



Master Service Agreement Standard Terms and Conditions

These Standard Terms and Conditions, are an integral part of the BCM One, Inc. (“BCM One”) Master Service Agreement (“MSA”), Service Orders, Rate Schedules, Service Addendums, and other documents annexed thereto and made part thereof (collectively the “Agreement”) by and between BCM One (on behalf of itself, its parent, affiliates, successors, and assigns), and the Client and shall be deemed accepted by, and binding upon, Client in accordance with the terms of the Agreement. These Standard Terms and Conditions are subject to change upon written notice to Client.

1. **SERVICES.** BCM One shall provide to Client the services set forth in the Service Order(s) or other accepted order form (each a “Service,” and, collectively, the “Services”) all of which are subject to the terms and conditions of the MSA and any accompanying documentation, including but not limited to Rate Schedules, Service Addendums, applicable service level agreements as well as any policies that may describe the Service(s) being purchased (the “Agreement”). All of these form the final written Agreement between BCM One and the Client. Services are subject to availability and BCM One has the right not to accept any order for Service submitted by Client.
2. **TARIFF.** If applicable, BCM One’s provision of Services to Client shall be governed by BCM One’s international, interstate, and state tariffs (“Tariff(s)). The Tariff(s) is incorporated by reference and made part of the Agreement. Client acknowledges and agrees that BCM One may change, terminate, adjust and/or modify any and/or all of the provisions of its Tariff(s) from time to time, and any modification shall be binding upon Client from the time filed and notice provided to Client. Except for new services, service features, service options, or service promotions, which shall become effective immediately upon the delivery of notification to Client, any modification made to the Tariff(s) or Services shall become effective beginning on the first day of the next calendar month following notice to the Client, or thereafter, on the first day of the next service billing cycle whenever adjustments are made to rates or charges. The rates, terms and conditions that shall apply in connection with the Services pursuant to the applicable tariffs are subject to change in accordance with the rules of the applicable state regulatory commission and/or Federal Communications Commission (the “FCC”). The contractual relationship between BCM One and Client shall be governed by the following order of precedence: (a) the Tariff(s) to the extent applicable, (b) the Agreement, and (c) these Standard Terms and Conditions.
3. **TERM.** The term and any renewal terms of the MSA and each Service Order shall be governed by the time period stated therein (the “Term”). If the MSA and/or Service Order do not contain a renewal period, the Term will be automatically renewed for successive one (1) month terms at BCM One’s then current out-of-contract rates, unless cancelled by either party pursuant to the terms of the MSA and/or Service Order.
4. **SERVICE CHARGES.** Client shall pay to BCM One, during each month of the Term, no less than the amount service charges contained in each monthly invoice.
 - (a) Services are billed on a monthly basis.
 - (b) Services are invoiced in advance, but usage charges are invoiced in arrears.
 - (c) All non-recurring charges, which are non-refundable, will appear on the applicable monthly invoice.
 - (d) “Total Service Charges” means all charges, after application of all discounts and credits, for each Service provided to Client, specifically excluding (i) taxes, tax-like charges and tax-related surcharges; (ii) charges for equipment and colocation (unless made part of Client’s PMMC); (iii) liabilities incurred by BCM One as a result of ordering, changing or providing facilities to operate the Services; (iv) non-recurring charges; (v) Governmental Charges (as defined below); and (vi) other charges expressly excluded by the Agreement.
 - (e) If Client’s Total Service Charges do not meet or exceed the Plan Monthly Minimum Commitment (“PMMC”) indicated in each Service Order for any billing cycle during the Term, Client must pay the Total Service Charges, plus an amount equal to one hundred

percent (100%) of the difference between the PMMC and Client's Total Service Charges during such billing cycle (the "Underutilization Charge").

- (f) With respect to Managed Services, billing will commence upon written acceptance of the Service by the Client. If Client does not accept or reject the Service, then billing will commence within five (5) calendar days after BCM One has delivered the Service and declared it to be ready. If there is a good faith dispute between BCM One and Client regarding the readiness of the Service, the parties will work together to resolve the issue before billing begins. A Managed Service is defined as any service that is monitored, configured or can be remediated by BCM One.

5. RATES AND CHARGES.

- (a) Client shall pay the rates and charges set forth in each Service Order, any applicable pricing schedule or tariff.
- (b) Non-recurring charges will be applied to the ordering, moving, changing, rearranging, installation or disconnection of a Service.
- (c) In the event that, (i) Client receives any Services that are not expressly set forth in a Service Order, or (ii) Client purchases any Service after the expiration of a Term, Client shall pay BCM One's then current out-of-contract rates for any such Service.
- (d) The rates set forth in each Service Order as well as the out-of-contract rates are subject to change. Any change to non-tariff services shall become effective beginning on the first day of the next calendar month following notice to the Client, or thereafter, on the first day of the next service billing cycle whenever adjustments are made to rates or charges.

6. GOVERNMENTAL CHARGES. BCM One may adjust its rates and charges or impose additional rates and charges in order to recover fines and other amounts it is required to pay to others in support of statutory or regulatory programs or is permitted by governmental or quasi-governmental authorities to collect from Clients ("Governmental Charges"). If the rates and/or charges are adjusted, BCM One shall provide notice to Client of any such change. Any change shall become effective beginning on the first day of the next calendar month following notice to the Client, or thereafter, on the first day of the next service billing cycle whenever adjustments are made to rates or charges. Any Governmental Charge will be charged on the monthly invoice following the date such Governmental Charges are charged to BCM One, or later, as the case may be.

7. TAXES. In addition to payment for the rates and charges for Service(s), Client is responsible for payment of all sales, use, gross receipts, value added, excise and other local, state and federal taxes, fees, charges and surcharges, however designated, imposed on or based upon the provision, sale or use of the Services, excluding taxes based on BCM One's employees, property and net income. If Client claims that its purchase of the Services is subject to tax exemption, Client must furnish BCM One with the proper tax exemption certificate as authorized by the appropriate taxing authority, or required by statute or regulation. If applicable, BCM One shall not collect such tax amounts from Client beginning on the date such certificate is provided. However, if BCM One does not collect such amounts in reliance on Client's tax exemption certificate, which certificate is later determined to be inadequate, then, as between BCM One and Client, Client shall be liable for such uncollected amounts and for all interest, penalties and additions to tax which are determined to be due with respect to such uncollected amounts. BCM One shall not issue any credit(s) for applicable taxes, tax-like charges and surcharges assessed prior to BCM One's receipt of Client's evidence of exemption. Notwithstanding any Client representation that any exemption application is pending, no exemption shall be available to Client until Client presents BCM One with the valid certificate(s).

8. PAYMENT. Client must remit payment to BCM One for the full amount indicated in Client's monthly invoice on or before the due date printed thereon ("Due Date"). Payments must be made in US Dollars only and at the address designated on the invoice or such other place as BCM One may designate. Any amount not paid on or before the Due Date, shall be considered to be past due and subject to a late payment charge equal to the lesser of: (a) one and one-half percent (1.5%) per month, compounded, or (b) the maximum amount allowed by law, as applied against the past due amounts. Client must not place any condition or restrictive legend, such as "Paid in Full," on any check or instrument used to make a payment. The negotiation of any such check or instrument so inscribed shall not constitute an accord and satisfaction or novation, and Client waives its right to assert any such defense. Client shall be liable for the payment of all fees and expenses, including reasonable attorney's fees, incurred by BCM One in collecting, or attempting to collect, any charges owed hereunder. BCM One may, at its discretion, setoff any charges, fees or any other amounts owed to BCM One by Client in the event of a default from any bond or security deposit given to BCM One by Client, and BCM One shall notify Client of such setoff.

9. BILLING DISPUTES.

- (a) If Client disputes charges or application of taxes, Client must give BCM One written notice of such dispute within thirty (30) days of the date of the invoice. If notice of a dispute is not received by BCM One within the foregoing thirty (30) day period, such invoice shall be deemed to be correct and binding on Client. Notwithstanding the foregoing, if any charges are reasonably disputed by Client, such charges (along with late fees attributable to such charges) shall not be due and payable for a period of thirty (30) days following the Due Date, provided Client: (i) pays all undisputed charges on or before the respective Due Date, (ii) presents to BCM One on or before the respective Due Date a detailed written statement disputing such charges which statement shall include but is not limited to, documents concerning the disputed billing discrepancies, and (iii) negotiates in good faith with BCM One for the purpose of resolving such dispute within said thirty (30) day period. If Client does not pay any or all of the undisputed charges, BCM One shall have the right to exercise its remedies as described in Section 11 below. Nothing contained herein shall limit Client's right to dispute amounts at any time following the applicable Due Date, however, BCM One shall not be obligated to consider any notice of disputed charges that it receives more than thirty (30) days following the Due Date of the respective invoice.
- (b) Each party agrees to negotiate in good faith for the purpose of resolving any properly raised dispute(s) relating to the Client's invoice, subject to the following:
- i. if the dispute is mutually agreed upon and resolved in favor of BCM One, Client agrees to pay BCM One the disputed charges together with any applicable late fees within ten (10) days of resolution;
 - ii. if the dispute is mutually agreed upon and resolved in favor of Client, Client will receive a credit for the disputed charges and the applicable late fees; and
 - iii. if BCM One has responded to Client's dispute in writing and the parties fail to mutually resolve or settle the dispute within the prescribed thirty (30) day period (unless BCM One has agreed in writing to extend such period), all disputed amounts together with late fees shall be immediately due and payable.

10. TERMINATION FOR CAUSE. Either party may terminate the Agreement or a Service for cause. Except for Client's failure to pay as specifically provided in Section 11, "cause" shall mean a material breach of any material provision of the MSA, Service Order or Service Addendum, and such breach is not cured within thirty (30) days after delivery of written notice from the non-breaching party. BCM One shall not be deemed to be in breach of the Agreement for its failure to meet any anticipated service installation or delivery date if such failure is caused, in whole or in part, by (i) a Force Majeure event; (ii) actions by Client or its end users; (iii) construction delays and/or costs; or (iv) inability to install Service(s) in Client's service location.

11. TERMINATION BY BCM ONE.

- (a) Termination with Notice. In the event Client fails to pay an invoice by the Due Date, BCM One may issue a notice of default. In addition, if Client disputes an invoice, but fails to pay any undisputed charges within ten (10) days of the default notice, such nonpayment shall be considered "cause" for termination as indicated in Section 10 and BCM One may discontinue one or more Services and/or terminate the Agreement. Upon thirty (30) days written notice, BCM One may discontinue one or more Services and/or terminate the Agreement if: (i) after BCM One's request, Client fails to provide a bond or security deposit; or (ii) if, as determined by BCM One in good faith, Client provides false information to BCM One regarding the Client's identity, creditworthiness, or its planned use of the Services.
- (b) Termination or Suspension without Notice. BCM One shall have the right to terminate or suspend one or more Services without notice to Client, if in the opinion of BCM One; (i) the interruption of the Service(s) is necessary to prevent or protect against fraud or otherwise protect BCM One's or any of BCM One's Clients personnel, facilities, or network; (ii) BCM One has reasonable evidence of Client's illegal, improper or unauthorized use of the Services; (iii) is required by legal or regulatory authority, or (iv) Client's insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or other similar event.
- (c) Any termination, disconnection or suspension of Service(s) shall not relieve Client of any liability incurred prior to such termination, disconnection or suspension, or for payment of the unaffected Services and applicable data storage fees and charges. BCM One reserves the right to pursue all available legal remedies if it terminates the MSA, a Service Order or disconnects Service(s) in accordance with this Section 11. All terms and conditions of the MSA, the Service Order(s), applicable Service Addendum or

other documentation that are made part of the Agreement shall continue to apply to any Service(s) not so terminated. If BCM One terminates Service(s) in accordance with this Section 11, and Client wants to restore such Service, Client must remit all past due charges to BCM One, and may have to pay a reconnection charge and deposit.

(d) Disconnect Notice. All requests for disconnection will be processed by BCM One in approximately thirty (30) days, and will become effective approximately thirty (30) days after BCM One receives notice of such request for cancellation. Client is obligated to pay for all Services until disconnection is effectuated. Client must provide all information required by BCM One. Client's failure to provide such information may delay or prevent the disconnection. In order for a Service to be disconnected, all Client's must complete a disconnect request form which is located at <http://disconnect.bcmone.com/>.

12. TERMINATION BY CLIENT. Client may terminate the MSA, a Service Order and/or any Service pursuant to Section 10, or upon Client's thirty (30) days prior written notice to BCM One, without incurring termination liability as a result of BCM One's breach of any law, rule or regulation that affect's Client's use of Services(s) and which breach remains uncured at the end of the notice period.

13. TERMINATION CHARGES. If BCM One terminates the MSA, any Service Order or any Service pursuant to Sections 10 or 11 above, or if Client terminates the MSA, any Service Order or any Service for any reason other than those arising from Sections 10 or 12 above, Client shall be subject to Early Termination Charges as set forth in the MSA, any Service Order, and any applicable Service Addendum or other documentation that is made part of the Agreement.

14. CONFIDENTIAL INFORMATION. Commencing on the date Client executes the MSA, and continuing for a period of three (3) years following the termination or expiration of the MSA, each party shall protect as confidential, and shall not disclose to any third party, any Confidential Information received from the disclosing party or otherwise discovered by the receiving party during the Term of the MSA, including, but not limited to, the terms of the MSA, Service Orders, Rate Sheets, Service Addendums, Service Level Agreements, all other documentation that is made part of the Agreement, all pricing, network or other designs, or other information that is marked confidential or bears a marking of like import, or that the disclosing party states (orally or in writing) is confidential or which under the circumstances surrounding the disclosure, the receiving party knows or should know is treated as confidential by the disclosing party, as well as any information relating to the disclosing party's technology, business affairs, and marketing or sales plans (collectively the "Confidential Information"). The parties shall use Confidential Information only for the purpose of the Agreement. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (a) is in the possession of the receiving party at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (b) is or becomes publicly known through no wrongful act or omission of the receiving party; (c) is received, without restriction, from a third party free to disclose it without obligation to the disclosing party; (d) is developed, independently, by the receiving party without reference to the Confidential Information, or (e) is required to be disclosed by law, regulation, court or governmental order.

15. DISCLAIMER OF WARRANTIES. Services are provided on an "as is" or "as available" basis. BCM One does not warrant that the Service(s) will be without failure, delay, interruption, error, degradation of quality or loss of content, data or information, and except as specifically set forth in the MSA, the Service Orders, Service Addendums and any applicable Service Level Agreement, BCM One makes no other representation or warranties, express or implied, as to any BCM One Service(s), related products, equipment, software or documentation. BCM One specifically disclaims any and all implied warranties; including without limitation any implied warranties of merchantability, fitness for a particular purpose, title, or non-infringement of third party rights. Broadband speed claim(s) represent maximum downstream and/or upstream capabilities which may vary and are not guaranteed. Factors including line quality and Client's distance from the exchange may limit available bandwidth.

16. DISCLAIMER OF CERTAIN DAMAGES. Neither party shall be liable to the other or to any third party for any indirect, consequential, exemplary, special, incidental or punitive damages, including without limitation loss of use or lost business, revenue, profits or goodwill, arising in connection with the Agreement, under any theory of tort, contract, indemnity, warranty, strict liability or negligence, even if the party knew or should have known of the possibility of such damages. Unless otherwise agreed, BCM One's sole obligation with regard to any error in the Service or hardware appliance is to provide, as applicable, the remedy set forth in

the applicable Service Level Agreement or the support service terms. BCM One shall not be liable for any claims made against, or liabilities incurred by, Client as a result of Client's or BCM One's performance under the Agreement which may result in Client's responsibility for, any and all shortfalls, early termination charges and other charges Client may incur from any previous provider of similar or identical Services.

17. **LIMITATION OF LIABILITY.** Client shall be bound by the limitation of liability clause contained in the MSA and any applicable Service Orders, Service Addendums and other documentation that is made part of the Agreement.
18. **INDEMNIFICATION.** Client shall indemnify and hold harmless BCM One, its officers, directors, employees, agents, parent, affiliates, direct and indirect subsidiaries, successors and assigns from and against all claims for damages, liabilities, or expenses, including reasonable attorney's fees attributed to, arising out of or resulting from Client's use of the Services as well as for any violation of BCM One's Acceptable Use Policy or Privacy Policy.
19. **ASSIGNMENT.** Neither party may assign the Agreement or any of its rights thereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that (a) BCM One may assign its rights and/or obligations under the Agreement, (i) to any parent, affiliate or subsidiary, (ii) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all of its assets, or (iii) for purposes of financing; and (b) Client may assign its rights and/or obligations under the Agreement, (i) to its parent, affiliates or subsidiaries, or (ii) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all of its assets, provided that any assignment by Client pursuant to this exception is subject to the following conditions: (a) the proposed assignee satisfies BCM One's then current credit and deposit standards; (b) Client has fully paid for all Services through the date of the assignment; and (c) the proposed assignee agrees in writing to be bound by all provisions of the Agreement. Any assignment in violation of this Section is null and void.
20. **USE OF SERVICES.** Client is responsible and liable for all use of the Services from its Service locations, with or without its permission. Client may not resell the Services or transfer the Services to any person or entity other than its employees, without the prior written consent of BCM One. The Services may not be used for any unlawful, abusive or fraudulent purpose. Client shall defend, indemnify and hold harmless, BCM One and its suppliers and their officers, directors, agents, affiliates and employees from and against any claims, liabilities, losses, costs or damages (including legal fees and costs) arising out of any third party claim or allegation that if true, would constitute a violation of the above. Any violation of this Section shall constitute a material breach establishing cause for termination of the Agreement by BCM One.
21. **UNAUTHORIZED USE OF SERVICES.** Client shall bear the risk of loss arising from any unauthorized or fraudulent use of the Services provided under the Agreement. BCM One reserves the right, but is not required, to take any and all action it deems appropriate, including blocking access to particular calling numbers or geographic areas, to prevent or terminate any fraud or abuse in connection with the Services or any use thereof. Client remains responsible for its own network security and security violation response procedures. Even though a virtual private network ordered from BCM One may enhance Client's ability to impede authorized access to its network and data, and may aid Client in detecting potential security breaches and network irregularities, Client understands and acknowledges that no Service is guaranteed to ensure Client's network security or to prevent security incidents, and that BCM One is not responsible for any unauthorized third party or Client employee access to Client's facilities and data.
22. **TERMS OF USE.** Client's use of the Services is subject to the terms of acceptable use and privacy policy available at www.bcmone.com/legal/. These policies may be updated from time to time by BCM One upon notice to all Clients by posting on the BCM One website.
23. **ADDITIONAL CLIENT RESPONSIBILITIES.** Client shall supply space, equipment, network, wiring, electrical power and environmental conditions suitable for and compatible with, BCM One's provision of the Services. Client shall return any BCM One-provided equipment in good working condition and free from all liens, charges and encumbrances within ten (10) days after termination of the Service for which it was used, or by agreement, or pay BCM One's purchase price for the equipment as invoiced by BCM One.

Client shall not, without the prior written consent of BCM One, alter, attempt to repair or remove such equipment from Client's premises. Client is solely responsible for maintaining the security of its account, password, files, network and user access. Client agrees that BCM One does not monitor, review or restrict information, communications, software, photos, video, graphics, music, sounds, services or other material from third parties via the Services and Client bears all risks associated with the same.

24. **USE OF SOFTWARE.** Any software application, including without limitation, the BCM One portal or other BCM One website, and documentation associated with any application as well as any local computer files installed as a result, in each case, provided by or on behalf of BCM One ("BCM One Software"), may be used in object code form only and solely by Client for Client's internal business purposes. Client may not (a) provide, disclose or make BCM One Software available to any third party, or (b) decompile, reverse engineer, disassemble, modify, rent, lease, loan, distribute, or create derivative works (as defined by the United States Copyright Act) or improvements (as defined by United State Patent Law) from the BCM One Software, no license under patents, copyrights, trademarks, service marks, trade names or other indicia of origins or other right is granted to Client in the BCM One Software or in the BCM One trademark, copyright, patent, trade secret or other proprietary rights nor shall any such rights be implied or arise by estoppel with respect to any transactions contemplated under the Agreement.
25. **SERVICE MARKS; TRADEMARKS AND PUBLICITY.** Client shall not use any service mark or trademark of BCM One, without prior written consent. BCM One shall have the right to disclose Client's use of the Services in connection with any advertising, promotion, press release or publication.
26. **FORCE MAJEURE.** If either party's performance under the MSA, a Service Order, Service Addendum or Service Level Agreement or any obligation thereunder (excluding the obligation of payment under the Agreement) is prevented, restricted or interfered with by causes beyond its reasonable control including, but not limited to, acts of God, epidemics, pandemics, quarantines, public health emergencies, fire, explosion, vandalism, cable cut by a third party, earthquake, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government, or state or local governments, or of any department, agency, commission, court, bureau, corporation or other instrumentality of anyone or more such governments, or of any civil or military authority, or by national emergency, insurrection, riot, terrorism, war, accident, strike, lockout or work stoppage or other labor difficulties, or supplier failure, shortage, breach or delay, then the affected party shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. The affected party shall use reasonable efforts under the circumstances to avoid or remove such causes of nonperformance and shall proceed to perform with reasonable dispatch whenever such causes are removed or cease.
27. **COMPLIANCE WITH LAWS.** Each party agrees to comply with all applicable laws in connection with the Agreement, including all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, Client is solely responsible for compliance related to the manner in which chooses to use the Service, including transfer and processing of content and the provision of content to any users.
28. **THIRD PARTY BENEFICIARIES.** The Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to the Agreement. Notwithstanding the foregoing, a BCM One underlying service provider may be third-party beneficiary for sole purpose of enforcing any terms of the Agreement that specifically apply to such BCM One underlying service provider.
29. **GOVERNING LAW; VENUE.** All matters arising out of and relating to the Agreement (including these Standard and Terms and Conditions) shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey without regard to its choice of law principles. Any action that is or may be commenced by any party pertaining to the Agreement and the subject matter thereof, shall be commenced in a federal or state court located in the county of Bergen, the state of New Jersey. The parties hereby consent to the jurisdiction of such court, waiving objection to forum non conveniens and personal jurisdiction.

30. NOTICE. Unless otherwise advised, all notices (including Client's notice of disconnect), requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, electronic mail, facsimile, hand delivery, certified or registered mail, postage prepaid and return receipt requested to the parties at the following addresses. Notices of disconnect must be sent to disconnects@BCMOne.com. Notices shall be deemed to have been given when received (or delivery refused).

To: BCM One Operations Center

BCM One, Inc.
295 Madison Avenue, 5th Floor
New York, NY 10175
Attn. Contract Administration

To: Client: At the billing address indicated in the Agreement.

Either party may change its address by providing notice of such address change to the other party in the manner set forth above.

31. NO WAIVER. The failure to enforce any provision or term of the MSA, Service Order, Rate Sheet, Service Addendum, Service Level Agreement or any other document that becomes part of the Agreement including these Standard Terms and Conditions, will not act as a waiver of any right contained in any provision or term in any MSA, Service Order, Rate Sheet, Service Addendum, Service Level Agreement or any other document that becomes part of the Agreement including these Standard Terms and Conditions.
32. SEVERABILITY. If any provision under the MSA, Service Order, Service Addendum, Service Level Agreement or any other document that becomes part of the Agreement including these Standard Terms and Conditions are declared or held to be invalid, illegal or unenforceable, all of the foregoing shall be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of either or both shall remain in full force and effect, provided that the modification is consistent with the original intent.
33. ENTIRE AGREEMENT. These Standard Terms and Conditions, the MSA, Service Order, Service Addendum, Service Level Agreement (and any attachments, or other documents incorporated therein by reference) constitute the entire agreement with respect to the Services provided pursuant to the Agreement and supersede all other representations, understandings or agreements that are not expressed herein or therein, whether oral or written.