

Background:

- VoIPcloud Wholesale Inc (USA - Delaware) (SR 20190014784) (File number 7219514) trading as VoIPcloud, referred to as 'VoIPcloud' in this document.
- Customer is a legal entity that subscribed and uses VoIPcloud services for its own use or to resell. This could be a company or an individual;
- VoIPcloud and its related body corporates are suppliers of telecommunications and Information technology products and services.
- The Customer wishes to purchase products and/or services from VoIPcloud.

IT IS AGREED AS FOLLOWS

1. Definitions and Interpretations

Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this Master Services Agreement and its schedules and annexures, as varied from time to time.

Business Day means a day other than a Saturday, a Sunday or a bank holiday in the United States when the banks are open for business.

Charges mean the fees payable by the Customer to VoIPcloud for Services provided under this Agreement or any relevant Service Schedules or Service Orders, including any Fixed Term Charge.

Corporations Act Delaware Commerce and Trade, Title 6, Subtitle II, Chapter 18, Subchapter II. Formation; Certificate of Formation Law.

Confidential Information of a party means any information marked as confidential or which by its nature the other party knows or ought to know is confidential (regardless of the form of the information and when it was acquired) and includes trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, know-how, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, Customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party.

Control has the meaning given in the Delaware Commerce and Trade, Title 6, Subtitle II, Chapter 18, Subchapter II. Formation; Certificate of Formation Law.

Customer Equipment means any hardware, software, equipment, systems and cabling provided by the Customer or an End User used in the provision of Services.

Customer Facility means the area housing equipment used by or belonging to the Customer.

Dispute means a dispute case raised by the Customer concerning the supply, charges, commissions or other aspects of Services provided under the Agreement.

End Users means the Customers, employees, or any other entity of the Customer.

Fixed Term Product means any Service supplied by VoIPcloud in a fixed or minimum amount per month for a fixed Initial Term, where the number of months in the Initial Term is specified in the relevant Service Schedule or Service Order for that Service.

Fixed Term Charge means the charge payable in accordance with clause 5.2 for a Fixed Term Product for the total duration of the Initial Term.

Force Majeure Event means any event that is beyond the reasonable control of a party and which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement or any Service Schedule or Service Order including (without limitation):

- a. forces of nature, any act of God, fire, storm or explosion.

- b. any strike, lockout or industrial action.
- c. any action or inaction by any organisation of government or government agency.
- d. a supplier failure.

Initial Term means, in respect of a Service, the minimum contract period specified in a Service Order applicable to that Service, the term of which shall be deemed to commence on the date once service has been provisioned and activated by VoIPcloud as per RFS date.

Insolvency Event means concerning a party:

- a. a receiver, receiver and manager, trustee, administrator, another controller (as defined in the Delaware Commerce and Trade, Title 6, Subtitle II, Chapter 13. Fraudulent Transfers Law) or similar official is appointed over any of the assets or undertaking of the party;
- b. the party suspends payment of its debts generally;
- c. the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Delaware Commerce and Trade, Title 6, Subtitle II, Chapter 13. Fraudulent Transfers Law;
- d. the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- e. the party ceases to carry on business or threatens to cease to carry on business;
- f. a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint an administrator; or
- g. an application or order is made for the winding up or dissolution of the other party, or a resolution is passed, or any steps are taken to pass a resolution, for the winding up or dissolution of the other party, otherwise than for an amalgamation or reconstruction that has the prior written consent of the first party;
- h. a party threatens to do any of a – g.

Intellectual Property Rights means all intellectual property rights, including the following rights:

- a. patents, copyright, rights in circuit layouts, registered and unregistered designs, trademarks, domain names, business names and any right to have confidential information kept confidential; and
- b. any application or right to apply for registration of any of the rights referred to in paragraph a.

Interest Rate set by the Central Bank plus 5%.

Network Services means communications services provided by VoIPcloud to the Customer as set by the VoIPcloud Rates and Service Sheet, Service Schedule or Service Order.

Programs mean any software to be used by a Customer that is provided by VoIPcloud.

RFS Date concerning a particular service means:

- a. the ready-for-service date specified in the Service Order for that Service or;
- b. if no date is specified in the Service Order, the date notified to the Customer as the RFS Date by email from VoIPcloud or;
- c. if neither a nor b applies, the date on which the Service is first made available to the Customer by VoIPcloud.

Scheduled Maintenance means maintenance to be carried out by VoIPcloud from time to time as agreed in the Service Schedule.

Security Deposit means an amount payable by the Customer determined by VoIPcloud to be held by VoIPcloud as security for payment of all sums due under this Agreement, a Service Schedule or a Service Order.

Service means a product or service supplied by VoIPcloud to the Customer under this Agreement, as more particularly specified in a Service Schedule or Service Order and includes any equipment, wires, cables, ports, switches, routers, cabinets, racks and other hardware or telecommunications equipment supplied with that product or service.

Service Level Agreement (SLA) means the document that identifies the expected performance levels of the Network Services provided by VoIPcloud.

Service Schedule means a schedule supplied to the Customer by VoIPcloud setting out the specifications, system requirements and performance capabilities of a Service. VoIPcloud may amend the terms of any Service Schedule from time to time by notifying the Customer in writing by email (Amendment Notice). Any such amendment will be binding on the parties from the date of delivery of the Amendment Notice. A Service Schedule, as varied from time to time will be binding in respect of all supplies of the Service to which it relates.

Service Order means an order in VoIPcloud's standard written format for the provision of a Service, which includes details of the Initial Term and Charges for the Services provided, signed on behalf of both parties or submitted electronically by email or via web form. A Service Order will continue in force for the specified Initial Term. After the expiry of the Initial Term, it will continue in force until terminated by either party giving 30 days written notice to the other. Termination of a Service Order does not automatically terminate this Agreement or any applicable Service Schedule, which will each continue in force until terminated under this Agreement.

Suppliers mean any person, company or legal entity that provides services, products or equipment to VoIPcloud.

Supplier Failure means a failure of any equipment, product or service supplied to VoIPcloud by a third party which is required by VoIPcloud to enable it to perform its obligations under this Agreement or a Service Schedule or Service Order.

System means the telecommunications equipment, servers, and software housed at VoIPcloud data centre.

Technical Standards means the prevailing telecommunications industry standards for Network Services.

Telecommunications Act means the Telecommunications Act of 1996.

VoIPcloud Equipment means any equipment owned or used by VoIPcloud in the provision of a Service.

Hosted PBX means a cloud-based phone system that includes call routing and other advanced features, provided by VoIPcloud. Several advanced features are an additional service of Hosted PBX including; Fax-to-Email, Call Recording Storage and Integrations. End Users are provided with a web portal also known as Customer Portal to manage their Hosted PBX.

Fax-to-Email is an additional Hosted PBX service to send faxes via email.

Call Recording Storage is an additional Hosted PBX service for the storage of Call Recordings on VoIPcloud Equipment.

Integrations are an additional Hosted PBX service to activate APIs, webhooks, and integration features.

Interpretation

- a. a reference to a person includes a body corporate, an unincorporated body, enterprise, firm, trust, joint venture, syndicate or other entity and conversely;
- b. a reference to a clause or schedule is to a clause of or schedule to this agreement;
- c. a reference to any party to this agreement or any other agreement or document includes the party's successors and permitted assigns;
- d. a reference to any legislation or any provision of any legislation includes any amendment, consolidation or replacement of it, and all regulations and statutory instruments issued under it;
- e. a reference to conduct includes, without limitation, any omission, statement or undertaking, whether or not in writing;
- f. a reference to a party is a party to this agreement or any person who executes a deed of accession to this agreement;
- g. terms defined in the Delaware Commerce and Trade law have the same meaning in this agreement unless the context expresses otherwise;
- h. if any payment by a party under this agreement is due on a day which is not a Business Day, the due date will be the next Business Day;
- i. if an obligation must be performed by 2 or more persons it binds them jointly and individually.

2. Interaction between this Agreement, Service Orders, Service Schedules, Critical Information Summaries, Reseller Agreement

Customers may order multiple services from VoIPcloud. Each service is supplied under its SLA, Pricing, Initial Term and other relevant conditions specified in the Service Order or Quotation which once signed can be deemed as a Service Order. Service Orders will continue in force for the specified Initial Term. After the expiry of the Initial Term, it will continue in force until terminated by either party giving 30 calendar days' written notice to the other. Termination of a Service Order does not automatically terminate this Agreement. In the event of any inconsistency between the terms of this Agreement and Service Order concerning a particular supply of a Service, the following order of priority applies:

- a. first the Service Order, including any applicable rate cards and attachments then
- b. Reseller agreement (when applicable)
- c. Critical Information Summary
- d. Service Schedule (for the corresponding product/service)
- e. this Agreement

The above documents are published at <https://us.voipcloud.online/legal>.

3. Supply of Services and VoIPcloud Obligations

3.1 Services supplied or resold by VoIPcloud. VoIPcloud must supply Services specified in a Service Order and in accordance with that Service order, and otherwise on the terms of this Agreement.

3.2 Service Levels. VoIPcloud must provide the Services in accordance with the relevant service level agreement specified in the Service Schedule. The Customer's sole remedy for failure to meet a service level agreement is the service level rebates specified in the relevant, and the Customer waives any right to any additional remedy.

3.3 Use of Services. The Customer must only use the Services in accordance with the terms specified in the Service Order.

3.4 Additional Services. The Customer may request additional services that are within the scope of the existing service order. Such requests may be made via Phone or email by the Authorised representative of the Customer.

3.5 VoIPcloud will take all reasonable steps to make sure the Customer receives their voice service, however, the voice service is not free from faults or interruptions. Certain factors, such as network congestion, maintenance, technical capabilities, geographic factors, obstructions or interference may mean you will not receive the voice service at certain times.

4. Obligations of the Customer

In addition to any other obligations of the Customer outlined in this Agreement, the Customer shall:

4.1 In exchange for the Network Services provided by VoIPcloud, pay the various recurring and non-recurring charges outlined in VoIPcloud Service Order, Rate and Service Sheet.

4.2 Make arrangements for and bear all expenses of a data or Internet connection to access the relevant VoIPcloud services;

4.3 Coordinate with VoIPcloud in the exchange of technical information relating to the interface circuitry and any local interconnect equipment for VoIPcloud to engineer the necessary interconnect facilities;

4.4 If applicable, be responsible for provisioning all interfaces between the System and the network in which the Customer Facility is located;

4.5 Provide and maintain its own network and network security;

4.6 Grant to VoIPcloud personnel such access to the Customer Facilities and System as may be necessary or appropriate for VoIPcloud to perform its obligations under this Agreement;

4.7 Comply with any operational procedures and technical specifications specified in any Service Order or other reasonable directions given by VoIPcloud concerning the Customer's obligations under this Agreement or a Service Order;

4.8 The Customer is responsible for setting up and managing their Customer Portal account administrators. The Customer must ensure Customer Portal account administrators have the appropriate level of access to the information contained within the Customer Portal.

4.9 The Customer is responsible for taking reasonable security precautions to prevent unauthorized use or access of the Customer Portal and VoIPcloud Services. They must ensure that no unauthorized person or third party can access these services.

5. Charges and Billing

5.1 VoIPcloud provides service on a prepaid or post-paid basis. VoIPcloud can decide that you have a credit limit. If so, we will tell you what that credit limit is. Fees and charges applicable to your service will commence from the RFS date (ready for service date). VoIPcloud will email an invoice to you no less frequently than monthly, and you must pay any outstanding fees and charges by the invoice due date. For cases where ACH direct debit authorization has been configured, all fees and charges will be billed to your nominated credit card on the invoice due date. If you cancel your credit card authority, or if you do not pay your invoice by the invoice due date, VoIPcloud will charge a late fee as per its current fee structure. Charges for archive or hardcopy invoices may apply. If you exceed the credit limit, VoIPcloud may suspend the service until payment has been made to bring your account back within the terms of your credit limit.

5.2 VoIPcloud may start to invoice a Customer for a Service from the RFS Date whether or not the Customer has used the Service since that date.

5.3 For Customers on a post-paid account billing model, an invoice will be issued monthly via the registered email address that you provided during registration with VoIPcloud. If you do not receive your invoice, it is your responsibility to notify VoIPcloud immediately. Invoices will be sent either as a PDF or text file. If you request an archived or hard copy invoice additional charges may apply.

5.4 For prepaid Customers' you are required to maintain a positive account balance. ACH direct debit transfers for account balance top-ups are supported by the account number nominated by VoIPcloud. You can also authorise VoIPcloud to automatically deduct money from your nominated bank account, payment failures may occur and are the responsibility of the Customer to resolve with their financial institution.

5.5 VoIPcloud reserves the right to make changes to, or close Pricing Plans at its discretion. Any Pricing Plan change that may be detrimental to the Customer, who already subscribed to the Pricing Plan, will be communicated via email to the Customer's nominated email address a minimum of 14 calendar days before becoming effective.

5.6 Automatically authorised payments by ACH direct debit or other similar methods, shall be drawn against your authority when due without further notice to you unless you terminate the payment method by 14 calendar days' written notice to VoIPcloud. Suspension of services will occur if your authorised payment method is refused or dishonoured by your nominated financial institution and your account balance exceeds the credit limit that is assigned to the billing account.

5.7 The Customer agrees that all Charges incurred when using the VoIPcloud Services are the sole responsibility of the Customer. Irrespective of whether or not the originated call was placed from the Customer, or was placed by a third party (with or without the Customers' consent).

5.8 The Customer must take all steps to verify that sufficient funds are available on credit cards stored in the billing account and the billing account has a sufficient balance to cover service and subscription fees.

5.9 Despite anything in these Terms and Conditions, VoIPcloud will not continue to provide the Customer with the Service, as a result of any unpaid charges extending beyond 30 calendar days from the date that the charges were due for payment unless the amount overdue is subject to a review as per item 6. of this agreement (Disputes); If any amounts are outstanding beyond 30 calendar days from the date on which payment for those charges was due, this Agreement may be terminated by VoIPcloud immediately and you will be required to pay all outstanding charges to VoIPcloud immediately. If after standard collection

activities, your account remains unpaid in part or in whole for a period of (30 calendar days) from the due date, your information may be referred to a debt collection agency or credit reference agency. VoIPcloud may charge reasonable expenses in connection with the recovery of late payments (including the costs of engaging a third-party recovery agency). If VoIPcloud engages a third-party agent or institutes legal proceedings to recover any outstanding amounts due under the Terms and Conditions of this agreement, the Customer will, to the extent permitted by law, be liable for VoIPcloud's costs of taking such action.

5.10 Termination of service on accounts with the minimum contract will be charged the monthly fee for the remainder of the contract period. E.g. If you have 8 months left on your 12-month contract on a \$220.00 per month fibre internet package you will be required to pay \$220.00 x 8 which would be \$1760.00; If the Customer breaches any term of this Agreement or any applicable Service Schedule or Service Order (including non-payment of any invoice issued under clause c), any unpaid part of any Fixed Term Charge outstanding becomes immediately due and payable.

5.11 It is agreed that call log information collected by VoIPcloud billing system is deemed to be sufficient evidence of the calls made by the Customer.

5.12 VoIPcloud reserves the right to invoice the Customer including its Resellers for an underpaid service anytime up until 12 months after the service has been provided to the Customer or its End Users. The Customer agrees to pay all such invoices.

6. Disputes

6.1 The parties must exhaust the provisions of this clause 6 before initiating any legal proceedings in court.

6.2 The Customer may lodge a Dispute with VoIPcloud by providing written notification outlining the nature of the Dispute and the supporting evidence that the Customer has based the Dispute.

6.3 Where a Dispute is lodged against an invoice from the current billing period, the Customer may withhold the disputed amount from the payment due on that invoice. All other undisputed amounts must be paid in full and the Customer's account must be fully paid up within the terms before a Dispute will be accepted by VoIPcloud.

6.4 Where a Dispute is lodged against a paid invoice, the Customer must not withhold any further payments or part thereof.

6.5 Disputes related to unpaid invoice charges may only be lodged before the invoice's due date. Disputes for settled invoices can be raised up to 6 months after the invoice payment due date.

6.6 The parties must use their best endeavours and act in good faith to resolve any dispute arising in connection with this Agreement, or Service Order by negotiation between senior management of both parties.

6.7 If a dispute is resolved in the favour of VoIPcloud, the Customer shall promptly pay the full amount due within 5 business days. If a dispute is resolved in favour of the Customer, VoIPcloud shall reimburse the disputed amount to the Customer within 5 business days.

6.8 If the senior management of the parties fails to resolve the dispute within 20 Business Days of notification of the dispute, either party may take such additional action as it deems necessary to resolve the dispute, including initiating legal proceedings.

7. Warranty and dispatch

The Customer agrees to all Terms and Conditions set in the Warranty, Dispatch and Returns policy, <https://us.voipcloud.online/legal>.

8. Fault reporting and restoration

8.1 The Customer must report any faults concerning the Services provided by VoIPcloud as per the applicable Service Schedule. Service rebates, guaranteed uptime and other conditions may vary depending on the services supplied.

8.2 VoIPcloud reserves the right to charge the Customer at its then commercial rates (including additional rates for out-of-hours service, as published in the relevant Service Schedule or Service Order) for fault restoration when VoIPcloud responds to a fault request from the Customer where the fault was a result of the following:

- a. any fault in any equipment, software or network unit which does not form part of the VoIPcloud's Infrastructure.
- b. defects in the Customer Equipment or its installation.
- c. any act or omission of the Customer or any of its employees, consultants, contractors, agents or representatives.

9. Confidentiality

9.1 Confidentiality Obligation Each party (Recipient) which receives Confidential Information of the other party (Disclosing Party) under this Agreement acknowledges that all Confidential Information provided to it or to which it is exposed is Confidential to the Disclosing Party, this includes all pricing information.

9.2 Loss suffered

The Recipient acknowledges and agrees that the Confidential Information is by virtue of its special nature valuable property of the Disclosing Party and that the Disclosing Party may suffer damage or loss by any disclosure by the Recipient of the Confidential Information.

9.3 Non-Disclosure

The Recipient must:

- a. treat all Confidential Information as Confidential and not make public or disclose to any other person that Confidential Information unless it has first obtained the written consent of Disclosing Party to do so;
- b. prevent third parties from gaining access to the Confidential Information and;
- c. deliver and surrender to Disclosing Party upon request all records of Confidential Information held by it.

9.4 Disclosure Required

The Recipient may disclose Confidential Information if required to do so by a government agency or any law or court order, or the rules of any applicable securities exchange after first giving notice to Disclosing Party and after taking all practicable steps to cooperate with Disclosing Party to prevent the disclosure to the maximum extent permitted by law.

9.5 Use of Information

The Confidential Information must not be used by the Recipient or its Representative other than for this Agreement or any use ancillary to the use contemplated by this Agreement without the prior written consent of Disclosing Party.

9.6 Reference to the Customer VoIPcloud may refer to the Customer as a Customer of VoIPcloud in any press release, marketing, sales, or web publications.

10. Suspension and termination of the service

10.1 If, in the opinion of VoIPcloud, the Customer breaches any of the Terms and Conditions of this Agreement, VoIPcloud may suspend, or limit your access to the service and we may terminate this agreement by giving 30 calendar days' notice to the Customer. The termination of the service shall not preclude VoIPcloud from exercising any other rights VoIPcloud may have against the Customer under this Agreement.

Immediate suspension:

Although VoIPcloud will try to give the Customer as much notice as is reasonably practicable, VoIPcloud may apply immediately suspend to your service in the following cases:

- a. If your service has been hijacked and is being used illegally.

b. If any equipment in the Customer administrative domain impacts VoIPcloud's network functionality in a way that affects other Customers. In the above events, VoIPcloud will contact the Customer immediately after suspension and will assist in the quickest possible service restoration.

c. The Customer is using the services provided by VoIPcloud, with the sole purpose being to resell or on-bill without signing or complying with the applicable reseller agreements.

VoIPcloud will provide the initial cloud PBX configuration, however, the Customer will have full access to the administrative web interface and have to ensure that strong passwords are maintained for all VoIP devices and web portals. The Customer account may be suspended as a result of the Customer's account, Hosted PBX, SIP Trunk or SIP Device being hacked/hijacked. It is agreed, however, that in such situations the Customer will be responsible for any call charges incurred.

10.2 Suspension, limitation and termination with notice:

In addition to our rights above, VoIPcloud may, by giving the Customer reasonable notice (in any event at least 30 calendar days notice): Suspend or limit the Service (or any feature of it) for such period as we determine is reasonably necessary, or Terminate this Agreement.

10.3 Consequences of Suspension:

If we suspend or limit the Service, you will be barred from using the Service until we un-bar the Service. We will continue to charge you, and you must pay us, the Monthly Service Fee in respect of the period during which we have suspended or limited the Service (or any feature of it)

10.4 Suspended Services

If VoIPcloud suspends the provision of any Services under this clause, VoIPcloud may reinstate those services if all amounts due (including interest) are subsequently paid. In that event, VoIPcloud may charge a reconnection fee equal to one month's Charges as a condition for the recommencement of the Services.

10.5 If you have purchased hardware at a discounted rate and agreed to a minimum term contract you may also be liable for the full RRP (Recommended Retail Price) of the hardware upon termination (if within the minimum term). Customers who wish to disconnect their services during the 14-day Trial Period offered will have this done once all equipment is returned to VoIPcloud.

10.6 For any Service Order with an initial minimum Term, after the Initial Term expires, the Service Order remains in force on a month-to-month basis until terminated by either party giving the other not less than 30 calendar days written notice of termination.

10.7 Customer termination

The Customer may terminate this Agreement, or an individual Service Order (as the case may be) by notice in writing to VoIPcloud, if:

- a. VoIPcloud has committed a material breach of this Agreement, the Service Order (as the case may be) and either:
 - i. the breach is not remedied within 10 business days of the date written notice of the breach is given to VoIPcloud; or
 - ii. the breach is not capable of remedy; or
- b. VoIPcloud suffers an Insolvency Event; or

11. Actions on termination of this agreement

On termination of this Agreement, or Service Order:

- a. all unpaid sums owing by each party will immediately become due and payable to the other party;
- b. in addition to any other rights it may have, VoIPcloud may:
 - i. retain any money paid to it in respect of services provided;
 - ii. repossess and resell any Products for which the Customer has not paid in full (and the Customer authorises VoIPcloud and its representatives to access its premises to do so);

iii. Request payment of any amounts due and if not paid within 10 business days, take possession of and sell any Customer Equipment held at a data centre and use the proceeds of the sale to meet any outstanding amounts due.

c. the Customer must:

i. immediately return to VoIPcloud all Confidential Information of VoIPcloud, all access codes and keys of any type, any Products for which the Customer has not paid in full and any other materials in the Customer's possession relating to VoIPcloud;

d. The Customer will be responsible for any costs incurred in:

12. Limitation of liability

12.1 No indirect loss

Unless expressly stated to the contrary in this Agreement or a Service Order, neither party is liable to the other for any indirect, special or consequential loss (including but not limited to loss of profits or loss of revenue, loss of data, loss of business or opportunity) however caused in connection with or related to this Agreement, or a Service Order.

12.2 No implied terms

All terms, conditions or warranties which may be implied in this Agreement or Service Order are excluded to the fullest extent permitted by law.

12.3 Resupply of Services

Where legislation implies in this Agreement or any Service Order any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty is deemed to be included. The liability of VoIPcloud for any breach of such condition or warranty is limited, at the option of VoIPcloud, to one or more of the following:

a. if the breach relates to goods:

i. the replacement of the goods or the supply of equivalent goods;

ii. the repair of such goods;

iii. the payment of the cost of replacing the goods or of acquiring equivalent goods or;

iv. the payment of the cost of having the products repaired and;

b. if the breach relates to services:

i. the supplying of the services again or;

ii. the payment of the cost of having the services supplied again.

12.4 Maximum liability

The total aggregate liability of VoIPcloud and its Related Body Corporates, employees, directors, agents or representatives in respect of all claims made under this Agreement (including under any Service Order) or otherwise in respect of the provision of Services (including in respect of any claims in tort or negligence) is limited as follows:

a. where the breach occurs as a result of a failure to meet any service level specified in a Service Order, the service level rebate specified in that Service Order;

b. in every other case, an amount equal to the total Charges paid by the Customer in the 6 months before the date of the relevant claim.

13. Indemnity

13.1 Indemnity

The Customer indemnifies VoIPcloud and its Related Body Corporates, directors, officers, employees, resellers and agents from and against all losses, damages, liabilities, claims and expenses incurred (including but not limited to reasonable legal costs and defence or settlement costs) arising directly or indirectly as a result of:

- a. any breach by the Customer or End User of this Agreement (or any Service Schedule or Service Order entered into between the Customer and VoIPcloud);
- b. any negligent act or omission of the Customer or any of its employees, consultants, contractors, agents or representatives relating to this agreement or any Services provided under this agreement;

13.2 Customer indemnities in respect of End Users

- a. The Customer indemnifies VoIPcloud (and its employees, directors, resellers or related body corporates) on a full indemnity basis in respect of any losses, damages, costs, penalties, awards, interest or other liabilities incurred as a result of any claim made by an End User relating to or in connection with Services or their use by the Customer or the End User.
- b. The Customer further indemnifies VoIPcloud (and its employees, directors, resellers or related body corporates) in respect of any losses, damages, costs, penalties, awards, interest or other liabilities incurred as a result of the negligent, fraudulent, criminal or other illegal or wrongful use by the Customer or any End User of any Service supplied under this Agreement, a Service Schedule or a Service Order.

14. Force Majeure

No liability.

VoIPcloud is not liable for any delay or failure to perform its obligations under this Agreement or any Service Order to the extent that the delay or failure is due to a Force Majeure Event.

15. Assignment and Sub-Contracting

15.1 No assignment by the Customer without consent. The Customer may not assign, charge or deal with any of its rights and obligations under this Agreement or any Service Schedule or Service Order, or attempt or purpose to do so, without the prior written consent of VoIPcloud which will not be unreasonably withheld.

15.2 Assignment by VoIPcloud. VoIPcloud may assign, novate or subcontract any of its rights or obligations under this Agreement or any Service Order to any person without the Customer's consent.

16. The supply of goods

16.1 Risk.

16.1.1 If VoIPcloud retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

16.1.2 If any of the Goods are damaged or destroyed following delivery but before ownership passes to the Customer, VoIPcloud is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions by VoIPcloud is sufficient evidence of VoIPcloud's rights to receive the insurance proceeds without the need for any person dealing with the Customer to make further enquiries.

16.2 Title.

16.2.1 VoIPcloud and the Customer agree that ownership of the Goods shall not pass until:

- a. the Customer has paid VoIPcloud all amounts owing for the particular Goods and;
- b. the Customer has met all other obligations due, in respect of all contracts between VoIPcloud and the Customer.

16.2.2 Receipt by VoIPcloud of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then, VoIPcloud's ownership or rights in respect of the Goods shall continue.

16.2.3 It is further agreed that:

- a. where practicable the Goods shall be kept separate and identifiable until VoIPcloud shall have received payment and all other obligations of the Customer are met and;

- b. until ownership of the Goods shall pass from VoIPcloud to the Customer, VoIPcloud may give notice in writing to the Customer to return the Goods. Upon such notice, the rights of the Customer to obtain ownership or any other interest in the Goods shall cease and;
- c. VoIPcloud shall have the right of stopping the Goods in transit whether or not delivery has been made and;
- d. if the Customer fails to return the Goods, then VoIPcloud or VoIPcloud's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods and;
- e. the Customer is only a bailee of the Goods and until VoIPcloud has received payment in full for the Goods, then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to VoIPcloud for the Goods, on trust for VoIPcloud and;
- f. the Customer shall not deal with the money of VoIPcloud in any way which may be adverse to VoIPcloud and;
- g. the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of VoIPcloud and;
- h. VoIPcloud can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer and;
- i. until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that VoIPcloud will be the owner of the end products.

16.3 Defects.

16.3.1 The Customer shall inspect the Goods on delivery following all the Terms and Conditions of the Warranty, Dispatch and Returns policy.

16.3.2 Goods will only be accepted for returns when following all the Terms and Conditions of the Warranty, Dispatch and Returns policy. <https://us.voipcloud.online/legal>.

17. General Provisions

17.1 Arbitration.

17.1.1 Except for the right of either party to apply to the state and federal courts of Delaware, United States jurisdiction for an injunction or other equitable relief available under applicable law to preserve the status quo or prevent irreparable harm pending the selection and confirmation of a panel of arbitrators, and the right of VoIPcloud to bring suit on an open account for any payment due VoIPcloud hereunder, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by;

a. First, holding discussions in good faith and exchanging information between the Parties to resolve. If this is not successful then;

b. By escalation to the respective directors of both Parties who will meet to resolve. If this is not successful then;

c. The Contract shall be governed by, and construed in accordance with the governing law system of Delaware, United States. The state and federal courts of Delaware, United States shall have the exclusive jurisdiction over any matter, claim or dispute arising out of or concerning the Contract. By arbitration in Delaware, in accordance with the Rules of Conciliation and Arbitration of the Delaware court judicial branch, judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in the English language by an arbitrator selected by agreement between VoIPcloud and the Customer. The arbitrator shall have the authority to grant injunctive relief in a form substantially similar to that, which would otherwise be granted by a court of law.

17.1.2 The Parties agree that the arbitration proceeding and the outcome shall be kept strictly confidential and that obligations under this Agreement shall survive termination or expiration of this Agreement.

17.2 Consent To Jurisdiction.

17.2.1 This Agreement shall be governed by and construed in accordance with governing law system of Delaware, United States and the Parties hereby submit to the non-exclusive jurisdiction of state and federal courts of Delaware, United States.

17.3 Miscellaneous.

17.3.1 Any document referred to in this Agreement and attached hereto as an Exhibit at the time of execution or later amended or updated shall be deemed an indispensable part of this Agreement.

17.3.2 The Parties agree to deal with each other fairly and in good faith and to perform all acts reasonably required to carry out the intent of this agreement.

17.3.3 If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of VoIPcloud and the Customer shall be construed and enforced accordingly.

17.3.4 Obligations under this Agreement that by their nature would continue beyond the termination, cancellation or expiration of this Agreement, including by way of illustration only and not limitation, continuing availability, warranties, repairs not covered under warranty, remedy for non-performance, confidentiality and consent to jurisdiction, shall survive the termination of this Agreement.

17.3.5 The failure of either Party at any time to enforce any right or remedy available to it under this Agreement or otherwise concerning any breach or failure by the other Party shall not be construed to be a waiver of such right or remedy concerning any other breach or failure by the other Party.

17.3.6 At its own expense, each Party shall comply with all applicable laws, regulations, rules, ordinances and orders regarding its activities related to this Agreement.

17.3.7 Both undersigned Parties acknowledge that they have the full authority to enter into this Agreement on behalf of the companies they represent.

17.3.8 The Parties to this Agreement are independent contractors, and no partnership, joint venture, employee-employer or agency relationship, whether express or implied, is intended or created by this Agreement. Neither Party may take any actions that are binding on the other Party. Without limiting the foregoing, neither Party shall make any representations or warranties to third Parties on behalf of the other party hereto.

17.3.9 This Agreement and the Exhibits attached hereto set forth the entire understanding and Agreement of the Parties, and supersede any oral or written Agreements or understandings between the Parties as to the subject matter of this Agreement. Except, as provided herein, this Agreement may be amended or changed only in writing and signed by both Parties. The waiver by either Party of a breach of any provision contained herein shall be in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or a waiver of the provision itself.

17.3.10 This Agreement may be executed in two counterparts, each of which shall be deemed an original and all of which shall be deemed to be one instrument.

17.3.11 Goods or services are supplied by VoIPcloud only on the Terms and Conditions of trade herein to the exclusion of anything to contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these Terms and Conditions of trade.

17.3.12 This Agreement is meant to be read in conjunction with VoIPcloud's, Service Schedules, Service Orders, Critical Information Summaries and any other applicable attachments supplied by VoIPcloud to this Agreement.

17.4 Notices.

a. A notice or other communication required, or permitted to be given by one Party to another must be in writing and:

i. delivered personally;

ii. sent by pre-paid mail to the address of the addressees specified on the Customer's billing account or entered in this Agreement or;

- iii. sent by electronic mail to the primary address entered on the Customer's billing account or entered in this Agreement.
- b. A notice or other communication is taken to have been given:
 - i. If delivered personally, immediately upon delivery;
 - ii. if mailed, on the 7th Business Day after posting or;
 - iii. if sent by electronic mail immediately upon confirmation of the proof of receipt.
- c. A Party may change its address for services by giving notice of that change in writing to the other Parties and attaching any required forms.
- d. The Parties' respective contact details for notification under this Agreement, are as set in the Customer's account.

17.5 Counterparts and signatures.

- a. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute the same Agreement.
- b. The transmission by a Party via email or other electronic means of an executed copy of this Agreement (or any Service Schedule, Service Order or applicable attachments) will be deemed proof of the signature of the original to constitute a binding Agreement between the Parties, and the signed copy so transmitted will be deemed the original for this Agreement.

17.6 Whole Agreement.

Concerning the subject matter of this Agreement:

- a. this Agreement, and any relevant Service Schedules, Service Orders, Reseller Agreements or applicable attachments, is taken to be the whole Agreement between the Parties and;
- b. supersedes all oral and written communications by or on behalf of any of the Parties concerning the subject matter of the Agreement, Service Schedules, Service Orders, Reseller Agreements or applicable attachments as the case may be.

17.7 No merger.

Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that VoIPcloud may have against the Customer or any other person at any time.

18. Privacy

Delaware Online and Personal Privacy Protection Act

From time to time VoIPcloud and/or its agents may collect personal information about you. Telecommunications and privacy legislation impose strict obligations on VoIPcloud to protect the confidentiality of your personal information and to respect your privacy. You can gain access to your personal information that we hold by contacting support@us.voipcloud.online. Your personal information is collected to provide you with a Telecommunications service. VoIPcloud may also use your information for purposes that are related to providing you with a Telecommunications service, which would be reasonably expected (such as keeping you informed about features of our Telecommunications services or conducting analysis to provide better service to you). VoIPcloud may disclose or receive personal information or documents about you to/from:

18.1 Credit providers or credit reporting agencies for the purposes permitted under the Delaware Online and Personal Privacy Protection Act;

18.2 Law enforcement agencies to assist in the prevention of criminal activities;

18.3 Our service and content providers, dealers and agents, for purposes that are related to providing you with a Telecommunications service, which would be reasonably expected. Unless you consent, we will not disclose your personal information to third parties, other than those who have contracted with VoIPcloud to keep the information confidential, or who are subject to obligations to protect your personal information.