



**CYPRESS COMMUNICATIONS, LLC**  
**MASTER TERMS AND CONDITIONS**

**MTC 2011-1**

**(Effective May 26, 2011)**

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THESE MASTER TERMS AND CONDITIONS (“MTCs”) apply to all Service Orders, service tickets, work orders, service level agreements, and other contracts, agreements and invoices (collectively, the “Instruments”) with Cypress Communications, LLC or its affiliates (collectively, “Cypress”) and its Customers, to the extent that these MTCs are incorporated by reference in any such Instrument. Capitalized terms contained in these Master Terms and Conditions are defined in Section 21 below unless otherwise defined in these Master Terms and Conditions.

**1. Services, Equipment and Software**

1.1 Cypress’s primary service offerings can be found at <http://cypresscom.net/solutions/>.

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’s Service Level Agreement (“SLA”), which is set forth in Section 21. A Service Order submitted by Customer to Cypress shall be deemed accepted by Cypress at the time Cypress begins installation. Unless otherwise specifically set forth in the Agreement between Cypress and Customer (the “Agreement”), Section 21 shall control as to Cypress’s Service Level Agreement. 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, in the event that such addition, deletion or change is required by one of Cypress’s equipment or software vendor or for regulatory reasons or if there is a material increase in Cypress’s cost structure for Customer’s location(s). If: (a) any such addition, deletion or change will materially and adversely impact Customer and (b) Customer notifies Cypress within thirty (30) days in writing after receiving notification from Cypress of such addition, deletion or change that Customer desires to terminate the affected Service(s), then Customer may terminate the affected Service(s) (but not the remainder of the Services provided to Customer) without liability, effective thirty (30) days after such written notice to Cypress.

1.3 Customer shall use the Equipment and Services in accordance with these MTCs, the Agreement and Cypress’s Acceptable Use Policy, which may be found at <http://www.cypresscom.net/use.html>, and which is incorporated herein by reference (“AUP”). Without limiting the foregoing, (a) Customer may not use the Equipment or Services for any unlawful purpose, (b) Customer shall not resell any of the Services or sub-lease any of the Equipment, and (c) Customer shall not permit any third party to use the Services or access the Equipment, except in the ordinary course of Customer’s business, without Cypress’s prior written consent or as contemplated in these MTCs. Cypress may restrict or cancel a Customer’s Services, in whole or in part, if Cypress believes that the Services are being used in violation of the AUP or are otherwise being used in an unlawful, abusive or fraudulent manner.

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 provide each Service by the date requested in the applicable Service Order (the “Requested Installation Date”). See the SLA for Cypress’s standard installation lead times. The SLA establishes the additional fees that are applicable if Customer requests Cypress to meet an installation/service commencement date earlier than the standard installation intervals. Customer may request one (1) delay in the installation date up to seven (7) days prior to the Requested Installation Date. If Customer requests additional delays and Cypress postpones the install, Customer will be charged a \$250 Installation Rescheduling Fee for each such approved delay. After three (3) rescheduling attempts by Customer or if Cypress is unable to install Customer ninety (90) days after the Requested Installation Date, Cypress, in its absolute and sole discretion, may terminate this Service Order with five (5) days written notice and without liability to Customer. Prior to the installation date of the Services, Customer shall be solely responsible for terminating any existing voice, data or other communications services that it already has in place with any other communications provider or carrier.

1.6 Unless otherwise expressly set forth in an Instrument that is binding on Cypress, 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. Customer shall provide Cypress sufficient space, electrical power, and heating/ventilation/air conditioning at Customer’s location(s) for Cypress to install and access the Equipment necessary to provide Cypress service.

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. If Customer is purchasing or using Cypress’s GO!VBX Managed (formerly C3) and C4 Office product, Customer agrees to be bound by the terms and conditions of the Customer License Terms Regarding Use of Microsoft Software. CUSTOMER ACKNOWLEDGES THAT CYPRESS AND CYPRESS’S THIRD-PARTY SOFTWARE SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,

TITLE, NONINFRINGEMENT, OR THOSE ARISING FROM COURSE OF DEALING AND USAGE OF TRADE WITH RESPECT TO ANY SOFTWARE.

1.8 None of the payments made by Customer to Cypress shall create, or be deemed to create, in Customer any ownership rights or equity interest in the Software or the Equipment.

1.9 In the event that Cypress agrees in a separate binding instrument to sell desktop handsets to Customer, the terms and conditions of this Section will apply: Cypress will provide a limited one-year warranty to repair or replace any handset that has a design or functionality defect. This warranty is void if Cypress determines that the handset has been mishandled, mistreated, improperly installed or configured, subjected to electrical stress, packaged incorrectly, upgraded incorrectly, misapplied, misused, damaged due to Customer negligence, or is defective due to intentional or willful abuse or because of a Force Majeure. In addition, this warranty is nullified if any of the following tampering conditions have been found: labels or seals (removed or broken), setup has been altered, changed, or upgraded (inclusive of modules and/or line cards and/or components). The warranty does not cover software licenses, software upgrades, key codes, or compatibility with future releases of hardware or software which will be managed by Cypress throughout the Agreement. If it is determined during the testing of returned equipment that damage is due to any of the above reasons, Customer will be subject to customary repair charges. Cypress will not be responsible for repairing or replacing any equipment after the one-year anniversary of the date hereof. Except as set forth above, all express or implied warranties are hereby disclaimed and excluded, including without limitation any implied warranty or condition of merchantability, fitness for a particular purpose (even if known to Cypress), non-infringement, satisfactory quality, or arising from course of dealing, law, usage, or trade practice. All liability of Cypress and its suppliers for claims arising with respect to defective handsets shall be limited to the money paid by Customer to Cypress for such defective handsets. In no event shall Cypress or any of its suppliers be liable for any incidental, special, indirect, punitive or consequential damages, lost revenue, lost profits, or lost or damaged data, whether arising in contract, tort, negligence or otherwise, even if Cypress or its suppliers have been informed of the possibility thereof.

## 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. For all non-usage-based services, invoicing will begin when the Services are installed. For all Remote Seats, invoicing will begin two days after equipment is shipped by Cypress to Customer's Remote Seat location or locations. 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 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 withhold payment associated with billing disputes only when Customer has submitted such disputes in good faith in writing to Cypress 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. 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 Agreement. 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.

2.2 In addition to all payments that are required under any Service Order, except for any income taxes attributable to the net income of Cypress, Customer will be responsible for, and Customer shall pay, all federal, state, city, county, municipal, local or other governmental excise, income and sales, value-added, use, personal 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, and (ii) Customer's payment for the Equipment and Services (collectively, the "Taxes"). A description of taxes and fees may be found here: <http://cypresscom.net/customer-care/taxes/>

2.3 After the Service Order Effective Date, Customer shall be bound by a Minimum Monthly Total Revenue Commitment ("MMTRC") as stated in the Service Order, beginning in the next month following the initial billing month. 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. If an installation is delayed by Cypress, Customer will be not billed its MMTRC until such delay has ended.

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 If Customer submits a signed Service Order to Cypress and cancels or terminates the Service Order prior to the end of the Service Order Termination Date, then, unless otherwise provided on the Service Order, Cypress shall have the right to invoice Customer for: (i) Early Termination Fees (as defined in Section 5.5 below) plus (ii) any out-of-pocket costs or expenses actually incurred by Cypress in connection with such signed Service Order. Customer shall be obligated to pay such invoiced amount to Cypress within thirty (30) days of the invoice date. If Customer cancels the Service Order less than 15 days prior to the Service Order Effective Date then, in addition to the amounts set forth in the preceding sentence, Cypress shall also invoice Customer an additional cancellation fee of five hundred dollars (\$500) and Customer shall pay such invoiced amount within thirty (30) days of the invoice date.

2.6 Cypress's then current charges shall apply to all moves, additions, or changes (MAC) 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 shall 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 modify or delay its performance of a MAC

Request, in the event that Cypress cannot perform such MAC Request because (i) such MAC Request is outside the Cypress footprint, (ii) there is a lack of available equipment or software, or (iii) there is a lack of available personnel. Cypress reserves the right, in its sole discretion, to refuse its performance of a MAC Request in the event that such Customer is in default or not in good standing with Cypress in relation to its payment for Service rendered.

2.7 Notwithstanding anything in the Instruments to the contrary, Cypress has the right to increase, decrease, change or modify any of its rates for Services at any time; provided, however, if Cypress raises its rate for a Service by more than five percent (5%) during any consecutive twelve (12) month period, Customer may terminate such Service (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, which rate shall be deemed accepted by Customer.

2.8 Customer will be charged for any invoice furnished to Customer on paper: The first invoice will be provided to Customer on paper at no charge. For the second and third months, the processing fee for a paper invoice will be \$18.50 per month. Thereafter, the charge will be \$7.95 per month if the invoices average five pages or less in length, the charge will be \$9.95 per month if the invoices average 6-25 pages, or the charge will be \$18.50 per month if the invoices are 26 or more pages on average. Average invoice page length is determined by Cypress one month in arrears. 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 made available to Customer at no charge at Cypress's customer-portal website ("Connexion"). An electronic invoice is deemed to be received by Customer when the electronic invoice is made available to Customer on Connexion. Customer will need to log on to Connexion on a monthly basis to access its electronic PDF invoices. Instructions on making the election to discontinue paper invoices and how to obtain electronic PDF invoices from Connexion will be provided to Customer with Customer's first invoice. Notwithstanding anything to the contrary in this Section, effective as of November 17, 2009, all new Customers of Cypress will no longer receive paper invoices; instead, electronic invoices will be made available free-of-charge to such new Customers on Connexion.

**3. Installation, Repairs and Maintenance.** Subject to Section 6 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 all Inside Wiring and any cabling required to provision properly the Services from the building's riser system or Cypress's distribution facilities to Customer's Premises. If riser cabling is required or Inside Wiring is damaged, moved or removed in a manner that adversely affects Cypress's 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's 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, as set forth below in this Section. If Cypress is engaged by Customer to perform Inside Wiring Services, Customer will be charged a fee of One Hundred Eighty-five Dollars (\$185.00) per station for a single drop of Cat 3 to Cat 6 cabling, with an additional Forty Dollars (\$40.00) per drop for additional drops, e.g. \$225 per station for dual drops. If Customer needs thirteen or more drops, Customer will pay fifty percent (50%) of the cabling work up front and the remaining fifty percent (50%) upon satisfactory completion of the work. 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's 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's 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 shall 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's 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's prior written consent, or if the Equipment or any part thereof is moved without Cypress's prior written consent, then (a) Customer shall be deemed in default under these MTCs, (b) at the election of Cypress, the repair obligations set forth above in this Section 3 shall become null and void, and (c) Cypress may exercise any of the remedies provided for in these MTCs. In addition, Customer shall defend, indemnify and hold Cypress harmless from and against any and all damages, losses, injuries or claims 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's then-standard charges for such repairs.

#### **4. Ownership of Equipment; Non-Interference with Equipment**

4.1 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 below and not sold to Customer. Cypress will be responsible for repair and maintenance of the Equipment. 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.

4.2 Title to the Equipment and Cypress's distribution facilities shall remain in the name of Cypress or Cypress's 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's 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's distribution facilities, and will defend, 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's distribution facilities shall not be deemed a fixture. Customer agrees that the Agreement, 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, upon notice to Customer, will remove the Equipment related thereto, which removal shall be at Cypress's cost and expense unless the Service Order was terminated because of Customer's breach of the Agreement or improper early termination of any Service Order between Cypress and Customer or the Agreement, 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, during Customer's normal business hours, to remove Services and Equipment as provided in this Section, and such authorization includes, without limitation, the right to access Customer's Premises for purposes of removing all Equipment from Customer's Premises.

4.3 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's 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.

4.4 Customer covenants and warrants that it shall 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 or to prevent imminent harm to persons, property or Customer's network. 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 shall use commercially reasonable 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 personnel and 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.

4.5 Customer shall 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. Each Service Order will terminate on the Service Order Termination Date; except as otherwise set forth in Section 5.10 below. The term of each Service Order shall automatically renew for successive one (1) 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 sixty (60) 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 unable to pay its bills as they become due; (ii) 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 (iii) 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) in excess of fifteen percent (15%) for three (3) months during any consecutive 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 shall have 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; otherwise Customer shall be deemed to have waived any and all claims with respect to such Chronic Service Level Failure.

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 its expiration (except for a termination by Customer as set forth in Section 5.3) or if a Service Order is terminated by Cypress for Customer's failure to pay or breach pursuant to Section 5.4, then Customer agrees to pay Cypress, as liquidated damages: (i) any amounts that are past due and payable for Services delivered by Cypress to Customer, (ii) any installation charge that was waived by Cypress at the time of installation, plus (iii) the MMTRC under the applicable Service Order multiplied by the number of months remaining had such Service Order not been terminated early (collectively, the amounts referred to in clauses (i), (ii) and (iii) above are referred to in the aggregate as the "Early Termination Fees"). If, during an Agreement Renewal Term, Customer terminates prior to the end of that Agreement Renewal Term, Customer agrees to pay Cypress as liquidated damages: (a) any amounts that are past due and payable for Services delivered by Cypress to Customer, plus (b) the average monthly aggregate MRCs for the most recent three full monthly billing cycles under the applicable Service Order multiplied by the number of months remaining had such Service Order not been terminated early multiplied by eighty percent (80%) (collectively, the amounts referred to in clauses (a) and (b) above are referred to as the "Renewal Period Early Termination Fees"). The parties agree that Cypress's damages resulting from an early termination of a Service Order as described in this Section would be difficult or impossible to accurately estimate. Therefore, the Early Termination Fees set forth in this Section 5.5 are intended by Cypress and Customer to establish a fair and reasonable pre-estimate of the probable loss incurred by Cypress in the event of a Service Order early termination. Such Early Termination Fees shall constitute the minimum and the maximum amount that may be collected by Cypress if Customer terminates a Service Order prior to its expiration (except for a proper termination by Customer as set forth in Section 5.3) or if a Service Order is terminated by Cypress for Customer's failure to pay or breach pursuant to Section 5.4. All Early Termination Fees shall be due and payable within thirty (30) days after the Service Order Termination Date.

5.6 Cypress has the right to suspend or 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 shall not apply to a Service Order termination under this Section.

5.7 If Cypress does not receive full payment from Customer by the due date applicable to the Services provided under a Service Order, with the exception of disputed charges properly withheld pursuant to Section 2.1 then, in addition to any other rights or remedies of Cypress, Cypress may, after giving Customer five (5) days written 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 if, and only if: (i) Customer pays in advance Cypress's actual 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 and (ii) Customer pays the \$150.00 Resumption of Service Charge Cypress may assess Customer 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 in Section 5.5.

5.8 Cypress reserves the right to move the Customer to metered usage pricing or 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 includes but is not limited to: (a) situations where the aggregate minutes of long distance usage per monthly billing cycle for an extension are excessive relative to the product that Customer has purchased from Cypress or (b) calling patterns that appear related to a call center environment, telemarketing operations, or the resale of Cypress services, in either case without Cypress's prior written approval.

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

5.10 If Customer: (a) signs a Service Order subsequent to the Service Order initially submitted by Customer for a new or different service location, (b) submits a Move, Add, Change (MAC) Service Order Addendum that is a "Complex MAC" (i.e., installing six (6) or more new GO!VBX Managed (formerly C3) and C4 IP phone sets, a new dedicated circuit, a service location move, a transfer of service, or access increase that triggers a larger router), or (c) migrates to a new service platform (for example, customer moves from Cypress's C2 Digital product to Cypress's GO!VBX Managed and C4 IP product (any event described in clause (a), (b) or (c) is hereinafter referred to as an "Extension Event"), then the term of the Service Order shall be extended until the later of (i) the Service Order Termination Date or (ii) the date that is twelve (12) months after the effective date of the Extension Event.

5.11 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's 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. If Cypress elects to provide Services to Customer at its new location, then the following terms shall apply: (a) Customer shall provide Cypress sufficient space at Customer's new location for Cypress to install the Equipment necessary to provide Cypress's managed communication services at Customer's new location; (b) Customer shall pay Cypress for all actual charges resulting from de-installing the Customer's Services at the current Premises and re-installing the Services at Customer's new location, and (c) Cypress shall provide notice to Customer of any changes in rates caused by relocation. These rates changes include, but are not limited to, change in Access and changes to Direct Inward Dial (DID)-associated charges. Cypress, in its sole and absolute discretion, may elect not to provide Services to Customer at Customer's new location. If Cypress makes such an election, or if Customer fails to provide Cypress with an adequate opportunity to provide Services at Customer's new location, then such election

or failure shall be deemed to result in Customer's early termination of the Service Order and Customer shall be obligated to pay Early Termination Fees to Cypress.

5.12 Regardless of when Services are ordered and delivered within the Service Order Term, all dedicated access circuits will bill a minimum of twelve (12) consecutive months and all voice seats will bill a minimum of three (3) consecutive months.

## **6. Limitations and Exclusions of Liability**

6.1 NOTWITHSTANDING ANYTHING IN THESE MTCS, THE AGREEMENT OR ANY SERVICE ORDER TO THE CONTRARY, IN NO EVENT SHALL CYPRESS BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, REPLACEMENT GOODS, LOSS OF TECHNOLOGY RIGHTS OF SERVICES, LOSS OF DATA, LOSS OF FILES OR SOFTWARE DAMAGE, FAILURE OR ERRORS IN SIGNAL TRANSMISSION, INTERRUPTION OR LOSS OF USE OF SERVICE, INCLUDING INABILITY TO DIAL 911 THROUGH VOICE SERVICES PROVIDED THROUGH MANAGED IP COMMUNICATIONS, OR ANY OTHER TYPE OF DAMAGES OTHER THAN ACTUAL AND DIRECT DAMAGES (AND WITH REGARD TO ACTUAL AND DIRECT DAMAGES INCURRED BY CUSTOMER, SUBJECT TO THE LIMITATION OF DAMAGES AS SET FORTH IN THESE MTCS). IN ADDITION, CYPRESS SHALL 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 ANY OF THE FOLLOWING: (A) CYPRESS'S 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'S COMPLIANCE WITH LEGAL PROCESS OR CYPRESS'S COMPLIANCE WITH A WRITTEN AGREEMENT WITH A SUPPLIER OR AN OWNER OF A CYPRESS BUILDING; (B) ANY FORCE MAJEURE EVENT OR OTHER CAUSES THAT ARE BEYOND CYPRESS'S CONTROL; (C) THE FAILURE OR MALFUNCTION OF CUSTOMER'S EQUIPMENT OR FACILITIES; (D) 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; (E) 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 (F) CYPRESS'S SUSPENSION OF SERVICES ACCORDING TO THE TERMS OF SECTIONS 5.6, 5.7 OR 13.4. THE LIMITATIONS IN THIS SECTION 6.1 APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT AND ANY OTHER THEORY OF LIABILITY.

6.2 NOTWITHSTANDING ANYTHING IN THESE MTCS, THE AGREEMENT OR ANY SERVICE ORDER TO THE CONTRARY, IN NO EVENT SHALL CYPRESS'S 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 THE AGREEMENT OR ANY SERVICE ORDER BETWEEN CYPRESS AND CUSTOMER OR THESE MTCS, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT OF CHARGES PAID BY CUSTOMER TO CYPRESS UNDER SUCH AGREEMENT AND SERVICE ORDER(S) DURING THE SIX (6) MONTH PERIOD AFTER THE DATE OF THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM.

6.3 Notwithstanding anything in these MTCs, the Agreement or any Service Order to the contrary, the Cypress Parties shall have no liability whatsoever to the Customer Parties, except to the extent such Customer Parties suffer personal injury proximately caused by the gross negligence or willful misconduct of the Cypress Parties.

6.4 ALL LIMITATIONS OF LIABILITY APPLICABLE TO CYPRESS CONTAINED IN THIS SECTION 6 SHALL ALSO BE APPLICABLE TO CYPRESS'S LICENSORS, SERVICE PROVIDERS, AGENTS, AND EQUIPMENT VENDORS.

6.5 Except as provided in Section 2.1 regarding Customer's good faith dispute of certain invoiced amounts, all other claims by Customer of whatever nature against Cypress shall 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's 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 applicable SLA; (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.** CYPRESS MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE EQUIPMENT, SERVICES OR SOFTWARE, AND CYPRESS HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF: (A) MERCHANTABILITY, (B) FITNESS FOR A PARTICULAR PURPOSE, (C) SUITABILITY, (D) USE, (E) NONINFRINGEMENT, (F) TITLE, (G) SERVICE BEING ERROR-FREE, VIRUS-FREE, UNINTERRUPTED, OR FREE FROM UNAUTHORIZED ACCESS (INCLUDING THIRD-PARTY HACKERS OR DENIAL OF SERVICE ATTACKS), AND (H) ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. CYPRESS DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS

BEHALF, AND CUSTOMER SHOULD NOT RELY ON ANYONE MAKING SUCH STATEMENTS. CYPRESS IS NOT THE MANUFACTURER OF EQUIPMENT PROVIDED TO CUSTOMER IN CONNECTION WITH THE USE OF THE SERVICES.

**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 shall 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**

Customer agrees to defend, indemnify and hold Cypress, and its employees, agents and affiliates, harmless from and against any claims or actions made by a third party which relate to, or arise out of, the negligence or misconduct of Customer or its employees or agents. In addition, Customer shall indemnify and hold Cypress and its employees, agents and affiliates, harmless from and against any claims or actions arising out of or in connection with Customer's use of the Service, including without limitation any and all losses, damages, liabilities, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) related to or arising in connection with: (a) any breach by Customer of the terms of the Agreement, any Service Order or these MTCs or Customer's breach of any warranty, representation or covenant in the Agreement, any Service Order or these MTCs; (b) any claim by any employee or invitee of Customer other than a claim based on the gross negligence or willful misconduct of Cypress; (c) 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; (d) Customer's operations or services, including without limitation any content or software displayed, distributed or otherwise disseminated by Customer, its employees, or users of the Services; (e) any claim that Customer's use of the Service including the registration and maintenance of Customer's selected domain name(s), infringes on the patent, copyright, trademark or other intellectual property right of any third party; (f) 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, including without limitation any malicious act or act in violation of any laws committed by Customer, its employees or users using the Services; (g) violation by Customer, its employees or authorized users of the Cypress AUPs; or (h) failure of Customer to notify those persons on its business premises by application of stickers to telephones, general posted notices, or other writings or communications that, during any 911 call, the person calling 911 must affirmatively inform the 911 service of his or her physical location.

**10. Deposits.** Cypress will require Customer to deposit an amount, as stated in the Agreement or an Exhibit thereto, with Cypress as a security deposit, reflecting one (1) month MRCs under the Agreement (the "Security Deposit"). Cypress reserves the right to require a security deposit (if the requirement of a security deposit was initially waived by Cypress) or additional security deposits for subsequent Service Orders if Customer has not made payments for existing Services in accord with the provisions of the Agreement and/or if Customer adds new locations not set forth in the Agreement or any Exhibit thereto. Cypress reserves the right to require a security deposit (if the requirement of a security deposit was initially waived by Cypress) or require additional security deposits from Customer if Cypress determines that Customer's creditworthiness is in doubt or becomes negative as reflected in Customer's credit score or credit rating. If Cypress requires Customer to pay a 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. Such 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 the Agreement or a Service Order, Cypress may 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 otherwise provided in this Agreement, 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.

#### **11. Regulated Services**

11.1 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, LLC or Cypress Communications Operating Company, LLC, or another affiliate of Cypress Communications, LLC pursuant to 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 communications services; except that any Special Stipulations relating to a Tariffed service shall remain effective to the extent permitted by the Tariff. If by action taken by a Regulatory Authority a Tariff is no longer applicable to a particular Service, Cypress's standard rates for that Service shall apply. Cypress reserves the right to make any Service a Tariffed service.

11.2 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 the Tariffs for interstate Services are posted at [www.cypresscom.net](http://www.cypresscom.net)

11.3 Local Number Portability. In the event that Customer seeks to port out its numbers to another communications carrier, Customer shall give Cypress at least ten (10) business days prior written notice of the numbers that Customer seeks to port out, so that Cypress can provide such carrier with a copy of the Customer's CSR (customer service record). 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 relevant Service Order. 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, 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. Notwithstanding Cypress's commitment to reasonably cooperate with Customer's efforts to port out its telephone numbers at the expiration or termination of the relevant Service Order, Customer shall remain obligated to pay 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. In the event that Customer seeks to have a number or set of numbers "remote call forwarded" to a new number, Cypress may require Customer to pay in advance for such services via credit card or otherwise to ensure prompt payment for such remote call forwarding services.

12. (Intentionally omitted).

### 13. Internet Access Services

13.1 The terms of this Section 13 are applicable to Internet access services provided by Cypress, as well as Customer's Internet access services provided by a third party other than Cypress.

13.2 Customer understands that neither Cypress nor Cypress's 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 shall 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.

13.3 Cypress has published its AUP on its corporate website, at <http://www.cypresscom.net/use.html>. Among other things, 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. 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's corporate website.

13.4 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, slanderous, 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, at Cypress's election, result in (a) Cypress immediately suspending or terminating Customer's Internet access services and email accounts provided by Cypress; and (b) the prosecution of any and all criminal and civil penalties available under the law. Actions taken by Cypress, at its sole discretion, may vary based on the level of the offense. In the event of termination of Customer's Internet access services and/or email accounts, Customer shall be obligated to pay Early Termination Fees to Cypress under Section 5.5. Internet access services or email accounts that have been disabled due to a violation of the AUP will not be restored by Customer without Cypress's prior written consent.

13.5 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 Sections 5.4 and 5.5 shall apply to any such termination.

13.6 If a GO!VBX Managed (formerly C3) and C4 IP Customer chooses to use an Internet Service Provider (ISP) other than Cypress, or if Customer's firewall or router is not provided by Cypress, then the following apply: (a) Customer is responsible for Customer's firewall management and configuration; (b) Customer must ensure Cypress GO!VBX Managed and C4 soft client services (e.g. PC Client, Multimedia Office Client or M6350 Client) operate properly by configuring its firewall based on Cypress-supplied configuration, to allow specific Internet traffic to and from the Cypress network; and (c) Cypress will not attempt to login or configure Customer's router and/or firewall. If Customer requires assistance with Customer's hardware configurations, Cypress LAN consulting is available for an hourly fee.

### 14. IP Addressing

14.1 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.

14.2 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.

14.3 Customer agrees to provide Cypress with all information, assistance and cooperation that 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.

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

**15. Limitations on 911 Dialing Service through Managed IP Communications.** Cypress will provide 911 Service at all Customer locations as defined by Service Orders and online at <http://cypresscom.net/customer-care/resource-center/e911/>. 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.

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 in connection with the inability of Customer, Customer Parties or any third party to be able to dial, access or receive 911 services through managed IP communications Services.

**16. Un-Managed Service for Remote Workers, Out-of-Footprint Locations, and Mobile Workers through Managed IP Communications.** Remote and mobile workers may access the voice services provided through IP communications through cable modem networks, DSL networks, cellular data networks or other forms of Internet access. Customer acknowledges that: (a) the off-net connections described in the preceding sentence are un-managed services; (b) that Cypress does not provide such off-net connections; (c) that Cypress does not guarantee the availability or quality of Cypress's voice services over such off-net connections; and (d) that Cypress does not support Customer-provided remote equipment such as cable/DSL modems, routers, switches or other devices. Customer may purchase or be provided as part of IP communications services from Cypress certain devices that would allow the Customer to shape traffic and/or prioritize outbound voice traffic over other forms of traffic over such off-net connections described above. Customer acknowledges that when Customer uses such devices on the off-net connections Cypress does not guarantee availability or quality of voice service and does not provide guarantees for availability or quality of service for inbound traffic or the circuit beyond Customer's Premises. Cypress provides documentation for initial set-up and use. Additional training and support is available at Cypress's then current hourly rates. Upon Customer request, Cypress may provide GO!VBX Managed and C4 Remote Seat equipment at Customer-specified location(s) that are not managed by Cypress. In such cases, Customer shall be responsible for the off-net connections. However, if such connections fail to meet Cypress's prequalification specifications then Cypress shall be under no obligation to provide the GO!VBX Managed and C4 Remote Seat equipment at such location. In any case, the provision of such GO!VBX Managed and C4 Remote Seat equipment will be made subject to the limitations of this Section 16. Cypress will provide GO!VBX Managed and C4 Remote Seat equipment only on a Customer self-installed basis and will not provide in-person, Cypress-led Customer training. Cypress will send training materials via mail or make them available electronically. Customer acknowledges special on-site repair and Mean Time to Respond (MTTR) targets apply to such GO!VBX Managed and C4 Remote Seat equipment and are set forth in the SLA. Exhibit A to the Agreement includes three types of Customer locations: (a) Managed In-footprint, (b) Remote locations, and (c) Managed Out-of-Footprint. Cypress may agree to provide managed services at such Out-of-Footprint Locations which shall be known as GO!VBX Managed and C4 Managed, Out-of-Footprint Locations. For such GO!VBX Managed and C4 Managed, Out-of-Footprint Locations, the following shall apply: (i) a Technician Travel Non-Recurring Charge will apply for the additional travel expense; (ii) Customer training will be delivered via Web and Audio Conference with supporting materials sent electronically; and (iii) On-Site Repair will be performed via a 3rd-party company. Customer acknowledges special on-site repair and MTTR targets apply to such GO!VBX Managed and C4 Managed, Out-of-Footprint Location equipment and are set forth in the SLA.

## **17. Miscellaneous**

17.1 The terms of this Section 17.1 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 shall 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's performance or non-performance of any obligations under these MTCs or the Service Orders. 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. 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 Customer of any obligation under its lease agreement with the owner of the Cypress Building.

17.2 Customer shall obtain all approvals for access into Customer's Premises by Cypress necessary for Cypress to fully perform under the Agreement and any Service Orders. Cypress shall not be in breach if Cypress is unable to comply with any term of the Agreement, Service Orders or MTCs due to Customer's refusal or inability to secure such access. At no cost to Cypress, Customer shall provide reasonable assistance with respect to any testing that Cypress performs with respect to the Services or Equipment to the extent requested by Cypress.

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

17.4 Customer may not sell, assign, sub-lease or transfer any Equipment or Services or Service Order(s) without Cypress's prior written consent. Cypress will provide written consent, acting within its reasonable discretion, 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, so long as such affiliate or purchaser, as the case may be, satisfies Cypress's credit standards, pays Cypress its standard security deposit, and signs Cypress's customary documentation for a new customer. Cypress may assign or otherwise transfer the Agreement and any Service Order(s) to any third party with written notice to Customer.

17.5 Cypress and Customer are independent entities who have negotiated on an arms' length basis, and any Service Order(s) and these MTCs shall not establish any relationship of partnership, joint venture, employment, franchise or agency between Cypress and Customer. Neither Cypress nor Customer shall have the power to bind the other part or incur obligations on the other party's behalf without the other party's prior written consent.

17.6 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's service marks, trademarks, logos, copyrights or any other ownership rights or intellectual property of Cypress.

17.7 These MTCs, together with any Agreement, Instruments, and Service Orders that incorporate these MTCs by reference, 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, these MTCs, the Agreement, and any Service Order, and any amendment, revision or modification thereto shall not be effective unless it is in writing that is signed by Cypress and Customer. The agreement to, or acceptance by Cypress, of any Service Order may be evidenced by the signature of an authorized representative of Cypress, provided that as to any Service Order that is wholly and exclusively prepared by Cypress, the provision of services or the performance of work by Cypress as described in such Service Order 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 such Service Order. Cypress may modify the AUP by posting the modifications on its Web site (<http://www.cypresscom.net/use.html>), and if Customer continues to use the Service after such posting, Customer shall be bound by such AUP as modified.

17.8 The MTCs, the Agreement and the terms of any Service Order, and any addendum thereto, as well as the relationship of the parties and any claims or disputes arising under or in connection with the MTCs or any Service Order, shall be governed by and enforced in according with the laws of the state of Ohio, without giving effect to any of its rules regarding conflicts of laws. Cypress and Customer hereby agree that any disputes, controversies, causes of actions, or claims between the parties shall be brought in the Cuyahoga County Court of Common Pleas in Cleveland, Ohio; 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 Ohio, 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, each party hereby 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. 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 action or representative proceeding.

17.9 If Customer and Cypress execute multiple Service Orders, each additional Service Order shall 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.

17.10 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 or conflict with those set forth in these MTCs, the Special Stipulations shall prevail and control.

17.11 To the extent that the terms and conditions set forth in the Agreement or a Service Order differ from or conflict with those set forth in these MTCs, the terms and conditions in such Agreement or Service Order shall prevail and control.

17.12 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 the Agreement and any Service Order), and it is the parties' intent that having the power to draft these MTCs, the Agreement and any Service Order shall not be construed against either party.

17.13 Except to the extent otherwise described in Section 17.19 below, there are no third-party beneficiaries of these MTCs, the Agreement and the Service Orders and, accordingly, the covenants, undertakings, agreements and other provisions of these MTCs, the Agreement and the Service Orders shall solely benefit, and be enforceable only by, Cypress and Customer and their respective successors and permitted assigns.

17.14 These MTCs shall be valid as to any obligation incurred prior to termination of a Service Order. All Sections of these MTCs (including without limitation Sections 1.8, 4, 5.5, 5.9, 6, 7, 8, 9, and 21.8) that can only be given proper effect if they survive the termination of a Service Order shall survive the termination of such Service Order.

17.15 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, LLC or Cypress Communications Operating Company, LLC or another affiliate of Cypress Communications, LLC pursuant to any and all applicable Tariffs. This Agreement and every Service Order issues pursuant to in shall 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 may be in effect from time to time shall supersede any inconsistent provision of this Agreement with respect to regulated communications services; except that any Special Stipulations relating to a Tariffed service shall remain effective to the extent permitted by the Tariff and law. If by any governmental action a Tariff is no longer applicable to a particular Service, the rates, terms and conditions previously set forth in the Tariff shall be incorporated into this Agreement and remain in full force and effect until changed by the parties. Cypress's standard rates for that Service shall apply. Cypress reserves the right to make any Service a Tariffed service.

17.16 If any provision of these MTCs, as applied to either party or to any circumstance, is determined by a court to be invalid, illegal or unenforceable, the same shall 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 shall 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 in order to reflect the clear intent of the parties.

17.17 The waiver of any breach or default of any provision of these MTCs, or any Service Order or Agreement, shall not constitute a waiver of any subsequent breach or default, and shall not act to amend or negate the rights of the waiving party.

17.18 All notices under this Agreement shall be in writing and shall be sent to the respective address set forth in the Service Order, and shall be deemed given when received at that respective address when delivered by commercial overnight courier with verification of receipt, when sent by confirmed fax, or three days after being sent by prepaid certified or registered U.S. mail to the address of the party to be noticed as set forth herein or such other address. Except for the use of facsimile, any notice required by this Agreement shall not be made or delivered in electronic form.

17.19 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.

17.20 Customer shall comply with all laws, rules and regulations that are applicable to Customer's use of the Services.

17.21 During the term of any Service Order and for a period of one (1) year after the Service Order Termination Date, Customer agrees not to solicit for hire any Cypress employee, nor encourage any employee of Cypress to leave the employ of Cypress, if such Cypress employee was involved in connection with the provision of Services to Customer during the term of such Service Order.

**18. 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's 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's reasonable control, including but not limited to: act of God; national emergency; act of war; act of civil or military authority; earthquake; fire; flood; adverse weather; lightning strike; hurricane, tornado; explosion; embargo; insurrection; act of terrorism, riot; sabotage; labor strike; lockout; work stoppage or other labor difficulty; any law, order, regulation or other action of any Regulatory Authority; failure of the ILEC local loop; failure of the Internet; vandalism or "hacker" attack; or any power brownout or blackout.

"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's 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 of installation, as reflected in Cypress's records for the initiation of a Customer's first billing cycle.

"Service Order Initial Term" means, as to each Service Order, the period beginning on the Service Order Effective Date and ending upon the expiration of the number of months indicated under the heading "Contract Term" in such 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 and 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 service orders, contracts or 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 such Services or Equipment from time to time.

"Services" means all services, products, software, 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's website or with any Regulatory Authority.

All capitalized terms used in the MTCs that are not defined herein shall have the meanings ascribed to such terms in the Agreement or the Service Order(s) between the parties.

**19. Training Hours.** Cypress will provide, free of charge, training for managed voice services inside the Cypress footprint based on the following schedule:

C4 IP product: training for every block of thirty (30) seats contracted by Customer (a "Block") as follows:

Contract Term Length	Training Hours per Block
Up to 24 Months	1 ½
25 to 59 Months	2
60 or more Months	2 ½

GOIVBX Managed (formerly C3) product: training (minimum of one training hour) for every Block of seats contracted as follows:

Contract Term Length	Training Hours per Block
Up to 24 Months	¾
25 to 59 Months	1
60 or more Months	1 ¼

C2 and C2 Enhanced products: Web-based training at Customer's request

Seats per Location	Training Sessions per Location
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All	1
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If Customer seeks additional hours of in-person or web-based training for any of the products above, Customer will pay Cypress's then-standard charges for such training plus any reasonable costs and expenses incurred by Cypress.

**20. CPNI; Privacy Policy.** Customer proprietary network information ("CPNI") means information about the quantity, technical configuration, type, destination, and amount of use of the communications services that Cypress or any Cypress Parties may provide to Customer, including without limitation information contained in the invoices prepared by Cypress for Customer. Under federal regulations, communications providers such as Cypress have an obligation to protect the confidentiality of CPNI. By executing a Service Order, Customer grants permission to Cypress and Cypress Parties: (i) to use Customer's CPNI to evaluate Cypress's existing Services and new opportunities to serve Customer better, and (ii) to use Customer's CPNI to identify additional communications related services or products that Customer may desire that would complement the Services already provided by Cypress to Customer. Customer has read, understands and agrees to be bound by the terms and conditions of Cypress's Privacy Policy which is posted at [www.cypresscom.net/privacy-policy](http://www.cypresscom.net/privacy-policy)

**21. Service Level Agreement.** Cypress's service level commitments of availability and quality of its voice and dedicated Internet access services, customer service, standard, minimum and expedited install times and other services:

**[Service Level Table begins on next page]**

<b>1.</b>	<b>IP Voice and Internet Service Availability Commitment</b> <b><u>Time of Major Outage (hr:min:sec)</u><sup>1</sup></b>	<b><u>Measurement Period</u></b>		<b><u>Service Level Credit</u><sup>2</sup></b>
	00:00:01 – 00:10:00	Total credits measured monthly by billing cycle; time of Major Outage is measured per incident; multiple Major Outages in one day are considered one incident		No Credit
	00:10:01 – 01:00:00			1 day
	≥ 01:00:01			1 day per additional hour of Major Outage
<b>2.</b>	<b>Digital Voice Service Availability Commitment</b> <b><u>Time of Major Outage (hr:min:sec)</u><sup>1</sup></b>	<b><u>Measurement Period</u></b>		<b><u>Service Level Credit</u><sup>2</sup></b>
	00:00:01 – 00:01:00	Total credits measured monthly by billing cycle; time of Major Outage is measured per incident; multiple Major Outages in one day are considered one incident		No Credit
	00:01:01 – 01:00:00			1 day
	≥ 01:00:01			3 days
<b>3.</b>	<b>Quality of Service (Internet and IP Voice Services)</b> <sup>1</sup>	<b><u>Measurement Period</u></b>	<b><u>Service Level</u></b>	<b><u>Service Level Credit</u><sup>2</sup></b>
	<u>Latency</u> If latency of greater than 150ms roundtrip, based on a 75ms each-way target, is not resolved within 2 hours after trouble ticket opened	Monthly by billing cycle	150 ms roundtrip or less	20% of monthly recurring charges for affected access or usage services
	<u>Packet Delivery</u> If less than 99.5% and not resolved within 2 hours after trouble ticket opened	Monthly by billing cycle	99.5% or greater	20% of monthly recurring charges for affected access or usage services
	<u>Jitter</u> If greater than 30ms and not resolved within 2 hours after trouble ticket opened	Monthly by billing cycle	30 ms or less	20% of monthly recurring charges for affected access or usage services
<b>4.</b>	<b>Data Failover Service Availability Commitment</b> <b><u>Time of Major Outage (hr:min:sec)</u><sup>1</sup></b>	<b><u>Measurement Period</u></b>		<b><u>Service Level Credit</u><sup>3</sup></b>
	00:00:01 – 00:05:00	Total credits measured monthly by billing cycle; time of Major Outage is measured per incident; multiple Major Outages in one day are considered one incident.		No Credit
	00:05:01 – 01:00:00			1 month
	≥ 01:00:01			1 month per additional hour of Major Outage
<b>5.</b>	<b><u>Customer Service</u></b>	<b><u>Service Level (target response times)</u></b>		
	<u>Cypress Buildings and Managed IP Communication Locations</u> Major Outage (except for Excused Outage) Minor Outage (except for Excused Outage)	Within 2 hours after trouble ticket opened Within 8 hours after trouble ticket opened		
	<u>VoIP Remote Seat Locations</u> Major Outage (except for Excused Outage) Minor Outage (except for Excused Outage)	Within 6 hours after trouble ticket opened Within 36 hours after trouble ticket opened		
	<u>Managed, Out-of-Footprint Locations</u> Major Outage (except for Excused Outage) Minor Outage (except for Excused Outage)	Within 6 hours after trouble ticket opened Within 36 hours after trouble ticket opened		
<b>6.</b>	<b><u>Installation Lead Times: Minimum Install and Expedite Fee by Order Size</u></b>			
	<b>Product/Service Change</b>	<b>Standard Install<sup>7</sup></b>	<b>Minimum Install<sup>7</sup></b>	<b>Expedite Fee<sup>8</sup></b>
	C4 IP and GO!VBX (formerly C3 IP)	45 Business Days	15 Business Days	50% of contracted NRC for all

				expedited services. Expedite fees are separate from and in addition to standard NRC or installation charges.
	Soft MACs <sup>4</sup>	2 Business Days	Same Business Day	
	Basic Moves, Adds, Changes (MACs) <sup>5</sup>	5 Business Days	2 Business Days	
	VoIP Remote Seats <sup>9</sup>	20 Business Days	10 Business Days	
	Complex MACs <sup>6</sup>	30 Business Days	15 Business Days	

7.	Other Services Installation Lead Times; Minimum Install and Expedite Fee by Order Size			
	Product/Service Change	Standard Install <sup>7</sup>	Minimum Install <sup>7</sup>	Expedite Fee <sup>8</sup>
	C2 Data and Voice	15 Business Days	5 Business Days	50% of contracted NRC for all expedited services. Expedite fees are separate from and in addition to standard NRC or installation charges.
	C1 Data and C1 Voice	10 Business Days	5 Business Days	
	C1 Data and C1 SIP Trunking - In-building and DS1 (Out-of-building)	30 Business Days	15 Business Days	
	C1 Data and C1 SIP Trunking – DS3 (Out-of-building)	40 Business Days	20 Business Days	
	C1 Data and C1 SIP Trunking – Ethernet or Optical Circuit (Out-of-building)	60 Business Days	40 Business Days	

#### Notes to Service Level Table

Note 1 – Major Outages and quality of service issues are measured 24 hours a day excluding holidays recognized by Cypress and any planned maintenance periods (“Normal Business Hours”).

Note 2 – Service Level Credits are applied against the invoice following the month of the credit according to the following formula – (days of Service Level Credit according to the above table) / (total days in billing cycle for the invoice that the credit is applied against) x the recurring charge for the service affected by the service level failure. The limitations and administration of Service Level Credits are described in Sections 21.1, 21.7, 21.8, 21.29 and 21.10 below.

Note 3 – Service Level Credits for Data Failover Services will be applied to the MRCs invoiced for such Data Failover Services; provided however that the total amount of Service Level Credits shall not exceed the total aggregate amount invoiced by Cypress for such Data Failover Services.

Note 4 – Soft MACs include a call appearance change, password resets, downgrade or upgrade of seat type, deleting a seat, account name change, etc.

Note 5 – Basic MACs include adding up to 5 new phone sets, moving a phone, simple inside wiring work, etc.

Note 6 – Complex MACs include installing 6 or more new phone sets, a new dedicated circuit, a service location move, a transfer of service, access increase that triggers a larger router, etc.

Note 7 – The standard install and minimum install time periods begin on the day after Cypress receives a signed Service Order Form from Customer. Installation of Services earlier than the Standard Install timeframe is contingent upon Cypress receiving from Customer a signed Expedite Form that indicates an Expedited Install Date that is at least the minimum install lead time.

Note 8 – If Cypress does not deliver an expedited Service by the Expedited Install Date indicated on an Expedite Form, then Cypress will waive the expedite fee. The expedite fee is in addition to the applicable installation fees indicated in a Service Order or work order.

Note 9 – Applies to Remote VoIP Seats installed to a Customer location currently without Cypress services, i.e. a new Customer location for Cypress.

Note 10 – The standard and expedite install timeframes quoted for In Building Services assumes sufficient Cypress building capacity and no additional facilities are required to deliver Customer’s Service Order.

All capitalized terms in this SLA that are not otherwise defined above are contained in Section 21 below.

#### SLA TERMS AND CONDITIONS

**21.1. Covered Components.** This SLA applies to all equipment, cabling, distribution facilities and network facilities that are under the direct control of Cypress and that are used to provide voice services or Internet access services to Customer (the “Network”). This SLA does not apply to the public Internet, Customer’s telephone system, PC, router and hub (unless the router and hub are provided by Cypress), ILEC local loops, and any other equipment, cabling, distribution facilities or other network facilities that are not in Cypress’s direct control including, but not limited to, equipment, cabling, distribution facilities and network facilities that are controlled by Cypress’ service providers. 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, then this use is considered “off-net” and this SLA will not apply because Cypress does not have direct control of the high-speed Internet connection. In addition, the Quality of Service (QOS) and the associated Service Level Credits do not apply to Internet-only circuits provided by Cypress since traffic on these circuits traverse the

public Internet, where Cypress cannot necessarily maintain QOS. However, if Customer connects a managed communications handset provided by Cypress to a high-speed Internet connection provided by Cypress, then this use is considered "on-net" and this SLA will apply.

## SERVICE LEVEL METRICS

**21.2. Grade of Service for Voice Services.** Cypress's voice services are provided on a P.01 Grade of Service basis and are not designed to be used for call center, telemarketing or similar traffic. If Customer uses Cypress's voice services for these purposes without Cypress's consent, then Cypress can terminate the Service Order pursuant to the Agreement governing this SLA.

**21.3. Service Availability.** Cypress's Network availability target for voice and Internet access services is an average of 99.999% per monthly billing cycle. If a Major Outage (excluding an Excused Outage) occurs with respect to Cypress's voice services, or Cypress's Internet access services, then Customer will receive the applicable Service Level Credit indicated in the Service Level Table. For voice services, the Service Level Credit will be applicable for those telephone extensions that are affected by the Major Outage. Service Level Credits do not apply to Minor Outages.

### 21.4. Service Quality

"**Latency**" – Latency refers to the average time an IP packet takes to complete a round trip between the relevant hub routers.

"**Packet Delivery**" – Packet delivery refers to the IP packets that are actually delivered between the relevant hub routers. Packet loss refers to delivery failure of an attempted IP packet delivery between the relevant hub routers.

"**Jitter**" – Jitter refers to the relative variation in delay between the delivery of consecutive IP packets between the relevant hub routers.

If Customer experiences service levels that do not meet the service levels indicated in the Service Level Table for Latency, Packet Delivery or Jitter, then Customer will receive the applicable Service Level Credit indicated in the Service Level Table.

**21.5. (a) Customer Service.** If Customer experiences a problem with services provided by Cypress, then Customer may report the problem to Cypress's Customer Service Center. Cypress's normal hours of operation are Monday through Friday, 7:00 a.m. to 8:00 p.m. (EST) excluding holidays recognized by Cypress. Calls received outside of normal business hours will be answered by an after-hours operator who will page an on-call technician. Additional service charges may apply to after-hours, non-emergency service requests such as moves, adds or changes (MAC Requests).

**21.6. (b) Trouble Ticketing Procedure.** If Customer reports a problem or Cypress detects a problem, a trouble ticket will be opened, repairs will be effected by the Cypress Network Operations Center (NOC) and upon resolution the trouble ticket will be closed and a reason for problem will be provided by Cypress to Customer. Customer notice will be provided upon opening and closing of trouble tickets.

## SERVICE LEVEL LIMITATIONS

**21.7.** Cypress has no support obligation or obligation to provide a credit with respect to (i) any person or entity other than Customer, and (ii) any off-net voice or data transmissions.

**21.8.** Cypress has no responsibility to support hardware, software or cabling that are not provided or maintained by Cypress. For example (and without limitation), Cypress has no obligation to support Customer routers, switches, hubs, firewalls, telephone systems, personal computers, personal computer software and DSL/cable modems unless such equipment and software are provided by Cypress and located at the service location indicated in the applicable Service Order.

**21.9.** All Network performance parameters in this SLA are based on the assumption that the network and cabling at Customer's location that has not been installed or provided by Cypress is appropriately configured and is not damaged. If Cypress determines, in its discretion, that Customer's network and cabling is not appropriately configured or is damaged, then Customer will not be eligible to receive Service Level Credits.

**21.10.** THE SERVICE LEVEL CREDITS DESCRIBED IN THIS SLA ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND CYPRESS'S SOLE LIABILITY, FOR ANY SERVICE OUTAGE, SERVICE FAILURE OR DELAY OF CYPRESS'S VOICE OR INTERNET ACCESS SERVICES, OR ANY OTHER ISSUE AFFECTING THE QUALITY OR PERFORMANCE OF CYPRESS'S VOICE OR INTERNET ACCESS SERVICES. CYPRESS'S LIABILITY IS FURTHER LIMITED BY SECTIONS 6 AND 7 OF THE MTCS.

## ADMINISTRATION OF SERVICE LEVEL CREDITS

**21.11. Billing.** All Service Level Credits are automatically credited to Customer's invoice following the month that the service level failure occurred or a reasonable period thereafter. In no event will Service Level Credits be greater than the monthly recurring charge for the Voice or Internet access service within any given monthly billing cycle. Customer will have 60 days after receipt of an invoice to dispute the application of Service Level Credits on that invoice.

**21.12. Calculation.** Total creditable minutes in any given monthly billing cycle will be calculated commencing on the date and time that Customer opens a trouble ticket with Cypress for the outage event, and ending when the event is corrected (excluding the period of any Excused Outage). Major Outages measured on a per incident basis. Any Major Outage of 10 minutes or less in duration will not count toward the cumulative monthly Major Outage time. When calculating Service Level Credits, total creditable minutes in any given monthly billing cycle will not include any period of time during which Cypress's personnel are denied access to Customer's premises or other facilities necessary to remedy the problem. If one incident involves multiple service level commitment failures (for example and without limitation, when an Internet access service Network outage corresponds with a service quality deficiency), then the credits applicable to each service level are not cumulative. Customer will receive the highest available credit that applies to that incident. An incident is defined in terms of location; for example, if several telephone extensions experience an outage at one location then it counts as one incident for purposes of applying the Service Level Credit.

**21.13. Eligibility.** Customer will not receive Service Level Credits for any service interruption or other transmission problems caused by or contributed to by (i) Customer or Customer's end user(s), customers, suppliers, business partners or visitors, (ii) anyone other than

Cypress, (iii) a Force Majeure Event (as defined below in the Agreement), or (iv) the failure of an ILEC local loop. Customer is not eligible for Service Level Credits before successful installation of voice or Internet access services at Customer's location.

**21.14. SLA Definitions**

For purposes of this Section 21, the following definitions shall apply:

"Excused Outage" means a Major Outage that (a) relates to off-net services, or (b) is caused by or is the result of (i) a Force Majeure Event; (ii) Customer's act or omission, or that of Customer's employees, affiliates or agents or any other third party; (iii) the use or failure of any of Customer's equipment or facilities other than the Network, Equipment or Cypress's distribution facilities; (iv) planned outages for maintenance or repair that Customer schedules and approves in advance; (v) maintenance of the Equipment and Services performed outside of Normal Business Hours, (vi) a reassigned or revoked IP number, or (vii) the failure of an ILEC local loop.

"Force Majeure Event" has the meaning set forth in Section 18.

"In Building" means a building where Cypress has a shared, multi-tenant data and/or voice platform.

"Major Outage" means (i) for voice services, any outage (excluding Excused Outages) in which at least 25% of the telephone extensions that are enabled with Cypress's voice service (whether through a digital voice service offering or a managed IP communication service offering) are unable to make or receive calls, excluding those telephone extensions that are sending or receiving calls off-net in the case of voice services provided through a managed IP communication offering; and (ii) for Internet access services, a complete failure of the Network to send or receive data transmissions.

"Minor Outage" means any outage of voice or Internet access service (excluding Excused Outages) that is not a Major Outage.

"Out-of Building" means a building where Cypress does not have a shared, multi-tenant data and/or voice platform.

"Service Level Credit" is the credit indicated under the column heading "Service Level Credit" in the Service Level Table.