:

Exhibit A: Acceptable Use Policy

### **19.2 Restriction on Assignment**

19.2.1 This Agreement and the rights herein granted may not be assigned (including by operation of law) or otherwise transferred by Customer without the prior written consent of Meriplex, which shall not be unreasonably withheld, and such assignment without consent shall be void. All the terms, provisions, and conditions of this Agreement shall inure to the benefit of and shall be enforceable by the Parties hereto and their respective successors and assigns. This Agreement is not intended to confer, and shall not be deemed to confer, upon any third-party, any rights or remedies hereunder, unless explicitly provided in this Agreement; provided further, no third-party is entitled to rely upon the agreements of the Parties in this Agreement, and the Parties assume no liability to any third-party (other than successors and assigns) because of such reliance, if any.

19.2.2 The rights and remedies provided herein are solely for the benefit of the Parties hereto. The exercise by Meriplex of any right or remedy provided in this Agreement (or the failure of Meriplex to exercise any such right or remedy) is not intended to and shall not give rise to any claim by any third-party.

19.3 United States Export Control Laws. Each of the Parties shall at all times comply with all United States laws, statutes, or regulations, as they may exist from time-to-time, regarding export licenses or the control or regulation of exportation or re-exportation of products or technical data sold, licensed, or supplied under this Agreement.

19.4 Foreign Corrupt Practices. Each of the Parties represents and warrants that, neither it, nor any of its directors, officers, partners, members, managers, shareholders, employees, or agents is an official, agent, or employee of any government or governmental agency or political party, or a candidate for any political office when this Agreement goes into effect. Each Party covenants and agrees promptly to notify the other Party of the occurrence of any event which would render the aforesaid representation and warranty incorrect or misleading. In addition, each Party shall at all times comply with all applicable laws of the United States concerning foreign corrupt practices or which in any manner prohibits the giving of anything of value to any official, agents, or employee of any government, governmental agency, political party, or any officer, employee, or agent thereof.

19.5 Force Majeure. If performance of an obligation under this Agreement is prevented, delayed, restricted, or interfered with by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, terrorism, embargo, acts of government in its sovereign capacity, service/product/equipment/material discontinuation or unavailability, or any other circumstances beyond the reasonable control, and not involving any fault or negligence, of the Party affected (each a "Force Majeure Event"), the Party whose performance is affected (the "Force Majeure Party"), upon giving prompt Notice to the other Party (the "Non-Force Majeure Party") describing in adequate detail the nature of the Force Majeure Event and Force Majeure Party's inability to perform due to the Force Majeure Event, shall be excused from performance of such obligation on a day-to-day basis during the Force Majeure Event (excluding any obligation to pay money); provided however, that the Force Majeure Party shall exercise due diligence to take all reasonable efforts to avoid, remove, or overcome the Force Majeure Event or perform such obligation, and the Parties shall proceed immediately with the performance of their obligations under this Agreement when the Force Majeure Event ceases. The Non-Force Majeure Party shall likewise be excused from performance of its obligations on a day-to-day basis during the Force Majeure Event.

19.6 Survival. The following sections shall survive the expiration or termination of this Agreement, regardless of the reasons for its expiration or termination, in addition to any other provision that by law or by its nature should survive: Section 9 Warranties and Limitations; Section 12 Confidentiality and Ownership; Section 13 Software Licenses; Section 14 Indemnity; Section 17 Dispute Resolution; Section 18.7 Equipment Return; Section 18.8 Cost of Repair; Section 19.7 Governing Law; Section 19.9 Notices; and Section 19.14 Conflicts. These sections survive and remain enforceable despite a "Force Majeure Event."

19.7 Governing Law; Venue; Consent to Personal Jurisdiction. This Agreement will be governed by the laws of the State of Texas, without reference to choice of laws or conflict of laws principles. Each Party hereby expressly consents to personal jurisdiction in the state and federal courts located in Harris County, Texas for any lawsuit filed by Meriplex against the Customer or filed against Meriplex by the Customer, arising from, or relating to this Agreement and/or any Sales Order, and that any such lawsuit filed shall be venued in Harris County, Texas. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

19.8 Attorneys' Fees. For purposes of this Agreement, the term "Attorneys' Fees" means the reasonable fees and expenses of legal counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges and fees billed for law clerks, paralegals, and other persons not admitted to the bar but performing services under the supervision of an attorney in connection with any dispute between the Parties.



19.9 Notices. Any Notice, request, consent or other communication provided, required, or permitted under this Agreement (the "Notice") shall be sufficiently given if it is in writing and personally served, or sent by certified mail with return receipt requested, or electronic mail (with delivery and read receipts retained on file). Notices to Meriplex are to be addressed and sent as follows:

Meriplex Solutions, LLC  
10111 Richmond Avenue, Suite 500  
Houston, TX 77042  
Attn: General Manager  
[notice@meriplex.com](mailto:notice@meriplex.com)

With a copy to:

Meriplex Solutions, LLC  
10111 Richmond Avenue, Suite 500  
Houston, TX 77042  
Attn: General Counsel  
[notice@meriplex.com](mailto:notice@meriplex.com)

Any Notice, if delivered personally or by electronic mail, shall be deemed to have been given the same day, or if delivered by certified mail, shall be deemed to have been given three (3) Business Days after the date of mailing. In no event should any Notice, request, consent, or other communication be sent by mail during any period of interrupted or threatened interruption of postal service.

19.10 Severability. In the event that one or more provisions contained in this Agreement are for any reason held to be unenforceable in any respect under the laws of the governing jurisdiction, such unenforceable provision shall not affect any other term or condition and this Agreement shall be construed as if the unenforceable provision was not contained herein.

19.11 Consents and Waivers. Forbearance or indulgence by a Party in any regard whatsoever shall not constitute the Party's waiver. No consent or waiver shall be effective unless made in writing by an authorized officer of the Parties.

19.12 Interpretation. In this Agreement, words importing the singular include the plural and words importing the plural include the singular. The Parties agree that the principle of *contra proferentem* (i.e., interpretation of the document against its drafter) does not apply to this Agreement.

19.13 Business Days. Any payment or Notice that is required to be made or given pursuant to this Agreement on a day that is not a Business Day shall be made or given on the next Business Day.

19.14 Conflicts. In the event of conflict or inconsistency between a provision of this Agreement and a provision of a Sales Order issued hereunder and signed or otherwise accepted by the Parties, the provision of such Sales Order shall govern, but only to the extent of the subject matter in conflict.

19.15 Amendment. This Agreement may be amended only by written agreement approved by an authorized representative of Meriplex.

19.16 Full Understanding. It is agreed that each Party has read and fully understands this Agreement and may consult independent legal counsel of its choice in connection with the execution of this Agreement. This Agreement is the voluntary act of the Parties hereto, neither acting under any compulsion.

19.17 Publicity. Customer agrees to submit to Meriplex, for written approval, any proposed advertising, sales promotion, press releases, and other publicity matters relating to the Services performed pursuant to this Agreement, when Meriplex's name or mark is mentioned or language from which the connection of said name or mark may be inferred or implied, and Customer agrees not to publish or use such advertising, sales promotions, press releases, or publicity matters without Meriplex's prior written approval, which such approval may be given or withheld in Meriplex's sole discretion.

19.18 Entire Agreement. This Agreement cancels, replaces, and supersedes as of the effective date of this Agreement, all prior and/or existing agreements and understandings, if any, whether written or oral, between the Parties relating to the subject matter of this Agreement. This Agreement together with any Sales Order signed by Meriplex and Customer shall constitute a complete agreement which represents the entire agreement of the Parties and supersedes all previous agreements or representations, written or oral, with respect to the Services. No Party has made any statement, representation, warranty, promise, or agreement not expressly set forth herein.

19.19 No Reliance. Each Party expressly represents that it has read and understands this Agreement and is not relying on any statement, representation, warranty, promise, or agreement not expressly state herein with respect to Meriplex or the Services.

\* \* \* \* \*



## MERIPLEX

**In Witness Whereof**, the undersigned have executed these Terms and Conditions, or have caused these Terms and Conditions to be executed on their behalf, by their duly authorized representatives.

\_\_\_\_\_:

Signature: \_\_\_\_\_

By: \_\_\_\_\_

(print name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Fax No.: \_\_\_\_\_

### Meriplex

Signature: \_\_\_\_\_

By: \_\_\_\_\_

(print name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Addresses:

Meriplex Solutions, LLC  
10111 Richmond Avenue, Suite 500  
Houston, TX 77042  
Attn: General Manager  
notice@meriplexsolutions.com

Meriplex Solutions, LLC  
10111 Richmond Avenue, Suite 500  
Houston, TX 77042  
Attn: General Counsel  
notice@meriplexsolutions.com



**EXHIBIT A**

**ACCEPTABLE USE POLICY**

Meriplex Solutions, LLC ("Meriplex") reserves the right to remove any content posted to its system that it deems offensive, inappropriate, or that violates any of its policies. It also reserves the right to suspend or cancel Customer's account for engaging in inappropriate conduct or for violating the following Acceptable Use Policy (AUP). Customer remains legally responsible for Customer's own conduct and the conduct of those whom Customer permits to use Meriplex's Services. Any use of Meriplex's resources that disrupts the normal use of the system for others is deemed unacceptable. Accordingly, Customer shall accept the following restrictions for Customer's employees or authorized users. As a customer, Customer agrees not to use or allow others to use or access the Internet in the following manner:

- . For any illegal purpose;
- . To copy or transmit any material that violates any federal, state, or local law or regulation which may include (but is not limited to) copyrighted material, threatening, obscene, libelous, harassing, or defamatory material, or material protected by trade secret laws;
- . To transmit content that is legally obscene or violates child pornography statutes or contains graphic visual depictions of sexual acts, visual depictions of sexually explicit conduct involving children, or depictions of children, the primary appeal of which is prurient;
- . To transmit any other sexually oriented material that, in the specific context, is offensive or inappropriate;
- . To interfere with or to disrupt network user, services or equipment (disruptions include, but are not limited to, distribution of unsolicited advertising, propagation of computer viruses or worms, and using the network to make unauthorized entry to any other machine accessible via the network);
- . To send unsolicited e-mail messages including, without limitation, commercial advertising and information announcements;
- . To use another site's mail server to relay mail without the express permission of the site;
- . To post the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting, also known as SPAM);
- . To alter, modify, or tamper with the IP address or those of any other person;
- . To forge any TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting;
- . To engage in conduct which interferes with Meriplex's ability to provide service or interferes with the rights of others including, but not limited to, hacking, circumvention of user authentication or security of any host, network, or account (cracking), "denial of service" attacks (port scans, "flooding" of networks, deliberate overload attempts, etc.), libel, invasion of privacy, consumer fraud, unauthorized dissemination of trade secrets, violation of trademark laws;
- . To perform the unauthorized monitoring of data or traffic on any network or system without the express authorization of the owner of the system or network;
- . To scan or probe the security of the network for any purpose whatsoever by the use of packet sniffers, siphons, decoders, analyzers, password gathers, Satan, etc.

Meriplex reserves the right to change this Acceptable Use Policy from time to time. Any changes will be posted on its web site, sent to Customer via e-mail or sent to Customer via U.S. Mail.

Complaints may be sent to [abuse@meriplex.com](mailto:abuse@meriplex.com).