

## MASTER SERVICE AGREEMENT

This Master Service Agreement (the "Agreement" or "Terms") is entered into by and between the subscriber ("you," "your," or "Subscriber") and Syndeo, LLC dba Broadvoice ("Broadvoice," "us," or "we"). Please be aware that, any of the following actions, without limitation or qualification, constitutes your acceptance and agreement to be bound by and to comply with all of the terms of service of this Agreement: (a) your submission of an order; (b) your accepting the terms electronically during the ordering process; or, (c) your use of the Service (as defined herein). Initial charges, including first month service and shipping and handling charges are non-refundable immediately upon submission of an order. If the individual who accepts these Terms is acting on behalf of a corporation, company, partnership, organization, association or other legal entity, then that individual hereby represents and warrants to Broadvoice that he or she has the authority to bind such entity. **IF YOU DO NOT HAVE SUCH AUTHORITY, OR YOU DO NOT AGREE WITH THESE TERMS, THEN YOU SHOULD NOT ACCEPT THESE TERMS AND YOU SHOULD NOT ACCESS OR USE, OR AUTHORIZE ANYONE TO ACCESS OR USE, THE SERVICES.**

**THIS AGREEMENT IS GOVERNED BY AND SUBJECT TO BROADVOICE'S STANDARD TERMS AND APPLICABLE ADDENDUM(S) WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE AS THOUGH SET FORTH IN THEIR ENTIRETY. THE BROADVOICE STANDARD TERMS ARE ACCESSIBLE AND DOWNLOADABLE AT THE COMPANY'S WEBSITE LOCATED AT <https://www.broadvoice.com/master-service-agreement>. BY SIGNING THE BROADVOICE SERVICE ORDER, THE SUBSCRIBER ACKNOWLEDGES HAVING READ AND AGREES TO AND INTENDS TO BE BOUND BY THESE TERMS. SIMILARLY, BY PURCHASING SERVICES FROM BROADVOICE, SUBSCRIBER AGREES TO AND INTENDS TO BE BOUND BY THE COMPANY'S TERMS.**

This Agreement includes the terms set forth herein, the Acceptable Use Policy, the Privacy Policy, and all other materials specifically referred to in this Agreement, all of which are incorporated herein by reference. This Agreement includes the terms set forth herein, the Exhibits, the "Acceptable Use Policy," the "Privacy Policy," and all other materials specifically referred to in this Agreement, all of which are incorporated herein by reference. This Agreement sets forth the terms under which you agree to use the Service and covers all of Broadvoice's plans. If you do not or are not willing to be bound in its entirety by these terms of service, do not proceed. Copyright and Licenses: The entire contents of this Agreement, the Services and Broadvoice's website are protected under the United States copyright laws. The copyright notices and other proprietary legends shall not be removed from the Services and no right to use any trademark is granted under this Agreement.

Please read these terms carefully because they affect the legal rights between you and Broadvoice by, among other things, (1) limiting Broadvoice's liability to you, (2) requiring arbitration of certain disputes, rather than jury trial, and (3) requiring payment of early termination charges or disconnect fees.

THIS AGREEMENT ALSO INCLUDES IMPORTANT INFORMATION REGARDING YOUR ACCESS AND USE OF EMERGENCY SERVICES (i.e., 911), INCLUDING LIMITATIONS RELATIVE TO TRADITIONAL, WIRELINE EMERGENCY SERVICES.

When you accept these Terms in conjunction with ordering Services, or when you access or use the Services after you are notified that these Terms apply to the Services, you agree to be bound by these Terms. If the individual who accepts these Terms is acting on behalf of a corporation, company, partnership, organization, association or other legal entity, then that individual hereby represents and warrants to Broadvoice that he or she has the authority to bind such entity. **IF YOU DO NOT HAVE SUCH AUTHORITY, OR YOU DO NOT AGREE WITH THESE TERMS, THEN YOU SHOULD NOT ACCEPT THESE TERMS AND YOU SHOULD NOT ACCESS OR USE, OR AUTHORIZE ANYONE TO ACCESS OR USE, THE SERVICES.**

These Terms shall amend and restate, supersede and replace in their entirety any earlier versions of the Broadvoice Agreement previously applicable to your Services.

### 1. General Pricing and Fees

Broadvoice shall, itself or through one or more of its Affiliates, vendors, subcontractors or other service-providers, provide the Services ordered by Subscriber from time to time in accordance with the terms and subject to the conditions of the Agreement. Subscriber shall be responsible for ensuring that its Internet connection, any local network equipment, hardware and software used in connection with the Services, and all related configurations, adhere to the minimum standards and technical requirements specified in applicable documentation.

Broadvoice's prices are shown in the Pricing Schedule, and you will be charged based on the Plan and Options you select during the ordering process. A Subscriber who selects a "Month to Month" Plan (a "Monthly Subscriber") will pay the monthly price(s) listed on the Pricing Schedule corresponding to the Plan and Options chosen by such Monthly Subscriber at the time of order. However, such monthly prices are subject at any time to increase to Broadvoice's then current prices. A Subscriber who selects a "1, or 3 Year Contract" Plan (a "Contract Subscriber") will pay the monthly price(s) listed on the Pricing Schedule corresponding to the Plan and Options chosen by such Contract Subscriber at the time of order. Such monthly prices for Contract Subscribers are guaranteed for the initial 1, or 3 Year Term. Following the initial Term, a Contract Subscriber will automatically renew for subsequent 1 Year Terms at the same rate, except where such renewals are prohibited by law, or subject to an increase at Broadvoice's sole and absolute discretion. In addition to regular fees set forth in the Pricing Schedule, you agree to pay all other charges, including but not limited to network usage, applicable taxes, fees and surcharges, including charges imposed against Broadvoice by third party providers that it passes on to you. The taxes and surcharges may vary monthly and change at any time without notice; any variations will be reflected in your monthly charge. When possible, Broadvoice will break out such charges on the monthly invoice. Contract period and billing for service will begin upon service activation.

Broadvoice, from time to time, offers promotions whereby subscribers receive an initial period for free (the duration of which may vary), the terms and conditions of the Master Service Agreement (MSA) shall be automatically extended by a period equal to the duration of the free initial period. This extension shall apply notwithstanding any other provisions to the contrary within the MSA. Subscribers acknowledge and agree that acceptance of such promotional offers constitutes their consent to this automatic extension of the MSA term. All other terms and conditions of the MSA shall remain in full force and effect, and the extended term shall be subject to the same rights, obligations, and limitations as the original term.

## **2. Payment, Late Fees, and Other Charges**

When you subscribe to our service, you authorize us to collect from your payment method, including, if applicable, Early Termination Fees, late fee, check return fees, recovery and administrative fees, and any other outstanding charges. This authorization will remain valid until 30 calendar days after you terminate our authority to charge your payment method.

Subscriber agrees to pay all charges due and payable under the Agreement without counterclaim, set-off or deduction, other than amounts disputed. Failure to pay in full may result in immediate suspension of services and Broadvoice shall have no liability for such suspension under any circumstances. During the period of suspension, Services will be unavailable to Subscriber until the account balance is paid in full.

If subscriber reasonably disputes an invoice, Subscriber must pay the undisputed amounts and provide written notice of the disputed amounts. Failure to dispute a charge within a 30-day period shall constitute an irrevocable waiver of Subscriber's right to dispute the charge, unless otherwise provided by law. The parties shall attempt to resolve the dispute in good faith for a period of 30 days from the notice. If any charges remain in dispute at the end of the 30-day period, Subscriber shall pay the full amount due within 10 days, otherwise Broadvoice may exercise any available remedies for breach (without regard to any further notice requirement or opportunity for cure under this Agreement, which shall be deemed waived).

If Subscriber does not deliver full payment for all billed charges by the due date, Broadvoice may restrict, suspend or terminate use of the services. Broadvoice may also apply any deposits or other payments made by Subscriber. If Broadvoice restricts, suspends or terminates Subscriber's services, Broadvoice may, at its sole discretion, choose to restore Subscriber's services prior to the payment of all charges due. Such restoration shall not be construed as a waiver of Broadvoice's right to receive full payment for all charges due or again restrict, suspend or terminate the Services at any time for non-payment of unpaid charges. The failure of Broadvoice to restrict, suspend or terminate the Services for non-payment of any charges shall not operate as a waiver or estoppel to restrict, suspend or terminate services of such account for non-payment of current or future charges.

All prepaid fees and other payments by Subscriber under this Agreement are non-refundable and non-creditable. There are no pro-rated refunds for unused time. Unless otherwise stated in the Pricing Schedule, Broadvoice will invoice and charge Subscribers monthly. Subscribers are responsible for paying monthly subscription fees while Services are suspended due to non-payment. In the event that an account is terminated for any reason with an outstanding balance, Broadvoice will continue to electronically charge any credit card on file for the outstanding balance until all balances are fully resolved. All disconnected accounts and all accounts suspended for non-payment are subject to a fifteen-dollar (\$15.00) reconnection fee. Any account which goes into collection status will be transferred to a collection agency and incur a twenty-five-dollar (\$25.00) processing fee and all other applicable fees and charges. Subscribers must pay a twenty-five-dollar (\$25.00) service charge on disputed credit cards and credit card chargebacks. Past

due accounts will accrue a monthly charge of one and one-half percent (1.5%) of the past due balance or one dollar (\$1.00), whichever is greater.

Subscriber is responsible for all charges attributable to its account incurred with respect to the Services. Subscriber agrees to notify Broadvoice immediately, in writing or by calling the Broadvoice customer care line at 1-888-325-5875, if you become aware at any time that Services are being stolen or fraudulently used. You are responsible for all usage charges attributable to your account, even if incurred as the result of fraudulent or unauthorized use by third parties, until you report the theft or fraudulent use of the Services. You are solely responsible for securing all passwords and access numbers to guard against and prevent unauthorized access to Services by third parties. Broadvoice, may, but is not obligated to, detect or report unauthorized use or fraudulent use of Services. You agree to save, defend, indemnify and hold Broadvoice harmless from all claims, costs, liabilities and damages arising out of such fraudulent or unauthorized use.

**2.1 International Calling.** International calling is enabled by default. Subscribers may enable or disable it at any time by logging into their “My Account” page. All International calls are billed at their respective international rates which are updated on the first Tuesday of each month. Any and all call charges are rounded to the nearest whole penny. Each Subscriber account is given a credit limit for international calls. If an international calling balance exceeds the credit limit prior to their next bill date, the account will be charged the balance immediately. Failure to pay will result in suspension of service. All international calls are subject to an FCC-mandated Universal Service Fund recovery charge. This rate changes quarterly based on the information located at the FCC Website.

**2.2 Directory Assistance and Operator Services.** Directory Assistance is charged at ninety-nine cents (\$0.99) per call and ten cents (\$0.10) per minute after two minutes. Directory Assistance is enabled by default on all new phone lines. Operator calls are billed at three dollars (\$3.00) per call. Operator calling is disabled by default on all new phone lines but may be activated using the My Account Dialing Options.

**2.3 Term.** This Agreement is effective upon Subscriber's acceptance as provided above and shall continue until terminated by Subscriber or Broadvoice pursuant to this Agreement.

**2.4 Call Burst.** Call Burst is the ability to make and receive calls above the subscribed capacity for Call Paths and SIP Trunks. This feature is active by default and billed at the rate of \$0.029 per minute. This feature may be deactivated upon request.

### **3. Termination by Subscriber**

Subscriber may terminate this Agreement at any time for any reason by providing Broadvoice with a thirty (30) day written notice in the form of a valid written termination request and paying all fees and other charges accrued or otherwise payable under the terms of this Agreement. Such thirty (30) day period begins on the date on which Broadvoice.com receives the Subscriber's valid written termination request.

#### **3.1 Early Termination**

In the event that this Agreement is terminated prior to the end of a Subscriber's Contract Term, such Subscriber must pay, in addition to all fees and other charges accrued or otherwise payable under the terms of this Agreement, an Early Termination Fee in the amount that equates to the amount due and payable through the end of the contract term. In the event a Contract Subscriber terminates this Agreement prior to the end of their Contract Term because of a service-related problem not caused by the Subscriber that Broadvoice has failed to cure after what Broadvoice determines in its sole discretion to be a reasonable amount of time based on the circumstances, the Subscriber is entitled to a waiver of the Early Termination Fee. For such waiver to apply, the reason for the waiver stated above must have occurred before termination and the Subscriber must report such reason for termination to Broadvoice in the Subscriber's valid written termination request. Broadvoice, in turn, must be given the opportunity to resolve the problem and the Subscriber must be willing and able to troubleshoot with Broadvoice. Broadvoice does not monitor Subscriber accounts for activity, and absence of activity or cancellation of a Subscriber's Internet Service will never constitute a termination request.

Notwithstanding notice by a Subscriber to terminate this Agreement, Services will remain in effect through the effective date of termination and the terms of this Agreement and applicable Service Orders will continue to apply to such services. Please refer to the corresponding service exhibits for information regarding cancellation and termination fees. **SUBSCRIBER MAY CANCEL SERVICES ONLY THROUGH THE METHODS SPECIFIED BELOW. FAILURE TO CANCEL IN ACCORDANCE WITH THIS SECTION WILL RESULT IN ONGOING SERVICE CHARGES, FEES AND TAXES.** A written termination request is valid only if it includes

your account number, main username, date you wish the service to be cancelled and is submitted using one of the following approved methods:

VIA EMAIL: [cancel@broadvoice.com](mailto:cancel@broadvoice.com)

VIA FAX: (818) 301-7465

VIA MAIL: Broadvoice

Attn: Cancellation Department  
9221 Corbin Ave. Suite 260  
Northridge, CA 91324

Upon termination or cancellation of the Services, Subscriber shall discontinue use of any Broadvoice services including telephone numbers, log-ins, voicemail access numbers or any web portal sites provided for Broadvoice subscribers. In the event Subscriber uses any ancillary services provided by Broadvoice, cancellation of services for any reason shall also result in cancellation of such ancillary services.

#### 4. Termination by Broadvoice

If, in Broadvoice's sole and absolute discretion, (a) a Subscriber is in breach of any of the terms of this Agreement (including but not limited to the Acceptable Use Policy); (b) a Subscriber's use of the Service is prohibited by law or is disruptive to, adversely impacts or causes a malfunction to the Service, Broadvoice's servers or other equipment, or the use and enjoyment of other users; (c) a Subscriber acts in an abusive or menacing manner when dealing with Broadvoice's technical support staff, Subscriber service staff, or any other Broadvoice employees or representatives; (d) Broadvoice receives an order from a court of competent jurisdiction to terminate a Subscriber's Service; or, (e) Broadvoice for any reason ceases to offer the Service, then Broadvoice at its sole election may terminate or suspend such Subscriber's Service immediately without notice. For a termination in accordance with this paragraph, Subscriber remains liable for all unpaid fees and other charges accrued or otherwise payable under the terms of this Agreement, including without limitation the equipment charges set forth herein, if applicable.

Broadvoice, in its sole and absolute discretion may refuse to accept a Subscriber's application for renewal or re-subscription following a termination or suspension of such Subscriber's use of the Service. If a Subscriber's Service is terminated for any reason, such Subscriber, upon approval by Broadvoice, may enter into a new Agreement and must pay a new setup or activation fee as provided above. Upon the termination of a Subscriber's use of the Service, Broadvoice has the right to immediately delete all data, files and other information stored in or for the Subscriber's account without further notice to the Subscriber.

#### 5. Emergency Services – 911 Dialing

**5.1 Dialing 9-1-1.** Broadvoice uses the same national 911 network that all traditional telephone companies use. Be aware that 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing. Service outages or suspensions or disconnections of service by your bandwidth provider or ISP will prevent all Service, including 911 Dialing, from functioning. Disconnection of your account will prevent all Service, including 911 Dialing, from functioning. Your ISP, bandwidth provider, or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. If you suspect this has happened to you, you should alert us to this situation, and we will work with you to attempt to resolve the issue. During the period that the ports are being blocked or your Service is impeded, your Service, including 911 Dialing, may not function. You acknowledge that Broadvoice is not responsible for the blocking of ports by any third party or any other impediment to your usage of the Service, and any loss of Service, including 911 Dialing, which may result. In the event you lose service as a result of blocking of ports or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you disconnect the Service in accordance with this Agreement. If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for various reasons, including those described elsewhere in this Agreement.

You authorize us to disclose your name and address to third parties involved with providing 911 Dialing to you, including, by way of illustration but not limitation, call routers, call centers, and local emergency centers.

We require you to provide the physical address where you will be using our service for 911 purposes. For E911 and basic 911, this address is used to route 911 calls to your local emergency center. When you initially provide your physical address, it can take up to

120 minutes to verify your address and activate 911 services at this address.

If you move this device to another location, you must update your address. You may register only one location at a time. If you do not update your location, your 911 calls may be sent to an emergency center near your old address. When you update your location, it can take several hours to activate 911 services at the updated address.

**5.2 Alternate 9-1-1 Arrangements.** If you are not comfortable with the limitations of the 911 Dialing service, you should make arrangements for an alternate means of accessing traditional 911 or E911 services or disconnecting the Service. You understand that additional arrangements should be made to access emergency services. To access emergency services, you acknowledge and accept that it is your sole responsibility to purchase, with a third-party separately from Broadvoice, traditional wireless or wire line telephone service that offers access to emergency services. You further recognize that Broadvoice is not a replacement for your primary telephone service and you are hereby advised to maintain a traditional wire line or wire-based telephone service at all times. By agreeing to these terms of service and by your use of the Device, you acknowledge and accept that the Device may not support or provide emergency service at all times. You represent and warrant to Broadvoice that you already have made additional arrangements with a third party to access emergency services.

**5.3 Network Congestion and Reduced Speed for Routing or Answering 911 Dialing Calls.** There may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

**5.4 Disclaimer of Liability and Indemnification.** We do not have any control over whether, or the manner in which, calls using our 911 Dialing service are answered or addressed by any local emergency response center. We expressly disclaim any and all responsibility for the conduct of such local emergency response centers and the national emergency calling center. We rely on third parties to assist us in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. We disclaim any and all liability or responsibility in the event such third party data used to route calls is incorrect or yields an erroneous result. Neither Broadvoice nor any of its officers, directors, members, or employees may be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to our 911 Dialing service, unless such claims or causes of action arise from our gross negligence, recklessness, or willful misconduct. You shall defend, indemnify, and hold harmless Broadvoice, its officers, directors, members, employees, affiliates, and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys' fees) by, or on behalf of, you or any third party relating to the absence, failure, or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

**5.5 Non-Provisioned 911 Calls.** For each billing cycle, if a Subscriber places one or more 911 calls but does not have a valid 911 address on file with Broadvoice, Broadvoice shall charge \$75 for each call placed. These charges are non-negotiable, and Subscriber waives the right to dispute these valid charges.

## 6. Equipment

As part of a service agreement, Broadvoice may provide Equipment to Subscribers, including but not limited to IP telephones, Analog Telephone Adapters (ATAs), and routers. Equipment is provided to Subscribers in two possible methods: Equipment Purchase and Equipment Rental. Subscriber shall be required to obtain authorization from Broadvoice to return any Equipment. By using the equipment provided by Broadvoice you are agreeing to be bound by the terms of the one (1) year limited warranty as set out below. Do not use the product until you have read the terms of the warranty. If you do not agree to the terms of the warranty, do not use the produce and return it to Broadvoice immediately.

**6.1 Equipment Purchases.** Upon receipt of each Purchased Device, you will examine each Device, and unless you notify Broadvoice within five business days of your receipt of said Device to any issue with a Purchased Device, each Device is deemed to be in good working order at the time of receipt. Subscriber will be provided a twelve (12) month manufacturer's warranty from the date of purchase of Equipment or Services. Broadvoice will provide replacement Equipment only if the Equipment is deemed to be defective and covered under the warranty. Broadvoice will not cover replacement for lost, stolen or modified Equipment. Equipment returned by Subscriber that is not covered under warranty may be refused by Broadvoice, and Subscriber will be responsible to pay return shipping charges.

**6.2 Equipment Rentals.** This Rental Agreement is for the rental of certain telephone hardware (each a "Rental Device") from Broadvoice (collectively, the "Rental Services"). Broadvoice is and will remain the owner of all rental paid or free rental devices.

Broadvoice charges a recurring monthly fee for each Rental Device (collectively, the “Rental Fees”). As a part of your recurring bill from Broadvoice, you agree to pay the Rental Fees for all Rental Devices, using the same payment method and payment period as your payments for Broadvoice Office Services, as defined in your Broadvoice Agreement. In the event the rental devices are provided free of charge the rental fees will be \$0. The Rental Services with respect to a Rental Device shall commence on the Rental Start Date and terminate upon the termination of the Broadvoice Service Agreement. Notwithstanding the above, at any time within thirty (30) days after the Rental Start Date, you may terminate the Rental Services with respect to a Rental Device immediately upon written notice from you to Broadvoice, without paying any Rental Fees for such Rental Device.

Upon any termination of the Rental Agreement or Rental Services, you agree to return or purchase a Rental Device (including all accessories and materials that were provided with the primary hardware device) consistent with Broadvoice’s written instructions and in accordance with the Return or Purchase Rights section of the service agreement, and that Rental Device will no longer be considered a Rental Device upon the completion of a return or purchase. If you do not return a Rental Device (subject to Broadvoice’s inspection and acceptance of the returned Rental Device in its reasonable discretion) within (30) days following the termination of the Rental Services for such Rental Device, you will be deemed to have purchased that device at the Broadvoice retail purchase price. If you wish to upgrade a Rental Device, the replacement of the current Rental Device shall be deemed a termination of the Rental Services with respect to the current Rental Device and be subject to the termination provisions hereof, including the return or purchase provisions for the Rental Device set forth in the Return or Purchase Rights section of this Service Agreement; provided that the Rental Services for the current Rental Device shall be deemed to terminate, and the Rental Services of the replacement Rental Device shall commence, on the date the replacement Rental Device is recorded as delivered by a designated courier.

The Rental Fees for the Rental Services do not include additional services you may select, taxes, fees, international usage, and other additional services. Sales tax varies by jurisdiction of purchase or rental and may be calculated based on full retail price or Broadvoice cost price, as determined by the tax law in the jurisdiction of purchase or rental.

**6.3 Rental Device Ownership; Damage and Loss.** Broadvoice is and will remain the owner of each Rental Device unless title is conveyed to you in writing following Broadvoice’s confirmation to you of its receipt of your payment in full of the purchase price for the Rental Device. You will not grant any third party any right to use, possess, or control any Rental Device, sublease any Rental Device, attempt to dispose of any Rental Device, grant any interest or right in a Rental Device to any third party, or otherwise do anything that undermines Broadvoice’s ownership of each Rental Device. Broadvoice may, without notifying you, assign Broadvoice’s interest in any Rental Device, and in that event, Broadvoice’s assignee will have all of Broadvoice’s rights in the Rental Device under this Agreement, but none of Broadvoice’s obligations. You agree not to assert against Broadvoice’s assignee any claims, offsets, or defenses you may have against Broadvoice. Upon Broadvoice’s request, you will execute and deliver to Broadvoice any documents or forms for protecting Broadvoice’s ownership and interest in each Rental Device, including finance statements under the Uniform Commercial Code.

Upon receipt of each Rental Device, you will examine each Rental Device, and unless you notify Broadvoice within five business days of your receipt of a Rental Device to any issue with a Rental Device, each Rental Device is deemed to be in good working order at the time of receipt. Broadvoice covers Rental Devices with an extended manufacturer's warranty in perpetuity as long as the Subscriber is active and in good standing with Broadvoice. Broadvoice will provide replacement Equipment only if the Equipment is deemed to be defective and covered under the warranty. In the event that any Rental Device delivered to you is stolen, lost, damaged, or transferred to any third party, regardless of the circumstances or cause, you will immediately notify Broadvoice in writing and pay Broadvoice a purchase price equal to the full Broadvoice retail price.

**6.4 Return or Purchase Rights.** When you return a Rental Device or Free Rental Device, you agree to return a fully functional and non-damaged Device beyond normal wear and tear to Broadvoice. You agree to pay all shipping and handling charges related to any Rental Device and related hardware returns. All returned Devices and related hardware must be fully functional, include all components, manuals, peripheral devices, and all other accessories that were originally shipped with the Device. At our discretion, we may decline your return or charge you an additional fee of thirty dollars (\$30) for each missing item or for each item that we determine is damaged or not in good working condition. Before returning any Device or hardware that has data in its memory, please transfer all files you wish to retain to another file source. Once the hardware is returned, your files cannot be recovered and you release us of any liability for any lost, damaged, or destroyed files, data, or other information.

**6.5 Other Remedies.** If you are obligated to return or purchase a Rental Device or Free Rental Device subject to this Return or Purchase Rights section of this Agreement, and you have not returned a Rental Device or Free Rental Device or you have defaulted in any obligation to pay the purchase price due for a Device to be purchased, Broadvoice may, in addition to those remedies available at law, in equity, or as otherwise set forth in this Agreement, take possession of any or all Rental Devices without demand, notice, or

legal process, wherever each Rental Device may be located, and you hereby waive any and all damages occasioned by that taking of possession.

**6.6 High Speed Internet Connection Required.** Subscriber understands, acknowledges and agrees that (1) subscriber must have a high-quality, high-speed internet connection to use the services; and (2) Broadvoice is not providing an internet connection for Subscriber. Broadvoice does not control and is not responsible for (1) Subscriber's internet connection; (2) the quality of Subscriber's internet connect; (3) any third party products and/or services related to Subscriber's internet connection; or (4) problems with the services that are caused by or related to Subscriber's internet connection.

**6.7 Standard Warranty Exclusions.** The Standard Warranty does not apply and is void with respect to: (a) cosmetic damage, (b) product that has been improperly installed or maintained, (c) costs of any installation or deinstallation, (d) Hardware not manufactured or supplied by Broadvoice, (e) failures or defects caused by misuse, abuse, accidents, physical damage, abnormal operation, improper handling and storage, neglect, exposure to fire, fluids, biological waste, hazardous materials, chemicals, excessive moisture or dampness, extreme changes in climate or temperature, spills of food or liquids, or alterations, (f) problems caused by the End User network (e.g., connectivity, coverage or other signal reception problems), (g) floods, (h) acts of God, (i) riots, (j) Hardware from which warranty stickers, electronic serial numbers and/or serial labels have been removed, altered or rendered illegible, (k) Hardware operated outside published environmental parameters, (l) performance of Hardware in combination with other items not manufactured or supplied by Broadvoice, (m) any Hardware which has been opened, repaired, modified or altered by anyone other than Broadvoice or a Broadvoice authorized service center, (n) engraving; (o) Accessories and materials subject to normal wear and tear, or (p) other circumstances beyond the reasonable control of Broadvoice.

EACH RENTAL DEVICE AND ANY TELEPHONE HARDWARE PURCHASED IN CONNECTION WITH THIS RENTAL AGREEMENT IS PROVIDED "AS IS" AND "AS AVAILABLE." TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND THE REMEDIES SET FORTH ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED. BROADVOICE DISCLAIMS ALL STATUTORY AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS, TO THE EXTENT PERMITTED BY LAW. IN SO FAR AS SUCH WARRANTIES CANNOT BE DISCLAIMED, BROADVOICE LIMITS THE DURATION AND REMEDIES OF SUCH WARRANTIES TO THE DURATION OF THIS EXPRESS WARRANTY AND, AT BROADVOICE'S OPTION, THE REPAIR OR REPLACEMENT SERVICES DESCRIBED BELOW. SOME STATES (COUNTRIES AND PROVINCES) DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY (OR CONDITION) MAY LAST, SO THE LIMITATION DESCRIBED ABOVE MAY NOT APPLY TO YOU. BROADVOICE MAKES NO REPRESENTATIONS OR WARRANTIES THAT ANY RENTAL DEVICE WILL BE DELIVERED TO YOU BY A PARTICULAR DATE OR IS FREE OF RIGHTFUL CLAIMS OF ANY THIRD PARTY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS (INCLUDING PATENT AND TRADE SECRET RIGHTS). THE ENTIRE RISK ASSOCIATED WITH THE USE OF ANY RENTAL DEVICE SHALL BE BORNE SOLELY BY YOU.

### **6.8 Third Party Reseller.**

In the event Broadvoice engages third parties to provide certain services, the implementation and support for these services shall be carried out by either the third parties or Broadvoice. Notwithstanding the party liable for implementation and support, all billing for these services will be conducted exclusively by Broadvoice. Broadvoice reserves the right to determine, at its sole discretion, whether a third party or Broadvoice itself will perform the implementation and support. Customers may be notified of the designated service provider, and all terms and conditions related to billing and payment will remain governed by Broadvoice's policies and agreements.

## **7. The Network**

**7.1** The Customers Network is expected to be VoIP ready. This means that the Customer has a Business Class Firewall that provides QoS\* and Prioritization settings and a Managed Business Class Ethernet Switch. In the event that the Customer does not have this equipment or cabling in place then the Customer agrees to acquire it or source it from Broadvoice so that the network is VoIP ready at the time of implementation. Broadvoice does not provide support for our services over WIFI networks. While Broadvoice services may work over WIFI the quality of the call will be dependent on the quality and reliability of the WIFI network. Broadvoice is unable to provide support for our customers' WIFI networks.

**7.2** If the customer has existing Firewalls, Routers and Switches then it is expected that the customer will make changes to the equipment as directed by Broadvoice to support QoS and Prioritization.

Quality of Service (QoS) is a feature of routers and switches which prioritizes traffic so that more important traffic can pass first. The result is a performance improvement for critical network traffic. QoS equipment is useful with VoIP phones or in LANs with high volumes of local traffic.

**7.3.** In the event a customer wishes to cancel a scheduled training session, Broadvoice requires notice of cancellation to be provided at least **48 hours** in advance. Failure to provide such notice within the 48 hours will result in the forfeiture of any fees paid, and the customer will not be entitled to any refund. This policy is applicable to all customers that schedule a training session, and the customer acknowledges and agrees to these terms and conditions.

## 8. Software

**8.1 Software.** If software is provided by Broadvoice in connection with the services, Broadvoice grants to Subscriber a personal, limited, revocable, non-exclusive, non-assignable and non-transferable license to use the software solely for the purposes of using the services. The license will permit such use by Subscriber and any of its employees or contractors (but only within the scope of their employment or services with Subscriber) authorized by Subscriber to use the Service, provided that Subscriber shall be responsible for all uses of the Service as provided by this Agreement.

**8.2 End-User Licenses.** Certain Software Broadvoice provides to Subscriber may contain third-party software (“Third-Party Software”), including open source software. Use of such Third-Party Software may be governed by separate copyright notices and license provisions, which may be found or identified in documentation or on other media delivered with the Third-Party Software and which are incorporated by reference into this license. Such provisions shall govern the use of Third-Party Software. Subscriber agrees to comply with the terms of all end user license agreements accompanying any Software (including Third-Party Software) or plug-ins to such Software distributed in connection with the Service. All end user licenses shall immediately terminate on the date that the Service expires, or this Agreement is terminated.

**8.3 Copyright / Trademark / Unauthorized Usage of Device, Firmware or Software.** The Service, Broadvoice Equipment and Software and all information, documents and materials on Broadvoice’s website(s) are protected by trademark, copyright, patent and other intellectual property laws and international treaty provisions. All websites, website content, corporate names, service marks, trademarks, trade names, logos and domain names of Broadvoice are and shall remain the exclusive property of Broadvoice and/or its Affiliates and nothing in this Agreement shall grant Subscriber the right or license to use any of the foregoing. Subscriber may not undertake, cause, permit or authorize the modification, creation of derivative works, or translate, reverse compile, disassemble, hack or reverse engineer, or otherwise attempt to derive the source code from the binary code of the Software.

## 9. Confidential Information

Broadvoice shall maintain commercially reasonable administrative, physical and technical safeguards designed to protect the confidentiality and integrity of Subscriber Data. To the extent any Subscriber Data includes Personal Data, Broadvoice shall comply with any applicable data protection Laws and any other specific requirements.

Either party may, directly or through an affiliate, vendor, subcontractor or other Broadvoice partner or advisor, or any workforce member or agent of the foregoing, disclose or otherwise make available to the other party or its Representatives information concerning the disclosing party or its Representatives which the Discloser indicates is confidential or proprietary, or which, by its nature, would reasonably be expected to be confidential or proprietary (collectively, “Confidential Information”), including, for example, trade secrets, technical information, pricing data and product plans. In addition, the pricing and other terms of the Agreement shall be deemed the Confidential Information of each party. Notwithstanding the foregoing, Confidential Information shall not include any information that the Recipient can demonstrate (i) is already or later becomes disclosed to the general public other than through the fault or negligence of Recipient or (ii) is lawfully obtained by Recipient from a third party which has the right to transfer or disclose it.

**9.1 Obligations.** The Recipient agrees: (a) to keep the Discloser’s Confidential Information confidential and disclose it only (i) to its Representatives to whom such disclosure is reasonably necessary to accomplish the purpose for which the Confidential Information was disclosed to the Recipient and who are bound to reasonable confidentiality obligations with respect to such Confidential Information, (ii) in response to a judicial order or other lawful process, as and to the extent required by such order or process, or (iii) as approved in

writing by the Discloser; (b) not to use Discloser's Confidential Information except for the purpose(s) for which the Confidential Information was disclosed or as approved in writing by the Discloser; and (c) to protect the confidentiality of the Discloser's Confidential Information with the same degree of care as Recipient uses to protect its own Confidential Information of like kind, but in no event less than reasonable care. Each party shall use reasonable efforts to ensure that its Representatives observe these obligations as if they were parties to the Subscriber Agreement.

**9.2 Survival.** Each party's obligations under this Section 9.1 shall survive any termination or expiration of the Subscriber Agreement and remain in effect for three (3) years thereafter or, in the case of trade secrets, as long as permitted by applicable Law. The parties agree that, in the event this Section 9.1 conflicts or is inconsistent with a non-disclosure or confidentiality agreement (an "NDA") previously entered into by the parties, this Section 9.1 shall govern as to disclosures from and after the effective date of the Subscriber Agreement.

## 10. Alarm Signals; Safety Applications

SUBSCRIBER UNDERSTANDS THAT THE SERVICES ARE NOT AUTHORIZED OR INTENDED TO BE USED TO CARRY ALARM SIGNALS OR FOR USE IN ANY HIGH-RISK, CRITICAL SAFETY OR OTHER APPLICATIONS WHERE ANY FAILURE, INTERRUPTION OR MALFUNCTION MAY REASONABLY BE ANTICIPATED TO RESULT IN BODILY INJURY, LOSS OF LIFE OR CATASTROPHIC DAMAGE TO PROPERTY.

## 11. Use of Outside Market

Although Broadvoice sells services primarily to Subscribers domiciled in the primary market, Broadvoice's Services are nomadic by nature and may be accessible through an Internet connection virtually anywhere a broadband connection is available. Regulation of IP-based telephony services varies significantly from jurisdiction to jurisdiction. For example, some countries have prohibited IP-based telephony services that interconnect with the local PSTN, and others require the user to obtain a specific consent or license. In addition, internet service providers (ISPs) in some countries may impose contractual restrictions on the use of their services for IP-based telephony. Methods of enforcement range from number blocking and suspension of internet service to fines and criminal penalties. Before ordering services for use in a jurisdiction outside the primary market, Subscriber is urged to consult with counsel for advice regarding its proposed use of the Services in that jurisdiction. Subscriber shall be solely responsible and liable for any violation of local Laws or breach of third-party contract terms resulting from Subscriber's use of the services outside the primary market, regardless of whether Broadvoice has consented to such use.

## 12. Service Location Access and Installation

Please refer to your Service Order(s) for specific Installation terms.

**12.1 Scope of Work.** Broadvoice's installation services include a pre-installation site survey, on-site installation of equipment, and basic training of how to use the service. Unless otherwise stated in the Service Order, on-site Installation and Training includes four hours on-site for installation and basic training of Subscriber and/or their authorized representatives. Broadvoice will schedule one or more installation visits with Subscriber. Subscriber's authorized representative must be present during installation. If during the course of installation Broadvoice determines additional time/work is necessary to enable Broadvoice to deliver the Services to the Service Location, Broadvoice will notify Subscriber of any additional charges. If Subscriber does not agree to pay such NRCs by executing a revised Service Order within five business days of receiving the same, Subscriber and Broadvoice shall each have the right to terminate the applicable Service Order. Subscriber shall connect Subscriber's computer or network to applicable Broadvoice-provided Equipment to enable access to the Services.

**12.2 Scheduling.** Subscriber understands that installation involves extensive planning, coordination and equipment preparation. Broadvoice will work to accommodate Subscriber's schedule for installation whenever possible. Scheduled installations that are cancelled or postponed by Subscriber within 48 hours of install date may incur an Install Cancellation Fee of \$500, plus any applicable non-refundable travel expenses.

**12.3 Location Access.** Broadvoice and any underlying providers and contractors will require reasonable access to each service location listed on a Service Order ("Service Location") as necessary to review, install, inspect, maintain or repair any Equipment or Materials necessary to provide the Internet Services. Subscriber shall provide Broadvoice all permissions, consents, or authorizations necessary to activate, maintain, inspect and repair the products and/or services and any Broadvoice equipment. If Subscriber owns or controls the Service Location(s), Subscriber grants Broadvoice and its underlying providers permission to enter the Service Location(s) for the exercise of such right. If a Service Location is not owned and/or controlled by Subscriber, Subscriber will obtain,

with Broadvoice's assistance, appropriate right of access. If such right of access for Broadvoice is not obtained by either party, then Broadvoice's obligations with respect to such Service Location shall be considered null and void.

**12.4 Site Survey; Subsequent Interference.** Broadvoice may perform an installation review of each Service Location prior to installation of the Services. Upon request, Subscriber shall provide Broadvoice with accurate site and/or physical network diagrams or maps of a Service Location, including electrical and other utility service maps, prior to the installation review. If Broadvoice determines that safe installation and/or activation of one or more of the Services will have negative consequences to Broadvoice or its underlying provider's personnel or Network or cause technical difficulties to Broadvoice or its Subscribers, Broadvoice may terminate the Service Order effective upon written notice to Subscriber or may require Subscriber to correct the situation before proceeding with installation or activation of the Services. Installations cancelled within 48 hours of install date or after Broadvoice personnel are on site may incur an Install Cancellation Fee of \$500, plus any applicable non-refundable travel expenses.

**12.5 Site Preparation.** Subscriber shall be responsible for necessary preparations at its location(s) for delivery and installation of Equipment and the installation and ongoing provision of Services, including the relocation of Subscriber's equipment, furniture, and furnishings as necessary to access the Equipment or Services. Broadvoice reserves the right to cancel an installation if Subscriber's preparations are not complete, or Subscriber's site information provided is not accurate.

**12.6 Required Maintenance.** Broadvoice and its underlying provider will need periodic access for inspection, operation, and maintenance of the Network. Except in emergency situations, Broadvoice will obtain approval from Subscriber (not to be unreasonably withheld or delayed) before entering Subscriber Premises. At Broadvoice's request, Subscriber, or a representative designated by Subscriber, will accompany Broadvoice's employees or agents into any unoccupied unit for any purpose relating to the Equipment.

**12.7 Self-Install.** With some Broadvoice products, Subscriber may have the option to either install services themselves ("Self-Install"), or pay for a Professional Install Broadvoice installation services. Subscribers that choose to self-install may access Broadvoice Support services by phone or email. If inside wiring or inside wiring repair is required, you must contract with a third-party professional for such work at your own cost. Faulty or lack of inside wiring is not grounds for cancellation of your contract. A required professional installation need for special equipment in order to establish a connection or incompatible wiring or phone system is not grounds for cancellation of the Services or this Agreement.

## 13. Monitoring

Broadvoice may monitor the use of our service for violations of these Terms. We may remove or block all communications if we suspect a violation of this Agreement, or if we think it necessary in order to protect our service, or Broadvoice, its parent, affiliates, directors, officers, agents, and employees from harm.

## 14. No Commitments

Subscriber represents that Broadvoice has made no commitments or promises orally or in writing with respect to delivery of any future features or functions. Broadvoice has no obligation to provide any future releases or upgrades or any features, enhancements or functions, unless specifically agreed to by both Parties. Subscriber acknowledges that its purchasing decisions are not based upon any future features or functions.

## 15. Third Party Networks

In some cases, Broadvoice may utilize the public Internet and third-party networks outside of its control in conjunction with the provision and maintenance of the Service. In such cases, Broadvoice makes no representation that such third-party providers will adequately secure or protect the privacy of Subscriber or any end user's personal information, and Broadvoice expressly denies any associated liability. Actions or inactions by third party networks can result in situations in which Broadvoice Subscribers services are impaired or disrupted. Broadvoice will use commercially reasonable efforts to remedy or avoid such events, however, Broadvoice expressly denies any associated liability.

## 16. Warranties and Limitations of Liability

**16.1 Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, BROADVOICE MAKES NO WARRANTIES AND DISCLAIMS ALL WARRANTIES IN

RELATION TO THE SERVICES AND EQUIPMENT, WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, BROADVOICE IS NOT LIABLE OR RESPONSIBLE FOR ENSURING THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR AVAILABLE 100% OF THE TIME, OR THAT ALL ATTEMPTED VOICE, FAX, TEXT AND OTHER COMMUNICATIONS WILL BE DELIVERED. Broadvoice provides the service, equipment and software on an "as is" and "as available" basis without warranty or representation of any kind. Broadvoice makes no warranty that the services will meet Subscriber requirements, specification, expectations or that services will be uninterrupted, timely, secure or free from errors. Subscriber acknowledges that Broadvoice does not control the transfer of data over communications facilities, and that the services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

**16.2 Limitations of Liability.** EXCEPT AS EXPRESSLY CONTEMPLATED BY PROVISIONS OF THIS AGREEMENT, TO THE MAXIMUM EXTENT SUCH DAMAGES CAN BE EXCLUDED UNDER APPLICABLE LAW, NEITHER BROADVOICE, ITS AFFILIATES OR ANY OTHER BROADVOICE PARTNERS, NOR ANY OF THEIR REPRESENTATIVES, SHALL BE LIABLE TO SUBSCRIBER OR ANY OTHER PERSON FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR COVER DAMAGES, LOSS OF PROFITS, REVENUES OR GOODWILL, LOSS OR CORRUPTION OF DATA, BUSINESS INTERRUPTION, OR DELAY IN PERFORMANCE, WHETHER FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE, FROM OR IN CONNECTION WITH THE AGREEMENT OR THE SERVICES PROVIDED THEREUNDER, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE, EQUIPMENT, AND SOFTWARE SUPPLIED HEREUNDER ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY SOFTWARE OR EQUIPMENT PROVIDED BY BROADVOICE (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH SOFTWARE OR EQUIPMENT). BROADVOICE (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS, AND SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES FOR THE SERVICE, SOFTWARE, AND EQUIPMENT WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. NO ADVICE OR INFORMATION GIVEN BY BROADVOICE OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY. USE OF BROADVOICE TECHNICAL SUPPORT IS AT YOUR OWN RISK AND IS NOT WARRANTED.

BROADVOICE DOES NOT WARRANT AND IS NOT LIABLE OR RESPONSIBLE FOR ENSURING THAT VOIP SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF BROADVOICE HAS ACCEPTED YOUR ORDER FOR VOIP SERVICE. THE PROVISIONING OF VOIP SERVICE IS SUBJECT TO CIRCUIT AVAILABILITY AND OTHER FACTORS. IN THE EVENT YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR BROADVOICE SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY PROVIDED EQUIPMENT, PURSUANT TO THE TERMS OF THIS AGREEMENT).

BROADVOICE DOES NOT WARRANT AND IS NOT LIABLE OR RESPONSIBLE FOR ENSURING THAT THE SERVICE, SOFTWARE, OR EQUIPMENT PROVIDED BY BROADVOICE WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH, OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED OR ERROR-FREE. BROADVOICE SHALL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE. BROADVOICE MAKES NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED USING THE SERVICE, THE SOFTWARE, THE EQUIPMENT, OR THE INTERNET. YOU EXPRESSLY ASSUME ALL RISK AND RESPONSIBILITY FOR USE OF THE SERVICE, THE SOFTWARE, THE EQUIPMENT, AND THE INTERNET GENERALLY. YOU AGREE NOT TO USE THE SERVICE, THE SOFTWARE, OR THE EQUIPMENT IN ANY HIGH-RISK ACTIVITIES WHERE DAMAGE OR INJURY TO PERSON, PROPERTY, ENVIRONMENT, OR BUSINESS MAY RESULT IF AN ERROR OCCURS.

IN NO EVENT SHALL BROADVOICE (OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, PARENT, SUBSIDIARIES, OR AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS, OR SUPPLIERS BE LIABLE FOR: (A)

ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF REVENUE, OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE, OR INABILITY TO USE THE SERVICE, THE SOFTWARE, OR THE EQUIPMENT, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE, OR STRICT LIABILITY, EVEN IF BROADVOICE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY. ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS SECTION 8 ALSO APPLY TO BROADVOICE'S THIRD PARTY LICENSORS, PROVIDERS, AND SUPPLIERS AS THIRD-PARTY BENEFICIARIES OF THIS AGREEMENT.

ANY RIGHTS OR LIMITS STATED HEREIN ARE THE MAXIMUM FOR WHICH BROADVOICE (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), BROADVOICE'S THIRD PARTY LICENSORS, PROVIDERS, AND SUPPLIERS ARE COLLECTIVELY RESPONSIBLE.

THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

BROADVOICE RESERVES THE RIGHT TO PURSUE ANY AND ALL LEGAL AND EQUITABLE CLAIMS AGAINST YOU PERTAINING TO YOUR USE OR MISUSE OF THE SERVICE, THE SOFTWARE, OR THE EQUIPMENT, OR FOR YOUR BREACH OF THE AGREEMENT (INCLUDING ANY POLICIES RELATING TO THE SERVICE) WITHOUT (A) INCREASING ANY OF THE LIABILITIES OR OTHER OBLIGATIONS BROADVOICE (OR ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, OR AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS, OR SUPPLIERS ARE OTHERWISE SUBJECT TO PURSUANT TO THIS AGREEMENT OR SUBJECTING BROADVOICE (OR ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, OR AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS, OR SUPPLIERS TO ANY ADDITIONAL LIABILITIES OR OTHER OBLIGATIONS, OR (B) INCREASING ANY OF THE RIGHTS YOU ARE OTHERWISE ENTITLED TO PURSUANT TO THIS AGREEMENT OR PROVIDING YOU WITH ANY ADDITIONAL RIGHTS, THE MAXIMUM AGGREGATE LIABILITY OF BROADVOICE (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE AMOUNT PAID TO BROADVOICE FOR SERVICE.

**16.3 Reliance on Limitations.** Subscriber acknowledges and agrees that the essential purpose of Section 16 is to allocate the risks under the Agreement between the parties and to limit Broadvoice's potential liability in light of the agreed-upon pricing for the Services, which would have been substantially higher if Broadvoice were to assume the risk of Subscriber's incidental or consequential damages, or other types of losses listed in Section 16, or the risk of liability in excess of the limit described above. Broadvoice relied on these limitations when offering to provide the Services to Subscriber.

## 17. Indemnification

Each party (The "Indemnifying Party") shall agree to defend, indemnify and hold harmless the other party (The "Indemnified Party") and its officers, agents, affiliates, parents, subsidiaries, directors, members, contractors, partners, shareholders, invitees, and employees, and each of them from and against all claims, demands, causes of action, suits, judgments, settlements, obligations, fines, penalties, damages, liabilities, charges, costs, and expenses, in law or equity, of every kind and nature whatsoever, including reasonable attorney's fees, related to or arising from the operations to be performed under this Agreement, including, but not limited to:

- (a) any violation of applicable laws, regulations, or this Agreement;
- (b) the use of the Service, the Software, the Equipment, or the Internet or the placement or transmission of any message, information, software, or other materials on the Internet by you (or any parties who use your account, with or without your permission, to access the Service);
- (c) negligent acts, errors, or omissions by you (or any parties who use your account, with or without your permission, to access the Service);
- (d) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement
- (e) claims for infringement of any intellectual property rights arising from the use of the Service, the Software, the Equipment, or the Internet)
- (f) infringement of any patent, copyright or trademark rights;
- (g) any economic loss or damage arising out of or related to the provision of services or this Agreement.

The Indemnified Party shall promptly notify the Indemnifying Party in writing of any such claim, action, or demand and shall cooperate fully in the defense thereof. The Indemnifying Party shall have the right to control the defense and settlement of any such claim. However, the Indemnified Party shall have the right to participate in the defense at its own expense. The Indemnifying Party shall not settle any claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, delayed, or conditioned.

## **18. Arbitration; Waiver of Jury Trial**

READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES. In the unlikely event that Broadvoice has not been able to resolve a dispute it has regarding Subscriber's Equipment or Services arising out of or relating to use of the Equipment or Services after 60 days, any claim, dispute, or controversy (excluding any Broadvoice claims for injunctive or other equitable relief), whether based in contract, tort, statute or otherwise arising out of or in connection with or relating to this Agreement, the Equipment, the Services, or the breach or alleged breach of this Agreement (collectively, "Claims"), shall be decided by binding arbitration in accordance with the Arbitration Rules of the American Arbitration Association. This agreement to arbitrate is intended to be given the broadest possible meaning under Applicable Laws. The initiation of an arbitration dispute shall not otherwise prevent Broadvoice or Subscriber from terminating services in accordance with this Agreement. Disputes about the arbitrability of any claims and/or the scope, enforceability, or validity of this arbitration agreement shall be decided by an arbitrator.

If an agreement to resolve the dispute is not reached, an arbitration proceeding may be commenced by downloading or copying a form from the AAA website (<http://www.adr.org>). The amount of any settlement offer made by Subscriber or Broadvoice shall not be disclosed to the arbitrator.

Each party will be responsible for its own costs incurred in the arbitration, including arbitration filing fees and attorneys' or expert witness fees. The arbitrator's costs and expenses shall be shared equally between the parties.

The arbitration will be conducted in Los Angeles County, California. Each party will be responsible for paying any filing, administrative and arbitrator fees in accordance with the Arbitrator's rules. The award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing Broadvoice from seeking injunctive or other equitable relief from the courts as necessary to protect any of Broadvoice's proprietary interests.

Subscriber and Broadvoice agree that, by entering into this agreement, Subscriber and Broadvoice are waiving the right to a trial by jury. ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND. THIS WAIVER APPLIES TO CLASS ARBITRATION, AND, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE ENTITY or PERSON'S CLAIMS. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS PROVISION TO BINDING NEUTRAL ARBITRATION.

## **19. Assignment**

You agree not to assign or otherwise transfer this Agreement, in whole or in part, including the Software or your rights or obligations under it. Any attempt to do so shall be void. Broadvoice may assign all or any part of this Agreement without notice and you agree to make all subsequent payments as directed.

## **20. Waiver**

The failure of either party to exercise or enforce any right or remedy under the Agreement shall not constitute a waiver of such right or remedy, except as expressly provided herein. Except as provided elsewhere in this Agreement, no waiver or amendment to any provision of the Subscriber Agreement shall be enforceable against a party unless it is in writing and otherwise conforms to the requirements of these Terms.

## 21. Severability.

If any provision of the Agreement is deemed illegal, invalid or unenforceable in whole or in part under applicable Law, the Agreement shall be deemed amended as and to the extent necessary to render its terms valid, enforceable under applicable Law, and, insofar as possible, consistent with the original intent of the parties.

## 22. Choice of Law

You and Broadvoice agree that the substantive laws of the state of California will be applied to govern, construe and enforce all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement, except to the extent such law is inconsistent with Federal law. The proper venue for any action is in the City of Los Angeles, County of Los Angeles and Subscriber waives any objection as to venue or inconvenient forum in such courts. To the fullest extent permitted by law, you and Broadvoice agree 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 this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

## 23. Compliance

Broadvoice's failure at any time to insist upon strict compliance with any of the provisions of this Agreement in any instance shall not be construed to be a waiver of such terms in the future. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the unenforceable portion shall be construed as nearly as possible to reflect the original intentions of the parties.

## 24. Force Majeure

Broadvoice will not be liable for delays, damages or failures in performance due to causes beyond its reasonable control, including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, of other things we do not control, or an inability to obtain necessary equipment or services.

## 25. Entire Agreement

This Agreement, including all policies posted on Broadvoice's website, which are fully incorporated into this Agreement by reference, constitutes the entire agreement between you and Broadvoice with respect to the subject matter hereto and supersedes any and all prior or contemporaneous agreements whether written or oral. Any changes by you to this Agreement, or any additional or different terms in your purchase orders, acknowledgements or other documents, written or electronic, are void.

## 26. Notice

Notices by Broadvoice to you shall be deemed given: (a) when sent to your primary contact email address; (b) when deposited in the United States mail addressed to you at the address you have specified in your account options; or, (c) when hand delivered to your home, as applicable.

## 27. Acceptable Use

Subscriber agrees to use the VOIP Service in accordance with Broadvoice's Acceptable Use Policy ("Acceptable Use Policy"), published at <http://www.broadvoice.com/AcceptableUse>. Broadvoice reserves the right to make changes to the Acceptable Use Policy without notice.

## 28. Privacy Policy

Broadvoice will treat each Subscriber's personal information in accordance with Broadvoice's Privacy Policy ("Privacy Policy") published at <https://www.broadvoice.com/privacy-policy-2/>. Subscriber agrees to the terms of the Privacy Policy. Broadvoice reserves the right to make changes to the Privacy Policy without notice.

### **29. Survival**

All obligations of the parties under this Agreement, which, by their nature, would continue beyond the termination, cancellation, or expiration of this Agreement, including without limitation, those provisions relating to Warranties and Limitation of Liability, and Indemnification, shall survive such termination, cancellation, or expiration.

### **30. Electronic Communications**

When you visit broadvoice.com, sign up for service with us, or send e-mails to us, you are communicating with us electronically. By doing so, you consent to receive communications from us electronically in return. It is the responsibility of the subscriber to maintain and update a valid email address with Broadvoice at all times. Broadvoice will not be held responsible for interruptions in service or cancellation of service for non-payment due to an email not being received by the subscriber or filtered out by the email provider being utilized by the subscriber. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. Broadvoice sends regular account notifications, balance notifications, and subscription renewal emails which cannot be opted out of. Subscribers may opt out of optional email correspondences, such as periodic newsletters and feature update announcements by clicking a link at the bottom of the email correspondence.

### **31. Third Party Beneficiaries**

If you are not a party to this agreement, you do not have any remedy, claim, reimbursement, or cause of action. This agreement does not create any third-party beneficiary rights.

### **32. Document Acceptance and Signature**

A Service Order or similar document setting forth a Service proposal that has been prepared by Broadvoice and sent to Subscriber for acceptance shall be deemed accepted, and shall become effective and legally binding on both parties, when an authorized representative of Subscriber (or an individual that Broadvoice reasonably believes to be such) manifests its assent in the manner indicated by the document (for example, by signature or "click to accept"). Notwithstanding the foregoing, a quotation or Service Order attached as an exhibit to a Service Agreement shall become effective as a Service Order when the parties enter into the Agreement, without further Subscriber acceptance. Use of DocuSign, or any other widely used method of verifiable electronic signature and delivery, shall be a valid method for signature and delivery of all documents hereunder.