

Terms of Service

Updated: August 26, 2016

Changes from the previous version:

- Section 16: Clarified that if we make a change that would impair your services we will notify you.
- Section 21C: Clarified that we are not liable for terminating or suspending service for cause under this section.
- Section 24M: Clarified that we'll provide notice on assignment.

These Terms of Service (the “TOS” or “Agreement”) constitutes the entire Agreement between Euclid Platform LLC (“PivaTel”, “we”, or “us”) and you on behalf of yourself and any entity that you represent (“You”), as the user of PivaTel’s voice and advanced communications services, collaboration services, and any associated software and hardware or web-accessible portals, including the Plan Services (the “PivaTel Services”). You and PivaTel are sometimes collectively referred to as the “Parties”, or individually as a “Party”. This Agreement governs Your use of the Plan Services provided by PivaTel.

There are important 911 terms related to Your Plan Services, please review the entire TOS. By activating the Plan Services, You acknowledge that You have read, understood and agree to these terms and conditions.

If You are uncomfortable with the limitations of the PivaTel 911 service, You should consider using an alternative means of access to traditional 911 or E911 services or discontinuing the Plan Services.

By subscribing to or using PivaTel Services, including those services, features or functionality provided by means of mobile applications, or by downloading installing, or using any associated software or hardware, You agree to these TOS. If You do not wish to accept these TOS, do not subscribe to or use any PivaTel Services or associated software or hardware.

When You accept these TOS by signing up for, subscribing to, downloading and installing any PivaTel software or using the PivaTel Services, You represent and warrant that: (i) You possesses the legal right and capacity to enter into the agreement with PivaTel and to

perform all of Your obligations thereunder; (ii) You are of legal age to enter into this Agreement; (iii) You have full power and authority to execute and deliver any agreement documents and to perform all of Your obligations thereunder; (iv) if You accept on behalf of an organization, You're telling us that You are authorized to bind that organization, and references to "You" in these TOS expressly includes without limitation the entity You represent; and (v) You shall be bound by the agreement.

Any capitalized terms set forth below not otherwise defined have the meanings set forth in Section 26 ("Definitions") below.

1. Operation and Limitations of the PivaTel 911 Service

A. PivaTel Provides Access to Emergency Calling Services (911).

PivaTel provides access to emergency calling services, allowing most PivaTel users to access either basic 911 or Enhanced 911 (E911) service. Your access may differ depending on Your location or the device You are using, and emergency calling services work differently than You may have experienced using traditional wireline or wireless telephones. **It is strongly recommended that You have an alternative means for placing emergency calls available at all times.**

PivaTel users using IP Desk Phones or 911-Enabled Softphones can dial 911 directly from their IP Desk Phones or 911-Enabled Softphone. **EMERGENCY CALLS CANNOT BE PLACED THROUGH SOFTPHONES THAT ARE NOT 911-ENABLED.**

Calls to 911 placed through the PivaTel Mobile Application on a smartphone are automatically routed to the native dialer on the smartphone, and the call will be handled by Your wireless service provider if wireless service is available. If Your wireless service is unavailable, the 911 call cannot be placed. The PivaTel Mobile Application cannot place emergency calls over Wi-Fi access. Emergency dialing is not available through the PivaTel Mobile Application on tablets or other mobile devices without a native phone dialer and a wireless service plan.

B. How it Works.

When a PivaTel Office user dials 911 on an IP Desk Phone or 911-Enabled Softphone, the PivaTel phone number and the Registered Address You have provided is sent to the local emergency center serving Your location. In some areas, emergency operators have access to this information; however, in areas where only basic 911 service is available, the emergency operator answering the call may not be able to see Your PivaTel telephone

number or Your Registered Address. You should always be prepared to provide the emergency operator with Your PivaTel telephone number and Registered Address in case the call is dropped or disconnected. If You are unable to speak, the emergency operator may not be able to send help to Your location and/or call You back should the call be disconnected. PivaTel does not control whether or not the emergency operator receives Your telephone number and Registered Address.

Emergency dialing with Your Service works differently than emergency dialing over traditional phone service. In some cases, 911 calls dialed from Your PivaTel device cannot be directed to the local emergency response center, and are instead directed to a National Emergency Call Center (the "NECC"). That might happen if there is a problem validating a Registered Address, if the Registered Address is an international location, or if the Registered Address is in an area that is not covered by the landline 911 network. 911 calls that are directed to the NECC may not include Your PivaTel telephone number or Your registered address. Trained operators at the NECC will request Your name, location, and telephone number and attempt to reach emergency responders in Your local area. Until You give the operator Your phone number, and location, he/she may not be able to call You back or dispatch help to Your location if the call is dropped or disconnected.

C. Service Limitations

PivaTel 911 service will not function in the event of an Internet or power outage, if You do not have cellular service (on the PivaTel Mobile Application), or if Your broadband, ISP, or PivaTel Service is terminated. The PivaTel Mobile Application cannot send emergency calls over Wi-Fi access. It is possible that network congestion may delay or prevent completion of a 911 call. PivaTel 911 service may not be available if You are dialing from a PivaTel number that is not a United States number.

D. Registering Your Location

You agree to register with PivaTel immediately upon activation of Your Account the address of the physical location where You will use the PivaTel Service, including each IP Desk Phone and each 911-Enabled Softphone. This is Your Registered Address. You agree that You will accurately register each individual number through the Account Admin Portal or the Customer Portal for the applicable End User. If You or Your End Users move a registered device, You agree to immediately update the Registered Address with the new physical location of the device with PivaTel through the Admin Portal or in Your account settings. You acknowledge that if You do not update the Registered Address, any 911 calls made from the device may be sent to the wrong emergency response center and will not transmit Your current location information to emergency responders, delaying

emergency assistance to You. It may take up to several hours for the address update to take effect. Customers with more than one number or extension are solely responsible for ensuring that an accurate and up-to-date Registered Address is maintained for each IP Desk Phone and each 911-Enabled Softphone, and that their End Users are aware of how the Registered Address can be changed.

E. Notification of Employees, Guests, or Other Users

You agree to notify any employees, contractors, guests, or persons who may place calls using the Services or may be present at the physical location where the Services may be used, of the limitations of PivaTel 911 Service from Your PivaTel IP phone, other equipment or the PivaTel Softphone. You agree to affix a PivaTel-provided sticker warning that 911 services may be limited or unavailable in a readily visible place on each piece of equipment that might be used to access or use the Services. You and Your End Users should always have an alternative means for placing 911 calls and/or sending text messages to 911.

F. Disclaimer of Liability for Emergency Call Response

You acknowledge and agree that Your use, and use by Your employees and/or guests or other third parties, of PivaTel's 911 Services are subject to the limitations described herein.

The availability of certain features, such as transmission of a Registered Address or Your PivaTel telephone number, depends on whether local emergency response centers support those features, and are factors outside of PivaTel's control. PivaTel relies on third parties to assist us in routing 911 calls and text messages to local emergency response centers and to the NECC. PivaTel does not have control over local emergency response centers, the NECC, emergency responders, or other third parties. PivaTel disclaims all responsibility for the conduct of local emergency response centers, the NECC and all other third parties involved in the provision of emergency response services. Accordingly, to the extent permitted by applicable Law, You hereby release, discharge, and hold harmless PivaTel from and against any and all liability relating to or arising from any acts or omissions of such third parties or other third parties involved in the handling of or response to any emergency or 911 call. You agree to indemnify and hold harmless PivaTel, and any third-party provider(s) from any and all third party claims, losses, damages, fines, or penalties arising out of: (i) Your provision to PivaTel of incorrect information, including physical addresses, or Your failure to update Your Registered Address; (ii) Your failure to properly notify any person who may place calls using the Services of the 911 limitations; or (iii) the absence, failure, or outage of emergency service dialing using the Office

Services for any reason; and (iv) the inability of any user of the Office Services to be able to dial 911 or access emergency service personnel for any reason.

2. Plan Subscription

A. Purchase of Plan Services

Pursuant to these TOS, You are purchasing a subscription for the Plan Services set forth in Your initial order, and agreeing to use and pay for the same as set forth in these TOS for the entire period in the initial order (the “Initial Term”), and any Renewal Terms. You agree to be financially responsible for Your use of the Plan Services, including the authorized or unauthorized use of Your Account. In order to use the Plan Services, You must have properly configured and working Internet service or broadband connection as set forth in Section 13(C), below.

B. Account Registration

Upon signing up for the Plan Services and at subsequent times as requested by PivaTel, You or Your End Users may be required to provide certain information in order to begin using or to update the Plan Services, activate features, or add or modify an individual user seat or extension (e.g., activating an Account or End User or provisioning a device) (“Registration Information”). You hereby grant to PivaTel permission and a perpetual, worldwide, royalty-free, fully paid-up, non-exclusive, non-transferable right and license to copy, reproduce, store, record, disclose, transmit, display, access, and use Registration Information in connection with the activation, provision, support, improvement, administration, or management of Your Plan Services, as set forth in these TOS or otherwise permitted by Law. You represent and warrant that all Registration Information provided to PivaTel by or on behalf of You or any End User will be true, accurate, current, and complete, and that You will promptly confirm, update, or supplement Registration Information on file upon PivaTel’s request or in the event that such Registration Information changes.

C. Account Administrators

The End User(s) You designate as Account Administrator(s) of Your Plan Services will have rights to set or modify the settings or preferences of other End Users of Your Account. You are responsible for all acts and omissions of Your Account Administrators,

and any other End Users, including without limitation any changes or purchases such individuals may make to Your Account.

D. Purchase of Additional User Seats

Your Plan Services may include User Seats as set forth in the applicable Order. Account Administrators may purchase additional User Seats for the applicable Account at any time by placing an Order for the User Seats through the Account's Admin Portal or by contacting the PivaTel account representative for that Account. Each additional User Seat added to Your Account is subject to the terms of these TOS. The Term of the additional User Seats will run conterminously with the Term of Your initial purchase (either monthly or annually renewed, as applicable).

E. Term and Automatic Renewal

Your license to the Plan Services is provided for the Initial Term. The Initial Term for all Service Plans will renew automatically for successive terms of the same length (each, a "Renewal Term") without further action by or notice to You unless You notify PivaTel customer service of non-renewal at least thirty (30) days before the end of the Initial Term or then-current Renewal Term. The Initial Term together with any Renewal Terms are collectively the "Term".

3. End User License and Restrictions

A. Limited License

PivaTel grants You and Your End Users a limited, personal, revocable, non-exclusive, non-sub-licensable, non-assignable, non-transferable, non-resellable license to use the software and hardware provided in conjunction with the Plan Services during the Term in strict accordance with these TOS and solely for Your own internal business use. In the event of any expiration or termination of your subscription to PivaTel services or termination of these TOS, all license rights granted herein or in connection with any software or hardware immediately terminate. Any IP Rights in the Plan Services or in any technology used in the provision thereof are and shall remain the sole and exclusive property of PivaTel and its licensors. All rights not expressly granted herein are reserved and retained by PivaTel and its licensors, and no IP Rights or other rights or licenses are granted, transferred, or assigned to You, any End User, or any other party by implication, estoppel, or otherwise. You acknowledge that misuse of the Plan Services may violate third party IP Rights in the software and/or hardware provided in conjunction with the

Plan Services. You may not use or disclose any Intellectual Property or IP Rights in the Plan Services or any hardware or software related to the same except as expressly contemplated by this section.

B. PivaTel's IP Rights

You agree that all rights, title and interest in and to all Intellectual Property in the Plan Services, any software or hardware used in conjunction with the Plan Services, and any materials provided in connection with the Plan Services are owned exclusively by PivaTel or our licensors. Except as expressly provided herein, the limited license granted to You under the Plan Services does not convey any ownership or other rights, express or implied, in the Plan Services, any materials provided in connection with the Plan Services, or in any Intellectual Property.

C. Use and Disclosure of Intellectual Property

You represent, warrant, covenant and agree that You shall not disclose or use any of the Intellectual Property in the Plan Services, any software or hardware used in conjunction with the Plan Services, or any marketing materials for any purpose following termination of the Plan Services or the limited license granted thereunder to use the Plan Services.

D. New Versions of the Software

PivaTel, in its sole discretion, reserves the right to add, remove, or modify features or functions, and to provide fixes, updates and upgrades to the Plan Services without notification to you. You acknowledge and agree that PivaTel has no obligation to make available to You any subsequent versions of the Plan Services; provided, however, PivaTel shall make available to You any such features, functions, fixes, updates and upgrades and subsequent versions of the Plan Services that PivaTel makes generally available at no additional charge to customers who subscribe to the same edition of the Plan Services purchased by You. In addition, You and PivaTel acknowledge that no third-party has any obligation whatsoever to furnish maintenance or support services with respect to the Plan Services and that PivaTel is solely responsible for the provision of maintenance and support as provided in these TOS and to the extent such maintenance and support is required under applicable Law.

4. Customer Security Policy

A. Password Information Security

You agree that You are responsible for all Password Information that You or any End User use with the Plan Services. You further agree to ensure that all such Password Information: (i) shall be immediately changed in the event that You or Your End Users learn of or suspect that any Account Security Incident has occurred; (ii) shall not be not transmitted or stored in any unsecure manner (including without limitation through any auto-storage, caching, “remember,” or auto-fill feature); and (iii) shall be protected from theft or unauthorized access, use, or disclosure with at least a reasonable degree of care and diligence.

B. End-Point Security

You agree to protect all End Points using, at minimum, generally accepted security measures, including without limitation: (i) effective passwords or other credentials; (ii) network segmentation and access restrictions utilizing an accurate and up-to-date access control list; (iii) session time-out and/or locking screen saver features; and (iv) use of an effective and up-to-date firewall for all networks to or through which any End Point might connect. **YOU ACKNOWLEDGE AND AGREE THAT THESE REQUIREMENTS APPLY TO IP DESK PHONES, WHICH UTILIZE THE SAME CONNECTIVITY – AND ARE SUBJECT TO THE SAME SECURITY RISKS – AS COMPUTERS.**

C. Update of Security Features

You acknowledge that some Plan Services security features may require activation or installation of software or firmware updates, and software may be de-activated or uninstalled. You agree to promptly download and install all updates to software and/or hardware or firmware used in conjunction with the Plan Services, and generally to ensure the activation and use of all features that are necessary or appropriate to protect the Accounts, users, End Users, or Your organization’s assets and operations. You acknowledge and agree that if You decide not to install updates, this may result in the functionality of the Plan Services to be diminished and unstable.

D. Account and End User Management

You acknowledge and agree that End Users You designate as Account Administrators may have the ability to make purchases and enter into transactions on Your behalf and/or to perform acts related to Your Plan Services, or Your Account, including any individual number or extension or ancillary services, that may significantly affect You or the operation of Your Plan Services, including without limitation adding, removing, or modifying numbers or extensions assigned to an Account; payment method(s); making

changes to software or hardware; adding, removing, or modifying ancillary services; and/or modifying settings. You are responsible for any such changes made to Your account. You agree to maintain sole and exclusive control over Your Plan Services or Your Account at all times and to ensure that all Account rights, permissions, and settings, and all use and Usage, are effectively managed as necessary to prevent any unauthorized access to, use or Usage of, or transaction or activity through or relating to Your Plan Services, including without limitation by implementing the following measures and practices:

I. Disable international calling and/or calling to Alaska, Hawaii, and/or Puerto Rico for all user seats or extensions for which such calls are not needed or not authorized;

II. Restrict international calling destinations to those that are needed and authorized;

III. Block inbound calls from any caller IDs and area codes from which You do not wish for Users to receive calls and block inbound calls with no caller ID if appropriate;

IV. Disable calling card feature for each Account for which such feature not needed;

V. Disable attachment of facsimile image and voicemail audio files to message notification emails for associated with Your Account and/or individual user seats or numbers for which such functionality is not required and to the extent that such files may include sensitive or confidential content;

VI. Regularly monitor, review, and scrutinize End User calling and other Account activity;

VII. Promptly notify PivaTel of Account Security Incident and provide all reasonable information and cooperation requested by PivaTel in responding to any Account Security Incident; and VIII. Implement and train all End Users as to general security controls and practices, as necessary to ensure Your compliance with this Section entitled "Customer Security Policy".

5. Marketing Partners & Authorized Distributors

PivaTel may enter into marketing arrangements with marketing partners (each a "Marketing Partner") or resale/distribution agreements with authorized distributors (each an "Authorized Distributor") who market PivaTel Services to prospective customers who then subscribe to these TOS. When these Terms are accepted by a Customer, the Customer is considered a customer of PivaTel only with respect to PivaTel Services. As an example, if the distributor of internet services also markets PivaTel branded solutions and

a Customer subscribes to both internet services and PivaTel Services with PivaTel under these Terms, the customer is considered, with respect to PivaTel Services, only a customer of PivaTel. The terms, conditions and policies pursuant to a Marketing Partner or Authorized Distributer's contractual arrangement with Customer for other products and services may differ from PivaTel's TOS, Privacy Policy and other policies applied by PivaTel to similarly situated customers, but such Marketing Partner's or Authorized Distributor's terms, conditions and policies will not apply to PivaTel Services, nor supersede these TOS as applicable to PivaTel.

6. Service and Promotional Communications and Publications

A. Erroneous Product Information

In its marketing, advertising, offering, and sale of the Plan Services, PivaTel attempts to describe the Plan Services as accurately as possible. Nevertheless, PivaTel does not warrant that any such information about Plan Services, including related software and hardware, is accurate, complete, reliable, current, or error-free. It is possible that such may be inaccurate or out-of-date, such as listing erroneous or out-of-date pricing information or referring to services or features that are no longer available. Such information is provided only for customers' convenience and is not part of these TOS, any agreement for the purchase of Plan Services, or any other agreement with PivaTel.

B. PivaTel Communications

You agree that PivaTel may send, or have sent, to You, Account Administrators, contacts, and/or End Users Service Communications and Marketing Communications. PivaTel shall not send Marketing Communications to You or or Your End Users without providing prior notification and the right to opt out. You hereby consent to PivaTel's distribution of Service and Marketing Communications in accordance with this Sub-Section 5(B) entitled "PivaTel Communications". In the event that You or any End User provides PivaTel with any feedback, answers, ideas, comments, or other information in connection with any of the foregoing communications, You hereby grant PivaTel a perpetual, irrevocable, unlimited, worldwide, fully-paid up, royalty free right and license to use the same.

C. Directory Listing Service

You acknowledge and agree that in the event that You subscribe to the PivaTel directory listing service, the information that You provide in connection with such subscription (i) may be used or reproduced by, or disclosed to, third-parties and otherwise made publicly

available, (ii) PivaTel may not be able to have such information or listing removed, altered, updated, or corrected, and (iii) You and End Users may receive calls, messages, mailings, and other communications from third parties as a result of Your participation in the PivaTel directory listing service. You represent and warrant that all information provided by You or any End User related to any subscription to the PivaTel directory listing service will be true, accurate, and up-to-date and that You shall promptly update any such information in the event that it changes or becomes inaccurate. You hereby authorize and grant PivaTel a worldwide, irrevocable, non-exclusive, royalty-free, fully paid-up license to use, disclose, transmit, publish, or publicize, in any medium or technology now or hereafter available, all information that You provide in connection with subscribing to, participating in, or using the PivaTel directory listing service. You hereby release, discharge, and hold harmless PivaTel from and against any and all liability relating to or arising from any publication or listing of information in connection with Your subscription to the PivaTel directory listing service and any third party's use of the same.

D. Promotional Services

You acknowledge and agree that in the event that PivaTel offers or provides You discounts or promotional services for Your Plan Services or an Account, PivaTel may terminate or modify the scope of such promotional services at any time without notice, unless PivaTel specifically agrees otherwise in writing in connection with its provision of the discounts or promotional services.

7. Acceptable Use Policy

A. High Risk Use

YOU ACKNOWLEDGE THAT THE PLAN SERVICES ARE NOT DESIGNED, MANUFACTURED, INTENDED, OR RECOMMENDED FOR USE FOR ANY HIGH-RISK OR FAIL-SAFE PURPOSE OR ACTIVITY OR IN ANY ENVIRONMENT WHERE FAILURE, INTERRUPTION, MALFUNCTION, ERROR, OR UNAVAILABILITY COULD RESULT IN SUBSTANTIAL LIABILITY OR DAMAGES, PHYSICAL HARM OR PERSONAL INJURY, DEATH OR DISMEMBERMENT, OR PROPERTY OR ENVIRONMENTAL DAMAGE. YOU REPRESENT AND WARRANT THAT YOU AND YOUR END USERS WILL NOT USE THE PLAN SERVICES FOR ANY SUCH PURPOSE OR ACTIVITY OR IN ANY SUCH ENVIRONMENT.

B. Customer Legal Compliance

You represent and warrant that all use and usage of Your Plan Services, the Account(s), and the Plan Services will at all times comply with all applicable Laws, including but not limited to the rules, policies and regulation of the Federal Communications Commission (“FCC”), and all Laws relating to Do-Not-Call provisions; unsolicited marketing; telemarketing; faxing; telemarketing; email marketing; spamming or phishing; data security or privacy; international communications; account or debt collection; recording of calls or conversations; export control; export of technical or personal data; end user, end-use, and destination restrictions imposed by the United States or foreign governments; consumer protection; pornography; trade practices; false advertising; unfair competition; anti-discrimination; harassment; defamation; intellectual property; or securities.

C. Unsolicited Advertisements and TCPA Compliance

Certain communication practices – including without limitation, the placing of unsolicited calls; the placing of commercial messages; the sending of unsolicited facsimile, internet facsimile, SMS, or other messages; and the use of certain automated telephone equipment to place certain calls – is regulated in the United States by the Federal Telephone Consumer Protection Act of 1991 (also known as the “TCPA”) ([available at http://www.fcc.gov/document/telephone-consumer-protection-act-1991](http://www.fcc.gov/document/telephone-consumer-protection-act-1991)), the Junk Fax Prevention Act of 2005, and under a number of similar state, municipal or local laws, regulations, codes, ordinances and rules. You agree, represent and warrant that:

I. You are the creator of the content of, and are solely responsible for determining the destination(s) and recipient(s) of, all outbound communications made using Your Plan Services (“Customer Communication”);

II. All content, communications, files, information, data, and other content provided for transmission through Your Plan, and Account, or the Plan Services will be provided solely for lawful purposes, and in no event shall any Customer Communication or any content thereof be in violation of the TCPA, Junk Fax Prevention Act, or any other Law; and

III. No unsolicited advertisements, commercial messages, solicitations, marketing or promotional materials, or commercial messages or content will be transmitted or distributed in the form of facsimiles or internet facsimiles through the Plan Services.

At PivaTel's sole option and without further notice, PivaTel may use technologies and procedures, including without limitation, filters, that may block or terminate such unsolicited advertisements without delivering them.

You agree to indemnify and hold harmless PivaTel, and any third-party provider(s) from any and all third party claims, losses, damages, fines, or penalties arising: (i) out of Your violation or alleged violation of the TCPA or Junk Fax Prevention Act or any similar regulation or legislation; or (ii) otherwise related to any voicemail, text, and/or fax spam, solicitations, or commercial messages that You may send and/or receive using the Plan Services.

D. Export Restrictions

You acknowledge and agree that the software and/or hardware used in conjunction with the Plan Services may be subject United States and other foreign Laws and regulations governing the export, re-export, and/or transfer of software by physical or electronic means. You agree, represent, covenant, and warrant that: (i) neither You nor any End User (nor any entity or person that controls You or any End User): (a) is located in an Embargoed Area or listed on any Export Control List or (b) will export or re-export any PivaTel software or hardware into any Embargoed Area or to any person, entity, or organization on any Export Control List, or to any person, entity, or organization subject to economic sanctions due to ownership or control by any such person, entity, or organization, without prior authorization by license, license exception, or license exemption; and (ii) the Plan Services and PivaTel software and/or hardware will not be Used or accessed from any Embargoed Area.

E. Recording Conversations or Calls

Certain features of the Plan Services may allow You or users of the Plan Services to record calls or other communications. The notification and consent requirements relating to the recording of calls, and/or other communications may vary from state to state, and country to country. You should consult with an attorney prior to recording any call as some states or countries may require callers or users to obtain the prior consent of all parties to a recorded call, or other communication before the caller or User may record the call, or other communication. You represent, covenant, and warrant that You will review all applicable Laws before You use or allow use of the Plan Services to record any calls or other communications and will at all times comply with all applicable Laws. You agree to inform all users of Your Account that they are obligated to comply with all Laws relating to their use of the call recording feature.

Violations of the call recording Laws may be subject to criminal or civil penalties.

PivaTel expressly disclaims all liability with respect to Your recording of telephone conversations. You agree to indemnify and hold harmless PivaTel, and any third-party

provider(s) from any and all third party claims, losses, damages, fines, or penalties arising out of Your violation or alleged violation of any call recording Laws. PivaTel expressly disclaims all liability and all warranties with respect to recording of conversations and/or calls.

F. Prohibited Use of the Plan Services

Neither You nor any User of Your Plan Services may use or allow use of Your Plan Services in any of the following ways:

I. in any manner or for any purpose that is fraudulent, malicious, deceptive, dishonest, abusive, obscene, threatening, harassing, tortious, improper, defamatory, libelous, slanderous, or in violation of any Law;

II. to intentionally send or transmit unsolicited or “junk” or “spam” advertisements, communications, or messages (commercial or otherwise) without consent, including without limitation through email, voicemail, SMS, facsimile, or internet facsimile;

III. to harvest or otherwise collect information about others, including without limitation email addresses or personally-identifiable information, without their consent;

IV. to intentionally engage in blasting or broadcasting bulk communications, advertisements, or messages (e.g., sending hundreds of messages simultaneously), including without limitation through email, voicemail, SMS, facsimile, or internet facsimile;

V. to perform auto-dialing or “predictive” dialing (i.e., non-manual dialing or using a software program or other means to continuously dial or place out-bound calls) in violation of applicable Law;

VI. to transmit any communication that would violate any applicable Law, including but not limited to the Telephone Consumer Protection Act, the Junk Fax Prevention Act of 2005, the rules governing the DoNotCall Registry;

VII. to intentionally transmit or store any material that contains viruses, time bombs, Trojan horses, worms, malware, spyware, or any other programs or materials that may be harmful or dangerous;

VIII. to transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value, including by creating a false Caller ID identity or forged email/SMS address or header or by otherwise attempting to mislead

others as to the identity of the sender or the origin of any outbound Customer Communication;

IX. to infringe, misappropriate, or otherwise violate the foreign or domestic IP Right or proprietary right of any party, including without limitation by transmitting or storing any material that might infringe, misappropriate, or otherwise violate any such right;

X. to violate the right of privacy, personality, or publicity of any party, including without limitation by transmitting or storing any material that might violate any such right;

XI. to violate any Law regarding the transmission of technical data or information or software through the Plan Services;

XII. in any manner that interferes with PivaTel's ability to provide high quality products or services to other customers;

XIII. to store PHI; or if You qualify as a "covered entity," "business associate," or "subcontractor" under HIPAA (or similar terms under similar legislation in other jurisdictions) or are otherwise subject to HIPAA, to transmit, receive, or store PHI.

A breach of obligations in this Section constitutes a material breach of these TOS or Your Agreement, as applicable, such that PivaTel may suspend service, terminate the Agreement immediately, or take any other action PivaTel deems necessary to enforce the terms of this Section.

G. Prohibited Acts

You represent, warrant, covenant, and agree that neither You nor any End User shall do any of the following during the Term:

I. transmit, upload, distribute in any way, or store any corrupted file or material that contains viruses, time bombs, Trojan horses, worms, malware, spyware, or any other programs or materials that may be harmful or dangerous or may damage the operation of the Plan Services or another party's computers, devices, equipment, systems, or networks;

II. take advantage of, bypass, exploit, or otherwise avoid Your obligations or the provisions, restrictions, and prohibitions set forth in this Section 6 (or attempt to do so);

III. interfere with or disrupt networks or systems connected to the Plan Services;

IV. sell; resell; distribute; lease; export; import; or otherwise grant or purport to grant rights to third parties with respect to the Plan Services, and any software or hardware

used in conjunction with the Plan Services or any part thereof without PivaTel's prior written consent;

V. display or use of any PivaTel Mark in any manner in violation of PivaTel's then-current policies on its trademark and logo usage or without PivaTel's express, prior written permission, to be granted or denied in PivaTel's sole discretion,

VI. display or use of any Third Party Mark without the prior, written consent of the third party that owns the Third Party Mark;

VII. undertake, direct, attempt, cause, permit, or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling, or hacking of the Plan Services or any software and hardware used in conjunction with the Plan Services, or part thereof;

VIII. defeat, disable, or circumvent any protection mechanism related to the Plan Services;

IX. intercept, capture, sniff, monitor, modify, emulate, decrypt, or redirect any communication or data used by PivaTel for any purpose, including without limitation by causing the any product to connect to any computer server or other device not authorized by PivaTel or in any manner not authorized in advance in writing by PivaTel;

X. allow any service provider or other third party – with the sole exception of PivaTel's authorized maintenance providers acting with PivaTel's express, prior authorization – to use or execute any software commands that facilitate the maintenance or repair of any software or hardware used in conjunction with the Plan Services;

XI. gain access to or use (or attempt to gain access or use) any device, system, network, account, or plan in any unauthorized manner (including without limitation through password mining);

XII. engage in or to allow trunking or forwarding of Your PivaTel telephone or facsimile number to (an)other number(s) capable of handling multiple simultaneous calls, or to a private branch exchange (PBX) or a key system; or

XIII. violate or take any action to jeopardize, limit, or interfere with PivaTel's IP Rights, including without limitation their IP Rights in the software and hardware used in conjunction with the Plan Services.

A breach of obligations in this Section constitutes a material breach of these TOS or Your Agreement, as applicable, such that PivaTel may suspend service, terminate the

Agreement immediately, or take any other action PivaTel deems necessary to enforce the terms of this Section.

8. Charges and Plan Credits

Please note that all prices, Taxes, surcharges, and fees are subject to change at any time. You are responsible for paying all charges for Your Account, including but not limited to toll-free, local, long distance, international minutes, additional feature charges, 411 and operator assisted charges, and directory assistance charges, and for all Taxes, surcharges, and fees imposed on You or us as a result of Your use of the Plan Service. Customers with a past due balance on previous or multiple accounts will be charged the full balance upon opening a new account or updating their credit card information on file. PivaTel also reserves the right to charge termination and transfer fees consistent with the terms and conditions and as provided in these TOS.

A. Charges and Plan Credits

PivaTel offers several different plan options for Plan Service. You may change Your Plan Service plan at any time; however, a one-time processing fee may apply when "downgrading" an existing plan to a plan with lower monthly fees (e.g., a plan with fewer minutes and/or features). In addition, certain plans may entitle You to receive discounts on equipment used in connection with PivaTel Plan Service. If You receive any equipment discounts associated with a Plan Service plan and subsequently change that plan to one that does not offer those equipment discounts, You agree to reimburse PivaTel, and hereby authorize PivaTel to charge Your credit card on file, or invoice You, as applicable, for such equipment discounts.

B. Service Availability

You acknowledge and agree that the products or services, including without limitation the Plan Services, may not be available one hundred percent (100%) of the time. Credit allowances for interruption of the Plan Services may only be provided on a case-by-case basis at the sole discretion of PivaTel and shall be Your sole remedy for any Plan Services interruptions or other issues with the Plan Services.

C. Plan Credits and Minutes

PivaTel offers several different plans for its products and services. Some of the plans provide for a fixed number of monthly usage minutes ("Plan Credits"). If You exceed Your

monthly Plan Credits during the course of a Service month, You may purchase additional Plan Credits as needed. PivaTel may also provide You certain bonus credit minutes and/or other promotional incentives (e.g., "tell-a-friend" credits) upon fulfillment of the applicable promotion requirements. All of the Plan Credits are quoted in terms of domestic minute usage, and may be referred to on the PivaTel website or by a PivaTel Customer service representative as "minutes". As explained below, international calling may be charged at a different rate than domestic calling, and a Plan Credit "minute" therefore will not entitle You to a minute of international calling ("International Minutes").

D. Metered Calling Plans

PivaTel offers several monthly metered plans for some of its products and services. Each metered calling plan provides You with a toll-free or local telephone number and a fixed number of Plan Credits each month for a monthly fee, excluding Taxes, surcharges, and fees. When You exhaust Your initial paid allotment of Plan Credits for Your metered plan, unless You advise PivaTel otherwise in writing, PivaTel will automatically bill Your Account for the smallest available bundle of Plan Credits for the applicable service. Additional minute usage will be debited at the applicable per minute rate(s) for Your metered plan. However, in some limited instances, calls placed under a metered plan may not be counted against Your monthly allotment (e.g., calls made via a local phone number to leave or check voicemail or configure a system and calls answered on the PivaTel Softphone). Please check the details of Your metered plan to determine which calls (if any) are not counted against Your monthly minute allotment. For international calling, international rates will apply.

E. Unlimited Plan

PivaTel offers unlimited monthly plans for some of its products and services. Unlimited calling applies only to calls made within the continental United States and Canada. Calls to Alaska, Hawaii and all non-Canadian international calls are subject to additional charges. An unlimited plan provides You with a local or toll-free telephone number and is subject to the terms and restrictions of these TOS. If, for any reason, PivaTel believes that Your usage of the unlimited plan and services violates these TOS, then PivaTel may, in its sole discretion with or without notice, either terminate Your unlimited plan or immediately convert Your unlimited plan to a metered plan, as set forth above.

F. Value, Ownership, and Expiration of Credits or Minutes

In no event shall any Toll-Free Minute, International Minute Credit, Billing Credit, Plan Credit, or any other type of credit or minute issued to You or applied to an Account have

any monetary value or be exchangeable or exchanged for cash. Account Credits may be applied to only the Account for which they were purchased and/or provided, and may not be sold, transferred, assigned, or applied to any other Account, account, plan, or customer. Credited Toll-Free Minutes not applied to Usage of the applicable Account during the monthly billing cycle for which they are credited shall expire at the end of such cycle and shall in no event be available for application to Usage occurring during (or “roll over” to) any other period. Other Account Credits shall expire according to the terms of their purchase or provision.

G. Discounts

From time to time in its sole discretion, PivaTel may offer promotions or discounts. Any promotion or discount codes must be provided to PivaTel upon purchase of the Plan Services. You are not entitled to a subsequent credit for any promotions or discounts if You do not request the promotion or discount credit at the time of Account creation or change of service. Promotions and/or discounts may not be used cumulatively or retroactively.

9. Billing and Payment

A. Plan Services Fees

The initial order sets forth the base recurring fees for the Plan Services and the number of minutes of inbound Usage of any toll-free number(s) assigned to an Account, if any, that are included in the Plan Services Fees for each monthly billing cycle. Any applicable initiation charges, Usage, monthly recurring charges, support charges, Taxes, and other fees are billed in full in advance. Termination, international minutes, equipment return fees and transfer charges, if any, are billed in arrears. Upon termination of Your Account for any reason, all unused Plan Credits and unused International Minutes shall expire in their entirety on the termination date. No refund, transfer or proration shall be made of any unused Plan Credits, Promotional Credits, or International Minutes or any other credits to Your Account.

B. Taxes and Fees

All fees for Services advertised or otherwise listed on the PivaTel website are exclusive of any Taxes. You agree to pay all Taxes and similar liabilities that may now or hereafter be levied on the Plan Services and related software or hardware by any federal, state, local, or international law or regulation, as well as any administrative and recovery fees and

charges levied on the Plan Services by PivaTel, whether or not mandated by law or regulation. Should PivaTel pay or be required to pay such liabilities (including any Taxes that were due but not charged or previously collected), You agree that PivaTel may charge Your credit card on file or invoice You, as applicable, for such payments upon receipt of an invoice and showing of indebtedness to PivaTel.

C. Billing for Mid-Year Transactions

In the event that any purchase, transaction, or event involving or resulting in an annually-incurred Plan Services Amount occurs subsequent to the beginning of an annual billing cycle, PivaTel may at that time bill You a pro-rated amount for the remainder of the then-current cycle and thereafter bill You conterminously with each subsequent cycle.

D. Late Fees

You agree and acknowledge that time is of the essence for payment of all fees and charges. Any fees or charges not paid when due shall incur a late fee of five percent (5%) of the overdue amount, and shall incur interest at a rate of the lesser of: (i) eighteen percent (18%) per annum; or (ii) the highest rate allowed by Law. PivaTel's acceptance of late or partial payments (regardless of how they are marked or designated (including without limitation as "Paid in Full," "Accord and Satisfaction," or similarly)) shall not waive, limit, or prejudice in any way PivaTel's rights to collect any amount due. PivaTel may terminate the Plan Services these TOS for non-payment if any fees or charges are not paid within thirty (30) days of the due date.

E. Form of Payment

All fees and charges are payable to PivaTel by check or credit or debit card. You agree to be liable for a processing fee in the amount of the lesser of: (i) fifty dollars (\$50.00); or (ii) the highest amount allowed by Law for any credit card chargeback or check or other payment returned for nonpayment.

When You subscribe to Plan Services, You will provide us with a payment method, such as a valid credit card or information for invoicing (if You are pre-approved by PivaTel in its sole discretion to be billed via invoice), and, if applicable, authorize us to collect from the payment method provided. Any authorization to charge a provided credit card will remain valid until thirty (30) days after You withdraw the authorization, or immediately upon provision of a replacement valid credit card. Upon termination of this Agreement, we will charge You any fees and any other outstanding charges and disconnect Your service. You agree to advise and notify us of any changes to Your payment method, such as credit card

account number or expiration date changes. If the credit card or other payment method on Your Account is declined or fails for any reason, PivaTel will use reasonable efforts to contact You and advise You of the failed billing attempts. Notwithstanding the foregoing, PivaTel reserves the right to disconnect Your Service and terminate Your Account if Your payment method is declined or fails for any reason, or if You withdraw authorization to charge a valid credit and do not provide an alternative payment method, and PivaTel reserves the right to continue to attempt charging Your credit card for any outstanding Service charges and additional fees and pursue any other legal remedies available to PivaTel.

F. Disputed Amounts

You will waive the right to dispute any billed amount if You do not dispute such amount within thirty (30) days of the date of its billing. In the event that You timely dispute a billed amount and PivaTel confirms that You were over-billed, PivaTel shall credit the applicable Account in the amount of the over-billing (“Billing Credits”). Billing Credits shall be PivaTel’s sole and exclusive obligation and Your sole and exclusive remedy with respect to any erroneous billing.

Notwithstanding the foregoing, if You request that Your bank or credit card company perform a chargeback or decline to process a check without first contacting PivaTel to dispute the charge, and PivaTel subsequently determines that the charges at issue are not erroneous, PivaTel reserves the right to terminate Your Account immediately and take any available legal action.

You are solely liable for any transactions or usage on Your Account, whether by You, any End User, or any other user of Your Plan Services, and in no event shall PivaTel be liable for any unauthorized use of Your Account.

G. Security Deposit

PivaTel reserves the right any time during the Service Term, in its sole discretion, to require You to maintain a non-interest bearing deposit, to be held on account, in an amount determined in PivaTel’s discretion based on Your actual or anticipated billings to include usage charges. A deposit may be required prior to the next billing date to continue the Services (e.g., with instances of high international calling). The deposit will be adjusted as Services and usage levels increase or decline and will be refunded, less any past due balance or other amounts due by You, at the end of the Service Term. In addition, in the event that Your use of the Services involves usage-based charges that in PivaTel’s opinion are substantial, PivaTel may, in its sole discretion, process charges against Your payment

method prior to Your regular monthly billing cycle date and/or require a non-interest bearing deposit to secure Your payment obligations under this Agreement. All deposits must be paid promptly on demand and will be held on account during the term of this Agreement. You authorizes PivaTel to offset any amounts due to PivaTel against the deposit.

10. Treatment of Customer Communications, Content, and Account Data

A. Passive Conduit Role

The Parties acknowledge and agree that: (i) PivaTel's role with respect to Customer Communications and the content thereof shall be that of a passive conduit; and (ii) any storage of Customer Communications and/or Account Data by PivaTel shall be performed merely as a convenience to You and as a compliment to and incidental to PivaTel's core data transmission function.

B. Disclaimer of Data Storage Responsibilities

You acknowledge and agree that: (i) PivaTel shall have no obligation to store, retain, back-up, or ensure the availability of any stored Customer Communications and/or Account Data; (ii) to the extent that You wish to retain any Account Data or other information relating to Your Plan Services, an Account, or the use thereof, You shall ensure that such information is downloaded, saved, and/or backed-up outside of Your Plan Services Account, as necessary or appropriate for Your and/or the End Users' purposes; (iii) You shall not rely on Your Plan Services or Account as a repository for or means by which to retain, store, or back-up Account Data or any other data, information, or materials; (iv) PivaTel may delete or purge any and all copies and versions of any stored Customer Communications and/or Account Data or other data at any time, without notice, including without limitation after You delete any such information from an Account or after termination of the TOS or closure of an Account; and (v) PivaTel may, in its sole discretion and option and without notice, implement reasonable limits as to the size or duration of storage of Account Data.

C. Access to Account Data

You and Your End Users can obtain Account Data and any stored Customer Communications with Your login credentials in the relevant PivaTel administrative or customer portal. PivaTel will not otherwise provide access to You, Your End Users, or

Your agents of Account Data or stored Customer Communications, except as otherwise set forth in any agreement of the purchase of PivaTel office Services, or these TOS, or as required by Law.

D. Record / Information Gathering and Production

You acknowledge and agree that the Plan Services do not include the performance of any of the following tasks or work by PivaTel, and in no event shall PivaTel be obligated under these TOS to perform any of the following tasks or work: (i) the investigation, access, correction, alteration, gathering, compilation, review, verification, or production of any Account Data, Customer Communications, or any other records, documents, information, or evidence related to You or Your Plan Services or transmitted, received, or stored through an Account; (ii) the provision of legal or other counsel; or (iii) the provision of assistance, cooperation, or information beyond that which is directly and specifically related to PivaTel's fulfillment of its obligations under these TOS or pursuant to applicable law. For the avoidance of doubt, except as provided herein or required by Law, PivaTel is not obligated to: (i) determine, prove, or disprove any fact or claim; (ii) pursue or defend against any claim, allegation, action, lawsuit, demand, or proceeding; (iii) substantiate any party's compliance with any Law or Legal Process; (iv) respond to or comply with any request or demand; (v) identify any party; or (vi) conduct any surveillance.

E. Export of Account Data

You acknowledge and agree that any Account Data, stored Customer Communications, or other information or materials that You export will not be under PivaTel's control and will not be subject to or protected by PivaTel's security controls. You or Your End Users shall comply with all applicable Law relating to the use, disclosure, access, or export of data from Your Account or use of the Plan Services.

F. Release

You hereby release, discharge, and hold harmless PivaTel from and against any and all liability relating to or arising from its acts or omissions in accordance with this Section entitled "Treatment of Customer Communications, Content, and Account Data."

11. PivaTel and HIPAA

A. No Storage of Personal Health Information

You acknowledge and agree that the Plan Services are not designed, intended, or recommended for use as a repository or means by which to store “protected health information,” as defined under the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and similar legislation in other jurisdictions, and the regulations promulgated pursuant thereto (such laws and regulations, “HIPAA”; such information, “PHI”) on a non-temporary basis, and You represent and warrant that neither Your Plan Services nor any ancillary product or service that is a part thereof will be used for such purpose. **PIVATEL SPECIFICALLY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE THAT YOUR PLAN SERVICES, THE ACCOUNT(S), OR THE PRODUCTS (OR THE USE OF ANY OF THE FOREGOING BY ANY PARTY) COMPLIES OR WILL COMPLY WITH HIPAA OR ANY OTHER LAW OR WILL RENDER ANY PARTY COMPLIANT WITH HIPAA OR ANY OTHER LAW.**

B. Release

You hereby release, discharge, and hold harmless PivaTel from and against any and all liability relating to or arising from its acts or omissions in accordance with this Section entitled “PivaTel and HIPAA.”

12. Number Policies

A. Number Availability

PivaTel may make available telephone and/or facsimile numbers for Your selection and assignment to Account(s). You acknowledge and agree that PivaTel’s listing of a number may be erroneous and does not constitute a representation or guarantee that such number is actually available for such assignment, and that PivaTel shall be authorized to remove such number from an Account in the event that it is not actually available.

B. Number Porting Policy

I. Federal Porting Law. Number porting is defined and regulated by the Federal Communications Commission. You may visit <http://www.fcc.gov/cgb/NumberPortability> to learn more about number porting.

II. Number Port-In Request Procedures. In order to request the porting of a telephone or facsimile number into an Account, the Account Administrator for the Account into which You wish the telephone or facsimile number to be ported must log in to the Admin Portal

for such Account and complete all steps and provide all information requested as part of the number port-in request process (which may include without limitation providing an executed Letter of Agency) or as otherwise requested by PivaTel. In addition, if You wish to port into an Account more than 100 telephone or facsimile numbers from the same third party service provider account, You must contact PivaTel's Project Porting Department at porting@pivatel.com and comply with their instructions.

III. The Number Porting Process. In order to request the porting out to another services provider of a telephone or facsimile number currently assigned to an Account, You must follow the instructions specified by that services provider and must provide all information and cooperation requested by the relevant other services providers, PivaTel, or any other relevant third party. You acknowledge and agree that: (i) the porting of telephone or facsimile numbers into or out of an Account requires Your provision of specific and detailed information to PivaTel and/or third parties (including without limitation other services providers) and completion of certain steps and procedures, as well as third parties' completion of certain steps; and (ii) numbers may not be ported into or out of an Account unless and until You are able to provide certain specific information that matches other information on record with PivaTel or other services providers. For these and other reasons, the completion of any number port request and the timing of and date by which any such request may be completed depend on a number of factors outside of PivaTel's control, including without limitation the acts and omissions of both You and third parties, including without limitation other services providers.

IV. Unauthorized Port Outs. You acknowledge and agree that telephone or facsimile numbers may be ported out from Your Plan Services or an Account due to acts or omissions of third parties, and it may be difficult or impossible for PivaTel to: (i) prevent such port-outs; (ii) retrieve numbers ported-out of an Account; or (iii) port such numbers back into an Account. PivaTel has no responsibility or liability due to such port-outs.

V. Accurate Porting Information. You agree, represent and warrant that all information or representations provided in connection with any request to port in or port out numbers (including without limitation any information or representations in any Letter of Agency) by You, any User or End User, or any party acting on behalf of, at the direction or request of, or with the permission or knowledge of any of the foregoing shall be true, accurate, and up-to-date.

VI. Customer Compliance with Porting Laws. You acknowledge and agree that the porting of numbers is subject to telecommunications and other Laws and may be subject to third party terms and conditions. You agree, represent, and warrant that neither You; nor any User or End User; nor any party acting on behalf of, at the direction or request of, or with

the permission or knowledge of any of the foregoing will at any time: (i) violate any applicable Law or engage in any fraudulent or deceptive conduct in its porting-related requests or activities; (ii) engage in or facilitate “slamming” or the porting out of any telephone or facsimile number or change or attempt to change any party’s telephony service provider without first obtaining the proper, requisite consents and authorizations; or (iii) violate contractual or other obligations to service providers or other third parties.

VII. Release of Numbers. You acknowledge that in the event of account termination or cancellation, all telephone numbers associated with Your Account, which have not previously been ported to another provider, may be released. Similarly, the cancellation of individual user seats may result in the release of the related numbers if those numbers have not previously been ported to another provider. You acknowledge that You are solely responsible for working with a third-party provider to port out any numbers prior to termination or cancellation of Your Account or Plan Services, or any individual line.

C. Number Publication by Customer

Neither You nor any End User may publicize, list, or communicate any number that You believe to be assigned to Your Services or Account, or purchase or invest in any materials or media reflecting any such number unless and until You have verified that such number is active and functioning as desired, including without limitation by test calling such number from a non-PivaTel service plan and verifying that the fees and charges that will be incurred in connection with Use of such number are acceptable to You.

13. Account Disputes

The Account owner shall be the legal entity (e.g., corporation, partnership, individual) that signs up for the Plan Services with PivaTel. If no legal entity is provided upon sign-up, the Account owner shall be the owner of the credit card used to open the Account. Subsequent changes to ownership must be supported by appropriate legal documentation.

A. Account Disputes

You agree that in no event shall PivaTel be obligated to – and in no event shall You request that PivaTel – participate in or act as the arbiter, adjudicator, or intermediary with respect to any claim or dispute relating to the ownership or control of, or rights relating to, Your Plan Services, any Account, any numbers assigned to an Account, or any Account Data or other information related to an Account or Your Plan Services (“Account Ownership

Disputes”). In the event of any Account Ownership Dispute, PivaTel is authorized to take any course of action that it deems to be appropriate, including without limitation declining to take any action.

B. Access to Account Data or Customer Communications

As permitted or required by Law, PivaTel may access, monitor, use or disclose Your Account Data, Customer Communications, and/or personal information to: (i) comply with the Law or respond to lawful requests or legal process; (ii) protect the rights or property of us, our agents, members, our customers, and others including to enforce our agreements, policies and terms of use; (iii) respond to emergencies; (iv) initiate, render, bill, and collect for services; or (v) facilitate or verify the appropriate calculation of Taxes, fees, or other obligations due to a local, state, or federal government requirement.

C. Release

You agree to release, discharge, and hold harmless PivaTel from and against any and all liability relating to or arising from their acts or omissions related to any Account Ownership Dispute or in seeking to comply with any Law or any Legal Process.

14. Service Requirements and Limitations

A. Caller ID Display Limitations and Compliance

You acknowledge and agree that the disclosure and/or display of information related to the origination of calls, messages, and other communications (including without limitation “Caller ID” information) may be subject to legal requirements, including without limitation those related to the accurate display of such information or the enforcement of certain privacy instructions, settings, etc. You agree to comply with all such applicable Laws and implementing regulations, including without limitation the Truth in Caller ID Act. PivaTel has no obligation to disclose, display, or transmit any such information for or in connection with any Customer Communication. You agree to indemnify and hold harmless PivaTel from any and all third party claims, losses, damages, fines, or penalties arising out Your breach of this Section.

B. Voice-to-Text and Text-to-Voice

You acknowledge and agree that: (i) any and all Voice/Text Features are provided merely as a convenience and may not accurately transcribe voice content, articulate text messages, or perform such functionality for all voice content or text messages or for the

entirety of voice content or text messages; (ii) neither You nor any End User may rely on any Voice/Text Feature to perform such accurate transcription or articulation; and (iii) You and all End Users shall be responsible for reviewing and/or listening to the original content of any Customer Communication or other media as necessary or appropriate to prevent You, any End User, or any other party from incurring any cost, expense, liability, loss, damage, or harm.

C. IP Network Sufficiency

You acknowledge and agree that: (i) the Plan Services require a properly-configured, high performance, enterprise-grade broadband IP network and connection; (ii) use of the Plan Services with any lesser network, services, or connection may result in partial or complete unavailability, interruption, or underperformance of the Plan Services or other services utilizing the same network, services, or connection; and (iii) 3G or 4G networks are not recommended for use with the Plan Services. Accordingly, You agree to provide and maintain, at Your cost, an IP network, services, and connection meeting the foregoing standard and all equipment necessary for the Plan Services to connect to and use such network, services, and connection. PivaTel is not liable for any unavailability, interruption, or underperformance of the Plan Services related to Your IP network or connection.

D. Use of Third Party Devices

PivaTel does not guarantee or make any representation or warranty that any third party IP telephone or other device will work or be compatible with the Plan Services or support the Plan Services' full performance or quality of service potential or range of features and functionalities.

E. Use of Mobile Application

The PivaTel Mobile Application can be configured to make or receive calls on Your 3G or 4G network using Your data service, and may result in additional data usage fees from Your mobile service provider. You can disable 3G/4G calling by configuring the Mobile Application to make/receive calls only over a wi-fi connection. Configuring the Mobile Application to disable VoIP calling will result in PivaTel making/receiving calls using Your voice connection from Your mobile service provider; this may result in additional voice minute usage fees from Your mobile service provider.

15. Support and Feedback

PivaTel will make support available to You and Your End Users via its call center, which will be available to attempt to resolve technical issues with, and answer questions regarding the implementation or use of, the Plan Services. Such support shall not include, and PivaTel shall have no obligation hereunder to perform, any of the following: (i) on-site support; (ii) implementation of any software or hardware; (iii) configuration of any device; (iv) dedicated representative support; or (v) network or third party equipment support. If You have a customer support issue, You may visit <http://support.pivatel.com> or open a case with PivaTel Customer Care ("Customer Care") at <http://support.pivatel.com>. Any End User contacting Customer Care may be required to provide certain verifying information (e.g., the answer to a security question on file) to receive support from Customer Care, and Customer Care may limit the level of support that it will provide or scope of information that it will disclose or confirm to any inquiring End User based on the scope of his or her Account rights or permissions.

From time to time, PivaTel may send You surveys, comment cards, customer satisfaction forms, or other requests to provide feedback. You hereby grant PivaTel, its licensors, and suppliers a perpetual, unlimited, worldwide fully-paid up, royalty free license to use all feedback, answers, ideas, comments, or other information You provide to PivaTel.

16. Service Changes

You understand and agree that PivaTel may make upgrades or changes to the Services which will not materially diminish the functionality of the Services without prior notice to You. In the event that a change to the Services would, in PivaTel's reasonable discretion and judgment, permanently and materially diminish or impair the functionality of the Services (a "Change"), PivaTel will notify of you. If such Change is unacceptable to You, You may terminate the Services without penalty within thirty (30) days of the notice by calling PivaTel. Any use of the Services after the such date will be deemed Your acceptance of the Change.

17. Additional Terms for PivaTel VoIP Service

PivaTel Plan Services include one or more Voice over Internet Protocol ("VoIP") user seats included in Your Plan Services, and for other plans, PivaTel offers options to add one or more VoIP user seats to Your Services. In either case, Services for the VoIP user seat(s) will be referred to as "VoIP Service", for which the following additional terms shall apply:

Operator Assisted Calling, 311, 511 and other X11 Calling

PivaTel does not support 0+ or operator assisted calling (including, without limitation, collect calls, third party billing calls, 900, or calling card calls). Your Plan Service may not support 211, 311, 411, 511, and/or other N11 calling (except as otherwise provided in these TOS) in one or more service areas.

18. Publicity Rights

You agree that PivaTel may identify You as a user of the Plan Services in its business deals, press releases, marketing materials, electronic, printed, and broadcast advertising, newsletters, mailings, tradeshows, other promotional materials, on PivaTel's website, or any other third-party website where PivaTel or its designated agents may promote the Services. You hereby grant PivaTel and its agents an irrevocable, perpetual, worldwide, non-exclusive, fully paid-up, royalty-free license (with right to sublicense) to use, reproduce, publish, and display Your name, trademarks, service marks, designs, logos, and symbols in connection with such purpose.

19. Copyright Infringement

Pursuant to the Digital Millennium Copyright Act of 1998 (17 U.S.C. § 512) (the "DMCA") upon good faith belief that copyrighted content transmitted via PivaTel is infringed, the copyright owner or its agent may send PivaTel a notice requesting removal of the infringing content or blocking access to it. Also, the DMCA allows a party against whom a notice of copyright infringement has been filed to submit a counter-notice. Notices and counter-notices must meet the then-current statutory requirements implemented by the DMCA. Notices and counter-notices may be sent to PivaTel's registered copyright agent at the following postal address or optionally our email address:

PivaTel

Atten: DMCA

1112 Montana Ave #122
Santa Monica, CA 90403
United States
legal@pivatel.com

The notice must include: (i) an electronic or physical signature of the owner (or person authorized to act on behalf of the owner) of the copyrighted work; (ii) a description of the copyrighted work that is claimed to have been infringed upon; (iii) information reasonably

sufficient to permit PivaTel to locate the copyrighted work; (iv) address, telephone number, and e-mail address of the owner of the copyrighted work; (v) a statement by the owner of the copyrighted work or its agent asserting good-faith belief that the use in question is not authorized by the copyright owner, its agent, or the Law; and (vi) a statement by the owner of the copyrighted work or its agent, made under penalty of perjury, that the foregoing information in the notice is accurate and affirming ownership of the copyright or authorized to act on the copyright owner's behalf.

Any notice or counter-notice must be truthful and must be submitted under penalty of perjury. A false notice or counter-notice may give rise to personal liability. Parties should seek the advice of legal counsel before submitting a notice or counter-notice. Upon receipt of the notice, PivaTel may make a good faith attempt to transmit the notice to the party who has transmitted or received the allegedly infringing copyrighted work, and to transmit any counter-notification to the complaining party. PivaTel may, at its sole discretion, suspend, terminate, or disconnect access to and use of the Plan Services or Account if it is deemed that such party has engaged in more than one instance of copyright infringement.

20. Indemnification

To the maximum extent permitted by applicable Law, You shall indemnify and hold harmless, individually and collectively, PivaTel, its affiliates, agents, resellers, and other providers who furnish goods and services to You in connection with the Services, and their officers, directors, managers, employees, and shareholders (the "Indemnified Parties") from and against any and all liability, claims, losses (including loss of profits, revenue and goodwill), damages, fines, penalties, injuries to persons or property, costs, and expenses (including reasonable attorneys' fees and dispute resolution expenses) arising from or related to: (i) the use of or reliance upon the Plan Services by You or any third party acting with Your permission, knowledge, authority or direction; (ii) a breach of these TOS by You, or any End User; (iii) any negligent acts, omissions to act or willful misconduct by You or any third party acting with Your permission, knowledge, authority or direction; (iv) the inability to use the Plan Services or failure or outage of the Plan Services for any reason, including but not limited to those related to calling, "911" or other emergency responders; (v) the use of the Plan Services in connection with a violation of any applicable law, code, regulation, or ordinance; or (vi) the misappropriation, breach, violation, or infringement of any right, title or interest of any third party, including but not limited to, contractual rights, Intellectual Property rights, rights of privacy, and rights of publicity and personality.

21. Termination

A. Monthly Plan Customers

For monthly plan customers, You may cancel or terminate Your use of the Plan Services with or without cause at any time by calling customer service at (855) 500-7482, subject to the restrictions and fees provided in these TOS, and any additional agreements governing the products or services.

B. Annual Plan Customers

For annual plan customers, You are purchasing the Plan Service for the full length of the applicable Term. You have thirty (30) days from the date of purchase for a prorated refund. After thirty (30) days, if You terminate the Plan Services prior to the end of Your Term, subject to applicable Law, You are responsible for all charges for any remaining time left on the Term as if You remained a customer through the end of the then-current Term, including, without limitation, outstanding charges, unbilled charges, Taxes, and fees, including any applicable disconnection fee. In addition, You will not be entitled to a refund for any unused portion of prepaid Term charges.

C. Generally

You understand and agree that PivaTel may at any time, and without additional notice to You, terminate, modify, suspend, disconnect, discontinue, or block access to some or all of the features of the Plan Services if:

- I. PivaTel determines or reasonably suspects that You have materially breached these TOS;
- II. PivaTel determines that You have created or caused to be created multiple free accounts;
- III. PivaTel determines that You have used a fraudulent credit card to pay for Service charges on Your Account;
- IV. PivaTel determines that You have verbally insulted, abused, or harassed any of its employees, contractors, agents, or other representatives;
- V. You did not or will not reasonably comply or cooperate with any applicable Law or regulation, or PivaTel is made aware of allegations of the same.

VI. PivaTel is ordered by law enforcement or other government agencies to suspend or terminate Service to Your Account;

VII. You bring any legal action or proceeding, including without limitation in any court, regulatory, or administrative body, arbitral body, or mediator, against PivaTel, or participate in any class action lawsuit against PivaTel;

VIII. You file a petition in bankruptcy or if a petition in bankruptcy is filed against You and such petition is not dismissed within thirty (30) days after the effective filing date thereof, or a trustee or receiver is appointed over any of Your relevant property;

IX. PivaTel determines that such action is necessary to protect, maintain, or improve the Services; to prevent fraud or misrepresentation by affirmative acts and/or omissions; to protect PivaTel, its customers, or other third parties affiliated with PivaTel; or for any other good cause;

X. You violate applicable Law; or

XI. As otherwise contemplated by these TOS.

Upon any termination or suspension of Your Account, PivaTel may immediately deactivate or delete Your Account and all related information and files in Your Account and/or restrict any further access to such files, information, or the Plan Services.

PivaTel shall not be liable to You or any third party for any reason for terminating or suspending Your use or access to the Plan Services under any of points I-XI above.

If You or PivaTel terminate or suspend Your right to use the Services, You shall not be entitled to any refund or pro ration of any pre-paid amounts, Plan Credits, international calling credits, or other amounts paid to PivaTel prior to the termination or suspension date.

22. Warranty Disclaimer

TO THE EXTENT PERMITTED BY LAW, THE PLAN SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND PIVATEL MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, INFRINGEMENT, TITLE, QUIET ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE IN TRADE, TOGETHER WITH SIMILAR WARRANTIES, WHETHER ARISING UNDER ANY LAW OR OTHERWISE. SPECIFICALLY AND

WITHOUT LIMITING THE FOREGOING IN ANY WAY, PIVATEL SPECIFICALLY DISCLAIMS ANY WARRANTY: (i) THAT ANY PRODUCT WILL MEET ANY PARTICULAR REQUIREMENTS; (ii) THAT ANY PRODUCT WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, OR THAT ANY DEFECTS IN ANY PRODUCT WILL BE CORRECTED; OR (iii) RELATING TO THE ACCURACY OR RELIABILITY OF THE RESULTS OBTAINED THROUGH USE OF YOUR OFFICE PLAN, ANY ACCOUNT, OR ANY PRODUCT OR ANY CUSTOMER COMMUNICATIONS, DATA, INFORMATION, OR CONTENT DOWNLOADED OR OTHERWISE OBTAINED OR ACQUIRED THROUGH THE USE OF ANY OF THE FOREGOING. THE PARTIES AGREE, AND IT IS THEIR INTENTION, THAT IN NO EVENT SHALL ANY WARRANTY PROVIDED BY LAW APPLY UNLESS REQUIRED TO APPLY BY APPLICABLE STATUTE NOTWITHSTANDING THEIR EXCLUSION BY CONTRACT. TO THE EXTENT THAT PIVATEL CANNOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

SOME JURISDICTIONS DO NOT PERMIT THE DISCLAIMER OF CERTAIN IMPLIED WARRANTIES, SO CERTAIN OF THE FOREGOING DISCLAIMERS MAY NOT APPLY TO YOU. TO THE EXTENT THAT PIVATEL CANNOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

23. Limitation of Liability

A. Consequential Damages

IN NO EVENT SHALL PIVATEL BE LIABLE TO YOU OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT, COVER, OR SUBSTITUTION GOODS OR SERVICES; LOSS OF USE, DATA, EQUIPMENT, PRODUCTS, BUSINESS OPPORTUNITIES, OR PROFITS; INTERRUPTION OF BUSINESS; TRANSACTIONS ENTERED INTO OR NOT ENTERED INTO; OR SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL, REPUTATIONAL, OR PUNITIVE DAMAGES OF ANY KIND, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR ANY OTHER THEORY OF LIABILITY, EVEN IF PIVATEL HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF - OR COULD HAVE FORESEEN – SUCH COSTS, LOSSES, OR DAMAGES.

B. Direct Damages Cap

EXCEPT AS SET FORTH BELOW, PIVATEL'S TOTAL AGGREGATE LIABILITY SHALL NOT EXCEED THE PLAN SERVICES FEES PAYABLE HEREUNDER DURING THE ONE (1) MONTH IMMEDIATELY PRIOR TO THE DATE OF THE EVENT(S) GIVING RISE TO THE LIABILITY. THE LIMITATION OF LIABILITY SET FORTH IN THIS SUB-SECTION DOES NOT APPLY TO: (i) YOUR LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (ii) YOUR LIABILITY ARISING FROM YOUR ACTUAL OR ALLEGED BREACH OF SECTIONS 1 (911 POLICY), 4 (CUSTOMER SECURITY POLICY), 6 (ACCEPTABLE USE POLICY), OR 11 (NUMBER POLICIES) OF THESE TOS.

C. Scope and Exceptions

THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THIS SECTION ENTITLED (LIMITATION OF LIABILITY):

I. SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW,

II. SHALL NOT DISCLAIM, LIMIT, OR CAP CUSTOMER'S OBLIGATION TO PAY ANY FEES OR CHARGES OR OTHER AMOUNT OWED TO PIVATEL OR ANY DAMAGES TO WHICH PIVATEL IS ENTITLED UNDER APPLICABLE LAW FOR INFRINGEMENT OF IP RIGHTS,

III. REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES, AND

IV. SHALL SURVIVE TERMINATION OR EXPIRATION OF THE PLAN SERVICES AND APPLY IN ANY AND ALL CIRCUMSTANCES, INCLUDING WITHOUT LIMITATION IN THE EVENT OF ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY PROVIDED HEREIN.

SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY, SO CERTAIN OF THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

24. General Terms

A. Relationship of the Parties

The Parties' relationship under these TOS is that of independent contractors. Nothing in these TOS shall constitute or create any employment, partnership, association, joint venture, agency, or fiduciary relationship between the Parties. Neither Party shall have the authority to bind or obligate the other Party in any way.

B. Notices

Notices to You shall be effective on the date sent to Your registered electronic mail address when sent by email or, at PivaTel's option, three (3) days following the date deposited in regular United States Mail, postage prepaid, and addressed to Your current address on Your Account. You are responsible for notifying PivaTel of any changes in Your contact information or address through Your Account settings page or by contacting customer service at (855) 500-7482.

Written notice to PivaTel shall be effective when directed to PivaTel's Legal Department and received at PivaTel's then-current address as posted on PivaTel's Website, available here. Your notice must specify Your name, Account information, and security verification question and answer. All notices from You to PivaTel must be made in writing.

C. Force Majeure

Excluding either Party's payment obligations under the Agreement, neither Party shall be responsible or liable for any failure to perform or delay in performing to the extent resulting from any event or circumstance that is beyond that Party's reasonable control, including without limitation any act of God; national emergency; riot; war; terrorism; governmental act or direction; Laws; breach, delay, act, or omission of any supplier, carrier, contractor, subcontractor, or business partner; failure, outage, or unavailability of third party network(s) or system(s); fiber, cable, or wire cut; power outage or reduction; rebellion; revolution; insurrection; criminal acts of third parties, earthquake; storm; hurricane; flood, fire, or other natural disaster; or strike or labor disturbance (each a "Force Majeure"). In the event that a Force Majeure prevents a Party's performance for more than forty-five (45) consecutive days, either Party may terminate the particular agreement document(s) impacted.

D. Third Party Beneficiaries

Nothing in these TOS, express or implied, is intended to or shall confer upon any person or entity other than the Parties themselves any right, benefit, claim, or remedy as a third party beneficiary or by any other nature whatsoever under or by reason of these TOS.

E. Choice of Law

These TOS and Your use of the Plan Services shall be governed by and construed under the laws of the State of California and the United States without regard to its conflict of

law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these TOS or Your sign up or use of the Plan Services.

F. Dispute Resolution and Optional Arbitration

In the event of any dispute, claim, question, or disagreement between You and PivaTel ("Dispute"), You and PivaTel shall first use reasonable best efforts to settle the dispute, claim, question, or disagreement. To this end, You and an authorized member of PivaTel's legal department (or other representative of PivaTel designated by the legal department) shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. Neither You nor PivaTel shall file or pursue any Disputes in any court, administrative, arbitral, or other adjudicative body prior to engaging in such consultations and negotiations.

Notwithstanding the adjudication requirement above, for any Disputes, including the issue of arbitrability of any such claim or controversy, shall be resolved solely by final, binding, and except as provided for herein, arbitration, conducted by a sole retired judge who served on the state or federal bench for a minimum of term of (10) years. The arbitration shall be conducted through the Los Angeles Office of JAMS/Endispute, and subject to its Expedited Arbitration Procedures, or equivalent, in effect at time the arbitration is initiated. There shall be no discovery permitted in any such arbitration, unless expressly agreed in writing by all of the parties hereto. The arbitration hearing shall not exceed a maximum of two (2) days of eight (8) hours each day unless agreed upon in writing by both parties hereto. The arbitrator in such arbitration shall issue a written statement of decision with findings of fact and conclusions of law and shall further issue and make his or her decision in complete conformance with applicable California law, and in the event that the written decision, or any portion thereof, of the arbitrator is not in complete conformance, it shall be appealable on that basis, notwithstanding any contrary provisions of either California law, federal law, if applicable, and/or the rules of JAMS/Endisputes, which are expressly superseded by the terms of this Agreement to the extent of any conflict between them. Nothing contained herein, however, shall limit the ability of the parties hereto to pursue interim injunctive and/or equitable relief (e.g., a temporary restraining order or preliminary injunction or a pre-judgment writ of attachment and right to attach order) prior to the start or during the course of arbitration prior to the issuance of an arbitration award. A judgment on the award by the arbitrator may be entered in any court having jurisdiction thereover.

EACH PARTY HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, LOCATED

IN THE COUNTY OF LOS ANGELES, AND ANY STATE COURT OF CALIFORNIA SITTING IN THE COUNTY OF LOS ANGELES, CALIFORNIA FOR PURPOSES OF ANY MOTION TO COMPEL ARBITRATION, TO CONFIRM AN ARBITRATION AWARD OR FOR INTERIM INJUNCTIVE OR EQUITABLE RELIEF OR FOR A PREJUDGMENT WRIT OF ATTACHMENT. In the event that any Party to these TOS, or any of them retains counsel for the purpose of restraining, enjoining or otherwise preventing the breach of, and/or for the purpose of enforcing or interpreting these TOS, including, without limitation, the commencement or institution of any arbitration proceeding or proceeding to enforce any provision of these TOS, the commencement of an action for equitable relief as provided for hereinabove, or the commencement of an arbitration proceeding for damages by reason of any alleged breach of any provision hereof, or for a declaration of such Party's rights or obligations hereunder, or for any other judicial remedy in connection therewith, the prevailing Party shall, in addition to such other relief as may be granted in such action or proceeding (whether at arbitration, trial or on appeal,) and without limitation, be entitled to be reimbursed by the other Party or Parties, for all costs and expenses incurred thereby, including, without limitation, all of her or his, or its, or any of their, reasonable attorneys' fees, costs and disbursements for services rendered to such prevailing Party, including, but not limited to, any expert witness fees, which award shall not be limited by any schedule of fees of any court or arbitration association or tribunal, and which shall be awarded to the prevailing party by the arbitrator and/or court in all cases as part of its arbitration award, equitable relief order, injunctive relief order, pre-judgment writ of attachment order, judgment or decision on appeal.

G. Venue

You agree that any Dispute shall be adjudicated in County of Los Angeles and the State of California and shall be exclusively governed and interpreted by the Laws of the State of California. Venue for any Disputes shall be the court of proper jurisdiction in the County of Los Angeles, California. You agree to submit to the exclusive jurisdiction of such courts with respect to any Disputes and agree not to bring any Disputes in any other court or adjudicative body. You hereby consent to venue and personal jurisdiction in such courts with respect to such Disputes and irrevocably waive any right that You may have to assert that such forum is not convenient or that any such court lacks jurisdiction.

H. Equitable Relief

You agree that any breach of PivaTel's IP Rights will cause PivaTel irreparable harm for which monetary damages will be inadequate and PivaTel may, in addition to other

remedies available at Law or in equity, obtain injunctive relief without the necessity of posting a bond or other security, proof of damages, or similar requirement.

I. Class Action Waiver

Any actions, lawsuits, or shall be conducted solely on an individual basis and the Parties expressly waive any right to bring any action, lawsuit, or proceeding as a class or collective action, private attorney general action, or in any other proceeding in which any party acts or proposes to act in a representative capacity.

J. Consumer Notice

The following specific consumer rights notice is hereby provided under California Civil Code Section 1789.3 to California customers and users of the Products: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1020 N Street, #501, Sacramento, California 95814, or by telephone at (916) 445-1254.

K. No Waiver

In no event shall any failure or delay by PivaTel to: (i) assert or exercise any right; (ii) demand fulfillment or performance of any obligation; or (iii) avail itself of any remedy under these TOS, in whole or in part, be deemed a waiver of any right or remedy under these TOS on such occasion or any other occasion. Except as otherwise expressly stated in these TOS or an agreement document duly executed by both PivaTel and You, all rights and remedies stated in these TOS are cumulative and in addition to any other rights and remedies available under these TOS, any agreement document, at Law, or in equity.

L. Interpretation

These TOS, including the documents incorporated herein, constitutes the entire agreement between You and PivaTel with respect to the Plan Services and supersedes all prior or contemporaneous understandings regarding such subject matter.

If any part of these TOS is held invalid or unenforceable, that portion shall be construed to reflect the parties' original intent, and the remaining portions shall remain in full force and effect.

The failure of PivaTel to exercise or enforce any right or provision of these TOS shall not constitute a waiver of such right or any other provision.

The section titles in these TOS are for convenience only and have no legal or contractual effect.

This electronic document and any other electronic documents, policies, and guidelines incorporated herein will be: (i) deemed for all purposes to be a "writing" or "in writing," and to comply with all statutory, contractual, and other legal requirements for a writing; (ii) legally enforceable as a signed writing as against the parties subject to the electronic documents; and (iii) deemed an "original" when printed from electronic records established and maintained in the ordinary course of business. Electronic documents introduced as evidence in any judicial, arbitration, mediation, or administrative proceeding will, if established and maintained in the ordinary course of business, be admissible to the same extent as business records in written form that are similarly established and maintained.

M. Assignment

Either party may assign these TOS and any of its rights and obligations hereunder with the other party's prior written consent (which such consent shall not be unreasonably withheld), except that PivaTel may, with notice, assign the TOS and all of PivaTel's rights and obligations hereunder to: (i) an affiliate; or (ii) PivaTel's successor or surviving entity in connection with a merger, acquisition, consolidation, sale of all or substantially all of its assets, or the transfer or disposition of more than fifty percent (50%) of a PivaTel's voting control or assets. Any purported transfer or assignment in violation of this section is void. Subject to the foregoing, these TOS shall be binding on and inure to the benefit of the parties, their successors, permitted assigns, and legal representatives.

N. Severability

If any provision or portion of the Agreement is determined to be invalid, unlawful, illegal, void, or unenforceable, in whole or in part, then (i) that provision or portion shall be construed in such a manner as to render the provision or portion enforceable and, to the extent possible, to reflect the Parties' original intent and (ii) the remaining provisions and portions of the Agreement shall remain in full force and effect.

O. Survival

The following provisions of these TOS will survive termination or expiration of these TOS for the maximum term allowed by Law: (i) Your payment obligations; (ii) terms relating to intellectual property ownership, customer representations, confidentiality, storage of user information, publicity rights, non-disparagement, indemnification, warranty

disclaimers, limitations of liability, dispute resolution and arbitration, and choice of law; and (iii) all provisions that are intended by their nature to survive termination of this agreement.

P. Non-Solicitation

Any attempt by You to induce employees or contractors of PivaTel to leave PivaTel's employ, or any effort by You to interfere with PivaTel's relationship with its employees or other contractors would be harmful and damaging to PivaTel. You agrees that during the term of these TOS and for a period of one (1) year after the end of the term, You will not in any way, directly or indirectly: (i) induce or attempt to induce any employee or contractor of PivaTel to quit employment or retainer with PivaTel; (ii) otherwise interfere with or disrupt PivaTel's relationship with its employees or other contractors; (iii) discuss employment opportunities or provide information about competitive employment to any of PivaTel's employees or other contractors; or (iv) solicit, entice, or hire away any employee or other contractor of PivaTel.

Q. Facsimile and Electronic Transmission; Counterparts

Sales Orders, and other documents that may be executed in connection with the Services (collectively "Service Documentation"), may be executed and delivered by facsimile or electronic transmission, and upon receipt, such transmission shall be deemed the delivery of an original. Service Documentation may be executed in several counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall each constitute one and the same instrument.

R. Electronic Communications and Consent to use of Electronic Signatures and Records

As a convenience and courtesy to you, PivaTel provides access to its Services online which may require You to enter into agreements or receive notices electronically. Accordingly, You acknowledge and agree that by clicking "I Agree" or "I Accept" anywhere on a PivaTel website:

I. You agree to conduct electronically the particular transaction into which You thereby enter including, without limitation, entering into this Agreement;

II. You have read and understand the electronic copy of electronic contracts, notices and records, including, without limitation, this Agreement, and any policies and any amendments hereto or thereto;

III. You agree to, and intends to be bound by, the terms of the particular transaction into which You thereby enters;

IV. You are capable of printing or storing a copy of electronic records of transactions into which You enter including, without limitation, this Agreement and any amendments hereto;

V. You agree to receive electronically information about the Services and other electronic records into which You thereby enter including, without limitation, this Agreement.

25. Future Changes to these TOS

We may change the terms of these TOS from time to time upon delivery of electronic or written notices to You. PivaTel generally provides written notice of changes to Your account, including these TOS and any other legal agreements, via email, electronic notice on the PivaTel Website or Your Account Page, or on Your billing statements, or as otherwise required by applicable Law. You agree to carefully read and review each such e-mail notice, electronic notice, and billing statement from PivaTel fully regarding any such notices of changes to Your Account.

Subject to applicable Law, the modified terms shall replace and supersede all previously agreed to electronic and written terms, as well as any prior versions of these TOS and become binding on You on the later of the date they are posted on the PivaTel website (www.pivatel.com) or as otherwise indicated in the notice to You. You agree that You are solely responsible for: (i) making sure that Your registered email account is current and functional; (ii) checking Your registered email account regularly; (iii) checking the PivaTel Website and Your Account page regularly; and (iv) making sure that PivaTel communications are not blocked or rendered undeliverable by You, Your computer, any software installed on Your computer, Your Internet service provider, or for any other reason. Continued use of the Plan Services will constitute Your acceptance of the modified terms. If the terms of these TOS are amended and You do not wish to accept the modified terms, You may terminate these TOS as provided for in Section 21 entitled "Termination".

26. Definitions

All capitalized terms used in these TOS shall be defined in accordance with the following definitions or as otherwise defined herein.

A. "IP Desk Phone" means a telephony hardware device that uses VoIP to place and transmit telephone calls over an IP network.

B. "911-Enabled Softphone" means a Softphone for which the PivaTel 911 Service is supported.

C. "PivaTel Mobile Application" the PivaTel application for mobile devices.

D. "Plan Services" means the services purchased under these TOS or any contract between Customer and PivaTel, and any software or hardware used in conjunction with those services.

E. "Registered Address" means the address of the physical location where You will use the PivaTel Service, including each IP Desk Phone and each 911-Enabled Softphone.

F. "Account" means the numbered account established with PivaTel that contains any of the following information: Your true, accurate, current, and complete personal name or business name, administrator name, billing address, shipping address, the address where the Plan Services will primarily be used, the records of Your User Seats, subscriptions, and any Plan Services that You have purchased from PivaTel. Multiple services, User Seats, or End Users may be included in a single account.

G. "Account Data" means Registration Information, and the PivaTel-generated logs of calling activity stored within that Account.

H. "Account Security Incident" means any actual or suspected unauthorized activity, erroneous billing, or breach or compromise of any Password Information or the security or privacy Your Office Plan, an Account, or any Account Data.

I. "Admin Portal" or "Customer Portal" means the website through which the Customer enters Registration Information, may purchase and register additional IP Desk Phones or Softphones devices, purchase additional products or services, or make modifications to or control Customer's PivaTel Account in any other way.

J. "Customer Communications" means the content of calls, facsimiles, SMS messages, voicemails, voice recordings, conferences or other communications transmitted or stored through the Plan Services.

K. "Embargoed Area" means a country or region that is subject to a Canadian, United States, United Nations, or European Union embargo or economic sanctions, including without limitations destinations designated by Foreign Affairs, Trade and Development Canada, the United States Government in Country Group E or Part 746 of the Export Administration Regulations (15 CFR Part 730-774), or otherwise subject to territorial sanctions under regulations administered by the Foreign Affairs, Trade and Development Canada, the United States Department of the Treasury, Office of Foreign Assets Control, or other governmental authorities with jurisdiction.

L. "End Point" means a point through which any End User might access and/or use the Plan Services, including without limitation all IP Desk Phones and all Softphones, instances of the PivaTel Mobile or Desktop Applications, and all devices or VoIP infrastructure on which any Softphone or such instance is installed or through which the Plan Services may be accessed or used.

M. "End User" means the user of a virtual extension or individual digital line set up within an Account or an individual assigned thereto by You or by PivaTel at Your direction or request.

N. "Export Control List" means any list maintained by the government of Canada, the United States or any other country of entities or individuals that are subject to export controls or economic sanctions, including without limitation the Foreign Affairs, Trade and Development Canada Export Control List, the United States Commerce Department's Denied Parties List, Entity List, or Unverified List; the United States Department of the Treasury's or the United States Office of Foreign Assets Control's Specially Designated National List; Sectoral Sanctions List; Foreign Sanctions Evaders List; and similar lists of entities, organizations, or individuals subject to export control restrictions or economic sanctions that are maintained by other agencies of the Canadian Government, the United States Government, the United Nations, the European Union, or any other governmental authority with jurisdiction.

O. "Intellectual Property" means mean all common law and statutory rights (whether registered or unregistered, or recorded or unrecorded, regardless of method) arising out of or associated with: (i) patents and patent applications, inventions, industrial designs, discoveries, business methods, and processes; (ii) copyrights and copyright registrations, and "moral" rights; (iii) the protection of trade and industrial secrets and confidential information; (iv) other proprietary rights relating to intangible property; (v) trademarks, trade names and service marks; (vi) a person's name, likeness, voice, photograph or signature, including without limitation rights of personality, privacy, and publicity; (vii) analogous rights to those set forth above; and (viii) divisions, continuations,

continuations-in-part, renewals, reissuances and extensions of the foregoing (as applicable).

P. "IP Rights" means any and all patents, copyrights, trademarks, service marks, trade secrets, and other Intellectual Property rights in the Plan Services or in any technology used in the provision thereof.

Q. "Law" means any federal, national, municipal, local, state, or international law, statute, regulation, code, ordinance, or restriction; treaty or convention; or court or administrative ruling.

R. "Legal Process" means any court or administrative order, subpoena, civil investigation demand, warrant, or other official request, order, or process.

S. "Marketing Communications" means occasional non-bulk sales-related communications, and any other communications solely or primarily designed to market products.

T. "Password Information" means any and all passwords, PINs, IVR PIN codes, security questions or answers, and other access-related credentials related to Your Plan Services or an Account.

U. "Registration Information" means any information You or Your End Users may be required to provide in order to begin using or to update the Plan Services, activate features, or add or modify an individual line or extension (e.g., activating an Account or End User or provisioning a device).

V. "PivaTel Mark" means a United States and foreign trademark, service mark, copyright, or logo of PivaTel.

W. "Service Communications" means any communications related in whole or in part to the administration, support, use, Usage, development, or improvement of its services (including without limitation communications related to billing, payment, Usage, purchases and other transactions, Customer Communications, upgrades, updates, installations, new products, security issues, support cases, and/or customer satisfaction).

X. "Softphone" means an instance of the PivaTel Softphone desktop software application used to access the Plan Services.

Y. "Taxes" means all federal, state, local, and municipal sales, international excise, value-added, transactional, regulatory, and other taxes and assessments and other governmental fees, surcharges, levies or amounts (including without limitation charges

related to the recovery of amounts contributed to any contribution, universal service or other governmental fund or entity, whether or not such recovery is mandated by any Law).

Z. "Third Party Mark" means a United States and foreign trademark, service mark, copyright, or logo of a third party.

AA. "Toll-Free Minute" means minutes of usage incurred on toll-free numbers assigned to an Account.

BB. "Usage" means Toll-Free usage, Local usage, Long-Distance usage, International Usage, and any other usage of an Account that could result in charges for calling, messaging, or other activity.

CC. "Voice/Text Feature" means any functionality or feature of the Plan Services that converts voice content to text content or vice versa.