

# Terms and Conditions

BY ACCEPTING THESE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS BELOW. ALL SERVICE ORDERS AND SERVICES ARE SUBJECT TO THESE TERMS AND CONDITIONS.

These Terms and Conditions (the "Agreement") are entered into by and between MONITOR TELECOM ("Provider"), and the customer purchasing products or services from Provider ("Customer").

## 1. DEFINITIONS

The following terms will have the meanings set forth below.

**1.1** "Customer Data" means any data, information or other materials of any nature whatsoever provided to Provider by Customer or a User in the course of implementing or using the Services.

**1.2** "Service Descriptions" means user manuals and other documentation relating to the Services that are made available to Customer by Provider in digital or hard copy form, as updated from time to time.

**1.3** "Service Fee" or "Service Fees" means the monthly or annual fees set forth in the Service Order to be paid by Customer to Provider as consideration for Provider's provision to Customer of the Services, but does not include usage fees, taxes or regulatory fees or surcharges, which Customer must pay in addition to the Service Fees.

**1.4** "Service Order" means an order for Services or products.

**1.5** "Service Plan" means the monthly or annual subscription plan a Customer agrees to in the Service Order.

**1.6** "Service Order Addendum" means a Service Order agreed to by Customer subsequent to the initial Service Order.

**1.7** "Services" means the products or services that are being provided to Customer as described in the Service Order, including any Additional Services set forth in a Service Order Addendum accepted by Provider.

**1.8** "Software" means any proprietary software owned by, licensed by or which Provider has a right to sublicense that is used in or used to provide the Services. "Software" includes, without limitation, any application that Provider makes available to the Customer for use on a mobile device.

1.9 "User" means a user of the software, client, mobile application or other web-based application, equipment, feature or functionality provided by Provider in conjunction with the Services.

## **2. SERVICES**

2.1 Generally. Provider will provide the Services set forth in an accepted Service Order subject to the terms and conditions of this Agreement. Provider hereby grants Customer limited, revocable, non-exclusive, non-transferable access to the Services for use by the number of Users set forth in the Service Order, for Customer's own internal business purposes. Provider grants Customer a limited, revocable, non-exclusive, non-transferable right to use the Services Descriptions in connection with its use of the Services. Each Service Order will be subject to Provider's acceptance, which will be deemed given if Provider thereafter provides the Services to Customer.

2.2 Conditions. Customer agrees that Provider's obligations to provide the Services are expressly conditioned upon (a) Customer's payment of the fees as and when due, and (b) Customer's satisfaction of the technical requirements set forth in the Services Descriptions for the Services made available to Customer by Provider, as the same may be updated by Provider from time to time.

2.3 Additional Services. Customer may request an increase in Users or additional Services at any time during the Term (any such increase, "Additional Services") by submitting a Service Order Addendum setting forth the specific Additional Services desired. Each Service Order Addendum will be subject to Provider's acceptance, which will be deemed given if Provider thereafter provides the Additional Services to Customer. Upon acceptance by Provider, such Service Order Addendum will be deemed an amendment to the Agreement, subject to all of the terms and conditions herein, and the Service Fees will be increased to reflect the Additional Services, subject to the same pricing and payment terms as are set forth in the Service Order or the Service Order Addendum as applicable.

## **3. TERM**

This Agreement will commence on the date Provider accepts the Service Order and will continue for the period of time specified in the Service Order (the "Initial Term"), unless either party provides the other party, at least thirty (30) days prior to the end of the Initial Term or applicable Renewal Term, with written notification. The Initial Term and any Renewal Terms are collectively the "Term".

## **4. TERMINATION**

4.1 Termination by Customer. If Customer terminates the Agreement, or some of the Services provided under the Agreement, Provider will charge

Customer, and Customer will pay a prorated amount for the terminated Services based on the date of termination. Provider will also charge Customer, and Customer will pay, (a) any unpaid recurring or non-recurring charges waived by Provider at the beginning of or during the Terminated Term, and (b) the difference between the MSRP and the price paid by Customer for any equipment purchased at the beginning of or during the Terminated Term. If Customer or its User transfers or ports its phone number to a service provider other than Provider, Customer must also contact Provider to terminate the Services provided to Customer by Provider.

4.2 Termination by Provider. (a) Provider is entitled, at its sole discretion, to suspend, terminate or change the Services without advance notice upon any misuse of the Services in any way, Customer's breach of the Agreement, Customer's failure to pay any sum due hereunder, suspected fraud or other activity by Customer or a User that adversely affects the Services, Provider, Provider's network or another customer's use of the Services. Provider will be entitled to determine, at its sole discretion, what constitutes misuse of the Services, and Customer agrees that Provider's determination is final and binding on Customer. Provider may require, and if required, Customer will pay, an activation fee as a condition to changing or resuming a terminated or suspended account. (b) Provider is entitled to terminate any affected portion of the Services if: (i) Provider is prohibited by law from providing such portion of the Services; or (ii) any material rate or term contained herein and relevant to the affected Services is substantially changed by or as a result of any regulation or order issued by any court of competent jurisdiction, the Federal Communications Commission (FCC), any other local, state or federal government authority, or any carrier or Internet service provider. (c) Upon termination of this Agreement under this Section 4.2, Customer will be responsible for the full monthly Service Fee for the month in which termination occurs, in addition to any accrued but unpaid usage and other charges.

## **5. FEES, BILLING AND TAXES**

5.1 Payment of Service Fees. Customer will pay the Service Fees for Services ordered by Customer, and all other amounts due under the Agreement, pursuant to the terms of this Section 5.

5.2 Credit. The provision of Services is contingent upon establishment of and continuing credit approval by Provider. Customer hereby consents to Provider's procurement of a credit score or report regarding Customer. At any time during the Term, Provider is entitled to require a deposit or other acceptable form of security from Customer, as it deems appropriate. In addition, if requested by Provider, Customer agrees to provide, within two (2) business days of request, appropriate financial records to evaluate Customer's continuing ability to pay. Provider may, immediately and without

notice, suspend or terminate the Services if Customer fails to comply with these security obligations. Upon a payment default by Customer not cured in a timely manner, Provider will have the right to offset against any security or deposit held any amounts owed to Provider by Customer, and to invoice and collect all other amounts owed.

5.3 Billing. Provider will provide Customer with a monthly billing statement for the Services provided each calendar month and bill all charges invoiced to Customer's account. Such charges will include monthly service fees, storage charges, activation charges, equipment charges, toll charges, shipping charges, taxes, regulatory recovery fees and any other applicable charges. Monthly Service Fees will be paid in advance of each month's service; any variable charges associated with usage and any other applicable charges associated with such usage shall be billed in arrears. Billing for monthly Service Fees commences upon ordering of the Services, and monthly Services Fees will be billed in the months in which such Services commence. Customer agrees to provide Provider with complete and accurate contact and payment information, which may include Customer's credit card information, and Customer agrees to advise Provider of any changes thereto. To the extent Customer's payment method is by credit card, Customer authorizes Provider to charge Customer's credit card automatically to pay for Customer's charges. If a charge to Customer's credit card is declined or reversed, or if the account or credit card has expired or been suspended or closed, or if Customer fails to provide Provider with accurate or complete credit card information, Provider may suspend or terminate the Services.

5.4 Late/Non-payment. If any charges for the Services are due but unpaid for any reason, Provider may suspend or terminate the Services and all accrued charges will be immediately due, plus a late fee of 2.2% per month. A fee may also be charged to activate a suspended or terminated account. No suspension or termination of the Services or of this Agreement will relieve Customer from paying any amounts due hereunder.

5.5 Taxes. All Service Fees and other charges are exclusive of any taxes, surcharges, public utility fees and regulatory fees (including, without limitation, Universal Service Fees and E911 taxes). Such taxes and fees will be billed by Provider and paid by Customer. Taxes and regulatory fees may increase during the Term, and Customer will pay such increased fees commencing with the next monthly bill. Should Customer claim an exemption of any taxes or regulatory fees, Customer must provide official documented and certified proof of such exemption. In no event will Provider be liable for any taxes due by Customer or its User, and Customer will defend, indemnify, and hold harmless Provider if any claim for taxes or fees is made. If any amounts paid for the Services are refunded by Provider, applicable taxes and regulatory fees may not be refundable.

5.6 Regulatory Recovery Fee. A regulatory recovery fee may be charged monthly to offset costs incurred by Provider in complying with inquiries and obligations imposed by federal, state and municipal regulatory authorities and the related legal and billing expenses. This fee is not a tax or charge required or assessed by any government. The regulatory recovery fee will apply to every phone number assigned, including toll free and virtual numbers. The regulatory recovery fee may increase during the Term, and Customer will pay such increased fee commencing with the next monthly bill.

5.7 Service Fee Changes. Provider may change the Service Fees, the types of Service Plans and any additional usage charges without advance notice. Notwithstanding the foregoing, the Service Fees agreed upon in Customer's Service Order will not be increased during the Initial Term. With respect to any Renewal Term, the Customer will be charged Provider's then-current Service Fees in effect at the commencement of the Renewal Term.

5.8 Availability. Customer acknowledges and agrees that the Services may not be available 100% of the time. Additionally, Services will not be available in the event of interruption in Customer's or its User's internet or broadband service. Provider will not credit Customer for any interruptions in Service.

5.9 Discounts. From time to time in its sole discretion, Provider may offer promotions or discounts. Any promotion or discount codes must be provided to Provider upon purchase of the Services. Customer will not be entitled to a subsequent credit for such promotions or discounts if not requested at the time of account creation or change of Service. Promotions and/or discounts may not be used cumulatively or be used for Services retroactively.

5.10 Billing Disputes. Customer must dispute any charges for the Services in writing to [customerservice@monitorcoop.com](mailto:customerservice@monitorcoop.com) within thirty (30) days of the date of the charge by Provider, or Customer waives any objection and further recourse with regard to such charges. Notwithstanding the foregoing, Customer shall pay all undisputed charges in accordance with this Agreement.

5.11 Usage Charges. Every call using the Services that originates or terminates in the Public Switched Telephone Network ("PSTN"), including without limitation other VoIP networks, accrues applicable toll charges. Customer will not be charged for monthly usage within the limits of its then current Service Plan. Calls to phone numbers outside the lower 48, United States and Canada will also be charged to the Customer in accordance with the applicable Service rates.

## **6. TELEPHONE NUMBER**

Any telephone number provided by Provider ("Number") to the Customer will be leased and not sold. Provider reserves the right to change, cancel or move the Number should Provider reasonably determine, in its sole discretion, that it is required to do so as a result of its agreements with its underlying services providers or for other business purposes related to the provision of the Services.

## **7. PRIVACY**

The Services use the public Internet and third-party networks to transmit voice communications and data. Provider is not liable for the interception, use or disclosure of Customer's or its User's voice communications or data. Provider does not represent, warrant or covenant that the Services will maintain the privacy or security of Customer's or its Users' voice communications or data. Customer acknowledges and agrees that none of its Customer Data is considered "Customer Proprietary Network Information" under the rules of the Federal Communications Commission. Customer agrees that Provider is entitled to monitor Customer's and Users' use of the Services to protect, maintain, or improve the Services; to prevent fraud or misrepresentation by affirmative acts and/or omissions; to protect Provider, its customers or other third parties affiliated with Provider; or for any other good cause. If required by law, Customer will inform its Users that Provider may monitor the Users' communications and store and use the Users' personally identifiable information as necessary to provide the Services. For Provider's Privacy Policy, please visit our privacy page.

## **8. LICENSE; PROHIBITED USES; CUSTOMER RESPONSIBILITIES; LIMITATIONS**

8.1 Customer hereby grants to Provider a license to copy, store, record, transmit, display, view, print and use Customer Data, solely to the extent necessary to provide the Services to Customer. Except as expressly provided in this Section 8, Customer grants to Provider no right, title, interest, or license in the Customer Data. Customer represents and warrants that it has all necessary consents and rights to provide personally identifiable information about its Users to Provider, and Customer will provide such information upon reasonable request by Provider.

8.2 Customer represents and warrants that it will not use the Services for any illegal, fraudulent, improper, or abusive purpose or in any way that interferes with Provider's ability to provide high-quality Services to other customers, prevents or restricts other customers from using the Services, or damages any of Provider's or other customers' property. If Provider discovers use of the Services for anything other than the permitted uses in this Agreement or for any of the prohibited uses in this Agreement, Provider may at its sole discretion terminate or suspend all or part of Customer's Services and charge any applicable fees for the Services used plus damages caused by such improper use. Prohibited uses include, but are not

limited to: (a) behavior that is illegal, obscene, threatening, harassing, defamatory, libelous, deceptive, fraudulent, malicious, infringing, tortious or invasive of another's privacy; (b) sending unsolicited messages or advertisements, including e-mail, voice-mail, text messages or faxes (commercial or otherwise) ("spamming"), or otherwise sending bulk or junk e-mail, voice-mail, text messages or faxes; (c) harvesting or otherwise collecting information about others, including e-mail addresses, without their consent; (d) negligently, recklessly, knowingly or intentionally transmitting any material that contains viruses, time bombs, Trojan horses, worms, malware, spyware or any other programs that may be harmful or dangerous; (e) creating a false caller identity ("ID spoofing") or forged e-mail/text message address or header, or otherwise attempting to mislead others as to the identity of the sender or the origin of any communication made using the Services; (f) transmitting any material that may infringe, misappropriate, or otherwise violate the foreign or domestic intellectual property rights or other rights of third parties; (g) violating any U.S. or foreign law regarding the transmission of technical data or software exported through the Services; (h) using the Services in excess of what, in Provider's sole discretion, would be expected of normal business use, including without limitation allowing more than one user to use a single VoIP line or using a single VoIP line in excess of what would be expected of a single user; (i) using the Services in any way that interferes with other customers' and third parties' use and enjoyment of the Services; (j) using or employing methods and/or devices that are designed or likely to take advantage of, bypass, exploit or otherwise avoid this use policy.

8.3 Customer understands and agrees that: (a) it will be solely liable for any transmissions sent through the Services under its account or its User's account, including the content of any transmission sent through the Services under its account or its User's account; (b) it will abide by all applicable Provider policies, procedures and agreements related to the Services; and (c) it will not attempt to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Services through password mining or any other means.

8.4 Some of Provider's plans and other Services are offered on an "unlimited" basis. All unlimited plans: (a) may only be used for normal commercially reasonable business use; (b) are provided only for dialog between two individuals at one time per line; (c) are issued on a "one (1) user per line basis", meaning that only one registered User may be assigned to use the Services for any one line; and (d) are subject to additional usage charges, including but not limited to such charges associated with international calling, in accordance with the then-current rates. Unlimited plans may not be used for any of the following prohibited uses (which are in addition to the other prohibited uses applicable to all Services): (i) trunking or forwarding a Provider Number to another phone number capable of handling

multiple simultaneous calls, or to a private branch exchange (PBX) or a key system; (ii) spamming or blasting (e.g., sending bulk or junk voice-mails, e-mails, text messages or faxes simultaneously); (iii) bulk call-in lines (e.g., customer support or sales call centers, "hotlines", 900 numbers, sports-line numbers, etc.); or (iv) autodialing or "predictive" dialing (i.e., non-manual dialing or using a software program or other means to continuously dial or place out-bound calls). In addition, unusually high usage of the Services may impair Provider's ability to provide high-quality Services to others and/or indicate unauthorized use of the Services, in which case Provider may suspend or terminate Customer's account or, upon prior notice, convert Customer's account to a metered calling plan that charges significantly higher usage rates.

8.5 Customer must report any unauthorized use of the Services to Provider immediately after Customer discovers such use. Customer is responsible for all use of the Services, whether authorized or unauthorized. Customer will be responsible if any of its Users use the Services in a manner prohibited by this Agreement. Customer will be responsible for any act or omission of a User that would be a breach of this Agreement if done by Customer.

8.6 Customer acknowledges and agrees that the right to use any Services is nonexclusive and nontransferable, and Customer will not permit use of the Services other than for its internal business purposes. Nothing in this Agreement will pass to Customer or any User title to any of the Services, any trade names, trade dress, trademarks, service marks, commercial symbols, copyrightable material, designs, logos and/or any other intellectual property of Provider or its vendors. Customer will not challenge or attempt to register or otherwise protect any of Provider's intellectual property or other rights in the Services.

8.7 Customer will not: (a) copy or adapt the Services for any purpose, except as specifically permitted under this Agreement; (b) use the Services except in accordance with all applicable laws and regulations, and except as set forth in this Agreement; (c) reverse engineer, translate, decompile, or disassemble the Services; (d) use the Services in any outsourcing, application service provider, timesharing or service bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party other than a User; (e) cause or permit the disabling or circumvention of any security mechanism contained in or associated with the Services; or (f) delete, alter, cover, or distort any copyright or other proprietary notices or trademarks with respect to the Services.

8.8 Customer understands and accepts that, in order to protect Customer against fraudulent use of the Services, Provider may require Customer to contact Provider in order to enable calling to certain calling destinations.

8.9 Customer will execute such other documents, provide such other information, and affirmatively cooperate with Provider, all as may be reasonably required by Provider relevant to providing the Services.

## **9. USE AND STORAGE**

Provider reserves the right to establish or modify general practices and limits concerning use of the Services and Software, including, without limitation, the maximum number of days that content will be retained by the Service and the maximum disk space or bandwidth capacity that will be allotted on servers owned or operated by Provider on Customer's behalf. Where practical, Provider will provide Customer with prior notice of such new or modified practices; provided, however, that Provider will have the absolute right to implement such new or modified practices without prior notice in its sole discretion and without liability of any kind.

## **10. ELECTRONIC RECORDING**

Customer agrees that there are federal and state statutes governing the electronic recording of telephone conversations and that Provider will not be liable for any illegal use of any recording services provided to Customer or its Users. It is Customer's responsibility to determine if the electronic recordings are legal under applicable federal and state laws and to comply with those laws. Customer will defend, indemnify and hold harmless Provider for any claims, damages, fines, penalties or costs (including, without limitation, attorneys' fees) arising out of Customer's or its User's failure to adhere to applicable electronic recording laws.

## **11. RESPONSIBILITY FOR REGISTRATION INFORMATION AND CONTENT OF CUSTOMER COMMUNICATIONS**

Customer is solely responsible for maintaining the confidentiality of Customer's account login information (including, without limitation, its Users' account login information), and will not allow a third party to use the Services. Customer is solely responsible for any and all activities that occur under Customer's account or its User's account, including, without limitation, fraudulent use of the account. Customer and its Users must comply with laws regarding online behavior, acceptable content and the transmission of equipment and information under applicable export laws. Customer also agrees to comply with applicable local rules or codes of conduct (including, if applicable, codes of conduct or policies imposed by employers) regarding online behavior and acceptable content. Use of the Services is void where prohibited. Customer will immediately notify Provider of any unauthorized use of Customer's account or its User's account or any other breach of security related to Customer's account, its User's account or the Provider Services. Customer and each User must "log off" at the end of each session. Provider is not liable for any loss or damage arising from Customer's or its User's failure to comply with any of the foregoing obligations. In

consideration for using the Provider Services, Customer will: (a) provide certain current, complete and accurate information about Customer and Users when prompted to do so by the Provider Services, and (b) maintain and update this information as required to keep it current, complete and accurate. Customer agrees that Customer is solely responsible for the content of all visual, written or audible communications ("Content") sent, displayed or uploaded by Customer or a User in using the Services. Although Provider is not responsible for any such communications, Provider may reject or remove any Content that violates a law or this Agreement. Customer or the User retains copyright and any other rights already held in Content that Customer or the User submits, posts or displays on or through, the Services, or any music or ring-tones Customer or a User uses in connection with the Service. Customer understands and agrees that by displaying, exchanging or uploading Content to a Provider website, transmitting Content using the Services or otherwise providing Content to Provider, Customer automatically grants (and warrants and represents that it has a right to grant) to Provider a world-wide, royalty-free, sub-licensable (so Provider affiliates, contractors, resellers and partners can deliver the Services) perpetual, irrevocable license to use, modify, publicly perform, publicly display, reproduce and distribute the Content in the course of offering the Services, including, without limitation, on associated websites ("Sites"). Furthermore, Customer represents and warrants that it has all necessary consents and rights to transmit Content and other communications from its users to Provider. **RESPONSIBILITY FOR CONTENT OF OTHERS.** Customer acknowledges that Users may violate one or more of the above prohibitions, but Provider assumes no responsibility or liability for such violation. If Customer becomes aware of misuse of the Services by any person, entity or organization, Customer agrees to contact Provider Customer Support at 503.634.2266 or [billing@monitorcoop.com](mailto:billing@monitorcoop.com). Provider may investigate any complaints and violations that come to its attention and may take any action that it believes is appropriate, including, but not limited to, issuing warnings, removing the content or terminating accounts and/or User profiles. Under no circumstances will Provider be liable in any way for any data or other content available on a Site or actions taken while using the Services, including, but not limited to, any errors or omissions in any such data, content or activity or any loss or damage of any kind incurred as a result of the use of, access to or denial of access to any data, content or activities on a Site. Provider does not endorse and has no control over what Users post, submit to or do on a Site. Customer acknowledges that Provider cannot guarantee the accuracy of any information submitted by any User of a Site, nor any personally identifiable information about any User. Provider reserves the right, in its sole discretion, to reject or remove content.

## **12. EMERGENCY 911 SERVICES**

12.1 Service Limitations. The FCC requires that Provider provide E911 Service to all Customers who use Provider Services within the United States. Sections 13.2-13.8 apply to all Customers who use Provider Services within the United States. Section 13.9 applies to all Customers.

12.2 Acknowledgement and Warning Labels. Customer acknowledges that provider's equipment and services do not support 911 emergency dialing or other emergency functions in the same way that traditional wireline 911 services work. The differences are detailed in this section 13, and customer agrees to notify all potential users who may place calls using customer's services of the 911 limitations described herein. Prior to the initiation of service, provider will provide customer with warning labels regarding the limitations or unavailability of 911 emergency dialing. Customer agrees to place such label on or near each telephone or other customer-premises or user premises equipment on which the services may be used. If additional labels are required, customer may request them from provider, and provider will provide additional labels. Provider will provide customer with advisory notices regarding 911 emergency dialing and request acknowledgments from customer. Customer will provide such advisory notices to its users. Customer agrees to respond and affirmatively acknowledge that provider has advised customer of the circumstances under which e911 service may not be available or may be limited in comparison to traditional 911 emergency dialing. Customer will provide similar acknowledgements from its users upon request by provider. Provider advises customer and users to maintain an alternative means of accessing traditional 911 services.

12.3 Electrical Power. Customer acknowledges that the services, including without limitation e911 service, will not function in the absence of electrical power.

12.4 Internet access. Customer acknowledges that the services, including without limitation e911 service, will not function if there is an interruption of customer's broadband or high-speed internet access service.

12.5 Non-Voice Systems. Customer acknowledges that the services are not set up to function with outdialing systems such as home security systems, medical monitoring equipment, tty equipment, or entertainment or satellite television systems. Provider will not be liable for interruption or disruption of such systems by the services.

12.6 E911 Service. E911 service is a mandatory component of all inbound/outbound traditional fax and voice service plans. E911 service is not offered on virtual numbers, outside the united states, on toll- free numbers or on similar service accessories or add-on service plans. E911 service is only available in selected areas. E911 service is tied to the customer's registered service address associated with the assigned phone number; customer is

responsible for providing provider with address information for customer's users. The provider mobile application uses the device's dialer and cellular telephone service to make 911 calls. If a device does not have cellular telephone service, then the user will not be able to call 911 from the provider mobile application. Customer acknowledges that provider's only mechanism for routing 911 calls to the correct emergency call taker is the customer's or user's registered service address associated with the assigned phone number. Customer acknowledges and understands that any enhanced location information passed to an emergency operator by provider will be based upon the customer's or user's registered service address provided to provider by customer. In the event that the registered service address associated with the assigned phone number is incorrect, is outdated, or is not complete, a 911 call may be routed incorrectly.

12.7 E911 Service Charge. Customers that are required to subscribe to provider e911 service will be subject to a monthly e911 service charge. The monthly e911 service fee will be in addition to the applicable service fees for the associated line. The monthly charge for provider e911 service is assessed on a "per-line" (that is, per phone number basis), and will be set at a level that reimburses provider for the direct costs it incurs in providing provider e911 service, including expenses provider incurs, either directly or indirectly, in the form of state, county or municipal e911 surcharges, e911 automatic location information (ali) database storage, line information database and caller id (lidx/cnam) expenses, and any other taxes or surcharges directly or indirectly associated with the provision of services to customers subscribing to this service. Provider reserves the right to adjust the level of charges associated with the provision of e911 services to reflect increases or decreases in the costs it incurs.

12.8 E911 Characteristics. Customer acknowledges that provider e911 service has certain characteristics that distinguish it from traditional, circuit-switched 911 service. These characteristics may make provider e911 services unsuitable for some customers or users. Because customer and user circumstances vary widely, customer should carefully evaluate its own circumstances when deciding whether to rely solely upon provider e911 service. Customer acknowledges that it is customer's responsibility to determine the technology or combination of technologies best suited to meet customer's and its users' emergency calling needs, and to make the necessary provisions for access to emergency calling services (such as maintaining a conventional landline phone or wireless phone as a backup means of completing emergency calls). The following characteristics distinguish provider e911 service from traditional, circuit-switched 911 service:

- E911 service will not function if customer's or its user's dta, phone or videophone fails or is not configured correctly or if customer's or its user's provider service is

not functioning for any reason, including, but not limited to, electrical power outage, broadband or other internet service outage, or suspension or disconnection of service because of billing or other issues. If there is a power outage, customer or the user may be required to reset or reconfigure the equipment before being able to use the provider service, including for e911 purposes. E911 service may not function if customer or a user relocates equipment or uses a non-native telephone number, or for any other reason beyond provider's control.

- E911 service will not function if customer's or its user's dta, phone or videophone fails or is not configured correctly or if customer's or its user's provider service is not functioning for any reason, including, but not limited to, electrical power outage, broadband or other internet service outage, or suspension or disconnection of service because of billing or other issues. If there is a power outage, customer or the user may be required to reset or reconfigure the equipment before being able to use the provider service, including for e911 purposes. E911 service may not function if customer or a user relocates equipment or uses a non-native telephone number, or for any other reason beyond provider's control.
- After initial activation of the e911 service and following any change of and update to customer's or a user's physical location, there may be some delay before the automatic number and location information is passed to the local emergency service operator. This information is typically populated into provider's e911 database (or nomadic e911 databases if nomadic e911 is offered) prior to service activation, but no guarantee can be made that the automatic number and location information will be activated within this schedule. Provider does not currently offer nomadic e911 services.
- The local emergency service operator receiving provider e911 emergency service calls may not have a system configured for e911 services or be able to capture and/or retain automatic number or location information. This means that the operator may not know the phone number or physical location of the person who is making the provider e911 call. Due to technical factors in network design, and in the event of network congestion on the provider network, there is a possibility that a provider 911

call will produce a busy signal, the caller will experience unexpected answering wait times, or the local emergency service operator will take longer to answer the call than 911 calls placed via traditional, circuit-switched telephone networks.

- If customer or its user does not correctly identify the actual location where the provider equipment will be located at the time of activation of the service, provider e911 communications may not be directed to the correct local emergency operator.

12.9 E911 Limitation of Liability and Indemnity. Customer agrees that provider will not be liable for any service outage or inability to dial 911 or any other emergency telephone number using a provider service or to access or reach an emergency service operator due to the 911 dialing characteristics and limitations set forth in this agreement. Customer agrees to defend, indemnify and hold harmless provider, its owners, managers, officers, directors, employees, affiliates and agents, and any other service provider who furnishes services to customer or a user in connection with the services, from any and all claims, actions, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys' fees) by, or on behalf of, customer or any third party or user of the service relating to 911 dialing or the inability to access or reach emergency 911 services.

### **13. DISCLAIMER AND LIMITATION OF LIABILITY**

Provider disclaims all warranties, express, implied, statutory or arising from a course of dealing or performance or custom, with respect to the services, equipment, and any other provider products, services or equipment provided hereunder, including, but not limited to, warranties of merchantability, fitness for a particular purpose, performance in a workman-like manner, compliance with laws, quality, accuracy, completeness or currency of information, system integrability, title, quiet enjoyment and non-infringement. Provider does not represent, warrant or covenant that the products, services or equipment provided will operate uninterrupted, error free or without degradation or loss of data, or be secure. Neither provider nor its service providers will be liable for unauthorized access to or alteration, theft or destruction of customer's or a user's data files, programs, procedures or information, including, without limitation, any such data in provider's possession, custody or control, through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of provider's or its service provider's negligence. In no event will provider or its affiliate, service provider, facility operator or carrier, or their respective owners, directors, managers, officers, employees or agents (collectively, "provider parties") be liable for any direct, actual, indirect, consequential, special, punitive or other damages, or for any cost of cover or

lost profits of any kind or nature whatsoever, arising from or related to this agreement or a provider party's performance or nonperformance of obligations hereunder, a failure of or a defect in the services, equipment or any product, a provider party's violation of a third party's right, or a provider party's acts or omissions. Provider will not be liable for the acts or omissions of, a failure of or a defect in any product or service provided by, or violation of any third party's rights by any third-party service provider, facility operator or carrier. The provider parties' maximum total liability to customer will not exceed the amounts paid by customer to provider in the three (3) months preceding the date the claim accrued. The provider parties will not be liable in any way to any user.

#### **14. INDEMNIFICATION**

Customer will defend the Provider Parties, at Customer's expense, against any third-party claim or action, and indemnify and hold harmless the Provider Parties from any and all losses, damages, liabilities, penalties, settlement obligations, costs, attorneys' fees and other legal expenses related to such third-party claim or action, arising from or related to: (a) Customer's breach of this Agreement or an agreement between Customer and a third party; (b) Customer's violation, infringement or misappropriation of the third party's intellectual property or other rights in Customer's use of the Services; (c) Customer's violation of the third party's privacy, publicity, personality or other rights; (d) Customer's fraud in use of the Services or fraud or misrepresentation regarding the nature or volume of Customer's traffic; (e) Customer's violation of an applicable law; (f) bodily injury, death or property damage to the extent such claim or action arises from the negligence, gross negligence or willful misconduct of Customer, or in the case where strict liability applies; (g) Customer's business, acts or omissions; or (h) acts or omissions by Users that, if done by Customer, would constitute a breach of this Agreement. Customer will not settle any claim or action without Provider's prior written consent. Provider will have the option, at its expense, to participate in the defense or settlement of the claim or action with counsel of its own choosing. If a conflict of interests arises or exists between the parties or if Provider has a good faith belief that its rights are being harmed by the counsel selected by Customer, Provider will have the right to retain separate counsel to represent its interests at Customer's sole cost and expense. Customer will not settle any claim without Provider's prior written consent.

#### **15. EQUIPMENT**

15.1 Equipment Purchase. If Provider sells any equipment to Customer, the terms of this Section 16 apply. Provider's liability for delivery will cease, and title (if applicable) and all risk of loss or damage will pass to Customer upon delivery to the common carrier for shipment. Customer shall be wholly responsible for insuring any products purchased from the time risk of loss or

damage passes to Customer. Provider will pass through to Customer any warranty provided by the manufacturer of the equipment; PROVIDER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO ANY EQUIPMENT.

15.2 Equipment Return Policy. Customer will be required to obtain authorization from Provider to return any equipment. Equipment returned by Customer that is not covered under warranty or that does not bear a return authorization number may be refused. Provider will not replace lost, stolen or modified equipment. Customer must pay all shipping and handling charges related to any equipment returns not covered under warranty. All returned equipment must be unmodified, in good working condition. Provider may decline Customer's return or charge Customer an additional fee for each missing item or for each item that Provider reasonably determines is modified, damaged or not in good working condition. Customer must delete all data files stored on returned equipment. Customer acknowledges that any data remaining on returned equipment cannot be recovered, and Customer releases Provider of any liability for any lost, damaged, or destroyed files, data or other information.

## **16. INTELLECTUAL PROPERTY**

The Services and Software, and all intellectual property therein, are and will remain the exclusive property of Provider. Provider reserves all rights not expressly granted under this Agreement. The Software may contain third-party software that is subject to the terms and conditions of third-party licenses. Neither Customer, Users nor any other third party has a right to inspect, possess, use, copy, or attempt to discover the source code of (or any portion of) the Software, except to the extent that Customer, a User or a third party is expressly permitted to decompile the Software under applicable law and Customer, the User or the third party notifies Provider in writing in advance of its intention to decompile the Software and its reason for doing so.

## **17. PORTAL UPGRADES; PHONE NUMBERS AND WEB PORTAL DISCONTINUANCE**

Provider may update the Customer and User portals, and Customer agrees that Service may be unavailable during the implementation of such updates. Upon expiration, cancellation or termination of the Services, Customer and Users will relinquish and discontinue use of any accounts, Numbers, voice mail access numbers, and/or web portal Sites assigned to Customer by Provider or its service providers.

## **18. MISCELLANEOUS**

18.1 Notices. Unless otherwise specified in this Agreement, any notice required or permitted to be given pursuant to this Agreement will be given in writing by overnight delivery service, sent via certified mail, return receipt

requested, e-mailed, or delivered by hand, and such notice will be deemed to have been given and received when delivered or when delivery was refused, or with respect to electronic transmissions, at the time of transmission (unless the sender received a notice of transmission failure). Customer consents to receive all notices in electronic form, and Provider may send any notice to Customer at Customer's latest physical address or e-mail address provided by Customer. Provider may, in addition to all other methods of giving notice, send any notice to Customer's mailbox in Customer's account on the Provider Customer Care Portal. Both parties agree that any agreements and notices made or provided by one or both parties in electronic form, and in accordance with this Agreement, are as legally binding as if made in physical written form. Customer must send all notices to Provider via e-mail in accordance with the following: To report misuse or fraudulent use of Service, submit a billing dispute, or terminate service please email [customerservice@monitorcoop.com](mailto:customerservice@monitorcoop.com).

18.2 Force Majeure. Provider's performance of any part of this Agreement will be excused to the extent that it is hindered by flood, fire, natural disaster, strike, riot, war, terrorism, hostile attack, governmental action, cable cuts, supplier shortages, breaches, or delays, Provider's inability to perform as a result of actions or inactions of third parties, Customer, a User or Provider's vendors, including, without limitation, Customer's failure to provide or maintain a circuit with respect to an order for Service, or any other cause (whether similar or dissimilar to those listed) beyond Provider's reasonable control (a "Force Majeure"). Provider may terminate the Services without liability if a Force Majeure hinders Provider's performance for more than five (5) days.

18.3 No Class Action. Customer irrevocably waives any right Customer may have to serve as a representative or as a private attorney general, or to participate as a member of a class of claimants, in any lawsuit, arbitration or other proceeding against any Provider Party arising from, related to or connected with this Agreement or any Service Order.

18.4 Binding Nature and Assignment. Customer's rights and obligations in this Agreement will not be assigned, delegated or otherwise transferred in whole or in part without the prior written consent of Provider. Except as part of the sale of all or substantially of the assets for Provider or the assignment of this Agreement, or any rights or obligations thereunder, to any of Provider's affiliates (which will not require Customer consent), Provider's rights and obligations in this Agreement will not be assigned, delegated or otherwise transferred in whole or in part without the prior written consent of Customer, which will not be unreasonably withheld. For sake of clarity, Provider may assign, delegate and transfer some or all of its rights and obligations under this Agreement to its affiliates. Except as otherwise expressly provided herein, this Agreement will inure to the benefit of, and will

bind, the heirs, executors, personal representatives, administrators, successors and permitted assigns of Provider and Customer.

18.5 Governing Law. This Agreement and any related Service Orders will be governed by and construed according to the laws of the State of Oregon, without regard to its conflict of law's provisions. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

18.6 Arbitration. Any dispute or controversy arising out of or in connection with this Agreement or any related Service Order, or otherwise related to the Services, will be resolved by binding arbitration. The Federal Arbitration Act and federal arbitration law applies to this Agreement. The arbitration will be administered by the American Arbitration Association (AAA), conducted by one (1) arbitrator, and conducted in accordance with the AAA's Commercial Arbitration Rules. The arbitration will be conducted in Salem, Oregon. The language of the arbitration will be English. The parties' briefs and other documents and the arbitrator's findings and decision will be confidential unless required to be disclosed by law. Neither party may use any finding or decision of the arbitrator in existing or subsequent litigation or arbitration involving any other person, entity or organization. The arbitrator must have sufficient experience in the matter(s) at issue. The arbitrator's decision will follow the plain meaning of the Agreement and will be final and binding. Neither party will have the right to appeal an error of law or fact. Each party will bear the cost of preparing and presenting its case. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. This agreement to arbitrate also requires Customer to arbitrate claims against other parties relating to Services or products provided or billed to Customer if claims are asserted against Provider in the same proceeding. Notwithstanding the foregoing, either party may bring suit in court to enjoin unauthorized access or trespass to its computer networks or any misappropriation, infringement or violation of its intellectual property rights. The arbitrator will have the exclusive power to rule on the formation, interpretation, applicability, validity or enforceability of this Agreement, including without limitation the validity or enforceability of this arbitration agreement. The arbitrator will not have the power to conduct any form of class or collective arbitration nor join or consolidate claims by or for individuals. If any dispute or controversy arising out of or in connection with this Agreement or any related Service Order, or otherwise related to the Services, cannot lawfully be resolved by arbitration, the complainant must bring any claim or action in the state or federal courts for Salem, Oregon, and the parties waive any objection based on personal jurisdiction, venue or inconvenient forum.

18.7 Entire Agreement, Amendments, Conflict, Severability, Waiver, Survival. This Agreement, all documents referred to herein and any related

Service Order executed by the parties constitute the entire agreement between the parties and supersede any and all prior agreements and rates between the parties with respect to the subject matter hereof. No additions, deletions or modifications to this Agreement or any Service Order will be binding unless (a) made in a writing signed by duly authorized representatives of both parties or (b) agreed to by the party to be charged by electronic means. In the event of a conflict between any of the terms and conditions of this Agreement and any Service Order, the terms and conditions in the Service Order will prevail. The parties are independent contractors. Nothing contained herein will be construed as creating any agency, partnership, or other form of joint venture or enterprise between the parties. If any provision(s) of this Agreement or any related Service Order is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby, and the parties further agree to substitute a valid provision that most closely approximates the economic effect of the invalid provision. The failure of either party to require performance by the other party of any provision hereof will not affect the right to require such performance at any time thereafter, nor will the waiver by either party of a breach of any provision hereof be taken to be a waiver of the provision itself. To the extent permitted by applicable law, the parties agree to and do hereby waive any applicable statutory or common law that may permit a court to construe a contract against its drafter. No claim or cause of action may be asserted against either party more than three (3) months after the time the facts giving rise to the claim or cause of action are discovered or should have been discovered. In the event a suit is brought or an attorney or collection agency is retained by Provider to enforce the terms of this Agreement or any Service Order, or to collect any monies due hereunder, or to collect money damages for breach thereof, Provider will be entitled to recover, in addition to any other remedy available at law or in equity, reimbursement for attorneys' fees, court costs, collection costs, costs of investigation and other related expenses incurred in connection therewith. The terms and provisions contained in this Agreement and any related Service Order that, by their sense and context, are intended to survive the performance thereof by the parties hereto will survive the completion of performance and termination of this Agreement, including, without limitation, payment obligations, the limitations on damages and liability, ownership of intellectual property, and defense and indemnity obligations.