



CYPRESS COMMUNICATIONS, INC.
MASTER TERMS AND CONDITIONS
MTC 2006-1

THESE MASTER TERMS AND CONDITIONS ("MTCs") apply to all Service Orders, service tickets, work orders, service level agreements, and other contracts, agreements and invoices with Cypress Communications, Inc. or its affiliates (collectively, "Cypress") and its Customers. Capitalized terms in these Master Terms and Conditions are defined in Section 23 unless otherwise defined in these Master Terms and Conditions.

1. Services, Equipment and Software

1.1 Cypress' primary service offerings can be found at <http://www.cypresscom.net/solutions/yoursolutions.html>.

1.2 For each Service Order, Cypress will install and maintain the Equipment, and provide the Services, indicated in the Service Order during the Service Order Term in accordance with these MTCs and Cypress' Service Level Agreement (SLA) Addendum found at <http://www.cypresscom.net/legal/sla.pdf> (the "SLA Addendum"). Cypress retains the right, in its sole discretion, to add, delete and/or change any Equipment or Services upon at least thirty (30) days notice to Customer. If any such addition, deletion or change will materially and adversely impact Customer, and Customer notifies Cypress within thirty (30) days after receiving notification from Cypress of such addition, deletion or change of Customer's desire to terminate the affected Service(s), Customer may terminate the affected Service(s) (but not the remainder of the Services provided to Customer), effective thirty (30) days after written notice to Cypress.

1.3 Customer will use the Equipment and Services in accordance with these MTCs and Cypress' Acceptable Use Policy found at <http://www.cypresscom.net/use.html> ("AUP"). Without limiting the foregoing, (a) Customer may not use the Equipment or Services for any unlawful purpose, (b) Customer will not resell any of the Services, and (c) Customer will not permit any third party to use the Services or access the Equipment, except in the ordinary course of Customer's business, without Cypress' prior written consent or as contemplated in these MTCs.

1.4 Customer acknowledges and agrees that some or all of the Services provided to Customer may be provided by affiliates of Cypress that are authorized and/or Tariffed to provide such Services in certain states or territories, including, without limitation, Cypress Communications Operating Company, LLC.

1.5 Cypress will undertake commercially reasonable efforts to provision each Service by the Requested Installation Date indicated in the Service Order. See the SLA Addendum for standard installation lead times and the expedite fees applicable to an Installation/Service Commencement Date earlier than the standard installation lead times. In the event Customer asks for a delayed installation date and Cypress is unable to install Customer ninety (90) days after Customer signs a Service Order, Cypress, in its absolute and sole discretion may terminate such Service Order without liability to Customer.

1.6 Unless otherwise indicated in a Service Order, all Equipment provided to Customer by Cypress is leased, not sold, to Customer, and any software provided to Customer is licensed to Customer according to the terms of Section 1.7 below and not sold to Customer.

1.7 Cypress will make certain software available to Customer in connection with its managed IP communications offerings (the "Software"). Customer's use of this Software is subject to any shrink wrap software license terms accompanying the software and any click through license terms that Customer is required to consent to as a condition to using the Software. CUSTOMER ACKNOWLEDGES THAT CYPRESS AND CYPRESS' THIRD-PARTY SOFTWARE SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THOSE ARISING FROM COURSE OF DEALING AND USAGE OF TRADE WITH RESPECT TO ANY SOFTWARE.

1.8 Cypress shall bear the risk of loss or damage to any Equipment provided in connection with the Services, except that Customer shall be liable to Cypress for the cost of repair or replacement of Equipment that is lost, stolen or damaged as a result of Customer's negligence.

2. Payments

2.1 Unless otherwise specified, usage-based Services shall be invoiced monthly in arrears and all other Services shall be invoiced monthly thirty (30) days in advance. Customer shall pay all amounts owed promptly upon receipt of invoice but in no event later than the payment due date specified on the invoice and shall send its payments to the address specified on the invoice. Customer may withhold payment associated with good faith billing disputes only where Customer has submitted such disputes in writing to Cypress within sixty (60) days after the invoice date. Customer shall be deemed to have approved all invoices (and to have waived its right to dispute any charges therein) if Customer fails to object thereto in writing within sixty (60) days after the invoice date. Customer may only withhold disputed payments up to a maximum of ten percent (10%) of any outstanding monthly invoice. If Customer withholds any amount greater than this Section permits, Customer stipulates and agrees that such withholding will cause irreparable harm to Cypress. Payment of fees will not prejudice a party's right to dispute charges so long as they are

disputed in the manner and timeframe specified in the MTCs. Disputed charges mutually agreed upon in favor of one party will be paid by the other party within five (5) Business Days of the resolution. This provision does not modify any payment dispute provisions in an applicable Tariff.

2.2 In addition to all of the payments that are required under any Service Order, Customer is responsible for, and Customer shall pay, all federal, state, city, county, municipal, local or other governmental excise, income and franchise, sales, value-added, use, personal and real property, occupational taxes, withholding taxes and any other obligations and other levies and fees now in force or enacted in the future, that arise from (i) the Equipment and Services provided to Customer and any distribution facilities relating to such Equipment whether imposed by virtue of ownership by Cypress or use by Customer of the Equipment and Services, or (ii) Customer's payment for the Equipment and Services ("Taxes").

2.3 A Service Order may indicate a Minimum Monthly Total Revenue Commitment ("MMTRC"). If during the Service Order Initial Term or Service Order Renewal Term (as defined in Section 5.1) the monthly recurring charges ("MRC") for Services provided under a Service Order fall below the MMTRC amount, then Customer shall pay the MMTRC amount plus applicable Taxes, fees, surcharges and non-recurring charges.

2.4 Cypress may, in addition to any other remedies available to it, impose a late payment charge of one and one-half percent (1.5%) per month on any amount not paid within thirty (30) days of the invoice date. In addition, Customer agrees that Cypress has the right to collect from Customer any fees, expenses or costs incurred by Cypress in collecting any amounts that remain due and owing to Cypress after the due date including, but not limited to, reasonable attorneys' fees, collection agency costs and court costs. Cypress may assess Customer a fee of \$25.00 for any check returned for insufficient funds.

2.5 A fixed cancellation fee as set forth in Section 7 of the Service Order will apply for Service Orders cancelled by the Customer before Service installation.

2.6 Cypress' then current charges will apply to all moves, additions, or changes to the Equipment or Services that are requested by Customer ("MAC Requests"). Certain MAC Requests may be subject to a Tariff in which case the Tariffed rate for the MAC Request will apply. Cypress may perform MAC Requests unless otherwise provided in these MTCs or as otherwise agreed to in writing by Cypress. Cypress reserves the right, in its sole discretion, to refuse to perform a MAC Request.

2.7 Cypress has the right to increase, decrease, change or modify any of its rates for Services at any time; however, if Cypress raises its rates for Services by more than five percent (5%) during any consecutive twelve (12) month period, Customer may terminate such Services (but not any other Service) without liability for early termination by providing written notice to Cypress within thirty (30) days after the effective date of such increase. If Customer does not provide timely notice of its election to terminate, such existing Service shall thereafter be billed at the new rate.

2.8 Customer will be charged at the rates set forth in the applicable Tariffs for any invoice furnished to Customer on paper, except for the first invoice, which will be provided to Customer on paper at no charge. Customer may elect to discontinue receipt of paper invoices and instead receive electronic invoices. If Customer elects to receive electronic invoices, such invoices will be provided to Customer at no charge at Cypress' web site. An electronic invoice is deemed to be received by Customer when the electronic invoice is made available to Customer at Cypress' web site. Directions on making the election to discontinue paper invoices and on obtaining electronic invoices from Cypress' web site will be provided to Customer with Customer's first invoice.

3. Installation, Repairs and Maintenance. Subject to Section 6 set forth below, Cypress agrees to repair and/or replace the Equipment located on Customer's Premises when the failure of the Equipment is caused by defects in materials or workmanship or by ordinary wear and tear from the use (but not misuse or improper use) of such Equipment for the purposes provided hereunder or under any Service Order. Customer is responsible for Inside Wiring and any cabling required to provision the Services from the building's riser system or Cypress' distribution facilities to Customer's Premises. If riser cabling is required or Inside Wiring is damaged or removed in a manner that adversely affects Cypress' ability to install or deliver the Services to Customer, then Customer shall promptly either (i) perform the appropriate cabling or Inside Wiring Services to Cypress' reasonable satisfaction so that Cypress is able to install and deliver the Services to Customer, or (ii) engage Cypress to perform such cabling or Inside Wiring Services subject to Section 6 set forth below. Cypress reserves the right, in its sole discretion, to refuse to perform any cabling or Inside Wiring Services on Customer's Premises. If Customer engages Cypress to perform any cabling or Inside Wiring Services, then Customer shall pay Cypress' then standard charges for such work plus any and all costs and expenses incurred by Cypress to perform the work including, but not limited to, Cypress' costs to obtain any low voltage permit that Cypress is required to obtain to perform the work. Customer shall provide Cypress with access to its Premises for purposes of allowing Cypress or any authorized representative of the manufacturers of the Equipment to install, maintain, repair and/or replace the Equipment, cabling and Inside Wiring located therein. Customer will provide reasonable assistance with respect to any testing that Cypress performs. Customer shall not permit anyone other than Cypress or the Equipment manufacturer to perform maintenance, service or other work on the Equipment without Cypress' prior written consent. Customer shall provide Cypress prior notice of any work performed on the Inside Wiring by Customer or a third party. If any maintenance or service work is performed on the Equipment by anyone other than Cypress or the Equipment manufacturer without Cypress' prior written consent, or if the Equipment or any part thereof is moved without Cypress' prior written consent, then (i) Customer shall be deemed in default under these MTCs, (ii) at the election of Cypress, the repair obligations set forth above in this Section 3 will become null and void, and (iii) Cypress may exercise any of the remedies provided in these MTCs. In addition, Customer shall indemnify and hold Cypress harmless from and against any and all damages arising out of any breach by Customer under this Section 3. Repairs for which Cypress is not responsible under these MTCs may be performed by Cypress in its sole discretion if Customer agrees to pay Cypress' then standard charges for such repairs.

4. Ownership of Equipment; Non-Interference with Equipment

4.1 Title to the Equipment and Cypress' distribution facilities shall remain in the name of Cypress or Cypress' vendor at all times and for all purposes, and the Equipment and distribution facilities may be marked and identified as the property of Cypress or

Cypress' vendor, which markings and identification shall not be changed, removed or altered by Customer. Customer will not cause, create or suffer any claims, including but not limited to, any liens, charges, encumbrances or security interests in, on, or to the Equipment or Cypress' distribution facilities, and will indemnify and hold Cypress and its vendor harmless from and against any loss, cost, liability and expense (including interest and reasonable attorney's fees) arising from such claims. The Equipment and Cypress' distribution facilities shall not be deemed a fixture. Customer agrees that any Service Order, these MTCs, and any other applicable documents necessary to protect the interest of Cypress and its vendors in the Equipment may be filed or recorded. Customer agrees that only Cypress or, in the case of repairs to the Equipment, either Cypress or an authorized representative of the manufacturer of the Equipment, may perform any installation, removal, relocation, maintenance, repair or modification of the Equipment and distribution facilities. At the expiration or earlier termination of a Service Order, Customer will surrender the Equipment provided by Cypress under the expired or terminated Service Order in the same condition as Customer received the Equipment, ordinary wear and tear excepted. Within thirty (30) days after the expiration or earlier termination of a Service Order, Cypress will remove the Equipment related thereto, which removal shall be at Cypress' cost and expense unless the Service Order was terminated because of Customer's breach of these MTCs or improper early termination of any Service Order between Cypress and Customer or these MTCs, in which event such removal shall be at Customer's cost and expense, payable within twenty (20) days after written demand from Cypress. Customer hereby authorizes Cypress to enter Customer's Premises to remove Services and Equipment as provided in this paragraph, and such authorization includes, without limitation, the right to access Customer's Premises for purposes of removing all Equipment from Customer's Premises.

4.2 Customer agrees to:

- (a) use the Equipment only for the purpose of using the Services provided by Cypress and for no other purpose;
- (b) prevent any connections to the Equipment which are not expressly authorized by Cypress;
- (c) prevent tampering, alteration or repair of the Equipment by any person other than Cypress' or its vendor's authorized personnel; and
- (d) assume complete responsibility for damage or loss of such Equipment that results from Customer's improper use or negligence.

4.3 Customer covenants and warrants that it will not (nor permit third parties to) move, modify, disassemble, alter or interfere with the Equipment and any distribution facilities other than a relocation of Equipment permitted by Cypress. To the extent that Customer is aware that any third party interferes with or seeks to interfere with the operation or use of such Equipment or distribution facilities, Customer further warrants that it will use diligent best efforts to stop or prevent such interference. Upon notice from Cypress that hardware or software not provided by Cypress is causing or is likely to cause damage to, or interference with, the Equipment or Services, Customer shall immediately cure such damage or interference, or take steps to prevent such damage or interference. In addition, if, and to the extent that, Customer engages Cypress personnel or other Cypress resources to cure any such interference caused by equipment or software not provided by Cypress, Customer shall pay Cypress all costs and expenses associated with the provision of such resources. Cypress is not responsible if any changes in Equipment or Services cause any equipment and/or software not provided by Cypress to become obsolete or require modification.

4.4 Customer will not connect any equipment or facilities to the Equipment without the express written consent of Cypress; provided, however, that Customer may connect an Internet connection not provided by Cypress to a managed IP communications handset for off-net communications (for example, if Customer connects a managed IP communications handset provided by Cypress to a DSL or other high speed Internet connection that has not been provided by Cypress).

5. Term and Termination

5.1 Each Service Order will commence on the Service Order Effective Date indicated on the Service Order. Each Service Order will terminate on the Service Order Termination Date. The term of each Service Order shall automatically renew for successive one year periods or such other renewal term as may be agreed to by the parties ("Service Order Renewal Term(s)") from the Service Order Termination Date of the Service Order unless either party notifies the other party in writing at least thirty (30) days prior to the end of the Service Order Initial Term, or applicable Service Order Renewal Term, that it wishes to terminate the Service Order.

5.2 Cypress may terminate any Service Order between Cypress and Customer, effective immediately upon notice to Customer, if (i) Customer becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (ii) Customer becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

5.3 Customer may terminate any Service Order if Cypress materially breaches that Service Order (e.g., materially breaches the terms of these MTCs as to the Services covered by the Service Order), and Cypress fails to cure the material breach within thirty (30) days after receipt of written notice of such material breach from Customer. Customer's termination of a Service Order as provided herein shall not have an effect on any other Service Order then in effect. Customer may terminate a Service Order by providing at least thirty (30) days prior written notice to Cypress, if Customer receives a Service Level Credit (as defined in the SLA Addendum) in excess of fifteen percent (15%) for three (3) consecutive months or for three (3) months during any six (6) month period (a "Chronic Service Level Failure"). Customer shall have no obligation to pay the Early Termination Fees (as defined below) that would otherwise be applicable to a Service Order if the Service Order is terminated for a Chronic Service Level Failure. Customer has sixty (60) days after Customer is entitled to terminate a Service Order for a Chronic Service Level Failure to provide Cypress written notice of such termination.

5.4 Cypress may terminate any or all Service Orders between Cypress and Customer if any of the following occur: (i) Customer fails to pay timely any invoiced amounts, and Customer fails to pay all such past due amounts within five (5) days after

receiving written notice from Cypress; or (ii) Customer breaches any other material term or condition of these MTCs (including any Service Order or the AUP), and Customer fails to cure such breach within thirty (30) days after receipt of written notice of such breach (or within such shorter period as set forth above).

5.5 If Customer terminates a Service Order prior to the end of a Service Order Initial Term (except as provided in Section 5.3), or if a Service Order is terminated by Cypress for Customer's breach prior to the end of the Service Order Initial Term, then Customer agrees to pay Cypress (i) any installation charge that was waived at the time of installation, (ii) all disconnection, early cancellation or termination charges reasonably incurred by Cypress on Customer's behalf, and (iii) the applicable amount indicated in the following table (collectively, the "Early Termination Fees"). The parties agree that Cypress' damages resulting from an early termination of a Service Order as described in this paragraph shall be difficult or impossible to ascertain. Therefore, the provisions provided for in this Section 5.5 are intended to establish liquidated damages in the event of a Service Order early termination and are not intended as a penalty. All Early Termination Fees shall be due and payable within thirty (30) days after the Service Order Termination Date.

Month Disconnected	1-Year Contract	2-Year Contract	3-Year Contract	4 or 5 –Year Contract
Month 1 to 6	75% of MRC X # months left	60% of MRC X # months left	50% of MRC X # months left	40% of MRC X # months left
Month 7 to 12	50% of MRC X # months left	40% of MRC X # months left	30% of MRC X # months left	25% of MRC X # months left
Month 13 to 24		25% of MRC X # months left	25% of MRC X # months left	20% of MRC X # months left
Month 25 to 36			20% of MRC X # months left	15% of MRC X # months left
Month 37 to 60				10% of MRC X # months left

For purposes of calculating the Early Termination Fees from the above table, the MRC amount shall equal the monthly average MRC amount for the three (3) monthly billing cycles immediately prior to the Service Order Termination Date.

5.6 Cypress has the right to terminate one or more Service Orders if (i) regardless of the cause or reason, Cypress cannot legally provide some or all of the Equipment or Services for a period exceeding thirty (30) days, including, without limitation, loss of federal, state or local authorizations required to provide the Equipment or Services; (ii) changes in law or regulations make the provision of some or all of the Services unprofitable to Cypress or make it impracticable or illegal for Cypress to install, maintain or operate any of the Equipment or provide any of the Services; or (iii) the license or other agreement between Cypress and the owner of a Cypress Building is terminated for any reason. The Early Termination Fees will not apply to a Service Order termination under this paragraph.

5.7 If Cypress does not receive full payment from Customer by the due date applicable to the Services provided under a Service Order, then, in addition to any other rights or remedies of Cypress, Cypress may, after giving Customer five (5) days notice, suspend all or any portion of the Services provided under any and all Service Orders until such time as Customer has paid in full all charges then due, including any late payment charge, resumption fees and collection costs. Following such payment, Cypress will resume Services to Customer only if Customer pays in advance Cypress' costs of, and any other fees for, such resumption and provides to Cypress assurances satisfactory to Cypress of Customer's ability to pay for Services provided under any and all Service Orders. Cypress may assess Customer a charge of \$150.00 to resume Customer's Services. If Customer fails to make such advance payment or provide such assurances, then Customer will be deemed to have terminated the Service Order and Cypress may assess Early Termination Fees as set forth above.

5.8 Cypress reserves the right to increase the charges for voice services provided under a Service Order upon Customer's improper usage of the voice service for two (2) consecutive months. Improper usage patterns include, but are not limited to, calling patterns where the aggregate minutes of long distance usage per monthly billing cycle for an extension is excessive based on predictive dialing equipment, call center environments, telemarketing use or similar calling patterns without Cypress' prior written consent.

5.9 Except as otherwise expressly provided herein, neither party will be liable to the other for properly terminating a Service Order in accordance with its terms, but Customer will be liable to Cypress for any accrued charges owed prior to the termination.

6. Limitations and Exclusions of Liability

6.1 NOTWITHSTANDING ANYTHING IN THESE MTCs OR ANY SERVICE ORDER TO THE CONTRARY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, REPLACEMENT GOODS, LOSS OF TECHNOLOGY (EXCLUDING EQUIPMENT THAT IS DAMAGED OR LOST AS A RESULT OF CUSTOMER'S IMPROPER USE OR NEGLIGENCE, IN WHICH CASE CUSTOMER SHALL BE RESPONSIBLE FOR SUCH LOSS OR DAMAGE), RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE, INCLUDING INABILITY TO DIAL 911 THROUGH VOICE SERVICES PROVIDED THROUGH MANAGED IP COMMUNICATIONS, OR OF ANY EQUIPMENT OR BUSINESS, OR ANY OTHER TYPE OF DAMAGES OTHER THAN DIRECT DAMAGES (AND WITH REGARD TO DIRECT DAMAGES APPLICABLE TO CYPRESS, ONLY TO THE EXTENT PERMITTED IN THESE MTCs). IN ADDITION, CYPRESS

WILL HAVE NO LIABILITY TO CUSTOMER (AND NO LIABILITY FOR SERVICE LEVEL CREDITS) WHERE THE CLAIMS ARISE OUT OF, RELATE TO, ARE CAUSED BY OR INVOLVE OR CONCERN ANY OF THE FOLLOWING: (I) CYPRESS' COMPLIANCE WITH AN ORDER OR DEMAND TO SUSPEND OR TERMINATE THE SERVICES OR REMOVE THE EQUIPMENT FROM CUSTOMER'S PREMISES AS A RESULT OF CYPRESS' COMPLIANCE WITH LEGAL PROCESS OR CYPRESS' COMPLIANCE WITH A WRITTEN AGREEMENT WITH A SUPPLIER OR AN OWNER OF A CYPRESS BUILDING; (II) ANY FORCE MAJEURE EVENT OR OTHER CAUSES THAT ARE BEYOND CYPRESS' CONTROL; (III) THE FAILURE OR MALFUNCTION OF CUSTOMER'S EQUIPMENT OR FACILITIES; (IV) THE FAILURE OF POWER, EQUIPMENT, SYSTEMS, CONNECTIONS OR SERVICES NOT PROVIDED BY CYPRESS, OR THE UNAVAILABILITY, INADEQUATE, UNTIMELY OR POOR PERFORMANCE OR NON-PERFORMANCE OF ANY FACILITIES UNDER THE CONTROL OF PERSONS OR ENTITIES OTHER THAN CYPRESS; (V) THE INABILITY OF CUSTOMER, CUSTOMER PARTIES OR ANY OTHER PERSON OR PARTY TO DIAL 911 OR ACCESS 911 EMERGENCY PERSONNEL THROUGH SERVICES PROVIDED BY CYPRESS; OR (VI) CYPRESS' SUSPENSION OF SERVICES ACCORDING TO THE TERMS OF SECTIONS 5.7 OR 15.5. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT AND ANY AND ALL OTHER THEORY OF LIABILITY.

6.2 IN NO EVENT SHALL CYPRESS' AGGREGATE LIABILITY TO CUSTOMER (INCLUDING, WITHOUT LIMITATION, LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY CUSTOMER) OR TO ANY THIRD PARTIES (INCLUDING, WITHOUT LIMITATION CUSTOMER PARTIES) WITH RESPECT TO ANY AND ALL CLAIMS ARISING FROM OR RELATING TO ANY SERVICE ORDER BETWEEN CYPRESS AND CUSTOMER OR THESE MTCs, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE LESSER OF (I) THE AGGREGATE AMOUNT OF CHARGES PAID BY CUSTOMER TO CYPRESS UNDER SUCH SERVICE ORDER DURING THE SIX (6) MONTH PERIOD AFTER THE DATE OF THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM; OR (II) \$25,000.

6.3 Notwithstanding anything in these MTCs to the contrary, except for Cypress itself (and then only to the extent permitted under these MTCs), under no circumstances will any of the Cypress Parties have any liability to the Customer Parties. Notwithstanding anything in these MTCs to the contrary, under no circumstances will Cypress have any liability to any Customer Parties other than Customer (and then only to the extent permitted under these MTCs), except to the extent such parties suffer personal injury caused by Cypress' gross negligence or willful misconduct.

6.4 ALL LIMITATIONS OF LIABILITY APPLICABLE TO CYPRESS IN THIS SECTION 6 ARE ALSO APPLICABLE TO CYPRESS' LICENSORS, SERVICE PROVIDERS AND EQUIPMENT VENDORS.

6.5 Except as provided in Section 2.1 regarding Customer's dispute of invoiced amounts, all other claims by Customer of whatever nature against Cypress will be deemed conclusively to have been waived unless Customer notifies Cypress (specifying the nature of the claim) within six (6) months after the date of the occurrence of the event giving rise to the claim.

6.6 Without limiting the foregoing, with respect to the Internet access services provided by Cypress, Cypress shall not be liable for any claims or damages arising out of or relating to (i) the quality, accuracy, propriety, decency, utility or correctness (or lack thereof) of content, data or information transmitted across Cypress' network or received by Customer; (ii) loss of content, data or information due to delay, non-delivery, mis-delivery or service interruptions however caused except for the application, when applicable, of Service Level Credits under the SLA Addendum; (iii) unauthorized access to, or misuse, alteration, theft, destruction or corruption of, Customer's data, software, hardware or other systems, including that data protected by a firewall product, whether or not that firewall product is provided by Cypress or by a third party; or (iv) the inability of Customer, Customer Parties or any other person or party to be able to dial 911 or to access 911 emergency personnel through voice services provided through Internet access services provided by Cypress.

6.7 All of the limitations set forth in Sections 6.1 through 6.7 apply to all causes of action and claims, including, without limitation, breach of contract, breach of warranty, negligence, misrepresentation and any other torts.

7. EXCLUSION OF WARRANTIES. THE EQUIPMENT, SERVICES AND SOFTWARE ARE PROVIDED BY CYPRESS ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE EQUIPMENT, SERVICES AND SOFTWARE IS AT ITS OWN RISK. EXCEPT FOR ANY WARRANTIES EXPRESSLY MADE IN ANY APPLICABLE TARIFF, CYPRESS DOES NOT MAKE, AND HEREBY DISCLAIMS AND EXCLUDES, ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, OR TRADE PRACTICE.

8. Basis of Bargain; Failure of Essential Purpose. Customer acknowledges that Cypress has established its prices and entered into one or more Service Orders in reliance upon the limitations and exclusions of liability and the disclaimers set forth in these MTCs, including Sections 1, 6 and 7, and that the same form is an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in these MTCs will survive and apply even if found to have failed their essential purpose; and Customer hereby waives its right to contest the enforceability of any provision of these MTCs by reason of such failure.

9. Indemnification

9.1 Cypress shall indemnify, defend and hold Customer harmless from and against any and all losses, damages, liabilities, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees) arising by virtue of, or relating to, any gross negligence or willful misconduct of Cypress while on Customer's Premises.

9.2 Customer shall indemnify, defend and hold Cypress and the other Cypress Parties harmless from and against any and all losses, damages, liabilities, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees) arising by virtue of, or relating to, (i) Customer's operations or services; (ii) any act, omission, fault, negligence or misconduct of Customer,

any of the Customer Parties, or any persons on Customer's Premises other than Cypress and the Cypress Parties; (iii) any material breach by Customer of the terms of any Service Order or these MTCs or Customer's breach of any warranty, representation or covenant in any Service Order or these MTCs; (iv) any claim by any employee or invitee of Customer other than a claim based on the gross negligence or willful misconduct of Cypress; or (v) any claim by customers or end-users of Customer or any other third party relating to, or arising out of, Customer's services or the Services, Equipment or Software.

10. CPNI. Customer proprietary network information ("CPNI") is information about the quantity, technical configuration, type, destination, location, and amount of use of the telecommunications services that Cypress or any Cypress Parties may provide to Customer. Under federal regulations, telecommunications providers such as Cypress have an obligation to protect the confidentiality of CPNI. By executing a Service Order, Customer grants permission to Cypress to use Customer's CPNI to evaluate Cypress' existing Services and new opportunities to serve Customer better. Cypress may use Customer's CPNI to identify additional communications related services or products that Customer may desire that will complement the Services already provided to Customer.

11. Deposits. Simultaneously with the execution and delivery to Cypress of a Service Order, Customer shall deposit with Cypress a security deposit of one month MRCs on the Service Order or such other amount indicated in the Service Order (the "Security Deposit"). Cypress shall hold the Security Deposit as collateral security for the payment of the charges and other sums of money payable by Customer under any and all Service Orders and for the faithful performance of all other terms, covenants and conditions of Customer hereunder. Said Security Deposit may be commingled with other funds of Cypress and transferred out of state, and Cypress shall have no liability for the accrual or payment of any interest thereon. Customer hereby waives the benefit of any provision of law requiring the Security Deposit to be held in escrow or trust, and the Security Deposit shall be deemed to be the property of Cypress. Customer further acknowledges that the Security Deposit is not to be construed as prepaid fees by Customer for any period of the Service Order Initial Term. In addition, Cypress may require a Security Deposit and a reconnection fee before Services are restored if the Services have been discontinued (or any Service Order has been terminated) by Cypress for nonpayment or other default by Customer under any Service Order. For a Customer who chooses to renew a Service Order, Cypress will apply the Security Deposit in full toward the first month(s) of the first Service Order Renewal Term as a credit toward all new charges; provided that Customer is current on all invoices and has no suspensions in its payment history. If a suspension was applied during the Service Order Initial Term, the Security Deposit shall remain in place for the length of the Service Order Renewal Term. Cypress may elect to adjust the amount of the Security Deposit for the Service Order Renewal Term based upon changes to the quantity of Services and/or Equipment. Except as provided above in this Section 11, the Security Deposit, without interest, shall be repaid to Customer within thirty (30) days after the expiration or early termination of the Service Order Initial Term, and all extensions or renewals thereof, unless there are unpaid amounts, including Early Termination Fees, owing by Customer to Cypress. In such cases, the Security Deposit will be applied to any outstanding balance on Customer's final invoice.

12. Regulated Services

12.1 Customer acknowledges that local exchange telephone services, intrastate and interstate interexchange telephone services, international telephone services and certain of the other Services may be provided by Cypress Communications, Inc. or Cypress Communications Operating Company, LLC. or another affiliate of Cypress Communications, Inc. pursuant to any and all applicable Tariffs. These MTCs and every Service Order incorporate by reference the terms of all such applicable Tariffs. Tariffed rates, terms and conditions are subject to change by Cypress or the appropriate Regulatory Authority, and such changes may affect the Services and Equipment furnished to Customer. The terms and conditions of the Tariffs as in effect from time to time shall supersede any inconsistent provision of these MTCs with respect to regulated telecommunications services; except that any Special Stipulations relating to a Tariffed service shall remain effective to the extent permitted by the Tariff. If by any governmental action a Tariff is no longer applicable to a particular Service, Cypress' standard rates for that Service shall apply. Cypress reserves the right to make any Service a Tariffed service.

12.2 The Tariffs having application to these MTCs are on file with, and available from, the Regulatory Authorities identified in the Service Orders to which these MTCs relate as to intrastate Services and posted at www.cypresscom.net for Interstate Services.

13. Local Number Portability. Cypress shall reasonably cooperate, at no cost or expense to Cypress, with Customer's efforts to transfer its telephone numbers at the initiation of Services with Cypress and after the expiration or termination of the Service Order for voice services. Notwithstanding the foregoing, Cypress makes no warranty or representation of any kind regarding local number portability, including, without limitation, whether Customer will have the right or ability to transfer such number(s) to another carrier or whether such number(s) will be active or useful for Customer's intended purposes. During any Service Order Term, should local number portability not be technically feasible due to the facilities deployed by the underlying carrier, the Customer's numbers may have to be remote call forwarded for which Customer will incur charges in addition to those set forth in the applicable Service Order. Except to the extent required by law, Cypress has no obligation to transfer or release any telephone numbers assigned to Customer until such time as Customer has paid all outstanding charges or other amounts owed by Customer to Cypress under any and all Services Orders then in effect including, but not limited to, any Early Termination Fees.

14. Calling Cards

14.1 Calling cards may be provided where available, subject to any applicable Tariffs, Service Orders and contracts between Cypress and the underlying local or long distance communications carrier. Charges for calling card calls include per-minute usage rates and surcharges. For details on the specific surcharges and fees for calling card calls from overseas to the U.S. and other countries, from Canada to the U.S. or other countries, operator assisted station-to-station and person-to-person, international directory assistance, domestic directory assistance, conference calling, or features usage, please call Cypress Customer Service at 877-590-5955.

14.2 Calling card calls can be completed from rotary phones only with operator assistance.

14.3 The calling card is not transferable. The named customer may authorize others to use the calling card, but

responsibility for payment of the incurred charges will remain that of the named customer. If the calling card was received from an employer, in the event of a change in employment, the calling card should no longer be used and returned promptly to the employer.

14.4 Customer agrees to use the calling card in accordance with the following procedures:

(a) Customer should always stand directly in front of the telephone as it dials. Most fraud occurs because someone sees the card holder dial his or her card number. When making calls from public places Customer should be aware of crowds or people loitering nearby.

(b) Calling cards should be protected just like any other credit card. Customer should never give out its card number. Anyone who calls and asks to verify numbers is probably trying to obtain the number for illegal use.

(c) Customer should call the customer service number immediately if its calling card is lost or stolen.

14.5 Any credits for lost or stolen cards will be provided to Customer only to the extent permitted, as applicable, by the underlying carrier of the card services or Regulation Z. Customer understands and agrees that some carriers utilize fraud detection methodologies which may interrupt card functionality if card usage is indicative of fraudulent or unauthorized use. Cypress has no control or responsibility for the underlying carrier's fraud detection systems, and Cypress is not responsible for service interruptions caused by an underlying carrier's fraud detection systems.

15. Internet access services

15.1 The terms of this Section 15 are applicable to Internet access services provided by Cypress.

15.2 Customer understands that neither Cypress nor Cypress' service providers are responsible for the content of the transmissions that may pass through the Internet and/or the Internet access services. Customer agrees that it will NOT use the Internet access service or the email accounts provided by Cypress in ways that violate applicable laws or regulations, infringe the rights of others, or interfere with the users, services, or equipment of the network.

15.3 Cypress has published its AUP on its corporate website, at <http://www.cypresscom.net/use.html>, or provided such AUP to Customer. The AUP addresses Customer's acceptable use of the Internet access services and the email accounts provided to Customer in connection with such Internet access services. The terms and conditions of the AUP are incorporated herein by this reference. Customer acknowledges and agrees that Cypress may amend the AUP from time to time. All amendments and modifications to the AUP shall be made available to Customer by publication on Cypress' corporate website.

15.4 Notwithstanding anything in the AUP to the contrary, Customer acknowledges and agrees that Customer shall not (i) allow its account to be used by any third parties other than Cypress employees; (ii) post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, profane, or otherwise objectionable material of any kind across the network; (iii) use Cypress Services or Equipment to commit a crime; (iv) use the network to post a single item to more than seven (7) newsgroups or mailing lists; (v) engage in spamming, e.g., mass unsolicited emails; (vi) violate the terms and conditions of any other websites or other network, application or content service providers; (vii) impersonate another user or misappropriate any other telephone numbers, names or email addresses; or (viii) copy, modify, adapt, reproduce, translate, distribute, misappropriate, reverse engineer, decompile or disassemble any aspect of the Services provided by Cypress. Violations of the AUP may result in (i) Cypress' immediate suspension or termination of Customer's Internet access services and email accounts provided by Cypress; and (ii) the prosecution of any and all criminal and civil penalties available under the law. Actions taken by Cypress may vary based on the level of the offense. Internet access services or email accounts that have been disabled due to any violation of the AUP may not be restored by Customer without Cypress' prior written consent.

15.5 Internet connectivity through the use of Internet access service is provided only to Customer and its personnel. Use of the Internet access service by anyone other than Customer and its personnel and resale of Internet access service is prohibited. Cypress may suspend the Services or terminate the applicable Service Order effective immediately upon written notice to Customer for Customer's violation of the terms of this Section 15 and Section 5.4 shall apply to any such termination.

16. IP Addressing

16.1 Any IP numbers assigned to Customer by Cypress shall only be used in connection with the Internet access service. In the event Customer discontinues use of the Internet access service for any reason, or the Service Order applicable to assignment of the IP numbers expires or is terminated for any reason, Customer's right to use the IP numbers shall terminate.

16.2 Customer agrees that Cypress reserves the right to review, at any time, the utilization of IP numbers previously allocated to Customer. Customer agrees that if IP numbers are not being used for the purpose allocated and/or assigned, Cypress reserves the right to revoke the assignment of such IP numbers.

16.3 Customer agrees to provide Cypress with all information, assistance and cooperation which Cypress requests for its review of Customer's utilization of allocated IP numbers. Customer agrees that failure to provide Cypress with all information, assistance and cooperation may result in the revocation of the current IP numbers allocated or may adversely impact Customer's future allocation of IP numbers.

16.4 Use of the IP numbers is solely at Customer's own risk. Cypress allocates IP numbers on an "As-Is," "As Available" basis. The limitations and exclusions of liability and exclusion of warranties in Sections 6 and 7, respectively, shall apply to Cypress' allocation of IP numbers to Customer.

17. Limitations on 911 Dialing Service through Managed IP Communications. Customer acknowledges and agrees that: (i) Customer has received and understood the Notice of Limitations of 911 Dialing Service through managed IP communications ("Notice"); (ii) Customer's ability to contact emergency services by dialing 911 may be limited or nonexistent; (iii) Customer must have alternate means of contacting 911 emergency services; (iv) Customer must notify any guests, residents or other third parties

using the managed IP communications that they may not be able to reach 911 emergency services and may have to use alternate means to contact 911 emergency services; and (v) Customer has received a warning sticker explaining that 911 service may not be available, and placed the sticker on or near the equipment used to access the managed IP communications Services.

As set forth in Section 6, the liability of Cypress and its licensors, service providers and equipment vendors is limited with respect to Customer's inability to dial 911 or obtain access to emergency service personnel through voice services that are provided by managed IP communications. Customer agrees to defend, indemnify, and hold harmless Cypress, its affiliates and agents and any other service provider who furnishes services to Cypress in connection with the managed IP communications from and against any and all losses, claims, liabilities, penalties, fines or damages arising by virtue of or relating to the absence of 911 service and/or inability of Customer, Customer Parties or any third person or party to be able to dial 911 through voice services that are provided through managed IP communications. As 911 and E911 capabilities and regulations continue to evolve, Cypress will revise these terms and keep our customers informed of appropriate changes.

Without limiting the foregoing, Customer acknowledges and agrees that voice services provided through managed IP communications may not provide access to 911 services for all locations and/or may not fully comply with the rules, regulations or other applicable laws relative to 911 coverage ("911 Rules"). Cypress shall have no liability whatsoever to Customer or any person using managed IP communications through Customer relating to any non-compliance with 911 Rules. Further, Customer agrees that Customer shall be solely responsible for, and Customer indemnifies and holds Cypress harmless, any and all Claims, fines, penalties, damages or other liabilities associated with the failure of managed IP communications to meet any 911 Rules.

18. Un-Managed Service for Remote Workers and Mobile Workers through Managed IP Communications. Remote and mobile workers may access the voice services provided through managed IP communications through cable modem networks, DSL networks, cellular data networks or other forms of Internet access. Customer acknowledges that the off-net connections described in the preceding sentence are un-managed services and Cypress does not provide or guarantee availability or quality of these voice services. Customer may purchase or be provided as part of managed IP communications service certain devices such as an Edgemark appliance that may provide traffic shaping and other capabilities that may help prioritize outbound voice traffic over other forms of traffic. Customer acknowledges that such devices do not guarantee availability or quality of voice service and do not provide guarantees for availability or quality of service for inbound traffic or the circuit beyond Customer's Premises. Customer further acknowledges that Cypress does not support Customer-provided remote equipment such as cable/ DSL modems, routers, switches or other devices. Cypress includes one hour of remote support and documentation for initial set-up. Additional support is available at Cypress' then current hourly rates.

19. SmartConference™

19.1 Cypress may provide certain services for use in providing Cypress voice conferencing through the Internet and public telephone networks (the "SmartConference Services"). Customer acknowledges that the delivery of SmartConference Services does not give Customer any right to use any proprietary software and hardware technology used by the underlying service provider of the SmartConference Services.

19.2 SmartConference Services are provided through accounts established by employees of Customer and activated by Cypress pursuant to these MTCs and the associated Service Order. Customer and Cypress shall establish initial accounts within forty-eight (48) hours after the Service Order Effective Date of the Service Order in which SmartConference Services has been ordered by Customer, and thereafter use commercially reasonable efforts to establish accounts with all employees who have a need for the Service. Each employee establishing an account pursuant to these MTCs shall agree to be bound by the terms of this Section 19.

19.3 Customer acknowledges that the SmartConference Services are for the internal business use by Customer and its employees only and agrees not to resell or redistribute the services to third parties.

19.4 Cypress agrees to provide reasonable technical support to Customer in the form of operator-assisted support via telephone and electronic mail at the number provided on the Cypress SmartConference Services card, twenty-four (24) hours per day, seven (7) days per week.

19.5 Customer acknowledges and agrees that it will be solely responsible for any legal and financial liability arising out of or relating to the use of the SmartConference Services provided under any account established pursuant to these MTCs and the applicable Service Order, and any such use will be deemed to have been made by Customer. Each account will be assigned a unique conference identification number and personal identification number for access to and use of the service. Customer shall be responsible for ensuring the security and confidentiality of all ID numbers. Customer acknowledges that it will be fully responsible for all liabilities incurred through use of any ID numbers (whether lawful or unlawful) and that any transactions completed under any ID numbers will be deemed to have been lawfully completed by Customer. In no event will Cypress be liable for the foregoing obligations or the failure by Customer to fulfill such obligations.

19.6 Customer acknowledges that Cypress shall be the exclusive provider of SmartConference Services to be used by Customer and its employees during the term of the applicable Service Order.

19.7 Cypress may adjust any of the SmartConference Services fees at any time upon ten (10) days prior notice to Customer; however, international rates are subject to change without notice.

20. SmartShield™

20.1 Cypress will provide network security services through its fully managed firewall service dedicated to Customer's specific LAN ("SmartShield Services") if SmartShield Services are ordered by Customer under a Service Order. By installing or

otherwise using the SmartShield Services, Customer agrees to be bound by the terms of this Section 20.

20.2 If Cypress provides SmartShield Services to Customer, then Cypress will take commercially reasonable efforts to secure Customer's specific LAN designated in the Service Order for such SmartShield Services. Customer acknowledges and agrees that the SmartShield Services are not 100% guaranteed and that unauthorized entry into the Customer's LAN on which the SmartShield Services are provided may occur as a result of (i) unauthorized use of usernames and passwords by persons other than Cypress' personnel, and (ii) unauthorized persons' hacking into Customer's LAN in a manner that industry standard network security protections could not have reasonably prevented. Cypress offers pop-up blocking, spam filtering and virus protection services as part of the SmartShield Services (the "Virus Protection Services"). Cypress will use commercially reasonable efforts to protect client from viruses, worms, or other software routines, programs or mechanisms designed to permit unauthorized access into, disable, erase, or otherwise adversely affect Customer's network (collectively, "Viruses"); provided, however, these Virus Protection Services are not 100% guaranteed, are subject to the limitations of the software used by Cypress to provide the Virus Protection Services and are conditioned upon Customer's compliance with the requirements in the section entitled "Security Violations" in Cypress' AUP. The SmartShield Services do not include support for Viruses that are caused in whole or in part by Customer's failure to comply with the requirements of the section entitled "Security Violations" in Cypress' AUP.

20.3 Cypress reiterates for emphasis that, notwithstanding all other Sections of these MTCs, Sections 1.3, 4, 6 and 7 apply to Customer's use of SmartShield Services.

20.4 Ownership rights to Software provided in connection with SmartShield Services shall remain in the name of Cypress' underlying vendor, WatchGuard. Customer's use of the Software for SmartShield Services is subject to the terms and conditions of separate end-user license agreements that accompany the Equipment.

21. Relocation

21.1 If Customer moves from Customer's Premises designated in a Service Order prior to the Service Order Termination Date, then Cypress shall have the right, at Cypress' option, to provide the Services at Customer's new location for the remainder of the Service Order Term. Customer shall provide Cypress ninety (90) days prior written notice of the new location and move date.

21.2 If Cypress elects to provide Services to Customer at its new location, then the following terms shall apply:

(a) If Customer's new location is not in a Cypress Building, then Customer shall (i) provide Cypress sufficient space at Customer's new location for Cypress to install the Equipment necessary to provide Cypress' managed IP communications at Customer's new location; and (ii) execute a new managed IP Service Order for an Initial Term equal to or greater than the remaining Term at Customer's existing location.

(b) If Customer's new location is in a Cypress Building, the terms of the Service Order and the MTCs applicable to the Services provided at Customer's existing Premises shall all apply to, and remain in full force and effect with respect to, the Services provided at Customer's new location.

(c) Customer shall pay Cypress for all charges resulting from de-installing the Customer's Services at the current Premises and re-installing the Services at Customer's new location.

21.3 If (a) Cypress elects not to provide Services to Customer at its new location, or (b) if Customer's new location is not in a Cypress Building and the recurring charges for Cypress' managed IP communications exceeds Customer's monthly recurring charges for Services at Customer's existing location by ten percent (10%), then Customer may terminate the Service Order without liability to pay the Early Termination Fees that would have otherwise been applicable to such termination.

21.4 Cypress, in its sole discretion, may elect not to provide Services to Customer at its new location. If Customer fails to provide Cypress an opportunity to provide Services at Customer's new location, then such failure shall result in Customer's early termination of the Service Order and obligation to pay Early Termination Fees to Cypress.

22. Miscellaneous

22.1 The terms of this Section 22.1 only apply if Customer's Premises are located in a Cypress Building. The owner of the Cypress Building is not a party to the Service Order(s) between Cypress and Customer or these MTCs. The owner of the Cypress Building will have no obligations or liabilities whatsoever under the Service Order(s) between Cypress and Customer or these MTCs with respect to any Services or Equipment, and no representations or warranties are being made by the owner of the Cypress Building with respect to any Services or Equipment provided hereunder. Customer acknowledges and agrees that the owner of the Cypress Building is not a partner, agent, representative or affiliate of Cypress, and the owner of the Cypress Building is not a provider of communications services under the Service Order(s) between Cypress and Customer or these MTCs. Any cessation or interruption of the Services shall not constitute a default or constructive eviction by the owner of the Cypress Building under the lease agreement between the Customer and the owner of the Cypress Building. The owner of the Cypress Building shall have no responsibility or liability to Customer with respect to the provision, maintenance, failure, or quality of any Services or Equipment provided by Cypress under any Service Order to which the owner of the Cypress Building is not a party, and Customer agrees to hold the owner of the Cypress Building harmless from any claims that Customer may have against Cypress arising hereunder. Customer shall not have any right to abate, decline to pay or otherwise alter its obligations under its lease agreement with the owner of the Cypress Building as a consequence of Cypress' performance or non-performance of any obligations under these MTCs or the Service Orders, and Customer shall not have any right to abate, decline to pay or otherwise alter its obligations under these MTCs or the Service Orders as a consequence of the performance or non-performance by the owner of the Cypress Building of any obligation under its lease agreement with Customer.

22.2 Customer will obtain all approvals for access into Customer's Premises by Cypress necessary for Cypress to fully perform under the Service Order(s) between Cypress and Customer or these MTCs. Cypress shall not be in breach of these MTCs if Cypress is unable to comply with any term of these MTCs due to Customer's refusal or inability to secure such access. At no cost

to Cypress, Customer will provide reasonable assistance with respect to any testing that Cypress performs with respect to the Services or Equipment to the extent requested by Cypress.

22.3 Nothing in these MTCs shall be construed as preventing Cypress from using independent contractors or other third-parties to perform any of Cypress' obligations under the Service Order(s) between Cypress and Customer or these MTCs.

22.4 Customer may not sell, assign or transfer any Service Order(s) without Cypress' prior written consent, except where Customer desires to assign or otherwise transfer same, in whole or in part, to any parent or subsidiary of Customer or to any purchaser of all or substantially all of Customer's assets, or to a purchaser of Customer's business as a going concern, in which case Customer shall not be released of any obligations hereunder. Cypress may assign or otherwise transfer any Service Order(s) to any third party with written notice to Customer.

22.5 Cypress and Customer are independent contractors and any Service Order(s) and these MTCs will not establish any relationship of partnership, joint venture, employment, franchise or agency between Cypress and Customer. Neither Cypress nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

22.6 Nothing in any Service Order(s) or these MTCs shall be deemed to give Customer any right to use, infringe upon, contest or impair any of Cypress' service marks, trademarks, logos, copyrights or any other ownership rights or intellectual property of Cypress.

22.7 These MTCs, together with all Service Orders (whether now or hereafter executed), supersede all prior oral or written statements and represent the sole and entire agreement of with respect to the subject matter. Except as the result of a revision of an applicable Tariff, neither these MTCs, any Service Order nor any amendment, revision or modification of these MTCs shall be effective unless it is in writing that is signed by Customer. The agreement to, or acceptance by Cypress of the MTCs, any Service Order or any written amendment, revision or modification of the MTCs may be evidenced by the signature of an authorized representative of Cypress, provided that as to any writing which is wholly prepared by Cypress the provision of services or the performance of work by Cypress as described in the writing or the invoicing or issuance of a work order by Cypress related to same shall be evidence of its acceptance of the terms stated in the writing.

22.8 The MTCs and the terms of any Service Order and any addendum thereto, shall be governed by and enforced according to the laws of the State of Georgia without giving effect to any of its rules of conflicts of laws. Cypress and Customer hereby agree that any disputes, controversies, claims or collection efforts regarding Customer's failure to pay any charges or Early Termination Fees invoiced to Customer may be brought in the Superior Court of Fulton County, Georgia; provided, however, that any such claim or cause of action may be brought in, or removed to, the United States District Court for the Northern District of Georgia, Atlanta Division, to the extent that such court would have jurisdiction over the subject matter of such action. Cypress and Customer hereby consent and submit to the in personam jurisdiction of such courts, and to the extent permitted by law, hereby consent that all services of process may be made by certified or registered mail, postage prepaid and return receipt requested. Each party hereto waives any objection based on forum non conveniens and waives any objection to venue of any action instituted hereunder to the extent that an action is brought in the courts identified above and is not otherwise subject to the arbitration requirements in Section 22.9 below. Customer and Cypress may bring claims against the other only in their individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding.

22.9 Excluding disputes, controversies, claims or collection efforts regarding Customer's failure to pay any charges or Early Termination Fees invoiced to Customer, any and all disputes, controversies and claims arising out of or relating to these Master Terms and Conditions or a Service Order, including its validity ("Arbitratable Claims"), shall be settled and determined by arbitration conducted in Atlanta, Georgia before one (1) arbitrator in accordance with the Commercial Arbitration Rules and Mediation Procedures then in effect of the American Arbitration Association. The arbitrator's award shall be final and binding on the parties, and judgment confirming such arbitration award may be entered thereon in any court having jurisdiction over such proceedings. The parties agree that Arbitratable Claims will be resolved individually and shall not be adjudicated on a consolidated or class basis. Even if applicable law permits class actions or class arbitrations, the arbitration procedure agreed to herein applies and the parties waive any rights to pursue any Arbitratable Claim on a class basis. Each party shall bear its own expenses and an equal share of the expenses and fees with respect to the arbitration.

22.10 If Customer and Cypress execute multiple Service Orders, each additional Service Order will supplement rather than replace the prior Service Orders. Except for terms designated as Special Stipulations in a Service Order, these MTCs shall govern and control over any conflicting terms in the Service Order to the extent of such conflict.

22.11 Special Stipulations between Cypress and Customer, if any, are set out in the Service Orders and any attachments thereto signed by Customer. To the extent that the terms and conditions set forth in the Special Stipulations differ from those set forth in these MTCs, the Special Stipulations shall govern.

22.12 Each party has used, or has had an opportunity to use, an attorney to review these MTCs (and will use, or have an opportunity to use, an attorney to review any Service Order), and it is the parties' intent that these MTCs and any Service Order will not be construed against either party.

22.13 The covenants, undertakings, and agreements set forth in these MTCs will be solely for the benefit of, and will be enforceable only by, the parties hereto or their respective successors or permitted assigns.

22.14 Sections 4, 5.9, 6, 7, 8, 9, 22.8 and 22.9 will survive the termination of a Service Order. In addition, all provisions of these MTCs that can only be given proper effect if they survive the termination of a Service Order will survive the termination of such Service Order. These MTCs will be valid as to any obligation incurred prior to termination of a Service Order. Without limiting the foregoing, Customer must pay all amounts owed to Cypress under a Service Order, including, without limitation, any amounts that are not due until after the expiration or earlier termination of such Service Order.

22.15 If any provision of these MTCs, as applied to either party or to any circumstance, is adjudged by a court to be invalid, illegal or unenforceable, the same will not affect the validity, legality, or enforceability of the portion of the provision, if any, that is not invalid, illegal or unenforceable, the application of such provision in any other circumstances, or the validity, legality or enforceability of any other provision of these MTCs. Further, all terms and conditions of these MTCs will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court in any action between the parties is requested to reform any and all terms or conditions to give them as much effect as possible.

22.16 The section headings throughout these MTCs are for convenience and reference only, and will not be used to construe these MTCs.

22.17 The waiver of any breach or default of these MTCs will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.

22.18 Notices must be in writing and are deemed given when received at the respective address set forth in the Service Order.

22.19 Cypress may have or later acquire one or more licensors or service providers whose products or services are incorporated into, or licensed with, the Services or the software provided by Cypress, and each such licensor or service provider is expressly made a third party beneficiary under the applicable Service Order and these MTCs. Such licensor or service provider shall have the right to enforce the terms of the Service Order and these MTCs with respect to any terms affecting such licensor or service provider as if such licensor or service provider were a party to the Service Order and these MTCs.

22.20 Customer shall comply with all applicable laws, rules and regulations related to the use of the Services.

23. Definitions. In addition to terms defined elsewhere herein, the following terms shall have the definitions ascribed to them unless otherwise indicated.

“Business Day” means Monday through Friday excluding holidays recognized by Cypress.

“Customer” means the person or entity ordering Service or Equipment from Cypress pursuant to a Service Order.

“Customer Parties” means Customer, its owners, parent, subsidiaries, affiliates, officers, directors, employees, partners and agents.

“Cypress Building” means a building where Cypress has implemented equipment and distribution facilities in a central location (other than Customer’s Premises) to enable Cypress’ provisioning of service to tenants in the building. If Customer’s Premises are located in a Cypress Building, then all references in these MTCs to a Cypress Building shall refer to the building in which Customer’s Premises are located.

“Cypress Parties” means Cypress, its owners, parent, subsidiaries, affiliates, officers, directors, employees, partners and agents.

“Equipment” means the equipment provided by Cypress or the Cypress Parties that is located in Customer’s Premises and is used in, or relates to, the provision of the Services to Customer.

“Requested Installation Date” means, as to each Service Order, the date listed as the Requested Installation Date for that Service Order.

“Force Majeure Event” means any act or event which is beyond Cypress’ reasonable control, including, but not limited to, national emergencies; acts of war or other civil commotion; acts of God; earthquakes; fires; flood; adverse weather conditions; explosions; other catastrophes; embargo; insurrections; riots; sabotage; strikes; lockouts; work stoppages or other labor difficulties; any law, order, regulation or other action of any governing authority or agency thereof; or failure of the Internet.

“Inside Wiring” means all wiring and cabling in Customer’s Premises that are used by Cypress to deliver the Services to Customer or that is otherwise connected to the Equipment. The Inside Wiring does not include any distribution facilities owned or leased by Cypress.

“Inside Wiring Services” means the installation, repair, replacement, re-routing, re-terminating or testing of Inside Wiring whether such services are performed by Cypress or Customer.

“Minimum Monthly Total Revenue Commitment” means with respect to each Service Order, the amount designated as the Minimum Monthly Total Revenue Commitment in the Service Order that Customer agrees to pay in recurring charges (excluding Taxes) each month during a Service Order Initial Term or a Service Order Renewal Term.

“Premises” means Customer’s location identified in a Service Order for Cypress’ delivery of Services to the Customer at that location.

“Regulatory Authority” means the Federal Communication Commission (“FCC”), the United States Congress, any United States Bankruptcy Court, any state public service commission, administrative agency, judicial authority, or any other federal, state, municipal, international, or foreign governmental body or agency (including without limitation federal, state and local health, safety and environmental regulatory authorities) having authority over these MTCs, the Parties hereto, the Services, the Tariffs, the Equipment or any matter related hereto or thereto.

“Service Order Effective Date” means the date designated as the “Effective Date” in a Service Order.

“Service Order Initial Term” means, as to each Service Order, the period indicated under the heading “Contract Term” in a Service Order.

“Service Order Term” means the Service Order Initial Term and any Service Order Renewal Term.

"Service Order Termination Date" means the date on which the Service Order will expire (i.e., the Service Order Effective Date of such Service Order plus the Service Order Initial Term or any Service Order Renewal Term) or the effective date of a termination of a Service Order according to the terms of Section 5.

"Service Orders" means any and all contracts, agreements (including agreements to take service pursuant to Tariffs), entered into by any Customer with Cypress for (i) the provision of Services, or (ii) the lease of Equipment, or (iii) any maintenance or other services related to (i) or (ii) foregoing, together with any service orders, "move, add, or change requests," work orders, or similar instruments executed by the Customer (executed either pursuant to a contract or Tariff or in such other form and substance as Cypress may prescribe), for the installation, addition, deletion, moving, removal, reconfiguration, replacement or modification of said Services or Equipment from time to time.

"Services" means all services, products, goods or offerings of any type provided, or required to be provided, by Cypress to Customer under these MTCs, including the Service Orders.

"Special Stipulations" means the special terms and conditions, if any, set forth in the Service Orders or any attachment thereto, that are identified as Special Stipulations.

"Tariff" means any federal, state, international or foreign Tariff, price guide, price list, or similar instrument applicable hereto that is filed or otherwise published, in accordance with applicable law, by Cypress (or by any Cypress Affiliate) on Cypress' website or with any Regulatory Authority.

All other capitalized terms used herein, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Service Order(s) between the parties.