

## **Customer-paper Master Services Agreement**

**Between:**

**Customer:** [Customer Name, a corporation organized under the laws of the United States, with principal offices at [Customer Address]]

**Provider:** [Provider Name, a technology provider specializing in Communication Platform as a Service (CPaaS) solutions, with principal offices at [Provider Address]]

**Effective Date:** \_\_\_\_\_

## 1. Definitions

For purposes of this Agreement unless the context otherwise requires the following terms shall have the meanings set forth below: (a) "Affiliate" means with respect to any entity any other entity that directly or indirectly controls is controlled by or is under common control with such entity; (b) "Confidential Information" includes but is not limited to any information that is proprietary to either party and not generally known to the public including but not limited to business plans customer data technical data product plans and any other information disclosed either orally or in writing that is designated as confidential or that a reasonable person would understand to be confidential; (c) "Customer Data" means any data inputted by the Customer or the Customer's authorized representatives into the Provider's systems including without limitation data related to the Customer's customers as well as any data output generated by the systems based on the input data; (d) "CPNI" means Customer Proprietary Network Information as defined in applicable telecommunications law and includes information that relates to the quantity technical configuration type destination location and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; (e) "Emergency Call Services" refer to services that enable users to reach emergency service personnel through dialing emergency numbers or other means as outlined herein; and (f) "PII" or Personally Identifiable Information means any information that could reasonably be used to identify an individual either by itself or when combined with other information.

## 2. Scope of Services

The Provider agrees to supply and the Customer agrees to purchase certain services described herein which encompass but are not limited to communication platform services including API access voice messaging data integration and related support services the scope of which shall be delineated in subsequent Order Forms provided however that the Provider shall have the right to modify or discontinue any service or feature thereof at its sole discretion upon providing thirty (30) days prior written notice to the Customer except in cases where such modification or discontinuation is necessitated by legal compliance or to prevent fraud abuse or other security threats in which case notice shall be given as soon as reasonably practicable notwithstanding the foregoing but subject to the terms of this Agreement the Customer shall have the right to terminate the affected service without penalty if the modification or discontinuation materially diminishes the utility of such service to the Customer.

### **3. Fees and Payment Terms**

**3.1 The Customer shall pay all fees as set forth in the applicable Order Form which shall be incorporated herein by reference and subject to change solely at the discretion of the Provider upon thirty (30) days prior notice provided however that any fee increase shall not exceed five percent (5%) of the fees from the prior annual period unless mutually agreed in writing not including any fees imposed by governmental authorities or third-party vendors which shall be borne by the Customer as a pass-through charge if applicable and unless otherwise specified all fees shall be due net thirty (30) days from the date of invoice; the Provider reserves the right to suspend services upon non-payment of overdue invoices and charge interest on overdue amounts at a rate of the lesser of one and one-half percent (1.5%) per month or the highest rate permitted by applicable law.**

**3.2 In the event of any dispute concerning fees the Customer shall provide written notice to the Provider within fifteen (15) days after the date of invoice detailing the nature of the dispute and the Customer shall continue to pay all undisputed amounts while the parties attempt in good faith to resolve the dispute through negotiation failing which either party may escalate the dispute pursuant to the provisions set forth in Section 19 herein.**

### **4. Service Level Agreements (SLAs)**

The Provider commits to service levels as described in Exhibit A which shall include uptime commitments response time criteria and resolution timeframes subject to exclusions for scheduled maintenance force majeure events and issues arising from third-party service providers with whom the Customer contracts separately it being understood that the Provider shall use commercially reasonable efforts to maintain service availability at ninety-nine point nine percent (99.9%) per calendar month and in the event the Provider fails to meet such

service levels for two consecutive months the Customer shall be entitled to request a service credit calculated as a percentage of the monthly fees applicable to the affected service as detailed in Exhibit A provided always that the total service credits shall not exceed ten percent (10%) of the total monthly fees for the affected service.

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## **5. Data Privacy and Protection**

The Provider shall implement and maintain reasonable security measures to protect Customer Data against unauthorized access use disclosure or destruction including compliance with applicable data protection laws such as but not limited to the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA) notwithstanding the foregoing it is understood that the Provider shall not be responsible for any unauthorized access or use arising from the Customer's failure to secure its login credentials or other security measures; the Provider shall promptly notify the Customer of any data breach affecting Customer Data in accordance with applicable law and take all reasonable steps to mitigate the breach including cooperating with the Customer to provide notifications to affected individuals if required by law.

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## **6. Intellectual Property**

All intellectual property rights in and to the services and any enhancements modifications or derivative works thereof shall remain the sole and exclusive property of the Provider except as expressly granted herein the Customer shall have a limited non-exclusive non-transferable license to use the services solely for its internal business purposes provided however that the Customer shall not reverse engineer decompile disassemble or otherwise attempt to derive the source code of any software provided by the Provider nor shall the Customer use the services to develop competing products or services notwithstanding the foregoing the Customer shall retain all rights title and interest in and to its Customer Data and the Provider shall have a limited license to use such data solely for the purposes of providing the services and improving the Provider's offerings.

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## **7. Acceptable Use Policies (AUPs)**

The Customer shall comply with the Provider's Acceptable Use Policies as may be updated from time to time which include but are not limited to prohibitions against using the services for unlawful activities transmitting harmful or obscene content engaging in spamming or other

unsolicited communications and interfering with the operation of the Provider's network or services provided that the Provider reserves the right to suspend or terminate services upon breach of these policies without notice if necessary to prevent harm to the Provider's infrastructure or reputation provided further that the Customer shall indemnify and hold harmless the Provider from any claims damages losses or expenses arising from the Customer's breach of these policies including reasonable attorneys' fees.

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## **8. Liability Limitation**

The Provider's liability for any breach of this Agreement shall be limited to direct damages and shall not exceed the total fees paid by the Customer under the applicable Order Form during the twelve (12) months preceding the claim notwithstanding the foregoing the Provider shall not be liable for any indirect incidental special punitive or consequential damages including but not limited to loss of profits loss of business revenue loss of data or other commercial loss arising out of or in connection with this Agreement except in cases of gross negligence or willful misconduct by the Provider or its employees agents or contractors.

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## **9. Termination Rights**

Termination rights include the right of either party to terminate this Agreement for cause upon thirty (30) days written notice if the other party breaches a material term of this Agreement and fails to cure such breach within the notice period provided however that the Customer may terminate this Agreement for convenience upon sixty (60) days written notice subject to payment of any outstanding fees and costs incurred up to the termination date notwithstanding the foregoing the Provider may terminate this Agreement immediately upon notice in the event the Customer becomes insolvent or enters bankruptcy proceedings or if continuation of the services would result in violation of applicable law.

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## **10. Indemnities**

Each party shall indemnify defend and hold harmless the other party from and against any claims damages losses or expenses arising from its breach of this Agreement or its gross negligence or willful misconduct provided however that the indemnifying party shall not settle any claim without the prior written consent of the indemnified party which consent shall not be unreasonably withheld or delayed and provided further that the indemnified party shall have the right to participate in the defense of any claim at its own expense using counsel of its

choosing notwithstanding the foregoing the Customer shall indemnify the Provider for any claims arising from the Customer's breach of Section 7 (AUPs) or Section 5 (Data Privacy).

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## **11. Dispute Resolution**

In the event of any dispute arising out of or relating to this Agreement the parties shall first attempt to resolve the dispute through good faith negotiation if the dispute is not resolved within thirty (30) days either party may submit the dispute to binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules the arbitration shall take place in [City State] and the decision of the arbitrator shall be final and binding on the parties notwithstanding the foregoing either party may seek injunctive relief in any court of competent jurisdiction to prevent irreparable harm pending the outcome of arbitration.

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## **12. Emergency Call Services**

Emergency call disclaimers include but are not limited to the acknowledgment that the services may not support emergency calls to traditional emergency services and the Customer shall ensure that alternative means of reaching emergency services are available to end users notwithstanding any other provision the Provider shall not be liable for any inability to place emergency calls or for any delays in emergency response arising from the use of the services and the Customer agrees to indemnify the Provider from any claims arising from such inability or delay provided further that the Provider shall comply with all applicable laws and regulations concerning emergency call routing location information and notification requirements.

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## **13. Compliance with Telecom Regulations**

The Provider shall comply with all applicable telecommunications laws and regulations including CPNI requirements as well as any other laws applicable to the services provided under this Agreement the Customer shall be responsible for compliance with any laws applicable to its use of the services including export control laws data protection laws and laws governing unsolicited communications notwithstanding the foregoing the Provider shall not be responsible for advising the Customer of such laws and the Customer shall indemnify the Provider for any claims arising from its failure to comply with such laws including reasonable attorneys' fees.

## **14. Data Localization**

Data localization requirements include the obligation of the Provider to store certain types of Customer Data within specific jurisdictions as mandated by applicable law including but not limited to data related to residents of the European Union which shall be stored within the EU unless otherwise agreed in writing provided however that the Provider shall use commercially reasonable efforts to comply with such requirements and shall notify the Customer if compliance would materially impact the cost or functionality of the services notwithstanding the foregoing the Customer shall be responsible for advising the Provider of any specific data localization requirements applicable to its use of the services.

## **15. Export Controls**

Export control obligations include but are not limited to the requirement that the Customer shall not export re-export or transfer any services or technology provided under this Agreement except in compliance with applicable export control laws the Provider shall notify the Customer of any restrictions applicable to the services and the Customer shall indemnify and hold harmless the Provider from any claims arising from its breach of this section including reasonable attorneys' fees notwithstanding any other provision the Provider shall not be liable for any failure to perform its obligations under this Agreement if such failure results from compliance with export control laws.

## **16. Audit Rights**

The Customer shall have the right to audit the Provider's compliance with this Agreement including but not limited to its data protection and security measures provided however that such audits shall occur no more than once per calendar year and shall be conducted upon thirty (30) days prior written notice during normal business hours in a manner that does not unreasonably disrupt the Provider's business operations notwithstanding the foregoing the Provider shall cooperate with any audits conducted by governmental authorities and the Customer shall indemnify the Provider from any claims arising from its breach of audit obligations including reasonable attorneys' fees.

## Signature Block

Customer: \_\_\_\_\_

Provider: \_\_\_\_\_

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



## **17. Miscellaneous**

**17.1 Notices:** All notices under this Agreement shall be in writing and delivered to the addresses set forth in the preamble or to such other address as either party may designate in writing from time to time notices shall be deemed given when received if delivered by hand or electronic means or three (3) days after mailing by certified mail postage prepaid; **17.2 Entire Agreement:** This Agreement

together with any Order Forms and Exhibits constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings whether written or oral relating to such subject matter; **17.3**

**Amendments:** No amendment or modification of this Agreement shall be effective unless in writing and signed by both parties except as otherwise provided herein; **17.4 Waiver:** No waiver of any breach

or default hereunder shall be deemed a waiver of any subsequent breach or default and no waiver shall be effective unless in writing and signed by the party against whom the waiver is asserted; **17.5**

**Severability:** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction such

provision shall be modified to reflect the parties' intention and the remaining provisions shall be enforced; **17.6 Governing Law:** This

Agreement shall be governed by and construed in accordance with the laws of the State of [State] without regard to its conflict of laws

principles; **17.7 Force Majeure:** Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure results from events beyond its reasonable control including but not limited to acts of God war terrorism natural disasters labor disputes or governmental actions.

## **Exhibit A: Service Level Agreement**

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### **Uptime Commitments**

The Provider shall ensure that the services are available at least ninety-nine point nine percent (99.9%) of the time in any given calendar month excluding scheduled maintenance and force majeure events provided however that in the event of failure to meet such commitments for two consecutive months the Customer shall be entitled to service credits as detailed below.

### **Service Credit Calculation**

Service credits shall be calculated as a percentage of the monthly fees applicable to the affected service and shall be capped at ten percent (10%) of the total monthly fees for the affected service notwithstanding any other provision service credits are the Customer's sole and exclusive remedy for any failure to meet uptime commitments.

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## **Exhibit B: Fee Schedule**

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### **Monthly Fees**

Service Tier 1: \$\_\_\_\_\_

Service Tier 2: \$\_\_\_\_\_

Service Tier 3: \$\_\_\_\_\_

Additional User Licenses: \$\_\_\_\_\_ per user

Data Storage: \$\_\_\_\_\_ per GB

API Access: \$\_\_\_\_\_ per API call

## **Exhibit C: Emergency Call Specifications**

### **Technical Requirements**

The Provider shall ensure compliance with technical specifications for emergency call routing including location data transmission and notification protocols as outlined in applicable regulations notwithstanding any other provision the Provider shall not be responsible for emergency call failures arising from incorrect configuration by the Customer or third-party equipment or services not provided by the Provider.

### **Signature Block**

Customer: \_\_\_\_\_

Provider: \_\_\_\_\_

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

## **Exhibit D: Compliance Obligations**

### **Data Protection Requirements**

The Customer shall ensure compliance with all applicable data protection laws including GDPR CCPA and any other laws applicable to its use of the services notwithstanding the foregoing the Provider shall not be responsible for advising the Customer of such laws and the Customer shall indemnify the Provider for any claims arising from its failure to comply with such laws including reasonable attorneys' fees.

## **Signature Block**

Customer: \_\_\_\_\_

Provider: \_\_\_\_\_

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

## **Exhibit E: Additional Terms**

### **1. Additional Definitions**

For purposes of this Exhibit unless the context otherwise requires the following terms shall have the meanings set forth below: (a) "Documentation" means any user guides installation instructions service descriptions or other documents provided by the Provider to assist the Customer in using the services; (b) "Third-Party Services" refer to any services not provided by the Provider but which integrate with or are used in conjunction with the Provider's services.

### **2. Third-Party Services**

The Customer acknowledges that its use of third-party services may be subject to additional terms and conditions provided by the third-party service provider and the Provider shall not be liable for any damages arising from the Customer's use of such third-party services notwithstanding any other provision the Customer shall indemnify the Provider from any claims arising from its breach of third-party service terms including reasonable attorneys' fees.

## **Signature Block**

Customer: \_\_\_\_\_

Provider: \_\_\_\_\_

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

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