

**REPUBLIC OF GUYANA****COUNTY OF DEMERARA****MASTER SERVICES AGREEMENT**

PLEASE READ THIS MASTER SERVICE AGREEMENT (“AGREEMENT”) CAREFULLY BEFORE USING THE SERVICES OFFERED BY ONE COMM (DEFINED BELOW). BY MUTUALLY EXECUTING ONE OR MORE SERVICE ORDER FORMS WITH ONE COMM WHICH REFERENCE THESE TERMS (EACH, “**SERVICE ORDER FORM**”), YOU (“**CUSTOMER**”) AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL SERVICE ORDER FORMS, THE “**AGREEMENT**”) TO THE EXCLUSION OF ALL OTHER TERMS.

For each Service Order Form, subject to Customer’s compliance with the terms and conditions of this Agreement, One Comm grants Customer a nonexclusive, limited, personal, non-sub licensable, non-transferable right and license to internally access and use the services specified in such Service Order Form (collectively, the “Service,” or “Services”) during the applicable Term (as defined below) for the internal business purposes of Customer, only as provided herein and only in accordance with One Comm’s applicable official user documentation for such Service.

**THIS MASTER SERVICE AGREEMENT** applies to Service or Services provided by **One Communications (Guyana) Inc.**, a company incorporated under the Companies Act of Guyana Cap 89:01 and continued under the Companies Act of Guyana 1991, whose registered office situate at Lot 79 Brickdam, Georgetown, Guyana on behalf of itself and its affiliates that may provide a portion of the Services (hereinafter collectively referred to as “**One Comm**”), pursuant to any Service Order Form signed or otherwise agreed to between One Comm and the Customer. One Comm and the Customer shall be collectively referred to as “the Parties” and such term shall, where the context so admits or requires, include their assigns, successors in title and interest and/or representatives.

**1. RELATIONSHIP TO OTHER DOCUMENTS.**

- 1.1 Capitalized terms not otherwise defined in this Agreement will have the meanings set out in **Appendix 1**, marked “Definitions,” attached hereto and incorporated herein by this reference to form part of this Agreement.
- 1.2 This Agreement contains the general conditions for the provision of Services by One Comm to the Customer. Service specific terms and conditions are set out in the applicable Service Order Forms, which shall all be incorporated into this Agreement to form part of same. Unless otherwise specified herein, the following priority applies to any conflict between the terms of documents relating to a Service: (i) any Addendum to a Service Order; (ii) the applicable Service Orders; and (iii) this Agreement.

**2. TERM.**

- 2.1 This Agreement is effective on the Service Commencement Date and shall continue for the Initial Term as set out in the applicable Service Order Form (the “Term”). A term will be selected by the Customer for each Service as specified in the Service Order Form which shall be the binding period for that specific Service (the “Service Initial Term”). The Service Initial Term starts on the Service Commencement Date.
- 2.2 This Agreement renews automatically for successive one-year periods at the expiration of the Initial Term, unless cancelled by either Party giving at least sixty (60) days written notice prior to the expiration of the then current term. Notwithstanding the foregoing, this Agreement shall not expire for so long as One Comm continues to provide Services under this Agreement through any Service Order Forms but shall remain in full force and effect until all such Services have terminated.

- 2.3 Subject to any contrary terms in Service Order Form or Addendum, at the end of the Service Initial Term (or

any extension) for any Service (in either case the "**Service Expiration Date**") the term for that Service will automatically be extended on the same terms and at the same rates and charges on a month-to-month basis until terminated by either Party upon sixty (60) days written notice to the other unless (i) the Customer notifies One Comm in writing at least forty-five (45) days before the applicable Service Expiration Date that the Customer does not wish the Service Term to renew, but wishes to terminate it on the Service Expiration Date, in which case One Comm will terminate that Service, and any associated local access circuits, on the Service Expiration Date; or (ii) One Comm agrees in writing to extend the service Term for a mutually agreed upon renewal period. If a Service renews on a month-to-month basis in accordance with this Section, then One Comm shall have the right to increase the rates and charges for that service (including charges for any associated local access circuits) upon thirty (30) days written notice to the Customer. If One Comm deems it necessary to discontinue offering a particular Service provided under this Agreement, then One Comm may terminate such Service upon ninety (90) days' prior written notice to the Customer.

### 3. **CHARGES AND PAYMENT.**

- 3.1 Commencing on the Service Commencement Date, the Customer will pay the applicable charges for each Service as specified in the applicable Service Order Form or Addendum.
- 3.2 a. The Customer will be billed for all Services as set out in the relevant Service Order Form or applicable Addendum. Except as otherwise specified by One Comm, invoices will be due and payable thirty (30) days from date of invoice. The invoice will also be emailed to the Customer. Invoices may be issued by One Comm or any of its Affiliates. Any invoiced amount not properly disputed under Section 3.4 hereof and not paid by the due date will bear a late payment charge at the rate of 1.5% per month (or such lower amount as may be required by law) until paid by the Customer and acknowledged by One Comm.
- b. One Comm shall, at its sole discretion, indicate the method of payment of the monthly charges.
- 3.3 The Parties (and their respective affiliates, parents, and subsidiaries) grant each other the right to offset any undisputed amounts incurred specifically for the provision and/or purchase of telecommunications and/or enhanced services ("**Offset Arrangement**") regardless of whether the obligation arose under this or any other current or future agreement or tariffed offering ("**Service Agreements**"). Such amounts may be offset after the expiration of any applicable notice and cure periods provided such amounts are more than twenty-four (24) hours past due under the respective then current payment terms.
- 3.4 Any dispute relating to an invoice shall be notified to One Comm by sending a billing dispute notice to One Comm within fourteen (14) days of the invoice date. The Customer must ensure that the billing dispute notice is sufficiently complete and describe in specific detail the basis for the billing dispute to enable One Comm to investigate the dispute. If a properly completed billing dispute notice is received by One Comm prior to the due date for payment of the applicable invoice then, if the Customer is not Delinquent in payment of any other invoice, the Customer may withhold the amount in dispute until the dispute is resolved. One Comm will communicate its resolution of any such dispute as soon as practicable and in any event within ninety days of receipt of a properly completed billing dispute notice. If the dispute is resolved in One Comm's favor, any amounts to be paid by the Customer shall be immediately due and payable and shall be subject to a late payment charge as referred to in Section 3.2. If the dispute is resolved in the Customer's favour, then any resulting amounts due to the Customer shall, as soon as practicable and provided that the Customer is not Delinquent in payment or otherwise in default of this Agreement, be applied as a credit against a subsequent Customer invoice. Invoiced amounts not disputed by the Customer in writing within fourteen (14) days from the date of invoice will be conclusively deemed undisputed and accepted by the Customer.
- 3.5 The Customer agrees that a breach of any other agreement it or its Affiliates may have with One Comm or a One Comm Affiliate shall be deemed a material breach of this Agreement.

### 4. **TAXES, ASSESSMENTS AND REGULATORY CHARGES.**

- 4.1 All payments made by the Customer under this Agreement will be made without any deduction or withholding for or on account of any Taxes unless otherwise mandated by law.
- 4.2 The Customer will be responsible for and will pay any applicable consumption, value added taxes or other national, regional, or local sales, use, excise, privilege, gross receipts or other similar taxes, duties or charges imposed by any governmental authority or regulatory body because of the existence or operation of this Agreement. One Comm will invoice the Customer for all applicable Taxes and such Taxes will be payable by the Customer unless the Customer produces to One Comm a valid resale certificate or other similar documentation legally sufficient to establish an exemption from Taxes.

**5. READY FOR SERVICE AND SERVICE COMMENCEMENT DATES.**

- 5.1 The Ready for Service Date for a Service will be as agreed between the Parties after submission of an Order Form for the Services and subsequently confirmed to the Customer in writing by One Comm, at its sole discretion thereof.
- 5.2 The Service Commencement Date for each Service will be the date upon which One Comm (after testing the Service) notifies the Customer (in writing or by electronic transmission) that the Service is available for the Customer use, unless the Customer, within forty-eight (48) hours, notifies One Comm of its non-acceptance on the basis that agreed technical specifications for the Service have not been met. In that case, further tests of the Service will be conducted, and a new Service Commencement Date will be agreed upon, provided that any Customer use of a Service for other than testing purposes following notice of non-acceptance will be deemed to constitute acceptance of that Service.
- 5.3 If the Customer is solely responsible for delay in a Ready for Service Date (including any delay caused because of the Customer ordering local access circuits directly from a third party), (i) the Customer will be liable to One Comm for any additional costs, and (ii) One Comm will amend the Ready for Service Date. If One Comm is solely responsible for delay in a Ready for Service Date, the Customer will be entitled, as its exclusive remedy, to any installation credits provided for in the SLA attached to each Order Form, where applicable, and, if the delay is for a period of thirty (30) days or more, to cancel its order without incurring any cancellation charges. If third parties or Force Majeure events are responsible for delay in a Ready for Service Date, or if the Customer, One Comm and/or third parties are jointly responsible for such a delay, One Comm and Customer shall jointly agree to a new date.
- 5.4 Further to Clause 5.3, prior to the Commencement Date, One Comm shall provide a test period of seventy-two (72) hours to assess the quality of the Services being provided. Provided that test period is satisfactorily completed, the charges incurred for the Services for this said period will be added to the amount due on the first monthly invoice at a prorated amount of the monthly reoccurring charges. If the Services during the test period is materially affected, the Services provided exclusively during the seventy-two (72) hours test period will be free of charge to the Customer.
- 5.5 The Customer will participate in any requested testing procedures and provide technician support services and a secure and safe environment to any One Comm or subcontractor personnel on the Customer's premises for purposes of installation, testing or maintenance.
- 5.6 One Comm's obligation for installation of any Service extends only to the installation of said Service at the applicable Customer Interface. Additional assistance or professional services in relation to the Customer's LAN or equipment will, if requested by the Customer, be provided at One Comm's discretion and will, if provided, be for the charge of the Customer as specified in the applicable Service Order Form.
- 5.7 One Comm will install Services during normal business hours, that is, between 08:30 and 16:30 local time, Monday through Friday, excluding local bank and other public holidays. Installations carried out, at the Customer's request, during periods outside those times may incur additional charges as set out in the Service Order Form.

## 6. **NETWORK MODIFICATION AND NETWORK MAINTENANCE.**

- 6.1 One Comm reserves the right to modify its Network, system configurations or routing configurations. One Comm may, at its sole discretion and without liability, change or modify the features and functionalities of a Service or modify or replace any hardware or software in the Network or in equipment used to deliver any Service if this does not have a material adverse effect on the quality of the Services being provided by One Comm to the Customer.
- 6.2 If applicable, maintenance support will be on a circuit level basis between One Comm Tier 1 POP and its International POP, or, where One Comm has arranged local access, between the Customer Interfaces. One Comm may perform scheduled or emergency maintenance (including temporary suspension of Service as necessary) to maintain or modify the Network, Network Terminating Equipment, or the Services. One Comm will give the Customer such notice of the maintenance as is reasonably practicable in the circumstances, provided that, in the event of scheduled maintenance, One Comm will give the Customer at least three (3) days prior notice.
- 6.3 One Comm provides trouble ticket support on a 365 x 7 x 24 basis. Trouble ticketing procedures will be provided to the Customer at time of order by the One Comm account representative. In any circumstances where One Comm dispatches technical assistance to the Customer's premises following the opening of a trouble ticket at the Customer's request, and the fault or Service outage is determined to be caused by something not within One Comm's control (such as, for example, a LAN problem at the Customer's premises or a problem with the Customer's equipment not managed by One Comm) (a "**Customer Fault**"), the Customer will be charged the greater of (a) the faulty vendor dispatch charge as set out in the Order Form for the applicable Service, and  
(b) third party costs incurred by One Comm in dispatching such technical assistance (including, but not limited to, costs incurred in having a third-party local access provider dispatch technical assistance to the Customer's premises). Trouble tickets are closed when the underlying issue either (i) has been resolved and Service has been restored, or (ii) is determined to be caused by a Customer Fault. If, in such circumstances, One Comm is requested to keep a trouble ticket open and provide additional troubleshooting assistance, One Comm will provide such assistance at its discretion at the then-current rate for professional services until the Customer instructs One Comm, in writing, to close the applicable trouble ticket.

## 7. **ARRANGEMENT BY ONE COMM OF LOCAL ACCESS.**

- 7.1 The Customer acknowledges that local access circuits are offered by One Comm on an "as available" basis and may be dependent upon the supply of access services from third party vendors. Local Access circuits provided by One Comm shall be installed at the Customer's premises in the Telco closet, Telco Room or other traditional point of interface identified by One Comm. The Customer acknowledges that One Comm's written agreement to provide local access circuits (if requested) is expressly conditional upon final confirmation and acceptance of the Customer's order for such circuits after submission of the Customer's order, at which time One Comm shall confirm (i) availability of such circuits, and (ii) the monthly recurring charge(s) payable in respect of such circuit(s) should the Customer decide to proceed with its order. This will be finalized by the execution of the Service Order Form.
- 7.2 If requested by the Customer, One Comm may arrange for the installation of 'extended demarcs'/inside wiring between the MPOE and the Customer LAN, at the Customer's premises or those of the Customer's clients where One Comm has agreed to install local access circuits. In such circumstances, the Customer acknowledges and agrees: (i) that agreement to arrange and/or install "extended demarcs" shall be on a case-by-case basis;  
(ii) that any such installation may be carried out by One Comm or third party contractors; (iii) that One Comm will arrange for the installation of "extended demarcs" only at locations at which the Customer has ordered local access circuits from One Comm; (iv) that the Customer will reimburse One Comm for all related charges levied by such third party contractors (including any subsequent break/fix charges); and (v) that the

agreement to install any such "extended demarcs" is conditional upon the Customer (and/or Customer's customer, as applicable) arranging

(a) physical access for such third-party contractors, on a timely basis, to any of the rights of way, conduits and/or equipment space necessary for such installations and (b) any consents or approvals required from applicable building owners and/or lessors necessary for such installations.

- 7.3 Physical Access at Circuit Location Address. In addition to its general responsibility to afford physical access to One Comm or its third party vendors, the Customer is responsible for: (a) arranging physical access for One Comm or its third party vendors, on a timely basis, to any of the rights of way, conduit and/or equipment space necessary to provide Service to the Customer's Circuit Location Address (that is, the Customer-specified location of the Customer Interface) and to cable installed in the Customer-provided conduit at any splice or junction box, to support installation, repair, maintenance, inspection, replacement or removal of any and all facilities and/or equipment for the Service provided by One Comm or its third party vendors; (b) providing, on a timely basis and without cost to One Comm, the necessary space, foundations, heating and cooling, conduit and electrical power required to terminate and maintain the facilities and Network Terminating Equipment (NTE) used to provide Service to a Circuit Location Address if provision of NTE is part of the agreement; and for affording One Comm or its agents access to the premises for installation and maintenance; and (c) ensuring that the equipment space and associated facilities, conduit and rights of way which it is providing are safe for work and are protected against fire, theft, vandalism or other casualty, and that the use thereof complies with all applicable laws, rules and regulations and with all applicable leases or other contractual agreements.
- 7.4 Title to any NTE will remain with One Comm or its suppliers, and the Customer may not (i) attempt to sell, charge or encumber NTE or (ii) add to, modify, or interfere with NTE, or allow any third party (other than someone authorized by One Comm) to do so.
- 7.5 The Customer will be liable for the costs of repair or replacement of NTE if damaged or lost due to loss, theft, destruction, negligence, intentional acts, unauthorized acts, irregular power supply or other causes, including but not limited to, acts of nature and fire. On termination of a Service, the Customer will make available any NTE for removal, or return it in the same condition as originally installed (ordinary wear and tear excepted), or Customer will pay for the restoration of NTE to original condition.
- 7.6 The Customer will provide any Customer Equipment as necessary to support the Services and provide equipment rooms compliant with applicable laws, One Comm conditions, and other environmental conditions as specified by the relevant equipment manufacturer and/or by One Comm. The Customer Equipment will conform to all applicable government regulations, and Customer will comply with the conditions of such regulations. One Comm may disconnect any Customer Equipment from the NTE and/or the Network if the Customer does not comply with this Section, or if, in the reasonable opinion of One Comm, such Customer Equipment poses a danger of death or personal injury, damage to One Comm property or materially impairing the Service(s) or the Network. The Customer will provide to One Comm such information as One Comm may reasonably require providing the Service(s), and the Customer will, at its own expense, modify the Customer Equipment in accordance with One Comm's reasonable instructions, provided such modifications are necessary to enable the Customer Equipment to be used in connection with providing the Service(s).
- 7.7 The Customer will if required under applicable law, or if requested by One Comm, notify any competent authority, or obtain any necessary permission from, or cooperation of a telecommunications network provider or other relevant person for the connection or maintenance of the Customer Equipment. One Comm will have no liability for any reason relating to failure to give such notification or to obtain such permission or cooperation.
- 7.8 In addition to the one-time Installation Charge and MRC for local access circuits, a customer ordering local access circuits from One Comm may also be responsible for miscellaneous charges including any charges for special construction requirements, expedited requests, or the like. The Customer acknowledges and agrees that the charges for local access circuits set forth on the Service Order Form are based upon the best



current information available to One Comm. In the event One Comm is notified by its third-party vendors of additional or different charges that will necessitate a change to either installation charges or MRC for such circuits, One Comm shall have the right to vary its charges for the Customer's local access circuits upon thirty (30) days advance written notice to the Customer and the Customer hereby unequivocally agrees to this.

- 7.9 Where the Customer chooses to have One Comm provision a Service between One Comm Tier 1 POP and its International POP and the Customer arranges its own local access circuits. Customer shall pay a POP Interconnection Fee, which is in addition to the MRC for access connections involving third party vendors. The POP Interconnection Fee shall be chargeable in consideration for the cross-connection between the access vendor's circuit and the Customer Interface. The POP Interconnection Fee varies depending upon the circuit speed of the access connection. The POP Interconnection Fee shall be listed on the Order Form. One Comm reserves the right to require the execution of an interconnect access agreement or similar agreement as a condition of facilitating interconnect access.
- 7.10 If for any reason the underlying Service associated with the One Comm Tier 1 POP and its International POP Interconnection to Customer is terminated (including by expiry of its applicable Initial Term without any renewal), Customer shall have no right to continue such interconnection or to otherwise occupy One Comm's facility, and One Comm shall have the right to take reasonable steps to disconnect same. In the event of such termination, the Customer shall, within fifteen days (15) from the date of termination or expiry of the underlying Service, take all reasonable steps to effect an orderly disconnection of the POP Interconnection, including but not limited to withdrawing, terminating and/or revoking any applicable Circuit Facility Assignment obtained through a local access provider. In the event the Customer fails to do so within the specified time limit, or is otherwise in material breach of this Agreement, after the expiration of any applicable notice and cure period,
- (i) the Customer hereby authorizes One Comm to disconnect the local access circuits from One Comm's Network and to instruct the local access provider on the Customer's behalf to remove the Customer's Circuit Facility Assignment from any One Comm shared or dedicated facility, and (ii) the Customer shall reimburse One Comm for all charges related to such local access circuits, including any ongoing charges levied by the local access provider until the local access circuit and any Circuit Facility Assignment is removed provided that the Customer's obligation to reimburse One Comm for these amounts shall not apply where (a) the underlying Service is terminated by the Customer pursuant to a right arising under this Agreement, and (b) the Customer disconnects the POP Interconnection within thirty days of such termination. The Customer will promptly on request cooperate with One Comm to enable One Comm to groom any Customer provided circuits. One Comm will provide a new letter of agency authorizing a new Circuit Facility Assignment for the Customer in connection with such grooming. If the Customer fails to cooperate with One Comm within thirty days of the request, One Comm shall be entitled to instruct the local access provider to remove Customer's existing Circuit Facility Assignment.
- 7.11 Billing for local access circuits provided by One Comm shall commence when installation of such circuits has been completed at that location, notwithstanding whether any 'extended demarc' arranged by the Customer has been completed at that time. Before the original RFS Date for the circuit, the Customer may, upon prompt written notice to One Comm, postpone the scheduled implementation date for that location. If the Customer postpones any scheduled implementation date for more than fifteen days beyond the original RFS Date, then, the sixteenth day following the original RFS Date shall be deemed the Service Commencement Date for the local access circuits provided by One Comm, and One Comm shall be entitled to commence billing for those local access circuits on that date, regardless of whether or not Customer has commenced using those local access circuits or the related One Comm Service.
- 7.12 In the event of cancellation of the Customer's order for local access circuits for any reason prior to the agreed RFS Date, Customer shall (i) pay One Comm, as liquidated damages, fifty percent of any installation and other non-recurring One Comm charges that were previously waived, (ii) reimburse One Comm for any costs incurred by One Comm in deploying any dedicated circuit(s), and (iii) be liable for any early termination or

cancellation fees charged to One Comm by the underlying local access provider.

- 7.13 The Customer agrees that title in any equipment provided by One Comm shall remain with One Comm while One Comm's Equipment is in or on the Customer's premises. The Customer shall be responsible for and will ensure that such Equipment is kept safe and secure and is not interfered with by any person. Any loss, damage and/or destruction to One Comm's Equipment while it is on the Customer's premises will be for the account of the Customer, and the Customer shall bear all costs associated with having same repaired and/or replaced, as advised by One Comm.

## 8. **TERMINATION AND TERMINATION CHARGES.**

- 8.1 If a foreign or state regulatory body (e.g. PUC, FCC), or a court of competent jurisdiction, issues a rule, regulation, law or order which has the effect of materially increasing the cost to provide Services hereunder or canceling, changing, or superseding any material term or provision of this Agreement (collectively "**Regulatory Requirements**"), then this Agreement shall be deemed modified in such a way as the Parties mutually agree is consistent with the form, intent and purpose of this Agreement and is necessary to comply with such Regulatory Requirements. Should the Parties not be able to agree on modifications necessary to comply with a Regulatory Requirements within thirty (30) days after the Regulatory Requirements is effective, then, upon written notice, either Party may, to the extent practicable, terminate that portion of the Agreement impacted by the Regulatory Requirements.
- 8.2 One Comm may terminate this Agreement, or any Service, or both, immediately on notice if the Customer fails to make any payment due under this Agreement.
- 8.3 Either Party may terminate this Agreement, any Service, or both, immediately on notice, if the other (a) commits a material breach of this Agreement (other than a failure to pay or provide security which is covered under Section 8.2), which is capable of remedy, and fails to remedy the breach within thirty days written notice, (b) commits a material breach of this Agreement which cannot be remedied, or (c) is repeatedly in breach of this Agreement.
- 8.4 One Comm may at its sole option, upon the occurrence of any of the events detailed in Section 8.2 or the Customer's breach as outlined in Section 8.3 giving One Comm a right to terminate this Agreement or any Service(s): (a) cease accepting or processing orders for Service(s) and suspend Service(s) without prejudice to its right to terminate this Agreement or the Service(s); (b) cease all electronically and manually generated information and reports (including any CDR not paid for by Customer); (c) draw on any letter of credit, security deposit or other assurance of payment and enforce any security interest provided by Customer; and/or (d) pursue such other legal or equitable remedy or relief as may be appropriate.
- 8.5 The Customer may at its sole option, and only upon One Comm's breach as outlined in Clause 8.3 hereof or if One Comm fails to deliver the service level agreed to by the Parties herein, terminate the Agreement by providing One Comm with thirty (30) days' prior written notice.
- 8.6 If this Agreement or any Service is terminated prior to the expiration of the initial or any renewal term (except if properly terminated by Customer for One Comm's breach under Section 8.3 or Section 8.5), then Customer shall pay to One Comm upon demand an early termination fee in an amount equal to the aggregate sum of each existing Service's MRC times the number of months remaining of the applicable term and all third party termination liability, as indicated by One Comm, in its sole discretion, for the Customer's termination. The Customer understands and agrees that such a termination fee is based on an agreed revenue expectation based on actual Customer Service data and is not a penalty and hereby agrees to paying same to One Comm.

8.7 Any notice of Service or Circuit availability and any notice of termination of Services by One Comm to Customer, permitted under this Agreement, shall be made to Customer in accordance with the "Notices" section of this Agreement. Any such "Notice of Termination of Services" shall take effect forty-five (45) days after it is sent by One Comm. Termination/disconnection requests by the Customer must be made by submitting a completed Services Disconnect Request Form to the One Comm Customer Service Manager ("CSM") assigned to the Customer's account. Service Disconnect request forms are available upon request from the CSM. All such termination/disconnect requests shall take effect forty-five (45) days after receipt and acknowledgement via e-mail by the One Comm CSM, provided that in the case of local access circuits and other service elements which are provided by third party subcontractors to One Comm, all such requests shall take effect sixty (60) days after receipt and acknowledgement by the CSM. Nothing contained herein shall relieve the Customer of applicable early termination penalties which may be due hereunder.

8.8 In the event of termination of a Service and/or this Agreement by One Comm under Section 8.2 or 8.5 above as a result of payment default by the Customer, One Comm shall have the right to retain the Customer equipment on One Comm premises pending satisfaction in full of the Customer's payment obligations under this Agreement.

## 9. **WARRANTY AND LIMITATION OF LIABILITY.**

9.1 WARRANTY AND DISCLAIMER. ONE COMM WARRANTS THAT IT WILL PERFORM SERVICES WITH REASONABLE SKILL AND CARE AND IN A WORKMANLIKE MANNER AND WILL USE REASONABLE EFFORTS TO RESTORE SERVICES IN THE CASE OF FAILURE. ONE COMM MAKES NO OTHER WARRANTY OR GUARANTEE RELATING TO THE SERVICES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE, AND ONE COMM EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS RELATING TO THE SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM ARISING FROM THE PERFORMANCE OF THE SERVICES IS SPECIFIED THE SLA APPLICABLE TO THE SERVICE, IF ANY.

9.2 LIMITATION OF LIABILITY. WITHOUT LIMITING THE REMEDY SPECIFIED IN AN APPLICABLE SLA RELATED TO THE SERVICES, ONE COMM'S ENTIRE AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS OF WHATEVER NATURE ARISING IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO CLAIMS OF NEGLIGENCE OR DAMAGE TO REAL OR PERSONAL PROPERTY, SHALL NOT EXCEED THE MONTHLY RECURRING CHARGE PAID BY THE CUSTOMER TO ONE COMM IN THE MONTH IN WHICH THE CLAIM FIRST AROSE, PROVIDED THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY FOR DEATH OR PERSONAL INJURY CAUSED BY ONE COMM OR ANY OTHER LIABILITY WHICH MAY NOT BY APPLICABLE LAW BE EXCLUDED OR LIMITED.

9.3 EXCLUSION OF LIABILITY. SUBJECT TO SECTIONS 9.1 AND 9.2, IN NO CIRCUMSTANCES SHALL ONE COMM, ITS SUBCONTRACTORS OR AGENTS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE: (A) THIRD PARTY CLAIMS AGAINST CUSTOMER FOR DAMAGES, (B) ANY DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO ANY SERVICE, PRODUCT OR ACTIONS OF ANY PERSON OTHER THAN ONE COMM, ITS EMPLOYEES AND AGENTS, INCLUDING BUT NOT LIMITED TO DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO COMPUTER VIRUSES, WORMS, COMPUTER SABOTAGE, 'DENIAL OF SERVICE' ATTACKS, DNS SPOOFING ATTACKS AND/OR OTHER HACKING ATTACKS OF A SIMILAR NATURE, OR (C) INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS.



9.4 IN NO CIRCUMSTANCE SHALL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL LOSS OR DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO ITEMS SUCH AS LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, OR LOST PROFITS.

9.5 NO ACTION OR PROCEEDING AGAINST ONE COMM WILL BE COMMENCED BY THE CUSTOMER MORE THAN TWO (2) YEARS AFTER THE SERVICE, WHICH IS THE BASIS FOR THE ACTION OR PROCEEDING, IS RENDERED, AND THE CUSTOMER ACKNOWLEDGES THAT THIS LIMITATION CONSTITUTES AN EXPRESS WAIVER BY IT OF ANY RIGHTS UNDER ANY APPLICABLE STATUTE OF LIMITATIONS, WHICH WOULD OTHERWISE AFFORD ADDITIONAL TIME.

## 10. **INDEMNITY.**

10.1 **Definition of Losses.** For the purposes of this Section, “**Losses**” means all losses, liabilities, damages, and costs (including Taxes) and all related costs and expenses (including reasonable attorney’s fees and disbursements and costs of investigation, litigation, and settlement).

10.2 The Customer shall indemnify, defend, and hold One Comm, its respective officers, directors, employees, agents, affiliates, successors, and assigns, harmless from and against all Losses arising out of or relating to: (i) a breach by the Customer or its Affiliates of any material representation of warranty provided under this Agreement; (ii) a breach by the Customer of the confidentiality provisions of this Agreement; and/or (iii) the death or injury of or damage to any person, or real or personal, tangible, or intangible personal property to the extent such injury or damage is proximately caused by the Customer’s negligence or willful misconduct; or (iv) a claim by a third party that the content, use and/or publication of information and communications transmitted by the Customer or its customers or authorized end-users using the Services, or accessible to third parties through the use by the Customer or its customers or authorized end-users of the Services (“**Content**”) infringes upon the rights of such third party, regardless of the form of action, whether in contract, tort, warranty, or strict liability and whether in respect of copyright infringement or any manner of intellectual property claims, defamation claims, claims of publication of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing material, or claims of infringement of data protection legislation.

10.3 **Indemnification Procedures.** If any claim in respect of Losses is asserted or any civil, criminal, administrative or investigative action or proceeding (any such claim, action or proceeding, a “**Claim**”) is threatened or commenced, in each case against any party seeking indemnification under this Section (an “**Indemnified Party**”), the Indemnified Party will promptly notify the Customer (the “**Indemnifying Party**”) in writing thereof. Any failure or delay by the Indemnified Party in giving such written notice shall not constitute a breach of this Agreement and shall not excuse the Indemnifying Party’s obligation under this Section, except to the extent (if any) that the Indemnifying Party is prejudiced by such failure or delay. If the Indemnifying Party acknowledges in writing an indemnification obligation under this Section, it will be entitled to elect, within thirty (30) days after its receipt of such notice, to assume sole control over the investigation, defense, and settlement of such Claim at its own cost, risk, and expense. Neither the Indemnifying Party nor the Indemnified Party shall enter a settlement of a Claim without the prior written consent of the other, which consent shall not be unreasonably withheld. After notice of a Claim by the Indemnified Party, if the Indemnifying Party does not elect to assume sole control of the defense of such Claim, the Indemnified Party will have the right to defend such Claim in such reasonable manner as it may deem appropriate, at the cost, risk, and expense of the Indemnifying Party. The Indemnified Party will have the right to participate in such defense at its own cost and expense. Each party, at its own cost and expense, agrees to provide reasonable cooperation and assistance to the other party in the investigation, defense, and settlement of any Claim, including but not limited to providing access to relevant information and employees.

## 11. **FORCE MAJEURE.**

Other than with respect to failure to make payments due hereunder, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by: fire; flood; earthquake; the elements; lightning; explosion; war; act of terrorism; strike; embargo; labor dispute; utility curtailments; power failures; government requirement; civil or military authority; act of god or nature; inability to secure materials or transportation facilities; acts or omission of carriers or suppliers (other than the parties themselves); acts or failures to act of any governmental authority; computer viruses or worms; 'denial of service' attacks, DNS spoofing attacks and/or other hacking attacks of a similar nature (provided that the parties have taken reasonable steps to prevent such hacking attacks) or any other causes beyond its reasonable control, whether or not similar to the foregoing providing that for any cause of force majeure the parties have taken reasonable steps to prevent such an event. Failure of either party to perform under this agreement, because of the occurrence of an event of force majeure lasting more than forty-five days will, upon twenty-four hours written notice to the other party, represent a ground for termination only of the service affected by such event.

## 12. **REGULATORY MATTERS; COMPLIANCE WITH LAWS; USE OF SERVICES AND SOFTWARE; ACCEPTABLE USE POLICY.**

- 12.1 One Comm, upon reasonable notice to the Customer, may cancel or suspend the provision of the whole or any part of any Service which is determined to be a violation of, or no longer permitted under, any applicable law or regulation or of One Comm's license in the jurisdiction. One Comm will make reasonable efforts to restore the Service or provide a permitted functionally equivalent substitute service on terms to be agreed.
- 12.2 The Customer will ensure that neither it nor its customers or other authorized third-party end users interfere with or disrupt other users of the Services or of the One Comm Network.
- 12.3 The Customer will use a Service only for the purposes for which it is designed and provided and subject to One Comm's terms, conditions, and policies.
- 12.4 The Parties shall comply with their licenses and all Laws applicable to this Agreement and to their respective businesses. The Customer shall only resell or otherwise allow third party use of a Service in accordance with all requisite approvals or authorizations to resell from governments or regulators in the jurisdictions where the Customer resells. Subject to the foregoing and except as set out in a Services Schedule, Service Order Form or Addendum, resale and third party use of a Service for the purpose for which it was designed and provided is not prohibited by this Agreement, provided that One Comm's performance obligations under this Agreement are solely to the Customer, and not to any third party.
- 12.5 The Customer warrants that any customers or other authorized third-party end users of the Customer will obtain all required licenses and permits and will comply with any Laws which may be applicable to the provision and use of the Services by such authorized third-party end users of Customer. Further, each Party shall obtain, file, and maintain any tariffs, permits, certifications, authorizations, licenses, or similar documentation as may be required by the FCC, a state Public Utility or Service Commission, or any other governmental body or agency having jurisdiction over its business ("**Authorizations**"). Upon the request of a Party, which request shall be no more frequent than once every six months (unless based on a request or order of a government body or agency having jurisdiction over either Party), the other Party will provide copies of the requested Authorizations.
- 12.6 One Comm hereby grants to the Customer a personal, non-exclusive, non-transferable license during the term of this Agreement to use, in object code form, all software and related documentation owned by One Comm ("**Licensed Material**") which may be furnished to Customer under this Agreement solely for use with the Service ordered. Any Licensed Material furnished to the Customer under this Agreement shall not be

reproduced or copied in whole or in part and will be returned to One Comm at the conclusion of the term (or earlier termination) of this Agreement.

- 12.7 The Customer is solely responsible for (a) content of information and communications transmitted using the Services, and (b) use and publication of communications and/or information using the Services. The Customer understands and agrees that One Comm is only an intermediary for the transmission of the Customer and third-party information, that One Comm plays a passive role as a conduit of information for the Customer and third parties, and that One Comm neither initiates the transmission of information, selects the receivers of the transmission, nor selects nor modifies the information contained in the transmission.
- 12.8 The Customer shall comply with One Comm's Acceptable Use Policy (the "**AUP**" or "**Policy**") which Policy One Comm may modify at any time. The current, complete Policy is attached hereto as Appendix 2 and incorporated herein by this reference to form part of this Agreement. A failure to comply with the Policy shall constitute a material breach of this Agreement not capable of remedy.
- 12.9 The Customer shall perform its obligations under this Agreement in a commercially reasonable, ethical and professional manner and in accordance with applicable legal requirements, including, as applicable, without limitation, (i) all applicable anti-bribery laws and regulations (including without limitation, the U.S. Foreign Corrupt Practices Act) and, (ii) all laws, regulations, codes of practice and guidelines regarding data privacy, telemarketing, "slamming" or other inappropriate selling activities, and (iii) all export control laws and regulations (including those promulgated by agencies of the United States Government, including the U.S. Departments of Commerce and Defense), which prohibit the export or diversion of goods to certain prohibited countries.

### 13. **GOVERNING LAW.**

- 13.1 The validity, the interpretation and performance of this Agreement will be governed by the laws of the Co-operative Republic of Guyana, with all actions brought in the courts in Guyana.

### 14. **NOTICES.**

- 14.1 All notifications, requests, demands and other communications required or permitted under this Agreement (not including invoices and rate changes) ("**Notices**") will be in writing (by email / post / fax) and addressed to the recipient Party at the address(es) indicated by the Parties, in writing. Notice will be deemed given: (a) upon delivery, when delivered in person during a Business Day or, if outside the hours of a Business Day, on the next Business Day; (b) twenty-four hours after transmission of an email or deposit with an overnight delivery service for next day delivery; (c) the same day when sent by facsimile transmission during normal business hours, receipt confirmed by sender's equipment; or (d) three Business Days after deposit in the mail, postage prepaid, registered or certified mail, return receipt requested.

### 15. **GENERAL.**

- 15.1 Independent Contractors. One Comm and the Customer are, and shall be deemed to be, independent contractors with respect to the subject matter of this Agreement. Nothing contained herein shall constitute this arrangement to be a joint venture or a partnership between One Comm and the Customer. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party.
- 15.2 Assignment. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other, except that One Comm may freely assign this Agreement or any portion thereof to an Affiliate and may freely assign its right to receive payments hereunder. Any assignment, transfer or other disposition which is in violation of this Section is void and of no force and effect.
- 15.3 Subcontracting. One Comm, without the Customer's consent, may subcontract the provision of a Service, or

- a portion of a Service, if One Comm will continue to be liable for the performance of such subcontractors under the terms of this Agreement.
- 15.4 Customer Data. Notwithstanding anything to the contrary, the Customer agrees that One Comm (or any One Comm Affiliate) may process personal data (for example, contact details) provided by Customer in connection with this Agreement (hereinafter, “**Customer Data**”) for the purpose of this Agreement and/or for purposes connected with the Service and/or business relationship between the Parties, consistent with applicable law and regulation. The Customer confirms that it has obtained all necessary consents to such processing from the data subjects concerned. Such processing may also include transferring Customer Data to other One Comm Affiliates worldwide and/or its storage in a local or foreign database.
- 15.5 Publicity. Neither Party will publish or use any advertising, sales promotions, press releases or other publicity which uses the name, logo, trademarks, or service marks of the other without the prior written approval of the other, provided either Party may list the other as a supplier/customer of the services provided hereunder.
- 15.6 Non-Disclosure. Each Party acknowledges that it may have access to confidential or proprietary information of the other party. Accordingly, the provisions of this Agreement, proprietary information and/or trade secrets of a Party, any information identified by the disclosing Party as confidential, and any information that by the circumstances of disclosure or the nature of the information itself should be treated confidentially (together the “Confidential Information”), shall be treated by all Parties on a confidential basis. Neither Party shall, unless required by law, disclose the other party’s Confidential Information without the prior written consent of the other Party. Upon a Party’s request or the termination or expiration of this Agreement, such Confidential Information, including copies thereof, shall be returned by the receiving Party or, if the disclosing Party elects, shall be destroyed. The Confidential Information shall include all documentation, technical information, software, business information, intellectual property and other materials that are disclosed by either Party.
- 15.7 No Waiver. No waiver of any term or condition of this Agreement shall be enforceable unless it is in writing and signed by the Party against whom it is sought to be charged. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver of any such right, power or remedy unless provided herein. The waiver by either One Comm or Customer of any breach of this Agreement by the other in a particular instance will not operate as a waiver of subsequent breaches of a same or different kind.
- 15.8 Amendment. This Agreement may be amended by the Parties hereto at any time only by execution of an instrument in writing signed on behalf of each of the Parties hereto. Any extension or waiver by any Party of any provision hereto shall be valid only if set forth in an instrument in writing signed on behalf of such Party.
- 15.9 Binding Effect. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain in full force and effect, and such provision will be deemed to be amended to the minimum extent necessary to render it enforceable.
- 15.10 Survival. Termination of this Agreement shall not affect either Party’s accrued rights or obligations under this Agreement as they exist at the time of termination, or any rights or obligations that either expressly or by implication continue after this Agreement has ended.
- 15.11 No Third-Party Beneficiary. This Agreement is not intended to be for the benefit of any third party, is not enforceable by any third party, and will not confer on any third party any remedy, claim, right of action or other right.
- 15.12 Headings. The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing, or enforcing any of the provisions of this Agreement.
- 15.13 Mutual Intent. The language used in this Agreement is deemed the language chosen by the Parties to express their mutual intent. No rule of strict construction shall be applied against either Party.
- 15.14 Remedies. Except as may otherwise be provided herein, the assertion by a Party of any right or the obtaining of any remedy hereunder shall not preclude such Party from asserting or obtaining any other right or remedy, at law or in equity, hereunder.
- 15.15 Entire Agreement. This Agreement and all Appendices, Exhibits, Service Order Forms, and other attachments incorporated herein represent the entire agreement between the Parties with respect to the subject matter hereof and supersedes and merge all prior agreements, promises, understandings, statements, representations, warranties, indemnities, and inducements to the making of this Agreement relied upon by

either Party, whether written or not. No change, modification, or waiver of any of the terms of this Agreement will be binding unless included in a written agreement and signed by an authorized representative of One Comm and the Customer. Any terms purportedly imposed by any purchase order or other document used by Customer shall be void and of no effect.

- 15.16 Counterparts; Electronic Signature. This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument, and a facsimile transmission or electronic delivery of a manual signature (e.g., .pdf) shall be deemed to be an original signature.
- 15.17 The Customer acknowledges that in executing this Agreement, the Customer has fully read as well as fully understands all the terms and conditions herein stated and has had the opportunity to consult with legal counsel and/or has opted to waive the right to do so.
- 15.18 Resale. Resale and third party use of a Service for the purpose for which it was designed and provided is prohibited by this Agreement.

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## **APPENDIX 1 DEFINITIONS**

**“Account”** is a numeric identifier that defines the way One Comm bills Customer. An “Account” defines the billing relationship with Customer. For each “Account,” One Comm will generate a separate invoice to Customer. An “Account” must be established by One Comm in One Comm’s billing system.

**“Affiliate”** means an entity controlling, controlled by, or under common control with, directly or indirectly, a Party.

**“Agreement”** means this Master Services Agreement, and any Service Appendix/Exhibit or Schedule hereto entered by the Parties from time to time.

**“Association ID”** is an alpha-numeric identifier that identifies a customer Account.

**“Billing Cycle”** means the One Comm billing cycle to which Customer’s account hereunder is assigned by One Comm (a full Billing Cycle approximates thirty days).

**“Business Day”** means (i) a Monday, Tuesday, Wednesday, Thursday, or Friday, and between the hours of 8:00 AM and 4:30 PM local time on such day and (ii) a day on which business is normally transacted in the Cooperative Republic of Guyana.

**“Customer Equipment”** means equipment owned or otherwise controlled or provided by Customer that interfaces with One Comm NTE on Customer premises or is co-located on One Comm premises.

**“Customer Interface”** means either (i) the point of Customer connection to the One Comm Network at a One Comm POP (tier 1 or international), or (ii) if Customer has elected that One Comm arrange provision of local access, and One Comm agrees, the point of Customer connection to the Service, in a Telco closet or Telco room on the Customer premises.

**“Delinquent”** means any invoiced amounts not properly disputed under this Agreement that remain unpaid thirty (30) days after the issuance of the invoice by one party to the other.

**“One Comm International POP”** means the One Comm International Point of Presence in the NAP of the Americas in Miami. Also, see definition of POP below.

**“One Comm Tier 1 POP”** means the One Comm Point of Presence in Telephone House, Guyana. Also, see definition of POP below.

**“Laws”** means all local, state, and federal laws and regulations imposed by any governmental, state, or regulatory body or agency in the Co-operative Republic of Guyana.

**“Local Services Addendum” or “Addenda”** means an addendum to this Agreement under which local services are provided to Customer.

**“Main Point of Entry” or “MPOE”** means the location of One Comm’s primary entry point into a customer’s location.

**“Month”** means a calendar month.

**“Network” or “One Comm Network”** means the telecommunications network of the One Comm, which may comprise of undersea, terrestrial fiber optic and metallic, and/or wireless and satellite systems owned or operated by One Comm which is offered to Customer by One Comm for carriage of Customer’s traffic or for the provision of any other Services under this Agreement.

**“Network Terminating Equipment” or “NTE”** means equipment, including software, and cabling which is owned by One Comm, or owned by suppliers to One Comm, and located at Customer’s site, and which is used to enable Customer to utilize

the Services.

**"Order Form"** means a One Comm ordering document for a specific Service which references this Agreement and sets forth specific requirements for the Service or any other form under which Services have been ordered and accepted by One Comm.

**"Party"** means One Comm or Customer, and **"Parties"** means both One Comm and the Customer.

**"Point of Presence"** or **"POP"** means any location on the One Comm Network at which One Comm permits access or interconnection to the Network.

**"Ready For Service Date"** or **"RFS Date"** is the target date agreed upon by One Comm and Customer and confirmed in writing by One Comm at which a Service is intended to be operational between Customer Interfaces.

**"Service Commencement Date"** is as defined in [Section 5.2](#), in [Section 5.3](#) or [Section 7.11](#), if applicable.

**"Services"** mean the services agreed to be provided by One Comm to Customer pursuant to this Agreement and the relevant Service Orders.

**"Taxes"** means all tax, duty or other charges of whatever nature including, without limitation, any regulatory fees, surcharges, or assessments imposed by any taxing or governmental authority.

## **APPENDIX 2 ACCEPTABLE USE POLICY**

1. General. This Acceptable Use Policy ("AUP") shall be applicable to all the Services provided to the Customer by One Comm and its affiliates. By using the Services, the Customer agrees to comply with the terms of this AUP and to be responsible for all users utilizing the Services. One Comm reserves the right to change or modify the terms of the AUP at any time, effective when a revised version of the AUP is provided to Customer or when posted on One Comm's web site, whichever is earlier. Customer's use of the Services after changes to the AUP are posted shall constitute acceptance of any changed or additional terms.
2. Illegal Use Prohibited. The Services and One Comm's network may be used only for lawful purposes. Access, transmission, distribution, storage, or export of any material in violation of any applicable law or regulation is prohibited.
3. Intellectual Property Rights of Others. The Services shall not be used to publish, submit/receive, upload/download, post, use, copy or otherwise reproduce, transmit, re-transmit, distribute or store any content/material or to engage in any activity that infringes, misappropriates or otherwise violates the intellectual property rights or privacy or publicity rights of any individual, group or entity, including but not limited to any rights protected by any copyright, patent, trademark laws, trade secret, trade dress, right of privacy, right of publicity, moral rights or other intellectual property right now known or later recognized by statute, judicial decision or regulation.
4. Material or Content. The Services shall not be used to host, post, transmit, or re-transmit any content or material (or to create a domain name or operate from a domain name), that harasses, threatens the health or safety of others, is obscene, or defamatory.
5. Email and Usenet Abuse.
  - 5.1 The Services shall not be used to send unsolicited mail messages, including, without limitation, commercial advertising, and informational announcements. A user shall not use another site's mail server to relay mail without the express permission of the site.
  - 5.2 The Services shall not be used to post the same or similar message to one or more newsgroups (excessive cross- posting or multiple-posting, also known as "SPAM").
  - 5.3 The Services shall not be used to transmit a forged TCP-IP packet header, or any part of the header information, in an email or a newsgroup posting.
6. Security. The Services shall not be used to violate the security of One Comm's or any parties networks. Examples of security violations include, without limitation, the following:
  - i). Interference with service to any user, host or network including, without limitation, deliberate attempts to overload a system, mail bombing, flooding, and broadcast attacks;
  - ii). Unauthorized access (e.g., "hacking") to or use of data, systems, or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network; or
  - iii) Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
7. Other Prohibited Uses.

- 7.1 The Services shall not be used for commercial by-pass of One Comm's international switching facilities or for interconnection to the public switched telephone network.
- 7.2 The Services shall not be used in a manner which contravenes the terms and conditions of the service agreement between the parties and any license, concession or authorization granted to OneComm.
- 7.3 The Services shall not be used contrary to recognized InternetProtocols.
- 7.4 The Services shall not be used in a manner that interferes with or adversely affects any other service provided by One Comm.
- 7.5 The Services shall not be used to route any traffic or affect transmission by a route other than that authorized and approved by One Comm for the purpose of providing the Services.
- 7.6 To fraudulently evade any charge payable to One Comm for the Services.
8. Violation.
- 8.1 ONE COMM RESERVES THE RIGHT, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE SERVICE AGREEMENT AND WITHOUT NOTICE, TO SUSPEND OR TERMINATE THE SERVICES UPON THE FIRST OR ANY SUBSEQUENT VIOLATION OF THE TERMS OF THISAUP.
- 8.2 INDIRECT OR ATTEMPTED VIOLATIONS OF THE POLICY, AND ACTUAL OR ATTEMPTED VIOLATIONS, BY CUSTOMER, ITS END USERS OR THIRD PARTIES ON BEHALF OF THE CUSTOMER OR AN END USER OF THE CUSTOMER SHALL BE CONSIDERED VIOLATIONS OF THE POLICY BY THECUSTOMER.
- 8.3 A VIOLATION OF THE AUP BY THE CUSTOMER, AN END USER OF THE CUSTOMER OR THIRD PARTIES ON BEHALF OF THE CUSTOMER OR AN END USER OF THE CUSTOMER ARE A MATERIAL BREACH AND DEFAULT OF THE APPLICABLE SERVICE AGREEMENT BETWEEN ONE COMM ANDCUSTOMER.