

## **TERMS OF SERVICE**

The following are terms and conditions that apply to and control VoIPStreet, Inc., (hereinafter "Provider") providing and allowing you (you, whether a business entity or an individual, shall herein after be referred to as "Customer") to purchase, have access to and/or use the products and/or services described herein. The aforementioned are the sole parties to these Terms of Service (each being a "Party" and collectively being the "Parties") and no third party, including, but not limited to the customers of Customer ("End Users" if Customer is a reseller and not a consumer), shall constitute a Party hereto.

BY ORDERING, PURCHASING, ACCESSING AND/OR USING ANY OF PROVIDER'S PRODUCTS OR SERVICES, CUSTOMER THEREBY ACKNOWLEDGES THAT IT HAS READ THESE TERMS OF SERVICE, IS AGREEING TO ALL THE TERMS AND CONDITIONS HEREIN, AND CONSENTS TO BE BOUND BY AND BECOME A PARTY HERETO. SHOULD CUSTOMER NOT AGREE TO OR NOT BE ABLE TO COMPLY WITH ANY OF THE TERMS AND CONDITIONS OF THESE TERMS OF SERVICE, CUSTOMER SHALL IMMEDIATELY TERMINATE THE ORDERING PROCESS, AND CEASE ITS ACCESS TO AND USE OF ANY OF PROVIDER'S PRODUCTS AND SERVICES.

### **1. THE SERVICE.**

The services consist primarily of Voice over Internet Protocol services, which may be offered, in Provider's sole discretion, in a variety of forms and packages, each of which shall be set forth on Provider's website (each being a "Service" and collectively being "Services"). The Service is designed as a business solution and not for predictive dialing, telemarketing, call center services or similar high traffic use. The Service(s) shall consist of a combination of software solutions, products, networks, services and hosting facilities (the "Network"), components of which Provider has been granted access and/or licenses to by third party licensors, suppliers, vendors, and subcontractors ("Third Party Vendors"). In no event shall Provider's use of, or contractual arrangement with, any Third Party Vendors create any agency, employment, joint venture, partnership, representation or fiduciary relationship, and neither Provider nor its Third Party Vendors shall have the authority to create any obligation on behalf of the other.

Customer may select and order the Service(s) offered by Provider by using the electronic registration and ordering process provided for each Service at Provider's website (hereinafter the "Order Form"). Each Service may be purchased by Customer exclusive of the other. Fees and charges associated with Customer's order of, access to and use of the Service(s) shall be set forth on each Service's respective Order Form, and may be amended from time to time by Provider, in its sole discretion, upon notice. Provider and any Third Party Vendor may, at any time and without liability to the Customer or any third party, including, but not limited to, Customer's End Users, modify, expand, improve, maintain or repair the Service(s), although such process may require a temporary suspension of Service(s) or increased rates.

### **2. SERVICE LIMITATIONS.**

The Service(s) is not intended to replace any primary phone service, such as traditional landline or mobile phone service. All Traffic carried by the Service(s) must be IP originated. Customer acknowledges and agrees, and commits to informing its End Users, that the Service(s) may not be compatible with all communication equipment. In addition, different regulatory treatment may be applied to the Service(s) than is applied to other telecommunications services, which may affect Customer's and its End Users' rights before regulatory agencies and other governmental bodies. Provider does not support 0+ calling (including, without limitation, collect or third party billing), 900 and 976 calls, and 10-10 "dial-around" calls. The Service(s) may not support 311, 411, 511 and/or

other x11 services in some or all service areas. Customer understands and acknowledges that access to each of the aforementioned functionality is not part of the Service(s).

### 3. **E-911 NOTICE.**

PLEASE READ CAREFULLY BEFORE USING THE SERVICE(S)

CUSTOMER ACKNOWLEDGES AND AGREES THAT, DEPENDING ON THE SERVICE ORDERED OR THE LOCATION THAT THE SERVICE IS CONSUMED, ACCESS TO ANY 911 OR SIMILAR EMERGENCY SERVICES (INCLUDING, BUT NOT LIMITED TO, TRADITIONAL 911, E911, OR SIMILAR EMERGENCY SERVICES) MAY NOT BE INCLUDED OR AVAILABLE.

This E911 Notice explains some of the limitations of E911 as it relates to the Service(s) and equipment associated therewith. The Federal Communications Commission ("FCC") requires that interconnected VoIP service providers supply E911 Service capabilities to their subscribers. Some, but not all, Services offered by Provider qualify as interconnected VoIP services. If Customer orders any Service that qualifies as interconnected VoIP service under the FCC definition, Provider will provide E911 functionality for such Service. Provider is providing this E911 Notice to explain the circumstances under which E911 Service may not be available or may in some way be limited compared to traditional landline telephone service. Provider may ask Customer to provide an affirmative acknowledgement of having received and understood this E911 Notice. Customer agrees to promptly execute and return such acknowledgement within the timelines established by Provider.

(a) Traditional Emergency Calling. In the United States, when 911 is dialed using a traditional landline telephone, the call is routed to the nearest public safety answering point ("PSAP") and the caller's number is displayed on the dispatcher's console. The PSAP cross checks the telephone number against its address records to determine the caller's exact location and directs the proper emergency service to that location. When a call reaches a PSAP equipped for E911 service, the callback number and location are automatically displayed to the dispatcher.

(b) Emergency Calling Using VoIP Services. Calling 911 using VoIP services is different from calling 911 using traditional landline services. Some of the key differences with VoIP services are as follows:

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

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

(iii). *Telephone or Computer Problems.* Problems with Customer's telephone, computer, modem, router, or other IP-enabled hardware may limit or completely restrict Customer's ability to use the Service or place E911 emergency calls.

(iv). *Problems with High-Speed Internet Connection.* Problems with Customer's high-speed Internet connection, including outages or network congestion, may limit Customer's or completely restrict Customer's ability to use the Service or place E911 emergency calls.

(v). *Suspension of Account.* If Customer's Account is suspended for any reason, including non-payment of charges, Customer will not be able to use the Service or place E911 emergency calls.

(vi). *Problems with the Service.* If Provider should experience problems in providing the Service, including, but not limited to, hardware problems, software problems, Internet connectivity problems, or network maintenance issues, Customer may not be able to use the Service or place E911 emergency calls.

(vii). *Problems with Equipment.* If Customer should experience problems with any equipment, Customer may not be able to use the Service or place E911 emergency calls.

(viii). *Outside the United States.* If Customer is calling from a location outside the United States, Customer will not be able to use the Service or place E911 emergency calls.

(ix). *E911 Provisioning Intervals.* Provisioning of Customer's E911 service may take additional time following the activation of the Service, during which time E911 emergency calling may not be available.

(x). *Required Information.* When Customer calls 911, Customer may need to advise emergency service personnel of the nature of Customer's emergency, Customer's telephone number, or Customer's physical location. If Customer's call is disconnected for any reason, emergency service personnel may not be able to call Customer back, determine Customer's physical location, or dispatch emergency personnel to Customer's location.

(xi). *Failure to Register Customer's Location Accurately.* It is important that Customer keeps Provider advised of Customer's physical service location at all times, keeping in mind the E911 provisioning interval issues detailed above. If Customer provides an incorrect physical address, or if Customer changes Customer's physical address without notice, emergency calls may be routed to an incorrect emergency service provider, and emergency service personnel may not be able to transfer Customer's call or respond to Customer's emergency.

(xii). *Address.* In order for E911 Service to work properly, the E911 Service address in Provider's records MUST correspond to the physical location from which Customer will use the Service. Customer cannot specify a P.O. Box as Customer's physical address. The emergency service dispatcher will only send emergency service personnel to Customer's registered E911 Service address.

Provider does not make, nor does it intend to make, specific representations or warranties based on the statements above, as it cannot foresee every possible combination of events. The fact that Provider may connect 911 phone calls for Customer, or in situations in which E911 services are not available, does, in no way, create a warranty that such call will be connected without delay or error free. Provider may charge Customer additional fees, and/or pass through to Customer any charges, fees, taxes or other amounts assessed on Provider for any E911 call that is connected by Provider if the Service(s) does not include E911.

If Customer is a reseller of the Service(s), then Customer hereby warrants that it shall provide the above notice to its End Users. Customer agrees that it will not resell the Service(s) to its End Users or any third party without first making arrangements to provide 911 and other emergency services in accordance with local, state and Federal laws and regulations. Provider reserves the right to terminate the Service(s) immediately and without notice or liability if it determines that Customer's End Users are using the Service(s) in violation of the foregoing. Customer shall be solely responsible for any liabilities that arise from its provisioning of, or failure to provide 911 or other emergency services to its End Users or third parties. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising from Customer's provision or failure to provide 911 or other emergency services pursuant to this Section.

4. **ORDERING THE SERVICE.**

Customer may select and order the Service(s) offered by Provider by using the electronic registration and ordering process provided for each Service at Provider's website (the "Order Form"). The Order Form requires Customer to provide certain information including, but not limited to, Customer's name, E911 information, billing address, email address, and credit card or banking information. Such information must be accurate, current and complete. Customer agrees to update such information immediately to keep it accurate, current and complete. Customer acknowledges that, if any information provided is untrue, inaccurate, not current, or incomplete, Customer's rights to use the Service(s) may be terminated.

5. **TERM.**

These Terms of Service shall apply upon Customer's submission of a completed Order Form; Provided that if Customer acquires access to, or uses the Service(s) without submitting an Order, then these Terms of Services shall immediately apply upon such access. Provider shall provide Customer a Service(s) Commencement Date when such date is known to Provider. Provider may change such date, without liability, in its sole discretion. Subject to the provision of these Terms of Service, either Party may terminate any of the Services ordered hereunder, without further liability, upon written notice to the other. Customer shall remain responsible and shall pay all charges and fees associated with the Service(s) that accrue up to termination.

6. **EQUIPMENT.**

To provide certain Services, Provider may provide equipment to Customer ("Equipment"). If Provider intends to provide Equipment to Customer, such intent shall be set forth in the Order Form. All Equipment shipments are F.O.B. from Provider's facility or such other facility from which the Equipment is sent to Customer. The Equipment shall be deemed delivered at the moment it is loaded for delivery, at which time the Provider's liability for delivery shall cease, and all risk of loss or damage shall pass to Customer. Provider will provide replacement Equipment only if the Equipment is deemed to be defective and covered under the Manufacturer's warranty. Provider shall not be responsible for lost, stolen or modified equipment.

Except as provided above, Customer shall be solely responsible for obtaining providing and configuring all equipment, software and facilities necessary for Customer and/or its End Users to use the Service(s), and necessary for the Customer's network to operate with the Service(s). All of Customer's and its End Users' equipment used in conjunction with the Service(s) must be SIP compatible. Customer shall be solely responsible for any liabilities that arise from the equipment used and/or provided by Customer and/or its End Users. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising from the forgoing.

7. **CUSTOMER NETWORK FACILITIES.**

Customer shall be solely responsible for any installation, testing or maintenance of its own network facilitates including those facilities between Customer's Point of Presence ("POP") and Customer's End User. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities,

losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising from the forgoing.

**8. END USERS.**

In the event Customer is a reseller of Provider's Service(s), Customer's End Users shall be solely the customers of Customer. Customer shall take full responsibility for the management of and provision of services to its End Users and any liabilities arising there from. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of any acts or omissions of Customer's End Users and Customer's Provision of Service(s) to its End Users.

In addition, Customer is solely responsible for collecting, from its End Users, any payment of any applicable Federal, state, local, or other governmental sales, use, excise, public utility or other taxes, regulatory fees, and charges that are now in force or enacted in the future, or other additional costs imposed that arise from or are a result of the Customer's provision of Service(s) to its End Users. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of Customer's collection or payment of the aforementioned monetary obligations.

**9. DATABASE UPDATES.**

Customer shall provide all information reasonably requested by Provider in order for Provider to provide the Service(s). Customer shall ensure that all information and data that it has given or that it will give to Provider, including but not limited to Customer's billing information, 911 information, mailing address and email address, is, at all times, current and accurate. Provider shall have no responsibility to verify the accuracy of any information provided by Customer, and shall have no liabilities or obligation relative to any amount billed or notices delivered incorrectly as a result of inaccurate information provided by Customer and Customer's failure to correct or update the same.

**10. UNLAWFUL AND PROHIBITED USE.**

Customer agrees to use, and ensure that its End Users use the Service(s) only for lawful purposes and in a lawful manner. Customer and its End Users are expressly prohibited from using the Service(s) in manner that would, in any way, constitute, or encourage conduct that is criminal in nature, that may give rise to a civil liability, or that otherwise violates any applicable laws or regulations. In addition, Customer and its End Users are expressly prohibited from using the Service(s) (a) for any abusive or fraudulent purpose; (b) in a manner that enables Customer or its End User to avoid any obligation to pay for the Service(s); (c) in a manner that is deemed to interfere with, disrupt, or present a risk to the Service(s), or the Network, software, property, or security of Provider, its customers, its Third Party Vendors or other third parties, whether directly or indirectly; (d) in a manner that results in usage inconsistent with Provider's expectations or the purpose for which Provider is providing the Service(s) (including using the Service for predictive dialing, telemarketing, call center services and other high traffic uses); or (e) in a manner that may violate these Terms of Service or the policies of Provider. If Provider determines, in its sole discretion, that Customer or its End Users are using the Service(s) in a manner that violates or is contrary to this Section, then Provider, as well as any affected Third Party Vendors, shall have the right, without liability, to block, suspend or terminate the Service(s), or any part thereof, without notice. Customer shall be responsible for any liabilities or obligations arising from Customer's or its End User's use of the Service(s) that is

contrary to, or violates this Section. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of Customer's or its End Users' violation of this Section. If Provider, in its sole discretion, believes that Customer's or any of its End User's actions or omissions may be considered criminal in nature, Provider may forward personally identifiable information to the appropriate authorities for investigation and prosecution. Customer hereby consents to such forwarding and agrees to notify its End Users of the same.

#### **11. AUDIT AND LAW ENFORCEMENT.**

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

#### **12. PRIVACY.**

The Service(s) utilizes the public Internet and third party networks. Provider and its Third Party Vendors shall not be liable for any lack of privacy which may be experienced by Customer or its End Users with regard to the Service(s). Customer shall be solely responsible for any liabilities arising from Customer's or its End User's lack of privacy. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of Customer's or its End User's lack of privacy.

#### **13. CONTENT.**

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

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

If Customer desires to port a number either to or from Provider's Network, Customer shall execute, and/or deliver to Provider, all documents and information requested by Provider, including, but not limited to, all required Letters of Authorization ("LOA"). Customer acknowledges and agrees that Provider shall have the right to refuse to port any number to its network for any reason or no reason. Customer agrees that Provider, in its sole discretion, may port a number to any Third Party Vendor selected by Provider in order for Provider to provide Customer the Service(s),

and that Provider may be required to be named the Customer of Record for such number. Provider will make reasonable commercial efforts to port all numbers requested, however, Provider has no control over any porting process (either to or from Provider's Network), and as such, Provider makes no guaranties or warranties that a number will be ported on a particular day, or that a submitted port request will actually result in the number being ported. Provider will inform Customer of each port date when such date is known to Provider. Provider reserves the right to change the port date in its sole discretion. Customer acknowledges and agrees that neither Customer, nor any End User has any property right in a telephone number assigned by or transferred to Provider. Customer agrees and understands that if Provider is unable to port numbers away from Provider's Network (e.g. technical improbability, regulatory issues or due to agreements with underlying providers) any such numbers shall remain with Provider. Customer agrees to comply with all applicable rules, regulations and orders, including but not limited to all FCC and stated public utility commission rules regarding number porting. Provider makes no warranty that the Service(s) associated with a number will be uninterrupted or error free during any porting process. Customer acknowledges that any third party provider, as well as Provider, may refuse to release a number for porting in the event the Customer or the End User has an outstanding or delinquent balance, or if such port is contrary to Provider's or such third party providers porting policies. Further, Customer acknowledges that, if any account associated with the number being ported is canceled or suspended prior to the port date, such number may not be eligible for porting. It is Customer's sole responsibility and obligation to cancel its account(s) with the provider from which the number is being ported, and Customer shall be solely responsible for any contractual obligations it has with such provider and any applicable fees and charges, including an early termination fees, that it owes to such provider. The porting of a number is done at the Customer's sole risk. Under no circumstances shall Provider be liable for any damages, including, without limitation, loss of profits, associated with porting or not porting a number. Customer agrees to pay all costs associated with any port. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of any number port requested by Customer.

#### **15. PAYMENT TERMS.**

Customer agrees that if an Order Form, which is submitted by Customer, is accepted by Provider, Customer shall pay all charges and amounts associated with the Service(s). Customer shall be responsible for accurately providing Provider with Customer's valid payment information, including the payment method, and maintaining and updating the same at all times. Customer shall ensure that all amounts billed hereunder are available each time Provider attempts to charge or debit any account designated for such purposes. Provider shall charge Customer a service fee in the amount of \$30 each time Provider attempts to charge or debit such designated account and such charge or debit is rejected due to insufficient funds. Customer hereby waives any and all claims, actions or suits against Provider, and its parent companies, affiliates and subsidiaries, and such entities' employees, officers, directors and shareholders, and releases the same from any errors, omissions, and/or liabilities that may arise due to the processing of aforementioned charge or debit transaction.

Customer shall pay charges in addition to those charges normally associated with the Consumption of the Service(s) in those circumstances in which costs and expenses are generated by Customer and/or its End Users, and reasonably incurred by Provider, including, but not limited to, (a) costs associated with Provider's employees, agents or third parties assisting Customer with problems relative to Customer's network, equipment or service outage if Provider determines that the outage was not a result of Provider's network or facilities; and (b) costs associated with Provider's employees, agents or third parties compliance with criminal, quasi criminal or civil subpoenas, court orders, and/or the like, that relate to Customer, Customer's End Users, or other third parties that access and/or use the Service(s) by and through the Customer.

Customer is responsible for, and must pay, any applicable Federal, state, local, or other governmental sales, use, excise, public utility or other taxes, regulatory fees, and charges that are now in force or enacted in the future, as well as other additional costs that may arise as a result of the Customer's consumption and Provider's provisioning of the Service(s). Similarly, Provider may pass through to Customer taxes and fees owed by Provider to the extent permissible by law. Said amounts, if any, are in addition to set-up fees or charges associated with the consumption of the Service(s). If Customer is exempt from paying any taxes or fees, Customer must provide documentation, satisfactory to Provider, that Customer is exempt. Tax exemption will only apply from and after the date Provider acknowledges Customer's exemption request. Customer agrees to indemnify and hold Provider, the Third Party Vendors, and the parent companies, sister companies, employees, directors, officers and shareholders of the same, harmless from and against any and all claims, liabilities, losses, judgments, damages and expenses, including without limitation attorneys' fees and costs of litigation, incurred or suffered by such party relating to or arising out of any exemption claimed by Customer.

Provider may, as a condition of accepting an Order Form, providing Service(s) to Customer, or continuing to provide Service(s) to Customer, require Customer to make a security deposit, which shall be due upon Provider's written request. Upon termination of Service(s), Provider may apply such deposit to any fees, charges or other amounts unpaid by Customer. Any remaining amount of the deposit will be returned to Customer within a reasonable time after termination.

Provider may immediately suspend, restrict, or terminate the Service(s), without notice or liability, if Provider does not receive payment of all amounts billed to Customer by the required due date, and/or all amounts that must be prepaid in order to continue the provision of Service(s). In addition, Provider may add interest charges to any past-due amounts at a rate equal to the lesser of 2.5% per month or the maximum rate allowed by law, prorated for each day payment is past due. Service suspension or cancellation will result in Customer's loss of the numbers associated with the Service(s). Acceptance of late or partial payments (even if marked "Paid in Full" or with other restrictions) shall not waive any of the rights of Provider to collect the full amount of the charges for the Service(s). Customer agrees to reimburse Provider for reasonable attorneys' fees, and any other costs associated with collecting delinquent or dishonored payments. Provider may assess reinstallation charges against Customer in the event the Provider suspends, restricts, or terminates the Service(s) as a result of Customer's nonpayment or breach of these Terms of Service.

**ADDITIONAL PAYMENT AND BILLING TERMS AND CONDITIONS MAY APPLY UPON REGISTRATION AND MAY BE CONTAINED IN THE ORDER FORM.**

**16. BILLING DISPUTES.**

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

**17. NON-DISCLOSURE.**

Customer acknowledges that it may obtain, from Provider, information relating to Provider's or a Third Party Vendor's Service or method of doing business, which is of a confidential and proprietary nature and which requires that certain steps be taken to ensure its protection (the "Proprietary Information"). Such Proprietary Information may include, without limitation, trade secrets, know-how, inventions, techniques, processes, programs, schematics,



theories of operation, software source documents, data customer lists, financial information, business information, sales and marketing plans and data. Although certain information may be generally known in the relevant industry, the fact that Provider and/or a Third Party Vendor use the same may not be so known, and, in such instance, such information shall be Proprietary Information. Furthermore, the fact that various fragments of information or data may be generally known in the relevant industry does not mean that the manner in which Provider and/or a Third Party Vendor combines them, and the results obtained by such combining, are so known, and, in such instance, such knowledge shall also be Proprietary Information. Customer shall not, without the prior written consent of Provider, disclose the information to any person or entity, except for those affiliates, employees, contractors and consultants who have a need to know such Proprietary Information in order for Customer to access and use the Service(s). The Customer may disclose Proprietary Information pursuant to a judicial or governmental request, requirement or order; Provided that Customer shall take all reasonable steps to give Provider prior notice sufficient to contest such request, requirement or order. Customer shall protect Proprietary Information from disclosure using the same degree of care used to protect its own Proprietary Information, but in no event less than a reasonable degree of care. Because money damages may be insufficient in the event of a breach or threatened breach of the foregoing provisions, the affected party may be entitled to seek an injunction or restraining order in addition to such other rights or remedies as may be available under these Terms of Service, at law or in equity, including but not limited to money damages.

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

These Terms of Service shall not be construed to grant Customer any right to use Provider's, or its parent company's and affiliates', corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "Marks"), or otherwise refer to the same in any marketing, promotional or advertising materials or activities. Without limiting the generality of the foregoing, neither Party shall issue any publication or press release relating to, or otherwise disclose the existence of any contractual relationship between the Parties, without the written consent of the other Party, except as may be required by law.

#### **19. MODIFICATION OF TERMS.**

Provider has the right to and may, at any time, modify the terms and conditions of these Terms of Service, and to change or discontinue any aspect or feature of the Service(s). Notice of any such change shall be sent to Customer either via email, at the email address provided by Customer upon registration, through another electronic method in which Customer must acknowledge acceptance of any updated Terms of Service, or both. Customer hereby consents to receive notifications and changes in electronic format and acknowledges that such format shall not affect the enforceability thereof. Such changes shall be effective immediately upon said notice. In addition to providing the above mentioned notice, Provider shall publish the modified Terms of Service at <http://www.voipstreet.com/voipstreet-termsofservice.html>. Customer agrees to review the Terms of Service periodically to be aware of any and all modifications. Customer's use of the Service(s) after notice of any such changes shall constitute Customer's conclusive acceptance of any and all such changes. In the event Customer no longer desires to receive notices via electronic methods, Customer shall provide written notification of such decision, at which time Provider may terminate Service(s) without liability.

#### **20. WEBSITE USE/WARRANTIES**

By accessing and using any Provider Website, (including, but not limited to the Back Office) the Customer acknowledges that it has read the terms of use located at <http://www.voipstreet.com/voipstreet-termsofuse.html> ("Terms of Use"), and, in addition to the terms and conditions contained herein, Customer agrees to all the terms and conditions therein, and consents to be bound and become a party thereto. Should the Customer not agree to, or cannot comply with any of the terms and conditions of the Terms of Use, it shall immediately cease any use of the Provider Website as well as the Service(s) or terminate the registration process.

21. **GENERAL WARRANTIES.**

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

22. **LIMITATION OF LIABILITY.**

EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVIDER SHALL NOT BE LIABLE FOR ANY DAMAGE, LOSS OR LIABILITY OF ANY NATURE INCURRED BY CUSTOMER, ITS END USERS, AND/OR ANY THIRD PARTY RESULTING FROM ANY ACCESS TO OR USE OF THE SERVICE(S), ANY PRODUCTS OR EQUIPMENT PROVIDED BY PROVIDER, AND THE INTERNET GENERALLY; ACCESS TO THE NETWORK; ANY INTERRUPTION OF SERVICE(S); ANY LOST DATA, LOST TIME OR OTHER SYSTEM RELATED DAMAGES; AND/OR DAMAGE TO OR LOSS OF PROPERTY OR EQUIPMENT. IN NO EVENT SHALL PROVIDER BE RESPONSIBLE FOR ANY LIABILITIES ARISING OUT OF: (A) THE SERVICE(S), FACILITIES OR EQUIPMENT PROVIDED BY CUSTOMER, ITS END USERS OR BY A THIRD PARTY (INCLUDING ANY THIRD PARTY VENDOR); (B) ANY ACT OR OMISSION OF ANY THIRD PARTY (INCLUDING ANY THIRD PARTY VENDOR), THE CUSTOMER AND/OR CUSTOMER'S END USERS.

IN ADDITION, AND NOT TO LIMIT THE FOREGOING, PROVIDER SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, TO THE CUSTOMER OR ANY THIRD PARTY, INCLUDING CUSTOMER'S END USERS, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUES OR COST OF PURCHASING REPLACEMENT SERVICES) ARISING OUT OF OR RELATING TO THESE TERMS OF SERVICE, THE SERVICE(S) OR ANY PRODUCT PROVIDED HEREUNDER. FURTHERMORE, IN NO CIRCUMSTANCES WILL THE AGGREGATE LIABILITY OF PROVIDER ARISING WITH RESPECT TO THESE TERMS OF SERVICE, THE SERVICE(S) OR ANY PRODUCT

PROVIDED HEREUNDER EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE CLAIM.

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

IN THE EVENT A JURISDICTION DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF WARRANTIES OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SUCH LIABILITIES AND WARRANTIES SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

23. **INDEMNIFICATION.**

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

24. **DISPUTE RESOLUTION.**

These Terms of Service, and all other aspects of the use of the Service(s), products and the Website, shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to choice of law rules. The above governing law provision applies regardless of the location of the Customer or where Customer or its End Users use or pay for Service(s). Venue for any action brought hereunder shall be in the state or Federal courts located in Pittsburgh, Pennsylvania, and Customer hereby waives any rights to the contrary. In any proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights under these Terms of Service, the prevailing party may be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and enforce the final judgment.

25. **MISCELLANEOUS.**

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

(b) Force Majeure. Except for the Customer's payment of charges for any product(s) or Service(s) which have accrued, neither Party to these Terms of Service assumes a risk of any event, foreseeable or unforeseeable, and beyond its reasonable control that has a material effect upon the agreed exchange contemplated herein, including, but not limited to, acts of God or public enemy; riots or insurrections; war; accidents; fire; strikes and other labor difficulties (whether or not the party is in a position to concede to such demands); embargoes; judicial action; lack of

or inability to obtain export permits or approvals, necessary labor, materials, energy, components, or machinery; and acts of civil or military authorities.

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

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

(e) Severability. If any terms herein are illegal or unenforceable at law or in equity, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect, except to the minimum extent necessary to bring such term within the provisions of applicable law and such term, as so modified, and the balance of these Terms of Service shall then be fully enforceable.

(f) Third Parties. Notwithstanding anything to the contrary contained herein, no third party shall be considered a party to or beneficiary of these Terms of Service or have any claim under these Terms of Service against either Customer or Provider, and the Customers, sister companies, parent companies, vendors, independent contractors and service providers of the same.

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

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

(j) Notices. Customer Agrees that all notices shall be considered written and properly given if sent to Customer via the email address provided by Customer at the time of registration and as necessarily updated, through another method in which Customer acknowledges receipt thereof, or both. Customer hereby consents to receive notifications in electronic format and acknowledges that such format shall not affect the enforceability thereof. In the event Customer wishes to not receive notices electronically, Customer shall inform Provider of such desire and Provider may, at its sole discretion, terminate the Service(s) without further liability.