

Master Service Agreement

Allegiant (“Allegiant, we or us”)	Customer (“Customer, you or your”)
Name: Allegiant Networks LLC Street Address: 12721 Metcalf Ave. Suite 104 City: Overland Park State/Province: KS Zip Code: 66213 Country: USA	Name: <u>&DH_SoldToCompany</u> Street Address: <u>&DH_SoldToAddress1</u> <u>&DH_SoldToAddress2</u> City: <u>&DH_SoldToCity</u> State/Province: <u>&DH_SoldToState</u> Zip Code: <u>&DH_SoldToPostalCode</u> Country: USA

Article I: Introduction & Definitions

- 1. Agreement.** This Master Service Agreement is entered into between you and Allegiant for the purpose of setting forth the terms and conditions for your right to use certain Services and Service related hardware and software from us. In the event you are purchasing, financing or leasing any hardware or software from us, such terms and conditions shall be set forth in a separate agreement.
- 2. Definitions.** In this Agreement the following definitions shall have the following meanings, and all other capitalized terms have the meanings given to them elsewhere in this Agreement.
 - 2.1. **“911/E911 Emergency Services”** has the meaning set forth in Article IV: Section 7.
 - 2.2. **“Allegiant, we, or us”** means Allegiant Networks, LLC. DBA Allegiant Technology.
 - 2.3. **“Agreement”** means this Master Services Agreement together with any schedules or appendixes annexed hereto.
 - 2.4. **“Colocation Services”** means Customers operation of or use of the Customer Colocation Hardware located at Allegiant’s Data Center Site.
 - 2.5. **“Colocation Space”** means the designated area in the Data Center Site where the Customer’s Colocation Hardware is kept.
 - 2.6. **“Commencement Date”** means the date on which the Services are made operational or are first made available for use by Customer or would have been made available for use but for Customer’s delay or default.
 - 2.7. **“Confidentiality”** means any information relating to the disclosing party (“Disclosing Party”) that is of a confidential or proprietary nature used in or otherwise relating to the Disclosing Party’s business, operations, customers or financial or other affairs, including the relations of a party with its customers, employees and service providers, and any such information of employees, customers, affiliates or representatives of a Disclosing Party, which is received by the receiving party (“Receiving Party”), whether communicated in written form, orally, visually, demonstratively, technically or by any other electronic form or other media, or committed to memory, and whether or not designated, marked, labeled or identified as confidential or proprietary, including any data or information described above which the Disclosing Party has obtained from a third party and which the Disclosing Party treats as proprietary or designates as Confidential Information, whether or not owned or developed by the Disclosing Party. Confidential Information also includes: the marketing of goods or services including, without limitation, existing and future customer names and lists and other details of existing and future customers; future products, business development or planning, commercial relationships and negotiations; information relating to the Products, and Allegiant’s Intellectual Property Rights; information received from third parties that a party is obligated to treat as confidential (including any Third Party Provider Intellectual Property Rights); all information disclosed or made available by a Disclosing Party to the Receiving Party hereunder in connection with this Agreement or the performance of obligations hereunder, whether marked as confidential or proprietary or disclosed orally, after the Effective Date; any personal information; and this Agreement.
 - 2.8. **“Customer, you, or your”** means the Customer as defined in this Agreement.
 - 2.9. **“Customer Colocation Hardware”** means any physical hardware (excluding Software) that is owned by Customer and located at Allegiant’s Data Center Site.
 - 2.10. **“Customer Content”** means any and all software, materials and data owned or licensed by Customer, including text, information, data, images (still and moving), trade-marks, and logos, and any portion thereof and used by Customer in connection with the Services hereto.
 - 2.11. **“Customer Hardware”** means any physical hardware (excluding Software) that is owned by Customer.
 - 2.12. **“Data Center Lease”** has the meaning set forth in Article V: Section 2.
 - 2.13. **“Data Center Site”** means Allegiant’s data center.
 - 2.14. **“Disclosing Party”** has the meaning set forth in Article I: Section 2.7.
 - 2.15. **“Effective Date”** has the meaning set forth in Article I: Section 4.
 - 2.16. **“Fees”** means the Prices for the Services and all other fees and charges referenced in this Agreement.
 - 2.17. **“Hardware”** means any physical hardware (excluding Software).
 - 2.18. **“Hardware Maintenance and Support Services”** means certain maintenance and support services provided by Allegiant for Customer Hardware as defined in this Agreement and on one or more Service Orders.
 - 2.19. **“Hosted Telephony Services”** has the meaning set forth in Article IV: Section 1.
 - 2.20. **“Indemnitor”** has the meaning set forth in Article VII: Section 5.3.
 - 2.21. **“Installation Fees”** means the set-up fees for installing the Service.
 - 2.22. **“Installation Services”** means the installation of certain Services listed on a Service Order.
 - 2.23. **“Intellectual Property Rights”** means any and all proprietary rights provided under: patent law, copyright law, trade-mark law, design patent or industrial

design law or any other statutory provision or common law principle applicable to this Agreement, including trade dress and trade secret law, which may provide a right in either ideas, formulae, algorithms, concepts, inventions, know-how or show-how generally, or the expression or use of such ideas, formulae, algorithms, concepts, inventions, know-how or show-how; and any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.

- 2.24. **"Laws"** means all applicable statutes, laws, codes, ordinances, decrees, rules, regulations, by-laws, orders, decisions, rulings or awards, policies, permits, licenses, authorizations, directions, voluntary restraints, guidelines, or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the party referred to in the context of which such word is used and "Law" means any one of the foregoing.
- 2.25. **"MSP Hardware"** has the meaning set forth in Article III: Section 2.5.
- 2.26. **"Number"** has the meaning set forth in Article IV: Section 2.
- 2.27. **"Power Rate Fees"** has the meaning set forth in Article V: Section 5.2.
- 2.28. **"Prices"** has the meaning set forth in Article II: Section 1.1.
- 2.29. **"PSTN"** has the meaning set forth in Article IV: Section 6.2.
- 2.30. **"Receiving Party"** has the meaning set forth in Article I: Section 2.7.
- 2.31. **"Recurring Service Fees"** means the monthly fees for the Services being provided as defined in this Agreement and on one or more Service Orders.
- 2.32. **"Recurring Variable Service Fees"** means monthly fees associated with the increased usage of certain Services as defined in this Agreement and on one or more Service Orders.
- 2.33. **"Regulatory Recovery Fees"** has the meaning set forth in Article IV: Section 6.1.
- 2.34. **"Services"** means any and all Services provided by Allegiant as defined in this Agreement and on one or more Service Orders, and including, without limitation the provision of people, infrastructure resources, support and access to and the use of Allegiant's licensed software (including, without limitation, the Software) the Hardware (including without limitation the MSP Hardware), data center resources and interconnection to other third party networks and any other services provided by Allegiant in connection with the Services.
- 2.35. **"Service Contract"** means an agreement between Allegiant and Customer (including related attachments) that describe the Services to be provided, the additional terms and conditions specific to that particular Service (including payment obligations) and the term for which such Services are to be provided by Allegiant for ("Service Contract Term").
- 2.36. **"Service Contract Term"** has the meaning set forth in Article I: Section 2.35.
- 2.37. **"Service Order"** means the documents that make up the agreement between Customer and Allegiant for the purchase of Services listed on a Quote.
- 2.38. **"Software"** means any computer application or code in object (binary) form.
- 2.39. **"Statement of Work"** means an agreement between Allegiant and Customer, which defines project-specific activities, deliverables and their respective timelines.
- 2.40. **"Term"** has the meaning set forth in Article I: Section 4.
- 2.41. **"Termination Fees"** has the meaning set forth in Article VII: Section 1.6.
- 2.42. **"Toll Fees"** has the meaning set forth in Article IV: Section 6.2.
- 2.43. **"Third Party End User License Agreement"** means an agreement between Customer and a Third Party Provider that Customer must agree to and sign in order to license and use the Software.
- 2.44. **"Third Party Products"** means any Hardware, Software, or Services not provided by, manufactured or created by Allegiant.
- 2.45. **"Third Party Provider"** means any third party that is a manufacturer and/or owner of the Intellectual Property rights in the Hardware, Software or Services.
- 2.46. **"Quote"** means an electronic or paper document which lists the estimated pricing and descriptions of the Products.
- 2.47. **"UPS"** has the meaning set forth in Article V: Section 4.2.

3. Addendums to this Agreement & Order of Precedence. Certain Services may be provided to you in accordance with the terms of this Agreement (including any schedules or appendixes annexed hereto) and one or more Service Contracts and/or Statements of Work. Each Service Contract or Statement of Work shall be incorporated hereto by referencing this Agreement and the applicable Service Order it applies to and shall be interpreted separately from any other Service Contracts or Statements of Work. In the event of a conflict or ambiguity between this Agreement and any Service Contract or Statement of Work, the agreements shall be interpreted in the following order: (1) This Agreement, (2) The Service Contracts, (3) The Statements of Work.

4. Term. This Agreement shall become effective on the date of execution hereof, or in the absence of the forgoing, the date your Service Order is accepted by Allegiant ("Effective Date"), and will continue for a period of twelve (12) months ("Term"), at which point the Term will automatically renew on an annual basis. After the initial Term, either Party may provide thirty (30) days' written notice of termination for convenience, as long as any applicable Service Orders or any other obligation of either party has expired or was terminated pursuant to the terms of this Agreement.

Article II: Terms of Sale

1. Prices; Quotes & Service Orders.

- 1.1. **Prices and Quotes.** The prices ("Prices") for the Services shall be set forth in one or more Allegiant Quotes which shall be prepared for you upon request by us. Prices shall remain valid until the expiration date listed on the Quote (or if not listed, thirty (30) days from the Quote creation date listed in the top right corner of your Quote). Quoted Prices for Third Party Products are dependent upon availability at the time of sale. Allegiant is not responsible for pricing,

typographical, or other errors contained in a Quote, and reserves the right to cancel Quotes arising from such errors.

- 1.2. **Service Orders.** During the Term of this Agreement, you may enter into one or more Service Orders with us for certain Services we offer by: signing and submitting to Allegiant a valid Quote together with any Service Contracts and/or Statements of Work that correspond to the Services listed on your Quote. Service Orders you submit us are subject to our acceptance at our sole discretion, and upon our acceptance, shall create a legally binding contract between you and Allegiant. Each Service Order we accept is non-cancellable by you and shall be interpreted as a single agreement, independent of all other Service Orders.
- 1.3. **Changes to your Service Order.** If you request a change to the Services to be delivered or the scope of the Services provided on your Service Order, you shall submit details of the requested change to Allegiant in writing and upon Allegiant's approval in Allegiant's sole discretion, Allegiant shall, within a reasonable time, provide a written estimate to you of: the likely time required to implement the change; any variations to Allegiant's Prices arising from the change; the likely effect of the change; and any other impact of the change on the terms of your Service Order. If you wish for Allegiant to proceed with the change, Allegiant has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to Allegiant's Prices, and any other relevant terms of your Service Order to take account of due to the change.
- 1.4. **Additions to your Service Order.** If Allegiant provides additions to the Services you are currently receiving or any other Services to you, such additions and other Services will be agreed to in advance between Allegiant and you in writing as part of a separate Service Order.

2. Billing & Payment.

- 2.1. **Invoices.** Allegiant may invoice parts of a Service Order separately or together in one invoice. Except as otherwise defined in this Agreement and on your Service Order, invoices are due and payable by the date noted on the face of the invoice, or if not stated, within thirty (30) days from the date the invoice was issued.
- 2.2. **Installation Fees.** The installation Fees for the Services shall be payable by the date stipulated in your invoice unless specified otherwise in your Service Order.
- 2.3. **Recurring Service Fees.** The Recurring Service Fees will commence on the Commencement Date and are payable by the first week of the month for the month to which the Fees relate or, if later, seven (7) days after receipt of the invoice.
- 2.4. **Variable Service Fees.** Allegiant will invoice you monthly in arrears for any Variable Service Fees that become payable as a result of the Services that we provide. Those Variable Service Fees will be calculated in accordance with the Prices set out in your Service Order.
- 2.5. **Credit Card Authorization.** Upon your purchase of the Services, you must provide Allegiant with a valid credit card number from an issuer that is accepted by Allegiant. You authorize Allegiant to charge the credit card number provided by you for all Fees arising from your use of the Services. You agree to notify Allegiant of any change to the credit card information, including, but not limited to: changes in account number, expiration date or billing address. Allegiant shall not be responsible for any charges made by the credit card issuer to your credit card account for exceeding credit limit, insufficient funds or other reasons.
- 2.6. **Credit Terms.** All Services provided to you and covered by this Agreement shall at all times be subject to credit approval or review by Allegiant. You will provide such credit information or assurance as is requested by Allegiant at any time. Allegiant, in its sole discretion and judgment, may discontinue credit at any time without notice or require a deposit.
- 2.7. **Late Payments.** Late payments shall accrue thirty (30) days after the invoice due date and will be subject to interest on the unpaid invoice amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable Law.
- 2.8. **Taxes.** Prices set forth in a Quote are exclusive of taxes and you shall pay all taxes (excluding those on Allegiant's net income), surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from your failure to timely pay such taxes or similar charges) relating to the installation, license, use or provision of the Services, except to the extent you provide us with a valid tax exemption certificate with your Service Order.
- 2.9. **Billing Disputes.** You shall have the right to reasonably and in good faith dispute any invoice, or portion thereof provided that you: pay the undisputed portion within the invoice due date; provide Allegiant written notice of the dispute no later than thirty (30) days from the date of the invoice; and specify with reasonable detail, the amount disputed and the reason for the dispute. Following Allegiant's notice of the results of its investigation of such a claim, payment of all properly due charges and properly accrued late payment Fees must be made within ten (10) days, and Allegiant will reverse any amounts including late payment Fees that were invoiced in error.

Article III: Terms of Service

1. **Terms of Service.** The terms and conditions listed in this Article III, shall apply to all Services provided by Allegiant pursuant to this Agreement, additional terms and conditions specific to certain Services not described in this Article III, shall be set forth below in a separate Article.
2. **Provision of the Services.**
 - 2.1. **Service Commencement Date.** Allegiant will use reasonable efforts to commence the provision of the Services to you within the estimated date(s) set forth in your Service Order, but Allegiant shall have no liability should there be any delay in the provision of the Services caused by you or any Third Party Providers contracted to provide such Services.
 - 2.2. **Technical Support.** Allegiant will use commercially reasonable efforts to provide support for your enquiries relating to the Services, retrieval of data or faults in the Services in accordance with the support and escalation procedures defined in your Service Order (if applicable).
 - 2.3. **Rights Granted.** Subject to your compliance with the terms and conditions of this Agreement, Allegiant grants you a limited, revocable, non-transferable, non-exclusive right to access and use the Services during the Service Contract Term defined in your Service Order, solely for your business purposes. Except for the rights expressly granted to you under this Article III: Section 2.4, Allegiant and its Third Party Provider's shall retain all right, title, and interest in and

to the Services, and other Intellectual Property Rights created, used, or provided by Allegiant to you pursuant to this Agreement, including all modifications or derivatives of, and improvements to, the Services, excluding any Customer Content. You further acknowledge that Allegiant and its Third Party Provider's Intellectual Property Rights include: data, modules, components, designs, utilities, objects, processes, program listings, tools, models, diagrams, analysis frameworks, leading practices, trade-marks, patents, industrial designs, know-how, show-how, software, and specifications owned or developed by Allegiant and/or its Third Party Providers.

- 2.4. **Customer Content.** In connection with Allegiant's performance of its obligations hereto, Allegiant may be required to host, store, manage, back-up and otherwise access the Customer Content for purposes of providing certain Services hereunder. You hereby grant Allegiant a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license to use and access the Customer content as is reasonably necessary solely to provide the Services. The parties agree that at all times you shall retain ownership and legal title to the Customer Content.
- 2.5. **Hardware as a Service.** Allegiant may rent to you under the terms of a separate agreement, or otherwise provide to you for the Service Contract Term set forth in your Service Order, certain devices, including, but not limited to servers, phones, routers, and switches, etc. ("MSP Hardware"), for use on your premises or at Allegiant's Data Center Site. Title to the MSP Hardware shall at all times remain with Allegiant or the Third Party Providers of the Services as the case may be. Allegiant may vary the technical specifications of the MSP Hardware, provided that at all times such changes do not materially impair or degrade the Service.
- 2.6. **Software as a Service.** If Software is being provided as part of the Services described in your Service Order, your use of the Software is governed by the respective Third Party End User Licensing Agreements applicable to such Software. Subject to your compliance with the terms and conditions contained in any Third Party End User License Agreements, Allegiant grants you a limited, revocable, non-transferable, non-exclusive right to use the Software for your own Internal use and for no other purpose. Title to the Software shall at all times remain with Allegiant or the Third Party Providers of the Services as the case may be.
- 2.7. **Maintenance Downtime.** Allegiant may suspend provision of the Services or any part thereof for the purpose of carrying out or implementing necessary repairs, maintenance or improvements provided that in the event of such suspension Allegiant will use commercially reasonable efforts to ensure that reasonable notice is given to you and minimum disruption to the Services is caused.
- 2.8. **Storage and Other Limitations.** Allegiant reserves the right to establish or modify general practices and limits concerning use of the Services, including without limitation, the maximum number of days that content will be retained by the Services, the maximum disk space and/or bandwidth capacity that will be allotted on MSP Hardware operated by Allegiant, if any. Where practical, Allegiant will provide you with prior notice of such new or modified practices; provided however, that Allegiant shall have the absolute right to implement such new or modified practices without prior notice in its sole discretion and without liability of any kind.

3. Customer Obligations.

- 3.1. **Access Rights.** You will be responsible for securing at your own cost, any necessary rights of entry (both remote and physical), licenses, permits or other permission necessary for Allegiant to install, maintain, repair, improve, upgrade, substitute or replace the Services (including any Software or Hardware) and you will also be responsible for providing adequate physical space, air conditioning, necessary power, electrical power outlets, network connections and environmental conditions necessary to support the Services including, pre-drilling holes and wire ways through concrete, plaster, metal floors, walls or ceilings when required. If Allegiant is required to have physical access to your sites to perform any obligations contained herein, you will ensure that your sites are safe, secure, and in compliance with all applicable industry and OSHA standards.
- 3.2. **Service Proprietary Rights.** Except as expressly permitted by Allegiant or to the extent expressly authorized by the Service, you will not (and will not allow any third party to): translate, adapt, reverse engineer, decompile, disassemble, unlock or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Service; modify, translate, or create derivative works based on the Service; rent, lease, distribute, sublicense, resell, pledge, assign, or otherwise transfer or encumber rights to the Service; use the Service for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove or otherwise alter any proprietary notices or labels from the Service or any portion thereof.
- 3.3. **Compliance with Laws.** You shall not use the Services for any illegal or unlawful purpose in violation of any Laws or in a manner which constitutes a violation or infringement of the rights (including any Intellectual Property Rights) of any other party. You shall at all times maintain all registrations and comply with all applicable Laws as may be necessary for the use of the Services.
- 3.4. **Acceptable Use Policy.** You will not use the Services to store, reproduce, transmit, communicate or knowingly receive any material, including the Customer Content, which is offensive, abusive, indecent, defamatory, obscene, racist, homophobic, menacing, or in any manner other than in conformance with any acceptable usage policies that you have agreed to with Allegiant or that Allegiant has agreed to with its Third Party Providers. YOU ARE SOLELY RESPONSIBLE FOR THE CONTENTS OF THE CUSTOMER CONTENT, AND IN NO CIRCUMSTANCES SHALL ALLEGIANT BE HELD LIABLE FOR THE CONTENTS OF ANY CUSTOMER DATA USED WITH THE SERVICES.
- 3.5. **Use of MSP Hardware.** You will not acquire any rights of ownership in the MSP Hardware or the Software installed on the MSP Hardware by virtue of the Agreement and shall not have, by operation of law or otherwise, any lien or other similar right over or in relation to the MSP Hardware. In the event MSP is located on your premises, you shall: provide electric power for the MSP Hardware and keep the MSP Hardware physically secure and free from liens and encumbrances; take reasonable care of the MSP Hardware and not damage it, tamper with it, move or remove it or attempt to repair it; bear the risk of loss or damage to MSP Hardware (other than ordinary wear and tear) except to the extent caused by Allegiant or its agents; not remove any sign, label or other marking on the MSP Hardware identifying that Allegiant is the owner thereof; and on either the termination of this Agreement or an applicable Service Order, allow Allegiant and its employees and agents reasonable access to your premises to remove the MSP Hardware.
- 3.6. **Payment of Fees.** You will pay the Installation Fees, Recurring Service Fees and all other Fees defined in this Agreement and on your Service Order.

Article IV: Hosted Telephony Services

1. **Hosted Telephony Services.** These additional terms and conditions listed in this Article IV, shall apply if Allegiant is providing you with hosted PBX, SIP trunking, voice channels, or any other hosted telephony Services ("Hosted Telephony Services").
2. **Telephone Number.** Any telephone number provided by Allegiant ("Number") to you shall be leased and not sold. You are not to use the Number with any other device other than Hardware authorized by Allegiant, without the express written permission of Allegiant. Allegiant reserves the right to change, cancel

or move the Number at its sole discretion.

- 3. Local Number Portability (LNP) Port Out.** You may be able to take, or port, your current phone Number(s) to another service provider. If you request your new service provider to port a number from us, and Allegiant receives your request from that new service provider, Allegiant will treat it as notice from you to terminate the Hosted Telephony Services for that Number upon successful completion of porting. After the porting is completed, you will not be able to use the Hosted Telephony Services for that number. You will remain responsible for any early Termination Fees, and for all other Fees and charges through the end of the Service Contract Term specified in your Service Order, just like any other termination.
- 4. Phone Numbers and Service Discontinuance.** Upon expiration, cancellation or termination of the Hosted Telephony Services, you shall relinquish and discontinue use of any Numbers, and voice mail access Numbers assigned to you by Allegiant or its Third Party Providers.
- 5. Electronic Recording.** You acknowledge and understand that there are federal and state statutes governing the electronic recording of telephone conversations and that Allegiant will not be liable for any illegal use of such Services. Because circumstances vary widely, you should carefully review your own circumstances when deciding whether to use any recording features with the Hosted Telephony Services and it is your responsibility to determine if the electronic recordings are legal under the federal and state statutes. ALLEGIANT IS NOT RESPONSIBLE FOR ANY MISINTERPRETATION, LACK OF UNDERSTANDING OR LACK OF KNOWLEDGE REGARDING THE USE OF ELECTRONIC RECORDINGS BY YOU WHETHER LEGAL OR ILLEGAL.
- 6. Regulatory Recovery Fee & Toll Fees.**
 - 6.1. Regulatory Recovery Fees.** A Regulatory Recovery Fee ("Regulatory Recovery Fee") may be charged monthly to offset costs incurred by Allegiant in complying with inquiries and obligations imposed by federal, state and municipal regulatory bodies/governments and the related legal and billing expenses. This Fee is not a tax or charge required or assessed by any government. The Regulatory Recovery Fee will apply to every phone Number assigned, including toll free and virtual Numbers.
 - 6.2. Toll Fees.** Every call to or from Hardware using the Hosted Telephony Services that originates or terminates in the Public Switched Telephone Network ("PSTN"), including other VoIP networks, is subject to the then applicable toll charges that are associated with the Hosted Telephony Services ("Toll Fees"). Calls to a phone Number outside the United States and Canada to a non-Allegiant Number will be charged at the current rates applicable to such calls. The duration of each call is to be calculated in one minute increments and rounded up to the nearest one-minute increment for any fraction of minutes used. If the computed charge for a call includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. If the computed charges for taxes and surcharges include a fraction of a cent, the fraction is rounded up to the nearest whole cent. When you dial an International PSTN phone Number, charges may apply regardless of whether the party on the other line answers the call. Calls made by you to an International mobile, rather than landline, or premium rate telephone Number, may result in higher toll charges.
- 7. 911/E911 Emergency Services & Limitations.** The following terms and conditions apply to your use of 911/E911 emergency services ("911/E911 Emergency Services") with Allegiant's Hosted Telephony Services.
 - 7.1. 911/E911 Emergency Services & Limitations Overview.** You acknowledge and understand that the 911/E911 Emergency Services do not support traditional 911 and access to emergency service providers. The 911/E911 Emergency Services differs from traditional emergency 911 services that you receive from the telephone company in several important ways described below. You and any of your end users should maintain an alternative means of calling emergency 911 services. YOU BEAR SOLE RESPONSIBILITY FOR PROVIDING ANY EMERGENCY SERVICES TO YOUR END USERS AND FOR ANY COSTS ASSOCIATED WITH PROVIDING THESE SERVICES AND PAYMENT OF ANY GOVERNMENTAL FEES OR ASSESSMENTS RELATED TO THE 911/E911 EMERGENCY SERVICE OR ALTERNATIVE 911 SERVICES. NEITHER ALLEGIANT NOR ITS OFFICERS OR EMPLOYEES MAY BE HELD LIABLE FOR ANY CLAIM, DAMAGE, OR LOSS, AND YOU HEREBY SHALL INDEMNIFY ALLEGIANT AND WAIVE ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION, ARISING FROM OR RELATING TO THE 911/E911 EMERGENCY SERVICE.
 - 7.2. Number and Location.** Unlike traditional emergency 911 services, when you or your end users call 911 using the 911/E911 Emergency Service, the emergency personnel receiving the call may not be able to automatically identify the phone number or the physical address from which the call originates. You or your end users might need to tell the emergency personnel the nature of the emergency, give them the phone number, and describe the physical location. If the call is dropped for any reason, emergency personnel may not be able to call back or find the location.
 - 7.3. Incorrect Service Address.** If you register for the 911/E911 Emergency Service using an incorrect physical address, emergency calls may be routed to the incorrect emergency service provider. The emergency personnel may not be able to respond to the emergency, transfer the call to the geographically appropriate emergency center or otherwise provide assistance.
 - 7.4. Geographic Location.** Emergency service personnel cannot accurately track the location through our system and it is therefore important that the location registration remains updated. For example, if you live and use the 911/E911 Emergency Service with a telephone in Virginia where the area code is 703, but your assigned telephone number has an area code of 212, an area code associated with New York City, when you dial 911, you may not be able to reach any emergency personnel. Even if you do reach emergency personnel, you may not be calling the emergency personnel near your actual location (the Virginia caller may be calling emergency services located in New York) and the emergency personnel may not be able to transfer the call to respond to the emergency, or otherwise provide assistance.
 - 7.5. Change of Location.** It is important that the location of the 911/E911 Emergency Service is accurately registered every time the Hardware using the 911/E911 Emergency Service is moved. If the Hardware is moved to another location without reregistering, when a call is made to 911, the call may not reach any emergency personnel. Even if emergency personnel are reached, the call may not be completed to the emergency personnel near the actual location if the location has not been updated, and the emergency personnel may not be able to transfer the call, respond to the emergency, or otherwise provide assistance.
 - 7.6. Outages.** Outages in the electricity and problems with the connection, including network congestion, will disrupt the 911/E911 Emergency Service making emergency calling using the 911/E911 Emergency Service unavailable.
 - 7.7. Third Party Software.** The 911/E911 Emergency Service is not supported for use in conjunction with any Third Party Software unless Allegiant expressly states otherwise in writing.
 - 7.8. Mobile Devices.** Allegiant's Hosted Telephony Services are provided to mobile devices through the use of Third Party Software that is installed on each mobile device registered for the Hosted Telephony Services. The 911/E911 Emergency Services do not include the capability to automatically locate these mobile devices, and as a result, an emergency call may be delivered to an inappropriate emergency service responder or relay an incorrect location.
 - 7.9. Disconnection of the Service.** The 911/E911 Emergency Service will not work if the Hosted Telephony Services are disconnected. If a service outage occurs

due to a suspension of the Hosted Telephony Services, whether due to billing issues or for any other reason, the 911/E911 Emergency Service will not be available for making any emergency calls.

Article V: Colocation Services

- 1. Colocation Services.** These additional terms and conditions listed in this Article V, shall apply if Allegiant is providing you with Colocation Services at Allegiant's Data Center Site.
- 2. Limitation of Rights.** Allegiant grants a non-exclusive, revocable right to you to operate the Customer Colocation Hardware in the Colocation Space under the terms set forth herein. This right is subject and subordinate to Allegiant's lease of the Data Center Site containing the Colocation Space ("Data Center Lease"). Allegiant has no obligation to provide you with additional space or power other than as described in your Service Order. You further acknowledge that you have not been granted any real property interests.
- 3. Insurance.** You must provide Allegiant with an applicable insurance policy covering the Customer Colocation Hardware. You may satisfy the insurance requirements herein through qualified plans of self-insurance, providing Allegiant with reasonable evidence of such prior to using the Colocation Services and upon request thereafter. The minimum limits of required insurance in no way limits or diminishes your liability, and may be subject to increase if necessary for adequate protection. Within thirty (30) days of demand for such increased coverage, you must provide Allegiant with a Certificate of Insurance reflecting the increased coverage and other required insurance provisions. **IN NO EVENT SHALL ALLEGIANT BE HELD LIABLE FOR ANY DAMAGE TO, OR LOSS OF, THE CUSTOMER COLOCATION HARDWARE OR RESULTING BUSINESS INTERRUPTION, INCLUDING HARDWARE AND BUSINESS INTERRUPTION OF YOUR END USERS.**
- 4. Installation and Relocation of Customer Colocation Hardware.**
 - 4.1. Installation of the Customer Colocation Hardware.** Allegiant will prepare and install the Customer Colocation Hardware according to the specifications detailed in your Service Order.
 - 4.2. Customer Provided UPS.** You are not permitted to provide your own uninterruptable power supply ("UPS") for the Customer Colocation Hardware without Allegiant's prior written consent, which may be withheld at Allegiant's sole discretion. If Allegiant provides its consent, including without limitation approval of the Colocation Hardware, design and manner of installation. Allegiant shall have no responsibility for the operation or performance of the UPS Hardware. You shall be responsible, to the extent permitted by law, for any and all liabilities, claims, demands, costs, damages, fines, penalties or expenses arising from the operation, maintenance, or repair of your UPS or inverter hardware, including without limitation damage to the Colocation Space or the Data Center Site arising from such operation, maintenance or repair.
 - 4.3. Relocation of Customer Colocation Hardware.** Allegiant will not arbitrarily or capriciously relocate the Customer Colocation Hardware; however, upon thirty (30) days' prior written notice (or, in the event of an emergency, such notice as may be reasonable under the circumstances), Allegiant may be required to relocate the Customer Colocation Hardware. The relocation site must provide comparable environmental conditions and accessibility. The reasonable costs of relocating the Customer Colocation Hardware and of improving the relocation site will be at Allegiant's expense.
- 5. Power Consumption and Fees.**
 - 5.1. Power Consumption.** If your power consumption in Allegiant's reasonable opinion, creates an unsafe or hazardous environment (including threatening the safe, continued operation of any part of the Data Center Site), then Allegiant may immediately suspend power to the Customer Colocation Hardware until you have remedied the cause and has provided Allegiant with adequate assurance that such event will not recur. You shall remain responsible for all applicable Fees associated with the Customer Colocation Hardware during all periods that Allegiant has suspended power due to your violation of this Article V: Section 5.1. Any requests for additional power are subject to Allegiant's prior written approval, which may be conditioned at Allegiant's sole discretion.
 - 5.2. Power Rate Fees.** Power is charged on a breakered amp basis which includes the applicable power utility rate and associated support costs ("Power Rate Fees"). If the utility provider increases the costs for power to Allegiant's Data Center site, Allegiant may increase your Fees for the power, but only in an amount necessary to cover Allegiant's additional costs associated with providing the power to the Customer Colocation Hardware.
 - 5.3. Fee Suspension due to Damage to the Data Center Site.** If the Data Center Site or Colocation Space is damaged by fire or other casualty and is rendered unusable for the Customer Colocation Hardware, and neither the applicable landlord nor Allegiant terminate the underlying Data Center Lease, and Allegiant elects or is required to restore the Data Center Site to substantially the same condition it was in prior to the damage, the Fees for the Customer Colocation Hardware will proportionately abate, for the period from the occurrence of the damage to the date it is repaired.
- 6. Use of the Customer Colocation Hardware.** You may only use the Colocation Space for operating and maintaining the Customer Colocation Hardware in the Co-Location Space. You may not use the Colocation Space for any other purpose including any unlawful purposes. You may not use the Customer Colocation Hardware in the Colocation Space to connect with other telecommunications providers without the prior written consent of Allegiant, which consent may be withheld in Allegiant's sole discretion. If Allegiant provides its consent, you must utilize Allegiant as the underlying transport service provider from the Colocation Space to the other telecommunication provider's service location. You are not permitted to sublicense the Colocation Space or to resell or share power. You are required to establish, adhere to, and maintain full compliance with all EPA, OSHA, state, local and jurisdictional safety laws, requirements, regulations, codes, and ordinances. You are also required to comply with all policies and procedures applicable to Allegiant's Data Center Site. You may not ship the Customer Colocation Hardware directly to the Data Center Site without Allegiant's prior written consent. Allegiant is not responsible, and you expressly waive any and all claims, for any harm, damage or theft of the Customer Colocation Hardware that is shipped to the Data Center Site without Allegiant's express written consent.
- 7. Removal of Customer Colocation Hardware upon Termination.** Within fifteen (15) days following the end of the Service Contract Term specified in your Service Order, you must make arrangements with Allegiant to remove the Customer Colocation Hardware. You will reimburse Allegiant for the reasonable cost of performing this Service, including any shipping costs. If you do not make arrangements with Allegiant within fifteen (15) days following the end of a Service Contract Term, then you shall be deemed to have abandoned the Customer Colocation Hardware and its title shall pass to Allegiant under this Agreement as by a bill of sale, without any further notice to you. To the extent permitted by applicable law, you shall be responsible for the cost of removal, storage and disposal of such abandoned Customer Colocation Hardware as well as any damages caused by such removal. Allegiant shall not be liable to you for disposing of the abandoned Customer Colocation Hardware (including without limitation destruction) or for any proceeds resulting from any sale of the

abandoned Customer Colocation Hardware. Notwithstanding any other provision contained in this Agreement, Allegiant reserves the right and without any liability to you, to shut off the Customer Colocation Hardware and prevent your access or removal of the Customer Colocation Hardware in the event any past due amounts are owed to Allegiant for the Colocation Services.

Article VI: Maintenance & Support Services

- 1. Maintenance & Support Services.** These additional terms and conditions listed in this Article VI, shall apply if Allegiant is providing Maintenance and Support Services for the Customer Hardware independently or in conjunction with certain Services provided under this Agreement that are operating on the Customer Hardware.
- 2. Service Authorization.** Some warranties or service contracts for Third-Party Products may become void if Allegiant provides Maintenance and Support Services for Customer Hardware covered by such warranties and service contracts. ALLEGIANT SHALL NOT BE RESPONSIBLE FOR ANY EFFECT THAT THE MAINTENANCE AND SUPPORT SERVICES MAY HAVE ON THOSE WARRANTIES OR SERVICE CONTRACTS FOR CUSTOMER HARDWARE YOU AUTHORIZE ALLEGIANT TO WORK ON.
- 3. Maintenance & Support Exclusions.** Repairs made necessary to Customer Hardware due to the scenarios listed below, expressly fall outside the scope of this Agreement and shall be subject to additional charges at Allegiant's current standard rates for time and materials: Installation Services; Maintenance and Support Services for Customer Hardware not defined/outside the scope of your Service Order; Force Majeure events; the replacement cost of Customer Hardware; neglect, theft, misuse, loss or negligent damage of the Customer Hardware by you or your agents; any repair made necessary where Allegiant either orally or in writing indicated system failure was likely and imminent, and you made the determination not to act; use of the Customer Hardware in a manner that is inconsistent with the manufacturer intended purpose or is incompatible with their intended design; repairs made necessary by the unauthorized: tampering, maintenance, modification, or interference of the Customer Hardware by your agents, employees, or any third party contracted by you without the prior authorized written consent of Allegiant; and the failure of you to provide and maintain a suitable environment for the Customer Hardware with all facilities prescribed by the manufacturer including, but not limited to proper electrical power, ventilation, air conditioning, and humidity control.

Article VII: General Terms and Conditions

- 1. Termination and Breaches of this Agreement.**
 - 1.1. Material Breach.** If either party fails to perform or observe any material warranty, representation, term or condition of this Agreement, including non-payment of Fees, and such failure continues un-remedied for thirty (30) days after receipt of notice, the aggrieved party may terminate the affected Service Order or Service Orders and, if the breach materially and adversely affects the entire Agreement, terminate the entire Agreement.
 - 1.2. Bankruptcy.** Either party can promptly terminate this Agreement if the other party is: declared or becomes insolvent or bankrupt; if a petition is filed in any court to declare the other party bankrupt or for a reorganization under bankruptcy law or any similar statute and such petition is not dismissed in ninety (90) days; or if a trustee in bankruptcy or a receiver or similar entity is appointed for the other party.
 - 1.3. Termination or Suspension for Non-Payment.** Allegiant, without waiving any other rights or remedies and without liability to you, may suspend or terminate any or all Service Orders and refuse additional Service Orders until all overdue amounts are paid in full, provided that Allegiant has supplied you prior notice and thirty (30) days' opportunity to cure such deficiency. In addition, Allegiant shall have the right to immediately terminate a Service Order without notice and without liability on Allegiant's part if you fail on more than two (2) occasions to pay any Fee due under the affected Service Order within the time period specified.
 - 1.4. Fraud or Abuse.** Allegiant may suspend, terminate, withdraw or discontinue all or a part of an Service Order immediately and without liability on its part by providing you with such advance notice as is reasonably practicable under the circumstances, when Allegiant reasonably believes: any part of the Service Order is prohibited by Law; you are involved in fraudulent or illegal activity; you are in violation of the terms of this Agreement and such violation may: expose Allegiant to sanctions, liability, prosecution or other adverse consequences under applicable Law if Allegiant were to allow the violation to continue; harm or interfere with the integrity, normal operations or security of Allegiant's network or networks with which Allegiant is interconnected; or otherwise presents an imminent risk of harm to Allegiant, Allegiant's customers or its respective employees.
 - 1.5. Termination by Customer.** You agree to provide Allegiant with thirty (30) days' notice of termination. You shall be responsible for the full amount of the Fees for the month during which the notice of termination of Service is provided to Allegiant. In accordance with Article VII: Section 1.6 below, termination Fees may apply.
 - 1.6. Termination Fees.** If Allegiant terminates a Service Order for cause in accordance with this Agreement following a breach by you of this Agreement or you fail to give sufficient notice of termination in accordance with the terms of this Agreement and/or your Service Order. You shall be liable and will pay any termination or cancellation fees set out in your Service Order, or in the absence of such specified charges, the early termination liability is 100% of the Fees due for remaining Service Contract Term of your Service Order. You shall also be responsible for reimbursing Allegiant for any Installation Fees for prior work Allegiant has performed and any third party charges resulting from the termination ("Termination Fees").
 - 1.7. Survival.** The provisions of Article VII: Section 1, Article VII: Section 4, Article VII: Section 5 (including all Articles and Sections referenced therein), Article VII: Section 19, and any provisions related to the payment obligations of the parties, will survive the termination of this Agreement and shall continue in full force and effect. Termination or suspension of a Service Order by either party does not waive any other rights or remedies a party may have under this Agreement and will not affect the rights and obligations of the parties regarding any other Service Order.
- 2. Representations and Warranties of the Parties.** Each party hereby represents, warrants and covenants: that It is duly organized, validly existing and in good standing; It has the requisite power and authority, to execute and perform its obligations under this Agreement; It exists under the laws of its own jurisdiction and is not under any contractual obligation that would preclude it from entering into this Agreement; it shall at all times maintain all registrations and comply with all applicable Laws as may be necessary to perform its obligations under this Agreement; It will adhere to the terms and conditions of this Agreement.
- 3. Third Party Products.** All Third Party Products are sold by Allegiant "as is." Allegiant makes no independent representations, warranties or covenants with respect to the Third Party Products supplied under this Agreement. You chose any/all Third Party Providers based on your judgment. You may contact us or the Third Party Provider for a statement of the warranties, if any, that the Third Party Provider is providing. We assign to you any warranties given to us. Any

Third Party Provider warranties are the exclusive remedies of you with respect to such Third Party Products. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ALLEGIANT HAS NO DEFENSE, SETTLEMENT, INDEMNIFICATION OR OTHER OBLIGATION OR LIABILITY ARISING FROM THE ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY BASED ON HARDWARE, SOFTWARE AND SERVICES NOT MANUFACTURED OR CREATED BY ALLEGIANT.

4. Disclaimer of Warranties & Limitations of Liability. In addition to the disclaimer of warranties and limitations provided elsewhere in this Agreement, the following terms and conditions shall apply.

- 4.1. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALLEGIANT SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING AND MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE SERVICES, INCLUDING BUT NOT LIMITED TO: ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; FOR THE PERFORMANCE OF OR RESULTS TO BE OBTAINED FROM YOUR USE OF THE SERVICES; THAT THE SERVICES WILL OPERATE OR BE PROVIDED WITHOUT INTERRUPTION OR ERROR; FURTHER, ALLEGIANT MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT ALLEGIANT'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S OR ITS END USER'S DATA AND INFORMATION.
- 4.2. **Disclaimer of Liability.** IN NO CIRCUMSTANCES SHALL ALLEGIANT BE LIABLE FOR: INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF ANTICIPATED SAVINGS, LOSS OR CORRUPTED DATA, COST OF CAPITAL, HOWEVER CAUSED, EVEN IF SUCH DAMAGES WERE FORESEEABLE AND THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOR SHALL ALLEGIANT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, HARDWARE, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS; UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S OR ITS END USER'S (OR THEIR AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS; THE OCCURRENCE OF TOLL FRAUD; OR THE UNAUTHORIZED USE OF VOICE PROCESSORS AND VOICE MAIL SYSTEMS.
- 4.3. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN THE EVENT ALLEGIANT IS FOUND LIABLE FOR ANY BREACH UNDER THIS AGREEMENT, ALLEGIANT'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED: THE TOTAL FEES ACTUALLY PAID BY CUSTOMER TO ALLEGIANT DURING THE PRIOR THREE (3) MONTHS FROM THE DATE IN WHICH THE SPECIFIC SERVICE OR SERVICES GAVE RISE TO SUCH CLAIMS.
- 4.4. **Application.** THE LIMITATIONS SET FORTH IN THIS ARTICLE VII: SECTION 4 AND THE LIMITATIONS SET ELSEWHERE IN THIS AGREEMENT, APPLY TO ANY CLAIMS AND CAUSES OF ACTION WHATSOEVER, REGARDLESS OF THE FORMS OF THE ACTIONS, AND WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY.

5. Indemnification.

- 5.1. **Customer Indemnification Obligations.** You will indemnify defend and hold harmless Allegiant and its affiliates, owners, officers, directors, employees, from any and all third party actions (including claims by your end users or their affiliates), liability, damages, costs and expenses: due to a breach by you of Article III: Section 3, Article VII: Section 2, Article VII: Section 6, Article VII: Section 7, Article VII: Section 8, Article VII, Section 9; arising from, relating to, or is covered by: Article IV: Section 5, Article IV: Section 7, Article V: Section 2, Article V: Section 3, Article V: Section 7, Article VI: Section 2, Article VII: Section 3; or otherwise arising from or relating to: any failure, breakdown, interruption or deterioration of the Services; the contents of the Customer Content; modifications to the Services by you, your end users, or a third party without Allegiant's express written consent; your violation of any Third Party End User License Agreements governing Software furnished in connection with the Services; or otherwise resulting from your use of the Services in violation of this Agreement.
- 5.2. **Allegiant Indemnification Obligations.** Allegiant will indemnify defend and hold harmless you and your affiliates, owners, officers, directors, employees, from any and all third party actions, liability, damages, costs and expenses: Article VII: Section 2, Article VII: Section 6, Article VII: Section 7, Article VII: Section 8, Article VII, Section 9; for a claim alleging that a Service provided to you under this Agreement infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from the exemptions listed above in Article VII: Section 5.1. or from the combination of the Services with any non-Allegiant Services, and in such circumstances, Allegiant shall either procure the right for you to continue using the infringing Service(s), or replace or modify the Services so that they are non-infringing.
- 5.3. Each party's indemnity obligations under this Article VII: Section 5, are contingent on the other party promptly notifying the other party (the "Indemnitor") in writing of any claim or threat thereof, promptly tendering to the Indemnitor sole control of the defense and any settlement of such claim, and providing to Indemnitor (at Indemnitor's cost) any assistance necessary to such defense or settlement. The Indemnitor will not be responsible for any settlement it does not approve in writing.
- 5.4. This Article VII: Section 5, sets forth both party's entire liability in regards to the indemnity obligations contained herein.

6. Confidentiality.

- 6.1. Each party agrees: to keep confidential all the other party's Confidential Information (whether written or oral) which it has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance or during the term of, this Agreement; not to disclose the other party's Confidential Information in whole or in part to any third party without the disclosing party's written consent, save to those of its employees, agents and contractors involved in the implementation of this Agreement and who have a need to know the same and are bound to keep if confidential; to use the other party's Confidential Information solely in connection with the performance of the Agreement and not otherwise or for the benefit of any other third party.
- 6.2. The provisions of this Article VII: Section 6, shall not apply to the whole or any part of Confidential Information which is: lawfully obtained free of any duty of confidentiality otherwise than directly or indirectly from the disclosing party; already in a party's possession other than as a result of a breach of this Article VII: Section 6; in the public domain (other than as a result of a breach of this Article VII: Section 6); or necessarily disclosed pursuant to a statutory obligation

- 6.3. Each party, upon the request of the other, shall: return all of the other party's Confidential Information and copies in its possession to the other party, or destroy such Confidential Information and copies as directed by the other party and provide to such party a certificate of an officer of the party certifying such destruction.
- 6.4. Each party further acknowledges and agrees that: the restrictions set forth in this Article VII: Section 6, are reasonable in the circumstances; a violation of any of the provisions of this Article VII: Section 6 shall result in immediate and irreparable harm and damage to the Disclosing Party; and In the event of any violation of any provision of this Article VII: Section 6, the Disclosing Party shall, in addition to any other right to relief, shall be entitled to equitable relief by way of temporary or permanent injunction and to such other relief as any court of competent jurisdiction may deem just and proper.
- 7. Proprietary Rights.** Nothing in this Agreement shall be construed to give any ownership interest in or constitute an assignment or transfer of any such intellectual Property of the other party.
- 8. Real Property.** This Agreement is not intended to and does not grant a lease or license over any real or personal property of Allegiant or its Third Party Providers. In particular, you acknowledge and agree that you have not been granted any real property interest in the MSP Hardware, Allegiant's Data Center Site or Allegiant's other premises, and you have no rights as a tenant or otherwise under any real property or landlord/tenant/tenant laws, or regulations.
- 9. Mutual Non-Solicitation.** No party shall solicit for employment any employee of the other party during the term of this Agreement and for a period of (2) years following its expiration or termination. Any breach of this Article VII: Section 9, by either party without express written consent of the non-breaching party will result in recovery of any and all training fees, recruiting fees, and an amount equal to two times the individuals' current salary at the time of the breach.
- 10. Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business.
- 11. Import/Export Control.** Neither party will use, distribute, transfer or transmit any Hardware, Software, Services or technical information provided under this Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.
- 12. Trademarks.** Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.
- 13. Independent Contractor.** The parties are independent contractors. Neither party will have any rights, power or authority to act or create an obligation on behalf of the other party except as specified in this Agreement. Neither party's employees, agents, nor consultants shall be considered under any circumstances to be employees of the other party.
- 14. Force Majeure.** Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies or other causes beyond such party's reasonable control.
- 15. Amendments and Waivers.** Any supplement to or modification of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. The failure by either party to exercise or enforce any right conferred by the Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of any such right on any later occasion.
- 16. Assignment and Subcontracting.** Allegiant has the right to assign, subcontract, or delegate in whole or in part this Agreement, or any of its rights, duties, obligations or liabilities provided that if it subcontracts its duties, Allegiant shall remain responsible for the performance of such obligations under this Agreement. You may not assign this Agreement without Allegiant's permission.
- 17. Severability.** If any portion of this Agreement is found to be invalid or unenforceable or if applicable Law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.
- 18. Injunctive Relief.** Nothing in this Agreement is intended to or should be construed to prohibit a party from seeking preliminary or permanent injunctive relief in appropriate circumstances from a court of competent jurisdiction.
- 19. Legal Action.** Any legal action arising in connection with this Agreement must be filed within one (1) year after the cause of action accrues, or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary. In the event of any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover reasonable attorneys' Fees incurred in connection with any court proceeding.
- 20. Counterparts/Facsimile.** This Agreement may be executed by the parties in one or more counterparts, each of which will be considered one and the same agreement, and will become effective when one or more counterparts have been signed by each party and delivered to the other party. This Agreement may be delivered by facsimile, email or other functionally equivalent electronic means of transmission agreed upon in writing by the parties.
- 21. Notices.** Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient set forth on the cover page of this Agreement or to such other office or recipient as designated in writing from time to time.
- 22. Governing Law/Jurisdiction.** This Agreement shall be enforced subject to the laws of the State of Kansas. Both parties agree that any dispute relating to this Agreement shall be subject to a Kansas Court of appropriate jurisdiction for resolution.
- 23. Modifications.** Any modifications to this Agreement must be made in writing and signed by authorized representatives of both parties to this Agreement hereto.
- 24. No Third Party Beneficiaries.** This Agreement is for the benefit of Allegiant and Customer and does not provide any third party (including users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.

25. Headings. The headings in this Agreement are for convenience only and shall not in any way affect the interpretation or enforceability of this Agreement.

26. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and all oral or written agreements relating to the same subject matter and existing prior to the date of the Agreement are expressly cancelled. Except as otherwise stated in this Agreement, this Agreement supersedes all other agreements, proposals, representations, statements and understandings, whether written or oral, concerning the Services or the rights and obligations relating to the Services, and the parties disclaim any reliance thereon.