

# SMB MASTER SERVICE AGREEMENT

This small and medium-sized business (“SMB”) Master Service Agreement (“MSA”) is made effective \_\_\_\_\_, 20\_\_ (“Effective Date”) by and between Wyverd Group, LLC, and its affiliates and subsidiaries, with an address of 1601 29<sup>th</sup> St Suite 1292-PMB1042 Boulder, CO 80301 (“Wyverd”) and \_\_\_\_\_, a corporation or limited liability company with an address of \_\_\_\_\_ (“Customer”). Each may be referred to herein as a “Party” and collectively as the “Parties.” This MSA and any Service Orders may be referred to as the “Agreement” herein.

## ARTICLE 1 - GENERAL

1.1 Structure. The purpose of this MSA is to provide general terms, conditions and a framework within which Customer may from time to time purchase certain telecommunications and related services (“Services”) from Wyverd for its use. Additional terms and conditions that apply to each type of Service are set forth in service order (each a “Service Order”). In the event of an express conflict between a term(s) of this MSA and the term(s) of any and/or Service Order, precedence will be given in the following order: (a) this MSA then (b) the Service Order. By using the Services, you agree to abide by, and require others using the Services to abide by, this Agreement and all of the documents referenced herein.

1.2 Service Orders. Customer may request Wyverd to provide a Service by submitting a Service Order in a form provided by Wyverd from time to time in accordance this Agreement. Customer acknowledges and agrees that Customer is solely responsible for the accuracy of all Service Orders and other information that it provides to Wyverd. Each Service Order must be accepted by Wyverd and shall be subject to this MSA.

## ARTICLE 2 - TERM

MSA and Service Order Term. This MSA shall be in effect for a period of three (3) years from the Effective Date (“Initial Term”) unless terminated earlier as otherwise provided for in this MSA, and shall automatically renew for one (1) year periods thereafter (each a “Renewal Term” and together with the Initial Term, shall be referred to as the “Term”) until either Party notifies the other Party of its intent not to renew the MSA at least ninety (90) days prior to the end of the Initial Term or any Renewal Term. Notwithstanding the foregoing, in the event that any Service Order remains in effect following such termination, this MSA shall govern and continue in effect with regard to such Service Order until the termination of such Service Order. The term of each Service Order shall commence on the Service Activation Date for such Service and continue for the period of time specified in that Service Order and thereafter, the Service Order shall automatically renew for one (1) year periods (collectively, the “Service Term”). Following the initial Service Term stated in any Service Order, Wyverd reserves the right to increase rates for any Services provided thereunder upon at least thirty (30) days’ notice.

## ARTICLE 3 - PAYMENT TERMS

3.1 Invoicing and Payment Terms. Wyverd may commence billing and Customer shall be liable for payment for Services upon the Service Activation Date as defined in the applicable Service Order. Wyverd will provide Customer with a monthly invoice, in advance, for the Services together with all other charges due. All amounts due Wyverd are payable in full within thirty (30) days from date of invoice (“Due Date”). Invoice amounts not paid on or before the Due Date shall bear interest at the rate of one and one-half percent (1.5%) per month or the highest lawful rate, whichever is lower. Unless otherwise stated in the Service Order, Wyverd shall invoice Customer for any NRC upon acceptance of a Service Order.

3.2 Invoice Disputes and Credit/Deposits. To the extent that Customer disputes any portion of an invoice, Customer shall notify Wyverd in writing and provide detailed documentation supporting its dispute within sixty (60) days of the invoice date or the Customer’s right to any billing adjustment shall be waived. In the event of a billing dispute, Customer shall timely pay all undisputed amounts. If requested by Wyverd, Customer shall complete and submit Wyverd’s standard credit application. Wyverd may from time to time conduct a review of Customer’s credit rating and payment history. Wyverd may require Customer to pay a deposit before acceptance of a Service Order.

3.3 Early Termination Liability. If any Service is terminated at any time after the start of Service but prior to the expiration of the Term provided herein or on an applicable Service Order, Wyverd shall be entitled to recover from Customer any pro rata non-recurring charges (i.e. installation, sign-up charges, etc.) conditionally waived by Wyverd as noted on the Service Order and the total monthly recurring charges for the unexpired portion of the Service Term.

3.4 Upgrades and Downgrades. Customer may upgrade its Service at any time. If Customer does upgrade the Service, then Customer agrees to pay the applicable (new) monthly recurring charges for the upgraded Service. Customer may downgrade the Service if agreed to in writing by Wyverd. If Customer does downgrade the Service, the Customer agrees to sign a new Service Order for the downgraded Services and agrees to pay any waived non-recurring charges as noted on the Service Order.

## ARTICLE 4 - DEFAULT; SUSPENSION OF SERVICE

Customer Default. Customer is in default of this MSA if Customer (a) fails to cure any monetary breach within ten (10) days of receiving notice of the breach from Wyverd; (b) fails to cure any non-monetary breach of any terms of the agreement within thirty (30) days of receiving notice of the breach from Wyverd; or (c) files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law (each such event shall be a “Customer Default”). In the event of a Customer Default, Wyverd may suspend all Services to Customer until Customer remedies the Customer Default, or Wyverd may terminate this MSA and/or any or all of the Services being provided hereunder. These remedies are in addition to and not a substitute for all other remedies contained in this MSA or available to Wyverd at law or in equity.

## ARTICLE 5 – TAXES AND OTHER FEES AND SURCHARGES

All charges for the Services are exclusive of any taxes and other fees and surcharges (as defined below). Except for taxes based on Wyverd's net income, Customer shall be responsible for payment of all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, and bypass ("Taxes"). Customer shall also be responsible for any property tax surcharges, additional government fees (including without limitation Federal and State regulatory fees), franchise fees, rights of way fees or charges, license or permit fees, and any other duties, fees, charges or surcharges imposed on incident to, or based upon the provision, sale, or use of the Services ("Other Fees and Surcharges"). If applicable to the Services being purchased by Customer, such Other Fees and Surcharges will be listed on Customer's Invoice.

#### **ARTICLE 6 - LIMITATION OF LIABILITY**

6.1 General Limitations. To the extent allowed by law, Wyverd shall enjoy any statutory protections granted to utility providers, and shall not be liable for injury to or death of any person and for damage to or loss of any property arising out of or attributable to its operations and performance under this Agreement. Wyverd's total liability for any and all causes and claims whether based in contract, warranty, negligence or otherwise shall be limited to the lesser of (i) the actual direct damages sustained by Customer; or (ii) an amount equivalent to the total MRC received by Wyverd from Customer over the preceding six (6) months for the Service affected. Excluding payments due by Customer, no cause of action which accrued more than one (1) year prior to the filing of a complaint alleging such cause of action may be asserted by either Party against the other Party. Wyverd is not responsible for the content of any information transmitted or received through the Services.

6.2 Special Damages. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH BELOW IN ARTICLE 7 AND EXCEPT FOR CLAIMS ARISING FROM A PARTY'S INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, INCURRED OR SUFFERED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, WYVERD MAKES NO WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OF THE SERVICE, LOCAL ACCESS OR ANY OTHER MATTER, AND ANY SUCH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

#### **ARTICLE 7 - INDEMNIFICATION**

Each Party shall indemnify, defend and hold harmless ("Indemnifying Party") the other Party, its directors, officers, employees, and agents, successors and assigns ("Indemnified Party"), from all damages, costs, expenses and liabilities, including reasonable attorney's fees and disbursements, sustained in any action commenced by any third party in connection with the Indemnifying Party's performance of, or failure to perform, its obligations and duties under this Agreement except for those damages, costs, expenses and liabilities arising from the negligence or willful misconduct of the Indemnified Party.

#### **ARTICLE 8 - FORCE MAJEURE**

Neither Party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including, but not limited to, acts of third parties not under the direction or actual control of the Party delayed or unable to perform, acts of God, fire, explosion, vandalism, cable cut, flood, storm, or other similar catastrophe, any law, order, regulation, direction, action or request of the government, or any department, agency, commission, court, or bureau of a government, or any civil or military authority, national emergency, insurrection, riot, war, strike, lockout, or work stoppage (each, a "Force Majeure Event"). The Party claiming relief under this Section shall notify the other Party of the occurrence or existence of the Force Majeure Event and of the termination of such event.

#### **ARTICLE 9 - CONFIDENTIALITY**

Confidential Information shall mean all information, including this Agreement, regarding the telecommunications needs of Customer and the Services that Wyverd offers under this Agreement which is disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party"), to the extent that such information is marked or identified as confidential or proprietary. Notwithstanding the foregoing, all written or oral pricing and contract proposals exchanged between the Parties shall be deemed Confidential Information, whether or not so designated. A Receiving Party shall hold all Confidential Information in confidence from the time of disclosure until three (3) years following its disclosure. During that period, the Receiving Party: (a) shall use such Confidential Information only for the purposes of performing its obligations under this Agreement; (b) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in this Agreement or as required by law; and (c) shall use at least the same degree of care as it uses with regard to its own proprietary or confidential information to prevent the disclosure. In the event that the Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, the Receiving Party will promptly notify the Disclosing Party of the required disclosure. The fact that Customer is a customer of Wyverd shall not be deemed Confidential Information and Wyverd may disclose the same without liability therefor.

#### **ARTICLE 10 - MISCELLANEOUS PROVISIONS**

10.1 Subject to Laws. This Agreement is subject to all applicable federal, state and local laws, and regulations, rulings and orders of governmental agencies, Wyverd's applicable tariffs, if any, and the obtaining and continuance of any required approval or authorization of the FCC or any governmental body. Either Party may terminate its obligations under this Agreement and/or a Service Schedule and/or a Service Order without liability if ordered to do so by the final order or ruling of a court or other governmental agency or if such order or ruling would make it impossible for either Party to carry out its obligations under this Agreement.

10.2 Governing Law and Prevailing Party. This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by the laws of the State of Colorado. In the event that suit is brought or an attorney is retained by either party to enforce the terms of this Agreement or to collect any money as due hereunder or to collect any money damages for breach hereof, the prevailing

party shall be entitled to recover, in addition to any other remedy, the reimbursement of reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

10.3 Assignment; Binding Effect. Customer shall not transfer or assign, voluntarily or by operation of law, its obligations under this Agreement without the prior written consent of Wyverd. This MSA shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Each of the undersigned hereby state that he/she has full authority to enter into this MSA and hereby accepts this MSA on behalf of the companies identified below.

10.4 Notices. Notices under this MSA shall be in writing and delivered by certified mail, return receipt requested, or by nationally recognized courier to the persons whose names and business addresses appear below, and such notice shall be effective on the date of receipt, or refusal of delivery, by the receiving Party.

If to Wyverd: Wyverd Group, LLC	If to Customer:
Attn: Legal and Accounts Receivable	Attn:
1601 29 <sup>th</sup> St Suite 1292-PMB1042	Address:
Boulder, CO 80301	Address:

10.5 No Third Party Beneficiaries. The representations, warranties, covenants and agreements of the Parties set forth herein are not intended for, nor shall they be for the benefit of or enforceable by, any third party or person not a Party hereto, including without limitation, End User Customers.

10.6 Entire Agreement. This Agreement constitutes the entire understanding between the Parties relating to the rights, duties and obligations granted and assumed herein. Any prior agreements, promises, negotiations or representations regarding the subject matter hereof are of no force or effect. This MSA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.7 Standard Installation for Voice Services and ICB Solutions.

10.7.1 Wyverd's standard installation for voice services will include (i) outside installation and connection, (ii) modem or dial-up equipment integration (gates, keypads, etc), (iii) inside wiring set-up for up to three (3) lines (and support analog devices up to two (2) lines), (iv) phones installed and connected to the network and functionality tested, and (v) voice services education which includes phone functionality, call park, transferring, soft-phone (if applicable) and customer portal use.

10.7.2 Any Wyverd voice services installation that involves additional efforts (not covered in 10.7.1 above) will be handled on an individual case basis ("ICB") and addressed in the applicable Service Order.

10.7.3 Inside Wiring supporting Wyverd's Voice Services. Customer will be responsible for providing any fiber optic cable or other inside wiring required for local networking purposes within Customer's premises ("Inside Wiring"), including any fiber optic cable or other inside wiring between Wyverd's network termination interface at Customer's premises and the [INSERT] equipment that will be located at Customer's premises. In most cases, the Inside Wiring will already be present in Customer's existing locations, however Customer will be responsible for providing any additional Inside Wiring which may be required. If additional Inside Wiring is required, Customer may have the option of ordering Inside Wiring from Wyverd or installing Customer owned Inside Wiring. If Customer elects to install Customer owned Inside Wiring, the Inside Wiring must be installed and available for use by Wyverd's technicians at the time of installation of Wyverd's services. If Customer elects to order Inside Wiring from Wyverd, the Inside Wiring Wyverd installs shall remain Wyverd property.

10.8 Voice Products and Equipment Rental.

10.8.1 Wyverd Equipment. Wyverd will install equipment in and around Customer's premises. This equipment may include, but is not limited to, an Optical Network Terminal ("ONT"), remote controls, and cabling (collectively the "Equipment"). Unless Customer purchases the Equipment, the Equipment is and shall remain Wyverd property. Customer agree that Customer will not move any of the Equipment to another location outside Customer's premises either temporarily or permanently. Customer is responsible for the reasonable care of the Equipment located at Customer's premises. Customer agrees not to modify the Equipment in any way. If any of the Equipment is damaged, modified, lost, destroyed, tampered with, or stolen while in Customer's possession, Customer will be responsible for the reasonable cost of repair or replacement of the affected Equipment. When Customer ceases being a customer or moves from Customer's current premises, Customer is responsible for returning the Equipment to us, with the exclusion of any wiring or Equipment located outside Customer's premises, and obtaining a signed receipt from Wyverd.

10.8.2 Leased Equipment. Customers who wish to lease equipment from Wyverd may do so at agreed upon lease terms based on the Wyverd service(s) and device(s) selected. Such lease terms will be addressed in the applicable Service Order. Equipment will be eligible to upgrade to a comparable device at 48 months. Customer is responsible for returning all leased equipment if they decide to cancel their Wyverd service(s). A penalty for leased equipment not returned within 30 days of cancellation will result in Customer being responsible for the total replacement cost of the device(s). Customer will be responsible for any damage to the device(s) outside of the manufacturer's warranty and other than normal wear and tear, and will result in Customer being responsible for the total replacement cost of the device(s). Wyverd will process any equipment warranty or exchanges on behalf of the Customer through our third-party distributor. Wyverd will support and troubleshoot hardware issues on equipment that is directly leased from Wyverd.