

## MASTER SERVICE AGREEMENT

This MASTER SERVICE AGREEMENT is entered into by and between Broadcore, Inc., a California corporation (“Broadcore”) and its Customers (each referred to as a “Party” or collectively referred to as the “Parties”) and establishes the terms and conditions under which Broadcore will provide network and communications services to Customer. As used in this Master Service Agreement, the term “Service(s)” shall apply to the Global Cloud Communications service (“Global Cloud Communications” or “GCC”) and any and all voice, video and data network services and managed telecommunications services provided by Broadcore to Customer, whether provided over Broadcore’s own network or through resale, including but not limited to the provision of equipment, cabling, circuits, facilities, systems and software.

### 1 Services and Sales Agreements.

1.1 The Parties anticipate that Customer may, at Customer’s sole discretion, subscribe to Services supplied by Broadcore, using written forms or electronic documents specified by Broadcore. For each of the specific Services to which Customer subscribes, Customer will (i) execute an attachment to this Master Service Agreement describing the Services in detail and setting forth the price, minimum duration of Service, and any Service-specific terms and conditions (hereinafter a “Sales Agreement Form” or “Sales Agreement;” the term “Sales Agreement Form” as used herein shall also include a Sales Agreement), or (ii) assent to the terms of an electronic document delivered to Customer by Broadcore containing information set forth in the Sales Agreement Form. Customer consents to the use of electronic documents and records in connection with the performance of this Master Service Agreement and delivery of the Services by Broadcore. Each Sales Agreement Form shall be attached to this Master Service Agreement and be identified by letters of the alphabet or numbers or a combination thereof. A Sales Agreement Form shall be effective upon acceptance of the Sales Agreement Form by Broadcore; provided, however, that Broadcore reserves the right to reject a Sales Agreement Form without liability at any time prior to acceptance by Broadcore. Broadcore shall accept a Sales Agreement Form: (a) in writing by execution of the Sales Agreement Form; (b) by taking any action to install the Service in reliance upon the Sales Agreement Form; or (c) by delivery of Service. Unless otherwise specified, the fees set forth in any Sales Agreement Form do not include applicable Taxes (as defined in Section 3.6), duties, or similar fees that may be imposed by any government. No term or condition hereof shall be modified except by written agreement of both Parties. As used in this document, the word “Agreement” shall apply to all promises, terms and conditions of the Parties contained in this Master Service Agreement, any Sales Agreement Form(s), the AUP (as defined in Section 1.6), the terms of use (the “Terms of Use”) and the privacy policy (the “Privacy Policy”), each of which is incorporated by reference, any applicable SLAs (as defined in Section 1.3) and any specific Service(s) documentation (a “Service Description”), available upon request. This Agreement shall supersede any and all prior agreements or understandings with respect to the Service described herein and comprises the full and final agreement of the Parties. In the event of any conflict between the various documents included in the Agreement, the provisions of the Sales Agreement Form shall in all respects govern and

control, followed by, in order, the provisions of this Master Service Agreement, the SLAs, the AUP, the Terms of Use, the Privacy Policy and any Service Description.

- 1.2 If a Sales Agreement Form is accepted by Broadcore, Broadcore agrees to provide the Service in accordance with this Agreement. Broadcore may use contractors in providing the Services and otherwise use third parties, including, without limitation, affiliates of Broadcore, and assign rights to bill and collect fees due under this Agreement.
- 1.3 Upon Customer's request, Broadcore shall provide Customer with service credits in accordance with the then-current service level agreements ("SLAs"), which are incorporated herein by reference and available at [www.broadcore.com/sla](http://www.broadcore.com/sla). Broadcore reserves the right to amend the SLAs, from time to time, effective upon posting of the revised SLAs at its web site or by other notice delivered to Customer by Broadcore using contact information most recently provided to Broadcore by Customer. Outages attributable to Customer ordered local access circuits shall not be included in the calculation of Service unavailability. In the event of an outage that Broadcore determines is attributable to a Customer ordered local access circuit, such outage will be referred back to the Customer.
- 1.4 Broadcore may substitute, change, or rearrange any equipment, facility or system used in providing Services from time to time, but shall not thereby alter the technical parameters of the Services provided in any adverse material manner. Customer agrees to cooperate in the event that Broadcore determines that it is necessary to change a third party service provider.
- 1.5 IP Addresses assigned from a Broadcore net-block are non-portable. In the event Customer or Broadcore should terminate Service, any and all IP address space allocated by Broadcore must be returned to Broadcore, and Customer's right to use such allocated address space shall terminate.
- 1.6 All use of the Services must comply with the then-current version of Broadcore's acceptable use policy ("AUP"), which is incorporated herein by this reference and is available at [www.broadcore.com/aup](http://www.broadcore.com/aup). Broadcore reserves the right to amend the AUP from time to time, effective upon posting of the revised AUP at its web site or by other notice to Customer.

## 2 Terms.

- 2.1 This Agreement shall be effective as of the Effective Date and shall continue through the expiration of the last Sales Agreement Form(s) that is in effect under this Agreement, unless earlier terminated as provided herein (hereafter the "Term"). The Initial Term of a particular Service shall mean the minimum term of Service set forth in the Sales Agreement Form, beginning as of the Commencement Date or the Installation Date of such Service, as defined in Section 3.3. Unless a Party provides the other Party with written notice, as per the notice provisions of Section 20.7, not less than sixty (60) days prior to the expiration of the Initial Term or any subsequent renewal term that it intends not to renew a Service, the Service shall automatically renew in increments of one year (each an "Extension Term").

2.2 Any termination of this Agreement shall not relieve Customer of its obligation to pay any charges incurred hereunder prior to such termination, including without limitation, termination liabilities arising under Section 6. The terms and provisions contained in this Agreement and the Parties' rights and obligations hereunder, which by their nature would extend beyond the termination, cancellation or expiration of this Agreement, shall survive such termination, cancellation or expiration.

### 3 Rates and payments.

3.1 Customer shall pay Broadcore for all charges associated with the Services at the rates and currency set forth in the Sales Agreement Form. Broadcore may change the rates for any Extension Term upon ninety (90) days written notice to Customer prior to the expiration of the current Initial Term or Extension Term. Service charges shall be invoiced monthly in advance, except for charges that are dependent upon usage of Service, which shall be billed in arrears. Broadcore reserves the right to increase the charges for GCC services provided under a Sales Agreement or a Sales Agreement Form upon Customer's improper usage of the GCC service for two (2) consecutive months. Improper usage patterns include, but are not limited to, calling patterns where the aggregate minutes of long distance usage per monthly billing cycle for an extension is excessive based on predictive dialing equipment, call center environments, telemarketing use or similar calling patterns without Broadcore's prior written consent. Broadcore reserves the right to review and notify customer to remove these types of calling patterns from Broadcore's network. This notice must be provided by Broadcore to Customer in writing.

3.2 In addition to the non-recurring charges and recurring charges set forth in the Sales Agreement Form (the "Non-Recurring Charges and "Recurring Charges", respectively), Customer is responsible for any additional charges required to complete the construction or provisioning of any local access facilities ("Start-up Charge"), to be agreed to and invoiced upon Customer's approval of such additional charges. Broadcore is not responsible for any delay in the Commencement Date or the Installation Date caused by delays in approvals by Customer or third parties.

3.3 The Customer may specify the Customer's desired Service delivery date during the Sales Agreement process. The Parties agree that an individual site's Initial Term and billing shall start on the date a functioning circuit is prepared to route IP packets from a Broadcore hub to an individual Customer site/building point of demarcation (the "Commencement Date"). The Installation Date (or "Billing Start Date") for the GCC service will be mutually agreed to between BROADCORE and Customer ("Parties"). If the Parties cannot agree to a mutually agreed to Billing Start Date, the Billing Start Date shall be defined as seven days after the GCC phones and/or GCC devices have been delivered to the Customer and such devices are capable of registering with the GCC platform. Customer is responsible for all Recurring Charges and all Non-Recurring Charges specified in the Sales Agreement Form from and after the Commencement Date or the Installation Date. Recurring Charges will be prorated for the first and last month of the Agreement if Service is not provided for a complete month. Broadcore will order all telco lines required for local access to the designated building point of demarcation, unless otherwise agreed to by the Parties. Customer is responsible for the

installation, maintenance, and warranty of circuit extension work or line extensions, and any charges associated with such circuit extension work or line extensions. If requested by the Customer, Broadcore will request the Local Exchange Carrier (LEC) or other third party provider to extend the circuit from the designated building point of demarcation to the extended delivery point; provided, however, that in some cases Broadcore may not be able to provide the line extension. Customer may be billed separately by Broadcore or by a third party for fees associated with facilities construction or line extensions, if applicable.

- 3.4 All amounts owed by Customer are due and payable upon receipt of Broadcore's invoice and shall be past due thirty (30) days after Customer's receipt of the invoice; provided that, if Broadcore sends an invoice to Customer by electronic mail, it shall be deemed to have been received on the date sent. Notwithstanding any contrary language in any purchase order, Automatic Clearing House/Electronic Funds Transfer (ACH/EFT) authorization agreement or similar document issued by the Customer to Broadcore with respect to the Service(s), shall be deemed to be for the Customer's internal use only and the provisions thereof shall have no effect whatsoever upon the terms and conditions of this Agreement or the provision of the Service(s). If a payment due by the Customer to Broadcore under this Agreement is not received by the due date as set forth above, Customer shall be liable for: (i) a late charge equivalent to the lesser of 1.5% per month or the maximum rate permitted by applicable law on past due balances until paid in full; and (ii) any additional charges or expenses incurred by Broadcore in recovering outstanding amounts due under this Agreement (including, without limitation, any legal costs and expenses and/or the cost of engaging a debt recovery agent). If Customer requires that a separate billing entity be billed for Services, for proper accounting of value-added taxes or otherwise, Broadcore must be notified at the time the Sales Agreement Form is executed or via other advance written notice as to which billing entity and address Customer would like Broadcore to bill. If Broadcore is not given such notice, Broadcore shall bill Customer at the address first set forth in this Agreement or such other billing address that has been previously provided to Broadcore in writing. Notwithstanding the failure of Customer to comply with such notice requirement, Broadcore shall revise an invoice to reflect the correct billing entity upon the written request of Customer, solely provided such written request is received within sixty (60) days of the date of such invoice.
- 3.5 If Customer elects to upgrade, relocate or otherwise change the place that Services are delivered after commencement of the installation of facilities or the Commencement Date or the Installation Date, Customer shall be responsible for any applicable charges as specified and agreed to in a Sales Agreement Form; provided, however, that Customer shall not be liable for the early termination charges set out in Section 6.5 for the disconnection of the old site specified on the Sales Agreement Form.
- 3.6 Other than taxes on Broadcore's net income, Customer will be responsible for payment of all taxes, fees, charges, surcharges, or withholdings of any nature imposed by any U.S. or foreign taxing or government authority based on the provision, sale or use of the Services (hereafter "Taxes") and a regulatory administrative recovery fee to recover expenses incurred by Broadcore related to its collection of Taxes and compliance with

related regulations. All charges, fees, or quotations for Services are net of applicable Taxes. If Customer is required by applicable law to make any deduction or withholding from any payment due hereunder to Broadcore, then the gross amount payable by Customer to Broadcore will be increased so that, after any such deduction or withholding for Taxes, the net amount received by Broadcore will not be less than Broadcore would have received had no such deduction or withholding been required.

3.7 If Customer disputes any portion of a Broadcore invoice, Customer must (i) pay the undisputed portion of the invoice as set forth in Section 3.4; and (ii) submit a written claim to [billing@Broadcore.com](mailto:billing@Broadcore.com) regarding the disputed amount and setting forth the particulars thereof within sixty (60) days of the date printed on the invoice giving rise to the claim.

3.8 Customer shall provide Broadcore with credit information as requested, and delivery of Service is subject to credit approval. Customer hereby consents to Broadcore's retrieval of credit information, regarding Customer, from third parties. Broadcore may require Customer to make a deposit or pre-payment reasonably acceptable to Broadcore as a condition to Broadcore's acceptance or continued provisioning of any Sales Agreement Form, or as a condition to Broadcore's continuation of Service. Broadcore shall hold, without any responsibility for paying Customer interest on any amounts held, any deposit or pre-payment provided by Customer under this Section as security for payment of Customer's charges. At such time as the provision of all Services to Customer is terminated, the amount of the deposit or pre-payment will be credited to Customer's account, and any credit balance, which may remain, will be refunded.

#### 4 Broadcore Web Portal.

4.1 Broadcore Web Portal ("Portal") is a web based tool that allows Customer's authorized users ("Authorized Portal Users") to view current Service configurations, make modifications to current Services, and add additional Services.

4.2 Customer must designate Authorized Portal Users into one of the following two (2) categories:

4.2.1 "Administrative User," a user with full access to Customer's records with the authority to view service configuration, add, modify, or delete Services for all users, or

4.2.2 "Non Administrative User," a user with access to their own profile and authority to change their own service settings.

4.3 Customer agrees to use the Portal and any additional electronic or web-based services offered by Broadcore in the future in accordance with this Agreement. Customer agrees that the person using Customer's username and password for the Portal is an Authorized Portal User and has the capacity and authority to make modifications that may increase or decrease the Customer's monthly recurring fees electronically on behalf of Customer. Administrative User may not reduce Service to less than 30% of the highest subscribed service during the Contract Term as per section 10. Customer's password security is the responsibility of the Customer.

4.4 Broadcore may change, modify and/or alter at any time the information or functionality



to which Customer will have access through the Portal. Broadcore may amend or terminate Customer's access to the Portal upon written notice, as per Section 20.7 of this Agreement, in any emergency circumstance to the extent necessary to protect Broadcore's equipment, information, or personnel.

4.5 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 or orders (which shall include the submission of trouble tickets) electronically transmitted or use of any data, information, or Services obtained using Customer's username, password, and other security data.

4.6 Customer agrees not to use the Portal except as authorized, and not to make it available to any third parties. Customer agrees that its use of the Portal shall be consistent with this Agreement. Customer shall immediately notify Broadcore if there is any unauthorized use of Customer's passwords and other security data or any use inconsistent with the terms of this Agreement. UNLESS DUE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF BROADCORE, BROADCORE SHALL NOT BE RESPONSIBLE OR OBLIGATED FOR ANY COSTS, FEES, EXPENSES OR LIABILITIES ACCRUING AS A RESULT OF ANY UNAUTHORIZED USE OF CUSTOMER'S PASSWORD OR OTHER SECURITY DATA PRIOR TO RECEIVING WRITTEN NOTICE OF THE UNAUTHORIZED USE FROM CUSTOMER.

## 5 Broadcore Equipment, Access and Software

5.1 Customer shall be liable for any damage to Broadcore's equipment, facility, or system caused by: (a) negligent or willful acts or omissions of Customer or otherwise attributable to Customer; or (b) malfunction or failure of any equipment or facility provided by Customer or its agents, employees or suppliers. Customer shall remove any existing hazardous materials or condition prior to any construction or installation work being performed by Broadcore on Customer's premises.

5.2 Customer shall be responsible for obtaining any reasonably necessary access and right-of-way to Customer's premises to the extent reasonably determined by Broadcore to be appropriate for the provision and maintenance of Services, equipment, facilities and systems hereunder. 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 Broadcore, to allow access to the Services provided under this Agreement for testing/configuration purposes.

5.3 Customer shall use reasonable measures to ensure that any facility or equipment of Broadcore located at a Customer's premises is not rearranged, moved, removed, disconnected, altered, or repaired without Broadcore's prior written consent. Customer shall not create or allow any liens or other encumbrances to be placed on any Broadcore equipment, facility or system arising from any act, transaction or circumstance relating to Customer.

5.4 All equipment provided by Broadcore will remain the property of Broadcore and must be returned to Broadcore, in substantially the same condition (normal wear and tear

excepted) in the event of Service termination. Upon Service termination, Broadcore reserves the right to invoice Customer for the current list price of the equipment; provided, however, if the equipment is returned to Broadcore as provided herein, Broadcore shall credit Customer's account for the amount invoiced for said equipment. If the equipment is returned to Broadcore in poor condition or missing pieces, a credit equal to the difference between the current list price of the equipment and the reconditioned price will be applied to Customer's account. If Customer fails to return the equipment within six (6) months from the date of termination, Customer will own the equipment and will be responsible for any required maintenance.

5.5 The firmware, plug-ins and software included in or associated with any Broadcore provided equipment or Services, all updates, upgrades, patches, and bug fixes thereto (collectively, the "Software"), and all intellectual property rights therein, are owned by Broadcore or its suppliers or licensors (each of such suppliers and licensors shall be referred to herein as a "Licensor"). Customer agrees and acknowledges that (i) the IT environment is very dynamic and always changing with updates and upgrades to hardware, application software, firmware, operating systems, etc.; (ii) changes to Software or any other software, hardware or the combination thereof associated with the Services whether by Broadcore, a Licensor or Customer may render partially or fully unavailable the Service that was previously available. After notice from Customer, Broadcore will work with Customer to attempt to generally identify and resolve the cause of any problems. Customer agrees and acknowledges that (i) to utilize some Services or portions thereof or access data, applications and resources (collectively, the "Resources"), Customer may be required to first download, or to permit to be downloaded, Software; (ii) Customer may also be required by Broadcore or a Licensor to periodically install patches, bug fixes, or upgrades, or download replacement or additional Software, provided that Broadcore shall be responsible for downloading all updates, upgrades, patches and bug fixes to Broadcore provided equipment; (iii) the obligation to download and install such Software and ensure that such Software functions properly is solely Customer's responsibility; (iv) 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 Resources; (v) downloading and installing any Software will require system memory, disk space and may negatively impact the processing speed of Customer's Resources, devices and network, for which neither Broadcore, nor Licensor will be liable, unless due to the negligence or willful misconduct of Broadcore or Licensor; and (vi) Customer is responsible for taking appropriate steps to safeguard its Resources and network. Customer agrees:

5.5.1 Not to reproduce, modify, distribute, publicly display, or publicly perform the Software or reverse engineer, decompile or otherwise attempt to discover the source code for the Software, or otherwise infringe upon the intellectual property rights of its respective owner.

5.5.2 That its use of any such Software is subject to the terms of any software license agreement applicable thereto (a "Software License") and Broadcore sublicenses its rights to use such Software solely to the extent necessary for Customer to access the

Services.

- 5.5.3 To warrant that it will comply with the terms of this Agreement and any Software License and to indemnify Broadcore against any claims related to any noncompliance with any Software License.
- 5.5.4 Failure to comply with the license of the Licensor will be grounds for Broadcore to immediately terminate the applicable Service.
- 5.5.5 That because violations of this provision are likely to cause irreparable damage, Customer agrees that damages are not an adequate remedy for any such violation and that Broadcore will be entitled to seek injunctive relief against each violation.
- 5.6 Broadcore will not be responsible for or liable to Customer if the Services or Broadcore equipment (a) fails to prevent one or more security breaches or (b) fails to detect a breach of security or other hacking. Broadcore makes no warranty, guarantee, or representation, express or implied, that all security threats and vulnerabilities will be detected or that the performance of the Broadcore equipment or the Services will render Customers' systems invulnerable to security breaches. Customer acknowledges and agrees that it is solely responsible for its network security policy and security response procedures. Customer acknowledges that by enabling remote access, Customer's network and Resources are at increased risk to hackers and others. Customer agrees to take steps to protect virtual and physical access to Customer's equipment including its remote computers, to the Software including any profiles provided by Broadcore, Customer's passwords and any wireless or wired Internet connection it uses. Customer acknowledges and agrees that Customer is exclusively responsible for developing any policies for securing all Customer equipment and its Resources. AT NO TIME SHOULD CUSTOMER DISCLOSE ITS ROOT OR SYSTEM LEVEL PASSWORDS TO BROADCORE. Customer may be asked to provide Broadcore or its designated third party provider with temporary or guest rights to Resources to assist Broadcore in testing that the remote Resources are available. However, Customer is then responsible for ensuring that any such rights are disabled.

6 Termination/Remedies.

- 6.1 Each of the following events shall be deemed a "Default" under this Agreement, and the non-defaulting Party may terminate this Agreement or suspend Service upon: (a) any failure of Customer to pay any undisputed amounts as provided in this Agreement; (b) any material breach by a Party of this Agreement; (c) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Customer; provided, however, that Broadcore will not terminate or suspend Service unless a Default of Customer continues for more than thirty (30) days after written notification, as per the notice provisions of Section 20.7, to Customer, or ten (10) days after written notice, as per the notice provisions of Section 20.7, in the case of failure to pay money. Notwithstanding the foregoing, Customer shall also be in Default, and Broadcore shall have the right to immediately terminate or suspend Service upon any violation by Customer of an applicable law, rule or regulation affecting the use of the Service or performance under this Agreement.



- 6.2 Notwithstanding any other provision of this Agreement, if Broadcore cancels or terminates Service due to a Default of Customer, such cancellation or termination shall apply to an individual Sales Agreement Form or the Agreement in its entirety, in Broadcore's sole discretion.
- 6.3 Broadcore reserves the right to immediately suspend or terminate Service in the event of any governmental prohibition or required alteration of the Service, or in any existing or anticipated emergency circumstance where injury to people or damage to property is reasonably possible, if Broadcore determines, in good faith, that no other commercially reasonable actions will adequately protect such people or property.
- 6.4 Customer may cancel or terminate this Agreement without payment of any liquidated damages charges or other termination charge of any kind or amount due to a Default of Broadcore as described in Section 6.1 above if such Default continues for more than thirty (30) days after Customer's written notice, as per the notice provisions of Section 20.7, to Broadcore.
- 6.5 If Service provided pursuant to any Sales Agreement Form is canceled or terminated before expiration of the Initial Term of such Service, or any Extension Term thereof: (a) by the Customer for any reason other than for a Default under this Agreement by Broadcore; or (b) by Broadcore due to a Default by Customer of this Agreement, Customer agrees to pay Broadcore the following sums, which shall become due and owing as of the effective date of cancellation or termination and be payable within thirty days thereafter: (i) all unpaid Non Recurring Charges, excluding any waived charges, specified in any Sales Agreement Form; (ii) all unpaid Recurring Charges for Services specified in any Sales Agreement Form through the date of termination; (iii) one hundred percent (100%) of all Recurring Charges for canceled or terminated Services specified in the related Sales Agreement Form for the balance of the then current Term of the Sales Agreement Form; and (iv) all fees related to the canceled or terminated Services that Broadcore is charged by any and all third parties that Broadcore is unable to avoid after using commercially reasonable efforts, including without limitation, all termination charges due to any and all third party service providers; provided, however, that such third party fees will not be separately charged if they are included in fees paid pursuant to subsection (iii) of this Section 6.5. The Parties agree that this paragraph constitutes liquidated damages (and not a penalty) and further agree that this paragraph sets forth the Party's mutual agreement on a reasonable estimate of Broadcore's actual damages in the event of an early cancellation or termination by Customer, which damages would otherwise be difficult or impossible to ascertain.
- 6.5.1 Customer will provide written notification of Service termination to Broadcore (i.e., electronic mail to [disconnect@Broadcore.com](mailto:disconnect@Broadcore.com), or by letter as per the notice provisions of Section 20.7) and the Service will be terminated the later of: (a) thirty (30) days past the date such written notice was received by the Broadcore disconnect department; or (b) the termination date provided by Customer for the applicable Services. Customer acknowledges that third party carriers or service providers may not immediately terminate services upon receipt of a notice of termination from Broadcore.

## 7 Warranties and Limitation of Liability.

- 7.1 In the event of a Service failure or interruption, Customer's sole and exclusive remedy shall be limited to credits granted by Broadcore for the actual period such Service was unavailable pursuant to the SLAs, with such credits being offset against accumulated unpaid charges billed to Customer as of the time the credit is granted. Any net remaining credit will be offset against unpaid charges within the next two complete billing cycles after the credit is granted. Following the termination of this Agreement, any remaining credit will be paid to Customer. Broadcore's cumulative liability under this Agreement shall in no event exceed the amounts actually paid to Broadcore by Customer for the Service giving rise to the claim. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO WARRANTIES OR REPRESENTATIONS MADE UNDER THIS AGREEMENT WITH RESPECT TO THE SERVICES, SOFTWARE OR OTHERWISE, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. EXCEPT WITH RESPECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR A PARTY'S LIABILITY UNDER SECTIONS 6.5 AND 20.3, NEITHER PARTY SHALL BE LIABLE TO THE OTHER, WHETHER FOR BREACH OF CONTRACT OR TORT, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, COSTS, EXPENSES OR LIABILITY (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES, COSTS, EXPENSES OR LIABILITY THAT ARE INCURRED BY A PARTY DUE TO LOST DATA, LATENCY, LOSS OF CONNECTIVITY, LOST REVENUES, LOST PROFITS, LOST CUSTOMERS, LOSS OF GOODWILL, REPLACEMENT COSTS OR LOSS OF ACCESS TO THE SERVICES).
- 7.2 BROADCORE WILL HAVE NO LIABILITY TO CUSTOMER (AND NO LIABILITY FOR SERVICE LEVEL CREDITS) WHERE THE CLAIMS ARISE OUT OF, RELATE TO, ARE CAUSED BY OR INVOLVE OR CONCERN ANY OF THE FOLLOWING: (I) BROADCORE'S COMPLIANCE WITH AN ORDER OR DEMAND TO SUSPEND OR TERMINATE THE GLOBAL CLOUD COMMUNICATIONS SERVICES FROM CUSTOMER'S PREMISES AS A RESULT OF BROADCORE'S COMPLIANCE WITH THE LEGAL PROCESS OR BROADCORE'S COMPLIANCE WITH A WRITTEN AGREEMENT WITH A SUPPLIER; (II) ANY FORCE MAJEURE EVENT OR OTHER CAUSES THAT ARE BEYOND BROADCORE'S CONTROL; (III) THE FAILURE OR MALFUNCTION OF CUSTOMER'S EQUIPMENT OR FACILITIES; (IV) THE FAILURE OF POWER, EQUIPMENT, SYSTEMS, CONNECTIONS OR GLOBAL CLOUD COMMUNICATIONS SERVICES NOT PROVIDED BY BROADCORE, OR THE UNAVAILABILITY, INADEQUATE, UNTIMELY OR POOR PERFORMANCE OR NON-PERFORMANCE OF ANY FACILITIES UNDER THE CONTROL OF PERSONS OR ENTITIES OTHER THAN BROADCORE; OR (V) THE INABILITY OF CUSTOMER, CUSTOMER PARTIES OR ANY OTHER PERSON OR PARTY TO DIAL 911 OR ACCESS 911 EMERGENCY PERSONNEL THROUGH GLOBAL CLOUD COMMUNICATIONS SERVICES PROVIDED BY BROADCORE. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCTS LIABILITY, TORT AND ANY AND ALL OTHER THEORY OF LIABILITY

## 8 Emergency Services, Voice Service.

8.1 Broadcore supports 911 services through its Global Cloud Communications. The Customer is responsible for registering each individual phone/extension with the Broadcore 911 service through the Broadcore 911 Web interface. Customers who do not register their address with Broadcore will be sent to the national emergency call center when they dial 9-1-1. A trained agent at the national emergency call center will ask for the name, telephone number and location of the end user calling 911, and then contact the local emergency center for such end user in order to send help. Examples of situations where 911 calls are sent to the national emergency call center include when there is a problem validating an end user's address, the end user is identified with an international location, or the end user is located in an area that is not covered by the landline 911 network.

Customer must register with Broadcore, the physical location where Customer will utilize Broadcore phone service for each phone line. By using this Broadcore phone service, you expressly agree that Broadcore its affiliates and partners will not be liable in contract or tort or under any other theory of law should you or any person on your premises attempt to use the Broadcore phone service to contact 911 and emergency services. Broadcore recommends that Customer conduct 911 training sessions as well as maintain an alternative 911-capable calling telephone such as a cell phone.

Furthermore, since the address Customer registers is automatically associated with its telephone number(s), in the event Customer or Customer's group administrator changes their outgoing calling line ID to any number other than their own individual telephone number(s), the information sent to a corresponding emergency service provider will be that of the outgoing calling line ID. If the outgoing calling line ID doesn't have an associated registered address the call will be transferred to the national emergency response center without a corresponding address.

8.2 Customer acknowledges that 911 dialing will not function in the event of a broadband outage, a power outage (unless a backup power source is available) or if Customer's broadband, ISP or Broadcore phone service is terminated.

9 Software and Intellectual Property. Broadcore may make certain software available to Customer in connection with its GCC service (the "Software"). Customer's use of this Software is subject to any software license terms that Customer may be required to consent to as a condition to using the Software. CUSTOMER ACKNOWLEDGES THAT BROADCORE AND BROADCORE'S THIRD-PARTY SOFTWARE SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THOSE ARISING FROM COURSE OF DEALING AND USAGE OF TRADE WITH RESPECT TO ANY SOFTWARE.

10 Right to Alter Service. During the term of the contract, Customer can add or reduce GCC service. At no time may the GCC service be reduced to less than 30% of the highest subscribed GCC service during the Contract Term, unless agreed to otherwise, in writing. Any increases to existing GCC service during the term of the contract will be billed at the contract rate. Hardware and new GCC service added during the contract term will be billed at the then-current rate.

- 11 Un-Managed Services for Remote Workers and Mobile Workers. Remote and mobile workers may be unable to access the voice services provided as part of the GCC service through cable modem networks, DSL networks, cellular data networks or other forms of Internet access. Customer acknowledges that the off-network connections described in the preceding sentence are un-managed services and Broadcore does not provide or guarantee availability or quality of these voice services.
- 12 Training. Broadcore will provide full term online training for end users, information services network staff, and operations staff for each location at no additional charge. Each training session is live and led by qualified instructors. Participants are encouraged to interact with the instructor and ask questions. The trainings are conducted utilizing a voice conference bridge and web-collaboration tools. Onsite training can be provided upon each deployment and is subsequently available per request.
- 13 Moves, Additions, Changes. Broadcore's then current charges will apply to all moves, additions, or changes to the hardware or new GCC that are requested by Customer ("MAC Requests"). The contract rate will apply to any MAC Requests for existing GCC service(s), unless the change in the GCC service reaches a threshold in the tiered pricing system for such GCC service (see Section 10) in which case the rate for the entire affected GCC services(s) may change. Broadcore may perform MAC Requests unless otherwise provided in this Agreement or as otherwise agreed to in writing by Broadcore. Broadcore reserves the right, in its sole discretion, to refuse to perform a MAC Request.
- 14 Compliance with the Law. This Agreement is subject to all applicable federal, state, and local laws and regulations, rulings, orders, and other actions of government agencies ("Rules"), including, but not limited to: Communications Act of 1934 as amended by the Telecommunications Act of 1996, the rules and regulations of the Federal Communications Commission ("FCC"), and the obtaining and continuance of any required approvals or authorizations with any other governmental agency. Broadcore will use its good faith reasonable efforts to obtain, retain, and maintain such approvals and authorizations. If any such Rules adversely affect the GCC service or requires Broadcore to provide GCC service other than in accordance with the terms of this Agreement, either Party may, without liability to the other Party for additional obligations that would otherwise thereafter pursuant to this Agreement, terminate the affected GCC service upon thirty (30) days prior written notice to the other Party. In performing their obligations under this Agreement, the Parties will comply with all applicable federal, state and local laws, regulations, rules and orders.
- 15 CPNI. Customer proprietary network information ("CPNI") is information about the quantity, technical configuration, type, destination, location, and amount of use of the GCC that Broadcore or any Broadcore Parties may provide to Customer. Under federal regulations, telecommunications providers such as Broadcore have an obligation to protect the confidentiality of CPNI. By executing a Sales Agreement or Sales Agreement Form, Customer grants permission to Broadcore to use Customer's CPNI to evaluate Broadcore's existing GCC service and new opportunities to serve Customer better. Broadcore may use Customer's CPNI to identify additional communications related services or products that Customer may desire that will complement the GCC service(s) already provided to Customer.

## 16 Assignment and Successors in Interest.

16.1 Neither Party may assign this Agreement without the written consent of the other Party (which consent shall not be unreasonably withheld or unduly delayed), except that either Party may assign this Agreement and have its rights and obligations assumed hereunder: (a) to any affiliate of said Party; (b) pursuant to any sale or transfer of the majority of the stock or controlling interest of such Party; (c) pursuant to any sale or transfer of substantially all of the assets of said Party related to this Agreement; or, (d) pursuant to any merger, restructuring or reorganization. As used in this Section 16.1, “affiliate” shall mean any person or entity which controls, is controlled by, or is under common control with another (with “control” meaning ownership of 50% or more of the voting control of any person or entity).

16.2 The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the Parties and their respective administrators, successors and assigns.

## 17 Regulatory Compliance.

17.1 All Services provided to Customer subject to Customer’s compliance with applicable laws and regulations in any country in which the Service is provided, the Federal Communication Commission (“FCC”), the United States Congress, any United States Bankruptcy Court, any state public service commission, administrative agency, judicial authority, or any other federal, state, municipal, international, or foreign governmental body or agency (including without limitation federal, state and local health, safety and environmental regulatory authorities) having authority over this Agreement, the Parties hereto, the Services, the Equipment or any matter related hereto or thereto. Each Party is responsible for complying with all laws and regulations applicable to their activities pertaining to the provision and use of the Services. If any applicable present or future regulation or law requires a modification or waiver of any term of the Agreement or a Sales Agreement Form, the Parties will promptly and in good faith undertake the actions required by such regulation or law.

17.2 In the event that any modification required by Section 17.1 materially increases the cost of service provided under this Agreement, Customer may terminate the affected Service by written notice sent to Broadcore within forty-five (45) days of the effective date of such change, without liability under Section 6.5.

## 18 Indemnity.

18.1 Customer shall: (i) indemnify and hold harmless Broadcore, its principals, officers, directors, agents, and employees (the “Broadcore Indemnified Parties”) from and against any liability, loss, cost, damage or expense incurred by the Broadcore Indemnified Parties that arises from any Customer Negligence; and (ii) either defend the Broadcore Indemnified Parties against, or pay their reasonable attorney’s fees and court costs incurred in defending against, any third party or government claims or actions arising from any Customer Negligence. “Customer Negligence” shall mean the negligence or intentional misconduct of Customer or Customer’s principals, officers, directors, agents or employees.



- 18.2 Broadcore shall: (i) indemnify and hold harmless Customer, its principals, officers, directors, agents, and employees (the “Customer Indemnified Parties”) from and against any liability, loss, cost, damage or expense incurred by the Customer Indemnified Parties that arises from any Broadcore Negligence; and (ii) either defend the Customer Indemnified Parties against, or pay their reasonable attorney’s fees and court costs incurred in defending against, any third party or government claims or actions arising from any Broadcore Negligence. “Broadcore Negligence” shall mean the negligence or intentional misconduct of Broadcore or Broadcore’s principals, officers, directors, agents or employees.
- 18.3 Customer shall: (i) indemnify and hold harmless the Broadcore Indemnified Parties from and against any liability, loss, cost, damage or expense incurred by the Broadcore Indemnified Parties; and (ii) either defend the Broadcore Indemnified Parties against, or pay their reasonable attorney’s fees and court costs incurred in defending against, any third party or government claims or actions arising from, in each case (i) and (ii) arising from the use or misuse of the Services by Customer or an end user given access to the Services by Customer, including, but not limited to: (a) a violation of the AUP; (b) a failure to pay taxes or fees arising from the use of the Services by Customer or such end user; or (c) the use of the Services to transmit, distribute or store material in violation of a law or regulation, including material protected by patent, copyright, trademark or other intellectual property right without authorization of the owner, or material that is obscene, defamatory, constitutes an illegal threat or harassment, or violates export control laws.
- 18.4 Neither Party shall have any indemnification obligation hereunder unless such Party receives the reasonable cooperation and assistance of the other Party in connection with any suit or claim indemnified hereunder, such Party controls any settlement of any suit or claim indemnified by such Party hereunder, prior written approval is obtained from such indemnifying Party prior to any settlement by the other Party and such indemnifying Party is promptly informed of any third party claim indemnified hereunder.
- 19 Import and Export Restrictions. The Parties acknowledge that the Service and certain equipment, software and technical data to be provided hereunder may be subject to import, export and re-export controls under the U.S. Export Administration Regulations and 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, technical data or intellectual property, or undertake any transaction in violation of any such export and import laws and each Party shall be responsible for its compliance with all such laws.
- 20 Miscellaneous.
- 20.1 Severability. If any provision of this Agreement is held by a court to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless remain unimpaired and in effect.
- 20.2 Relationship of the Parties. No license, joint venture or partnership, express or implied, is granted by Broadcore pursuant to this Agreement. Neither Party may use the other’s name, trademarks, trade names or other proprietary identifying symbols

without the prior written approval of the other Party.

- 20.3 Confidentiality. Each Party agrees to maintain in strict confidence all plans, designs, drawings, trade secrets and other proprietary information of the other Party (the Services shall be deemed proprietary information of Broadcore) that are disclosed pursuant to this Agreement and shall not use any such information or materials for any purpose other than in connection with the exercise of its rights and obligations under this Agreement. No obligation of confidentiality shall apply to disclosed information that the recipient: (a) already possessed without obligation of confidentiality; (b) develops independently; (c) rightfully receives without obligation of confidentiality from a third party; or (d) becomes publicly known or available. Notwithstanding this Section 20.3, either Party may disclose information of the other Party to a government authority pursuant to a judicial, legislative, or regulatory subpoena, order or proceeding. In the event of any conflict, inconsistency, or incongruity between the provisions of this Section 20.3 and any separate confidentiality or non-disclosure agreement between the Parties, the provisions of the separate agreement shall in all respects govern and control.
- 20.4 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by an event of Force Majeure, including but not limited to fire, flood, explosion, accident, war, strike, embargo, governmental requirement, civil or military authority, Act of God, acts or omissions of common carrier, warehouseman, vendors or suppliers, including but not limited to providers of telecommunications services, or any other cause beyond its reasonable control. A failure to pay money by either Party shall not be excused under this provision for a period longer than five (5) days. Any such delay or failure shall suspend the Agreement until the Force Majeure condition ceases and the Term shall be extended by the length of the suspension.
- 20.5 No Waiver. The failure by either Party to take action to enforce compliance with any of the terms or conditions of this Agreement, or to give notice of any breach, shall not constitute a waiver or relinquishment of such right.
- 20.6 Choice of Laws. This Agreement shall be governed by the laws of the State of California and the federal laws of the United States without regard to their choice of law provisions. In any action between the Parties to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover its legal fees and court costs from the non prevailing Party in addition to whatever other relief a court may award.
- 20.7 Notices. Notices required pursuant to this Agreement shall be in writing, transmitted to the applicable Party's respective address, and will be considered given when (a) delivered and signed for by the recipient if sent by certified or registered mail, return receipt requested; or, (b) signed for by the recipient if sent by overnight courier service. Notices to Broadcore must be addressed to Broadcore, Inc., 5933 W. Century Blvd., Suite 100, Los Angeles, California 90045., Attn: Contract Administration. Notices to Customer must be addressed to the Customer as set forth on the Sales Agreement.
- 20.8 Non-Exclusivity. The Parties respective obligations under this 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 Broadcore hereunder. Nothing herein is intended to limit Broadcore's right to offer its services to other customers or end users, even if such customers compete with Customer. Nothing herein is intended to restrict Customer and Broadcore from competing with each other. Nothing herein is intended to restrict solicitation by Broadcore or Customer of any specific or prospective end user customers or restrict solicitation of any general categories of prospective or existing end user customers.

20.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.