

**ElliCom**  
**Terms of Service**

THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO AND CONTROL ANY PERSON AND/OR ENTITY (HEREINAFTER THE "CUSTOMER") ORDERING, HAVING ACCESS TO, AND/OR USING THE SERVICE(S) DESCRIBED HEREIN. BY SUBMITTING A SERVICE ORDER FORM, AND/OR ACCESSING AND/OR USING THE SERVICE(S), CUSTOMER ACKNOWLEDGES THAT IT HAS READ THESE TERMS OF SERVICE, IS AGREEING TO ALL THE TERMS AND CONDITIONS HEREIN, AND CONSENTS TO BE BOUND BY AND BECOME A PARTY HERETO. SHOULD CUSTOMER NOT AGREE TO OR BE ABLE TO COMPLY WITH ANY OF THE TERMS AND CONDITIONS OF THESE TERMS OF SERVICE, CUSTOMER SHALL IMMEDIATELY CEASE ANY USE OF THE SERVICE(S) OR TERMINATE THE REGISTRATION/ORDER PROCESS. CUSTOMER SHALL BE RESPONSIBLE FOR THE ACTS AND OMISSIONS OF ANY THIRD PARTY TO WHICH CUSTOMER PERMITS ACCESS TO OR USE OF THE SERVICES AND EQUIPMENT DESCRIBED HEREIN ("CUSTOMER'S USERS"), AND SUCH ACCESS OR USE SHALL BE DEEMED THAT OF CUSTOMER. AS USED HEREIN WITH RESPECT TO ELLICOM, INC. (HEREINAFTER THE "PROVIDER"), THE TERM "AFFILIATE(S)" SHALL INCLUDE ANY ENTITY THAT IS OWNED BY OR UNDER COMMON OWNERSHIP WITH, OR IS MANAGED BY THE PROVIDER OR UNDER COMMON MANAGEMENT WITH THE PROVIDER.

**1. THE SERVICE.**

(a) **General Description.** The Services consist primarily of Voice over Internet Protocol services, which may be offered by Provider in a variety of forms and packages (each being a "Service" and collectively being the "Services"). The Service(s) shall consist of a combination of software solutions, products, networks, services and hosting facilities (the "Network"), components of which Provider has been granted access and/or licenses to by third party licensors, suppliers, vendors, and subcontractors ("Third Party Vendors"). In no event shall Provider's use of, or contractual arrangement with any Third Party Vendors create any agency, employment, joint venture, partnership, representation or fiduciary relationship, and neither Provider nor its Third Party Vendors shall have the authority to create any obligation on behalf of the other.

(b) **Non-Regulated Provider.** The Customer acknowledge that Provider is not a regulated carrier and does not provide telecommunications services or other regulated services. Rather, Provider provides management services whereby Provider arranges for Third Party Vendors, including certificated carriers, to provide the underlying services. In addition, different regulatory treatment may be applied to all or aspects of the Service(s) than is applied to other telecommunications services, which may affect Customer's rights before regulatory agencies and other governmental bodies.

(c) **Fees.** Rate Decks establish the Fees of certain of the Services. Customer is responsible to select a Rate Deck that is appropriate for the Customer's needs from the available Rate Decks. Customer agrees that Customer is responsible, and not Provider, for the selection of a Rate Deck and Customer is responsible, and not Provider, for any cost associated with selection or non-selection of any Rate Deck. In addition, certain fees and charges associated with the Service(s) shall be set forth within each Service's respective Order Form, other fee schedules, these Terms of Service and/or other policies and/or rate decks furnished by Provider from time to time, all of which may be amended by Provider in its sole discretion. Provider will reasonably try to provide customer with notice of any rate or fee increases; however, Provider reserves the right to modify any fees and/or rates without notice.

(d) **Modifications to Service.** Provider and any Third Party Vendor may modify, expand, decrease, improve, maintain and/or repair the Service(s) or Network at any time and without liability to the Customer or any third party although such process may require a suspension of Service(s) or increased rates.

(e) **Compatibility.** Traffic carried by the Service(s) must be IP originated. Customer acknowledges and agrees that the Service(s) may not be compatible with all communication equipment.

(f) **Power Outages.** The Service does not function in the event of power failure. Should there be a power interruption in the power supply, the Service will not function until power is restored. A power failure or disruption may require that Equipment be reset or reconfigured prior to utilizing the Service. Power disruptions or failures will also prevent dialing to emergency service numbers including any 911 calling feature that may be activated in or accessed by the Service.

(g) **Non-Supported Calling.** Provider does not support 0+ calling (including without limitation collect or third party billing), 900 and 976 calls, and 10-10 "dial-around" calls. The Service(s) may not support 311, 411, 511 and/or other x11 services in some or all Service areas. Customer understands and acknowledges that access to the aforementioned functionality is not part of the Service(s).

(h) **Short Message Service (SMS).** Customer may purchase SMS Services from Provider (the "SMS Services") for person to person inbound and outbound text messaging. Customer shall at all times comply with laws and regulations governing the use of SMS Services including those that control use of SMS for marketing or solicitation purposes. Provider will deliver SMS messages to the best of its ability, but does not guarantee that any message sent via the SMS Services will reach the intended recipient. SMS messages are delivered in plain text and are not secured. Customer accepts responsibility for, and Provider accepts no responsibility for, any SMS message communicated via the SMS Services, including any message that is received by a party other than one intended by the sender.

(i) **Call Failover Service.** Customer may purchase Call Failover Service, whereby an unanswered call is to be forwarded to a secondary Customer selected number. Provider does not guarantee that any call acted upon by the Call Failover Service will reach the secondary number selected by Customer. The Call Failover Service is only to be used in the case of a temporary failure that prevents delivery of the call to the target number. Customer agrees not to provide a Call Failover number that has not been issued to Customer for its own use. Customer is responsible to provide the secondary number to Provider. Provider accepts no responsibility for any calls that are forwarded to a party other than Customer.

(j) **Fax to Email Service.** If Customer purchases Fax to Email Service from Provider, facsimiles received at the number designated for Fax to Email Service will be converted to emails and delivered to Customer in an unsecured email format. Accordingly, Customer should not receive sensitive documents via the Fax to Email Service and accepts responsibility for all communications received via the Fax to Email Service. Provider accepts no responsibility for any communication that is accessed by an unintended third party or for any communication or lack of communication that uses or attempts to use the Fax to Email Service. Provider does not guarantee that any fax sent to the Fax to Email Service will be properly converted to email and does not guarantee that any fax sent to the Fax to Email Service will be delivered to the Customer

(k) **Email to Fax Service.** If Customer purchases Email to Fax Service from Provider, emails sent from the number designated for Email to Fax Service will be converted to facsimiles and delivered to a Customer designated facsimile number in an unsecured format. Accordingly, Customer should not send sensitive documents via the Email to Fax Service. Provider accepts no responsibility for any communication that is accessed by an unintended third party or for any delivery, mis-delivery, or non-delivery of a communication that uses or attempts to use the Email to Fax Service. Provider does not guarantee that any fax sent to the Fax to Email Service will be properly converted to email and does not guarantee that any fax sent to the Fax to Email Service will be delivered to Customer. Customer agrees not to use the Email to Fax Service to send advertisements or solicitations of any kind in a manner prohibited by law. Customer agrees to use the Email to Fax Service only to a communication to a single recipient known to the sender each time the Email to Fax Service is used.

(l) **International Voice Termination.** If Customer purchases International Voice Termination Service from Provider, rates shall be as set forth in the Rate Deck or Rate Decks offered by Provider for such Services. International Services and rates that Provider will charge Customer are subject to change with or without notice. Provider does not guarantee international call delivery and may block routes it determines may be improperly using the Services at any time.

(m) **Voice Response Services for Toll Free Services.** In the event an inbound Toll Free Call is sent to Customer and such call is not accepted by Customer's equipment or such equipment is unable to complete the call for any reason, Customer shall be responsible for any and all surcharges levied onto Customer by Provider for such incomplete call. In attempt to assist Customer to avoid such surcharges, Provider will automatically provide Customer Voice Response Services ("CVRS") designed to redirect incomplete Toll-Free Calls to Provider's Voice Response platform, which will complete the call and provide an automated voice message. The CVRS is not a message recording system and the sender of the call will not be able to leave a message or interact with the platform in anyway. The sender of the call will receive an automated message that generally indicates that the call is not able to be completed at this time. Unless notice is provided to the contrary, CVRS will be provided at no cost to Customer. Customers may opt out of the Toll-free CVRS at any time by using the Back Office Settings Page. Provider reserves the right to stop providing CVRS to Customer at any time for any or no reason. Provider does not make, nor does it intend to make, representations or warranties with respect to the Toll-free CVRS, including any representation that the CVRS will work in every event or error free. Customers shall remain responsible to complete inbound traffic to any Toll Free number associated with their account, and in the event the CVRS is not able to complete a call for any reason, Customers shall remain responsible for any and all surcharges associated with incomplete calls.

(n) **Activity.** Customer agrees it is responsible to pay for any and all activity related to the Services purchased by Customer, including all international calls made from any IP address Customer has registered with Provider. Customer agrees that Provider shall have the right to, temporarily or permanently, at Provider's sole discretion, immediately terminate Customer Services or any communication if suspicious activity occurs. Examples of suspicious activities include, for example, any communication lasting more than thirty (30) minutes and excess daily usage, as determined by Provider. The above shall in no way limit other Rights of Provider with respect to Prohibited Activities or otherwise under law or equity.

(o) **International DIDs.** Due to international regulations and/or policies of Third Party Vendors, Customer is required to provide End User information for each international DID you purchase, whether such End User is Customer's User or a down steam End User. DIDs may not be activated unless and until End User information is verified as being true and accurate. Customer is solely responsible for providing and maintaining true and accurate End User Information. Any attempt to purchase an international DID using a United States domestic address will be rejected. The information Customer provides will be forwarded to our international ULC and kept on file by them as required by local authorities. Customer shall receive authorization from each End User that allows Provider to forward the End User's information to Third Party Vendors and relevant Authorities.

## 2. **E-911.**

### **PLEASE READ THE FOLLOWING CAREFULLY BEFORE USING THE SERVICE(S)**

(a) **Notice.** Provider is providing this Notice to explain the circumstances under which E911 Service may not be available, or may in some way be limited compared to traditional landline telephone service. In certain situations and depending on the purpose for which Customer is ordering the Service(s), Provider may ask Customer to give an additional acknowledgement of having received and understood this E911 Notice. Customer agrees to promptly execute and return such acknowledgement within the timelines established by Provider.

(b) **Specific Considerations.** Calling 911 using VoIP services is different from calling 911 using traditional landline services. Some of the key differences are as follows:

(i) **Availability.** E911 Service will not be available in areas where E911 service is not available for traditional landline telephone service. In cases where E911 is not available for traditional landline telephone service, Provider will route emergency calls to the police department or other emergency service provider for that jurisdiction.

(ii) **Power Outages.** Electrical power outages will disrupt the E911 Service, and Customer will not be able to place E911 emergency calls.

- (iii) **Telephone or Computer Problems.** Problems with the Customer's telephone, computer, modem, router, or other IP-enabled hardware may limit or completely restrict the Customer's ability to use the Service or place E911 emergency calls.
- (iv) **Problems with High-Speed Internet Connection.** Problems with the Customer's high-speed Internet connection, including outages or network congestion, may limit or completely restrict the ability to use the E911 Service or place E911 emergency calls.
- (v) **Suspension of Account.** If Customer's Account is suspended for any reason, including nonpayment of charges, Customer will not be able to use the E911 Service or place E911 emergency calls.
- (vi) **Problems with the Service.** E911 Service may be unavailable if Provider should experience Network problems, including, but not limited to, hardware problems, software problems, Internet connectivity problems, or network maintenance issues.
- (vii) **Problems with Equipment.** E911 Service may be unavailable if Customer should experience problems with any of its equipment.
- (viii) **Outside the United States.** If Customer uses the Service(s) from a location outside the United States, Customer will not be able to use the E911 Service or place E911 emergency calls.
- (ix) **E911 Provisioning Intervals.** Provisioning E911 Service may take additional time following the activation of the Service, during which time E911 emergency calling may not be available.
- (x) **Required Information.** In some circumstances, Customer may need to advise emergency service personnel of the nature of the emergency, the Customer's telephone number, or the Customer's physical location. If a call is disconnected for any reason, emergency service personnel may not be able to call the caller back, determine the Customer's physical location, or dispatch emergency personnel to the Customer's location.
- (xi) **Failure to Register Customer's Location Accurately.** It is important that Customer keeps Provider advised of each number's physical service location at all times. If Customer provides an incorrect physical address, or if the physical address is changed without notice, emergency calls may be routed to an incorrect emergency service provider, and emergency service personnel may not be able to transfer the call or respond to the emergency.
- (xii) **Physical Location.** In order for E911 Service to work properly, the E911 Service address in Provider's records MUST correspond to the physical location from which the Customer will use the Service. A P.O. Box is not sufficient to use as a physical address. The emergency service dispatcher will only send emergency service personnel to Customer's registered E911 Service address.

(c) **Disclaimer.** PROVIDER DOES NOT MAKE, NOR DOES IT INTEND TO MAKE, SPECIFIC REPRESENTATIONS OR WARRANTIES BASED ON THE STATEMENTS ABOVE AS IT CANNOT FORESEE EVERY POSSIBLE COMBINATION OF EVENTS. THE FACT THAT PROVIDER MAY CONNECT E911 PHONE CALLS IN SITUATIONS IN WHICH E911 SERVICES ARE NOT AVAILABLE DOES, IN NO WAY, CREATE A WARRANTY THAT SUCH CALL WILL BE CONNECTED ERROR FREE OR WITHOUT DELAY.

(d) **Information.** Customer will be responsible for accurately providing Provider with all information necessary to ensure the accuracy of each Automatic Location Identification ("ALI") and Public Safety Answering Point ("PSAP"), including, but not limited to, all Direct Inward Dialing ("DID")/Direct Outward Dialing ("DOD") numbers, and a correct and valid emergency response address for each DID/DOD number. Further, Customer must furnish all updates of this information to Provider. All of Customer's information must be accurately provided and provisioned in the Automatic Number Identification ("ANI") database in order to provide full 911 service functionality. If a 911 call is made from a non-provisioned or improperly-provisioned telephone number, the call will not be normally and automatically routed to the correct PSAP, and shall be routed to the backbone E911 provider's 24/7 Emergency Call Routing Center (ECRC). In such event, a per-call charge will be billed to Customer at a rate determined by Provider from time to time. As of 11/16/2018 the per-call charge for ECRC

calls is three hundred dollars (\$300.00). Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to the failure of Customer to provide Provider with accurate database entries and updates thereto.

(e) **Routing Solution.** Provider's designated E911 Vendor (which shall be included within the definition of "Third Party Provider") routes VoIP E911 calls by way of native 911 solutions where the Vendor's backbone provider has access to the E911 Service infrastructure. The following limitations apply to Service(s) in regions where a native 911 solution is utilized:

(i) In the event of an address geo-coding or Master Street Address Guide ("MSAG") validation failure, the error records cannot be processed in real-time. Commercially reasonable efforts will be made to resolve the records in error. There may be instances that will prevent the correction of errors, causing delays in uploading data into the provisioning system; and

(ii) The E911 Service is predicated on using primary wireline Public Safety Answering Point ("PSAP") boundaries for routing the Service's emergency calls to the appropriate PSAP. The primary wireline boundary information is collected and is entered into a database for real time queries for PSAP boundary lookup. Customer acknowledges that primary wireline PSAP boundary data may not be available for the entire United States and that 911 Service is dependent on the PSAPs to provide such information resulting in the use of wireless PSAP boundary data to route a VoIP emergency call.

(f) **Non-Native Solution.** If E911 Service is provided in regions where a non-native 911 solution is utilized, the following limitations apply:

(i) E911 Service uses wireless PSAP boundaries when a primary wireline PSAP boundary is not available. Therefore, the 24x7 PSAP DN provided when a caller places an emergency call may correspond to a PSAP other than the PSAP that would normally receive wireline emergency calls placed from the caller's location;

(ii) A caller's physical service address and call back number will not be presented to the PSAP; and/or

(iii) If a caller cannot speak, Customer acknowledges that no information will be provided to the PSAP to contact the caller to obtain information that would automatically allow them to dispatch emergency services to caller's location. Each PSAP's internal processes will dictate how the call should or will be handled.

(g) **Additional Considerations.** If an address provided for by Customer or Customer's Users cannot be recognized by the system and/or cannot be geo-coded, neither Provider or its third party carriers, or such other third parties utilized by such carriers, assumes any liability or responsibility for providing emergency calling services for the telephone number associated with such address. In situations where emergency call routing uses the Emergency Call Routing Center ("ECRC"), and if (i) caller cannot speak or identify his or her address; (ii) data connectivity between the address database and the ECRC is interrupted; or (iii) the caller's location information cannot be provided, Customer acknowledges that the Provider and any Third Party Vendor shall have no ability to assist the caller and Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party as a result of such instances. Customer understands and acknowledges, and commits to informing its Users of the nature and limitation of 911 Emergency Dialing over the Service(s). Customer acknowledges and agrees that Provider and any Third Party Vendor will not be liable for any Service outage and/or inability of a caller to dial 911 or to access emergency service personnel due to the characteristics and limitation of the Service. Customer understands that all calls must be delivered with the appropriate calling party number ("CPN") representing the caller's actual geographic location. Customer will be responsible for 911 configurations for all active CPNs. "Valid CPN" means the calling party's actual assigned ten (10)-digit telephone number within the North

American Numbering Plan assigned by Provider, excluding special purpose phone numbers such as 8XX, 950, 555 and N11. Delivery of valid CPN is a material obligation of Customer under these Terms of Service. For outbound calls other than calls to 911, if Customer does not deliver valid CPN, Provider will use commercially reasonable efforts to complete the call. For 911 calls, if Customer does not deliver valid CPN, Provider cannot complete the call. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to the failure of Customer to deliver valid CPN.

(h) **E-911 Secondary Notification Service.** When a 911 call is placed using the Services, a non-secure plain text notice may be sent to one or more Customer selected email addresses when the Customer purchases such a Secondary Notification Service from the Provider. The Provider does not guarantee, however, that any such notice will be sent or reach the Customer selected email addresses.

(i) **Call Volume.** If the number of 911 calls from Customer's Users exceeds three percent (3%) of the total Subscriber Records managed on behalf of Customer in Provider's ALI database in any applicable month, Provider may charge Customer a \$5.00 surcharge per call. For example, normal call volume per month per Customer typically is approximately one to two percent (1 - 2%) of the total Customer's Subscriber Records managed on behalf of Customer in Provider's ALI database.

### 3. **ORDERING THE SERVICE.**

Customer may order the Service(s) offered by Provider by completing and submitting an order form (the "Order Form"). The Order Form requires Customer to provide certain information including, but not limited to, Customer's name, E911 information, billing address, email address and credit card or banking information. Such information must be accurate, current and complete. Customer agrees to ensure that all such information is always accurate and complete. Customer acknowledges that if it provides any information that is untrue, inaccurate, not current, or incomplete, Customer's rights to use the Service(s) may be suspended or terminated without liability on the part of Provider.

### 4. **TERM.**

These Terms of Service shall apply upon Customer's submission of a completed and signed Order Form; provided that if Customer acquires access to or uses the Service(s) without submitting an Order, then these Terms of Service shall immediately apply upon such use or access. Provider shall provide Customer a Service Commencement Date when such date is known to Provider. Provider may change such date, without liability, in its sole discretion. Subject to the provision of these Terms of Service and unless a longer term is specified in the Order Form, either Party may terminate Services at any time, without further liability, except for the payment of fees that have accrued prior to termination. Customer must terminate Services by contacting their account manager. Any other form or written cancellation notification will NOT be accepted as proper cancellation notification. Customer account cancellations are processed within 30-days of the cancellation submission. Customer shall remain responsible and shall pay all charges and fees associated with the Service(s) that accrue up to termination. Customer MUST remove all provisioned Services. Failure to remove provisioned Services will result in a \$200 administration fee. Customer acknowledges that if it orders DID's from provider, such DID's may have a minimum Term of a year or more. The Term of DID's ordered hereunder shall be set forth on the Order Form.

### 5. **CUSTOMER NETWORK FACILITIES AND EQUIPMENT.**

Customer shall be solely responsible for the acquisition, installation, testing, maintenance and security of its own equipment and network facilities needed to utilize the Services, including facilities between Customer's Point of Presence ("POP") and Customer's Users. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses,

including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of the foregoing.

#### 6. **DATABASE UPDATES.**

Customer shall furnish all information reasonably requested by Provider in order for Provider to provide each Service. Customer shall ensure that all information and data that it has given or that it will give to Provider, including but not limited to Customer's billing information, mailing address and email address, is current and accurate at all times. Provider shall have no responsibility to verify the accuracy of any information provided by Customer and shall have no liabilities or obligations relative to any amount billed or notices delivered incorrectly as a result of inaccurate information provided by Customer and Customer's failure to correct or update the same. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to Customer's failure to perform the foregoing obligation.

#### 7. **UNLAWFUL AND PROHIBITED USE.**

(a) **Automated Calling Prohibition.** Unless Customer purchases the short duration calling Service from Provider, Customer agrees that all calls it originates through the Services shall be initiated by a human user and conducted by that human user. Unless otherwise agreed upon in writing, Customer agrees that it shall not use the Services to initiate any automated communication. Customer shall ensure that any and all automatic Calling shall be at all times conducting in compliance with federal, state and local, laws regulations and rules.

(b) **General Prohibitions.** Customer is expressly prohibited from using the Service(s) in a manner that would, in any way, constitute or encourage conduct that is improper, including uses that are criminal in nature, that may give rise to a civil liability, or that otherwise violates any applicable laws or regulations. Examples of such improper uses include, without limitation, attempts at phishing or otherwise improperly attempting to gain access to financial information and making calls to numbers included in a government Do Not Call List. In addition, Customer is expressly prohibited from using the Service(s): (i) for any abusive or fraudulent purpose; (ii) in a manner that enables Customer to avoid any obligation to pay for the Service(s); (iii) in a manner that is deemed to interfere with, disrupt, or present a risk to the Service(s), Network, software, property, or security of Provider, its customers, its Third Party Vendors or other third parties, whether directly or indirectly; (iv) in a manner that results in usage inconsistent with Provider's expectations or the purpose for which Provider is providing the Service(s); and/or (v) in a manner that may violate these Terms of Service, or the policies of Provider. Customer shall provide, at its cost, all reasonably necessary security equipment, software, facilities and other apparatuses to ensure that the Service(s) are not used in a fraudulent or unauthorized manner, whether by Customer or any third party.

(c) **Rights.** If Provider determines, in its sole discretion, that Customer is or any of its customers are using the Service(s) in a manner that violates or is contrary to this Section 7 then Provider, as well as any effected Third Party Vendors, shall have the right, without liability, to block, suspend or terminate the Service(s), or any part thereof, without notice. Customer shall be responsible for any liabilities and obligations arising from Customer's use of the Service(s) that is contrary to, or violates this Section 7. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of Customer's violation of this Section 7. If Provider, in its sole discretion, believes that Customer's actions or omissions may be considered criminal in nature, Provider may forward personally identifiable information to the appropriate authorities for investigation and prosecution. Customer hereby consents to such forwarding.

(d) **Suspicious Activity Service Termination.** In addition to and not to limit any other rights of Provider, Provider has the right to suspend or terminate Service if Provider, in its sole discretion, believes that any activity on the Customer account is or could be suspicious in nature.

(e) **Use of Service outside the United States.** Customer shall be liable for any and all use of the Service and/or Equipment by any person outside of the United States. Transport or sale of the Device outside of the United States may result in a violation of U.S. or foreign technology import/export laws or rules; compliance with which is Customer's sole responsibility, and you agree to indemnify and hold Provider harmless from any and all liability associated with claims arising therewith. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of the aforementioned.

#### 8. **AUDIT AND LAW ENFORCEMENT.**

Provider reserves the right to audit, track or monitor Customer's use of the Service(s) to (a) enforce the provisions of these Terms of Service; (b) conform to legal requirements or comply with legal process; (c) protect and defend the rights or property of Provider or any Third Party Vendors; (d) respond to request for identification in connection with a claim of copyright or trademark infringement, or unlawful activity; (e) act to protect the interests of Provider's customers or such Customer's Users; (f) conform to Provider's contractual obligation with any Third Party Vendor; or (g) provide the Service(s). Customer agrees that these Terms of Service are sufficient notice to Customer of such monitoring to the extent any notice is required under applicable federal or state law.

#### 9. **PRIVACY.**

The Service(s) utilizes the public Internet and third party networks. Provider and its Third Party Vendors shall not be liable for any lack of privacy which may be experienced by Customer with regard to the Service(s). Customer shall be solely responsible for any liabilities arising from Customer's lack of privacy.

#### 10. **CONTENT.**

Neither Provider nor any of its Third Party Vendors operate or control the content transported by the Service(s). As such, neither Provider nor any of its Third Party Vendors shall have any liability or responsibility for the content of any communication or information transmitted via the Service(s). Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of the content of any communication or information transmitted via the Service(s).

#### 11. **LOCAL NUMBER PORTABILITY (LNP).**

If Customer desires to port a number either to or from Provider's Network, Customer shall execute and/or deliver to Provider all documents and information requested by Provider, including, but not limited to, all required Letters of Authorization ("LOA"). Customer acknowledges and agrees that Provider shall have the right to refuse to port any number to its network for any reason. Customer agrees that Provider, in its sole discretion, may port a number to any Third Party Vendor selected by Provider in order to provide the Service(s), and that Provider or a Third Party Vendor may be required to be named as the Customer of Record for such number. Provider will make reasonable commercial efforts to execute all port requests; however, Provider has no control over any porting process (either to or from Provider's Network). As such, Provider makes no guaranties or warranties that a number will be ported on a particular day, or that a submitted port request will actually result in the number being ported. Provider will inform Customer of port dates when such dates are known to Provider. Provider reserves the right to change the port date in its sole discretion. **Customer shall pay \$10.00/TN for any number ported from Provider's network.** Customer agrees to comply with all applicable rules, regulations and orders,



including but not limited to all FCC and public utility commission rules regarding number porting. Provider makes no warranty that the Service(s) associated with a number will be uninterrupted or error free during any porting process. Customer acknowledges that, if any account associated with the number being ported is canceled or suspended prior to the port date, such number may not be eligible for porting. It is Customer's sole responsibility and obligation to timely cancel its account(s) with the provider from which the number is being ported, and Customer shall be solely responsible for any contractual obligations it has with such provider and any applicable fees and charges, including early termination fees. Number porting is done at the Customer's sole risk. Under no circumstances shall Provider be liable for any damages, including, without limitation, loss of profits, associated with porting or not porting a number. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of any number port requested by Customer, including those arising from any slamming complaints. Customer agrees to comply with all Local Number Portability ("LNP") policies established from time to time by Provider. Provider may modify its LNP policies at any time with or without notice to Customer and customer agrees to comply with all such modifications.

## 12. **PAYMENT TERMS.**

- (a) Customer agrees that if a Service Order submitted by Customer is accepted by Provider, Customer shall pay all charges and amounts associated with the Service(s) and Customer's account(s), regardless of whether such amounts result from fraudulent or unauthorized activities by third parties. Customer shall comply with Providers billing and payment policies that are in addition to the provisions set forth herein, as the same may change from time to time in Provider's sole discretion.
- (b) Customer shall be responsible for accurately providing Provider with Customer's valid payment information, including the payment method, and maintaining and updating the same at all times.
- (c) Customer shall ensure that all amounts billed hereunder are available each time Provider attempts to execute a charge, debit, or Automated Clearing House ("ACH") transaction on any account designated for such purposes. Provider shall charge Customer a service fee in the amount of \$30.00 each time Provider attempts to execute a charge, debit, or ACH to any such designated account and such charge, debit, or ACH transaction is rejected due to insufficient funds or for any other reason.
- (d) If Provider charges Customer for Service(s) pursuant to these Terms of Service and Customer places a chargeback with its credit card company for any reason, Provider shall charge Customer a fee in the amount of \$150.00. In addition, Provider shall consider credit card chargebacks as fraud if it believes that the amounts charged to Customer's account were proper pursuant to these Terms of Service. Provider will pursue all criminal and civil remedies available to recover losses incurred as a result of Customer's chargeback.
- (e) Customer hereby waives any and all claims, actions or suits against Provider, and its parent companies, Affiliates and subsidiaries, and such entities' employees, officers, directors and shareholders, and releases the same from any errors, omissions and/or liabilities that may arise due to the processing of aforementioned charge, debit, or ACH transaction.
- (f) CUSTOMER ACKNOWLEDGES THAT PROVIDER WILL NOT, NOR IS IT RESPONSIBLE TO, MONITOR CUSTOMER(S) ACCOUNT FOR FRAUDULENT OR UNAUTHORIZED ACTIVITIES, OR ACTIVITIES THAT MAY RESULT IN INCREASED COSTS TO CUSTOMER. CUSTOMER AGREES THAT IT IS ENTIRELY RESPONSIBLE TO MONITOR ALL ACTIVITIES ATTRIBUTED TO ITS ACCOUNT(S). IF CUSTOMER BELIEVES THAT ANY SERVICE IS BEING USED IN A FRAUDULENT OR UNAUTHORIZED MANNER THROUGH ITS ACCOUNT, THEN CUSTOMER MUST NOTIFY PROVIDER OF SUCH ACTIVITIES AND PROVIDER WILL REASONABLY ASSIST CUSTOMER TO PREVENT SUCH INDIVIDUALLY IDENTIFIED ACTIVITIES.

- (g) Customer shall pay charges in addition to those charges normally associated with the Consumption of the Service(s) in those circumstances in which costs and expenses are generated by Customer and incurred by Provider, including but not limited to: (i) costs associated with Provider's employees, agents or third parties assisting Customer with problems relative to Customer's network, equipment or service outage if Provider determines that the outage was not a result of Provider's network or facilities; and (ii) excessive costs associated with Provider's employees, agents or third parties compliance with criminal, quasi criminal or civil subpoenas, court orders, and/or the like, that relate to Customer or third parties that access and/or use the Service(s) by and through the Customer.
- (h) Provider may require Customer to commit to and pay a minimum monthly fee for certain Services. Such minimum commitment shall be set forth on the respective Order Form. Customer acknowledges that if a minimum commitment is required by Provider at the time the Service(s) is purchased, Customer shall be responsible for and shall pay the minimum monthly fee throughout the Term of the Service(s), regardless of whether Customer actually consumes any of the Services.
- (i) Customer is responsible for and must pay any applicable federal, state, local, or other governmental sales, use, excise, public utility, or other taxes, regulatory fees, and charges now in force or enacted in the future, as well as other additional costs that may arise as a result of the Customer's consumption of the Service(s). Similarly, Provider may pass through to Customer taxes and fees owed by Provider to the extent permissible by law. Said amounts, if any, are in addition to set-up fees or charges associated with the consumption of the Service(s). If Customer is exempt from paying any taxes or fees, Customer must provide documentation, acceptable to Provider, certifying that Customer is exempt. Tax exemption will only apply from and after the date Provider acknowledges Customer's exemption request. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of any exemption claimed by Customer.
- (j) As a condition of accepting a Service Order, providing Service(s) to Customer or continuing to provide Service(s) to Customer, Provider may require Customer to make a security deposit, which shall be due upon Provider's written request. Upon termination of Services, Provider may apply such deposit to any fees, charges or other amounts unpaid by Customer.
- (k) Provider may permit Customer to provide to Provider one or more payment facilities, including one or more credit facilities or credit card accounts, which may be provided in writing, through a secure internet based facility, or otherwise, to be used for payment of any amount due from Customer to Provider. Provider may draw any amount due from Customer to Provider from any payment facility provided by Customer.
- (l) For certain Services, Provider may provide invoices and related billing notifications to Customer by email. Provider will provide such invoices and related billing notification emails to one or more emails provided by Customer. Customer agrees that it is responsible to provide desired email addresses to Provider. Provider accepts no responsibility for invoices or related billing notifications that are not received by Customer due to an improper email address being provided by Customer and Provider accepts no responsibility for sending invoices or related billing notifications to any Customer provided email address. Provider accepts no responsibility for any interruption in Services or other harm caused to Customer due to one or more invoices or related billing notifications that are not received by Customer because the invoice or related billing notification was sent to an improper email address provided to Provider by Customer.
- (m) Provider may immediately suspend, restrict or terminate the Service(s)s, without notice or liability, if Provider does not receive payment of all amounts billed to Customer by the required due date and/or all amounts that must be prepaid in order to continue the provision of the Service(s). In addition, Provider may add interest charges to any past-due amounts at a rate equal to the lesser of 2.5% per month or the maximum rate allowed by law, prorated for each day payment is past due. Service suspension or cancellation will result in Customer's loss of the numbers associated with the Service(s). Acceptance of late or partial payments (even if

marked "Paid in Full" or with other restrictions) shall not waive any of the rights of Provider to collect the full amount of the charges for the Service(s). Customer agrees to reimburse Provider for reasonable attorneys' fees, and any other costs associated with collecting delinquent or dishonored payments. Provider may assess reinstallation charges against Customer in the event the Provider suspends, restricts or terminates the Service(s) as a result of Customer's nonpayment or breach of this agreement.

(n) If Customer has prepaid for the Service(s), such Service(s) shall be immediately suspended without notice at the time the fees for Customer's consumption of Service(s) has reached the prepayment amount. Customer is entirely responsible to monitor its consumption of Service(s) and replenish any prepayment amounts when necessary to continue using the Service(s).

### 13. **TRAFFIC REQUIREMENTS.**

(a) For conversational termination Services:

- (i) Customer's Answer Seizure Ratio (ASR) in any 24 hour period must be above 60.0%;
- (ii) the Average Length of Call (ALOC) must be above 60.0 seconds in duration; and
- (iii) 90% of total calls must be above 6 seconds in duration.

(b) For Toll-Free origination Service, 90% of all incoming calls must be accepted by Customer's switch.

(c) In the event any of the requirements in this Section are not met, Provider may, in addition to any other remedies available hereunder:

- (i) Charge Customer (retroactively and in the future) a surcharge of \$0.02 per call attempt for conversational termination Services and \$0.10 per call for Toll-Free origination services, which shall be in addition to all other fees and charges billed to Customer for its consumption of the Service(s); or
- (ii) Modify its billing method and charge Customer for its consumption of Service(s) in accordance with Provider's then current Short Duration Rate Deck.

### 14. **BILLING DISPUTES.**

In the event Customer disputes any amount billed by Provider, Customer shall notify Provider of such billing dispute by completing and submitting a "Billing Dispute Ticket". The existence of a dispute shall not relieve Customer from paying any amounts billed hereunder. All Customer disputes must be submitted to Provider within thirty (30) days of the billing date or such dispute shall be forever waived. Upon receipt of a billing dispute, Provider shall reasonably investigate the dispute and provide Customer with a resolution based on the outcome of such investigation.

### 15. **NON-DISCLOSURE.**

Customer acknowledges that it may obtain from Provider information relating to Provider's or a Third Party Vendor's Service or method of doing business which is of a confidential and proprietary nature and which requires that certain steps be taken to ensure its protection (the "Proprietary Information"). Such Proprietary Information may include, without limitation, financial information, marketing and business plans, customer lists, business and contractual relationships, business forecasts, sales forecasts, sales activity and plans, customer data, current and proposed products and services and pricing, patents, patent applications, technology, databases, employee information, trade secrets, contracts, historical information, financial information, product and business requirements, business strategies, operating data, pricing, organizational structures, software programs, software source documents, know how, formulas, processes, ideas and inventions (whether patentable or not) and information about or from either party's vendors. Although certain information may be generally known in the relevant industry, the fact that Provider and/or a Third Party Vendor uses the same may not be so known and in such instance would comprise Proprietary Information. Furthermore, the fact that various fragments of information or data may be generally known in the relevant industry does not mean that the manner in which Provider and/or a Third Party Vendor combines them, and the results obtained by such

combination are so known and in such instance would also comprise Proprietary Information. Customer shall not, without the prior written consent of Provider of the Proprietary Information, disclose Proprietary Information to any person or entity, except for the Customer's employees, contractors and consultants who have a need to know such Proprietary Information. The Customer may disclose Proprietary Information pursuant to a judicial or governmental request, requirement or order; provided that the recipient take all reasonable steps to give Provider prior notice sufficient to contest such request, requirement or order. Customer shall strictly protect Proprietary Information from disclosure. Because money damages may be insufficient in the event of a breach or threatened breach of the foregoing provisions, the affected party may be entitled to seek an injunction or restraining order in addition to such other rights or remedies as may be available under this Agreement, at law or in equity, including but not limited to money damages.

#### **16. COPYRIGHT, TRADEMARK AND UNAUTHORIZED USE.**

The Service and any equipment, firmware or software used to provide the Service or provided to Customer in conjunction with the Service, and all information, documents and materials provided or offered by Provider may be protected by trademark, copyright or other intellectual property laws and international treaty provisions. Customer is only granted a nontransferable, revocable license to use such equipment, firmware or software, information, documents and materials (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement, and exclusively for use in connection with the Service. Any equipment, firmware or software, information, documents and materials provided by Provider to Customer pursuant to this agreement shall be included in the Definition of Services.

These Terms of Service shall not be construed to grant Customer any right to use Provider's, or its parent company's or Affiliates', corporate names, service marks, trademarks, trade names, logos and domain names (collectively "Marks") or otherwise refer to the same in any marketing, promotional or advertising materials or activities. Customer agrees that Provider may identify Customer as a customer of Provider and recipient of the Service(s) for the purposes of marketing Provider's Services. Further, Customer hereby grants Provider the right to use Customer's logo/trademark on its website and other material solely for the purpose of advertising the sales by Provider of similar services to third parties.

#### **17. MODIFICATION OF TERMS.**

Provider has the right to and may, at any time, modify the terms and conditions of these Terms of Service, and to change or discontinue any aspect or feature of the Service(s) as it deems reasonably necessary. Notice of any such change shall be sent to Customer via email and/or via Provider's Ticket System using the email address provided by Customer upon registration (or the email address that Customer provides from time to time for such purpose). Customer shall configure its email system to accept correspondence from Provider's Ticket System. Customer hereby consents to receive notifications and changes in electronic format and acknowledges that such format shall not affect the enforceability thereof. Such changes shall be effective immediately upon said notice. In addition to providing the above mentioned notice, Provider shall publish the modified Terms of Service on its website. Customer agrees to review the Terms of Service periodically so that it is aware of any and all modifications. Customer's use of the Service(s) after notice of any such changes shall constitute Customer's conclusive acceptance of any and all such changes. In the event Customer no longer desires to receive notices via electronic methods, Customer shall provide written notification of such decision, at which time Provider may terminate Service(s) without liability.

#### **18. WEBSITE USE/WARRANTIES.**

By accessing and using any Provider Website, (including, but not limited to the Back Office) the Customer acknowledges that it has read and agreed to the Terms of Use located on such site ("Terms of Use"), and, in addition to the terms and conditions contained herein, Customer agrees to all the terms and conditions therein, and consents to be bound and become a party thereto. Should the Customer not agree to, or be able to comply with any of the terms and conditions of the Terms of Use, it shall immediately cease any use of Provider's Website, as well as the Service(s), or terminate the registration process. Information, ideas and opinions expressed on the Provider Website should not be regarded as professional advice or the official opinion of

Provider and Customer is encouraged to consult professional advice before taking any course of action related to the information, ideas or opinions expressed on the Provider's website. Provider does not make any warranties or representation that the content and services offered on the Provider Website are or will be, in any case, available, true, correct or free from any errors. Provider may provide hyperlinks to websites not controlled by Provider ("target sites") and such hyperlinks do not imply any endorsement, agreement on or support of the content, products and/or services of such target sites and Provider shall not have any liabilities to Customer or any third party arising from Customer's access or use of such third party sites. Provider does not editorially control the content, products and/or services on target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access, the use of, inability to use or the content available on or through target sites.

**19. GENERAL WARRANTIES.**

THE SERVICE(S), DEVICES, EQUIPMENT, HARDWARE, SOFTWARE AND OTHER COMPONENTS OF THE NETWORK AND SERVICE ARE OFFERED AND PROVIDED "AS IS", "AS AVAILABLE" AND SUBJECT TO THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY FOUND HEREIN. PROVIDER AND ITS THIRD PARTY VENDORS AND ANY THIRD PARTY THAT FURNISHES SERVICES TO PROVIDER OR ENABLES PROVIDER TO FURNISH SERVICE(S) TO CUSTOMER MAKE NO WARRANTIES OF ANY KIND REGARDING THE SERVICE(S), SOFTWARE OR EQUIPMENT PROVIDED HEREUNDER AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, ACCURACY OF DATA, AVAILABILITY, FITNESS FOR A PARTICULAR PURPOSE, THAT THE SERVICE(S) WILL MEET CUSTOMER'S REQUIREMENTS, ANY WARRANTY AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OF THE SERVICE(S), OR AGAINST INFRINGEMENT OF ANY NATURE. IN ADDITION, PROVIDER, AND ITS THIRD PARTY VENDORS AND ANY THIRD PARTY WHO FURNISHES SERVICES TO PROVIDER OR ENABLES PROVIDER TO FURNISH THE SERVICE(S) TO CUSTOMER MAKE NO WARRANTY THAT THE SERVICE(S) WILL BE UNINTERRUPTED OR ERROR FREE. PROVIDER DOES NOT AUTHORIZE ANYONE, INCLUDING, BUT NOT LIMITED TO, EMPLOYEES, AGENTS, CONTRACTORS OR REPRESENTATIVES, TO MAKE A WARRANTY OF ANY KIND ON BEHALF OF PROVIDER, ITS THIRD PARTY VENDORS OR ANY THIRD PARTIES. ANY AND ALL STATEMENTS AND/OR DESCRIPTIONS CONCERNING THE SERVICE(S) OR EQUIPMENT, IF ANY, BY PROVIDER OR ITS EMPLOYEES, AGENTS, CONTRACTORS OR REPRESENTATIVES ARE INFORMATIONAL ONLY AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND, AND CUSTOMER SHOULD NOT RELY ON ANY SUCH STATEMENT OR DESCRIPTIONS.

**20. LIMITATION OF LIABILITY.**

(a) PROVIDER SHALL NOT BE LIABLE FOR ANY DAMAGE, LOSS OR LIABILITY OF ANY NATURE INCURRED BY CUSTOMER OR CUSTOMER'S USERS AND/OR ANY THIRD PARTY RESULTING FROM ACCESS TO THE NETWORK; ANY INTERRUPTION OF SERVICE(S); ANY LOST DATA, LOST TIME OR OTHER SYSTEM RELATED DAMAGES; AND/OR DAMAGE OR LOSS OF PROPERTY OR EQUIPMENT.

(b) IN ADDITION, AND NOT TO LIMIT THE FOREGOING OR THE FOLLOWING, IN NO EVENT SHALL PROVIDER BE RESPONSIBLE FOR ANY LIABILITIES ARISING OUT OF: (A) THE SERVICE(S), FACILITIES OR EQUIPMENT PROVIDED BY CUSTOMER, CUSTOMER'S USERS, OR BY A THIRD PARTY VENDOR (INCLUDING ANY AGENTS, SUBCONTRACTORS, INDEPENDENT CONTRACTORS OR CUSTOMERS OF THE SAME); OR (B) ANY ACT OR OMISSION OF ANY THIRD PARTY, THE CUSTOMER OR CUSTOMER'S USERS.

(c) IN ADDITION, AND NOT TO LIMIT THE FOREGOING, PROVIDER SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, TO THE CUSTOMER OR ANY THIRD PARTY, INCLUDING CUSTOMER'S USERS, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICE(S)).

(d) IN NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF PROVIDER ARISING WITH RESPECT TO THESE TERMS OF SERVICE EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

(e) NO CAUSE OF ACTION UNDER ANY THEORY WHICH ACCRUED MORE THAN ONE (1) YEAR PRIOR TO THE INSTITUTION OF A LEGAL PROCEEDING MAY BE ASSERTED BY CUSTOMER RELATIVE TO THE SERVICE(S) OR THESE TERMS OF SERVICE.

(f) IN THE EVENT A JURISDICTION DOES NOT ALLOW ANY OF THE ABOVE EXCLUSIONS OR LIMITATIONS OF WARRANTIES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SUCH LIABILITIES AND WARRANTIES SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

#### 21. **INDEMNIFICATION.**

In addition to any other indemnification provisions herein, Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, contractors, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to Customer's or Customer's Users acts or omissions, consumption, use and/or resale of the Service(s) and/or breach of these Terms of service, including, without limitation, any claims asserted by any third party. Provider shall promptly notify Customer in writing of any claim for which it is obligated under this indemnity and for which Provider may seek indemnification.

#### 22. **DISPUTE RESOLUTION.**

(a) **Governing Law.** These Terms of Service, and all other aspects of the use of the Service(s) and the Website, shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to its conflict of law provisions. This governing law provision applies regardless of the location of the Customer or where Customer or Customer's Users use or pay for Service(s). To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 22(b), you shall submit to the personal and exclusive jurisdiction of the courts located within the State of Oregon and waive any objection as to venue or inconvenient forum.

(b) **Mandatory Arbitration and No Jury Trial.** Any dispute or claim between Customer, or Customer's User, and Provider arising out of or relating to the Service or Device will be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration will take place in Portland, Oregon. The arbitrator's decision will follow the plain meaning of the relevant documents, and will be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. **REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR BE FOREVER BARRED.** All claims shall be arbitrated individually. You shall not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. **THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL AND AN AGREEMENT TO BE SUBJECT TO JURISDICTION IN, AND CONDUCT ARBITRAL PROCEEDINGS IN, OREGON.**

#### 23. **MISCELLANEOUS.**

(a) **General Provisions.** These Terms of Service and any documents incorporated herein by reference constitute the entire Agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, understandings, statements or proposals concerning the Service(s), including representations, whether written or oral. No written or oral statement, advertisement or service description not expressly contained in these Terms of Service will be allowed to amend, contradict, explain or supplement it unless agreed upon by Provider in writing. Neither Customer nor Provider is relying on any representations or

statements by the other party or any other person or entity that is not included as a Party to these Terms of Service.

(b) **Force Majeure.** Except for the Customer's payment of charges for Service(s) which have accrued, neither Party to these Terms of Service assumes a risk of any event, foreseeable or unforeseeable, and beyond the reasonable control of either Party, including but not limited to acts of God or the public enemy; riots or insurrections; war; accidents; fire; strikes; and other labor difficulties (whether or not the party is in a position to concede to such demands); embargoes; judicial action; lack of or inability to obtain licenses, permits or approvals, necessary labor, materials, energy, components, software, equipment or machinery; and acts of civil or military authorities, and such event has a material effect upon the agreed exchange contemplated herein.

(c) **Survival.** The provisions of these Terms of Service that, by their purpose, are intended to survive the termination of Service(s) shall so survive. Said provisions shall include, but shall not be limited to, those provisions that include indemnification clauses, limitations on liability, warranty limitations, billings, non-disclosure and Customer's obligations to pay for the Service(s) provided, including any additional usage charges.

(d) **Non-Waiver.** Failure by either Party to insist upon strict performance of any terms or conditions of these Terms of Service or failure or delay to exercise any rights or remedies provided herein or by law shall not release either Party from any of the obligations hereunder, and shall not be deemed a waiver of any right to insist upon strict performance thereof or any rights and remedies herein.

(e) **Third Parties.** Notwithstanding anything to the contrary contained herein, no third party shall be considered a party to or beneficiary of these Terms of Service or have any claim under these Terms of Service against either Customer or Provider.

(f) **Assignment.** Customer may not assign its rights or obligations under these Terms of Service without the express written consent of Provider. Any such assignment in violation of this Section shall be null and void.

(g) **Business Relationship.** These Terms of Service shall not create any agency, employment, joint venture, partnership, representation or fiduciary relationship between the Parties. Neither party shall have the authority to, nor shall any party attempt to, create any obligation on behalf of the other party.

(h) **Notices.** Customer Agrees that all notices shall be considered written and properly given if sent to Customer via the email address provided by Customer at the time of registration and as necessarily updated. Customer acknowledges that Notices may be sent by and through Provider's Ticketing System and that the email address provided to receive such tickets shall be sufficient to receive notices. Customer shall configure its email system to accept correspondence from Provider's Ticket System. Customer hereby consents to receive notifications in electronic format and acknowledges that such format shall not affect the enforceability thereof. In the event Customer wishes to not receive notices electronically, Customer shall inform Provider of such desire and Provider may, at its sole discretion, terminate the Service(s) without further liability.