

## **Terms and Conditions for Service Ordered from China Telecom (Americas) Corporation**

These terms and condition apply to the specialized Services (as defined below) ordered from China Telecom (Americas) Corporation (“CT Americas”) in the absence of a Master Service Agreement between CT Americas and the purchaser (“Customer”). By submitting a Customer Order Summary, Customer agrees to be bound by these Standard Terms and Conditions (hereinafter referred to as the “Agreement”) as if Customer had executed this Agreement. CT Americas and Customer may be referred to collectively as “Parties” and each individually as a “Party.” CT Americas and Customer agree that the terms of this Agreement apply to the provision and use of all Services ordered pursuant to an Order. Capitalized terms are defined in Attachment A hereto.

## 1 ORDERING SERVICES

1.1 Services. CT Americas, either directly or through its Affiliates or Underlying Operators, shall provide Customer with services for the direct transmission and reception of data, video, voice, and/or facsimile signals between terminals (the “Services”). CT Americas provides Services to Customer as a private carrier under these terms and conditions specially tailored to meet the unique needs of Customer. CT Americas will work with Customer and endeavor to meet Customer’s particular needs but Customer understands that certain Services may not be available or offered in all areas or to all customers based on CT America’s assessment of the costs involved, availability of capacity, facilities or other necessary resources, or other business considerations.

1.2 Ordering. Customer will purchase Services by submitting to CT Americas a Customer Order Summary (“Order”), which will set out the Service requested and information reasonably necessary for CT Americas to provide that Service to Customer based on Customer’s specific request and circumstances, including term of the Service, volume requirements, technical and logistical specifications, geographic scope and pricing that applies to Services to be provided. Acceptance of an Order by CT Americas and provision of a new Service is subject to submission of complete and accurate information by Customer and availability of the requested Service. Depending on the particular Services requested and the Customer circumstances, not all Services are available to all Customers. Each Order submitted by Customer may be subject to an engineering review by CT Americas to determine whether the Service requested can be built or upgraded in order to provide the requested Service. All submitted Orders are subject to approval and acceptance by CT Americas and CT Americas reserves the right to reject an Order for any reason; provided, however that CT Americas shall use commercially reasonable efforts to notify Customer of any such rejection and the reason therefore within five (5) Business Days. If an Order is rejected, CT Americas will work with the Customer to revise the terms so that a new Order can be signed.

1.3 Orders by Customer Affiliates. Customer’s Affiliates may purchase Services under this Agreement by submitting an Order. The conditions for Ordering set forth in 1.2 above shall apply to any request for Service by Customer Affiliate. Upon acceptance of an Order by CT Americas, any Customer Affiliate that purchases Services under this Agreement shall be bound by the terms and conditions to the same extent as Customer; provided, however, that Customer shall be jointly and severally liable for all claims and liabilities arising under this Agreement related to any Order accepted from any Customer Affiliate, and any event of default under this

Agreement by the Customer Affiliate with respect to such Order shall also be deemed an event of default by Customer. Any reference to Customer in this Agreement with respect to any Order accepted from a Customer Affiliate shall also be deemed a reference to the applicable Customer Affiliate.

1.4 No Resale. Other than to the extent that Customer is permitted to make the Services available for use hereunder by its Affiliates, the Service is for Customer’s use only, and may not be resold to any third party without CT Americas’ consent.

1.5 Account Representative. Customer will be assigned a dedicated CT Americas Account Representative.

## 2 TERM

2.1 Term of Agreement. This Agreement is effective and the Parties’ obligations shall commence upon the Effective Date and, unless otherwise terminated pursuant to the terms of this Agreement, shall continue until the later of date that is three (3) years from the Effective Date of this Agreement or one (1) year from the expiration of the last Service Term below.

2.2 Term of Service. Each Order shall set out the Initial Service Term of any Service provided under this Agreement. If no Initial Service Term is specified in an Order, the Initial Service Term shall be one (1) year from the Service Activation Date. Upon the expiration of the Initial Service Term, an Order automatically shall be renewed for successive one (1) year Renewal Service Terms, until one Party provides the other Party with written notice of termination pursuant to Section 2.3, below. The Initial Service Term and Renewal Service Terms together shall be referred to as the “Service Term.”

2.3 Notice of Termination. Any notice of termination under this Agreement shall be effective sixty (60) days after confirmation of receipt by the other Party, unless a different amount of time is specified elsewhere in this Agreement. A request by Customer for termination of a Service at the end of a Service Term or otherwise must be sent by email to [provisioning@ctamericas.com](mailto:provisioning@ctamericas.com), and will be effective only upon CT Americas’ specific confirmation of receipt of the request. If Customer does not receive such confirmation from CT Americas within forty-eight (48) hours, Customer must request the Account Representative to confirm receipt of Customer’s notice of termination and, upon such confirmation of receipt, Customer’s original date of termination notice shall apply.

### 3 PRICING AND BILLING

3.1 Monthly Charges. The Monthly Recurring Charges (“MRCs”) set forth in the Order shall begin to accrue as of the Ready for Service Date confirmed by Acceptance of the Service in accordance with Article 10, below. Customer also shall owe CT Americas a one-time fee for installation as set forth in the Order (“Installation Fee”), which shall be invoiced as specified in Section 3.2, below and determined by the specific requirements and technical specifications of Customer. The Installation Fee shall be non-refundable in the event of cancellation or termination of this Agreement or a related Service by the Customer.

3.2 Invoices. CT Americas will invoice the MRCs on a monthly basis in advance. The first invoice will be issued following Acceptance in accordance with Article 10, below. If the Ready for Service Date occurs on a date other than the first day of a calendar month, the initial invoice for MRCs for that partial month shall be pro-rated to an amount equal to the remaining days of said month multiplied by a rate equal to one-thirtieth (1/30th) of the MRC. In addition to the pro-rated MRCs for the first partial month, the first invoice will include MRCs in advance for the full following month as well as the Installation Fee. Subsequent invoices for MRCs will be issued on a monthly basis. CT Americas may not invoice Customer for any MRCs more than One Hundred Eighty (180) days after such MRCs were incurred.

3.3 Due Date. Customer shall make all undisputed payments on or before the date that is (30) calendar days after the invoice date (“Due Date”). A reseller Customer must meet its payment obligations hereunder regardless of whether Customer is promptly paid by its own End User(s).

3.4 Rate Changes. At the expiry of the Initial Service Term, CT Americas shall be entitled to change the MRCs for the Service, based on the specific Services provided and circumstances of Customer, to be provided during any Renewal Term of the Order, provided that CT Americas shall give thirty (30) calendar days written notice of such change to Customer. In the event that Customer notifies CT Americas on or before the termination of such thirty (30) day period after CT Americas’ notice that Customer does not agree with such changes, and provides notice of termination in accordance with Section 2.3 hereof, CT Americas shall continue to provide Service until the effective date of such termination at the MRC in effect on the date of CT Americas’ notice of change.

3.5 Intentionally omitted.

3.6 Late Payment Penalties. In addition to other remedies set forth herein, if Customer fails to pay any undisputed amount on or before the Due Date, CT Americas may charge interest on the unpaid balance from the Due Date until the date paid at the nominal rate of 1.0% per month, compounded monthly, or the highest rate permitted by applicable law, whichever is lower. CT Americas also may net or set-off amounts payable by CT Americas to Customer under this Agreement or otherwise against any unpaid balance if Customer fails to pay any amount, including any accrued interest, when due.

3.7 Taxes and Surcharges. The charges described in Sections 3.1 and 3.2 are exclusive of, and Customer shall assume and pay promptly, all applicable taxes, including without limitation consumption, value added taxes or other national, regional or local sales, use, excise, privilege, or other similar taxes, duties or charges imposed on or incident to the provision, sale or use of any Service, but excluding taxes on income, personal property, corporate franchises, capital gains) (collectively “Taxes”). The charges also exclude, and Customer will be responsible for, any regulatory surcharges which CT Americas is required to pay and expected to recover from customers in connection with the provision, sale or use of any Service, including without limitation, permanent or temporary surcharges to meet government obligations, or to support a governmentally established subsidy program (collectively “Surcharges”). Taxes and Surcharges, shall be passed through without mark-up, and itemized on invoices. Surcharges may be shown on invoices as cost recovery fees. Customer also will be responsible to pay any documented penalties incurred by CT Americas as a result of Customer’s failure to pay any undisputed Taxes or Surcharges; provided that Customer shall not be responsible for any penalties due as a result of CT Americas’ failure to timely bill or remit any such Taxes or Surcharges or to timely notify Customer of same. Customer may present to CT Americas a valid tax exemption certificate and CT Americas will give effect thereto prospectively.

3.8 Tax Withholding. Notwithstanding anything else contained herein, if any Taxes are required to be remitted directly to a Taxation Authority, Customer shall be entitled to withhold and deduct such amounts from any payment owing to CT Americas under this Agreement and shall timely pay the subject Taxes to the Taxation Authority. Customer must pay CT Americas the amounts owing under this Agreement as set forth on the applicable invoice net of the withheld Taxes. Upon CT Americas’ written request, Customer shall deliver to CT Americas acceptable documentation evidencing the payment and

remittance to the relevant Taxation Authority of the Taxes withheld by Customer.

3.9 Enforcement. Each Party shall be responsible for all costs and expenses, including attorneys' fees and expenses and court costs, incurred by the other Party in the enforcement of the payment obligation of any undisputed amounts under this Agreement and the collection of outstanding amounts due hereunder.

3.10 Currency. All monetary references in this Agreement are denominated in United States Dollars, and all financial transactions under this Agreement must be settled in United States Dollars, unless otherwise specified in an Order or amendment to this MSA. In the event that Customer requests to be invoiced in Chinese Yuan Renminbi, Customer will be required to execute a separate payment arrangement agreement with a CT Americas' affiliate in China. In the event that Customer requests to be invoiced in a currency other than United States Dollars or Chinese Yuan Renminbi, the proper amount for settlement of a transaction shall be the amount denominated in this Agreement in United States Dollars converted into the referenced foreign currency at the rate of exchange as of the Invoice date.

#### 4 BILLING DISPUTES

4.1 Notice of Dispute. If Customer reasonably disputes any matter contained in any invoice, the Customer may withhold payment of the disputed portion but shall pay the undisputed portion of the invoice. Written notice regarding any dispute as to an invoice and a detailed explanation as to the reasons therefor must be provided to CT Americas' Finance Department on or before the Due Date of the subject invoice. The effective date of any such notice ("Date of Dispute Notice") shall be the date CT Americas receives such notice.

4.2 Limitation of Time to Dispute. Customer may dispute any amount that has been paid on any invoice for ninety (90) days from the date of the invoice on which the charge first appeared.

4.3 Resolution of Invoice Disputes. In the event of a dispute regarding an Invoice, the Parties shall thereafter investigate the matter and endeavor to resolve the disputed charges within thirty (30) days following the Date of Dispute Notice. If the Parties reach an impasse or are unable to informally resolve the dispute in good faith, including through escalation of the dispute to senior executives of each Party, then within ninety (90) days of the Date of Dispute Notice, the issue shall be resolved in accordance with the dispute resolution provisions of Article 23, below. If an invoice dispute is

referred to dispute resolution under Article 23, CT Americas may suspend Service pending resolution of the dispute; provided that CT Americas shall not suspend Service if Customer pays the disputed amount subject to refund in accordance with the result of the dispute proceedings and as provided for in Section 4.4 below.

4.4 Adjustments. Following resolution of the dispute, the adjustment (if any) will be applied to a subsequent invoice within no more than two (2) billing cycles. If the dispute is resolved so that one Party must pay money to the other, that Party must pay interest on the amount determined to be payable from the original Due Date (or payment date, for overpayments) at the nominal rate of 1.0% per month or 12% per annum, compounded daily, for each day thereafter until payment is made.

4.5 No Waiver of Rights to Payment. A request by Customer for invoice adjustment shall not be grounds for Customer to delay or withhold payment of any undisputed balance due. Nor shall any provision herein be construed to constitute a waiver of CT Americas' rights to payment hereunder or at law or in equity to declare a default by Customer under this Agreement on account of a delinquency to pay undisputed charges.

#### 5 REPRESENTATIONS AND WARRANTIES OF THE PARTIES

5.1 Qualification. Each Party is a duly formed corporation in good standing under the laws of the state in which it is incorporated and is qualified to transact business in all locations where the ownership of its properties or nature of its operations requires such qualification; and the execution, delivery and performance of this Agreement do not violate any applicable law known to such Parties or breach any other material agreements or covenant to which such Party is bound.

5.2 Authority. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that this Agreement is validly and legally binding on such Party and enforceable in accordance with its terms.

5.3 Compliance with Laws. Each Party represents, warrants and agrees that it will comply with all Laws applicable to its business and its obligations under this Agreement. Each Party shall secure all domestic and foreign permits, licenses, certifications, regulatory approvals and authorizations (collectively, "Authorizations") required for CT Americas to provide the Services and, if required, for Customer to use the

Services; and shall, as necessary, maintain such Authorizations for however long this Agreement is in effect. The Parties shall cooperate in securing necessary Authorizations and each Party shall ensure that it remains in compliance with its respective Authorizations.

5.4 Anti-bribery Laws. Both Parties are aware of and understand the terms of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1 et seq., (“FCPA”), the transactions prohibited thereby, and the penalties for violation thereof. In compliance with the FCPA, neither Party shall make, offer or agree to offer anything of value to any government official, political party or official thereof, or candidate for governmental office in order to obtain, retain or direct business to any business enterprise or person, or to obtain an advantage. Each Party represents that it understands the purposes, prohibitions and penalties stated in the FCPA, and shall not knowingly commit any act that would place the other Party in jeopardy under the FCPA. Violations of the FCPA by will not be suggested, encouraged or condoned by either Party.

## 6 RESPONSIBILITIES OF CUSTOMER

6.1 Cooperation With Installation. Customer will, if applicable, at its own expense:

- (i) provide all necessary preparations required to comply with the installation and maintenance specifications as communicated to Customer by CT Americas its Affiliates or Underlying Operators in connection with the Service, including but not limited to working with landlord(s) of any leased Customer premises to arrange for access to, or obtain any necessary permits for, any of the rights-of-way to the premises and conduits and equipment space on the premises as necessary for CT Americas to provide Services to the Customer’s sites;
- (ii) fully cooperate in the installation, hook-up, maintenance, provision, and trouble-shooting, of the Services described in the Order, and avoid causing or contributing to any interruption of the Service; and
- (iii) be responsible for the costs of relocation of Services once installed.

6.2 Maintenance of Equipment. Customer will, if applicable, provide the necessary inside wiring, equipment, protective apparatus, space, conduits, ventilation, air conditioning and electrical power required to interconnect and maintain the facilities used to provide Services to Customer’s sites without charge or cost to CT Americas. The space, conduits and power will be made available to CT Americas, its Affiliates or Underlying

Operators on a timely basis. Customer will be responsible for maintaining the equipment space and associated facilities, conduits and rights-of-way as safe places to work, and shall maintain conventional casualty insurance to protect them. Customer also will be responsible for ensuring that the use of the equipment space and associated facilities, conduits and rights-of way comply with all applicable Laws as well as any existing leases or other contractual agreements or rights of others.

6.3 Acceptable Use. Customer will not permit or assist others to, and will take all reasonable steps to ensure that its own employees, End Users and third parties accessing the Services through Customer do not, misuse, abuse or fraudulently use the Services or use the Services for any illegal or unauthorized purpose, and Customer will comply in all respects with CT Americas’ Acceptable Use Policy (“AUP”) posted on the CT Americas web site at <http://www.ctamericas.com/files/CTA%20Authorized%20Use%20Policy%20-%20Final.pdf>.

6.4 Prevention of Contamination. In its use of the Services, Customer will take every reasonable precaution to prevent contamination to the systems and facilities of CT Americas, its Affiliates or its Underlying Operators through software or hardware diffusion, including without limitation, by contamination caused by computer viruses, worms, or other harmful computer programming code.

6.5 Customer may resell and permit third parties to use the Service, subject to the following conditions: (a) no such resale or third party use will lessen or modify Customer’s obligations under this Agreement; (b) use of the Service by third parties must comply with this Agreement and all applicable laws; and (c) Customer must possess or maintain all licenses, permits and other requirements that may be applicable to such resale or third party use. For the avoidance of doubt, Customer shall be fully responsible for its own End Users and CT Americas shall have no responsibility for, or liability to, such End Users whatsoever.

## 7 EQUIPMENT AND SOFTWARE

7.1 Carrier Equipment. Customer shall be liable for any and all damage to the equipment or property owned by CT Americas, its Affiliates or Underlying Operators and located on Customer’s premises, excluding reasonable wear and tear and any damage caused by CT Americas, its Affiliates or Underlying Operators. Upon expiration or termination of an Order, Customer will surrender to CT Americas any such equipment and property.

7.2 Network Terminating Unit. CT Americas, its Affiliates or Underlying Operators may be required to provide a Network Terminating Unit (“NTU”) at the Customer’s premises. The NTU shall at all times remain the sole and exclusive property of CT Americas, its Affiliates or Underlying Operators, as the case may be, and Customer shall have no interest or rights in it except for quiet possession and the rights to use the NTU in connection with the Service. If any NTU is damaged or removed by Customer, Customer shall be liable to CT Americas and CT Americas will invoice the Customer for the replacement cost of the NTU.

## 8 OPERATIONAL AND COMMERCIAL MATTERS

8.1 Access to Customer’s Premises. The Customer shall, upon prior and reasonable notice from CT Americas and subject to compliance with the Customer’s security and other procedures, as provided to CT Americas, give CT Americas’ agents and employees reasonable entry and access to the premises at which Services will be provided, to install, inspect, repair or remove CT Americas’ facilities and/or equipment, or to perform necessary inspections or maintenance in cases where Customer-provided equipment or facilities are disrupting provision of the Services.

8.2 Technical Standards. The technical standards and methods of operation to be applied by the Parties for the implementation and provision of the Services must conform to the relevant provisions of pertinent Laws applicable to the Services in the jurisdiction(s) in which they are provided as well as the International Telecommunication Union Telecommunications Standardization Sector Recommendations, and standards of the Internet Engineering Task Force, as they may be amended from time to time.

## 9 LOCAL LOOPS

9.1 Local Loop Selected by CT Americas. If an Order requires that CT Americas order and administer one or more Local Loops in order to interconnect Customer’s network and equipment with the Services, CT Americas reserves the right to order Local Loops from the Loop Provider of its choice; provided that CT Americas shall coordinate with Customer to ensure that Customer’s route diversity objectives are met. CT Americas may, at its reasonable discretion, change such Loop Provider for Service quality or other issues upon at least sixty (60) days prior written notice to Customer. Customer also may, at its reasonable discretion, request a change in such a Loop Provider selected by CT Americas for Service quality issues. Changes of Local Loop Providers selected by CT Americas or agreed to by CT Americas for Service

quality purposes shall be at CT Americas’ sole cost and expense.

9.2 Local Loop Selected by Customer. If Customer does not indicate on the Order that it desires CT Americas to provide (or, where necessary, to order and administer) a Local Loop on its behalf, then Customer shall be solely responsible for ordering and administering that Local Loop. Customer may request that CT Americas interconnect with a Loop Provider selected by Customer; provided, however, that CT Americas shall not be liable for any delays in the Ready for Service Date caused by Customer’s failure to place a timely order for a Local Loop, nor for any delays in Local Loop delivery caused by Customer’s Loop Provider.

9.3 Changes to Customer’s Local Loop Provider. Customer may request a change in a Loop Provider it has selected upon at least sixty (60) days prior written notice to CT Americas. If CT Americas accepts Customer’s request, Customer shall submit a new Order. Changes requested by Customer to a Loop Provider selected by Customer shall be at Customer’s sole cost and expense, including all costs or penalties incurred by CT Americas due to the early termination of the original Loop Provider.

9.4 Local Loop Charges. Local Loop charges may be bundled with CT Americas’ MRCs (without mark-up), in which case, Local Loop charges will begin to accrue as of the Ready for Service Date confirmed after Customer Acceptance as specified in Article 10 herein. If Local Loop charges are not bundled, CT Americas shall invoice for Local Loop charges on a monthly basis and in advance, with the initial Local Loop charges beginning to accrue on the date that they are incurred on Customer’s behalf. CT Americas will, however, use commercially reasonable efforts to cause the commencement of Local Loop charges to coincide as closely as possible with the Ready for Service Date and commencement of CT Americas’ MRCs. If the Ready for Service Date occurs on a date other than the first day of a calendar month, the amount of Local Loop charges appearing on the initial invoice shall be reduced to an amount equal to the remaining days of said month following the Ready for Service Date (including the Ready for Service Date), multiplied by a rate equal to one-thirtieth (1/30th) of the Local Loop charges. If the Ready for Service Date is delayed under circumstances that preclude avoidance of Local Loop charges, the Party causing such delay shall be responsible for all Local Loop charges incurred prior to the actual Ready for Service Date.

9.5 Local Loop Termination Charges. Customer shall be liable for all termination charges incurred by CT

Americas due to any cancellation of a Local Loop, unless such cancellation is initiated by CT Americas pursuant to Section 9.1 or is due to CT Americas' gross negligence or willful misconduct.

## 10 ACCEPTANCE AND TESTING

Once CT Americas deems the Service ready and available for use, CT Americas shall provide the Customer with a written Ready for Service Notice (or "RFS Notice"). Customer shall have a forty-eight (48) hour period (the "Testing Period") from the date of such notice to test the Service at Customer's expense. Before the end of the Testing Period, Customer shall notify CT Americas in writing if it believes the Service is in material non-compliance with the applicable technical specifications established by the International Telecommunications Union and set forth in the Order and Service Level Agreement. Acceptance shall be deemed to occur on the date earliest to occur that: (i) Customer accepts the Service in writing; (ii) Customer begins to use the Service (other than for testing); or (iii) the Testing Period ends with no written notice received by CT Americas from Customer. The Ready for Service Date shall be the date of the RFS Notice immediately preceding Acceptance. If Customer delivers notice of material non-compliance within the Testing Period, CT Americas shall promptly take such reasonable action as is necessary to correct any such non-compliance in the Services and shall send Customer a new RFS Notice, and the Testing Period and Acceptance process set forth in this Article 10 shall repeat. Upon Customer acceptance of the Service, CT Americas will provide Customer a Service Activation Notice.

## 11 DATA AND SERVICE SECURITY

11.1 Internet. CT Americas does not operate or control the information, services, opinions or other content of the Internet. Customer agrees that it shall make no claim whatsoever against CT Americas relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet.

11.2 Personal Information. Other than for the administration of the Service in accordance with this Agreement, CT Americas does not collect or require or have access to any personally identifiable information of any Customer or End User personnel ("Personal Information"), and urges Customer to use commercially reasonable efforts to avoid unauthorized disclosure or conveyance of any such Personal Information to any CT Americas personnel in connection with Services obtained under this Agreement. Notwithstanding the foregoing, in the event Customer voluntarily provides any such

information to CT Americas, CT Americas shall use commercially reasonable measures consistent with industry best practices and applicable Laws to protect any such Personal Information obtained hereunder from unauthorized access, destruction, use, modification or disclosure.

11.3 Customer Data. As between the Parties, Customer retains all right, title and interest in and to any Personal Information or other traffic, text, photos, video or other data content that is transmitted over the Services, or delivered to CT Americas for storage or processing, by or on behalf of Customer or its End Users (collectively "Customer Data"). CT Americas acquires no rights in any Customer Data (including all intellectual property rights therein), other than the nonexclusive, non-transferable, limited right to host and store Customer Data on CT Americas' systems, including, only to the extent necessary, the right to reproduce Customer Data on CT Americas' systems, solely for the purpose of providing Service to Customer in accordance with this Agreement. All other rights are hereby reserved by Customer and no additional rights are granted by implication, estoppel or otherwise. CT Americas agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from any Customer Data provided to CT Americas, except as may be expressly permitted or required by law. CT Americas will not engage in deep packet inspection or use of other means to extract Customer Data from packets unless required by legal or regulatory authority. EXCEPT TO THE EXTENT REQUIRED BY LAW OR GOVERNMENT REQUEST, CT AMERICAS DOES NOT MONITOR AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR CUSTOMER DATA TRANSMITTED VIA AN APPLICABLE SERVICE AND DISCLAIMS LIABILITY AND RESPONSIBILITY FOR UNAUTHORIZED USE OR MISUSE OF ANY APPLICABLE SERVICE.

11.4 CPNI. CT Americas will protect the confidentiality of customer proprietary network information ("CPNI") as required in the United States by 47 C.F.R. §§ 64.2005-10, if applicable, and by the similar requirements of any jurisdiction in which the Services are provided. CT Americas will not use CPNI for any purpose other than to market similar services to Customer. Customer shall abide by all applicable CPNI regulations with respect to its End Users.

11.5 Security Responsibilities of CT Americas. CT Americas agrees that it will exercise commercially reasonable efforts to prevent, respond to, and otherwise address threats to CT Americas' network, including without limitation unauthorized access to or use of CT

Americas' network devices, in order to protect the devices used to provide the Services from unauthorized access, interception, use or manipulation. CT Americas will not attempt to, or authorize any third party to, circumvent or defeat any encryption or other security measures that Customer elects to deploy with respect to its Customer Data except as may be required by applicable Law. Except as expressly stated above in this Section 11.5, CT Americas provides, and takes responsibility for, only the transport layer of the Service. Other than the transport layer, CT Americas undertakes no obligations and is not liable for the security of the Customer's or its End Users' telecommunications services or connections, or for the security or integrity of Customer Data.

11.6 Security Responsibilities of Customer. Customer will protect the privacy and legal rights of its End Users under all applicable Laws. Customer must have the ability to access, monitor, use, and disclose Customer Data as may be required by Law. Customer will obtain and maintain any required consents from End Users to allow Customer's access, monitoring, use and disclosure of Customer Data. Customer agrees to maintain throughout the term of this Agreement, appropriate physical, technical and organizational measures, internal controls, and data security routines consistent with industry best practices that are intended to protect Customer Data against accidental loss or change, unauthorized disclosure or access, accidental or unlawful destruction, other unlawful forms of processing and any information security breach.

11.7 Consent to Data Transfer. Customer Data will remain in the geographic region designated by Customer in the Order; provided, however, that during the performance of this Agreement, it may be necessary for CT Americas to transfer, process and store aggregated billing and utilization data and other data necessary for CT Americas' operation of its network and for the performance of its obligations under this Agreement ("Usage Data"). The transfer, processing and storing of such Usage Data may be to or from the United States. Customer hereby consents to CT Americas' transfer, processing, storage, and use of such aggregated Usage Data as required to provide the Service in accordance with this Agreement and as allowed by Law. Usage Data will not be disclosed to third parties, except as may be required by Law. CT Americas will not use Customer Data or Usage Data or derive information from it for any purposes other than providing the Services for the benefit of Customer, including, without limitation, advertising or other commercial purposes. To the extent required by applicable Law, Customer will obtain any necessary

consent from End Users whose Personal Information or other data is transferred under this Agreement.

## 12 SERVICE ISSUES, EXCLUSION OF WARRANTIES AND SOLE REMEDIES

12.1 Service Level Agreement. Provision of Service may be subject to a Service Level Agreement. Each Service Level Agreement sets forth the applicable credit allowances for that Service. Notwithstanding the foregoing, CT Americas provides no credit allowances for service interruption or service problems on an unprotected international submarine cable. For the purposes of this Agreement, an "unprotected" international submarine cable is one for which Customer has not paid an extra charge to reserve a dedicated redundant line to be used in case of service disruption on the cable. Customer acknowledges that service over protected cables may be available upon request.

12.2 Local Loop Issues. In the event of interruptions to or other problems with a Local Loop, Customer shall notify CT Americas' designated technical point of contact via phone, fax and/or e-mail. Except as otherwise provided in a pertinent Service Level Agreement, CT Americas' sole obligation with regard to such interruptions shall be to use its commercially reasonable efforts to cause the Loop Provider to promptly remedy such problems. CT Americas also shall obtain and directly pass through to Customer all service credits owed by the Local Loop Provider for outages on such Local Loop.

12.3 Chronic Outage.

(i) Termination Right. Notwithstanding anything stated herein to the contrary, and subject to the exclusions set forth in the immediately succeeding paragraph, Customer shall have the right, if it experiences any three (3) periods of eight (8) hours or more of outage (i.e., complete network unavailability) in any rolling sixty (60) day period on a particular circuit ordered hereunder, or any one single period of outage in any calendar month of forty-eight (48) hours or more ("Chronic Outage"), to terminate the affected Service and associated Local Loop without penalty or other payment; provided, however, that Customer exercises its right to terminate Service in accordance with the terms of this Agreement within fifteen (15) Business Days of the day on which such right vests therein. In the event of such termination, CT Americas shall refund to Customer any unused pre-paid MRCs for Service.



(ii) Exclusions. Periods of outage or service problems arising from the following circumstances shall not be counted for the purposes of the above provision:

(a) Service degradation due to such factors as slow transmission or high latency, or periods of network unavailability lasting less than sixty (60) seconds in duration.

(b) Outages attributable in whole or in part to Customer's premises equipment (whether or not owned by Customer), or, with respect to "POP to POP" Service, to local access facilities ordered directly by Customer;

(c) Outages attributable in whole or in part to any breach of this Agreement by Customer or any act or omission of Customer or any third party not affiliated with CT Americas, excluding CT Americas' agents, contractors or vendors providing services to Customer under this Agreement;

(d) Outages attributable to regularly scheduled maintenance notified to Customer in accordance with the applicable SLA;

(e) Force Majeure events as described in Section 14 of this Agreement; and

(f) Outages attributable to private line circuits provided, with the agreement of Customer by third party providers in locations where CT Americas does not have a network.

12.4 Intellectual Property. CT Americas warrants that, to the best of its knowledge, the Services do not infringe any patent, copyright, trademark, service mark, trade secret or other intellectual property right of any third party ("IP Right"). If CT Americas reasonably believes that a claim of infringement of any IP Right may bar Customer's use of a Service, CT Americas may: (i) obtain for Customer the right to continue to use the Service consistent with this Agreement; (ii) modify the Service so that it is non-infringing and in compliance with this Agreement; or (iii) replace the Service with an alternative, non-infringing Service with equivalent functionality. If none of the foregoing options (i) – (iii) are reasonably practicable under the circumstances, CT Americas will so notify Customer, and Customer may terminate the affected Services (or the Agreement as a whole, if such Claim would materially affect the Agreement as a whole) and Customer will receive a refund of prepaid MRCs for Services not delivered within thirty (30) days of the date of termination.

12.5 Exclusion of Warranties. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ARTICLE 12 AND ANY PERTINENT SERVICE LEVEL AGREEMENT, THE SERVICES ARE PROVIDED ON AN "AS IS," AND "AS AVAILABLE" BASIS, AND CT AMERICAS MAKES NO FURTHER WARRANTY THAT THE SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. CT AMERICAS EXPRESSLY EXCLUDES ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

12.6 Exclusion of Remedies Related to Service Performance Issues. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE 12 AND ANY PERTINENT SERVICE LEVEL AGREEMENT, CT AMERICAS WILL NOT BE LIABLE TO CUSTOMER, OR TO ITS AFFILIATES OR END USERS, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY LOSS, CLAIM, COST OR DAMAGES, INCLUDING BUT NOT LIMITED TO THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES, RESULTING FROM ANY SERVICE AVAILABILITY OR SERVICE PERFORMANCE ISSUES.

## 13 SUSPENSION AND TERMINATION RIGHTS; TERMINATION PAYMENT

13.1 Suspension by CT Americas. CT Americas, without prejudice to its other rights at law or in equity, CT Americas may suspend Service: (i) in the event that Customer is in Default, and has failed to remedy such Default within ten (10) days of receipt of written notice from CT Americas; (ii) if any misuse of Service or misconduct with respect to Service on the part of Customer or its employees, agents or End Users creates, in CT Americas' sole reasonable judgment, an imminent risk of material damage to CT Americas' network, facilities or other property or violation of any applicable Laws; or (iii) upon request of a government authority. To the extent permitted by law, CT Americas shall provide Customer with notice of any such suspension in advance or as soon as is reasonably possible, identifying the reason therefor. Any suspension of Service shall be as limited in scope and duration as possible consistent with CT Americas' needs to protect its network, facilities and property. Except in the case of suspension upon request of government authority, Customer shall continue to pay

all MRCs during the suspension period. Service shall be promptly restored as soon as CT Americas determines, in its sole discretion, that the default has been cured. Customer also shall be liable for any actual reconnection charges incurred by CT Americas up to the amount of one month's MRCs.

13.2 Termination by CT Americas. CT Americas may terminate a Service: (i) upon written notice if any cause of suspension of such Service under Section 13.1 continues uncured after sixty (60) days; or (ii) immediately without notice upon request of a governmental authority; provided, however, that CT Americas shall provide Customer with written notice and information regarding the reason for such termination as soon as possible under the circumstances, and in advance of termination if practicable. CT Americas may terminate this Agreement if the causes of termination under subsections (i) or (ii) of this paragraph affect all Services provided under this Agreement.

13.3 Termination by Either Party for Default or Insolvency. Except for a Default by Customer resulting in suspension by CT Americas which is governed by Sections 13.1 and 13.2, above, either Party may terminate this Agreement: (di) on thirty (30) days written notice in the event of a Default by the other Party and such Default has not been cured within such thirty (30) day period; or (ii) immediately upon written notice: (a) in the event of any evidence of the potential, imminent or actual insolvency of the other Party or that Party's insolvency, dissolution or cessation of business operations; (b) to the extent permitted by law if the other Party files a petition in bankruptcy or if a petition in bankruptcy is filed against it; (c) if the other Party makes an assignment for the benefit of any of its creditors or similar arrangement pursuant to any bankruptcy law or similar law of an applicable jurisdiction; or a Force Majeure Event has prevented performance for at least thirty (30) days.

13.4 Termination Payment. In the case of termination of this Agreement or any Service after the Ready for Service Date: (i) by Customer for any reason other than under Section 12.3 for Chronic Outage, Section 12.4 for IP infringement, Section 13.3(i) for CT Americas' Default; or Article 14 for Force Majeure; or (ii) by CT Americas under Sections 13.2(i) or 13.3(i) for Customer's Default, Customer shall remain liable to pay CT Americas an amount equal to the MRCs for the remainder of the term of that Service as set forth in the Order ("Termination Payment"), plus any third party charges not already covered by the Termination Payment. Customer agrees that CT Americas' damages will be difficult to ascertain if termination occurs and that the

Termination Payment establishes liquidated damages and is not a penalty.

13.5 Intentionally omitted.

13.6 Cancellation Charge. If Customer cancels a Service prior to the Ready for Service Date for any reason other than a delay in the Ready for Service Date of more than ninety (90) days caused by CT Americas, Customer shall pay CT Americas an amount equal to (a) the MRCs for one (1) month, plus (b) the aggregate charges, payable to any Affiliates or Underlying Operators, if any, for which CT Americas is or becomes contractually liable in connection with any such cancellation ("Cancellation Charge").

## 14 FORCE MAJEURE

14.1 Force Majeure Event. Neither Party shall be liable for any delays, failures to perform, omissions, damages, losses or destruction, or malfunction of any equipment or any consequence thereof occasioned by or due to any Force Majeure Event.

14.2 Consequences. A Party delayed in, or prevented from, performing due to a Force Majeure Event shall give notice to the other Party in writing at the earliest possible time after such cause becomes known of its claim for any extension of time for its performance, together with a statement on which it bases its claim of Force Majeure. Customer's obligation to pay for Services provided prior to the date of a Force Majeure Event shall not be excused except to the extent that such Force Majeure Event has deprived Customer of any reasonable means to deliver timely payment to CT Americas. Customer shall not be liable for MRCs for Services that are not delivered as a result of a Force Majeure Event. The affected Party shall be excused from performance for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to resume performance to the extent possible without delay.

14.3 Termination. If a Force Majeure Event continues for a period of thirty (30) days, either Party may terminate this Agreement without Termination Payment or other liability by giving notice in writing to the other Party.

## 15 LIMITATION OF LIABILITY

15.1 Exclusion of Consequential Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, SUCH AS, WITHOUT LIMITATION, LOSS OF

REVENUES, PROFITS, CUSTOMERS, BUSINESS OPPORTUNITIES OR GOODWILL, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

15.2 Legislation. THE TERMS AND CONDITIONS IN THIS AGREEMENT THAT EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY APPLY TO THE EXTENT PERMITTED BY LAW. PROVISIONS OF APPLICABLE LEGISLATION MAY IMPLY WARRANTIES OR CONDITIONS OR IMPOSE OBLIGATIONS UPON A PARTY WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED OR WHICH CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED EXCEPT TO A LIMITED EXTENT. THIS AGREEMENT MUST BE READ AND CONSTRUED SUBJECT TO ANY SUCH LEGISLATION. IF ANY SUCH LEGISLATION APPLIES, THEN TO THE EXTENT TO WHICH A PARTY IS ENTITLED TO DO SO, THE LIABILITY OF THAT PARTY UNDER THAT LEGISLATION WILL BE LIMITED AT THE OPTION OF THE RELEVANT PARTY TO:

- (i) re-supply of the Services;
- (ii) payment of the cost of having the Services supplied again; or
- (iii) any other remedy prescribed by any relevant law.

15.3 Limitation of Liability. Except for indemnification claims under Article 16 or breaches of confidentiality under Article 19, either Party's maximum liability for any Order shall be limited to the total payments by Customer to CT Americas in the six (6) month period preceding the event out of which the liability arose; provided that this limitation of liability shall not apply to service charges, penalties or termination charges due from Customer for Services provided hereunder.

## 16 INDEMNITY

16.1 Customer's Indemnity. Customer shall indemnify and hold harmless CT Americas, its affiliates, stockholders, officers, directors, agents and employees against any and all third party claims, actions or proceedings including but not limited to claims by governmental authorities seeking to impose penalties ("Claims") for damages, losses, claims, costs and expenses (including reasonable legal costs and attorney fees) ("Losses") arising out of or otherwise related to (i) any Default by or negligence of Customer or its employees, agents or End Users in the performance of its

responsibilities under Article 6, above, and (ii) any Customer Data published or distributed by Customer or by any other person from or in connection with use of the Service.

16.2 CT Americas' Indemnity. CT Americas shall indemnify and defend Customer, its Affiliates and their respective employees, directors, officers, shareholders, representatives and agents against any and all Claims for Losses arising out of or otherwise related to an allegation that Customer's authorized use of a Service infringes any IP Right. If a Claim for which CT Americas may have an indemnification obligation hereunder is or may be made, CT Americas may, at its option and expense, implement any remedy set forth in Section 12.4, above. The foregoing indemnification obligation shall not apply to CT Americas to the extent that any infringement results from (i) any open source or third-party components or products not provided by CT Americas; (ii) any use of the Services not in accordance with this Agreement; (iii) any use of the Services in combination with other materials, services, software or hardware not supplied by CT Americas if the alleged infringement would not have occurred but for such combination; and (iv) any modification of the Services not performed by CT Americas if the alleged infringement would not have occurred but for such modification.

16.3 Mutual Indemnities. Each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other and its affiliates, stockholders, officers, directors and employees (each an "Indemnified Party") against and from any and all Losses relating to damage to tangible property or bodily injury or wrongful death, arising out of, or relating to the negligence or willful misconduct of the respective Indemnifying Party, its Affiliates, employees, agents, contractors or End Users in connection with this Agreement or the provision of Services hereunder.

16.4 Procedure. A Party's right to indemnification hereunder is conditioned upon: (i) giving the Indemnifying Party prompt notice of any Claim, and (ii) cooperating fully with the Indemnifying Party in the defense, settlement or other disposition of such Claim. The Indemnifying Party shall have the right to control the defense of any or all Claims to which an indemnity applies; provided, however, the Indemnifying Party shall have no right to settle any Claim without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed. The Indemnified Party shall have the right, but not the obligation to join in the defense of such Claims and to be represented by its own counsel at its own expense. Each Party's obligation to defend is independent of its obligation to indemnify under this Agreement. The Parties' respective rights to

defense and payment of judgments or settlements under this Section are in lieu of any common law or statutory indemnification rights or analogous rights, and each Party waives such common law rights.

## 17 REGULATORY EVENTS AND REGULATIONS

The Parties' performance under this Agreement is subject to all present and future applicable Laws. In the event that the implementation of this Agreement, or any of its provisions, shall be found contrary to or in conflict with any such Law(s), the Agreement or such provision(s) shall be deemed modified to the extent necessary to comply with any such Law and shall be modified in such a way as is consistent with the form, intent and purpose of this Agreement.

## 18 RELATIONSHIP OF THE PARTIES

The Parties are independent contractors. Neither Party is authorized to act as an agent for, or legal representative of, the other Party and neither Party shall have the authority to assume or create any obligation on behalf of, in the name of, or binding upon the other Party. No provisions of this Agreement shall be considered to constitute a joint venture, partnership or agency between the Parties or to merge the assets, liabilities and undertaking of the Parties.

## 19 CONFIDENTIALITY

19.1 Definition. "Confidential Information" means this Agreement and other information of any type and form reasonably related to the Agreement and the Services that the receiving Party ("Recipient") knows or has reason to know is confidential, proprietary or trade secret information of the other Party ("Discloser"), either (i) because the information, if written is marked or otherwise identified as confidential or proprietary at the time of disclosure or promptly after disclosure, or if given orally is accompanied by notice of confidentiality promptly after disclosure; or (ii) because of the nature of the information and the context in which it was disclosed. Without limitation, information concerning business plans, models and strategies, network design and traffic, Service performance, customers, vendors, requirements, and pricing is considered "Confidential Information."

19.2 Exclusions. The term "Confidential Information" does not include information that the Recipient is able to demonstrate: (i) was in Recipient's possession before receipt from Discloser; (ii) was independently developed by or for Recipient without reference to Discloser's Confidential Information; (iii)

was rightfully received by Recipient from a third party without a duty of confidentiality; or (iv) is or becomes available to the public through no fault of Recipient.

19.3 Permissible Use. Recipient may use Discloser's Confidential Information only for the purpose of performing its obligations under this Agreement and may not disclose any such Confidential Information except as follows: (i) to employees, contractors and financial and legal advisors of Recipient who have a need to know, are under an obligation of confidentiality, and have been informed of Recipient's obligations hereunder; and (ii) when and to the extent that disclosure is required under applicable Law, if Recipient first gives Discloser notice of the required disclosure and reasonably cooperates with Discloser, at Discloser's expense, in seeking reasonable protective arrangement; provided, however, that Recipient is not required to act in a manner which would result in sanctions or other penalties). Customer is not authorized to disclose CT Americas' Confidential Information to any other third party, including but not limited to any End User, without CT Americas' prior written consent. Recipient shall preserve all proprietary markings on Discloser's Confidential Information provided to Recipient. At Discloser's request, Recipient shall return Confidential Information to Discloser or destroy it and certify its destruction.

19.4 Duration. Other than obligations with respect to trade secrets which shall be held in confidence for as long as they are recognized under law as trade secrets, Recipient's obligations under this Article 19 shall end three (3) years following disclosure.

19.5 Disclaimer. All information exchanged under the Agreement is provided "AS IS", without warranty of any kind other than that the Discloser warrants that it is authorized to make such disclosure.

19.6 Prior Agreements. The confidentiality provisions in this Article 19 completely replace and supersede any prior confidentiality and/or nondisclosure agreement between the Parties.

19.7 Remedies. Each Party acknowledges that its breach or threatened breach of this Article 19 may cause the Discloser irreparable harm which would not be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, the Recipient agrees that, in addition to any legal remedies to which it might be entitled, Discloser may seek equitable relief, including a temporary or permanent injunction, without bond or further proof.

## 20 INSURANCE

20.1 Coverages. CT Americas will maintain the following minimum insurance coverage during the Service Term of this Agreement:

- (i) Commercial General Liability insurance with a combined single limit per occurrence of not less than one million United States Dollars (US \$1,000,000.00);
- (ii) Workers' Compensation insurance with total coverage of one million United States Dollars (US \$1,000,000.00) and in compliance with any minimum requirements established by applicable law. CT Americas shall obtain a waiver from its insurance carriers with which CT Americas carries workers' compensation insurance releasing their subrogation rights against Customer; and
- (iii) In the event that CT Americas will use an automobile in connection with its performance of the Services, Commercial Automobile Liability insurance, with a combined single limit of not less than one million United States Dollars (US \$1,000,000.00) each accident for all owned, non-owned, hired, and permissive use vehicles.

20.2 Rating. The above-described insurance policies will be issued by insurance carriers with an A.M. Best Rating of at least A-VII, and Customer and its subsidiaries and affiliates shall be included as additional insureds under the Commercial General Liability and Auto Liability policies described above. CT Americas will not be deemed to be relieved of any liability or responsibility because of the fact that it maintains (or does not maintain) insurance.

## 21 NOTICES

21.1 Form. All notices, requests, or other communications hereunder shall be in writing, in the English language, and addressed to the Parties at the addresses set forth on the Order.

21.2 Delivery. Notices and requests must be delivered by a method providing for proof of delivery (including express courier, and facsimile or email if evidence of receipt is obtained). Unless specified otherwise elsewhere herein, any notice or request will be deemed to have been given on the date of receipt. For purposes of this Agreement, the date of "receipt" is (i) 24 hours after deposit with an overnight courier service; (ii) the date of a facsimile or e-mail as evidenced in the successful facsimile transmission report or the email confirmation; or (iii) three (3) days after deposit in the U.S. mail as a certified or registered letter, postage prepaid.

CT Americas Confidential

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## 22 PUBLICITY; USE OF NAME

Except as set forth in this Article 22, neither Party (i) shall issue any publication or press release relating to this Agreement or the relationship of the Parties under this Agreement except as may be required by Law or securities exchange or agreed to in writing between the Parties or (ii) may use the name, logo, trade name, service marks, trademarks or printed material of the other Party in any promotional or advertising material, statement, document, press release or broadcast without the prior written consent of the other Party, which consent may be granted or withheld at the other Party's sole discretion. CT Americas has the right to provide any customer or potential customer bound by a nondisclosure agreement access to a list of customers and a description of Service purchased by such customers. Customer consents to such disclosure, including the listing of Customer's name and Service purchased by Customer (financial terms relating to the purchase shall not be disclosed).

## 23 GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement is governed by and shall be construed in accordance with the laws of the Commonwealth of Virginia, excluding its choice of laws principles. The Parties agree that any action related to this Agreement shall be brought and maintained only in a Federal or State court of competent jurisdiction located in the Eastern District of Virginia. The Parties each consent to the jurisdiction and venue of such courts and waive any right to object to such jurisdiction and venue. The Parties also hereby waive any right to jury trial. The prevailing Party in any dispute proceeding shall be entitled to recovery of its reasonable attorneys' fees and litigation costs from the other Party.

## 24 ENTIRE AGREEMENT

This Agreement, including all attachments and schedules, along with the Service Level Agreements and Orders agreed to hereunder, contains the entire understanding between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, correspondence, arrangements, understandings, promises and agreements with respect to such subject matter. The documents comprising this Agreement shall be given preference in the following descending order: (i) the main body of this Agreement, (ii) the attachments, the (iii) Service Level Agreement(s) and CT Americas policies posted on its website including but not limited to the AUP; and (iv) the pertinent Order(s). If there is a conflict between the provisions of this Agreement and the general terms stated in any Order, the terms of this Agreement shall

prevail; provided, however, that any particular technical, implementation or operational specification customized for a particular Customer in an Order shall prevail over more general terms addressed to the same issues in this Agreement.

## **25 AMENDMENT**

CT Americas may amend the terms of this Agreement at any time, with such amendment effective upon posting to the website.

## **26 INTERPRETATION**

The words and phrases used herein but not specifically defined herein shall have the meaning generally understood in the telecommunications and information technology industries. This Agreement shall be construed in accordance with its fair meaning and is not to be construed for or against either Party on regardless of which Party may be viewed as having drafted this Agreement.

## **27 SEVERABILITY**

Any article or any other provision of this Agreement which is or becomes illegal, invalid or unenforceable shall be severed here from and shall be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof, which provisions shall otherwise remain in full force and effect.

## **28 FURTHER ASSURANCES**

Each of the Parties agrees to execute and deliver any and all further agreements, documents or instruments necessary to effectuate this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by any other Party to evidence its rights hereunder.

## **29 ASSIGNMENT**

This Agreement is personal to, shall be binding upon and inure only to the benefit of, the Parties hereto. Nothing in this Agreement is intended to create or confer any right or remedy on any third party. Neither Party shall voluntarily or by operation of law assign, transfer, license or otherwise transfer all or any material part of its rights or duties or other interests in this Agreement or the proceeds thereof, without the other Party's prior written consent, which consent shall not be unreasonably withheld or delayed. However, either Party may assign this Agreement without consent to any Affiliate, entity or successor in interest whether by merger, reorganization,

or transfer of all or substantially all of its assets. Any assignee of Customer must meet CT Americas' test for creditworthiness. No assignment shall release the assignee of its obligations hereunder. Any attempt to assign any rights or duties in violation of this provision shall be null and void.

## **30 MISCELLANEOUS**

30.1 No Waiver. No waiver by either Party of any provisions of this Agreement shall be binding unless made expressly and confirmed in writing. Any such waiver shall relate only to such matter, non-compliance or breach as it relates to and shall not apply to any subsequent or other matter, non-compliance or breach. The failure of either Party to enforce or insist upon compliance with any of the provisions of this Agreement or the forbearance or waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment of any such right.

30.2 No Exclusivity. Subject to compliance with the confidentiality provisions of Article 19, nothing in the Agreement diminishes, restricts or prejudices the rights of either Party to enter into similar agreements with other Parties or to otherwise compete with each other. Each Party acknowledges that it remains at all times solely responsible for the success and profits of its own business.

Attachment A

**DEFINITIONS**

**Acceptable Use Policy (“AUP”)**, referenced in Section 6.3, establishes CT Americas’ parameters for approved use, as well as proscribed misuse, of a Service by Customer, its employees, agents and End Users

**Acceptance** means the Customer’s consent to receive Service as delivered, as described in Article 10.

**Affiliate** means an entity that is at least fifty percent (50%) controlling of, controlled by or under common control with a Party.

**Business Day** means any day that is neither a Saturday, Sunday or national holiday in a jurisdiction in which a Party performs any obligations under this Agreement.

**Cancellation Charge** means the total aggregate charge payable if Customer cancels Service prior to the Ready for Service Date, as set forth in Section 13.6.

**Chronic Outage** means the level and frequency of repeated incidents of complete network unavailability described in Section 12.3(i) that gives rise Customer’s right to terminate service without penalty.

**Claim** has the meaning provided in Section 16.1.

**Confidential Information** means information exchanged between the Parties that is subject to requirements for confidential treatment as referenced in Article 19.

**Customer Data** has the meaning provided in Section 11.3.

**Date of Dispute Notice** has the meaning provided in Section 4.1.

**Default** means the failure of a Party to perform a material obligation of this Agreement; provided that any incidence of interruption, unavailability or degradation of Service or other failure to achieve an objective set forth in a Service Level Agreement shall not be considered a Default.

**Discloser** is the Party that discloses Confidential Information to the Recipient, as referenced in Section 19.1.

**Due Date** has the meaning provided in Section 3.3.

**End User** means any non-employee of Customer authorized by Customer to utilize a Service.

**Force Majeure Event** ,means any cause that is beyond the affected Party’s reasonable control and could not have been prevented through contingency measures standard in the industry, including but not limited to fire, flood, water, the elements, or other acts of God; labor disputes or shortages (except those affecting a Party’s own personnel), power failures, blackouts, unavailability or other acts of transportation, public utilities or other essential services including but not limited to submarine cable cuts; acts or omissions of government or unaffiliated third parties (other than the Customer’s own personnel, agents and End Users, or CT Americas’ agents or Underlying Operators), explosions, civil disturbances, or acts of terrorism or war.

**Indemnifying Party** as referenced in Article 16 means the Party that is obligated to defend and hold harmless an Indemnified Party against a Claim.

**Indemnified Party** as referenced in Article 16 means the Party that is to be defended and held harmless against a Claim by an Indemnifying Party.

**Initial Service Term** as initially referenced in Section means the initial period of time for the provision of Service as specified in the Order.

**Installation Fee** has the meaning provided in Section 3.1

**IP Right** has the meaning provided in Section 12.4.

**Law** means any statute, regulation, policy or order of any governmental agency or judicial authority with competent jurisdiction over the Parties or the Service.

**Local Loop** means the portion of a circuit that provides a connection from the demarcation point at the Customer's premises to the edge of CT Americas' network.

**Losses** has the meaning provided in Section 16.1.

**Monthly Recurring Charges ("MRCs")** mean the fixed monthly charges for Service to be invoiced by CT Americas, as they may be changed from time to time in accordance with the Agreement.

**Order** has the meaning provided in Section 1.2.

**Personal Information** has the meaning provided in Section 11.2.

**Ready for Service ("RFS") Date** means the date that Acceptance of Service is deemed to have occurred pursuant to Article 10.

**Ready for Service Notice** means the notice given by CT Americas to Customer that CT Americas deems the Service ready and available for use and that Customer may begin testing pursuant to Article 10.

**Recipient** is the Party that receives Confidential Information from a Discloser, as referenced in Section 19.1.

**Renewal Service Term** means any term of Service immediately following the Initial Term of Service or a prior Renewal Service Term.

**Services** has the meaning provided in Section 1.1.

**Service Activation Date** means the date following Acceptance upon which CT Americas notifies Customer that Service has been activated and billing begins.

**Service Activation Notice** means notice to the Customer by CT Americas of the Service Activation Date.

**Service Term** has the meaning provided in Section 2.2.

**Surcharges** has the meaning provided in Section 3.7.

**Taxes** has the meaning provided in Section 3.7.

**Termination Payment** has the meaning provided in Section 13.4.

**Testing Period** means the period of time specified in Article 10 during which Customer may test the Service for Acceptance.

**Underlying Operator** means a third party service provider operating over facilities not owned by CT Americas and from which CT Americas obtains service which forms part of the service provided to Customer under this Agreement.

**Usage Data** has the meaning provided in Section 11.7.

\* \* \* End \* \* \*