

## CANADAVOIP GENERAL TERMS OF SERVICE

These terms of service ("**Terms Of Service**") are effective as of May 1, 2016 ("**Effective Date**") by and between CanadaVoip Group, LLC, a Delaware limited liability company, and its affiliates and subsidiaries with an address of 422 North Rivermede Road, Concord, ON L4K 3R5 ("**CanadaVoip**") and the Customer Each may be referred to herein as a "**Party**" and collectively as the "**Parties**."

### ARTICLE 1 - GENERAL

**1.1 Agreement Structure.** The purpose of these Terms Of Service is to provide general terms, conditions and a framework within which Customer may from time to time purchase certain telecommunications and related infrastructure services ("**Services**") from CanadaVoip for its use and/or for resale to its customers ("**End User Customers**"). Additional terms and conditions that apply to each type of Service are set forth in service schedules (each a "**Service Schedule**"). These Terms of Service, the MSA, the applicable Service Schedules and Service Orders (as defined in Section 1.2 below) and any other attachments are hereby incorporated herein, and shall collectively be referred to as the "**Agreement**."

**1.2 Orders for Services.** Customer may request CanadaVoip to provide a Service by submitting a service order in a form provided by CanadaVoip from time to time ("**Service Order**") in accordance with the procedures set forth in the Agreement. Customer acknowledges and agrees that Customer is solely responsible for the accuracy of all Service Orders and other information that it provides to CanadaVoip. Each accepted Service Order shall incorporate by reference, and shall be subject to, the terms and conditions of the Agreement and the applicable Service Schedule. Service Orders shall clearly set forth the term, pricing, service type and location(s), monthly recurring charge ("**MRC**"), non-recurring charge ("**NRC**"), and any additional specific terms for the Services. All Service Orders shall be subject to availability and acceptance by CanadaVoip.

**1.3 Order of Precedence.** In the event of an express conflict between a term(s) in this document and the term(s) of any Service Schedule and/or Service Order, precedence will be given in the following order: (a) the Service Order but solely with respect to the Service covered by that Service Order; (b) the Service Schedule but solely with respect to the Service covered by that Service Schedule; and (c) these Terms of Service.

### ARTICLE 2 - PAYMENT TERMS

**2.1 Credit and Deposit.** If requested by CanadaVoip, Customer shall complete and submit CanadaVoip's standard credit application. CanadaVoip may from time to time conduct a review of Customer's credit rating and payment history. CanadaVoip may require Customer to pay a deposit before acceptance of a Service Order. Additionally, for any existing Services, CanadaVoip may require (i) Customer to pay a deposit or (ii) an increase in the existing deposit, upon the failure of Customer to submit payment of any amount by the Due Date as a condition to the continued provision of such existing Services. CanadaVoip shall refund any amount of deposit paid pursuant to this Section, less any amount for payments that Customer still owes to CanadaVoip, when CanadaVoip determines in good faith, based on Customer's credit rating and payment history, that such deposit is no longer necessary to ensure payment, but in no event later than after the termination of all Services and termination of the Agreement.

**2.2 Billing Commencement.** CanadaVoip may commence billing and Customer shall be liable for payment for Services upon the Service Activation Date as defined in the applicable Service Schedule.

**2.3 Invoicing and Payment Terms.** CanadaVoip will provide Customer with a monthly itemized invoice, in advance, for the Services together with all other charges due. All amounts due CanadaVoip are payable in full within thirty (30) days from date of invoice ("**Due Date**"). Invoice amounts not paid on or before the Due Date shall bear interest at the rate of one and one-half percent (1.5%) per month or the highest lawful rate, whichever is lower. Unless otherwise stated in the Service Order or Service Schedule, CanadaVoip shall invoice Customer for any NRC upon acceptance of a Service Order.

**2.4 Invoice Disputes.** To the extent that Customer disputes any portion of an invoice, Customer shall notify CanadaVoip in writing and provide detailed documentation supporting its dispute within forty-five (45) days of the invoice date or the Customer's right to any billing adjustment shall be waived. In the event of a billing dispute, Customer shall timely pay all undisputed amounts. If the dispute is resolved against Customer, Customer shall pay such amounts due plus interest as set forth in Section 2.3 from the date the payment was originally due. A dispute regarding bandwidth usage may not be based upon a claim that all or a portion of the charges for the Services were incurred by unauthorized users.

### ARTICLE 3 - TERM

**3.1 Term.** These Terms Of Service shall be in effect for as long as any Service Order remains in effect.

**Service Order Term.** The term of each Service Order shall commence on the Service Activation Date for such Service and continue for the period of time specified in that Service Order and thereafter, the Service Order shall automatically renew for one

(1) year periods (collectively, the "**Service Term**") until terminated by either Party upon at least ninety (90) days written notice

prior to the end of the Service Term. Customer shall continue to be responsible for payment to CanadaVoip for the Services to be terminated through the end of the ninety (90) day notice period. Following the initial Service Term stated in any Service Order, CanadaVoip reserves the right to increase rates for any Services provided thereunder upon at least thirty (30) days' notice.

#### ARTICLE 4 - DEFAULT; SUSPENSION OF SERVICE

##### 4.1 Customer Default.

4.1.1 Customer is in default of the Agreement if Customer (a) fails to cure any monetary breach within five (5) days of receiving notice of the breach from CanadaVoip; (b) fails to cure any non-monetary breach of any terms of the agreement within thirty (30) days of receiving notice of the breach from CanadaVoip; or (c) files or initiates proceedings or has proceedings filed or initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or such other official) under any bankruptcy, insolvency or other similar law (each such event shall be a "**Customer Default**").

4.1.2 In the event of a Customer Default, CanadaVoip may suspend Services to Customer until Customer remedies the Customer Default, or CanadaVoip may terminate the Agreement and/or any or all of the Services being provided hereunder. CanadaVoip may at its sole option, but without any obligation, cure a non-monetary breach at Customer's expense at any point and invoice Customer for the same. These remedies are in addition to and not a substitute for all other remedies contained in the Agreement or available to CanadaVoip at law or in equity.

##### 4.2 CanadaVoip Default.

4.2.1 CanadaVoip is in default of the Agreement if CanadaVoip fails to cure any non-monetary breach of any material term of the Agreement within thirty (30) days of receiving written notice of the breach from Customer ("**CanadaVoip Default**"); provided, however, that Customer expressly acknowledges that Service related failure or degradation in performance is not subject to a claim of a CanadaVoip Default. Customer's sole and exclusive remedy for any failure of Service is set forth in the applicable Service Schedule.

4.2.2 In the event of a CanadaVoip Default, Customer may terminate the Services and the Agreement upon written notice to CanadaVoip. Any termination shall not relieve Customer of its obligations to pay all charges incurred hereunder prior to such termination.

#### ARTICLE 5 – TAXES AND OTHER FEES AND SURCHARGES

All charges for the Services are exclusive of any taxes and other fees and surcharges (as defined below). Except for taxes based on CanadaVoip's net income, Customer shall be responsible for payment of all applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, and bypass ("**Taxes**"). Customer shall also be responsible for any property tax surcharges, additional government fees (including without limitation Federal and State regulatory fees), franchise fees, rights of way fees or charges, license or permit fees, and any other duties, fees, charges or surcharges imposed on incident to, or based upon the provision, sale, or use of the Services ("**Other Fees and Surcharges**"). If applicable to the Services being purchased by Customer, such Other Fees and Surcharges will be listed on Customer's Invoice. If Customer is entitled to an exemption from any of the Taxes or Other Fees and Surcharges, Customer is responsible for presenting CanadaVoip with a valid exemption certificate (in a form reasonably acceptable to CanadaVoip). CanadaVoip will give effect to any valid exemption certificate provided in accordance with the foregoing sentence to the extent it applies to any Service billed by CanadaVoip to Customer following CanadaVoip's receipt of such exemption certificate.

#### ARTICLE 6 - LIMITATION OF LIABILITY

**6.1 General Limitations.** To the extent allowed by law, CanadaVoip shall enjoy any statutory protections granted to utility providers, and shall not be liable for injury to or death of any person and for damage to or loss of any property arising out of or attributable to its operations and performance under the Agreement. CanadaVoip's total liability for any and all causes and claims whether based in contract, warranty, negligence or otherwise shall be limited to the lesser of (i) the actual direct damages sustained by Customer; or (ii) an amount equivalent to the total MRC received by CanadaVoip from Customer over the preceding three (3) months for the Service affected. Excluding payments due under any Service Order that have not been paid, no cause of action under any theory which accrued more than one (1) year prior to the filing of a complaint alleging such cause of action may be asserted by either Party against the other Party.

**6.2 Special Damages.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH BELOW IN ARTICLE 7 AND EXCEPT FOR CLAIMS ARISING FROM A PARTY'S INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER

PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF, OR IN CONNECTION WITH, THE AGREEMENT, INCLUDING BUT NOT

LIMITED TO, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, INCURRED OR SUFFERED BY EITHER PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, CANADAVOIP MAKES NO WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OF THE SERVICE, LOCAL ACCESS OR ANY OTHER MATTER, AND ANY SUCH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.

**6.3 No Liability for Certain Actions.** CanadaVoip is not responsible for the content of any information transmitted or received through the Services. Other than as expressly stated in a Service Schedule, Customer shall be solely responsible for all of the security and confidentiality of information it transmits using a Service. Customer shall be solely responsible for all Customer support, pricing and service plans, billing and collections with respect to its End Users Customers, including obtaining all necessary legal or regulatory approvals to provide or terminate the provision of the services to its End User Customers. CanadaVoip exercises no control over, and accepts no responsibility for, the content of the information passing through its network, or Customer equipment, and use of any such Service is at Customer's own risk.

## ARTICLE 7 - INDEMNIFICATION

**7.1 Indemnification.** Each Party shall indemnify, defend and hold harmless ("**Indemnifying Party**") the other Party, its directors, officers, employees, and agents, successors and assigns ("**Indemnified Party**"), from all damages, costs, expenses and liabilities, including reasonable attorney's fees and disbursements, sustained in any action commenced by any third party in connection with the Indemnifying Party's performance of, or failure to perform, its obligations and duties under the Agreement except for those damages, costs, expenses and liabilities arising from the negligence or willful misconduct of the Indemnified Party; provided, however, that CanadaVoip is not obligated to indemnify Customer, and Customer shall defend and indemnify CanadaVoip hereunder, for any claims by any third party, including End User Customers, arising from services provided by Customer that incorporate any of the Services including but not limited to (a) violation of any applicable law by End User Customers; (b) damage to property or personal injury (including death) arising out of the acts or omissions of End User Customers; (c) termination or suspension of Services of Customer or End User Customers, due to a Customer Default; or (d) claims by a third party, including without limitation End User Customers, arising out of or related to the use or misuse of any Service.

**7.2 Indemnification Procedures.** The Indemnified Party shall promptly notify the Indemnifying Party in writing of any such suit or claim, and shall take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. The Indemnifying Party shall have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and provided further, that the Indemnifying Party shall not take any action in defense or settlement of the claim that would negatively impact the Indemnified Party. The Indemnified Party shall provide cooperation and participation of its personnel as required for the defense at the cost and expense of the Indemnifying Party.

## ARTICLE 8 - CONFIDENTIALITY

"**Confidential Information**" shall mean all information, including the Agreement, regarding the telecommunications needs of Customer and the Services that CanadaVoip offers under the Agreement which is disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), to the extent that such information is marked or identified as confidential or proprietary. Notwithstanding the foregoing, all written or oral pricing and contract proposals exchanged between the Parties shall be deemed Confidential Information, whether or not so designated. Confidential Information is the property of the Disclosing Party and shall be returned to the Disclosing Party upon request. Information that (i) is independently developed by the Receiving Party, (ii) is lawfully received by the Receiving Party free of any obligation to keep it confidential, or (iii) becomes generally available to the public other than by breach of the Agreement, shall not be considered Confidential Information. A Receiving Party, including its officers, directors, employees, partners, affiliates, agents and representatives, shall hold all Confidential Information in confidence from the time of disclosure until three (3) years following its disclosure. During that period, the Receiving Party: (a) shall use such Confidential Information only for the purposes of performing its obligations under the Agreement; (b) shall reproduce such Confidential Information only to the extent necessary for such purposes; (c) shall restrict disclosure of such Confidential Information to employees that have a need to know for such purposes; (d) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in the Agreement or as required by law; and (e) shall use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information. In the event that the Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, the Receiving Party will notify the Disclosing Party of the required disclosure with sufficient time for the Disclosing Party to seek relief, will cooperate with the Disclosing Party in taking appropriate protective measures, and will make such disclosure in a fashion that maximizes protection of the Confidential Information from further disclosure. Notwithstanding anything in this Article to the contrary, the fact that Customer is a customer of CanadaVoip shall not be deemed Confidential Information and CanadaVoip

may disclose the same without liability therefor.

## ARTICLE 9 - FORCE MAJEURE

Neither Party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including, but not limited to, acts of third parties not under the direction or actual control of the Party delayed or unable to perform, acts of God, fire, explosion, vandalism, cable cut, flood, storm, or other similar catastrophe, any law, order, regulation, direction, action or request of the government, or any department, agency, commission, court, or bureau of a government, or any civil or military authority, national emergency, insurrection, riot, war, strike, lockout, or work stoppage (each, a “**Force Majeure Event**”). The Party claiming relief under this Section shall notify the other Party of the occurrence or existence of the Force Majeure Event and of the termination of such event.

## ARTICLE 10 - MISCELLANEOUS PROVISIONS

**10.1 Subject to Laws.** The Agreement is subject to all applicable federal, state and local laws, and regulations, rulings and orders of governmental agencies, including, but not limited to, the Communications Act of 1934, as amended, the Telecommunications Act of 1996, the Rules and Regulations of the Federal Communications Commission (“**FCC**”), CanadaVoip’s applicable tariffs, if any, and the obtaining and continuance of any required approval or authorization of the FCC or any governmental body. Either Party may terminate its obligations under the Agreement and/or a Service Schedule and/or a Service Order without liability if ordered to do so by the final order or ruling of a court or other governmental agency or if such order or ruling would make it impossible for either Party to carry out its obligations under the Agreement.

**10.2 Governing Law.** The Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by the laws of the State of Colorado.

**10.3 Prevailing Party.** In the event that suit is brought or an attorney is retained by either party to enforce the terms of the Agreement or to collect any money as due hereunder or to collect any money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, the reimbursement of reasonable attorneys’ fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

**10.4 Relationship of Parties.** The Agreement does not create a partnership, joint venture or agency relationship between the CanadaVoip and Customer. Neither Party shall have any authority to bind the other Party to any agreement, understanding or other instrument, in any manner whatsoever.

**10.5 Assignment; Binding Effect.** Customer shall not transfer or assign, voluntarily or by operation of law, its obligations under the Agreement without the prior written consent of CanadaVoip. The Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

**10.7 No Third Party Beneficiaries.** The representations, warranties, covenants and agreements of the Parties set forth herein are not intended for, nor shall they be for the benefit of or enforceable by, any third party or person not a Party hereto, including without limitation, End User Customers.

**10.8 Entire Agreement.** The Agreement constitutes the entire understanding between the Parties relating to the rights, duties and obligations granted and assumed herein. Any prior agreements, promises, negotiations or representations regarding the subject matter hereof are of no force or effect. No alteration or variation of the terms of any provision shall be valid unless made in writing and signed by a duly authorized representative of CanadaVoip and the Customer. In the event that any one or more of the provisions of the Agreement shall for any reason be held to be invalid or unenforceable, the remaining provisions of the Agreement shall be unimpaired, and shall remain in effect and be binding upon the Parties. The Services provided by CanadaVoip are subject to the condition that they will not be used for any unlawful purposes. No course of dealing between the Parties and no failure to exercise any right hereunder shall be construed as a waiver of any provision hereof.