

## **Master Services Agreement**

### **This Agreement is entered into by and between:**

Customer: [Insert Customer Name], a corporation organized and existing under the laws of [Insert State], having its principal place of business at [Insert Address];

Provider: [Insert Provider Name], a corporation organized and existing under the laws of [Insert State], having its principal place of business at [Insert Address];

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

## **Definitions, Scope, and Interpretation**

For purposes of this Agreement the following terms shall have the meanings set forth below notwithstanding any other provision which might suggest otherwise "Customer Data" shall mean any and all data provided by Customer to Provider in connection with the Services including but not limited to Personally Identifiable Information (PII) which shall be construed to mean any information that can be used to identify a natural person financial information including account numbers and health-related information subject to applicable laws "Services" shall mean the communication platform as a service (CPaaS) solutions provided by Provider to Customer as set forth in Exhibit A which shall be subject to the terms and conditions herein which may be modified from time to time by mutual written agreement provided however that such modifications shall not materially adversely affect the Customer's use and enjoyment of the Services "Confidential Information" shall mean any non-public information including technical business or financial information disclosed by one party to the other party and marked as confidential or proprietary or which under the circumstances surrounding disclosure ought reasonably to be treated as confidential the disclosure of which would cause irreparable harm to the disclosing party notwithstanding the foregoing the term Confidential Information shall not include information which is or becomes publicly available other than as a result of a breach of this Agreement by the receiving party or its representatives as such term is used herein "Affiliate" shall mean any entity that directly or indirectly controls is controlled by or is under common control with Customer or Provider as applicable "Force Majeure Event" shall mean any act event or circumstance beyond the reasonable control of the affected party which prevents or delays the performance of its obligations under this Agreement including without limitation acts of God war terrorism strikes lockouts labor disturbances civil commotion fire explosion flood epidemic or government action or inaction provided that the affected party shall use all reasonable endeavors to mitigate the effects of the Force Majeure Event and resume performance of its obligations as soon as practicable following the cessation of the Force Majeure Event but nothing herein shall require the party to settle any labor dispute or accept any terms which it finds unacceptable or adverse to its interests

## **Fees and Payment Terms**

Subject to the provisions set forth herein Customer shall pay Provider the fees described in Exhibit B which shall be incorporated herein by reference the fees shall be payable within thirty (30) days of receipt of an invoice from Provider which shall detail the Services provided during the billing period notwithstanding any disputes regarding the invoice which must be raised within fifteen (15) days of receipt thereof Customer shall pay the undisputed portion of the invoice and the parties shall endeavor to resolve the dispute amicably within thirty (30) days failing which either party may invoke the dispute resolution procedures set forth in Section 16 below without prejudice to the rights of either party to seek interim relief from a court of competent jurisdiction each party shall bear its own costs and expenses in connection

with the resolution of any dispute under this Agreement except as otherwise provided herein the fees set forth in Exhibit B shall be subject to change by Provider upon sixty (60) days prior written notice provided that such changes shall not exceed five percent (5%) in any twelve (12) month period unless otherwise agreed in writing by the parties all fees shall be exclusive of applicable taxes which shall be borne by Customer except for taxes based on Provider's net income which shall be borne by Provider notwithstanding any other provision Customer shall have the right to audit Provider's records relating to the fees charged under this Agreement once per calendar year upon reasonable notice during normal business hours provided that such audits shall not unreasonably interfere with Provider's business operations

## **Indemnity and Limitation of Liability**

Provider shall indemnify defend and hold harmless Customer and its Affiliates officers directors employees and agents from and against any and all claims actions suits proceedings losses liabilities damages costs and expenses including reasonable attorneys' fees arising out of or relating to (i) any breach of this Agreement by Provider (ii) any negligence or willful misconduct of Provider or its employees or agents in connection with the performance of the Services or (iii) any infringement or misappropriation of any intellectual property rights of any third party by Provider or its employees or agents provided that Customer shall promptly notify Provider of any such claim and Provider shall have the right to control the defense and settlement thereof subject to Customer's reasonable approval notwithstanding the foregoing Provider shall not be liable for any indirect incidental consequential special exemplary or punitive damages arising out of or relating to this Agreement including without limitation loss of business profits business interruption or loss of business information even if Provider has been advised of the possibility of such damages except to the extent such damages are caused by Provider's gross negligence or willful misconduct the total aggregate liability of Provider under this Agreement whether in contract tort or otherwise shall not exceed the total fees paid by Customer to Provider under this Agreement during the twelve (12) month period preceding the event giving rise to such liability provided however that nothing in this Agreement shall limit or exclude Provider's liability for personal injury or death caused by its negligence fraud or fraudulent misrepresentation

## **Service Level Agreements (SLAs) and Remedies**

Provider shall use commercially reasonable efforts to meet the service levels set forth in Exhibit C which shall be incorporated herein by reference the service levels shall include but not be limited to uptime availability response times and resolution times for incidents and requests notwithstanding any other provision Provider shall not be liable for any failure to meet the service levels due to a Force Majeure Event or any act or omission of Customer or its Affiliates agents or contractors the service levels shall be subject to periodic review and modification by mutual agreement of the parties provided that any modifications shall not materially adversely affect the performance of the Services or the obligations of Provider hereunder in the event Provider fails to meet the service levels Customer shall be entitled to the remedies set forth in Exhibit C which shall be Customer's sole and exclusive remedies for

such failure provided that Customer shall notify Provider of the failure within ten (10) days of the occurrence thereof and Provider shall have thirty (30) days to cure the failure before Customer may invoke the remedies notwithstanding any other provision the remedies set forth in Exhibit C shall not apply to any failure caused by a Force Majeure Event or any act or omission of Customer or its Affiliates agents or contractors

## **Data Privacy and Security**

Provider shall comply with all applicable data privacy and security laws and regulations including but not limited to the CPNI regulations under the U.S. Telecommunications Act and the GDPR as applicable. Provider shall implement and maintain appropriate technical and organizational measures to protect Customer Data against unauthorized access, use, disclosure, alteration, or destruction, including but not limited to encryption, access controls, and regular security audits. Notwithstanding any other provision, Provider shall promptly notify Customer of any unauthorized access, use, or disclosure of Customer Data and shall cooperate with Customer in any investigation or remediation efforts. Customer shall have the right to audit Provider's data privacy and security practices once per calendar year upon reasonable notice during normal business hours, provided that such audits shall not unreasonably interfere with Provider's business operations. Provider shall indemnify, defend, and hold harmless Customer and its Affiliates, officers, directors, employees, and agents from and against any and all claims, actions, suits, proceedings, losses, liabilities, damages, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to any breach of Provider's data privacy and security obligations under this Agreement, notwithstanding the foregoing. Provider shall not be liable for any indirect, incidental, consequential, special, exemplary, or punitive damages arising out of or relating to any breach of its data privacy and security obligations, except to the extent such damages are caused by Provider's gross negligence or willful misconduct.

## **Intellectual Property Rights**

Except as otherwise provided herein, all intellectual property rights in and to the Services, including any software, documentation, and materials provided by Provider to Customer, shall remain the sole and exclusive property of Provider. Customer shall have a limited, non-exclusive, non-transferable license to use the Services solely for its internal business purposes during the term of this Agreement, subject to the terms and conditions herein. Customer shall not reverse engineer, decompile, or disassemble the Services or any software provided by Provider, nor shall Customer modify, adapt, or create derivative works based on the Services without Provider's prior written consent. Notwithstanding any other provision, Provider shall indemnify, defend, and hold harmless Customer and its Affiliates, officers, directors, employees, and agents from and against any and all claims, actions, suits, proceedings, losses, liabilities, damages, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to any infringement or misappropriation of any intellectual property rights of any third party by Provider or its employees or agents, provided that Customer shall promptly notify Provider of any such claim, and Provider shall have the right to control the defense and settlement thereof, subject to Customer's reasonable approval.

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

Customer shall comply with Provider's Acceptable Use Policies as set forth in Exhibit D which shall be incorporated herein by reference the AUPs shall include but not be limited to restrictions on the use of the Services for illegal or unauthorized purposes spamming and other abusive practices notwithstanding any other provision Provider reserves the right to suspend or terminate Customer's access to the Services in the event of a material breach of the AUPs by Customer or its Affiliates agents or contractors provided that Provider shall use commercially reasonable efforts to notify Customer of the breach and provide an opportunity to cure before suspending or terminating access Customer shall indemnify defend and hold harmless Provider and its Affiliates officers directors employees and agents from and against any and all claims actions suits proceedings losses liabilities damages costs and expenses including reasonable attorneys' fees arising out of or relating to any breach of the AUPs by Customer or its Affiliates agents or contractors

## **Termination Rights and Obligations**

Termination rights include the right of either party to terminate this Agreement for convenience upon sixty (60) days prior written notice to the other party provided however that such termination shall not relieve either party of any obligations incurred prior to the effective date of termination nor shall it affect any provisions of this Agreement which by their nature are intended to survive termination notwithstanding the foregoing either party may terminate this Agreement immediately upon written notice in the event of a material breach by the other party which remains uncured for thirty (30) days following receipt of notice of the breach provided that the non-breaching party shall have the right to seek damages or other remedies as provided herein in addition Customer shall have the right to terminate this Agreement immediately upon written notice in the event of Provider's insolvency or bankruptcy or any change in control of Provider which materially affects the performance of the Services or the obligations of Provider hereunder upon termination of this Agreement each party shall return or destroy all Confidential Information of the other party in its possession except as otherwise required by law or regulation and Provider shall cease all use of Customer Data and promptly return or destroy all copies thereof except as otherwise provided herein

## **Dispute Resolution**

In the event of any dispute arising out of or relating to this Agreement the parties shall endeavor to resolve the dispute amicably through good faith negotiations failing which either party may invoke the dispute resolution procedures set forth herein without prejudice to the right of either party to seek interim relief from a court of competent jurisdiction the dispute resolution procedures shall include mediation by a mutually agreed mediator followed by arbitration conducted by the American Arbitration Association in accordance with its Commercial Arbitration Rules provided that the arbitration shall take place in [Insert City] and the arbitrator's decision shall be final and binding on the parties each party shall bear its own costs and expenses in connection with the mediation and arbitration except as otherwise provided herein notwithstanding any other provision the parties shall continue to perform their obligations under this Agreement during the pendency of any dispute resolution proceedings

except to the extent such performance is prevented or delayed by the dispute

## **Miscellaneous Provisions**

The parties acknowledge that this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements whether written or oral relating to such subject matter no amendment or modification of this Agreement shall be valid or binding unless in writing and signed by both parties except as otherwise provided herein the failure of either party to enforce any provision of this Agreement shall not constitute a waiver of such provision or any other provision herein unless expressly stated in writing the headings used in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement each party represents and warrants that it has the authority to enter into this Agreement and to perform its obligations hereunder this Agreement shall be governed by and construed in accordance with the laws of the State of [Insert State] without regard to its conflict of law principles and the parties hereby submit to the exclusive jurisdiction of the courts located in [Insert City] for the resolution of any disputes arising out of or relating to this Agreement provided however that either party may seek interim relief from any court of competent jurisdiction

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## **Exhibits**

Exhibit A: Scope of Services

Exhibit B: Fee Schedules

Exhibit C: Service Level Agreements

Exhibit D: Acceptable Use Policies

Signature Block:

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

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



