

# CARRIER ENHANCED VOIP SERVICE AGREEMENT TERMS AND CONDITIONS

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## **WITNESSETH AND DEFINITIONS:**

1stpoint is in the business of providing wholesale SIP-based VOIP services. Customer desires to purchase from 1stpoint, and 1stpoint desires to sell to customer, wholesale VOIP services, in accordance with the terms and conditions set forth in this Agreement as well as defined in FCC document 47CFR64.702. "Service" shall mean those services described in the attached relevant Annex(es) incorporated herein by reference. "Service Date" shall mean the date of completion of provisioning and testing of the Services; which date will be notified to the Customer by 1stpoint.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. Scope of Agreement and Term**

1.1. **SERVICES AND BILLING.** In accordance with the terms and conditions of this Agreement, 1stpoint shall provide certain Services to Customer as specified in any Service Addendum or Service Order attached to this Agreement ("Service(s)"). Billing for such Services shall begin as of the "Acceptance Date" set forth in this Agreement.

1.2. **TERM OF SERVICE.** The initial term of service shall begin on the Effective Date, and continue for the duration of the term as defined in this Agreement.

1.3. **RENEWAL.** This Agreement, and all Services shall automatically renew for a term of twelve (12) months, unless one party notifies the other party at least thirty (30) days prior to the expiration of the then-current term of its intention to not renew this Agreement.

### **2. DESCRIPTION OF SERVICES.**

1stpoint, either directly or through its affiliates or underlying carriers, shall provide the Services, and Customer shall purchase and utilize the Services per the terms and conditions of this Agreement. The Parties may, by mutual agreement, add and incorporate additional services by executing additional Addendums or Addenda and incorporating them herein

### **3. PRICING, BILLING and CAPS.**

For the Services provided pursuant to this Agreement, Customer shall pay 1stpoint per the pricing and provisions set forth in the attached relevant Addendum or Addenda. 1stpoint, in its sole discretion may amend the Addendum or Addenda from time to time and such amendments shall

become effective twenty-four (24) hours after notice to Customer.

3.1. 1stpoint shall provide a weekly invoice for the Services and the invoiced amounts shall be due and payable by Customer in U.S. Dollars in immediately available funds within the time stated in the relevant Annex(es) hereto.

### **3.2. BILLING PROCEDURE.**

Customer agrees to accept delivery of invoices electronically via the Internet and agrees to remit payment via Automated Clearinghouse ("ACH") or wire transfer to 1stpoint, LLC in care of: Capital One Bank, Account #7204005180, or such other bank or account as 1stpoint may in writing direct Customer to remit payment.

3.3. In no event shall 1stpoint be liable for the fraudulent or illegal use of the Services by any customers or end-users of Customer, or for any amounts that Customer is unable to collect from its customers, end users or others.

3.4. Customer may, in good faith, dispute any invoiced amount. It shall submit to 1stpoint such dispute within fifteen (15) days following receipt of such disputed invoice the written documentation identifying the disputed invoiced amounts. It should include an 1stpoint-supplied Call Detail Records (CDR) for the disputed calls and the reason for the dispute. The Parties shall investigate the disputed invoiced amounts and upon mutual agreement, 1stpoint may, at its sole discretion, issue a credit against future invoices. Failure to contest a charge within fifteen (15) days of the date of the invoice will create an irrefutable presumption of the correctness of the charge, absent manifest error, defined as a clerical error obvious to both parties.

3.5. Any amounts due hereunder that are not paid when due shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount allowable by law, compounded daily, beginning with the day following the date on which payment was due, and continuing until paid in full. Further, 1stpoint shall have the right to set off any amounts due hereunder which are not paid when due against any amounts owed to Customer by 1stpoint or any of its affiliates pursuant to any other agreement or arrangement.

3.6. 1stpoint may make billing adjustments for 1stpoint Services for a period of one hundred eighty (180) calendar days after the date a Service is rendered, and for Third Party Services at any time within two (2) months of 1stpoint's receipt of any invoice from the Third Party Provider, or any other timeframe allowed by contract, law, or government rule or regulation, whichever is later.

3.7. Customer agrees to pay 1stpoint all local, state, federal taxes or services fees in connection with Services provided by 1stpoint. 1stpoint has the right to pass on to Customer any changes in taxes which may be incurred during the Term of Services.

3.8. 1stpoint may, at any time, validate the credit worthiness of Client at any time during the Term using available verification procedures.

## **4. SECURITY DEPOSIT.**

On or before the Start Date (but in any case prior to the

Service Date) Customer may be required to provide 1stpoint with a security deposit ("Deposit") as set forth in the attached relevant Addenda hereto for measured services, which shall be based on amounts equal to thirty (30)- or seven (7)- day anticipated usage, at 1stpoint's discretion.

4.1. 1stpoint may draw upon the Deposit at any time to recover any amounts due and unpaid, in which case Customer shall immediately replenish the Deposit to its prior value. 1stpoint shall not waive any of its rights or remedies by drawing upon the Deposit to recover overdue or unpaid amounts. In the event that 1stpoint draws upon the Deposit, it may suspend the provision of Services until Customer replenishes the Deposit to its original value.

4.2. If at any time, Customer's payment history is or becomes unacceptable to 1stpoint, 1stpoint may require that Customer provide, modify, or increase the amount or form of the Deposit. The Customer shall have twenty-four (24) hours from the receipt of 1stpoint's written request to comply with this request, and if Customer fails to do so, 1stpoint may immediately suspend the delivery of Services and/or terminate this Agreement without further notice or demand.

## **5. TERMINATION.**

5.1. In addition to any other rights at law or in equity, or those stated elsewhere in this Agreement, 1stpoint may immediately suspend the delivery of Services and/or terminate this Agreement in the event that Customer (i) fails to provide a Deposit as required in this Agreement; (ii) fails to make payment for prepaid domestic US service by the first of each month without any notice or fails to make payment for other measured services when due and to remedy such non-payment within (24) hours after receipt of written notice thereof from 1stpoint; (iii) becomes insolvent or bankrupt or ceases paying its debts generally as they mature; or (iv) commits a breach of any of the terms of this Agreement (other than a breach of the Deposit or payment obligation as addressed in (i) and (ii) above) and fails to remedy such breach within three (3) days after receipt of written notice thereof from 1stpoint.

5.2. In the event of any termination of this Agreement, Customer shall pay 1stpoint for all Services rendered through and including the date of termination, in addition to any other charges established by this Agreement. 1stpoint reserves the right to backbill at anytime for any possible access or reciprocal fees should those arise.

5.3. In the case of early termination of the fixed term pursuant to this Agreement prior to the expiration of the Term either by 1stpoint pursuant to this Paragraph or by Customer for any reason other than a material breach solely attributable to 1stpoint, Customer shall remain liable to 1stpoint for the monthly charges or minimum commitments defined in the relevant Annex hereto for the remainder of the then-current Term, in addition to any other charges established by this Agreement.

5.4. Customer understands and agrees that any breach by Customer of its obligations under this Agreement shall also be deemed a breach by Customer of its obligations under any other agreements it has entered into with 1stpoint and/or

its affiliates and understands and agrees that such breach shall authorize 1stpoint and/or any of its affiliates to immediately suspend performance under, and/or terminate, said agreements with Customer for default if such breach(es) have not been cured within the time provided for in this Agreement.

**5.5. CANCELLATION FOR CAUSE BY 1stpoint.** 1stpoint may discontinue the furnishing of any and/or all Service(s) to a Customer, without incurring any liability, immediately and without notice if 1stpoint deems, in its sole discretion, that such action is necessary to prevent or to protect against fraud, tricks, tampering, schemes, false or invalid numbers, false credit devices, electronic devices, or any other fraudulent means or devices or to otherwise protect its personnel, agents, facilities or services or to protect against actual or potential adverse financial effect. 1stpoint may discontinue the furnishing of any and/or all Service(s) to a Customer, without incurring any liability, immediately and without notice if Customer refuses to furnish information to 1stpoint regarding the Customer's creditworthiness, its past or current use of 1stpoint's VOIP Services, the jurisdictional nature or characteristics of the Services or its planned use of Service(s). 1stpoint may discontinue the furnishing of any and/or all Service(s) to a Customer, without incurring any liability, immediately and without notice if Customer provides false information to 1stpoint regarding the Customer's identity, address, creditworthiness, past or current use 1stpoint's VOIP Services, jurisdictional nature or characteristics of the Services or its planned use of Service(s)

## **6. Use of Services, Customer Responsibilities**

**6.1. DID TELEPHONE NUMBERS.** 1stpoint will make available to Customer all reasonably requested Direct Inward Dialing (DID) Telephone Numbers where 1stpoint has access to such numbers. Unless otherwise stated, Customer understands and acknowledges that no 911, DA or 411 services are provided to those numbers. The DID telephone numbers service is provided as an aggregated transport service only. It is understood it is a Customer responsibility to test the numbers assigned before activating it and delivering the service to Customer's end user.

**6.2. TELEMARKETING TRAFFIC.** 1stpoint does not accept for termination any telemarketing traffic or any fax broadcasts, including any traffic that would violate the Telephone Consumer Protection Act ("TCPA"), which prohibits the sending of facsimile advertisements without the prior consent of the recipient.

**6.3. SINGLE NUMBER COMPLAINT.** In the event that Customer experiences a single number complaint or a single end user complaint and such complaint is referred to 1stpoint, 1stpoint will perform reasonable efforts to isolate the problem. 1stpoint by practice and policy will not perform any alternate routing of egress trunks based upon a single number or single end user complaint. However, 1stpoint will attempt to correlate the problem across multiple customers in order to perform any necessary corrective actions. If 1stpoint determines that a trouble ticket is related to a single number or single end user, 1stpoint will change the status of the trouble ticket to "Service Restore" and pursue closure of the trouble ticket.

**6.4. TRAFFIC CONTROL BY CUSTOMER.** In addition to any other terms and conditions of this Agreement, Customer shall bear the following responsibilities in connection with 1stpoint's provision to Customer of Service:

6.4.1. Customer shall manage the including, without limitation, integrity of the traffic egressing Customer's network;

6.4.2. Customer shall screen and block calls destined to (a) invalid single numbers, (b) unassigned numbers or (c) numbers with invalid formats;

6.4.3. Customer shall manage and correct, as necessary, any fraudulent calling patterns or calling patterns perceived as fraudulent that may harm or adversely affect 1stpoint or its network,

In the event that Customer fails to comply with the requirements described above, 1stpoint shall have the right (but not the obligation) to take protective action against Customer in order to protect 1stpoint's egress network which protective action may include, without limitation, the temporary blocking of Customer's traffic until the applicable problem is resolved (at 1stpoint's reasonable discretion).

## 7. General

7.1. **LIMITED PERFORMANCE WARRANTY.** 1stpoint shall provide services in a manner consistent with industry standards and practices, and in accordance with any Service Addendum during the Term.

7.2. **LIMITATION OF LIABILITY.** Customer acknowledges that 1stpoint has no control over how a foreign administration or third party carrier establishes its own rules and conditions pertaining to VOIP services. Customer agrees that 1stpoint, its directors, officers, employees and agents shall not be liable for any loss or damage sustained by Customer, its interconnecting carriers, its customers or its end users, among other individuals and entities, due to any failure in or breakdown of the communication facilities associated with providing the Services, for any delay, interruption or degradation of the Services, whatsoever shall be the cause or duration thereof, or for any other cause or claim whatsoever arising under this Agreement. Customer shall remain solely responsible for any and all charges and damages arising out any conduct described in this section, and shall indemnify 1stpoint, and hold and save 1stpoint harmless, for and from any and all such charges and damages.

7.3. **LIMITATION OF 1STPOINT'S LIABILITY FOR "ON-LINE" OR API (WEB) SERVICES.** 1stpoint's "on-line" Services are provided on an "As Is" basis. Customer acknowledges and accepts that communications and transactions conducted on-line may not be absolutely secure, that there may be system failure that may limit Customer's accessibility to on-line Services and that on-line Services are not guaranteed to be error free. By enrolling for and using such online Services, Customer agrees to accept all responsibility and risk associated with the use of such on-line Service and the Internet generally. Customer shall remain solely responsible for any and all charges and damages arising out any conduct described in this section, and shall indemnify 1stpoint, and hold and save 1stpoint harmless, for and from any and all such charges and damages.

7.4. **LIMITATION OF 1STPOINT'S LIABILITY FOR MISUSE OF CUSTOMER'S SERVICE.** 1stpoint shall not be liable at all for the use, misuse, or abuse of a Customer's Service or Customer's facilities by Customer, Customer's agents or employees, or third parties including, without limitation, members of the public. For example, 1stpoint is not liable for any damages,

including any damages for claims brought due to a Customer's violation of 1stpoint's Acceptable Use Policy or toll usage charges, the Customer may incur as a result of the unauthorized placement of calls (i) from the Customer's premises; (ii) through Customer-provided equipment that are transmitted or carried on the 1stpoint network; (iii) to Customer's Toll Free Prefixes in error, and (iv) otherwise using Customer's Services. 1stpoint may work with Customer, if requested, to recommend possible solutions to reduce unauthorized use of the Services and Customer's facilities. 1stpoint does not, however, warrant or guarantee that its recommendations will prevent unauthorized use, and the Customer is responsible for controlling access to, and use of, the Service and its own communications facilities. Customer shall remain solely responsible for any and all charges and damages arising out any conduct described in this section, and shall indemnify 1stpoint, and hold and save 1stpoint harmless, for and from any and all such charges and damages.

**7.5. COOPERATION.** Customer agrees that, if another carrier and/or regulatory agency determine that it is necessary to audit the traffic which is the subject of the Agreement, Customer will cooperate in any such investigation. In addition, to the extent any third party attempts to recover access charges from 1stpoint as a result of such audit/investigation, Customer agrees that it will compensate and indemnify 1stpoint for, and shall hold and save 1stpoint harmless from, any and all costs and charges resulting from such third party actions. This does not prohibit Customer from challenging charges assessed by the third party or the classification of its traffic being subject to access charges.

**8. REGULATORY and LEGAL COMPLIANCE.** The rates set forth in this Agreement are subject to the imposition of new regulations, modification of existing regulation, new interpretation, application or enforcement of, or exercise of authority related to, any regulation or finding of any federal, state, and/or local regulatory agency, legislative body, or court of competent jurisdiction, including, without limitation, the imposition of any charges (such as USF charges), surcharges, and/or taxes in reliance on, or as a result of, the same (collectively, "Regulatory Activity").

8.1. 1stpoint reserves the right, at any time, (i) to pass through to Customer all, or a portion of, any charges, surcharges, or taxes directly or indirectly related to such Regulatory Activity; and/or (ii) modify the rates and/or other terms and conditions of this Agreement to reflect the impact of such Regulatory Activity, including, without limitation, the impact of any actions by third parties in connection with such Regulatory Activity.

8.2. Customer represents and warrants that all traffic Customer delivers to 1stpoint for termination is originated on IP-based end points, such as VOIP-enabled on premises PBX, Digital or Analog VOIP Gateways, Digital or Analog Telephone Adapters and similar voice-packet producing devices.

8.3. Customer represents and warrants that all traffic 1stpoint delivers to Customer or its End Users or agents that has originated in the same local calling area in which Customer's NPA-NXX is assigned and/or in which such traffic is terminated to Customer or its End Users or agents, is local traffic or is legally entitled to be treated as local traffic under all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over such traffic.

8.4. Customer understands and acknowledges that 1stpoint will rely upon such representation to assign local telephone numbers to Customer and/or route Customer's traffic for termination as local calling.

8.5. Customer shall promptly pay to 1stpoint all access charges, reciprocal compensation, and/or any other charges, surcharges and/or taxes billed to 1stpoint by a third party, or remitted by 1stpoint to a third party, that are associated with any of Customer's traffic delivered or facilities utilized pursuant to this Agreement, including but not limited to any retroactive charges (collectively, "Additional Charges"), and that are not already reflected in the rates charged by 1stpoint for the Services rendered pursuant to this Agreement.

8.6. Although 1stpoint shall not have any obligation to challenge any Additional Charges levied by a third party, if 1stpoint successfully challenges imposition of any Additional Charges by a third party, it will refund to Customer any Additional Charges previously paid by Customer to 1stpoint that were subject to such successful challenge.

8.7. Even if Customer elects to transition the affected Services to another carrier, Customer shall still be responsible for paying any and all Additional Charges billed to or remitted by 1stpoint up to and including the final transition date. The parties agree to cooperate on the scheduling of any such transition, but such transition shall be subject to all of the terms in this Agreement, including those regarding early termination.

8.8. **DISCLAIMER OF DAMAGES.** IN NO EVENT SHALL 1STPOINT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER WHO FURNISHES SERVICES TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE BE LIABLE FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE SERVICE, INCLUDING INABILITY TO BE ABLE TO DIAL 911 OR TO ACCESS EMERGENCY SERVICE PERSONNEL THROUGH THE SERVICE. THE LIMITATIONS SET FORTH HEREIN APPLY TO CLAIMS FOUNDED IN BREACH OF CONTRACT, BREACH OF WARRANTY, PRODUCT LIABILITY, TORT AND ANY AND ALL OTHER THEORIES OF LIABILITY AND APPLY WHETHER OR NOT 1STPOINT WAS INFORMED OF THE LIKELIHOOD OF ANY PARTICULAR TYPE OF DAMAGES.

8.9. **INDEMNIFICATION.** Client, and Client on behalf of its employees, assigns or any direct or indirect user of Services provided to Client, agrees that it shall indemnify, defend and hold harmless 1stpoint and its respective officers, directors, employees and agents (collectively, the "Indemnitees"), from and against any and all third party damages, claims, losses, expenses, costs, obligations and liabilities including without limitation reasonable attorney's fees ("Damages"), suffered directly or indirectly by any of the Indemnitees by reason

of or arising out of this Agreement, including without limitation, any Damages related to use of the Services.

8.10. NO WARRANTIES ON SERVICE. 1STPOINT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, 1STPOINT DOES NOT WARRANT THAT THE SERVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATA OR INFORMATION. NEITHER 1STPOINT NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES OR AGENTS OR ANY OTHER SERVICE PROVIDER OR VENDOR WHO FURNISHES SERVICES OR PRODUCTS TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO 1STPOINT OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF 1STPOINT OR ITS SERVICE PROVIDER'S OR VENDORS' NEGLIGENCE. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICE OR DEVICE, IF ANY, BY 1STPOINT OR 1STPOINT'S AGENTS OR INSTALLERS ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

8.11. NO THIRD PARTY BENEFICIARIES. No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights. However, 1stpoint may transfer this agreement to a third party in the event of a sale of 1stpoint to a third party, or a party to this agreement, or in the event of a change of control in the ownership of 1stpoint.

## **9. Governing Law/Resolution of Disputes**

9.1. MANDATORY ARBITRATION. Any dispute or claim between Customer and 1stpoint arising out of or relating to the Service or Device provided in connection with this Agreement shall be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration shall take place in New York, New York and shall be conducted in English. The arbitrator's decision shall follow the plain meaning of the relevant documents, and shall be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and Customer will not bring, or join any class



action of any kind in court or in arbitration or seek to consolidate or bring previously consolidated claims in arbitration. CUSTOMER ACKNOWLEDGES THAT THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL.

9.2. GOVERNING LAW. The Agreement and the relationship between you and 1stpoint shall be governed by the laws of the State of New York without regard to its conflict of law provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 5.1, you and 1stpoint agree to submit to the personal and exclusive jurisdiction of the courts located within the state of New York and waive any objection as to venue or inconvenient forum. The failure of 1stpoint to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

9.3. ENTIRE AGREEMENT. This Agreement, and the associated Addenda, Service Orders, the rates for Services found on the 1stpoint website, and the terms of use found on the 1stpoint web site constitute the entire agreement between you and 1stpoint and govern your use of the Service, superseding any prior agreements between you and 1stpoint and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. No amendment to this Agreement shall be binding upon 1stpoint unless and until posted in accordance with Section 3 hereof.

9.4. SEVERABILITY. If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

[ NO FURTHER TEXT BELOW ]