

ECO ENTERPRISE MASTER SERVICE AGREEMENT

1 Terms.

The terms and conditions in this Master Service Agreement (“MSA” or “Service Agreement”) shall be binding upon any 46 Labs Communications Service Order, namely the 46 Labs Communications Order Form (“SO”), and together with the terms and conditions in each SO, any supplemental terms and conditions, including exhibits and Service Level Agreements, 46 Labs Communications’ Acceptable Use Policy (“AUP”) and Privacy Policy, comprise Customer’s agreement with 46 Labs Communications (the “Agreement”). In the event of an inconsistency between these documents (but only to the extent of the inconsistency), the order of precedence, from the most to the least controlling, shall be:

- **Any mutually agreed upon SO or amendment or addendum thereto, properly executed by authorized representatives of both 46 Labs Communications and Customer;**
- **Applicable supplemental terms and conditions, including exhibits and Service Level Agreements;**
- **This MSA;**
- **The AUP and Privacy Policy.**

THIS MSA, ALL SOs, ANY SUPPLEMENTAL PRODUCT TERMS AND CONDITIONS, AND 46 LABS’ AUP AND PRIVACY POLICY ARE LOCATED ON A WEBSITE ACCESSIBLE AT ALL TIMES BY CUSTOMER AND MAY BE MODIFIED BY 46 LABS AT ANY TIME. FOR CHANGES TO ANY OF THE AFOREMENTIONED COMPONENTS OF THE AGREEMENT, 46 LABS WILL NOTIFY CUSTOMER OF ANY MATERIAL CHANGES IN THE AGREEMENT PRIOR TO THE BILLING PERIOD IN WHICH THE CHANGES WOULD GO INTO EFFECT, EXCEPT FOR RATES, WHICH MAY BE CHANGED ON ONE (1) DAY NOTICE. NOTIFICATION OF ANY SURCHARGE MAY BE IN THE FORM OF A BILL INSERT OR BY A MESSAGE WITHIN CUSTOMER’S INVOICE; BY POSTCARD OR LETTER; BY 46 LABS’ CALLING AND SPEAKING TO CUSTOMER OR LEAVING A MESSAGE FOR CUSTOMER; BY POSTINGS ON 46 LABS’ WEBSITE AT WWW.46LABS.COM; OR BY EMAIL. CUSTOMER SHALL BE BOUND BY CHANGES IMMEDIATELY AFTER THEY BECOME EFFECTIVE. CUSTOMER ACCEPTS THE INCORPORATION INTO THE AGREEMENT OF SUPPLEMENTAL PRODUCT TERMS AND CONDITIONS, THE TERMS AND CONDITIONS IN THIS MSA, AUP AND PRIVACY POLICY, AND ALL MODIFICATIONS MADE THERETO.

2 Provision of Services.

2.1 Regulation: The rates set forth in the Agreement are subject to the imposition of new regulations, modifications of existing regulations, new interpretation, application or enforcement of, or exercise of authority related to, any regulation or finding of any federal, state and/ or local regulatory agency, legislative body, or a court of competent jurisdiction, including, without limitation, the imposition of any charges, surcharges, and/or taxes in reliance on or as a result of the same ("Regulatory Change"). 46 Labs Communications reserves the right, at any time (including retroactively) to (i) to pass through to Customer all charges, surcharges or taxes directly or indirectly related to such Regulatory Change, and/or (ii) modify the rates and/or terms and conditions of the Agreement to reflect the impact of such Regulatory Change, including, without limitation, the impact of any actions by third parties in connection with such Regulatory Change.

2.3 Availability of Facilities: 46 Labs Communications' Telecommunications Service ("Service") is offered and furnished subject to the availability, in 46 Labs Communications' sole judgment, of all necessary facilities, including those acquired or leased by 46 Labs Communications from other entities.

2.4 Reseller: 46 Labs Communications is acting as a reseller/ network provider of certain services, facilities and equipment provided by third parties. 46 Labs Communications may be unable to initiate service due to facilities or other constraints of third parties. Further, 46 Labs Communications cannot guarantee any requested turn up/ start of service date, or ensure that 46 Labs Communications or its underlying network/ facilities providers can achieve any projected turn up/start of service date. Any statement or representation to the contrary shall be deemed null and void.

2.5 Right to Alter Service: In its sole discretion and without liability to Customer, 46 Labs Communications may:

- (a) alter the methods, processes or suppliers by or through which it provides Service;

- (b) change the facilities used to provide Service;

- (c) substitute comparable Service for that being provided to Customer. If necessary due to the potential impact on affected Customers, 46 Labs Communications will furnish prior notice of any alterations, changes or substitutions.

2.6 46 Labs Communications' Right to Block, Discontinue, or Surcharge Service Without Notice to Customer:

2.6.1 Fraud, Network Blockage or Degradation: 46 Labs Communications may discontinue furnishing Service by blocking traffic to or from certain countries, cities, NXX exchanges, or individual telephones; by blocking call origination; or by blocking calls using certain Customer authorization or access codes; and/ or cancel Customer's account immediately and without notice, without 46 Labs Communications incurring any liability whatsoever, if 46 Labs Communications deems that such action is necessary to prevent or protect against fraud, or to otherwise protect 46 Labs Communications' personnel, agents, facilities or services, for reasons which include but are not limited to:

- (a) violation of 46 Labs Communications' AUP;
- (b) use or misuse of the Service in a manner that results, or could result, in network blockage or other degradations that adversely affect the Service furnished to Customer or to other existing or prospective customers of 46 Labs Communications;
- (c) manipulation, change, or in any way modifying traffic line records, including the Calling Party Number ("CPN") or Automatic Number Identification ("ANI");
- (e) sequential dialing;
- (f) call blasting;
- (g) excessive incomplete calls;
- (h) improperly formatted SIP messages;
- (i) uses, or threatens to use any of the Services for any unlawful or fraudulent purpose or otherwise violates the terms of the Agreement;
- (j) if 46 Labs Communications is ordered or requested to terminate service by a governmental entity. Regardless of whether or not 46 Labs Communications blocks service, the Customer shall still be fully liable for all fraudulent calls made on Customer's Service.

2.6.2 For Financial Cause: 46 Labs Communications may immediately and at any time terminate the Agreement, discontinue service, cancel an application for service, cancel the Customer's account, or require Customer to deposit funds as security, without incurring any liability, for any of the following reasons:

- (a) Customer fails to pay any amount owed to 46 Labs Communications when due;
- (b) Customer's failure to comply with any material term or condition of this Agreement;
- (c) For usage by Customer beyond any credit limit or prepaid balance limit imposed by 46 Labs Communications;
- (d) If, in 46 Labs Communications' sole judgment, any aspect of Customer's payment arrangements with 46 Labs Communications appear to be fraudulent, including false or misleading credit information, or Customer's use of a credit card that has been reported as misused or stolen;
- (e) Customer's ability to pay, or if, in 46 Labs Communications' sole judgment, Customer's payment arrangements with 46 Labs Communications appear to be inadequate to meet any of Customer's obligations to 46 Labs Communications coming due;
- (f) Customer's filing of any voluntary or involuntary Petition in the bankruptcy court which names Customer as the debtor;
- (g) Customer communicates any intent to breach, or to not comply with the terms of this Agreement, including but not limited to payment for Services at then-prevailing rates.

2.6.3 Customer Obligation to Pay Through Disconnection Period: Customer shall be responsible for payment of all non-usage based charges through any disconnection period.

2.6.4 Fair Use Policy for Unlimited Calling: 46 Labs Communications' fair use policy ("Fair Use Policy") is to prevent abuse, fraud or unreasonable exploitation of unlimited local and long distance calling ("Unlimited Calling") and unreasonable overutilization of 46 Labs Communications' facilities. 46 Labs Communications' Unlimited Calling, both long distance and local, offered in conjunction with 46 Labs Communications' local service products, is intended solely for normal commercial use. 46 Labs Communications' Unlimited Calling for its local service products is designed only for continuous live dialog between two individuals. Unusual calling patterns, excessive called numbers and/or consistent excessive usage will each be considered an indicator that usage is exceeding normal standards. 46 Labs Communications' Unlimited Calling for its local service products may not be used for auto-dialing, continuous, or extensive call forwarding,

excessive conferencing, inbound/ outbound centralized or distributed call center activity, inbound/outbound customer service, telemarketing (including charitable or political solicitation or polling), fax or voicemail blasting, or for continuous or extensive chat line access, or as an open telephone line as a monitor, intercom or transcription service. 46 Labs Communications has other plans applicable for such applications and businesses.

It will be considered outside of 46 Labs Communications' Fair Use Policy for Unlimited Calling on a 46 Labs Communications local service product for a Customer to exceed more than one-thousand (1,000) inbound, outbound or toll free local or long distance minutes per month per subscriber line, SIP trunk, hosted seat, PRI/T-1 trunk/DS0 or analog line, etc., in aggregate ("Normal Usage"). For example, for a Customer who contracts for 50 hosted seats, if the Customer's total monthly local/long distance inbound minutes or local/long distance outbound minutes (as applicable) exceeds 50,000 minutes / per month (1,000 minutes/ hosted seat x 50 seats), then such usage exceeds the Fair Use Policy. For Unlimited Calling on a 46 Labs Communications local service product, 46 Labs Communications shall apply a surcharge of up to \$0.04 per minute of use to the number of minutes by which Customer's usage exceeds this normal usage. The minutes for call forwarded and remote call forwarded calls are allocated to the Customer's inbound and outbound minutes for each call that i) comes into a 46 Labs Communications-supplied DID and ii) is then rerouted outbound to a telephone number outside of 46 Labs Communications' network.

2.7 Service Reconnection Delay: If service is suspended and/or disconnected and then resolution of the issue occurs, the process of reconnection of the service may take up to sixty (60) business days.

2.8 Delivery of Circuit: Unless specifically stated otherwise in a 46 Labs Communications order form, all loop installs are quoted with delivery to the Local Exchange Carrier ("LEC") building Minimum Point of Entry ("MPOE"). Customer is liable for any loop extension ("Demarc Extension") from the LEC MPOE. Customer is responsible for ensuring that all Demarc Extensions are completed, ordered and approved by the LEC prior to any local loops being dropped by the LEC at Customer's MPOE. In the event Customer fails to complete the Demarc Extension or order appropriate Demarc Extensions prior to the LEC's local loop drop, Customer shall be fully responsible for all associated costs as of the date of local loop drop. For Ethernet services, the Customer is responsible for ensuring there are adequate facilities at the premises' primary MPOE to receive 46 Labs Communications' service, including power and backboard / rack. The Customer will also be responsible for providing any wiring extension beyond the primary MPOE. Customer will be responsible for any additional

unforeseen construction costs including, without limitation, inside wiring administration and special installation costs.

46 Labs Communications' Ethernet Service Installation Guide, which can be found at www.46labs.com, identifies the Customer requirements necessary for delivery of Ethernet services to Customer premises. Cancellation charges as set forth in the SO shall be applied in the event Customer has not complied with the requirements in the Ethernet Service Installation Guide, or excessively delays installation. 46 Labs Communications will pass through any costs 46 Labs Communications incurs that are associated with extending wiring beyond the premises' primary MPOE. In the event the Customer chooses not to make the necessary upgrades, the Customer shall nevertheless be responsible for all associated cancellation charges. Where applicable, 46 Labs Communications will deliver Circuit Facilities Assignment ("CFA") at the underlying carrier designated building and suite/cage. It is the Customer's express responsibility to order and pay for all in building local loop circuits or cross-connects required to connect Customer's facilities to the underlying carrier assigned CFA.

2.9 Expedited Installation: Customer acknowledges that requests and payments for an expedited installation do not guarantee that the underlying provider and/or local exchange carrier will meet a requested installation date. Requests for expedited installation may expedite the process by which Customer's order is serviced by the underlying carrier and/or local exchange carrier, but 46 Labs Communications cannot guarantee that any installation will occur by a specified date. 46 Labs Communications cannot refund any payment made for expedited service in the event that an expedited service date is not met.

2.10 Service Availability: The Service is available throughout the Term, except in the case of scheduled maintenance of the 46 Labs Communications network and/or its underlying carrier's networks. 46 Labs Communications will use commercially reasonable efforts to provide prior notification via electronic mail ("email") to Customer regarding any scheduled maintenance of the Service. 46 Labs Communications may interrupt its provision of Service for unscheduled emergency maintenance without notice to Customer or Customer's customers. 46 Labs Communications reserves the right to monitor and/or record certain calls for the purpose of quality control or trouble-shooting service issues, subject to state and federal privacy laws.

2.11 Valid ANI: Where Customer's equipment allows for manipulation or changing of the outpulsed Automatic Number Identification ("ANI") or calling party number ("CPN"), Customer is required to pass a valid originating ANI or CPN that is owned by the Customer. For purposes of this paragraph, "valid" ANI or CPN shall mean ANI or CPN in an industry

standard format that correctly identifies the call as originating from the geographic area where the Customer is physically situated.

2.12 900, 500, 700, or Invalid Numbers: Customer shall not pass 900, 500, 700, or invalid numbers (including 000-000-0000 as CPN).

2.13 Local Number Portability: 46 Labs Communications utilizes the Local Number Portability database maintained on behalf of the telecommunications industry by the Number Portability Administration Center ("NPAC") for validation purposes. As a result, the number dialed by Customer may return porting information from the NPAC database which results in calls terminating to different physical locations, and/ or Operating Company Numbers ("OCN") and Local Access Transport Areas ("LATA") that may differ from the dialed number. If (1) the Customer's rate plan does not include flat-rate pricing, or (2) for the purpose of calculating high cost area surcharges on flat-rate plans, calls terminating to ported telephone numbers will be rated based on the ported number information, and not the dialed number. 46 Labs Communications does not provide Customer access to the NPAC database. Customers wishing to determine whether a dialed number has been ported prior to dialing must arrange independent access to the NPAC database.

2.14 OCN Information: OCN Information: All calls billed under plans other than flat-rate plans will utilize OCN information provided by Bellcore or similar database providers. OCN's are determined by criteria including the NPA/NXX of the number dialed, as well as the NPAC database. 46 Labs Communications shall not be liable for the accuracy of any OCN information, which may be utilized by Customer for any purpose, including but not limited to rating, scrubbing or sorting.

2.15 Toll Free Directory Assistance: Upon Customer's written request and to the extent available to 46 Labs Communications, Toll-Free Directory Assistance listing is available for Customer's Toll-Free numbers provided by 46 Labs Communications. Due to the fact that Toll-Free Directory Assistance is provided through an arrangement with a third party, the provision of Toll-Free Directory Assistance by 46 Labs Communications is subject to the policies and procedures promulgated from time to time by such third parties. Customer understands that any Toll-Free Number listed with Toll-Free Directory Assistance is not published in any written directory but is only available on either an online or call-in basis. This service will be charged at such third party provider's then prevailing rates, which are subject to change without notice at any time.

2.16 International Routes: Customer is aware and acknowledges that 46 Labs

Communications has no control over the international routes of its underlying providers. Therefore, 46 Labs Communications cannot assure or guarantee calls/voice quality for all international traffic. Customer agrees that all calls completed will be considered valid and billable, regardless of call quality.

2.17 Blocking of International Calls: If Customer wishes to block International calls, the Customer must ensure that such request is in writing, in the body of the SO for the services for which International blocking is to be applied. Any such blocking request that is not in writing will not be valid. For the purpose of call blocking, "International" refers only to those calls not destined to the United States or Canada. It is the Customer's responsibility to understand the limits on any call blocking functionality. Any request to 46 Labs Communications to unblock international calls must be in writing.

2.18 Internet Services: All Internet services provisioned under this Agreement or any 46 Labs Communications SO are provided as information services, and not as telecommunication services for the purposes of regulation.

2.19 Rights to IP Addresses and Circuits: Upon termination of the Agreement or any SO, or cancellation of any Service, all rights to circuits ordered by Customer will revert to 46 Labs Communications, and Customer shall have no rights to the continued use of such circuits even if 46 Labs Communications ordered such circuits through another provider. Similarly, 46 Labs Communications does not represent that IP Addresses used by Customer in conjunction with the Service will be available to Customer after termination or cancellation. Customer agrees that

2.20 911 Services: Customer must have at least one 911-enabled DID for each location, with that location's correct address populated in 46 Labs Communications' 911 database, for 911 database services to operate properly for DIDs utilized at that location. For 911 service, the Customer will be required to register the physical location of Customer's equipment (desk phone, softphone, video phone or mobile phone) with 46 Labs Communications and agree to call 46 Labs Communications customer service to update the location whenever the physical location of service for a particular telephone number changes. Customer may register only one location at a time.

IF CUSTOMER DOES NOT UPDATE THE PHYSICAL LOCATION OF CUSTOMER'S EQUIPMENT (DESK PHONE, SOFTPHONE, VIDEOPHONE OR MOBILE PHONE) WHEN IT CHANGES, CUSTOMER'S 911 CALLS MAY BE SENT TO AN INCORRECT EMERGENCY CENTER.

FOR USERS OF THE 46 LABS COMMUNICATIONS KEY SYSTEM TELEPHONES, TO PRESERVE THE ABILITY OF 911 OR E911 PUBLIC SAFETY ANSWERING POINT ("PSAP") PERSONNEL TO RESPOND PROPERLY, CUSTOMER / END USERS OF THE KEY SYSTEM CANNOT MOVE THEIR KEY SYSTEM PHONE TO ANOTHER STREET ADDRESS DIFFERENT FROM THE STREET ADDRESS ASSOCIATED WITH THE REGISTERED ADDRESS FOR SUCH CUSTOMER / END USER.

IT CAN TAKE SEVERAL HOURS TO ACTIVATE 911 SERVICE AT THE UPDATED ADDRESS. WHEN REQUESTED BY 46 LABS COMMUNICATIONS, CUSTOMER SHALL TIMELY COOPERATE WITH 46 LABS COMMUNICATIONS FOR THE TESTING OF THE 911 SERVICE FOR THE PURPOSE OF ENSURING THE 911 SERVICE IS PROPERLY WORKING. IF CUSTOMER REFUSES OR DELAYS TO COOPERATE WITH 46 LABS COMMUNICATIONS FOR SUCH 911 TESTING, 46 LABS COMMUNICATIONS GIVES NO ASSURANCE THAT THE 911 SERVICE IS WORKING OR HAS EVER WORKED, AND CUSTOMER SHALL ASSUME FULL AND SOLE LIABILITY IN THE EVENT THE 911 SERVICE FAILS TO WORK PROPERLY. 911 SERVICE WILL NOT FUNCTION IN THE EVENT OF A CUSTOMER PREMISE OR CARRIER SERVICE OUTAGE OR A POWER OUTAGE. NETWORK CONGESTION OR SIGNIFICANT DEGRADATION OF CUSTOMER'S INTERNET ACCESS OR OTHER TYPES OF ACCESS SERVICE MAY DELAY OR PREVENT COMPLETION OF A 911 CALL. THESE CONDITIONS MAY OCCUR REGARDLESS OF THE SIZE OF CUSTOMER'S BANDWIDTH OR THE NUMBER OF CIRCUITS INSTALLED, AND REGARDLESS OF WHETHER OR NOT 46 LABS COMMUNICATIONS IS THE PROVIDER. 46 LABS COMMUNICATIONS SERVICES (INCLUDING OR NOT LIMITED TO) INTERNET SERVICE AND/OR MANAGED CONNECTIVITY OR LOCAL T1/ PRI SERVICE ARE NOT IMMUNE FROM THESE CONDITIONS. 46 LABS COMMUNICATIONS STRONGLY RECOMMENDS CUSTOMER AT ALL TIMES MAINTAINS AN ALTERNATIVE METHOD FOR PLACING EMERGENCY CALLS.

Based on the local emergency center servicing Customer's location, such center will operate with either basic 911 or E911 service.

With basic 911 service when a caller from the Customer's Registered Address dials the digits 9-1-1, the call is sent to the local emergency center serving the Customer's location. Operators answering the call will not have automatic access to the caller's call-back telephone number or the Registered Address because the emergency center will not be equipped to receive, capture or retain Customer's assigned 46 Labs Communications telephone number and Registered Address. Accordingly, callers must be prepared to provide both call-back and address information. If the call is dropped or disconnected, or if the caller is unable to speak, the emergency operator answering the call will not be able to call the caller back or dispatch help to the caller's address.

As additional local emergency centers become capable of E911 functionalities, 46 Labs Communications will automatically upgrade customers from basic 911 to E911 service. 46 Labs Communications will not notify Customer of the upgrade. With Enhanced 911 service (E911), when a caller from the Customer's Registered Address dials the digits 9-1-1, the 46 Labs Communications telephone number and subscriber's registered address is automatically sent to the local emergency center serving your location. The emergency operators will have access to this information regardless of whether the caller is able to verbally provide such information to the emergency call-taker.

Accordingly, with E911 service, the emergency call-taker will have the caller's call-back telephone number and registered address information just by virtue of the caller placing the call using the digits 9-1-1.

Some Customers will have the ability to directly update their own E911 location via an online portal. Customer is solely responsible for setting the E911 location accurately to the correct physical location of Customer's equipment (desk phone, softphone, videophone or mobile phone) with 46 Labs Communications.

In limited circumstances, Customers equipped with basic 911 or E911 may have their calls routed to the national call center.

46 Labs Communications' Service is Internet based and 911 services are different from that of traditional wireline services. Customer acknowledges and agrees to inform all employees, guests, and other third persons who may use the Service of the potential complications arising from basic 911 or E911 dialing and more specifically that basic 911 and E911 services will not function in the case of a service failure for any of the following reasons:

- (a) the telephone device to which a particular telephone number has been assigned is moved to a location outside the premises where the telephone device was originally installed, the "registered address";
- (b) there is an outage, degradation or other disruption of power at the Customer's location;
- (c) there is outage, degradation or other disruption of Customer's broadband Internet connection, whether such connection is provided by 46 Labs Communications or another provider;
- (d) suspension of services due to billing issues;
- (e) any other service outages not described herein;

(f) Customer's failure to provide a correct physical address in the requisite format may cause all basic 911 or E911 calls to be routed to the incorrect local emergency service provider;

(g) the 911 or E911 call is routed to a long distance trunk group instead of a local trunk group; and/ or

(h) if Customer uses the public Internet for voice calls (or voice call signaling), Customer may not be able to access 911 or E911 services.

Under any of the circumstances enumerated in items (a) through (h), above, 46 Labs Communications will not be liable for any inability to dial 911 using 46 Labs Communications VoIP services or for the misrouting of any calls made to the PSAP emergency center or to a municipal emergency service providers, and Customer further agrees to defend, indemnify and hold harmless 46 Labs Communications, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to 46 Labs Communications in connection with 46 Labs Communications' VoIP services, from any and all claims, losses (including loss of profits or revenue), damages, fines, penalties, costs and expenses (including, without limitation, attorneys' fees and expenses) by, or on behalf of, Customer or any third party or user of 46 Labs Communications' VoIP services relating to the non-availability of 911 dialing. 46 Labs Communications' suppliers will not be liable to Customer for any damages for any reason.

If Customer routes 911 calls to 46 Labs Communications utilizing anything other than 46 Labs Communications 911-enabled DIDs as the source, then Customer is subject to surcharges for the call. For the PSAP to receive the Customer's correct 911 address information, Customer must route their 911 calls to 46 Labs Communications using DIDs which are assigned by 46 Labs Communications or ported to 46 Labs Communications and set up by 46 Labs Communications as 911-enabled. If Customer routes 911 calls using 46 Labs Communications 911-enabled DIDs to another phone company, then **i)** the PSAP may not receive the proper address, and **ii)** that other phone company may charge Customer for such call.

2.21 911 Notice: The following physical notice will be supplied with 46 Labs Communications-supplied VoIP Equipment: Federal Communications Commission 911 Notice:

911 SERVICE MAY NOT BE AVAILABLE ON THIS PHONE IF:

- the phone is moved to a location outside the premises where it was originally installed;
- there is a loss of power to the phone; or
- there is a loss of the phone's broadband connection.

This notice must be placed and remain near the phone(s) used for your 46 Labs Communications VoIP Service.

Customer should call 46 Labs Communications for a replacement notice card if Customer loses the provided notice or requires additional copies.

2.22 Additional Requirements for SIP Trunking 911: For basic 911 or E911 to be accurately routed to the appropriate emergency responder, the Customer must provide the telephone number ("TN") associated with the SIP trunking service for the registered address, in the 'userpart' of the 'from uri' contained in the SIP 'from' header. The SIP trunk service may not support basic 911 or E911 dialing in the same manner as traditional wireline phone service. Further, 911 or E911 services may not be available for 46 Labs Communications' SIP Trunking products, which are not intended as a replacement for local phone service.

2.23 Customer Duty to Inform Regarding 911 and E911 Services: Customer acknowledges and agrees to inform all employees, guests, and other third persons who may use the service that basic 911 and E911 services will not function in the case of a service failure for any of the following reasons:

- (a) power failures;
- (b) suspended or terminated broadband service;
- (c) suspension of services due to billing issues; and/or
- (d) any other service outages not described herein.

Customer further acknowledges that failure to provide a correct physical address in the requisite format may cause all basic 911 or E911 calls to be routed to the incorrect local emergency service provider. Furthermore, Customer recognizes that use of the service from a location other than the location to which the service was ordered, i.e., the "registered address," may result in basic 911 or E911 calls being routed to the incorrect local emergency service provider.

2.24 Software Based Phone ("Soft Phone") – E911 Calling Not Available: 46 Labs Communications may make available to Customer a SoftPhone, which allows Customer to

receive phone calls through a software program that runs on Customer's personal computer ("PC"). Customer will NOT be able to place outgoing calls using the Soft Phone, including calls made to emergency services through 911, E911 or the emergency numbers. In addition, even if Customer purchases 46 Labs Communications' separate outbound Soft Phone service, Customer will NOT be able to make calls to emergency services using E911 services. 46 Labs Communications strongly recommends that Customer has, at all times, access to a standard telephone or a cellular phone to place emergency phone calls whenever 46 Labs Communications' outbound Soft Phone service is being used.

2.25 No 0+, Operator Assisted, or x11 Calling: 46 Labs Communications Services do not support 0+ or operator assisted calling, including, without limitation, collect calls, third party billing calls, 900, or calling card calls. 46 Labs Communications Services may not support 311, 511, and other x11 services in one or more service areas.

2.26 Incompatibility With Other Services: 46 Labs Communications Services may not be compatible with non-voice communications equipment, including but not limited to: home security systems; TTY; medical monitoring equipment; TiVo; satellite television systems; PBX; Centrex; other private telephone networks; other broadband services; home networking; or computer modems. There may be other services with which 46 Labs Communications Services are incompatible. 46 Labs Communications does not warrant that the Services will be compatible with all broadband services. Some providers of broadband service may provide modems that prevent the transmission of communications using 46 Labs Communications' Services.

46 LABS COMMUNICATIONS EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES REGARDING THE COMPATIBILITY OF THE SERVICES WITH ANY PARTICULAR BROADBAND SERVICE. CUSTOMER WAIVES ANY CLAIM AGAINST 46 LABS COMMUNICATIONS FOR INTERFERENCE WITH OR DISRUPTION OF THESE SERVICES AND EQUIPMENT.

2.27 Bandwidth Requirements: For 46 Labs Communications' local SIP services, including Voice Over MPLS for SIP services, the Customer shall be responsible for ordering a sufficient amount of bandwidth to support the desired number of simultaneous calls and permit the applicable audio compression. In the event of insufficient bandwidth, or in the event Customer attempts to place more simultaneous calls over a circuit than what the circuit can support, Customer may experience degraded call quality or unavailable connectivity. 46 Labs Communications' services that utilize VoIP can also be affected by insufficient bandwidth or overutilization.

2.28 Porting Numbers: 46 Labs Communications will require a completed and signed Letter of Authorization ("LOA") for any numbers or toll free numbers the customer wishes to port. In addition, 46 Labs Communications will require a recent, applicable copy of Customer's current phone bill that contains the Customer's Billing Telephone Numbers ("BTN") as well as a record of any numbers that need to be ported. Necessary LOA(s) and bill copy(s) must be received by 46 Labs Communications before 46 Labs Communications initiates the port request. 46 Labs Communications shall not be responsible or liable for any claims or damages customer or other service providers' requests for porting of numbers.

2.29 Requested Start Date: 46 Labs Communications will use its commercially reasonable efforts to activate Service by the agreed-upon date. However, 46 Labs Communications cannot guarantee Service activation by a particular date because 46 Labs Communications relies on other entities, such as suppliers and Customer, to perform certain tasks and provide certain information before 46 Labs Communications can activate Service. Customer is responsible for canceling any communications services that the Service will replace and for any and all charges related to those services. Customer is advised not to cancel any services until the Customer has received written confirmation that the porting has been successfully completed.

2.30 Bandwidth Measurements: There are many types of bandwidth speed tests, including various public speed test websites. These sites are subject to inaccuracy and variable results, and do not provide scientific or reliable data for troubleshooting by 46 Labs Communications. 46 Labs Communications will not accept speed test results from such websites. 46 Labs Communications and its underlying providers will only utilize Iperf or RFC-2544 testing terminating to on-net facilities and are considered industry standards for speed performance testing. With respect to Ethernet circuits, there is an inherent overhead by the nature of the protocol coupled with equipment such as routers, adaptors and connectors, and the industry standard for the usable portion of the bandwidth is approximately 80% – 85% of any given Ethernet bandwidth.

3 Billing And Payment Arrangements.

3.1 Form of Invoice: 46 Labs Communications shall send invoices for services by either email, web portal or surface mail, and any invoice received by either method shall constitute a valid bill for services.

3.2 Payment: Customer shall pay for all Services ordered from 46 Labs Communications, pursuant to a SO at the rates set forth in such SO or other pricing exhibits, or as amended from time to time. Customer shall timely pay the full amount invoiced (subject to [Section 4 - Billing Disputes](#)), if Customer expects a portion of the invoiced amount to be paid or

reimbursed in the future by a third party such as, for example, the Universal Service Administrative Company ("USAC") in the case of certain customer schools and libraries. Customer shall also pay any repair, telephone charges and charges for inspection, installation or repair of wiring performed on Customer's premises for the additional charges set forth in the Customer Policies. For a monthly recurring charge that begins somewhere in between the start and end of a billing period, such charge will be prorated for that first billing period. Each month, 46 Labs Communications shall bill Customer in arrears for usage charges, non-recurring and pro-rata monthly charges (if any) as well as in advance for all applicable circuit port, loop and equipment Monthly Recurring Charges (MRC). In the event Customer orders any DS3, Fast Ethernet, Gig Ethernet, OC3, OC12 or other high speed service (excluding DS1 or below speeds), then the Customer shall provide together with submission of the Order an initial payment equal to the quoted installation fees and one month's MRC for all loops and ports ordered. The amount received shall be applied against the initial installation fees charged on the first month's invoice. The remainder will be credited against customer's last monthly invoice.

3.3 Rounding: Unless otherwise stated in an SO, charges for Services shall be rounded up to two digits per call. By way of example, a call whose cost calculated to \$1.214 would be rounded to \$1.22.

3.4 Prepayment: Unless Customer receives credit approval in writing from 46 Labs Communications' credit department and has signed a separate billing agreement, the Customer will be invoiced on a prepaid basis.

3.4.1 30-Day Payment Customers: For Customers who receive written credit approval from 46 Labs Communications' credit department for thirty (30) day payment terms, payments for Service shall be due upon Customer's receipt of the invoice. Undisputed amounts which are not paid in full within thirty (30) days of the invoice date will be past due and subject to an additional charge equal to the lesser of one and one half percent (1.5%) per month late payment fee or the maximum monthly rate permitted by law on past-due balances. In the event of non-payment of any past due invoice due, or a material breach of this Agreement, including, but not limited to Access Arbitrage or fraudulent use of 46 Labs Communications services, all outstanding invoices, including any unbilled usage shall become immediately due and payable, and Customer shall be considered in default.

3.5 Liability for Completed Calls: Customer understands that rates to special service numbers and non-US mobile numbers can be significantly higher than landline rates and Customer is wholly responsible for all calls made over their lines.

CUSTOMER IS LIABLE FOR ALL COMPLETED CALLS MADE UTILIZING CUSTOMER'S EQUIPMENT, WHETHER AUTHORIZED OR UNAUTHORIZED, AND REGARDLESS OF SUITABILITY FOR CUSTOMER'S APPLICATIONS, AND/OR ANY FAILURE OF OTHER NETWORK ELEMENTS OR SERVICES WHICH MAY IMPACT CUSTOMER'S ABILITY TO OPERATE. CUSTOMER REQUESTS TO BLOCK INTERNATIONAL SERVICE ON 46 LABS COMMUNICATIONS SERVICE ORDERS SHALL NOT RELIEVE CUSTOMER FROM LIABILITY FOR INTERNATIONAL CALLS MADE ON CUSTOMER'S SERVICE. 46 LABS COMMUNICATIONS SHALL MAKE COMMERCIALY REASONABLE EFFORTS TO PROCESS SUCH BLOCKING REQUESTS, SUBJECT TO NETWORK LIMITATIONS AND RESTRICTIONS. CUSTOMER SHALL NOT HOLD 46 LABS COMMUNICATIONS LIABLE FOR ANY FRAUDULENT CALLS WHICH MAY OCCUR ON CUSTOMER'S SWITCHED, DEDICATED OR CALLING CARD SERVICES, INCLUDING ANY FRAUD RELATED TO UNAUTHORIZED ACCESS OF CUSTOMER'S TELECOMMUNICATIONS EQUIPMENT.

3.6 Account Codes: Account Codes, either Verified or Unverified, are not intended to be utilized as a security measure; they are for accounting purposes only. Verified Account Codes are used for the purpose of tracking calls made under that specific Account Code. 46 Labs Communications does not offer any guarantee that either Verified or Unverified Account Code types can or will prevent any fraudulent calls. The Account Codes are issued at the Customer's request and are the sole responsibility of the Customer. Customer understands and accepts all responsibility for calls made from any location using the Account Codes whether Verified or Unverified.

3.7 Credit Information: Customer agrees that 46 Labs Communications may request credit information from third parties, and Customer authorizes the release of such information as part of this application.

3.8 Forms of Payment: Acceptable forms of payment are: company checks; cashier's and certified checks; money orders; wire transfers and ACH credits; except where other payment form restrictions are specifically noted in a separate SO or addendum. Checks must be drawn on U.S. banks and written in U. S. dollar values. Checks drawn on foreign banks and third party checks are not accepted. Payment by cash is not acceptable. 46 Labs Communications may accept, in its sole discretion, payment by credit card. If Customer pays 46 Labs Communications by credit card, Customer's continued receipt of Services, after Customer's payment to 46 Labs Communications appears on Customer's credit card statement, shall be construed as Customer's acknowledgement of the validity of such undisputed charges, and as Customer's waiver of all rights to reverse such charges. A three

percent (3%) surcharge will be applied to the total amount paid using a credit card. Customer's sole recourse for disputed charges shall be as outlined in [Section 4](#) ("Billing Disputes").

3.9 Applicable Rates and Charges: 46 Labs Communications may modify the applicable rates and charges upon prior notice to Customer as referenced above in Sections [1](#), [2.1](#), 2.2, and [3.2](#). Customer acknowledges that the termination of international long distance wireless calls may be billed at higher rates.

3.10 Service Start Date; Invoicing; and Payment Deadline: For Services providing an access circuit / loop, the Start of Service Date shall be the earliest of

- i) the Customer's first use of the Service,
- ii) five (5) business days after Circuit Ready Date, regardless of whether all Services have been turned up and regardless of Customer readiness, or
- iii) five (5) business days after the start of a "Customer Delay of Circuit Installation."

"Circuit Ready Date" is the date the Customer's circuit is active, as notified by the underlying provider. "Customer Delay of Circuit Installation" is defined as an occurrence of Customer directly or indirectly delaying or impeding 46 Labs Communications' underlying provider from installing and/or testing Customer's access circuit / loop. Customer indirectly delays the underlying provider if the Customer site is not ready to accept Services, or if the Customer's employees, contractors, supplies, vendors, agents, assigns, property owner, property manager, or landlord does not allow, blocks, or delays 46 Labs Communications' underlying provider from installing or testing the access circuit / loop. Customer networking issues, whether the result of improper network design, equipment issues, or incorrect information supplied to 46 Labs Communications by or on behalf of the Customer, shall not relieve the Customer of the obligation to pay for the Service, including circuit charges, beginning on the Start of Service Date.

3.13.2 Cost Recovery: 46 Labs Communications may impose recovery fees in order to recover costs associated with regulatory compliance, administrative and network facilities costs.

3.13.3 Set-up, Installation and Disconnect Fees: Customer shall pay all applicable inspection, repair, set-up, Demarc extension, installation and disconnect fees, service upgrade or relocation fees, which will be invoiced on a Non-Recurring Charge basis and are non-refundable. Quoted installation fees contemplate installations in normal locations

under normal working conditions during regular business hours. Any installations under other circumstances including, but not limited to, hazardous locations or made on an expedited basis outside of standard installation intervals will be subject to additional charges.

3.13.4 Charges Imposed By Other Suppliers: If an entity other than 46 Labs Communications (e.g., another carrier or supplier) imposes charges on 46 Labs Communications in connection with the provisioning of Service to Customer, including but not limited to, for expedited installations, such charges will be invoiced by 46 Labs Communications on a pass-through basis and paid by Customer.

3.13.5 Internet/Data Usage (for Measured Broadband Services): Usage is determined as follows: Utilization samples are taken every 5 minutes throughout Customer's billing cycle. Only the highest sample is captured for each five-minute period, even though there are actually two samples taken; one for inbound utilization and one for outbound utilization. The higher of these two figures is retained. At the end of the billing period, the samples are ordered from highest to lowest. The result is a database of over 8,000 samples (12 Samples/hour x 24 hours/day x 30 days /month), with the highest sample listed first and the lowest sample listed last. The top five percent (5%) of the samples (representing the top five percent (5%) of usage levels) are discarded. The Highest remaining sample, the 95th percentile of peak usage, is the bandwidth usage for an individual port.

3.14. Underutilization: Customer understands and acknowledges that 46 Labs Communications' underlying carriers may terminate service on any circuit for underutilization. Customer understands that such termination would in no way affect Customer's commitment to pay for all monthly circuit charges associated with these circuit(s) for the entire term of the contract. 46 Labs Communications will provide Customer fifteen (15) days written notice of its underlying carrier's intent to disconnect, and Customer shall have the option of increasing usage to prevent disconnection of circuit(s), or alternatively accepting disconnection of designated circuit(s). In the event of disconnection, Customer shall reimburse 46 Labs Communications for any circuit disconnection fees charged by the underlying carrier to 46 Labs Communications.

3.15 Excessive Incomplete Calls: If Customer utilizes the 46 Labs Communications underlying network for call termination, Customer may not have an excessive percentage of outbound incomplete calls, as calculated on the basis of total outbound call attempts in a month per unique customer account. Also, it will be considered outside of 46 Labs Communications' Fair Use Policy if the Customer has an excessive percentage of inbound

call attempts. An Excessive Call Attempt Surcharge of \$0.005 per call will be assessed for all incomplete calls, whether outbound or inbound, deemed excessive by 46 Labs Communications in its sole and absolute discretion.

For customers utilizing the 46 Labs Communications network whose total number of DS1 circuits ordered is 4 (Four) or less (including all circuits utilizing the 46 Labs Communications network ordered previously or separately by Customer), the Excessive Call Attempt Surcharge shall not apply until such time as Customer's total number of DS1 circuits utilizing the 46 Labs Communications network exceeds 4. For customers utilizing Toll Free services, Customer may not have an excessive percentage of inbound or outbound Toll Free incomplete calls, as calculated on the basis of total Toll Free call attempts by end user customers in a month per unique customer account. An Excessive Call Attempt Surcharge of up to \$0.04 per call will be assessed for all Toll Free incomplete calls deemed excessive by 46 Labs Communications in its sole and absolute discretion.

3.16 Termination: If service is terminated for any reason, Customer will pay 46 Labs Communications for

(a) Services that Customer has used through the date that 46 Labs Communications or Customer

terminates the Services, (b) any outstanding balance for non-recurring charges, (c) all charges that may still be due or may be incurred for early termination (see [section 3.17](#). Early Termination Liability).

3.17 Early Termination Liability: Except as may be mutually agreed upon in writing, such in the SO, in the event Customer terminates the Service or the Agreement or any SO is after submission of an order for a loop/circuit to the underlying carrier but before the end of the applicable term, the Customer shall pay to 46 Labs Communications on demand, as liquidated damages and not as a penalty, an Early Termination Liability charge ("ETL") equal to the sum of one hundred percent (100%) of the Monthly Recurring Charges ("MRCs") for all of the months remaining in any applicable term. In the event of Customer's termination of the Agreement before the expiration of its term, 46 Labs Communications' actual damages would be impractical and/or extremely difficult to ascertain, so the parties agree the ETL set forth above is a reasonable estimate of actual damages. With respect to Customer terminating the Agreement after the submission of paperwork but prior to the Start of Service Date, the number of months remaining in the term shall be the total number of months for which the Customer has contracted. Assessment of an ETL does not relieve Customer of Customer's obligation to pay any non-recurring charges or any undisputed past due charges and interest thereon.

3.18 Recovery of Collection Costs: Unless otherwise prohibited by law, Customer shall reimburse 46 Labs Communications for any costs incurred by 46 Labs Communications in undertaking any collection activity, including, but not limited to, the reimbursement of reasonable attorneys' fees. Reasonable attorney's fees shall include the time and costs associated with 46 Labs Communications' in-house legal staff efforts related to the collection activity. For purposes of calculating the time and costs, the Parties stipulate that 46 Labs Communications' in-house legal staff's time shall be billed at \$250.00 per hour.

3.19 Right of Offset: If Customer defaults on any payment obligation owed 46 Labs Communications under any agreement for more than thirty (30) days and 46 Labs Communications has funds that are owed the defaulting Customer, 46 Labs Communications may offset that which it is owed by first applying such funds to the full balance due by the defaulting Customer. Any amount remaining following the offset shall be remitted to Customer in the normal course of business.

3.20 Call Rating: For Customers that purchase a Local voice service, "Local" calls are separate from "Local Toll" calls. A local call is a telephone call that both originates and terminates within the Customer's exchange. A Local Toll call is a telephone call that terminates within a geographic area known as a Local Access and Transport Area ("LATA") in which the Customer is located, but outside of the Customer's exchange. Per minute toll charges usually apply to a Local Toll call. Calls will be rated as local calls if they are terminated

within subscriber's Local Calling Area associated with the call's originating ANI (which must be a 46 Labs Communications assigned DID). All calls outside of a subscriber's Local Calling area shall be rated as either intrastate, interstate, or international long distance. For Customers that purchase Long Distance ("LD") service, calls will not be rated as local calls, and as such no call will be billed at no charge. There are only five categories of LD calls: intrastate, interstate, offshore, international and indeterminate. Intrastate calls originate and terminate in the same US state within the contiguous 48 states. Interstate calls originate and terminate in different US States within the 48 contiguous US states. Offshore calls terminate or originate in the United States territories, Alaska or Hawaii, with the alternate leg originating or terminating within the contiguous 48 states. International calls originate from and/or terminate into a country other than the United States and its territories.

All of the above defined categories shall only be applicable if a valid NADP telephone number appears in the Originating Automatic Number Identification (ANI) and Terminating ANI provided in the call signaling with respect to any US number. All other originated telephone numbers are deemed indeterminate calls. Indeterminate calls are billed at the higher of the intrastate or interstate rates.

For purposes of determining call jurisdiction, 46 Labs Communications uses the Originating Automatic Number Identification (ANI) and Terminating ANI provided in the call signaling. 46 Labs Communications utilizes the value in the 'FROM' field in the SIP header as the Originating ANI for establishing the jurisdiction of the call (i.e. interstate versus intrastate versus international). However, in the event a value is present in any of the SIP header fields used for caller id (e.g. Remote Party ID, P-Assert-Identity) 46 Labs Communications may use this in lieu of the "FROM" field as the Originating ANI to determine the jurisdiction of a call. If 46 Labs Communications cannot accurately rate a call due to an invalid or omitted Originating ANI, and its rating jurisdiction is not international, 46 Labs Communications will default to rating the call at the prevailing Intrastate long distance rate. 46 Labs Communications will determine the originating or terminating carrier by evaluating the terminating ANI down to the NPA-NXX-X level. Customer is required to maintain the originating ANI for all outbound calls and abstain from any level of ANI manipulation in the call signaling.

3.21 Local Call Rating Exclusion: Rating outbound calls as Local only applies to calls that utilize telephone numbers (DIDs) assigned by 46 Labs Communications or that have been ported to 46 Labs Communications' service as the originating ANI. Termination of calls from DIDs not provided by 46 Labs Communications or ported to 46 Labs Communications' service will be rated as either Interstate or Intrastate long distance. This distinction of interstate versus intrastate long distance will be determined based on the Originating Automatic Number Identification (ANI) and Terminating ANI provided in the call signaling. If 46 Labs Communications cannot accurately rate a call due to an invalid or omitted Originating ANI, and its rating jurisdiction is not international, 46 Labs Communications will default to rating the call at the prevailing Intrastate long distance rate.

3.22 Toll Free Pricing: For the Customer to obtain the pricing of toll free calls set forth on the Service Order i) all associated DIDs to the toll free numbers must be ported to 46 Labs Communications or ii) 46 Labs Communications must assign the associated DIDs, otherwise a higher switched rate will apply for toll free minutes.

3.23 No Rollover: All bundles/buckets of minutes and/or bundles of text are invoiced on a monthly basis. Unused minutes or texts do not rollover into subsequent months.

4 Billing Disputes.

4.1 Customer Obligation: Any invoices issued to Customer shall be deemed correct and binding on the Customer unless Customer files a dispute according to the provisions of this Section 4.

4.2 Requirements for Valid Dispute: An invoiced charge will be deemed disputed by Customer if, and only if:

- (a) Customer believes in good faith that the charge was invoiced in error;
- (b) Customer provides 46 Labs Communications written notice of the disputed charge no later than thirty (30) days from the date of the invoice on which the charge first appeared;
- (c) Customer's notice of the disputed charge includes the amount of the disputed charge, the reason the charge is disputed, and documentation supporting the dispute, and provide all documents supporting each dispute. Customer shall not have the right to withhold any amount not properly disputed. If Customer does not dispute a charge(s) on the invoice within thirty (30) days from the date of the invoice, then the invoice will be deemed to be correct.

4.3 Resolution of Disputed Charges: 46 Labs Communications shall have the right to determine in good faith the merit of each dispute and Customer's associated payment obligation. 46 Labs Communications will investigate all billing disputes and notify Customer in writing that:

- (a) a credit will be issued to reverse any amount that 46 Labs Communications determines was incorrectly billed,
- (b) 46 Labs Communications has determined that the disputed charge was invoiced correctly.

After a billing dispute is resolved, if the dispute is resolved in 46 Labs Communications' favor, Customer will, within five (5) business days of such resolution, remit to 46 Labs Communications any required payment, plus interest at the lower of one and one-half percent (1.5%) per month or the maximum rate permissible under applicable state law, calculated from the due date until the date payment is received by 46 Labs Communications.

Failure to pay such amount in full within such five (5) day period shall be a breach hereof and shall entitle 46 Labs Communications, in addition to its other remedies at law or equity, to terminate all Services to Customer without notice and without liability of any kind or amount. If the dispute is resolved in Customer's favor, and Customer withheld payment of the disputed amount, then 46 Labs Communications will issue a credit to reverse the amount incorrectly billed. If the dispute is resolved in Customer's favor and Customer previously paid the disputed amount, then 46 Labs Communications will issue a credit to reverse the amount incorrectly billed and apply such credit against Customer's next invoice(s). If Customer is no

longer being invoiced by 46 Labs Communications, 46 Labs Communications will remit to Customer the amount of the credit within ninety (90) days of the date of such credit.

5 Services and Equipment.

5.1 Products and Customer Equipment Supplied by 46 Labs Communications: 46 Labs Communications may deliver to Customer certain software, hardware and documentation, including but not limited to 46 Labs Communications-provided equipment (collectively, "Products"). 46 Labs Communications grants to Customer a personal, limited, non-transferable, non-exclusive, license, without the right to sublicense, transfer, copy or create derivative works, to use the Products during the term of the appropriate SO solely for use with the Service specified in such SO and in accordance with the Agreement. Either 46 Labs Communications or other third-parties own and will continue to own the software used to provide Services. Customer may not decompile, reverse engineer or otherwise use any software code from any software provided by 46 Labs Communications or its suppliers. Some software necessary to fully utilize the full functionality of the Services may require Customer to accept additional terms and conditions required by the third-party providers of such software. If Customer has purchased or leased Equipment from 46 Labs Communications or its certified third party leasing company then the Customer must install Equipment in accordance with instructions provided by 46 Labs Communications (or its third party vendor). Customer may not change the settings on any equipment supplied by 46 Labs Communications or its agents without 46 Labs Communications' express written consent. In addition 46 Labs Communications-provided equipment must be used solely for the purpose of Service utilization.

46 Labs Communications will use commercially reasonable efforts to supply and configure the Products to allow Customer to use the Services, unless Customer is supplying its own equipment or purchasing it from a third party (including a 46 Labs Communications authorized dealer or fulfillment partner). 46 Labs Communications is not responsible for the configuration of, or the components of, Customer's personal computer or for other telephony equipment that may be necessary to make such customer-provided equipment compatible with the Service. For any equipment that Customer purchases directly through 46 Labs Communications, 46 Labs Communications may supply new or recertified equipment. On new and recertified equipment purchased by Customer through 46 Labs Communications, Customer understands that any Product it purchases through 46 Labs Communications, a dealer or fulfillment partner is only designed to work with 46 Labs Communications' Services. If Customer or 46 Labs Communications terminates Services for ANY REASON, Customer will NOT be eligible for a refund, either full or partial, for any fees paid by Customer for a Product, or for third party- supplied equipment.

5.2 Return of 46 Labs Communications-Provided Equipment: Customer agrees to return all

equipment provided by 46 Labs Communications or its underlying carriers ("46 Labs Communications Provided Equipment") within thirty (30) days of i) the termination of Services for any reason or ii) upon receiving replacement 46 Labs Communications-Provided Equipment for a non- functioning unit or as part of a Service upgrade. Customers may receive a prepaid shipping label by emailing the request to shipping@46labs.com. Please include your company name, address and telephone number in the request. If Customer fails to return all of the 46 Labs Communications- Provided Equipment within thirty (30) day period, 46 Labs Communications shall invoice Customer for the current replacement cost of any 46 Labs Communications-Provided Equipment not returned, plus taxes. The 46 Labs Communications-Provided Equipment must be returned in the same condition as received, normal wear and tear excepted. Labs Communications.

Failure to pay such amount in full within such five (5) day period shall be a breach hereof and shall entitle 46 Labs Communications, in addition to its other remedies at law or equity, to terminate all Services to Customer without notice and without liability of any kind or amount. If the dispute is resolved in Customer's favor, and Customer withheld payment of the disputed amount, then 46 Labs Communications will issue a credit to reverse the amount incorrectly billed. If the dispute is resolved in Customer's favor and Customer previously paid the disputed amount, then 46 Labs Communications will issue a credit to reverse the amount incorrectly billed and apply such credit against Customer's next invoice(s). If Customer is no longer being invoiced by 46 Labs Communications, 46 Labs Communications will remit to Customer the amount of the credit within ninety (90) days of the date of such credit.

5.3 Maintenance, Support, and Repair for Products Provided by 46 Labs Communications:
All equipment provided to Customer by 46 Labs Communications is subject to the terms and conditions set forth in the manufacturer's or publisher's warranty, end-user license, or agreement applicable to such Products, with no additional warranty of any kind from 46 Labs Communications. If Customer purchases equipment from 46 Labs Communications, an authorized dealer or fulfillment partner, Customer must address any issues or warranty concerns relating to that equipment with the manufacturer of such equipment or the authorized dealer or fulfillment partner. 46 Labs Communications will not repair, replace or warranty such purchased equipment. Customer shall reimburse 46 Labs Communications for the Field Service Technician visit, if applicable, at then-applicable rates and for the cost of any replacement equipment for the entire cost to repair and/or replace any Product in the event that Product requires replacement due to

(a) misuse or abuse;

(b) failure to exercise reasonable care;

(c) altering original 46 Labs Communications configuration;

(d) damage;

(e) theft;

(f) disaster.

If a replacement Product is requested for a 46 Labs Communications-supplied non-purchased Product, 46 Labs Communications will ship preconfigured replacements to Customer. Customer shall return any non-purchased faulty Product to 46 Labs Communications within thirty (30) days of receiving the replacement Product or pay for such Product. Customer will not receive compensation for downtime associated with Product failure, replacement or repair. 46 Labs Communications' liability is strictly limited to the pro-rata reduction of 46 Labs Communications' monthly recurring charges. At 46 Labs Communications' discretion, any Product, either originally, or as a replacement, may be new, recertified or refurbished. Any Product supplied by 46 Labs Communications as a replacement Product will carry the remainder of any manufacturer warranty. 46 Labs Communications may also provide any Product upgrades at no expense to Customer, and Customer shall use all such upgrades provided by 46 Labs Communications. 46 Labs Communications shall not replace, and the Customer shall be responsible for the full cost of replacement of 46 Labs Communications- Provided Equipment and phones in the event of damage:

(a) to consumable parts, such as batteries, or protective coatings designed to diminish over time unless failure has occurred due to a defect in materials or workmanship;

(b) to cosmetic damage, including but not limited to scratches, dents, and broken plastic on ports;

(c) to damage caused by use with other products;

(d) to damage caused by accident, abuse, misuse, liquid contact, fire, earthquake or other external causes;

(e) to damage caused by operating the product outside the permitted or intended uses described by 46 Labs Communications;

(f) to damage caused by service (including upgrades and expansions) performed by

anyone who is not a representative of 46 Labs Communications;

(g) to a product or part that has been modified to alter functionality or capability without the written permission of 46 Labs Communications;

(h) to defects caused by excessive wear and tear or otherwise due to the excessive aging of the product;

(i) if any serial number has been removed or defaced. 46 Labs Communications and its suppliers shall have no obligation or liability in connection with any equipment not purchased through 46 Labs Communications even if configured by 46 Labs Communications, or for any abuse, misuse or reconfiguration, including, but not limited to, the addition of software or other devices, of any equipment by any party other than 46 Labs Communications.

5.4 Customer-Provided Equipment ("CPE"): Customer may not use equipment that 46 Labs Communications has not certified for use with the 46 Labs Communications Services. Customer is solely responsible for ensuring that CPE complies with the compatibility guidelines published by 46 Labs Communications. If Customer or a third party changes the settings with respect to equipment at Customer's location that 46 Labs Communications uses to provide Service (including, but not limited to, the addition of software or other devices on the LAN), then Customer assumes the risk that the Service may not work. Customer is solely responsible for ensuring the proper functioning of Customer-provided CPE. 46 Labs Communications will not provide any assistance in the setup or configuration of Customer provided CPE at the time of installation. Customer is solely responsible for the management of Customer-provided CPE.

46 Labs Communications' Customer Support Center will not provide any assistance with the configuration or maintenance of Customer-provided CPE. If 46 Labs Communications dispatches a Field Service Technician in response to a trouble ticket ultimately determined by 46 Labs Communications to be the result of the Customer-provided CPE, 46 Labs Communications will charge Customer for the Field Service Technician dispatch. The Customer will not receive service credits if 46 Labs Communications determines that Customer-provided CPE contributed to the event for which Customer is requesting a credit.

IN ADDITION TO THE WARRANTY DISCLAIMERS ELSEWHERE IN THIS AGREEMENT, 46 LABS COMMUNICATIONS EXPLICITLY DISCLAIMS ANY AND ALL WARRANTY OR MAINTENANCE RESPONSIBILITY FOR CUSTOMER-PROVIDED CPE. ANY WARRANTY CLAIMS, MAINTENANCE, OR REPAIRS FOR CUSTOMER-PROVIDED CPE WILL BE THE

SOLE RESPONSIBILITY OF THE CUSTOMER.

Customer will not receive Service Level Agreement credits if 46 Labs Communications determines that Customer-provided CPE contributed to the event for which Customer is requesting.

5.5 Customer Cooperation: Provisioning and maintaining Service will require Customer's cooperation, including allowing 46 Labs Communications or its third-party contractors, reasonable and safe access to Customer's premises to activate and support the Service.

5.6 46 Labs Communications Local SIP Trunk Services: 46 Labs Communications SIP Trunks is a bundled virtual trunking service providing inbound, outbound local and long distance voice services via a 46 Labs Communications assigned direct inward dial telephone number ("DID"). The service will route between a Customer's Internet Protocol ("IP") address and either the public switched telephone network ("PSTN") or another IP address with 46 Labs Communications delivering traffic to the Customer's gateway device or IP-private branch exchange ("IP-PBX") via an Internet protocol connection using Session Initiation Protocol ("SIP") signaling. g. Each SIP Trunk enables a single concurrent call but can be oversubscribed with multiple assigned DIDs being accessible via a single trunk. SIP Trunks may also include static 911 services, 411, Operator services, inbound caller id, caller location or white page listing, which require Customer to provide their own legitimate service address. Only telephone numbers ("TNs") or Toll-Free TNs provided by 46 Labs Communications or ported to the 46 Labs Communications network can be used in conjunction with this service.

5.7 46 Labs Communications Local SIP Trunk Services Limitations: 46 Labs Communications SIP Trunk service does not include any Class 5 features (e.g. call waiting, call forwarding, voicemail, etc.), nor will the service provide any of the following call types: 976, 900, or 1010xxx. (Outbound local, 911, outbound 800 calls or 411 calls are only available if the call's originating Automated Number Identification ("ANI") is a 46 Labs Communications assigned DID or DID that has been ported to the 46 Labs Communications network). The Service does not support 0+ or operator assisted calling, including, without limitation, collect calls, third party billing calls, 900, or calling card calls. The Service may not support 311, 511, and other x11 services in one or more service areas. All special configurations are subject to 46 Labs Communications' approval and 46 Labs Communications reserves the right to terminate this agreement where proper interoperability testing has not been completed when required. Any traffic deemed to jeopardize the integrity of 46 Labs Communications' network may be blocked by 46 Labs Communications. 46 Labs Communications SIP Trunk Service may not be compatible with all non-voice

communications equipment, including but not limited to home security systems, TTY, medical monitoring equipment, certain versions of TiVO, satellite television systems, PBX, Centrex, other private telephone networks, or computer modems. The Customer waives any claim against 46 Labs Communications for interference with or disruption of these services and equipment, as well as any claim that 46 Labs Communications is responsible for any disruption to Customer's business, if applicable. If Customer uses public broadband or Internet access, 46 Labs Communications SIP Trunk Service presently is not compatible with all broadband services. Some providers of broadband service may provide modems that prevent the transmission of communications using the 46 Labs Communications SIP Trunk Service. 46 Labs Communications does not warrant that SIP Trunk Service will be compatible with all broadband services and expressly disclaims any express or implied warranties regarding the compatibility of 46 Labs Communications SIP Trunk Service with any particular broadband service.

6 Confidentiality.

6.1 Definition: "Confidential Information" shall include 46 Labs Communications pricing, trade secrets as defined under applicable law ("Trade Secrets"), and any and all information, whether provided in writing, orally, visually, electronically or by other means, whether or not marked as "confidential" or "proprietary," related to the Services and/or business of 46 Labs Communications, including, but not limited to, the terms and conditions of the Agreement. Confidential Information shall not include information

- (a) already lawfully known to or independently developed by Customer as evidenced by its written records,
- (b) disclosed in published materials,
- (c) generally known to the public,
- (d) lawfully obtained from third parties without any obligation of confidentiality.

6.2 Confidentiality Obligation: Customer shall maintain the confidentiality of the Confidential Information and shall use the same level of care, but in no event less than a reasonable standard of care, as it uses to maintain the confidentiality of its own confidential information. Customer shall take reasonable steps to ensure that the Customer's personnel, subcontractors, and personnel of such subcontractors, if any, comply with this Section, which steps shall include obtaining enforceable written agreements from Customer's personnel and subcontractors and requiring enforceable written agreements from personnel of subcontractors binding such entities and individuals to obligations of confidentiality no less restrictive than those set forth in this Agreement. Customer agrees that if it is required by

law to disclose the Confidential Information, Customer shall first give written notice of such required disclosure to 46 Labs Communications and 46 Labs Communications shall have a reasonable opportunity to prevent or limit the third party disclosure. Customer acknowledges that monetary damages may not be sufficient remedy for unauthorized disclosure or use of Confidential Information and that 46 Labs Communications may seek without waiving any other rights or remedies, such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. The obligations under this Agreement shall: (a) with regard to the Trade Secrets, remain in effect as long as the information constitutes a Trade Secret under applicable law; and (b) with regard to the Confidential Information, remain in effect during the term of this Agreement and for a period of five (5) years thereafter.

6.3 Customer Confidential Information: 46 Labs Communications' [privacy policy](#) details 46 Labs Communications' confidentiality obligations to Customer.

6.4 Non-Disclosure and Publicity: Neither Party shall disclose to any third party the terms and conditions of the Agreement without the prior written consent of the other Party.

7 Representations And Warranties.

7.1 Customer: Customer warrants and represents that

(a) Customer has full power and authority to enter into this Agreement;

(b) the signatory to this Agreement possesses all necessary authority to enter into this Agreement with 46 Labs Communications in all respects and render it effective; and that Customer shall comply with all applicable federal, state, and local laws, ordinances, regulations and codes in its use of the Services. The laws and regulations include United States export control laws. Customer shall adhere to the laws of foreign countries, particularly if traveling internationally with a device used in conjunction with a 46 Labs Communications Service.

Customer represents that the address provided to 46 Labs Communications for billing purposes is either Customer's residential or business street address. Customer warrants that the DIDs it has been assigned by 46 Labs Communications when utilized by Customer to place outbound calls shall at all times accurately reflect the name of Customer as has been provided by Customer to 46 Labs Communications. The out pulsed caller identification information shall not be altered, manipulated or modified by Customer in any such manner that can cause harm, injury or misrepresent to the called party the nature of the call and shall at all times remain in compliance with the provisions of the Truth in Caller ID Act. (the "Act").

7.2 Telemarketing: Customer further warrants and represents that it will adhere to all federal,

state, and local laws, ordinances, regulations, and codes applicable to telemarketing. These laws include, but are not limited to the Federal Trade Commission's Telemarketing Sales Rule ("TSR"), the Federal Communication Commission's Telephone Consumer Protection Act ("TCPA"), and the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Under these laws, Customer's use of the Services may be restricted. For example, under the TSR, a telemarketer is required to periodically search the National Do Not Call Registry ("DNC Registry") (currently every 31 days) and to avoid placing certain telemarketing calls to those listed in the DNC Registry. A telemarketer's failure to do so could subject the telemarketer to substantial fines (currently up to \$16,000 for each call). Other restrictions can include call monitoring, times telemarketing calls are permitted, use of pre-recorded telephone messages, placing "abandoned" calls, advanced called party consent for certain telemarketing calls, calls to cell phones, and disclosures required by law. Use of text messages may be subject to many of the same restrictions as voice calls. For telemarketing, Customer is solely responsible for obtaining and maintaining written consent for those who may be called, in accordance with applicable law. Customer shall stop calling any party who indicates in any manner that the party withdraws their consent to be called.

The telemarketing laws affecting outbound calling have changed over the past several years and are expected to continue to change. This paragraph is not intended to provide you with a complete list of all applicable law. You are strongly advised to consult with an attorney knowledgeable in this area of law prior to using the Services for telemarketing.

7.3 Do Not Call Rules for Telemarketers: Federal Do Not Calls rules require that companies that telemarket or engage in telephone solicitations adhere to the requirements set forth in 47 C.F.R. section 64.1200 (FCC) and 16 C.F.R. Part 310 (FTC), among other laws and regulations. Customer has sole responsibility for ensuring Customer checks the national Do Not Call Registry ("DNC Registry") periodically, as prescribed by law, and is not calling any party on the DNC Registry. Customer is solely responsible that any lead lists / contact lists / automatic dialing lists Customer uses do not violate the TCPA or TSR rules, or any other laws, rules, or regulations. 46 Labs Communications assumes no liability for any such lead list / contact list / automatic dialing list that Customer uploads, downloads or uses, regardless of the source of the list. 46 Labs Communications assumes no liability for any equipment or malfunction of equipment software used to upload, download, block, or dial telephone numbers called by or on behalf of Customer.

7.4 CPN/Pseudo CPN Requirements for Telemarketers: Per the Federal Trade Commission ("FTC"), telemarketers are required to transmit their telephone number to Caller ID services. As such, all telemarketers using 46 Labs Communications commercial services are required to provide CPN/pseudo-CPN in compliance with federal rules.

7.5 Call Recording and Monitoring: Customer further warrants and represents that it will adhere to all federal, state, and local laws, ordinances, regulations, and codes applicable to telephone call monitoring and recording. These laws can differ from state to state. Some state law, such as the California Invasion of Privacy Act, places strict limitations on the recording or monitoring of inbound and outbound telephone conversations.

7.6 Possible Termination or Suspension for Violations of Laws: If 46 Labs Communications determines, in its sole, reasonable discretion that Customer is not adhering to telemarketing laws and regulations, if Customer is harassing individuals or businesses, or if Customer is otherwise violating telecommunications law, 46 Labs Communications may consider such conduct a breach of this Agreement. In such event 46 Labs Communications reserves the right, among other remedies, to suspend or terminate Customer's Service after written notice to Customer.

7.7 Enhanced Traffic: For Customers utilizing 46 Labs Communications' long distance or long distance SIP trunking products, Customer represents and warrants that each call originated to 46 Labs Communications as Native IP traffic meets the criteria defined as (i) traffic that originates as IP from the originating caller, and (ii) is then transported as IP from Customer to 46 Labs Communications. Customer is prohibited from intermingling traffic or for utilizing these services for anything other than SIP originated or terminated service in accordance with all applicable federal and state regulations. Customer expressly agrees, represents and warrants that all long distance or SIP trunking traffic delivered by Customer to 46 Labs Communications is SIP-originated in accordance with all applicable federal and state law and regulation and, without limiting the foregoing, it will not use the Services to originate or terminate TDM or voice calls in a manner that bypasses applicable switched access or other charges.

7.8 IP Originated Traffic for SIP Trunking Services: For Customer utilization of 46 Labs Communications' SIP Trunking service products, Customer represents and warrants that all user traffic is IP originated. "IP Originated" shall mean voice traffic which Customer represents and certifies as utilizing TCP/IP as a transmission protocol from the Customer's originating equipment (i.e. SIP phones, SIP PBX, TDM to SIP Gateway, IP-adaptor, etc.) to a TCP/IP gateway. Traffic identified as non-IP originated is subject to incremental \$.04 per minute charges.

7.9 46 Labs Communications: 46 Labs Communications warrants that

- (a) 46 Labs Communications has full power and authority to enter into this Agreement and convey the rights conveyed herein;

(b) the signatory to this Agreement possesses all necessary authority to enter into this Agreement with 46 Labs Communications in all respects and render it effective.

7.10 46 LABS COMMUNICATIONS SPECIFICALLY AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER OR THE FACILITIES AND EQUIPMENT FURNISHED PURSUANT TO THE AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A

8 Indemnification.

8.1 46 Labs Communications' Indemnification of Customer: 46 Labs Communications will defend and indemnify Customer, its employees, directors, officers and agents, from and against any suit, proceeding or other claim brought by an entity (not a party to or an affiliate of a party to this Agreement) that is caused by, arises from, or relates to damage to real or tangible personal property or personal injuries (including death) arising out of the gross negligence or willful act or omission of 46 Labs Communications in the provision of Service by 46 Labs Communications.

8.2 Customer's Indemnification of 46 Labs Communications: Customer will defend and indemnify 46 Labs Communications, its employees, directors, officers and agents, from and against any damages, penalties, interest, expenses, liabilities, suit, proceeding or other claim (asserted or threatened) brought by an entity that is caused by, arises from, or relates to:

(a) damage to real or tangible personal property, personal injuries (including death) arising out of the gross negligence or willful act or omission of Customer in the use of the Service;

(b) any fraud arising from Customer's use of the Service;

(c) any failure of Customer to properly collect and/or remit taxes of services ordered hereunder;

(d) representations regarding the nature of Customer's traffic and any use, operation or resale of Service by Customer in contravention of this Agreement, including without limitation, claims of libel, slander, unauthorized use of copyright or trademark by Customer or the business activities and practices of Customer arising from Customer's use of the Service;

(e) Customer's engagement of, or relationship or interaction with, any third party service

provider;

8.3 Truth in Caller ID Act Indemnification: Customer shall forever indemnify, defend and hold 46 Labs Communications harmless from any demand, claim, action, proceeding, fine, penalty or assessment brought or initiated by third parties, in their individual capacity, or regulatory agencies or authorities including, but not limited to, the Federal Communications Commission, State Attorneys General, Federal Trade Commission, state regulatory authorities (where concurrent jurisdiction exists) for any alleged or actual violation by Customer or Customer affiliates (collectively "Customer") of the Truth in Caller ID Act. This specific indemnity shall be a blanket indemnification for all consequences, whether known or unknown on the part of 46 Labs Communications or Customer that may befall 46 Labs Communications as a result of any such actual or alleged violation by Customer of the "Act". This indemnification shall include, but not be limited to, any cost of defense incurred response required or documentation requested of 46 Labs Communications due to any such violation of the Act by Customer.

In the event parties other than Customer (e.g. Customer's end-users) shall have use of the telecommunications services provided by 46 Labs Communications through Customer, then the Customer agrees to forever indemnify and hold 46 Labs Communications and any third party provider or operator of facilities employed in provision of telecommunications services provided by 46 Labs Communications harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which those parties may assert relating to any violation of the Truth in Caller ID Act. Customer agrees to reimburse 46 Labs Communications for all reasonable costs and expenses incurred by 46 Labs Communications due to 46 Labs Communications' direct participation (either as a party or witness) in any administrative, regulatory, criminal or civil proceeding concerning Customer if 46 Labs Communications' involvement in said proceedings is based upon Customer's actions or inactions resulting in a violation of the Truth in Caller ID Act.

8.4 Intellectual Property: If a Service provided by 46 Labs Communications becomes, or if 46 Labs Communications reasonably believes a Service it is providing may become, the subject of a suit, proceeding or other claim by an entity (not a party to or an affiliate of a party to this Agreement) that the Service directly infringes the U.S. patent, trademark or copyright rights ("Intellectual Property") of such entity, 46 Labs Communications shall, at its own expense and option:

- (a) procure the right for 46 Labs Communications to continue to provide the Service;

- (b) modify or replace the Service with a different service that has substantially similar functionality;

(c) discontinue providing or direct the cessation of any use of the Service and refund to Customer a prorated portion of any charges paid for the affected Service through the date of Service discontinuation or cessation.

Notwithstanding the foregoing, 46 Labs Communications will have no obligation to defend or indemnify Customer, and Customer will defend, indemnify and hold harmless 46 Labs Communications for any suit, proceeding or claim arising out of: Customer's:

(a) designs, specifications, modifications, or configurations;

(b) combination of Customer hardware or software, or other materials, services or methods with the Service;

(c) use, operation or resale of the Service in contravention of its obligations and responsibilities.

8.5 Procedure: If an entity makes a claim against 46 Labs Communications or Customer, the Party in receipt of such claim ("Indemnified Party") will promptly notify the other Party ("Indemnifying Party") in writing no later than sixty (60) days after receipt of such notification of a potential claim. The Indemnifying Party may assume sole control of the defense of such claim and all related settlement negotiations. The Indemnified Party will provide the assistance, information and authority necessary to assist the Indemnifying Party in its obligations. Neither 46 Labs Communications nor Customer may settle any such matter without the consent of the other as to any settlement that imposes an obligation on, or requires any admission by, the other Party. Failure of the Indemnified Party to promptly notify the other will not relieve the Indemnifying Party of its obligations except to the limited extent such delay prejudices the Indemnifying Party. Additionally, if the Service as and in the manner provided by 46 Labs Communications is determined by a court of competent jurisdiction to have directly infringed on an entity's Intellectual Property rights, or if such claim is settled, 46 Labs Communications shall indemnify Customer for its reasonable legal fees incurred to defend itself against such claim up to and including the time of final disposition or settlement of such claim and any payment required to be made by Customer pursuant to such judgment or settlement.

8.6 Survival: These Customer and 46 Labs Communications indemnifications will survive this Agreement.

9 Limitations on Liability.

9.1 Underlying Carriers: 46 Labs Communications is not liable for any act or omission by any other company or companies furnishing a portion of the Services to Customer.

9.2 Direct Damages: Even if advised of the possibility of losses or damages, 46 Labs Communications shall not be liable, except as set forth herein, for any losses or damages resulting from:

- (a) its provisioning of Service to Customer, including but not limited to any act or omission of Customer, those using the Customer's Service or third party entities furnishing products used in connection with Service;

- (c) the loss or destruction of Customer data resulting from the use of Service.

9.3 Limitation of 46 Labs Communications Liability for Direct Damages: 46 Labs Communications' liability to Customer for any damage, including but not limited to property damage to Customer premises, service outages/problems, and personal injury, shall in no event be greater than an amount equal to the sum of the payments made by Customer to 46 Labs Communications during the three months immediately preceding the event for which losses or damages are claimed. By entering into an Agreement and remaining a Customer, Customer manifests its acceptance of this limitation on direct damages as fair and reasonable.

9.4 Indirect or Consequential Damages: Neither 46 Labs Communications nor Customer shall be liable to the other for any indirect, incidental, exemplary, punitive or other consequential damages, whether or not foreseeable, including, but not limited to, damages from the loss of data, business goodwill or profits, savings or revenue, harm to business, whether under contract, tort, including negligence, strict liability or any other theory of liability. A party's out-of-pocket costs for damages recovered by a third party shall be deemed to be indirect damages suffered by such party, except to the extent such damages are part of a claim for which indemnification is due under [Section 7](#).

9.5 Service Interruptions: 46 Labs Communications' sole liability under this Agreement for interruption of service or failure of equipment shall be limited to that amount of 46 Labs Communications' actual fixed charges incurred by Customer during the period of such interruption. 46 Labs Communications shall not be liable for any interruption caused by the negligence or willful act or omission of Customer or any third party furnishing any portion of the services hereunder. Notwithstanding anything to the contrary, Customer's sole and exclusive remedy for any service related claim will be set forth in each applicable 46 Labs Communications standard Service Level Agreement ("SLA"), which is available for review

[here.](#)

9.6 Delays: 46 Labs Communications shall not be liable to Customer for losses or damages resulting from its inability to provide Service or from any delay in meeting a scheduled Start of Service Date or a scheduled change in service date.

9.7 Force Majeure Events: In no event shall either Party have any claim or right against the other Party for any failure of performance (except for 46 Labs Communications' right to seek payment of all accrued charges) due to causes beyond that Party's reasonable control including, but not limited to: acts of God, earthquake, fire, explosion, vandalism, fiber optic cable cut, storm, flood or other similar catastrophes; any law, order, regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over either of the Parties or of any department, agency, commission, court, bureau, corporation, or other instrumentality of any one or more said governments, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; acts of terrorism; riots; wars; strikes; lock-outs, work stoppages or other labor difficulties; actions or inactions of third party providers or suppliers; or supplier failures, shortages, breaches or delays.

9.8 Facilities, Services, Equipment or Systems of Others: 46 Labs Communications shall not be liable for the unavailability, or deficient performance, of any facilities, services, equipment or systems used in connection with the provision of Services that are under the control of Customer or any third party, even if 46 Labs Communications has acted as the Customer's agent in procuring such facilities, services, equipment or systems from third parties. Customer's rights with regard to the unavailability or deficient performance of such facilities, services, equipment or systems not provided by 46 Labs Communications shall be strictly as established by the supplying entity. Customer shall be liable to 46 Labs Communications for any loss, theft, or damage to any of 46 Labs Communications' equipment located on Customer's premises, however caused.

9.9 Passwords: Customer will be asked to create a password in order to gain access to Customer's account information on-line or when contacting a 46 Labs Communications agent by phone. Customer agrees to keep all passwords and account information confidential and Customer is solely responsible for any liability or damages resulting from Customer's failure to maintain that confidentiality, and for all activities that occur under Customer's password. Customer must immediately notify 46 Labs Communications if Customer suspects any breach of security such as loss, or unauthorized disclosure or use of Customer's password and account.

9.10 Electronic Recording: Customer acknowledges and understands that there are federal and state statutes governing the electronic recording of telephone conversations and that 46 Labs Communications will not be liable for any illegal use of the service. Because Customer circumstances vary widely, Customers should carefully review their own circumstances when deciding whether to use the recording features of the service. It is the Customer's sole responsibility i) to determine if the electronic recordings are legal under the applicable federal and state statutes and regulations, and ii) to fully comply with all such applicable federal and state statutes and regulations. 46 Labs Communications expressly disclaims all liability with respect to Customer's recording or monitoring of telephone conversations. 46 Labs Communications is not responsible for any misinterpretation, lack of understanding or lack of knowledge regarding the use of electronic recordings or monitoring conversations or the use of its products by Customer whether legal or illegal. Customer shall fully hold 46 Labs Communications harmless and indemnify 46 Labs Communications from all damages and/or liabilities or potential liabilities arising from or related to Customer's unlawful recording or monitoring of any telephone conversation using 46 Labs Communications' service.

9.11 Customer's Failure to Fulfill Obligations: 46 Labs Communications shall not be liable to Customer or any third party for Customer's failure to fulfill its obligations, including, without limitation, Customer:

- (a) obtaining, installing and maintaining all necessary equipment, materials, and supplies for interconnecting Customer or third party facilities, services, equipment or systems to Services;
- (b) securing all licenses, permits, approvals, rights-of-way, access rights, including ingress and egress from buildings, and other arrangements necessary to install, receive and use Services;
- (c) ensuring that Customer or third-party facilities, services, equipment or systems interface properly with Services; that the signals delivered to 46 Labs Communications' Service are fully compliant with industry standards; and that such signals do not damage 46 Labs Communications property or personnel, or degrade Service to other Customers of 46 Labs Communications,
- (d) Customer use of non-approved Services.

9.12 Misuse of Customer Service: 46 Labs Communications shall neither provide credit allowances nor otherwise be liable for the use, misuse or abuse of Customer's Service by Customer, its agents, employees or any third parties including, without limitation, members of

the public. If 46 Labs Communications co- operates with Customer by recommending potential solutions to reduce or eliminate the unauthorized use of Customer's Service, 46 Labs Communications' recommendation shall not be deemed to be promises or guarantees by 46 Labs Communications that the unauthorized use of Customer's Service will be reduced or eliminated, and in no event shall 46 Labs Communications incur any liability in connection with those undertakings to Customer or any third party. In all instances, the Customer shall be responsible for its facilities, services, equipment or systems interconnected with 46 Labs Communications' Service. Customer shall be responsible for maintaining the security of any networks that Customer controls, including, but not limited to, local area networks, private networks, and/or virtual private networks.

9.13 Billing Errors: 46 Labs Communications' obligation with respect to any errors resulting in Customer overpayments for Service is limited to granting invoice credits equal to the dollar amounts erroneously billed. Under no circumstances will any billing error affect the Customer's obligation to pay for Services rendered and used.

9.14 911 Limitation of Liability: Neither 46 Labs Communications nor its underlying carriers, or any other third parties involved in the routing, handling, delivery, or answering of emergency services or in responding to emergency calls, nor their officers or employees, may be held liable for any claim, damage, loss, fine, penalty or cost (including, without limitation, attorneys' fees), and Customer hereby waives any and all such claims or causes of action, arising from or relating to the provision of all types of emergency services to Customer. Customer further indemnifies and holds 46 Labs Communications harmless from any claim or action for any caller placing such a call without regard to whether the caller is an employee of the Customer. Customer holds harmless and indemnifies 46 Labs Communications from any claim or action arising out of mis-routes of any 911 calls, or whether local emergency response centers or national emergency calling centers answer a 911 call or how the 911 calls are handled by any emergency operator, including operators of the national call center. The limitations apply to all claims regardless of whether they are based on breach of contract, breach of warranty, product liability, tort or any other theories of liability.

9.15 Customer is solely responsible for its interaction and relationship with any third party provider that it may engage for any purpose. If Customer has a dispute with a third party service provider, Customer agrees that 46 Labs Communications is not liable for any claims or damages arising out of or connected with such dispute. 46 Labs Communications reserves the right, but has no obligation, to monitor any such dispute.

10 Term and Termination.

10.1 Term: The term of the Agreement shall commence on the Start of Service Date and shall continue for the term as set forth in the applicable SO. After such initial term, the Agreement shall automatically renew for successive one-year terms unless terminated in writing by 46 Labs Communications or by Customer via mail pursuant to this Agreement. Unless otherwise stated, the initial term shall be thirty-six (36) months. The termination of the Agreement shall have the effect of terminating each SO. At the discretion of 46 Labs Communications, an individual SO may be terminated without terminating the Agreement.

10.2 Termination: 46 Labs Communications may elect in its sole discretion to terminate this Agreement and any outstanding SO(s) immediately for any reason enumerated under [Section 2.6](#) above.

46 Labs Communications may terminate this Agreement or any SO(s), at its option upon providing Customer with written notice of such election. In such event, the effective date of the termination shall be thirty (30) days from the date of such notice. 46 Labs Communications shall not be liable to Customer or any third party for any reason for terminating or suspending Customer's use of or access to the Services. Customer may cancel the Service by emailing 46 Labs Communications at accounting@46labs.com, AND by giving written notice to 46 Labs Communications (as provided below in paragraph 10.3, "Notice"), with the words "Attention: Disconnection Department, Service Disconnection Request" prominently written on the outside of the envelope, no less than forty- five (45) days prior to the effective date of such cancellation.

REGARDLESS OF WHETHER A THIRD PARTY PORTS THE CUSTOMER'S PHONE NUMBER TO A NEW SERVICE, SERVICES WILL CONTINUE TO BE DELIVERED AND BILLED THROUGH THE DISCONNECTION PERIOD FOLLOWING A PROPER NOTICE OF DISCONNECTION.

46 Labs Communications shall begin the disconnection process upon receipt of notification from the Customer. The disconnection process shall not begin until all Toll Free numbers have been removed from the Customer's services. Charges shall continue until 46 Labs Communications and any underlying carriers complete the disconnection process, or 45 days, whichever is later. 46 Labs Communications recommends Customer ensures any replacement services are operational before requesting disconnection, as 46 Labs Communications is not responsible for any interruption or failure of service once disconnection has been requested by Customer. Once disconnection has been requested, service may disconnect at any time without prior notice to Customer. If the effective date of cancellation is prior to the end of the Minimum Term, or any renewal term, Customer shall pay 46 Labs Communications an early termination charge as defined in paragraph 3.17, "Early

Termination Liability."

10.3 Notice: All notices, demands, consents, requests, approvals, Customer name and address changes, billing inquiries and requests, authorizations, or other communication which Customer is required or desires to give or make to 46 Labs Communications shall be in writing and shall be effective i) immediately upon hand delivery, ii) on the next business day if sent by a generally recognized overnight delivery service (subject to confirmation of receipt from the service), or iii) on the date received if sent by United States certified or registered mail, return receipt requested. Any faxed notice must be followed up with a written notice which is either hand-delivered; mailed either certified or registered mail; or delivered by a reputable overnight carrier, as per the above. Such Notices shall be sent to the address or fax number of 46 Labs Communications as set forth below:

By Mail to:

46 Labs Communications
Attn: Support
1503 E. 19th St
Edmond, OK 73013

By Fax to:

46 Labs Communications
Attn: Support
1-405-340-1001

By E-mail to:

46 Labs Communications
support@46labs.com

Notices to Customer shall be sent to the email or billing mailing address on file in the 46 Labs Communications billing system. Rate change notices may be delivered by 46 Labs Communications to Customer by email or facsimile and shall be deemed to be delivered when received by Customer

11 Miscellaneous Provisions.

11.1 Entire Agreement: This Agreement, including the Terms, any underlying SOs, any supplemental product terms and conditions, and AUPs, shall constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersede all prior statements, agreements, discussions, proposals, representations or warranties, whether written or oral, on this subject matter, and there are no representations or promises which are

not expressly set forth herein. No statement, representation or warranty made by any agent or representative of 46 Labs Communications regarding the Services, facilities or equipment to be provided hereunder or the rates therefore shall be binding upon 46 Labs Communications unless expressly included herein.

11.2 Compliance With Law: In conjunction with the Agreement, each Party shall at all times comply with all applicable federal, state, and local statutes, ordinances, regulations and orders of any commission or other government body.

11.3 Change of Contact Information: Customer acknowledges that it is Customer's sole responsibility to supply immediate notice to 46 Labs Communications if Customer changes any of its contact information. If at any time Customer's name or billing information changes from that which is set forth below, Customer shall have five (5) days to inform 46 Labs Communications of such changes in accordance with the Notice provisions set forth in the Agreement.

11.4 Relationship of Parties: Neither the Agreement nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between 46 Labs Communications and Customer; the Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party, nor any agent or representative of either Party, shall have, or hold itself out as having the power or authority to bind or create liability for the other Party by its intentional or negligent act and no claimed act of authority shall have any binding effect.

11.5 Amendment: Except as otherwise provided herein, the terms and conditions of this Agreement may not be modified or amended other than by a document that expressly states its intention to modify this Agreement, and such document is signed by hand in ink by both Parties.

11.6 Signature Authority: 46 Labs Communications shall not be bound by the terms of any SO, or any supplemental document or agreement of any kind, unless signed by hand in ink by an Officer of 46 Labs Communications.

11.7 Survivability: The terms and conditions contained in the Agreement that, by their sense and context, are intended to survive the performances of the Parties shall survive the completion of those performances and the Agreement's termination. These include, without limitation, the making of payments due under the Agreement.

11.8 Governing Law, Jurisdiction: This Agreement shall be governed by and construed in

accordance with the laws of the State of Oklahoma without reference to its principles of conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not apply. Customer and 46 Labs Communications both hereby irrevocably agree that any suit brought by either Party arising out of or relating to this Agreement shall be brought exclusively in the United States District Court for the Western District of Oklahoma, and Customer and 46 Labs Communications both hereby submit to the personal jurisdiction of such courts. The Parties both hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which either Party may raise now, or hereafter have to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum.

THE PARTIES HEREBY EXPRESSLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY A PARTY AGAINST THE OTHER PARTY RELATING TO THIS AGREEMENT.

In the event an action is brought or an attorney is retained by either Party to enforce the terms of this Agreement or to collect any money due hereunder, the prevailing Party will be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorney's fees, court costs, reasonable costs of investigation and other related expenses incurred in connection therewith.

11.9 No Waiver: Neither 46 Labs Communications' nor the Customer's failure, at any time, to enforce any right or remedy of the Agreement will be interpreted as a waiver of such Party's right to enforce each and every provision of the Agreement in the future. No waiver of any provision of this Agreement, or any rights or obligations of either Party under this Agreement, shall be effective, except pursuant to a written instrument signed by the Parties waiving compliance, and any such waiver shall be effective only in that specific instance and for the specific purpose stated in such writing.

11.10 Severability: In the event any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid, illegal or unenforceable by a court with jurisdiction over the Parties to this Agreement, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the Parties in accordance with the applicable law, and the remainder of this Agreement shall remain in full force and effect. The illegality or unenforceability of any provision of this Agreement does not affect the legality or enforceability of any other provision or portion of this Agreement.

11.11 Assignment: 46 Labs Communications may assign in whole or in part its rights or duties under the Agreement without prior notice to Customer and upon such assignment 46 Labs Communications shall be released from all liability hereunder. Customer may assign the Agreement only with 46 Labs Communications' prior written consent. Subject to these restrictions, the Agreement shall inure to the benefit of and be binding upon the heirs, successors, subcontractors, and assigns of the respective Parties.

11.12 Purchase Order: A Customer purchase order or similar document is evidence only of Customer's intention to purchase Services. Except for a properly signed, written provision specifically evidencing 46 Labs Communications' intent to be bound by the terms and conditions of a purchase order between Customer and 46 Labs Communications, the terms and conditions of a Customer purchase order or similar document will be disregarded and have no force or effect; instead, the terms and conditions of the Agreement between Customer and 46 Labs Communications will govern.

11.13 No Third-Party Beneficiaries: Except to the extent explicitly provided, this Agreement and any SO(s) is being executed for the sole and exclusive benefit of 46 Labs Communications and Customer and is not for the benefit of any third parties. The execution of the Agreement and any SO(s) shall not creat

11.14 Interpretation: Neither this Agreement nor any SO may be construed or interpreted for or against 46 Labs Communications because 46 Labs Communications drafted any of its provisions.

11.15 Headings: Headings contained herein are provided for reference and convenience only. Headings do not affect or limit the interpretation, contents or terms of this Agreement.

11.16 Execution in Counterparts and by Facsimile: The Parties hereby acknowledge that any SO may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. The Parties intend that any counterpart copy signed and exchanged (including signed counterparts exchanged via facsimile or email) shall be fully binding as an original handwritten executed copy and all such copies together shall constitute one instrument.