

End-User Terms of Service

Last Updated: October 25, 2023

We updated these Terms of Service on October 25, 2023. These changes will be effective December 1, 2023, to customers who signed up for Services before December 1, 2023. Signatories on the Order may be referred to individually as a “Party” and collectively as the “Parties”.

THESE ONLINE TERMS OF SERVICE, including the Order(s) and any applicable Service Attachments, which by this reference are incorporated herein (“Agreement”), are a binding agreement between Chesapeake Telephone Systems, Inc. (“Company”) and the Customer (“Customer”) identified on the Order.

Company provides services and equipment intended solely for business use, pursuant to the terms and conditions set forth in this Agreement and on the condition that Customer accepts and complies with this Agreement. By signing an Order, Customer (a) accepts this agreement and agrees that Customer is legally bound by its terms; and (b) represents and warrants that: (i) its representative is 18 years of age or of legal age to enter into a binding agreement; and (ii) has the right, power, and authority to enter into this agreement on behalf of the corporation, governmental organization, or other legal entity, and to bind such organization to these terms. If Customer does not agree to the terms of this Agreement, neither Customer nor its End Users may download, install, or use the Services or Equipment.

1. DEFINITIONS.

- a. **“Account Administrator”** means the person(s) who have been granted authority by Customer to set up, amend, or otherwise control settings and/or make additional purchases for the account via the Account Manager. Account Administrators may have varying levels of account rights, skills, or permissions.
- b. **“Account Data”** means any business contact information provided with the account; logs of calling or other metadata developed or collected in the provision of the Services; configuration data; and records of any Services purchased under this Agreement.
- c. **“Administrative Fees”** means any administrative recovery fees, 911 cost recovery fees and the like separately charged by Company to Customer.
- d. **“Account Manager”** means the online Account Manager through which Account Administrators control settings and/or make additional purchases for the account.
- e. **“Affiliate(s)”** means a person or entity that is controlled by a Party hereto, controls a Party hereto, or is under common control with a Party hereto, and **“control”** means beneficial ownership of great than fifty percent (50%) of an entity's then-outstanding voting securities or ownership interests.

- f. **"Confidential Information"** means any information disclosed by or on behalf of the Disclosing Party to the Receiving Party that should reasonably be considered as confidential given the nature of the information and the circumstances surrounding its disclosure. Confidential Information excludes any information or data which the Receiving Party can demonstrate: (i) is available to the public; (ii) becomes available to the public through no breach of this or any other agreements between the Parties; (iii) before its disclosure hereunder, was known by the Receiving Party without any obligation owing to the Disclosing Party (directly or indirectly) to hold it in confidence; (iv) is received from a third party who does not owe any duty to the Disclosing Party (directly or indirectly) with respect to such information; (v) is independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party; or (vi) is approved for release by written authorization of the Disclosing Party but only to the extent of such authorization and without any disassembly, reverse engineering, or similar undertaking by Receiving Party.
- g. **"Customer Content"** means the content of calls, facsimiles, SMS messages, voicemails, voice recordings, shared files, conferences or other communications transmitted or stored through the Services.
- h. **"Disclosing Party"** means the Party disclosing Confidential Information or on whose behalf Confidential Information is disclosed by such Party's agents, including but not limited to, its Affiliates, officers, directors, employees and attorneys.
- i. **"Effective Date"** means the date of execution (port-over date) of the initial Order.
- j. **"End Point"** means an application or device through which any End-User might access and/or use any of the Services, including without limitation IP Desk Phones, Desktop Clients, Web Clients, Mobile Applications, and Software Integrations.
- k. **"End User"** means an individual user to whom Customer makes the Services available, and may be a natural person, and may include but is not limited to Customer's employees, consultants, clients, external users, invitees, contractors and agents.
- l. **"Equipment"** means equipment or hardware which Customer acquires from Company, a Company Affiliate, a Company authorized vendor or a Leasing Company, for use in connection with the Services.
- m. **"Intellectual Property Rights" or "IP Rights"** means all common law and statutory rights (whether registered or unregistered, or recorded or unrecorded, regardless of method) arising out of or associated with: (a) patents and patent applications, inventions, industrial designs, discoveries, business methods, and processes; (b) copyrights and copyright registrations, and "moral" rights; (c) the protection of trade and industrial secrets and Confidential Information; (d) other proprietary rights relating to intangible

property; (e) trademarks, trade names and service marks; (f) a person's name, likeness, voice, photograph or signature, including without limitation rights of personality, privacy, and publicity; (g) analogous rights to those set forth above; and (h) divisions, continuations, continuations-in-part, renewals, reissuances and extensions of the foregoing (as applicable).

- n. **"Order(s)"** means a request or order for Service describing the type and quantity of Services required by Customer and submitted and accepted by the Parties in accordance with Section 2(A) (Ordering Services). The Order may be presented and executed via the Account Manager.
- o. **"Receiving Party"** means the Party or its agents, including, but not limited to its Affiliates, officers, directors, employees and attorneys receiving Confidential Information.
- p. **"Service(s)"** means all services or Equipment provided under this Agreement, and set forth in one or more Order(s).
- q. **"Start Date"** means the date so identified in the relevant Order or the date of portover, whichever is the later.
- r. **"Taxes"** means any and all federal, state, local, municipal, foreign and other taxes and fees charged or collected from Customers, including but not limited to any Universal Service Fund, TRS and 911 taxes and fees.
- s. **"Term"** means the Initial Term plus any Renewal Terms.
- t. **"Use Policy"** refers to any of the policies identified in Section 5(B) (Use Policies).

2. ORDERING AND TERM.

- a. **Ordering Services.** Customer may order Services by executing an Order in the format provided by Company. The Order will identify the Services requested by Customer. An Order will become binding when it is executed by the Customer and accepted by Company. Company may accept an Order by commencing performance of the requested Services. The Services will begin on the Start Date. Customer may purchase additional Services, software, and equipment through execution of additional Orders.
- b. **Term.** The Term of this Agreement will commence on the Effective Date and continue until the last Order is terminated or expires, unless terminated earlier in accordance with its terms.
- c. **Services Term and Automatic Renewal.** The Services Term will begin on the Start Date of the initial Order and continue for the initial term set forth in the initial Order ("Initial Term"). Upon expiration of the Initial Term, recurring Services will automatically renew for successive periods of the same length as the Initial Term (each a "Renewal Term") unless the Customer gives notice of non-renewal at least thirty (30) days before the expiration of the Initial Term or the then-current Renewal Term or as is otherwise agreed upon in the Order. The term of any recurring Services added after the initial Order is submitted will start on the Start Date of the subsequent Order, will run

coterminously with the then-current Term of any preexisting Services, and will be billed on the same billing cycles as the preexisting Services.

3. INVOICING AND PAYMENT.

a. Prices and Charges.

- i. All prices are identified in US dollars. Additional charges may result if Customer activates additional features, exceeds usage thresholds, or purchases additional Services or equipment. Customer will be liable for all charges resulting from use of the Services on its account.
- ii. Recurring charges for the Services begin on the Start Date, and will continue for the Term. Recurring charges (such as charges for phone numbers, product licenses, minute bundles, and equipment rental fees) will, once incurred, remain in effect for the then-current Term. Company will provide notice of any proposed increase in such charges no later than sixty (60) days before the end of the Initial Term or then-current Renewal Term, and any such increase will be effective on the first day of the next Renewal Term. Administrative Fees that Company is entitled to pass on to its customers as a surcharge pursuant to applicable laws may be increased on thirty (30) days' written notice.

b. Billing and Payment

- i. All installation services and equipment will be billed separately by CTS, Inc. and must be paid via check, ACH or a valid credit or debit card at the time of receipt of invoice. All MRC and initial NRC charges billed by the Beacon portal must be paid via ACH or a valid credit or debit card at the time of receipt of invoice in the Beacon portal. By providing valid ACH or credit/debit card information, Customer is expressly authorizing all recurring payments and fees to be charged to such bank or payment card on a monthly basis. This authorization will remain valid until 30 calendar days after you terminate our authority to charge your payment method. In addition, Customer's provided ACH or credit card shall be used for any in-month purchases of additional services and products, or where Customer has exceeded usage or threshold limits, and any overage charges. Recurring charges are billed to the ACH or credit/debit card associated with your account monthly in advance for those Services and Equipment in the following month. If ACH payment date falls on a weekend or holiday, the charge may be made on the following business day. An ACH authorization will remain in effect until Customer notifies the Company in writing to cancel it at least 15 days prior to the next billing date. Credit and debit card payments are subject to the approval of the card issuer, and Company will not be liable in any way if a card issuer refuses to accept a credit or debit card for any reason. Customer is responsible for any ACH or credit card chargeback or similar fees for refused or

rejected payments that Company is entitled to charge under this Agreement. If the payment ACH or card associated with Customer's account is declined or fails for any reason, Company will send Customer a notice using the contact information associated with Customer's account. Company may continue to attempt charging Customer's payment card for outstanding charges and additional fees along with any other rights and remedies available to Company under this Agreement, at law or in equity. A monthly Admin Fee of 10.00 will be billed to Customers account that wish to use credit/debit cards as a form of payment. There will not be any Admin fee billed to Customers account for payments made via ACH.

- ii. Unless otherwise stated at the time of purchase or on the billing statement, payment is due in full, without deduction or set-off, within thirty (30) days of the date on the billing statement. Any payment not made when due may be subject to a late payment fee equivalent to the lesser of (i) one and a half percent (1.5%) per month; or (ii) the highest rate allowed by law. Company's acceptance of late or partial payments (regardless of how they are marked or designated (including without limitation as 'Paid in Full', 'Accord and Satisfaction', or similarly)) will not waive, limit, or prejudice in any way Company's rights to collect any amount due. Company may terminate the Services and this Agreement for non-payment if any fees or charges are not paid within thirty (30) days of the due date.
- c. **Taxes.** All rates, fees, and charges are exclusive of applicable Taxes, for which Customer is solely responsible. Taxes may vary based on jurisdiction and the Services provided. Taxes, access fees, universal service or other recovery fees, or similar charges will be adjusted on the date in which those increases become effective as mandated by competent authority. If any withholding tax is levied on the payments, then Customer must increase the sums paid to Company so that the amount received by Company after the withholding tax is deducted is the full amount Company would have received if no withholding or deduction had been made.
- d. **Billing Disputes.** If a Customer reasonably and in good faith disputes any portion of Company's charges, it must provide written notice to Company within thirty (30) days of the billing date, identifying the reason for the dispute and the amount being disputed. Customer's dispute as to any portion of the billing statement will not excuse Customer's obligation to timely pay the undisputed portion of the billing statement. Upon resolution, Customer must pay any unpaid amounts within thirty (30) days. Any amounts that are found to be in error resulting in an overpayment by the Customer will be applied as a billing credit against future charges. Customer will be reimbursed any such outstanding billing credits at the expiration or termination of this Agreement.

4. PROVISION OF THE SERVICE

- a. **General Terms.** Company will provide the Services as described in the relevant Order.
 - i. Company may retire Services that become obsolete and replace them with new Services that provide the same or similar functionality, as necessary, upon notice to you.
 - ii. The Service is not a telecommunications service. Important distinctions exist between telecommunications services and the Services. The Services are subject to different regulatory treatment than telecommunications service. This treatment may limit or otherwise affect Customer's rights of redress before regulatory agencies.
 - iii. The provision of 911 Dialing Services shall be subject to the information provided by the Customer.
 - iv. The Service does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls or calling card calls). The Service may not support 311, 511 and/or other x11 (other than certain specified dialing such as 911 and 411, which are provided for elsewhere in this ToS) services in one or more (or all) service areas.
 - v. Customer acknowledges that Company may provide details of the numbers issued to Customer and/or End Users by Company to organizations that wish to compile directories or directory enquiry services, and Customer consents to such disclosure.
 - vi. Although the Service may be used to place calls to foreign countries from within the United States, Company does not presently offer or support the Service in any country other than the United States. If Customer uses the Service outside of the United States, Customer will be solely responsible for any violations of local laws and regulations resulting from such use.
- b. **Incompatibility With Other Services.**
 - i. The Service may not be compatible with security systems. Customer may be required to maintain a telephone connection through their local exchange carrier in order to use any alarm monitoring functions for any security system installed in your home or business. You are responsible for contacting the alarm monitoring company to test the compatibility of any alarm monitoring or security system with the Service.
 - ii. The Service may not be compatible with some broadband services. You further acknowledge that some providers of broadband service may provide modems that prevent the transmission of communications using the Service. Company does not warrant that the Services will be compatible with all broadband services and

expressly disclaims any express or implied warranties regarding the compatibility of the Service with any particular broadband service.

- c. **Customer Care.** Company provides technical support for Services to its Customers. Support shall be available 24 x7, unless otherwise specified.
- d. **Professional Services.** Certain Services may require professional services for implementation. Under such a circumstance, Company shall notify Customer of the requirement of such professional services, and shall require Company's written consent (which may be in the form of a separately executed Statement of Work) to proceed with the performance of such professional services. Any such services are governed by this Agreement and any applicable Statement of Work (SOW), which may be attached hereto.
- e. **Subcontracting.** Company may provide any of the Services hereunder through any of its Affiliates or subcontractors, provided that Company will bear the same degree of responsibility for acts and omissions for those subcontractors acting on Company's behalf in the performance of its obligations under this Agreement as it would bear if such acts and omissions were performed by Company directly.

5. USE OF THE SERVICE.

- a. **Service Requirements.** The Services are dependent upon Customer's maintenance of sufficient Internet access, networks and power. Blockage or outage of Customer's internet access will not be cause for withholding payments due under this Agreement.
- b. **Use Policies.** Customer may use the Services only in compliance with this Agreement, applicable laws, and the Use Policies referenced below, which are incorporated into and form part of this Agreement. Customer may not use, or permit the use of the Services, to interfere with the use of the Services by others or with the operation of the network. Customer may not resell the Services. Customer must ensure that its End Users comply with the Use Policies. Any breach of this Section (Use Policies) will be deemed a material breach of this Agreement. Company may update the Use Policies from time to time, and will provide notice to Customer at the email address on file with the account. Such updates will become effective thirty (30) days after such notice to Customer.
 - i. Emergency Services. The policy governing the provision of emergency services accessed via the Services is available at <https://beaconcloudvoice.com/wp-content/pdf/e911+disclaimer.pdf>
 - ii. Notwithstanding anything to the contrary in this Agreement, Company may act immediately and without notice to suspend or limit the Services if Company reasonably suspects fraudulent or illegal activity in the Customer's account, material breach of the these Use Policies, or use of the Services that could interfere with the functioning of the network provided such suspension or limitation may only be to the

extent reasonably necessary to protect against the applicable condition, activity, or use. Company will promptly remove the suspension or limitation as soon as the condition, activity or use is resolved and mitigated in full. If Customer anticipates legitimate but unusual activity on its account, Customer should contact Company in advance to avoid any Service disruption.

6. EQUIPMENT AND SHIPPING

- a. **General; Shipping.** Customer may order Equipment from Company from time to time for use with the Services by entering into Service Orders. Customer shall pay all shipping and related charges unless otherwise agreed upon in writing. All Equipment shipments are F.C.A. (free carrier), and title and risk of loss or damage shall pass to Customer upon delivery to the carrier. Customer shall be deemed the importer of Equipment for all purposes, and shall be liable for any applicable customs, import/export duties, clearance charges and other Taxes (including VAT), in connection with international shipments.
- b. **Warranty and Returns.** Company will pass through to Customer all warranties that Company is expressly authorized by the original Supplier to pass through to Customer.
- c. **Lost, Stolen, Altered or Broken Equipment.** During the Term, Customer shall not modify the Equipment in any manner without the express written consent of Company and shall only use the Equipment in connection with the Services. Customer shall be responsible for all lost, stolen or broken equipment (except to the extent covered by warranty) and shall promptly notify Company of any such loss or theft and cooperate with Company as reasonably requested to prevent unauthorized use of lost or stolen Equipment.
- d. **Equipment Leasing Companies.** Company may refer Customer to one or more unaffiliated companies that have agreed to provide Equipment leasing options to Company's customers (a "**Leasing Company**"). The terms of any such leasing arrangement shall be governed solely by Customer's contract with the Leasing Company. Company does not endorse, guarantee the services of, or have control over such Leasing Companies and disclaims all liability in connection with their services. The use of any financial information, Personal Data and other information disclosed to or collected by Leasing Companies is governed by such Leasing Company's own privacy policies and not by Company's Privacy Policy.
- e. **Unsupported Devices, etc.** Customer shall be responsible for ensuring that any Equipment acquired from a third-party vendor is in reasonable working condition and configured in accordance with Company's technical requirements. Customer shall not access or use the Services with any

equipment or devices other than supported Equipment, without Company's consent. Company shall have no liability whatsoever for Customer's access or use of the Services with any equipment or device that is not supported by Company, even if Service provider has consented to Customer's use of such device.

7. TERMINATION.

- a. **Termination for Cause.** Either Party may terminate this Agreement and any Services purchased hereunder in whole or part by giving written notice to the other Party if the other Party: i) breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of such notice; ii) at the written recommendation of a government or regulatory agency following a change in either applicable laws or the Services; or iii) upon the commencement by or against the other Party of insolvency, receivership or bankruptcy proceedings or any other proceedings or an assignment for the benefit of creditors.
- b. **Effect of Termination**
 - i. If Customer terminates the Services, a portion of the Services, or this Agreement in its entirety due to Company's material breach under Section 7(A) (Termination for Cause), Customer will not be liable for any fees or charges for terminated Services for any period subsequent to the effective date of such termination (except those arising from continued usage before the Services are disconnected), and Company will provide Customer a pro-rata refund of any prepaid and unused fees or charges paid by Customer for terminated Services.
 - ii. If this Agreement or any Services are terminated for any reason other than as a result of a material breach by Company or as set forth in Section 15(I) (Regulatory and Legal Changes) the Customer must, to the extent permitted by applicable law and without limiting any other right or remedy of Company, pay within thirty (30) days of such termination all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services for the remainder of the then-current Term plus related Taxes and fees.

8. INTELLECTUAL PROPERTY.

- a. **Limited License.**
 - i. Subject to, and conditional upon Customer's compliance with, the terms of this Agreement, Company grants to Customer and its End Users, a limited, personal, revocable, non-exclusive, non-transferable (other than as permitted under this Agreement), non-sublicensable license to use any software provided or made available by Company to the Customer as part of the Services ("Software") to the extent

reasonably required to use the Services as permitted by this Agreement, only for the duration that Customer is entitled to use the Services and subject to the Customer being current on its payment obligations.

- ii. Customer will not, and will not allow its End Users, to:
 - 1. Sublicense, resell, distribute or assign its right under the license granted under this Agreement to any other person or entity;
 - 2. modify, adapt or create derivative works of the Software or any associated documentation;
 - 3. reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code for the Software;
 - 4. use the Software for infringement analysis, benchmarking, or for any purpose other than as necessary to use the Services Customer is authorized to use;
 - 5. create any competing Software or Services; or
 - 6. remove any copyright or other proprietary or confidential notices on any Software or Services.

b. IP Rights.

- i. **Company Rights.** Except as expressly provided in this Agreement, the limited license granted to Customer under Section 7(A) (Limited License) does not convey any ownership or other rights or licenses, express or implied, in the Services, any related materials, or in any Intellectual Property and no IP Rights or other rights or licenses are granted, transferred, or assigned to Customer, any End User, or any other party by implication, estoppel, or otherwise. All rights not expressly granted herein are reserved and retained by Company, and its licensors. The Software and Services may comprise or incorporate services, software, technology or products developed or provided by third parties, including open source software or code. Customer acknowledges that misuse of the Services may violate third-party IP Rights.
- ii. **Customer Rights.** As between Company and Customer, Customer retains title to all IP Rights that are owned by the Customer or its suppliers. To the extent reasonably required or desirable for the provision of the Services, Customer grants to Company a limited, personal, non-exclusive, royalty-free, license to use Customer's IP Rights in the same. Customer must provide (and is solely responsible for providing) all required notices and obtaining all licenses, consents, authorizations or other approvals related to the use, reproduction, transmission, or receipt of any Customer Content that includes personal or Confidential Information or incorporates any third-party IP rights.

- iii. **Use of Marks.** Neither Party may use or display the other Party's trademarks, service mark or logos in any manner without such Party's prior written consent.

9. CONFIDENTIALITY.

a. Restrictions on Use or Disclosures by Either Party.

- i. During the Term of this Agreement and for at least one (1) year thereafter, the Receiving Party shall hold the Disclosing Party's Confidential Information in confidence, shall use such Confidential Information only for the purpose of fulfilling its obligations under this Agreement, and shall use at least as great a standard of care in protecting the Confidential Information as it uses to protect its own Confidential Information.
- ii. Each Party may disclose Confidential Information only to those of its employees, agents or subcontractors who have a need to it in order to perform or exercise such Party's rights or obligations under this Agreement and who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Each Party may disclose the other Party's Confidential Information in any legal proceeding or to a governmental entity as required by law, but only to the extent and for the purposes of such required disclosure, and provided the Receiving Party first promptly notifies the Disclosing Party of the need for such disclosure.
- iii. Upon termination or expiry of this Agreement, the Receiving Party will promptly delete, destroy or, at the Disclosing Party's request, return to the Disclosing Party, all Disclosing Party's Confidential Information in its possession, including deleting or rendering unusable all electronic files and data that contain Confidential Information, and upon request will provide the Disclosing Party with certification of compliance with this subsection.

10. DATA PROTECTION.

- a. **Data Privacy.** Company respects Customer's privacy and will only use the information provided by Customer to Company or collected in the provision of the Services in accordance with: (a) the Privacy Policy available at <https://beaconcloudvoice.com/wp-content/pdf/Beacon-Privacy-Policy.pdf> which is incorporated by reference. The Privacy Policy may be updated from time to time. Company will provide notice of such update to Customer at the email address on file with the account. Such updates will be effective thirty (30) days after such notice to Customer.
- b. **Data Security.**
 - i. Company will take commercially reasonable precautions, including, without limitation, technical (e.g., firewalls and data encryption),

administrative and physical measures, to help safeguard Customer's account, Account Data, and Customer Content against unauthorized use, disclosure, or modification.

- ii. Customer must protect all End Points using industry-standard security measures. Customer is solely responsible to keep all user identifications and passwords secure. Customer must monitor use of the Services for possible unlawful or fraudulent use. Customer must notify Company immediately if Customer becomes aware or has reason to believe that the Services are being used fraudulently or without authorization by any End User or third party. Failure to notify Company may result in the suspension or termination of the Services and additional charges to Customer resulting from such use. Company will not be liable for any charges resulting from unauthorized use of Customer's account.
- c. **Software Changes.** Company may from time-to-time push software updates and patches directly to Customer's device(s) for installation and Customer will not prevent Company from doing so. Customer must implement promptly all fixes, updates, upgrades and replacements of software and third-party software that may be provided by Company. Company will not be liable for inoperability of the Services or any other Services failures due to failure of Customer to timely implement the required changes.

11. LIMITATION OF LIABILITY.

- a. **Excluded Damages.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR (1) INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, REPUTATIONAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND; (2) COSTS OF PROCUREMENT, COVER, OR SUBSTITUTE GOODS OR SERVICES; (3) LOSS OF USE, LOSS OR CORRUPTION OF DATA; OR (4) LOSS OF BUSINESS OPPORTUNITIES, PROFITS, GOODWILL, OR SAVINGS, WHETHER IN ANY OF THE FOREGOING, ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN INFORMED IN ADVANCE OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. NEITHER PARTY WILL BE LIABLE FOR ACTIONS REASONABLY TAKEN TO COMPLY WITH LAW.
- b. **Direct Damages.** EXCEPT AS SET FORTH HEREIN, THE TOTAL CUMULATIVE LIABILITY OF THE PARTIES UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNTS PAID OR PAYABLE UNDER THIS AGREEMENT DURING THE PREVIOUS SIX (6) MONTHS. LIMITATIONS UNDER THIS SECTION 11(B) (DIRECT DAMAGES) WILL NOT APPLY TO: I) CUSTOMER PAYMENT OBLIGATIONS; II) EITHER PARTY'S LIABILITY FOR INFRINGEMENT OF THE OTHER PARTY'S IP RIGHTS; III) EITHER PARTY'S LIABILITY RESULTING FROM GROSS NEGLIGENCE, FRAUD, OR WILLFUL OR CRIMINAL MISCONDUCT; OR IV) CUSTOMER'S

LIABILITY RESULTING FROM USE OF THE SERVICES IN BREACH OF THE ACCEPTABLE USE POLICY OR EMERGENCY SERVICES POLICY. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE ANY LIABILITY WHICH MAY NOT BE RESTRICTED, LIMITED OR EXCLUDED PURSUANT TO APPLICABLE LAW.

- c. Survival. **The limitations of liability contained in this Section 11 (Limitation of Liability) will survive termination or expiration of this Agreement and apply in any and all circumstances (except as expressly set forth above), including without limitation in the event of any failure of the essential purpose of any limited warranty or available remedy provided Indemnification.**

12. INDEMNIFICATION.

- a. **By Customer.** Customer agrees to indemnify and defend Company and its Affiliates at Customer's expense, from and against any and all third-party claims, arising out of or in connection with: i) material violation of applicable law by the Customer or its End Users in connection with the use of the Services; ii) use of the Services in a manner not authorized by this Agreement; iii) failure to promptly install any updates of any software or firmware or accept or use modified or replacement items provided by or on behalf of Company, or iv) claims relating to Customer Content. Further, Customer will indemnify and hold harmless Company against all damages, costs, and legal fees finally awarded against Company by a court of competent jurisdiction in connection with such third-party claim, or agreed to in a written settlement agreement approved in writing by the Customer.
- b. **Defense and Indemnification Procedures.** Any Party seeking defense or indemnification (the "Indemnified Party") must provide the Party from which it seeks such indemnification or defense (the "Indemnifying Party") with the following: (a) prompt written notice of the third-party claim, (b) sole control over the defense and settlement of the third-party claim, and (c) reasonable information, cooperation, and assistance in connection with the defense and settlement of the third-party claim. The Indemnified Party's failure to comply with the foregoing obligations will not relieve the Indemnifying Party of its defense or indemnification obligations under this Section 12 (Indemnification), except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnified Party will have the right to participate at its own expense in the defense of such third-party claim, including any related settlement negotiations. No such claim may be settled or compromised by the Indemnifying Party without the Indemnified Party's express written consent (which such consent may not be unreasonably withheld, conditioned, or delayed), unless such settlement or compromise includes a full and complete release of all claims and actions against the Indemnified Party by each party bringing such third-party claim.

13. WARRANTIES.

- a. **Company Warranty.** Company will provide the Services using a commercially reasonable level of skill and care, in material compliance with all applicable laws and otherwise subject to the terms of this Agreement.
- b. **Customer Warranty.** Customer's and its End Users' use of the Services must at all times comply with all applicable laws and this Agreement.
- c. **Disclaimer of Warranties.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND SERVICE PROVIDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, QUIET ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE IN TRADE, TOGETHER WITH SIMILAR WARRANTIES, WHETHER ARISING UNDER ANY LAW OR OTHERWISE. FURTHERMORE, SERVICE PROVIDER EXPRESSLY DENIES ANY REPRESENTATION OR WARRANTY ABOUT THE ACCURACY OR CONDITION OF DATA OR THAT THE SERVICES OR RELATED SYSTEMS WILL OPERATE UNINTERRUPTED OR ERROR-FREE. TO THE EXTENT THAT SERVICE PROVIDER CANNOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

14. DISPUTE RESOLUTION.

- a. **Good Faith Attempt to Settle Disputes.** In the event of any dispute or claim arising out of or relating to the Agreement (a "Dispute"), each Party will appoint a duly authorized representative which will confer with the other Party before either Party brings legal action, to make a reasonable and good faith effort to settle or otherwise resolve such Dispute.
- b. **Venue.** In the event that the Parties are unable to resolve a Dispute, any related action, lawsuit, or proceeding must be brought in and adjudicated exclusively by state or federal courts located in the city and county of Company's registered office address. Each Party hereby consents to and agrees to submit to the exclusive venue and personal jurisdiction of such courts with respect to any such actions or lawsuits and irrevocably waives any right that it might have to assert that either forum is not convenient or that any such courts lack jurisdiction.
- c. **Equitable Relief.** Any breach of either Party's IP Rights will cause that Party irreparable harm for which monetary damages will be inadequate and such Party may, in addition to other remedies available at Law or in equity, obtain injunctive relief without the necessity of posting a bond or other security, proof of damages, or similar requirement, in addition to any other relief to which such Party may be entitled under applicable law.

- d. **Limitations.** Except for actions for nonpayment or liability arising from Section 12 (Indemnification), no claim, suit, action or proceeding relating to this Agreement may be brought by either Party more than one (1) year after the cause of action has accrued. Any actions, lawsuits, or proceedings must be conducted solely on an individual basis and the Parties expressly waive any right to bring any action, lawsuit or proceeding as a class or collective action, private attorney general action or in any other capacity acting in a representative capacity.

15. MISCELLANEOUS.

- a. **Relationship of the Parties.** Company and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Company and Customer.
- b. **Assignment.** Neither Party may assign the Agreement or any portion thereof without the other Party's prior written consent (which such consent may not be unreasonably withheld or delayed), however either Party may assign the Agreement and all of that Party's rights and obligations thereunder without consent (a) to an Affiliate; (b) to the Party's successor or surviving entity in connection with a merger, acquisition, consolidation, sale of all or substantially all of its assets used in connection with the provision of Services under this Agreement; or (c) as part of the transfer or disposition of more than fifty percent (50%) of a Party's voting control or assets. This Agreement will bind and inure to the benefit of the Parties, and their permitted assigns and successors.
- c. **Notices.** Except where otherwise expressly stated in the Agreement, all notices or other communications must be in English and are deemed to have been fully given when made in writing and delivered in person, upon delivered email, confirmed facsimile, or five days after deposit with an reputable overnight courier service to the Parties and addresses set forth on the Order. Customer acknowledges and agrees that all electronic notices have the full force and effect of paper notices. The addresses to which notices may be given by either Party may be changed upon written notice given to the other Party pursuant to this Section or by Customer in the Account Manager.
- d. **Force Majeure.** Excluding either Party's payment obligations under the Agreement, neither Party will be responsible or liable for any failure to perform or delay in performing to the extent resulting from any event or circumstance that is beyond that Party's reasonable control, including without limitation any act of God; national emergency; third-party telecommunications networks; riot; war; terrorism; governmental act or direction; change in Laws; fiber, cable, or wire cut; power outage or reduction; rebellion; revolution; insurrection; earthquake, storm, hurricane,

flood, fire, or other natural disaster; strike or labor disturbance; or other cause, whether similar or dissimilar to the foregoing, not resulting from the actions or inactions of such Party.

- e. **Third-Party Beneficiaries.** Company and Customer agree that there will be no third-party beneficiaries to this Agreement.
- f. **Internal Customer Activities.**
 - i. Company does not have any obligation to assist in or otherwise mediate in the event of any dispute between Customer representatives or Customer and any third party with respect to ownership or control of any account or Account Data. All information within Company's records regarding the ownership or control of an account or Account Data, Services ordered, and numbers assigned to an account will be definitive and controlling for purposes of administering the account. In the event of any such dispute, Company may take any course of action that it deems appropriate based on the information available, which include declining to take any course of action.
 - ii. Company may access your account and related data as required to provide the Services. However, Company has no obligation to access your account, Account Data or any Customer Content for any other purposes. Services do not include or consist of any investigation, review, verification, production, compilation, modification, or other similar services for any Account Data or Customer Content. Services do not include the provision of any legal, accounting or other professional services.
- g. **Governing Law.** The Agreement is governed by the Laws of the state in which the registered offices of Company are located, excluding its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or Customer's use of the products or Services.
- h. **Export Control.** Any services, products, software, and technical information (including, but not limited to, services and training) provided pursuant to the Agreement may be subject to U.S. export laws and regulations. Customer will not use, distribute, transfer, or transmit the services, products, software, or technical information (even if incorporated into other products) except in compliance with U.S. and other applicable export regulations.
- i. **Regulatory and Legal Changes.** In the event of any change in law, regulation or industry change that would prohibit or otherwise materially interfere with Company's ability to provide Services under this Agreement, Company may terminate the affected Services or this Agreement or otherwise modify the terms thereof.
- j. **Entire Agreement.** The Agreement, together with any exhibits, Orders, and Attachments, each of which is expressly incorporated into this Agreement

with this reference, constitutes the entire agreement between the Parties and supersedes and replaces any and all prior or contemporaneous understandings, proposals, representations, marketing materials, statements, or agreements, whether oral, written, or otherwise, regarding such subject.

- k. **Order of Precedence.** In the event of any conflict between the documents comprising this Agreement, precedence will be given to the documents in the following descending order: (i) the applicable Order; (ii) Use Policies and Privacy Policy incorporated by reference in this Agreement; (iii) the main body of this Agreement; (iv) the applicable Service Attachment; and (v) and any other document expressly referred to in this Agreement which governs the Services.
- l. **Amendments.** Except as otherwise provided, this Agreement may only be modified by a written amendment (provided electronically or otherwise) executed by authorized representatives of both Parties. In no event will handwritten changes to any terms or conditions, including in the applicable Order, be effective. Notwithstanding the foregoing, Company may update this Agreement or any of its Policies from time to time, and will provide notice to Customer at the email address on file with the account. Such updates will become effective thirty (30) days after such notice to Customer. In the event that any such update would be of material detriment to Customer and is not required by law, Customer must inform Company of its objection within ten (10) days of receiving the notice provided under this provision. If the Parties, negotiating in good faith cannot reach agreement within thirty (30) days, Customer may terminate the portion of the Services affected by the change without penalty by written notice to Company. Any use of the Services after the effective date will be deemed Customer's acceptance of the change.
- m. **Severability and Waiver.** In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, such provision(s) will be stricken and the remainder of this Agreement will remain legal, valid and binding. The failure by either Party to exercise or enforce any right conferred by this Agreement will not be deemed to be a waiver of any such right or to operate so as to bar the exercise or enforcement of any such or other right on any later occasion. Except as otherwise expressly stated in this Agreement, all rights and remedies stated in the Agreement are cumulative and in addition to any other rights and remedies available under the Agreement, at Law, or in equity.
- n. **Publicity.** Notwithstanding anything to the contrary in this Agreement, Company may identify Customer as a customer (including use of any Customer logo or trademark) and may refer to this Agreement during its earnings calls and in connection with its business deals, press releases, and marketing and/or promotional materials.

- o. **Execution.** Each Party represents and warrants that: (a) it possesses the legal right and capacity to enter into the Agreement and to perform all of its obligations thereunder; (b) the individual executing the Agreement on that Party's behalf has full power and authority to execute and deliver the same; and (c) the Agreement will be a binding obligation of that Party. The Parties' signatures on the Order shall constitute execution of this Agreement.
- p. **Survival.** The rights and obligations of either Party that by their nature would continue beyond the expiration or termination of this Agreement or an Order will survive expiration or termination of this Agreement or the Order, including without limitation payment obligations, warranty disclaimers, indemnities, limitations of liability, definitions and miscellaneous.