

## LV VOICE, LLC'S TERMS OF SERVICE

THESE TERMS OF SERVICE, ALONG WITH THE POLICIES REFERENCED HEREIN ("AGREEMENT"), GOVERNS CUSTOMER'S USE OF LV VOICE, LLC'S ("LV VOICE" OR "COMPANY") SERVICES. READ THIS AGREEMENT CAREFULLY, IN ITS ENTIRETY, BEFORE USING THE COMPANY SERVICE. YOU REPRESENT THAT YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT. FURTHERMORE, IF YOU ARE ENTERING THIS AGREEMENT ON BEHALF OF A COMPANY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO: (1) REGISTER THE COMPANY OR OTHER LEGAL ENTITY THAT YOU REPRESENT, INCLUDING ANY AUTHORIZED AGENT/ EMPLOYEE OF SUCH ENTITY, AS USERS OF THE COMPANY SERVICE; AND (2) BIND THE COMPANY OR OTHER LEGAL ENTITY THAT YOU REPRESENT, INCLUDING ANY AUTHORIZED AGENT/ EMPLOYEE OF SUCH ENTITY TO THE TERMS OF THIS AGREEMENT. **HEREINAFTER, YOU, THE COMPANY OR OTHER LEGAL ENTITY THAT YOU REPRESENT, INCLUDING ANY AUTHORIZED AGENT/ EMPLOYEE OF SUCH ENTITY THAT WILL BE AUTHORIZED USERS OF THE COMPANY SERVICE WILL BE REFERRED TO AS "CUSTOMER".** IF YOU DO NOT HAVE SUCH AUTHORITY, ARE NOT OF LEGAL AGE TO FORM A BINDING CONTRACT, OR DO NOT WISH TO BE BOUND BY THE TERMS CONTAINED IN THIS AGREEMENT, DO NOT USE, OR PERMIT ANYONE ELSE TO USE, THE COMPANY SERVICE. CUSTOMER'S USE OF THE COMPANY SERVICE WILL CONSTITUTE CUSTOMER'S ASSENT TO THIS AGREEMENT (OR RATIFICATION OF PREVIOUS ASSENT).

### **1. SERVICES PROVIDED; ADDITIONAL TERMS; CHANGES**

**1.1 Services Provided.** Company will provide the Customer with the Company's service(s) (collectively, "**Services**") in accordance with the plan ordered by Customer on the order form provided by Company or its authorized representatives. The Company's current Service plans may be posted from time to time on the Company's website or made available upon request ("**Service Plans**"). Customer's service order and any future orders (collectively referred to as "Service Order") shall be automatically incorporated into this Agreement effective as of the date of such Service Order.

**1.2 Additional Terms.** In order to obtain additional features of the Company Service and/or equipment offerings as Company may make available from time to time, Customer may be required to agree to additional terms (the "**Additional Terms**") above those stated herein, which will be automatically incorporated into this Agreement effective as of such agreement and will apply with respect to Customer's use of such specific additional feature or features elected.

**1.3 Changes to the Agreement or Service.** Company may at its sole discretion modify the aspects, features, or functionality of the Service, and/or the terms of its Service Plans (including pricing), without prior notice. New or modified Service Plans may be implemented by the Company from time to time. If such modified Plans are not posted on the Company's website, the Company will use commercially reasonable efforts to provide Customer with prior notice of material changes to Customer's Service Plan. Company may also update or modify these Terms of Service and the policies referenced herein by posting updated or revised versions on the Company's website. Customer agrees that it is

responsible for reviewing these Terms of Service and Company policies periodically; provided, that if any updates or modifications impose new, material obligations upon Customer, Company will use commercially reasonable efforts to provide Customer with prior written notice of the same. Customer's use of the Services following the posting of modified Terms or Service or policies, or after such notice as Company may provide, shall be deemed Customer's agreement to the modifications.

## **2. TERM**

Unless otherwise agreed in a Service Order or stated in the Service Plan, the "Initial Term" of this Agreement is 12 months, unless earlier terminated as provided for herein or unless otherwise stated in a Service Plan. The Service and Initial Term commences upon Customer's execution of a Service Order prepared by Company. This Agreement will renew for successive periods of 12 months (each a "Renewal Term") unless either Party provides the other with written notice of its intention not to renew no later than thirty (30) days prior to the end of the Initial Term or then-current Renewal Term. The Initial Term and all Renewal Terms are collectively the "Term" of this Agreement.

## **3. USE OF THE SERVICE**

**3.1 System Requirements.** In order to use the Service, Customer must, at Customer's own expense, provide and utilize one or more industry standard, Service compatible devices, high speed broadband access, and certain software, and may be required to obtain updates or upgrades to the foregoing from time to time. Customer's ability to use the Service may be affected by the performance of these items. Customer acknowledges and agrees that system requirements for the Service may change from time to time and that adherence to the system requirements is Customer's responsibility. Customer is responsible for ensuring that its networks and systems are adequately secured against unauthorized intrusion or attack and for regularly backing up its data and files in accordance with good computing practices.

**3.2 Registration.** Customer is required to register prior to using the Services. Customer agrees that any registration information shall be accurate, correct, and up to date, and Customer agrees to maintain and promptly update its registration information, including but not limited to the physical location of each user. Customer shall be responsible for maintaining the security of any required user names and passwords (including both for the Customer/an "Account Administrator" and any users), and shall not disclose them to any third party. Customer shall be solely responsible to Company for all activities that occur under Customer's account or subscription, including any unauthorized use. Customer agrees to notify Company immediately via email at \_\_\_\_\_ upon becoming aware of any unauthorized use of Customer's password, account, or subscription.

**3.3 Privacy.** Company's privacy policy is located at [lvvoice.net](http://lvvoice.net). Customer agrees to the use of Customer's data in accordance with Company's privacy policy. Without limiting the generality of the foregoing, Company may provide its third party providers, vendors, sales or marketing agents and/or referral companies who provide Company with services related to the Services with certain Customer data such as Customer name, address, and number of users. Company will use commercially reasonable efforts to limit the disclosure of

personally identifying information to that necessary to provide the Services or to comply with applicable laws.

**3.4 Scope of Use/ Fair Usage.** Customer and all users of the Service under Customer's account shall use the Service only as permitted in this Agreement and the Acceptable User Policy ("AUP") posted at [lvvoice.net](http://lvvoice.net) and in accordance with applicable laws and regulations, including but not limited to laws regarding the export of data or software. Customer shall use the Service only for its personal communications purposes or internal business purposes, and shall not resell the Services to any party. Customer's use of the Service may be subject to certain restrictions and limits, including without limitation as to number of users per subscription and storage, which if applicable will be communicated by Company. If Company determines that Customer has violated or is in violation of this provision, Company will so notify Customer and may, in its sole discretion, suspend or terminate Customer's Service. In the event of such termination Customer shall remain bound by its payment obligations for the remainder of the then current month (or other specified term) of Customer's Service Plan. Customer may not transfer its Service subscription to any other person, company or entity.

**3.5 Prohibited Uses.** Customer agrees not to use the Service in a manner that is actually or potentially libelous, threatening, harmful, harassing, indecent, obscene, in violation of the intellectual property rights of any party, is otherwise unlawful under any applicable law or regulation, or is in violation of the AUP, as the same may be posted from time to time. Customer agrees not to access or attempt to access the Service by any means other than the interface provided by Company, including but not limited to any automated means such as the use of scripts or web crawlers. Customer agrees not to use any trademark, service mark, trade name, or logo of any company or organization in conjunction with the Service in a manner that is likely or intended to cause confusion about the owner or authorized user of such mark, name, or logo.

**3.6 Company's Remedies for Prohibited Use.** Company may take any lawful action it deems appropriate with respect to prohibited use of the Service or other use of the Service that it deems to be inappropriate, in violation of this Agreement or the AUP, or potentially disruptive to the Service or Company's or its providers' network(s), Company's rights and interests, or the rights of other customers. Company's remedies for Customer's prohibited use of the Service include but are not limited to issuing warnings; terminating Customer's Service, subscription, accounts, or users; disabling access to or suspending the Service, subscription, or accounts; or increasing the monthly rates charged Customer for the period of Customer's prohibited use and the remainder of the Agreement's term. Company may take such action without notice or liability to Customer or any other party, although Company shall have no obligation to take any such action.

**3.8 Support.** Company will provide Customer with technical consultation support for the term of the Service. Customer may access technical support by submitting a ticket through the Company's customer support portal at [help.lvvoice.net](http://help.lvvoice.net).

**3.9 Customer Proprietary Network Information.** In the normal course of providing services to its users and customers, Company collects and maintains certain customer proprietary network information ("CPNI") typical to the US communications industry. CPNI includes the types of telecommunications and interconnected VoIP services Customer currently purchases or subscribes to, how Customer uses those services (for example,

Customer's calling records), and billing information related to those services. Customer's Company telephone number, name, and address do not constitute CPNI. Company does not sell, trade, or otherwise share Customer's CPNI with anyone outside of Company and those parties authorized to represent Company to offer Company's services or to perform functions on Company's behalf related to Company's services, except as the law may require or Customer may authorize. US federal law generally permits Company to use CPNI in its provision of the telecommunications and interconnected VoIP services Customer purchases or subscribes to, including billing and collections for those services. Company may also use or disclose Customer CPNI for legal or regulatory reasons such as to respond to a court order, to investigate fraud, to protect Company's rights or property, to protect against the unlawful use of Company services, or to protect other users. Further detailed information regarding Company's uses of CPNI is set forth in the Privacy Policy at [url].

Customer may elect to prohibit Company's use of Customer's CPNI to market services other than services of the same type that Customer already purchases from Company by providing Company with Customer's "opt-out" notice within thirty (30) calendar days of Customer's Service commencement via email at [\\_opt-out@lvvoice.net](mailto:_opt-out@lvvoice.net)\_\_\_\_. If Customer fails to do so within such timeframe, Customer will be deemed to have given Company consent to use Customer's CPNI to market services other than services of the same type that Customer already purchases from Company. Restricting Company's use of Customer CPNI will not affect Company's provision of any service, nor will it necessarily eliminate all types of Company marketing.

#### **4. CUSTOMER'S CONTENT**

**4.1** Customer is solely responsible for the content of all information and communications, whether visual, written, audible, or of other nature, sent, displayed, uploaded, posted, published, or submitted by Customer while utilizing the Service ("**Customer's Content**") and for the consequences of doing so, including any loss or damage to Company or any third parties. Company has no responsibility to Customer or any third party for Customer's Content.

**4.2** Company reserves the right to, but shall have no obligation to, pre-screen, refuse, flag, filter, or remove any of Customer's Content from the Service at Company's discretion without notice or liability to Customer or any other party.

**4.3** Customer shall retain copyright and any other intellectual property rights Customer holds in Customer's Content. Customer shall remain solely responsible for protecting and enforcing such rights where applicable.

**4.4** Customer hereby grants to Company a non-exclusive, world-wide, royalty free, sub-licensable, transferable, perpetual, irrevocable license to use, modify, adapt, translate, publish, publicly perform, publicly display, reproduce, prepare derivative works of, and distribute Customer's Content solely for the purpose of providing and distributing the transmission of such Customer Content, as is necessary to the successful provision of the Service to Customer. Customer represents and warrants that it has all necessary rights, licenses, consents, and permissions to grant such license and permit such use.

**4.5** Company will endeavor to store Customer's voicemail, sent or received call logs, and/ or instant messages as part of the Service, however Company is not obligated to do so and Company has no responsibility or liability for the deletion or failure to store any of the foregoing.

## **5. OTHER USERS' CONTENT**

**5.1** Company does not control and shall have no liability or responsibility for the 1) conduct or 2) content of any information and communications, whether visual, written, audible, or of other nature, sent, displayed, uploaded, posted, published, or submitted by other users via the Service, including but by no means limited to advertisements or sponsored content (item (2) collectively referred to as "**Other Users' Content**").

**5.2** Other Users' Content may be protected by copyright and other intellectual property rights of such other users or other persons. Customer shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works based in whole or part upon Other Users' Content unless specifically agreed to by the owners of such Other Users' Content in a separate written agreement with Customer.

**5.3** It is Company's policy to respond to notices of alleged copyright infringement that comply with applicable international intellectual property law (including in the United States the Digital Millennium Copyright Act) and to terminate the accounts or subscriptions of repeat infringers.

## **6. CHARGES AND PAYMENT**

**6.1 Charges.** Company will charge Customer's credit card, or such other payment mechanism as may be approved by Company, for the fees for the Service, including the Service per-user monthly fees and any other fees or charges associated with Customer's account. Company reserves the right to require credit approval prior to providing Company Services to Customer. Company shall bill on a monthly basis beginning on the date Service commences with payment due on the same date of the following months of the Agreement's term. Customer shall pre-pay for the service on a monthly basis and Customer hereby authorizes the Company to automatically charge Customer's credit card or other payment mechanism provided by Customer. Company will bill any other fees or charges monthly in arrears unless otherwise agreed or specified in writing by Company. Customer will pay all bank charges, taxes, duties, levies and other costs and commissions associated with non-credit card methods of payment. Company may suspend performance of the Services for which payment is overdue until the overdue amount is paid in full. Overdue payments will be subject to a late payment charge of the greater of one and one half percent (1.5%) per month, or the maximum rate allowed by applicable law. Customer will reimburse Company for reasonable attorneys' fees and any other costs associated with collecting delinquent payments.

**6.2 Carry Over.** Unused minutes in a service month do not carry over to the subsequent month.

**6.3 Suspension for Non-Payment.** If Customer fails to pay for a subscription with either a credit card or available account balance within fifteen (15) days of the due date, Company may thereafter, in its sole and absolute discretion, suspend Services to Customer without prior notice. Customer will be able to restore Service if, within thirty (30) days following

suspension, Customer pays all amounts due for Service plus a "recovery fee," the amount of which shall be posted on Company's website from time to time. If, by the end of such 30-day period, Customer fails to pay all amounts then due plus the recovery fee in full, Company may terminate Service to the Customer upon written notice, and Company may thereafter release Customer's telephone number(s) for reassignment. Customer will not be able to recover its telephone number(s) thereafter.

**6.4 Billing Disputes.** Except for those occurrences addressed in Section 7, Customer must dispute any charges for the Services in writing within thirty (30) days after the date of the occurrence that forms the basis for the dispute; otherwise Customer waives any dispute or further recourse with respect to the applicable charges.

**6.5 Taxes.** Unless Customer provides Company with a current tax exemption certificate, Customer is solely responsible for paying all legally required taxes, including without limitation any state or local sales, excise, and/or other taxes and fees which may be levied upon the Service, except for any income tax assessed upon Company.

**6.6 Regulatory Fees.** Company may charge Customer any fees, assessments, surcharges or other amounts which may be assessed on the Company or on or in connection with the Services by any regulatory body or in connection with any regulatory program, including without limitation any applicable federal or state Universal Service Fund contributions. Company may also charge a monthly regulatory recovery fee to offset costs it incurs in complying with obligations imposed by, and inquiries made by, federal, state, and municipal regulatory bodies/governments and related legal and billing expenses. This fee is not a tax or charge required or assessed by any government. If assessed by Company, the regulatory recovery fee will apply to every directly dialable telephone number (in certain cases referred to as DID-phone numbers) assigned to Customer, including toll free and virtual numbers.

## **7. SERVICE LEVELS AND SERVICE AVAILABILITY**

**7.1 Service Level.** Company will use commercially reasonable efforts to ensure that the Service meets a Service Level Objective ("SLO") of 90% uptime as stated in section 7.2, unless such failure is caused by events beyond Company's control, such as those enumerated in section 7.3 or due to scheduled maintenance. Company makes no representation or warranty that the Service will be available at all times and temporary disruptions in Service shall not constitute a breach of this Agreement. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE SERVICE IS PROVIDED ON A "BEST EFFORTS" BASIS, "AS IS," AND "WITH ALL FAULTS." NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE RELIEF SET FORTH IN SECTION 7.2 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE FAILURE OR NON-PERFORMANCE OF THE SERVICE.

**7.2 Service Availability and Credits.** The Company SLO stated in terms of Service Availability shall be deemed to be in an outage condition if Customer is unable to receive and initiate VoIP communications traffic 98% of the time measured cumulatively on a calendar month basis ("Outage"). Customer is entitled to credit equal to the pro rata amount of Customer's monthly fee per hour of any Outage ("Outage Credit") in the event of an SLO Outage condition, not to exceed Customer's monthly recurring charges for the month in which the SLO Outage occurs. An Outage shall be deemed to commence upon

Company's verification of the trouble as stated in the trouble ticket submitted by Customer; this verification will be conducted by Company's network operator. An Outage shall be deemed to terminate upon the closing of the same trouble ticket (or the termination of the downtime, if sooner), less any time Company is awaiting additional information or premise testing from Customer. The duration of the Outage period and eligibility for Outage Credits will be determined at the sole discretion of Company, based upon Company's internal records. Customer shall have the right to request Outage Credit(s) for a period of thirty (30) days after the date of the reported occurrence. Customer shall have the right to contest any calculations of credit(s) for a period of thirty (30) days after the application of such credit(s) to Customer's account. The Outage Credits shall be Company's sole liability and Customer's sole remedy in the event of any Outage period or interruption of Service.

**7.3 No Outage Credits.** There shall be no Outage Credits for Outages:

- (i) Caused directly or indirectly by the acts or omissions of Customer;
- (ii) Caused by the failure of equipment or systems provided by Customer or any third party (not under the direction or control of Company);
- (iii) Caused by a Force Majeure event as defined in Section 22.3;
- (iv) Occurring with respect to a request or an order from Customer for a change in the Service; or
- (v) Occurring while Customer is in breach of the Agreement.

**7.4 MAINTENANCE AND MODIFICATIONS TO SERVICE.** Company may at any time and without liability modify, expand, improve, maintain, or repair the Service or Company facilities even if such activity might result in temporary suspension(s) of the operation of the Service. Company will use commercially reasonable efforts to minimize any disruption to the Service to Customer and shall use its best efforts to give Customer commercially reasonable notice of a maintenance period prior to the disruption by telephone (real-time or voicemail), facsimile, or e-mail. Credits will not be issued with respect to such Service interruptions if Company has used commercially reasonable efforts to so notify Customer in accordance with this paragraph.

## **8. COMPANY'S IP RIGHTS**

**8.1 Company's IP.** Company reserves all rights, including, but not limited to, ownership, title, and all other rights and interest in, and to, any computer programs (in object or source code format or any other form), know-how, inventions, processes, data bases, documentation, training materials and any other intellectual property and any tangible embodiments of it (collectively, "**Intellectual Property**") that Company (i) owned prior to providing the Services under the Agreement, (ii) any Intellectual Property that Company develops, creates, or otherwise acquires independently of this Agreement, and (iii) any derivative works or Intellectual Property that Company develops, creates, or otherwise acquires while performing the Services under the Agreement.

**8.2** Company and/or its licensors own all right, title, and interest in and to the Service, associated software, and the content of all information and communications, whether visual, written, audible, or of another nature presented by or on behalf of Company as part

of the Service (“**Company’s Content**”). Customer shall not copy, modify, rent, lease, sell, loan, distribute, or create derivative works based in whole or part upon Company’s Content.

**8.3** Nothing in this Agreement grants Customer any right to use any of Company’s trade names, trademarks, service marks, logos, domain names, trade dress, or other distinctive brand features.

**8.4** Customer shall not remove, obscure, or alter any proprietary rights notices, such as copyright or trademark notices, attached to or contained within Company’s Content, the Service, or associated software or servers.

## **9. SOFTWARE LICENSE TERMS**

The software and documentation provided or made accessible under this Agreement will be licensed to Customer by Company in accordance with and subject to the terms and conditions set forth in the Company’s or its licensors end user licenses, as the same may be posted on Company’s website or as otherwise provided to Customer from time to time (“License Terms”). The scope of the license granted shall be for the sole purpose of utilizing the Service for the specified number of users, in accordance with the terms of this Agreement, and for the duration of Customer’s subscription (until the effective date of termination of the Service).

## **10. SOFTWARE UPDATES**

The Company software may automatically (push or pull – download) and install updates from Company and/ or affiliated equipment manufacturers from time to time. Updates may take the form of bug fixes, new or enhanced functionality, new software modules, and updated or new versions of the software, and are intended to improve or enhance the Service. Customer agrees to allow such updates to be promptly downloaded and installed as part of its utilization of the Service.

## **11. 911/E911**

Company’s E911 Addendum, available at [Ivvoice.net](http://Ivvoice.net) is a material part of this Agreement. Customer represents and warrants that it has read and understood the E911 Addendum, including all descriptions of the limitations and restrictions on 911/E911 services using Company’s voice Service, and that it agrees to the same.

## **12. DID NUMBERS**

Company will assign to Customer one or more DID/telephone numbers as provided for in Customer’s Service Plan. Customer is responsible for choosing the Service Plan that provides sufficient DIDs for its users, including without limitation in order to provide call back number and location information for 911 calls. Company reserves the right to change, cancel, withdraw, or move such numbers at its sole discretion immediately upon notice. Customer will surrender all rights to the DID/ telephone numbers and fax numbers upon termination of Customer’s Service if they have not been ported out in accordance with **Section 13.2** below prior to such termination, and the numbers assigned to Customer may be reassigned upon termination of Customer’s Service. Company will not be liable for any direct or indirect damages or incidental costs arising out of such reassignment.



### **13. LOCAL NUMBER PORTABILITY**

**13.1 Porting In.** Customer may elect to port an existing DID/ telephone number to Company ("Port-In") for use with the Service. In the event Customer elects to Port-In a number, Customer must first select a temporary number from the list of DID/ telephone numbers Company presents to Customer at the time Customer orders the Service, which will be used until the Port-In is complete. Company will support all valid requests and will cooperate with Customer to perform any Port-In in accordance with Customer's reasonable directions and Company's operating procedures. Neither Company nor its providers are responsible for any delay, rejection, or false processing of Port-In requests to the extent such delay, rejection, or false processing is attributable to Customer, Customer's prior provider, or any third parties.

**13.2 Porting Out.** Customer or a third-party provider acting as agent on behalf of Customer ("Requesting Party") may request that Company port a number assigned to Customer by Company to a third party provider ("Port-Out"). Company will support all such requests and will promptly cooperate with the Requesting Party to perform any Port-Out in accordance with the Requesting Party's reasonable directions and Company's standard operating procedures. In the event of any Port-Out, Customer agrees that until such time as the Port-Out is complete and Customer terminates the Service for such DID/ telephone number, Customer shall remain bound by the terms of this Agreement related to that DID/ telephone number. Once the Port-Out is complete, Customer must terminate the Services associated with such ported DID/ telephone number in order to stop incurring charges for such DID/ telephone number. Customer recognizes and agrees that in the event of a Port-Out Customer shall remain responsible for paying the required monthly service fees in accordance with Section 20.1.

### **14. 711 DIALING**

The Service, when used in the US, allows dialing 711 to reach Telecommunications Relay Services (TRS). In the event the user's registered location is not the same as the user's geographic location, 711 calls may not be routed to the correct TRS center for the user's location.

### **15. SERVICE EXCLUSIONS**

The Service does not include directory listings and operator and directory assistance and does not support 976 or 900 calls. The Service may not support 311, 411, 511, or other X11 calling (other than 911 and 711 as detailed in this Agreement) in all or certain service areas.

### **16. EXCLUSION AND DISCLAIMER OF WARRANTIES**

**16.1** COMPANY PROVIDES THE SERVICE, INCLUDING WITHOUT LIMITATION THE SOFTWARE, WEBSITES, SERVERS, CONTENT, SUBSCRIPTIONS, AND ACCOUNTS, ON AN "AS IS" AND "AS AVAILABLE" BASIS. CUSTOMER'S USE OF THE SERVICE IS AT CUSTOMER'S OWN RISK. NEITHER COMPANY NOR ITS LICENSORS OR SUPPLIERS MAKES ANY EXPRESS REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH REGARD TO THE SERVICES OR OTHERWISE RELATED TO THE AGREEMENT. COMPANY DOES NOT WARRANT UNINTERRUPTED OR ERROR

FREE OPERATION OF THE SERVICES OR THAT THE SERVICES WILL PREVENT TOLL FRAUD. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

**16.2** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER COMPANY, ITS LICENSORS, NOR SUPPLIERS REPRESENT OR WARRANT THAT I) (I) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR PROVIDE ANY SPECIFIC RESULTS, (II) CUSTOMER'S USE OF THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR VIRUS OR ERROR FREE, (III) INFORMATION OR CONTENT PROVIDED TO CUSTOMER THROUGH THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (IV) DEFECTS IN THE SERVICE WILL BE CORRECTED, OR (V) THE SERVICE WILL HAVE ANY PARTICULAR UP-TIME, QUALITY OF SERVICE, OR QUALITY OF VOICE OR FAX COMMUNICATIONS.

**16.3** WITHOUT LIMITING THE GENERALITY OF SECTION 16.1 ABOVE, NEITHER COMPANY, ITS LICENSORS, NOR SUPPLIERS SHALL HAVE ANY RESPONSIBILITY TO CUSTOMER FOR DAMAGE RESULTING FROM THE USE OF THE SERVICE, INCLUDING BUT NOT LIMITED TO DAMAGE TO ANY DEVICE OR LOSS OF DATA RESULTING FROM THE DOWNLOADING, OTHERWISE ACCESSING, OR USING ANY CONTENT, MATERIAL, OR DATA THROUGH THE SERVICE. DOWNLOADING, OTHERWISE ACCESSING, AND USING SUCH CONTENT, MATERIAL, OR DATA IS AT CUSTOMER'S OWN RISK.

**16.4** COMPANY DOES NOT HAVE ANY RESPONSIBILITY FOR RETAINING ANY USER INFORMATION OR CONTENT OR COMMUNICATIONS BETWEEN USERS.

## **17. CONFIDENTIAL INFORMATION**

**Confidential Information** shall be interpreted to mean that all Company business and/or technical information, pricing, discounts and other information or data, whether in tangible or other form if marked or otherwise expressly identified in writing as confidential shall be considered privileged and not for release to others. Information communicated verbally will qualify as Confidential Information if designated as confidential or proprietary at the time of disclosure and summarized in writing within thirty (30) days after disclosure. Confidential Information excludes information that: (i) is publicly available other than by an act or omission of Customer; (ii) subsequent to its disclosure was lawfully received from a third party having the right to disseminate the information without restriction on its dissemination or disclosure; (iii) was known by Customer prior to its receipt as "Confidential Information" and was not received from a third party in breach of that third party's confidentiality obligations; (iv) was independently developed by Customer without use of Company's Confidential Information; or (v) is required to be disclosed by court order or other lawful government action, but only to the extent so ordered, provided Customer makes prompt written notification to Company of the pending disclosure so that Company may attempt to obtain a protective order. In the event of a potential disclosure in the case of subsection (v) above, Customer will provide reasonable assistance to Company should Company attempt to obtain a protective order. Customer will protect such Confidential Information received from Company with no less care than the care it uses to protect its

own Confidential Information, but in no event, with no less than a reasonable degree of care. Customer will not use or disclose Company's Confidential Information except as permitted in this Section or for the express purpose of performing obligations under the Agreement. Customer's confidentiality obligations will survive the termination of the Agreement. Upon termination of the Agreement, Customer will cease all use of Company's Confidential Information and will promptly and in a manner of transmittal reasonably expected to protect the confidentiality of such information, return or, at Company's request, and in a manner of destruction reasonably expected to protect the confidentiality of such information, destroy all Confidential Information, including all copies, in whatever form in Customer's possession or under its control, including such Confidential Information stored on any electronic medium or device of any sort. Upon request, Customer will certify in writing its compliance with this Section.

## **18. LIMITATION OF LIABILITY**

IN NO EVENT WILL COMPANY OR ITS LICENSORS OR SUPPLIERS HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA, TOLL FRAUD, COST OF COVER, OR SUBSTITUTE GOODS OR PERFORMANCE. COMPANY'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF ALL COMPANY CHARGES MADE TO CUSTOMER FOR THE COMPANY SERVICE PAID OR PAYABLE UNDER THE AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATIONS OF LIABILITY IN THIS SECTION WILL APPLY TO ANY DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE TO THE PARTIES FAIL OF THEIR ESSENTIAL PURPOSE. THE LIMITATIONS OF LIABILITY IN THIS SECTION ALSO WILL APPLY TO ANY LIABILITY OF COMPANY'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUPPLIERS.

## **19. INDEMNIFICATION**

**19.1** Customer agrees to indemnify, defend, and hold harmless Company, its affiliates, officers, directors, employees, consultants, agents, licensors, suppliers, and resellers from any and all third party claims, liability, damages, losses, expenses, and/ or costs (including but not limited to attorney's fees and cost of suit) arising from or related to (i) Customer's use of the Service, (ii) violation of this Agreement (including but not limited to fraudulent or illegal use of the Service), (iii) any negligent acts or omissions or willful misconduct of Customer, or (iv) infringement or violation of any intellectual property or other right of any person or entity in connection with this Agreement.

## **20. TERMINATION**

**20.1 Termination for Cause.** Company may terminate this Agreement and the Service associated herewith without notice and immediately upon Customer's failure to comply with

any provision of this Agreement. Upon such termination, Customer will remain responsible for payment of the monthly charges for the month in which termination occurs. Company will not prorate the charges under Customer's Service Plan due to termination that is effective on other than the last day of the month.

**20.2 Effect of Termination/ Expiration of Subscription.** In the event of termination of this Agreement for cause, for any reason, or upon Customer providing the required notice of termination of Customer's Company subscription, Customer shall immediately cease use of the Service and permanently destroy all copies of the software portion thereof within Customer's possession or control. Such software must be end-user accessible and suited for such destruction without damaging any hardware associated therewith. All software licenses granted in conjunction with, and all subscriptions to the Service shall terminate immediately upon the termination of this Agreement. Upon termination, Company may deactivate or delete Customer's account and all related information and files therein and/or bar any further access thereto, and Customer shall have no further access to any Customer-assigned DID/ telephone number (unless Port-Out of such phone number was completed prior to termination of this Agreement). All provisions concerning confidentiality, license grant and restrictions, IP ownership, warranty disclaimers, limitation of liability, and indemnity (as well as any other terms which, by their nature, are intended to survive termination) of this Agreement will survive the expiration of Customer's Company subscription and any termination of this Agreement.

## **21. GOVERNING LAW AND DISPUTE RESOLUTION**

**21.1 Governing Law.** The Agreement and any claims, disputes, or controversies arising out of or relating to the Agreement ("**Disputes**") will be governed by the laws of the State of Florida applicable to contracts entered into and performed in Minnesota without regard to its choice of law principles, excluding choice of law principles and the United Nations Convention on Contracts for the International Sale of Goods.

**21.2 Arbitration.** Subject to **Section 21.3**, all Disputes, including without limitation those regarding the formation, interpretation, breach or termination hereof, or any issue regarding whether a Dispute is subject to arbitration hereunder, that cannot be settled by good faith negotiation between the parties within a reasonable period of time, will be conclusively determined by a final and binding arbitration proceeding to take place in Willmar, Minnesota. Such proceeding will be conducted in English and administered by JAMS pursuant to the JAMS Comprehensive Arbitration Rules and Procedures then in effect, or in the event one of the parties is located outside of the United States, pursuant to the JAMS International Arbitration Rules then in effect, before a panel of one arbitrator chosen in accordance with such rules. The arbitrator will not award punitive or exemplary damages, and will not have the authority to limit, expand or otherwise modify the terms of the Agreement. The ruling by the arbitrator may be entered in any court having jurisdiction over the parties or any of their assets. The parties will evenly split the cost of the arbitrator's fees, but each party will bear their own attorneys' fees and other costs associated with the arbitration. The parties agree that this arbitration provision may be enforced by injunction or other equitable order, and no bond or security of any kind will be required with respect to any such injunction or order. The parties, their representatives, other participants and the arbitrator will hold the existence, content and result of arbitration in confidence.

**21.3 Injunctive Relief.** Nothing in this Section will be construed to preclude either party from seeking provisional remedies, including but not limited to temporary restraining orders and preliminary injunctions, from any court of competent jurisdiction in order to protect its rights pending arbitration.

**21.4 Time Limit.** Actions on Disputes between the parties must be brought in accordance with this Section within one (1) year after the cause of action arises.

## **22. MISCELLANEOUS**

**22.1 Compliance.** The parties will observe all applicable laws and regulations, including export and re-export laws and regulations, when using the Service.

**22.2 Assignment & Subcontractors.** Company may assign the Agreement to any of its affiliated entities or to any entity to which Company may sell, transfer, convey, assign or lease all or substantially all of the assets or properties used in connection with its performance under the Agreement. Any other assignment of the Agreement or any rights or obligations under the Agreement without the express written consent of the other party will be invalid. Company may partner with others or subcontract any or all of its obligations under the Agreement but will retain its responsibility to Customer for the timely performance of the work necessary to the provision of Service properly paid for by Customer.

**22.3 Force Majeure.** Neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including without limitation, fire, flood, Act of God, explosion, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, civil or military authority, and inability to secure materials, systems, subsystems, components, underlying services or transportation facilities ("Force Majeure").

**22.4 Notices.** Any notice required or permitted under this Agreement shall be deemed properly made when delivered by email, messenger, overnight courier, or mailed via Certified or Registered Mail (Return Receipt Requested) if to Customer: to the information Company has on file; and if to Company: to LV Voice, LLC, 3019 Exeter RD, Greensburg, PA 15601, Attn: Cynthia Dorazio. Notices will be considered effective when sent or posted.

**22.5 Entire Agreement.** The Agreement, including any Attachments and the policies referenced herein, constitute the entire understanding of the parties with respect to the subject matter of the Agreement and will supersede all previous and contemporaneous communications, representations or understandings, oral and/or written, between the parties relating to that subject matter and will not be contradicted or supplemented by any prior course of dealing between the parties. If any provision of the Agreement is determined to be unenforceable or invalid by court decision, the Agreement will not be rendered unenforceable or invalid as a whole, and the original unenforceable provision will be changed only minimally as required for it to be enforceable and interpreted so as to best accomplish the objectives of the original provision within the limits of applicable law. The failure of either party to assert any of its rights under the Agreement, including, but not limited to, the right to terminate the Agreement in the event of breach or default by the other party, will not be deemed to constitute a continuing or permanent waiver by that party of its right to enforce each and every provision of the Agreement in accordance with their terms.