



**PRODUCT SUPPLEMENT - VOICE**  
to the  
**Master Service Agreement**

This Product Supplement – Voice (this "Supplement") is incorporated by reference into and made a part of that certain Master Service Agreement (including all attachments and incorporated documents, the "Agreement") entered into between the Seller and the Buyer, as expressly provided therein and shall be effective as of the Effective Date defined in the Service Order form. This Supplement provides additional terms and conditions governing the Voice Services.

**I. SERVICE DESCRIPTIONS**

Services. Seller offers the following Services subject to the terms of the Product Supplement and the Agreement:

- (a) "SIP Trunk" - shall mean a configuration where Buyer utilizes Session Initiation Protocol ("SIP") Signaling to transmit and receive a single Real Time Protocol ("RTP") voice traffic which will originate and/or terminate from the Buyers owned or leased IP enabled PBX to/from the PSTN.
- (b) "Voice PRI Trunk" – shall mean a set of configurations, with limited call features where Buyer obtains a connection providing up to 23 B channels and I D channel to its legacy owned or leased PBX for Buyer to originate and terminate voice traffic to and/or from the PSTN. Buyer can purchase a Full or Fractional PRI.
- (c) "SIP Business Line" - shall mean a configuration, which includes defined call features, where Buyer utilizes Session Initiation Protocol ("SIP") Signaling to transmit and receive Real Time Protocol ("RTP") voice traffic which will originate and/or terminate from the Buyers owned equipment to the PSTN to/from the PSTN.
- (d) "Hosted PBX Product" is a voice service offering consisting of a bundle of Seller-provided hardware, software and network which is sold on a per seat basis.

Services include:

- the evaluation, design, provisioning, maintenance and management of Service based on a configuration proposed to, and accepted by Buyer as set forth in the installation packet
  - the provisioning of Hosted PBX platform and telephone handset(s) at Buyer-specified service location(s), based on the Buyer's network design requirements documented in the installation packet. Note: Pursuant to compliance with Section 9.10 below, Buyer may provide and utilize some of its own equipment
  - PSTN access for local, and long distance voice services
  - Call Features defined in Seller's documentation
  - Service and Support (as defined in Section 10 below) of hardware and software provided by Seller and located on Buyer's Premises
- (g) Features. The above products may include features, as listed in the Seller's documentation, as determined by Seller which may be either included in Buyer's Service or priced as further set forth in the relevant Service Order or separate price list. Feature availability is subject to change from time to time, and Buyer should consult the Seller's documentation for an up to date listing. Service packages are also subject to change. Certain features, such as Directory Assistance and Operator Services, will incur additional charges based on use. Seller can provide current price lists upon request.
- (h) Definitions: Capitalized terms or phrases not defined in this Supplement shall have the definitions ascribed thereto in the Agreement. In addition to terms or phrases defined elsewhere in the Agreement or this Supplement, the following terms or phrases, where capitalized, shall be defined as follows:

"OSI" shall mean Digital Signal 1.

"Directory Assistance" shall mean the service providing identification of telephone directory numbers via an operator or automated platform.

"Directory Listing" shall mean a listing of all of Buyer's numbers and the inclusion of Buyer's main billing number in the public directory in either electronic or paper format.

"FXS" shall mean Foreign eXchange Subscriber interface is the port that actually delivers the analog line to the subscriber that delivers dial tone, battery current and ring voltage.

"Operator Services" means access to operator assistance including fully automated call handling and live operator assistance, by dialing "O."

"PBX" shall mean Private Branch exchange.

"POTS" shall mean Plain Old Telephone Service.

"PRI" shall mean Primary Rate Interface

"PSTN" shall mean the public switched telephone network.

"Rate Center" shall mean a specific geographic area (as determined by the applicable ILEC or state regulatory commission) within a LCA or Market that is associated with one or more specific NPA/NXX codes.

1.2 Rates. The rates and charges for the Services shall be those set forth in the Service Order or additional provided rate schedule provided in conjunction with the Service Order (the "Rate Schedule"). All rates and charges set forth in any preliminary quote are subject to final approval and acceptance by Seller. The rates and charges in the Service Order or Rate Schedule apply only to the Services provided at the service address listed on the Service Order. Each additional Buyer location added after the Effective Date of the Service Order shall require its own specified rates. For any Seller service used by Buyer for which a rate is not specified in the Agreement, Seller's standard business rate shall apply. All rates and charges are subject to change at any time. Buyer shall remain liable for charges that are billed to it after the Service termination date based on billing delays.

## **2. PROVISIONING INTERVALS FOR FACILITIES.**

2.1 Provisioning Intervals. Seller shall use reasonable commercial efforts to provision the Service by the Scheduled Service Date set forth on the Firm Order Confirmation.

2.2 Remedies. If the Commencement Date does not occur prior to the Scheduled Service Date with regard to Services and such delay in the Commencement Date is not due to a Force Majeure Event or an act or omission of Buyer, Buyer's Users or their respective representatives, then the following remedies shall apply:

(a) Delay of Recurring Charge. Buyer shall not be obligated to pay the Recurring Charges until such time as the Service commences.

(b) Termination of Service. If the Commencement Date does not occur on or before sixty (60) days following the applicable Scheduled Service Date, then Buyer shall have the right to terminate the applicable Service by providing written notice to Seller to the extent that such notice is provided prior to the Commencement Date. In such event, unless otherwise provided in the Service Order, Buyer shall not be obligated to pay, and shall receive reimbursement for any amounts previously paid with regard to, any Recurring Charges or Non-Recurring Charges associated with such Service.

(c) **SOLE AND EXCLUSIVE REMEDIES. THE PARTIES ACKNOWLEDGE THAT THE REMEDIES IN THIS SECTION 2 SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR THE FAILURE OF THE COMMENCEMENT DATE TO OCCUR PRIOR TO THE SCHEDULED SERVICE DATE OR ANY OTHER DELAY IN PROVIDING THE SERVICE.**

### **3. TESTING PROCEDURES FOR FACILITIES.**

3.1 Testing Standards. Seller will use reasonable commercial efforts to test the Service consistent with industry standards and durations prior to the Commencement Date.

### **4. LIABILITY FOR USE.**

4.1 Buyer's Responsibility for Fraudulent Calls. Buyer shall immediately notify Seller if it is aware of or suspects any fraudulent calling or calling patterns, pretexting, or other unlawful, improper or fraudulent activities. Buyer shall work with Seller to cause any fraudulent calling, or other activities describe herein, to be blocked. Buyer shall cooperate with Seller in its efforts to prevent fraudulent or illegal use of the Services. Buyer shall be responsible for all costs, expenses, claims or actions arising from all calls relating to Buyer's or its end users use of the Services including those calls the purpose or effect of which is theft or unauthorized usage of communications services or misleading or fraudulent communications of any nature (including, without limitation, communications intended to effect theft through unauthorized use of calling cards) and all unauthorized or fraudulent communications on pay-per-call numbers, information service calls, directory assistance calls or the life for which Seller is billed and that are passed through to the Buyer . Seller may take protective action against Buyer or a third party in order to protect Buyer and/or Seller or its network from and against any harm that may arise out of the illegal, fraudulent or otherwise suspicious conduct (including blocking access to particular calling numbers or geographic areas). Such protective action may include, without limitation, the temporary blocking of Buyer's traffic until the applicable risk of harm is mitigated to Seller's reasonable satisfaction. Buyer releases and holds harmless Seller from and against any claims, costs or loss arising out of Seller's good faith exercise of its reasonable business judgment to take a protective action.

4.2 Buyer party shall comply with all applicable laws, regulations, court decisions or administrative rulings regarding the provision or use of the Services. Without limiting the foregoing, Buyer will ensure that all who use the Services provided to Buyer for the purpose of making telephone solicitations must comply with the national do-not-call requirements, including the rules as set forth in 47 C.F.R. Section 64.1200 and 16 C.F.R. Part 310. Failure to do so shall constitute a material breach of the Agreement and Seller shall be entitled to immediately suspend Service in such event.

4.3 Limitations on Service. This Supplement shall apply only to Services provided directly to Buyer for use by Buyer. Without the written consent of Seller, Buyer may not purchase Services under the Agreement and this Supplement for resale to third parties. Seller's Voice Service Products are designed using various IP technologies specifically for quality Voice Service. Traditional analog services such as facsimile and alarms lines were designed to be provided over PSTN and are supported via Seller's Facilities but are not guaranteed for any Service Level Specification nor eligible for any Service Outage Credits. Buyer should use a Service other than Seller's Voice Service Product, such as a traditional POTS line from the local ILEC, for mission critical transmissions.

### **5. ADDITIONAL SERVICE TERMS**

5.1 Adequate Trunking. As a condition of receiving the telecommunication services contemplated hereunder, Buyer shall at all times order adequate trunking for Buyer's call volume. In the event Buyer's call trunking is inadequate to accommodate the call volume it is receiving at any given time, then Seller may, at its sole option, restrict or block calls to the applicable circuits.

5.2 Tariff Considerations. Depending on the Buyer's choice of products and services, Buyer may receive from Seller and its affiliates regulated local, interstate, intrastate, and local toll telecommunications services provided pursuant to Seller's or its affiliates' tariffs and price lists and the terms and conditions contained therein (collectively the "Tariffs"). If the Buyer's choice of products and services includes de-tariffed services, this Agreement shall govern such services. If Buyer's choice of products includes unregulated services, this Agreement is subject to and incorporates by reference the general rules and regulations of the local Tariffs of the state in which the services are provided. To the extent this contract differs from any terms and conditions in Seller's tariffs, the Tariffs control. Seller may modify its Tariffs from time to time in accordance with law. These modifications may affect service(s) furnished to Buyer.

5.3 900 Access. At Buyer's request, Seller will permit Buyer to access 900 (and similar) service numbers provided by third-party vendors by removing the "blocking" that Seller typically applies to those services. If such a request is made by Buyer, Buyer shall be liable for all charges associated with 900 number services dialed from the Buyer premises, regardless of whether such use (1) is authorized by Buyer management; (2) is initiated by Buyer employees or third parties; or (3) constitutes or involves fraudulent activity of any nature. Buyer agrees that Seller assumes no liability of any kind with respect to its providing access to 900 services, the use of 900 services, or the

content or use of the information provided via 900 services, via connections from Buyer premises and locations where Buyer uses Seller service. Buyer shall indemnify, defend and hold Seller harmless against any and all claims made by the third party vendor of 900 services or information services providers that subscribe to services provided by such third party providers of information services. Buyer acknowledges that, pursuant to government regulation, failure to make proper payment to third party vendors of 900 services could result in suspension or interruption of long distance and/or local services provided by Seller. Seller assumes no liability of any kind with respect to such potential suspensions or interruptions. Should Buyer request any third-party services, Buyer agrees that Seller may release its name and billing information directly to that third party so that it can bill Buyer directly for those services.

5.4 International Calling. By default, Seller will block access to international locations and numbers. At Buyer's request, Seller will permit Buyer access to international calling capabilities by removing the "blocking" that Seller typically applies to that service. If such a request is made by Buyer, Buyer shall be liable for all charges associated with all international calling charges dialed from the Buyer premises, calling card(s) and/or access numbers, regardless of whether such use (1) is authorized by Buyer management; (2) is initiated by Buyer employees or third parties; or (3) constitutes or involves fraudulent activity of any nature. Buyer agrees that Seller assumes no liability of any kind with respect to its providing access to international calling or the use of international calling services via connections from Buyer premises and locations where Buyer uses Seller's service. Buyer shall indemnify, defend and hold Seller's harmless against any and all claims made by any third party related to the use of international calling services. Buyer acknowledges that, pursuant to government regulation, failure to make proper payment to third parties could result in suspension or interruption of long distance and/or local services provided by Seller. Seller assumes no liability of any kind with respect to such potential service suspensions or interruptions.

5.5 Seller's Equipment. The equipment provided by Seller (Modem/Router/EMT A, etc...) provided by Seller and located at the Buyer premise is the property of Seller and must be returned to Seller by Buyer within thirty (30) days of termination of the Service that utilizes Seller's Equipment. If the equipment is not returned within this timeframe, Buyer agrees to reimburse Seller for the full purchase price of the equipment as well as any attorney's fees and costs incurred by Seller related to Seller's retrieval of the equipment. Seller's equipment will be located based on the demarcation point of the Service. If a third party service is involved in providing the Service, Seller may need to move the demarcation point based on the location of third party facilities.

5.6 Installation Delays. Buyer acknowledges and agrees that if Buyer causes an installation delay of any of its services past the Buyer's Scheduled Service Date, Buyer will pay all applicable monthly recurring charges for all Buyer's services as if all services were installed and commenced on such Scheduled Service Date. Additionally, in the event installation delays occur for any reason, Seller shall not be responsible for charges imposed on Buyer by Buyer's previous service provider(s) and/or the difference between such charges and the charges that Seller would have imposed pursuant to this Agreement.

5.7 Location. Buyer acknowledges that Seller does not provide services beyond specific service boundaries. Buyer's service is specific to the location to which Seller agreed to provide service in the relevant service order. Any agreement to move the location of service must be agreed to by Seller in its sole discretion. Buyer's movement from the premises or desire to move service shall not be grounds for Buyer to terminate service. Any loss of rights to the premises or access thereto for the service will be a breach by Buyer of this Agreement.

5.8 LOA. Buyer agrees to execute letter of authorization forms related to the service as reasonable requested by Seller. If Buyer adds lines during the course of this Agreement, Buyer's original Letter of Authorization provides Seller with authorization to add such lines and such authorization will be deemed to comport with federal and state unauthorized carrier change regulations, laws, administrative Orders and other legal guidelines.

5.9 Porting. Prior to termination of the Service, Buyer may be required to transport ("port") its then current telephone number to a new provider. If Buyer requests or authorizes a third party to request on its behalf the porting of one or more of its numbers from Seller to a new provider, Seller will treat that request as notice from Buyer to immediately terminate the Service for those specified numbers upon successful port of such numbers. After any number has been ported, Buyer will not be able to use Seller's services for that number. Buyer will remain liable to pay all Service charges for such numbers through the service end date or, if later, when the number has been successfully ported. Early Termination Charges apply upon any termination of the Service or porting to another carrier before the end date of the Service Term.

## 6. NETWORK USE

6.1 Network Management. The parties will work cooperatively with each other to install and maintain effective and reliable interconnected facilities. Consistent with applicable law and industry practices, Seller may use protective network traffic management controls to protect its network from congestion, failure, or unanticipated traffic, including traffic for which Seller believes it will not receive reasonable compensation.

6.2 Call Information. Buyer shall provide Automatic Number Identification (ANI) or other call identifying information as reasonably requested by Seller for all communications using Seller's Services. All communications delivered to Seller's network without ANI, or other appropriate call identifying information, will be treated, for purposes of compensation, as toll (either interstate or intra-state), and will be subject to terminating access rates of the terminating ILEC or carrier, even if Seller has selected a flat rate billing plan. Buyer shall not: (1) route U.S. Domestic traffic or traffic destined for Alaska or Hawaii through points outside of the United States; (2) re-classify or re-originate traffic or take any other action to make traffic appear as if it (i) is anything other than the type of traffic delivered to Buyer (including but not limited to making TDM originated traffic appear to be IP originated) or (ii) originated from a place or on a type of equipment different from the place or type of equipment from where it, in fact, originated; and (3) modify, alter or delete in any manner calling party number information, originating point codes or any other signaling information, or call detail in connection with the transport and termination of traffic to the called party.

6.3 Abusive Practices. Buyer cannot use using auto-dialing, predictive dialers, Internet dial access applications, call back operator, call transfer release or call forwarding switching applications, VoIP local call terminations or any other extraordinary business applications with any unlimited usage plan. Seller reserves the right to terminate this Agreement upon thirty (30) days notice in the event that Seller determines, in its sole discretion, that Buyer is using a predictive dialer or other auto-dialing application, employing the service for outbound telesales applications or is otherwise abusing Seller's local or long distance calling plans, unless Buyer has specifically purchased a Seller product designated for predictive dialer/call center applications. If ten percent (10%) or more of Seller's completed calls are equal to or less than six (6) seconds in length ("Short Duration Calls") during any calendar month, Seller reserves the right to charge and Buyer shall pay a surcharge of \$0.01 per Short Duration Call, which surcharge shall be in addition to the rates and charges for the Services and all other applicable surcharges and taxes. If more than forty percent (40%) of Buyer's total call attempts are uncompleted during any given month, per trunk group and DSO circuit, Seller reserves the right to disconnect the affected circuit or to charge Buyer \$10 per DSO per month per trunk group. If applicable, the same metrics will be applied on a session (or DSO equivalent) basis for SIP based termination Services.

## 7. E911

E911 Availability. Buyer acknowledges that E911 calling capability associated with the Services:

- (a) may not available during an electrical power outage affecting the Service location;
- (b) will not be available if Buyer's connection service has been disrupted and not restored;
- (c) will not be available if Service has been discontinued for any reason, including Buyer's non payment;
- (d) may not be available at certain locations;
- (e) may not be available or may be routed to emergency personnel unable to respond if Buyer has disabled or otherwise damaged the Services;
- (f) may be delayed or unavailable due to network configuration or other problems affecting the network; or
- (g) may not be available if Buyer has failed or delayed in updating its information with Seller.

Buyer also acknowledges that 911 dialing is not automatic with VoIP service and it must keep 911 addresses accurate in order for emergency personnel to know where Buyer locations are. To change an existing 911 address or add a new one, Buyer must provide notice to Seller and confirm the change. If a new 911 dialing address is not confirmed, emergency personnel may not be able to send assistance to the proper address promptly.

Buyer acknowledges and agrees that 911 services shall only be available in the Rate Center, or corresponding geographic area associated with the particular DID/DOD assigned to it. Buyer further acknowledges and agrees that 911 services will not be available, and Seller shall have no liability to Buyer or any third party for failure to provide 911 services, in the event that (i) DID/DOD is assigned to a Buyer location outside of the Rate Center associated with such DID/DOD or (ii) the telephone device to which a DID/DOD has been assigned is moved outside of the of the Rate Center associated with such DID/DOD.

Buyer's signature on the MSA and relevant service orders is its acknowledgement that Seller has advised Buyer of these limitations and that Buyer accepts the Services with these limitations.

## 8. Hosted PBX Service. The provisions of this Section 9 shall apply to Hosted PBX Services.

- 8.1 Service Requirements. To receive Hosted PBX Service, Buyer must execute, a Service Order that is accepted by Seller, and complete the appropriate documentation in a form provided by Seller that will include information requested by Seller. In addition, Buyer shall comply with the following obligations before Seller is required to provide any Service and before any provisioning interval begins:

(a) Buyer acknowledges and approves, in writing, the (i) type, quantity, and location of Seller-Provided Equipment, and (ii) design, configuration, and bandwidth of network services.

(b) Provide Seller with a complete and accurate inventory of Buyer's telephone numbers to be ported as part of the Service, if any. For telephone numbers being ported as part of the Service, Buyer shall provide Seller an LOA that including the following information, at a minimum, in addition to any other information requested by Seller:

- (i) Buyer Account Name;
- (ii) Buyer Account Address;
- (iii) Buyer Account Number;
- (iv) List of telephone numbers porting to Seller plus list of any telephone numbers on the same account not being ported to Seller.

(c) Buyer may be required to have a dedicated CAT5e or higher Ethernet connections from the Seller-provided Ethernet switch to each telephone handset location that utilizes the Hosted PBX Services. If the Service is provided via a dedicated private MPLS network and traffic is segmented for call quality purposes.

8.2 Service Support. After Service activation, Buyer shall be required to contact Seller to report any network outages or problems with any aspect of the Service. Buyer shall use Seller-Provided Equipment and other equipment in compliance with the associated manuals and Seller's operating procedures, and shall not abuse or modify any Seller-Provided Equipment used as part of the Service, regardless of whether it is owned by Buyer or Seller. If the Service utilizes Seller-Provided Equipment, then Seller shall furnish Service and Support of the Seller-Provided Equipment when required, provided that the Buyer is in compliance with the Agreement. Seller shall have no responsibility to provide any support of any aspect of the Service if Buyer has modified any aspect of the Service in any way. For the avoidance of doubt, Seller shall have no responsibility to provide any support for any Buyer-provided or owned equipment or equipment that is not a component of the Service, and in all such cases, all costs and expenses related to fault isolation, diagnosis, hardware repair or replacement and software updates shall be Buyer's sole and exclusive responsibility. Hours of support are as follows:

(a) Hosted PBX Hardware Coverage Hours. Hosted PBX hardware Service and Support coverage applies during standard business hours: 8:00a.m. to 5:00p.m. in the time zone of the covered Seller-Provided Equipment, Monday through Friday, excluding Seller observed holidays.

8.3 Hosted PBX Service Repair Response Intervals. Hosted PBX Service Repair Response interval is measured from the time Buyer initiates requests for support by contacting Seller via telephone or by giving Seller written notice. Support work will be performed during Buyer's coverage hours as set forth herein. Seller's response to Buyer's request for support will include contacting Buyer, remotely accessing the Seller-Provided Equipment or by dispatching technical resources to Buyer's premises, as determined in Seller's sole discretion. Seller's repair response intervals for Hosted PBX Enhanced Services are stated below:

- (a) Priority 1: Within (4) hours of a properly reported request for service and support service
- (b) Priority 2: Within (8) Seller business hours of a properly reported request for service and support service.
- (c) Priority 3: Within (16) Seller business hours.

#### 8.4 Definition of Support Priority:

(a) Priority I: A problem that makes the continued use of one or more critical functions of the Service impossible (or severely restricted), and severely risks business operations. The problem may cause loss of data and/or restrict data availability. Examples include:

- (i) 50% or more of the SIP endpoints cannot receive or place calls or retrieve voicemail;
- (ii) An outage of the main business number for the Buyer's site; or
- (iii) An outage of the automated attendant.

(b) Priority 2: A problem that severely affects or restricts major functionality, is of a time sensitive nature, and important to long term productivity but is not causing an immediate work stoppage. Operations can continue in a restricted fashion. Examples include:

- (i) 20% or more of the SIP endpoints cannot receive or place calls or retrieve voicemail; or
- (ii) Certain features are not functioning properly or at all.

(c) Priority 3: A minor condition or error that has no significant effect on an End User's site operations, such as:

- (i) Outages of less than 20% of the SIP endpoints
- (ii) A partial Hosted PBX Web Portal administrative dashboard outage or certain functions not working properly

8.5 Equipment Replacement. If replacement of Seller-Provided Equipment is required for any reason, Seller may use refurbished Seller-Provided Equipment and will be replaced on an exchange basis only, and only when the defective equipment has been actually received by Seller. Returned hardware that has been replaced by Seller will remain Seller property. The following apply with respect to end of life Seller-Provided Equipment:

(i) Seller may discontinue, or limit the scope of Support Services, for Seller-Provided Equipment that a third party manufacturer has declared "end of life," "end of service," "end of support," "manufacture discontinue" or similar designation ("End of Support") from time to time.

(ii) Seller may notify Buyer of any hardware and/or software application elements of the Service that become End of Support at any time during the Term. Upon notification, Seller will consult Buyer as to the impact to the Hosted PBX Service. Consultation may include upgrade, replacement, or deployment of a new technology and any applicable one-time or monthly service charges to continue the Service.

8.6 Electronic Monitoring. Seller may electronically monitor supported Seller-Provided Equipment for the following purposes:

- (a) Remote diagnostics and corrective actions;
- (b) To determine applicable charges; or
- (c) To verify compliance with applicable software license terms and restrictions.

8.7 Exclusions. None of the following are included in support provided by Seller:

- (a) Diagnosis or support of equipment or software other than supported Seller-Provided Equipment, including without limitation, systems interfacing with supported Seller-Provided Equipment;
- (b) Support of user-defined applications;
- (c) Data recovery services;
- (d) Services associated with relocation of supported Seller-Provided Equipment;
- (e) Support of Seller-Provided Equipment used in breach of applicable license restrictions, the Agreement, or contrary to capacity and other use limitations under which the Seller-Provided Equipment was licensed by the manufacturer or Seller;
- (f) Support of Seller-Provided Equipment that has had serial numbers altered, defaced or deleted;
- (g) Support or repair resulting from any of the following:
  - (i) Neglect, misuse, power failures or surges, fault or negligence of any persons other than Seller, or causes external to the supported Seller-Provided Equipment;
  - (ii) The combination or integration of non- Seller-Provided Equipment, software, or facilities with supported Seller-Provided Equipment (except as explicitly allowed in writing by Seller);
  - (iii) Supported Seller-Provided Equipment that has been changed, modified or altered if such changes, modifications or alterations are not performed or explicitly directed by Seller;
  - (iv) Changes to the environment in which the supported Seller-Provided Equipment were installed;
  - (v) Any failure by any party, other than Seller, to follow Seller's or the manufacturer's installation, operation or service and support instructions, including the failure to permit Seller timely remote access to the supported Seller-Provided Equipment;
  - (vi) Actions of person other than Seller employees and Seller's authorized contractor personnel; and
  - (vii) Force majeure.

8.8 Seller-provided Equipment. Equipment provided by Seller and delivered to Buyer is to be used in conjunction with the Hosted PBX Service only, unless otherwise consented to by Seller. Buyer is not authorized to use the Seller-Provided Equipment for any other purpose. Buyer is obligated to comply with all documentation and manufacturer's instructions that accompany such Seller-Provided Equipment as strict adherence to technical documentation is required for warranty pass-through. Any violation of the preceding sentence shall be a default of this Agreement. Buyer will take all reasonable measures to protect and care for the Seller-Provided Equipment as it would its own equipment. Buyer shall be responsible for all loss, damage or destruction of the Seller-Provided Equipment from the date of delivery to Buyer's premise until the date the Seller-Provided Equipment is removed from Buyer's premises by Seller or its contractors or agents. Upon termination or expiration of the Agreement, the Seller-Provided Equipment must be in the same condition as when originally delivered, normal wear and tear accepted. If Seller-Provided Equipment cannot be recovered by Seller, or if Seller-Provided Equipment is damaged beyond the ordinary wear and tear, Buyer shall be liable to Seller for either the replacement value of the Seller-Provided Equipment or its repair costs, both of which shall be determined by Seller. Under no circumstance may Buyer or its employees, agents, contractors or subcontractors move the Seller-Provided Equipment furnished as part of the Service without prior Seller approval.

8.9 Support. Seller shall furnish Support of Seller-Provided Equipment only during the Hosted PBX Service Term, provided that the Seller-Provided Equipment is used by Buyer in strict compliance with these terms and conditions. For the purposes of this Exhibit, "Support" is defined as fault isolation and diagnosis, hardware replacement for defective hardware, and software updates for defective software, all as further limited herein.

8.10 Buyer-Provided Equipment. Buyer may provide its own equipment only if consented to by Seller. Seller's consent shall not be, nor be construed as, any approval, licensing, sanctioning, or other acceptance by Buyer of such use, and shall be entirely at Buyer's risk. Buyers providing their own equipment used in conjunction with the Service shall be solely and exclusively responsible for all support, payment, maintenance, selection, interoperability, trouble-shooting, and all other operational, use and compliance aspects of the Buyer-provided equipment. Buyers providing their own equipment shall present Seller with an itemized list of equipment to be included in the accompanying BCG, including make, model, MAC address and any other information requested by Seller. All Buyer-provided equipment shall meet all manufacturer's interoperability specifications, vintage and firmware requirements, and updates for the solution set forth in the Ordering Documents. Buyer is responsible for all costs associated with any necessary upgrade of its equipment required to meet manufacturer interoperability specifications. If, after diagnosing a problem with the Service Seller determines that the Buyer provided equipment is the cause of the problem, Buyer solely will be responsible for servicing such equipment.

8.11 Acknowledgements. For Buyer provided equipment, Buyer acknowledges, accepts, and agrees to the following:

(a) Buyer-provided equipment and any of Buyer's previously purchased and installed handsets or manufacturer-specific software or feature module may not work with Hosted PBX Service.

(b) All Buyer-provided equipment must be in good working order. Any defective cord, cable, or other components that impacts, materially or otherwise, the proper configuration, testing and operation of the Service must be replaced immediately at Buyer's expense. This is a material term of the Agreement.

8.12 Administration. Seller shall have the absolute right to retain all administrator privileges for hardware and software and all other components of the Hosted PBX Service. Seller may, but is not obligated to, grant Buyer with limited administrator privileges for the purpose of self-administering the Seller-Provided Equipment. If such administrative rights are granted to Buyer, Buyer shall read all system administration manuals. Additionally, Buyer shall defend, indemnify, and hold harmless Seller, its principals, officers, directors, agents, and employees from and against any loss, cost, damage, liability, claims and expenses of any kind arising directly or indirectly from the installation, operation, maintenance and repair of Seller-provided Equipment, and from Buyer's or any of Buyer's subcontractors' or agents' acts or omissions including, but not limited to, reasonable attorneys' fees and court costs, except to the extent such loss, damage, cost or expense is due solely to the gross negligence or willful misconduct of Seller.

8.13 Web Portal and Passwords. The Service includes Buyer access to web portals for viewing, configuring and managing available options and features within the allowable permissions for Buyer administrators and end users, subject to password security.

8.14 User Guides. Seller will provide the Buyer with user guides sufficient for Buyer to learn all available system features available to end-users via the handset and portal functionality. Buyer agrees that all Buyer-administrators and End Users will utilize Seller-provided training materials and use reasonable commercial efforts to perform all available portal functions themselves.

8.15 Buyer Moves, Adds, Changes And Upgrade Policy. Only authorized Buyer contacts set forth in the Ordering Documents shall have the right to submit Buyer requests for changes to the Hosted PBX Service that cannot be performed via the Hosted PBX Buyer portal. Contact your Seller Account Manager to request all other moves, adds, changes, and upgrades, which shall be subject to charges at then-current rates. All Upgrades will be subject to a



separate Service Order, which may include a different Service Term. All moves, adds, changes, and upgrades shall be at Seller's sole and absolute discretion. Seller shall have no obligation to accept any request for any moves, adds, changes, or upgrades. Additionally:

(a) Buyer shall pay a non-recurring charge as designated by Seller in connection with related configuration, installation, and training.

(b) Buyer shall pay applicable additional monthly recurring charges for moves, adds, changes, and upgrades and Customer Support additions.

(c) Upgrades requested in last 6 months of the term of the Agreement are subject to Seller review and approval and may require a new term agreement beyond the existing Service Term.