



# Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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## Contents

1.	Notices to Customer- Email .....	5
2.	Privacy Policy .....	5
3.	Acceptable Use Limitations and Guidelines .....	7
4.	The following activities violate Speakeasy's Acceptable Use Policy .....	8
5.	Source Addresses .....	10
6.	Personnel Abuse .....	10
7.	Support .....	10
8.	Shell Accounts .....	11
9.	Newsgroups/Usenet Service .....	11
10.	Account Information and Password Policy .....	11
11.	Accounts Receivable, Billing and Invoicing .....	11
12.	Account Billing .....	12
13.	Invoices and Payment .....	12
14.	Late Payment and Billing Disputes .....	12
15.	Term .....	13
16.	Termination .....	13
17.	Limitation of Liability and Remedies .....	14
18.	Disclaimer of Warranties .....	14
19.	Indemnity .....	15
20.	Governing Law .....	15
21.	Copyright, Trademark & Unauthorized Use .....	15
22.	Final Qualification .....	15
23.	Amendment .....	15
24.	Use of Name, Logo, Quotes & Case Studies .....	16
25.	Entire Agreement .....	16
26.	Service Orders .....	16
27.	Miscellaneous .....	17
	Attachment "A" Service Addendum, Speakeasy Broadband Connectivity & Services .....	21
1.	Pricing Guarantee .....	21
2.	Service Term Information .....	21



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

---

3.	Installation Procedure Policy .....	21
4.	IP Allocation.....	22
5.	Service Guarantee .....	23
6.	Disconnection Policy .....	23
7.	Miscellaneous.....	25
8.	One Time Charges.....	28
9.	Notices .....	31
10.	Other Fees.....	31
	<b>Attachment "B" Service Addendum, Speakeasy Business Voice Services .....</b>	<b>32</b>
1.	Definitions .....	32
2.	Speakeasy Voice Services Description .....	32
3.	Service Levels.....	35
4.	Emergency 911 Service.....	36
5.	Miscellaneous.....	39
6.	General Terms .....	43
	<b>Attachment "C" Service Addendum, Speakeasy Colocation, Managed &amp; API Services .....</b>	<b>46</b>
1.	Definitions .....	46
2.	Service Installation, Fees and Billing .....	47
3.	Colocation.....	47
4.	Managed & API Services .....	50
5.	Security .....	51
6.	Local and Long Distance Carriers .....	52
7.	Other Networks; Approval and Usage.....	52
8.	Resale.....	52
9.	Acceptable Use Guidelines.....	52
10.	Service Guarantee .....	53
11.	No Other Warranty.....	53
12.	Disclaimer of Third Party Actions and Control .....	53
13.	Limitations of Liability.....	53
14.	Confidential Information.....	54
15.	Term .....	55
16.	Termination .....	55



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

---

<b>17. Customer License Terms .....</b>	<b>57</b>
<b>18. Miscellaneous Provisions .....</b>	<b>58</b>
<b>Attachment "D" Service Addendum, Additional Service Terms.....</b>	<b>60</b>



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

---

### Speakeasy Master Service Agreement

This Agreement is between you as our Subscriber ("Customer" or "you" or "your") and Speakeasy Broadband Services, LLC. and its affiliates ("Speakeasy") and it sets forth the terms and conditions under which you agree to use and we agree to provide the Service.

THIS IS A CONTRACT. PLEASE READ THESE TERMS CAREFULLY. IF YOU DO NOT AGREE TO THESE TERMS DO NOT USE THE SERVICE AND CONTACT US IMMEDIATELY TO TERMINATE IT.

The Effective Date of this Agreement shall be when you accept this Agreement.

Acceptance by you of this Agreement occurs upon the earlier of: (a) Speakeasy's acceptance of a Service Order signed by you indicating your acceptance of this Agreement; (b) your acceptance of this Agreement electronically during an online order, registration or when installing the Software or the Equipment; (c) your use of the Service; or (d) your retention of the Software or Equipment we provide beyond thirty (30) days following delivery. If you change Service plans, your term and monthly rate may change (depending on the plan you select), but all other provisions of this Agreement will remain in effect unless otherwise noted.

This Agreement consists of the terms below (The Master Service Agreement), plus (a) the specific terms of your Service plan (including the plan's pricing, duration and applicable termination charges); (b) The Service Addendum for your service plan (Attachments A through C) and any applicable Additional Services Terms (Attachment D); and (c) other Speakeasy policies referred to in this Agreement, all of which are incorporated herein by reference. This Agreement and related policies are posted online at <https://www.speakeasy.net/tos> ("Website"). You can also receive a paper copy of this Agreement by writing to: Speakeasy, Inc., 1201 Western Ave, Seattle, WA 98101, Attention: Customer Service.

Speakeasy is committed to providing dedicated, reliable and robust Internet services by providing options that are not offered by other Internet Service Providers (ISPs). By entering this Agreement or subscribing to Speakeasy services, Customer understands and agrees to this Master Service Agreement and the Terms of Service applicable to service to which Customer subscribes (collectively, the "Agreement"). Additionally, Customer agrees to be bound by any future modifications or additions to the Agreement for which Speakeasy provides notice to Customer. If Customer does not agree with any modification or addition to the Agreement, Customer may terminate Customer's subscription as provided by the Termination Policy set out below. In the case of an inconsistency or conflict between terms and conditions of an applicable Service Addendum and/or Service Order,



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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the governing order of precedence will be (1) the Service Order (2) the Service Addendum, (3) the Speakeasy Master Service Agreement.

### 1. Notices to Customer- Email

Speakeasy primarily communicates with customers via email. Customer agrees that sending a message to Customer's Speakeasy.net contact email address is Speakeasy's agreed upon means of providing notification to Customer. All Speakeasy Internet services come with at least one email account. Customer agrees that Customer routinely will check this email account, or in the event that Customer has another email account that Customer prefers to use, make arrangements to forward Customer's Speakeasy email to Customer's preferred account. Customer can set up or change Customer's forwarding by logging into [MySpeakeasy](#) (login required). Customer's Speakeasy email account is used to communicate vital information about Customer's services, billing, service outages, the Agreement, and enhancements or changes to Customer's existing services and to make Customer aware of products or services that might be of interest to Customer. This information is time-sensitive in nature. Customer must read any email sent to Customer's account to avoid any potential interruptions in Customer's service.

### 2. Privacy Policy

Speakeasy is committed to respecting Customer's privacy. As explained below, Customer's personally identifiable information will only be used in the context of customer's relationship with Speakeasy, including service and billing functions and informing Customer of products and services of potential interest.

On various Speakeasy web pages Customer can order services, make requests, and register to receive materials or support. The types of personal information collected at these pages are name, username, contact and billing information, transaction, and credit card information. Data collected online may also be combined with information provided during ownership registration of Speakeasy products and services. In order to tailor subsequent communications and continuously improve products and services, Speakeasy may ask Customer to voluntarily provide information regarding Customer's personal or professional interests, demographics, product experience, and contact information.

Speakeasy will not sell, rent, or lease Customer's personally identifiable information to others. Except as may be required by subpoena, search warrant, or other legal process or in the case of imminent physical harm to a customer or others, Speakeasy will only share the personal data the Customer provided with business partners who are acting on Speakeasy's behalf to complete the activities Customer requested. In that event, Speakeasy's business partners will be governed by Speakeasy's privacy policy with respect to the use of this data. Should a



## **Speakeasy Master Services Agreement**

For customers who purchased Speakeasy services before October 1, 2010.

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company not governed by Speakeasy's privacy policy require Customer's personal information, Customer's permission will be initially obtained, unless seeking Customer's permission is inconsistent with legal guidelines or legal requirements. The use of any shared data will be governed by the company's respective privacy policy.

Speakeasy uses Customer's information to better understand customer needs and continuously improve the level of service provided. Specifically, Customer's information is used to help complete a transaction, to communicate back to Customer, to update Customer on service and benefits, and to personalize Speakeasy's web site. Credit card numbers are used only for payment processing and are not utilized for other purposes.

From time to time, Speakeasy may use Customer's information to contact Customer for market research or to provide Customer with information thought to be of particular interest. At a minimum, Customer will have the opportunity to opt out of receiving such direct marketing or market research contact. Where applicable, Speakeasy will also follow local requirements such as allowing Customer to opt in before receiving an unsolicited contact.

Speakeasy strives to keep Customer's personally identifiable information accurate. Every effort is made to provide Customer with online access to Customer's registration data so that Customer may update or correct Customer's information at any time. Speakeasy is committed to ensuring the security of Customer's information. To prevent unauthorized access, maintain data accuracy, and ensure the appropriate use of information, appropriate procedures are in place to safeguard and secure the information collected online. Speakeasy uses encryption when collecting or transferring sensitive data such as credit card information.

Speakeasy may also collect certain non-personally identifiable information when Customer visits Speakeasy's web-site. Speakeasy accomplishes this through the use of "cookies" or tracking mechanisms that collect this type of information. If Customer does not want this to happen or wants to know when it does happen, Customer's browser should be set to warn Customer or to block cookies (although blocking cookies may affect Customer's use of certain sites). In addition, Speakeasy or others may use small bits of code called "one-pixel gifs" or "clear gifs" embedded in some web pages to make cookies more effective.

Speakeasy has put in place physical, electronic, and managerial procedures to safeguard and help prevent unauthorized access, maintain data security, and correctly use the information Speakeasy collects online. However, no transmission of data over the Internet is guaranteed to be completely secure. While Speakeasy strives to protect Customer's information, Speakeasy cannot guarantee or warrant the security of any information Customer transmits to Speakeasy. Any such transmission is done at Customer's own risk. Neither people nor security systems are foolproof, and people can commit intentional crimes, make mistakes or fail to follow policies.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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Although Speakeasy takes certain precautions, Speakeasy does not guarantee security. Additionally, it may be possible for third parties to intercept or access transmissions or private communications unlawfully. Customer assumes the risk of any failure of security and agrees to do what Customer reasonably can to promote security.

Notwithstanding the above policies and guidelines, there are Federal Communications Commission rules governing the access, use and disclosure of certain information that Speakeasy obtains from you if it provides VoIP services to you. ("Speakeasy Business Voice Services" including, but not limited to, "Integrated Voice" and "Hosted Voice" are VoIP services.) This information is known as Customer Proprietary Network Information ("CPNI"). You have the right to restrict Speakeasy from accessing, using or disclosing CPNI in certain circumstances. If you receive VoIP services from Speakeasy, please refer to Section 5.1 of the Speakeasy Business Voice Services addendum or [www.speakeasy.net/tos](http://www.speakeasy.net/tos) for additional information regarding your CPNI rights.

### 3. Acceptable Use Limitations and Guidelines

- 3.1. **Bandwidth:** As an ISP, Speakeasy's financial liability is partially determined by the amount of bandwidth customers utilize. Speakeasy can normally balance that cost and utilization while continuing to provide great service to all customers. Customers will not be charged for the bandwidth consumed, nor does Speakeasy have specific limits or caps on that bandwidth. However, if Customer utilizes any of Customer's Speakeasy services in a manner that consumes excessive bandwidth or otherwise negatively affects Speakeasy's core equipment, overall network performance, or other users' services, Speakeasy may require that Customer cease or alter these activities.
- 3.2. **Reverse DNS:** Speakeasy does not allow customers authoritative control of their own reverse Domain Name System (DNS) within the speakeasy.net or speakeasy.org domain.
- 3.3. **Resale of Residential-Class Services:** The resale of residential-class services as well as Speakeasy Business Voice Services is strictly prohibited. Collection of service fees from third party customers on behalf of a Speakeasy residential-class service is allowed only if the primary account holder has subscribed to a service package defined by Speakeasy to promote connection sharing of any type. This includes but is not limited to both wireless and wired connection sharing.
- 3.4. **No Disruptions:** Speakeasy believes in the right of the individual to publish information they feel is important to the world via the Internet. Unlike many ISPs, Speakeasy allows customers to run servers (web, mail, etc.) over their Internet connections, use hubs, and share networks in multiple locations. Any service that causes a disruption in the network integrity of Speakeasy or its vendors, whether directly or indirectly, is strictly prohibited and could result in termination of service. This may include but is not limited to: Internet Relay Chat servers, adult-content servers, bots, web pages hosted on any Speakeasy



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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servers, servers connected to a Speakeasy provided Internet connection, or shared networks. Speakeasy reserves the rights to modify or terminate services at Speakeasy's sole discretion.

- 3.5. **Acceptable Use Guidelines:** Customer is ultimately responsible for any and all activity that originates from Customer's Internet circuit regardless of Customer's knowledge of such activity. This includes, but is not limited to, activity by employees, visitors and guests or other household members. This also applies to security breaches of Customer's own system by others who launch attacks from Customer's machine. It is imperative that everyone with an Internet connection takes proper precautions to ensure the security of their machine. Customer is liable and accountable for any activity originating from any of Customer's Speakeasy account services that is deemed to be in violation of Speakeasy's Acceptable Use Policy.

Speakeasy vigorously pursues all instances of abuse. If Customer feels Customer has been attacked or spammed, Customer should notify Speakeasy's Abuse Department ([abuse@speakeasy.net](mailto:abuse@speakeasy.net)) so that appropriate action can be taken.

An existing Speakeasy customer ("Existing Customer") may not, via phone or online account access, establish a new user associated with his or her account where the person on whose behalf the new user was established ("New Person") would have a reasonable expectation of privacy with regard to the account information, including CPNI, associated with the services the New Person receives from Speakeasy. Such a reasonable expectation is present if such New Person would consider himself or herself to be a Speakeasy customer, separate and apart from the Existing Customer.

In the event of activity that could be considered deliberately or otherwise abusive or in violation of this Acceptable Use Policy, Speakeasy reserves the right to suspend and/or terminate Customer's account and all Speakeasy-provided services immediately, without advance notice. Speakeasy reserves the right, at its sole discretion, to make a determination of what constitutes abuse and Customer agrees that Speakeasy's determination is final and binding on Customer. Speakeasy reserves the right to modify or terminate services at Speakeasy's sole discretion.

### 4. The following activities violate Speakeasy's Acceptable Use Policy

- 4.1. **Intellectual Property Rights Infringement, DMCA, Notice to Copyright Agent:** Customer may not store material on, or transmit material over, Speakeasy's information systems or servers in any manner that infringes the intellectual property rights of any entity or individual. All notices received by Speakeasy indicating any activity suspected to infringe upon third party intellectual property rights will be re-routed to the primary account holder on file, accompanied by a request to verify and possibly cease and desist. Speakeasy's policy of service suspension or termination of members deemed to be infringing the



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

---

intellectual property rights of a third party is in accordance with the Digital Millennium Copyright Act ("DMCA") as well as U.S. copyright law.

If Customer believes that Customer's work has been used in a way which constitutes copyright infringement, by reason of the storage of material on Speakeasy's system or network or otherwise connected with Speakeasy's services, Customer may provide a notice to Speakeasy's designated Copyright Agent. The notice must contain all of the following information:

- (i) An electronic or physical signature of a person authorized to act on behalf of the owner of the copyright interest;
- (ii) Identification of the copyrighted work claimed to have been infringed;
- (iii) Identification of the material that is claimed to be infringing and information reasonably sufficient to permit Speakeasy to locate the material;
- (iv) The address, telephone number, and, if available, an e-mail address at which the complaining party may be contacted;
- (v) A representation that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- (vi) A representation that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Copyright infringement claims and notices (but not other notices) should be sent to the attention of Speakeasy Network Security in the following manner:

by mail: Speakeasy Network Security, 1201 Western Ave., Seattle, WA 98101

by phone: 206-728-9770

by fax: 206-728-1500.

4.2. **Denial of Service:** The use of Customer's connection to facilitate any activity that deliberately impairs another entity, individual or machine from accessing its computer or Internet connection is a violation of this Agreement.

4.3. **Cracking / "Hacking":** Any customer accessing or attempting to access the machines or accounts of others or any other attempts to breach the security of other systems, regardless of success or failure, is a violation of this Agreement. This also applies to unauthorized mail or web relay/proxy access attempts and port scans.

## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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- 4.4. **E-Mail Spam:** Transmission of unsolicited e-mail from anywhere within Speakeasy's network, distributing unsolicited, commercial, email which advertises any portion of Speakeasy's network, IP or domain space, hosting content for the purpose of spamming (such as bulk e-mail distribution lists) or providing support services (such as DNS) for anyone intending to conduct such activity, or otherwise failing to comply with the U.S. CAN-SPAM Act of 2003, is a violation of this Agreement.
- 4.5. **Newsgroup Spam:** Posting of messages to newsgroups that are off-topic or mass posting of messages to news groups is a violation of this Agreement.
- 4.6. **Dissemination of Viruses:** Intentional release of malicious software that is an attempt to cause damage or harassment to persons and/or machines is a violation of this Agreement. Repeated demonstrated neglect of equipment on the network which causes malicious traffic or allows unsolicited emails containing virus attachments to be sent to other customers or third parties is a violation of this Agreement.

### 5. Source Addresses

- 5.1. All Internet Protocol datagrams which traverse Speakeasy infrastructure are required to have valid information in the source address field of the outermost header. Customer may only emit Internet Protocol datagrams whose source address used in the outermost header satisfies one of the following conditions:
  - (i) The address has been allocated to Customer by Speakeasy.
  - (ii) Customer has made previous arrangements with Speakeasy to permit the use of Provider Independent address space across Customer's connection. Failure to abide by this requirement is a violation of this Agreement.

### 6. Personnel Abuse

Personal threats, sexual harassment, profanity and vulgarities of any sort directed toward Speakeasy personnel are a violation and grounds for termination of this Agreement.

### 7. Support

The technical support that Speakeasy provides is limited to the services that Speakeasy provides and assistance with configuring Customer's computer and/or browser and email applications to work with Speakeasy's services. Support for other applications and uses is not provided or implied unless specifically contracted.



## **Speakeasy Master Services Agreement**

For customers who purchased Speakeasy services before October 1, 2010.

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### **8. Shell Accounts**

Some offered packages include a Unix shell account accessible from any computer in the world that has Internet access. Shell accounts are not automatically created.

For Customer's security, shell accounts that remain inactive for at least 90 calendar days will be disabled.

Remaining data may be archived for an additional 90 calendar days. The retrieval of archived shell account data may require a Retrieval Fee if not already deleted.

Programs not associated with a logged-in interactive user are prohibited and will result in termination. This includes but is not limited to bots (for IRC or anything else) and cron jobs. Speakeasy reserves the right to limit, restrict or prioritize access to system resources, including CPU time, memory and disk space.

### **9. Newsgroups/Usenet Service**

News server connections are a limited resource and shared among all Speakeasy members. One Gigabyte of news throughput is provided for free per account login each calendar month. News throughput benefits are subject to change per Speakeasy's discretion. Speakeasy does not guarantee throughput to or articles from the news servers.

### **10. Account Information and Password Policy**

Upon account creation Customer will receive a username and password and other account information. Customer and members of Customer's business are the authorized users of Speakeasy services and must comply with this Agreement. Customer must protect Customer's account by guarding Customer's password carefully. Customer is responsible for all use of Customer's account(s) and for the confidentiality of any password selected by Customer. Speakeasy will suspend or modify Customer's account(s) as soon as practicable after notification from Customer that a password has been lost, stolen or otherwise compromised. Customer must notify Speakeasy immediately if Customer believes Customer's account may be compromised.

### **11. Accounts Receivable, Billing and Invoicing**

All account payments are processed by Speakeasy Broadband Services, LLC.

Speakeasy reserves the right to perform a credit/background check as part of the qualification process prior to order placement or at any other time at Speakeasy's sole discretion and to either cancel the order without liability to either party or require prepayment of up to 90 days worth of service fees based on the results of this check.

Bill Accounts will be invoiced 30 days prior to the start of each regular monthly service period. Exceptions may include the initial or final invoice for a particular service. Payment is due prior to the beginning of the service period billed, as indicated by the invoice's Due Date. All payments will be applied to the oldest unpaid invoice in



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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relation to the Customer account's bill cycle. For example, if the Customer Bill Account's Invoice Date is the 15th of the month and payment remains past due until the 28th, Accounts Receivable will apply Customer's payment back to the previous month, forwarding Customer's Due Date for current charges to the 15th of the following month. Customer will need to make another payment before the 15th to keep Customer's account from becoming past due again. If a payment in any form is recovered or otherwise not paid by Customer's financial institution, there will be a Returned Payment Fee.

### 12. Account Billing

Billing will commence on Customer's Activation Date (i.e. the day Speakeasy's vendor declares Customer's circuit or Voice Services installed, inbound switch completed, Customer's Dialup, Rainmail, Domain Hosting, or other service account created.) Customer will be financially responsible for all service time thereafter unless Speakeasy is notified within a timely manner of an outstanding issue which Speakeasy deems to justify service credit. All additions to Customer's existing service package are recognized as non-refundable regardless of usage. Service fees may include applicable state and federal taxes and fees in addition to the advertised rate.

Speakeasy charges for its service continuously regardless of whether or not Customer is using it because Speakeasy continues to maintain Customer's connection, reserve IP space, accept mail and keep files Customer has saved in Customer's account on Speakeasy's servers. This is also true of accounts that are Frozen (denied access) due to non-payment.

### 13. Invoices and Payment

Residential-class Bill Accounts are automatically setup for credit card autorenewal by default, using the credit card information provided during the order process. To update Customer's credit card information or turn on or off the auto-renewal of Customer's account, please visit [MySpeakeasy](#) (login required). Speakeasy will make every effort to process auto-renew payments from Customer's credit card or checking account 7 days prior to each invoice's due date. Speakeasy reserves the right to charge the credit card on file if Customer's check payment is canceled, fails to process through the Automated Clearing House (ACH), or if Customer's account, regardless of auto-renew status, remains past due.

Business-class Bill Accounts will be mailed a monthly paper invoice free of charge unless alternative billing arrangements have been made. Residential-class Bill Accounts will be invoiced solely via email unless a physical paper invoice is requested for an additional charge per invoice.

### 14. Late Payment and Billing Disputes

Acceptance of late or partial payments (even if marked "Paid in Full" or with other such verbiage) shall not waive any of Speakeasy's rights to collect the full amount of Customer's charges for the Service. Customer must notify



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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Speakeasy in writing within sixty (60) days after receiving Customer's Invoice if Customer disputes any Speakeasy charges on that Invoice or such dispute will be deemed waived. Billing disputes should be directed to Speakeasy in one of the following manners:

Email: [support@speakeasy.net](mailto:support@speakeasy.net)

Online: [www.speakeasy.net/myspeak/create\\_ticket.mpl](http://www.speakeasy.net/myspeak/create_ticket.mpl) [login required]

Telephone: 1-800-556-5829

Customer agrees to reimburse Speakeasy for reasonable attorneys' fees and any other costs associated with collecting delinquent or dishonored payments. If charges cannot be processed through Customer's credit card, Speakeasy will charge Customer an additional \$25.00. If the state law where Customer receives the Service requires a different fee, Speakeasy will charge Customer that amount.

### 15. Term

This Agreement commences on the Effective Date, and continues through the latest expiration of all Order Form or Service Term(s) subject to this Agreement, unless earlier terminated as provided herein.

### 16. Termination

Speakeasy reserves the right to terminate Bill Accounts that remain past due at its final discretion. Upon termination, services on the account will be discontinued and all files will be removed from Speakeasy's servers without further notice. Any applicable Disconnection Fees will be applied and due at that time.

If Customer wishes to reinstate service with Speakeasy, Customer will be required to pay all outstanding charges from the inception of Customer's service continuously to the current month, which is always paid in advance. If Customer's account is permanently deleted, Customer's username may be reassigned. If Customer wishes to reinstate Customer's account, Customer will be subject to any and all installation and setup charges in effect at the time of order placement, as well as any pertinent outstanding charges from Customer's former account.

Speakeasy has the right to terminate Customer's service at its sole discretion as determined by Speakeasy's Acceptable Use Policy. Customers within an active service term that are terminated due to violation of Speakeasy's Acceptable Use Policy and Limitations or that are past due will be assessed a standard Disconnection Fee. All customers terminated for any of these reasons are liable for any and all outstanding funds due to Speakeasy at the time of service termination, including but not limited to rendered service, hardware and installation fees. Should Customer opt to terminate Customer's Speakeasy service(s), Customer must contact Speakeasy via telephone or [MySpeakeasy](#) (login required) on the date Customer wishes the termination to take effect. All disconnection requests will be processed on the date the request is received. This applies to both total account and single service terminations. Broadband services are also subject to Speakeasy's Disconnection Policy.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

---

Speakeasy reserves the right to modify this Agreement and if Customer does not agree with any modification or addition to the Agreement, Customer may terminate Customer's subscription as provided by the Termination Policy set out above. If Customer does choose to terminate Customer's service on the basis of a modification in the Agreement, Customer is responsible for all outstanding funds due to Speakeasy at the time of the termination. Monthly service fees will be pro-rated and customer agrees that the Speakeasy has the right to determine what is owed in the final invoice.

### 17. Limitation of Liability and Remedies

Customer assumes full responsibility and risk for Customer's use of the service and of Customer's account. Speakeasy is not liable for any costs, expenses, losses, or damages, either general, special, actual, consequential, or incidental, that Customer may suffer or that some other person may suffer and claim against Customer resulting from the following: use, misuse, or service outage; customer provided hardware; Customer's actions or activities, whether legal or illegal; the actions or activities of any other Speakeasy customer, whether legal or illegal; or any other goods or services provided by Speakeasy or any of its vendors.

If Customer's state laws prevent Customer from taking full responsibility for Customer's use of the service, Speakeasy's liability is limited to the greatest extent allowed by law. In any event, Speakeasy's liability to Customer under this Agreement or in relation to any matter in any way connected with this Agreement, for any and all types of damages, in no event shall exceed the amount of service fees that Customer has paid to Speakeasy in the year preceding Customer's notice of any claim to Speakeasy, or the affected period, whichever is greater.

NOTWITHSTANDING ANY OTHER PROVISION HEREOF, SPEAKEASY SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF CUSTOMERS, LOSS OF DATA, INTERFERENCE WITH BUSINESS OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER ANY CUSTOMER ORDER OR THESE TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED THOSE ARISING FROM SPEAKEASY'S FAILURE TO MEET AN INSTALLATION DATE (EXPEDITED OR OTHERWISE) REGARDLESS OF WHETHER SPEAKEASY HAS BEEN INFORMED OF THE POSSIBILITY OF THE LIKELIHOOD OF SUCH DAMAGES.

### 18. Disclaimer of Warranties

Speakeasy makes no express or implied warranties (including warranties of title, non-infringement, and implied warranties of merchantability or fitness for a particular purpose), representations, or endorsements regarding its service or related equipment or software, or any third party material available through the service. Furthermore,



## **Speakeasy Master Services Agreement**

For customers who purchased Speakeasy services before October 1, 2010.

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the service, equipment and software are provided on an "as is, as available" basis -- SPEAKEASY DOES NOT WARRANT THAT THEY WILL BE UNINTERRUPTED OR ARE ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED.

### **19. Indemnity**

CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD SPEAKEASY HARMLESS FROM ANY LOSS, DAMAGE AND OR COST (INCLUDING ATTORNEYS' FEES) RESULTING FROM CUSTOMER'S VIOLATION OF THIS AGREEMENT OR ANY ACTIVITY RELATED TO CUSTOMER'S ACCOUNT.

### **20. Governing Law**

Customer agrees that this Agreement shall be governed by the laws of Washington with regard to its rules on conflicts of laws.

### **21. Copyright, Trademark & Unauthorized Use**

All Services, information, documents and materials on Speakeasy's website(s) are protected by trademark, copyright, patent and other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") of Speakeasy are and shall remain the exclusive property of Speakeasy and nothing in this Agreement shall grant Customer the right or license to use any of such marks.

### **22. Final Qualification**

Speakeasy is committed to providing quality Internet services. However, Speakeasy is not ultimately responsible for the quality of Customer's actual computer or any modifications Customer makes to any equipment Speakeasy supplies. Speakeasy is committed to solving Customer's problems but Speakeasy is not responsible for failings in individual Operating Systems and custom configuration of Operating Systems, Operating System components, software, network hardware, or inside wiring.

Although Speakeasy wishes to provide an equitable solution to every customer, Speakeasy reserves final rights in providing service and final discretion in all decisions.

### **23. Amendment**

This Agreement, and any Service Addendum or Service Order, may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party if by Customer, or by notice from Speakeasy as described herein if by Speakeasy. Without limiting the generality of the foregoing, any handwritten



## **Speakeasy Master Services Agreement**

For customers who purchased Speakeasy services before October 1, 2010.

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changes to a Service Order shall be void unless acknowledged and approved in writing by a duly authorized representative of each party.

### **24. Use of Name, Logo, Quotes & Case Studies**

Customer extends to Speakeasy the right to use, copy, transmit, display, and distribute Customer name, logo, quotes, case studies and testimonials in connection with Speakeasy products. Such use shall include but not be limited to, sales collateral, websites, PR, advertising and other associated activities involving applicable external communications, using all media known and hereafter developed. Customer will have the pre-approval of all uses of Customer logos, as well as quotes, communication and messaging related to Customer. Customer agrees to provide comments of approval or changes within 48-hours of receipt or request for such approval.

### **25. Entire Agreement**

This Agreement, including any future Service Addendum(s) and Service Order(s) executed hereunder, constitutes the entire and final agreement and understanding between the parties with respect to the Service and supersedes all prior agreements relating to the Service, which are of no further force or effect. The Service Addendums are included below in Attachments A through C and are hereby made integral parts of this Agreement.

### **26. Service Orders**

By signing a Service Order form, Customer agrees to pay all charges incurred on Customers Speakeasy Broadband Services, LLC and/or Speakeasy, Inc. (Collectively "Speakeasy") account(s) as described therein and any applicable Regulatory Compliance Fees and all applicable government mandated taxes, fees, and/or surcharges, or similar liabilities, by the stated due date and to adhere to all of the terms and conditions stated in the Speakeasy Master Service Agreement and its Addendum(s), and promotional offerings and the terms and conditions included with the Service Order and its Appendices (collectively the "Agreement") which are hereby incorporated by reference. Customer also authorizes Speakeasy to obtain any credit information necessary and/or Customer proprietary network information, necessary to provision the Speakeasy Service and to establish this Speakeasy account, and authorizes release of said information by any and all third parties to Speakeasy. Further, Customer represents that he/she is authorized to approve and accept the responsibility of the terms and conditions therein.

All initial upfront charges are due and payable by Customer according to the terms and conditions of the Service Order. Delays in payment may result in Service activation delays. Service Order may not reflect all applicable Regulatory Compliance Fees and government mandated taxes, fees, and/or surcharges, or similar liabilities that may be applicable to the Services or the hardware which Customer will be responsible for paying.





## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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Upon receipt of the Service Order executed by Customer, if Speakeasy determines (in its sole discretion) to accept the Service Order, Speakeasy will return a copy of the Service Order fully executed with Speakeasy's representative's signature. Speakeasy will become obligated to deliver ordered Service subject to the Master Service Agreement, its Addendum(s) and the Service Order only if Speakeasy has returned to Customer a copy of the Service Order fully executed with Speakeasy's representative's signature.

### 27. Miscellaneous

- a. **Rebates.** Customer may be eligible for equipment rebates. Customer is solely responsible for applying for and collecting any and all such rebates, which may not be used to offset any initial upfront or other charges, including but not limited to charges for hardware and installation.
- b. **Delay.** If, at any time after execution of a Service Order, Customer causes a delay in Service installation or port dates, Customer shall be responsible for any additional cost and fees incurred by Speakeasy or Customer as a result of this delay.
- c. **Warranty.** Speakeasy provided equipment may be covered by the original manufacturer's warranty. Speakeasy assumes no liability for any equipment, Speakeasy provided or otherwise.
- d. **Prepayment For Hardware.** For hardware costs exceeding \$5,000, Speakeasy will schedule the delivery of hardware and provisioning of Services upon Speakeasy's receipt of payment from Customer for 100% of the hardware charges and according to the other terms and conditions of this Agreement, its Addendum(s) and Service Order(s).
- e. **Customer Provided Hardware.** If Customer has opted to provide its own equipment, Customer will be solely responsible for procuring any firmware licenses and/or updates and Speakeasy shall have no obligation to provide such firmware licenses or upgrades.
- f. **Regulatory Compliance Fees.** Customer will be charged a monthly Regulatory Compliance Fee equal to 7.00% of all Broadband Services charges plus \$3.55 per seat or line of Voice Services.
- g. **Cost Recovery Fee.** For Service ordered after June 1, 2010, to the extent that Customer's Service Order indicates that hardware or service received by Customer has been provided by Speakeasy at a discounted cost to Customer or that hardware or service is eligible for a rebate, then, to the extent that Customer opts to terminate Customer's service with Speakeasy following any applicable Trial Period or without benefit of eligibility under the 60-day Service Guarantee or fails to comply with the provisions of those programs concerning the return of CPE, or that Speakeasy terminates Customer's service for non-payment or any other violation of the Agreement and that such termination occurs prior to the completion of that service's initial service term then Speakeasy shall charge to Customer, and Customer shall pay to Speakeasy, in addition to any eligible Termination Charges and/or other



## **Speakeasy Master Services Agreement**

For customers who purchased Speakeasy services before October 1, 2010.

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cancelation fees, a Cost Recovery Fee, as indicated in the table below, for each piece of hardware or CPE provided to Customer by Speakeasy for use with the canceled service. The Cost Recovery Fee is to recover ancillary costs and expenses associated with the provision of the hardware or CPE including, but not limited to, any hardware or CPE costs discounted or rebated to Customer by Speakeasy or its vendors. In no event shall the Cost Recovery Fee be seen to be a Termination Charge or other form of cancelation fee.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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<b>Hardware or CPE</b>	<b>Cost Recovery Fee</b>
Broadband Modem/Gateway/Router or IAD	\$0
Basic IP Phone	\$100
Advanced IP Phone	\$200
Application Layer Gateway	\$300
All other hardware or CPE	\$200

### **Broadband Modem / Gateway / Router or IAD**

Broadxent 8012-G ADSL2

Broadxent 8012-V ADSL

Netopia 4652 IDSL SDSL Modem

Adtran NetVanta 3130 ADSL Router

Adtran NetVanta 3448

Netopia 4622

Samsung Ubigate 1000

Cisco 1841

Adtran NetVanta 3120

Adtran Total Access 916

Adtran Total Access 924e

Edgemarc 4552 (Data Only)

### **Basic IP Phone List**

Polycom IP 321

Polycom IP 335

Cisco Spa 504G

### **Advanced IP Phone List**

Polycom IP 650

Polycom IP 670

Polycom IP 6000

Cisco SPA 509G

Cisco SPA 525G



## **Speakeasy Master Services Agreement**

For customers who purchased Speakeasy services before October 1, 2010.

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### **Application Layer Gateway**

Edgemarc 4500

Edgemarc 4552 (Voice Enabled)



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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### Attachment "A" Service Addendum, Speakeasy Broadband Connectivity & Services

If you subscribe to any of the following services ("Broadband Connectivity & Services"), the terms and conditions below apply to your use of the service(s) in addition to the terms of the Agreement.

#### 1. Pricing Guarantee

In the event that Speakeasy's pricing increases, Customer's monthly recurring charge will remain at the price set during order placement or special billing agreement for 12 months following Customer's Activation Date.

Additionally, if Customer's account is invoiced quarterly, semi-annually or annually, Customer will receive Customer's set monthly recurring charge until the end of the current payment period. This does not include new orders under the same name and/or location or new orders associated with a service relocation, nor orders for service changes that may be required if the desired service is not available due to technical or other reasons. Price changes for different packages at the same speeds, technologies, and throughput level are not included; one-time charges, applicable state and federal taxes, and promotional pricing are excluded. This guarantee only applies to the recurring broadband service charges.

#### 2. Service Term Information

Speakeasy requires Customers ordering broadband installations and inbound switches to commit to an initial service term at least twelve months. Service terms may be extended for additional monthly increments due to specific offerings or promotional terms. Service terms are required to offset associated costs of service acquisition and to enable Speakeasy to maintain innovative broadband policies and service features for a sustained period of time. Customer's initial service term begins once Speakeasy's vendor declares Customer's circuit as up and running on Speakeasy's network, referred to as Customer's Installation or Activation Date.

In the event of a service move (if Customer moves and has the service installed at the new location), a new initial service term will begin again from the date of activation at the new location. Additionally, in the event of a switch from another ISP to Speakeasy, the initial service term will begin from the date that the ISP switch is completed. Requests to have Customer's circuit switched to an alternate service provider at anytime during an active service term with a specific order will be subject to an Outbound Switch Fee to cover Speakeasy's provisioning expenses.

#### 3. Installation Procedure Policy

Speakeasy is not responsible for loss of income or time due to an order not being completed within the time frame desired, service outages, missed CLEC or ILEC appointments, and/or Trouble Ticket dispatches.

Should a new order be placed for line-sharing DSL on a voice line with existing DSL service, a vendor may find it necessary to migrate that service in order to complete Customer's installation. This may occur without warning



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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during the course of Customer's order. Customer is ultimately responsible for identifying this prior to initial order placement as well as handling any outstanding contractual obligations with Customer's former DSL provider.

For most installation and/or truck roll dates, an individual over the age of 18 must be present to grant access into the business, home, garage, apartment building, basement, phone closet, etc. so the technician can complete his or her work. In the event that there is no one present over the age of 18 at the scheduled time of the technician visit, and notification was not provided to Speakeasy at least 2 business days in advance, there will be a Missed Appointment Fee charged. Similarly, a No Access Fee will be charged if a technician is denied access to the phone closet (NID or Dmarc) due to a locked facility, or by the actions of others.

If Inside Wiring is authorized during order placement, Customer is financially responsible for any and all applicable Inside Wiring Fees. If Customer chooses not to pre-authorize Inside Wiring work, and it is determined that additional wiring is needed to complete Customer's installation, it is Customer's responsibility to ensure the necessary wiring is completed by Customer or a third party vendor. The Installation technician will supply Customer's CPE (Customer Premise Equipment), and service will be considered Activated once the line from the Central Office to Customer's phone box is verified as running.

The maximum number of phone line filters recommended on any line sharing order is three. Additional phone lines/filters may interfere with the quality of Customer's DSL service.

### 4. IP Allocation

Regardless of account type, there is a maximum allotment of 10 IPs for all bridged circuits. In order to exceed the 10 IP maximum allotment, Customer must have a routed connection.

#### Residential Packages

The number of static IPs varies from package to package. Additional IPs can be purchased, with a maximum allotment of 10 for bridged services. Any packages expressly marketed as including one Dynamic IP are an exception to this rule, as they are limited to one IP only. At this time, Speakeasy may choose to assign a static IP to these services, as some CPEs cannot be configured to use dynamic IPs without specific software. Testing of various software applications for future use is being looked into, and Speakeasy reserves the right to switch a static IP to dynamic at any time.

To find out how many IPs come with Customer's Residential package, please visit Speakeasy's Residential DSL Package Comparison Table at <https://www.speakeasy.net/home/compare/>.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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**Business Packages.** Most Business class packages are set up using Network Address Translation (NAT). IPs are assigned as needed, and up to 32 are available at no extra charge. Routed IPs are available in blocks of 8, 16, 32, 64, etc. Additional IP fees are billed for the entire block; e.g. if Customer has a block of 32 and needs 5 more IPs, Customer will need to purchase a 64 block for a monthly charge, per IP beyond 32. Three IPs in any block are used for the router, etc., and are not usable for computers on Customer's local network. Bridged Business class packages are limited to 10 IPs.

It is imperative that Customer use the IPs assigned to Customer. Speakeasy retains the right to randomly audit and reclaim any unused IPs assigned to a service. In addition, Speakeasy reserves the right to re-allocate or re-assign IP addresses as necessary at Speakeasy's sole discretion.

If Customer's IP needs exceed the amount included in Customer's current package, Customer should submit a request for additional IPs via MySpeakeasy at <https://www.speakeasy.net/myspeak/> (login required).

### 5. Service Guarantee

Speakeasy's Broadband Connectivity & Services Service Level Agreement is available to Customers at <https://www.speakeasy.net/tos> and/or will be provided upon request. Speakeasy's Broadband Connectivity & Services Service Level Agreement is subject to change at Speakeasy's sole discretion, and as such is updated by Speakeasy from time to time.

### 6. Disconnection Policy

It is the responsibility of the Customer to notify Speakeasy of cancellation via phone. Returning hardware, completion of service term, or cessation of payment does not constitute notification of cancellation.

**PRIOR TO ACTIVATION** - Cancellations within 72 hours of order placement will not be subject to penalty.

Cancellations Requested before the Activation Date and after 72 hours from initial order placement will be subject to a Processing Fee. If Customer's order has not been installed after 60 calendar days, Customer may cancel without penalty. There are no associated penalties for orders canceled by Speakeasy or its vendors due to technical limitations.

**FOLLOWING ACTIVATION** - Speakeasy offers a 25-day Trial Period on all ADSL services. If Customer feels that Customer must cancel within 25 calendar days of Customer's Activation Date, Customer may do so without being subject to a Disconnection Fee. Any outstanding Monthly Service, Installation, Missed Appointment, No Access, Internal Wiring, or Promotional Fees will apply. If your ADSL service or your SDSL, IDSL or T1 service with an initial order placement date before August 5, 2005 is disconnected or terminated after 25 calendar days from your



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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Activation Date and prior to end of your initial service term, or at anytime during an extended service term with that specific order, you will incur a Disconnection Fee.

Speakeasy offers a 60-day Service Guarantee on all SDSL, IDSL and T1 services placed on or after August 5, 2005. If Speakeasy is either unable to meet Speakeasy's installation guarantees or if during the first 60 calendar days following Customer's Activation Date Customer's service does not operate in accordance with Speakeasy's Service Guarantees, Customer may cancel Customer's circuit without being subject to a Disconnection Fee and Customer will be eligible to receive a credit for any Installation, Construction or Special Access Fees that were charged and, upon its return to Speakeasy as described below, any Hardware purchased from Speakeasy. Customer will be charge for any outstanding Monthly Service, Missed Appointment, No Access and Internal Wiring Fees.

To be eligible under the 60-day Service Guarantee, Customer must be in compliance with the terms of the Master Service Agreement, Service Addendum and Service Order. All Service Guarantee claims must be documented as Trouble Tickets opened with Speakeasy's support team and Customer's cancellation request must be made within 60 days of Customer's Activation Date. If there are (a) no Trouble Tickets logged or (b) Speakeasy determines (in Speakeasy's sole discretion) that Customer is, or has been, in violation of the terms of the Master Service Agreement, Service Addendum and Service Order including, but not limited to its Acceptable Use Policy or (c) cancellation is requested more than 60 days after Customer's Activation Date and prior to the end of Customer's initial service term or anytime during an extended service term with that specific order, Customer will not be eligible for any credits under the 60-day Service Guarantee and Customer will be liable for at least the standard Installation Fee (regardless of any marketing promotions that may have been applied).

Should Customer opt to terminate Customer's service with Speakeasy following any applicable Trial Period or without benefit of eligibility under the 60-day Service Guarantee, disconnection will be processed on the day on which the request is made. Upon termination, a final invoice will be generated, which will include any credits or refunds for service paid in advance and charges for any outstanding Monthly Service, Installation, Missed Appointment, No Access, Internal Wiring, Promotional or Disconnection Fees, if applicable.

If Customer moves or disconnects a specific circuit during an active service term and reorders that Speakeasy broadband service within 60 days (90 days for circuits with initial order placement dates before August 5, 2005), Speakeasy will credit the charged Processing Fee or Disconnection Fee to Customer's account upon notification of Activation. The Processing Fee or Disconnection Fee will not be refunded if the new installation is unsuccessful, or the line is cancelled within the 25 day Trial Period.

Disconnected orders are not eligible for rebate reimbursement. Customers with ADSL, SDSL, IDSL or T1 equipment (CPEs) that have received a vendor and/or Speakeasy rebate will not be reimbursed. ADSL, SDSL, IDSL or T1 CPEs that have not received a rebate will be reimbursed if the circuit was disconnected during a Service Guarantee or





## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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Trial Period for which it is eligible, and the CPE is postmarked for return to Speakeasy via the United Parcel Service (UPS) within 25 days of Customer's Activation Date in the case of the 25-day Trial Period or within 60 days of Customer's Activation Date in the case of the 60-day Service Guarantee. To ensure timely credit for an equipment return, Customer must provide the UPS tracking number to Speakeasy by submitting a new service ticket at <https://www.speakeasy.net/myspeak>. Equipment must be in its original packaging and with its original contents. This includes all Ethernet/power cables, power supplies, manuals, and discs that may have been provided with Customer's specific CPE.

### 7. Miscellaneous

**7.1 Hosting.** In addition to the terms provided in the All Services section of this document, the following terms apply specifically to customers utilizing Speakeasy's Web Hosting Services.

**Server Resources.** Per the terms of Speakeasy's Master Service Agreement, should Customer's website utilize an excessive amount of server resources (including, but not limited to, CPU processing time, memory usage and network resources) for a sustained period of time, Speakeasy reserves the right to request that Customer either upgrade Customer's web hosting service package or reduce Customer's website's use of resources to an acceptable level. Speakeasy will be the sole arbiter of what is considered to be an excessive amount of server resources. Speakeasy reserves the right to suspend or shut down any Web Hosting account deemed to adversely affect server performance or network integrity.

**Spam.** Speakeasy strictly prohibits bulk, unsolicited email and related practices, as defined by Speakeasy's Master Service Agreement.

**Scripts.** Scripts that pose a potential security risk and/or are deemed to adversely affect server performance or network integrity will be shut down or removed without prior notice.

**IRC.** Speakeasy does not allow IRC clients or IRC bots to be hosted and operated on its web-hosting servers.

**Content Restrictions.** All content hosted on Speakeasy's servers are subject to Speakeasy's Master Service Agreement including but not limited to its sections concerning Acceptable Use. Speakeasy servers may be used for lawful purposes only. Transmission, storage or distribution of any information, data or material in violation of any applicable law or regulation, or that may directly facilitate the violation of any particular law or regulation is prohibited. This includes, but is not limited to, Intellectual Property Rights Infringement, child pornography and material that constitutes an illegal threat or violates export control laws.

**Modifications.** Speakeasy may modify from time to time, and in any way, without limitation, any data, software, or hardware used to provide customers with Speakeasy's services. Certain changes to Speakeasy's services may affect the operation of customers' personalized applications and content. While Speakeasy will work with its customers



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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to provide proper notice of such changes, each customer is solely responsible, and Speakeasy is not liable, for any and all such personalized applications and content, except as expressly agreed to by Speakeasy.

**Backup of Data.** Customers are solely and entirely responsible for the management and backup of all customer data, and all updates, upgrades, and patches to any software that customers use in connection with Speakeasy services.

**Non-Speakeasy Products.** Any mention of non-Speakeasy products by Speakeasy and its employees is for information purposes only and does not constitute an endorsement or recommendation by Speakeasy. Speakeasy disclaims any and all liabilities for any representation or warranty made by the vendors of such non-Speakeasy products or services.

**7.2 Dialup.** Dialup connection numbers and methods are subject to change or replacement at any time. Speakeasy reserves the right to direct those with dialup service to specific numbers, or restrict the use of others. Customer is responsible for any long distance charges associated with the use of Customer's Speakeasy dialup.

Customer's Speakeasy dialup service is restricted to one simultaneous connection per unique Speakeasy username. Dialup services must remain in an active state without the aid of an automatic connection refreshing program/device for the duration of the session. Unlimited service does not provide a dedicated connection, and Speakeasy's standard dialup package includes 150 hours of connectivity per month. Speakeasy reserves the right to disconnect, suspend, cap, or change connection requirements based on the abuse or misuse of Customer's dialup connection.

Dialup service does not come with an uptime or connection throughput service guarantee.

**7.3 Speakeasy Private Networking.** All Private Networking services are assigned a Dedicated Business Account Manager, responsible for the resolution of account and service issues. Speakeasy's Dedicated Business Account Management team is guaranteed to provide a response time of one business day for modifications to Customer's service's configuration, and a four hour response time for Private Networking related outages following phone notification. A Private Networking related outage is defined as the unavailability of one or more of the Private Networking connections due to a failure or malfunction of Speakeasy's Network. Credits for Private Networking service outages will be prorated based on the time between initial outage notification and restoration of Private Networking service.

Speakeasy requires all Private Networking customers to commit to an initial 12-month service term. Service terms may be extended for additional monthly increments due to specific offerings or promotional terms. A service term is required to offset costs of service acquisition. The initial term begins once service (as defined during order placement) is up and running, referred to as Customer's Installation or Activation Date.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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If any of the circuits in Customer's Private Networking are disconnected or terminated at any time following Customer's Activation Date and prior to the end of an active service term, Customer will incur the Disconnection Fee associated with those circuits. Should Speakeasy's Dedicated Business Account Management Team fail to meet set response time guarantees more than two times within a calendar month, Customer may disconnect service without penalty.

**7.4 Speakeasy Bonded T1.** All Bonded T1 services are assigned a Dedicated Business Account Manager, responsible for the resolution of account and service issues. Speakeasy's Dedicated Business Account Management team is guaranteed to provide a response time of one business day for modifications to Customer's service's configuration, and a four hour response time for Bonded T1 related outages following phone notification. A Bonded T1 related outage is defined as the unavailability of one or more of the individual T1 connections due to a failure or malfunction of Speakeasy's Network. Credits for Bonded T1 service outages will be prorated based on the time between initial outage notification and restoration of Bonded T1 service.

If any of the circuits in Customer's Bonded T1 are disconnected or terminated at any time following Customer's Activation Date and prior to the end of an active service term, Customer will incur the Disconnection Fee associated with those circuits. Should Speakeasy's Dedicated Business Account Management Team fail to meet set response time guarantees more than two times within a calendar month, Customer may disconnect service without penalty.

**7.5 Virtual Private Network.** All Virtual Private Network (VPN) services are assigned a Dedicated Business Account Manager, responsible for the resolution of account and service issues. Speakeasy's Dedicated Business Account Management team is guaranteed to provide a twenty-four hour.s response time for modifications to Customer's service's configuration, and a four hour response time for VPN related outages following phone notification. A VPN related outage is defined as the inability to ping a private IP while retaining the ability to ping the public gateway. Credits for VPN service outages will be prorated based on the time between initial outage notification and restoration of VPN service.

Speakeasy requires all VPN customers to commit to an initial 12-month service term. Service terms may be extended for additional monthly increments due to specific offerings or promotional terms. A service term is required to offset costs of service acquisition. The initial term begins once VPN service (as defined during order placement) is up and running, referred to as Customer's Installation or Activation Date.

If Customer's VPN service is disconnected or terminated at any time following Customer's Activation Date and prior to the end of an active service term, Customer will incur a Disconnection Fee. Should Speakeasy's Dedicated



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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Business Account Management Team fail to meet set response time guarantees more than two times within a calendar month, Customer may disconnect service without penalty.

### 8. One Time Charges

CHARGES ARE SUBJECT TO CHANGE AT SPEAKEASY'S SOLE DISCRETION. Please reference Speakeasy's website at <https://www.speakeasy.net> for a full description of current charges.

#### Disconnection Fees:

**Standard ADSL Disconnection Fee:** For circuits with an initial order placement date on or after August 5, 2005 Customers will be charged a \$300 Disconnection Fee for any specific individual ADSL circuit order that is disconnected or terminated prior to the end of its then current service term.

**Standard IDSL Disconnection Fee:** For circuits with an initial order placement date on or after August 5, 2005 Customers will be charged a \$300 Disconnection Fee for any specific individual IDSL circuit order that is disconnected or terminated prior to the end of its then current service term.

**Standard SDSL Disconnection Fee:** For circuits with an initial order placement date on or after August 5, 2005 Customers will be charged a \$300 Disconnection Fee for any specific individual SDSL circuit order that is disconnected or terminated prior to the end of its then current service term.

**Standard T1 Disconnection Fee:** Customer will be charged a \$600 Disconnection Fee for any specific individual T1 circuit order placed after June 2, 2005 that is disconnected or terminated prior to the end of its then current service term. For circuits with an initial order placement date on or after August 5, 2005 Customers will also be liable for the full amount (including the Speakeasy paid portion) of any Construction or Special Access charges approved by Customer.

**24 Month Term T1 Disconnection Fee:** Customer will be charged a \$1,100 Disconnection Fee for any specific individual T1 circuit order placed after June 2, 2005 that is disconnected or terminated prior to the end of its then current service term. For circuits with an initial order placement date on or after August 5, 2005 Customers will also be liable for the full amount (including the Speakeasy paid portion) of any Construction or Special Access charges approved by Customer.

**36 Month Term T1 Disconnection Fee:** Customer will be charged a \$1,500 Disconnection Fee for any specific individual T1 circuit order placed after June 2, 2005 that is disconnected or terminated prior to the end of its then current service term. For circuits with an initial order placement date on or after August 5, 2005 Customers will also be liable for the full amount (including the Speakeasy paid portion) of any Construction or Special Access charges approved by Customer.

**Bonded T1 Disconnect Fee:** For circuits with an initial order placement date on or after August 31, 2009, Customer will be charged a Disconnection Fee as specified in the table below for any individual Bonded T1 circuit that is



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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disconnected or terminated prior to the end of its then current service term. Customers will also be liable for the full amount (including the Speakeasy paid portion) of any Construction or Special Access charges approved by Customer.

Bandwidth	1 Yr Term	2 Yr Term	3 Yr Term
3.0 Mbps	\$1,600	\$2,300	\$3,000
4.5 Mbps	\$2,300	\$3,400	\$4,400
6.0 Mbps	\$2,900	\$4,300	\$5,600

**Speakeasy Business Ethernet Disconnect Fee:** For circuits with an initial order placement date on or after June 1, 2009, Customer will be charged a Disconnection Fee as specified in the table below for any individual Business Ethernet circuit that is disconnected or terminated prior to the end of its then current service term. Customers will also be liable for the full amount (including the Speakeasy paid portion) of any Construction or Special Access charges approved by Customer.

Bandwidth	1 Yr Term	2 Yr Term	3 Yr Term
3 Mbps	\$750	\$1250	\$1500
5 Mbps	\$1000	\$1500	\$1750
10 Mbps	\$1500	\$2000	\$2500
15 Mbps	\$1750	\$2250	\$2750
20 Mbps	\$2000	\$2500	\$3000

For circuits with an initial order placement date prior to June 1, 2009, Customer will be charged a Disconnect Fee equal to 50% of the monthly recurring service fees remaining in their service term for any individual Business Ethernet circuit that is disconnected or terminated prior to the end of its then current service term.

**VPN Disconnection Fee:** Customer will be charged \$300 if Customer's VPN service is disconnected or terminated after Customer's Activation Date and prior to the end of an active service term.

**Dispatch Time** is charged per vendor discretion for time spent on site during a dispatch. Covad charges are \$20 per whole or partial 15 minutes.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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**Inside Wiring Fee of \$150** for the initial hour, \$88 per hour there after.

**\$199 Line Conditioning Fee** where applicable on IDSL, ADSL, and 192 SDSL services provided through New Edge Networks.

**\$150 Missed Appointment Fee** if there is no one present over the age of 18 at the scheduled time of the technician visit, and notification was not provided to Speakeasy at least 2 business days in advance.

**\$150 No Access Fee** if a technician is denied access to the phone closet (NID or Dmarc) due to a locked facility, or by the actions of others.

**\$225 Outbound Switch Fee** for all requests to have Customer's broadband circuit switched to an alternate service provider at any time during the first year of service with a specific order.

### Processing Fees:

**ADSL Processing Fee:** Customer will be charged a \$49 Processing Fee for all cancellations requested after 72 hours from initial order placement and prior to the Activation Date.

**SDSL Processing Fee:** Customer will be charged a \$149 Processing Fee for all cancellations requested after 72 hours from initial order placement and prior to the Activation Date.

**IDSL Processing Fee:** Customer will be charged a \$149 Processing Fee for all cancellations requested after 72 hours from initial order placement and prior to the Activation Date.

**T1 Processing Fee:** Customer will be charged a \$49 Processing Fee per T1 for all cancellations requested after 72 hours from initial order placement and prior to the Activation Date. Customer will be charged a \$300 Processing Fee in addition to any Construction/Special Access (including the Speakeasy paid portion thereof) or Special (Non-Standard) Installation Fees Customer approved for all cancellations requested after 72 hours from initial order placement and prior to the Activation Date.

**Business Ethernet Processing Fee:** Customer will be charged a \$499 Processing Fee for all Business Ethernet cancellations requested after 72 hours from initial order placement and prior to the Activation Date.

**\$49 Retrieval Fee** applied for all requests of data retrieval from Speakeasy's servers.

**\$25 Returned Payment Fee** if a payment in any form is recovered or otherwise not paid by Customer's financial institution.

**\$199 Technician Dispatch Fee** if a vendor technician dispatch is necessary to repair any non-Speakeasy/non-vendor initiated changes to the on-site equipment or wiring that renders that device inoperable or unreachable by Speakeasy remotely, hardware reconfigurations, or hardware repairs not covered under warranty. Additional repairs may be billed per vendor discretion.



## **Speakeasy Master Services Agreement**

For customers who purchased Speakeasy services before October 1, 2010.

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### **9. Notices**

Certain notices hereunder may be delivered to Customer by Speakeasy by sending them to an e-mail address identified in the Service Order and/or Site Detail Form, including but not limited to pricing updates, the Customer Welcome Letter and Service Connection Notices. Notices so e-mailed shall fulfill the notice requirements under the Agreement.

### **10. Other Fees**

Speakeasy will invoice, and Customer will pay fees for CPE, Devices, Site Surveys and other services as described in the Service Order and/or Site Detail.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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### Attachment "B" Service Addendum, Speakeasy Business Voice Services

If you subscribe to any of the following services ("Phone Services"), the terms and conditions below apply to your use of the service(s) in addition to the terms of the Agreement.

#### 1. Definitions

Capitalized terms used but not defined herein shall have the meaning given to them in the Agreement.

**1.1 "CPE" and "Device"** shall mean Speakeasy or Customer-provided devices which enable access to Speakeasy Business Voice Services and which will be located at the Customer Premises.

**1.2 "Customer Provided Facilities"** shall mean all facilities necessary to the delivery of Speakeasy Business Voice Services which are not Speakeasy Facilities, which may include but may not be limited to Speakeasy recommended and approved IP telephone equipment, the CPE Router, inside wiring, desktop hardware and software, and internet access.

**1.3 "Speakeasy Business Voice Services"** ("Voice Services") shall mean the enhanced Service described in Section 2.1 of this Service Addendum and identified in a Service Order and/or Site Detail.

**1.4 "Seat"** shall mean a telephone number provisioned in relation to the Voice Services associated with a specific user or telephone device.

**1.5 "Off-Net"** shall mean Service that originates from and/or terminates to any Location that is not on the Speakeasy voice network.

**1.6 "Speakeasy Facilities"** shall mean all facilities provided by Speakeasy and necessary to the delivery of Voice Services. These facilities shall be specified in the Service Order and/or Site Detail.

**1.7 "NES"** shall mean No Emergency Service. Services with this designation are provided without 911 type emergency services.

**1.8 "ES"** shall mean Emergency Service. Services with this designation are provided with 911 type emergency services.

**1.9 "LAN"** shall mean Local Area Network.

#### 2. Speakeasy Voice Services Description

Description of the Voice Services and description of the delivery of the Voice Services.

**2.1 Speakeasy Voice Services Description.** Voice Services, including, but not limited to, "Integrated Voice", "Hosted Voice", and "Speakeasy Business VoIP Services" are hosted Internet Protocol ("IP") based business voice service which may bundle Class 5 communications features with other available features and/or services as selected by Customer and identified in Customer's Service Order and/or Site Detail. Customer may choose to





## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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supply Customer's own Internet connectivity provided that Speakeasy approves such internet connectivity. Customer acknowledges that the quality of the Internet connectivity will affect the performance of the Service. To use the Voice Services, Customer must purchase or otherwise supply all necessary Customer Provided Facilities. Speakeasy's Service does not support 0+ calling (including without limitation collect, third party billing or calling card calling). Speakeasy's Service may not support 900, 311, 511 and/or other x11 (other than 911 and 411, which are provided for elsewhere in this Agreement) services in one or more (or all) service areas. Speakeasy's Service does not connect calls to phone numbers in Area Code/Prefix combinations used by third party Reverse Billing Services. A complete list of blocked Reverse Billing Service Area Code/Prefix combinations can be found at Blocked Area Code/Prefix Combinations. This list is subject to change by Speakeasy without notice to Customer.

**2.2 Service Delivery and Billing Commencement.** Subject to Section 2.5 below, upon the sooner of (a) the Customer site activation; or (b) use of the DID number, Speakeasy will commence billing for usage and the monthly recurring seat charge shall commence on the Customer site activation date, this shall be the Service Commencement Date. Billing shall commence on the applicable Service Commencement Date regardless of whether Customer has procured other services from other carriers or Affiliates of Speakeasy's needed to operate the Voice Services, and regardless of whether Customer is otherwise prepared to accept delivery of ordered Voice Services.

**2.3 Disputed Invoices.** Notwithstanding anything to the contrary in the Agreement, all claims related to disputed invoices must be submitted to Speakeasy in writing within thirty (30) days from the date of invoice of those Services. Customer waives the right to dispute any charges not disputed within such thirty (30) day period.

**2.4 Termination Charges.** Notwithstanding anything in the Agreement to the contrary, Customer may terminate or cancel the Voice Services or any element of the Voice Services under a Service Order and/or Site Detail upon fifteen (15) days prior written notice to Speakeasy (in a form reasonably requested by Speakeasy). In the event that Customer terminates or cancels the Voice Services or any element of the Voice Services as set forth herein or in the event that the delivery of Voice Services is terminated by Speakeasy as the result of an uncured default by Customer, Customer shall, as indicated, pay to Speakeasy any and all of the following fees:

**(i) Service Cancellation Fee:** Voice Services cancellations within 72 hours of order placement will not be subject to a Service Cancellation Fee. If Customer cancels any Voice Services after 72 hours of order placement and prior to Service activation, Customer will be charged a Service Cancellation fee equal to 50% of the list activation fee for that Service.

**(ii) Order Cancellation Fee:** Voice Services cancellations within 72 hours of order placement will not be subject to a Order Cancellation Fee. If Customer cancels the entire Service Order after 72 hours of order placement and prior to Service activation, Customer will be charged an Order Cancellation fee equal to 50% of the list activation fee for all Services. This fee is IN ADDITION to the Service Cancellation Fee above. For purpose of clarification, if Customer



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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cancels the entire Service Order, the total combined cancellation fee will be 100% of the total list activation fee for that order.

**(iii) Early Disconnect Fee:** If Customer cancels any Voice Services after initial activation, Customer will be charged an Early Disconnect fee for each Service being canceled. For Services with a 1 year term, this Fee is 4 times the list monthly recurring charge for the canceled Service. For Services with a 2 year term, this Fee is 5 times the list monthly recurring charge for the canceled Service. For Services with a 3 year term, this Fee is 6 times the list monthly recurring charge for the canceled Service.

Customer shall also pay the full amount of the monthly recurring charges for the terminated Voice Services for the month of the effective termination (regardless of whether the termination date is mid-billing cycle).

You acknowledge that the cancellation or termination charges set forth are a genuine estimate of the actual damages that Speakeasy will suffer and are not a penalty.

**2.5 Assignment of DID by Office Administrator.** Subject to availability, if ordered for assignment at the same time, Speakeasy will use reasonable commercial efforts to provide Customer with DIDs in blocks of a maximum of 50 in consecutive order. Speakeasy will not disclose DIDs requested by Customer to third parties except as required to comply with law or regulation or as may be necessary in the provision of the Service. Customer and Speakeasy will reasonably cooperate should Customer elect to change the service provider for those DIDs. Speakeasy may, upon fifteen (15) days' prior written notice, reclaim any DIDs provided by Speakeasy to Customer hereunder that have not been used by Customer in connection with any Service in the immediately preceding sixty (60) day period

**2.6 Non-Standard Use.** Speakeasy will notify Customer if and to the extent that Speakeasy determines in Speakeasy's reasonable discretion that the Service is showing improper usage patterns. Improper usage patterns may include but are not limited to calling patterns where Customer's ratio of inbound or outbound call minutes exceeds 80% of Customer's aggregate minutes or Customer's aggregate minutes of usage per month per Seat or Line in an Order exceeds 5,000 minutes regardless of the purchased Service plans. Aggregate minutes are calculated by adding all of Customer's Off-Net inbound plus all of Customer's Off-Net outbound minutes, excluding any metered or shared minute plans, on a monthly basis. Speakeasy reserves the right to, at its sole discretion, Terminate the Service or convert the Service to metered billing where improper usage patterns are identified.

Notwithstanding the foregoing, Speakeasy has no obligation to monitor the Service for improper usage patterns.

**2.7 Service Term and Pricing.** The Service Term will be year-to-year after an Initial Term Period of two (2) years unless otherwise stated in a Service Order and/or Site Detail. Speakeasy will provide Customer with five (5) days notice in advance of pricing changes other than changes to International rates, which are subject to change



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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without notice. Notwithstanding the foregoing, Speakeasy reserves the right to modify or discontinue the Service generally upon thirty (30) days. prior written notice to Customer.

**2.8 Training.** If Customer has selected Speakeasy-provided on site training for Business Voice Service in this Service Order, Speakeasy will provide this training on a date mutually agreed upon by Speakeasy and Customer. The charges included in this Service Order do not include travel and out-of-pocket expenses which are not within Speakeasy's normal training locations. Speakeasy will quote to Customer such travel and out-of-pocket expenses upon request. Customer acknowledges that Speakeasy will charge Customer accordingly and Customer agrees to pay Speakeasy for such additional expenses.

**2.9 LAN Information.** Customer warrants Local Area Network ("LAN") information provided herein is accurate. Unless otherwise indicated in writing by Speakeasy, Customer shall maintain the same LAN and physical premises configuration (wired and wireless) as described at time of order to assure proper operation of the Voice Service. Speakeasy shall not be held responsible for project delay resulting from errors or omission in this information. Moreover, Customer shall be responsible for any additional costs resulting from such errors or omissions, including but not limited to field technician dispatches, re-scheduling fees and additional vendor costs. Customer warrants that LAN information on record will be maintained and updated with Speakeasy. Speakeasy reserves the right to audit Customer LAN. If, at any time, Speakeasy's audit reveals significant deviations from information on record, Customer shall be responsible for updating this information and for any costs Speakeasy may incur as a result of this information being inaccurate. Failure by Customer to notify Speakeasy of any material changes to the LAN information may result in additional costs, including but not limited to field dispatch of professional technicians, and Speakeasy will charge Customer accordingly and Customer agrees to pay Speakeasy for such additional costs. In addition, Speakeasy shall not be held responsible for any outage directly resulting from Customer's material LAN and WAN changes performed without prior written communication to and written approval from Speakeasy.

### 3. Service Levels

**3.1 Service Level Credits.** In no event shall the cumulative total amount of the Service Credits for all Service Levels issued to Customer in any month exceed the monthly recurring charges ("MRC") invoiced to Customer for the affected Seat(s) or Line(s) for that month. For the avoidance of doubt, the MRC for the Seats or Lines does not include usage-based charges. Speakeasy's Service Levels do not apply to any failure or degradation in Voice Services resulting from Off-Net local access circuits, Off-Net Local Loops and/or internet access or connectivity provided by any third-party supplier. Any Service Level Credit for other Services provided by Speakeasy will be set forth in a separate Service Addendum related to the Service. Notwithstanding anything in the Agreement to the contrary, to request a credit, Customer must contact Speakeasy Customer Service or deliver to Speakeasy a written



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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request (with sufficient detail necessary to identify the affected Seats and Service) within seven (7) days of the end of the month for which a credit is requested.

**3.2 Service Level Measurement Demarcation.** Unless otherwise stated in a Service Level, Service Level measurements are made by Speakeasy, and are taken between the ingress router of the Speakeasy Communications-provided IP network and the egress router from the Speakeasy Communications-provided IP network at the locations provided in the Service Levels. No Service Levels apply to Internet connectivity provided by third parties although failure of the same to perform will affect the Voice Services. If Speakeasy arranges to procure the internet connectivity through a third party, Speakeasy will pass through to Customer any availability service level and associated credit (if applicable) provided to Speakeasy by the third party.

**3.3 Service Level Agreement.** Speakeasy's Business Voice Services Service Level Agreement is available to Customers at <https://www.speakeasy.net/tos> and/or will be provided upon request. Speakeasy's Business Voice Services Service Level Agreement is subject to change at Speakeasy's sole discretion, and as such is updated by Speakeasy from time to time.

## 4. Emergency 911 Service

**4.1 Distinction Between Speakeasy Voice Services 911 and Traditional 911.** Customer acknowledges and understands that Speakeasy offers a 911 type Emergency Service as described herein in certain areas and with certain, but not all, Voice Services and Products, and that such 911 type dialing is different in a number of important ways (some, but not necessarily all, of which are described in this Agreement) from traditional 911 service, and that Speakeasy has told Customer that Speakeasy's Service does not support traditional 911 or E911. Customer acknowledges and confirms that Customer understands the availability, or lack of availability, of 911 type services as described in the Site Details of the Service Order, and further acknowledges and confirms that Customer understands that Products or Services listed in the Site Details of the Service Order as "NES" are provided with No Emergency Services, and as such Speakeasy does not provide any 911 type services in support of those Products or Services and that a call placed to 911 from any service designated as "NES" may or may not complete to an operator or PSAP administrator and such operator or PSAP administrator may or may not be specifically designated to receive the incoming 911 call. Speakeasy 911 dialing, when available, cannot be used in conjunction with a Soft Phone application and is only available on Devices or Equipment that Speakeasy provides at the physical street address location that the Device is registered for. Customer agrees to inform any employees, guests and other third parties who may be present at the physical location where Customer utilizes the Service of the non-availability of traditional 911 or E911 dialing from Customer's Voice Services and Device(s) and to inform them of the important differences and limitations of Speakeasy 911 dialing service as compared with traditional 911 or E911 dialing that are set forth in this Agreement.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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**4.2 Different Capabilities.** When Customer dials 911 on Customer's phone utilizing the Voice Services, Customer's calls may be routed to a different dispatcher than that used for traditional 911 dialing. The dispatcher may be located at a Public Safety Answering Point (PSAP) designated for the address Customer listed at the time Customer registered for the Service or other back-up emergency answering services. Speakeasy relies on third parties for the forwarding of information underlying such routing, and accordingly Speakeasy and Speakeasy's third party provider(s) disclaim any and all liability or responsibility in the event such information or routing is incorrect. In addition, Voice Services 911 Service has fewer capabilities than traditional 911 or E911 service as follows:

**4.2.1 Availability.** Customer acknowledges and agrees that 911-type Services are not available in all locations or with all services and, that when available, shall only be available at the Physical street address associated with the particular Area Code and Phone Number assigned to Customer. Customer further acknowledges and agrees that 911-type Services will not be available to Customer and that neither Speakeasy nor Speakeasy's underlying service providers shall have any liability to Customer or any third party for failure to provide 911 Services to Customer in the event of the assignment of a Area Code and Phone Number to Customer located outside of the Exchange Area associated with Customer's physical street address or relocation of the telephone device to which an Area Code and Phone Number has been assigned to a location other than Customer's physical street address as registered with Speakeasy. Customer acknowledges that 911 calls placed using the Voice Portal or the Remote Office features will not be terminated and that such users should be instructed to use standard dial-tone phone Service to place 911 calls. Speakeasy 911 Service is not available to end users and Customer sites located outside of the United States.

**4.2.2 Failure to Designate the Correct Physical Street Address.** If Customer does not correctly identify the actual current and correct physical street address location where Customer's Speakeasy equipment will be located at the time Customer registers for the Service, 911 communications may be misdirected to an incorrect local emergency service provider. When ordering Service, Customer must provide the actual physical street address where the Service will be located, not a post office box, mail drop or similar address. Customer acknowledges and understands that 911 dialing does not function properly or at all if Customer moves or otherwise changes the physical location of the Speakeasy-provided hardware to a different street address. Any change of the devices physical address must be coordinated with Speakeasy for the Service and 911 to work properly.

**4.2.3 Automated Number & Location Identification.** The PSAP receiving Voice Services 911 Emergency Service calls may not be able to capture and/or retain automatic number or location information. Speakeasy's system is configured in most instances to send the automated number identification information and to transmit identification of the address that Customer has registered with Speakeasy to the Public Safety Answering Point (PSAP) and local emergency personnel for Customer's area when Customer dials 911; however, one or more telephone companies, not Speakeasy, route the traffic to the PSAP and the PSAP itself must be able to receive the



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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information and pass it along properly, and PSAPs are not yet always technically capable of doing so. Customer acknowledges and understands that PSAP and emergency personnel may or may not be able to identify Customer's phone number and location in order to call Customer back if the call is unable to be completed, is dropped or disconnected, or if Customer is unable to speak to tell them Customer's phone number and location and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

**4.2.4 Power Failure, Outages or Disruptions of Service.** Customer acknowledges and accepts that Voice Services 911 Service may not function if Customer's voice gateway fails or is not configured correctly or if Customer's Voice Services are not functioning for any reason, including, but not limited to, in the event of a power outage, broadband service outage, or suspension or disconnection including suspension or termination of service by Customer's broadband provider and/or ISP or by Speakeasy for any reason including BILLING ISSUES or for other reasons described elsewhere in this Agreement. If there is a power outage, the Service and 911 dialing will not function until power is restored and Customer may be required to reset or reconfigure the Speakeasy Equipment prior to being able to use Customer's Voice Services, including for 911 purposes.

**4.2.5 Possibility of Network Congestion and/or Reduced Speed for Routing or Answering 911.** Customer acknowledges and understands that for technical reasons associated with the possibility of network congestion, with Voice Services there is a greater possibility that Customer's 911 calls will produce a busy signal or will experience unexpected answering wait times and/or take longer to answer, as compared to traditional 911 calls over traditional public telephone networks. Customer acknowledges and accepts that Speakeasy relies on third parties for the forwarding of information underlying such routing, and accordingly Speakeasy and Speakeasy's third party provider(s) disclaim any and all liability or responsibility in the event such information or routing is incorrect.

**4.2.6 Limitation of Liability and Indemnification.** As described herein, this 911-type dialing currently is NOT the same as traditional 911 or E911 dialing, and at this time, does not necessarily include all of the capabilities of traditional 911 dialing. Customer acknowledges and understands such limitations and agree to release, defend, indemnify, and hold harmless Speakeasy, its officers, directors, employees, affiliates and agents and any other of its underlying providers, service providers or other third party providers who furnish services to Customer or Speakeasy in connection with this Agreement or the Services, from any and all liabilities, claims, actions, losses, damages, fines, penalties, costs and expense (including, without limitation, reasonable attorneys fees) by, or on behalf of, Customer or any third person or party or user of the Service relating to or arising out of the absence, failure or outage of the service, including 911 dialing and/or inability of Customer or any third person or party or user of the Service to be able to dial 911 or to access emergency service personnel and/or misroutes of 911 calls, including but not limited to misroutes resulting from Customer's provision to Speakeasy of incorrect address information in connection therewith. Further, Customer hereby waives any and all such claims or causes of action



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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resulting from the foregoing events or conditions unless it is proven that the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, gross recklessness, or intentional gross misconduct on Speakeasy's part.

**4.2.7 Alternative 911 Arrangements.** Customer acknowledges that Speakeasy does not offer Primary Line or Lifeline services, and that Speakeasy strongly recommends that Customer always have an alternative means of accessing traditional 911 services.

### 5. Miscellaneous

**5.1 Privacy and Security.** Voice over IP communication may utilize, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Customer acknowledges and understands that Speakeasy cannot guarantee that voice over IP communication is always private or secure. Speakeasy is not liable for any lack of privacy or security that Customer may experience with regard to the Service. Customer is responsible for taking precautions and providing security that best suits Customer's intended use of the Service. Please refer to Speakeasy's Privacy Policy in the Agreement for information on Speakeasy's use and disclosure of Customer's information.

There are Federal Communications Commission rules governing the access, use and disclosure of certain information that Speakeasy obtains from you in its provision of Voice Over Internet Protocol ("VoIP") services to you. (Voice Services including, but not limited to, "Integrated Voice" and "Hosted Voice" are VoIP services.) This information is known as Customer Proprietary Network Information ("CPNI"). CPNI is a) information that relates to the quantity, technical configuration, type, destination, location and amount of use of a telecommunications service subscribed to by you, and that is made available to Speakeasy by you solely by virtue of your customer relationship with Speakeasy, and b) information contained in your bills pertaining to telephone exchange service or telephone toll service. CPNI does not include subscriber list information, such as the information found in phone directories. Subject to certain exceptions, including the provisioning of services, marketing adjunct services, and preventing telecommunications fraud and abuse, Speakeasy may not use, disclose, or permit access to your CPNI without your consent. A more detailed explanation of your CPNI rights and how you may provide or withdraw your consent for Speakeasy to access, use or disclose your CPNI may be found by logging into your [MySpeakeasy](#) account and navigating to Manage Account > Account Permissions.

Speakeasy takes its responsibility to protect your CPNI seriously. If you wish to obtain access to your CPNI from Speakeasy (such as the numbers that you have called in the prior month), you must either (1) log-on to Speakeasy's secure website and obtain access to your CPNI using your online account password or (2) call your account representative and provide either the last four digits of the billing credit card on the account or be able to supply the amount due to Speakeasy on your bill from the last two months.





## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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An existing Speakeasy customer ("Existing Customer") may not, via phone or online account access, establish a new user associated with his or her account where the person on whose behalf the new user was established ("New Person") would have a reasonable expectation of privacy with regard to the CPNI associated with the services the New Person receives from Speakeasy. Such a reasonable expectation is present if such New Person would consider himself or herself to be a Speakeasy customer, separate and apart from the Existing Customer.

**5.2 Loss of Service Due to Power Failure or Internet Service Outage or Termination or Suspension or Termination by Speakeasy.** Customer acknowledges and understands that the Service does not function in the event of power failure. Customer also acknowledges and understands that the Service requires a fully functional broadband connection to the Internet (which may or may not be provided by Speakeasy) and that, accordingly, in the event of an outage of, or termination of service with or by, Customer's Internet service provider ("ISP") and/or broadband provider, the Service will not function, but that Customer will continue to be billed for the Service unless and until Customer or Speakeasy terminate the Service in accordance with this Agreement. Should there be an interruption in the power supply or ISP outage, the Service will not function until power is restored or the ISP outage is cured. A power failure or disruption may require Customer to reset or reconfigure equipment prior to utilizing the Service. Power disruptions or failures or ISP outages will also prevent dialing to emergency service numbers including the 911 type calling feature. Should Speakeasy suspend or terminate Customer's Service, the Service will not function until such time as Speakeasy restores Customer's Service (which may require payment of all invoices and reconnection fees owed by Customer or cure of any breach by Customer of this Agreement).

**5.3 Security Systems. Fax Machines and Other Non-Voice Communications Equipment.** Many types of non-voice communications equipment, including but not limited to, security systems that are set up to make automatic phone calls, fax machines, modems and medical monitoring device, may not be compatible with the Voice Services. By accepting this Agreement, Customer waives any claim against Speakeasy for interference with or disruption of such systems due to the Services.

**5.4 Hardware Warranty.** If Customer received CPE or other Devices new from Speakeasy and the CPE or Device included a limited warranty at the time of receipt, Customer must refer to the separate limited warranty document provided with the CPE or Device for information on the limitation and disclaimer of certain warranties. Remedies for breach of any such warranties will be limited to those expressly set forth in such documentation. If Customer's CPE or Device did not include a limited warranty from Speakeasy at the time of receipt, Customer agrees that Customer accepts the CPE or Device "as is" and that Customer is not entitled to replacement or refund in the event of any defect. Any limited warranty shall not apply to any defect or failure other than a manufacturing defect, and, without limiting the generality of the foregoing, shall not apply to any defect caused by damage in transit or customer handling. Customer's sole remedy for any breach of any limited warranty is to obtain a repaired or





## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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replacement CPE or Device, by following Speakeasy's return procedures. Customer must include with the returned CPE or Device a letter stating that Customer is returning the CPE or Device for warranty repair or replacement and stating the nature of the defect. OTHER THAN WARRANTIES AS TO THE CPE OR DEVICE EXPRESSLY SET FORTH IN DOCUMENTATION PROVIDED WITH THE CPE OR DEVICE SPEAKEASY MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS OF THE CPE OR DEVICE FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE CPE OR DEVICE OR ANY FIRMWARE OR SOFTWARE IS "ERROR FREE" OR WILL MEET CUSTOMER'S REQUIREMENTS. THE FOREGOING WILL NOT BE DEEMED TO LIMIT ANY DISCLAIMER OR LIMITATION OF WARRANTY SET FORTH IN THE DOCUMENTATION PROVIDED WITH THE CPE OR DEVICE.

**5.5 Onsite Repair Service.** To the extent it is indicated in the Service Order and/or Site Detail Form for the Voice Services that Speakeasy will provide Onsite Repair Service to Customer, Speakeasy shall provide Onsite Repair Services for Speakeasy provided Voice Gateways/Routers through the appropriate Speakeasy Service Provider as described herein:

**(i.)** 7 x 24 x 4 . Onsite Repair is available to Customer 365 days a year 24 hours a day. If resolution needs dispatch of parts and/or field engineer, response time is 4 hours (as described herein).

**(ii.)** Onsite Repair Service starts when Customer calls Speakeasy to open a trouble ticket. The following information is needed to place a service request:

- a. Customer's contact name and telephone number
- b. Model number and serial number of the equipment to be serviced
- c. Site location address of equipment to be serviced
- d. Description of the problem

**(iii.)** Speakeasy will start resolution of the problem with remote diagnosis within 15 minutes of notification. The diagnosis will determine if the issue is software, hardware, circuit or user related. Problem determination by Speakeasy typically will not exceed 30 minutes. Speakeasy will then bring the problem to resolution remotely or start the dispatch of part and/or field engineer.

**(iv.)** Onsite Repair Service covers:

- a. Contracted devices only with correct information in customer database
- b. Trouble ticket tracking and escalation
- c. Remote trouble isolation of contracted device
- d. Software support and configurations of current level at contract time



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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- e. Hardware repair and replacement per contracted response time
- f. Field Engineers to customer location per contracted response time

**(v.)** Onsite Repair Service will not cover:

- a. Circuit issues
- b. Software releases out of scope of the contract
- c. Misapplications user has applied
- d. Devices without remote access
- e. Locations without physical access
- f. Acts of nature

If a vendor technician dispatch is necessary to repair any non-Speakeasy/non-vendor initiated changes to the on-site equipment or wiring that renders that device inoperable or unreachable by Speakeasy remotely, hardware reconfigurations, or hardware repairs not covered under warranty, there will be a Technician Dispatch Fee.

Dispatch Time spent on site and/or additional repairs may be billed per vendor discretion. This does not apply to dispatches needed for a repair due to normal service outages unless deemed necessary by Speakeasy's vendors.

**5.6 Porting Telephone Numbers.** Customer may port Customer's toll-free and local access telephone numbers to Speakeasy, in which event Customer warrants that the porting information provided to Speakeasy is accurate, including but not limited to the Letter of Authorization. Customer is solely responsible for all of its contractual obligations with its current/previous Service provider, the timely termination of all Services with current/previous Service provider and the settlement of any charges owed to the current/previous Service provider, including, but not limited to, service fees and termination charges. Speakeasy does not guarantee the ability to port Customer's telephone numbers. Speakeasy is not liable for any costs, expenses, losses, or damages, either general, special, actual, consequential, or incidental, that Customer may suffer, or that some other person may suffer and claim against Customer, arising from the porting process, including, but not limited to, any loss of Service during porting or Speakeasy's, or the current/previous Service providers, inability to successfully port Customer's numbers either in a timely manner or at all, and Speakeasy will not provide credit for any such costs, expenses, losses, or damages. Customer is solely responsible for initiating any and all port reversals with the current/previous Service provider and shall remain fully responsible to Speakeasy for all charges for any services used while requesting and waiting for any such reversal.

**5.7 Certification of Equipment.** Customer acknowledges that Speakeasy Voice Services are intended for use with Speakeasy-provided or Speakeasy-certified equipment only. Speakeasy reserves the right to terminate or suspend Service if non-Speakeasy certified equipment is being used by Customer in conjunction with Speakeasy Voice



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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Services, without prior written approval by Speakeasy. Termination fees may apply. In addition, Speakeasy does not provide and has not certified any equipment for use in conjunction with analog faxing and automated dialing.

**5.8 Confidentiality.** Customer acknowledges that all information provided by Speakeasy for use with the Voice Services, such as web portal usernames, passwords, and SIP credentials, is confidential in nature. In addition, Customer warrants that it will treat this information as confidential, provide such information only to authorized end users and inform them of the confidential nature of this information. Customer further acknowledges that failure to do so may result in Service suspension, cancellation and fraudulent usage, for which Speakeasy shall not, under any circumstances, be liable.

**5.9 Hardware Returns.** Customers desiring to return purchased products for credit once approved must do so within thirty (30) days of the original shipment date. After thirty (30) days all sales are final. Purchases returned within thirty (30) days will be charged a restock fee of 20% of the original purchase price of the product(s) returned. Prior to returning any material, an RMA number must be issued by Speakeasy. The product must be in the same condition as when it originally shipped from Speakeasy in its original package with all accessories. Any package received without a valid RMA will be returned to the shipper. To return products purchased through Speakeasy, contact Speakeasy. Speakeasy will provide an RMA number that must be affixed to the outside box of your returned shipment. A restocking fee will be deducted from the credit issued to the Customer's account. Once the product is physically received and tested, a credit will be issued to the Customer's account.

## 6. General Terms

**6.1 Compliance with Law.** Speakeasy will comply with all applicable laws, rules and regulations relating to the delivery of the Voice Services. Customer shall comply with all applicable laws, rules, licensing and certification requirements and regulations related to the use of the Voice Services. If any change in law, rule, licensing requirement, certification requirement or regulation (or any interpretation of the same) impacts Speakeasy's ability to offer the Voice Services to Customer and/or bill or collect amounts from Customer therefore, Customer's obligations to pay for Voice Services and otherwise comply with the terms of this Agreement shall remain unaffected. Speakeasy and Customer shall make a good faith effort to revise this Agreement to comply with such changes and if parties are unable to reach agreement, either party may terminate this Agreement without penalty.

**6.2 Limitation of Liability.** EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN AND SAVE FOR CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER AND ANY CLAIMS FOR TERMINATION LIABILITY, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY TO THE OTHER RELATED TO OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO AN AMOUNT EQUAL TO ALL AMOUNTS PAID UNDER THIS AGREEMENT DURING THE PREVIOUS SIX (6)-MONTH PERIOD.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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**6.3 Speakeasy-Provided Software.** In the event Speakeasy provides any software to Customer in connection with the Services, Speakeasy grants Customer a personal, non-exclusive, non-transferable license, for the duration of the Service Term of the Voice Services for which the software is used, to use such software, in object code form only, on the hardware on which it is installed for the sole purpose of enabling Customer to use the Voice Services. Speakeasy and/or Speakeasy's third-party suppliers retain all rights, title and interest (including all intellectual property and proprietary rights) in and to such software Customer acknowledges that the software and the content and design thereof are valuable copyrights, trade secrets and/or other intellectual property of Speakeasy, its Affiliates, parents and/or its third party suppliers. Customer agrees not to (a) disclose or make available to third parties any portion of such software without Speakeasy's advance written permission; (b) copy, modify or create any derivative work of the software (or any portion thereof); (c) reverse engineer, decompile or disassemble such software or otherwise attempt to derive the source code, algorithms, structure or organization of the software; (d) assign, transfer, lease, time-share or redistribute the software; or (e) authorize or permit any other third party to do any of the foregoing. Customer shall not remove, alter, cover or obfuscate any copyright, trademark, service mark or other proprietary rights notices placed or embedded by Speakeasy or any of its third party software suppliers on or in any software. Customer shall not use or allow the use of the software after the applicable Service Term without obtaining a valid license from Speakeasy or from the third-party supplier respecting such use. For certain software, additional licensing terms may be included as a "click-wrap" license with the software to which Customer must agree and abide. Customer ACKNOWLEDGES THAT SPEAKEASY AND SPEAKEASY'S THIRD-PARTY SOFTWARE SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THOSE ARISING FROM A COURSE OF DEALING AND USAGE OF TRADE AS RESPECTS ANY SOFTWARE.

**6.4 Notices.** Certain notices hereunder may be delivered to Customer by Speakeasy by sending them to an e-mail address identified in the Service Order and/or Site Detail Form, including but not limited to pricing updates, the Customer Welcome Letter and Service Connection Notices. Notices so e-mailed shall fulfill the notice requirements under the Agreement.

**6.5 Other Fees.** Speakeasy will invoice, and Customer will pay fees for CPE, Devices, Site Surveys and other services as described in the Service Order and/or Site Detail. All Speakeasy Voice Services seat packages are intended for individual use only. If multiple users are assigned or are otherwise using any single seat package, Speakeasy may retroactively charge Customer for applicable subscriber fees for all users using such packages. Speakeasy charges and Customer shall pay to Speakeasy telecom usage and Service charges and fees in addition to other recurring Service and activation charges. These charges are detailed in the Speakeasy Calling Rates posted online at [SPK\\_CallRates\\_HostedVoice.pdf](#) and [SPK\\_CallRates\\_IntegratedVoice.pdf](#) which are subject to change by Speakeasy at Speakeasy's sole discretion per the terms posted at [www.speakeasy.net/tos](http://www.speakeasy.net/tos). Such change by



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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Speakeasy to the Speakeasy Calling Rates will not constitute a modification, addition to or pricing change under any interpretation of the Agreement.

**6.6 Price Changes and other Modifications.** We may decrease prices without providing advance notice. Increases to the prices or charges for the Services (other than international calling) are effective no sooner than five days after we post them on our web site at <https://www.speakeasy.net>. Increases to charges that recover our costs associated with government programs are effective no sooner than 3 days after we post the increases on our web site. International rates are subject to change without notice.

If we increase the monthly service fee (as distinct from long distance call charges, international call charges or Regulatory Compliance Fees) and you would be charged a cancellation or other fee to cancel that Service, or we modify a material term of our Agreement with you and the modification would be materially adverse to you, we will notify you of the increase or modification (as provided herein) and you can cancel the Service without paying the cancellation or other fee (which is your only remedy) by following the cancellation instructions in the notice. If you do not cancel the Service by following the instructions in the notice, then you agree to the increase or modification, even if you paid for Service in advance. If the notice does not say how long you have to cancel, then it is within 14 days after the date of the notice. If we increase charges for Service to which no cancellation or other fee to cancel service applies, we will notify you of the increase, but you will still be responsible for any cancellation fee applicable to any Services you may have if you cancel Service.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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### Attachment "C" Service Addendum, Speakeasy Colocation, Managed & API Services

If you subscribe to any of the following services ("Colocation, Managed & API Services"), the terms and conditions below apply to your use of the service(s) in addition to the terms of the Agreement.

#### 1. Definitions

Capitalized terms used but not defined herein shall have the meaning given to them in the Agreement.

**1.1 "Customer Equipment"** As used in this Addendum, the term "Customer Equipment" refers to any and all computer equipment, software, networking hardware or other materials provided by the Customer and placed by or for Customer in the Colocation Space, other than Speakeasy Equipment.

**1.2 "Service"** As used in this Addendum Service means the transmission of data to and from the Internet through the network of routers, switches and communication channels owned and controlled by Speakeasy ("Network") together with Colocation and managed hosting services, including 24x7 connectivity to the Internet, and Colocation Space. Service also includes the use of the GDX API ("API Service") and Licensed Products as further defined herein and in Customer's Service Order for Speakeasy Colocation, Managed & API Services (the "Service Order").

**1.3 "Service Orders"** As used in this Addendum Service Order means the initial or subsequent service order forms. Speakeasy and Customer may enter into subsequent Service Orders, which may supersede or complement prior Service Orders.

**1.4 "Speakeasy Provided Equipment"** As used in this Addendum, the term "Speakeasy Provided Equipment" refers to any and all computer equipment, software, API Service, networking hardware or other materials placed by Speakeasy for the Customer's use in the Colocation Space, other than Customer Equipment.

**1.5 "Client Software"** means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

**1.6 "Device"** means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone", server or other electronic device.

**1.7 "Server Software"** means software that provides services or functionality on a computer acting as a server.

**1.8 "Software Documentation"** means any end user document included with server software.

**1.9 "Redistribution Software"** means the software described in Paragraph 17.3 ("Use of Redistribution Software") below.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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### 2. Service Installation, Fees and Billing

Speakeasy will begin installation, initiation and Service after it receives and accepts: (1) Customer's signed Service Order; (2) a copy of the Agreement signed by Customer's authorized representative and (3) payment of amounts due under Section 2.1 below as detailed on Customer's Service Order. Customer agrees to pay the Service Activation Charges, Monthly Service Fees, and other fees indicated on the Service Order (collectively, "Service Fees"). If Customer uses Services in excess of or in addition to those agreed to in the Service Order, Customer agrees to pay additional service fees accordingly.

**2.1 Activation Charges.** Speakeasy will bill Customer for applicable Service Activation Charges and applicable Service Fees (collectively the "Activation Charges") upon Speakeasy's acceptance of the Service Order. Speakeasy will not commence installation, and initiation of Service until it has received payment in full of all Activation Charges indicated as payable before installation in the Service Order.

**2.2 Recurring Fees.** Speakeasy will begin billing for recurring Service Fees on the date that is the earlier of: (a) the date that Speakeasy completes installation and provisioning of cabinet space; or (b) the date that Customer places, or has placed on its behalf, Customer Equipment in Speakeasy's premises or otherwise begins using Service. If, however, Customer is unable to use the Services commencing on the earlier of these dates solely as a result of delays caused by Speakeasy, and to the extent that such delay causes the use of the Services to commence on a date after the Installation Date then the Installation Date specified in the Service Order shall be extended one day for each day of delay caused by Speakeasy. On or about the first day of each month, Speakeasy will bill Customer for Recurring Service Fees which shall include any fixed rate services to be provided in the subsequent month, and any usage based services including bandwidth overages provided, but not billed, in the previous month. Recurring Service Fees do not include monthly telephone company charges, which are billed separately by the local telephone company(s).

**2.3 Taxes & Shipping.** All payments required by this Addendum are exclusive of applicable taxes and shipping charges. Applicable taxes and shipping charges will be invoiced to Customer and Customer will be liable for and will pay in full all such amounts. Customer will not be invoiced nor be responsible for the payment of taxes based on Speakeasy's net income.

### 3. Colocation

**3.1 Installation.** Speakeasy grants Customer the right to operate Customer Equipment at the Colocation Space, as specified on Customer's Service Order. The Colocation Space is provided on an "AS-IS" basis and Customer may use the Colocation Space only for the purposes of maintaining and operating Customer Equipment as necessary to support local access communications facilities and links to Speakeasy and to third parties. Customer will install Customer Equipment in the Colocation Space after obtaining the appropriate authorization from Speakeasy to



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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access Speakeasy premises. Customer will remove and be solely responsible for all packaging for Customer Equipment.

**3.2 Colocation Access.** Customer may access the Colocation Space only in accordance with the Speakeasy Colocation Access Policies located at <https://www.speakeasy.net/tos>, as updated from time to time. Customer may not provide or make available to any third party any portion of the Colocation Space without Speakeasy's prior written consent, which consent shall not be unreasonably withheld. Customer may utilize the Colocation Service as outlined in the Service Order.

**3.3 Customer Equipment.** Except as otherwise provided herein, Customer is responsible for all aspects of installation and removal of Customer Equipment, including bringing appropriate related equipment, tools and packaging materials. Customer will install Customer Equipment in the Co-location Space only after obtaining the appropriate authorization from Speakeasy to access the premises. Customer will remove all packaging for Customer Equipment promptly after installation. Should Customer use an agent or other third party to deliver, install or remove Customer Equipment, Customer will be solely responsible for the acts of such party. Under no circumstances will Speakeasy be obligated to accept deliveries on behalf of Customer. Customer will provide Speakeasy with written notification at least two (2) days before Customer wishes to remove any Customer Equipment. Upon Speakeasy's authorization and at Customer's option, Speakeasy will remove and package Customer Equipment and place it in a designated area for pick-up, on the condition that Customer either provide or pay for all needed packaging plus pay Speakeasy's packaging fees and charges. If Speakeasy is forced to remove or clean up after any Customer activity, Speakeasy will invoice and Customer will pay all costs and Speakeasy charges associated with such removal or clean-up. Within ten (10) days after any termination of the related Service Order, and upon Speakeasy granting authorization to do so, Customer will remove all Customer Equipment and any other Customer property from Speakeasy's premises and return the Co-location Space in the same condition as it was prior to Customer installation. If Customer does not remove such Customer Equipment and property within the ten (10) day period, such Customer Equipment or property will automatically be deemed abandoned to Speakeasy (collectively "Abandoned Equipment") without the need for further notice to Customer and, Speakeasy, at its option will (i) remove and store any and all Abandoned Equipment or return Abandoned Equipment to the Customer, (ii) dispose of the Abandoned Equipment without liability for any related damages, (iii) sell the Abandoned Equipment at any public or private sale, or (iv) assume ownership of the Abandoned Equipment (collectively, "Disposal Rights"). Notwithstanding the foregoing, Speakeasy reserves the right to deny Customer the right to remove Customer Equipment from the Co-location Space if Customer is not current in the payment of its obligations hereunder and, exercise any of its Disposal Rights, stated above, within ten (10) days after Speakeasy's termination of the related Service Order due to Customer's nonpayment. Except as specifically provided herein, Customer expressly assumes all risk of loss to Customer Equipment in the Co-location Space. Customer shall be





## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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liable to Speakeasy for any damage to the Speakeasy Co-location Space or equipment of Speakeasy or its other customers caused by Customer, Customer Equipment or Customer's contractors, agents or employees. If during the Term, Customer removes significantly all of its Equipment in the Co-location Space, Customer will continue to pay the applicable Recurring Charges through the end of the Term and provide adequate assurance, as determined by Speakeasy, in its sole discretion.

**3.4 Colocation Security Interest.** Speakeasy shall have at all times a valid first priority security interest to secure payment of all Services and other sums of money becoming due hereunder from Customer, and to secure payment of any damages or loss which Speakeasy may suffer by reason of the breach by Customer of any covenant, Addendum or condition contained in this Addendum, upon all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Customer presently, or which may hereafter be, situated by the Customer in the Colocation Space, and all proceeds therefrom (collectively, the "Collateral"), and the Collateral shall not be removed from the Customer Space without the consent of Speakeasy until all arrearages in Service Fees as well as any and all other sums of money then due to Speakeasy under this Addendum shall first have been paid and discharged and all the covenants, Addendums and conditions of this Addendum have been fully complied with and performed by Customer. Upon the occurrence of any Default, Speakeasy may, to the extent permitted by law and in addition to any other remedies provided in this Addendum, enter upon the Colocation Space and take possession of the Collateral, without liability, and sell the same at public or private sale, with or without having the Collateral at the sale, after giving Customer reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale Speakeasy or Speakeasy's assigns may purchase unless otherwise prohibited by law. The requirement of reasonable notice shall be deemed met if such notice is given in the manner prescribed in this Agreement at least ten (10) days before the time of sale. Any sale of the Collateral shall be deemed to have been a public sale conducted in a commercially reasonable manner if held on or about the Building or where the Collateral is located after the time, place and method of sale and a general description of the types of the Collateral to be sold have been advertised in a daily newspaper published in the county in which the Building is located, for five (5) consecutive days before the date of the sale. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorneys' fees) shall be applied as a credit against the indebtedness secured by the security interest granted in this Article. Any surplus shall be paid to Customer or as otherwise required by law; Customer shall pay any deficiencies upon demand therefore. Customer authorizes Speakeasy to take any actions necessary to perfect Speakeasy's security interest in the Collateral including, without limitation, to sign on behalf of Customer a financing statement describing the Collateral (the "Financing Statement") and to file the Financing Statement with the appropriate authority to perfect Speakeasy's security interest in the Collateral. Customer shall execute any further documents and take any further actions reasonably requested by Speakeasy to evidence,



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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perfect or maintain Speakeasy's first priority security interest in the Collateral. Customer shall not change the state where Customer's chief executive office is located or change Customer's corporate name without providing Speakeasy with at least thirty (30) days prior written notice. Customer represents and warrants that Customer's exact legal name and state of incorporation or formation is as set forth in the Agreement.

**3.5 Insurance.** Customer will keep in full force and effect during the term of any Service Order calling for the installation of any Customer Equipment at Speakeasy premises or the Colocation Space: (i) business loss and interruption insurance in an amount not less than that necessary to compensate Customer and its customers for complete failure of Service; (ii) comprehensive general liability insurance in an amount not less than one (1) million dollars per occurrence for bodily injury and property damage; (iii) employer's liability insurance in an amount not less than one (1) million dollars per occurrence; and (iv) workers' compensation insurance in an amount not less than that required by applicable law. Customer also agrees that it will be solely responsible for ensuring that its agents (including contractors and subcontractors) maintain other insurance at levels no less than those required by applicable law and customary in Customer's and its agents' industries. Prior to installation of any Customer Equipment in the Colocation Space or otherwise as Speakeasy may request, Customer will furnish Speakeasy with certificates of insurance which evidence the minimum levels of insurance set forth above. Customer agrees that prior to the installation of any Customer Equipment at Speakeasy premises or the Colocation Space, Customer will cause its insurance provider(s) to name both Speakeasy and the Speakeasy landlord indicated on the applicable Service Order as additional insured and notify Speakeasy in writing of the effective date of such coverage, and will be prepared to, upon request, furnish Speakeasy with certificates of insurance which evidence these minimum levels of insurance. Customer agrees that Customer and its agents and representatives shall not pursue any claims against Speakeasy for any liability Speakeasy may have under or relating to this Agreement unless and until Customer or Customer's employee, as applicable, first makes claims against Customer's insurance provider(s) and such insurance provider(s) finally resolve(s) such claims. Any inability by Customer to furnish the proof the insurance required under this Section or failure to obtain such insurance shall be a material breach of this Section and of the Agreement.

## 4. Managed & API Services

**4.1 Services.** Speakeasy agrees to provide the services and equipment specified on any Speakeasy executed Customer Service Order. Speakeasy will provide to the customer a FOC ("Firm Order Commitment") Date within 2 business days of an order being placed. Speakeasy will install Speakeasy Provided Equipment and additional equipment and API Services necessary to provide the services specified on Customer's Service Order, deliverable by the FOC date that is determined. Speakeasy may install and operate auditing software on Speakeasy Provided Equipment.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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**4.2 Managed & API Services Access.** Customer may access Speakeasy Provided Equipment and the Managed & API Services only in accordance with the Speakeasy Managed & API Services Policies located at <https://www.speakeasy.net/tos>, as updated from time to time. Customer may not provide or make available to any third party any portion of the Managed & API Services without Speakeasy's prior written consent, which consent Speakeasy may withhold in its sole discretion.

**4.3 Insurance,** Customer will keep in full force and effect during the term any Service Order for Managed and/or API Services business loss and interruption insurance in an amount not less than that necessary to compensate Customer and its customers for complete failure of Service, and will be prepared to, upon request, furnish Speakeasy with certificates of insurance which evidence that minimum level of insurance. Customer agrees that Customer and its agents and representatives shall not pursue any claims against Speakeasy for any liability Speakeasy may have under or relating to this Agreement unless and until Customer or Customer's employee, as applicable, first makes claims against Customer's insurance provider(s) and such insurance provider(s) finally resolve(s) such claims. Any inability by Customer to furnish the proof the insurance required under this Section or failure to obtain such insurance shall be a material breach of this Section and of the Agreement.

## 5. Security

Speakeasy does not guarantee security of Customer Equipment, the Colocation Space or of the Network. Speakeasy requires that Customer and Customer's employees comply with all Colocation Security Procedures, as modified from time to time, in order to maximize the security of the Network and Speakeasy premises. Speakeasy's current Colocation Security Procedures are located at <https://www.speakeasy.net/tos>. In particular, Customer must establish a password with Speakeasy for purposes of requesting any support services with respect to Customer Equipment or Customer's Network connection, either by telephone or email. Information detailing password requirements is available in the Master Service Agreement. Only individuals whom Customer have identified as "Customer Representatives" in writing to Speakeasy will be permitted to enter the Colocation Space, to request Services on Customer's behalf, or to request any support services with respect to Customer Equipment or Customer's Network connection, either by telephone or email (for example, but without limitation, instructing Speakeasy to modify or reconfigure its Services or to remove Customer Equipment). For good cause, Speakeasy may suspend the right of any Customer Representative or other person to visit the Speakeasy premises and/or the Colocation Space. Speakeasy will assist in Network security breach detection or identification, but shall not be liable for any inability, failure or mistake in doing so.



## **Speakeasy Master Services Agreement**

For customers who purchased Speakeasy services before October 1, 2010.

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### **6. Local and Long Distance Carriers**

Speakeasy will provide Customer with a list of approved third party carriers for data communications and telecommunications. Customer is responsible for ordering all local and long-distance lines from such third party carriers and ordering any and all necessary crossconnects from Speakeasy. Speakeasy Service Fees for such crossconnects are as indicated on the Service Order. The carriers will install such circuits in Customer's name. Customer will be solely responsible for such circuits and for all payments due to the carriers. Customer will notify the carrier directly when Customer wishes to terminate or modify such circuit.

### **7. Other Networks; Approval and Usage**

Services include the ability to transmit data beyond Speakeasy's Network, through other networks, public and private. Use of or presence on other networks may require approval of the respective network authorities and will be subject to any acceptable usage policies such networks may establish. Customer will not hold Speakeasy responsible for, and Speakeasy will not be liable for, such approval or for violation of such policies. Customer understands that Speakeasy does not own or control other networks outside of its Network, and Speakeasy is not responsible or liable for performance (or non-performance) within such networks or within interconnection points between the Service and other networks that are operated by third parties.

### **8. Resale**

Customer may resell the Service only after receiving Speakeasy's prior written approval of the nature and scope of such resale. Customer may only grant third parties access to the Services as set forth in Section 3.2 and 4.2. Customer also may be charged additional reseller fees for the resale of all or any portion of the GDX API Service, which is not to exceed 33% of the total price listed on the Service Order. Should Customer resell any portion of the Service to any other party, Customer assumes all liabilities arising out of or related to such third party sites and communications. Customer agrees to enter into written Addendums with any and all parties to which it resells any portion of the Services with terms and conditions at least as restrictive and as protective of Speakeasy's rights as the terms and conditions of this Addendum, including, without limitation, Sections 3.3, 3.5, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15 and 16, and naming Speakeasy as a third party beneficiary.

### **9. Acceptable Use Guidelines**

Customer must at all times conform its use of the Service to Speakeasy's Acceptable Use Limitations and Guidelines. The current version of Speakeasy's Acceptable Use Guidelines can be found in the Master Service Agreement. Speakeasy's Anti-SPAM Policy is located in the Master Service Agreement. If Speakeasy is informed by government authorities or other parties of inappropriate or illegal use of Speakeasy's facilities (including but not limited to the Network) or other networks accessed through Speakeasy, or Speakeasy otherwise learns of such use



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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or has reason to believe such use may be occurring, then Customer will cooperate in any resulting investigation by Speakeasy or government authorities. Any government determinations will be binding on Customer. If Customer fails to cooperate with any such investigation or determination, or fails to immediately rectify any illegal use, Speakeasy may immediately suspend Customer's Service. Further, upon notice to Customer, Speakeasy may modify or suspend Customer's Service as necessary to comply with any law or regulation as reasonably determined by Speakeasy. This includes, without limitation, any use contrary to the Digital Millennium Copyright Act of 1998, 17 U.S.C. 512.

### 10. Service Guarantee

Speakeasy's Colocation, Managed & API Services Service Level Agreement is available to Customers at <https://www.speakeasy.net/tos> and/or will be provided upon request. Speakeasy's Colocation, Managed & API Services Service Level Agreement is subject to change at Speakeasy's sole discretion, and as such is updated by Speakeasy from time to time.

### 11. No Other Warranty

Except for the Service Guarantee set out in this Section 10 above, the Services are provided on an "AS IS" basis, and Customer's use of the Services is at its own risk. Speakeasy does not make, and hereby disclaims, any and all other express and implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement and title, and any warranties arising from a course of dealing, usage, or trade practice. Speakeasy does not warrant that the Services will be uninterrupted, error-free, or completely secure.

### 12. Disclaimer of Third Party Actions and Control

Speakeasy does not and cannot control the flow of data to or from the Network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which Speakeasy customers' connections to the Internet (or portions thereof) may be impaired or disrupted. Although Speakeasy will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, Speakeasy cannot guarantee that they will not occur. Accordingly, Speakeasy disclaims any and all liability resulting from or related to such events.

### 13. Limitations of Liability

**13.1 Personal Injury.** Each Customer Representative and any other persons visiting Speakeasy facilities does so at his or her own risk and Speakeasy shall not be liable for any harm to such persons resulting from any cause other



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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than Speakeasy's gross negligence or willful misconduct resulting in personal injury to such persons during such a visit.

**13.2 Damage to Customer Business.** Except as expressly set forth in the Service Guarantee, including its limited remedies and other limitations, in no event will Speakeasy be liable to Customer, any Customer Representative, or any third party for any claims arising out of or related to Customer's business, Customer's customers or clients, Customer Representative's activities at Speakeasy or otherwise, or for any lost revenue, lost profits, replacement goods, loss of technology, rights or services, incidental, punitive, indirect or consequential damages, loss of data, or interruption or loss of use of Service or of any Customer's business, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

**13.3 Damage to Customer Equipment.** Speakeasy assumes no liability for any damage to, or loss of, any Customer Equipment resulting from any cause other than Speakeasy's gross negligence or willful misconduct. To the extent Speakeasy is liable for any damage to, or loss of, the Customer Equipment for any reason, such liability will be limited solely to the then-current value of the Customer Equipment and further subject to the limitations set forth in this Section and in Section immediately below. In no event will Speakeasy be liable to Customer, any Customer Representative, or any third party for any claims arising out of or related to Customer Equipment for any lost revenue, lost profits, replacement goods, loss of technology, rights or services, incidental, punitive, indirect or consequential damages, loss of data, or interruption or loss of use of any Customer Equipment, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

**13.4 Maximum Liability.** Notwithstanding anything to the contrary in this Addendum, Speakeasy's maximum aggregate liability to Customer related to or in connection with this Addendum will be limited to the total amount paid by Customer to Speakeasy hereunder for the Twelve (12) month period prior to the event or events giving rise to such liability.

**13.5 Reliance on Disclaimer, Liability Limitations and Indemnification Obligations.** Customer acknowledges that Speakeasy has set its prices and entered into this Addendum in reliance upon the limitations and exclusions of liability, the disclaimers of warranties and damages and Customer's indemnity obligations set forth herein, and that the same form an essential basis of the bargain between the parties. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Addendum will survive and apply even if this Addendum is found to have failed of their essential purpose.

## 14. Confidential Information

Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, including the terms and conditions of this



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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Addendum ("Confidential Information"). Confidential Information will include, but not be limited to, each party's proprietary software and customer information. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by this Addendum, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information. Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Addendum by the receiving party; (iv) is independently developed by the receiving party; or (v) is required to be released by law or regulation, provided that the receiving party provide prompt written notice to the disclosing party of such impending release, and the releasing party cooperate fully with the disclosing party to minimize such release. Speakeasy acknowledges that, during the course of this Addendum, it may receive on Customer's behalf or be entrusted with data concerning website traffic, visitors, and usage (including, but not limited to, personally identifying information). Speakeasy agrees that such data is Confidential Information which is owned exclusively by Customer and Speakeasy agrees that it will not use such Confidential Information for any purpose except the performance of this Addendum and the amendments hereto, and that it will not disclose any such Confidential Information to any third party unless such disclosure is authorized in writing by Customer.

### 15. Term

This Addendum will be effective beginning on the Effective Date and ending at the end of the last "Term" specified in any Service Order accepted by Speakeasy, unless terminated as provided in Section 16 below. Upon expiration of the "Term" specified in any Service Order, notwithstanding anything to the contrary in that Service Order, the term of that Service Order shall automatically renew for a period of 1 (one) year unless otherwise terminated by either party upon 30 (thirty) days notice in advance of the termination date.

### 16. Termination

**16.1 For Customer Nonpayment.** After fifteen (15) days of non-payment from the Speakeasy invoice due date, or such longer period as Speakeasy's Billing Terms & Conditions may provide, Speakeasy may disable Service. After thirty (30) days of non-payment from the Speakeasy invoice due date, or such longer period as Speakeasy's Billing Terms & Conditions may provide, Speakeasy may terminate the Service permanently. To re-enable Service, Speakeasy will require a reconnection fee after the fifteen (15) day period. The reconnection will be equal to 25%





## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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of the then current monthly minimum payment due from Customer to Speakeasy as outlined in the Service Order. Termination does not remove Customer's obligations under this Addendum, including the obligation to pay all fees due for Service used, and any future Service Fees that may become due during the remainder of the duration of the then current Term.

**16.2 Unacceptable Use; Bankruptcy.** Speakeasy may terminate this Addendum upon written notice to Customer for violation of the Acceptable Use Guidelines or Anti-Spam Policy or if Customer becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors or becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.

**16.3 For Cause.** Either party may terminate this Addendum if the other party materially breaches any term or condition of this Addendum and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of (i) termination by Customer when either no notice, or a shorter notice period is permitted by the Service Guarantee, (ii) failure to pay fees which failure is subject to Section 16.1 above or (iii) for failure to comply with Speakeasy's Acceptable Use Guidelines or Anti-SPAM Policy as set forth in Section 16.2.

**16.4 No Liability for Termination.** Neither party will be liable to the other for any termination or expiration of this Addendum in accordance with its terms. However, expiration or termination will not extinguish claims or liability (including, without limitation, for payments due) arising prior to such expiration or termination. Further, in the event of early termination due to Customer breach or non-payment, Customer shall remain fully obligated for the payment of all Fees for services ordered for the remainder of the then current Term.

**16.5 Effect of Termination.** Upon the effective date of expiration or termination of this Addendum: (a) Speakeasy will immediately cease providing the Services; (b) any and all payments related to fees for Service under this Addendum will become due immediately, including but not limited to Recurring Service Fees through the end of the then current term as indicated on the Service Order adjusted for the net present value of the prospective payments; (c) within thirty (30) days after such expiration or termination, each party that has received confidential information will return all Confidential Information remaining in its position (including all copies summaries or other documents derived there from) to the disclosing party and will not make or retain any copies of such Confidential Information except as required to comply with any 16.6 Survival. The following provisions will survive any expiration or termination of the Addendum: Sections 2.3, 3 (until all Customer Equipment is removed from the Colocation Space), 3.5, 4.3, 6, 7, 8, 10, 11, 12, 13, 14 (for a period of three (3) years from the date of expiration or termination), 16.4-16.6, and 18.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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### 17. Customer License Terms

#### TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated media, printed materials, and "online" or electronic documentation (individually and collectively, "Licensed Products") provided by Speakeasy. Speakeasy does not own the Licensed Products and the use thereof is subject to certain rights and limitations of which Speakeasy must inform you. Your right to use the Licensed Products is subject to the terms of your agreement with Speakeasy, and to your understanding of, compliance with, and consent to the following terms and conditions and the Microsoft Service Provider Use Rights (SPUR) document, which is located at <http://www.microsoft.com>, which Speakeasy does not have authority to vary, alter, or amend.

**17.1 Ownership of Licensed Products.** The Licensed Products are licensed to Speakeasy from an affiliate of the Microsoft Corporation (collectively "Microsoft"). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of the Licensed Products or any intellectual property rights to you.

**17.2 Use of Client Software.** You may use the Client Software installed on your Devices by Speakeasy only in accordance with the instructions, and only in connection with the services, provided to you by Speakeasy. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during your use of the Client Software.

**17.3 Use of Redistribution Software.** In connection with the services provided to you by Speakeasy, you may have access to certain "sample", "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO SPEAKEASY, WHICH TERMS MUST BE PROVIDED TO YOU BY SPEAKEASY. Microsoft does not permit you to use any Redistribution Software unless you expressly agree to and comply with such additional terms, as provided to you by Speakeasy.

**17.4 Copies.** You may not make any copies of the Licensed Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by Speakeasy; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 17.3 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Speakeasy, upon notice from Speakeasy or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Licensed Products.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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**17.5 Limitations on Reverse Engineering, Decompilation and Disassembly.** You may not reverse engineer, decompile, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

**17.6 No Rental.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this agreement and any agreement between you and Speakeasy.

**17.7 Termination.** Without prejudice to any other rights, Speakeasy may terminate your rights to use the Licensed Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Speakeasy or Speakeasy's agreement with Microsoft under which the Licensed Products are licensed, you must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts.

**17.8 NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT.** ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY SPEAKEASY AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.

**17.9 Product Support.** Any support for the Licensed Products is provided to you by Speakeasy and is not provided by Microsoft, its affiliates or subsidiaries.

**17.10 NOT FAULT TOLERANT.** THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

**17.11 Export Restrictions.** The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

**17.12 Liability for Breach.** In addition to any liability you may have to Speakeasy, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

## 18. Miscellaneous Provisions

**18.1 Force Majeure.** Neither party will be liable for any failure or delay in its performance under this Addendum, or for credits under the Service Guarantee, due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to correct promptly such failure or delay in performance.

**18.2 No Lease.** This Addendum is a services Addendum and is not intended to and will not constitute a lease of any real or personal property. In particular, Customer acknowledges and agrees that Customer has not been granted any real property interest in the Colocation Space or other Speakeasy premises, and Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations, or ordinances.

**18.3 Government Regulations.** Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Addendum without first complying with all export control laws and regulations which may be imposed by the U.S.

Government and any country or organization of nations within whose jurisdiction Customer operates or does business.

**18.4 Assignment.** Neither party may assign its rights or delegate its duties under the Agreement either in whole or in part without the prior written consent of the other party, except to a party that acquires substantially all of the assigning party's assets or a majority of its stock as part of a corporate merger or acquisition. Any attempted assignment or delegation without such consent will be void. The Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

**18.5 Notices.** Any notice or communication required or permitted to be given hereunder may be delivered personally, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party first indicated above, or at such other address as either party may provide to the other by written notice. Such notice will be deemed to have been given as of the date it is delivered, or five (5) days after mailed or sent, whichever is earlier.

**18.6 Relationship of Parties.** Speakeasy and Customer are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Speakeasy and Customer. Neither Speakeasy nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

**18.7 Changes Prior to Execution.** Customer represents and warrants that it made no changes to the Agreement prior to providing the Agreement to Speakeasy for its acceptance and execution, and that Speakeasy alone incorporated any and all changes negotiated between, and accepted by, Customer and Speakeasy into the Agreement or into an Addendum executed by both parties.

**18.8 Disputed Invoices.** Notwithstanding anything to the contrary in the Agreement, all claims related to disputed invoices must be submitted to Speakeasy in writing within thirty (30) days from the date of invoice of those Services. Customer waives the right to dispute any charges not disputed within such thirty (30) day period.



## Speakeasy Master Services Agreement

For customers who purchased Speakeasy services before October 1, 2010.

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**18.9 Entire Addendum.** Both parties represent and warrant that they have full corporate power and authority to execute and deliver the Agreement and to perform their obligations under the Agreement and that the person whose signature appears above is duly authorized to enter into the Agreement on behalf of the respective party. Should any terms of the Agreement be declared void or unenforceable by any arbitrator or court of competent jurisdiction, such terms will be amended to achieve as nearly as possible the same economic effect as the original terms and the remainder of this Addendum will remain in full force and effect. In the case of international, federal, state or local government orders, Customer's purchase order must contain the following language:

"Notwithstanding any provisions to the contrary on the face of this purchase order, attachments to this purchase order, or on the reverse side of this purchase order, this purchase order is being used for administrative purposes only, and this purchase order is placed under and subject solely to the terms and conditions of the Speakeasy Network Addendum executed between Customer and Speakeasy."

### Attachment "D" Service Addendum, Additional Service Terms

This section intentionally left blank.