

**BLUIP MASTER SUBSCRIPTION AGREEMENT**  
**\*\*\*CONFIDENTIAL\*\*\***

BY EXECUTING THIS MASTER SUBSCRIPTION AGREEMENT, OR A SERVICE ORDER OR STATEMENT/SCOPE OF WORK THAT INCORPORATES THIS MASTER SUBSCRIPTION AGREEMENT, CUSTOMER AGREES, ON BEHALF OF ITSELF AND USERS, TO FOLLOW AND TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS MASTER SUBSCRIPTION AGREEMENT. CERTAIN TERMS AND CONDITIONS ARE CONTAINED IN DOCUMENTS COLLECTIVELY KNOWN AS THE “BLUIP POLICIES.” THE BLUIP POLICIES ARE LOCATED AT [HTTP://WWW.BLUIP.COM/LEGAL](http://www.bluip.com/legal) OR ARE ACCESSIBLE BY CLICKING “[POLICIES](#).” THE BLUIP [POLICIES](#) ARE THE BLUIP: [ACCEPTABLE USE POLICY](#) OR “[AUP](#),” [TERMS OF USE](#), [PRIVACY POLICY](#), [COMMUNICATIONS SERVICE AGREEMENT](#) AND [SERVICE LEVEL AGREEMENT](#). THE BLUIP [POLICIES](#) ARE HEREBY INCORPORATED INTO THIS MASTER SUBSCRIPTION AGREEMENT. PLEASE READ ALL DOCUMENTS COMPRISING THIS MASTER SUBSCRIPTION AGREEMENT CAREFULLY. BY EXECUTING THIS MASTER SUBSCRIPTION AGREEMENT, OR THE APPLICABLE SERVICE ORDER OR STATEMENT/SCOPE OF WORK THAT INCORPORATES THIS MASTER SUBSCRIPTION AGREEMENT, CUSTOMER EXPRESSLY AGREES TO EACH OF ITS TERMS, INCLUDING THOSE SET FORTH IN THE [POLICIES](#). THE PERSON ENTERING INTO THIS MASTER SUBSCRIPTION AGREEMENT ON BEHALF OF CUSTOMER CONFIRMS THAT THEY HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS MASTER SUBSCRIPTION AGREEMENT (INCLUDING THE [POLICIES](#)), AND HAVE THE AUTHORITY TO BIND CUSTOMER AND ITS RELATED PARTIES HERETO.

This master subscription agreement (“Master Subscription Agreement” or “MSA”) is entered into by and between BluIP, Inc. (“BluIP”) and its customer identified on the applicable Service Order (“Customer”). By executing a Service Order, the parties agree to be bound by the “Agreement.” As used in this document, the word “Agreement” shall apply to all promises, terms and conditions of the parties contained in this Master Subscription Agreement, each Service Order, each Statement of Work (also known as an “SOW”) all other incorporated addenda, exhibits, attachments, schedules and the like (other than product brochures and other marketing collateral and service descriptions) including: BluIP’s: usage policy (“[Acceptable Use Policy](#)” or “[AUP](#)”), terms of use of the BluIP websites and other services and products accessible to customers and non-customers (the “[Terms of Use](#)”) privacy policy (the “Privacy Policy”), terms and conditions for use of BluIP Communication Service (“[BluIP Communication Service Agreement](#)”) and the service level agreement (“[Service Level Agreement](#)”), (collectively “[Policies](#)”), each of which is incorporated by reference and available at [www.bluip.com/legal](http://www.bluip.com/legal). In consideration of the mutual promises and obligations in the Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows.

## 1. SERVICES AND SERVICE ORDERS.

1.1. **Service Orders.** The parties anticipate that Customer might subscribe to Services supplied by BluIP. For each of the specific Services or groups of Services to which Customer subscribes, Customer will execute a Service Order. Each Service Order will be deemed an attachment to and governed by this Master Subscription Agreement. A Service Order shall be effective upon its execution by Customer.

1.2. **Change Orders.** If the parties elect to modify a Service Order or SOW, they shall execute a replacement Service Order, SOW or change order (“Change Order”). Notwithstanding the foregoing, Service Orders for particular Services or Professional Services not included under an existing Service Order or SOW will be made by new Service Orders or SOWs, respectively. Customer shall be responsible for any applicable charges as specified in a replacement or changed Service Order; provided, however, that Customer shall not be liable for the Cancellation Fees solely for the disconnection of the Services-implementation site specified on a Service Order, where such Services are delivered to another location in accordance with the terms of a Change Order.

1.3. **Affiliates and Contractors.** BluIP agrees to provide the Services and Equipment in accordance with the Agreement. BluIP may utilize services and facilities of its Affiliates, subsidiaries, contractors and other third parties in providing the Services. Notwithstanding the foregoing, BluIP shall have no liability for the failure of the Internet, local loops, or other

circuits connections, items, Service modifications or combinations not provided or managed, whether or not distributed by BluIP as part of or together with the Services.

1.4. **SLA.** BluIP shall provide Customer with Service availability commitments as stated in BluIP's then-current [Service Level Agreement](#) located at [www.bluip.com/legal](http://www.bluip.com/legal).

1.5. **Service Modifications.** BluIP may substitute, change, rearrange or otherwise modify any Service, Equipment, facility or system used in providing Services from time to time, but shall not thereby materially or adversely alter the technical parameters of the Services. Customer agrees to cooperate in the event that BluIP makes any such modifications, including changes in respect of any third party service provider.

1.6. **IP Addresses.** IP Addresses assigned from a BluIP net-block are non-portable. Upon the termination or expiration of the Service, any and all IP address space allocated by BluIP must be returned to BluIP, and Customer's right to use such allocated address space shall thereupon terminate.

1.7. **Policies.** All use of the Services and Equipment must comply with the then-current BluIP [Policies](#). Each [Policy](#) is incorporated herein by this reference, and is available at [www.bluip.com/legal](http://www.bluip.com/legal) or by clicking [Policies](#). BluIP reserves the right to amend any of the [Policies](#) from time to time, effective upon posting of the revised [Policy](#) at its web site or by other notice to Customer. Notwithstanding the foregoing, the changed [Policy](#) will not become effective until the sooner of: (a) as required by Law, judicial order, or regulation; or, (b) commencement of the next Renewal Subscription Term following the time of such modifications.

## 2. Term.

2.1. **Agreement Term.** The Agreement shall be effective as of the Effective Date, and shall continue through the Agreement Term, unless earlier terminated as herein provided.

2.2. **Commencement.** Each Initial Subscription Term, and billing therefor, shall start on the applicable Commencement Date and continue for the period specified on the Service Order. Customer is responsible for all charges during phase-in or ramp periods (if any), prior to the commencement of the applicable Subscription Term. BluIP is not responsible for any delay in the Commencement Date caused by Customer, including any failure by Customer to issue a PO, or caused by third parties under Customer's control, pursuant to Customer's direction or otherwise due to Customer's requirements or circumstances, or for any delay in activation or usage by Customer after any notification by BluIP to Customer that the Services are ready to be activated. Without limiting the foregoing, if BluIP is unable to set-up/provision the Services due to Customer's act or omission, then the Commencement Date of the Initial Subscription Term shall begin the sooner of ninety-one (91) days from and after the date of the applicable Service Order, or the date provisioning is complete, and in the event of any such delay, BluIP has the right to adjust pricing and charge Customer for additional Professional Services Fees. Notwithstanding anything to the contrary herein contained, Services or quantities of existing Services added after the Commencement Date of the Subscription Term, but prior to the expiration of a Subscription Term shall be ordered, if at all, by a Service Order (meaning a Service Order or a Change Order), and might have their own Commencement Date. Notwithstanding the foregoing and unless otherwise stated in an applicable Service Order such added Services will be coterminous with the Subscription Term during which such Services were added.

2.3. **Renewal.** Unless a party provides the other party with written Notice not less than sixty (60) days prior to the expiration of the Initial Subscription Term, or any then-current Renewal Subscription Term, that it intends not to renew a Service, the Service shall automatically renew for consecutive one-year Subscription Terms at the then-current one-year list pricing (for the applicable year).

2.4. **Termination.** Without limiting anything else set forth under the Agreement (including under the below "Termination/Remedies" Section), unless otherwise expressly set forth under the Agreement, any termination of the Agreement shall not relieve Customer of its obligation to pay any charges incurred prior to such termination, and Cancellation Fees.

## 3. FEES AND PAYMENTS.

### 3.1. Fees.

3.1.1. **Payment Terms.** Customer shall pay BluIP for all charges under a Service Order at the rates and currency set forth in such Service Order. Except as otherwise provided in an applicable Service Order, Customer is obligated to meet the Minimum Commitment Fees. All amounts owed by Customer are due and payable upon receipt of BluIP's invoice, and shall be past due thirty (30) days or more from and after the date of the invoice.

3.1.2. **Rates, Rate Changes and Permitted Reduction.** Rates as specified in Service Orders are subject to Customer's fulfillment of the Initial Subscription Term and the Minimum Commitment Fees (if any Minimum Commitment Fees are specified) under the applicable Service Order. If Customer does not fulfill the Initial Subscription Term (and/or any Minimum Commitment Fees, if applicable), Customer Rates will accrue at 100% of list subscription price for month-to-month Subscription Terms. Notwithstanding the foregoing, Customer may reduce BluIP Communication Service, provided that Customer must maintain a minimum of eighty percent (80%) of the specified contracted amount for BluIP Communication Service to avoid incurring early termination liability in respect of BluIP Communication Service reductions. BluIP may change the rates for any Services effective upon commencement of a Renewal Subscription Term as stated in the Agreement, and if not herein stated then upon ninety (90) days' Notice to Customer prior to the expiration of the then-current Subscription Term, provided that third-party-based usage fees, or other carrier-based fees, may change from time-to-time during a Subscription Term, without advance notice to Customer.

3.2. **Payment Amounts.** Customer is responsible to pay non-recurring charges and recurring monthly charges set forth in the Service Order (the "Non-Recurring Charges" and "Monthly Recurring Charges," respectively). Charges may include amounts in respect of the following: Services, Equipment, Professional Services and other charges required to complete the construction, activation, set-up or provisioning of any local access facilities, and all other charges set forth in an SOW or a Service Order or otherwise agreed in writing by the parties. Other than with respect to Monthly Recurring Charges comprising any part of Cancellation Fees, Monthly Recurring Charges in respect of Services provided for only a portion of the first and/or last month of the then-current Subscription Term, and/or unless otherwise required by third party, will be prorated. All payments shall be made without set-off or counterclaim.

3.3. **Taxes.** All payments, charges, fees, or quotations for Services are net of applicable Taxes. Customer will be responsible for payment of all such Taxes, and all fees to recover expenses and pay deficits, late fees, and all other liabilities incurred by BluIP related to its collection of such Taxes and compliance with related regulations. To that end, Customer shall indemnify and hold BluIP harmless for Customer's failure to pay Taxes as and when due. If either Customer or BluIP is required by applicable Law to make any deduction or withholding from any payment due hereunder to BluIP, then the gross amount payable by Customer to BluIP will be increased so that, after any such deduction or withholding for such Taxes, the net amount received by BluIP will not be less than the amount BluIP would have received had no such deduction or withholding been required. BluIP may pay Taxes on Customer's behalf and, list such Taxes on the applicable invoice. Customer shall be responsible for reimbursing BluIP, in accordance with the payment terms applicable to the subject invoice, in the event BluIP has remitted Taxes on Customer's behalf.

3.4. **Governing Payment Terms.** Only the terms and conditions of the Agreement, including the Service Orders, shall govern the payment terms and fee requirements in respect of the Services. Language in any ordering document, payment authorization document or document originally generated by Customer to BluIP with respect to the Service(s), shall be deemed to be for Customer's internal use only, and the provisions thereof shall have no effect whatsoever upon the terms and conditions of the Agreement or the provision of Service(s). BluIP reserves the right to recover bank and/or finance fees related to payments when such payments are not made as per the remittance instructions on BluIP's invoice.

3.5. **Late Payments.** If a payment due by Customer to BluIP under the Agreement is not received by the due date as set forth above, BluIP may charge, and Customer shall pay: (a) a late charge equivalent to the lesser of: (i) 1.5% per month; or, (ii) the maximum rate permitted by applicable Law on past due balances until paid in full; and (b) any additional charges or expenses incurred by BluIP in recovering outstanding amounts due under the Agreement (including, without limitation, any legal costs and expenses and/or the cost of engaging a debt recovery agent). BluIP shall bill Customer at the address set forth in the applicable Service Order, or such other billing address that has been previously provided to BluIP in writing. BluIP shall make good faith efforts to modify future invoices to reflect the correct billing entity or address within sixty (60) days of Customer's written request therefor. Customer is responsible to timely pay all invoices, including those that have been sent prior to Notice from Customer to modify Customer's billing address, even if any such invoice has been sent to a prior billing address.

**3.6. Excessive Use Charges.** In addition to the provisions concerning excessive use in the [AUP](#), BluIP reserves the right, upon thirty (30) days' written Notice to Customer, to increase the charges for Communication Service upon determining, in BluIP's sole discretion, that Customer's utilization of Communication Service has exhibited "**excessive usage patterns.**" Excessive usage patterns include, but are not limited to use such as resultant from predictive dialing equipment, call center environments and telemarketing use, excessive short duration or incomplete calls, or use resulting in similar calling patterns. Customer acknowledges and agrees that unlimited usage Services may not be employed for call or contact centers, telemarketing or similar uses that result in excessive usage patterns. Customer further acknowledges and agrees that so called "unlimited" Services may have usage restrictions.

**3.7. Billing Disputes.** If Customer disputes any portion of a BluIP invoice, Customer must: (a) pay the undisputed portion of the invoice in accordance with this MSA; and (b) within thirty (30) days of the date of the invoice giving rise to the dispute, submit a written claim to [billing@bluip.com](mailto:billing@bluip.com) regarding the disputed amount, setting forth the particulars thereof.

**3.8. Financial Status.** Delivery of Services is subject to credit approval. Customer shall provide BluIP with credit information as requested. Customer hereby consents to BluIP's retrieval of Customer's credit information from third parties. As a condition to BluIP's provisioning of or continuation of Services, BluIP may require that Customer make a deposit or pre-payment, reasonably acceptable to BluIP, BluIP shall hold any deposit or pre-payment provided by Customer under this Section (Financial Status) as security for payment of Customer's charges without any responsibility for paying Customer interest on any amounts held. Within ninety (90) days of the termination date of all Services, the amount of the deposit or pre-payment will be credited to Customer's account; any remaining credit balance will be refunded. If at any time during the term of the Agreement there is a detrimental material change in Customer's financial status, as determined in BluIP's sole and reasonable discretion, BluIP has the right to modify the payment timing or terminate any credit availability extended to Customer under the Agreement. In the event Customer does not fully remit payment in accordance with the terms of the Agreement, including any such modified payment timing, BluIP has the right to immediately: (a) stop or suspend all provision of the Services; and/or (b) terminate the Agreement, or in whole or in part. Without limiting any of BluIP's rights and remedies, in the event that Customer becomes a debtor and/or a debtor in possession, whether voluntary or involuntary, in a bankruptcy proceeding under Title 11 of the United States Code, as amended from time to time (the "**Bankruptcy Code**"), BluIP and Customer agree that: BluIP is a Critical Vendor to Customer; Customer shall include BluIP on the list of Critical Vendors to be paid pursuant to such approved Critical Vendor program; and, that BluIP shall receive treatment under such program at least as favorable as any other Critical Vendor. In such event, Customer shall make best efforts to obtain court approval for BluIP to be deemed a Critical Vendor.

#### **4. EQUIPMENT, ACCESS, SOFTWARE AND RECORDINGS.**

**4.1. Access.** Customer shall be responsible for obtaining any reasonably necessary access and right-of-way to Customer's premises to the extent determined by BluIP to be appropriate for the activation, set-up, provision, maintenance, replacement or termination of Services, Equipment, facilities and systems hereunder. Customer shall remove any existing hazardous materials or condition prior to any work being performed on Customer's premises by BluIP, upon BluIP's behalf or requisitioned by BluIP acting as Customer's agent. Upon request, Customer will provide an out-of-band telephone connection from the public switched telephone network (PSTN) to be connected to a modem provided by BluIP, to allow access to the Services provided under the Agreement for testing/configuration purposes. After commencement of Services, if BluIP, in its sole and reasonable discretion, determines it needs to perform any Professional Services or other services on Customer's site, then pursuant to an SOW, similar document or email exchange expressing mutuality therefor, Customer will be charged for such PS in accordance with BluIP's then-current, applicable rates.

#### **4.2. Equipment.**

**4.2.1. Pass-Through and Return of Equipment.** BluIP may offer Equipment for Customer's rental or on a purchase. All Equipment is provided "AS-IS" without warranty of any kind, unless passed through by an authorized third party and expressly set forth by BluIP in writing to Customer. Notwithstanding the foregoing, Equipment warranties are excluded from the scope of any BluIP warranty, and are not protected under BluIP's indemnification obligations. Shipping terms to Customer are F.O.B. shipping point. Shipping and handling expenses in respect of Equipment are the responsibility of Customer. In the event that Customer rents Equipment, Customer shall pay such fees as reflected in the Service Order. In

all events, whether Equipment is provided to Customer by rental or purchase, Customer shall secure and protect Equipment at Customer's location(s).

**4.2.2. Ownership and Return of Equipment.** Customer shall not create or allow any liens or other encumbrances to be placed on any BluIP-rented Equipment, facility or system. Customer shall use reasonable measures to ensure that any Equipment located at a Customer's premises is not rearranged, moved, removed, disconnected or altered without BluIP's prior written consent. All rented Equipment provided by BluIP or a third party will remain the property of BluIP or such third party, respectively. Customer may not sell, lease, abandon, or give away rented Equipment; unless authorized by BluIP in writing, or pursuant to a then-current user guide provided by BluIP; allow anyone other than BluIP or its delegates to service, repair or maintain rented Equipment; or permit any other person to use the Equipment, other than a User in connection with its use of the Services. Customer will be directly responsible for loss of the Equipment. Customer shall return Equipment, at Customer's risk and expense, in the manner, method and to an address as directed by BluIP no later than ten (10) days following the expiration or sooner termination of the applicable Service Order. If rented Equipment is lost, stolen or damaged, or is not completely returned to BluIP or is so returned in less than the required condition, Customer shall pay BluIP the greater of Two Thousand Dollars (\$2,000.00) per piece of Equipment, or the then-present-value replacement costs for such Equipment, per the payment terms of the Agreement, no later than thirty (30) days from the date of termination.

If, at the outset of transacting for Services, Customer elects to purchase any Equipment, the purchase will be noted on the applicable Service Order and Customer will own such Equipment and at all times under the Agreement. Unless otherwise expressly agreed in writing by the parties, if Customer elects to own any Equipment, Customer will be responsible for any required maintenance thereof. Any other equipment or facilities required by Customer to access the Services will be provided and paid for by Customer.

**4.2.3. Damage to Equipment.** Customer shall be liable and indemnify and hold BluIP harmless, for any damage to BluIP or third party rented Equipment, facility, or system caused by: (a) negligent or willful acts or omissions of Customer or its Related Parties, or otherwise attributable to Customer, or its Related Parties in violation of the Agreement; and, (b) malfunction or failure of any equipment or facility provided by Customer or its Related Parties.

**4.3. Local Access.** If pursuant to an applicable Service Order the parties agree, then BluIP shall provide circuits, or other installation in connection with local channel access, required for local access to the designated building point of demarcation, or such other points agreed by the parties and achievable by the service provider. After the effective date of a Service Order, Customer may be notified that "special construction and/or additional access charges" apply because, for example, the access service provider must install special equipment or incur unusual expenses to establish Service. Facilities construction relating to special construction and/or additional access charges will not begin<sup>[SEP]</sup> until Customer has agreed in writing to pay the such charges. If Customer does not timely authorize the special construction, then the applicable Service Order will be cancelled and Customer shall pay to BluIP "Two-Day Cancellation Fees" (defined under the below Section "Termination/Remedies"). In any event, Customer is responsible for the installation, maintenance, and warranty of circuit extension work or line extensions (e. g., beyond the point of demarcation), and any charges associated with such circuit extension work or line extensions, access, usage and maintenance of telecom lines.

**4.4. Software.** Without limiting anything set forth under the Agreement, Customer agrees to the following. The Software and all intellectual property rights therein, are owned by BluIP or its suppliers or licensors (each of such suppliers and licensors shall herein be referenced as "Licensor"), all as further set forth in this Section (Software), and the below Section "Intellectual Property." Customer agrees and acknowledges that (a) if Software has been provided by or on behalf of a Licensor, Customer's rights are at all times contingent upon an effective agreement between BluIP and such Licensor; (b) in order to utilize some Services or portions thereof, or access the Customer Resources, Customer may first be required to download, or to permit to be downloaded, Software; (c) any device onto which such Software cannot be downloaded, or does not otherwise function properly, may be unable to utilize some or all of the Services or access some or all of the Customer Resources; (d) downloading and installing any Software will require certain operating system specifications, memory, disk space as expressly specified by BluIP in writing, or in the applicable documentation, and may negatively impact the processing speed of Customer's Resources for which (without limiting any other limitations of BluIP and its Licensor's liability) neither BluIP, nor Licensor will be liable, other than BluIP if due to a Default (defined in the below Section "Default/Termination") by BluIP; (e) where specified by BluIP in writing, in no event will Customer introduce any third party software on the hardware on which the Software is installed; (f) in certain instances, the Software may be provided as server or client Software: server Software may only be loaded on hardware as

designated by BluIP; client Software may be loaded on individual Users (devices) for the authorized User (individuals) of such User (devices); (g) the IT environment in which the Software operates is very dynamic and frequently changing (e. g., updates and upgrades to Equipment and Software); at all times under the Agreement, Customer shall be responsible for maintaining its IT environment such that it is current and compliant with utilizing the Software, Services, Equipment and Customer Resources; Customer is responsible for taking appropriate steps to safeguard its Customer Resources; (h) Customer is granted a limited, nonexclusive, nontransferable, revocable right to use the Software in object code only, solely for its internal business purposes; the Software may not be used by anyone other than Customer (and its employees, agents, contractors and other authorized individual and device-Users); (i) use the Software for rental, timesharing, subscription, hosting or outsourcing purposes, unless expressly authorized by BluIP in writing; (j) Customer will not reproduce, modify, distribute, publicly display, or reverse engineer, decrypt, decompile or otherwise attempt to discover the source code for the Software, the Services or any component of either, or otherwise reduce same to human-readable form or otherwise infringe upon the intellectual property rights of its respective owner, as further set forth in the Section "Intellectual Property"; (k) will not publish any results of benchmark tests run on the Software or any component thereof; provided that Customer shall not be restricted in its ability to publish or grant rights to publish of any results of benchmark tests run on Software-based Services, if, in accordance with the Agreement: (i) Customer sublicenses such Services (ii) such Services are branded as Customer services and (iii) such Services are not identified as Software, Services, or any other BluIP or its Licensors-based services or products; and, (l) changes to Customer Resources, Software or any other software, Equipment or other hardware or the combination thereof, performed by Customer, may render the Services partially or fully unavailable. BluIP may from time to time request that Customer provide, and in each instance Customer shall then promptly provide, BluIP or a BluIP-designated third party with temporary or guest rights to use Customer Resources for the purpose of BluIP performing its obligations under the Agreement; Customer is responsible for ensuring that any such rights are disabled upon completion of such activity.

#### 4.5. Network Security and Access.

4.5.1. **BluIP Network Security.** BluIP acknowledges and agrees that other than due to a negligent act or omission of Customer, or Customer's violation of the Agreement, BluIP is responsible for BluIP's data, applications, devices and network; and, BluIP shall maintain reasonable and appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Service, to the extent controlled by BluIP, to provide the Services.

4.5.2. **Customer Network Security.** Without limiting anything set forth in the AUP, Customer acknowledges and agrees that Customer is responsible for, and for the security, of Customer Resources. To that end, Customer agrees to take all reasonable steps to protect virtual and physical access to the Software and Services originating from or transmitted through or to Customer Resources. Without limiting the foregoing, Customer will maintain any reasonable and appropriate administrative, physical, and technical level of security (and such other requirements in accordance with applicable Law) regarding its account ID, password, antivirus and firewall protections, and connectivity with the Services. Without limiting the foregoing, Customer shall be responsible for the confidentiality and use of Customer's username, password, and other security data, methods and devices. Customer understands that Customer shall be solely responsible for all information electronically transmitted (including Customer's submission of Service and Change Orders, and trouble tickets), or use of any data, information regarding the Services, or use of the Services, themselves, obtained using Customer's username, password, and other security data. Customer shall immediately notify BluIP if there is any unauthorized use of Customer's passwords or other security data or any use inconsistent with the terms of the Agreement. EXCEPT TO THE EXTENT OF BLUIP'S DEFAULT OF ITS OBLIGATIONS UNDER SECTION 4.5 OF THIS MSA, BLUIP SHALL NOT BE RESPONSIBLE OR OBLIGATED FOR ANY COSTS, FEES, EXPENSES OR LIABILITIES AT LAW OR AT EQUITY ACCRUING AS A RESULT OF ANY UNAUTHORIZED USE OF CUSTOMER'S PASSWORD OR OTHER SECURITY DATA.

**IN ADDITION, AND WITHOUT LIMITING ANY OF ITS OBLIGATIONS UNDER SECTION 4.5, CUSTOMER SHALL MAINTAIN STRICT SECURITY OVER ALL BLUIP COMMUNICATION SERVICE LINES.**

4.5.3. **Network Security Risks.** Notwithstanding the foregoing, each party acknowledges that the Services are provided over the Internet, third party equipment and networks with inherent risks and vulnerabilities. Neither party will be responsible for or liable to the other party if such party's security systems that are compliant with the Agreement, fail to detect or prevent one or more incidents of hacking, intrusion, loss of data, or other security breaches. BLUIP MAKES

NO WARRANTY, GUARANTEE, OR REPRESENTATION, EXPRESS OR IMPLIED, THAT ANY SECURITY THREAT AND VULNERABILITY WILL BE DETECTED, OR THAT THE PERFORMANCE OF BLUIP EQUIPMENT OR THE SERVICES WILL RENDER CUSTOMER'S SYSTEMS INVULNERABLE TO SECURITY BREACHES.

**4.6. Recordings.** As between BluIP and Customer, Customer acknowledges that Recordings are solely within Customer's discretion and control. Without limiting the foregoing: (a) Customer accepts sole responsibility for determining the method and manner of performing Recording such that it is compliant with all applicable Laws, and for instructing the Services accordingly; (b) to the extent Recordings do not comprise voicemail, Customer shall ensure that such Recordings shall be made only for diagnostic, quality assurance, archival, and/or Support purposes, and in any event only for purposes required and/or in compliance with, all applicable Laws; (c) Customer will ensure that Recordings will not knowingly include any bank account number, credit card number, authentication code, Social Security number, or other personal or Sensitive Information, except as allowed or required by all applicable Laws; and, (d) Customer will solely store or archive Recordings on its own systems and devices, apart from and external to the Services and any Equipment or other facilities provided with, as part of or incidental to the Services.

**4.7. Sensitive Information.** If the Services will be used to otherwise transmit or process Sensitive Information, Customer will ensure that it has the right to use such Sensitive information, and that all Sensitive Information is captured and used solely via the use of available security features.

## **5. Termination/Remedies.**

**5.1. Default.** Each of the following events shall be deemed a "Default" under the Agreement. Without waiver of any other remedies each party may have at law or in equity, upon a Default, the non-defaulting party may terminate the Agreement or suspend Services. A "Default" is: (a) any failure of Customer to pay any undisputed amounts as provided in the Agreement; (b) a party's termination or suspension of its business or its insolvency; or, (c) a party's material breach of the Agreement; provided, however, that unless otherwise stated under the Agreement, a party will not terminate the Agreement or any Service, or suspend Service for the other party's Default unless such Default continues for more than thirty (30) days following the date of Notice thereof to such other party, or ten (10) days following the date of such Notice, in the case of failure to pay money.

**5.2. Termination/Suspension.** Notwithstanding the foregoing, Customer shall also be in Default, and BluIP shall have the right to immediately terminate or suspend Services, without Notice, other notice or cure period, upon any violation by Customer of an applicable Law affecting the use of the Services or performance of Customer's obligations of security, confidentiality, intellectual property, and/or as under the [AUP](#). BluIP also reserves the right to immediately suspend or terminate Services, without Notice, other notice or cure period, in the event of any governmental prohibition or required alteration of the Services, or in any existing or anticipated circumstance where compromise to the Services, BluIP's network, injury to people or damage to property is reasonably possible. BluIP shall affect such suspension if BluIP determines, in good faith, that no other commercially reasonable actions will adequately protect such people, facilities, systems or property.

Notwithstanding any other provision of the Agreement, if BluIP cancels or terminates Service due to a Default of Customer, such cancellation or termination shall apply to an individual Service Order, multiple Service Orders or the Agreement in its entirety, as determined by BluIP in its sole discretion.

**5.3. Termination by Customer for Cause.** Customer may cancel or terminate the Agreement without payment of any Cancellation Fees solely because an uncured (if capable of cure) Default of BluIP pursuant to this Section.

**5.4. Service Availability Outage Termination.** Customer may terminate the Agreement in the event that a Service Availability Credit, as defined in the Service Level Agreement, is due for four (4) or more consecutive hours during each of any three (3) consecutive calendar months ("Service Availability Outage Termination") by providing Notice to BluIP within 60 days after the last day of the third month ("Service Availability Outage Termination Notice"). In the event of a Service Availability Outage Termination, regardless of any outstanding Subscription Term, Customer will be liable only for then-unpaid charges (including NRC (including third party fees) and MRC) specified in the applicable Service Order up to the Service Availability Outage Termination Notice date, and Customer shall not owe Cancellation Fees to BluIP.

## 5.5. Cancellation.

5.5.1. **Cancellation Fees.** If any of the Services provided pursuant to a Service Order is canceled or terminated during the Initial or Renewal Subscription Term of such Services: (a) by (i) Customer for any reason other than for a Default by BluIP; or (ii) by BluIP due to Customer's Default then, (b) Customer shall pay to BluIP, no less than the following sums (such sums to be known as "Cancellation Fees").

5.5.2. **Amount.** (a) Cancellation Fees shall be equal to the sum of: (i) all unpaid (A) Non-Recurring Charges; and, (B) Monthly Recurring Charges for Services specified in the applicable Service Order(s) through the date of termination, and as further set forth in the below subsection (c); (ii) one hundred percent (100%) of all Monthly Recurring Charges for canceled or terminated Services specified in the applicable Service Order(s) through the balance of the then-current Subscription Term of the applicable Service Order; and, (iii) all fees related to the canceled or terminated Services that BluIP is charged by each third party including without limitation, all termination charges due to any and all third party service providers. BluIP will use commercially reasonable efforts, but is not otherwise obligated to avoid or abate such third party charges. (b) Such third party fees will not be separately or additionally charged if they are included in Non-Recurring or Monthly Recurring Charges to be paid under this Section (Cancellation Fees). (c) Cancellation Fees shall accrue and be payable as of the effective date of cancellation or termination, and shall be payable by Customer within thirty (30) days therefrom; for purposes of clarity, Monthly Recurring Charges, for purpose of calculating Cancellation Fees, shall be deemed to be the full list, retail or month-to-month charges, regardless of Customer's Term or other discount employed in the applicable Service Order.

5.5.3. **No Penalty.** The parties agree that Cancellation Fees: (a) constitute liquidated damages, not a penalty; (b) such damages bear a reasonable and appropriate relationship to the range of harm arising from cancellation; (c) such damages have been reasonably anticipated by the parties as of the Effective Date; and, (d) actual damages for such harm may be costly, inconvenient or difficult to prove or foresee. The parties further agree that payment of Cancellation Fees shall be in lieu of any actual damages arising solely from a termination of the Agreement. For any termination of the Agreement by Customer, for BluIP's Default pursuant to Section 5.1(a) or Section 5.3, Customer shall have no obligation to BluIP for payment of Cancellation Fees; provided, however, that in no event shall Customer be relieved of any obligations and/or liabilities, nor shall BluIP be deemed to have waived its rights and remedies related to: fees for Services and Professional Services performed as of the date of Service termination; other Defaults that had occurred prior to such termination of the Agreement; or, any other obligations or liabilities that survive the termination of the Agreement.

5.5.4. **Notice of Cancellation.** Customer will provide notification of Services cancellation to BluIP by electronic mail to disconnect@bluip.com, or by Notice. Services will be cancelled the later of: (a) thirty (30) days following the date the BluIP disconnect department has received such notification; or, (b) the cancellation date provided by Customer, in such notification. Customer acknowledges that third party carriers or other service providers may not necessarily, and Customer will be responsible for all charges arising from such third parties that do not, cancel services commensurate with BluIP's cancellation of the Services as above set forth in this Section.

5.5.5. **Cancellation Fees Inapplicable.** Cancellation Fees will not be assessed solely in the following instances: (a) cancellation of a Service Order (including Change Orders), Statement/Scope of Work if BluIP receives Notice of cancellation (email acceptable, if followed by Notice) within two (2) business days of execution of the respective document, but prior to the Commencement Date ("Two-Day Cancellation"); provided certain fees will be assessed ("Two-Day Cancellation Fees"). Two-Day Cancellation Fees shall be equal to the sum of: (i) all costs incurred by BluIP for Service preparation; and, (ii) any then-unpaid Non-Recurring Charges, including those charges waived by BluIP; and (b) termination of the Agreement by Customer for BluIP's Default in accordance with this Section (Termination/Remedies).

## 6. Limitation of Liability, Service Availability Credit and Warranties.

6.1. **Limitation of Liability.** NEITHER PARTY, NOR ANY OF ITS RELATED PARTIES, SHALL BE LIABLE TO THE OTHER PARTY OR TO THE OTHER PARTY'S RELATED PARTIES, WHETHER FOR BREACH OF CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, COSTS, EXPENSES OR LIABILITY (INCLUDING, WITHOUT LIMITATION, FOR ANY DAMAGES, COSTS, EXPENSES OR LIABILITY THAT ARE INCURRED BY A PARTY DUE TO LOST DATA, LATENCY, LOSS OF CONNECTIVITY, TRANSMISSION OF MALICIOUS CODE, LOST

REVENUES, LOST PROFITS, LOST CUSTOMERS, LOSS OF GOODWILL, REPLACEMENT COSTS, LOSS OF ACCESS TO THE SERVICES), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE DAMAGES ARE OTHERWISE FORESEEABLE. OTHER THAN AS EXPRESSLY SET FORTH IN THIS SECTION, THE CUMULATIVE, AGGREGATE LIABILITY OF A PARTY, AND ALL OF ITS RELATED PARTIES, UNDER THE AGREEMENT SHALL BE DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE FEES PAID TO BLUIP FOR THE SERVICES THAT ARE THE SUBJECT OF THE DISPUTE WHICH FEES HAVE PAID TO BLUIP DURING THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE COMMENCEMENT OF THE DISPUTE. NOTWITHSTANDING THE FOREGOING, NONE OF BLUIP SUPPLIERS OR THEIR RELATED PARTIES OR SUPPLIERS WILL BE LIABLE TO CUSTOMER OR ITS RELATED PARTIES FOR DAMAGES OR LIABILITY OF ANY KIND ARISING UNDER THE AGREEMENT.

6.1.1. **Exceptions.** THIS LIMITATION OF LIABILITY SHALL NOT OPERATE SO AS TO: (a) LIMIT OR REDUCE: (i) THE AMOUNTS PAYABLE AS CANCELLATION FEES; (ii) ANY AMOUNTS DUE AND PAYABLE UNDER UNCONTESTED INVOICES; NOR, (iii) OTHER CHARGES DUE AND PAYABLE BY CUSTOMER TO BLUIP; (b) LIMIT LIABILITY ARISING IN CONNECTION WITH INDEMNIFICATION OBLIGATIONS; OR, (c) LIMIT LIABILITY FINALLY DETERMINED TO HAVE RESULTED FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

6.1.2. **Emergency Calling Liability Disclaimer.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, NEITHER BLUIP, NOR ANY OF ITS RELATED PARTIES WILL HAVE ANY LIABILITY TO CUSTOMER, ANY OF CUSTOMER'S RELATED PARTIES, USERS OR OTHER PERSONS (AND NO LIABILITY FOR OTHERWISE CORRESPONDING SERVICE AVAILABILITY CREDIT OR ANY OTHER CREDIT) WHERE THE CLAIMS ARISE OUT OF, RELATE TO OR ARE CAUSED BY THE INABILITY OF CUSTOMER, USERS OR ANY OTHER PERSON OR PARTY TO DIAL, REACH OR ACCESS ANY EMERGENCY CALLING SERVICES, INCLUDING 911, INCLUDING CALLING SUCH EMERGENCY PERSONNEL THROUGH ANY OF THE SERVICES OR EQUIPMENT PROVIDED BY BLUIP.

6.2. **Service Availability Credit.** Subject to and without limiting the terms and provisions of the SLA, in the event of a Service Availability Outage as therein described, Customer's sole and exclusive remedy shall be limited to Service Availability Credit or, if applicable, Service Availability Outage Termination. Service Availability Credit will not be issued for Service Availability Outages that directly result in a Service Availability Outage Termination. In the absence of Service Availability Outage Termination: (a) Service Availability Credit shall offset against accumulated unpaid charges billed to Customer at the time the Service Availability Credit is granted, if any; any net remaining Service Availability Credit will be offset against unpaid charges within the next two (2) complete billing cycles after the Service Availability Credit is granted, if any; and, (b) unused Service Availability Credits shall expire two (2) years following the date of issuance. Other terms applicable to Service Availability Credit/Outage Termination are set forth in the applicable Service Level Agreement and are herein incorporated.

6.3. **Warranty Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, BLUIP AND BLUIP ON BEHALF OF ITS RELATED PARTIES THIRD PARTY CARRIERS AND OTHER SUPPLIERS, DISCLAIMS ALL WARRANTIES. THE SERVICES, BLUIP COMMUNICATIONS SERVICE, SOFTWARE, INITIAL SERVICE ITEMS, PROFESSIONAL SERVICES AND EQUIPMENT ARE PROVIDED TO CUSTOMER ON AN "AS IS" "WHERE IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE RELATED TO ACCURACY, DURABILITY, OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR THOSE ARISING FROM COURSE OF DEALING, CUSTOM USAGE OF TRADE OR PRIOR DEALING. BLUIP MAKES NO REPRESENTATIONS OR WARRANTIES THAT USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, COMPLETE, OR ERROR-FREE. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION OR ADVICE GIVEN OR PROVIDED BY BLUIP, OR BLUIP'S RELATED PARTIES, SHALL NOT BE DEEMED TO CREATE OR IN ANY WAY, INCREASE THE SCOPE OF THE WARRANTIES SET FORTH HEREIN, AND THAT CUSTOMER SHALL NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

## 7. BLUIP COMMUNICATIONS SERVICE.

The parties acknowledge that the Services may include BluIP Communications Service which may include emergency calling Services. If any BluIP Communications Service is provided, the BluIP Communications Service Agreement will

apply. CUSTOMER'S AGREEMENT TO THE BLUIP COMMUNICATIONS SERVICE AGREEMENT IS A CONDITION PRECEDENT TO THE AGREEMENT IN RESPECT, AND CUSTOMER'S RECEIPT, OF BLUIP'S COMMUNICATIONS SERVICE. Customer may not use the Services in any manner that interferes with or impairs the Services or the privacy of any communication over any of the facilities and Equipment and other accommodations comprising BluIP's network. If emergency calling services are not provisioned as part of the BluIP Communications Services, and Customer either directly or indirectly uses the Service to terminate emergency calls, or the BluIP Communications Service is provisioned to include emergency calling services and Customer uses other services to terminate an emergency call, BluIP may pay and pass through to Customer applicable emergency calling charges. If Customer acts in accordance with either of the penultimate two sentences Customer will be fully liable under the BluIP Communications Service Agreement; and the BluIP Communications Services Agreement will be in effect, *mutatis mutandis*, as if BluIP Communications Service had been provided to Customer.

## 8. INTELLECTUAL PROPERTY.

Each party retains all rights, title and interest in and to its Existing Intellectual Property.

**8.1. Customer's Limited Rights.** Customer is granted no rights in or to Services (including the Software) except as expressly set forth under the Agreement. Customer shall not (a) create Derivative Works based on the Services, (b) reverse engineer, decrypt or decompile the Services or any component thereof, or (c) access the Services in relation to the building of a competitive product or service. Services include tools that can be used to create content related to Customer Data. The algorithms, compilations, collation methods and anonymized/pseudo-anonymized/de-identified analyses created through the use of Services are considered Derivative Works and are therefore retained by BluIP. Customer retains, however, non-anonymized/non-pseudo-anonymized/non-identifiable analyses of Customer Data obtained from its use of such tools.

**8.2. Customer Data.** As between BluIP and Customer, Customer Data is the proprietary material of Customer and shall be considered Customer's Confidential Information. Customer grants BluIP a non-exclusive, non-sublicenseable (except to parties working on BluIP's behalf), non-transferable, royalty-free license to access, process, store, transmit, and otherwise make use of Customer Data as directed by Customer or as necessary to provide the Services, and to otherwise fulfill its obligations under and in accordance with the Agreement.

**8.3. Feedback.** To the extent not already owned by BluIP, Customer, on behalf of itself and its Related Parties, hereby grants BluIP a perpetual, exclusive, royalty-free, worldwide license to use or disclose (or delete, take down, or choose not to use or disclose), and create Derivative Works of Feedback for any purpose, in any way, in any media worldwide. To the extent such feedback violates applicable Law; comprises: tortious conduct such as slander or libel, negligence, or intentional or willful misconduct, Customer shall be and remain solely liable for Feedback content, and fully Indemnify BluIP in respect thereof.

**8.4. Copyright / Trademark / Unauthorized Use of Equipment or Software.** The Services, Software, Equipment, other devices and any other firmware or software used to provide the Services are provided to Customer in conjunction with providing the Services, or embedded in the Equipment or other devices, and all Services, information, documents and materials on BluIP's website(s), or otherwise provided, obtained or accessible are protected by trademark, copyright or other intellectual property Laws and international treaty provisions and all other applicable Laws. All Marks are and shall remain the exclusive property of BluIP, or its respective Related Party, and nothing in the Agreement shall grant Customer the right to license, remove, modify or otherwise use any Marks, unless expressly set forth in the Agreement.

## 9. ASSIGNMENT AND SUCCESSORS IN INTEREST.

**9.1. Assignment.** Neither party may assign the Agreement without the prior written consent of the other party (which consent shall not be unreasonably withheld or unduly delayed), except that either party may assign the Agreement with prior Notice to the other party, but without the other party's prior written consent, or any part or parts thereof, and have its rights and obligations assumed thereunder: (a) to any Affiliate of the assigning party; (b) pursuant to any sale or transfer of the majority of the issued and outstanding capital stock or controlling interest of such party; (c) pursuant to any sale or transfer of all or substantially all of the assets of said party; or, (d) pursuant to any merger or other consolidation, restructuring or reorganization; provided that absent the written consent of BluIP, any assignment of Customer under this Section shall not relieve Customer of its responsibility for any and all liabilities incurred and payment obligations undertaken prior to such assignment.

9.2. **Terms Inure.** The perspective terms, covenants and conditions contained in the Agreement shall bind and inure to the benefit of the parties and their respective administrators, successors and assigns.

## 10. COMPLIANCE.

10.1. **Compliance with Laws.** Each party is responsible for complying with all Laws applicable to their activities pertaining to the provision and use of the Services, and in performing their obligations under the Agreement. The Agreement is subject to all Laws and regulations, rulings, orders, and other actions of government agencies and judiciary having authority over the Agreement, the parties hereto, the Services, the Equipment or any matter related hereto or thereto. All Services provided to Customer are subject to Customer's compliance with all applicable Laws in each country where the Service is provided. Without limiting anything contained in the Agreement, in the event of any violation of Law by, or liability that results from actions or inactions of Customer, with respect to this Section (Compliance), Customer shall Indemnify BluIP in accordance with the Indemnification procedures under this MSA.

10.2. **Ethical Compliance.** Customer understands that: (a) BluIP is committed to acting in accordance with the highest level of business and professional ethics in connection with the promotion, marketing, distribution and other exploitation of the BluIP offerings under the Agreement; and, (b) at all times under the Agreement, Customer shall act in accordance with the foregoing ethical standards. Various Laws have created standards of such compliance. Such Laws include: Foreign Corrupt Practices Act the U.K. Bribery Act, the OECD Convention on Combating Bribery of Public Officials in International Business and the UN Convention Against Corruption. Without limiting anything contained in the Agreement, Customer warrants that it shall comply with such Laws, as applicable.

10.3. **Modifications as a Result of Change of Law.** If any applicable present or future government authority, Law or the like requires a modification or waiver of any term of the Agreement, the parties will promptly and in good faith undertake the actions required by such Law, authority or the like.

10.4. **Material Increase.** In the event that due solely to a modification as contemplated under the above Section "Modifications as a Result of Change of Law", the cost of Services or related third party service is materially increased, Customer may terminate the affected Service by Notice sent to BluIP within forty-five (45) days of the effective date of such change; Cancellation Fees will not be assessed for such termination; provided that all invoices in respect of the Service through such date of termination will be paid in full no later than the date of said termination.

## 11. REPRESENTATIONS AND WARRANTIES; INDEMNITY.

11.1. **IP Indemnity.** BluIP shall Indemnify Customer for a final award of damages directly arising from a finding that that the Services have or continue to infringe(d) a third party's intellectual property rights, which rights have been identified in a patent or copyright that is enforceable in the United States. Notwithstanding the foregoing or anything contained in the Agreement, BluIP shall not be liable and shall have no obligation for any claim arising from or based upon (a) the use of the Services outside the scope or terms, or upon or after the termination of the Agreement; (b) a claim would not have arisen without (i) any modification of the Services or the Professional Services by Customer, or a User or a party acting under Customer's direction or control; (ii) the combination of the Services or the Professional Services with any technology (including software), equipment or other device, product or service that: (A) is not performed or provided by BluIP; (B) is not authorized by BluIP in writing; or, (C) causes any modification, intentional or inadvertent, to the Services or the Professional Services; (c) use of the Services or the Professional Services after receipt of Notice from BluIP to discontinue such use; or, (d) Customer's actions against the third-party intellectual property holder.

11.2. **IP Indemnity Remedies.** In the event that it is determined, or BluIP believes, that the Services have violated a third party's intellectual property rights, BluIP shall (the selection of which of the following remedies shall be at BluIP's sole discretion): (a) obtain for Customer the right to continue using the Services, (b) replace or modify the Services so that they become non-infringing while retaining no material diminution of functionality; or (c) terminate Customer's right to use the violating Services and refund to Customer the fees paid for the violating Services in the amount of the lesser of the: (i) prepaid, unused Monthly Recurring charges therefor; or, (ii) Monthly Recurring charges therefor, paid during the immediately prior twelve (12) month period. The provisions of this and the immediately prior Sections (IP Indemnification Remedies and IP Indemnity) state the sole, exclusive, and entire liability of BluIP, and are Customer's sole remedy with respect to the infringement or claimed infringement of third party intellectual property rights.

**11.3. Customer Indemnity.** Customer shall Indemnify BluIP for any claim, loss, or damage arising in connection with Customer's (a) use of the Services, Professional Services, Equipment and Initial Service Activation Items (including any activities undertaken by Users and/or its Related Parties); and, (b) or Users and/or its Related Parties': (i) violation of applicable Law; or, (ii) other violation of the Agreement.

**11.4. Mitigation and other Duties.** The Indemnified party shall take all reasonable steps to mitigate any potential expenses and shall provide the Indemnifying party with: (a) prompt Notice of any such claim or actions, or possibility thereof upon becoming aware of the same; (b) all relevant information (subject to confidentiality restrictions the Indemnified party owes to third parties), (c) sole control, authority and reasonable assistance to settle or defend such claim or action. Notwithstanding the foregoing, the Indemnified party shall have the right to retain counsel of its own choice, at its own expense, in respect of the subject of the Indemnification, for purposes including services as co-counsel or to monitor the defense provided by the Indemnifying party's appointed counsel. The Indemnified party shall have the right to approve counsel selected by the Indemnifying party, which approval shall not be unreasonably withheld or delayed. Such right of approval shall continue through the duration of representation under this Section 11, such that if at any time, the actions or inactions of such counsel are not acceptable to the Indemnified Party for material cause, as determined by the Indemnified Party in its prompt, prudent, reasonable and good faith discretion, the Indemnified Party may request replacement of such counsel. The Indemnified party shall have the right to approve any replacement counsel, which approval shall not be delayed, or unreasonably withheld or denied.

**12. IMPORT AND EXPORT RESTRICTIONS.** The Parties acknowledge that the Services, Software, Equipment, other software technical data and other intellectual property provided hereunder may be subject to import, export and re-export controls under the U.S. Export Administration Regulations, certain regulations under the Office of Foreign Assets Control of the U.S. Department of Commerce and regulations of other countries or governments. Neither party shall export or re-export any Services, Software, Equipment, other software, technical data or intellectual property, or undertake any transaction in violation of any export and import Laws, and each party, on behalf of itself and each Related Party, shall be responsible for its respective compliance with all such Laws.

### **13. MISCELLANEOUS.**

**13.1. Severability, Headings and Defined Terms.** If any provision of the Agreement is held by a court to be invalid, void or unenforceable, the remainder of the Agreement shall nevertheless remain unimpaired and in effect. The headings stated in this MSA are for convenience of reference only, and shall not have any bearing on the construction or interpretation hereof. Defined terms shall have the meanings defined in the Definitions Section and otherwise throughout the Agreement, or as commonly understood in the technology industry. Terms defined in the plural shall have the same meaning when used in the singular, and vice versa; terms defined as one type of word (noun, verb, adverb, adjective, etc.) shall have the same meaning as all types of that word. Failure to use the appropriate defined term will not defeat the meaning of the term if it is reasonably understood to be the same as the capitalized term.

**13.2. Relationship of the Parties.** Each party is an independent contractor, not an employee or employer of the other party. No license (except to the extent expressly granted under this MSA), joint venture or partnership, express or implied, is granted by BluIP pursuant to the Agreement.

#### **13.3. Confidentiality.**

**13.3.1 Protection.** Each party agrees to maintain in confidence the Confidential Information of the other party that is disclosed under the Agreement and shall not use the Confidential Information for any purpose other than in connection with the exercise of its rights and obligations under the Agreement. Without limiting the foregoing, each recipient of Confidential Information of the party shall: (a) protect the confidentiality of such Confidential Information using the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care) to prevent unauthorized use or disclosure; and, (b) not disclose Confidential Information to any person, other than an employee, Related Party, consultant or agent of such recipient party with a need to know such Confidential Information, and who or which is bound by terms at least as restrictive as those set forth herein.

**13.3.2. Exceptions.** Obligations of confidentiality shall not apply to disclosed information that (a) the recipient: (i) already possessed without legal or codified obligation of confidentiality; (ii) develops independently without use of the

other party's Confidential Information; or, (iii) rightfully receives from a third party without legal or codified obligation of confidentiality; or, (b) becomes publicly known or available through no breach of the Agreement by recipient.

13.3.3. **Required Disclosures.** Notwithstanding anything contained in this Section ("Confidentiality"), either party may disclose information of the other party to a government authority pursuant to a judicial, legislative, or regulatory subpoena, order or proceeding; provided that recipient shall: (a) notify discloser of any duty to disclose, affording opportunity for discloser to take protective actions (except to the extent notice is prohibited by Law); and, (b) disclose only as much of the Confidential Information as required, maintaining all proprietary notices applicable to such Confidential Information.

13.3.4. **Return of Information.** Upon written request in connection with the expiration or termination of the Agreement, each party shall promptly deliver to the other party or destroy all copies of such other party's Confidential Information. Notwithstanding the foregoing, recipient may retain an archival record of Confidential Information to the extent required pursuant to applicable Law subject to recipient's compliance with the remaining terms of this Section ("Confidentiality").

13.3.5. **Equitable Relief.** In the event of a recipient's breach of the Agreement, the disclosing party may suffer irreparable harm and have no adequate remedy at Law. In such event, or when encountering risk of such event, without limiting any other of its rights and remedies, the disclosing party shall be entitled to seek injunctive relief, to seek specific performance, and to seek other equitable remedies without the need to prove monetary damages or the inadequacy of other remedies.

13.4. **Professional Services.** BluIP will perform Professional Services (i. e. the professional services described in a Statement of Work or Service Order executed by the parties on a time and materials basis unless otherwise stated in the applicable SOW or Service Order), if any. BluIP shall control the manner by which the Professional Services are performed and may use subcontractors in the performance of the Professional Services (and the Services). BluIP reserves the right to make all staffing decisions in its sole and reasonable discretion. BluIP warrants that it shall perform the Professional Services in a professional and workperson-like manner. BluIP expressly disclaims all other warranties as set forth under the above Warranty Disclaimer Section. Customer shall make available at no charge all technical data, computer facilities, programs, files, documentation, test data, sample output, office space, equipment and other assistance as reasonably requested by BluIP in the performance of Professional Services. BluIP retains sole and exclusive ownership of all materials created in connection with its performance of the Professional Services, including but not limited to: methodologies; know-how; source and object code; specifications; configurations; designs, architecture; processes; techniques; concepts; discoveries; inventions made or developed; and, all Derivative Works of the foregoing (collectively, "PS Creations"). To the extent, and for any reason the foregoing statement of ownership is not effective, BluIP shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use all PS Creations, including by the incorporation of PS Creations into the Services. Unless otherwise set forth in the Statement of Work, Customer is hereby granted a license to use the PS Creations solely in connection with, and under the same provisions as, its use of the Services.

13.5. **Force Majeure.** Neither party shall be liable for any loss or damage of any kind, or for any consequences resulting from delays or failures to perform by reason, in whole or in part due to consequences Force Majeure. Any such failure or delay shall not be deemed a breach of the Agreement. Any Force Majeure delay or failure shall suspend a Subscription Term until the event of Force Majeure ceases. Each such suspended Subscription Term shall be extended by the length of such applicable suspension.

Notwithstanding the foregoing, a failure to pay money by either party shall not be excused under this Section (Force Majeure) for a period longer than five (5) days.

13.6. **Theft of Service.** If any Service, Equipment or other device employed to access and use the Services is stolen, or if Customer becomes aware at any time that Services, Equipment or other BluIP offerings under the Agreement, are being stolen or used fraudulently, Customer agrees to notify BluIP immediately by Notice, and by: electronic mail at [support@bluip.com](mailto:support@bluip.com); or, calling the BluIP customer support line at (702) 690 • 4455. When Customer calls or writes to BluIP, Customer must provide Customer's account number and a detailed description of the circumstances of the Equipment or device theft or fraudulent use of Service, or other offering. Failure to do so in a timely manner may result in the termination of Services and other offerings, and additional charges to Customer. Customer will be liable for all use

of the Services using Equipment or a device stolen from Customer, and any and all stolen Services, or other offering, or fraudulent use of the Service, or other offering. Notwithstanding anything herein to the contrary, neither Service Availability Credit nor any other credit will be issued for charges resulting from fraud that arises out of third parties hacking into Customer's equipment or the Internet. Such hijacking includes, but is not limited to, modem hijacking, wireless hijacking or fraud arising out of a failure of Customer's procedures or security. BluIP will not issue Service Availability Credit or any other credit for invoiced charges for fraudulent use resulting from Customer's, Users or its Related Parties' negligent or willful acts or omissions.

**13.7. Marketing.** Customer grants BluIP the right to use Customer's name and logo to identify Customer as a BluIP customer. Subject to prior written approval of content, Customer grants BluIP the right to issue a media release after execution of the Agreement announcing that Customer has become a BluIP customer, and to make other such announcements and place promotion in various publications and media. Except as set forth in a mutually agreed written public statement, Customer will not imply or state that Customer is affiliated with or endorsed by BluIP, publicize the existence of the Agreement or disclose any of its terms.

**13.8. No Waiver.** The failure by either party to take action to enforce compliance with the Agreement, exercise any right under the Agreement or to give Notice of any breach shall not constitute a waiver or relinquishment of such right. No claim may be asserted by either party against the other party with respect to any event, act or omission that occurred more than two (2) years prior to the assertion of such claim.

**13.9. Choice of Laws.** The Agreement shall be governed by the Laws of the State of California in and for Los Angeles County, California, and if there is federal jurisdiction, the United States District Court for the Southern District of California. Each such venue shall have the personal and exclusive jurisdiction, which such jurisdiction is acknowledged to be proper and convenient; the parties waive any rights to change venue. The UN Convention for the International Sale of Goods shall not apply to the Agreement in whole or in part. In any dispute under the Agreement, in addition to other relief sought or awarded, the prevailing party shall be entitled to recover its cost of bringing and enforcing its claim, including but not limited to attorney fees and costs from the non-prevailing party.

**13.10. Notices.** "Notices" required pursuant to the Agreement shall comprise the following: a writing, transmitted to the applicable party's address, and will be considered given when delivered and signed for by the recipient where tangible evidence of confirmed delivery is issued. Notices to BluIP must be addressed to BluIP, 410 Rampart Blvd., Suite 460, Las Vegas NV 89145, Attn: Legal Notices. Notices to Customer must be addressed to Customer as set forth on the initial Service Order, or such other address as may be designated in writing by the respective party.

**13.11. Non-Exclusivity.** The parties' respective obligations under the Agreement are non-exclusive and nothing herein is intended to restrict Customer as to the purchase, resale or use of any other company's services, even if such services are similar to services provided by BluIP hereunder. Nothing herein is intended to limit BluIP's right to offer its services to other customers or end users, even if such customers or end users compete with Customer. Nothing herein is intended to restrict solicitation by BluIP or Customer of any specific or prospective customers or restrict solicitation of any general categories of prospective or existing customers.

**13.12. Third Party Beneficiaries.** No third-party beneficiary relationships are created by the Agreement.

**13.13. Survival.** The provisions of the Agreement regarding payment, confidentiality, assignment, definitions, limitation of liability, intellectual property, indemnification and any provision which by its nature should survive, will survive the termination of the Agreement. In the event that any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement shall remain in full force.

**13.14. Complete Agreement; Amendment.** The Agreement is composed of this Master Subscription Agreement, each Service Order, [Policies](#) and all other schedules, exhibits, attachments, addenda and the like, including all documents linked by url and herein incorporated (other than product brochures and other marketing collateral and service descriptions), and together constitutes the complete agreement between the parties. The Agreement supersedes all prior agreements and representations, written or oral, concerning the subject matter of the Agreement. In the event of any conflict between the various documents included in the Agreement, the provisions of the Service Order shall in all respects govern and control. Notwithstanding the foregoing, the provisions, regarding Limitation of Liability, Compliance, Conditions of Regulatory Rules, BluIP Communications Service, [Service Level Agreement](#), Acceptable

Use and this Section (Complete Agreement) may only be modified in an otherwise controlling document by a direct reference to the sections under the less dominant document that are to be modified by the controlling document. In addition, and in any event, all provisions as amongst the documents comprising the Agreement shall be subject to the rule that specific clauses shall prevail over more general clauses dealing with the same subject matter. In any event, modifications and amendments of the Agreement are effective only by a writing signed by a duly authorized representative of each party. The terms of the Agreement shall supersede the terms in any Customer purchase order or other ordering document.

**13.15. Execution, Digitized Copies, Hyperlinks and urls.** The parties agree that the Agreement, and any part(s) thereof subject to execution, may be executed by any means of signature, including electronic commerce or transmission, including facsimile, email, or acknowledgement through a webpage. The Agreement may be executed in two (2) or more counterparts, each of which is deemed an original, but which together constitute one contract or document. Signed digitized copies of the Agreement and other associated documents, including attachments and amendments shall legally bind the parties to the same extent as original documents. The parties further agree that all of the terms, provisions and conditions comprising a document incorporated by referencing a hyperlink or url in the Agreement shall be fully binding upon the parties as if the linked document were printed and attached to the Agreement.

**13.16. Authority to Execute.** The individual executing the Agreement on behalf of a party represents and warrants that they have been duly authorized under the party's charter documents and applicable Law to do so.

## Schedule 1 to the BluIP Master Subscription Agreement

### Definitions

To avoid doubt or confusion in interpreting the Agreement, the following interpretations shall apply under the Agreement. The phrase “Customer will” or “You or “you” will” has the same meaning as “Customer must” or “You or “you” must,” respectively, and the phrase “[party] may” has the same meaning as “[party] has the contractual right to.” Actions described herein as being taken “under the Agreement” must be taken in a manner consistent with the Agreement’s requirements. The words, “purchase”, “sale”, “sell” or “sold” means: (a) with respect to Equipment, any sale, lease, rental or other transfer of such Equipment; (b) with respect to any software, the granting of a limited license to use the software; and, (c) with respect to the Services and/or the Professional Services, the provision of a right to access and use such service as permitted by the Agreement for the applicable Subscription Term(s).

Please note that the categories of BluIP offerings in the Service Order do not necessarily correspond to the defined terms. For example, “Type” as identified in the Service Order does not necessarily correspond to the categories of BluIP offerings as defined in this MSA (e. g., “Professional Services,” “Services” “Initial Service Items” and “Equipment”). In the event of inconsistency, the categories of BluIP offerings, as defined in this MSA, will prevail and be controlling under the Agreement. Without limiting the foregoing, this order of precedence applies to all Service Orders, such that regardless of any “Type” therein designated, the category of BluIP offering shall be that which is set forth under this MSA.

The following terms used in the Agreement have the meanings given them below:

1. **“Affiliate”**: Any person or entity that Controls, is Controlled by, or is under common Control with another (with “Control(s)” and “Controlled” meaning ownership of 50% or more of the voting control of any person or entity).
2. **“Agreement Term”**: The term during which the Agreement is effective. The Agreement Term commences upon Effective Date, and ends upon completion of the Services unless earlier terminated by either party in accordance with the Agreement.
3. **“BluIP Communications Service”**: Session initiation protocol trunking, hosted applications, connectivity (commonly known as) or hybrid services providing cloud-based telecommunication services.
4. **“BluIP Unified Communications as a Service” or “BluIP UCaaS”**: means a cloud-based set of communications products that provides a unified user interface and user experience across multiple devices and media types implemented using the BluIP Communication Services.
5. **“Commencement Date”**: The date which is the sooner of: (a) Customer’s first use of the Services or the Equipment; or, (b) the Intended Commencement Date.  
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6. **“Confidential Information”**: Any information disclosed by one party to the other party, or otherwise learned by the recipient from the discloser, marked "confidential" or disclosed or learned under circumstances that would lead a reasonable person to conclude that the information was confidential. Notwithstanding the foregoing, BluIP Confidential Information includes but is not limited to the Services and the terms of the Agreement. Customer Confidential Information includes but is not limited to Customer Data and Sensitive Information. In addition, whether or not marked "confidential" or otherwise identifiable as confidential, the following information shall be deemed Confidential Information of the discloser: inventions, product development plans, education materials, pricing, marketing plans, and customer lists and customer information.
7. **“Critical Vendor”**: A ‘critical vendor,’ as such term is defined in the Bankruptcy Code, under which the debtor seeks authority to make payment of all or a significant portion of certain vendors’ unpaid pre-petition claims.
8. **“Customer Data”**: (a) All data submitted to and/or transmitted through the Services by Customer or Users; and (b) the non-anonymized/non-pseudo-anonymized/non-de-identified content of any reports generated by the Services regarding Customer's use of the Services.
9. **“Customer Resources”**: Any or all of Customer’s data, applications Customer’s or third party’s, equipment, including

any remote computers and devices, and any wireless or wired Internet connection and network.

**10. “Derivative Work”:** A new or modified work that is based on or derived from all or any part of the Services, including without limitation, a revision, modification, translation, localization, adaptation, abridgment, port, condensation or expansion, in any form or language, of the Services, or any work that would infringe any copyright if created without the authorization of the copyright holder or any other intellectual property right in the Services or that uses trade secrets or other Confidential Information, or patents or other intellectual property embodied in, made a part of, referenced, based upon or used by the Services.

**11. “Effective Date”:** The effective date of the Agreement (and any incorporated document), which is the date of the last signature of, or as otherwise stated in, the first linking Service Order.

**12. “Equipment”:** Third party devices and other products provided on a pass-through basis without warranty from BluIP.

**13. “Existing Intellectual Property”:** Any and all technology, know-how, software, data, ideas, formulas, processes, charts, Confidential Information, and any other materials or information and any and all worldwide intellectual property rights therein and thereto: (a) owned or controlled by a party on the Effective Date or (b) developed by a party outside the scope of the Agreement and which does not use the other party’s Existing Intellectual Property or Confidential Information.

**14. “Feedback”:** Any suggestions, enhancement requests, recommendations, report, feedback, proposals, anonymized/pseudo-anonymized/de-identified statistical data or other information concerning the Services provided by Customer to BluIP hereunder. Notwithstanding anything to the contrary herein contained, in no event shall Feedback be deemed Customer Existing Intellectual Property unless such Feedback existed on or before the Effective Date. Feedback shall not be deemed to include any disparagement or similar material in respect of the Services.

**15. “Force Majeure”:** Delays or failures on performance resulting from acts beyond the control of a party. Such acts include natural or human-made disaster, epidemics, pandemics, war, labor or other governmental or civil controversy, uprising or assembly, Laws effective after the Effective Date, encumbered intellectual property rights, Services or third party service blockades, denial-of-service attacks, communication line failures, power failures, fire, theft, shortages, inability to obtain materials, shipping, storage or space, breakdowns, delays or interruptions of carriers and/or other third parties, warehouses, devices, Equipment, manufacturers, or suppliers, including providers of telecommunication services or other facilities.

**16. “Indemnify”:** (and all forms of the word (e. g. **Indemnification**)): Agreement to indemnify, hold harmless, and defend the other party and its Related Parties from and against any and all third-party claims, demands, sums of money, actions, rights, causes of action, obligations, allegations and liabilities of any kind or nature whatsoever, and from any resulting liabilities, damages, losses, and costs (including, but not limited to, attorney fees, costs and disbursements) arising from or relating, directly or indirectly, to the use, act, omission, or manner set forth as the subject of and giving rise to the claim.

**17. “Initial Service Item”:** Items that may be necessary to activate Service such as “special construction,” “service activation” or “provisioning.” Initial Service Items are neither Professional Services nor Services.

**18. “Initial Subscription Term”:** The minimum term of a particular Service beginning as of the Commencement Date of such Service, and continuing for the duration set forth in the applicable Service Order.

**19. “Intended Commencement Date”:** The date set forth in the applicable Service Order as the date the parties reasonably intend the Initial Subscription Term to begin.

**20. “IT Service”:** Data and video network services, and managed information technology services.

**21. “Law(s)”:** All federal, state, provincial, regional, territorial and local laws, statutes, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters, treaties, conventions, official releases and the like of any territorial division, of or by any government, or any authority, department or agency thereof or self-regulatory organization (“SRO”). For purposes of the Agreement, Laws shall also include all generally accepted accounting principles (“GAAP”) as such principles may be modified during the Term by the Public Company Accounting Oversight Board or other applicable authorities.

**22. “Malicious Code”** Any virus, worm, trojan horse, spyware, adware, rootkit, scareware, rogueware, ransomware, backdoor, trap door, logic bomb, Disabling Code or similar item intended to cause or capable of causing undesired

effects, security breaches and/or damage to a system or a system's contents.

**23. "Marks":** BluIP's or its Related Party's websites, corporate names, service marks, trademarks, trade names, logos, domain names and the like.

**24. "Minimum Commitment Fees":** The minimum Fees set forth in a Service Order, defining the scope of Customer's purchase commitment for the Subscription Term. Minimum Commitment Fees may be set forth for a monthly, annual, biannual or other basis. Fees incurred during the period of time per which the Minimum Commitment Fees are assessed in excess of the Minimum Commitment Fees will not roll-over to reduce minimums in any other period. If Minimum Commitment Fees are set forth on a basis other than monthly, the Minimum Commitment Fees will be: (a) recalculated on a monthly basis for the purpose of assessing Service Availability Credit pursuant to a Service Level Agreement; and, (b) unless otherwise stated in the Agreement, true-up calculations to determine whether the Minimum Commitment Fees have been met will be conducted on a quarterly basis.

**25. "Professional Services (or PS)":** The professional services described in a Statement of Work or Service Order executed by the parties.

**26. "Recordings":** Recorded inbound or outbound voice calling service transmission performed by Customer, via the Services (including e. g., voicemail).

**27. "Related Parties":** A party's past, present and future officers, directors, employees, and other personnel, agents, insurers, reinsurers, servants, attorneys, parent company, subsidiaries and affiliates.

**28. "Renewal Term":** Each Subscription Term following the Initial Subscription Term. Each Renewal Term commences upon the anniversary date of the commencement of the Initial Subscription Term, and unless set otherwise set forth in an applicable Service Order, continues for periods equal to one year.

**29. "Sensitive Information":** All sensitive or Confidential Information used in connection or transmitted by the Services including but not limited to personal health information (PHI), personally identifiable information (PII) and credit card information.

**30. "Service Availability Credit"** The remedy BluIP will provide for a Valid Claim (as defined in the SLA). The Service Availability Credit will be applied in the form of a credit as set forth in the Agreement.

**31. "Service Level Agreement":** An agreement to perform services in accordance with specific availability metrics, subject to a defined set of remedies.

**32. "Service Order":** The ordering document to be utilized under the Agreement which shall set forth the Services and Equipment ordered, the price, duration of the Initial Subscription Term Service, the Minimum Commitment Fees, the Intended Commencement Date, and any Service-specific terms and conditions ("Business Exceptions"). Each Service Order will be deemed an attachment to and governed by this Master Subscription Agreement. The term "Service Order" shall be deemed to include reference to new Service Orders and/or Change Orders.

**33. "Services":** All or any of the BluIP Communication Services and/or BluIP UCaaS together with the IT Service, but excluding (i) Third party Software that is not provided by BluIP (access to third party applications by url are not deemed to be provided by BluIP); (ii) Professional Services; and (iii) Equipment.

**34. "Software":** The firmware, plug-ins and software included in or associated with any BluIP Equipment or Services, all updates, upgrades, patches, and fixes thereto and/or Derivative Works thereof

**35. "Subscription":** Term-based grant, for a specified time to use a specific quantity and type of Services, all listed in the applicable a Service Order in accordance with the Agreement. Subscriptions exclude non-recurring services such as decommissioning Customer's use of the Service, migration of Customer Data, and storage and retrieval of records associated with Customer's use of the Services.

**36. "Subscription Term":** The Initial Subscription Term and each Renewal Subscription Term, collectively or individually.

**37. "Support":** The maintenance and support of the Services, subject to the then-current BluIP Support terms and policies.

**38. "Taxes":** Any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including regulatory fees (such as USF), fines, penalties, value-added, use or withholding

taxes. Taxes shall not include charges based upon BluIP's income, assets or net worth or that of its employees.

**39. "Third-Party Applications":** Third party or Customer-developed online, Web-based applications and offline software products that are provided by Customer or third parties, that may or may not interoperate with the Services.

**40. "User":** An individual or a device (a) who/which, subject to the terms and conditions of the Agreement (i) is authorized by Customer; and, (ii) has been supplied a User identification and password(s) by Customer to access the Services on Customer's behalf; (b) for whom/which a Subscription to the Services has been purchased or selected by Customer to access the Services. Users may include employees, consultants, contractors and agents of Customer, BluIP-authorized devices or third parties with which Customer transacts business. A User may be enabled or actual. An enabled User is a unit of the Services enabled for use by a User, and deemed a User regardless of whether the User is actually using the Services.