

# Cover Page

Master Services Agreement

Between

Customer: [Customer Name]

Provider: [Provider Name]

Date: [Date]

## # Core Document

### ## Section 1: Definitions and Interpretations

Confidential – Page 1 of 30

The following definitions shall apply throughout this Agreement notwithstanding any other provision herein, including any provision that may conflict with the definitions set forth herein, and shall be construed consistently with the terminology used in the telecommunications industry, provided however that in the event of any inconsistency between these definitions and any statutory definition applicable under United States law, the latter shall govern, except where such statutory definition is expressly waived by mutual agreement of the parties in writing. "Agreement" means this Master Services Agreement including all attached Exhibits, Schedules, and Amendments thereto. "Affiliates" refers to entities controlling, controlled by, or under common control with a party, where control means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract, or otherwise. "Customer Data" means any information provided by or on behalf of Customer to Provider, including but not limited to personally identifiable information, proprietary data, and confidential business information. "Effective Date" shall mean the date first written above, notwithstanding any delays in execution or acceptance of this Agreement by either party. "Provider Services" refers to the communications platform as a service ("CPaaS") offerings provided by Provider to Customer as described in Exhibit A, including but not limited to messaging services, voice and video communications, and API integrations. "Service Levels" or "SLAs" shall mean the performance metrics and targets detailed in Exhibit B hereto, which Provider agrees to meet or exceed in the provision of Provider Services, subject however to the limitations and exclusions specified herein. "Term" refers to the duration of this Agreement as set forth in Section 12 herein, including any renewal periods unless terminated earlier in accordance with the provisions hereof.<sup>1</sup> "Confidential Information" means any non-public information disclosed by one party to the other party, either directly or indirectly, in writing, orally, or by inspection of tangible objects, including without limitation trade secrets, business plans, product designs, source code, and financial information, provided however that Confidential Information shall not include any information that is or becomes generally available to the public other than through any act or omission of the receiving party, or was rightfully disclosed to the receiving party by a third party without restriction. "Intellectual Property Rights" includes patents, trademarks, service marks, copyrights, trade secrets, and any other proprietary rights recognized anywhere in the world, whether registered or unregistered, including any applications or rights to apply for such rights. Notwithstanding the foregoing, "Provider Intellectual Property" means all intellectual property owned by Provider prior to the Effective Date or developed independently of this Agreement by Provider, and "Customer Intellectual Property" means all intellectual property owned by Customer prior to the Effective Date or developed independently of this Agreement by Customer.

### ## Section 2: Scope of Services

Confidential – Page 2 of 30

This section describes the scope of services to be provided by Provider to Customer under this Agreement, which shall include but not be limited to those services described in Exhibit A attached hereto, subject to the terms and conditions set forth herein and in the exhibits attached hereto, as well as any modifications or additions to said services as may be mutually agreed upon by the parties in writing from time to time, provided however that any such modifications or additions shall not materially alter the fundamental nature of the Provider Services, nor shall they relieve Provider from its obligations to meet the Service Levels specified in Exhibit B, which shall remain in full force and effect throughout the Term hereof. Provider shall perform the Provider Services in accordance with the specifications and requirements set forth in Exhibit A, and shall use commercially reasonable efforts to achieve the Service Levels specified in Exhibit B, subject to the limitations and exclusions set forth herein. Customer shall be responsible for ensuring that all information provided to Provider for the purposes of performing the Provider Services is accurate, complete, and up-to-date, and shall promptly notify Provider of any changes to such information. Provider shall not be liable for any failure to perform the Provider Services to the extent such failure is attributable to any inaccurate, incomplete, or outdated information provided by Customer. Notwithstanding the foregoing, Provider shall use reasonable efforts to notify Customer of any deficiencies in the information provided by Customer and to cooperate with Customer in rectifying such deficiencies, provided however that Customer shall bear all costs associated with such rectification. Provider shall provide Customer with access to all documentation and materials related to the Provider Services, and shall cooperate with Customer in any audits or inspections conducted by Customer or its representatives to verify Provider's compliance with the terms of this Agreement. Provider shall retain all records related to the Provider Services for a period of at least three years following the termination or expiration of this Agreement, and shall make such records available to Customer upon request, subject to any confidentiality obligations owed to third parties.

### ## Section 3: Fees and Payment Terms

Confidential – Page 3 of 30

The fees payable by Customer to Provider for the Provider Services shall be as set forth in Exhibit C attached hereto, and shall be calculated in accordance with the pricing schedule contained therein, provided however that Provider reserves the right to adjust the fees on an annual basis to reflect changes in its costs of providing the Provider Services, subject to prior written notice to Customer and any applicable limitations set forth herein. Customer shall pay all fees due under this Agreement within thirty (30) days of receipt of an invoice from Provider, provided however that Customer shall have the right to dispute any invoice within fifteen (15) days of receipt thereof, and Provider shall cooperate with Customer in resolving any such disputes in a timely manner. Notwithstanding the foregoing, Customer shall not be entitled to withhold payment of any undisputed amounts, and Provider shall have the right to suspend the Provider Services in the event of any failure by Customer to pay any undisputed amounts when due. Provider shall issue invoices to Customer on a monthly basis, and each invoice shall include a detailed breakdown of the fees payable for the Provider Services provided during the relevant billing period, including any applicable taxes, duties, or other charges, as

well as any adjustments or credits applied to the fees. Customer shall be responsible for all taxes, duties, and other charges imposed by any governmental authority in connection with the Provider Services, except for taxes imposed on Provider's income, which shall be borne by Provider. Provider shall maintain accurate and complete records of all fees and charges incurred by Customer under this Agreement, and shall make such records available to Customer upon request, subject to any confidentiality obligations owed to third parties. In the event of any termination or expiration of this Agreement, Customer shall remain liable for all fees and charges incurred up to the date of termination or expiration, and Provider shall issue a final invoice to Customer for any outstanding amounts, which shall be payable within thirty (30) days of receipt thereof.

## ## Section 4: Indemnification

Confidential – Page 4 of 30

Provider shall indemnify, defend, and hold harmless Customer and its Affiliates, officers, directors, employees, agents, and representatives from and against any and all claims, liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with any breach of this Agreement by Provider, or any negligence or willful misconduct by Provider in the performance of the Provider Services, except to the extent such claims, liabilities, damages, losses, costs, and expenses are attributable to any breach of this Agreement by Customer, or any negligence or willful misconduct by Customer, provided however that Provider's obligations under this section shall be subject to Customer's compliance with the indemnification procedures set forth herein. Customer shall indemnify, defend, and hold harmless Provider and its Affiliates, officers, directors, employees, agents, and representatives from and against any and all claims, liabilities, damages, losses, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with any breach of this Agreement by Customer, or any negligence or willful misconduct by Customer in the use of the Provider Services, except to the extent such claims, liabilities, damages, losses, costs, and expenses are attributable to any breach of this Agreement by Provider, or any negligence or willful misconduct by Provider, provided however that Customer's obligations under this section shall be subject to Provider's compliance with the indemnification procedures set forth herein. In the event of any claim for indemnification under this section, the indemnified party shall promptly notify the indemnifying party in writing and provide reasonable assistance in the defense of such claim, provided however that the failure to provide prompt notice shall not relieve the indemnifying party of its obligations under this section except to the extent such failure prejudices the defense of the claim. The indemnifying party shall have the right to assume control of the defense of any claim for indemnification under this section, provided however that the indemnified party shall have the right to participate in the defense of such claim at its own expense, and the indemnifying party shall not settle any claim without the prior written consent of the indemnified party, which shall not be unreasonably withheld.

## ## Section 5: Service Level Agreements (SLAs)

Confidential – Page 5 of 30

Provider shall provide the Provider Services in accordance with the Service Levels set forth in Exhibit B attached hereto, which shall include, without limitation, metrics related to uptime, response times, resolution times, and other performance indicators, subject to the exclusions and limitations specified herein, including any Force Majeure events that may impact Provider's ability to achieve the Service Levels, provided however that Provider shall use commercially reasonable efforts to mitigate the effects of any Force Majeure event and resume normal operations as soon as practicable following the cessation of such event. Customer shall have the right to monitor and audit Provider's performance against the Service Levels on a regular basis, and Provider shall cooperate with Customer in any such audits, including providing access to all relevant records, systems, and personnel, subject to any confidentiality obligations owed to third parties. In the event that Provider fails to meet any Service Level specified in Exhibit B, Customer shall be entitled to the remedies set forth therein, which may include service credits, termination rights, or other remedies, subject to the limitations specified herein, including any limitations on liability or exclusions for Force Majeure events, provided however that Customer shall provide written notice to Provider of any failure to meet a Service Level within thirty (30) days of the occurrence of such failure, and Provider shall have the right to cure such failure within the period specified in Exhibit B. Provider shall maintain accurate and complete records of its performance against the Service Levels, and shall make such records available to Customer upon request, subject to any confidentiality obligations owed to third parties. Provider shall review the Service Levels on a regular basis and propose any necessary amendments to Exhibit B to reflect changes in technology, industry standards, or other relevant factors, provided however that any amendments to the Service Levels shall be subject to Customer's prior written approval, which shall not be unreasonably withheld.

## ## Section 6: Data Privacy and Security

Confidential – Page 6 of 30

Provider shall implement and maintain reasonable security measures to protect Customer Data from unauthorized access, use, or disclosure, including but not limited to encryption, access controls, and monitoring, as further described in Exhibit D attached hereto, subject to the limitations and exclusions specified herein, provided however that Provider shall not be liable for any unauthorized access, use, or disclosure of Customer Data to the extent such access, use, or disclosure is attributable to any act or omission by Customer or its Affiliates, including but not limited to any failure by Customer to comply with its obligations under this Agreement. Provider shall comply with all applicable data protection laws and regulations, including but not limited to the United States' Communications Act, as amended, and any regulations promulgated thereunder, including the Customer Proprietary Network Information (CPNI) rules, as well as any applicable state laws and regulations, provided however that Provider's obligations under this section shall be subject to any exceptions or exemptions set forth in such laws and regulations. Customer shall be responsible for obtaining any necessary consents or authorizations from any individuals whose personal data is included in Customer Data, and shall provide Provider with evidence of such consents or authorizations upon request. Provider shall notify Customer promptly upon becoming aware of any breach of security affecting Customer Data, and shall provide reasonable assistance to Customer in

mitigating the effects of such breach and complying with any applicable notification requirements, provided however that Provider's obligations under this section shall be subject to Customer's compliance with its obligations hereunder. Provider shall conduct regular audits of its data security practices and provide Customer with the results of such audits upon request, subject to any confidentiality obligations owed to third parties. Provider shall retain all records related to its data security practices for a period of at least three years following the termination or expiration of this Agreement, and shall make such records available to Customer upon request.

## ## Section 7: Intellectual Property Rights

Confidential – Page 7 of 30

All intellectual property rights in the Provider Services, including any modifications, enhancements, or derivative works thereof, shall be owned exclusively by Provider, notwithstanding any contributions made by Customer or its Affiliates, provided however that Customer shall retain all intellectual property rights in any Customer Data provided to Provider in connection with the Provider Services, subject to Provider's license rights set forth herein. Provider grants to Customer a non-exclusive, non-transferable, royalty-free license to use the Provider Services during the Term solely for Customer's internal business purposes, subject to the terms and conditions set forth herein, including any limitations on use or restrictions specified in Exhibit E attached hereto. Customer shall not reverse engineer, decompile, or disassemble the Provider Services, nor shall Customer attempt to create any derivative works based on the Provider Services, except to the extent expressly permitted by applicable law, provided however that Customer shall be responsible for any third-party claims arising out of or in connection with any unauthorized use of the Provider Services by Customer or its Affiliates. Provider shall indemnify, defend, and hold harmless Customer from and against any and all third-party claims alleging that the Provider Services infringe any intellectual property rights, subject to the limitations and exclusions set forth herein, including any limitations on liability or exclusions for Force Majeure events, provided however that Customer shall provide written notice to Provider of any such claim within thirty (30) days of the occurrence of such claim, and Provider shall have the right to assume control of the defense of such claim, subject to Customer's right to participate in the defense at its own expense. In the event of any third-party claim of infringement, Provider shall have the right to modify the Provider Services to eliminate the infringement, or to obtain a license permitting the continued use of the Provider Services, provided however that if neither option is commercially reasonable, Provider may terminate this Agreement and refund to Customer any prepaid fees for the affected Provider Services.

## ## Section 8: Acceptable Use Policies (AUPs)

Confidential – Page 8 of 30

Customer shall comply with the Acceptable Use Policies (AUPs) set forth in Exhibit F attached hereto, which shall include, without limitation, restrictions on the use of the Provider Services for any illegal, harmful, or unauthorized purposes, including but not limited to the transmission of any material that is defamatory, obscene, threatening, or otherwise unlawful, provided however that Customer shall be responsible for any third-party claims arising out of or in

connection with any unauthorized use of the Provider Services by Customer or its Affiliates, and Provider shall have the right to suspend the Provider Services in the event of any failure by Customer to comply with the AUPs, subject to the limitations and exclusions specified herein. Customer shall promptly notify Provider of any unauthorized use of the Provider Services, and shall cooperate with Provider in any investigations or actions taken by Provider to address such unauthorized use, provided however that Customer shall bear all costs associated with such investigations or actions, except to the extent such costs are attributable to any act or omission by Provider. Provider shall have the right to modify the AUPs from time to time to reflect changes in technology, industry standards, or legal requirements, provided however that any modifications to the AUPs shall be subject to Customer's prior written approval, which shall not be unreasonably withheld. Provider shall provide Customer with access to all documentation and materials related to the AUPs, and shall cooperate with Customer in any audits or inspections conducted by Customer or its representatives to verify Provider's compliance with the AUPs, subject to any confidentiality obligations owed to third parties. Provider shall retain all records related to its compliance with the AUPs for a period of at least three years following the termination or expiration of this Agreement, and shall make such records available to Customer upon request.

## ## Section 9: Limitation of Liability

Confidential – Page 9 of 30

Except as otherwise expressly provided herein, neither party shall be liable to the other party for any indirect, incidental, consequential, or punitive damages arising out of or in connection with this Agreement, including but not limited to any loss of profits, revenue, data, or use, even if advised of the possibility of such damages, provided however that this limitation shall not apply to any indemnification obligations set forth herein, or any damages arising out of or in connection with any breach of confidentiality or intellectual property rights. The aggregate liability of Provider to Customer under this Agreement shall not exceed the total fees paid by Customer to Provider under this Agreement during the twelve (12) month period preceding the date of the claim, provided however that this limitation shall not apply to any damages arising out of or in connection with any gross negligence or willful misconduct by Provider, or any breach of confidentiality or intellectual property rights. Customer shall indemnify, defend, and hold harmless Provider from and against any and all third-party claims arising out of or in connection with any unauthorized use of the Provider Services by Customer or its Affiliates, subject to the limitations and exclusions set forth herein, including any limitations on liability or exclusions for Force Majeure events, provided however that Provider shall provide written notice to Customer of any such claim within thirty (30) days of the occurrence of such claim, and Customer shall have the right to assume control of the defense of such claim, subject to Provider's right to participate in the defense at its own expense. Provider shall not be liable for any failure to perform the Provider Services to the extent such failure is attributable to any act or omission by Customer or its Affiliates, including but not limited to any failure by Customer to comply with its obligations under this Agreement.

## ## Section 10: Termination

Confidential – Page 10 of 30

This Agreement may be terminated by either party upon written notice to the other party in the event of any material breach of this Agreement by the other party, provided however that the terminating party shall provide the breaching party with a reasonable opportunity to cure such breach prior to termination, except where such breach is incapable of cure, in which case termination shall be effective immediately upon notice, notwithstanding any other provision herein. Customer may terminate this Agreement for convenience upon thirty (30) days' prior written notice to Provider, subject to payment of any outstanding fees and charges incurred up to the date of termination, provided however that Provider shall not be entitled to any further compensation following termination for convenience by Customer. Provider may terminate this Agreement upon written notice to Customer in the event of any failure by Customer to pay any undisputed amounts when due, or any other material breach of this Agreement by Customer, subject to the limitations and exclusions specified herein, including any limitations on liability or exclusions for Force Majeure events. In the event of any termination of this Agreement, each party shall return to the other party all Confidential Information and materials provided under this Agreement, and shall cease all use of any intellectual property licensed under this Agreement, subject however to the confidentiality and intellectual property obligations set forth herein, which shall survive termination or expiration of this Agreement. Provider shall issue a final invoice to Customer for any outstanding amounts, which shall be payable within thirty (30) days of receipt thereof, notwithstanding any disputes or claims arising out of or in connection with this Agreement.

## ## Section 11: Dispute Resolution

Confidential – Page 11 of 30

Any disputes arising out of or in connection with this Agreement shall be resolved by binding arbitration conducted in accordance with the rules of the American Arbitration Association, provided however that either party may seek injunctive relief in a court of competent jurisdiction to prevent any breach of confidentiality or intellectual property rights, notwithstanding any obligation to arbitrate under this section. The arbitration shall be conducted by a single arbitrator selected by mutual agreement of the parties, or failing such agreement, by the American Arbitration Association, and shall take place in [City], [State], unless otherwise agreed by the parties in writing. The arbitrator shall have the authority to award any relief that would be available in a court of law, including but not limited to damages, injunctive relief, and attorneys' fees, subject to the limitations and exclusions set forth herein. The decision of the arbitrator shall be final and binding upon the parties, and may be enforced by any court of competent jurisdiction, notwithstanding any other provision herein. Each party shall bear its own costs and expenses in connection with the arbitration, except that the costs of the arbitrator and the arbitration proceedings shall be shared equally by the parties, provided however that the prevailing party in any arbitration or litigation arising out of or in connection with this Agreement shall be entitled to recover its reasonable attorneys' fees and costs, subject to the limitations and exclusions set forth herein.

## ## Section 12: Miscellaneous

Confidential – Page 12 of 30



This Agreement, including all Exhibits, Schedules, and Amendments thereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, understandings, negotiations, and communications, whether oral or written, relating to such subject matter, notwithstanding any provision herein to the contrary. Any amendments or modifications to this Agreement shall be made in writing and signed by both parties, except where such amendments or modifications are expressly permitted herein without the need for written agreement. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of such provision or any other provision herein, except where such waiver is expressly made in writing. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement, notwithstanding any provision herein to the contrary. The headings in this Agreement are for convenience only and shall not affect the interpretation of any provision herein. The parties acknowledge and agree that the provisions of this Agreement are severable, and that the invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision, provided however that the parties shall negotiate in good faith to amend or modify any invalid or unenforceable provision to achieve the original intent of the parties as closely as possible.

---

Signature Block:

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

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

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