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## Terms and Conditions

### 1. General

a. By using Meriplex Communications, Ltd.'s ("**Meriplex**") service, you agree to the terms and conditions set forth herein (the "Terms and Conditions") The terms "customer," "you" or "your" refers to you, your employees, and those you have authorized to use the service provided by **Meriplex**. Customer and **Meriplex** may be referred to herein individually as a "Party" and together as the "Parties".

b. These Terms and Conditions apply to **Meriplex**'s IP Intranet, Internet access, Multiprotocol Label Switching, and Voice over Internet Protocol (VoIP) services and products. No representation, warranty, term or condition, other than as specifically set forth in these Terms and Conditions or the Sales Order or purchase order to which these Terms and Conditions are attached or in which these Terms and Conditions are referred to (each, a "Sales Order") shall be binding on **Meriplex**. The Sales Order and these Terms and Conditions are referred to herein collectively as the "Agreement."

c. This Agreement shall be in effect during the term of the Sales Order unless modified as set forth herein. The initial term for each service provided to you by **Meriplex** shall be specified on the Sales Order for the service. The term of each service shall commence on the activation or installation date for the respective service. Upon expiration of the initial term or any subsequent terms, the service term shall automatically renew for consecutive one year terms, or if the initial term is less than one year, the renewal term shall be equal to the initial term. If you desire to terminate the service upon expiration of the initial term or any subsequent terms, you must send written Notice to **Meriplex** at least thirty (30) days prior to the expiration of the term. **Meriplex** will also notify you in writing at least thirty (30) days prior to the expiration of the initial term or subsequent terms if **Meriplex** plans to terminate the service upon expiration of the term.

d. **Meriplex**'s VoIP services are provided as ancillary services to the customer's primary local and long distance service. Such services do not replace the customer's local and 1+ service provider. If you make a request to **Meriplex** in writing and provide a letter of agency, we may act as your agent in securing local and 1+ services from local exchange carriers and/or Interexchange carriers for you. The respective provider may bill these services directly to you, but **Meriplex** will be your one point of contact for these services and interface with these providers on your behalf.

e. You agree not to resell **Meriplex**'s voice services, nor permit these services to be used by anyone other than your employees, guests, and customers of your business.

f. Because of variations in the telephone company wiring infrastructure, **Meriplex** cannot guarantee that a particular service or speed will be available until we actually complete the service set-up, even if we believe that it should be available and accept an order for it. All orders are subject to downgrade or cancellation as a result of unforeseen or unknown problems with the wiring infrastructure.

g. **Meriplex** shall have the right at any time to change or discontinue any aspect or feature of its service, including, but not limited to changes required by changes in government regulations. **Meriplex** shall have the right to add to, modify, or delete any provision of these Terms and Conditions at any time. **Meriplex** will notify you of any change to the Terms and Conditions by e-mail or certified U.S. Mail, return receipt requested. You agree that the foregoing will constitute sufficient Notice of such changes. If you do not agree to the changes, you must provide **Meriplex** with Notice of your objection, which includes the impact on your use of the service, no later than fifteen (15) days after the date of our Notice of the change to the Terms and Conditions. If we cannot accommodate your objection, and the change materially affects your use of our service, then you may, within ten (10) days following your receipt of Notice from **Meriplex** of its inability to accommodate your objection, terminate such service without penalty at any time within forty-five (45) days of the date of our Notice of non-accommodation; provided, further, you shall receive a prorated refund of any prepaid fees for an applicable Sales Orders that are affected by such termination. If (1) **Meriplex** does not receive a Notice of objection from you within the 15-day period described above or (2) you fail to select a termination date within the 45-day period described above and Notify **Meriplex** of such termination date within ten (10) days following your receipt of our Notice of non-accommodation, then you shall be deemed to have agreed to the proposed change(s), which shall thereafter become a part of this Agreement.

h. You are responsible in all respects (including payment obligations) for all use of the services provided to you, including all use under any screen name or password by any person, and all use by others. All use of your account, whether or not authorized by you, shall be deemed your use. Accordingly, you are responsible for protecting the confidentiality of your account passwords.

i. You may not assign your rights or obligations under this Agreement or any Sales Order(s) to any other person or entity, or to a different location, without **Meriplex**'s prior written consent of approval; such consent will not be unreasonably withheld. You



agree to pay for any charges associated with the move, assignment or transfer; provided, however, such charges shall not exceed two hundred fifty dollars (\$250.00). This Agreement shall apply to any permitted transferees or assignees.

j. You understand that the service connects to the Internet and may be filtered to ensure compliance with our Acceptable Use Policy, and that **Meriplex** can neither control nor assume responsibility for any content on the Internet or content that is posted or accessed by a user.

k. The security of your system, computers, network and equipment is your responsibility. You agree that neither **Meriplex** nor any of **Meriplex's** authorized vendors, agents or affiliates shall be responsible for any breach or break-in on your system or network.

## 2. Charges

a. You agree to pay for your services and all use of your account, including charges for installation and all local, state, and federal fees and taxes. Charges for the service are on the executed Sales Order that has been provided to you. **Meriplex's** prices, except as provided under an executed Sales Order, are subject to change from time to time; accordingly, **Meriplex** will notify you of any changes by e-mail or U.S. Mail. You agree that any one of the foregoing will constitute sufficient Notice of such changes.

b. Recurring monthly charges will be billed monthly in advance. Usage charges for services will be billed in the next monthly billing cycle following such use, or as otherwise specified in the price list. All charges are payable on the due date specified on the bill, normally thirty (30) days from the date of billing. Billing for partial months is prorated. You are responsible for all charges respecting the Service, even if incurred as the result of unauthorized use.

c. Payments must be received by **Meriplex** on or before the due date stated on the monthly bill, statement or invoice. A late fee may be charged on accounts that are past due, calculated at the lesser of one-and-a-half-percent (1.5%) per month of the past due amount or the maximum rate permitted by law. **Meriplex** reserves the right to change the late fee at any time in the future pursuant to Section 1.g above and as permitted by applicable law. If you reasonably dispute an invoice(s), you must pay the undisputed amount and submit written Notice of the disputed amount (with details of the nature of the dispute and the Services and invoice(s) disputed). Disputes must be submitted in writing within one hundred twenty (120) days from the date of the invoice. If the dispute is resolved against you, you shall pay such amounts plus interest from the date originally due.

d. If you discontinue service other than as provided in this Agreement, you are in material breach of this Agreement, or the service is discontinued for account past due, you will be required to pay all outstanding charges and all charges due or to become due over the remaining balance of the current term of the Sales Order. If you want to reconnect, you will be required to pay all outstanding balances and you may be required to pay a reconnect charge or trip charge before re-connection. Such charges include, but are not limited to, charges charged **Meriplex** by its vendors and your local exchange service provider to re-connect service.

e. **Meriplex** may charge a service fee for all returned checks and bankcard or charge card charge backs. The current late fee is listed in the list of charges or can be provided upon request.

f. You are responsible for and agree to pay all expenses, including but not limited to, reasonable attorneys' fees, court costs, and all other costs incurred by **Meriplex** in collecting any amounts due and unpaid.

## 3. Equipment and Software

a. The charges for the service may include rental of the equipment to be operated at the customer's premises to connect to **Meriplex's** service. If you require additional premise equipment, then **Meriplex** may provide premise equipment for an additional fee.

b. You will be responsible for and agree to pay for the cost of any cabling and/or equipment required to connect **Meriplex** equipment to your phone system and/or local computer network.

c. **Meriplex** and its authorized representatives may enter your premises with prior Notice and during normal business hours and have access to your computers periodically to install, connect, inspect, maintain, repair, or replace its equipment or software, or to disconnect and remove its equipment. If you are not the owner of the premises upon which equipment and software are to be installed, you must obtain the consent of the premises' owner for **Meriplex** personnel or its authorized representatives to enter the premises with reasonable Notice and scheduling. Customer agrees to indemnify and hold **Meriplex** harmless from and against any claims of the owner or occupants of the premises arising out of **Meriplex's** entry into the premises or performance under this Agreement.

d. **Meriplex** may upgrade, modify, enhance, and/or replace the equipment and/or software from time to time through downloads from the network or otherwise.

e. Equipment

i. The rental equipment provided by **Meriplex** is and shall remain **Meriplex's** personal property. You shall not acquire an ownership interest in this equipment by virtue of the payments for service unless specifically written in your individual agreement.

ii. You shall not alter, misuse, tamper with or remove **Meriplex's** equipment, or remove any markings or labels including serial or identity numbers from **Meriplex's** equipment. You will take all reasonable steps to safeguard **Meriplex's** equipment from loss or damage, and will not permit anyone other than **Meriplex's** authorized representative to perform any work on it.

iii. Upon termination of the service, you must return the equipment to **Meriplex** in the same condition as when it was received, ordinary wear and tear excepted.

iv. If the equipment is damaged, destroyed, lost, or stolen while in your possession, you are liable for the cost of repair or replacement of the equipment. If the equipment is not returned to **Meriplex** upon termination of the service, you agree to pay **Meriplex** the equipment's replacement cost without any deduction for depreciation or wear and tear on the physical condition of the equipment.

f. Software

i. If software is provided, **Meriplex** grants you a limited, non-exclusive license to use the software, in object code form only, solely for the purpose of connecting your computers to **Meriplex's** service. This license will permit such use by you and any person you authorize to use your account, under any password, provided that you shall be responsible for all use of the account. This license will commence upon your acceptance of service, and will terminate immediately upon termination of the service. **Meriplex** and its licensors retain all rights and interests in and to the software.

ii. You are permitted to make a single copy of any such software solely for back-up purposes, provided that such copy contains the same copyright notices and proprietary markings as the original software. You agree not to copy, and not to permit any other copying, or any translation, reverse engineering, or reverse compiling, disassembly, or modification of, or preparation of any derivative works based on the software.

iii. You agree to destroy all software and any related written material together with any copies promptly upon termination of the service.

#### 4. Customer Conduct

a. You may use the service for lawful purposes only, and in accordance with these Terms and Conditions and **Meriplex's** Acceptable Use Policy. You shall not upload, post, transmit or otherwise make available any material that violates or infringes in any way upon the rights of others, or that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, or that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense or give rise to civil liability or otherwise violate any law. You may not link personal home pages to material or content that violates the standards of conduct in these Terms and Conditions or **Meriplex's** Acceptable Use Policy. **Meriplex** may remove or require that you remove content that in **Meriplex's** sole discretion violates these standards.

b. You may not upload, post, transmit or otherwise make available any material protected by copyright, trademark, patent, trade secret or other proprietary right in a manner that infringes or violates any such right. **Meriplex's** policy is to terminate any customer's service where there is a repeat infringement after reasonable notification. This policy does not affect any other rights **Meriplex** may have under law or under any agreement between you and **Meriplex**. **Meriplex** also reserves the right to suspend or terminate your service for a single violation of any provision of these Terms and Conditions, **Meriplex's** Acceptable Use Policy, or its tariffs.

c. You may use, copy, and distribute the information found on **Meriplex's** web sites for personal, internal, noncommercial, educational purposes only. All copies that you make of the information must bear any copyright, trademark or other proprietary notice located on **Meriplex's** website which pertain to the information being copied. Except as authorized in this paragraph, you are not being granted any right or license under any copyright, trademark, service mark, patent or other intellectual property right in the information, services, processes, or technology described therein or under any other intellectual property right of **Meriplex** or its affiliates. **Meriplex**, its affiliates, and any third party owner of such rights retain all such rights.

d. Meriplex's names and logos and all related product and service names, design marks, and slogans are the trademarks or service marks of Meriplex or one of its affiliates. You must obtain Meriplex's written authorization before using any Meriplex name or mark in any advertising, publicity, or in any other commercial manner.

## 5. Review and Enforcement

a. Meriplex shall have the right, but not the obligation, to review content on public areas of the service, including but not limited to chat rooms, bulletin boards, and forums, to determine compliance with these Terms and Conditions and our Acceptable Use Policy.

b. Meriplex has the right to edit, refuse to post, request removal of, or remove any material submitted to or posted on its service, including personal home pages and links to other sites. Without limiting the foregoing or Meriplex's other rights, Meriplex has the right to remove any material that Meriplex in its sole discretion determines to be unacceptable or to violate these Terms and Conditions, any bandwidth use limitations, or Meriplex's Acceptable Use Policy. If Meriplex finds any violation or objectionable material, it may suspend your service, take other action to prevent you from using certain account privileges (e.g., home pages), or cancel your account without prior notification. Meriplex may also suspend or cancel your account for posting content to the Internet that violates these Terms and Conditions or its Acceptable Use Policy. If your service is suspended, you will not be charged for services during the suspension. If your account is canceled, Meriplex may refund any pre-paid fees minus any amount due.

c. You agree that Meriplex shall have the right to take any reasonable and professional action that it deems appropriate to protect its service, its reputation, its facilities, and its equipment.

d. Meriplex has the right to monitor your bandwidth use (i.e., volume of data transmitted) at any time and on an on-going basis but will not limit use of bandwidth lower than the rate specified in the Sales Order.

## 6. Republication

a. Material posted or transmitted through the Internet may be copied, republished, or distributed by third parties. YOU AGREE TO RELEASE, INDEMNIFY, AND HOLD MERIPLEX HARMLESS FOR ANY HARM RESULTING FROM SUCH ACTIONS.

c. Meriplex will not use your logo, information, or material highlighting the business relationship between Meriplex and you without your prior written consent.

## 7. Service and Repairs

At Meriplex's expense, it will repair or replace damaged equipment, modify software, and otherwise attempt to correct interruptions of the service due to reasonable equipment wear and tear or technical malfunction of the system or network operated by Meriplex. At your expense, Meriplex may repair or replace damaged equipment, modify software, and otherwise attempt to correct interruptions of the service due to your, your agents', contractors and/or your employees' actions or omissions. You are solely responsible for the operation, security, repair, and maintenance of your own equipment and software.

## 8. Force Majeure

Meriplex is not liable, nor shall any credit allowance or other remedy be extended, for interruption of the service nor for any loss or damage, whether direct, indirect, special, or consequential, that may result from interruption of the service due to circumstances beyond Meriplex's control, including without limitation, acts of God, flood, natural disaster, regulation or governmental acts, fire, civil disturbance, strike, or weather.

## 9. Disclaimer of Warranty; Limitation of Liability

a. **EXCEPT AS SET FORTH IN THE SERVICE LEVEL AGREEMENT ("SLA") PROVIDED TO YOU, OR INCLUDED WITHIN OR ATTACHED TO A SALES ORDER AND SUBJECT TO APPLICABLE LAWS, YOU AGREE THAT THE SERVICE IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU FURTHER AGREE THAT ALL USE OF THE SERVICE, INCLUDING, BUT NOT LIMITED TO, THE ACCESSING AND USE OF CONTENT, INFORMATION, AND SERVICES, THE EQUIPMENT AND SOFTWARE, THE PURCHASE OF MERCHANDISE AND SERVICES, THE**

TRANSMISSION OF INFORMATION AND OTHER COMMUNICATIONS BY AND TO YOU, AND THE DOWNLOADING OF COMPUTER FILES IS AT THE YOUR SOLE RISK. Without limiting the foregoing:

i. **MERIPLEX** MAKES NO WARRANTIES AS TO THE PERFORMANCE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY THAT ANY DATA, FILES, OR OTHER COMMUNICATIONS BY OR TO YOU WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME, THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, OR AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICE.

ii. **MERIPLEX** NEITHER ENDORSES OR WARRANTS, NOR SHALL IT BE RESPONSIBLE IN ANY REGARD FOR ANY MERCHANDISE OR SERVICES ORDERED THROUGH THE INTERNET OR ANY SECURITIES TRADING OR OTHER COMMERCIAL TRANSACTIONS, WHETHER OR NOT SUCH MERCHANDISE OR SERVICES OR THE PROVIDERS OF ANY TRANSACTIONAL SERVICES ARE PROMOTED OR MARKETED ON THE INTERNET.

iii. **MERIPLEX** DOES NOT WARRANT THE SECURITY OF THE CUSTOMER'S COMMUNICATIONS VIA ITS SERVICES. **MERIPLEX** DOES NOT WARRANT THAT THIRD PARTIES WILL NOT GAIN UNAUTHORIZED ACCESS TO OR MONITOR THE CUSTOMER'S COMPUTERS OR ONLINE COMMUNICATIONS. YOU AGREE THAT **MERIPLEX** IS NOT LIABLE FOR ANY SUCH UNAUTHORIZED ACCESS.

iv. SOFTWARE AND OTHER CONTENT DOWNLOADED VIA THE INTERNET MAY CONTAIN HARMFUL OR DISABLING FEATURES OR CODES SUCH AS VIRUSES. **MERIPLEX** DOES NOT WARRANT OR UNDERTAKE TO ENSURE THAT COMPUTER FILES RECEIVED VIA THE INTERNET DO NOT OR WILL NOT CONTAIN ANY VIRUS OR OTHER HARMFUL OR DISABLING CODE OR FEATURE, AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR DAMAGE TO OR LOSS OR DESTRUCTION OF HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM THE SAME.

b. YOU UNDERSTAND THAT THE INSTALLATION, USE, INSPECTION, MAINTENANCE, REPAIR, REPLACEMENT, OR REMOVAL OF THE SERVICE, EQUIPMENT, AND/OR SOFTWARE COULD RESULT IN DAMAGE TO YOUR COMPUTERS, OTHER HARDWARE, SOFTWARE, AND/OR DATA FILES. YOU ARE SOLELY RESPONSIBLE FOR BACKING UP ALL EXISTING COMPUTER FILES PRIOR TO THE PERFORMANCE OF ANY OF THE FOREGOING ACTIVITIES. **MERIPLEX** IS NOT LIABLE FOR AND EXPRESSLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY SOFTWARE, HARDWARE, DATA OR FILES UNLESS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF **MERIPLEX** OR ITS EMPLOYEES.

c. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL **MERIPLEX**, ITS EMPLOYEES OR ITS AUTHORIZED AGENTS, CONTRACTORS OR REPRESENTATIVES WHO ARE INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING THE SERVICE, INCLUDING THE CONTENT, THE EQUIPMENT, OR THE SOFTWARE, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICE, ACTION TAKEN TO PROTECT THE SERVICE, OR THE BREACH OF ANY WARRANTY. **Meriplex** reserves the right to refuse credit allowances for interruptions of Services not within its control or which are the fault of Customer, or if Customer is at the time of such interruption, in default of any of the terms of this Agreement. **Meriplex** also reserves the right to modify or discontinue, temporarily or permanently, at any time and from time to time, the Services (or any function or feature of the Services or any part thereof) without liability, although Customer's billing will be adjusted appropriately to reflect any such changes. Customer's sole and exclusive remedy and **Meriplex's** entire liability for direct damages as a result of a breach of any warranty or any claim related to the services shall be the granting of credits pursuant to the foregoing provisions or applicable SLAs as described above. IF, DESPITE THE FOREGOING LIMITATIONS, **MERIPLEX** IS SOMEHOW HELD LIABLE FOR DAMAGES IN EXCESS OF THE FOREGOING, **MERIPLEX'S** TOTAL LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS RELATING TO THE SERVICES OR THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF "RECURRING SERVICE FEES" PAID DURING THE IMMEDIATELY PRECEDING ONE (1) MONTH PERIOD. CUSTOMER HEREBY RELEASES **MERIPLEX** FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THIS LIMITATION. FOR THE PURPOSES OF THIS AGREEMENT, THE TERM "RECURRING SERVICE FEES" MEANS FEES FOR WHICH THERE IS A SUBSCRIPTION IN PLACE FOR SERVICE WITH A SUBSCRIPTION TERM EQUAL TO OR GREATER THAN ONE YEAR AND THE CUSTOMER IS BEING CHARGED ON AN ONGOING BASIS FOR SUCH SERVICE RATHER THAN AS A ONE-TIME PURCHASE, SUCH AS IN THE CASE OF EQUIPMENT OR PROFESSIONAL SERVICES.

d. THE CUSTOMER ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION APPLY TO ALL CONTENT AND SERVICES INCLUDED IN, ACCESSIBLE THROUGH, OR PROVIDED BY **MERIPLEX**, AND ARE FOR THE BENEFIT OF AND MAY BE ENFORCED BY **MERIPLEX**.

## 10. Release and Indemnification

YOU AGREE TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS **MERIPLEX** FROM AND AGAINST ANY AND ALL LIABILITY, INCLUDING ANY LIABILITY CAUSED BY **MERIPLEX'S** OWN FUTURE NEGLIGENCE, AND AGAINST ANY

AND ALL CLAIMS, COSTS, LIABILITIES OR EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RELATED IN ANY WAY TO YOUR USE OF THE SERVICE OR OTHERWISE ARISING OUT OF THE USE OF YOUR ACCOUNT OR THE EQUIPMENT OR THE SOFTWARE; PROVIDED THAT YOU SHALL NOT BE OBLIGATED TO INDEMNIFY MERIPLEX FOR ANY CLAIMS, LIABILITIES, COSTS, OR EXPENSES TO THE EXTENT RESULTING FROM THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF MERIPLEX.

YOUR USE OF THE SERVICE CONSTITUTES AN ACKNOWLEDGMENT AND AN AGREEMENT THAT THE RELEASE, INDEMNIFICATION, AND LIMITATION OF LIABILITY PROVISIONS CONTAINED IN THESE TERMS AND CONDITIONS ARE CONSPICUOUS AND COMPLY WITH THE EXPRESS NEGLIGENCE RULE.

## 11. Privacy

**Meriplex** and its affiliates are committed to protecting the privacy and security of its customers. The customer's privacy interests, including its ability to limit disclosure of certain information to third parties, are addressed by, among other laws, the Electronic Communications Privacy Act.

- a. **Meriplex** uses private information for billing and operations purposes.
- b. **Meriplex** will not disclose information on a customer's account to any unaffiliated third party for marketing purposes.
- c. **Meriplex** may disclose customer information without the customer's consent to comply with a subpoena, court order, or legal reporting requirement.
- d. **Meriplex** may disclose customer information to protect accounts against fraud and unauthorized transactions, to resolve customer disputes, and as necessary to our accountants, attorneys, regulators and auditors.
- e. In addition to actions and disclosures specifically authorized by statute or authorized elsewhere in this Agreement, **Meriplex** shall have the right (except where prohibited by law notwithstanding your consent), but not the obligation, to monitor content on its service and to disclose any information to protect its rights, property, operations, and where circumstances suggest that individual or public safety is in peril. You agree to allow **Meriplex** to release any and all information about you to comply with a legal process, such as a subpoena, search warrant, court order, or in the circumstances described above.
- f. When you use **Meriplex's** Internet access to transmit information, the Electronics Communications Privacy Act permits **Meriplex** to access such information, including the content of communications. It also permits **Meriplex** to disclose such information to an addressee or intended recipient (or his or her agent); to a person involved in forwarding such information to its destination; when it is necessarily incident to providing service or to protect our rights or property; to others with the consent of the customer or an addressee or intended recipient (or his or her agent); to law enforcement if such information appears to be evidence of child pornography or was inadvertently obtained and appears to pertain to a crime; or as otherwise provided by law. You agree that **Meriplex** may monitor content on the service; and may disclose any information in the possession of, **Meriplex** to protect their respective rights, property or operations, or where circumstances suggest that individual or public safety is in peril.
- g. Customer hereby authorizes **Meriplex** to make inquiries and to receive information about his/her/their credit history from credit reporting agencies or others and to utilize such information in its decision regarding its entry into this Agreement or provision of services hereunder.

## 12. Entire Agreement

These Terms and Conditions, the customer's Sales Order, and the Acceptable Use Policy constitute the entire agreement between **Meriplex** and the customer, and supersede all previous written or oral agreements between **Meriplex** and the customer. Acceptance of **Meriplex's** service shall constitute acceptance of these Terms and Conditions. This Agreement shall not be construed in favor of, or against, either party.

## 13. Choice of Law and Forum

This Agreement is to be governed and construed under the laws of the State of Texas, excluding its conflicts of law rules. Subject to the arbitration provisions contained herein, you expressly agree that the exclusive jurisdiction for any claim or action arising out of or relating to this Agreement, or which arises from any use or misuse of **Meriplex's** or any other web site by you, shall be filed only in the courts of Harris County, Texas. You further agree and submit to the exercise of personal jurisdiction of

such courts for the purpose of litigating any such claim or action. Customer waives all rights to bring any claim, suit or proceeding more than one (1) year after the date the cause of action arose.

#### **14. Severability**

If any provision of these Terms and Conditions, the customer's Sales Order, or the Acceptable Use Policy is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder shall continue in full force and effect.

#### **15. Termination**

Customer may terminate this Agreement and a particular service purchased under the applicable Sales Order only if **Meriplex** breaches a "material term" of this Agreement and fails to cure such breach no later than thirty (30) days' after receipt of written Notice thereof by Customer. For purposes of this Section 15, a breach of a "material term" means the failure to achieve the applicable SLA for a particular service for three (3) consecutive months in a calendar year during the term of the applicable Sales Order hereunder, as documented by the appropriate written requests for credits within thirty (30) days of the occurrence.

In addition to rights granted to **Meriplex** in other provisions of this Agreement, **Meriplex** shall have the right to suspend services or terminate this Agreement and services (i) for Customer's breach of any of the provisions of this Agreement; (ii) for customer's violation of **Meriplex's** Acceptable Use Policy; (iii) if **Meriplex** discovers that customer has provided to **Meriplex** false or materially misleading information; or (iv) if Customer becomes insolvent, ceases operations, is the subject of a bankruptcy petition, enters receivership or any state of insolvency proceeding, or makes an assignment for the benefit of its creditors.

#### **16. Acceptable Use Policy**

Customer understands and agrees that use of services provided pursuant to this Agreement is subject to **Meriplex's** Acceptable Use Policy, as may be amended from time to time, which can be found at [www.meriplex.com](http://www.meriplex.com), or may be requested by contacting **Meriplex** at 866.637.4235.

#### **17. Notice**

Except as provided otherwise herein, all notices, requests, or other communications (excluding invoices) ("Notices") under the Agreement must be in writing and either transmitted via (a) overnight courier, (b) electronic mail, (c) hand delivery, or (d) certified or registered mail, postage prepaid and return receipt requested. Except as provided otherwise herein, Notices will be deemed to have been given when received.