



Last Update: *October 6, 2020*

Master Services Agreement

This Master Services Agreement, together with any and all Order Forms, Statements of Work, Exhibits and Addenda issued hereunder, which are hereby incorporated by reference (collectively, the "Agreement"). The Agreement represents the full legal agreement between the customer (hereinafter "Customer" or "you") set forth on the applicable Order Form and Gryphon Networks, Corp. ("Gryphon") governing Customer's access and use of the Services as defined herein. Gryphon and Customer may be referred to herein individually as a "Party" or collectively as the "Parties".

By executing an Order Form that references this Agreement, you agree to the terms, conditions and obligations of this Agreement. This Agreement is effective as of that date that you, as the Customer, accept it in accordance with the terms herein ("Effective Date"). If you are entering into this Agreement on behalf of a company or other legal entity, including an Affiliate, you represent that you have the authority to bind such entity to this Agreement. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this Agreement and may not use Gryphon's Service.

Gryphon reserves the right, in its sole discretion, to modify or replace any part of this Agreement by (a) posting the revised terms on Gryphon's website *and/or* (b) announcing the change(s) to Gryphon's customer base, which may be accomplished via generally distributed notice (including by electronic mail). Any such changes or modifications to the terms shall take effect thirty (30) days after they are updated on Gryphon's website or notice is sent. Gryphon will update the 'Last Update' date at the top of the Agreement, which will reflect the date the revised terms were posted on the Gryphon website.

Customer and Gryphon hereby agree as follows:

1. Definitions.

1.1. "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the Customer entity signing this Agreement. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2. "Free Trial Service" means any Gryphon service or functionality that may be made available by Gryphon to Customer to try at Customer's option, at no additional charge, and which is clearly designated as "proof of concept," "POC," "trial," "pilot," "free trial," "evaluation," or by a similar designation.

1.3. "Customer" means the individual or entity, including Affiliates of such entity, engaging Gryphon to perform the Services specified in this Agreement and any Order Form referencing this Agreement

1.4. "Customer Data" means all electronic data submitted by or on behalf of Customer to the Service.

1.5. "Documentation" means Gryphon's user guides and other end user documentation for the Service available either online or as provided by a Gryphon representative or authorized third-party, as may be updated by Gryphon from time to time including without limitation the materials available at www.gryphonnetworks.com.

1.6. "Non-Gryphon Application" means a web-based, offline, mobile, or other software application functionality that is provided by Customer or a third party and interoperates with a Service.

1.7. "Order Form" means an ordering document that specifies the Service, Training Services, Support Services, and/or Professional Services purchased by Customer under this Agreement that is entered into by Customer (or any Affiliate) and Gryphon (or any Affiliate). Order Forms shall be subject solely to and incorporate by reference the terms

of this Agreement. By executing an Order Form hereunder, Customer and/or its Affiliate(s) agree(s) to be bound by the terms of this Agreement.

1.8. “Professional Services” means implementation, modification and/or configuration services provided by Gryphon in connection with the Service, as described more fully in a Statement of Work. Professional Services shall not include the Service.

1.9. “Service” means the products and services purchased by Customer and provided by Gryphon, as specified on an Order Form. “Service” excludes the Professional Services, Free Trial Service, and Non-Gryphon Applications.

1.10. “Statement of Work” or “SOW” means a document that describes certain Professional Services provided by Gryphon and purchased by Customer under this Agreement. Each Statement of Work shall incorporate this Agreement by reference.

1.11. “Support Services” means the support services provided by Gryphon in accordance with Gryphon’s then-current support policy as specified in Exhibit A, Implementation and Support.

1.12. “Telemarketing Compliance” means the following Gryphon telemarketing compliance offerings: (i) Gryphon One with Compliance and/or (ii) Gryphon Lite. See Section 2.5 and Section 6.1(b) for additional terms, conditions, and obligations applicable to Gryphon’s Telemarketing Compliance Services.

1.13. “Training Services” means the education and training services provided by Gryphon as described more fully in an applicable Order Form.

1.14. “Term” and “Renewal Term” have the meaning set forth in Section 11.1.

1.15. “Users” means individuals who are authorized by Customer to use the Service, for whom a subscription to the Service has been procured. Users may include, for example, Customer’s and Customer’s Affiliates’ employees, consultants, clients, external users, contractors, agents, and third parties with which Customer does business.

2. Free Trials, Service, Professional Services, and Training Services.

2.1. Free Trials. If Customer registers for a Free Trial Service on Gryphon’s website, Gryphon will make such Free Trial Service available to Customer on a trial basis, free of charge, until the earlier of (a) the end of the free trial period for which Customer registered to use the applicable Free Trial Service(s), or (b) the start date of any Service subscription purchased by you for such Service(s). Notwithstanding anything to the contrary in this Agreement, during the free trial, the Free Trial Service is provided “as-is” without any representation or warranty.

2.2. Gryphon’s Obligations. Gryphon shall make the Service available to Customer pursuant to this Agreement and all Order Forms during the Term, and grants to Customer a limited, non-sublicensable, non-exclusive, non-transferable right during the Term to allow its Users to access and use the Service in accordance with the Documentation, solely for Customer’s business purposes. During the Term, the functionality of the Service will not materially decrease. Customer agrees that its purchase of the Service or the Professional Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Gryphon with respect to future functionality or features.

2.3. Customer’s Obligations. Customer is responsible for all activities conducted under it and its Users’ logins on the Service. Customer shall use the Service in compliance with applicable law and shall not: (i) copy, rent, sell, lease, distribute, pledge, assign, or otherwise transfer, or encumber rights to the Service, or any part thereof, or make it available to anyone other than its Users; (ii) send or store in the Service any personal health data, credit card data, personal financial data or other such sensitive data which may be, without limitation, subject to the Health Insurance Portability and Accountability Act, Gramm-Leach-Bliley Act, or the Payment Card Industry Data Security Standards; (iii) send or store infringing or unlawful material in connection with the Service; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs to the Service; (v) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Service or the data contained therein; (vi) modify, copy or create derivative works based on the Service, or any portion thereof; (vii) access the Service for the purpose of building a competitive product or service or copying its features or user interface; or (viii) delete, alter, add to or fail to reproduce in and on the Service the name of Gryphon and any copyright or other notices appearing in or on the Service or which may be required by Gryphon at any time.

Any use of the Service in breach of this Agreement, Documentation or Order Forms, by Customer or its Users that in Gryphon's judgment threatens the security, integrity or availability of the Service, may result in Gryphon's immediate suspension of the Service; however, Gryphon will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.

2.4. Professional Services; Training Services. Customer and Gryphon may enter into a Statements of Work that describe the specific Professional Services to be performed by Gryphon. Gryphon shall provide any Training Services in accordance with Gryphon's then-current Training Services terms. If applicable, while on Customer premises for Professional Services or Training Services, Gryphon personnel shall comply with reasonable Customer rules and regulations regarding safety, security, and conduct made known to Gryphon, and will at Customer's request promptly remove from the project any Gryphon personnel not following such rules and regulations.

2.5. Telemarketing Compliance Services. If Customer engages Gryphon to provide Telemarketing Compliance Services, Customer will at all times remain in compliance with laws requiring Customer to register for, acquire or purchase federal, state and private do-not-call or other do-not-contact lists or data. Customer shall provide Gryphon its federally assigned Subscription Account Number (SAN) associated with Customer's subscription to the U.S. National Do Not Call Registry and, if applicable, the Canadian National Do Not Call List. Customer shall also provide Gryphon with confirmation information associated with Customer's purchase of state do-not-call lists and any similar privately maintained lists upon request. Customer and authorized Users shall not utilize Gryphon's Services to attempt to contact a telephone number associated with any U.S. or foreign jurisdiction for which Customer has not purchased private, state or National Do Not Call Registry contact data. Customer and authorized Users shall not use Gryphon Services to: (i) place calls to jurisdictions outside the U.S or Canada, (ii) transmit false, defective or misleading caller ID information, or (iii) place any prerecorded or automated voice telephone calls. Customer will defend, indemnify and hold Gryphon, its affiliates, directors, employees and agents and their successors and assigns harmless from any liability, claim, demand, suit or action to the extent that it is based on Customer's failure to fulfill its obligations under this Section 2.5. Customer understands and acknowledges Gryphon obtains or may obtain do-not-call, do-not-email, do-not-text, do-not-mail, do-not-fax, wireless telephone number, and business telephone number data and lists from government bodies, private sources and Customer. Gryphon does not own or control the data and information it is provided by such sources and bears no responsibility for any deficiencies or inaccuracies contained in such data at the time it is provided to Gryphon. Service output reflects such do-not-contact data, Customer Data and legal requirements existing at the time of Service utilization by Customer. Service output used at a later time or date may not reflect do-not-contact data or legal requirements at such later time or date.

2.6. Customer Affiliates. Customer Affiliates may purchase and use Service subscription and Professional Services subject to the terms of this Agreement by executing Order Forms or Statements of Work hereunder that incorporate by reference the terms of this Agreement, and in each such case, all references in this Agreement to Customer shall be deemed to refer to such Customer Affiliate for purposes of such Order Form or Statements of Work.

3. Security, and Support.

3.1. Security. Gryphon shall: (i) maintain appropriate administrative, physical, and technical safeguards to protect the security and integrity of the Service and the Customer Data; (ii) protect the confidentiality of the Customer Data; and (iii) access and use the Customer Data solely to perform its obligations in accordance with the terms of this Agreement, and as otherwise expressly permitted in this Agreement ("Security Program").

3.2. Support Services. During the Term, Gryphon shall provide Support Services to Customer in accordance with Gryphon's then-current Gryphon support policy, attached hereto as Exhibit A, Implementation and Support.

4. Confidentiality. Each Party ("Recipient") may, during the course of its provision and use of the Service or provision of Professional Services hereunder, receive, have access to, and acquire knowledge from discussions with the other Party ("Discloser") which may not be accessible or known to the general public, such as technical and business information concerning hardware, software, designs, specifications, techniques, processes, procedures, research, development, projects, products or services, business plans or opportunities, business strategies, finances, costs, vendors, penetration test results and other security information; defect and support information and metrics; and first and third party audit reports and attestations ("Confidential Information"). Confidential Information shall not include, and shall cease to include, as applicable, information or materials that (a) were generally known to the public on the Effective Date; (b) become generally known to the public after the Effective Date, other than as a result of the act or omission of

the Recipient; (c) were rightfully known to the Recipient prior to its receipt thereof from the Discloser; (d) are or were disclosed by the Discloser generally without restriction on disclosure; (e) the Recipient lawfully received from a third party without that third party's breach of agreement or obligation of trust; or (f) are independently developed by the Recipient as shown by documents and other competent evidence in the Recipient's possession. The Recipient shall not: (i) use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement, except with the Discloser's prior written permission, or (ii) disclose or make the Discloser's Confidential Information available to any party, except those of its employees, contractors, and agents that have signed an agreement containing disclosure and use provisions substantially similar to those set forth herein and have a "need to know" in order to carry out the purpose of this Agreement. Each Party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such Confidential Information. If the Recipient is compelled by law to disclose Confidential Information of the Discloser, it shall provide the Discloser with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other Party's cost, if the other Party wishes to contest the disclosure. The obligations set forth in Section 3.1 and not this Section 4 apply to Customer Data.

5. Ownership, Feedback, and Aggregated Data.

5.1. Customer Data. As between Gryphon and Customer, Customer owns its Customer Data. Customer grants to Gryphon, its Affiliates and applicable employees and consultants a worldwide, limited-term license to host, copy, transmit and display Customer Data, as reasonably necessary for Gryphon to provide the Service in accordance with this Agreement. Subject to the limited licenses granted herein, Gryphon acquires no right, title or interest from Customer or Customer's licensors under this Agreement in or to any Customer Data. Customer shall be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data. Customer will not provide Gryphon with any personal health data, credit card data, personal financial data or other such sensitive data which may be, without limitation, subject to the Health Insurance Portability and Accountability Act, Gramm-Leach-Bliley Act, or the Payment Card Industry Data Security Standards as part of its Customer Data. Upon request by Customer, Gryphon shall, as identified by Customer, (1) promptly return to Customer, in the format and on the media as reasonably requested by Customer, Customer Data and (2) erase or destroy Customer Data in Gryphon's possession. Any archival tapes containing Customer Data shall be used solely for back-up purposes or as otherwise required to provide the Services.

5.2. Gryphon Ownership of the Service. Except for the rights expressly granted under this Agreement, Gryphon and its licensors retain all right, title, and interest in and to the Service, Documentation, the Professional Services, the Training Services materials, including all related intellectual property rights inherent therein. If Customer purchases Professional Services, Gryphon grants to Customer a worldwide, non-exclusive, non-transferable, non-sublicensable right to use the Professional Services solely for Customer's use with the Service. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement.

5.3. Feedback. Gryphon shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or its Users relating to the features, functionality or operation of the Service, the Professional Services, or the Training Services ("Feedback"). Gryphon shall have no obligation to use Feedback, and Customer shall have no obligation to provide Feedback.

5.4. Statistical Usage Data. Gryphon owns the statistical usage data derived from the operation of the Service, including data regarding web applications utilized in connection with the Service, configurations, log data, and the performance results for the Service ("Usage Data"). Nothing herein shall be construed as prohibiting Gryphon from utilizing the Usage Data to optimize and improve the Service or otherwise operate Gryphon's business; provided that if Gryphon provides Usage Data to third parties, such Usage Data shall be de-identified and presented in the aggregate so that it will not disclose the identity of Customer or any User(s) to any third party.

6. Fees, Expenses, and Taxes.

6.1. Fees. Customer shall pay Gryphon the fees set forth in the applicable Order Form ("Fees") in accordance with this Agreement and the Order Form. If not otherwise specified on an Order Form, Fees will be due within thirty (30) days of date of invoice. Except as otherwise specifically provided in this Agreement, all Fees paid and payable to Gryphon hereunder are non-cancelable and non-refundable. If Customer fails to pay any amounts due under this Agreement by the due date, in addition to any other rights or remedies it may have under this Agreement or by matter of law, (i) Gryphon

reserves the right to suspend the Service upon thirty (30) days written notice, until such amounts are paid in full, and (ii) Gryphon will have the right to charge interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law until Customer pays all amounts due; provided that Gryphon will not exercise its right to charge interest if the applicable charges are under reasonable and good faith dispute. All Fees specified in this Section and the applicable Order Form are subject to a three percent (3%) price increase each year on the anniversary of the effective date of each Order Form (“Order Form Effective Date”).

Additional Fees will apply if additional Users are selected throughout the Term or any Renewal Term. The Fee for Users added throughout the Term and any Renewal Term shall be prorated for the remainder of the Term. Additional User(s) purchased by Customer during the Term and/or any Renewal Term will be invoiced by Gryphon for payment by Customer upfront.

Additional Fees, if any, incurred by Customer during the Term or a Renewal Term, will be invoiced in accordance with the below schedule:

- a. Additional Users and/or Services: Annual upfront Fees will be prorated for the remaining duration of the Term or Renewal Term and will be invoiced by Gryphon upon receipt of the Customer signed Order Form. Payment is due within thirty (30) days of Customer’s receipt of the invoice.
- b. Overage Fees (if applicable as part of Gryphon’s Telemarketing Compliance Services): If Customer’s use of Gryphon’s Telemarketing Compliance Services exceeds the allotted volume of use authorized in in the applicable Order Form, Gryphon will invoice for such overage fees (“Overage Fees”) annually and Customer will pay Gryphon within thirty (30) days of receipt of such invoice. Each telephone number record submitted by Customer in accordance with the chosen Telemarketing Compliance Services, including the transmission and certification of telephone number records (collectively referred to herein as a “Submission”) is recorded by Gryphon and counts towards the allotted number of Submissions specified in the Order Form (Submission Cap”). Telephone number records are not unique telephone numbers submitted by Customer but rather are individual telephone numbers submitted by Customer and processed by Gryphon.

6.2. Expenses. Unless otherwise specified in the applicable SOW, upon invoice from Gryphon, Customer will reimburse Gryphon for all pre-approved, reasonable expenses incurred by Gryphon while performing the Professional Services, including without limitation, transportation services, lodging, and meal and out-of-pocket expenses related to the provision of the Professional Services. Gryphon will include reasonably detailed supporting documentation of all such expenses with each related invoice.

6.3. Taxes. Except for Customer providing Gryphon with a valid tax exemption certificate authorized by the appropriate taxing authority prior to the commencement of Services, Customer shall be responsible for all sales, use, value added and other taxes, both local and foreign, and similar or analogous charges imposed or assessed on the provision of the Services to Customer, other than taxes based on Gryphon’s net income or property. Notwithstanding the foregoing, all amounts stated in the Agreement (including, applicable Order Form or SOW) are exclusive of the foregoing taxes and if any amounts (including any taxes) are required to be withheld or deducted by Customer from any amount payable to Gryphon hereunder, Customer shall increase such payments such that Gryphon receives the full amount it would have received but for such withholding or deduction. Customer shall be deemed to be using the Services from the billing address stated herein or therein for tax purposes. If, at a future point in time, Gryphon is assessed taxes retroactively for Customer’s past usage of the Services or any Professional Services, Customer will remain responsible for both the taxes and any late penalties or other fees incurred by Gryphon to the applicable taxation authority. Gryphon will notify Customer within seven (7) days of receiving notice of the potential tax liability or penalties and will provide an invoice for any amount owed. Payment will be due within thirty (30) days of the invoice date.

6.4. Disputes. If Customer wishes to dispute an invoice, Customer must notify Gryphon of any disputed fees within twenty (20) days of receiving the invoice. If Customer fails to notify Gryphon of its objection within this time period, Gryphon will be deemed to have accepted the accuracy of the invoice. Customer must pay any undisputed portion of the invoice as ordinarily due and payable. The parties will negotiate in good faith to resolve the dispute within thirty (30) days and the disputed amount will not be considered overdue during this time.

7. Warranties and Disclaimer.

7.1. Warranties.

a) Service. Gryphon warrants that during the Term: (i) the Service shall perform materially in accordance with the applicable Documentation, (ii) Gryphon shall make commercially reasonable efforts to make the Service available to Customer 24 hours a day, 7 days a week, every day of each year (except for any unavailability caused by a Force Majeure event or Gryphon's standard weekly maintenance window between the hours of 1:00 AM and 5:00 AM Eastern Time; (iii) Gryphon will employ then-current, industry-standard measures to test the Service to detect and remediate viruses, Trojan horses, worms, logic bombs, or other harmful code or programs designed to negatively impact the operation or performance of the Service, and (iv) it owns or otherwise has sufficient rights in the Service to grant to Customer the rights to use the Service granted herein. As Customer's exclusive remedy and Gryphon's entire liability for a breach of the warranties set forth in this Section 7.1(a), Gryphon shall use commercially reasonable efforts to correct the non-conforming Service at no additional charge to Customer, and in the event Gryphon fails to successfully correct the Service within a reasonable time of receipt of written notice from Customer detailing the breach, then Customer shall be entitled to terminate the applicable Service and receive an immediate refund of any prepaid, unused Fees for the non-conforming Service. The remedies set forth in this subsection shall be Customer's sole remedy and Gryphon's sole liability for breach of these warranties. The warranties set forth in this Section shall apply only if the applicable Service has been utilized in accordance with the Order Form, Documentation, this Agreement and applicable law.

b) Customer Warranties. Customer represents and warrants to Gryphon that it (a) is duly organized, validly existing and in good standing under the laws of the country and/or state in which it is organized and (b) has the full corporate power and authority to enter into this Agreement and any applicable Order Form and any SOW for the provision of Professional Services, if applicable, and perform its obligations hereunder. Customer further warrants to Gryphon that it has and will continue to have the right to provide Gryphon with all Customer Data for the purposes set forth herein and that Customer will not use the Services in conflict or violations of any applicable law or regulation.

c) Professional Services. Gryphon warrants that Professional Services mutually agreed upon in a written SOW and will be performed in a good and workmanlike manner consistent with applicable industry standards. As Customer's sole and exclusive remedy and Gryphon's entire liability for any breach of the foregoing warranty, Gryphon will, at its sole option and expense, promptly re-perform any Professional Services that fail to meet this limited warranty or refund to Customer the fees paid for the non-conforming Professional Services.

7.2. Disclaimer. EXCEPT FOR ANY EXPRESS WARRANTIES SET FORTH UNDER SECTION 7.1, GRYPHON AND ITS SUPPLIERS HEREBY DISCLAIM ALL (AND HAVE NOT AUTHORIZED ANYONE TO MAKE ANY) WARRANTIES RELATING TO THE SERVICE, PROFESSIONAL SERVICES OR OTHER SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES ARE NOT RELYING AND HAVE NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED, EXCEPT FOR THE WARRANTIES SET FORTH UNDER SECTION 7.1. GRYPHON MAKES NO WARRANTY REGARDING ANY NON-GRYPHON APPLICATION WITH WHICH THE SERVICE MAY INTEROPERATE. GRYPHON SHALL HAVE NO OBLIGATION TO THE EXTENT THAT ANY DEFICIENCY OR FAILURE OF A SERVICE IS CAUSED BY (i) IMPROPER USE OR OPERATION OF THE SERVICE BY CUSTOMER; (ii) CUSTOMER'S REFUSAL OR DELAY TO IMPLEMENT UPGRADES TO THE SERVICES AS PROVIDED BY GRYPHON; (iii) FAILURE OR MALFUNCTION OF ANY ELECTRONIC, TECHNOLOGY OR TELECOMMUNICATIONS EQUIPMENT OR RESOURCE NOT UNDER GRYPHON'S SOLE CONTROL; OR (iv) CUSTOMER REQUESTED MODIFICATION, CHANGE TO OR ALTERATION OF ANY GRYPHON SERVICE DEFAULT CONFIGURATION, SETTING, PROCESS OR FUNCTIONALITY.

8. Limitation of Liability.

8.1. IN NO EVENT WILL EITHER PARTY'S (OR GRYPHON'S THIRD PARTY LICENSORS') BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY (A) FOR ERROR OR INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF DATA, (B) FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, RIGHTS, OR TECHNOLOGY, (C) FOR ANY LOST PROFITS OR REVENUES, OR (D) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT A PARTY HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

8.2. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICE GIVING RISE TO THE LIABILITY IN THE TWELVE-MONTH PERIOD PRECEDING THE FIRST INCIDENT FROM WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION SHALL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CUSTOMER'S AND CUSTOMER'S AFFILIATES' PAYMENT OBLIGATIONS UNDER THE 'FEES' SECTION ABOVE.

9. Indemnification.

9.1. Gryphon's Indemnification Obligation. Subject to Section 9.3, Gryphon will defend Customer from any and all claims, demands, suits or proceedings brought against Customer by a third party alleging that the Service, as provided by Gryphon to Customer under this Agreement infringe any patent, copyright, or trademark or misappropriate any trade secret of any third party (each, an "Infringement Claim"). Gryphon will indemnify Customer for all damages, costs, reasonable attorneys' fees finally awarded by a court of competent jurisdiction or paid to a third party in accordance with a settlement agreement signed by Gryphon, in connection with an Infringement Claim. In the event of any such Infringement Claim, Gryphon may, at its option: (i) obtain the right to permit Customer to continue using the Service, (ii) modify or replace the relevant portion(s) of the Service with a non-infringing alternative having substantially equivalent performance within a reasonable period of time, or (iii) terminate this Agreement as to the infringing Service and refund to Customer any prepaid, unused Fees for such infringing Service hereunder. Notwithstanding the foregoing, Gryphon will have no liability for any Infringement Claim of any kind to the extent that it results from: (1) modifications to the Service made by a party other than Gryphon, (2) the combination of the Service with other products, processes or technologies (where the infringement would have been avoided but for such combination), or (3) Customer's use of the Service other than in accordance with the Documentation and this Agreement. The indemnification obligations set forth in this Section are Gryphon's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third-party intellectual property rights of any kind.

9.2. Customer Indemnification Obligation. Subject to Section 9.3, Customer will defend Gryphon from any and all claims, demands, suits or proceedings brought against Gryphon by a third party alleging a violation of a third party's rights arising from Customer's provision of the Customer Data. Customer will indemnify Gryphon for all damages, costs, reasonable attorneys' fees finally awarded by a court of competent jurisdiction or paid to a third party in accordance with a settlement agreement signed by Customer.

9.3. Indemnity Requirements. The Party seeking indemnity under this Section 9 ("Indemnitee") must give the other Party ("Indemnitor") the following: (a) prompt written notice of any claim for which the Indemnitee intends to seek indemnity, (b) all cooperation and assistance reasonably requested by the Indemnitor in the defense of the claim, at the Indemnitor's sole expense, and (c) sole control over the defense and settlement of the claim, provided that the Indemnitee may participate in the defense of the claim at its sole expense.

10. Publicity. Gryphon may use Customer's name and logo in client lists or other marketing material that identify Customer as a customer of Gryphon, including on Gryphon's public website, without Customer's prior written approval, *provided, however,* Gryphon agrees that any such use shall (i) be subject to Gryphon complying with any written guidelines that Customer may deliver to Gryphon regarding the use of its name or logo, and (ii) not damage, tarnish or otherwise degrade Customer's name and logo, or be derogatory to or misrepresent Customer. Other than as expressly stated in the foregoing sentence, Gryphon may not use Customer's name and logo for any other reason without Customer's prior written approval.

11. Term, Termination, and Effect of Termination.

11.1. Term. This Agreement shall take effect on the Effective Date and continue until the stated term in all Order Forms have expired or have otherwise been terminated. Subscriptions to the Service commence on the date, and are for a period, as set forth in the applicable Order Form ("Term"). Upon expiration of the Term, unless otherwise stated on an applicable Order Form, the Service will automatically renew for additional terms equal in duration to the initial Term (each a "Renewal Term"), unless and until either Party gives the other notice of non-renewal at least ninety (90) days prior to the end of the then-current Term or Renewal Term. Unless otherwise set forth in the applicable Order Form or terminated in accordance with the provisions of this Agreement, all Services will be coterminous. The Term for any Professional

Services provided by Gryphon to Customer will be as specified in SOW.

11.2. Termination. Either Party may terminate this Agreement by written notice to the other Party in the event that (i) such other Party materially breaches this Agreement and does not cure such breach within thirty (30) days of such notice, or (ii) immediately in the event the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer pursuant to this Section 11.2, Gryphon will refund Customer a pro-rata portion of any prepaid Fees that cover the remainder of the applicable Order Form Term or Renewal Term after the effective date of termination and a pro-rata portion of any prepaid Professional Services Fees that cover Professional Services that have not been delivered as of the effective date of termination.

11.3. Retrieval of Customer Data. Upon request by Customer made prior to the effective date of termination of this Agreement, Gryphon will make available to Customer, at no cost, for a maximum of thirty (30) days following the end of the Term for download a file of Customer Data. After such 30-day period, Gryphon shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, be entitled to delete all Customer Data by deletion of Customer's unique instance of the Service; provided, however, that Gryphon will not be required to remove copies of the Customer Data from its backup media and servers until such time as the backup copies are scheduled to be deleted in the normal course of business; provided further that in all cases Gryphon will continue to protect the Customer Data in accordance with this Agreement. Additionally, during the Term, Customer may extract Customer Data from the Service using Gryphon's standard web services, if applicable.

11.4. Effect of Termination. Upon termination of this Agreement for any reason, all rights and subscriptions granted to Customer including all Order Forms will immediately terminate and Customer will cease using the Service (except as otherwise permitted under Section 11.3 ("Retrieval of Customer Data") and Gryphon Confidential Information. Termination for any reason other than termination for cause by Customer pursuant to Section 11.2(i) shall not relieve Customer of the obligation to pay all future amounts due under all Order Forms. The sections titled "Definitions," "Confidentiality," "Ownership; Aggregated Data," "Fees, Expenses and Taxes," "Warranty Disclaimer," "Limitation of Liability," "Indemnification," "Term, Termination, and Effect of Termination," and "General" shall survive any termination or expiration of this Agreement.

12. General

12.1. Assignment. Neither the rights nor the obligations arising under this Agreement are assignable or transferable by Customer or Gryphon without the other Party's prior written consent which shall not be unreasonably withheld or delayed, and any such attempted assignment or transfer shall be void and without effect. Notwithstanding the foregoing, either Party may freely assign this Agreement in its entirety (including all Order Forms), upon written notice and without the consent of the other Party, to its successor in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, provided that all fees owed and due have been paid.

12.2. Governing Law and Severability. This Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its conflicts of law principles. . With respect to all disputes arising out of or related to this Agreement, the Parties consent to exclusive jurisdiction and venue in the state and federal courts located in Boston, Massachusetts. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Service of process, summons, notice or other document by mail to such Party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.

12.3. Waiver of Jury Trial. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

12.4. Equitable Relief. The Parties will be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a Party to seek equitable relief in a court of competent jurisdiction.

12.5. Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party hereto against the other Party arising out of or related to this Agreement, the prevailing Party will be entitled to recover its reasonable attorneys' fees, expert witness fees and out-of-pocket and court costs from the non-prevailing Party.

12.6. Notices. All legal notices hereunder shall be in writing and given upon (i) personal delivery, in which case notice shall be deemed given on the day of such hand delivery, or (ii) by overnight courier, in which case notice shall be deemed given three (3) business days after deposit with a recognized courier for U.S. deliveries.

If to Gryphon:

Gryphon Networks Corp.
711 Atlantic Ave., 6th Floor
Boston, MA 02111
Attention: Legal Department

If to Customer:

Notice will be provided to the Customer address specified in the most current Order Form provided under this Agreement.

In addition to the mechanisms for giving notice specified herein, unless expressly specified otherwise in an Order Form, the parties may use e-mail as a secondary method to ensure timely notification.

12.7. Force Majeure. Neither Party will be liable in damages or have the right to terminate this Agreement for any reasonable delay or default in performing under this Agreement if such delay or default is caused by conditions beyond the Party's reasonable control, including without limitation acts of God, natural disasters, war or other hostilities, labor disputes, civil disturbances, governmental acts, orders or regulations or failures or fluctuations in electrical power, heat, lights, air conditioning or telecommunications equipment (each of the foregoing, a "Force Majeure Event"), provided that the non-performing Party is without fault in causing such condition. Subject to the Party so delaying promptly notifying the other Party in writing of the reason for the delay and the likely duration of the delay, the performance of the delaying Party's obligations, to the extent affected by the delay, will be temporarily suspended during the reasonable period of time that the cause persists, provided that if performance is not resumed within thirty (30) days after that notice, the non-delaying Party may by notice in writing immediately terminate this Agreement.

12.8. Equitable Relief. Due to the unique nature of the parties' Confidential Information disclosed hereunder, there can be no adequate remedy at law for a Party's breach of its obligations hereunder, and any such breach may result in irreparable harm to the non-breaching Party. Therefore, upon any such breach or threat thereof, the Party alleging breach shall be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it, without the requirement of posting a bond.

12.9. Independent Contractors. The parties shall be independent contractors under this Agreement, and nothing herein shall constitute either Party as the employer, employee, agent, or representative of the other Party, or both parties as joint venturers or partners for any purpose. There are no third-party beneficiaries under this Agreement.

12.10. Export Compliance. Each Party represents that it is not named on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, nor owned or controlled by or acting on behalf of any such persons or entities, and Customer will not access or use the Service in any manner that would cause any Party to violate any U.S. or international embargo, export control law, or prohibition.

12.11. Anti-Corruption. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Gryphon employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Gryphon.

12.12. Entire Agreement. This Agreement together with the Order Form(s), SOW(s), Exhibits or applicable Documentation constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, and any and all prior or contemporaneous written or oral agreements existing between the Parties hereto, including any non-disclosure agreement(s), and related to the subject matter hereof are expressly canceled. The Parties agree that any term or condition stated in a Customer purchase order or in any other of Customer's order documentation (excluding Order Forms or SOWs) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision.

EXHIBIT A
IMPLEMENTATION & SUPPORT

Gryphon shall provide Customer the following Implementation and Support Services beginning on the date Gryphon first provides Customer access to the Services and continuing throughout the Term and any Renewal Terms:

1. If requested by Customer, initial import and load of the Customer company specific Do Not Call List. Such data must be submitted in comma-separated values, pipe delimited or another Gryphon accepted file format (Customer will retain responsibility for compliance with any preexisting or separately maintained Customer do not call list(s) that is not transferred to Gryphon),
2. Access to Service training collateral and Gryphon's regularly scheduled training sessions for both authorized Users and Customer (and, if applicable, related parties' sales leaders). These service training sessions will be web-based and/or onsite, based on Gryphon's availability and depending on the time and location. Gryphon's account team will work with Customer to determine appropriate schedules. The trainings would include both initial and refresh training for any authorized User or Customer and, if applicable, its franchisee or related parties' sales leaders. Customer's appointed Gryphon Account Manager will be the primary Gryphon contact for all training matters including scheduling and follow-up questions,
3. Archive and provide Customer access to records of authorized User Service calling activity for up to five (5) years,
4. Customer shall receive upgrades to Services which shall mean modifications that result from error corrections, additions in functionality, point releases or substitutes that accomplish performance, structural or functional improvements (substantial or otherwise), including re-design or replacement. Upgrades do not include new releases of the Services that are (i) identified under a new product name, (ii) are not generally made available to other customers without the payment of an additional fee or fees, or (iii) contain substantially new, different or enhanced functionality than that contained in or delivered by the Services pursuant to this Agreement, and
5. Phone support for Services is available from the Gryphon Help Desk Monday through Friday from 8:00 am to 6:00 pm and Saturday through Sunday from 9:00 am to 5:00 pm, Eastern Time. In the event Customer opens a trouble ticket, the Help Desk will assign a level of severity in accordance with the schedule below.

Severity	Description	Time to Repair
Critical	Services are not functional or there exists severe Customer operational impact which threatens future business productivity	4 Business Hours
High	Loss of Functionality that diminishes business operations and productivity	8 Business Hours
Low	Feature or Function not working which does not seriously impact Customer's business or operations	24 Business Hours