



## Small Business Services Subscriber Agreement

### 1. Introduction.

This Small Business Services Subscriber Agreement (“SBSSA”) applies to the small and mid-sized business customers of Astound Business Solutions, LLC and its affiliates (collectively, “Astound”). Affiliates of Astound Business Solutions, LLC include, but are not limited to, RCN Telecom Services, LLC. Astound offers business class Internet access services, phone services and video services (each, a “Service,” and, collectively, the “Services”) to its small and mid-sized business customers. This SBSSA applies to your use of those Services in addition to and in conjunction with the terms and conditions of the terms and conditions of the Request for Service, Service Order Agreement, or other ordering document(s) you signed when ordering your Services from Astound (each, a “Service Order”). Together, this SBSSA and your Service Order constitute your “Contract” with Astound. Your use of Astound’s Services constitutes your acceptance of and agreement to comply with the provisions of your Contract. You are responsible for ensuring that your employees, contractors, agents and all other end users of your Services comply with your Contract.

You expressly acknowledge and agree that the Services you receive from Astound pursuant to your Contract are for your sole use and benefit. Your employees, contractors, agents and other persons working for you at your service site are permitted end users of your Services. No other persons are permitted to use your Services. You agree that you will not allow any third party to use your Services. You agree that you will not use the Services for commercial purposes that are competitive with Astound’s business (e.g., use the Services to sell Internet access services, point-to-point data transport services, VoIP services, etc., to third parties within Astound’s service area). You agree that you will use your Services only for lawful purposes, and your use of the Services will at all times comply with applicable law.

### 2. Other Governing Documents.

In addition to the terms of your Contract, your use of the Services is also subject to and governed by Astound’s Acceptable Use Policy for Commercial Services and Astound’s Privacy Policy, both of which are available on the Astound Business website at <http://www.astound.com/business/aup>, and <https://www.astound.com/business/privacy-policy>, respectively.

### 3. Installation and Equipment.

(a) Access to Service Site. In order to install, remove, test, maintain, operate, troubleshoot and otherwise provide your Services, Astound will need to access your service site. If your service site is part of a larger complex, Astound may also need to access portions of the larger complex (such as the telco closet or MPOE room) in order to install and provide your Services. Astound will need to install and leave in place within your service site and/or within portions of the larger complex of which your service site is a part certain networking equipment, cabling and related facilities belonging to Astound (collectively, the “Astound Equipment”). You grant Astound the right to enter onto and access your service site as and to the extent reasonably necessary for Astound to install, remove, test, maintain, operate, troubleshoot, repair and upgrade the Astound

Equipment and provide your Services. You understand and agree that Astound may need to drill holes in walls or other similar activities in connection with installing the Astound Equipment.

(b) Permission of Landlord or Property Manager. If you do not own your service site, or if your service site is part of a larger complex that you do not own, you expressly understand and agree that it is your responsibility (not Astound's responsibility) to arrange for your landlord or your landlord's property manager to provide Astound with access to your service site and to any portion of the larger complex (such as the telco closet or MPOE room) that Astound needs to access in order to install, remove, test, maintain, operate, troubleshoot, repair and upgrade the Astound Equipment and otherwise provide your Services. Astound agrees to reasonably cooperate with you and with your landlord and/or your landlord's property manager regarding access to your service site and the larger complex of which your service site is a part. You agree to indemnify and hold Astound harmless from and against any claims or damages asserted by your landlord against Astound (including costs and reasonable attorneys' fees) with respect to Astound's entry onto your service site and/or the larger complex of which your service site is a part in connection with Astound's provision of Services to you. Astound shall not be liable for any effects of normal Services installation and workmanship, such as holes in walls, etc., which may remain after installation or removal of the Astound Equipment, except for damage caused by gross negligence or willful misconduct on the part of Astound.

(c) Astound Equipment. The Astound Equipment is and shall at all times remain the property of Astound. You agree that you will only use the Astound Equipment to receive and use the Services and for no other use or purpose whatsoever. Astound will perform all maintenance and repair of the Astound Equipment during the term of your Contract. You agree that you will not attempt to repair, relocate, remove, uninstall, re-arrange or otherwise alter the Astound Equipment, nor will you permit any other person to do so. If you believe there is a problem with any of the Astound Equipment, you must immediately contact Astound's customer service department so that Astound can attempt to resolve the problem remotely or send a technician to address the problem. To the extent that you need to handle the Astound Equipment in order to receive your Services (e.g., cycling the power on the router or modem), you agree to use reasonable care in handling, operating and otherwise using the Astound Equipment. If and when your Contract expires or your Services are otherwise terminated, you will promptly arrange for Astound to disconnect and retrieve the Astound Equipment. The Astound Equipment must be returned in substantially the same condition as when it was installed at your service site (ordinary wear and tear excepted). After removal of the Astound Equipment, Astound shall have no obligation to repair or remediate any holes in walls or other similar impacts associated with having had the Astound Equipment installed.

(d) Liability for Damage or Loss. You expressly understand and agree that if any of the Astound Equipment becomes damaged, or is destroyed, lost or stolen while installed at your service site, you will be liable to Astound for the full replacement cost (without any deduction for depreciation or wear and tear) of that Astound Equipment, regardless of whether or not the damage, destruction, loss or theft was beyond your reasonable control. The preceding sentence does not apply to equipment malfunction in the ordinary course of reasonable usage.

(e) Your Equipment. All equipment and facilities provided by you for use with your Services is "Customer Equipment." You are solely responsible for installing, maintaining, configuring, repairing, replacing, upgrading and using your Customer Equipment. Astound has no responsibility whatsoever with respect to your Customer Equipment. If your Customer Equipment impairs the Services, you will remain liable for payment of the applicable Fees for your Services. If, at your request, Astound should attempt to resolve difficulties caused by your Customer Equipment, such efforts will be performed at Astound's discretion and at Astound's then-current standard hourly rates for such work. Any Customer Equipment you use in connection with the Services must meet Astound's current minimum technical and other requirements.

(f) Hosted Voice Equipment. If you receive hosted voice Services from Astound, please refer to Section 8 for special provisions governing hosted voice equipment.

#### **4. Service Term.**

(a) Initial Service Term. The Service Order you signed when ordering your Service(s) specifies the initial service term for which you have agreed to receive and pay for your Service(s) (e.g., 12 months, 24 months, 36 months, etc.) (the “Initial Service Term”).

(b) Promotional Pricing. If the pricing (i.e., monthly recurring charges) at which you receive your Service(s) during your Initial Service Term is a promotional rate or is otherwise discounted from Astound’s standard retail rates for the Service(s), the promotional or discounted rate will end at the expiration of your Initial Service Term. In such event, the pricing (i.e., monthly recurring charges) for your Service(s) is subject to change upon the start of the first Renewal Term described in Section 4(c) below, with the new rate not to exceed Astound’s then-current standard retail rates for the Service(s).

(c) Automatic Renewal. Upon expiration of the Initial Service Term for a specific Service Order, unless either you or Astound delivers written notice of termination to the other party no less than thirty (30) days prior to the expiration of the Initial Service Term, the Service Order at issue will automatically renew for successive periods of one (1) year each (each, a “Renewal Term”). During any Renewal Term, either party may terminate the Service Order at the end of the then-current Renewal Term by delivering written notice of termination to the other party no less than thirty (30) days prior to the expiration of the then-current Renewal Term. Pricing is subject to change at the start of each Renewal Term, with the new rate not to exceed Astound’s then-current standard retail rates for the Service(s).

(d) Early Termination for Customer Convenience. At any time during the Initial Service Term or any Renewal Term for a Service, you may discontinue one or more of your Services and/or terminate the corresponding Service Order by delivering no less than thirty (30) days’ advance written notice of termination to Astound. Any early termination by you pursuant to this Section is a termination for Customer convenience (i.e., without cause). If you terminate one or more of your Services and/or Service Order(s) for Customer convenience (i.e., without cause), you agree to pay Astound the Termination Charge described in Section 5(g) below.

(e) Early Termination for Cause. As stated in Section 11 below, either you or Astound may terminate a Service and/or the corresponding Service Order prior to its scheduled expiration date if the other party breaches a material provision of the Contract and does not cure the breach within the time frames specified in Section 11. Any such termination is a termination for cause. If Astound terminates one or more of your Services and/or the corresponding Service Order(s) for cause, you agree to pay Astound the Termination Charge described in Section 5(g) below.

#### **5. Payment and Billing.**

(a) Fees. All amounts owed by you to Astound under your Contract shall be called “Fees.” You agree to pay Astound the following types of Fees: (i) the monthly recurring charges for your Services; (ii) the monthly recurring charges for rental of Astound Equipment (if any); (iii) any one-time installation charges; (iv) any one-time service charges for work you authorize Astound to perform; (v) all applicable local, state and federal taxes and fees, as more fully described below; and (vi) all other amounts Astound is authorized to charge you pursuant to your Contract (e.g., reimbursement for lost or damaged Astound Equipment, charges associated with overdue accounts, early Termination Charges, etc.). Astound will begin charging Fees for your Service(s) when the Service(s) have been installed, tested and are available for your use. Fixed fees shall be billed in advance and usage-based Fees shall be billed in arrears. Fixed fees for any partial month shall be pro-rated.

(b) Invoices. Astound shall deliver invoices on a monthly basis. You agree to promptly inform Astound of any changes to your billing address. You agree to pay all undisputed invoices within thirty (30) days of receipt. If you believe there is an error in your invoice, you must immediately contact Astound to report same. If you do not report an alleged billing error to Astound within sixty (60) days of receiving the invoice at issue, you agree that you have waived your right to object to the invoice and the Fees shown on the invoice shall be deemed valid and accurate.

(c) Applicable Taxes. The Fees listed in your Service Order do not include Applicable Taxes (as defined below). Applicable Taxes are additional. Except for taxes based on Astound's net income or taxes for which you possess a valid exemption certificate, you shall be responsible for payment of all applicable taxes and regulatory fees, however designated, that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, or other taxes, fees, duties, charges or surcharges, that are imposed on, incident to, or based upon the provision, sale, or use of the Service(s) (collectively "Applicable Taxes"). The Applicable Taxes will be individually identified on invoices. If you are entitled to an exemption from any Applicable Taxes, you must provide Astound with a valid exemption certificate (in a form reasonably acceptable to Astound). Astound will give prospective effect to any valid exemption certificate you submit.

(d) Past-Due Amounts; Disconnection of Services. You expressly understand and agree that failure to timely pay Fees to Astound constitutes a breach of your Contract. Past-due Fees shall bear interest in the amount of 1.5% per month, or the highest amount allowed by law, whichever is lower. You understand and agree that if your account is past-due, Astound may impose reasonable late fees, may disconnect your Service(s) and/or terminate your Contract. To re-connect any disconnected Service(s), you may be required, in addition to paying your full outstanding balance, to pay reconnection charges, to provide Astound with a security deposit, and/or to authorize automatic payment of future invoices from your bank account or credit card. If Astound has terminated your Contract due to your breach for non-payment, Astound reserves the right to refuse to reconnect your Services. Astound may send your past-due account to a collections agency or to an attorney. You will be responsible for all costs and expenses (including collection agency costs and reasonable attorneys' fees) incurred by Astound in collecting past-due Fees from you. Astound may charge you fees for returned checks and/or for debit or credit card chargebacks.

(e) Credit Check; Automatic Payment. You agree that Astound may, as a condition of providing or continuing to provide Services to you, verify your credit standing with one or more credit reporting agencies. Based on your credit rating and other applicable criteria, as a condition of providing or continuing to provide Services to you, Astound may require a security deposit and/or that you arrange for automatic monthly payments to be made from your bank account or credit card. If you have elected to be automatically billed by credit card, debit card or ACH transfer, you expressly authorize Astound to automatically collect payment of your balance owed on a monthly basis.

(f) Responsibility for Unauthorized Charges. You expressly understand and agree that you are legally responsible for payment of all charges incurred through use of your Service(s), regardless of whether or not such charges were actually authorized by you (e.g., international long distance charges, pay-per-view video, VOD, etc.). You are responsible for securing your internal network and your Services so that unauthorized use of your Services does not occur. Astound is entitled to assume that any communication made through your Service(s) is authorized by you until you alert Astound that your Services have been compromised.

(g) Early Termination Charge. You agree to pay Astound the early termination charge (the "Termination Charge") described in this paragraph if either of the following occur: (i) you terminate one or more of your Service(s) prior to the expiration of the Initial Service Term or the then-current Renewal Term for Customer convenience (i.e., without cause); or (ii) Astound terminates one or more of your Service(s) prior to the expiration of the Initial Service Term or the then-current Renewal Term for cause.

(i) Calculation of Termination Charge Incurred During the Initial Service Term. If you incur a Termination Charge during your Initial Service Term, the Termination Charge shall equal the sum of the following: (1) all unpaid amounts for Services actually provided prior to the early termination date; (2) any non-recurring charges associated with the terminated Service(s) that have not yet been paid to Astound; (3) any disconnection or other early termination charges Astound reasonably incurs on your behalf in connection with the early termination; and (4) the greater of (A) any buy-out payment Astound made to you in connection with the Service(s) being terminated, or (B) the monthly recurring charges for the Service(s) that are being terminated multiplied by the number of months then-remaining in the Initial Service Term (partial months to be pro-rated). You expressly acknowledge and agree that the calculation of the Termination Charge set forth above is a genuine estimate of Astound's actual damages in the event of the early termination of your Service(s) during the Initial Service Term and is not a penalty.

(ii) Calculation of Termination Charge Incurred During a Renewal Term. If you incur a Termination Charge during a Renewal Term, the Termination Charge shall equal the sum of the following: (1) all unpaid amounts for Services actually provided prior to the early termination date; (2) any non-recurring charges associated with the terminated Service(s) that have not yet been paid to Astound; (3) any disconnection or other early termination charges Astound reasonably incurs on your behalf in connection with the early termination; and (4) fifty-percent (50%) of the monthly recurring charges for the Service(s) that are being terminated multiplied by the number of months then-remaining in the Renewal Term (partial months to be pro-rated). You expressly acknowledge and agree that the calculation of the Termination Charge set forth above is a genuine estimate of Astound's actual damages in the event of the early termination of your Service(s) during a Renewal Term and is not a penalty.

## **6. Astound's Internet Access Services.**

If you receive Internet access Services from Astound, the provisions of this Section apply to your use of Astound's Internet access Services.

(a) Acceptance of Risk. You expressly acknowledge and agree that the Internet is a shared network that is not secure and is not controlled by Astound. Any content you access through the Internet access Services is provided by independent third-party content providers over which Astound does not exercise control. Astound does not preview, exercise editorial control over, or endorse any opinions or information accessed through the Services. You expressly understand and agree that it is possible data or files you send or receive over the Internet will be monitored by third-parties and/or subject to unauthorized access by third-parties. Third-parties may gain access to your data, including confidential information. Data or files transmitted over the Internet may contain computer viruses or other harmful components. Astound has no responsibility and assumes no liability for any such acts or occurrences. You expressly assume the risks inherent in connecting your internal network and your Customer Equipment to the Internet and in accessing and using the Internet through the Services.

(b) Bandwidth Limitations; Data Allotment. Astound offers multiple tiers of Internet access Service to meet the differing needs of its customers. When you signed your Service Order, you selected a maximum bandwidth for your Internet access Service. You expressly understand and agree that the actual bandwidth you experience at any time will vary based on numerous factors, such as the type and configuration of your internal network equipment, the number of devices simultaneously using your Internet access Service, the amount of traffic Astound's network is then-experiencing, and other similar factors. Each tier of Internet access Service may include an allotment of data consumption that you may use during each calendar month at no additional charge. Downloading and uploading are aggregated for purposes of determining your data consumption. If your tier of Internet access Service includes a data allotment, you understand and agree that you will be charged

additional fees for data usage in excess of your allotted amount. Unused data from your monthly usage allotment expires at the end of your billing cycle and does not carry over to subsequent months.

(c) IP Addresses. Any IP addresses provided to you by Astound in connection with the Services are and will remain the property of Astound. You will not alter, modify, sell, lease, assign, encumber or otherwise tamper with the IP addresses. Astound reserves the right to change addressing schemes at any time.

## **7. Astound's Phone Services.**

If you receive phone Services (including hosted voice Services) from Astound, the provisions of this Section apply to your use of Astound's phone Services.

(a) VoIP Services. Astound's phone Services are provided via Internet Protocol voice network (aka "VoIP"). VoIP services operate using the standard commercial electrical power provided to your service site. Astound does not provide a back-up generator, UPS or other alternate power source for the Services; accordingly, in the event of a power outage at your service site, unless you have arranged for back-up power, the VoIP Services will be unavailable until electrical service is restored. You acknowledge and accept that the Service is not represented as fail-safe and is not designed for use in situations where error-free or uninterrupted service is essential. Astound will not be responsible for, and you expressly assume all risk of, any losses or damages arising as a result of the unavailability of the Service, including the inability to reach 911 or other emergency services, or the inability to contact your security system, your fire alarm system or any remote medical monitoring service provider.

(b) Battery Back-Up. Astound may offer a battery back-up for purchase with the phone Services. If you have purchased a battery back-up from Astound, you understand and agree that the performance of the battery back-up is not guaranteed. If the battery back-up power supply is not correctly installed, fails or malfunctions, or is exhausted during the course of a sustained power outage, your phone Services will not function until electrical service is restored.

(c) Important Notice Regarding E911 Service. Federal Communications Commission rules require providers of VoIP phone services to remind customers of these important E911 facts: (i) Astound needs a complete and correct service site address in order to deliver accurate location information to E911; (ii) If you move your VoIP phone equipment to a different physical address, you must call Astound immediately to update the location information, otherwise E911 will not have your correct location information on file; (iii) VoIP services operate using the standard electrical power provided to the service site, so unless you have arranged for a back-up power supply, the Services will be unavailable during a power outage; (iv) You may not be able to make E911 calls if there is a power outage, network outage or other technical problems, or if your phone service is terminated or suspended.

(d) Disclosure of Your Information. Unless you expressly inform Astound otherwise as described below, you agree that Astound may disclose your name, address and/or telephone number(s) to the general public in connection with Caller ID functions, telephone directories, 411 and E911 services. You agree that Astound may disclose your personally identifiable information to the communications providers serving persons to whom you make phone calls so that your calls can be completed. If you wish to have Astound remove any of the information from any of the services described above, you must inform Astound's customer service department of your wishes.

(e) Limitation of Liability Regarding Directory Listings. Should any of the following types of errors occur with respect to the listing or non-listing of one or more of your phone number(s), the total liability of Astound in connection with such error will not in the aggregate exceed the monthly charges, if any, which you have actually paid to Astound to list or not to list or to publish or not to publish the number(s) at issue for the affected Small Business Services Subscriber Agreement

period: (i) any phone number for which you have requested unlisted or nonpublished status is published or included in any directory, directory assistance database, or is otherwise disclosed to any unauthorized person; (ii) any phone number which you requested be published or listed in any directory or directory assistance database is not so published or listed; and/or (iii) any published or listed phone number contains material errors or omissions. You agree to hold Astound, its officers, directors, employees, agents and affiliates harmless from and against any and all claims for damages in excess of the foregoing that are caused or claimed to have been caused, directly or indirectly, by the types of errors described in this paragraph.

(f) Transfer/Porting of Phone Numbers.

(i) Transfer/Porting of Phone Numbers to Astound Phone Service. If you are switching to Astound's phone Service from another phone service provider, you may transfer (aka "port") your existing phone number(s) to Astound's phone Service, provided that: (1) you request the phone number transfer when you place your order for Astound's phone Service; (2) your current/previous phone service provider releases your phone number(s) at Astound's request, without delay or charge; (3) the transfer of your phone number(s) to Astound's Service would not, in Astound's view, violate applicable law or Astound's standard phone number porting processes and procedures; (4) where applicable, you acknowledge and agree that if your Astound phone Service is set up before the number transfer becomes effective, you may only be able to make limited outgoing calls until the transfer takes effect; and (5) you acknowledge and agree that, to avoid interruption in your phone service, you must have your Astound phone Service installed prior to the effective date of the number transfer. Your existing/previous phone service will be disconnected on the effective date of the number transfer. Thus, if you do not have Astound's phone Service installed prior to the effective date of the port, you will not have phone service for the ported phone number until your Astound phone Service is activated.

(ii) Transfer/Porting of Phone Numbers from Astound to Another Provider. If you are switching to another phone service provider from Astound's phone Service, you may transfer (aka "port") your existing phone numbers from Astound to your new provider by terminating your phone Service with Astound and placing the number transfer order with your new phone service provider. Astound will release your phone number(s) to your new service provider so long as: (1) your new service provider requests the number transfer from Astound upon termination of your Astound phone Service; (2) your new service provider is willing to accept transfer of the phone number(s) without delay or charge; and (3) transfer of your phone number(s) would not, in Astound's view, violate applicable law or Astound's standard phone number porting processes and procedures.

(g) Long Distance Providers. Unless otherwise expressly agreed to in writing, Astound has no obligation or responsibility to arrange for termination or removal of telecommunications services provided by long distance providers. You remain responsible for terminating and removing any such unwanted services and circuits provided by other long distance providers. You understand that you may designate only one primary interexchange carrier for any one telephone number for state-to-state (interLATA), intrastate and international usage.

(h) Long Distance Charges. Any long distance rates listed in your Contract are the rates as of the effective date of that Contract and may not reflect the actual rates applicable at any given time during the term of the Contract. All long distance charges are exclusive of applicable taxes, and Astound may add or adjust rates and charges in order to recover amounts it is required or permitted by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs ("Governmental Charges"), plus amounts to recover reasonable administrative costs associated with such Governmental Charges.

(i) International Calling Charges. The rates listed in your Contract do not include charges for international calls. Astound will pass through to you all charges for any international calls made via your phone service.

(j) CPNI. Astound will have access to certain customer proprietary network information of yours (“CPNI”). Under federal law, you have a right to, and Astound has a duty to protect, the confidentiality of CPNI. CPNI may be useful to tailor services to you and to enhance Astound’s ability to meet your needs. You expressly authorize Astound, its affiliates, or its sales representatives to use CPNI to determine if you could benefit from other services offered by Astound and its affiliates, and market them to you. You may withdraw your authorization at any time by informing Astound in writing. Any such withdrawal will not affect the quality of Services provided to you.

## 8. Astound’s Hosted Voice Services.

If you receive hosted voice Services from Astound, the provisions of this Section apply to your use of Astound’s hosted voice Services.

(a) Leased Hosted Voice Equipment. If you are leasing hosted voice equipment (the “Leased Equipment”) from Astound, then the Leased Equipment shall at all times be and remain the personal property of Astound. Astound shall be responsible for the regular maintenance and repair of all Leased Equipment. Should you experience problems with any of the Leased Equipment, you must contact Astound and Astound will use commercially reasonable efforts to repair or replace the malfunctioning Leased Equipment as soon as reasonably possible after receiving your notification. For Leased Equipment, Astound shall have the right at any time, and from time to time, during the service term to substitute different hosted voice equipment for some or all of the Leased Equipment initially installed at your service site; provided that the substituted Leased Equipment has equivalent or better functionality than the previously installed Leased Equipment. Should any Leased Equipment require repair or replacement due to your negligent or willful conduct, including the misuse or abuse of same, you shall reimburse Astound for the costs of such repair or replacement.

(b) Purchased Hosted Voice Equipment. If you have purchased hosted voice equipment (the “Purchased Equipment”) through Astound, then upon your acceptance of the Purchased Equipment, the Purchased Equipment shall be and remain your personal property. As between Astound and you, you shall be solely responsible for the repair and maintenance of all Purchased Equipment and any and all obligations and liabilities associated therewith. **YOU ACKNOWLEDGE THAT THE PURCHASED EQUIPMENT IS NOT MANUFACTURED BY ASTOUND AND THAT ASTOUND DOES NOT SUPPORT AND SHALL HAVE NO MAINTENANCE OBLIGATIONS OR OTHER LIABILITY REGARDING SAME.** ASTOUND WILL EITHER DELIVER THE MANUFACTURER’S WARRANTY FOR THE PURCHASED EQUIPMENT DIRECTLY TO YOU OR PASS THROUGH THE MANUFACTURER’S WARRANTY TO YOU DEPENDING ON THE APPLICABLE MANUFACTURER’S POLICY. ASTOUND HEREBY ASSIGNS TO YOU ALL OF THE MANUFACTURERS’ WARRANTIES AND INDEMNITIES RELATING TO THE PURCHASED EQUIPMENT TO THE EXTENT ASTOUND IS PERMITTED BY THE MANUFACTURER TO MAKE SUCH ASSIGNMENT TO YOU. SUCH ASSIGNMENT IS SUBJECT TO ALL OF THE TERMS AND CONDITIONS IMPOSED BY THE MANUFACTURER WITH RESPECT THERETO. YOUR REMEDY FOR DEFECTIVE PURCHASED EQUIPMENT SHALL BE AS SET FORTH IN THE APPLICABLE MANUFACTURER’S WARRANTY WHICH IS YOUR SOLE AND EXCLUSIVE REMEDY FOR BREACH OF AN EQUIPMENT WARRANTY. ASTOUND DOES NOT EXTEND ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, EITHER TO YOU OR TO THIRD PARTIES, FOR ANY PURCHASED EQUIPMENT PURCHASED BY YOU PURSUANT TO A SERVICE ORDER AGREEMENT, NOR SHALL ASTOUND HAVE ANY LIABILITY FOR ANY LOSS, DAMAGE, OR EXPENSE DIRECTLY OR INDIRECTLY ARISING FROM YOUR USE OF (OR INABILITY TO USE) THE PURCHASED EQUIPMENT OR A THIRD PARTY’S UNAUTHORIZED USE OF THE PURCHASED EQUIPMENT. Any questions concerning or requests for maintenance or repair of the Purchased Equipment should be directed to the manufacturer of the Purchased Equipment at issue. If Purchased Equipment impairs the Services, you will remain liable for payment of the applicable monthly service fees. If, at your request, Astound attempts to resolve difficulties caused by Purchased Equipment, you will be responsible for Astound’s then-current commercial rates and terms for such consulting services on a time and materials basis.



(c) Installation of Hosted Voice Equipment. As a part of the hosted voice Service, Astound will install the hosted voice equipment for you (whether such equipment is Leased Equipment or Purchased Equipment) at the specified service site. If your service site contains existing inside wiring, Astound will use your existing wiring for the installation; provided, that Astound's use of any existing wiring shall not constitute any type of representation, warranty or guarantee to you that the existing wiring is in good condition and/or free from defects. If your service site does not contain the necessary inside wiring (as determined by Astound in Astound's commercially reasonable judgment), Astound will so notify you and you may elect to install wiring itself or to request that Astound install wiring for you. If Astound installs wiring for you, such work shall be performed on a time and materials basis, with the wiring to become your personal property upon your acceptance of the Service. If, during the installation process, Astound discovers or uncovers any hazardous materials or substances at your service site: (i) Astound shall have the option to cease work at the service site and terminate your hosted voice Service Order, without any liability for or obligation to remove or remediate the hazardous materials so discovered; and (ii) you shall indemnify, defend and hold Astound harmless from and against any and all claims, costs, damages and expenses incurred by Astound in connection with or as a result of the pre-existing hazardous materials, including attorneys' and experts' fees and costs as well as the costs of any environmental assessment or remediation work that may be performed at the service site.

(d) Bring-Your-Own-Phone Provisions. For certain models of phones, Astound has the ability to attempt to connect phones that you already own (the "Customer Phones") to Astound's hosted voice Service, which eliminates the need for you to lease or purchase phones from Astound. If you elect to use your existing Customer Phones with Astound's hosted voice Service, you expressly agree to the following provisions: (i) you must supply the passwords for the Customer Phones, otherwise the phones may not be usable with Astound's network; (ii) the process of connecting the Customer Phones to Astound's network involves re-setting the Customer Phones to their factory defaults, which will delete all information stored on the phones, including contact lists, speed dial numbers, as well as the configurations established for connectivity to your previous hosted voice solution; (iii) it is possible that attempting to connect the Customer Phones to Astound's network could render one or more of the Customer Phones unusable, requiring a firmware re-flash. In such event, Astound will have no responsibility or liability for repairing or replacing the Customer Phone(s) at issue. Instead, you expressly assume the risk inherent in attempting to attach the Customer Phones to Astound's hosted voice network; and (iv) Astound will be unable to provide support and troubleshooting for Customer Phones after implementation. Astound will be able to troubleshoot problems with Astound's network, but if the network is functioning properly and there are technical problems with any of the Customer Phones, you must seek equipment support from the manufacturer or original vendor of the equipment.

(e) Hosted Voice Software. Certain types of hosted voice Services, such as virtual seats, mobile clients, and video conferencing solutions, require the installation of third-party software on your equipment. Additionally, both Leased Equipment and Purchased Equipment may include a limited license to use certain third-party software and/or firmware provided by the vendor or manufacturer of the Leased Equipment / Purchased Equipment. Any such software or firmware provided to you in connection with hosted voice Services shall be collectively referred to as the "Hosted Voice Software." You expressly understand and agree that, unless otherwise provided in any written license agreement or other documentation from the third-party vendor or manufacturer of the Hosted Voice Software, you may only use the Hosted Voice Software for the purposes of using and operating the Leased Equipment / Purchased Equipment and receiving the Services as contemplated by your Contract. You understand and agree that each of the following is prohibited with respect to the Hosted Voice Software: (i) copying the Hosted Voice Software or associated documentation, either in whole or in part; (ii) modifying, reverse compiling, reverse assembling or otherwise reverse engineering the Hosted Voice Software, either in whole or in part, or attempting to do any of the foregoing; (iii) sub-licensing, leasing, sub-licensing, selling or otherwise distributing the Hosted Voice Software, either in whole or in part, and whether or not for profit, to any third parties; and (iv) creating derivative works of, from, based on, using or incorporating all or any portion of the Hosted Voice Software.

(f) Use of Specific Hosted Voice Features. Astound's hosted voice Services may include certain features that are enabled by "add-in" software or service components. These features are intended to enhance the functionality of the hosted voice Services and provided you with additional convenience and collaboration tools. Examples of such features include, but are not limited to, SMS messaging, voicemail transcription, voicemail recording and other similar functions, expressly including any additional "add-in" feature enhancements that Astound may make available or incorporate into the hosted voice Services in the future. Astound has established its pricing for the hosted voice Services based on assumptions of normal business use of the hosted voice Services within the United States of America. Should your use of the hosted voice Services, including any of the "add-in" features such as SMS messaging, significantly exceed normal business use, Wave reserves the right to disable the feature(s) at issue and/or impose additional cost-recovery charges for your excessive use.

## **9. Astound's Video Services.**

If you receive video Services from Astound, the provisions of this Section apply to your use of Astound's video Services.

(a) Channel Line-Up. You expressly understand and agree that Astound may, at any time and from time to time, change the number and/or identity of the signals comprising your video Services and/or the placement of these signals. Astound, its authorized agents and equipment manufacturers may send code updates to the video equipment including, but not limited to, cable modems, digital interactive televisions with CableCARDS, and MTAs at any time it is determined necessary to do so as part of the video Services provided hereunder. Such code updates may change, add or remove features or functionality of any such equipment or the video Services.

(b) Additional Charges. Through the video Services, you (and your end users) may have the ability to purchase additional products such as video-on-demand and/or pay-per-view. You expressly agree that you shall pay for all such purchases made through your video Services, regardless of whether or not such purchases were actually authorized by you.

(c) Rate Increases. You expressly understand and agree that the pricing for video Services is subject to increase at any time. Should Astound elect to increase the price of some or all of your video Services, Astound shall provide you with at least thirty (30) days advance written notice specifying the amount of the price increase.

(d) Public Areas. Pursuant to the provisions of one or more of Astound's programming agreements with video content providers, you may be restricted from showing certain channels of the Services in public areas (e.g., meeting rooms, lobbies, exercise rooms, restaurants, and the like). You expressly agree that you will not display the video Services in public areas. You may be required by law to obtain separate music performance license(s) if you use the audio component of the video Services in public areas. You expressly understand and agree that you are solely responsible for (i) investigating and determining the need for such license(s) and (ii) taking all steps necessary to obtain and pay for such license(s). Astound shall not be liable to you or to any third party should you violate the provisions of this paragraph.

(e) Right to Audit. Astound may, at any time, upon reasonable advance notice to you, enter onto your service site to perform an audit verifying that your use of the video Services complies with the provisions of your Contract.

## **10. Performance; Force Majeure.**

(a) General Standard. Astound shall use commercially reasonable efforts in keeping with normal industry standards to ensure that the Services are available to you twenty-four (24) hours per day, seven (7) days per week. It is possible, however, that there will be interruptions in the Services. You expressly understand and agree that the Services may be unavailable from time to time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Astound's reasonable control. Temporary interruptions in the Services for such reasons, as well as all interruptions caused by you, or by force majeure events, will not constitute failures by Astound to perform its obligations under your Contract.

(b) Force Majeure. Astound shall not be liable to you for any delay in or failure of performance hereunder due to causes beyond Astound's reasonable control, including, but not limited to, acts of God, fire, flood, earthquake, ice storms, wind storms, or other severe weather events, explosion, vandalism, cable cut, power outage, terrorist acts, insurrection, riots or other civil unrest, national or regional emergency, a governmental authority's failure to timely act, inability to obtain equipment, material or other supplies due to strike, lockout or work stoppage, or any law, order, regulation, direction, action or request of any civil or military governmental authority.

## **11. Default and Remedies.**

(a) Default by Customer. Each of the following shall constitute a default by you under your Contract (each, a "Default"): (i) if you do not pay any undisputed Fees when due, and you do not cure your failure to pay within ten (10) days after receiving written notice from Astound regarding same; (ii) if you do not comply with any other material provision of your Contract, and you do not cure your non-compliance within thirty (30) days of receiving written notice from Astound regarding the breach; or (iii) if you file or initiate proceedings, or have proceedings initiated against you, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

(b) Remedies for Customer's Default. In the event of your Default under your Contract, Astound may, at its option: (i) suspend any applicable Services until such time as your Default has been corrected (provided, however, that any suspension shall not relieve your on-going obligation to pay Astound all Fees and other amounts due under the Contract as if such suspension of Services had not taken place); (ii) terminate the applicable Service(s) and/or the applicable Service Order(s) for cause; and/or (iii) pursue any other remedy available to Astound under the Contract or applicable law. In the event of early termination by Astound for your Default pursuant to this Section 11(b), you shall pay Astound the Termination Charge described in Section 5(g) above.

(c) Default by Astound. Each of the following shall constitute a Default by Astound under your Contract: (i) if Astound does not comply with any material provision of the Contract, and Astound does not cure its non-compliance within thirty (30) days of receiving written notice from you regarding the breach; or (ii) if Astound files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

(d) Remedies for Astound's Default. In the event of Astound's Default under the Contract, you may, at your option: (i) terminate the applicable Service(s) and/or the applicable Service Order(s) for cause without incurring any Termination Charge or other early termination fee; and/or (ii) pursue any other remedy available to you under your Contract or applicable law. In the event of early termination by you for Astound's Default pursuant to this Section 11(d), Astound shall reimburse you for any pre-paid, unused monthly service Fees attributable to the terminated Service(s) and/or Service Order(s), and you shall have no further liability to Astound for the terminated Service(s) and/or Service Order(s). Early termination by you pursuant to this Section shall not relieve you of your obligation to pay all Fees incurred prior to the early termination date.

## **12. Limitation of Liability.**

(a) General Limitations. Astound shall not be liable for any loss or damage occasioned by a force majeure event. Astound shall not be liable to you for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or incurred in connection with Astound's performance or failure to perform under your Contract, including, by way of example and not by way of limitation, lost profits, lost revenue, loss of goodwill, loss of anticipated savings, loss of business opportunity, loss of data or cost of purchasing replacement services, even if Astound had been advised, knew or should have known of the possibility of such special damages. Astound's total cumulative liability to you for any and all causes and claims arising under your Contract, whether based in contract, tort, warranty or otherwise shall be limited to the lesser of: (i) the actual direct damages sustained by you; or (ii) an amount equivalent to the total monthly recurring charges received by Astound from you for the Service(s) at issue during the three (3) month period immediately preceding the event giving rise to the liability. You irrevocably and permanently release Astound from all obligations, liability claims or demands in excess of the foregoing limitations.

(b) Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH ELSEWHERE IN YOUR CONTRACT, ASTOUND MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EITHER IN FACT OR BY OPERATION OF LAW, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY SERVICE(S) OR ANY ASTOUND EQUIPMENT PROVIDED TO YOU PURSUANT TO YOUR CONTRACT.

(c) Assumption of Risk. Astound has no control over and expressly disclaims any liability or responsibility whatsoever for (i) the content of any information transmitted or received by you through your Service(s), or (ii) Service interruptions attributable to your network, to failures of the Customer Equipment, or to any other such causes. YOU UNDERSTAND AND AGREE THAT YOUR USE OF YOUR SERVICES IS AT YOUR OWN RISK. YOU SHALL BE SOLELY RESPONSIBLE FOR THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF INFORMATION YOU TRANSMIT OR RECEIVE USING YOUR SERVICES.

## **13. Indemnification.**

You shall indemnify, defend and hold Astound and its members, managers, officers, agents and employees harmless from and against any and all claims, lawsuits or damages asserted against them by any third-party to the extent the same arise out of or are due to: (i) your negligence or willful misconduct in exercising your rights or performing your obligations under your Contract; (ii) your noncompliance with or default under your Contract; and/or (iii) your failure to comply with applicable law in connection with your performance under your Contract.

## **14. Binding Arbitration.**

(a) Agreement to Arbitrate. Except as set forth in Subsection 14(b) below, any and all disputes, controversies or claims, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, arising out of or related to your Contract and the Service(s) provided to you by Astound pursuant to your Contract that are not resolved between the parties through good faith negotiation shall be settled and determined by final and binding arbitration. Any arbitration proceeding shall be a bilateral proceeding involving only you and Astound; you may not act or purport to act as a representative of a class or group of similarly situated persons. The Federal Arbitration Act, 9 U.S.C. §§ 1-15, not state law, shall govern the arbitrability of all disputes. The provisions of this Section 14 shall survive the expiration or termination of your Contract.

(b) Exclusion from Arbitration; Option to Proceed in Small Claims Court. Notwithstanding the provisions of Subsection 14(a) above, where the total amount in controversy in the dispute is Five Thousand Dollars (\$5,000) or less, the party pursuing the claim (either you or Astound) may elect to resolve the dispute through arbitration, or may instead elect to resolve the dispute in small claims court.

(c) Arbitration Procedure. Any arbitration hearing shall be before a single neutral arbitrator and shall be held in a location reasonably convenient to both you and Astound, in the offices of Judicial Arbitration & Mediation Services, Inc. or a similar professional dispute resolution organization. The arbitration shall be administered pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall not have the power to order any pre-hearing discovery of documents or the taking of depositions, but may compel attendance of witnesses and the production of documents at the hearing. Any award of the arbitrator shall be in writing and shall state the reasons for the award. The arbitrator shall not have the power to award any damages in excess of the liability limitations set forth in the Contract. Judgment upon an award may be entered in any court having competent jurisdiction. The parties, their representatives and participants and the arbitrator shall hold the existence, content and result of the arbitration in confidence, except to the limited extent necessary to enforce a final settlement agreement or to obtain or enforce a judgment on an arbitration decision and award. Each party shall bear its own expenses and the parties shall share equally the filing and other administrative fees of the arbitration including the expenses of the arbitrator.

(d) Waiver of Your Rights. **YOU EXPRESSLY UNDERSTAND AND AGREE THAT BY EXECUTING YOUR SERVICE ORDER AND RECEIVING SERVICES FROM ASTOUND, YOU ARE AGREEING TO THE PROVISIONS OF THIS SECTION 14 WHICH REQUIRE THAT ANY DISPUTES BETWEEN YOU AND ASTOUND BE RESOLVED BY BINDING ARBITRATION AND NOT BY GOING TO COURT BEFORE A JUDGE AND/OR A JURY. YOU KNOWINGLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, YOUR STATUTORY AND CONSTITUTIONAL RIGHT TO TRIAL BEFORE A JUDGE AND/OR A JURY OF ANY DISPUTES, CLAIMS OR ISSUES ARISING OUT OF OR RELATING TO YOUR CONTRACT AND THE SERVICES PROVIDED TO YOU BY ASTOUND.**

## 15. Miscellaneous.

(a) Entire Agreement. The Contract constitutes the entire agreement between you and Astound regarding the Service(s) provided to you by Astound pursuant to the Contract. The Contract supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Service(s) or the parties' rights or obligations regarding the Service(s). Any prior representations, promises, inducements, or statements of intent regarding the Service(s) that are not expressly provided for in the Contract are of no effect.

(b) Governing Law; Interpretation. The Contract and all matters arising out of the Contract shall be governed by the laws of the State in which you receive your Service from Astound. The Contract and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of the Contract shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties. If any provision of the Contract or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of the Contract and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect.

(c) No Assignment. You understand and agree that the Service Order you signed with Astound is for your sole benefit. You may not assign or transfer your rights under any Service Order to any other person without the prior written consent of Astound, which may be granted or withheld in Astound's sole discretion. Any attempt by you to transfer your rights under a Service Order without Astound's prior written consent shall be void and shall constitute a material breach by you of your Contract.

(d) Disclaimer Regarding HIPAA Compliance. If and to the extent your business is a covered entity under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and needs its business associates to comply with HIPAA, Astound hereby notifies you that Astound’s operations are not complaint with HIPAA. Astound’s operations are generally exempt from HIPAA pursuant to the conduit exception. However, if and to the extent the Services provided to you would not qualify for the conduit exception, Astound’s operations with respect to the Services are not HIPAA complaint. You understand and agree that Astound will not execute a business associate agreement under HIPAA.

(e) No Waiver. No failure by either party to enforce any rights under the Contract will constitute a waiver of such rights. Nor shall a waiver by either party of any particular breach or Default constitute a waiver of any other breach or Default or any similar future breach or Default. Astound’s acceptance of any payment under the Contract will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Astound for additional amounts due from you.

(f) Relationship; No Third Party Beneficiaries. The Contract is a commercial contract between you and Astound and the relationship between the parties is that of independent contractors. Nothing in the Contract creates any partnership, principal- agent, employer-employee or joint venture relationship between the parties or any of their affiliates, agents or employees for any purpose. The Contract is for the sole benefit of you and Astound and is not intended to confer any rights on any other person; there are no third party beneficiaries of the Contract.

(f) Compliance with Laws. Each of the parties agrees to comply with all applicable local, state and federal laws, rules, regulations and ordinances in performing under the Contract.

(g) Survival. Those provisions of the Contract that by their nature, in order to be given full force and effect, must survive the expiration or earlier termination of the Contract or any Service Order shall so survive.

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