



## MASTER SERVICE AGREEMENT

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This Master Service Agreement ("**MSA**") has been made and entered into as of the latest date of signature below (the "**Effective Date**") by and between:

1. **GTT Americas, LLC** and its Affiliates (to the extent designated on a Service Order Form) (the providing entity being "**GTT**"); and
2. "**Client**" (named above) and its Affiliates (to the extent designated on a Service Order Form),

for the purpose of GTT providing Client with any one or combination of GTT's services ("Service(s)") as set forth in one or more orders for Service ("**Service Order Form(s)**" or "**SOF**"), which shall be deemed incorporated by reference and made part of this MSA. A Service Order Form may contain multiple Services.

GTT and Client may be referred to in this MSA individually as a "**Party**" and/or collectively as the "**Parties**".

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**1. DEFINITIONS AND ABBREVIATIONS.**

- 1.1. **"Affiliate"**, except for the purposes of Subsection 17.6 below, it means any entity which directly or indirectly controls, is controlled by, or is under common Control with a Party.
- 1.2. **"AUP"** is GTT's Acceptable Use Policy
- 1.3. **"Confidential Information"** is as defined in Subsection 17.4 of the MSA.
- 1.4. **"Control"** means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
- 1.5. **"CPE"** is Client Premises Equipment
- 1.6. **"Credit Hold"** means that GTT will not accept SOFs for new Services from Client, all activity for Services being provisioned but not active shall be suspended until the Client's account is released from Credit Hold by GTT in line with Subsection 7.2 of the MSA.
- 1.7. **"Disclosing Party"** is as referenced in Subsection 17.4 of the MSA.
- 1.8. **"Force Majeure"** is as defined in Section 11 of the MSA.
- 1.9. **"Initial Service Term"** is as defined in Subsection 3.2 of the MSA.
- 1.10. **"Minimum Commitment"** is as defined in Subsection 3.4 of the MSA.
- 1.11. **"Master Service Order Form"** or **"Master SOF"** is as defined in Subsection 2.3 of the MSA.
- 1.12. **"Member State"** is as defined in Subsection 17.6 of the MSA.
- 1.13. **"Monthly Recurring Rate (MRR) charge(s)"** is the monthly rate charge, specified in the SOF or other applicable contract document, that GTT invoices Client for the specific Service for the duration of the Service Term.
- 1.14. **"MSA Term"** is as defined in Subsection 3.1 of the MSA.
- 1.15. **"Non-Recurring Rate (NRR) charge(s)"** is any one-time charge, specified in the SOF or other applicable contract document, that GTT invoices Client for the initial provision of the specific Service
- 1.16. **"Payment Date"** is as defined in Subsection 6.2 of the MSA.
- 1.17. **"Receiving Party"** is as referenced in Subsection 17.4 of the MSA.
- 1.18. **"Relevant End-use"** is as defined in Subsection 17.6 of the MSA.
- 1.19. **"Renewal Service Term"** is as defined in Subsection 3.2 of the MSA.
- 1.20. **"Restrictive Sanctions"** is as defined in Subsection 17.6 of the MSA.
- 1.21. **"RMA"** is GTT's return merchandise authorization.
- 1.22. **"Service Outage"** is as defined in Subsection 10.2 of the MSA.
- 1.23. **"Service Schedule"** is as defined in Subsection 17.10 of the MSA.
- 1.24. **"Service Term"** is defined as the Initial Service Term and Renewal Service Term, collectively.
- 1.25. **"Shortfall"** is as defined in Subsection 3.4 of the MSA.
- 1.26. **"SOW"** is as defined in Subsection 17.10 of the MSA.
- 1.27. **"Start of Service Date"** is as defined in Subsection 4.1 of the MSA.
- 1.28. **"Start of Service Letter"** is as defined in Subsection 4.1 of the MSA.
- 1.29. **"Taxes"** Subsection 5.1 of the MSA.

## 2. ORDERING AND PROVISION OF THE SERVICE(S); AFFILIATES.

- 2.1. Services may be ordered by Client or an Affiliate of Client under this MSA. The Client or the purchasing Affiliate of Client shall be specified on the SOF and shall be jointly and severally liable with Client under the SOF.
- 2.2. Each SOF, regardless of the purchasing Client or Client Affiliate or providing GTT or GTT Affiliate, shall be governed by this MSA.
- 2.3. A SOF may contain multiple Services and in such case, it may be referred to as "**Master Service Order Form**" or "**Master SOF**".
- 2.4. Prior to the Start of Service Date (defined below), GTT reserves the right to reject or cancel any Service in its commercially reasonable discretion.
- 2.5. GTT's provision of the Services is subject to the continuing availability of capacity and facilities and any end-of-life discontinuance.

## 3. MSA TERM AND SERVICE TERM; COMMITMENTS.

- 3.1. The term of this MSA shall commence as of the Effective Date and shall remain in effect until terminated as set forth herein (the "**MSA Term**").
- 3.2. Subject to Section 9 below, a Service shall be provided as of its Start of Service Date and for the term specified in the related SOF ("**Initial Service Term**"). Unless one of the Parties provides written notice of termination to the other Party on or before thirty (30) days prior to the expiration of a Service Term, the term of the related Service **shall automatically continue in full force thereafter on an month-to-month basis** (each a "**Renewal Service Term**"), until a Party provides written notice of termination in accordance with this Section 3 or Section 9 below.
- 3.3. Any Service being provided at the time of termination of this MSA shall continue upon the terms and conditions of this MSA until the end of the applicable Service Term.
- 3.4. If a minimum aggregate volume or revenue commitment applies, whether it be monthly, annual or as otherwise agreed ("**Minimum Commitment**"), Client agrees to pay any shortfall in achieving the applicable Minimum Commitment equal to the difference between the MRRs actually billed and the sum of the Minimum Commitment during the applicable commitment period ("**Shortfall**").

## 4. SERVICE ACTIVATION.

- 4.1. **Start of Service Date.** After GTT has determined that a delivered Service conforms to the relevant Service specifications, GTT will notify Client (in writing or electronically) that the Service is activated and is available for use ("**Start of Service Letter**"). GTT may incrementally deliver individual Services or locations specified in a SOF, when ready, which may result in different Start of Service Dates for each incrementally delivered Service or location. Client shall have two (2) business days to notify GTT that it is rejecting the Service as a result of its failure to meet the applicable Service specifications. The "**Start of Service Date**" shall be the earlier of (i) the date that Client begins using the Service for any purpose other than testing or (ii) the date of the Start of Service Letter. The Client's failure to test or delay in testing the Service or failure to utilize or delay in utilizing the Service on or after the Start of Service Letter date shall not prevent GTT from billing the Client for the Service.
- 4.2. **Client Readiness.** If the Start of Service Date is delayed as a result of:
  - 4.2.1. Client's failure to:
    - (i) timely complete and submit to GTT the related GTT Provisioning Document (including, without limitation, the Technical Architecture Document (TAD)) or timely meet GTT's product deployment requirements as described in the applicable product Client Engagement Guide(s) or other authorizations, or
    - (ii) meet its responsibilities under the MSA, applicable Service Schedule, SOF or another relevant contract document, or
    - (iii) have ready the necessary interconnection facilities and equipment for GTT to deliver a Service or for Client to test and turnup a delivered Service; or
  - 4.2.2. any other action or inaction of Client which prevents GTT from installing or delivering Service, provided that in each of the following cases GTT has informed the Client of such delay, then if Client fails to cure such failure within fourteen (14) days,

GTT may deem the Service cancelled and Client shall pay to GTT the related early termination charge.

## 5. BILLING; TAXES; CHARGES.

- 5.1. GTT charges Client for each Service commencing on the Start of Service Date. GTT may invoice Client for a NRR charge(s) for Services prior to the Start of Service Date. GTT shall invoice Client via electronic delivery, and Client shall pay in advance on a monthly basis for all Services, the MRR charges set forth in the SOF, any unpaid NRR charge(s), and all applicable excise, sales, use, VAT, customs and import taxes or other taxes, fees, surcharges, and/or recovery charges, however designated, imposed upon or authorized as a result of GTT's sale of the Services (collectively, "**Taxes**"). Usage based charges or professional fee charges will be invoiced in the billing period after such Services have been provided. All payments made by Client under this MSA shall be made without any deduction or withholding for or on account of any Taxes. GTT may adjust charges during a Renewal Service Term, upon thirty (30) days written notice to Client.
- 5.2. To the extent that any deduction or withholding of Taxes is required, at any time, by applicable law, Client shall increase the amount of such payment to ensure that GTT receives the amount it would have received had no deduction or withholding been required and indemnify and hold GTT harmless on an after-tax basis from and against any such withholding, interest or penalties levied or asserted against GTT in connection therewith. If Client provides GTT with a valid direct payment permit, sale for resale exemption certificate, sales tax exemption certificate or other applicable exemption certificate acceptable to GTT, then following GTT's receipt of such exemption certificate and proof on an annual or other basis of continued exemption from time to time, GTT will not invoice the Taxes covered by the exemption certificate(s), if such exemption certificate is applicable to the Services provided. A tax exemption certificate or resale certificate is not applicable to certain surcharges.
- 5.3. Twelve (12) months from the Start of Service Date of a Service and annually thereafter, GTT reserves the right to review the related charges and may increase such charges by the lesser of (i) ten percent (10%) or (ii) the percentage increase, for the previous twelve (12) month period, in the applicable local inflation index of the country where the GTT billing Affiliate is registered.

## 6. PAYMENT.

- 6.1. All invoices are due upon receipt, payable by company check or electronic transfer in available funds.
- 6.2. If any undisputed amount due on any invoice is not received by GTT within thirty (30) days of the invoice date ("**Payment Date**"), then, in addition to any other remedies available to GTT (including, but not limited to, those set forth in Section 9), GTT may in its sole discretion:
- 6.2.1. charge interest, at the rate of the lesser of one and one-half percent (1.5%) per month or the maximum rate allowable under law, commencing as of the Payment Date through the date of GTT's receipt of payment; and/or
- 6.2.2. place Client's account on a Credit Hold in accordance with Subsection 7.2 below.
- 6.3. Except for bona fide disputes submitted in accordance with Section 8 of this MSA, payments due are not subject to reduction, set-off, or adjustment of any nature by Client.
- 6.4. If GTT initiates legal action to pursue collection of any undisputed amount due under this MSA or any SOF, Client shall be responsible for and agrees to pay for any and all reasonable attorneys' fees and expenses incurred by GTT.

## 7. CREDIT.

- 7.1. GTT reserves the right to conduct a review of Client's credit rating, credit history, and payment history at any time.
- 7.2. GTT may, as a condition of providing new Services or continuing to provide active Services, place Client's account on a Credit Hold if:
- 7.2.1. there has been a materially adverse change in Client's financial condition; or
- 7.2.2. Client has been late in paying its undisputed charges on invoices by the Payment Date; or
- 7.2.3. Client does not timely respond to GTT's communications and/or propose a repayment plan acceptable to GTT, in its commercially reasonable discretion, regarding unpaid disputed charges.
- 7.3. GTT will provide Client at least thirty (30) days' advance written notice prior to placing Client's account on Credit Hold. During those thirty (30) days, GTT will use commercially reasonable efforts to work with Client to reach a mutually agreeable repayment plan prior to instituting the Credit Hold.

## 8. DISPUTES.

- 8.1. If Client reasonably and in good faith disputes any portion of GTT's invoice, Client shall, within thirty (30) days of the invoice date, submit written notice to GTT of such dispute, identifying in specific detail the reason for the dispute and the amount being disputed. If Client does not deliver such written notice within thirty (30) days of the invoice date, the invoice and all charges thereon will be deemed correct, and Client shall have waived its rights to dispute the invoice.
- 8.2. Client's dispute as to any portion of the invoice shall not excuse Client's obligation to pay the undisputed portion of the invoice by the Payment Date.
- 8.3. The Parties shall negotiate in good faith to resolve any disputes within fifteen (15) days following GTT's receipt of Client's timely written notice.
- 8.4. Any amounts that GTT determines to be in error shall be adjusted on Client's next invoice. Any disputed amounts that GTT determines to be correct as billed shall be due and payable by Client, upon notification and demand by GTT, along with any charges that GTT may impose pursuant to Section 6 above.

## 9. TERMINATION AND SUSPENSION.

- 9.1. **By GTT.** GTT may terminate this MSA or cancel or terminate any and all SOFs, in whole or in part, or suspend Services without any liability at any time upon:
  - 9.1.1. any failure of Client to timely pay any and all undisputed amounts due hereunder if Client fails to cure such non-payment within ten (10) calendar days after receiving written notice of such non-payment from GTT; or
  - 9.1.2. immediately upon a violation of AUP or any incurable material breach by Client of any provision of this MSA (including without limitation, Subsection 17.6 (Sanctions Compliance), any SOF, or any other applicable contract document or in case the material breach is curable- if Client fails to cure such breach within thirty (30) calendar days after receiving such written notice of such breach from GTT; or
  - 9.1.3. any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Client; or
  - 9.1.4. any governmental prohibition or required alteration of the Service provided hereunder necessitating such termination.
- 9.2. **By Client for Cause.** Client may cancel or terminate the affected Service(s) for cause that are materially breached, without any liability at any time upon:
  - 9.2.1. immediately upon any incurable material breach by GTT of any provision of this MSA, any SOF, or any other applicable contract document or in case the material breach is curable if GTT fails to cure such breach within thirty (30) days after receiving written notice thereof from Client; or
  - 9.2.2. any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to GTT; or
  - 9.2.3. any governmental prohibition or required alteration of the Service provided hereunder necessitating such termination.
- 9.3. If **(1)** Client cancels or terminates a Service prior to the end of the Service Term without cause (as specified above in Subsection 9.2.) or for convenience; or **(2)** GTT terminates this MSA and/or any Service(s) prior to the end of the Service Term pursuant to Subsections 9.1.1, 9.1.2 or 9.1.3, then in addition to any other rights or remedies available to GTT hereunder, at law, or in equity, Client shall provide GTT with at least thirty (30) days' written notice of termination and pay GTT an early termination charge (as liquidated damages and not as a penalty) equal to:
  - 9.3.1. all unpaid, waived, discounted and/or amortized NRR charges associated with the terminated Service(s) and, if applicable, unpaid Shortfalls; plus
  - 9.3.2. all MRR charges specified for the terminated Service for all remaining months of the unexpired balance of the related Service Term of the terminated Service; plus
  - 9.3.3. to the extent greater than the amount in Subsection 9.4.2 above, the aggregate fees, charges, expenses, and taxes payable by GTT (including, but not limited to, liquidated damages, and disconnection, early cancellation or termination charges payable to third parties) in connection with the cancelled or terminated Service(s), provided that such amount does not exceed the remaining unpaid MRR charges of the terminated Service.

- 9.4. Client's obligation to pay the related service charge shall not be relieved, if Service is suspended by GTT because of any non-payment or other breach of this MSA by Client and no Service Outage (defined under Subsection 10.2 below) shall be deemed to have occurred as a result of such suspension.
- 9.5. Upon expiration or termination, neither Party shall owe the other any further duties, obligations, or consideration; provided, however, that expiration or termination of this MSA shall not affect the rights or obligations of either Party that have arisen before the date of expiration or termination, nor shall Client or GTT be relieved of any liabilities arising prior to such termination.
- 9.6. GTT will process any request for disconnection or early termination by Client within thirty (30) days or less, subject to Client's payment of early termination charge. Client must pay for Services until actual disconnection if any delay in disconnection is due to the actions of a third-party provider.

## 10. SERVICE PERFORMANCE; MAINTENANCE.

- 10.1. Services will be activated, provided and provisioned in accordance with the delivery, availability, reporting, response time, restoration and maintenance objectives of the applicable Service Schedule(s).
- 10.2. In the event of a failure to perform in accordance with objectives of the applicable Service Schedule(s) or interruption in the Service ("**Service Outage**"), Client shall be entitled to a service credit and/or termination right pursuant to the applicable Service Schedule(s). Credit and termination right allowances shall be measured only after GTT's receipt of written notice of a Service Outage from Client and will be provided via credit note only if Client provides written notice with respect to obtaining such credit and/or termination right within thirty (30) days of the Service Outage occurring. Under no circumstance shall a Service Outage be deemed a breach under this MSA, any Service Schedule or any SOF. Client's sole remedy for the failure or non-performance of the Service or equipment to meet the performance and Service levels of the applicable Service Schedule shall be to receive a credit or cancel the affected Service as set forth in applicable Service Schedule.
- 10.3. Service availability, and Service Outages, are subject to the following exclusions: a Service Outage will be deemed to have occurred only if the Service becomes unusable to Client as a result of the inability of GTT's facilities, equipment or personnel to provide the Service, and only when the Service Outage is not the result of: **(1)** fault or negligence of Client or its contractors, agents, representatives, or users; **(2)** the failure of interconnecting facilities or other equipment not part of GTT's Service or facilities or not within GTT's reasonable control; **(3)** any planned interruption, emergency maintenance or routine maintenance; or **(4)** other circumstances beyond the reasonable control of GTT.
- 10.4. GTT shall use commercially reasonable efforts to perform routine maintenance at mutually agreeable times.
- 10.5. In the event GTT dispatches a technician to a site for troubleshooting and determines that the cause resulted from a factor caused by Client or on Client's side of the Service demarcation point, GTT may charge its standard rates and charges for such dispatch.

## 11. FORCE MAJEURE.

Neither Party will be in default or otherwise liable for any Service Outage, delay, or failure of its performance under this MSA or any SOF to the extent such Service Outage, delay, or failure to perform arises by reason of any cause or circumstance beyond the reasonable control of the affected Party, including but not limited to, reason of act of God, the elements, adverse weather conditions, fire, flood, riots, strikes, accident, war, governmental requirement or any action of government in its sovereign capacity, act of civil or military authority, action or inaction of a supplier or other third party (including but not limited to failure of an underlying third party provider to timely process an application), fiber or cable cut, subsea fiber damage, inability to secure materials, labor or transportation, epidemic or catastrophe (each constituting a "**Force Majeure**").

## 12. LIMITATION OF LIABILITY AND DISCLAIMER OF WARRANTIES; INDEMNITY.

- 12.1. Except as expressly set forth in this MSA, Service Schedule, a SOF and to the extent permissible under applicable law, GTT does not make, and expressly disclaims and excludes to the fullest extent, any warranties, conditions, representations or other agreements, express or implied (either in fact or by operation of law, statutory or otherwise), to Client or any third party with respect to the Service or equipment, including, without limitation, any conditions or warranties of merchantability, satisfactory quality or fitness for a particular purpose or otherwise. GTT shall provide and maintain the Service to Client as specified herein.
- 12.2. In no event shall a Party be liable to the other Party under any circumstances, howsoever arising out of, or in connection with, this MSA for: (i) any loss of actual or anticipated profit, (ii) loss of income or revenue, (iii) loss of goodwill, opportunity, business or contract, (iv) loss, destruction or corruption of data or technology, (v) business interruption, downtime costs, or any wasted expenditure or time, (vi) loss of anticipated savings, (vii) loss of use of any property, (ix) cost of substitute performance, equipment or services, in each of the foregoing cases, whether such loss or cost is direct, indirect or consequential; or any indirect, special, incidental, exemplary, punitive or consequential losses or damages. The exclusions in this Subsection 12.2 shall apply whether or not the costs, losses or damages were caused by the acts or omissions of a Party's employees or agents, and regardless of whether it has been informed of, or could have foreseen, the possibility or likelihood of such losses.

- 12.3.** A Party's entire liability to the other Party for any claim, loss, cost, expense, or damages under this MSA or any SOF shall in no event exceed the sum actually paid by Client to GTT for the affected Service during the twelve (12) month period preceding the date such claim first arose.
- 12.4.** The foregoing exclusions and limitations apply to all causes of action and claims of any kind arising out of or related to this MSA or any SOF including, without limitation, breach of contract, breach of warranty or condition, under an indemnity or otherwise (unless expressly provided), strict liability, breach of statutory duty, negligence, misrepresentation, or any other tort. Client acknowledges and accepts the reasonableness of the foregoing disclaimers and limitations of liability. For purposes of this Section 12, all references to a Party shall include its affiliates, agents, suppliers, officers, directors, shareholders, and employees. In no event shall GTT's third-party suppliers be directly liable to Client or any other party for any loss or damage arising out of the provision of Services or equipment hereunder.
- 12.5.** Each Party shall protect, defend and indemnify, and hold harmless the other Party, its officers, employees, contractors, and agents, from and against any and all liabilities, allegations, claims, losses, damages, expenses, judgments and causes of action arising from or in connection with damage to property caused by the gross negligence or willful misconduct of the indemnifying Party, or its employees, affiliates, representatives, agents or contractors in the performance of the indemnifying Party's obligation hereunder, except those damages, costs, expenses and liabilities arising from the negligence or willful misconduct of the indemnified Party.
- 12.6.** Nothing in this MSA shall exclude or limit a Party's liability:
- 12.6.1.** for willful misconduct;
  - 12.6.2.** for death or personal injury caused by a Party's gross negligence;
  - 12.6.3.** to pay charges (including any Shortfall, cancellation charges or other early termination charges) which have already become due; or (iv) in respect of any other liability which cannot be excluded or limited by applicable law.
- 12.7.** The Parties shall use best endeavors to mitigate any losses that may arise from any SOF under this MSA.

### **13. CLIENT'S RESPONSIBILITIES; RESALE OF THE SERVICES.**

- 13.1.** Client acknowledges and agrees that:
- 13.1.1.** Client is solely responsible for obtaining all licenses, approvals, and regulatory authority for its operation and the provision of Client's services which incorporate GTT's Services to its end user and/or other customers; and
  - 13.1.2.** Client is solely responsible for obtaining all local permits, landlord consents, access licenses and permissions, and other consents and waivers necessary for installation of facilities and equipment to allow GTT to provide the Service and make use of the Service.
- 13.2.** Equipment used by Client or Client's customers, suppliers, agents, employees or end users in connection with any GTT Service shall not:
- 13.2.1.** interfere with or impair service over any facilities and equipment of GTT and its suppliers; or
  - 13.2.2.** impair the privacy of any communications carried over GTT's Services; or
  - 13.2.3.** create hazards to the employees of GTT or the public.
- 13.3.** In addition to any other remedies available hereunder, GTT may, in its sole discretion, suspend Service upon the provision of notice if Client does not comply with the terms and conditions of this Section 13. GTT shall have no liability to Client's end user, suppliers and/or customers arising from or relating to this MSA or any SOF.
- 13.4.** Client's obligations to GTT under this MSA and all SOFs including, without limitation, its payment obligations, are independent covenants from Client's ability to collect payment from its end user and/or carrier customers. GTT shall have no obligation to interact with Client's end users or customers for any reason or purpose.
- 13.5.** GTT shall not be liable for any fraudulent use of the Services by Client or any third party, including, but not limited to, fraudulent calls. GTT has no obligation to investigate the authenticity of any use of the Services charged to Client's account.
- 13.6.** Client shall protect, defend, indemnify, and hold harmless GTT, its officers, directors, employees, contractors, and agents, from and against any and all liabilities, allegations, claims, losses, damages, expenses (including reasonable attorney's fees and costs), judgments, and causes of action arising from or related to any claim made by any of Client's customers or other third parties relating to or arising from this Section 13.

#### **14. EQUIPMENT AND LOCATION.**

- 14.1. Client will grant GTT, its agents and contractors, access to and use of Client's facilities to the extent reasonably necessary for the installation, connection, removal, and maintenance of equipment, facilities, and systems relating to Services.
- 14.2. Client will not allow or cause any service, facility, or equipment of GTT or its suppliers to be rearranged, moved, modified, repaired or relocated without GTT's written consent.
- 14.3. Client will not create or allow any liens or other encumbrances to be placed on any such facilities or equipment of GTT or its suppliers.
- 14.4. If Client relocates or changes the place of the Service provided under any SOF, Client will pay all additional installation and related charges associated with such relocation.
- 14.5. GTT may require Client, as a condition to receiving Service, to use the CPE, supplied by GTT. Unless agreed otherwise between the Parties, all CPE shall remain the exclusive property of GTT.
- 14.6. Client will return disconnected or faulty CPE in accordance with the RMA process which includes completing the necessary forms and using the shipping label provided by GTT, if applicable. Client will pay GTT the associated non-return fee for CPE specified in the related SOF (or if no non-return fee is specified, the manufacturer's suggested retail price as of the date of the related SOF) that is (i) not returned to GTT within fifteen (15) days of the disconnection date or the date that Client receives new CPE to replace faulty CPE or (ii) damaged during return shipping to GTT.
- 14.7. If Client takes ownership of CPE, Client will assist GTT with all administrative requirements associated with such ownership.

#### **15. THIRD-PARTY SOFTWARE LICENSE.**

- 15.1. If and to the extent that the Client requires the use of licensed software in order to use the Services, the Client will be provided with a non-exclusive non-transferable license for the Service Term to use such third-party licensed software solely for its internal purposes and solely to the extent required to use the Services. To the extent such licensed software is sourced from a third-party provider, such license shall be subject to the terms of the applicable software license embedded in the relevant software.
- 15.2. Client will not, and shall use all its reasonable endeavors to ensure that others do not:
  - 15.2.1. obtain or claim any ownership in any licensed software (or in any derivation thereto or improvement thereof);
  - 15.2.2. copy the licensed software except as agreed in writing by GTT and in accordance with the terms of the applicable software license;
  - 15.2.3. save as permitted by law, reverse engineer, decompile or disassemble licensed software;
  - 15.2.4. sell, lease, license or sublicense the licensed software;
  - 15.2.5. create, write or develop any derivative software or any other software based on the licensed software; or
  - 15.2.6. take any action prohibited by the applicable software license.

#### **16. CANCELLATION OF SERVICE; DISCONNECTION.**

All Client's requests to disconnect a Service must be submitted through the GTT Client Portal. Any alternative forms of disconnection requests must be approved by GTT in writing. For purposes of clarification, any cancellations by Client prior to or on or after the Start of Service Date for a Service shall be subject to the charges set forth in Section 9 of this MSA.

#### **17. GENERAL.**

##### **17.1. Assignment.**

- 17.1.1. Either Party may assign this MSA, along with any SOF, to any Affiliate, or to a successor company pursuant to any reorganization or merger of its business, or to any successor pursuant to any sale or transfer of all or substantially all of its assets.



- 17.1.2. No other assignment by either Party will be permitted without the prior written consent of the other Party, which consent will not be unreasonably withheld or denied.
- 17.1.3. The rights and obligations under this MSA shall survive any merger or sale of either Party and shall be binding upon the successors and permitted assignees of each Party.
- 17.2. **Governing Law.** This MSA and all SOFs, or any other applicable contract document that incorporates by reference the terms of this MSA or SOFs, and any dispute or claim arising thereto shall be governed by and construed in accordance with the law of the state of Virginia and the Parties further consent to exclusive jurisdiction and venue in the courts of Virginias.
- 17.3. **Construction; Severability; Waiver.**
- 17.3.1. Each Party acknowledges that this MSA has been jointly drafted by the Parties and that it has not been induced to enter into this MSA by any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this MSA and agrees that it shall have no remedy in respect of the same.
- 17.3.2. In the event that any provision of this MSA conflicts with the law under which this MSA is to be construed or if any provision is declared invalid by a court with jurisdiction over the Parties to this MSA, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law.
- 17.3.3. Each provision of this MSA is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect.
- 17.3.4. Failure of either Party to enforce any of the provisions of or its rights under this MSA, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment of any rights.
- 17.4. **Confidentiality.**
- 17.4.1. Neither Party shall disclose to any third party during the term of this MSA and for two (2) years following the expiration or termination of this MSA, any of the terms of this MSA or any SOF, including any rate information, unless such disclosure is required by any state or federal governmental agency, is otherwise required by law, or is necessary in any proceeding establishing or applying rights or obligations under this MSA.
- 17.4.2. By virtue of this MSA, each Party (the "**Receiving Party**") shall have access to or may learn certain confidential or proprietary technical, business, scientific, strategic, financial, legal (including intellectual property), commercial, regulatory, organizational, and/or operational information and data of the other Party (the "**Disclosing Party**"), including the existence of this MSA and the terms of any supplemental document, work order, SOF or statement of work, whether disclosed by or on behalf of the Disclosing Party and in any form of disclosure whether or not expressly identified as confidential ("**Confidential Information**").
- 17.4.3. Each Party shall, both during the Term of this MSA and for a period of two (2) years after expiration or termination of this MSA, hold the Confidential Information in confidence.
- 17.4.4. Each Party shall not make the Confidential Information available in any form to any third party or use the Confidential Information for any purpose other than the implementation of this MSA.
- 17.4.5. Each Party shall take all reasonable steps to ensure that Confidential Information is not disclosed or distributed to any other individual or entity in violation of the provisions of this MSA.
- 17.4.6. Each Party shall disclose the Confidential Information only to those employees, directors, officers, agents, professional advisers or consultants who need to know the Confidential Information for the purpose of MSA or any business interaction between the Parties and who are bound in writing to observe terms and conditions comparable to this Subsection 17.4.
- 17.4.7. Confidential Information shall not include:
- (i) information that is publicly available as of the Effective Date or subsequently becomes publicly available through no fault or act of such Receiving Party or representative of such Receiving Party; provided that such information shall not be deemed to be publicly available merely because more general information may be publicly available;
  - (ii) information that is known to such Receiving Party prior to disclosure from the Disclosing Party as evidenced by such Receiving Party; provided that such information is not known by such Receiving Party to have been received in violation of any obligation to the Disclosing Party to keep such information confidential;
  - (iii) information that such Receiving Party receives from any third party not under any obligation to the Disclosing Party to keep such information confidential; and

- (iv) information that is independently developed by such Receiving Party or its representatives without reliance upon or use of the Confidential Information of the Disclosing Party.

**17.4.8.** For purposes of clarification, under no circumstances shall either Party utilize any information obtained in connection with this MSA to contract directly with any vendors, contractors, or customers of the other Party with respect to that specific Service or a replacement or substitute for that Service; provided, however, that nothing in this MSA shall be construed to preclude either Party from purchasing, selling or utilizing any other telecommunications, information, or ancillary services from or to any other entity or from using information independently developed to purchase, sell, or utilize such services.

**17.5. Third-Party Beneficiaries.**

**17.5.1.** The representations, covenants, obligations, rights, and agreements of the Parties set forth in this MSA are not intended for, nor shall they be for the benefit of or enforceable by, any third party or person not a Party to this MSA including, without limitation, Client's end user, suppliers and/or carrier customers.

**17.5.2.** Under this MSA, GTT shall have no relationship with the customers to which Client may provide service.

**17.5.3.** Client acknowledges and agrees that no fiduciary relationship arises under this MSA or any SOF and shall indemnify GTT from any third-party claims.

**17.6. Sanctions Compliance.**

**17.6.1.** For the purposes of this Subsection 17.6, the following terms will bear the meaning below:

- (i) **"Affiliate"** means in relation to any person or body corporate, a person or body corporate that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned person or body corporate;
- (ii) **"Client"** means, Client, including any officer, director, employee, successor and/or Affiliate of Client;
- (iii) **"Restrictive Sanctions"** means applicable measures, resolutions, laws, rules, regulations, and executive orders adopted by the United Nations or implemented by the European Union, a European Union Member State ("**Member State**"), the United Kingdom, or the United States, including laws, regulations, and Executive Orders administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**") or the U.S. Department of Commerce's Bureau of Industry and Security ("**BIS**");
- (iv) **"Relevant End-use"** means military use; use in connection with chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons; or use in connection with Iran's enrichment-related, reprocessing, or heavy water-related activities.

**17.6.2.** Client warrants and represents to GTT that:


- (i) Client shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any products (including any software, documentation, and any related technical data included with, or contained in, such products, and any products utilizing any such products, software, documentation, or technical data), goods, works, or services provided by GTT to any jurisdiction or country to which, or any party to whom, the export, reexport, or release of any such goods, works or services is prohibited by applicable federal or foreign law, regulation, or rule, including Restrictive Sanctions;
- (ii) the performance of Client's duties under this MSA will not result in any funds, economic resources, products, goods, works, services, or wider benefits being made available, directly or indirectly, to any individual, entity, or body designated under Restrictive Sanctions measures adopted by the United Nations or implemented by the European Union, a Member State, United Kingdom, or the United States, or any party acting on behalf or at the direction of such an individual, entity, or body; and
- (iii) Client will not sell, export, transfer, re-export, or re-transfer any products, goods, works, or services provided by GTT which may be intended for a Relevant End-use unless prior authorization by a competent authority has been granted.

**17.6.3.** For the avoidance of doubt, and notwithstanding any other provision in this MSA, Client shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any products, goods, works, or services provided by GTT to Iran, including any person or entity located in Iran or owned or controlled by any person or entity located in Iran.

- 17.6.4.** Cooperation with compliance: Where GTT is required by a competent authority to provide records and/or information, Client upon request by GTT, shall promptly provide GTT with all information, pertaining to the particular end Clients, the particular destinations, and the particular end use of the goods, works and services provided by GTT.
- 17.6.5.** GTT shall be entitled to terminate this MSA and or any and all SOFs, in whole or in part thereunder with immediate effect by giving notice in writing to Client in the event that Client breaches this Subsection 17.6 directly or indirectly, otherwise affect the ability of the Parties to perform their duties.
- 17.7. Headings; Interpretation.** The headings used in this MSA are for convenience only and do not in any way limit or otherwise affect the meaning of any terms of this MSA. This MSA shall be construed fairly according to its terms, without regard to the drafter of any provision hereof.
- 17.8. Acceptable Use and GTT Corporate Policies.**
- 17.8.1.** Client and its end users and customers shall comply with the AUP in its use of the Service(s). Client shall indemnify, defend, and hold harmless GTT from any losses, damages, costs or expenses resulting from any third-party claim or allegation arising out of any alleged or actual violation of the AUP.
- 17.8.2.** The Parties acknowledge that GTT has GTT Code of Business Conduct and Ethics, Privacy Policy and a broad range of corporate policies and procedures, which may be located on the company's website. The Parties acknowledge that GTT is to follow its Code of Conduct and other GTT corporate policies and regulations.
- 17.9. Notices.** Any notice given or made pursuant to this MSA will be effective if in writing and delivered by overnight courier, first class or certified mail, or electronic delivery (email) and delivered at the address provided above, with regard to Client and below, with regard to GTT, or such other address as may be furnished by either Party to the other.
- GTT  
7900 Tysons One Place, Suite 1450  
McLean, VA 22102  
Attn: General Counsel  
Email: [legal@gtt.net](mailto:legal@gtt.net)
- 17.10. Entire Agreement.**
- 17.10.1.** All Services are subject to the terms and conditions of this MSA, GTT's operational and service schedules, guides and service level agreement(s) applicable to the specific Service (collectively a "**Service Schedule**"), the SOF, the AUP, and any statement of work or other written instrument (collectively a "**SOW**") between the Parties that applies to Services.
- 17.10.2.** GTT will provide Client with the Services as described on any SOF issued pursuant to this MSA, which constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior offers, communications, representations, understandings, and agreements, whether verbal or written, made between the Parties. GTT shall not be bound by any provision in any purchase order, confirmation, correspondence or other communication from Client which is at variance with, in addition to, seeks to define or clarify, and/or conflicts with any provision of this MSA, SOW, a Service Schedule, or any SOF, unless such variance, addition, definition/clarification, or conflict is specifically identified in a written agreement signed by Client and GTT which expressly references the appropriate provision of this MSA, a SOW, a Service Schedule, and/or a SOF, as applicable.
- 17.10.3.** The order of precedence in interpretation shall be: (i) any SOF; (ii) a SOW; (iii) a Service Schedule; (iv) AUP and then (v) this MSA.
- 17.11. Signatures; Counterparts.**
- 17.11.1.** Any SOF is signed by Client only.
- 17.11.2.** This MSA and any SOW may be executed in one or more counterparts, whether by original, electronic signature, photocopy or facsimile, each of which shall constitute an original, but all of which shall constitute one and the same instrument.
- 17.12. Independent Contractors.** Except as specifically and expressly provided herein, the Parties shall be considered independent contractors for the purposes of this MSA. Except as specifically and expressly provided herein, the relationship between GTT and Client shall not be that of partners, agents, fiduciaries or joint venturers for one another, and nothing in this MSA shall be deemed to constitute a partnership, agency agreement, or joint venture between the Parties for any purpose whatsoever.

- 17.13. **Survival.** Provisions contained in this MSA that by their sense and context are intended to survive completion, performance, termination, suspension, cancellation, or expiration of this MSA (including, but not limited to, the NDA terms and conditions incorporated herein by reference) shall survive.

IN WITNESS WHEREOF, the Parties hereto have executed this MSA.

Agreed to and Accepted:	Agreed to and Accepted:
<b>GTT</b>	<b>CLIENT</b>
Signature:	Signature:  Paul Finkbeiner (Sep 18, 2023 07:55 EDT)
Name:	Name: Paul Finkbeiner
Title:	Title: Vice President, IT
Date:	Date: Sep 18, 2023






# GTT - Concentra Secondary Project - Colorado Springs CO MSA

Final Audit Report

2023-09-18

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