

THIS MASTER SERVICES AGREEMENT ("MSA") is by and between LightWave Networks, Inc. and/or each affiliate thereof who will be providing any Services to the Customer (each such entity providing Services, "LightWave") and the customer who executes this MSA or otherwise accepts and agrees to be bound to the terms hereof ("Customer") and is entered into as of the date it is accepted by LightWave following Customer's execution or acceptance ("Effective Date"). For the avoidance of doubt, all Services due Customer pursuant to any Service Order (and all obligations arising under this MSA and any other Service Attachment in connection therewith) shall be several, shall be treated as a separate contract between Customer and the entity providing such Services, shall solely be the obligations of the entity providing such Services, and no other affiliate of LightWave shall in any way be obligated or liable in connection therewith or hereunder. Except as otherwise expressly set forth herein or in any Service Attachment, this MSA shall govern the provision of Services by LightWave.

1. General

1.1. **Services.** LightWave will provide the Services in accordance with the Agreement. The "Agreement" means this MSA plus all applicable Service Schedules, LightWave Service Guides, Service Orders, Statements of Work ("SOWs"), service level agreements ("SLAs") and any other documents that are expressly incorporated herein (collectively "Service Attachments"). LightWave will not be bound by any Service Order or SOW until it is accepted in writing by LightWave.

1.2. **Order of Precedence.** In the event of any inconsistency, conflict, or ambiguity among this MSA and/or any Service Attachment, the documents will govern in the following order: (a) the SLA but solely with respect to the Service and/or SOW to which the SLA is applicable to; (b) the Service Order and/or SOW but solely with respect to the Service covered by that Service Order and/or SOW and provided that an authorized representative of LightWave has executed such Service Order and/or SOW; (c) the Service Schedule but solely with respect to the Service covered by that Service Schedule; (d) the LightWave Service Guide, but solely with respect to the Service covered by that LightWave Service Guide, and only in the event that such an applicable LightWave Service Guide exists for the Service, and (e) this MSA. Information identified in one Service Attachment and not identified in another shall not be considered a conflict or inconsistency.

2. Term

2.1. **MSA Term.** This MSA shall be in effect for a period of five (5) years from the Effective Date ("Initial Term") unless terminated earlier as otherwise provided for in this MSA, and shall automatically renew for successive one (1) year periods thereafter (each a "Renewal Term" and together with the Initial Term, shall be referred to as the "Term") until either Party notifies the other Party of its intent not to renew the MSA at least ninety (90) days prior to the end of the Initial Term or any Renewal Term. Notwithstanding the foregoing, in the event that any Service Order and/or SOW remains in effect following such termination, this MSA shall govern and continue in effect with regard to such Service Order and/or SOW until the termination of such Service Order and/or SOW.

2.2. Service Order Term. The term of each Service Order shall commence on the Service Activation Date for such Service and continue for the period of time specified in that Service Order ("Initial Service Order Term") and thereafter, shall automatically renew for successive terms equal to the lesser of (a) one (1) year periods or (b) a period of time equivalent to the Initial Service Order Term (each a "Renewal Service Order Term") unless Customer provides written notice to LightWave at least sixty (60), but no more than one hundred twenty (120), days prior to the end of the Initial Service Order Term or any Renewal Service Order Term of their desire to move to a month-to-month term. In the event Customer requests to move to month-to-month Renewal Service Order Terms, LightWave may, in its sole discretion, impose up to a fifteen percent (15%) surcharge on the fees for the Service(s) covered by the Service Order. The Initial Service Order Term, together with any Renewal Service Order Terms as defined herein, shall collectively be referred to as the "Service Term" and will continue until terminated by either Party upon at least sixty (60) days written notice prior to the end of the Service Term, unless the Service Term is less than sixty (60) days, in which case a written notice equivalent to the Service Term is required prior to the end of the Service Term. Customer shall continue to be responsible for payment to LightWave for the Services to be terminated through the end of the term.

3. Billing. Billing for each Service shall commence on the Service Activation Date, as defined in the applicable Service Schedule. Except as may otherwise be set forth in the applicable Service Order or SOW, (a) monthly recurring charges ("MRCs") will be billed monthly in advance, (b) varying or usage-based charges will be billed monthly in arrears and (c) installation or other non-recurring charges ("NRCs") will be billed upon the Service Activation Date. All invoices will be delivered to Customer via electronic mail to the Invoice E-Mail Address specified on the applicable Service Order or SOW. LightWave may prorate charges in accordance with their standard billing practices.

4. Payment.

4.1. Invoiced amounts are due in full within thirty (30) days after the date of the invoice ("Due Date"). In addition to the Service charges, Customer will pay all applicable Taxes and Government Charges. Any amount not received by the Due Date will be past due and subject to interest at the lesser of 1 1/2% per month or the highest rate permitted by applicable law, together with attorneys' fees and costs incurred by LightWave in collecting such amounts. LightWave may, upon thirty (30) days prior notice, require a deposit if Customer has failed to pay its invoices by the Due Date three (3) times in any twelve (12) month period or if there has been a material, adverse change in its financial condition (as determined by LightWave).

4.2. To dispute a charge on an invoice, Customer must identify in writing the specific charge in dispute and provide a written explanation of the basis of the dispute within fifteen (15) days after receipt of an invoice. Customer may withhold payment of a charge subject to good faith dispute provided (i) Customer provides written notice of dispute within such time period; (ii) Customer pays the undisputed portion of all charges by the Due Date; and (iii) Customer cooperates in good faith with LightWave' efforts to investigate and promptly resolve the dispute. If LightWave determines that a disputed charge is in error, LightWave shall issue a credit or reverse the amount incorrectly billed. If LightWave determines in good faith that a disputed charge was billed correctly, Customer's payment shall be due no later than ten (10) days after LightWave provides notice of such determination.

5. Use of Service. Customer and its End Users will not use or access the Services or any LightWave data center in a manner that: is in violation of any law, rule or regulation; is in violation of the

Agreement; materially interferes with or harms the LightWave infrastructure or any third parties; or is tortious or violates any third party right. Customer agrees to defend, indemnify and hold LightWave harmless from third party claims, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees arising from non-compliance with the preceding sentence or any other term of this Agreement.

6. Termination. Either party may terminate the Agreement or affected Services (i) upon thirty (30) days prior written notice in the event of a material, uncured breach of the Agreement (unless a different notice period is expressly set forth in the Agreement); or (ii) in accordance with any other express term contained in the Agreement permitting termination. LightWave may suspend the affected Service: (a) upon ten (10) days' notice in the event of any uncured payment or other default; or (b) upon notice in the event Customer violates Section 5. If Customer terminates an ordered Service prior to its Service Activation Date, Customer will pay a cancellation fee equal to one (1) month's projected MRC, plus all out-of-pocket costs incurred by or imposed upon LightWave (e.g., ordered equipment, licenses, vendor termination charges). If the Service or this Agreement is terminated either by LightWave for cause or by Customer for any reason other than cause prior to the conclusion of the applicable Service Term, then Customer shall be liable for: (a) unless otherwise set forth on a Service Order, an early termination charge equal to 70% of the then current MRC for the affected Services multiplied by the number of months remaining in the Service term; (b) Service charges accrued but unpaid as of the termination date; and (c) any out-of-pocket costs incurred by or imposed upon LightWave (e.g., ordered equipment, licenses, vendor termination charges). The parties agree that any cancellation fees and early termination charges set forth in the Agreement constitute liquidated damages and are not intended as a penalty. If a particular Service is terminated upon which another service is dependent, all such dependent services shall be deemed to be terminated as well.

7. Disclaimer of Warranties. THE SERVICES, CUSTOMER SPACE AND ANY RELATED EQUIPMENT, SOFTWARE AND OTHER MATERIALS PROVIDED BY LIGHTWAVE IN CONNECTION WITH THE SERVICES ARE PROVIDED "AS IS WHERE IS" AND WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS, COMPATIBILITY OF SOFTWARE OR EQUIPMENT, OR ANY RESULTS TO BE ACHIEVED THEREFROM, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITATION OF THE FOREGOING, LIGHTWAVE MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY SERVICE WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF THE CUSTOMER.

8. Limitation on Liability. NEITHER PARTY, NOR ITS AFFILIATES, CONTRACTORS, SUPPLIERS OR AGENTS, SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE, CONSEQUENTIAL DAMAGES, ANY LOST OR IMPUTED PROFITS OR REVENUES, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, AND REGARDLESS OF WHETHER A PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY. EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER AND CUSTOMER'S OBLIGATIONS SET FORTH IN SECTION 6, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO TWELVE (12) TIMES THE MONTHLY RECURRING CHARGE PAID OR PAYABLE IN THE MONTH IMMEDIATELY PRECEDING THE DATE IN WHICH THE CLAIM ARISES.

9. Intellectual Property Infringement. LightWave shall, at its own expense, defend Customer against any claim, demand or suit made or brought against Customer by a third party alleging that Customer's use of the Services as allowed hereunder infringes or misappropriates the patent, copyright, or trademark rights of a third party and LightWave shall pay any costs of settlement or any damages finally awarded against Customer solely with respect thereto; provided, however, that LightWave shall have no obligation hereunder to the extent that a claim arises from (a) the combination, use or operation of any Services with any service or product not provided by LightWave (other than combinations approved in writing by LightWave); (b) any modification of the Services made by Customer or by any party at Customer's direction; (c) use by Customer other than the then current unaltered release of any software used in the Services; (d) use or operation by Customer or its agents or contractors of the Service other than in accordance with this Agreement; or (e) use of any service or product supplied or provided by any third party. Except as set forth in Section 5, this Section 9 provides the sole and exclusive obligations and remedies of the parties in connection with any third party claim, suit or other demand described herein.

10. Confidentiality. Neither party shall, without the prior written consent of the other party, use or disclose the Confidential Information of the other party during the Term of this Agreement and for two (2) years following the expiration or termination hereof. Each party will take all reasonable precautions to protect the other party's Confidential Information, using at least the same standard of care as it uses to maintain the confidentiality of its own Confidential Information. Notwithstanding the foregoing, a party may disclose Confidential Information: (i) to any consultants, contractors, and counsel who have a need to know in connection with this Agreement and have executed a reasonably protective non-disclosure agreement with the disclosing party, or (ii) pursuant to legal process; provided that, the disclosing party shall, unless legally prohibited, provide the non-disclosing party with reasonable prior written notice sufficient to permit it an opportunity to contest such disclosure.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to its principles for resolving conflicts of law. In the event of litigation, each party expressly waives its right to have its claims or defenses heard by a jury.

12. Force Majeure. Neither party will be liable for any failure or delay in its performance under the Agreement (other than a failure to comply with payment obligations) due to an event beyond a party's reasonable control ("Force Majeure Event"). If a Force Majeure Event prevents the provision of Service for a period of thirty (30) days, either party may terminate the affected Service by providing thirty (30) days written notice to the other party.

13. Notices. All notices required or permitted to be given hereunder shall be in writing and deemed given if sent to the addressee identified on the applicable Service Order or to such other address (including email addresses) as may hereafter be furnished in writing to the other party either (a) by registered or certified U.S. mail, return receipt requested, postage prepaid, three (3) days after such mailing; or (b) by national overnight courier service, the next business day. Customer's Service disconnect, termination, non-renewal, and/or Renewal Service Order Term change request notices may be sent via email to the Cancellation E-Mail Address specified on the applicable Service Order and will be deemed given on the day such notice is delivered provided that LightWave has acknowledged receipt of such notice. Routine operational notices (e.g., notice reminder of non-payment and suspension notices for Customer's violation of Section 5) may be sent via email to Customer contact specified on the

applicable Service Order (or to such other email address as may hereafter be furnished in writing) and will be deemed given on the day such notice is delivered.

14. Maintenance. Customer acknowledges that the Services may be subject to routine maintenance or repair and agrees to cooperate in a timely manner and provide reasonable access and assistance as necessary to allow such maintenance or repair.

15. Waiver. Except as otherwise expressly set forth in the Agreement, neither party's failure to insist upon strict performance of any provision of the Agreement shall be construed as a waiver of any of its rights hereunder. Neither the course of conduct between parties nor trade practice shall act to modify any provision of the Agreement.

16. Miscellaneous. All provisions in the Agreement which by their nature are intended to survive expiration or termination shall so survive. If any term of the Agreement is held unenforceable, the unenforceable term shall be construed as nearly as possible to reflect the original intent of the parties and the remaining terms shall remain in effect. The Agreement is intended solely for LightWave and Customer and does not provide any third party with any right or benefit. Neither party may assign this Agreement or any portion hereof without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement or a portion thereof: (i) in the event of a merger in which the party is not the surviving entity; (ii) in the event of a sale of all or substantially all of its assets; or (iii) to any party that controls, is controlled by or is in common control with such party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Except as otherwise set forth herein, all amendments to the Agreement shall be in writing and signed by the parties' authorized representatives. This MSA together with all applicable Service Attachments constitutes the entire agreement of the parties with respect to the Services and supersedes any other prior or contemporaneous agreement or understandings, whether oral or written, related to the subject matter hereof. All handwritten or typed modifications to the Agreement which are not mutually agreed to in writing are null and void. Notwithstanding anything contained herein, other than provisions that set forth Customer's costs of Services, term and termination rights or LightWave's specific service obligations, LightWave will have the unilateral right to modify or amend any provision to the Agreement by providing at least 60 days' prior written notice of any such modification or amendment, which notice may be provided by posting on LightWave's website.

17. Definitions.

"Confidential Information" means non-public information of the parties hereto relating to their business activities, financial affairs, technology, marketing or sales plans that is exchanged by the parties in the formation and implementation of the Agreement. Confidential Information includes the terms and pricing of the Agreement. Confidential Information shall not include information which: (i) is or becomes public knowledge through no breach of the Agreement by the receiving party, (ii) is received by recipient from a third party not under a duty of confidence, or (iii) is already known or is independently developed by the receiving party without use of the Confidential Information.

"End Users" means Customer's end-users, customers, agents or any other third parties who utilize or access the Services or LightWave data centers via the Services provided hereunder.

"LightWave Service Guide" (or "SSG") means the product-specific Service guide that includes technical specifications which can be found at <http://www.LightWave.com/ssg>, which LightWave may modify from time to time, effective upon posting on the website.

"Service" means the service provided by LightWave and/or its licensors and contractors as set forth on the Service Order or SOW.

"Service Order" means a service order request submitted on a form issued by LightWave and signed by Customer that includes the type and details of the specific Services ordered by Customer.

"Service Schedule" means those service descriptions providing additional terms pursuant to which LightWave may provide and Customer may purchase the Services described therein.

"SLA Attachment" means the attachment that sets forth the SLA applicable to each individual Service, if any, which provides Customer's sole and exclusive remedies for any Service quality or performance deficiencies or failures of any kind (e.g., uptime, latency). To clarify, such sole and exclusive SLA remedies shall not apply to breaches of unrelated obligations under the Agreement such as infringement, confidentiality, etc. LightWave may modify SLAs during a renewal term upon sixty (60) days' notice.

"Taxes and Government Charges" means any applicable foreign, federal, state, or local taxes and government charges assessed or incurred in connection with the Service, including without limitation, all governmental excise, use, sales, value-added, or occupational levies and environmental assessments, energy or power consumption levies or charges, regulatory administration and similar pass through fees, and other similar surcharges and levies, but excluding any taxes based on LightWave' net income.