

## **TERMS AND CONDITIONS OF SERVICE**

These Terms and Conditions of Service (the “Terms and Conditions”) govern all Service Agreements entered into and made by and between the party identified in a relevant Service Agreement (the “Subscriber”) and Enhanced Voice Processing, Incorporated (“EVP”). When referred to collectively, EVP and the Subscriber may be referred to as the “Parties”.

**1. Definitions.** The following definitions are adopted to aid in construing this Agreement:

“*Access*” means logging into a Subscriber account for the purposes of using the Services or changing the Services.

“*Account*” means the log-in interface, or portal, by and through which a Subscriber accesses settings such as “on call” Agents, Agent groups, and greeting verbiage.

“*Agent*” means a party designated by a Subscriber, who is authorized to access and use the Services per the terms of the Service Agreement governing the provision of the Services to a specific Subscriber. Agent is, for purposes of use and access to the Services, the designated “on call” medical provider or representative of a Subscriber.

“*Business Associate*” means the extent to which EVP performs services for or on behalf of Covered Entity, and in performing said services, the Business Associate will create, receive, maintain, or transmit Protected Health Information (“PHI”) or Electronic Protected Health Information (“ePHI”).

“*Business Associate Agreement*” means that portion of this Service Agreement that a Covered Entity is required under HIPAA to enter into a Business Associate Agreement with Business Associate that meets certain requirements with respect to the use or disclosure of PHI; and that a Business Associate is required under HIPAA to comply with, as set forth in 45 C.F.R. 164.502(e)(2) and 164.504(e).

“*Covered Entity*” has the meaning as defined under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended, (“HIPAA”), and the regulations promulgated thereunder by the Secretary of the U.S. Department of Health and Human Services (“Secretary”), including, without limitation, the regulations codified at 45 C.F.R. Parts 160 and 164 (“HIPAA Regulations”).

“*Invoice*” means a bill sent to Subscriber by EVP for payment of Subscriber Fees, such payment due within fifteen (15) days of receipt of said Invoice.

“*Service Start Date*” means the date the Services contemplated by this Agreement shall begin.

“*Services*” means automated call answering services, presented as a telecommunications software application, to medical professionals and related entities in the medical field.

“*Subscriber*” means the primary Subscriber of EVP, operating as an “agency” or “office”, that designates on call “agents” to receive and respond to messages captured by and through the Services.

“*Subscription*” an agreement to purchase access to and use of the Services.

“Use” means engaging in use of the Services by logging into a Subscriber account or receiving messages related to a Subscriber account.

2. **Services Provided by EVP.** EVP provides automated answering services, presented as a telecommunications software application, to medical professionals and related entities in the medical field. The Services, generally described, allow a Subscriber to receive calls through the Service, resulting in messages, such messages being forwarded to the Subscriber according to settings selected by the Subscriber. Delivery of the messages may be, at the discretion of the Subscriber, made to a designated Agent of the Subscriber. The Services are provided when a Subscriber, following the instructions provided to the Subscriber by EVP, accesses the Services. Failure by a Subscriber to follow the instructions provided by EVP related to Access and Use may result in the Services being temporarily unavailable to a Subscriber; however, EVP provides to all Subscribers access to EVP’s team of technical support and Subscriber service representatives who are available 24/7. Though not guaranteed—and not a material part of this Agreement—EVP’s technical support and Subscriber service representatives usually provide a response to a request for assistance within two (2) minutes of receiving such request from a Subscriber or a Subscriber’s designated Agent.
3. **Access to the Services.** Access to the Services is provided to a Subscriber via unique log-in credentials, depending upon the status of the Subscriber or Subscriber’s Agent. As directed by a Subscriber, certain Agents may have access to the User Control Panel, which allows for the designation of on call Agents, changes to greetings, and changes to any corresponding schedules. Only Subscribers may designate Agents, and only the Subscriber or a designated Agent of the Subscriber may edit or change the basic settings of a Subscriber account or the content of Urgent and Non-Urgent “mailboxes”.
4. **Use of the Services.** Use of the Services is limited to an acceptable use of the Services, as described herein or per any instructions, directions, or policies communicated to the Subscriber by EVP during the term of this Agreement.
5. **Term of Agreement; Renewal.** The initial term of this Agreement shall be from the Service Start Date and shall renew on a month-to-month basis until terminated or canceled according to the provisions of the Terms and Conditions.
6. **Payment of Subscriber Fees.** Subscriber Fees under this Agreement are due and owing upon receipt of an Invoice from EVP. All Invoices are sent to Subscriber electronically, to the electronic mail address specified in the relevant Service Agreement. Payment information provided to EVP by Subscriber shall be kept confidential and such information shall be maintained pursuant to all applicable State and Federal laws. Subscriber Fees shall be fully earned upon provision of the Services and shall be nonrefundable, as by providing the Services to the Subscriber, EVP will be a good and valuable service to the Subscriber and would sustain economic damages should payment not be made by Subscriber to EVP. The Parties agree that, to the extent allowed by law, the monthly fee agreed to in this Agreement will be liquidated damages and recoverable by EVP in the event of a default by the Subscriber. If payment of a Subscriber Fee remains unpaid for a period of fifteen (15) days after dispatch of an Invoice by EVP to Subscriber, such Subscriber Fee shall accrue a Late Fee of twenty-five dollars (\$25.00), which shall appear on the subsequent Invoice provided to Subscriber. Sales tax shall be assessed to Subscriber for all Services rendered or all products sold to Subscriber. The sales tax rate shall be assessed at the rate of 8.25%, or the rate provided for in State law.
7. **Modification of Service Agreement or Terms and Conditions of Service.** The terms of a relevant Service Agreement and these Terms and Conditions of Service may only be modified by written instrument, signed by both EVP and the Subscriber, subject to the exchange of new consideration.

Proposal of any modification must be made according to the provisions for Notices contained in Section 11 herein.

8. **Cancellation of Service Agreement.** A relevant Service Agreement may be cancelled by the Subscriber with thirty (30) days' notice to EVP, such notice of cancellation being provided to EVP according to the provisions of Section 11. If this Agreement is cancelled, Subscriber agrees that any future agreements entered into by and between EVP and Subscriber may contain different terms and conditions, including different costs related to Access to and Use of the Services.
9. **Termination of Agreement.** EVP may terminate this Agreement only for cause, and EVP shall, in good faith, seek to provide a Subscriber thirty (30) days' notice before any termination of the Agreement. Default under these Terms and Conditions shall, *per se*, give rise to a right of termination by EVP.
10. **Notices.** Notices may be given, from time to time, related to a Service Agreement, such notices including, but not limited to: (1) notices regarding the Services; or (2) notices regarding the terms of a relevant Service Agreement or these Terms and Conditions, including notices regarding breach or default. For a notice to be effective, a notice must be delivered to the Party to whom it is directed, and must be signed, dated, and contain a concise description of the subject matter of the notice. Notices regarding the Services must reference the specific Services contemplated by the notice. Delivery of a notice may be accomplished by electronic mail to either Party; if to the Subscriber, to the electronic mail addresses listed in a relevant Service Agreement. If to EVP, to [support@evpinfo.com](mailto:support@evpinfo.com). Notices may also be delivered by mail; if to Subscriber, to the address for Subscriber listed in a relevant Service Agreement. If to EVP, to 5801 Golden Triangle Blvd., Suite 103-242, Fort Worth, Texas, 76244. Notices delivered to the address listed in a relevant Service Agreement must be delivered by the United States Postal Service, by Certified Mail, Return Receipt Requested, for such notice to be effective. Any notices allowed to be delivered by electronic mail is deemed to have been delivered upon dispatch by the Party dispatching the notice.
11. **HIPAA Compliance; Business Associate Agreement.** EVP, by providing the Services herein, may be considered a Business Associate of the Subscriber under relevant State and Federal law. To the extent this section applies to the relationship between the Subscriber and EVP, is indicated in a relevant Service Agreement. For purposes of this section, "Subscriber" and "Covered Entity" are used interchangeably. The Parties to a Service Agreement intend to protect the privacy and provide for the security of PHI and ePHI disclosed by a Covered Entity to EVP, or received or created by EVP, when providing services in compliance with HIPAA, its corresponding regulations, and the Health Information Technology for Economic and Clinical Health Act ("the HITECH Act"); and all other applicable State and Federal laws, all as amended from time to time. Because a Covered Entity is required under HIPAA to enter into a "Business Associate Agreement" with business associate, such as EVP, that meets certain requirements with respect to the use or disclosure of PHI; and because EVP, as a Business Associate, to the extent applicable, is required under HIPAA to comply with the terms of any Business Associate Agreement, as set forth in 45 C.F.R. 164.502(e)(2) and 164.504(e), the Parties agree that, for the purposes of foregoing, that a relevant Service Agreement governed by these Terms and Conditions, is to be construed as a Business Associate Agreement to the extent applicable. In consideration of foregoing, and for the other good and valuable consideration exchanged and contemplated by this Service Agreement, the parties, to the extent applicable, agree as follows related to the relationship between the Covered Entity and EVP:

**A. Definitions.** For purposes of this section, the following definitions shall be applied:

1. **"Breach"** shall have the meaning given under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.

2. **"Data Aggregation"** shall have the meaning given under 45 C.F.R. § 164.501.

3. **"Designated Record Set"** shall have the meaning given to such term under 45 C.F.R. § 164.501.

4. **"Disclose"** and **"Disclosure"** mean, with respect to PHI, the release, transfer, provision of, access to, or divulging in any other manner, of PHI outside of Business Associate or to other than members of its workforce, as set forth in 45 C.F.R. § 160.103.

5. **"Electronic PHI"** or **"ePHI"** means PHI that is transmitted or maintained in electronic media, as set forth in 45 C.F.R. § 160.103.

6. **"Protected Health Information"** and **"PHI"** mean any information, whether oral or recorded in any form or medium, that: (a) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that (b) identifies the individual, or for which there is a reasonable basis for believing that the information can be used to identify the individual. "Protected Health Information" shall have the meaning given to such term under 45 C.F.R. § 160.103. Under 45 C.F.R. § 160.103, Protected Health Information includes Electronic Protected Health Information (ePHI).

7. **"Security Incident"** shall have the meaning given to such term under 45 C.F.R. § 164.304.

8. **"Services"** shall mean the services for or functions performed by Business Associate on behalf of Covered Entity pursuant to any service agreement(s) between Covered Entity and Business Associates which may be in effect now or from time to time (**"Underlying Agreement"**), or, if no such agreement is in effect, the services or functions performed by Business Associate that constitute a Business Associate relationship, as set forth in 45 C.F.R. § 160.103, *Definition of "Business Associate."*

9. **"Subcontractor"** Subcontractor means a person to whom a Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such Business Associate.

10. **"Unsecured PHI"** shall have the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402, and Federal Register documents, including, but not limited to, Federal Register document 74; Federal Register 19006 (April 27, 2009); and 78 Federal Register 5565 (January 25, 2013).

11. **"Use"** or **"Uses"** mean, with respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such PHI within Business Associate's internal operations, as set forth in 45 C.F.R. § 160.103.

**B. Obligations of Business Associate.** For purposes of this section, the following shall govern the obligations of EVP in its role as a Business Associate:

1. **Permitted Uses and Disclosures of Protected Health Information:** Business Associate shall not use or disclose PHI other than for the purposes of performing the

Services; as permitted or required by this Agreement; or as required by law. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of Subpart E of 45 C.F.R. Part 164 if so used or disclosed by Covered Entity. However, Business Associate may use or disclose PHI (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate, provided that with respect to any such disclosure either: (a) the disclosure is required by law; or (b) Business Associate obtains a written agreement from the person to whom the PHI is to be disclosed that such person will hold the PHI in confidence and will not use or further disclose such PHI except as required by law and for the purpose(s) for which it was disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached; and (iii) pursuant to 45 C.F.R. § 164.501 and 164.504(e)(2)(i)(B), for Data Aggregation purposes for the healthcare operations of Covered Entity. To the extent that Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

**2. Prohibited Marketing and Sale of PHI:** Notwithstanding any other provision in this Business Associate Agreement, Business Associate shall comply with the following requirements: (i) Business Associate shall not use or disclose PHI for fundraising or marketing purposes, except to the extent expressly authorized or permitted by this Business Associate Agreement and consistent with the requirements of 42 U.S.C. § 17936, 45 C.F.R. § 164.514(f), and 45 C.F.R. § 164.508(a)(3); and (ii) Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. § 17935(d)(2), and 45 C.F.R. § 164.502(a)(5)(ii).

**3. Adequate Safeguards of PHI:** Business Associate shall implement and maintain appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement. Business Associate shall reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains, or transmits on behalf of Covered Entity in compliance with Subpart C of 45 C.F.R. Part 164 to prevent use or disclosure of PHI other than as provided for by this Agreement.

**4. Mitigation:** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

**5. Reporting Non-Permitted Use or Disclosure:** The following provisions govern reporting of non-permitted use or disclosure:

**a. Reporting Security Incidents and Non-Permitted Use or Disclosure:** Business Associate shall report to Covered Entity in writing each Security Incident or use or disclosure that is made by Business Associate, members of its workforce, or subcontractors that is not specifically permitted by this Business Associate Agreement, no later than three (3) business days after becoming aware of such security incident or non-permitted use or disclosure, in accordance with the notice provisions set forth herein. Business Associate shall investigate each security incident or non-permitted use or disclosure of Covered

Entity's PHI that it discovers, to determine whether such security incident or non-permitted use or disclosure constitutes a reportable breach of unsecured PHI. Business Associate shall document and retain records of its investigation of any Breach, including its reports to Covered Entity under this Section 2.5.1. Upon request of Covered Entity, Business Associate shall furnish to Covered Entity the documentation of its investigation and an assessment of whether such security incident or non-permitted use or disclosure constitutes a reportable Breach. If such security incident or non-permitted use or disclosure constitutes a reportable breach of unsecured PHI, then Business Associate shall comply with the additional requirements of Section 2.5.2 below.

**b. Breach of Unsecured PHI:** If Business Associate determines that a reportable breach of unsecured PHI has occurred, Business Associate shall provide a written report to Covered Entity without unreasonable delay but no later than thirty (30) calendar days after discovery of the breach. To the extent that information is available to Business Associate, Business Associate's written report to Covered Entity shall be in accordance with 45 C.F.R. §164.410(c). Business Associate shall cooperate with Covered Entity in meeting Covered Entity's obligations under HIPAA and the HITECH Act with respect to such breach. Covered entity shall have sole control over the timing and method of providing notification of such breach to the affected individual(s), the HHS Secretary and, if applicable, the media, as required by HIPAA and the HITECH Act. Business Associate shall reimburse Covered Entity for its reasonable costs and expenses in providing the notification, including, but not limited to, any administrative costs associated with providing notice, printing and mailing costs, and costs of mitigating the harm (which may include the costs of obtaining credit monitoring services and identity theft insurance) for affected individuals whose PHI has or may have been compromised as a result of the breach.

**6. Availability of Internal Practices, Books, and Records to Government:** Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by the Business Associate on behalf of Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with HIPAA, the HIPAA Regulations, and the HITECH Act. Except to the extent prohibited by law, Business Associate shall notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate agrees to provide to Covered Entity proof of its compliance with the HIPAA Security Standards.

**7. Access to and Amendment of Protected Health Information:** To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity and within fifteen (15) days of a request by Covered Entity, Business Associate shall (a) make the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets available to Covered Entity for inspection and copying, or to an individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524, or (b) amend the PHI it maintains (or which is maintained by its Subcontractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526. Business Associate shall not disclose PHI to a health plan for payment or healthcare operations purposes if and to the extent that Covered Entity has informed Business Associate that the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates, consistent with 42 U.S.C. § 17935(a)

and 42 C.F.R. § 164.522(a)(1)(vi). If Business Associate maintains PHI in a Designated Record Set electronically, Business Associate shall provide such information in the electronic form and format requested by the Covered Entity if it is readily reproducible in such form and format, and, if not, in such other form and format agreed to by Covered Entity to enable Covered Entity to fulfill its obligations under 42 U.S.C. § 17935(e) and 45 C.F.R. § 164.524(c)(2). Business Associate shall notify Covered Entity within fifteen (15) days of receipt of a request for access to PHI.

**8. Accounting:** To the extent that Business Associate maintains a Designated Record Set on behalf of Covered Entity, within thirty (30) days of receipt of a request from Covered Entity or an individual for an accounting of disclosures of PHI, Business Associate and its Subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and its obligations under 42 U.S.C. § 17935(c). Business Associate shall notify Covered Entity within fifteen (15) days of receipt of a request by an individual or other requesting party for an accounting of disclosures of PHI.

**9. Use of Subcontractors:** Business Associate shall require each of its Subcontractors that creates, maintains, receives, or transmits PHI on behalf of Business Associate, to execute a Business Associate Agreement that imposes on such Subcontractors the same restrictions, conditions, and requirements that apply to Business Associate under this Business Associate Agreement with respect to PHI.

**10. Minimum Necessary:** Business Associate (and its Subcontractors) shall, to the extent practicable, limit its request, use, or disclosure of PHI to the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure, in accordance with 42 U.S.C. § 17935(b) and 45 C.F.R. § 164.502(b)(1) or any other guidance issued thereunder.

**C. Term and Termination.** For purposes of this section, the following shall govern the term and termination of the Business Associate aspect of the Service Agreement related to EVP in its role as a Business Associate:

**1. Term:** The term of this agreement shall be effective as of the Service Start Date and shall terminate as of the date that all of the PHI provided by Covered Entity to Business Associate, created, or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such information, or on the date that Covered Entity terminates for cause, whichever is sooner.

**2. Termination for Cause:** Upon Covered Entity's knowledge of a material breach or violation of this AGREEMENT by Business Associate, Covered Entity shall either: (a) Notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within ten (10) business days of such notification; provided that if Business Associate fails to cure the breach or end the violation within such time period to the satisfaction of Covered Entity, Covered Entity may immediately terminate this Business Associate Agreement upon written notice to Business Associate; or (b) upon written notice to Business Associate, immediately terminate this Business Associate Agreement if Covered Entity determines that such breach cannot be cured.

**3. Disposition of Protected Health Information Upon Termination or Expiration:** Upon termination or expiration of this Business Associate Agreement, Business Associate shall either return or destroy all PHI received from, created, or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. If Covered Entity requests that Business Associate return PHI, PHI shall be returned in a mutually agreed upon format and timeframe, at no additional charge to Covered Entity. If return or destruction is not feasible, Business Associate shall (a) retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities; (b) return to Covered Entity the remaining PHI that Business Associate still maintains in any form; (c) continue to extend the protections of this Business Associate Agreement to the PHI for as long as Business Associate retains the PHI; (d) limit further uses and disclosures of such PHI to those purposes that make the return or destruction of the PHI infeasible and subject to the same conditions set out in Section 2.1 and 2.2 above, which applied prior to termination; and (e) return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

**D. Additional Provisions.** For purposes of this section, the following additional provisions govern as to the Business Associate aspect of the Service Agreement related to EVP in its role as a Business Associate:

**1. Amendment to Comply with Law:** This Business Associate Agreement shall be deemed amended to incorporate any mandatory obligations of Covered Entity or Business Associate under the HITECH Act, HIPAA, and their implementing or associated regulations. Additionally, the Parties agree to take such action as is necessary to amend this AGREEMENT from time to time as necessary for Covered Entity to implement its obligations pursuant to HIPAA, the HIPAA Regulations, or the HITECH Act.

**2. Indemnification:** Both companies/organizations (Covered Entity and/or Business Associate(s)) hereby agree to indemnify and hold harmless the other, its affiliates, and their respective officers, directors, managers, members, shareholders, employees, and agents from and against any and all fines, penalties, damage, claims, or causes of action and expenses (including, without limitation, court costs and attorney's fees) the companies/organizations incur, arising from violations of the HIPAA Act, the HIPAA Regulations, the HITECH Act, or from any negligence or wrongful acts or omissions, including, but not limited to, failure to perform its obligations, that results in a violation of HIPAA, the HIPAA Regulations, or the HITECH Act, by either company/organization or its employees, directors, officers, subcontractors, agents, or members of its workforce.

**3. Notices:** Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic mail or facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery service; or (4) by United States first class registered or certified mail, postage prepaid, return receipt, in each case, addressed to a Party on the signature page(s) to this Agreement or to such other addresses as the Parties may request in writing by notice given pursuant to this Section 4.3. Notices shall be deemed received on the earliest of personal delivery; upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed; twenty-four (24) hours



following deposit with a bonded courier or overnight delivery service; or seventy-two (72) hours following deposit in the U.S. mail as required herein.

**4. Relationship of Parties:** Business Associate is an independent contractor and not an agent of Covered Entity under this Agreement. Business Associate has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed, all Business Associate obligations under this Agreement.

**5. Survival:** The respective rights and obligations of the Parties under Sections 3.3 and 4.2 of this Agreement shall survive the termination of this Agreement.

**6. Applicable Law and Venue:** This Business Associate Agreement shall be governed by and construed in accordance with the laws of the State of Texas (without regards to conflict of laws principles). The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal (if permitted by law and if a Party elects to file an action in federal court) courts located in the County of Tarrant, Texas.

**12. Other Confidential Information.** The Parties hereto will not disclose to any other persons the terms of a Service Agreement, or the agreements made herein, unless required or allowed by law, such as to attorneys or tax professionals. The Parties hereto further will keep confidential any and all confidential information that the Party may become aware of, including confidential business information regarding the other Party, including, but not limited to, business practices, trade secrets, financial information, or other sensitive data.

**13. Assignment of Rights.** The Subscriber may not assign any rights under a Service Agreement or any part of the Services contemplated by a Service Agreement or these Terms and Conditions. Subject to the foregoing, a Service Agreement shall be binding upon the Parties heirs, executors, successors, and assigns. Any assignment or delegation, by operation of law or otherwise, in whole or in part, by Subscriber of this Agreement, or of any claims arising hereunder without the prior written consent of EVP shall be void. EVP shall have the right, at its sole discretion, to assign its rights and obligations under this Agreement, as well as any claims arising hereunder, as allowable under the applicable law. EVP shall not recognize or be bound by any assignment of any right to the Services to be performed hereunder unless and until EVP shall receive written Notice which reasonably approves the assignment and identifies the rights assigned. Any assignment hereunder shall be subject to, and EVP reserves, all rights and remedies possessed by or available to EVP by law or under this agreement as against Subscriber, its sureties and assigns including, without limitation, rights of set-off, to retain moneys, to amend or modify this agreement, and to assert all other defenses and claims whether or not arising under this agreement.

**14. Default.** Default by Subscriber under the terms of a Service Agreement shall be deemed to have occurred when (1) payment of a Subscriber Fee remains unpaid for fifteen days after dispatch of an Invoice to Subscriber; (2) a Subscriber fails to comply with these Terms and Conditions; or (3) a Subscriber accesses or uses the Service in a manner not contemplated by these Terms of Service or that exposes EVP to any liability to third parties in the Subscriber's use or access to the Services.

**15. Limitation of Liability.** EVP does not make any representations, promises, warranties, covenants, or agreements—whether express or implied—regarding the Service, Access to the Service, Use of the Services, except as follows:

- A. EVP shall provide the Services in a manner consistent with industry standards and practices. Subscriber acknowledges that EVP has no control over how a foreign administration or third party carrier establishes its own rules and conditions pertaining to VoIP services. EVP will make every reasonable effort to ensure quality of service and uptime, however EVP is not responsible for service interruptions as a result of Subscriber equipment issues or Subscriber connection issues that are beyond the control of EVP.
  - B. EVP will put forth reasonable effort to rectify any situation where outage, damage, or loss of service occur, and said situation is under the control of EVP. Whenever EVP has no control or ownership over an issue, Subscriber understands EVP is not liable.
  - C. EVP warrants its services under these Terms and Conditions as functional over a sufficient internet connection. Subscriber acknowledges and accepts that communications and transactions conducted online may not be absolutely secure, that there may be system failure that may limit Subscriber's accessibility to online Services and that on-line Services are not guaranteed to be error free. By enrolling for and using such online Services, Subscriber agrees to accept responsibility and risk associated with the use of such online Service and the Internet generally, specifically for services outside of the control of EVP. Subscriber shall be responsible for any and all charges and damages arising out any non EVP provided services, and shall indemnify EVP, and hold and save EVP harmless, from any and all such charges and damages, including reasonable attorneys' fees and costs which shall be paid as incurred, where such charges are for Subscriber issues that originate outside of the control of EVP. EVP is responsible for its connectivity and equipment, and the Subscriber is responsible for its own equipment.
  - D. EVP shall not be liable for the use, misuse, or abuse of a Subscriber's Service or Subscriber's facilities by the Subscriber, the Subscriber's agents or its employees, or any third parties including, without limitation, members of the public who are not employed by EVP or agents of EVP. EVP may work with Subscriber, if requested, to recommend possible solutions to reduce unauthorized use of the Services and Subscriber's facilities. EVP does not, however, warrant or guarantee that its recommendations will prevent unauthorized use, and the Subscriber is responsible for controlling access to, and use of, the Services and its own communications facilities. Subscriber shall remain solely responsible for any and all charges and damages arising out of any wrongful conduct by the Subscriber as described in this section, and shall indemnify EVP, and hold and save EVP harmless, from any and all such charges and damages, including reasonable attorneys' fees and costs which shall be paid as incurred.
  - E. Subscriber and EVP agree that, if another carrier and/or regulatory agency determines that it is necessary to audit the traffic which is the subject of a Service Agreement, Subscriber and EVP will cooperate in any such investigation. This does not prohibit Subscriber from challenging the charges assessed by the third party or the classification of its traffic being subject to access charges.
- 16. Force Majeure.** EVP will not be liable for any failure or delay in performing an obligation under a Service Agreement that is due to any of the following causes (such causes are hereinafter referred to as "Force Majeure"), to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, or generalized lack of availability of raw materials or energy. For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b)

changes in market prices or conditions, or (c) a party's financial inability to perform its obligations under a Service Agreement.

- 17. Authority.** A parties to a Service Agreement represents and warrants that it has full authority to execute a Service Agreement and bind to a Service Agreement its directors, officers, employees, agents, advisors, attorneys, successors, assigns, and personal representatives.
- 18. Severability.** If any provision of a Service Agreement or these Terms and Conditions is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provisions shall be duly severable; a Service Agreement and these Terms and Conditions, shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the severance of the illegal, invalid, or unenforceable provision or provisions.
- 19. Participation Disclaimer.** Parties to a Service Agreement represent and warrant that they have the sole right and exclusive authority to execute a Service Agreement as it pertains to each of them.
- 20. Other Agreements.** Parties to a Service Agreement represent and warrant to the other that the execution, delivery, and performance of a Service Agreement will not result in any breach of the terms or conditions of, or constitute a default under, any agreement or instrument under which it is a party or is obligated and further that such Party is not in default in the performance or observance of any obligations, covenants, or conditions of any such agreement or instrument.
- 21. Counterpart Execution.** A Service Agreement may be executed in multiple counterparts, each of which shall be fully effective as an original, for which together shall constitute only one instrument.
- 22. Further Acts.** Each party to Service Agreement agrees to perform any and all such further and additional acts and execute and deliver any and all such further and additional instruments and documents as may be reasonably necessary in order to carry out the provisions and effectuate the intent of a Service Agreement.
- 23. Paragraph Headings.** All paragraph headings set forth in a Service Agreement or these Terms and Condition are for purposes of identification and are intended for convenience only, and shall not control or affect the meaning, construction or effect of a Service Agreement or these Terms and Conditions or any provision hereof.
- 24. Governing Law; Venue.** A Service Agreement and these Terms and Conditions shall be governed by and construed under and in accordance with the laws of the State of Texas except to the extent such law is preempted by the laws of the United States of America. Any lawsuit filed related to these Terms and Conditions or related to a Service Agreement must be filed in Tarrant County, Texas; the parties to a Service Agreement agree that venue is proper in, and only in Tarrant County, Texas. Any mediation or arbitration must be conducted in Tarrant County, Texas, unless otherwise agreed to, in writing, by the parties.
- 25. Advice of Counsel.** Each party of a Service Agreement represents that they have the advice and counsel of their own attorneys; that they are relying upon their own judgment, belief, and knowledge with respect to this Agreement; and that no representation or statement made by any other party has influenced them in executing or induced them to execute a Service Agreement or be bound by these Terms and Conditions.

- 26. Attorney Fees.** In the event of any lawsuit over the terms and conditions of these Terms and Conditions or a Service Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred in that action.
- 27. Entire Agreement.** A Service Agreement and these Terms and Conditions constitutes the entire agreement between the parties to a Service Agreement; all prior written or verbal agreements are superseded by it. This Agreement may not be modified except by written instrument, signed by both parties to a Service Agreement, subject to the provisions of Section 7.