

## CYBERNET MASTER TERMS AND CONDITIONS

### 1. DEFINITIONS

**“Affiliate”** of a Party means any entity that controls, is controlled by, or is under common control with such Party.

**“Agreement”** means the Master Services Agreement (“MSA”) entered into between CyberNet Communications, Inc. (“CyberNet”) and the Customer, including these CyberNet Master Terms and Conditions, any effective Order Forms, any SLAs, and any other documents expressly incorporated by reference in accordance with the provisions of these CyberNet Master Terms and Conditions, now or in the future.

**“Digital Assets”** means telephone numbers, IPv4 Addresses, IPv6 Addresses, and any other network address codes or identifiers, assigned by CyberNet in connection with its provision of a Service.

**“HaaS Order Form”** is a sub-type of Order Form that CyberNet may designate for ordering HaaS.

**“HaaS Terms and Conditions”** means additional terms and conditions specific to leases of HaaS.

**“Hardware as a Service” (“HaaS”)** means equipment that CyberNet makes available for lease by the Customer.

**“Monthly Minimum Recurring Charge” (“MMRC”)** means a monthly revenue commitment, as set forth in an Order Form, that Customer agrees to satisfy during each month of the Service term.

**“Minimum Payment Period” (“MPP”)** means the minimum period of time, as set forth in an Order Form, for which Customer is required to pay recurring charges for a Service.

**“Minimum Retention Period” (“MRP”)** means the minimum period of time, as set forth in an Order Form, that Customer is required to maintain a Service in exchange for certain credits, waived charges, or amortized charges.

**“Non Recurring Charge” (“NRC”)** means any one-time charge in connection with establishment, installation, activation or other non-recurring activities relating to the provisioning of a Service.

**“On-Premise Equipment”** or **“CyberNet Equipment”** means equipment or other tangible property owned by Cybernet, other than HAAS, placed at one or more Service Sites in connection with CyberNet’s provision of Services.

**“Order Form”** means a form, in either hard copy or in electronic format, that is designated by CyberNet for Customer to request the provision of Service. The term, Order Form, includes HaaS Order Forms.

**“Purchased Equipment”** means equipment or other tangible property Customer purchases under the Agreement, including any replacements of Purchased Equipment provided to Customer. Purchased Equipment also includes any internal code required to operate such Equipment. Purchased Equipment does not include Software but does include any physical media provided to Customer on which Software is stored.

**“Service(s)”** means such communications services, telephone, internet, data connectivity, transport, information technology, help desk, cloud computing, maintenance, HaaS or Purchased Equipment, and other services that Customer has ordered and CyberNet has agreed to provide pursuant to an effective Order Form.

**“Service Component”** means an individual component of a Service provided under the Agreement.

**“Service Level Agreement” (“SLA”)** means performance metrics for certain Services and specific remedies that CyberNet agrees to provide if such metrics are missed.

**“Service Site”** means a physical location, including but not limited to Customer’s collocation space on Cybernet’s or its Affiliate’s or Underlying Vendor’s property, where Cybernet installs or provides a Service.

**“Software”** means software, including APIs, and all associated written and electronic documentation and data Cybernet furnishes to Customer.

**“Start of Service Date”** means the date billing commences and the initial date that begins the Monthly Minimum Recurring Charge, Minimum Payment Period, and the Minimum Retention Period.

**“Third-Party Service”** means a service provided directly to Customer by a third party under a separate agreement between Customer and the third party.

**“Underlying Vendor”** means any Third Party that provides CyberNet with one or more element of a Service, including both paid and nonpaid “open source” vendors. Such elements may include, without limitation, network elements, such as local loops, internet access, voice termination, toll free, inbound voice traffic, Voice over IP or digital voice services, dark fiber, switched Ethernet, MPLS or VPLS, equipment, software, hardware, firmware, field services, and wiring materials.

**“User”** means anyone who uses or accesses any Service provided to Customer.

## **2. GENERAL**

- 2.1. Document Overview.** The Agreement sets forth the terms and conditions under which CyberNet will provide Services described in one or more Order Forms submitted by Customer and accepted by CyberNet in accordance with the procedures set forth herein. Upon acceptance, Order Forms, including all pricing and other terms and conditions specified in the accepted Order Form, shall become part of the Parties’ Agreement. If there is any conflict or inconsistency between the provisions of the documents constituting the Agreement, priority shall ordinarily be given to the provisions of such documents in the following order: highest priority shall be given to the provisions of these CyberNet Terms and Conditions; second priority to the provisions of the applicable Order Form; and third priority to the provisions of any applicable SLA; with lowest priority being given to the provisions of any other incorporated documents. However, in the case of HaaS, priority shall be given to the provisions of the pertinent documents in the following order: highest priority shall be given to the provisions of the HaaS Procurement Terms and Conditions; second priority shall be given to the provisions of these CyberNet Terms and Condition; third priority to the provisions of the applicable Order Form; and fourth priority to the provisions of any applicable SLA; with lowest priority being given to the provisions of any other incorporated documents.
- 2.2. Tariffs.** Customer acknowledges that certain Services may be regulated and governed by tariffs filed with the Federal Communications Commission or the state public utilities commission. In the event of any inconsistencies between the Agreement and an applicable tariff, the tariff shall control except as otherwise permitted by the provisions of the tariff or applicable law.
- 2.3. Term of Agreement.** The term of the Agreement shall begin on the Effective Date specified in the MSA and shall continue for at least as long as there is an active Order Form in effect. In the event there are no longer any active Order Forms in effect, the Agreement will continue in effect indefinitely until such time as it is terminated by either Party in writing upon a minimum of ninety (90) days’ notice.
- 2.4. Term of Order Forms; Automatic Renewal.** Each Order Form has its own term, which commences as the date the Order Form is accepted by CyberNet and continues through the end of the applicable MPP. The starting period for each Order Form’s MPP is the applicable Start of Service Date Unless cancelled by either Party by notice given at least forty-five (45) days before the end of the applicable MPP, the term of the Order Form will automatically renew at the then-current General Terms and Conditions and, if applicable, the then-current HaaS Terms and Conditions, and CyberNet’s then-current pricing for the affected Services for successive MPPs of equal length until canceled by either Party, effective as of the end of the then-current MPP, upon forty-five (45) days’ advance notice.

## **3. ORDERING AND PROVISION OF SERVICES**

- 3.1. Orders.** Customer may order Services from time to time by submitting a completed Order Form to CyberNet. An Order Form shall become effective and incorporated into the Agreement when (i) it is specifically accepted by CyberNet either electronically or in writing or (ii) CyberNet begins providing (or in the case of HaaS, delivers) the Service described in the Order Form, whichever is earlier. At CyberNet’s sole discretion, Cybernet may assign to an Affiliate the right to accept and provide Service pursuant to an Order Form in the Affiliate’s own name. In such event, the contract formed by such acceptance shall be deemed to incorporate the provisions of these CyberNet Terms and Conditions, (substituting the Affiliate for CyberNet wherever appropriate) and shall be deemed a separate contract enforceable only by or against the Affiliate.

- 3.2. Deposits or Other Security for Payment.** CyberNet reserves the right to require Customer to provide a deposit or post other ongoing security in such amount and form that CyberNet in its sole discretion deems necessary to ensure payment for any Service. Such deposit or other security initially shall be limited to twice the amount of the applicable MMRC. CyberNet may, but is not required to, apply any such deposit in payment of amounts that are outstanding following the due date, Customer shall remain liable for all outstanding amounts exceeding the applied deposit. In the event CyberNet applies a deposit toward amounts owed by Customer, CyberNet shall be permitted to immediately suspend continued provision of Services until Customer replenishes the deposit and provides such other and further security for payment that CyberNet reasonably determines in its sole discretion is appropriate under the circumstances.
- 3.3. Provision of Services.** Subject to Customer's provision of any necessary access rights and fulfillment of its other responsibilities under the Agreement, CyberNet shall use commercially-reasonable efforts to provide the Service(s) specified in an effective Order Form by the date(s) specified therein, if any, or otherwise within a reasonable time after the Order Form becomes effective. In any event, CyberNet will provide an estimated target date by which a requested Service will be ready for use by the Customer (the "SOC Date"). If CyberNet determines that the targeted SOC Date needs to be revised, CyberNet will inform the Customer of the new SOC Date as soon as practical. In no event shall any change in the targeted SOC date or CyberNet's failure to provide Service by the SOC Date constitute a breach of the Agreement or otherwise give rise to any liability on the part of CyberNet for any delay or failure in delivering the Service.
- 3.4. Acceptance of Service.** Once CyberNet notifies the Customer that a Service is ready for the Customer's use (or in the case of HaaS, the Service is delivered to Customer), the Customer shall have two (2) business days to test the Service for conformity to the specifications in the Order Form. If the Customer determines that the Service does not meet such specifications, the Customer must notify CyberNet within such two (2) day period of the specific manner in which the Service deviates from the specifications. CyberNet will thereafter take commercially-reasonable steps to rectify any such issues and notify the Customer when such work is completed. Customer will then have two (2) additional business days to re-test the Service, and if the Service continues to deviate from the specifications, the foregoing process will be repeated until the Service complies. If the Customer does not report non-compliance within the applicable testing period, the Service will be deemed accepted with the Start of Service Date being effective as of the end of such period.
- 3.5. Service Modifications.** CyberNet may, without any liability, at any time change, update, modify, or replace the technical features of any Service at its discretion and without prior notice to the Customer, provided that the resulting Service is consistent with the requirements set out in the applicable Order Form and provided that such change, modification, or replacement does not result in a material deterioration to the Service.
- 3.6. Use of Underlying Vendors and Contractors.** CyberNet may rely on Underlying Vendors or other third parties selected by CyberNet in its sole discretion to fulfill any of its obligations under this Agreement.
- 3.7. Cybernet Equipment.** CyberNet will provide, maintain, and repair its network facilities and CyberNet Equipment used to provide the Services. Customer is responsible for providing adequate space and electric power for any On-Premise Equipment and keeping On-Premises Equipment physically secure and free from liens and encumbrances. Customer shall not tamper with, remove, or conceal any CyberNet identifying plates, tags or labels. Customer shall be responsible for any loss or damage to On-Premises Equipment (other than ordinary wear and tear), except to the extent caused by Cybernet or its agents. Upon termination of the Agreement or any applicable Order Form, CyberNet shall be entitled to immediately remove any related On-Premise Equipment.
- 3.8. Digital Assets.** The assignment of phone numbers, IP addresses, or other Digital Assets for Customer's use does not constitute a transfer of any property or other rights with regard to the Digital Assets. Subject to any limitation of applicable law, CyberNet may withdraw or reallocate any Digital Assets if it is reasonable to do so, which is always deemed to be the case when:
- (i) an order is terminated or withdrawn before activation;
  - (ii) such action is required pursuant to any change in the relevant national numbering plan;

- (iii) CyberNet is required to do so by applicable law;
- (iv) Customer does not use one or more Digital Asset(s) for three (3) successive months; or
- (v) the Digital Asset is withdrawn or reassigned by the underlying carrier or other supplier of the Digital Asset.

### **3.9. Customer Equipment.**

- 3.9.1. HaaS Terms and Conditions.** Each Order Form for HaaS, whether designated as a Haas Order Form or not, shall be deemed to incorporate all of the terms and conditions of the HaaS Terms and Conditions, then in effect.
- 3.9.2. CyberNet Ownership of HaaS.** Title to and ownership of HaaS shall at all times remain in CyberNet. Customer shall keep all HaaS physically secure and free from liens and encumbrances, and Customer shall identify HaaS as CyberNet's property. Customer shall not attempt to sell, encumber, or otherwise transfer any interest in HaaS, and Customer shall not tamper with, remove, or conceal any CyberNet identifying plates, tags or labels. Customer agrees that CyberNet is entitled to file any document necessary to demonstrate and secure its ownership in HaaS, including, without limitation, a UCC-1 financing statement, and Customer shall cooperate with CyberNet in completing and filing and execute any documents necessary to demonstrate and secure CyberNet's ownership interest HaaS.
- 3.9.3. Responsibility for Loss and Damage.** Customer shall be responsible for any loss or damage to HaaS (other than ordinary wear and tear), except to the extent caused by CyberNet or its agents. Upon termination of this Agreement or any applicable Order Form, affected HaaS shall be immediately returned to CyberNet in the same condition as installed, normal wear and tear excepted.
- 3.9.4. Installation and Use.** Customer is solely responsible for providing suitable building facilities and equipment (including but not limited to space, circuitry, power, backup power, and surge protectors) for the installation, operation, and maintenance of its equipment, including Purchased Equipment and HAAS, in accordance with the manufacturer's documentation and CyberNet's installation standards, if any, as more fully described in the applicable Order Form. Customer shall not sub-lease, lend, or otherwise allow any person other than Customer's employees to use HaaS without prior written consent of provider.
- 3.9.5. Title to Purchased Equipment.** Title to and risk of loss of Purchased Equipment shall pass to Customer on delivery to the transport carrier for shipment to Customer's designated location.
- 3.9.6. Compliance with Software License.** Customer shall comply fully with the terms of any software license applicable to use or operation of HaaS or other Services.

## **4. NETWORK DEMARCATION; ACCESS TO PREMISES AND SPACE**

- 4.1. CyberNet Responsibilities.** CyberNet shall be responsible for the provision of appropriate facilities on its network to the established point of demarcation or interface ("Demarcation" or "Demarc") with premise wiring or cabling at the Customer's location. If CyberNet determines that unusual circumstances require special construction for such purpose, CyberNet reserves the right to cancel the affected Order Form unless Customer agrees to pay for the cost of such special construction. If Customer does not so agree, the Order Form shall be deemed cancelled without liability to either Party.

### **4.2. Customer's Responsibilities.**

- 4.2.1. Rights of Access.** Customer is responsible, at its expense, for arranging all necessary rights of access from the public rights of way to the Demarc and within the premises, including space for cables, conduits, and equipment as necessary for CyberNet to install, repair, inspect, maintain, replace, or remove its network facilities and equipment. In addition, if CyberNet requires rights of access to building wiring, risers, laterals, or closets to reach Customer, Customer shall obtain the same from the building owner at Customer's expense. Customer is further responsible for providing CyberNet with reasonable access to Customer's premises during normal business hours for the purpose of installing, inspecting, testing, rearranging,

repairing, or removing any Services and CyberNet Equipment, or otherwise carrying out work under this Agreement, and at such other times as necessary to carry out emergency restorations and temporary provisioning of wiring and electronic equipment. Customer shall provide all authorizations, including approvals, permits, or licenses from third parties, needed by CyberNet in connection with such work.

**4.2.2. Provision of Facilities, Wiring, and Equipment Space.** Customer is responsible for providing all necessary building facilities and wiring on Customer's side of the Demarc, including a secured space with electrical power, and protection against fire, vandalism, and other casualty for any CyberNet Equipment, ducting, conduit, structural borings for cable and conductors in floors, ceilings and walls, electrical service with suitable terminals and power surge protection devices, and metallic grounds with sufficient slack in the equipment room. All building facilities, wiring, and equipment must conform to the National Electrical Code, local codes, and CyberNet's reasonable installation standards if installation standards have been provided by CyberNet to Customer. If requested by Customer, CyberNet may, at Customer's expense, provide premises wiring to connect the Service to the Demarc interface. Customer shall provide any information reasonably needed by CyberNet, such as design layout records of any Customer or third-party network elements to be connected to the Services.

**4.2.3. Cooperation.** Customer shall cooperate in good faith and follow through with any reasonable coordination efforts and requests by CyberNet in a timely manner.

## **5. USE OF SERVICES**

- 5.1. Resale of Services.** Customer may not resell the Services or rebrand the Services for resale to third parties without Cybernet's prior written consent.
- 5.2. Authorized Use.** Services are provided for business purposes and not for personal or household use. Only the Customer and persons authorized by Customer are permitted to use Services. Customer agrees to follow and ensure that all Users abide by the terms and conditions of any software licenses or sublicenses granted in connection with CyberNet's provision of Services, and CyberNet's Acceptable Use Policy ("AUP"), which can be found at [aup.cybernetcom.com](http://aup.cybernetcom.com) and is incorporated herein by reference. The AUP is subject to change and the Customer may at any time access the latest AUP at the website referenced above.
- 5.3. Security.** Customer is responsible for the selection, implementation, and maintenance of security features for protection against unauthorized or fraudulent use of the Services and related equipment on Customer's premises. Customer is solely responsible for ensuring that all of Customer's data files on Customer's premises are adequately duplicated and documented. CyberNet and its Underlying Vendors and other contractors are not responsible for any data losses under this Agreement. Customer is responsible for the security of all of its assigned access numbers, computer access credentials and authorization codes, and for maintaining the security of its owned voice or data equipment, computers, and other equipment on Customer's premises, and all service and equipment capabilities, and functionalities within Customer's control that afford the potential for remote access, computing capability, traffic generation, dialing, call completion, and similar capabilities.
- 5.3.1.** Customer shall be liable for misdialed and fraudulent use of toll and other Services furnished by interconnected carriers, or other Underlying Vendors, whether completed over Customer's assigned access lines, or completed using remote access, dialing, call completion, or similar capabilities of Services or equipment furnished to Customer.
- 5.3.2.** CyberNet reserves the right to periodically change any previously-assigned access numbers, computer access credentials, and authorization codes at any time upon notice to Customer.

## **6. MAINTENANCE**

- 6.1.** CyberNet shall provide maintenance of Services as CyberNet reasonably determines is necessary. In the event of a service issue or event requiring support or assistance from CyberNet, Customer must report the issue to CyberNet's Network Operating Center via phone to 877-333-0303 or via email to

support@cybernetcom.com. If a response is not received to an email submission, the Customer must follow up via phone to confirm receipt and delivery of the reported issue. CyberNet at its sole discretion may choose to change the communication methods, email address, or phone number upon fifteen (15) days' notice to the customer.

- 6.2. CyberNet shall provide Customer with no less than five (5) days' notice of any regular maintenance work that may result in disruption of a Service. In the event that emergency maintenance or repair work is required, including, without limitation, repairs to CyberNet's network facilities or On-Premises Equipment, CyberNet shall endeavor to provide as much notice to Customer as is feasible, under the circumstances.
- 6.3. If CyberNet is unable to access Customer's premises or is otherwise prevented by Customer's actions or inactions from performing any regular or emergency maintenance work on the date and at the time scheduled for such work, as specified in CyberNet's notice, Customer shall be liable for any related costs reasonably incurred by CyberNet, including but not limited to travel at normal rate and overtime labor rates, as applicable. In addition, in the event that repair or other maintenance work is required as the result of: (i) alteration, faulty maintenance or repair work by any person other than CyberNet, without CyberNet's prior written consent; (ii) mishandling, abuse, misuse, improper operation, improper storage, or improper installation of any Service or Premises Equipment by anyone other than CyberNet (including use in conjunction with electrically or mechanically incompatible equipment); or (iii) any other cause or circumstance within Customer's control, Customer shall be responsible for CyberNet's full cost of performing such work.
- 6.4. Only authorized agents and representatives of CyberNet may perform maintenance work. In the event that any repair, alteration, configuration, or servicing of HAAS, CyberNet's network facilities, or CyberNet Equipment is undertaken by Customer or any third party without the written consent of CyberNet, Customer shall be deemed in breach of the Agreement and CyberNet shall have the right to suspend or terminate affected Order Forms or the Agreement in its entirety as well as pursue any other remedies available under the Agreement or applicable law.

## 7. **PRICING AND BILLING**

- 7.1. **Pricing for Services.** Customer is responsible for paying all charges for Services furnished by CyberNet at the rates specified in the applicable Order Form, including any Provider Surcharges specified in the applicable price and fee list for the Service. CyberNet will bill for Services on a monthly basis, with recurring charges being billed in advance and any usage charges being billed in arrears. For the purpose of computing partial month charges, a month will consist of thirty (30) calendar days. In addition, CyberNet will bill Customer in advance for any NRCs specified in the applicable Order Form.
- 7.2. **Government Fees and Taxes.** Prices set forth in an Order Form are exclusive of government-imposed taxes and fees. Customer is responsible for paying all taxes and other government-imposed fees (excluding those on Cybernet's net income) that CyberNet is required to remit or that are imposed on CyberNet incident to the provision, sale, or use of Services, whether imposed on CyberNet or Customer, including, without limitation, amounts at the rates specified by the Federal Communications Commission to cover the costs of mandatory federal Universal Service Fund contributions by CyberNet, TRS, LNP, and NANP fees, and similar fees, taxes, or surcharges imposed by the state public utilities commission or any other local, state, or federal governmental body.
- 7.3. **Billing.** Customer's obligation to pay for a Service begins as of the Start of Service Date. Customer will pay Cybernet without deduction, setoff, or delay for any reason. At Customer's request, but subject to Cybernet's consent (which may not be unreasonably withheld or withdrawn), Customer's Affiliates may be invoiced separately, and Cybernet will accept payment from such Affiliates. Customer will be responsible for payment if Customer's Affiliates do not pay charges in accordance with the Agreement
- 7.4. **Payments.** The Customer is required to make payment by the date specified on CyberNet's billing statement, ensuring that the payment references the invoice number. All payments must be made in U.S. dollars unless otherwise stated on the invoice. Any conditions or notations written on checks will be considered invalid. The Customer is responsible for reimbursing Cybernet for any expenses incurred in the process of recovering late or refused payments, including but not limited to legal fees. For any

payment that is not made by the due date, Cybernet may impose late payment fees for each day that a payment remains unpaid after the due date, calculated at the lesser of either (a) two percent (2.0%) per month, which equates to twenty-four percent (24%) annually, or (c) the highest rate permissible by applicable law. Additionally, if the Customer's outstanding amount remains unpaid for more than forty-five (45) days after the due date, the Customer consents to automatic deductions via ACH for all monthly charges that are not currently disputed.

- 7.5. Disputed Charges.** If Customer disputes a charge, Customer will provide notice to Cybernet specifically identifying the charge and the reason it is disputed within sixty (60) days after the date of the invoice in which the disputed charge initially appears, or Customer shall conclusively be deemed to have waived the right to dispute the charge. The portion of charges in dispute may be withheld pending resolution of the dispute. Following Cybernet's notice of the results of its investigation to Customer, payment of all properly due charges and properly accrued late payment fees must be made within ten (10) business days.
- 7.6. MMRC.** If Customer fails to satisfy the applicable MMRC in any month, Customer will pay a shortfall charge in an amount equal to the difference between the actual billed revenue for the associated Service and the total of the applicable MMRC.

## **8. CONFIDENTIAL INFORMATION**

- 8.1.** Confidential Information means the Agreement, including without limitation, Service pricing and other Service-specific terms and conditions set forth in an Order Form, as well as any information related to the past, current, or proposed operations, business or strategic plans, financial statements or reports, technology or services of CyberNet or any Affiliate that CyberNet discloses or otherwise makes available in any manner to Customer, or to which Customer may gain access, or which either Customer knows or has reason to know is Confidential Information of CyberNet or any Affiliate, whether such information is disclosed orally, visually, or in writing, and whether or not bearing any legend or marking indicating that such information is confidential. Confidential Information shall be and remain the sole property of CyberNet. Customer shall not use any Confidential Information for any purpose not expressly permitted by this Agreement or disclose the Confidential Information to any person or entity without the prior written consent of CyberNet. Customer shall protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Customer protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Customer shall not copy, duplicate, or reproduce any Confidential Information without the prior written consent of CyberNet. Customer shall return to CyberNet all Confidential Information and all copies thereof in Customer's possession or control, and permanently erase all electronic copies of such Confidential Information promptly upon the written request of CyberNet or the termination or expiration of the Agreement.
- 8.2. Exclusions.** The obligation to maintain the confidentiality of the Confidential Information shall not apply to such portion of the Confidential Information that can be established by credible evidence: (i) as already generally available to the public or that becomes public and generally available (other than as a result of breach of this Agreement) after Customer discloses it to a recipient; (ii) to have been lawfully acquired by the recipient from a third party without breach of a confidentiality restriction; or (iii) that the recipient can demonstrate by written proof was independently developed by the recipient without use of or reference to the Confidential Information.

## **9. LIMITATIONS OF LIABILITY; DISCLAIMER OF WARRANTIES, INDEMNIFICATION**

Customer acknowledges that the provision of telecommunications services and facilities is a complex undertaking, and that no assurance can be given by CyberNet that its provision of services or facilities, or transmissions or attempted transmissions over such services or facilities, will not be subject to outages, failures, inadequacies, mistakes, omissions, interruptions, delays, errors, or other defects. The Customer also acknowledges that CyberNet has no practical means to prevent and insure against the types and extent of losses, injuries, liabilities, damages, or other harm that may be incurred by the Customer, authorized users, or third parties with whom the Customer or authorized users may seek to communicate as the result of such outages, failures, inadequacies, mistakes, omissions, interruptions, delays, errors, or other defects, and that the Customer alone, is in a position to prevent and insure against such losses, injuries, liabilities, damages, and other harm. For these reasons, the Customer will be responsible for obtaining any insurance and taking any other measures

that may be prudent or necessary in order to protect the Customer, Users, and other third parties from any losses, injuries, liabilities, damages, and other harm that may be caused by or in any way result from any such outages, failures, inadequacies, mistakes, omissions, interruptions, delays, errors, or other defects, irrespective of the nature or cause thereof. Therefore, Customer and CyberNet agree:

- 9.1. LIMITATIONS ON CYBERNET LIABILITY.** THE LIABILITY OF CYBERNET, ITS AFFILIATES, AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, OWNERS, CONTRACTORS, AND AGENTS FOR ANY OUTAGE OR INTERRUPTION OF SERVICE SHALL BE LIMITED TO THE CREDITS OR REFUNDS, IF ANY, THAT ARE SPECIFIED, IN AN APPLICABLE SLA, OR, IN THE CASE OF ANY DEFECT OR MALFUNCTION IN HAAS, SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF HAAS COMPONENTS IN ACCORDANCE WITH THE HAAS TERMS AND CONDITIONS. THE LIABILITY OF CYBERNET, ITS AFFILIATES, AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, OWNERS, CONTRACTORS, AND AGENTS FOR ANY LOSS, INJURY TO PERSON OR PROPERTY, LIABILITY, DAMAGE, OR OTHER HARM OF ANY NATURE THAT IS DUE TO ANY OTHER CAUSE SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AMOUNT PAID BY THE CUSTOMER TO CYBERNET FOR RELATED SERVICE DURING THE PRECEDING TWO MONTHS, IRRESPECTIVE OF WHETHER SUCH LIABILITY ARISES IN WARRANTY, TORT, BREACH OF CONTRACT, OR OTHER FORM OF ACTION AND IRRESPECTIVE OF WHETHER SUCH LIABILITY IS DUE TO NEGLIGENCE OR OTHER ACT OR FAILURE TO ACT BY CYBERNET, ITS AFFILIATES, OR THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, OWNERS, CONTRACTORS, OR AGENTS. NOTWITHSTANDING THE FOREGOING ,UNDER NO CIRCUMSTANCES WHATSOEVER SHALL CYBERNET, ITS AFFILIATES, OR THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, OWNERS, CONTRACTORS, OR AGENTS BE LIABLE TO CUSTOMER FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, AND IN NO EVENT WILL CYBERNET, ITS AFFILIATES, OR THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, OWNERS, CONTRACTORS, OR AGENTS BE LIABLE FOR ANY OUTAGE, FAILURE, INADEQUACY, MISTAKE, OMISSION, INTERRUPTION, SOFTWARE BUG, DATA LOSS, COMPUTER SYSTEM COMPROMISE, DATA BREACH, DELAY, OR OTHER DEFECT CAUSED BY THE CUSTOMER OR BY FACILITIES, SERVICES, OR EQUIPMENT PROVIDED BY THE CUSTOMER, OR BY THE ACTS OF OTHER COMMUNICATIONS CARRIERS, UNDERLYING VENDORS, USERS. OR ANY OTHER THIRD PARTY.
- 9.2. DISCLAIMER OF WARRANTIES.** CYBERNET WARRANTS THAT EQUIPMENT HARDWARE LEASED TO CUSTOMER AS HAAS WILL FUNCTION FOR ITS INTENDED PURPOSE. SUCH WARRANTY DOES NOT EXTEND TO ANY SOFTWARE. OTHERWISE, ALL SERVICES AND ALL SOFTWARE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND BY CYBERNET. CYBERNET MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING. FURTHER, CYBERNET MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT CYBERNET'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S DATA AND INFORMATION. CYBERNET'S SOLE RESPONSIBILITY WITH RESPECT TO PURCHASED EQUIPMENT, AND, EXCEPT AS SET FORTH ABOVE, HAAS, OR ASSOCIATED SOFTWARE IS TO PASS THROUGH ANY WARRANTIES THAT MAY BE AVAILABLE FROM THE MANUFACTURER OR LICENSOR. THE MANUFACTURE OR LICENSOR, AND NOT CYBERNET, IS SOLELY RESPONSIBLE FOR ANY SUCH WARRANTIES AND RELATED TERMS AND COMMITMENTS. ALL SOFTWARE, HAAS, AND PURCHASED EQUIPMENT IS OTHERWISE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS.



**9.3. INDEMNIFICATION BY CUSTOMER.** THE CUSTOMER SHALL DEFEND AND INDEMNIFY CYBERNET, ITS AFFILIATES, AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, OWNERS, CONTRACTORS, AND AGENTS (“INDEMNITEES”) AGAINST, AND HOLD SUCH INDEMNITEES HARMLESS FROM, ALL LOSS, LIABILITY, DAMAGE, AND EXPENSE, INCLUDING REASONABLE ATTORNEYS FEES, DUE TO: CLAIMS OF LIBEL, SLANDER, OR INFRINGEMENT OF COPYRIGHT IN CONNECTION WITH MATERIAL TRANSMITTED OVER CYBERNET’S NETWORK FACILITIES OR SERVICES; CLAIMS FOR ANY LOSS, INJURY TO PERSON OR PROPERTY, LIABILITY, DAMAGE, OR OTHER HARM OF ANY NATURE ARISING OUT OF ANY OUTAGE, FAILURE, INADEQUACY, MISTAKE, OMISSION, INTERRUPTION, LOSS OF DATA, DELAY, OR OTHER DEFECT IN CYBERNET’S PROVISION OF SERVICES OR FACILITIES OR TRANSMISSIONS OR ATTEMPTED TRANSMISSIONS OVER SUCH SERVICES OR FACILITIES; CLAIMS FOR PATENT INFRINGEMENT ARISING FROM CUSTOMER’S COMBINING OR CONNECTION OF CUSTOMER-PROVIDED EQUIPMENT TO CYBERNET’S FACILITIES OR SERVICE; AND ALL OTHER CLAIMS ARISING OUT OF OR IN ANY WAY RELATING TO CYBERNET’S PROVISION OF SERVICES AND FACILITIES OR OTHER PERFORMANCE UNDER THE AGREEMENT, IRRESPECTIVE OF ANY NEGLIGENCE, WHETHER PASSIVE OR ACTIVE, OR OTHER ACT OR FAILURE TO ACT ON THE PART OF ANY SUCH INDEMNITEE.

Cybernet will provide notice to Customer upon learning of any claim for which defense or indemnity be sought under the foregoing indemnification provisions, but failure to do so will have no effect except to the extent the Customer is unduly prejudiced by the delay.

## **10. SUSPENSION AND TERMINATION OF SERVICE**

**10.1. Non-payment.** In the event the Customer fails to pay, by the due date listed on the applicable invoice, any amount owing to CyberNet, CyberNet may, after providing seven (7) days’ advance written notice to the Customer, immediately restrict, suspend, or discontinue the affected Service. Notwithstanding the foregoing, CyberNet may, without notice, immediately restrict, suspend, or discontinue the Service, without incurring liability of any nature, in the event that any act or omission to act on the Customer’s part poses any actual or threatened interference with CyberNet’s provision of service to other persons, or in the event that the Customer has exceeded any established credit limit, supplied false or inaccurate information of a material nature in order to obtain Service, or evidenced any intent not to pay charges when due.

**10.2. Violation of AUP.** If Customer does not address a breach of the AUP within five (5) days of notification from CyberNet, CyberNet may suspend or block relevant Service Components. Nonetheless, Cybernet maintains the discretion to immediately suspend or terminate the Service Component in the event of:

- (i) Multiple or recurrent AUP infractions or grievances prompting Cybernet’s action;
- (ii) Adherence to a judicial directive or a governmental warning demanding cessation of specific actions;
- (iii) Cybernet’s assessment that:
  - (a) Continuation of the violation may subject CyberNet to liability or government sanctions;
  - (b) The breach could jeopardize or disrupt the integrity, customary operations, or security of Cybernet’s network or that of interconnected networks, or could impair or interfere with another customer’s usage of Cybernet services or the Internet;
  - (c) The breach poses an immediate threat of harm to Cybernet, its customers, or any other person.

**10.3. Fraud or Abuse.** If Cybernet determines in its sole reasonable judgment that the Customer is involved in activities including (i) defrauding Cybernet; (ii) using the Service for fraudulent activities against others; (iii) illegal utilization of the Service; (iv) abuse or misuse of Cybernet’s network or Service; or (v) disruption of another customer’s use of Cybernet’s network or services, Cybernet may proceed to immediately suspend or terminate the relevant Service or Service Component without notice. In instances where such actions substantially and negatively impact the Agreement as a whole, Cybernet may also

suspend or terminate any or all other Services or Service Components furnished under the Agreement or may terminate the Agreement in its entirety.

- 10.4. Hazardous Materials.** If Cybernet encounters any Hazardous Materials at a Service Site, Cybernet may immediately suspend all activities at the Service Site and otherwise suspend performance of any obligations that may be affected by the existence of Hazardous Materials until Customer removes the Hazardous Materials and remediates the Service Site at Customer's expense. If Customer fails to do so within a reasonable time, CyberNet may terminate the affected Services.
- 10.5. Other Breaches.** In the case of any breach for which a cure period is not specified, Customer shall have thirty (30) days following from notice from CyberNet to cure any breach. If Customer fails to do so, CyberNet may suspend or terminate the affected Service or the Agreement in its entirety effective upon notice to the Customer.
- 10.6. Effect of Termination.** Unless CyberNet terminates the Agreement in its entirety, the termination or suspension of one or more Services or Service Components by CyberNet will not affect the ongoing provision of any other Service and Customer shall remain responsible for fulfilling all payment and other obligations with respect to such other Services.
- 10.7. Preservation of Remedies.** The rights of suspension and termination of Service are in addition to, and not in lieu of, any and all remedies at law or equity that are otherwise available to CyberNet, and the Customer will remain liable to CyberNet for all unpaid amounts and other liabilities notwithstanding CyberNet's restriction, suspension, or discontinuance of service.

## **11. TERMINATION CHARGES**

- 11.1.** If CyberNet terminates a Service for cause or the Customer cancels a Service without cause before the end of the MPP, the Customer shall be liable to CyberNet for all amounts incurred prior to the effective date of termination or cancellation, plus an early termination fee equal to the total amount of MMRC for the remainder of the MPP, and, if such termination or cancellation occurs before the end of the MRP, Customer shall also be liable for the amounts of all previously waived Non-Recurring Charges. The Parties agree that actual damages in the event of early termination would be difficult or impossible to determine and that the early termination fee and other charges payable under this Section for early termination are intended to be liquidated damages and not penalties.

## **12. IMPORT/EXPORT CONTROL**

- 12.1.** Both Parties are obliged to handle any equipment, services, software, or technical data acquired under the Agreement in strict accordance with all relevant import and export laws, treaties, and regulations, and shall not use, distribute, transfer, or export such items (even when integrated into other products) except in full compliance with such legal requirements.

## **13. GOVERNMENT REGULATION**

- 13.1.** To the extent that any Service(s) provided hereunder are subject to the jurisdiction of the Federal Communications Commission ("FCC") or any state public utilities commission or other regulatory agency, the Agreement shall at all times be subject to such changes as are mandated by orders, regulations, or other requirements of such agency. CyberNet reserves the right to suspend, modify, or terminate any Service without liability where any statute, regulation, order, regulation, or other requirement of law (i) prohibits, restricts, or otherwise prevents CyberNet from furnishing such Service, or (ii) has a material negative impact on CyberNet's performance hereunder or its rights and benefits under the Agreement.
- 13.2.** In the event of any change in applicable law, regulation, decision, rule, or order that materially increases CyberNet's costs or adversely affects CyberNet's delivery of the Services, CyberNet and Customer agree to negotiate regarding the rates to be charged to Customer to reflect such increase in cost or the revisions to the affected Order Form necessary to equitably adjust for such adverse effect. In the event that the Parties are unable to reach agreement within thirty (30) days after CyberNet's delivery of written notice requesting negotiation, then (i) CyberNet may pass such increased costs through to Customer upon thirty (30) days' notice to equitably adjust for such adverse effect, or (ii) Customer may terminate the affected

Order Form without liability by delivering written notice of termination no later than thirty (30) days after the effective date of the rate increase or other a materially-adverse change to the Order Form

#### **14. MISCELLANEOUS PROVISIONS**

**14.1. No Joint Venture.** Neither Party shall be deemed a partner, co-venturer, or otherwise a member of a joint enterprise with the other Party.

**14.2. Force Majeure.** Neither Party will be liable for any delay or other failure in the performance of any obligation on its part under the Agreement, other than the obligation to make timely payments for Services, due to causes or events beyond its reasonable control (“Force Majeure Event”), except to the extent such failure or delay in performance could have been avoided by the exercise of reasonable diligence. Force Majeure Events include: fire, flood, other catastrophes; atmospheric conditions or other phenomena of nature, such as radiation; national emergencies; acts of terror; pandemics; national emergencies; Underlying Vendor issues outside of CyberNet’s control; or civil disorder, insurrections, riots, wars, strikes, lockouts, work stoppages, or other labor disputes or shortages; or inability to reasonably obtain material, power, equipment or transportation. CyberNet will notify Customer if CyberNet’s performance is affected by a Force Majeure Event upon learning of the existence of one or more of the conditions set forth herein and will notify Customer when such condition(s) have ended. If a Force Majeure Event results in CyberNet being unable to perform its material obligations hereunder for more than thirty (30) consecutive days, Customer may elect to terminate any directly-affected Service upon thirty (30) days’ notice to CyberNet effective as of the end of such thirty (30) day notice period if CyberNet, in the meantime, has been unable to restore the Service. Upon such termination of the Service in accordance with this Section 14.2, the Service shall be deemed terminated with neither Party having any further obligation to the other, except for Customer’s obligation to pay for Services actually rendered in compliance with the Agreement prior to the date of termination of the Service.

**14.3. Amendments and Waivers.** Any supplement to or modification or waiver of any provision of the Agreement must be in writing and signed by both Parties.

#### **14.4. Assignment.**

**14.4.1.** Customer shall not assign the Agreement or any rights or obligations under the Agreement without CyberNet’s prior written consent, except that, upon prior notice to Cybernet, Customer may assign in whole or relevant part its rights and obligations under the Agreement to a Customer Affiliate.

**14.4.2.** CyberNet may, without Customer’s consent, assign in whole or relevant part its rights and obligations under the Agreement.

**14.4.3.** In the case of any assignment, the assigning Party shall remain financially responsible for the performance of the assigned obligations

**14.5. Severability.** If any portion of the Agreement is found to be invalid or unenforceable or if, notwithstanding Section 14.9 (Governing Law), the declared public policy or law of a state other than California applies to the Agreement and prohibits enforcement of a provision in accordance with California law, the remaining provisions will remain in effect and the Parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

**14.6. Legal Action.** Any legal action arising in connection with the Agreement, except for actions to collect unpaid amounts owed by the Customer, must be filed within two (2) years after the cause of action accrues or it will be conclusively deemed time-barred and waived notwithstanding the existence of any longer period in which such action might otherwise be brought under applicable law.

**14.7. Compliance With Law.** Each Party represents and warrants that its performance of its obligations under the Agreement will comply and conform with all applicable federal, state, and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of the Agreement and each Party will be responsible for applying for, obtaining, and maintaining all registrations and certifications which may be required by such authorities with respect to such performance.

**14.8. Notices.** Any notices to be provided under the Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission, such as e-mail, (in which case delivery will be deemed to have been effected on the day the transmission was sent).

Any such notice to CyberNet shall be sent to the address specified below (subject to any changes as CyberNet may identify by prior notice to Customer):

CyberNet Communications, Inc.  
Attn: Legal Department  
18425 Burbank Blvd  
Suite 711  
Tarzana, CA 91356  
E-Mail: legal@cybernetcom.com

Any such notice to Customer shall be sent to such address as specified in the MSA below (subject to any changes as Customer may identify by prior notice to Cybernet).

**14.9. Governing Law.** The Agreement shall be governed and construed in accordance with the laws of the State of California, United States of America, without regard to its conflicts of law principles. Both Parties agree to personal jurisdiction and venue in Los Angeles, California.

**14.10.No Third-Party Beneficiaries.** The Agreement is for the benefit of Customer and Cybernet and does not provide any third party (including Users) with any rights or interests, including, without limitation, the right to enforce or bring an action for any remedy, claim, liability, reimbursement, or cause of action, or any other right or privilege.

**14.11.Survival.** All provisions of these CyberNet Terms and Conditions that by their nature are intended to continue in effect and be binding upon the parties following termination of the Agreement shall remain in force after termination, including, without limitation, Section 8 (Confidential information), Section 9 (Limitation of Liability; Disclaimer of Warranties; Indemnification), Section 11.17 (Termination Charges), Section 14.6 (Legal Action), Section 19.8 (Governing Law), and Section 14.12 (Non-Disparagement).

**14.12.Non-Disparagement.** The Parties mutually agree to refrain from making any statements, whether orally or in writing, that negatively impact or harm the reputation, practices, or conduct of the other Party, including but not limited to, statements made in any public forum, social media platforms, blogs, or to third parties that may lead to unfavorable or adverse perceptions. The provisions of this Section apply to all forms of communication, public or otherwise, that could reasonably be expected to reach a wide audience, including comments made online, in the media, or in any other public setting. This Section does not restrict the Parties from making truthful statements as required by law, regulation, or under subpoena, or court order. A violation of this clause shall be considered a material breach of the Agreement. The non-breaching Party shall be entitled to seek appropriate relief, including but not limited to injunctive relief and monetary damages. This non-disparagement obligation shall survive termination of the Agreement.

**14.13.Dispute Resolution.** Except as otherwise specifically provided in or permitted by the Agreement, the Parties agree to endeavor to resolve all disputes, differences of opinion, or controversies arising in connection with the Agreement through good faith negotiation. If, after negotiating in good faith for a period of one hundred twenty (120) calendar days, or any other agreed upon period, the Parties are unable to resolve the dispute, then the Parties may seek resolution by exercising, subject to any limitation specified in the Agreement, any rights or remedies that may be available in law or equity.

**14.14.Entire Agreement.** The Agreement, as defined, constitutes the entire agreement between the Parties with respect to its subject matter. The Agreement supersedes all other agreements, proposals, representations, statements, and understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the Parties disclaim any reliance thereon.