



## COOPERATIVE PURCHASE AGREEMENT

Cooperative Name: San Joaquin County

Contractor: Telcion Communications Group

Contract ID: A-16-383 [RFP 16-06, VoIP upgrade (Voice over Internet Protocol Telephone Technology)]

Effective Date: November 1, 2016, as extended and re-awarded

The City of Stockton, a California municipal corporation on behalf of itself and its associated entities ("City"), and the above named Contractor ("Contractor"), do hereby agree that City shall be granted the pricing, terms, and conditions of the San Joaquin County Cooperative Agreement A-16-383 as such may be amended from time to time.

Contractor also agrees to the following:

1. All equipment under this agreement shall be shipped to City of Stockton, 400 E. Main St, 4<sup>th</sup> Floor, Stockton, CA 95202.
2. The City will retain twenty five percent (25%) of total compensation for services until project is completed by Contractor and accepted by the City. However, equipment and software shall be paid in their entirety.
3. The City and the Contractor acknowledge and agree that "Work Product," and all components of it, provided or developed by the Contractor hereunder or in connection herewith shall constitute "works made for hire" within the meaning of Title 17 United States Code Section 101 et seq. (the "Copyright Act"), and all right, title, and interest in and to the Custom Products shall vest in the City immediately upon development. To the extent any such Custom Products may not be the sole and exclusive property of the City and/or may not be a "work made for hire" as defined in the Copyright Act upon development, then the Contractor agrees to and hereby does sell, transfer, grant and assign to the City all copyrights, patents, trade secrets, inventions, and other proprietary rights, title, and interest in and to such Custom Products upon development. On all written material, whether in print, electronic, or any media form, constituting "Work Product."
4. All the terms as noted in the San Joaquin County contract as applies to Data Security – Confidentiality.
5. All the terms as noted in the Telcion Proposal with the City (Exhibit A).
6. All the terms as noted in the Cloud Services Agreement (Exhibit B).
7. All the terms as noted in the Annual Support Agreement (Exhibit C).

Contractor shall grant such pricing, terms, and conditions to City for all procurements of goods and services, whether taking place on a City purchase order, purchasing card (credit card), or other purchasing modality, whether via telephone, via the Contractor website, or via direct purchase at a Contractor retail location.

City and Contractor do hereby enter into this Agreement. Any person signing this Agreement on behalf of City or Contractor does represent and warrants that he or she has full authority to do so.

**CITY OF STOCKTON**

\_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**CONTRACTOR**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

Title: \_\_\_\_\_

*[If Contractor is a corporation, signatures must  
comply with Corporations Code §313]*

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

Title: \_\_\_\_\_



## Proposal: Cisco Hosted Solution

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Prepared For:  
**City of Stockton**

Requested By:  
**Erie Luces**

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February 1, 2017

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### Notice

The information contained in this document is confidential information between Telcion and City of Stockton. Its purpose is to communicate the details of a proposed business solution from Telcion to the client. All information is to be kept confidential and used only to determine the feasibility and acceptability of the proposed solution by Telcion.

This document is the property of, and is proprietary to Telcion. It is not to be disclosed in whole or in part without the express, written authorization of Telcion, and shall be returned upon request.

All Trademarks are the property of their respective owners.

Telcion Communications Group

3070 Commerce Way | Turlock, CA 95380 | 209.632.5700 | [www.telcion.com](http://www.telcion.com)

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## EXECUTIVE OVERVIEW

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City of Stockton is looking to upgrade their existing Cisco VOIP implementation by moving to a Telcion hosted solution.

### DESIGN CONSIDERATIONS:

There are several considerations used in this design:

- 1,100 phones/users
- 48 Contact Center Agents
- Continue to use existing PRI circuits
- Support for integration to Centrex
- Replacement for existing Cisco Conferencing solution
- Existing infrastructure (POE switches) and phones will continue to be utilized.

## PROPOSED SOLUTION

### Voice Infrastructure

Main Site	
<ol style="list-style-type: none"> <li>1. Cisco Hosted Solution including: <ol style="list-style-type: none"> <li>a. (1100) Call Manager Licenses</li> <li>b. (1100) Emergency Response Licenses</li> <li>c. (48) Premium Contact Center Licenses</li> <li>d. (24) Contact Center Recording Licenses</li> <li>e. (24) MediaSense Audio Port License</li> <li>f. (2) ISR4431 PRI/SIP Voice Gateway</li> </ol> </li> <li>2. Installation and Project Management <ol style="list-style-type: none"> <li>a. Upgrade existing Call Manager to 11.x version and migrate to hosted platform.</li> <li>b. Integrate O365 Unified Messaging with Call Manager.</li> <li>c. Upgrade existing UCCX Contact Center to 11.x version, convert to Finesse, and migrate to hosted platform.</li> <li>d. Install new ISR4431 voice gateways. Convert from PRI to SIP service for dial tone. Integrate with O365 for Unified Messaging.</li> </ol> </li> <li>3. Telcion Annual Support, with Software Upgrade protection</li> </ol>	
Total Monthly, 5 year Contract	<b>\$12,950/month</b>

## Voice Infrastructure

Audio Conference Solution	
1. Cisco WebEx for Conferencing	
a. (25) Named User Spark with Cisco Meeting Center	
Subscription	<b>\$13,320/Year</b>

## ANNUAL SUPPORT PRICING

1. TelcionCare Standard Annual Support Agreement	
<b>Price</b>	<b>\$30,000/Year INCLUDED</b>

### TelcionCare Support

**Service Windows**      **Standard** – Monday to Friday, 8:00AM – 8:00PM, excluding holidays  
**Premium** – 24 x 7 x 365

Problem Resolution	Average Time to Respond	Average Time to Fix
Severity Level 1	15 minutes	4 hours
Severity Level 2	60 minutes	24 hours
Severity Level 3	4 hours	48 hours

#### Base Level Services:

Moves, Adds, Changes	<ul style="list-style-type: none"> <li>Assistance with installed product capabilities, installation, or configuration</li> </ul>
Circuit Troubleshooting	<ul style="list-style-type: none"> <li>Troubleshoot hardware, software, and carrier circuits for reported issues</li> <li>Work with customer's carrier to troubleshoot voice and data circuits</li> <li>Escalate issues with the carrier as required for problem resolution</li> <li>Update customer periodically on status of the circuit</li> <li>Monitor troubled circuits after initial outage to verify resolution</li> </ul>
Network Change Management	<ul style="list-style-type: none"> <li>Minor reconfiguration of deployed Cisco solutions including routers, switches, wireless, firewalls, and Unified Computing.</li> <li>Reconfiguration of voice applications such as auto attendants, dial plans, attendant console, or other built-in Communications Manager or Unity applications</li> </ul>
Contact Center Support	<ul style="list-style-type: none"> <li>Minor configuration changes to existing scripts, including single variables, holidays, greetings, etc.</li> <li>Resolution of any problems encountered by agents</li> </ul>
Software Updates	<ul style="list-style-type: none"> <li>OS and software updates. <i>Major software upgrades are optional.</i></li> </ul>
Post-failure re-install of software and hardware	<ul style="list-style-type: none"> <li>Installation of replacement device, restored to original configuration on the network</li> </ul>
Telephone support	<ul style="list-style-type: none"> <li>Technical support for Cisco solutions</li> </ul>
Monitoring, Assessment, & Repair	<ul style="list-style-type: none"> <li>Configuration and device error information</li> <li>Remotely evaluate health of devices on the network</li> <li>Up to 5 IPs included and monitored quarterly; additional device pricing available</li> <li>Automatic escalation and resolution path defined for network device and voice server faults or failures</li> </ul>
Proactive Alerts &	<ul style="list-style-type: none"> <li>Email alerts providing nature of the issue and detailed device information</li> </ul>



Notifications	
Reporting (daily, weekly, monthly)	<ul style="list-style-type: none"> <li>• Network Exception Reports (weekly)</li> <li>• Business Exception reports (monthly)</li> <li>• Capacity Reports for PRI and SIP trunks</li> <li>• Capacity Reports for bandwidth on circuits</li> </ul>
Devices Diagnostics – Smart Call Home	<ul style="list-style-type: none"> <li>• Embedded support at the device level</li> <li>• Proactive diagnostics and remediation advice on available devices</li> </ul>
Disaster Recovery	<ul style="list-style-type: none"> <li>• Continuous operation and rapid recovery of the network</li> <li>• Archive of router, switch, and security solution configurations managed offsite</li> <li>• Remotely access the network and upload configuration to new device</li> </ul>
Telcion Portal Access	<ul style="list-style-type: none"> <li>• Create and manage tickets for problem resolution</li> </ul>
Monitoring Dashboard	<ul style="list-style-type: none"> <li>• Health and stability statistics</li> <li>• Capacity and usage graphs for circuits and network traffic</li> </ul>

#### Optional Services:

Website Assessment	<ul style="list-style-type: none"> <li>• Monitor website uptime and functionality</li> </ul>
Security & Vulnerability Assessment	<ul style="list-style-type: none"> <li>• Monthly/Quarterly vulnerability scan, up to 5 outside IPs included; additional device pricing available</li> </ul>

#### PROBLEM RESOLUTION SEVERITY LEVEL DEFINITIONS

- Level 1** Network-down status. Internal business operations are critically impacted and/or external interaction with clientele is severely hindered. IT staff and Telcion will commit all necessary resources around the clock to resolve the problem.
- Level 2** Operation of network is severely degraded, or significant aspects of the business operation are negatively impacted by inadequate performance of installed products. IT staff and Telcion will commit full-time resources during normal business hours to resolve the problem.
- Level 3** The IT staff requires information or assistance with installed product capabilities, installation, or configuration. Little to no effect on business operations. IT staff and Telcion schedule tasks during normal business hours.

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## PRICE SUMMARY

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Summary List	Price
1. Cisco Hosted VOIP Solution	\$155,400/year
2. Cisco Webex Hosted Conferencing Solution	\$13,320/year
3. TelcionCare Standard Annual Support Agreement	Included
5 Year Commitment, Per Year Annual Subscription	<b>\$168,720</b>

### Payment Terms:

Cash: First annual payment due upon award of contract. Net 30 terms.

## **CLOUD SERVICES AGREEMENT**

This Cloud Services Agreement ("Agreement") is between Telcion Communications Group, a California corporation ("Telcion"), and the City of Stockton, ("Customer"), each referred to herein as "Party" or collectively as "Parties." This Agreement sets forth the terms and conditions that govern the Services (as defined below) provided under this Agreement.

### **1. DEFINITIONS**

1.1. "Cloud Services" means Telcion's TelcionCloud through which Customer may access and use the Telcion Software. The term "Cloud Services" does not include Professional Services.

1.2. "Service Specifications" means all hardware, software, and licensing required to run customer's hosted applications in a highly available computing environment. This includes compute, memory, storage, Internet connectivity, and 3<sup>rd</sup> party software licensing that enable the TelcionCloud to be available to the customer in a hosted environment.

1.3. "Customer" refers to the City of Stockton that is the entity that has executed this Agreement.

1.4. "Customer Content" means all data, text, pictures, sound, graphics, logos, marks, symbols, video, and other materials supplied by Customer to Telcion pursuant to this Agreement, as such materials may be modified from time to time.

1.5. "Invoice" means the invoice Telcion has given Customer that indicates the pricing for your Services and the maximum number of authorized Users who may access the Services. The terms of the Invoice are incorporated herein by reference.

1.6. "Purchase Agreement" means the San Joaquin County Contract, the Cooperative Purchase Agreement to which this Cloud Services Agreement is an Exhibit and is incorporated into the Cooperative Purchase Agreement as though fully set forth therein, and the Telcion proposal to the City of Stockton. The Cooperative Purchase Agreement, and all exhibits thereto, including the San Joaquin Contract, indicates pricing and governs customer's purchase and use of all hardware, software, support, services, including but not limited to Cloud Services, Services (as defined herein), Virtual Servers, Dedicated Hosting and Services Co-Location, as described in the Cooperative Purchase Agreement and exhibits and addenda thereto, if any. All terms and conditions in the Cooperative Purchase Agreement are incorporated herein provided, however, in the event of any conflict in between the terms of this Agreement and the Cooperative Purchase Agreement, the terms of the Cooperative Purchase Agreement shall control.

1.7. "Telcion Software" refers to Telcion's software product known as Telcion vCloud owned or licensed by Telcion to which Telcion grants You access as part of the Cloud Service. The term "Telcion Software" does not include Third Party Technology.

1.8. "Professional Services" means, collectively, consulting and other professional Services provided to Customer, including any deliverables described in the Cooperative Purchase Agreement and any exhibits or addenda thereto, if any. The term "Professional Services" does not include Cloud Services.

1.9. "Separate Terms" refers to separate license terms that are specified in the program documentation, Service Specifications, readme, or notice files and that apply to Third Party Technology.

1.10. "Services" means, collectively, both the Cloud Services and Professional Services as set forth herein, including but not limited to Cloud Services, Virtual Servers, Dedicated Hosting and Services Co-Location.

1.11. "Services Environment" refers to the combination of hardware and software components owned, licensed, or managed by Telcion to which Telcion grants Customer and Customer's user's access as part of the Cloud Services.

1.12. "Subscription Period" means a period of sixty (60) months from the date that Telcion informs Customer is the commencement date for Customer's access to the Cloud Services.

1.13. "Third Party Content" means all text, files, images, graphics, illustrations, information, data, audio, video, photographs, and other content and material, in any format, that are obtained or derived from third party sources outside of Telcion and made available to Customer through, within, or in conjunction with Customer's use of, the Cloud Services. Examples of Third Party Content include data libraries and dictionaries. Third Party Content does not include Third Party Technology.

1.14. "Third Party Technology" refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement.

1.15. "Users" means those employees, contractors, and end users, as applicable, authorized by Customer or on Customer's behalf to use the Cloud Services in accordance with this Agreement.

1.16. "Your Content" means all text, files, images, graphics, illustrations, information, data, audio, video, photographs, and other content and material, in any format, provided by You or Your Users that reside in, or run on or through, the Services Environment.

## 2. TERM OF AGREEMENT

This Agreement is valid for the original Services for the Subscription Period and any renewal thereof.

### 3. RIGHTS GRANTED

3.1. For the duration of the Subscription Period and subject to Customer's payment obligations and other terms of this Agreement and the Cooperative Purchase Agreement, and except as otherwise set forth in this Agreement, Customer has the nonexclusive, non-assignable, royalty-free, worldwide limited right to access and use the Services that Customer ordered, including anything developed by Telcion and delivered to Customer as part of the Services, solely for Customer's internal business operations and subject to the terms of this Agreement, including the Service Specifications. Customer may allow Customer's Users to use the Services for this purpose and Customer are responsible for Customer's Users' compliance with this Agreement. You have purchased access rights for the number of Users specified in the Cooperative Purchase Agreement.

3.2. Customer does not acquire under this Agreement any right or license to use the Services, including the Telcion Software and Services Environment, in excess of the scope and/or duration of the Services stated herein. Upon the end of the Services ordered Customer's right to access and use the Services will terminate.

3.3. To enable Telcion to provide Customer and Customer's Users with the Services, Customer grants Telcion the right to use, process, and transmit, in accordance with this Agreement, Customer's Content for the duration of the Subscription Period plus any additional post-termination period during which Telcion provides Customer with access to retrieve an export file of Customer's Content.

3.4. The Services may contain or require the use of Third Party Technology. Customer is responsible for complying with the Separate Terms that govern Customer's use of Third Party Technology. The third party owner or author of such Third Party Technology retains all ownership and intellectual property rights in and to such Third Party Technology.

3.5. Telcion may provide Customer with access to Third Party Content within the Services Environment as determined by Telcion from time to time. Customer understands, acknowledges and agrees that the third party owner or author of such Third Party Content retains all ownership and intellectual property rights in and to that content, and Customer's rights to use such Third Party Content are subject to, and governed by, the terms applicable to such content as specified by such third party owner, author, or Telcion.

3.6. Customer agrees to indemnify, defend and hold harmless Telcion from and against any and all costs, losses, liabilities, expenses, claims, judgments, fines, and amounts paid and/or actually and reasonably incurred, including attorney's fees, statutory or non-statutory costs and sanctions, if any, in connection with any claim(s)

and/or lawsuit(s) by the owner or author of Third Party Content that arise from Customer's unauthorized use of Third Party Content, or any claimed violation(s) of Third Party's copyright, intellectual property or other proprietary rights in and to the Third Party Content.

#### 4. OWNERSHIP AND RESTRICTIONS

Customer retains all ownership and intellectual property rights in and to Customer's Content. Telcion or its licensors retain all ownership and intellectual property rights to the Services, including Telcion Software and derivative works thereof, to any ideas or suggestions submitted by Customer or Customer's Users, and to anything developed or delivered by or on behalf of Telcion under this Agreement. Customer shall obtain at Customer's sole expense any rights and consents from third parties necessary for Your Content and Third Party Content, as well as other vendor's products provided by Customer that Customer uses with the Services, including such rights and consents as necessary for Telcion to perform the Services under this Agreement. Customer shall not do any of the following:

- 4.1.1. remove or modify any program markings or any notice of Telcion's or its licensors' proprietary rights;
- 4.1.2. make the programs or materials resulting from the Services (excluding Customer's Content) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services Customer has acquired);
- 4.1.3. modify, make derivative works of, disassemble, decompile, or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, or assist a third party in building or supporting, products or Services competitive to Telcion;
- 4.1.4. perform or disclose any benchmark or performance tests of the Services, including the Telcion Software, without Telcion's prior written consent;
- 4.1.5. perform or disclose any of the following security testing of the Services Environment or associated infrastructure without Telcion's prior written consent: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing;
- 4.1.6. copy, reproduce, distribute, republish, download, display, post, or transmit any part of the Service in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; or
- 4.1.7. license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise

commercially exploit or make the Services, Telcion Software, Services Environments, or materials available to any third party.

## 5. SERVICE SPECIFICATIONS

5.1. The Services are subject to and governed by the Service Specifications. Customer acknowledges that use of the Services in a manner not consistent with the Service Specifications may adversely affect Services performance or may result in additional fees, or both. Customer may not exceed the ordered quantity reflected in the Cooperative Purchase Agreement. If excess usage is desired, Customer must purchase additional license quantity, if available.

5.2. Telcion may make changes or updates to the Services and the Service Specifications at Telcion's discretion; however, Telcion's changes to the Service Specifications will not result in a material reduction in the level of performance or availability of the applicable Services provided to Customer for the duration of the Subscription Period.

5.3. Telcion and its affiliates may perform the Cloud Services or any part thereof, such as service administration and support, as well as other Services (including Professional Services and disaster recovery), from any location worldwide or through use of subcontractors, or both.

## 6. USE OF THE SERVICES

6.1. Customer is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords, and account information. Telcion is not responsible for any harm caused by Customer's Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords, or accounts were not terminated by Customer on a timely basis. Customer is responsible for all activities that occur under Customer's and Customer's Users' usernames, passwords, or accounts or as a result of Customer's or Customer's Users' access to the Services, and Customer acknowledges and agrees to notify Telcion immediately of any unauthorized use. Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services. Telcion Software and Services are not designed for or specifically intended for use in nuclear facilities or other hazardous applications.

6.2. Customer agrees not to use or permit use of the Services, including by uploading, e-mailing, posting, publishing, or otherwise transmitting any material, including Customer's Content and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing, or obscene, (c) violate privacy rights or promote bigotry, racism, hatred, or harm, (d) constitute unsolicited bulk e-mail, "junk mail," "spam," or chain letters; (e) constitute an

infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances, or regulations. In addition to any other rights afforded to Telcion under this Agreement, Telcion reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the removal or disablement of access to such material. Customer acknowledges and agrees that Telcion shall have no liability to Customer in the event that Telcion takes such action. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and ownership of all of Your Content. Customer agrees to defend, indemnify and hold harmless Telcion from and against any claims, costs, losses, liabilities, expenses, judgments, fines, and amounts paid and/or actually and reasonably incurred, including attorney's fees, statutory or non-statutory costs and sanctions, if any, arising out of a violation of Customer's obligations under this section.

6.3. You are required to accept all patches, bug fixes, updates, maintenance, and service packs (collectively, "Patches") necessary for the proper function and security of the Services, including Telcion Software, if any, as such Patches are generally released by Telcion as described in the Service Specifications. Except for emergency or security related maintenance activities, Telcion will coordinate with Customer the scheduling of application of Patches, where possible, based on Telcion's next available standard maintenance window.

## 7. FEES AND TAXES

7.1. All fees payable to Telcion are due within thirty (30) days from the invoice date. , Customer's purchase of the Services is noncancelable and the sums paid nonrefundable, except as provided in this Agreement. Customer will pay any sales, value-added, or other similar taxes imposed by applicable law that Telcion must pay based on the Services Customer ordered, except for taxes based on Telcion's income. Also, Customer will reimburse Telcion for reasonable expenses related to providing any Professional Services. Fees for Services are exclusive of taxes and expenses.

## 8. SUBSCRIPTION PERIOD; END OF SERVICES

8.1. Services shall be provided for the Subscription Period, unless earlier suspended or terminated in accordance with this Agreement or the Cooperative Purchase Agreement. The Subscription Period will automatically renew for additional twelve (12) month terms unless (a) Customer provides Telcion with written notice no later than thirty (30) days prior to the end of the applicable Subscription Period of Customer's intention not to renew such Services, or (b) Telcion provides Customer with written notice no later than ninety (90) days prior to the end of the applicable Subscription Period of its intention not to renew such Services.

8.2. Upon the end of the Services, Customer no longer has rights to access or use the Services, including the associated Telcion Software and Services Environments; however, at Customer's request, and for a period of up to sixty (60) days after the end of the applicable Services, Telcion will make available to Customer Customer's Content



as existing in the Services Environment on the date of termination. At the end of such 60-day period, and except as may be required by law, Telcion will delete or otherwise render inaccessible any of Customer's Content that remains in the Services Environment.

8.3. Telcion may temporarily suspend Customer's passwords, account, and access to or use of the Services if Customer fails to make payment(s) as provided in this Agreement and the Cooperative Purchase Agreement, Customer's Users violate any provision of this Agreement, or if in Telcion's reasonable judgment, the Services, or any component thereof, are about to suffer a significant threat to security or functionality. Telcion will provide advance notice to Customer of any such suspension in Telcion's reasonable discretion based on the nature of the circumstances giving rise to the suspension. Telcion will use reasonable efforts to re-establish the affected Services promptly after Telcion determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, Telcion will make available to Customer Customer's Content as existing in the Services Environment on the date of suspension. Telcion may terminate the Services if any of the foregoing causes of suspension is not cured within thirty (30) days after Telcion's initial notice thereof. Any suspension or termination by Telcion under this paragraph shall not excuse Customer from Customer's obligation to make payment(s) under this Agreement and the Cooperative Purchase Agreement.

8.4. If either Party breaches a material term of this Agreement and fails to correct the breach within thirty (30) days of written notice of the breach, then the breaching party is in default and the non-breaching party may terminate this Agreement. If Telcion terminates this Agreement as specified in the preceding sentence, Customer must pay within thirty (30) days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services ordered under this Agreement plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30-day period for so long as the breaching party continues reasonable efforts to cure the breach. Customer acknowledges and agrees that if Customer is in default under this Agreement or the Cooperative Purchase Agreement, Customer's Services may be suspended.

8.5. Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnity, infringement, payment, and others that by their nature are intended to survive.

## 9. NONDISCLOSURE

9.1. By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). The Parties agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential information shall be limited to the terms and pricing under this Agreement, Customer's Content residing in the Services Environment, the Cloud Services, the Telcion Software, and all information clearly identified as confidential at the time of disclosure.

9.2. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party and without a breach of this Agreement; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without an obligation to keep it confidential or without a restriction on the disclosure; or (d) based on written credible evidence is independently developed by the other party without the use of Confidential Information.

9.3. The Parties agree not to disclose each other's Confidential Information to any third party other than as set forth in the following sentence for a period of five (5) years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Telcion will hold Customer's Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. The Parties may disclose Confidential Information only to those employees, agents, or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Telcion will protect the confidentiality of Customer's Content residing in the Services Environment in accordance with the Service Specifications. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

9.4. The Service Specifications define the administrative, physical, technical, and other safeguards applied to Customer's Content residing in the Services Environment, and describe other aspects of system management applicable to the Services. Customer is solely responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer's Content, including any viruses, Trojan horses, worms, or other programming routines contained in Customer's Content that could limit or harm the functionality of any hardware or software or that could damage, intercept, or expropriate data.

## 10. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

10.1. Telcion warrants that it will perform (a) Cloud Services in all material respects as described in the Service Specifications, and (b) Professional Services in a professional manner in accordance with the Service Specifications. If the Services provided to Customer are not performed as warranted in this Section 10.1, Customer must promptly provide written notice to Telcion that describes the deficiency in the Services (including, as applicable, the service request number notifying Telcion of the deficiency in the Services).

10.2. TELCION DOES NOT GUARANTEE THAT: (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT TELCION WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN

COMBINATION WITH CUSTOMER'S CONTENT, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, OR DATA NOT PROVIDED BY TELCION, AND (C) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, SPECIFICATIONS, OR EXPECTATIONS. CUSTOMER ACKNOWLEDGES THAT TELCION DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. TELCION IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. TELCION IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION, OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER'S CONTENT OR THIRD PARTY CONTENT. TELCION DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.

10.3. FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND TELCION'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF TELCION CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALLY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND TELCION WILL REFUND TO CUSTOMER THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO TELCION FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

10.4. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS, OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.

#### 11. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, OR DATA USE. TELCION'S MAXIMUM LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO TELCION FOR THE SERVICE THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM LESS ANY REFUNDS OR CREDITS RECEIVED BY CUSTOMER FROM TELCION.

#### 12. INDEMNIFICATION

12.1. Subject to the terms of this Section 12 (Indemnification), if a third party makes a claim against either Customer or Telcion ("Recipient," which may refer to Customer or Telcion depending on which party received the Material (as defined below)) that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either Customer or Telcion ("Provider" which may refer to Customer or Telcion depending on which party provided the Material) and used by the Recipient such that it infringes the third party's intellectual property rights, Provider, at Provider's sole cost and expense, will defend, indemnify and hold harmless Recipient against the claim and defend, indemnify and hold harmless Recipient from any and all claims, costs, losses, liabilities, expenses, judgments, fines, and amounts paid and/or actually and reasonably incurred, including attorney's fees, statutory or non-statutory costs and sanctions, if any, awarded by a court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- (i) notifies Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- (ii) gives Provider sole control of the defense and any settlement negotiations; and
- (iii) gives Provider the information, authority, and assistance Provider may reasonably need to defend against or settle the claim.

12.2. If Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Provider's ability to meet its obligations under this Agreement, then Provider may, at its option and upon thirty (30) days prior written notice, terminate this Agreement.

12.3. Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in Provider's user or program documentation or Service Specifications, (b) uses a version of the Material that has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material that was made available to the Recipient, or (c) continues to use the applicable Material after the end of the license to use that Material. Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware, or material not furnished by Provider. Provider will not indemnify Recipient for any portion of an infringement claim that is based upon the combination of any Material with any

products or Services not provided by Provider. Provider will not indemnify Recipient to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible to Recipient within or from the Services. Provider will not indemnify Recipient for infringement caused by Recipient's actions against any third party if the Services as delivered to Recipient and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. Provider will not indemnify Recipient for any intellectual property infringement claim(s) known to Recipient at the time Services rights are obtained.

12.4. The term "Material" defined above does not include Third Party Technology. Solely with respect to Third Party Technology that is part of or is required to use the Cloud Services and that is used: (a) in unmodified form; (b) as part of or as required to use the Cloud Services; and (c) in accordance with the usage grant for the relevant Cloud Services and all other terms and conditions of this Agreement, Provider will indemnify Recipient for infringement claims for Third Party Technology to the same extent as Provider is required to provide infringement indemnification for Materials under the terms of the Agreement.

12.5. This Section 12 provides the parties' exclusive remedy for any infringement claims or damages.

### 13. THIRD PARTY WEB SITES, CONTENT, PRODUCTS, AND SERVICES

13.1. The Services may enable Customer to link to, transmit Customer's Content to, or otherwise access, other Web sites, content, products, services, and information of third parties. Telcion does not control and is not responsible for such Web sites or any such content, products, services, and information accessible from or provided through the Services, and Customer bears all risks associated with access to and use of such Web sites and third party content, products, services, and information.

13.2. Any Third Party Content made accessible by Telcion in or through the Services Environment is provided on an "as-is" and "as available" basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing, or otherwise objectionable or unlawful, and Customer acknowledges that Telcion is not responsible for and under no obligation to control, monitor, or correct Third Party Content; however, Telcion reserves the right to take remedial action if any such content violates applicable restrictions under Section 6.2 of this Agreement, including the removal of, or disablement of access to, such content.

13.3. Customer acknowledges that: (a) the nature, type, quality, and availability of Third Party Content may change at any time during the Subscription Period, and (b) features of the Services that interoperate with third parties depend on the continuing availability of such third parties' respective application programming interfaces (APIs) for use with the Services. Telcion may update, change, or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third Party Content,

Third Party Services, or APIs. Telcion in its sole discretion, may cease providing access to the affected Third Party Content or Third Party Services without any liability to Customer.

#### 14. SERVICE DATA

Telcion may (a) compile statistical and other information related to the performance, operation, and use of the Services, and (b) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (the data described in clauses (a) and (b) being collectively referred to as "Service Data"). Telcion may make Service Data publicly available; however, Service Data will not incorporate Customer's Content or Confidential Information in a form that could serve to identify Customer or any individual, and Service Data do not constitute Personal Data. Telcion retains all intellectual property rights in Service Data.

#### 15. MISCELLANEOUS

15.1. Customer agrees to comply with all export laws and regulations of the United States and any other relevant local export laws and regulations applicable to the Services. Customer agrees that no data, information, software programs, or materials resulting from Services (or a direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws, including, without limitation, for nuclear, chemical, or biological weapons proliferation, or development of missile technology.

15.2. Neither Party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import, or other license); or other event outside the reasonable control of the obligated party. The Parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty (30) days, either Party may terminate unperformed Services and this Agreement. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligation to pay for the Services.

15.3. This Agreement is governed by the substantive and procedural laws of the State of California, and Customer and Telcion agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Joaquin or Stanislaus counties in California in any dispute arising out of or relating to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement.

15.4. Any notice required under this Agreement shall be provided to the other party in writing. If Customer has a dispute with Telcion or if Customer wishes to provide a notice of termination or notice under Section 12 (Indemnification) of this Agreement, or if

Customer becomes subject to insolvency or other similar legal proceedings, **Customer will promptly send written notice to: 140 W. Main Street, Turlock, CA 95380.**

Telcion may give notices generally applicable to customers of the Services by means of a general notice on the Telcion portal for the Cloud Services, and notices specific to Customer by electronic mail to: erie.luces@stocktonca.gov and by written communication sent by first class mail or pre-paid post to Customer's at: 425 N. El Dorado, Stockton, CA 95202.

15.5. Customer may not assign this Agreement or give or transfer the Services (including the Telcion Software) or any interest in them to another individual or entity.

15.6. Telcion is an independent contractor, and the Parties agree that no partnership, joint venture, or agency relationship exists between the Parties. Each Party will be responsible for paying its own employees, including employment related taxes and insurance. Customer shall defend, indemnify and hold harmless Telcion against liability arising under any applicable laws, ordinances, or regulations related to Customer's termination or modification of the employment of any of Customer's employees in connection with any Services under this Agreement. Customer understands that Telcion's business partners, including any third party firms retained by Customer to provide consulting services or applications that interact with the Cloud Services, are independent of Telcion and are not Telcion's agents. Telcion is not liable for nor bound by any acts of any such business partner, unless the business partner is providing Services as a Telcion subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Telcion would be responsible for Telcion resources under this Agreement.

15.7. If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

15.8. Customer agrees to provide Telcion with all information, access, and full good faith cooperation reasonably necessary to enable Telcion to provide the Services, and Customer will perform Customer's responsibilities hereunder.

15.9. Customer remains solely responsible for Customer's regulatory compliance in connection with Customer's use of the Services. Customer is responsible for making Telcion aware of any technical requirements that result from Customer's regulatory obligations prior to entering this Agreement. Telcion will cooperate with Customer's efforts to determine whether use of the standard Telcion Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by Telcion or changes to the Services.

15.10. Telcion may audit Customer's use of the Services (e.g., through use of software tools) to assess whether Customer's use of the Services is in accordance with this Agreement. Customer agrees to cooperate with Telcion's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere

with Customer's normal business operations. Customer agree to pay within thirty (30) days of written notification any fees applicable to Customer's use of the Services in excess of Customer's rights. If Customer does not pay, Telcion can terminate or suspend Customer's Services.

15.11. Customer agrees that this Agreement and the information incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy) is the complete agreement for the Services ordered by Customer and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

15.12. It is expressly agreed that the terms of this Agreement shall supersede the terms in any proposals, purchase orders or other similar non-Telcion document. No third party beneficiary relationships are created by this Agreement.





## TELCION COMMUNICATIONS GROUP ANNUAL SUPPORT AGREEMENT

This Annual Support Agreement (the “Agreement”) is entered into by and between Telcion Communications Group, a California corporation, with offices at 3070 Commerce Way, Turlock, CA 95380, (“Telcion”) and **Client name** with offices located at the address set forth below (“Customer”), and is effective as of this       day of       , 20       (the “Effective Date”).

Customer Contact Information			
Contact Name:			Phone:
Address:			Fax:
City:	State:	Zip:	E-Mail:

### 1. SUPPORT OFFERINGS; TERM AND FEES

1.1 Support Offerings. Customer has purchased products from Telcion (hereinafter referred to as the “Products”) by separate agreement for its internal use and desires support services (“Support”) from Telcion for such Products, listed in Schedule 1. Subject to the terms and conditions of this Agreement, the terms and conditions of the Cooperative Purchase Agreement (“Purchase Agreement”) to which this is Exhibit C, and Customer’s payment of the applicable fees quoted by Telcion, Telcion shall perform Support pursuant to the support offering ordered by Customer (the “Support Offering”) as indicated as follows (check as applicable):

☐ 1 year; ☐ 2 years; ☐ 3 years; ☒ 5 years;

☐ Standard

☐ Premium

#### Additional Options:

☐ Network and Voice Monitoring Service Option

☐ Upgrade Protection

☐ Unified Contact Center Service

☒ Hosted Subscription

1.2 Scope of Included Support Services. A more detailed description of each Support Offering is set forth in the TelcionCare Support datasheet attached hereto and incorporated herein.

1.3 Additional Services. Services performed and not included within the scope of Support will be billed on a time and materials basis in accordance with Telcion’s then-current rates for such services.

1.4 Term. This Agreement shall commence on the Effective Date and shall continue for the period of years indicated In Section 1.1 above (“Initial Term”). Thereafter, the Agreement shall automatically renew for additional one (1) year terms (the Initial Term and any subsequent term shall be “Term”), unless (a) Customer provides Telcion with written notice no later than thirty (30) days preceding the next anniversary of the Effective Date of Customer’s intention not to renew such Services, or (b) Telcion provides Customer with written notice no later than ninety (90) days preceding the next anniversary of the Effective Date of its intention not to renew such Services, or unless the Agreement is otherwise terminated in accordance with the terms of this Agreement. Support to cover (i) newly purchased Products or (ii) Products moved from other locations, will be added to this Agreement as such Products are purchased. Telcion will bill Customer for Support of such Products on a pro-rata basis for the



balance of applicable Term. In the event Support for Products is reinstated, and Support for such Products has lapsed for longer than one hundred eighty (180) days, Customer may be required to have such Products re-certified at Customer's expense.

## 2. FEES

2.1 Amount. In consideration for Support, Customer will pay Telcion the following Support Fee for the Term for all Products purchased by Customer, and on the following payment terms:

**\$30,000/annual – built into hosted subscription**

2.2 Taxes. Customer shall be responsible for any applicable sales, use, or any value added or similar taxes payable with respect to provision of Support to Customer, or arising out of or in connection with this Agreement, other than payroll taxes and taxes imposed on Telcion's income.

2.3 Incremental Services. Before the performance of any incremental services not included in the applicable Support Offering, Customer will provide a valid purchase order number against which fees for such services can be charged. Customer may provide a blanket purchase order number upon execution of this Agreement in order to avoid delays in the delivery of incremental services. Such reference numbers will be kept on file and used only in the event Telcion provides incremental services.

## 3. CONTACT POINT

Customer shall designate a point of contact for matters arising under this Agreement as follows:

**Primary contact:** Erie Luces

**Phone:** 209-937-7061

**E-mail:** erie.luces@stocktonca.gov

Telcion's point of contact may be changed upon written notice to Customer. Customer's point of contact may be changed by contacting Telcion in writing.

## 4. RELATIONSHIP OF THE PARTIES

Telcion is an independent contractor and neither Telcion nor its personnel shall be deemed employees of Customer. Telcion reserves the right to determine the manner in which it performs Support. Except as set forth in the description of the Support Offerings, and subject to Customer's normal business hours and security requirements, Telcion shall be solely responsible for determining the times and locations at which Telcion performs Support. So long as Telcion's performance of Support is not materially adversely affected, Telcion may replace or reassign Telcion personnel designated to perform Support.

## 5. RESPONSIBILITIES OF THE PARTIES

5.1 Telcion's Responsibilities. Telcion shall provide Support as described in the applicable Support Offering. Telcion may modify the Support Offerings from time to time with reasonable notice to Customer.

5.2 Customer's Responsibilities. Customer shall provide Telcion current information on product identifier, serial numbers, location, and key contacts in each Customer location for the Products. Customer shall provide Telcion with updates on such information on a quarterly basis and as additional Products are deployed, moved or taken out of production service. Customer shall also provide Telcion with access to Customer's materials,

systems, information, facilities and employees, including without limitation, remote access, as Telcion may reasonably require in order to deliver Support. Telcion reserves the right to audit Customer's records in order to ensure that Customer has paid all required Support Fees.

## 6. TERMINATION

In the event of a material breach of this Agreement or the Cooperative Purchase Agreement by either party where no other remedy is specified, the non-breaching party may terminate this Agreement and the Cooperative Purchase Agreement by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. This Agreement and the Cooperative Purchase Agreement shall automatically terminate thirty (30) days following such notice, unless the breaching party cures or makes substantial progress, in the non-breaching party's reasonable discretion, in curing the breach before the expiration of the thirty (30) day period. Should the Cooperative Purchase Agreement be terminated, this Exhibit C shall also terminate as of the same date.

## 7. EXCLUSIONS ON SUPPORT

Telcion shall have no obligation to provide Support without additional charge to Customer in the event: (i) Customer has not paid the Support Fee for the applicable Product(s), (ii) Customer modifies the Product(s), (iii) Customer has failed to perform normal preventative maintenance in accordance with Telcion's recommendations, excluding maintenance for which Telcion is responsible hereunder (iv) the problem is due to Customer's negligence, or hardware or software not provided by Telcion, (v) end-of-life or discontinued Products, or there are causes not within Telcion's control.

## 8. LIMITED WARRANTIES

8.1 Limited Warranty. Telcion warrants to Customer that Telcion will deliver Support in a competent and professional manner. Customer's sole remedy for breach of the foregoing warranty shall be Telcion's re-delivery of the non-conforming work at no charge to Customer.

8.2 Limitations on Warranties. Except as specifically set forth in Section 8.1 above, Telcion does not warrant that Support will meet Customer's requirements. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTY ARISING OUT OF THE COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

## 9. LIMITATION OF LIABILITY

9.1 Exclusion of Certain Claims. IN NO EVENT SHALL EITHER PARTY BE LIABLE (WHETHER IN TORT OR CONTRACT, UNDER STATUTE OR OTHERWISE) FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION AND THE LIKE, ARISING OUT OF ITS PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, EVEN IF TELCION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 Limitation. Telcion's liability arising out of this Agreement shall in no event exceed the fees paid by Customer to Telcion during the twelve (12) month period prior to when such liability arose under this Agreement.

## 10. CONFIDENTIAL INFORMATION

10.1 Confidential Information. Each party understands that the other possesses and will possess Confidential Information that is important to its business and may disclose information in the course of this



Agreement that is considered to be trade secrets, highly confidential, or sensitive. For purposes of this Agreement, "Confidential Information" includes, but is not limited to, information about trade secrets, computer programs, designs, technology, proprietary software, algorithms, circuits, mask works, layouts, ideas, know-how, processes, formulas, compositions, data, techniques, improvements, inventions (whether patentable or not), works of authorship, business and product development plans, the salaries and terms of compensation of employees, customers and other information concerning the party's actual or anticipated business, research or development, or which is received in confidence from any other person. Each party agrees to not divulge Confidential Information to any person or entity for any purpose.

10.2 Restrictions on Use. At all times during and after the term of this Agreement, each party agrees to keep all Confidential Information in strictest confidence and trust and to take all reasonable precautions to protect against its disclosure or misuse. Neither party will disclose any Confidential Information except to employees or contractors with a need to know for purposes of delivering the Support. The parties shall not, however, be required to treat as confidential any Confidential Information which: (i) is in the public domain by reason of prior publication not directly or indirectly resulting from any act or omission of the recipient or its employees or subcontractors, or (ii) was already properly known to the recipient (other than in connection with this Agreement) without restriction on use or disclosure at the time of disclosure under this Agreement. All Confidential Information shall be returned to the disclosing party upon request and upon termination of this Agreement.

## 11. MISCELLANEOUS

11.1 Amendments and Waivers. Any term of this Agreement may be amended or waived only with the written consent of the parties.

11.2 Entire Agreement. This Agreement constitutes the sole agreement of the parties and supersedes all oral agreements, prior writings and other printed terms with respect to the subject matter hereof.

11.3 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by an industry recognized and reputable delivery service (such as Federal Express or UPS), or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, if such notice is addressed to the party to be notified at such party's address as set forth above or as subsequently modified by written notice.

11.4 Choice of Law. The laws of the State of California shall govern the validity, interpretation, construction and performance of this Agreement, without giving effect to the principles of conflict of laws.

11.5 Force Majeure. If performance of this Agreement, or any obligation hereunder except for the making of payments hereunder, is prevented, caused, restricted or interfered with by reason of strike, fire, flood, governmental acts or other causes or events beyond either party's reasonable control, the other party shall be excused from performance.

11.6 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such provision shall be excluded from this Agreement, the balance of the Agreement shall be interpreted as if such provision were so excluded and the balance of the Agreement shall be enforceable in accordance with its terms.

11.7 Attorneys' Fees. In the event any proceeding or lawsuit is brought by Telcion or Customer in connection with this Agreement, the prevailing party in such proceeding shall be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.

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## SCHEDULE 1

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### Equipment List to be Covered

☐ All Cisco Hardware

☐ Cisco Routers

☐ Cisco Switches

☐ Cisco Security Devices

☐ Cisco Wireless Devices

☐ Cisco Servers

☐ All Cisco Technologies

☒ Cisco Unified Communications

☐ Cisco Routing and Switching

☐ Cisco Security/Internet/VPN

☐ Cisco Wireless

☐ Cisco Virtualization