

## End-User Terms and Conditions

### TERMS AND CONDITIONS OF SERVICE FOR END-USERS

This agreement ("Agreement") is between VoIP Provider ("Provider") and the End-User ("End-User") of the VoIP service. Any Provider services or products ("Services") made available to End-User shall be governed by the terms and conditions herein. By activating the Services, End-User acknowledges receiving, reading and understanding this Agreement and accepts the terms and conditions herein. End-User acknowledges that they are of legal age to enter into this Agreement.

#### 1. TERMS AND CONDITIONS.

The terms and conditions stated herein are in lieu of and replace any and all terms and conditions set forth in any documents issued by End-User, including, without limitation, purchase orders and specifications. Any additional, different, or conflicting terms and conditions on any such document issued by End-User at any time are hereby objected to by Provider, and any such documents shall be wholly inapplicable to any sale made or service rendered hereunder and shall not be binding in any way on Provider. No waiver or amendment to this contract or these terms and conditions shall be binding on Provider, unless made in writing expressly stating that it is such a waiver or amendment and signed by a duly authorized representative of Provider.

#### 2. TERM.

The term of this Agreement ("Term") begins on the date that End-User purchases Services and continues monthly for the duration of the service period. At the end of the current Term, the Term is automatically renewed unless End-User provides Provider, prior to the end of the current Term, notification of intention to terminate the service. End-User agrees to pay for Services for the duration of the Term. Expiration of the Term does not alleviate End-User of responsibility for paying all unpaid, accrued charges due hereunder.

#### 3. 911 EMERGENCY DIALING.

**a. 911 Dialing.** CommPartners 911 Dialing will be implemented and operational with the Service. Service may not be used in any geographical area different from that reported to CommPartners as the Customer's installation site. With E911 service, when you dial 911, your telephone number and registered address is simultaneously sent to the local emergency center assigned to your location, and emergency operators have access to the information they need to send help and call you back if necessary. By using this Service, you authorize us to disclose your name and address to third-parties involved with providing 911 Dialing to you, including, without limitation, call routers, call centers and local emergency centers.

**b. Registration of Physical Location Required.** For each phone number that you use for the Service, you must register with CommPartners the physical location where you will be using the Service with that phone number. When you move the Device to another location, you must register your new location. If you do not register your new location, any call you make using the 911 Dialing feature may be sent to an emergency center near your old address.

**c. Confirmation of Activation Required.** Your 911 Dialing feature will not be activated for any phone line that you are using with the Service, unless and until you receive an email from us confirming that the 911 Dialing feature has been activated for that phone line.

**d. Outages due to Electrical, Internet or other General Failures.** End-User acknowledges that the Services will not function in the absence of electrical power, access to the Internet or other general failures associated with the VOIP network. End-User acknowledges that the Services will not function if there is an interruption of End-User's broadband or high-speed Internet access service.

**e. Non-Voice Systems.** End-User acknowledges that the Services are not set up to function with out-dialing systems including home security systems, medical monitoring equipment, satellite television systems and some facsimile systems. By consenting to these terms and conditions, End-User waives any claim against Provider for interruption or disruption of such systems by the Services.

#### 4. EQUIPMENT.

In offering the Services, Provider may supply Equipment to End-User. All Equipment shipments are F.O.B. Provider's facility. Provider's liability for delivery shall cease, and title (if applicable) and all risk of loss or damage shall pass to End-User upon delivery to carrier. End-User will be provided with manufacturer's

warranty from the date of purchase of Equipment. End-User shall be required to obtain authorization from Provider to return any Equipment. Provider will replace Equipment only if the Equipment is deemed to be defective and covered under the warranty. Provider will not cover replacement for lost, stolen, mistreated or modified equipment. Equipment returned by End-User that is not covered under warranty may be refused by Provider, and End-User will be responsible to pay return shipping charges.

## **5. BILLING, CHARGES AND PAYMENT.**

**a. PAYMENT.** Upon purchase of the Service, End-User must provide a valid credit card number from an accepted issuer (American Express, MasterCard or Visa). End-User authorizes Provider to charge the End-User credit card number for all charges arising from End-User's use of the Services. End-User agrees to notify Provider of any change to the credit card information including, but not limited to, changes in account number, expiration date or billing address. Provider shall not be responsible for any charges made by the credit card issuer to End-User's credit card account for exceeding credit limit, insufficient funds or other reasons.

**b. CREDIT TERMS.** All Services provided to End-User and covered by the Agreement shall at all times be subjected to credit approval or review by Provider. End-User will provide such credit information or assurance as is requested by Provider at any time. Provider, in its sole discretion and judgment, may discontinue credit at any time without notice.

**c. BILLING.** Provider will send or make available to End-User a monthly on-line invoice for the Services and bill all charges invoiced to End-User's account to the End-User credit card. Such charges shall include activation fees, monthly service fees, shipping charges, disconnection fees, equipment charges, toll charges, taxes and any other applicable charges. Monthly service fees are paid in advance of each month's service; toll charges and any other applicable charges are billed at the end of each month's service. Provider reserves the right to charge the End-User credit card for toll charges at any time if End-User's cumulative toll charges for the current month exceed two hundred fifty dollars (\$250.00). Billing for monthly service fees commences upon purchase of the Services, and the first month's monthly service fee shall be prorated to take into account any partial month that may occur as the result of the date monthly service fees are initiated. Thereafter, billing for monthly phone services will occur in advance of the month the Services are provided, whereas billing for any toll or long-distance charges will occur in arrears.

**d. LATE/NON-PAYMENT.** If any charges for the Services are due but unpaid for any reason including, but not limited to, non-payment or declined End-User credit card charges, Provider may suspend or terminate the Services and all accrued charges shall be immediately due. Provider may charge End-User interest (at 1.5% per month or the maximum allowable rate, whichever is less) on those charges and a late fee (to the extent allowable by law) of 10% of the past-due balance. If End -User fails to pay Provider within 30 days of billing date, Provider has the right to disconnect the Services without notice and/or send to collection. Upon disconnect, End-User agrees to immediately pay all amounts owed to Provider. Provider reserves the right to charge End-User a \$50.00 re-establishment of service fee. Upon disconnect a valid credit or debit card will be required to reinstate service. If payment is not made in full within 60 days, Provider has the right to repossess the End-User Equipment to offset monies owed without liability for damage or trespass.

**e. TAXES.** Prices for the Services do not include any applicable customs duties, sales, use, value added, excise, federal, state, local, public utility or other similar taxes. All such taxes shall be paid by End-User and will be added to any amounts otherwise charged to End-User unless End-User provides Provider with an appropriate exemption certificate. If any amounts paid for the Services are refunded by Provider, applicable taxes may not be refundable. At the present time, under the terms of Provider's VoIP phone service, federal excise taxes are applicable, as are sales taxes on the Equipment purchased by End-User.

**f. CREDITS.** End-User acknowledges and agrees that the Services are provided "as is, where is." Credit allowances are under the sole discretion of Provider.

**g. DISCOUNTS.** From time to time in its sole discretion, Provider may offer promotions or discounts on activation or other fees. Any promotion or discount codes must be entered by End-User upon purchase of the Services. End-User shall not be entitled to a subsequent credit for such promotions or discounts, if not requested at the time of account creation or change of service.

**h. BILLING DISPUTES.** End-User must dispute any charges for the Services within thirty (30) days of receipt of the monthly on-line invoice or End-User waives any objection.

## **6. TOLLS.**

If applicable, every call to or from Equipment using the Services that originates or terminates in the Public Switched Telephone Network ("PSTN") is subject to the then-applicable toll charges that are associated with the respective Plan ordered by End-User. Every call to or from Equipment using the Services that originates or terminates with a SIP service provider that is not affiliated or associated with Provider will also count as PSTN minutes and be subject to the then-applicable toll charges that are associated with the respective Plan ordered by End-User. As applicable, domestic long distance calls are billed in six (6) second increments. As applicable, calls to a phone number outside the United States and Canada to a non-Provider account will be charged at the current rates published on the Provider related website. The duration of each call from the US to international destination is to be calculated in six (6) second increments after a thirty (30) second minimum. As applicable, calls to Mexico are rounded to the minute.

## **7. TELEPHONE NUMBER.**

Telephone numbers provided by Provider ("Number") to the End-User shall be leased and not sold. End-User is not to use the Number with any other device other than the Equipment without the express written permission of Provider. Provider reserves the right to change, cancel or move the Number at its sole discretion. If, however, the End-User chooses to 'port' their existing phone number into the Provider VoIP service, the End-User shall also be able to 'port' the number out of the Provider network upon termination of service if the End-User has maintained an account in good standing with Provider.

## **8. LOST, STOLEN, ALTERED OR BROKEN**

**End-User** shall not modify the Equipment in any way without the express written permission of Provider. End-User shall not use the Equipment except with the Services provided hereunder. Except as otherwise provided for hereunder, End-User is responsible for all lost, stolen or broken Equipment and may be required to purchase a replacement to continue service. Replacement charges will be based on the fair retail price of equipment, plus applicable shipping costs and taxes. End-User shall immediately notify Partner of any lost or stolen Equipment and shall cooperate with Provider in all reasonable aspects to eliminate actual or potential unauthorized use of the Equipment. At Provider's sole option, failure to report lost or stolen equipment in a timely manner will cause End-User to be responsible for all service fees accrued until the time that Provider is informed of the loss or theft and can effect a termination of the Services.

## **9. PROHIBITED USES.**

Any use of the Services or any other action that causes a disruption in the network integrity of Provider or its vendors, whether directly or indirectly, is strictly prohibited and could result in termination of the Services. End-User understands that neither Provider nor its vendors are responsible for the content of the transmissions that may pass through the Internet and/or the Services. End-User agrees that it will NOT use the Services in ways that violate laws, infringe the rights of others, or interfere with the users, services, or equipment of the network. End-User agrees and represents that it is purchasing the Services and/or the Equipment for its own internal use only, and shall not resell, transfer or make a charge for the Services or the Equipment without the advance express written permission of Provider. Use of service shall not include certain activities including, but not limited to, any autodialing, continuous or extensive call forwarding, continuous connectivity, fax broadcast, fax blasting, telemarketing or any other activity that would be inconsistent with residential or small business usage, unless specifically agreed to otherwise in writing by Provider and End-User.

## **10. UNLIMITED MINUTE USAGE PLANS; CHANGES TO THE AGREEMENT, SERVICES OR PLAN.**

Provider reserves the right to review usage of unlimited minute usage plans to ensure that there is no End-User abuse of such plans. End-User agrees to use unlimited minute plans for normal voice calls and will not employ methods or devices to take advantage of unlimited plans by using service excessively or for means not intended by Provider. Provider may terminate service immediately if, in its sole discretion, End-User is abusively using the unlimited minute plan.

Provider reserves the right to make changes to the terms and conditions of this Agreement, the Services and/or the Plan ("Change of Service"). In the event of a Change of Service, Provider will post to the website currently located at <http://voice.Partner.com/Terms>. Notice will be considered received by End-Users and such changes will become binding to End-Users, on the date the changes are posted to the

website ("Change Date"), and no additional notice will be required. Provider will post all changes thirty (30) days in advance of the effective date of change, with the exception of international calling rates, which require only 24 hours notice. If End-User does not send Provider notification of its desire to terminate this agreement or uses the Service after the Change Date, End-User is deemed to have accepted and consented to the change of terms and conditions of the Service. If End-User does not consent to the change of service and terminates this agreement, End-User will be responsible for any sums due hereunder in addition to any applicable Disconnection Fee. End-User may request a Plan change at anytime, subject to any applicable change of service fee and additional terms and conditions. For a Plan change to a plan that requires a purchase of the Equipment, an equipment charge may apply. Provider may decrease prices for the Services or Plans without providing any prior notice to End-User.

#### **11. TERMINATION.**

End-User agrees to provide Provider with thirty (30) days notice of termination. End-User shall be responsible for the full monthly service fee for the month during which the notice of termination of service is provided to Provider. Provider reserves the right, at its sole discretion, to suspend, terminate or change the Services without advanced notice for any reason, including without limitation, misuse of the Services in any way, End-User's breach of this Agreement, End-User's failure to pay any sum due hereunder, suspected fraud or other activity by End-User that adversely affects the Services, Provider, Provider's network or other End-Users' use of the Services. Provider reserves the right to determine, at its sole discretion, what constitutes misuse of the Services and End-User agrees that Provider's determination is final and binding on End-User. Provider may require an activation fee to change or resume a terminated or suspended account.

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

Provider utilizes the public Internet and third party networks to provide voice and video communication services. Accordingly, Provider cannot guarantee the security of voice and video communications of End-User. Provider is committed to respecting End-User's privacy. Once End-User chooses to provide personally identifiable information, it will only be used in the context of the End-User's relationship with Provider. Provider will not sell, rent, or lease End-Users' personally identifiable information to others. Unless required by law or subpoena or if End-User's prior permission is obtained, Provider will only share the personal data of End-User with business partners that are acting on Provider's behalf to complete the activities described herein. Such Provider entities and/or national or international business partners are governed by Provider's privacy policies with respect to the use of this data. Upon the appropriate request of a government agency, law enforcement agency, court or as otherwise required by law, Provider may disclose personally identifiable information.

#### **13. TECHNICAL SUPPORT.**

Provider will make available technical support to End-Users via telephone and e-mail for the Services and the Equipment provided. Support for other applications and uses is not provided or implied unless agreed to in writing by Provider and End-User.

#### **14. BREACH.**

In the event of End-User's breach of the terms of the Agreement, including without limitation, failure to pay any sum due hereunder, End-User shall reimburse Provider for all attorney, court, collection and other costs incurred by Provider in the enforcement of Provider's rights hereunder and Provider may keep any deposits or other payments made by End-User

#### **15. INDEMNIFICATION.**

End-User agrees to defend, indemnify and hold Provider, its affiliates and its vendors harmless from any claims or damages relating to this Agreement.

#### **16. DISCLAIMER OF CONSEQUENTIAL DAMAGES.**

In no event shall Provider or its vendors be liable for any special, incidental, indirect, punitive or consequential damages or for any damages, including but not limited to loss of data, loss of revenue or profits, or arising out of or in connection with the use or inability to use services or products provided

hereunder whether due to a breach of contract, breach of warranty, the negligence of Provider or its vendors or otherwise.

#### **17. WARRANTY AND LIABILITY LIMITATIONS.**

Provider makes no warranties, express or implied, including, but not limited to, and implied warranties of merchantability or fitness for a particular purpose. Neither Provider nor its vendors will be liable for unauthorized access to Provider's or End-User's transmission facilities or premise equipment or for unauthorized access to or alteration, theft or destruction of End-User's data files, programs, procedures or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of Provider's or its vendors' negligence. Any claim against Provider must be made within 90 days of the event of the claim and Provider has no liability thereafter. Provider's liability is limited to repair, replacement, credit or refund. Provider may elect to provide a refund in lieu of credit, replacement or repair. All warranties cover only defects arising under normal use and do not include malfunctions or failures resulting from misuse, abuse, neglect, alteration, modification, improper installation, or repairs by anyone other than Provider. In no event shall Provider's total liability hereunder exceed the amounts paid by the End-User to Provider in the prior twelve (12) months from the date of claim.

#### **18. EXPORT COMPLIANCE.**

End-User agrees to comply with U. S. Export laws concerning the transmission of technical data and other regulated materials via the Services. End-User agrees to comply with applicable local, state and federal regulations governing the locality in which the Equipment and Services are used.

#### **19. PHONE NUMBERS AND WEB PORTAL DISCONTINUANCE.**

Upon expiration, cancellation or termination of the Services, End-User shall relinquish and discontinue use of any Numbers, voice mail access numbers and/or web portals assigned to End-User by Provider or its vendors.

#### **20. SOFTWARE COPYRIGHT.**

Any software used by Provider in connection with the Services and any software provided to End-User in conjunction with providing the Services are protected by copyright law and international treaty provisions. End-User may not copy the software or any portion of it.

#### **21. SURVIVAL.**

The provisions of sections 4, 5, 7, 14, 15, 16, 17 and 19 shall survive any termination of the Agreement.

#### **22. NOTICES.**

Provider communicates with its End-Users primarily via email. Notices to End-User shall be sent to the email address specified by End-User at the time of registration for the Services or as subsequently specified by End-User ("Email Address"). End-User is responsible for notifying Provider of any Email Address changes. End-User agrees that sending a message to the Email Address is the agreed upon means of providing notification. Email is used to communicate important information about the Services, billing, changes to the Services and other information. The information is time-sensitive in nature. It is required that End-User read any email sent to the Email Address in a timely manner in order to avoid any potential interruption in the Services provided hereunder.

#### **23. FORCE MAJEURE (EVENTS BEYOND OUR CONTROL).**

Provider shall not be liable for any delay in performance directly or indirectly caused by or resulting from acts of God, fire, flood, accident, riot, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late delivery by suppliers or other difficulties of Provider that may occur in spite of Provider's best efforts.

#### **24. GOVERNING LAW / RESOLUTION OF DISPUTES.**

##### **a. Mandatory Arbitration.**

Any dispute or claim between End-User and Provider arising out of or relating to the Service or Equipment

provided in connection with this Agreement shall be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules . The arbitrator's decision shall follow the plain meaning of the relevant documents, and shall be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and Customer will not bring, or join any class action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. Customer acknowledges that this arbitration provision constitutes a waiver of any right to a jury trial.

**b. Governing Law.**

The Agreement and the relationship between you and Provider shall be governed by the laws of the State of Nevada without regard to its conflict of law provisions. End-User and Provider agree to submit to the exclusive jurisdiction of the courts located within the state of Nevada for purposes of entering any arbitration award hereunder or for any other litigation hereunder. The failure of Provider to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. End-User agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**25. ENTIRE AGREEMENT.**

The terms and conditions of this Agreement constitute the entire agreement with regard to this sale and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to the Services. This agreement shall be binding upon the heirs, successors, and assigns of Provider and End-User.

**26. INTERPRETATION OF AGREEMENT.**

No provision of this Agreement will be interpreted in favor of End-User or against Provider by reason of the fact that Provider has drafted this Agreement.