



1559 Pony Express Hwy • Home, KS 66438
877.876.1228 • business.bluevalley.net

Master Service Agreement

1.7 **“Off Network Services”** shall mean those Services that are either provided solely by a third-party or provided either partially or wholly off of NP’s operated network.

2. **Provisions of Service.** NP will provide those Services selected by Customer as set forth below. Services will be subject to specific terms and conditions set forth in this Agreement and the applicable Addendums. The following Addendums are part of this Agreement and are incorporated herein as if fully set forth in their entirety.

Addendum	NP Initials	Customer Initials
[Collocation]	_____	_____
[Pricing]	_____	_____
[Virtual Cloud Services]	_____	_____

3. **Term.** This Master Service Agreement shall become effective upon execution by Customer and acceptance by NP. This Master Service Agreement shall remain in effect until the last of any services received by Customer from NP is terminated. The initial term for each Service provided to Customer shall be one year from the date this agreement becomes effective (the “Initial Term”). Customer shall receive a State of Service Notice (SOSN) (as hereinafter defined) from NP for each Service provided to Customer by NP. The SOSN shall set forth the date upon which the initial term commenced for that Service. This shall be the same as the Actual Start Date as hereinafter defined.

3.1 **Automatic Renewal.** Contracted services shall automatically renew for successive terms (“Renewal Term(s)” and, collectively with the Initial Term, the “Term”) equal in length to the Initial Term and at NP’s then current rates, unless either NP or Customer provides written notice of its intent to not to renew the Agreement least sixty (60) days prior to the end of the then current Term. If, for any reason, the term for any Services provided by NP shifts to a month-to-month basis, the fees for those Services shall be billed on a monthly basis at the then-current monthly rates. Notwithstanding the foregoing, NP and Customer shall have the right to terminate this Master Service Agreement and any of the Services provided through this Agreement, as provided herein. However, it is understood that, in the event of a partial cancellation or termination, the terms and conditions of this Agreement, including any applicable Addendums, and all applicable policies, terms, and provisions, shall continue to govern the remainder of the parties’ relationship.

4. **Billing and Fees.** In consideration of the Services provided, Customer shall pay NP those fees itemized on the applicable Addendums as well as those fees and payments required by any Purchase Agreement. In addition to any such fees and payments, Customer is responsible for paying, or reimbursing NP for all excise, sales, use, or other taxes and regulatory fees that may be imposed directly by, or to recover costs relating to regulatory requirements imposed by, any governmental body, agency or designee. Customer shall also pay NP for any supplemental charges applicable to the Services, such as charges for incremental usage, design changes, service relocation, maintenance, and expedites requested by Customer. It is understood that changes to these rates and supplemental charges may be made from time to time to reflect increases in NPs costs. NP shall notify Customer of any changes in its rates or charges and Customer shall have the right to cancel the affected Service(s), without penalty, by sending notification in writing on Customer’s letterhead, from an authorized representative of Customer within thirty (30) days after receiving notification of adjustment from NP. Such cancellation will in no event be effective any earlier than thirty (30) days after receipt of the Customer’s termination notification by NP. Upon receipt

of the Customer's termination notice due to NP changes in rates or charges, NP will have the option to continue the Service under the prior charging arrangement or prior level of service by notifying the Customer of this election in writing prior to the effective date of the termination. Should NP exercise this option, there shall be no termination or cancellation of the Service. Notwithstanding the foregoing, any failure by Customer to provide written notification of cancellation within the time periods set forth above in response to any increase in rates or charges shall be deemed acceptance of the changed terms by the Customer.

- 4.1 **Payments.** Customer shall fully pay the initial set up fees itemized on a Purchase Agreement prior to the scheduled installation date of the Service. Additionally, Customer shall pay all other fees itemized on the Purchase Agreement prior to NP initially providing the Service to Customer. Thereafter, Customer shall pay, in advance of the Service, those fees as stated on a monthly invoice from NP within ten (10) days of the date of such invoice ("Due Date").
- 4.2 **Late Fees and Collection Costs.** In the event Customer fails to make full payment by the Due Date, Customer also shall pay a late fee in the amount of the lesser of either three percent (3%) of the current charges per month or the maximum lawful rate under applicable state law. Late fees shall accrue from the Due Date. Customer shall pay any amounts incurred by NP in the collection of past due amounts owed including, but not limited to, reasonable attorneys' fees and costs. All returned checks will be subject to a \$25.00 processing fee; or the maximum amount allowed by law.
- 4.3 **Service Suspension for Non-payment.** In the event Customer fails to make full payment by the Due Date, NP may suspend any or all of the Service provided to Customer with no additional notice provided to Customer. Such suspension may be rescinded by NP upon full payment of Customer's account, including any late fees, plus payment of a service reconnection charge.
- 4.4 **Disputes.** Customer shall have the right to withhold payment of fees related to the Service(s) being provided by NP hereunder that Customer disputes in good faith but only if Customer provides timely written notice to NP, on Customer's letterhead, from an authorized representative of Customer, prior to the due date on the applicable invoice that is in dispute in whole or in part. Failure of Customer to provide notice of a *bona fide* dispute in a timely manner, and specifically noting the amount in dispute and the basis for the dispute shall require Customer to pay the full amount of the invoice when due and request a refund from NP of the disputed amount. Failure of the Customer to pay the full invoiced amount where a notice of dispute has not been timely received by NP shall subject Customer to late fees, reconnection charges, and service suspension, at NP's discretion and such charges and fees shall not be refundable in the event that customer's dispute is ultimately resolved in Customer's favor in whole or in part. Customer shall not have the right to dispute any invoice or seek any refund for charges or fees after six (6) months from the due date of the invoice in question. In cases where Customer has timely notified NP of a charge or invoice that is the subject of a good faith dispute and is withholding monies on account of such a dispute, NP shall not impose any additional charges, such as late fees or penalties on Customer's account by reason of the unpaid disputed amount, or withhold or suspend Service otherwise due to Customer hereunder. Customer will not withhold payments for any portion of any invoice or charges that are not in dispute and the provisions and penalties of this Section shall continue to apply to any amounts which are not in dispute, regardless of

whether such charges or amounts appear on the same invoice as other charges which are disputed.

In the case where this Agreement includes the delivery of Service to multiple locations and Service delivery is delayed due to circumstances beyond the control of NP as determined by NP in its sole, reasonable discretion, Customer shall pay such partial fees for those portions of the Service which are not so delayed.

5. Use of Services.

- 5.1 Any use of NP's Services or systems that is in violation of NP's Authorized Use Policies, (as set forth at www.networksplus.com/legal and as such policies may be amended from time to time) or that disrupts the normal use of the NP's system for other NP customers, shall not be permitted. NP may monitor Customer communications as necessary to comply with applicable laws, regulations, or judicial requests, or to protect the NP network and its Customers. NP reserves the right to remove and/or block all communications if it suspects a violation of NP policies, terms, or conditions or if, in NP's sole discretion, it deems such action necessary to protect the system, NP, or its affiliates, directors, officers, agents, employees, or other Customers, from harm.
- 5.2 Customer shall be the end-user of the Service. The Service provided by NP is not to be resold or distributed without the prior express, written consent of NP. Customer may not create multiple applications, accounts, or projects to simulate or act as a single application, account, or project or otherwise access the Services in a manner intended to avoid incurring fees and charges that would otherwise be due under this Agreement and/or any related Service Agreements and/or Purchase Agreements
- 5.3 Customer may be required to maintain a secure password for use of a Service. Password requirements shall be established by NP. Customer is solely responsible for maintaining the security and integrity of the password provided by NP.
- 5.4 Customer shall not use any process, program, or tool via NP's system for guessing the passwords or circumventing any security measures of NP Customers or other systems. Customer shall not use NP's system to make unauthorized attempts to access the systems and networks of others.
- 5.5 Customer shall not copy or alter, or cause a third party to copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code, any firmware or software related to Service provided by NP. Customer is solely responsible for any costs, liabilities, or charges incurred as a result of such actions. Customer shall not attempt to hack or otherwise disrupt the Services or make any use of a Service that is inconsistent with its intended purpose.
- 5.6 Customer shall use the Service provided by NP in accordance with all applicable local, state, and federal laws, regulations and orders, including but not limited to, obscenity laws. Customer shall not use the Service to conduct a business or activity or solicit the performance of any activity that is prohibited by law, or that violates NP's Authorized Use Policies nor shall Customer's use of the Service impinge upon the use of NP's system by other Customers.

- 5.7 NP has not granted to Customer any license to use any firmware or software provided to Customer in connection with the Service provided by NP, other than a nontransferable, revocable license to use the firmware or software in object code, strictly in accordance with the uses contemplated by this Agreement.
- 5.8 Customer is responsible for maintaining the integrity of the Service it receives from NP that are under the control of Customer. This includes, without limitation, guarding against fraudulent usage of voice and data services. Customer shall be responsible to NP and shall indemnify and hold harmless NP, its officers, directors, affiliates, employees, agents, and contractors for any all costs, including Service charges incurred through fraudulent improper or other use stemming from activities that are under Customer's control. By way of example and not limitation, this would include long-distance voice charges for calls made using Customer's handset and line.
- 5.9 Customer shall promptly report to NP any information Customer may have concerning instances in which the conditions of use have been or are being violated. When NP becomes aware of any possible violations, NP will initiate an investigation. In the event that NP determines that Customer has violated or will violate any of these policies, NP may take such action deemed appropriate by NP under the circumstances as known to NP. NP shall not be liable for any damages of any nature suffered by any Customer, client or third party resulting in whole or in part from its exercise of its rights under these policies. Customer is responsible for any charges resulting from the violation of these policies including but not limited to charges resulting from the compromise of any Customer secure password or Service under the control of Customer.
- 5.10 Notwithstanding anything herein which may indicate or require otherwise, including without limitation any requirements that NP provide certain notices to Customer, Customer's use of any Service provided by NP is an absolute acknowledgement by Customer that Customer has received delivery of such Service.
6. **Start of Service.** NP shall make reasonable efforts to provide Services within its Standard of Service Installation Interval. It is understood that failure of NP to deliver Service by such date shall not require NP to issue service credits or pay Customer any penalties or monetary damages. If Customer requests to either delay or otherwise replace its confirmed start date, additional charges and fees may apply in NP's discretion. Additional charges may also apply if Customer cancels an installation appointment without proper notice or otherwise fails to make proper arrangements for its installation, which results in NP having to reschedule to complete installation.

Once a Service is on line, NP will issue a notice to Customer (the "State of Service Notice" or "SOSN"). Prior to the SOSN, NP shall test the Service to verify that it meets the service level commitments as defined in the applicable Service Agreement. The SOSN shall not be more than 48 hours from the time that NP has completed testing and the Service is available for use. The date of the SOSN shall be deemed to be the date upon which that Service commenced (Actual Start Date). Customer will be billed applicable usage charges beginning on the Actual Start Date, regardless of when Customer actually begins using the Service. If Customer fails to give written notice that the Service is in material non-compliance with the applicable service level commitments contained in the applicable Service Agreement within two (2) business days after NP issues the SOSN, Customer shall be deemed to have accepted such Service.

As stated above, NP shall test the Services to verify that they meet the applicable specifications and service level commitments set forth in the applicable Addendum or Service Agreement. Unless otherwise stated in this Agreement or in any Service Agreement, this shall be the extent of the testing performed by

NP. Customer has sole responsibility for installation, testing, and operation of any applicable software acquired from NP for installation on Customer's own equipment, broadband access acquired from third parties, and all Customer facilities, services, and equipment. Customer is also responsible for ensuring that the Services are compatible with its existing systems and devices. NP shall only be responsible for the installation of the Services covered herein on NP's equipment. Additional services provided to Customer by NP will be governed by the specific Service Agreement or by the Statement of Work ("SoW").

7. Equipment

- 7.1 Customer may elect, but shall not be required to, purchase from NP certain devices, including, but not limited to phones, routers, switches, and modems, etc. ("Purchased Devices") for Customer's use in conjunction with the Services. Full payment for devices shall be due at the time of purchase. Purchased devices shall be listed on a Purchase Agreement. Ownership of, and title to, the purchased devices shall transfer from NP to Customer at the time of sale. Customer will own and bear all risks of loss, theft, or damage.
- 7.2 NP will pass along to Customer all manufacturer warranties on any Purchased Devices to the extent that it is permitted to do so by the manufacturers. Customer shall look to the manufacturers directly to enforce any such warranties. NP makes no warranty as to devices, including Purchased Devices, either expressed or implied. All such warranties, including without limitation, the implied warranties of merchantability and fitness for a particular purpose, are expressly excluded. For devices that fail to operate in a manner to support the associated NP Service, NP will make reasonable attempts to provide technical assistance to Customer in configuring Purchased Devices to work with the Service. Expedited delivery services (e.g., Next Business Day Delivery) when available can be provided to a Customer's location for an additional charge when equipment is in stock either at NP or the equipment manufacturer. NP may also offer certain types of support pursuant to certain service plans if Customer elects to pay for and receive this additional Service, the terms and conditions for which are set forth in the applicable Service Agreement. Non-expedited shipping charges will be the responsibility of NP for NP equipment that is determined to be non-operational due to equipment failure. If it is determined the cause of failure is related to Customer damage outside of normal wear and tear, Customer will be responsible for all shipping and delivery charges.
- 7.3 Customer may elect to use its own equipment instead of purchasing equipment directly from NP. NP shall not be responsible in any way for the compatibility or fitness for use of any Customer-supplied equipment.
- 7.4 Customer acknowledges that the performance of equipment, including the Purchased Devices and equipment supplied by Customer, can be affected, and thus the corresponding Service provided by NP can be directly impacted, by environmental conditions, which are outside the control of NP. It is the responsibility of Customer to ensure that such equipment is receiving proper care, such as proper cooling, a clean power supply, being housed in proper facilities, etc. In addition, NP will in no way be responsible to Customer for any damage caused by these factors to the Purchased Devices, Customer's supplied equipment, or any degradation in Service levels resulting therefrom.

8. Representations, Warranties, and Acknowledgements.

Representations and Warranties of NP. NP hereby represents, warrants, and covenants that:

- i. NP has the requisite power and authority to execute, deliver, and perform its obligations under this Agreement;
- ii. the Service provided by NP will conform to the specifications set out in the applicable Addendums and Service Agreements; and,
- iii. the provision of Service by NP does not and will not violate, infringe, or misappropriate the intellectual property rights of any third party.

Representations and Warranties of Customer. Customer hereby represents, warrants, and covenants that:

- i. Customer has the requisite power and authority to execute, deliver and perform its obligations under this Agreement;
- ii. Customer will make all payments on time;
- iii. Customer will abide by this Agreement, and all related Service Agreements and Purchase Agreements, including all applicable terms of use and applicable NP policies that are publicly posted on NPs website; and will also abide by all applicable laws;
- iv. Customer will not introduce to any NP system, any code, device, criteria, mechanism, or function which may be used to restrict, damage, disable, destroy, or otherwise shut down or alter any portion of the NP system;
- v. Customer will not intentionally introduce into any NP system, any malicious code, command, instructions, programs, or other internal components (e.g., a computer "virus," computer "worm," computer "time bomb," "Trojan horse," "back door," or malware);
- vi. Customer will take reasonable steps to protect the NP system, and assist with troubleshooting; and,
- vii. Customer will not use the Service provided by NP to violate, infringe, or misappropriate the intellectual property rights of NP or any third party.

- 9. Disclaimer of Warranties.** Customer acknowledges that the information available via NP's system and/or through the interconnecting networks may not be accurate and that NP makes no representation or warranty of any kind, either express or implied, regarding the quality, accuracy, or validity of the data and/or information available from or through such networks. Use of information obtained through NP's system is at the Customer's risk.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, NP DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT

LIMITATION, AND IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

IN INSTANCES WHERE NP IS SUPPLYING DEVICES TO CUSTOMER NECESSARY FOR CUSTOMER TO RECEIVE THE SERVICES, NP IS NOT THE MANUFACTURER OF THE DEVICES AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY, PERFORMANCE, OR NON-INFRINGEMENT OF THE DEVICES. WITH RESPECT TO NP, CUSTOMER'S PURCHASE OF THESE DEVICES IS "AS-IS." DEVICES SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED TO CUSTOMER BY THE DEVICE MANUFACTURER. MODIFICATIONS MAY VOID OR OTHERWISE LIMIT ANY WARRANTY APPLICABLE TO THE DEVICES.

NP MAKES NO WARRANTIES WHATSOEVER AS TO THE COMPATIBILITY OF ITS SERVICES WITH EQUIPMENT, DEVICES, OR SOFTWARE SUPPLIED BY CUSTOMER OR PURCHASED BY CUSTOMER FROM A VENDOR OTHER THAN NP.

NP IS NOT RESPONSIBLE OR LIABLE FOR THE DELETION OF OR FAILURE TO STORE ANY CUSTOMER DATA AND OTHER COMMUNICATIONS MAINTAINED OR TRANSMITTED THROUGH USE OF THE SERVICES. CUSTOMER IS SOLELY RESPONSIBLE FOR SECURING AND BACKING UP ITS APPLICATION, PROJECT, AND CUSTOMER DATA. NP DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE OR THE SERVICES THAT IT PROVIDES WILL BE ERROR-FREE OR UNINTERRUPTED.

- 10. Indemnification.** Customer shall indemnify, defend, and hold harmless NP, and its officers, directors, affiliates, employees, agents, and contractors from and against any and all loss, claim, liability, damage, cost, or expense (including, without limitation, court costs, and attorneys' fees) arising in connection with the provision or use of the Service by Customer, or its affiliates, employees, agents and contractors or performance by those entities under this Agreement, including but in no way limited to, a breach by Customer of its representations and warranties.

NP shall indemnify, defend and hold harmless Customer from and against any and all loss, claim, liability, damage, cost, or expense (including, without limitation, court costs and attorneys' fees) arising in connection with the provision of the Service or its performance under this Agreement, including, but in no way limited to, a breach by NP of its representations and warranties, but only to the extent that those losses, claims, liabilities, damages, costs, or expenses arise out of the willful misconduct of NP, its employees, agents or other representatives.

The party seeking indemnification ("Indemnified Party") shall promptly notify the other party ("Indemnifying Party") in writing of any allegation or third-party legal proceeding for which indemnification is sought and shall cooperate with the Indemnifying Party to resolve the matter. The Indemnified Party shall tender sole control of the defense of the allegations or legal proceeding to the Indemnifying Party, subject to the following: (i) the Indemnified Party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the Indemnified Party to admit liability, pay money, or take (or refrain from taking) any action, will require the Indemnified Party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

- 11. Limitation of Liability.** NP SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR UNDER ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT. ANY NP LIABILITY TO CUSTOMER FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT SHALL NOT EXCEED A SUM EQUIVALENT TO THE AMOUNTS PAYABLE BY CUSTOMER TO NP FOR THE SERVICES FOR

THE SIX (6) MONTH PERIOD PRIOR TO ANY CLAIM. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

- 12. Termination.** NP may terminate all or any portion of this Agreement, at any time, for any reason, upon sixty (60) days' notice to Customer. If NP elects to terminate Service other than for Cause (as prescribed below), Customer shall be responsible for paying all amounts owed under this Agreement up and until the date of termination, but shall not incur any termination liability.

Either party may terminate this Agreement or any related Service Agreement or Purchase Agreement for Cause provided that the party wishing to terminate first provides written notice to the other party, specifying the alleged cause for termination. The party receiving the termination notice shall then have a period of thirty (30) days from receipt of this notice to correct the situation, except that in cases where the termination notice is based upon a failure to pay money due, the recipient of the notice shall have only ten (10) days to correct the situation. "Cause" is defined as: (i) the failure of Customer to pay any amounts for Services that are undisputed (provided any disputes are reasonable and in good faith) by the due date shown on the invoice or the failure to pay any amounts when due that Customer owes to NP under any other agreements, contracts, or other arrangements or otherwise; (ii) any failure by a party to comply with or to perform any material provision or condition of this Agreement, or to adhere to applicable NP policies, including but not limited to NP's Authorized Use Policies, or the failure by Customer to comply with or to perform any material provision under any other agreement or understanding between Customer and NP; or, (iii) a party becomes insolvent, is unable to pay its debts when such debts become due, or is the subject of a petition in bankruptcy, whether voluntary or involuntary, or of any other proceeding under bankruptcy, insolvency or similar laws, or makes an assignment for the benefit of creditors, or is named in, or its property is subject to a suit for appointment of a receiver, or is dissolved or liquidated, where such a suit, petition or assignment is not dismissed within thirty (30) days after it has been filed.

- 12.1 Early Termination Without Cause.** Customer may terminate all or any portion of this Agreement without Cause by providing a minimum of sixty (60) days written notice to NP from an authorized representative of Customer, on Customer's letterhead (Termination Notice). The date of any such written Termination Notice shall be identified as the Termination Notice Date. The effective date of termination shall be 60 days from the Termination Notice Date or any other later date specified by Customer in the Termination Notice. Normal service charges shall apply up to the effective date of termination. Additionally, the Customer shall pay an early termination fee equivalent to the lesser of: (i) two (2) months service charges calculated based on the average monthly service charges for the six (6) months prior to the termination; or (ii) the remaining balance of all amounts owed for the remaining Term of the terminated portion of the Agreement, as measured from the effective date of termination.
- 12.2 Termination Liability.** If NP terminates all or any portion of this Agreement for Cause, in addition to owing any and all fees, costs and expenses incurred up and through the effective date of termination, Customer shall be responsible for the remaining balance of all amounts owed for the remaining Term of the terminated portion of the Agreement, as measured from the effective date of termination, including but not limited to payments for terminated Services associated with the terminated portions of this Agreement, as well as all other costs, fees, that may be owing under any Services Agreement or Purchase Agreement.

- 13. Out-of-Service Credit.** Applicable Out-of-Service Credits, if any, are denoted in the applicable Addendum.

- 14. Service Suspension / Maintenance.** NP may from time-to-time suspend a Service for routine maintenance. NP shall provide Customer advance notice of the Service suspension. Such Service suspensions are not considered an out-of-service condition for the purpose of calculating any out of service credits or for any other reason, provided that the Service is restored by the end of the period specified in the notification.
- 15. Intellectual Property/ Proprietary Information.** Customer acknowledges that this Agreement is not intended to transfer ownership of any intellectual property, including but in no way limited to, patents, inventions, trade secrets, trademarks, service marks, trade names, logos, designations, copyrights, and other proprietary rights, and Customer agrees that it will not at any time during or after the term of this Agreement, assert or claim any interest in or do anything that may adversely affect the validity of any trademark, service mark, trade name, logo, designation or copyright belonging to or licensed to the NP (including, without limitation, any act or failure to act which may infringe or lead to the infringement of any of the proprietary rights).
- 16. Confidentiality.** Customer understands and agrees that the terms and conditions of this Agreement and communications between the parties regarding this Agreement or the Services provided hereunder (including any price quotes or related proposals), as well as such information relevant to any other agreement between Customer and NP are confidential and shall not be used by Customer for any purpose other than in connection with the performance of this Agreement. Neither party shall disclose Confidential Information (as defined below), except to its officers, directors, affiliates, employees, agents, or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient of any Confidential Information will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential. Notwithstanding any provision to the contrary in this Agreement, the recipient may also disclose Confidential Information to the extent required by applicable Legal Process; provided that the recipient uses commercially-reasonable efforts to: (i) promptly notify the other party of such disclosure before disclosing; and (ii) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, subsections (i) and (ii) above will not apply if the recipient determines in good faith that complying with (i) and (ii) could: (a) result in a violation of legal process; (b) obstruct a governmental investigation; and/or (c) lead to death or serious physical harm to an individual. As between the parties, Customer is responsible for responding to all third party requests concerning its use of the Services. For purposes of this agreement, "Confidential Information" means information that one party (or an Affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient.
- Notwithstanding the foregoing, it is understood that Customer shall not disclose the terms of this Agreement to any competitor of NP. Customer agrees that a breach or imminent breach of this section shall constitute a material breach of this Agreement for which NP will have no adequate remedy at law. Customer agrees, therefore, that NP's remedies upon a breach or imminent breach of this section include, but are not limited to, the right to preliminary and permanent injunctive relief restraining Customer from any further violation of said Section, as well as an equitable accounting of all profits or benefits arising out of such breach, in addition to any other remedies available at law or in equity or otherwise to NP.
- 17. Force Majeure.** If NP's performance of any obligation under this Agreement is prevented, restricted, or interfered with by causes including failure or malfunction of Customer-supplied equipment, acts of God,

explosions, vandalism, cable cuts, storms, fires, floods, or other catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, work stoppages, or other labor difficulties, or any law, order, regulation, or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then NP shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. NP shall use commercially-reasonable efforts under the circumstances to avoid or remove such causes of nonperformance with reasonable dispatch. If such occurrence occurs for a period of at least sixty (60) days, then Customer shall have the option to terminate the affected portion of this Agreement, without liability.

18. Notices. All notices required or permitted to be given hereunder shall be in writing, (including electronic mail sent to the addresses set forth on Page 1 of this Master Agreement) and deemed given (a) when personally delivered, (b) one (1) day after delivered to an overnight courier guaranteeing next day delivery, (c) three (3) days after deposited in the United States mail, postage prepaid, sent certified mail or registered, or (d) the date upon which the read-receipt was received for electronic mail. All notices shall be addressed to the parties at the addresses specified above or to such other address as hereafter designated in writing by the applicable party in the manner provided in this Section for the giving of notices.

19. Attorney's Fees. If a proceeding is brought for the enforcement of this Agreement (including the collection of any amounts owed hereunder) or because of any alleged or actual dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs and expenses incurred in such action or proceeding in addition to any other relief to which such party may be entitled.

20. Arbitration / Venue and Choice of Law. Except for attempts by NP to collect amounts owed under this Agreement, which may be pursued, among other ways, through the federal and state judicial systems, any dispute arising out of or relating to this agreement or the breach thereof, shall be referred to arbitration by either party hereto and finally settled by arbitration in accordance with the rules of the American Arbitration Association as the exclusive method of dispute resolution. The arbitration panel shall consist of three (3) arbitrators, with one arbitrator to be appointed by each party and the third arbitrator to be appointed by the first two arbitrators so elected. The arbitration shall take place in Marysville, Kansas. The arbitration award shall be final, binding upon the parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all matters related thereto. Judgment upon the award rendered may be entered by any court having jurisdiction, or application may be made to such court for judicial recognition of the award or an order of enforcement thereof, as the case may be.

All disputes arising out of this Agreement and or any related Service Agreement or Purchase Agreement shall be governed by Kansas law, without reference to that state's conflict of law rules. Venue for disputes that may be brought to the courts shall be exclusively in the Marshall County District Court sitting in Marshall County, Kansas and in the United States District Court for the District of Kansas, and the parties hereby consent to personal jurisdiction of those courts.

CUSTOMER AND NP EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

21. Miscellaneous Provisions.

21.1 Past Due Accounts. In the event Customer is past due on amounts owed to NP, Customer shall not be entitled to any applicable out-of-service credit. In addition, NP may, at its sole option, refuse to provide additional Service or allow Customer to place additional orders; place Customer's account on hold

and refuse to provide support for the Services, including the issuance of new trouble tickets. Customer shall receive email notification that its account will be placed on hold unless Customer pays the past-due amounts, including any applicable fees. NP shall not be responsible in any way for expenses incurred by Customer or damages to Customer as a result of NP placing Customer's account on hold.

21.2 Technical Support. NP shall not be responsible for any charges incurred by Customer for Customer's engagement of a third party to perform technical support, whether related or unrelated to the Services and/or devices (except where specifically noted in an applicable service plan).

21.3 Assignability. Without first obtaining NP's express, written consent, Customer shall not assign or otherwise transfer (including without limitation, a transfer due to a change of control), whether voluntarily, involuntarily or by operation of law, its rights or obligations under this Agreement.

21.4 Relationship of the Parties. Nothing in this Agreement will create, or shall be construed to create, any partnership, joint venture, agency, franchise, sales representative or employment relationship between the parties.

21.5 Severability. If any provision of this Agreement is held to be unenforceable, the Parties shall substitute for the affected provision an enforceable provision which approximates the intent and economic effect of the affected provision and remaining provisions of this Agreement will be unimpaired and will remain in full force and effect.

21.6 Waiver, Remedies, Non-Exclusive. No failure or delay on the part of any Party in exercising any right or remedy provided in this Agreement will operate a waiver thereof; nor will any single or partial exercise of or failure to exercise any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy provided herein or at law or in equity. Except as expressly provided herein, no remedy specified in this Agreement is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and in addition to every other right or remedy provided herein or available at law or in equity.

21.7 Headings. The headings of the sections, subsections, and paragraphs of this Agreement are inserted for convenient reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

21.8 No Third-Party Beneficiaries. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, legal representatives and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto (and their respective heirs, successors, legal representatives and permitted assigns) any rights, remedies, liabilities or obligations under or by reason of this Agreement.

21.9 Entire Agreement. This Agreement, along with all applicable Addendums, Service Agreements and Purchase Agreements constitutes the entire understanding and agreement between the Parties related to the subject matter hereof and shall supersede and/or replace any and all prior or contemporaneous oral and written communications. In the event of a conflict between the provisions of this Agreement and the provisions of any associated Addendum, Service Agreement or Purchase Agreement, the provisions of this Agreement shall control.

21.10 Amendments/Counterparts. This Agreement may only be amended by a writing signed by both of the Parties. This Agreement may be executed in multiple counterparts. Facsimiles of a Party's

authorized representative's signature shall be deemed to be binding upon such Party, unless otherwise prohibited by law.

21.11 Drafting. This Agreement has been drafted and negotiated by the Parties (and their counsel) and shall be fairly interpreted in accordance with its terms without any presumption or strict construction in favor of, or against, either Party arising from the identity of the drafter.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date this Agreement is signed by Customer and accepted by NP as set forth below.

[Insert Customer Name]

Accepted by NP

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____