

# Master Services Agreement

## Between

### Customer: [Customer Name]

### Provider: [Provider Name]

### Effective Date: [Date]

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## **## Section 1 - Definitions**

**For the purposes of this Agreement, the following definitions shall apply: "Affiliate" means any entity directly or indirectly controlling, controlled by, or under common control with a party, where "control" means the ownership of more than fifty percent (50%) of the voting stock or interests in such entity, provided however that the term "Affiliate" shall also include any entity designated by Customer in writing, notwithstanding that such entity may not meet the aforementioned criteria; "Confidential Information" refers to any and all information, whether oral, written, electronic, or otherwise, that is disclosed by one party to the other, including but not limited to business plans, technical data, product roadmaps, and customer lists, regardless of whether such information is marked as confidential or proprietary, although it is agreed that any information which by its nature is confidential shall be treated as such; "CPaaS Services" means the range of communication platform services provided by the Provider, including but not limited to messaging, voice, video, and data services, as further described in the applicable Statements of Work, which are incorporated herein by reference, and subject to modification by mutual written agreement of the parties; "Customer Data" encompasses all data provided by Customer to Provider, whether directly or indirectly, in connection with the services, including but not limited to personal data, proprietary data, and any derivatives thereof, subject to the terms and conditions set forth herein; "Force Majeure Event" shall mean any event beyond the reasonable control of a party, including but not limited to acts of God, war, terrorism, civil unrest, and pandemics, which prevents such party from fulfilling its obligations under this Agreement, provided that such party makes all reasonable efforts to mitigate the effects of the Force Majeure Event; "Intellectual Property Rights" are defined as all rights, title, and**

interest in and to all patents, copyrights, trademarks, trade secrets, and other intellectual property rights, whether registered or unregistered, arising under the laws of any jurisdiction, including any applications and registrations thereof; "Service Level Agreement" or "SLA" refers to the performance metrics and uptime targets agreed upon by the parties for the CPaaS Services, as set forth in Exhibit A, which may be amended from time to time by mutual written consent; "Term" means the duration of this Agreement, commencing on the Effective Date and continuing until terminated in accordance with Section 10; "Termination for Convenience" refers to the right of either party to terminate this Agreement without cause upon providing the requisite notice period, subject to any fees or penalties as specified herein.

## **## Section 2 - Scope of Services**

The Provider shall deliver the CPaaS Services to Customer as detailed in the applicable Statements of Work, which are subject to amendment by mutual written agreement of the parties. The scope of services shall include, but not be limited to, the following: the provision of messaging services that enable Customer to send and receive SMS, MMS, and other types of messages to and from end-users, subject to compliance with all applicable laws and regulations, including but not limited to the Telephone Consumer Protection Act and the CAN-SPAM Act; the delivery of voice and video services that facilitate real-time communication between Customer and its end-users, incorporating functionalities such as call routing, voicemail, and video conferencing, provided that all calls involving emergency services shall comply with the requirements set forth in Section 9.2; the offering of data services that allow Customer to transmit and store data securely, utilizing encryption methods approved by Customer, and ensuring robust protection against unauthorized access, in accordance with industry standards; the development of custom applications and integrations that enhance the functionality of the CPaaS Services, subject to

acceptance testing by Customer and contingent upon the successful completion of all milestones specified in the relevant Statement of Work; the provision of technical support and maintenance services to ensure the continuous operation of the CPaaS Services, including troubleshooting, bug fixes, and software updates, as delineated in the SLA; the undertaking of regular audits to assess the security and performance of the CPaaS Services, with findings to be reported to Customer promptly and any identified issues to be addressed in accordance with the corrective action plan agreed upon by the parties; the adherence to all instructions and specifications provided by Customer regarding the configuration and deployment of the CPaaS Services, provided that any deviations shall require prior written approval from Customer, notwithstanding any contrary provisions herein; the compliance with all applicable export control laws and regulations, including the International Traffic in Arms Regulations and the Export Administration Regulations, with respect to the provision of CPaaS Services to Customer's affiliates located outside the United States; the observance of any additional requirements imposed by Customer, which may include data residency obligations, subject to the terms and conditions set forth in this Agreement.

### **## Section 3 - Fees and Payment Terms**

Customer shall pay Provider the fees specified in Exhibit B, which are calculated based on the services rendered and the pricing model agreed upon by the parties. The payment terms shall be as follows: all invoices shall be due and payable within thirty (30) days of receipt, except where otherwise agreed in writing by the parties; any disputed amounts must be raised by Customer within ten (10) days of receipt of the invoice, failing which the invoice shall be deemed accepted by Customer; late payment shall incur interest at the rate of one percent (1%) per month, compounded monthly, provided that the interest shall not exceed the maximum rate permitted by applicable law; all fees shall be invoiced in U.S. dollars, unless

otherwise agreed in writing by the parties, and Customer shall be responsible for all applicable taxes, duties, and levies, excluding taxes based on Provider's income; Customer shall not be obligated to pay any fees not expressly set forth in Exhibit B, unless the parties agree otherwise in writing; Provider shall provide Customer with reasonable access to its records and documentation to verify the accuracy of any invoices, provided that Customer shall bear any costs associated with such verification; Provider shall notify Customer promptly of any pricing changes, which shall not take effect until thirty (30) days after such notification, unless otherwise agreed in writing by the parties; Customer shall have the right to withhold payment of any disputed amounts until resolution of the dispute, provided that Customer shall not unreasonably withhold payment of any undisputed amounts; Provider shall be entitled to suspend the provision of services in the event of non-payment by Customer, subject to prior written notice and provided that such suspension shall not relieve Customer of its payment obligations; Provider shall issue refunds to Customer for any overpayments, subject to verification by Provider and provided that Customer shall cooperate with Provider in the refund process.

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#### ## Section 4 - Indemnification

**Provider agrees to indemnify Customer against any claims, losses, or damages arising from Provider's breach of this Agreement or negligence in the performance of its obligations hereunder, including but not limited to claims related to breaches of data privacy, intellectual property infringement, and violations of applicable law, subject to the limitations set forth in Section 5. Provider's indemnification obligations shall be conditioned upon Customer providing Provider with prompt written notice of the claim, reasonable cooperation in the defense thereof, and sole control over the defense and settlement of the claim, provided however that Provider shall not settle any claim without Customer's prior written consent if such settlement requires Customer to admit liability or pay any amount. Customer shall indemnify Provider for any claims arising from Customer's breach of this Agreement or negligence in the use of the CPaaS Services, subject to the limitations set forth in Section 5, and provided that Customer's indemnification obligations shall be conditioned on Provider providing Customer with prompt written notice of the claim, reasonable cooperation in the defense thereof, and sole control over the defense and settlement of the claim, notwithstanding any contrary provisions herein. Notwithstanding the foregoing, Provider shall have no indemnification obligations for claims arising from Customer's unauthorized use of the CPaaS Services, including any use that violates Customer's Acceptable Use Policy or applicable law, provided that Provider shall promptly notify Customer of any such claims and cooperate with Customer in the defense thereof. Provider's indemnification obligations shall not apply to claims arising from modifications to the CPaaS Services made by Customer or third parties, unless such modifications were authorized by Provider in writing, and Provider shall not be liable for any damages**

resulting from such unauthorized modifications. Provider shall indemnify Customer for any claims related to Provider's failure to comply with export control laws, provided that Customer shall indemnify Provider for claims arising from Customer's failure to comply with export control laws applicable to the CPaaS Services, subject to the limitations set forth in Section 5. The indemnification obligations of the parties shall survive termination of this Agreement, provided that any claims must be brought within the statute of limitations applicable to such claims. Provider shall indemnify Customer for claims related to Provider's breach of its obligations under the SLA, provided that Customer shall indemnify Provider for claims related to Customer's failure to comply with the SLA, subject to the limitations set forth in Section 5. Provider shall indemnify Customer for claims related to Provider's breach of its obligations under Section 9, provided that Customer shall indemnify Provider for claims related to Customer's failure to comply with its obligations under Section 9, subject to the limitations set forth in Section 5.

#### **## Section 5 - Limitation of Liability**

Except in cases of gross negligence or willful misconduct, neither party shall be liable to the other for any indirect, special, or consequential damages arising out of or related to this Agreement, including but not limited to lost profits, loss of data, or business interruption, whether based on contract, tort, or any other legal theory, even if such party has been advised of the possibility of such damages. The aggregate liability of each party for direct damages arising out of or related to this Agreement shall not exceed the total fees paid by Customer to Provider under this Agreement during the twelve (12) months preceding the event giving rise to the claim, provided however that such limitation shall not apply to any indemnification obligations set forth herein or to any breach of confidentiality obligations. Provider's liability for any breach of the SLA shall be limited to the service credits specified therein, and

**Customer's sole remedy for any breach of the SLA shall be the receipt of such service credits, except where otherwise agreed in writing by the parties. Provider shall not be liable for any damages arising from Customer's failure to comply with its obligations under this Agreement, including any unauthorized use of the CPaaS Services, provided that Provider shall promptly notify Customer of any such breaches and cooperate with Customer in the resolution thereof. Provider's liability for any breach of its obligations under Section 9 shall be limited to the remedies specified therein, and Customer's sole remedy for any breach of Section 9 shall be the receipt of such remedies, subject to the limitations set forth in this Section. Provider shall not be liable for any damages arising from events beyond its reasonable control, including any Force Majeure Events, provided that Provider shall make all reasonable efforts to mitigate the effects of the Force Majeure Event and resume performance of its obligations as soon as practicable. Provider shall not be liable for any damages arising from modifications to the CPaaS Services made by Customer or third parties, unless such modifications were authorized by Provider in writing, and Provider shall not be liable for any damages resulting from such unauthorized modifications. Provider's liability for any breach of its obligations under Section 9 shall be limited to the remedies specified therein, and Customer's sole remedy for any breach of Section 9 shall be the receipt of such remedies, subject to the limitations set forth in this Section.**

**## Section 6 - Service Level Agreement (SLA)**

**The Provider shall adhere to the performance metrics and uptime targets specified in Exhibit A, which are incorporated herein by reference and subject to amendment by mutual written consent of the parties. Provider shall use commercially reasonable efforts to ensure that the CPaaS Services meet or exceed the service levels set forth in the SLA, provided however that service levels may be adjusted in the event of a Force Majeure Event or other**

circumstances beyond Provider's reasonable control. Provider shall issue service credits to Customer for any failure to meet the service levels specified in the SLA, subject to the limitations set forth in Section 5, and Customer's sole remedy for any breach of the SLA shall be the receipt of such service credits, except where otherwise agreed in writing by the parties. Provider shall provide Customer with regular reports detailing the performance of the CPaaS Services, including any incidents of downtime or service degradation, and shall cooperate with Customer in the resolution of any issues identified in such reports. Provider shall promptly notify Customer of any changes to the SLA, which shall not take effect until thirty (30) days after such notification, unless otherwise agreed in writing by the parties. Provider shall not be liable for any failure to meet the service levels specified in the SLA due to events beyond its reasonable control, including any Force Majeure Events, provided that Provider shall make all reasonable efforts to mitigate the effects of the Force Majeure Event and resume performance of its obligations as soon as practicable. Provider shall not be liable for any failure to meet the service levels specified in the SLA due to modifications to the CPaaS Services made by Customer or third parties, unless such modifications were authorized by Provider in writing, and Provider shall not be liable for any damages resulting from such unauthorized modifications.

## **## Section 7 - Data Privacy and Security**

Provider shall comply with all applicable data privacy and security laws and regulations in the provision of CPaaS Services to Customer, including but not limited to the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA), as well as any additional requirements imposed by Customer, which may include data residency obligations. Provider shall implement and maintain appropriate technical and organizational measures to protect Customer Data against unauthorized access, use, or disclosure, including encryption,

access controls, and regular security audits, subject to the limitations set forth in Section 5. Provider shall promptly notify Customer of any data breaches involving Customer Data and cooperate with Customer in the investigation and resolution of such breaches, provided however that Provider shall not be liable for any damages arising from data breaches caused by Customer's failure to comply with its obligations under this Agreement. Provider shall not be liable for any unauthorized access, use, or disclosure of Customer Data caused by events beyond its reasonable control, including any Force Majeure Events, provided that Provider shall make all reasonable efforts to mitigate the effects of the Force Majeure Event and resume performance of its obligations as soon as practicable. Provider shall not be liable for any unauthorized access, use, or disclosure of Customer Data caused by modifications to the CPaaS Services made by Customer or third parties, unless such modifications were authorized by Provider in writing, and Provider shall not be liable for any damages resulting from such unauthorized modifications. Provider shall indemnify Customer for any claims related to Provider's breach of its data privacy and security obligations, provided that Customer shall indemnify Provider for claims arising from Customer's failure to comply with its data privacy and security obligations, subject to the limitations set forth in Section 5. Provider's data privacy and security obligations shall survive termination of this Agreement, provided that any claims must be brought within the statute of limitations applicable to such claims.

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## **## Section 8 - Intellectual Property Rights**

**Provider shall retain all intellectual property rights in the CPaaS Services, including any modifications, enhancements, or derivative works thereof, subject to the rights granted to Customer under this Agreement. Customer shall have a limited, non-exclusive, non-transferable, and revocable license to use the CPaaS Services for its internal business purposes, provided however that Customer shall not reverse engineer, decompile, or otherwise attempt to derive the source code of the CPaaS Services, except where expressly permitted by applicable law. Provider shall indemnify Customer for any claims related to intellectual property infringement by the CPaaS Services, provided that Customer shall indemnify Provider for claims arising from Customer's unauthorized use of the CPaaS Services, subject to the limitations set forth in Section 5. Provider shall not be liable for any intellectual property infringement claims arising from modifications to the CPaaS Services made by Customer or third parties, unless such modifications were authorized by Provider in writing, and Provider shall not be liable for any damages resulting from such unauthorized modifications. Provider shall promptly notify Customer of any claims related to intellectual property infringement and cooperate with Customer in the defense thereof, provided however that Provider shall not settle any claim without Customer's prior written consent if such settlement requires Customer to admit liability or pay any amount. Customer shall promptly notify Provider of any claims related to intellectual property infringement and cooperate with Provider in the defense thereof, provided however that Customer shall not settle any claim without Provider's prior written consent if such settlement requires Provider to admit liability or pay any amount.**

## **## Section 9 - Acceptable Use Policy (AUP)**

**Customer shall comply with Provider's Acceptable Use Policy in the use of the CPaaS Services, which is incorporated herein by reference and subject to amendment by Provider from time to time. The AUP shall include, but not be limited to, the following: prohibitions against the transmission of spam, malware, or illegal content through the CPaaS Services; restrictions on the use of the CPaaS Services for fraudulent or deceptive purposes; requirements for compliance with applicable laws and regulations, including the Telephone Consumer Protection Act and the CAN-SPAM Act; limitations on the use of the CPaaS Services for high-risk activities, including emergency services and life-critical applications; obligations to maintain the confidentiality of access credentials and promptly notify Provider of any unauthorized access to the CPaaS Services; restrictions on the use of the CPaaS Services for competitive analysis or benchmarking purposes, except where expressly permitted by Provider in writing. Provider shall have the right to suspend or terminate Customer's access to the CPaaS Services in the event of any breach of the AUP, provided that Provider shall notify Customer promptly of any such breaches and cooperate with Customer in the resolution thereof. Provider shall not be liable for any damages arising from Customer's failure to comply with the AUP, provided that Provider shall promptly notify Customer of any such breaches and cooperate with Customer in the resolution thereof.**

#### **## Section 10 - Termination**

**Either party may terminate this Agreement for cause upon providing written notice to the other party, if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving notice thereof, provided however that Customer may terminate this Agreement immediately upon written notice to Provider in the event of any breach of Provider's data privacy and security obligations or the SLA. Either party may terminate this Agreement for convenience upon providing ninety**

**(90) days' written notice to the other party, subject to any fees or penalties specified herein. Upon termination of this Agreement, Customer shall cease all use of the CPaaS Services and return or destroy all Confidential Information of Provider, except where otherwise agreed in writing by the parties. Provider shall return or destroy all Customer Data upon termination of this Agreement, except where otherwise agreed in writing by the parties. The termination of this Agreement shall not relieve either party of its payment obligations for services rendered prior to the effective date of termination, provided that any amounts disputed in good faith by Customer shall not be due until resolution of the dispute. The termination of this Agreement shall not affect any rights or obligations that have accrued prior to the effective date of termination, including any indemnification obligations or confidentiality obligations. Provider shall issue refunds to Customer for any prepaid fees for services not rendered due to termination of this Agreement, subject to verification by Provider and provided that Customer shall cooperate with Provider in the refund process.**

#### **## Section 11 - Dispute Resolution**

**In the event of any dispute arising out of or related to this Agreement, the parties shall first attempt to resolve the dispute through informal negotiation, involving representatives with decision-making authority, provided however that if the dispute is not resolved within thirty (30) days of initiation, either party may proceed with formal dispute resolution. For any claims not resolved through informal negotiation, the parties agree to submit to binding arbitration in accordance with the rules of the American Arbitration Association, with the arbitration to be conducted in [City, State], provided however that either party may seek injunctive relief in any court of competent jurisdiction to prevent irreparable harm. The arbitrator shall have the authority to award any remedies available under applicable law, including but not limited to damages, specific performance, and injunctive relief, provided however that the**

**arbitrator shall not have the authority to award punitive damages or attorney's fees unless expressly authorized by this Agreement or applicable law. The arbitration proceedings shall be confidential, and the parties shall maintain the confidentiality of all documents and information exchanged in connection with the arbitration, except where disclosure is required by law. The parties shall share the costs of the arbitration equally, provided however that each party shall bear its own attorney's fees and expenses, except where otherwise agreed in writing by the parties. The decision of the arbitrator shall be final and binding upon the parties, and judgment on the award may be entered in any court of competent jurisdiction. The dispute resolution provisions of this Agreement shall survive termination of this Agreement, provided that any claims must be brought within the statute of limitations applicable to such claims.**

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## ## Section 12 - Emergency Call Disclaimers

**Provider shall ensure that all emergency calls made using the CPaaS Services are routed to the appropriate emergency services, in compliance with all applicable laws and regulations, including but not limited to the requirements of the Federal Communications Commission (FCC) and the National Emergency Number Association (NENA). Provider shall implement technical measures to ensure the accuracy and reliability of location information transmitted with emergency calls, provided however that Customer shall be responsible for ensuring that its end-users are informed of any limitations of the CPaaS Services in relation to emergency calls. Provider shall not be liable for any damages arising from the failure of emergency calls to reach the appropriate emergency services, provided that such failure is not due to Provider's gross negligence or willful misconduct. Customer shall indemnify Provider for any claims related to the failure of emergency calls to reach the appropriate emergency services, subject to the limitations set forth in Section 5. Provider shall cooperate with Customer in the investigation and resolution of any issues related to emergency calls, provided that Provider shall promptly notify Customer of any such issues and cooperate with Customer in the resolution thereof. Provider shall implement and maintain appropriate technical and organizational measures to ensure the security and confidentiality of location information transmitted with emergency calls, subject to the limitations set forth in Section 5. Provider's obligations with respect to emergency calls shall survive termination of this Agreement, provided that any claims must be brought within the statute of limitations applicable to such claims.**

## ## Section 13 - Compliance with Telecom Laws

**Provider shall comply with all applicable telecom laws and regulations in the provision of CPaaS Services to Customer, including but not limited to the Communications Act of 1934, the Telecommunications Act of 1996, and the rules and regulations of the Federal Communications Commission (FCC). Provider shall implement and maintain appropriate technical and organizational measures to ensure compliance with Customer Proprietary Network Information (CPNI) requirements, including encryption, access controls, and regular audits, subject to the limitations set forth in Section 5. Provider shall promptly notify Customer of any changes to applicable telecom laws and regulations that may affect the provision of CPaaS Services, and cooperate with Customer in the implementation of any necessary changes to ensure compliance. Provider shall indemnify Customer for any claims related to Provider's failure to comply with applicable telecom laws and regulations, provided that Customer shall indemnify Provider for claims arising from Customer's failure to comply with applicable telecom laws and regulations, subject to the limitations set forth in Section 5. Provider's compliance obligations shall survive termination of this Agreement, provided that any claims must be brought within the statute of limitations applicable to such claims.**

**## Section 14 - Exhibits and Signature Blocks**

**The exhibits attached hereto are incorporated herein by reference and shall form an integral part of this Agreement, notwithstanding any contrary provisions herein. Each exhibit shall be subject to amendment by mutual written consent of the parties, provided however that any amendments shall not affect the validity or enforceability of this Agreement. Provider shall execute and deliver to Customer any signature blocks contained in the exhibits, provided that Customer shall execute and deliver to Provider any signature blocks contained in the exhibits, notwithstanding any contrary provisions herein. The parties agree that any electronic signatures affixed to the exhibits shall have the same force and**

**effect as original signatures, except where otherwise agreed in writing by the parties. The exhibits shall include, but not be limited to, the following: Statements of Work detailing the scope of services, deliverables, and milestones; Fee Schedules outlining the pricing model and payment terms; Service Level Agreements specifying performance metrics and uptime targets; Data Privacy and Security Policies detailing technical and organizational measures; Acceptable Use Policies outlining prohibited activities and obligations; Export Control Compliance Statements detailing applicable laws and regulations; Emergency Call Procedures detailing routing and location information requirements.**

#### **## Section 15 - Miscellaneous Provisions**

**This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, negotiations, and understandings, whether oral or written, notwithstanding any contrary provisions herein. No amendment or modification of this Agreement shall be valid unless made in writing and signed by both parties, except where otherwise agreed in writing by the parties. The failure of either party to enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision, provided that any waiver must be in writing and signed by the party granting the waiver. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect, provided that the parties shall negotiate in good faith to amend the Agreement to reflect the original intent of the parties as closely as possible. Neither party shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party, except where otherwise agreed in writing by the parties. 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, provided however that any disputes**

**arising out of or related to this Agreement shall be resolved in accordance with Section 11.**