

VOICE SERVICES - MASTER SERVICE AGREEMENT  
HOSTED PBX SERVICES AND CONFERENCE BRIDGE SERVICES

**CAREFULLY READ THESE TERMS AND CONDITIONS, AS THEY FORM A BINDING LEGAL AGREEMENT BETWEEN YOU AND VOICE SERVICES. ONLY AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY MAY EXECUTE THIS AGREEMENT.**

**IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS,  
CLOSE YOUR BROWSER AND DO NOT PROCEED WITH USING THE SERVICES.**

By accepting this Agreement between You and Voice Services – by clicking “I Accept and Continue” and/or using the Services – You agree to be bound by all of the terms and conditions of (i) this Master Service Agreement and (ii) for Hosted PBX Services, the following (collectively, this “Agreement”):

- Voice Services’ e911 Policy (the “e911 Policy”).

The foregoing is expressly incorporated herein by reference and may be updated from time-to-time by Voice Services. A current copy of the e911 Policy is located at <http://cloudvoiceservices.com/legal/>.

If You do not agree to any of the terms of this Agreement, then You (i) must click “I Decline” or close Your browser and (ii) do not have Voice Services’ permission to use the Services.

While the Services are provided directly to you by Voice Services, one or more third parties have been authorized by Voice Services as agent to conduct contracting, billing and support services to You on Voice Services’ behalf. Voice Services’ agents have no direct rights or obligations to You outside the scope of this Agreement and do not have any liability with respect to the Services.

*If you are an individual entering into this Agreement on behalf of an Entity (defined below), you represent and warrant that you have the authority to bind such Entity to this Agreement. If you do not have such authority, neither you nor such Entity may accept this Agreement or use the Services.*

**Please read the e911 policy very carefully. By entering into this Agreement for Hosted PBX Services (including by activating, paying for or using the Service) You acknowledge, understand and agree to the limitations of e911/911 emergency dialing service, and understand the distinctions between such service and traditional 911 or e911 calls. You agree to notify any user who may place calls using Your Service, including any guests or visitors who may be present in the location of service, of the limitations of e911/911 dialing through the Services. The e911 policy can be found at <http://cloudvoiceservices.com/legal> and is incorporated herein.**

**Definitions.** For the purposes of this Master Service Agreement, the following definitions apply:

“Access Information” means information that alone or together with other information, can provide access to any portion of Your Account, including but not limited to Your Account number, login names, passwords, credit card or other financial information, security questions and their respective answers, and any other similar information. For the avoidance of doubt, Your Access Information will include any similar information for each of Your Users.

“Account” means the account created with Voice Services in connection with this Agreement that relates to Your purchase or subscription to and use of Services by You and Your Users.

“Agent” means the party designated by Voice Services to provide contract, billing and support services to You on behalf on Voice Services.

“Applicable Law” means any applicable foreign, federal, state or other laws, rules, regulations or interpretations of relevant Governmental Authorities.

“Data” means all data submitted by Your Users to Voice Services in connection with the Services, including all content, material, IP and similar addresses, voice calls, software, messages and account information and settings.

“Entity” means a company, corporation, partnership, association, trust, unincorporated organization, government or political subdivision or any other legal entity.

“Governmental Authority” means a government, regulatory organization, self-regulatory organization, court of competent jurisdiction, including a state public utility commission or the Federal Communications Commission, or a similar body.

“Services” means Voice Services’ VOIP calling services or Voice Services’ conference Bridge services, and/or other services, software and products, as such services, software and products are offered by Voice Services in the contiguous United States from time-to-time in its discretion.

“Third-Party Service” means any service or product offered by a party that is not Voice Services.

“Voice Services Parties” means Voice Services’ affiliates (including parents and subsidiaries), vendors, licensors and partners, and it and their officers, employees, agents and representatives

“User” means any of Your employees, consultants or independent contractors to whom You grant permission to access the Services in accordance with Voice Services’ entitlements procedures. Users may not be "shared" or used by more than one named individual, other than the administrative account that may be used by an appropriate number of individuals required to administer the use of Services within Your organization.

“You” or “Your” means the individual or Entity on whose behalf this Agreement is accepted.

## **1 Service and Account.**

1.1 Services. Services hereunder are provided by Voice Services and available in the contiguous United States.

1.2 Access to Services. Subject to and in accordance with the terms of this Agreement, Voice Services grants You a non-exclusive, non-sublicensable, nontransferable, non-assignable, revocable personal right and license for the term of this Agreement to access and use the Services for Your internal business purposes only. You agree to comply with the terms and conditions of this Agreement and with all applicable Voice Services procedures and policies that further define use of the Services. You acknowledge and agree that the actions of any of Your Users with respect to the Services will be deemed to be actions by You and that any breach by any of Your Users of the terms of this Agreement will be deemed to be a breach by You.

1.3 Account Information and Ownership. You agree to maintain accurate Account information by providing updates to Voice Services promptly, but no later than three (3) business days, when any of Your Account information requires change, including any relevant Account contact information. Failure by You, for any reason, to respond within three (3) business days to any inquiries made by Voice Services to determine the validity of information provided by You will constitute a material breach of this Agreement. You acknowledge and agree, and expressly consent, that in the event of any dispute regarding access to or legal ownership of any Voice Services account, or any portion thereof, including Your Account, Voice Services will resolve such dispute in its sole discretion. In addition, in the event of such a dispute, Voice Services may immediately suspend, alter or terminate any relevant account, including Your Account, or any portion thereof. You shall reimburse Voice Services for any legal and other fees incurred with respect to any dispute regarding control or ownership of Your Voice Services Account or Your Data, or the same of another Voice Services customer. You acknowledge and agree that (i) the legal owner of all Data on the Account is You, the counterparty to this Agreement, and not any individual User, including any Account contact registered with Voice Services, regardless of any administrative designation (e.g., “Administrator,” “Billing Contact,” “Owner,” etc.) and (ii) Voice Services may request any documentation it requires to establish ownership and rights to Your Account and any related Data; provided that any User with an administrative designation has the authority to bind You to any amendments, modifications or acknowledgements regarding this Agreement or otherwise relating to the Services.

1.4 Account Security and Activity. You acknowledge and agree that You are solely responsible for (i) maintaining the confidentiality and security of Your Access Information, and (ii) all activities that in connection with Your Account, whether initiated by You, by others on Your behalf or by any other means. You will notify Voice Services immediately of any unauthorized use of Your Account, Access Information or any other actual or potential breach of security. You acknowledge and agree that Voice Services will not be liable for any loss that You may incur as a result of any party using Your Access Information, either with or without Your knowledge and/or authorization. You further agree that You may be held liable for losses incurred by Voice Services, any Voice Services Party or another party due to any party using Your Access Information. Voice Services strongly recommends that You keep Your Access Information in a secure location, take precautions to prevent others from accessing it and change it when necessary to maintain its confidentiality and security. **Voice Services specifically disclaims all liability for any activity in Your Account, whether authorized by You or not.**

1.5 Local Number Portability. Availability and use of local number portability, for porting an existing telephone number to Voice Services, is subject to Voice Services' policies, as modified from time-to-time. If LNP is offered by Voice Services and You decide to transfer Your existing number, You authorize Voice Services to process Your order for the Service and to notify Your service provider of Your decision to switch Your services to Voice Services and to transfer Your telephone number, and represent that You are authorized to take these actions. You may be required to complete a letter of authorization, provide Voice Services with a copy of Your most recent bill from Your service provider, as well as provide Voice Services with any other information required by Your service provider to port Your number. Failure to provide any information requested by Voice Services or the third party services provider will delay the porting of the number to Voice Services. Voice Services shall not be responsible for any delay in the port of Your number and will not provide credit for any such delays. Voice Services has the right to refuse to import a number if, in its sole discretion, it does not have the infrastructure to support the number.

1.6 Agent. You acknowledge and agree that (i) Voice Services has designated an Agent to provide billing and support services to You in connection with the Services, (ii) Agent shall be deemed to be Voice Services with respect to those aspects of the relationship under this Agreement, and (iii) You consent to the disclosure of Data to Agent for the purposes of the Services and the collection of Data by Agent for the purposes of the Services. For the avoidance of doubt, if You fail to respond to Agent when it is acting for Voice Services under this Agreement, You shall be deemed to be in breach of this Agreement.

1.7 Local Numbers. For Hosted PBX Services, You represent and warrant that all traffic delivered to You under this Agreement that has originated in the same local calling area in which Your local number (i.e., NPA-NXX) is assigned, and/or in which such traffic is terminated to You, is local traffic and is legally entitled to be treated as local traffic under all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over such traffic. You understand and acknowledge that Voice Services will rely upon such representation to assign local telephone numbers to You and/or route Your traffic for termination as local calling.

## 2 Term and Termination.

### 2.1 Term.

(a) Term. The Initial Term is the period from the date of Your initial payment or acceptance of this Agreement, whichever occurs earlier, through the remainder of that calendar month. The Renewal Term is one calendar month beginning at the end of the Initial Term and each subsequent calendar month thereafter.

(b) Automatic Renewal. This Agreement will renew automatically at the end of the then-current Term for a Renewal Term unless terminated in accordance with this Agreement by either You or Voice Services.

### 2.2 Termination by You.

(a) Termination. You may terminate this Agreement for any reason by following the termination procedure located within the administrative control panel provided by Voice Services or the Agent prior to the beginning of any Renewal Term. If You terminate prior to the end of the then-current Term, Voice Services will not be required to refund to You any fees already paid. In addition, even if you port a telephone number from your Account, you will continue to be liable to Voice Services for Service until the Account or relevant Service is terminated.

(b) Refunds/Fees for Termination by You. Fees for non-recurring Services and set up fees will not be refunded. Any fees previously waived or discounts applied may be reinstated if You terminate the Account during the Initial Term or if You breach this Agreement.

### 2.3 Termination by Voice Services.

(a) 15-Day Termination. Except as otherwise provided, Voice Services may terminate this Agreement for any reason by providing notice not less than fifteen (15) calendar days prior to the effective termination date. If Voice Services terminates this Agreement pursuant to this Section 2.2(a), if the effective termination date occurs prior to the end of the then-current Term, Voice Services will refund or refrain from charging You the pro rata monthly fees for the month in which Services terminate.

(b) Immediate Termination. Voice Services may terminate this Agreement immediately and without prior notice for any of the following reasons:

1) Any material breach of this Agreement, as determined by Voice Services in its sole discretion, including, but not limited to, failure to make payment when due, violation of the terms of use of the Services or any other Voice Services policy or procedure applicable to the Services;

2) If Your use of the Services results in, or is the subject of, actual or potential legal action or threatened legal action, against Voice Services or any of its affiliates, vendors, partners, representatives or customers, without consideration for whether such actual or potential legal action or threatened legal action is eventually determined to be with or without merit; and

3) Any non-material breach of this Agreement which remains uncured beyond ten (10) calendar days from notice by Voice Services.

(c) Termination or Suspension of User. In lieu of terminating or suspending Your entire Account pursuant to this section, Voice Services may terminate or suspend individual Users.

(d) No Refunds. If Voice Services terminates this Agreement pursuant to Section 2.2(b), Voice Services will not refund any paid fees.

2.4 Automatic Termination. This Agreement will automatically terminate without notice upon expiration or termination of your agreement with the relevant Agent ("Agent Agreement"). You acknowledge and agree that your Agent Agreement may be terminated by the relevant Agent upon the expiration or termination of this Agreement.

2.5 Following Termination. Termination will not cancel or waive any fees owed to Voice Services or incurred prior to or upon termination. You agree that Voice Services may charge such unpaid balance to Your payment account on file or otherwise bill You for such unpaid balance. Upon termination, You must promptly uninstall all software provided by Voice Services in connection with the Services. **All of Your Data will be irrevocably deleted immediately upon termination. It will be solely Your responsibility to secure all necessary Data from Your Account prior to termination. Voice Services will not be responsible for any loss of Your Data, or any damages arising from the deletion of Your Data following termination of service. You acknowledge that in the event of any Service termination or cancellation, all telephone numbers associated with Your Account may be immediately released and may not be available to You for porting to a new carrier or upon Service reactivation with Voice Services.**

## 3 Fees, Billing, Taxes, Charges.

3.1 Fees. The fees initially charged upon ordering any Service will be effective for the Initial Term and each Renewal Term of this Agreement, provided, that Voice Services will have the right to increase these fees at any time upon notice to You. If You do not agree with such fee increase, You will have the right to terminate this Agreement immediately upon notice, provided, that such notice of termination must be received within thirty (30) calendar days of date of notice of the fee increase. You will pay all non-recurring and recurring fees, regulatory cost recovery fees, surcharges, assessments and taxes billed to Your Account. Fees are non-refundable. Recurring fees are typically billed once per month and include charges for the current month and usage or adjustments from the prior month. Telephone call minutes of use (including but not limited to inbound and outbound local, long distance, international, toll free, and conferencing) and adjustments for additions, changes or deletions of certain monthly recurring services are billed in arrears. Rates may vary by destination country, city, and band, and are subject to change by Voice Services from time-to-time without prior notice. Voice Services may occasionally offer special

promotions from time to time and shall determine eligibility and when to terminate such promotions in its sole discretion.

3.2 Payment by Automated Means.

(a) You may view and print an invoice for Your Account using the administrative control panel made available to You. On or about the first day of each month, Voice Services will apply the current monthly charges to Your automated payment method, the relevant information of which You entered on the billing information page in the administrative control panel. Payment by automated means includes any form of automated payment accepted by Voice Services from time-to-time, including credit card, debit card, direct debit or other means.

(b) You must provide Voice Services with valid automated payment information as a condition to receive or use the Services. You are responsible for and agree to update Voice Services with any changes to Your billing and/or automated payment information (e.g. new or updated credit card, credit card expiration date or other payment account information). **By providing Voice Services with the automated payment information, You authorize Voice Services to charge Your automated payment account for any amounts arising from or relating to the Services without further authorization from You.** It is Your responsibility to keep Your automated payment information up-to-date. If charges to Your automated payment account fail, Voice Services will email a warning to Your Account billing contacts.

(c) If Voice Services is unable to successfully process Your payment by automated means by the seventh (7th) calendar day of the month for which the payment is due, Your payment will be considered late and not paid in full. Voice Services may suspend or terminate Your Account in accordance with Section 2.3(b)(1) for failure to timely pay in full. Late payments are subject to a late-payment charge of the greater the greater of (i) interest calculated at the lesser of (x) 18% (eighteen percent) and (y) the maximum amount permitted by law and (ii) \$25 (twenty-five dollars). Such interest will accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You will pay the interest immediately on demand. You will pay all collection costs incurred by Voice Services (including, without limitation, reasonable attorney's fees).

3.3 Payment by Check.

(a) If You apply for and are accepted into Voice Services' check paying program, Voice Services will issue You an invoice within the first five (5) calendar days of each calendar month. Each invoice will include an invoice processing fee of \$25.00 (twenty-five dollars). Payment by check must be received by the fifteenth (15th) calendar day of each month. Acceptance into and continued participation in Voice Services' check paying program will be at Voice Services' sole discretion.

(b) Should Your check not be honored, a check fee in the amount of the lesser of (i) \$50 (fifty dollars) and (ii) the maximum amount allowed by law will be charged to your Account. In addition, Voice Services may require You to pay by cashier's check or money order.

(c) If Voice Services does not receive payment by the fifteen (15th) calendar day of the month for which the payment is due, Your payment will be considered late and not paid in full. Voice Services may suspend or terminate Your Account in accordance with Section 2.3(b)(1) for failure to timely pay in full.

(d) If Voice Services does not receive payment by the fifteen (15th) calendar day of the month for which the payment is due, Your payment will be considered late and not paid in full. Voice Services may suspend or terminate Your Account in accordance with Section 2.3(b)(1) for failure to timely pay in full. Late payments are subject to a late-payment charge of the greater the greater of (i) interest calculated at the lesser of (x) 18% (eighteen percent) and (y) the maximum amount permitted by law and (ii) \$25 (twenty-five dollars). Such interest will accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You will pay the interest immediately on demand. You will pay all collection costs incurred by Voice Services (including, without limitation, reasonable attorney's fees).

3.4 Fair Use.

a. Voice Services may offer calling plans that are described as including unlimited minutes of use. Voice Services reserves the right to review usage of unlimited plans to ensure Fair Use and reserves the right to, at any time, to take the actions noted in 3.4(b) below without notice to You. "Fair Use" means the combined number of outbound minutes plus local inbound minutes does not substantially exceed the average use of all other Voice Services customers as measured on a per user basis. Usage and associated charges for excess usage will be determined based solely upon Voice Services' collected usage information. Fair Use also prohibits any activities

that result in excessive usage including, but not limited to, auto dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting, fax blasting or transmitting broadcasts or recorded messages, or any activity that disrupts the activities of Voice Services and other Voice Services customers.

b. If Your usage exceeds the limits for Your Account or otherwise exceeds Fair Use, You agree that Voice Services may immediately, in its sole discretion, (i) charge You for such excess usage via Your automated payment account or by invoice if You have been accepted into Voice Services' check paying program, (ii) upgrade You to a plan or increase the limits on Your Account to address this excess usage, and/or (iii) suspend Your Account or terminate Your Account upon notice to You. Upon any upgrade or increase on the limits of Your Account, You will be responsible for the new costs and fees.

3.5 Taxes. You shall be liable for all taxes, governmental fees, surcharges and assessments to be paid related to fees and charges arising under this Agreement or in connection with the Services. You shall also pay all taxes, fees, and assessments of any nature associated with products or services sold through the use of or with the aid of the Services. Unless Applicable Law or changes in Applicable Law require otherwise, applicable taxes, governmental fees, surcharges and assessments for the Services shall be applied based upon the jurisdiction in which You primarily use the Services ("Place of Primary Use"), and You and Voice Services agree that the primary business street address You designate on Your Account for purposes of this Agreement shall also be Your Place of Primary Use for determining applicable taxes for all charges on Your Voice Services Account.

3.6 Fees for Additional Services. You agree to pay Voice Services' then-current rates for expenses, including the cost of Voice Services' vendors, for any requests related to information retrieval, subpoenas, consulting and advisory services or similar work.

3.7 Bill Disputes. You will notify Voice Services of any dispute relating to charges billed to Your Account by submitting written notice to Voice Services within thirty (30) days of the date the disputed charges appeared on Your Account. The existence of a dispute will not relieve You from paying any and all amounts billed hereunder. You waive all rights to dispute any charges not disputed by written notice as required above.

3.8 Electronic Billing and Documentation. All billing and other documentation regarding the Services may be provided electronically ("Electronic Documentation"). You acknowledge and agree that you are able to view all Electronic Documentation and consent to receiving Electronic Documentation and decline to receive hard copies of any such materials

#### **4 Use of the Services.**

4.1 Business Use; No Call Centers. You will use the Services for Your own internal business non-residential and non-personal use, and will not allow any third party, including Your vendors and service providers, to access or use the Services. For the avoidance of doubt, You agree that You will not use the Services for residential purposes. You may not use the Services for any call center activities.

#### 4.2 Restricted Activities.

(a) You will not (A) use any Service for any purpose outside the Service's intended scope, features, and function set; (B) Use any Service for third-party training; (C) use any Service as an application service provider or service bureau; (D) use any Service for timesharing or rental; (E) use any Service to design software or other materials or services with similar or competitive functionality for any purpose, including distribution to third parties; (F) use any Service in connection with sending or placing unsolicited or unauthorized telephone calls, faxes, advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (G) use any Service to harvest, collect, gather or assemble information or data regarding other users, including telephone numbers or e-mail addresses, without their consent; (H) use the Services for communications that are unlawful, harassing, libelous, abusive, harassing, tortious, defamatory, threatening, harmful, invasive of privacy, vulgar, pornographic, obscene or otherwise objectionable communications of any kind or nature or which are harmful to minors in any way under the law or otherwise; (I) use any Service to transmit or knowingly to accept any material or communications that may infringe the intellectual property rights or other rights of third parties, including, but not limited to, trademark, copyright or right of publicity; (J) use any Service to transmit or knowingly to accept any material or communication that contains software viruses or other harmful or deleterious computer codes, files or programs such as, but not limited to, Trojan horses, worms, time bombs or cancelbots; (K) use any Service to interfere with, disrupt, attempt to interfere with or disrupt computer servers or networks connected to the Services or violate the regulations, policies or

procedures of such networks; (L) use any Service to attempt to gain unauthorized access to or to gain access to the Services, other accounts, computer systems or networks connected to the Services, through password mining or any other means; (M) harass or interfere with another user's use and enjoyment of the Services; (N) unlawfully record conversations in violation of applicable law; (O) make calls that are not between individuals (e.g., automated calls are not permitted); (P) otherwise use the Services in a manner deemed by Voice Services to be inappropriate. You may not access the Services for purposes of monitoring their performance, availability, or functionality, or for any other benchmarking or competitive purposes, without Voice Services' prior written consent. You may not access the Services if You are a direct competitor of Voice Services, without Voice Services' prior written consent.

(b) Additionally, You will not (A) duplicate any portion of the Services (except with respect to Your Data) or display, distribute, publish, or otherwise disclose any Service; (B) use any of the Services to interface with any other service or application that is outside the scope of intended use; (C) decompile, disassemble, or otherwise reverse engineer any portion of the Services; (D) sublicense any portion of the Service, and any purported sublicense thereof will be null and void; (F) without prior written consent of Voice Services, make any modification or interface to any Service that is not specifically authorized by Voice Services; and (G) resell or sublicense the Services.

#### 4.4 Applicable Law; Regulatory Matters.

(a) **Applicable Law. Use of the Services is only authorized for use in the United States of America.** You acknowledge and agree that access and use of the Services may be restricted or limited as a result of Applicable Laws and that You will not use, or allow the use of the Services, in contravention of, and will comply with, any Applicable Law. You represent that You and Your Users are not named on any Governmental Authority list of persons or entities prohibited from receiving exports, and (ii) You will not permit Users to access or use Services in violation of any export embargo, prohibition or restriction. You acknowledge and agree that that it is Your sole responsibility to use the Service in a lawful manner.

(c) **Regulatory Matters.** Notwithstanding any other provision of this Agreement, this Agreement is subject to change, modification, or cancellation as may be required or reasonably deemed necessary with or without prior notice by Voice Services pursuant to any Applicable Law, including any order, rule or decision of a Governmental Authority. All taxes, regulatory fees, surcharges, assessments or other charge imposed by any Governmental Authority on You or Voice Services are in addition to the fees and charges of Voice Services and are the sole responsibility of You. If any such taxes or fees are assessed upon Voice Services, Voice Services may pass through such charges to You or assess a regulatory cost recovery fee. All such charges may be a flat fee or a percentage of Your Voice Services charges and may change without notice. It is the express intention of the parties that You, and not Voice Services, will bear the risk of loss arising from any unauthorized or fraudulent usage of Services provided under this Agreement to You. Voice Services reserves the right, but is not required, to take any and all action it deems appropriate (including blocking access to particular calling numbers or geographic areas) to prevent or terminate any fraud or abuse in connection with the Services, or any use thereof, provided, however, that any such action will be consistent with applicable federal and state laws, rules, and regulations and provided further that the failure to take any such action will not limit Your responsibility for all usage of the Services. To the extent You are obligated to report and pay any applicable taxes or regulatory fees to a Governmental Authority, You hereby indemnify Voice Services against any claim arising out of Your failure to do so.

4.5 **Call Recording Features.** Notwithstanding any other applicable provisions or prohibitions of use set forth in this Agreement, you agree and acknowledge that the laws regarding the notice, notification, and consent requirements applicable to the recording of conversations vary between federal and state jurisdictions, and between state jurisdictions, and locally. You agree that you are solely responsible for complying with all federal, state, and local laws in any relevant jurisdiction when using call recording features. If you use call recording features from outside the United States, or if a party to the call is located outside the United States, you must also abide by all applicable international laws, rules and regulations. Voice Services and Voice Services Parties expressly disclaim all liability with respect to your recording of conversations. You hereby release and agree to hold harmless Voice Services and Voice Services Parties from and against any damages or liabilities of any kind related to the recording of any telephone conversations using the Services. You should carefully review your particular circumstances when deciding whether to use the recording features of the Service, and it is your responsibility to determine if the electronic recordings are legal under applicable federal, state or local laws. Voice Services and Voice Services Parties are not responsible for any misinterpretation, lack of understanding or lack of knowledge regarding the use of electronic recordings or the use of its products by any User, whether legal or illegal. The call

recording feature is intended for single person use only. We reserve the right to disconnect or modify your service plan if we determine, at our sole and absolute discretion, that your usage of this feature is inconsistent with, or in excess of, normal usage patterns of other users of our Services.

## 5 Your Data and Privacy.

(a) Voice Services does not own any of Your Data unless otherwise stated by Voice Services. Except as set forth herein or otherwise required by Applicable Law, Voice Services will not monitor, edit, or disclose any information regarding You or Your Account, including any Data, without Your prior permission. Voice Services may use or disclose such information, including Data, to enforce this Agreement, to provide, support and bill for Services (including disclosure to the Agent and other third-party vendors and contractors), to respond to or monitor technical issues with the Services, for compliance purposes with Voice Services' vendors, to protect Voice Services' rights or property, and to protect against potentially fraudulent, abusive or unlawful use of the Services. In addition, Voice Services may provide certain user registration and statistical information such as usage or user traffic patterns in aggregate form to third parties, but such information will not include any identifying information. You, not Voice Services, will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Data and, except as provided for herein, Voice Services will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Data. You understand and agree that it will be Your sole obligation to take, and that You will take, all measures necessary to protect Your Data, including without limitation, the timely backup of all Data on one or more systems that operate independently from any system associated with the Services.

(b) In providing the Services, Voice Services collects and maintains certain Data, known as customer proprietary network information ("CPNI"). This includes information that relates to the quantity, technical configuration, type, destination, location and amount of use of Services to which You subscribe. Your telephone numbers, name and address are not CPNI. Voice Services may use CPNI without Your consent to provide the Services, for billing and collection purposes, to protect Voice Services' rights or property or to protect users from fraudulent, abusive or unlawful use of the Services, to inbound telemarketing services for the duration of the call, or as required or permitted by law. Voice Services may also use CPNI to offer additional services of the type that You already purchase. Voice Services does not sell, trade or share Your CPNI with Voice Services' affiliates or any third parties for marketing purposes, unless You authorize such use.

**6 CALEA. VOICE SERVICES intends to fully comply with the Communications Assistance for Law Enforcement Act and similar laws ("CALEA"). By using the Service, You hereby agree and consent to Voice Services' right, pursuant to lawful request by law enforcement or any Governmental Authority, to monitor and otherwise disclose the nature and content of Your communications if and as required by CALEA without any further notice to You.**

## 7 LIMITED WARRANTY; LIMITATION ON LIABILITY; THIRD PARTY SERVICES.

**7.1 Limited Warranty. Voice Services provides the Services and any related products strictly on an "as is" basis. The Services are offered with no service level guarantee or assurances that the Services will work as intended. You expressly agree that use of the Services is at Your sole risk. Voice Services and the Voice Services Parties expressly disclaim all warranties of any kind, whether express or implied, oral or written, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. You hereby agree that the terms of this Agreement will not be altered due to custom or usage or due to the parties' course of dealing or course of performance under this Agreement. Voice Services and the Voice Services Parties will not be liable for any direct, indirect, incidental, special, punitive or consequential damages, including but not limited to damages for lost profits, business interruption, loss of programs or information, and the like, that result from the use or inability to use the Services or from mistakes, omissions, the Services not meeting Your requirements or expectations, hardware failures, issues making 911 calls, interruptions, deletion of files or directories, errors, defects, delays in operation, or transmission, regardless of whether Voice Services or any Voice Services Party has been advised of such damages or their possibility. Voice Services and the Voice Services Parties will not be liable for any harm that may be caused by the execution or transmission of malicious code or similar occurrences, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, Trojan horses, worms, viruses and similar mechanisms.**



7.2 **Limitation on Liability.** You agree that the total liability of Voice Services and any Voice Services Party and Your sole remedy for any claims regarding the Services under this Agreement or otherwise is limited to the fees paid to Voice Services for preceding six-month period. Notwithstanding anything to the contrary, Voice Services and the Voice Services Parties will have no liability whatsoever in the event that You have, either under Voice Services' direction or Your own actions, misconfigured any telephone or other device connecting to the Service, or if any User has any issue regarding a 911 call. You acknowledge and agree that the limitation of Voice Services' and the Voice Services Parties' liability is a material term to Voice Services and that it would not otherwise enter into this Agreement without this limitation, and that You agree these limitations are reasonable.

7.3 (a) **Emergency 911 (Enhanced 911 or E911) Liability.** You agree that Voice Services and Voice Services Parties will have no liability whatsoever in the event that You are unable to place, or complete, a call to 911 or E911 services, or in the event that emergency responders do not respond, or do not respond to the location at which you are physically present or require such services. Under no circumstances whatsoever will Voice Services and Voice Services Parties have any liability associated with 911 or E911 services, including, without limitation, in the event of: a) a loss of electrical power at your location; b) loss of internet connectivity at your location; c) defective or misconfigured customer premise equipment; d) network congestion; e) delays associated with updating Your registered service address; f) restrictions created by Your non-voice equipment, such as security systems and medical monitoring equipment; g) equipment relocated by You, including outside of the contiguous United States; h) the simultaneous use of one line with multiple pieces of equipment; i) failure of emergency response centers to answer Your 911 calls; j) failures of any third parties that are responsible for routing 911 calls; k) the use of non-native telephone numbers; or l) any Force Majeure Event. You acknowledge and agree that the limitation of Voice Services' and Voice Services Parties' liability is a material term to Voice Services and that it would not otherwise enter into this Agreement without this limitation, and that You agree these limitations are reasonable.

(b) You agree to print and distribute the following label on or near the equipment used in conjunction with the Voice Services:

**Calls to E911 will not operate if:**

- There is a power outage, unless you have a battery back-up connected to the equipment.
- Your service is disconnected by Voice Services.
- Service to your location is interrupted.
- You move your equipment to a new address without notifying Voice Services. To move your equipment to another address, you must contact Voice Services Customer Support prior to your move to ensure that calls to E911 will continue to work properly.

7.4 **Licensor and Vendor Liability.** Voice Services' licensors and vendors are not responsible to You for any warranty provided by Voice Services.

7.5 **Third-Party Services.** The Services may be compatible with Third-Party Services. While Voice Services does not disclose or permit access to Your CPNI to Third Party Services, Your installation or use of Third Party Services on Your equipment or software could result in Your own disclosure of CPNI. Any purchase, enabling or engagement of Third Party Services, including but not limited to implementation, customization, consulting services, and any exchange of Data between You and any Third-Party Service, is solely between You and the applicable Third-Party Service provider. Voice Services does not warrant, endorse or support Third-Party Services. If You purchase, enable or engage any Third-Party Service for use with the Services, You acknowledge that the providers of those Third-Party Services may attempt to access and/or use Your Data used in connection with the Services as required for the interoperation of such Third-Party Services with the Services. You represent and warrant that Your use of any Third-Party Service signifies Your independent consent to the access and use of Your Data by the Third-Party Service provider, and that such consent, use and access is outside of Voice Services' control. Voice

Services will not be responsible for any disclosure, modification or deletion of Data resulting from any such access by Third-Party Service providers.

## **8 Ownership and Control.**

8.1 No Transfer. Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any Service provided to You, including without limitation any copyright, trade secret and vested or potential trademark and patent rights, is solely the property of Voice Services and its vendors and licensors. As between You and Voice Services, all materials distributed by Voice Services in connection with the Services will at all times remain the property of Voice Services, and upon the request of Voice Services or upon the termination of this Agreement, You will promptly return any and all such materials.

8.2 Control. Voice Services will have sole and complete control over, and reserves the right at any time to make changes to, the configuration, appearance, content and functionality of the Services and Data. In addition, Voice Services reserves the right, at any time, without prior notice, to the exercise of its sole discretion to suspend any Service for the protection of the security and integrity of the Services or other business, technical or financial considerations as determined by Voice Services.

8.3 Feedback License. Voice Services will have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You and Your Users relating to the operation of the Services to Voice Services and any Voice Services Party.

**9 Hardware, Equipment, and Software.** You are responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access and use the Services. Voice Services makes no representations, warranties, or assurances that Your equipment will be compatible with any Service. Voice Services reserves the right to change or upgrade any equipment or software that it uses to provide the Services without notice to You.

**10 Indemnification.** You will defend, indemnify, save, and hold Voice Services and the Voice Services Parties harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys' fees, asserted against them that may arise or result from Your use of the Services, Your breach of this Agreement, Your negligence or willful misconduct, or any of Your own services or products.

**11 Modification of Terms.** Voice Services may update, amend, modify or supplement the terms and conditions of this Agreement, including the e911 Policy, from time to time by giving notice to You. You can review the most current version of this Agreement at any time at: (<http://cloudvoiceservices.com/legal>). Any updates, amendments, modifications or supplements to this Agreement are effective immediately upon posting, and Your continued use of Your Account and/or the Services after Voice Services posts a new version of the Agreement will be conclusively deemed to be acceptance by You of any such new version.

## **12 Miscellaneous.**

12.1 Governing Law; Jurisdiction; Forum; Attorney Fees. This Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of laws or its principles except to the extent such law is preempted or inconsistent with applicable federal law. Any claim or suit arising out of or relating to this Agreement will be brought in the County and State of New York in accordance with Section 13 below. In any action to enforce this Agreement, including, without limitation, any action by Voice Services for the recovery of fees due hereunder, You will pay Voice Services reasonable attorneys' fees and costs in connection with such action if Voice Services prevails in such action. You agree to waive the right to trial by jury with respect to any proceeding related to or arising out of this Agreement.

12.2 Age and Capacity. You hereby represent and warrant that You and any person to whom You grant access to Your Voice Services Account have reached the older of (i) the age of eighteen and (ii) the age of majority in Your jurisdiction, and that You are not subject to a limitation on Your ability to enter into this Agreement.

12.3 Severability. In the event that any one or more of the provisions contained herein will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any of the other provisions of this Agreement, and this Agreement will be construed as if such provision(s) had never been contained herein, provided that such provision(s) will be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

12.4 Waiver. No waiver by Voice Services of any breach by You of any of the provisions of this Agreement will be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver will be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing.

12.5 No Assignment. No benefit or duty of You under this Agreement will, without the consent of Voice Services, be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so will be void. Voice Services may assign this Agreement without Your consent and without notice.

12.6 Force Majeure. Except for monetary obligations, this Agreement and Your obligations hereunder will not be affected or impaired because Voice Services is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of Force Majeure Event and Voice Services' obligations under this Agreement will be suspended by any such Force Majeure Event. "Force Majeure Event" is any cause beyond Voice Services' reasonable control or anticipation, including, without limitation, acts of war, acts of god, terrorism, earthquake, hurricanes, flood, fire or other casualty, embargo, riot, sabotage, labor shortage or dispute, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, service outages, equipment failures, failure of power, restrictive governmental laws or regulations, condemnation, acts or failures of third parties, failure of the Internet or other reason that is beyond Voice Services' reasonable control or anticipation.

12.7 Survival. The preamble, Definitions and Sections 1.6, 2, 5, 7, 8.1, 8.3, 10, 11 and 12 of this Agreement will survive termination.

12.8 Entire Agreement; Third Party Beneficiaries. This Agreement constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and Voice Services with respect to the Services. You understand and agree that Voice Services and You intend to include, as the sole third party beneficiaries of this Agreement, Voice Services' vendors and licensors, with all rights and remedies available as if such vendors and licensors were a party to this Agreement.

12.9 Notice. You accept that communication from Voice Services may be electronic. Voice Services may contact You by e-mail or provide You with information by posting notices on Voice Services' website or to Your Account. You agree to this electronic means of communication and You acknowledge that all contracts, notices, information and other communications that Voice Services provides to You electronically are acceptable and effective as notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given (i) immediately upon personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email or, if from Voice Services to You, online posting. Notices to You may be addressed by Voice Services to any e-mail address, postal address or facsimile number registered with Voice Services, or through means of online posting through the Services. Notices to Voice Services that are not expressly authorized by administrative control panel under this Agreement shall be mailed to Voice Services Services, Inc., 156 W 56<sup>th</sup> Street, Suite 1601, New York NY 10019, Attn: Legal Department, or such other address as designated on Voice Services' website from time to time.

### **13 Dispute Resolution and Binding Arbitration**

**It is important that You read this entire section carefully. This section provides for resolution of disputes through final and binding arbitration before a neutral arbitrator instead of in a court by a judge or jury.**

13.1 Before initiating or participating in any legal action, arbitration or other resolution proceeding concerning any aspect of this Agreement or Services, You must notify Voice Services in writing of such a dispute and give Voice Services at least sixty (60) days (from the date written notice is given) to resolve the dispute. You and Voice

Services will first attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement.

13.2 If Your dispute is not resolved by good faith negotiations, You have the right to take any dispute that qualifies to small claims court rather than arbitration, or to a state or federal regulatory agency. You and Voice Services agree that all of Your other disputes arising out of or related to this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal or equitable theory) must be resolved by final and binding arbitration. This includes any dispute based on any Service or matter having a connection with this Agreement and any dispute not finally resolved by a small claims court or state or federal regulatory agency.

13.3 The arbitration process established by this section is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq. The arbitration of any dispute will be conducted in accordance with the American Arbitration Association's ("AAA") Supplementary Procedures for Consumer-Related Disputes, as modified by this Agreement, which are in effect on the date a dispute is submitted to the AAA. In conducting the arbitration and making any award, the arbitrator will be bound by and strictly enforce the terms of this Agreement and may not limit, expand, or otherwise modify its terms.

13.4 The arbitrator will have no authority to award consequential, incidental, punitive, or exemplary damages barred by this Agreement, and You expressly waive Your rights to any such damages. To the extent such damages may not be so waived, if an arbitrator decides to award such damages they will be limited to the total amount of Service charges between You and Voice Services. Unless applicable substantive law provides otherwise, each party pays its own expenses to participate in the arbitration, including attorneys' fees and expenses for witnesses and production and presentation of evidence.

13.5 Arbitrations under this Agreement will be confidential as permitted by federal law.

13.6 EACH DISPUTE WILL BE DECIDED ON AN INDIVIDUAL CASE BASIS AND WILL NOT BE CONSOLIDATED IN ANY ACTION WITH THE DISPUTES OR CLAIMS OF OTHER CONSUMERS OR CUSTOMERS. YOU AGREE THAT YOU WILL NOT BRING ANY DISPUTE OR CLAIM AS A CLASS ACTION OR AS A PRIVATE ATTORNEY GENERAL, AND YOU AGREE NOT TO ACT AS A CLASS REPRESENTATIVE OR PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS WITH RESPECT TO ANY DISPUTE OR CLAIM RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED BY VOICE SERVICES. WHETHER ANY CLAIM IS IN ARBITRATION OR IN COURT, THE YOU AND VOICE SERVICES AGREE TO WAIVE ANY RIGHT TO JURY TRIAL INVOLVING ANY CLAIMS OR DISPUTES UNDER THIS AGREEMENT.

13.7 If any portion of this dispute resolution section is determined to be unenforceable, then the remainder will be given full force and effect.