

CYPRESS COMMUNICATIONS, INC.

MASTER TERMS AND CONDITIONS

THESE MASTER TERMS AND CONDITIONS apply to all Service Orders, service tickets and other contracts, agreements and invoices by or between Cypress Communications, Inc., Cypress Communications Operating Company, Inc. and the affiliates and subsidiaries thereof (collectively, "Cypress") and its Customers to the extent incorporated herein. Capitalized terms used in these Master Terms and Conditions shall have the meaning given to such terms in Section 23 of these Master Terms and Conditions.

1. Services and Equipment.

1.1 For each Service Order, Cypress shall install and maintain the Equipment, and provide the Services, contemplated by such Service Order during the Term of the Service Order. Cypress retains the right, in its sole discretion, to add, delete and/or change any Equipment or Services upon at least thirty (30) days notice to Customer. If any such addition, deletion or change will materially and adversely impact the Customer, and Customer notifies Cypress within ten (10) days after receiving notification from Cypress of such addition, deletion or change of Customer's desire to terminate the impacted Service(s), Customer may terminate the impacted Service(s) (but not the remainder of the Services provided to Customer), effective thirty (30) days after written notice to Cypress.

1.2 Customer may use the Equipment and Services in the manner contemplated by the applicable Service Order and these Master Terms and Conditions, and in accordance with the terms of Cypress' AUP, as defined in Section 21 hereto. Without limiting the foregoing, (a) Customer will not use the Equipment or Services for any unlawful purpose, (b) Customer will not resell any of the Services and (c) Customer will not permit any third party to use the Services or access the Equipment without Cypress' prior written consent.

1.3 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, Inc.

1.4 Cypress will undertake commercially reasonable efforts to commence providing any Service(s) on the date that is identified as the Estimated Installation/Service Commencement date in the Service Order applicable to such Service(s). Cypress makes no representations or warranties regarding the exact date of installation, Service availability or Equipment operability.

1.5 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 lost, stolen or damaged as a result of Customer's negligence.

2. Payments.

2.1 Each month, Cypress will submit invoices to Customer. Cypress has the right but not the obligation to invoice Customer in advance for Recurring Charges; all other charges (which may include Usage-Based Charges and Other Charges) will be invoiced as and when they are incurred by Customer. Customer must pay all amounts set forth in each invoice, without any set-off, within thirty (30) days of the invoice date. In addition to all of the payments that are required under any Service Order between Cypress and Customer or these Master Terms and Conditions, Customer is responsible for, and Customer shall pay, all federal, state, city, county, municipal, local or other governmental excise, income and franchise, sales, value-added, use, personal and real property, occupational taxes, withholding taxes and any other obligations and other levies and fees now in force or enacted in the future, that arise from Customer's subscription to or payment for the Equipment and Services.

2.2 The Recurring Charges for any Services will commence on the date that Cypress commences providing such Services in accordance with the Service Order therefor. Customer will pay any Recurring Charges for a partial month on a prorata basis, and, if any Recurring Charges increase or decrease during a month, Customer will pay the amounts that were in effect for each portion of the month for the applicable portion of the month.

2.3 Notwithstanding anything in these Master Terms and Conditions to the contrary, except as otherwise expressly provided under Section 4 below with respect to certain repairs, any moves, additions, changes or repairs to the Equipment or Services requested by the Customer ("MAC Requests") shall be performed and/or provided by Cypress at Cypress' standard rates, or if such move, addition, change, or repair is subject to Tariff, at the tariffed rate prescribed therefor. The parties agree that MAC Requests will be performed by Cypress.

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

2.5 A late payment Charge equal to the lesser of one and one-half percent (1.5%) per month or the highest percentage permitted by law will be added to any Charges not received by Cypress when due. In addition, Customer agrees that Cypress has the right to collect from the Customer any fees, expenses or costs incurred by Cypress in collecting any Charges including reasonable attorneys' fees, collection agency costs and court costs.

2.6 Customer shall be deemed to have approved all invoices delivered from Cypress (and to have waived its right to dispute any Charges therein) if Customer fails to object thereto in writing within one hundred twenty (120) days after the invoice date.

3. **Service Level Agreement; Outage Credits.** Customer may report Service and Equipment problems to Cypress' customer service center twenty-four (24) hours per day/seven (7) days per week. Cypress shall respond to Customer requests for repairs and services as follows: (a) within four (4) hours after notice from Customer with respect to any Major Outage, (b) within twenty-four (24) hours after notice from Customer with respect to any Minor Outage or other service or equipment problem, (c) within three (3) business days with respect to one (1) to five (5) MAC Requests, (d) within five (5) business days with respect to five (5) to ten (10) MAC Requests, and (e) promptly, according to times mutually agreed upon by Customer and Cypress (and generally consistent with the foregoing response times) with respect to more than ten MAC Requests. For purposes of these Master Terms and Conditions, a "Major Outage" shall mean and refer to (i) any outage in which at least twenty-five percent (25%) of Customer's telecommunications receiving and transmitting stations are unable to make or receive voice or data transmissions, or (ii) any complete disruption of connectivity between Customer and Cypress' Internet routing and switching equipment. A "Minor Outage" is any outage or other Service or Equipment failure that is not a Major Outage. Under no circumstances will Cypress have any liability to Customer with respect to, or relating to, any of the Services provided by Cypress to Customer, or that were required to be provided by Cypress to Customer, or for any Major or Minor Outage, other than to the extent the credits set forth in this Section 3 are applicable, which credits are Customer's sole and exclusive remedy. Subject to Section 7, and except as further limited herein, Customer is entitled to a credit only for Major Outages that exceed three (3) hours in duration from the time that Customer notifies Cypress of the problem (the "Minimum Period"). Such credits shall be equal to 1/1440 of its monthly recurring charge for the affected Service for each one-half (½) hour period in which there is a Major Outage for such Service in excess of the Minimum Period for such Service. Under no circumstances is Customer entitled to a credit, nor is Cypress required to repair the outage, where the outage is caused by or is the result of (i) a Force Majeure Event (as defined in Section 23) or any other reason beyond Cypress' control; (ii) an act or omission of Customer, Customer's employees, affiliates or agents or any other third party; (iii) the use or failure of any Customer equipment or facilities used in connection with the Equipment and Services; or (iv) planned outages for maintenance or repair that are scheduled and approved in advance by Customer. In addition, outage credits will not be paid for any period of time during which Cypress personnel or contractors are denied access to the Premises or other facilities necessary to remedy an outage.

4. **Repairs and Maintenance.** Subject to Section 7 set forth below, Cypress agrees to repair and/or replace the Equipment located in 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 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 located therein. Customer will provide reasonable assistance with respect to any testing that Cypress performs. Customer shall not permit anyone other than Cypress or the Equipment manufacturer to perform maintenance, service or other work on the Equipment without Cypress' prior written consent. If any maintenance or service work

is performed on the Equipment by anyone other than Cypress or the Equipment manufacturer without Cypress' prior written consent, or if the Equipment or any part thereof is moved without Cypress' prior written consent, then (i) Customer shall be deemed in default under these Master Terms and Conditions, (ii) at the election of Cypress, the repair obligations set forth above in this Section 4 will become null and void, and (iii) Cypress may exercise any of the remedies provided in these Master Terms and Conditions. In addition, Customer shall indemnify and hold Cypress harmless from and against any and all damages arising out of any breach by Customer under this Section 4 of the Agreement. Repairs for which Cypress is not responsible under these Master Terms and Conditions may be performed by Cypress in its sole discretion if Customer agrees to pay Cypress' then standard charges for such repairs.

5. **Ownership of Equipment; Non-Interference with Equipment.**

5.1 The Equipment, including any horizontal fiber, wiring or other distribution facilities, shall at all times remain the property of Cypress or its assigns, shall not be deemed a fixture, and Customer agrees that any Service Order, these Master Terms and Conditions, and any other applicable documents necessary to protect Cypress' interest in the Equipment may be filed or recorded. Customer agrees that only Cypress or, in the case of repairs, an authorized representative of the manufacturers of the Equipment, may perform any installation, removal, relocation, maintenance, repair or modification of the Equipment. At the expiration or earlier termination of any Service Order between Cypress and Customer or these Master Terms and Conditions, Customer will surrender the Equipment related thereto in the same condition as received, ordinary wear and tear excepted. Within thirty (30) days after the expiration or earlier termination of any Service Order between Cypress and Customer or these Master Terms and Conditions, Cypress will remove the Equipment related thereto, which removal shall be at Cypress' cost and expense unless the Agreement was terminated because of Customer's breach of these Master Terms and Conditions or improper early termination of any Service Order between Cypress and Customer or these Master Terms and Conditions, in which event such removal shall be at Customer's cost and expense, payable within twenty (20) days after written demand from Cypress. Customer has expressly authorized Cypress to enter the Premises in connection with the provision or removal of the Services and the Equipment, and such authorization includes, without limitation, the right to access the Premises, with the assistance of Owner's representative, law enforcement personnel or otherwise, for purposes of removing all Equipment from the Premises after Customer has vacated the Premises or otherwise failed to be open during normal business hours.

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

Cypress to become obsolete or require modification.

5.3 Customer will not connect any equipment or facilities to the Equipment without the express written consent of Cypress. If Customer connects any equipment or facilities to the Equipment after receiving such written consent, Customer will ensure that no third party has a claim for infringement of patents, trade secrets, copyrights or other intellectual property rights arising from or in connection with the transmission of communications by means of a combination of the Equipment or Services with Customer's equipment or facilities.

6. Term and Termination.

6.1 Each Service Order will commence on the Effective Date of that Service Order. Unless earlier terminated in accordance with these Master Terms and Conditions, each Service Order will terminate on the later of (i) the Termination Date of that Service Order, and (ii) the Termination Date of any Renewal Term (as defined below) for that Service Order where the Service Order is not renewed beyond that Renewal Term. Each Service Order shall automatically renew for successive one (1) year periods ("Renewal Term(s)") from the 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 Initial Term, or applicable Renewal Term, that it wishes to terminate the Service Order.

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

6.3 Customer may terminate any Service Order if Cypress materially breaches that Service Order (e.g., materially breaches the terms of these Master Terms and Conditions 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.

6.4 Notwithstanding anything in these Master Terms and Conditions to the contrary, if Customer terminates any Service Order (the "Terminated Service Order") prior to its expiration (other than as permitted under Sections 1.1 or 6.3), or if Cypress terminates any Service Order pursuant to Section 6.5 below, Customer will pay to Cypress early termination Charges as follows:

6.4.1 If Customer has entered into a Service Order that requires a Minimum Monthly Total Revenue Commitment, Customer shall pay (i) such Minimum Monthly Total Revenue Commitment for the Services pertaining to the Terminated Service Order, multiplied by the number of months that would have been remaining in the Term of the Service Order or any current extension thereof had it not been terminated by Customer, plus (ii) the dollar value of any promotional credit, discount or waiver provided to the Customer as an incentive to subscribe to the applicable Services for the duration of the Service Order Term.

6.4.2 If Customer has not entered into a Service Order that requires a Minimum Monthly Total Revenue Commitment,

Customer shall pay (i) one hundred percent (100%) of the average monthly aggregate Recurring Charges for the most recent three (3) full months for the Services pertaining to the Terminated Service Order, multiplied by the number of months that would have been remaining in the Term of the Service Order or any current extension thereof had it not been terminated by Customer, plus (ii) the dollar value of any promotional credit, discount or waiver provided to the Customer as an incentive to subscribe to the applicable Services for the duration of the Service Order Term.

6.4.3 Early termination Charges will be billed by Cypress and paid by Customer in one lump sum. If Customer terminates a Service Order prior to its expiration other than as permitted under Sections 1.1 and 6.3, such termination will be considered an early termination of each Service Order, and Customer will pay to Cypress early termination Charges equal to the aggregate of the early termination charges for each Service Order as calculated under this Section 6.4.

6.4.4 The parties agree that the early termination Charges set forth in this Section 6.4 are reasonable, are not penalties, and are in addition to any other fees or payments of any nature owed by Customer, including, without limitation, any accrued unpaid Charges owed by Customer under the Agreement at the time of termination.

6.5 Cypress may terminate any Service Order between Cypress and Customer if any of the following occur: (i) Customer fails to pay timely any amounts set forth in one or more of Cypress' invoices to Customer, and Customer fails to pay all such past due amounts within five (5) days after receiving written notice from Cypress; (ii) any maintenance or service work is performed on the Equipment by anyone other than Cypress without Cypress' prior written consent, (iii) the Equipment or any part thereof is moved without Cypress' prior written consent; or (iv) Customer breaches any other material term or condition of these Master Terms and Conditions (including any Service Order or the AUP), and Customer fails to cure such breach within thirty (30) days after receipt of written notice of the same (or within such shorter period as set forth above).

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

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

7. Limitations and Exclusions of Liability.

7.1 NOTWITHSTANDING ANYTHING IN THESE MASTER TERMS AND CONDITIONS OR ANY SERVICE ORDER TO THE CONTRARY, IN NO EVENT WILL 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 OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE, INCLUDING INABILITY TO BE ABLE TO DIAL 911, OR OF ANY EQUIPMENT OR BUSINESS, OR ANY OTHER TYPE OF DAMAGES OTHER THAN DIRECT DAMAGES (AND WITH DIRECT DAMAGES, ONLY TO THE EXTENT PERMITTED IN THESE MASTER TERMS AND CONDITIONS). IN ADDITION, CYPRESS WILL HAVE NO LIABILITY TO CUSTOMER (AND NO LIABILITY FOR OUTAGE CREDITS) WHERE THE CLAIMS ARISE OUT OF, RELATE TO, ARE CAUSED BY OR INVOLVE OR CONCERN ANY OF THE FOLLOWING: (I) ANY LAWFUL CONDUCT OF THE CYPRESS PARTIES THAT IS PERMITTED UNDER THESE MASTER TERMS AND CONDITIONS; (II) ANY FORCE MAJEURE EVENT (AS DEFINED BELOW) OR OTHER CAUSES THAT ARE BEYOND CYPRESS' CONTROL; (III) THE FAILURE OR MALFUNCTION OF CUSTOMER'S EQUIPMENT OR FACILITIES; (IV) THE FAILURE OF POWER, EQUIPMENT, SYSTEMS, CONNECTIONS OR SERVICES NOT PROVIDED BY CYPRESS, OR THE UNAVAILABILITY, INADEQUATE, UNTIMELY OR POOR PERFORMANCE OR NON-PERFORMANCE OF ANY FACILITIES UNDER THE CONTROL OF OTHER PERSONS OR ENTITIES; OR (V) THE INABILITY OF CUSTOMER, CUSTOMER PARTIES OR ANY OTHER PERSON OR PARTY TO BE ABLE TO DIAL 911 OR ACCESS 911 EMERGENCY PERSONNEL THROUGH SERVICES PROVIDED BY CYPRESS. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT AND ANY AND ALL OTHER THEORY OF LIABILITY.

7.2 In no event shall Cypress' aggregate liability to Customer (including, without limitation, liability to any person or persons whose claim or claims are based on or derived from a right or rights claimed by Customer) or to any third parties (including, without limitation Customer Parties) with respect to any and all claims arising from or relating to any Service Order between Cypress and Customer or these Master Terms and Conditions, in contract, tort, or otherwise, exceed the lesser of (i) the aggregate amount of Charges paid by Customer to Cypress under such Service Order; or (ii) \$25,000. As further limitations, (i) with respect to claims relating to the portion of the Services for which payment is made through Recurring Charges, under no circumstances will Cypress' liability to Customer with respect to such claims exceed the amount of Recurring Charges paid by Customer to Cypress for the portion of the Services giving rise to the cause of action for the period in which Cypress' performance was in material breach of these Master Terms and Conditions; (ii) with respect to claims relating to the portion of the Services for which payment is made through Usage-Based Charges, under no circumstances will Cypress' liability to Customer with respect to such claims exceed the amount of Usage-Based Charges paid by Customer to Cypress for the portion of the Services giving rise to the cause of action for the period in which Cypress' performance was in material breach of these Master Terms and Conditions; (iii) Cypress' maximum liability relating to any Services offered or provided by Cypress under these Master Terms and Conditions for which the charge is any Other Charge, shall equal such Other Charge paid for the performance that was in material breach of these Master Terms and Conditions; and (iv) Cypress shall have no liability whatsoever for any damage to, or loss of, any equipment or other property under the care, custody or control of Customer unless caused by Cypress' gross negligence or willful misconduct, in which case Cypress' maximum liability is set forth above in this Section 7.2.

7.3 Notwithstanding anything in these Master Terms and Conditions to the contrary, except for Cypress itself (and then only

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

7.4 Any claim by Customer for a credit under Section 3 will be deemed conclusively to have been waived unless, within ten (10) days after the date of the occurrence of the event giving rise to the credit, Customer notifies Cypress in writing that Customer is seeking a credit and specifies the basis for its claim. Without limiting the foregoing, all other claims by Customer of whatever nature against Cypress will be deemed conclusively to have been waived unless Customer notifies Cypress (specifying the nature of the claim) within six (6) months after the date of the occurrence giving rise to the claim.

7.5 Without limiting the foregoing, with respect to data or Internet Services provided by Cypress, Cypress shall not be liable for any claims or damages arising out of or relating to (i) the quality, accuracy, propriety, decency, utility or correctness (or lack thereof) of content, data or information transmitted across Cypress' network or received by Customer; (ii) loss of content, data or information due to delay, non-delivery, mis-delivery or service interruptions however caused; (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 data or Internet Services provided by Cypress.

7.6 All of the limitations set forth in Sections 7.1 through 7.5 apply to all causes of action and claims, including, without limitation, breach of contract, breach of warranty, negligence, misrepresentation and any other torts.

8. EXCLUSION OF WARRANTIES. THE EQUIPMENT AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE EQUIPMENT AND SERVICES IS AT ITS OWN RISK. EXCEPT FOR ANY WARRANTIES EXPRESSLY MADE IN ANY APPLICABLE TARIFF, CYPRESS DOES NOT MAKE, AND HEREBY DISCLAIMS AND EXCLUDES, ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, OR TRADE PRACTICE. Without limiting the foregoing, Cypress makes no representations or warranties regarding the exact date of installation, Service availability or Equipment operability.

9. 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 Master Terms and Conditions, including Sections 3, 7 and 8, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in these Master Terms and Conditions will survive and apply even if found to have failed their essential purpose; and Customer hereby waives its right to contest the enforceability of any provision of this Agreement by reason of

such failure.

10. **Indemnification.** Customer will indemnify, defend and hold Cypress and the other Cypress Parties harmless from and against any and all losses, damages, liabilities, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees) arising by virtue of, or relating to, (i) Customer's operations or services; (ii) any act, omission, fault, negligence or misconduct of Customer, any of the Customer Parties, or any persons on the Premises other than Cypress and the Cypress Parties; (iii) any material breach by Customer of the terms of any Service Order or these Master Terms and Conditions or Customer's breach of any warranty, representation or covenant in any Service Order or these Master Terms and Conditions; (iv) any claim by any employee or invitee of Customer other than a claim based on the gross negligence or willful misconduct of Cypress; or (v) any claim by customers or end-users of Customer or any other third party relating to, or arising out of, Customer's services or the Services or Equipment.

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

12. **Deposits.** Simultaneously with the execution and delivery to Cypress of a Service Order, Customer shall deposit with Cypress the Security Deposit amount set forth on the applicable Service Order. The amount of the Security Deposit shall not exceed the lesser of (i) three (3) times the amount of the average (or, for new Customers, estimated) monthly Charges payable by Customer under any and all Service Orders or (ii) the maximum amount permitted by law. Cypress shall hold the Security Deposit as collateral security for the payment of the Charges and other sums of money payable by Customer under this Agreement and for the faithful performance of all other terms, covenants and conditions of Customer hereunder. Said Security Deposit may be commingled with other funds of Cypress and transferred out of state, and Cypress shall have no liability for the accrual or payment of any interest thereon. Customer hereby waives the benefit of any provision of law requiring the Security Deposit to be held in escrow or trust, and the Security Deposit shall be deemed to be the property of Cypress. Customer further acknowledges that the Security Deposit is not to be construed as prepaid fees by Customer for any period of the Initial Term. In addition, Cypress may require a Security Deposit and a reconnection fee before Services are restored if the Services have been discontinued (or any Service Order has been terminated) by Cypress for nonpayment or other default by Customer under any Service Order. For a Customer who chooses to renew a Service Order, Cypress will apply the Security Deposit in full toward the first month(s) of the new 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 Customer's Initial Term, the Security Deposit shall remain in place for the length of the new Term. Cypress may elect to adjust the amount of the Security Deposit for the new Term based upon changes to the quantity of Services and/or Equipment. The Security Deposit, without interest, shall be repaid to Customer

within thirty (30) days after the expiration or early termination of the Initial Term, and all extensions or renewals thereof, unless there are unpaid amounts, including early termination Charges, owing by Customer to Cypress. In such cases, the Security Deposit will be applied to any outstanding balance on the Customer's final invoice.

13. **Regulated Services.**

13.1 Customer acknowledges that local exchange telephone services, intrastate and interstate interexchange telephone services, international telephone services and certain of the other Services may be provided by Cypress Communications, Inc. or Cypress Communications Operating Company, Inc. or another affiliate of Cypress Communications, Inc. pursuant to any and all applicable Tariffs. These Master Terms and Conditions 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 Master Terms and Conditions with respect to regulated telecommunications services; except that any Special Stipulations (as defined in Section 23) relating to a tariffed Service shall remain effective to the extent permitted by the Tariff. If by any governmental action a Tariff is no longer applicable to a particular Service, Cypress' standard rates for that Service shall apply. Cypress reserves the right to make any Service a Tariffed service.

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

13.3 Cypress will compute the number of trunks necessary to provide the specified grade of Service required by any Service Order. Customer will pay the applicable Cypress rate per trunk times the equivalent number of trunks. The number of trunks will be reviewed and increased or decreased by Cypress on an as-required basis, as determined in its sole discretion.

14. **Local Number Portability.** Cypress shall reasonably cooperate, at no cost or expense to Cypress, with Customer's efforts to transfer its telephone numbers at the initiation of Services with Cypress and after the expiration or termination of the Service Order for Telephone Service between Cypress and Customer. 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 the Term of any Service Order for Telephone Service between Cypress and Customer, should Local Number Portability not be technically feasible due to the facilities deployed by the underlying carrier, the Customer's numbers may have to be remote call forwarded for which the Customer will incur charges in addition to those set forth in the applicable Service Order. Except to the extent required by law, Cypress has no obligation to transfer or release any telephone numbers assigned to Customer until such time as Customer has paid all outstanding Charges or other amounts owed to Customer.

15. **Calling Cards.**

15.1 Calling cards may be provided where available, subject

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

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

15.3 The calling card is not transferable. The named customer may authorize others to use the calling card, but responsibility for payment of the incurred charges will remain that of the named customer. If the calling card was received from an employer, in the event of a change in employment, the calling card should no longer be used and returned promptly to the employer.

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

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

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

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

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

16. Video Services.

16.1 Cypress may provide multi-channel video services to the Customer pursuant to the terms of a Service Order and in accordance with these Master Terms and Conditions. At the request of Cypress, Customer shall make available one or more representatives of Customer for purposes of training such employees regarding the operation of DBS Equipment at times and locations to be mutually agreed upon by the parties. The video and/or audio programming which comprises the multi-channel video services is subject to change at any time at Cypress' sole discretion. As a component of the multi-channel video services, Cypress may, but is not obligated to, offer DBS programming to the Customer as such DBS programming is provided by a DBS provider (such as, but not limited to, DIRECTV). Customer's receipt of DBS programming is subject to the approval of the DBS provider at the sole discretion of such DBS provider. The DBS

provider may require that the Customer enter into some form of subscription agreement directly with the DBS Provider as a condition of the Customer's reception of DBS Programming. Customer shall comply in all respects with the rules, terms and conditions governing the reception of DBS programming imposed by the DBS provider, including without limitation any and all restrictions on the precise locations within the Building or Customer premises which are authorized to receive and/or display such DBS programming. A breach by the Customer of such rules, terms or conditions imposed by the DBS provider shall constitute a breach of the Service Order relating to such Services and these Master Terms and Conditions.

16.2 Cypress may terminate without any liability its provision of multi-channel video services to the Customer upon thirty (30) days written notice, provided however that such termination of the multi channel video services shall not in any way alter Cypress' rights and obligations to provide any other Services and Equipment under these Master Terms and Conditions or any other Service Order between the parties. Upon the completion of the thirty (30) day notice period, Cypress may remove the video Equipment from the Customer premises in accordance with these Master Terms and Conditions.

16.3 Customer shall not make any modification, addition or deletion to any programming provided by Cypress or any DBS provider. Customer shall not resell, retransmit, or rebroadcast any DBS programming unless Customer is specifically authorized by the DBS provider to do so; and Customer shall not resell, retransmit, or rebroadcast any other multi-channel video services unless Customer is specifically authorized by Cypress to do so.

16.4 Cypress' sole liability to Customer for interruption of multi-channel video services is to make a credit allowance in the form of a pro rata adjustment of the charge applicable to the multi-channel video services, except that no credit shall be given for interruptions of less than twenty-four (24) hours duration. No credit allowance will be given for interruptions caused by Customer's negligence or willful act, failure of equipment or service not provided by Cypress, or acts of God or other circumstances beyond the control of Cypress (e.g., earthquake, fire, flood, war, riot, hurricane, tornado, heavy rain).

17. Remote Dial-Up Access Service

17.1 Cypress may provide Remote Dial-Up Access Service pursuant to the terms of a Service Order and in accordance with these Master Terms and Conditions. For the purpose of this section all references to Customer shall include all individual employee accounts of Customer. Each account will receive a welcome package by mail and/or a welcome and introduction to the service via e-mail.

17.2 The Term of Service for Remote Dial-Up Access Service shall be month-to-month, and, therefore, Customer will not be subject to the early termination charges set forth in Section 6.4. Customer will continue to receive Remote Dial-Up Access Service from Cypress until either party provides written notice to the other party of its intent to terminate the Service. Customer's notice to Cypress of its intent to terminate the Service shall be sent by e-mail to URL: Support@cypresscom.net. No partial month refunds will be given.

17.3 Customer will be responsible for the timely payment in full of all charges on each of its company accounts. Each company

account shall be subject to these Master Terms and Conditions.

17.4 Customer understands that neither Cypress nor its Network Services Supplier is responsible for the content of the transmissions that may pass through the Internet and/or the Remote Dial-Up Access Service. Customer agrees that it will NOT use the Remote Dial-Up Access Service in ways that violate laws, infringe the rights of others, or interfere with the users, services, or equipment of the network. For example, Customer shall not distribute unsolicited advertising, chain letters, or commercial electronic mail ("spamming"); propagate computer worms or viruses; attempt to gain unauthorized entry to other computers, data or networks; distribute child pornography, obscenity, or defamatory material over the Internet; or infringe copyrights, trademarks, or other intellectual property rights.

17.5 The Service Level Agreement set forth in Section 3 does not apply to Remote Dial-Up Access Service. Cypress support will include an 800 number to the Remote Dial-Up Access Service Help Desk that will be available to help Customer with general dial-up software setup and trouble-shooting. All qualified calls to the Help Desk should be answered within three (3) minutes 80% of the time. The Help Desk assumes Customer has a working modem before software is installed. First time installations of the modem are not included as part of the support.

17.6 IN NO EVENT WILL CYPRESS, ITS AFFILIATES OR ITS NETWORK SERVICES SUPPLIERS BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR FOR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE SERVICES OR PRODUCTS PROVIDED HEREUNDER, INCLUDING THE INABILITY TO USE OR BE ABLE TO DIAL 911.

17.7 **Except to the extent expressly set forth in a separate written agreement,** Customer may not resell or redistribute any Services.

17.8 CYPRESS DOES NOT WARRANT THAT THE SERVICES WILL BE AVAILABLE ON A SPECIFIED DATE OR TIME OR THAT THE NETWORK WILL HAVE THE CAPACITY TO MEET THE DEMAND OF USERS DURING SPECIFIC HOURS. CUSTOMER MAY BE UNABLE TO ACCESS THE NETWORK AT ANY TIME, AND DISCONNECTION FROM THE NETWORK MAY OCCUR FROM TIME TO TIME. NEITHER CYPRESS COMMUNICATIONS NOR ITS NETWORK SERVICES SUPPLIER WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO CYPRESS' OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF CYPRESS' OR ITS NETWORK SERVICE SUPPLIER'S NEGLIGENCE.

17.9 The Remote Dial Up Access Service does not support traditional 911 or E911 dialing service or any other form of quick dial access to emergency services. Customer acknowledges that neither Customer nor any other person will be able to dial or access 911 or emergency personnel by using the Remote Dial Up Access Service provided by Cypress. As an alternative, Customer can order a standalone POTS line that will allow for the ability to dial 911 and for access to traditional 911 service. As set forth in section 7 above, Cypress's liability is limited with respect to the

inability of the customer to dial 911 or obtain access to emergency service personnel. In addition to section 7.10 above, the customer agrees to defend, indemnify, and hold Cypress, its affiliates and agents and any other service provider who furnishes services to Cypress in connection with the Remote Dial Up Access Service, harmless from and against any and all losses, claims, liabilities, penalties, fines or damages arising by virtue of or relating to the absence of 911 service and/or inability of Customer, Customer Parties or any third person or party to be able to dial 911.

18. Internet Access Service

18.1 Cypress may provide to Customer Burstable, Committed or Flexible Internet Access Service and associated services such as e-mail, Web hosting and Remote Dial-Up Access connectivity pursuant to the terms of a Service Order and in accordance with these Master Terms and Conditions.

18.2 Sections 17.4, 17.6 and 17.8 of the Master Terms and Conditions concerning the provision of Remote Dial-Up Access Service also apply to the provision of Internet Access Service.

18.3 Connectivity is provided only to Customer. Resale to or use by another person or entity is prohibited. Cypress may suspend service or terminate the applicable Service Order effective upon notice for a violation of the terms of this Section.

18.4 Any Internet Protocol numbers ("IP Numbers") assigned to Customer by Cypress in connection with the Service shall be used only in connection with the Service. In the event Customer discontinues use of Service for any reason, or this Agreement expires or is terminated for any reason, Customer's right to use the IP Numbers shall terminate.

18.5 The Internet Access Service does not support traditional 911 or E911 dialing service or any other form of quick dial access to emergency services. Customer acknowledges that neither Customer nor any other person will be able to dial or access 911 or emergency personnel by using the Internet Access Service provided by Cypress. As an alternative, Customer can order a standalone POTS line that will allow for the ability to dial 911 and for access to traditional 911 service. As set forth in section 7 above, Cypress's liability is limited with respect to the inability of the customer to dial 911 or obtain access to emergency service personnel. In addition to section 7.10 above, the customer agrees to defend, indemnify, and hold Cypress, its affiliates and agents and any other service provider who furnishes services to Cypress in connection with the Internet Access Service, harmless from and against any and all losses, claims, liabilities, penalties, fines or damages arising by virtue of or relating to the absence of 911 service and/or inability of Customer, Customer Parties or any third person or party to be able to dial 911.

19. Webconferencing Service

19.1 Cypress may provide certain services for use in providing Cypress Webconferencing through the Internet and public telephone networks. Both parties acknowledge that this is not a technology license agreement and it does not give Customer any right to use any proprietary software and hardware technology used by the underlying service provider.

19.2 Webconferencing Services provided by Cypress under this Agreement shall be provided through accounts established by employees of Customer and activated by Cypress pursuant to these Master Terms and Conditions and the associated Service

Order. Customer and Cypress shall establish initial accounts within forty-eight (48) hours of the Effective Date of this Agreement, and thereafter use commercially reasonable efforts to establish accounts with all employees who have a need for the Service. Each employee establishing an account pursuant to these Master Terms and Conditions shall agree to be bound by these terms and conditions.

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

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

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

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

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

20. Network Security

20.1 Cypress may provide network security through its fully managed firewall service dedicated to Customer's specific LAN. By installing or otherwise using the network security services, Customer agrees to be bound by the terms of this Section 20 specific to the network security services and other applicable provisions contained herein.

20.2 Cypress reiterates for emphasis that, notwithstanding all other Sections of this Agreement, Sections 1.2, 5, 7 and 8 apply to Customer's use of network security.

20.3 All Equipment provided to Customer by Cypress is leased, not sold, to Customer, and any software provided to Customer is sublicensed, not sold, to Customer.

20.4 No ownership right is granted to any intellectual property relating to the software. Such ownership right shall remain in the name of Cypress' underlying vendor, WatchGuard. Customer's use

of the software is subject to the terms and conditions of separate end-user license agreements that accompany the Equipment. Except as may be provided in such end-user license agreements, no right is granted to Customer to replicate, produce, copy, alter, distribute, rent, lease, lend, supply or market the software. Customer shall not decompile, disassemble or reverse-engineer the software.

20.5 Title to the Equipment shall remain in the name of Cypress at all times and for all purposes, and the equipment may be marked and identified as the property of Cypress or the 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, and will indemnify and hold Cypress and its vendor harmless from and against any loss, cost, liability and expense (including interest and reasonable attorney's fees) arising from such claims.

20.6 Customer agrees:

(a) to use the Equipment only for the purpose of receiving the Services ordered from Cypress and for no other purpose;

(b) to prevent any connections to the Equipment which are not expressly authorized by Cypress;

(c) to prevent tampering, alteration or repair of the Equipment by any person other than Cypress' or its vendor's authorized personnel; and

(d) to assume complete responsibility for improper use, damage or loss of such Equipment regardless of cause.

21. **AUP.** Cypress has published its Acceptable Use Policy (the "AUP") on its corporate website, at www.cypresscom.net, or provided such AUP to Customer. The terms and conditions of the AUP are incorporated herein by this reference. Customer acknowledges and agrees that Cypress may amend the AUP from time to time. All amendments and modifications to the AUP shall be made available to Customer by publication on Cypress' corporate website. Notwithstanding the foregoing or anything in the AUP to the contrary, Customer acknowledges and agrees that Customer shall not (i) allow its account to be used by any third parties other than Cypress employees; (ii) post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, profane, or otherwise objectionable material of any kind across Cypress' network or lines; (iii) use Cypress Services or Equipment to commit a crime; (iv) use Cypress' network to post a single item to more than 7 newsgroups or mailing lists; (v) engage in spamming, e.g., mass unsolicited emails; (vi) violate the terms and conditions of any other websites or other network, application or content service providers; (vii) impersonate another user or misappropriate any other telephone numbers, names or email addresses; or (viii) copy, modify, adapt, reproduce, translate, distribute, misappropriate, reverse engineer, decompile or disassemble any aspect of the Services provided by Cypress. Violations of the AUP may result in (i) the immediate suspension or termination of Customer's account and Services by Cypress and (ii) the prosecution of any and all criminal and civil penalties available under the law. Penalties imposed by Cypress may vary based on the level of the offense. Accounts that have been disabled due to any violation of the AUP may not be restored by Customer without Cypress' prior written consent.

22. Miscellaneous.

22.1 The Owner is not a party to the Service Order(s) between Cypress and Customer or these Master Terms and Conditions. Owner will have no obligations or liabilities whatsoever under the Service Order(s) between Cypress and Customer or these Master Terms and Conditions with respect to any Services or Equipment, and no representations or warranties are being made by Owner with respect to any Services or Equipment provided hereunder. Customer acknowledges and agrees that Owner is not a partner, agent, representative or affiliate of Cypress, and Owner is not a provider of communications services under the Service Order(s) between Cypress and Customer or these Master Terms and Conditions. Any cessation or interruption of the Services shall not constitute a default or constructive eviction by Owner under the lease agreement between the Customer and Owner. Owner 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 Owner is not a party, and Customer agrees to hold Owner 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 Owner as a consequence of Cypress' performance or non-performance of any obligations under these Master Terms and Conditions or the Service Orders, and Customer shall not have any right to abate, decline to pay or otherwise alter its obligations under these Master Terms and Conditions or the Service Orders as a consequence of Owner's performance or non-performance of any obligation under its lease agreement with Customer.

22.2 Customer will obtain all approvals for access into the Premises by Cypress necessary for Cypress to fully perform under the Service Order(s) between Cypress and Customer or these Master Terms and Conditions. Cypress shall not be in breach of these Master Terms and Conditions if Cypress is unable to comply with any term of these Master Terms and Conditions due to Customer's refusal or inability to secure such access. At no cost to Cypress, Customer will provide reasonable assistance with respect to any testing that Cypress performs with respect to the Services or Equipment to the extent requested by Cypress.

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

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

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

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

22.7 These Master Terms and Conditions, together with all Service Orders (whether now or hereafter executed), supersede all prior oral or written statements and represent the sole and entire agreement of the parties with respect to the subject matter. Except as the result of a revision of an applicable tariff, no amendment, revision or modification of these Master Terms and Conditions shall be effective unless it is in writing, signed by authorized representatives of both parties.

22.8 These Master Terms and Conditions and the rights and obligations of the parties under any Service Order will be construed in accordance with and will be governed by the laws of the State of Georgia, without reference to the choice of law provisions thereof.

22.9 Arbitration. Any and all disputes, controversies and claims arising out of or relating to these Master Terms and Conditions, including its validity, shall be settled and determined by arbitration conducted before a panel of one (1) arbitrator in accordance with the rules of the American Arbitration Association then in effect. The arbitrator's award shall be final and binding on the parties, and judgment confirming such arbitration award may be entered thereon in any court having jurisdiction over such proceedings. Each party shall bear its own expenses and an equal share of the expenses and fees with respect to the arbitration.

22.10 No Service Order shall be effective (i.e., become a Service Order) unless executed by both parties. If Customer and Cypress execute multiple Service Orders, each additional Service Order will supplement rather than replace the prior Service Orders.

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

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

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

22.14 Sections 2.5, 5.1, 5.2, 6.4, 6.7, 7.1 through 7.5, 8, 9, and 10 will survive the termination of a Service Order. In addition, all provisions of these Master Terms and Conditions that can only be given proper effect if they survive the termination of a Service Order will survive the termination of such Service Order. These Master Terms and Conditions will be valid as to any obligation incurred prior to termination of a Service Order. Without limiting the foregoing, Customer must pay all amounts owed to Cypress under a Service Order, including, without limitation, any amounts that are not due until after the expiration or earlier termination of such

Service Order.

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

22.15 The section headings throughout these Master Terms and Conditions are for convenience and reference only, and will not be used to construe these Master Terms and Conditions.

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

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

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

"Building" means the building or buildings identified in the Service Order(s) to which these Master Terms and Conditions relate.

"Charges" means, as the context may require, some or all Recurring Charges, Usage-based Charges, Other Charges, Equipment Charges, (whether included in the Charges or separately stated) Taxes and other amounts owed by Customer, pursuant to any and all Service Orders for Services, Equipment or other consideration provided by Cypress thereunder.

"CPI" means the Consumer Price Index, as reported by the *Wall Street Journal* from time to time.

"Customer" means the Person 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 Parties" means Cypress, its owners, parent, subsidiaries, affiliates, officers, directors, employees, partners and agents.

"Estimated Installation/Service Commencement Date" means, as to each Service Order, the date listed as the Estimated Installation/Service Commencement date for that Service Order.

"Equipment" means the equipment provided by Cypress or the Cypress Parties that is located on the Premises and is used in, or relates to, the provision of the Services to Customer, including any horizontal fiber.

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

"Initial Term" means, as to each Service Order, the period commencing on the Effective Date of such Service Order and terminating on the Termination Date of such Service Order.

"MAC Request" means a single move, add or change with respect to Services or Equipment provided by Cypress to Customer.

"Other Charges" means, as to each Service Order, charges and fees other than the Recurring Charges and Usage-Based Charges pertaining to that Service Order.

"Owner" means the owner of the Building and includes authorized representatives of Owner, including leasing agents.

"Premises" means the area in the Building which Customer has leased from the owner, landlord or other representative of the Building.

"Recurring Charges" means, as to each Service Order, the total monthly recurring charges for that Service Order listed in that Service Order, listed in the applicable tariff, or determined by Cypress in accordance with the terms of these Master Terms and Conditions and any applicable tariff.

"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 Master Terms and Conditions, the Parties hereto, the Services, the Tariffs, the Equipment or any matter related hereto or thereto.

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

"Services" means all services, products, goods or offerings of any type provided, or required to be provided, by Cypress to Customer under these Master Terms and Conditions, 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) with any Regulatory Authority.

"Taxes" has the meaning set forth in Section 2.1 and are the responsibility of the Customer whether imposed by virtue of ownership by Cypress or use by the Customer of the Equipment and Services.

"Term" means, as to each Service Order, the Initial Term for such Service Order plus any Renewal Term for such Service Order.

"Termination Date" shall mean the date on which the Service Order will expire (i.e., the Effective Date of such Service Order plus the Initial Term or any Renewal Term).

"Usage-Based Charges" means, as to each Service Order, the usage-based charges for that Service Order, calculated in the manner set forth in that Service Order or any applicable tariff or determined by Cypress in accordance with the terms of these Master Terms and Conditions and any applicable tariff.

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