



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 include, but are not limited to, RCN Telecom Services, LLC, Grande Communications Networks, LLC, Wave Business Solutions, LLC, and enTouch Systems, Inc. Astound offers business class Internet access, voice, mobile, video and other related 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 Order Form, Request for Service, Service Order Agreement, or other ordering document(s) you signed when ordering and/or accepting your Services from Astound (each, an “Order Form”). Together, this SBSSA and your Order Form(s) constitute your “Agreement” with Astound. Your use of Astound’s Services constitutes your acceptance of and agreement to comply with the provisions of your Agreement. You are responsible for ensuring that your employees, contractors, agents and all other end users of your Services comply with your Agreement.

You expressly acknowledge and agree that the Services you receive from Astound pursuant to your Agreement 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 Agreement, 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 <http://www.astound.com/business/legal-disclosures/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 Agreement. 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 Agreement 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 then-current minimum technical and other requirements.

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

4. Service Term.

(a) Month-to-Month Service(s). The Order Form you signed when ordering and/or accepting your Service(s) may state that there is no minimum term for which you have agreed to receive and pay for your Service(s). If your Order Form does not specify a minimum term, or if the term specified on your Order Form is “30 days,” “1 month,” “M2M” or “month-to-month,” then your Services are provided to you by Astound on a “Month-to-Month” basis. Month-to-Month Services may be terminated at any time, by either you or by Astound, on thirty (30) days’ notice. In order to terminate Month-to-Month Services, the party desiring to terminate the Services must give the other party no less than thirty (30) days’ advance written notice of termination. If your Order Form is a Month-to-Month Order Form, then the remaining paragraphs of this Section 4 do not apply to your Services.

(b) Initial Service Term. The Order Form you signed when ordering and/or accepting your Service(s) may specify an 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”).

(c) 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(d) below, 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, you may discontinue one or more of your Services and/or terminate the corresponding Order Form 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 Order Form(s) for Customer convenience (i.e., without cause), you agree to pay Astound the Termination Charge described in Section 5(g) below.

(e) Automatic Month-to-Month Renewal. Upon expiration of the Initial Service Term for a specific Order Form, 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 Order Form at issue will begin to automatically renew on a month-to-month basis (the “Renewal Period”). During the Renewal Period, either party may terminate the Order Form at any time, by giving no less than thirty (30) days’ advance written notice of termination to the other party. At any time during the Renewal Period, Astound may increase the pricing for the Services by delivering no less than thirty (30) days’ advance written notice of the new pricing to you, with the new rate not to exceed Astound’s then-current standard retail rates for the Service(s) at issue.

(f) Early Termination for Cause. As stated in Section 12 below, either you or Astound may terminate a Service and/or the corresponding Order Form prior to its scheduled expiration date if the other party breaches a material provision of the Agreement and does not cure the breach within the time frames specified in Section 12. Any such termination is a termination for cause. If Astound terminates one or more of your Services and/or the corresponding Order Form(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 Agreement shall be called “Fees.” You agree to pay Astound the following types of Fees: (i) the monthly recurring charges for your Services; (ii) any usage-based charges you incur (e.g., charges for data usage above the base plan you selected, charges for international calling, etc.); (iii) the monthly recurring charges for rental of Astound Equipment (if any); (iv) any one-time installation charges; (v) any one-time service charges for work you authorize Astound to perform; (vi) all applicable local, state and federal taxes and fees, as more fully described below; and (vii) all other amounts Astound is authorized to charge you pursuant to your Agreement (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) Taxes and Other Charges. The Fees listed in your Order Form do not include applicable taxes, regulatory fees or other charges. Such taxes, fees and charges are additional, and will be separately itemized on invoices. You shall be responsible for payment of all applicable local, state or federal fees (including but not limited to regulatory recovery, franchise and/or carrier line fees) and/or taxes, however designated, as well as any surcharges, excises, “pass-through” charges, or other payment obligations in connection with the Services imposed or permitted by governmental or quasi-governmental bodies, or otherwise imposed by Astound, in connection with the sale, installation, use or provision of the Services. If you are entitled to an exemption from any taxes, fees or other charges, 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 Agreement. 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 Agreement. 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 Agreement 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 calls, 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 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 for cause.

(h) Calculation of Termination Charge. If you incur a Termination Charge, 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) that are 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.

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, ransomware, 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 Order Form, 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.

(d) Wireless Internet Backup Service. If you receive wireless internet backup (“WIB”) Service from Astound in connection with your primary, wired Internet access Service, the provisions of this Section 6(d) apply to your WIB Service.

(i) Intended Function. You expressly agree and acknowledge that WIB Service is not intended to function as your primary means of accessing the Internet. Instead, WIB Service is designed to provide you with a temporary, back-up, fail-over method of accessing the Internet using the cellular data network in the event that your primary, wired Internet access connection is temporarily interrupted, disrupted or otherwise fails. WIB Service begins to function when your modem or router detects problems with your primary, wired Internet access connection. Once your primary, wired Internet access connection is again transmitting data properly, WIB Service automatically deactivates.

(ii) Base Data Allotment; Charges for Data Use Overages. Because WIB Service uses cellular network wireless data transmission to function, a monthly base data allotment is included in the base price of your WIB Service. **If you purchase a WIB Service plan that allows you to exceed your monthly base data allotment, then you expressly understand and agree that if your data usage in any given month exceeds the base data allotment, you will incur charges for data use overages at the rate specified in your Service Order. You will not receive any alert or other notification if your monthly base data allotment is exceeded and you begin to incur data use overage charges.**

(iii) Maximum Monthly Data Cap. If your WIB Service plan involves a maximum monthly data cap, you understand and agree that once your maximum monthly data cap has been reached, your WIB Service will cease transmitting data and will no longer function until the beginning of the next billing period when your data allotment is re-set.

(iv) Performance Is Not Guaranteed. You expressly understand and agree that while WIB Service provides a fail-over, back-up solution to temporary disruption of your primary, wired Internet access connection, Astound does not guarantee WIB Service will function as intended, does not represent that WIB Service is fail-safe or error-free, and WIB Service should not be relied upon 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 failure of your WIB Service to function as expected.

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, mission-critical 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 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 Agreement are the rates as of the effective date of that Agreement and may not reflect the actual rates applicable at any given time during the term of the Agreement. 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 Agreement 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 (aka UCaaS) 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 AN ORDER FORM, 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 yourself 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 Order Form, 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 installation. 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 Agreement. 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-leasing, 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, Astound reserves the right to disable the feature(s) at issue and/or impose additional cost-recovery charges for your excessive use.

9. Astound’s Mobile Phone Services.

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

(a) Mobile Phone Services. Astound’s mobile phone Services are resold commercial mobile radio services (“CMRS”), acquired from third party carriers (the “Carriers”) and resold by Astound. Astound mobile phone Services are limited to customers that receive invoices for Services in the following jurisdictions: California, District of Columbia, Illinois, Indiana, Maryland, Massachusetts, New York, Oregon, Pennsylvania, Texas, Virginia, and Washington. You may only activate new Astound mobile phone Services if you are currently receiving Astound’s Internet access Services. However, once you are enrolled in Astound’s mobile phone Services, you are not required to continue receiving Astound’s Internet access Services in order to continue receiving Astound’s mobile phone Services. Astound’s mobile phone Services provide broadband Internet access service (“BIAS”) bundled with Data, Voice, and Texts.

(b) Mobile Devices. Astound does not provide mobile devices for customers that enroll in Astound’s mobile phone Services. Customers must bring their own devices (the “Mobile Devices”) for use with Astound’s mobile phone Services. Accordingly, all Mobile Devices provided and used by customers in connection with Astound’s mobile phone Services are Customer Equipment. In order to receive Astound’s mobile phone Services, your Mobile Devices must be compatible with Astound’s mobile phone Services, must be non-stationary, non-desktop devices, and must be approved by Astound for use with the Services. To activate Astound’s mobile phone Services for your Mobile Devices, you must ensure that the devices are unlocked, are compatible with Astound’s mobile phone Services, will not interfere with the Astound mobile phone Services, and comply with all applicable laws, rules and regulations. Astound reserves the right to deny Services based on the Mobile Device’s non-compliance with this Section or for any other reason. Once your Mobile Devices are approved for use with Astound’s mobile phone Services, Astound will provide you with SIM cards for use in the Mobile Devices. Upon activation, the Mobile Devices can only be used with Astound mobile phone Services, and cannot be used with any other wireless or cellular services. Some functions and features referenced in certain hardware manufacturer’s manuals for your Mobile Devices may not be available with Astound mobile phone Services. You are responsible for ensuring that your Mobile Devices meet all federal laws and standards and for all maintenance of the Mobile Devices required to use the Services. Not all aspects of the Astound mobile phone Services will function on all Mobile Devices. Astound reserves the right to change, suspend, terminate, remove, impose limits on the use of or access to, or disable access to, any Mobile Device, at any time without notice, and will have no liability for doing so. For customers without Mobile Devices, Astound may refer customers to one or more third-party providers to obtain Mobile Devices. However, to the fullest extent permitted by law, Astound makes no representations or warranties (express or implied), including, any warranty of merchantability, fitness for a particular purpose, service quality of content, non-infringement, performance, accuracy, or efforts, relating to any third-party provider of Mobile Devices, to any specific Mobile Device, or to Astound’s referral to any third-party provider.

(c) Service Packages. Enrollment in Astound’s mobile phone Services requires you to choose an Astound mobile phone Service package that contains broadband data. Existing Astound mobile phone customers who wish to switch packages may do so by calling Astound’s Customer Support at 833-249-2786. All Astound mobile phone



Service packages contain a specified amount of broadband data per month (e.g., 1 Gigabyte, 3 Gigabytes, or 20 Gigabytes usage). Where available, voice, and texts, short message service (“SMS”), and multimedia service (“MMS”) (collectively, “Text”) are functionality supported by Data. Astound’s mobile phone Services also incorporate the specific terms and conditions applicable to the rate package you have chosen, which take precedence over the below descriptions in the event of a conflict.

(i) Data Usage. Astound mobile phone Services offers packages that provide gigabytes of broadband (“Data”) as part of the Services. The 20 Gigabyte plan offers high-definition (“HD”) streaming; the 1 Gigabyte and 3 Gigabyte plan offer solely non-HD streaming. Astound mobile phone Data usage is measured in 1 MB increments. You will be charged for Data usage in excess of your chosen plan used during a billing period, as indicated in the enrollment terms and conditions for the rate plan you selected.

(ii) Voice Telephone. Astound’s mobile phone Services include voice telephone usage provided through the customer’s Data as Internet-based calling where available. Voice functionality is supported by your Data usage and is measured in 1 MB increments. Voice telephone usage includes all incoming and outgoing calls, including incoming call waiting calls, simultaneous calls, call forwarding, and calls to toll-free numbers. For simultaneous calls, such as incoming call waiting and 3-way calling (where available), and call forwarding, voice service will be billed for each participating call. Voice telephone usage does not apply for calls to 911, 411, and 611 (Astound Customer Support). SEE IMPORTANT NOTICES RELATING TO 911 EMERGENCY SERVICE CALLING IN SECTION 9(h) BELOW. Voice telephone usage applies for voicemail calls and for incomplete, busy, and no answer calls.

(iii) Texts. Astound provides customers with unlimited Text messaging as part of the Astound mobile phone Services. Sending and receiving Text messages (including picture messages or video messages) is supported by your Data usage and is measured in 1 MB increments. Astound permits international Texts and permits 411, 611, and other short code Texts.

(iv) International. Your Service package may include international voice calling and international texting. International voice calling and texting is restricted to calls and texts placed to the countries, and are billed at the rates, listed here: <https://www.astound.com/support/Mobile/international-calling-rates/>. For international roaming, the eligible countries and respective rates are listed here: <https://www.astound.com/support/Mobile/international-roaming/>. The countries applicable to international calling and international roaming are subject to change at any time without prior notice. All Astound mobile phone Services are restricted from operating when you are located anywhere outside of the United States, Puerto Rico, or the U.S. Virgin Islands, including offshore or in international waters. You will not be able to use your Mobile Device unless you are located in the United States, Puerto Rico, and the U.S. Virgin Islands.

(d) Activation of Mobile Phone Services. Upon activation of Astound mobile phone Services for a specific Mobile Device, the Mobile Device will receive an assigned telephone number for use with the Astound mobile phone Services. The assignment of the telephone number to your Mobile Device does not confer on you any proprietary interest in the telephone number. Astound may reassign the Mobile Device telephone number to another subscriber, without giving notice, if you cancel the Services, or if your account is deactivated or is otherwise terminated. You may transfer a telephone number assigned to you by another provider to your Astound mobile phone Services by contacting Astound’s Customer Support at 833-249-2786. You must contact Astound’s Customer Support to port the telephone number to your Astound mobile phone Services prior to terminating services with the other provider or prior to the telephone number’s reassignment by the other provider. Astound will not reimburse you for any termination charges or other charges and fees imposed by other providers for transferring a telephone number to Astound’s mobile phone Services.

(e) Trial Period. When customers initiate Astound mobile phone Services, Astound informs customers, at points of sale and on its website, that they have may cancel service without charge for usage of the Services within thirty (30) days. Astound will not impose charges for usage of Astound’s mobile phone Services if the customer cancels the Service within the 30-day trial period, provided that the customer complies with all applicable return and/or exchange policies. Other charges may still apply. You will be charged for Astound’s mobile phone Services if you not terminate Service during the 30-day trial period.

(f) Limitations on Data. Astound does not guarantee the availability of Data on all Mobile Device models or at all times. Data is not available in certain areas. Astound is not responsible, and will not be liable, for any interruptions or discontinuation of Data or for any failure in Data. In addition, you may access third-party content and apps using Data via Astound’s mobile phone Services. Access to third-party content and apps using Data provided by Astound is at your own risk. Some content from third-parties may harm your Mobile Devices or their software, may cause personal information to be transmitted over the Internet, may include content unsuitable for minors or which is offensive or illegal, or may result in additional charges to your Astound monthly invoice caused by third-parties. Astound does not have control over the content provided by third-parties or charges imposed by third-parties. To the fullest extent permitted by law, Astound makes no representations or warranties (express or implied), including any warranty of merchantability, fitness for a particular purpose, service quality of content, non-infringement, performance, accuracy, or efforts, with respect to any third-party content that you may access while using Astound’s mobile phone Services. If you would like to block third-party charges, at no charge, contact Astound’s Customer Support at 833-249-2786.

(g) Limitation on Mobile Phone Services. Astound provides coverage maps on its website at: <https://www.astound.com/Mobile/coverage/>. These maps are for general informational purposes only; actual coverage and service areas may vary from the maps and may change without notice. Astound offers limited “roaming”, where available outside the coverage areas shown, as part of its Service in United States, Puerto Rico, and the U.S. Virgin Islands. While roaming, you may make phone calls from your Mobile Devices at an additional charge indicated at: <https://www.astound.com/support/Mobile/international-roaming/>. Astound does not warrant or guarantee availability of network or of any Astound mobile phone Services at any specific time or geographic location or that the Services will be provided without interruption. Factors such as network congestion, terrain, weather, structures, foliage, signal strength, traffic volumes, service outages, network changes, technical limitations, and/or your equipment may interfere with actual service, quality, and availability. In addition, services may be temporarily refused, limited, interrupted, or curtailed due to system capacity limitations, technology migration, or limitations imposed by Astound or the Carriers, or because of equipment modifications, upgrades, repairs, relocations, or other similar activities necessary for the operation of the Services. In the event Astound determines that it is necessary to interrupt the Services for maintenance, Astound will use reasonable efforts to notify customers prior to the interruption and will attempt to schedule such maintenance during non-peak hours. Neither Astound, nor the Carriers or any other carrier, shall have any liability with respect to any coverage gaps or for service failures, interruptions, outages, or limitations of Service.

(h) Emergency Calls and Services. Astound’s mobile phone Services provide free access to 911 emergency services but your Mobile Device must have battery power and network connectivity to complete a 911 call. You should always be prepared to provide your location information even if your Mobile Device is GPS-enabled because your Mobile Device may not transmit accurate location information or enhanced 911 services may not be available in your location. In addition, Text-to-911 service is not available in all locations. IF THERE IS NO OR LIMITED WIRELESS COVERAGE, YOUR CALL TO 911 MAY NOT GO THROUGH — YOU SHOULD DIAL 911 FROM THE NEAREST LANDLINE PHONE. PLEASE REVIEW THIS SECTION CAREFULLY. BY USING THE ASTOUND MOBILE PHONE SERVICES, YOU ACKNOWLEDGE THE LIMITATIONS DESCRIBED IN THIS SECTION. Using Internet-based calling through your



Astound mobile phone Service or through your Astound Wi-Fi Internet connection may limit your ability to access Emergency Services. WHERE POSSIBLE, USE A TRADITIONAL LANDLINE. Internet-based calling applications operate differently than traditional landline telephone services. It is important that you understand these differences. The differences in the Emergency Services calling capabilities include the following:

- (i) calls through the Internet may not convey the actual location of a caller making an Emergency Services call or may connect a caller with an Emergency Services call center not in the caller's area, which could result in Emergency Services being dispatched to the wrong location or may result in other significant delays in Emergency Services' arrival—CALLERS MAY BE REQUIRED TO PROVIDE ADDITIONAL LOCATION INFORMATION BEFORE REACHING AN EMERGENCY SERVICES CALL CENTER;
- (ii) calls through the Internet may not connect callers to the Emergency Services call center serving the caller's location or may connect the caller to administrative lines for Emergency Services which may not be staffed or staffed by Emergency Services operator after hours;
- (iii) if the customer's Mobile Device or Wi-Fi equipment has no power, is experiencing a power outage, or for any reason cannot otherwise access the Internet, the customer cannot make an Emergency Services call using Internet-based calling applications; and
- (iv) although Internet-based calling can be used anywhere where an Internet connection is available, users should not make an Emergency Services call from a location outside their home country/region because the call likely will not be routed to the appropriate call center in that country/region.

For the foregoing reasons, PLEASE USE A TRADITIONAL LANDLINE TELEPHONE, WHERE AVAILABLE, TO ACCESS EMERGENCY SERVICES RATHER THAN USING INTERNET-BASED CALLING. Text-to-911 service may be available in some locations, but the availability of text-to-911 depends on whether the Emergency Services call center has implemented the ability to receive text messages.

(i) Emergency Alerts. To the extent made available from the Carriers and supported by your Mobile Device, Astound will provide wireless emergency alerts administered by the federal government. There is no charge for these wireless emergency alerts.

(j) Consent to Communications from Astound. Customer agrees that Astound or Astound's contractors may email, call or text customer at any email address or telephone number customer provides to Astound or that Astound issues to customer for any purpose relating to customer's account and/or the services to which customer subscribes. For example, Astound may call or text customer to provide information about customer's account or services, including, without limitation, the status of repairs or outages, and to schedule or confirm service appointments. Customer expressly consents to receive such communications and agrees that such communications are not unsolicited. Customer acknowledges and agrees that these communications may include the use of an automatic telephone dialing system and/or artificial or pre-recorded messages. Message frequency depends on customer's activity with the services. Message and/or data rates may apply. You agree that all consents provided in this Section will survive cancellation of your Service and account. You can contact us to opt-out of receiving calls or texts made using an automatic telephone dialing system and/or artificial or pre-recorded voice technology at any time, including by simply texting "STOP" in response to an Astound text message. For additional information about



our SMS (text message) program, please see <https://www.astound.com/policies-disclaimers/text-messaging-terms-conditions/>.

(k) CAN-SPAM Act. Commercial email messages sent to customer will comport with the requirements of the CAN-SPAM Act. Customer consents to receive commercial email messages (including Astound mobile phone Service commercial messages sent to your wireless device) from Astound including for advertising purposes, subject to the opt-out restrictions described below. Astound will honor commercial email opt-out requests received within ten (10) business days if received by Astound within thirty (30) days of the date when the original message was sent. Opt-out instructions and submissions are available at: <https://econnect.astound.com/small-business-special-offers>. For more on our data protection practices and your privacy rights, please review the Astound Privacy Policy located at: <https://www.astound.com/policies-disclaimers/privacy-policy/>.

10. 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 Agreement.

(f) Cooperation with Technology Upgrades. From time to time, it is possible that technological changes, improvements or enhancements will make it necessary for Astound to substitute new/different equipment at your service site in order for you to continue receiving Astound's video Services. You agree to reasonably cooperate with Astound in connection with any such technology upgrades.

11. Performance; Force Majeure.

(a) General Standard. Astound shall use commercially reasonable efforts in keeping with normal industry standards to ensure 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 Agreement.

(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.

12. Default and Remedies.

(a) Default by Customer. Each of the following shall constitute a default by you under your Agreement (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 Agreement, 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 Agreement, 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 Agreement as if such suspension of Services had not taken place); (ii) terminate the applicable Service(s) and/or the applicable Order Form(s) for cause; and/or (iii) pursue any other remedy available to Astound under the Agreement or applicable law. In the event of early termination by Astound for your Default pursuant to this Section 12(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 Agreement: (i) if Astound does not comply with any material provision of the Agreement, 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 Agreement, you may, at your option: (i) terminate the applicable Service(s) and/or the applicable Order Form(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 Agreement or applicable law. In the event of early termination by you for Astound's Default pursuant to this Section 12(d), Astound shall reimburse you for any pre-paid, unused monthly service Fees attributable to the terminated Service(s) and/or Order Form(s), and you shall have no further liability to Astound for the terminated Service(s) and/or Order Form(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.

13. 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 Agreement, 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 Agreement, 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 AGREEMENT, 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 AGREEMENT.

(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.

14. 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 Agreement; (ii) your noncompliance with or default under your Agreement; and/or (iii) your failure to comply with applicable law in connection with your performance under your Agreement.

15. Binding Arbitration.

(a) Agreement to Arbitrate. Except as set forth in Subsection 15(b) below, any and all disputes, controversies or claims, whether based in contract, tort, warranty, statute, fraud, misrepresentation or any other legal theory, arising out of or related to your Agreement and the Service(s) provided to you by Astound pursuant to your Agreement 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 15 shall survive the expiration or termination of your Agreement.

(b) Exclusion from Arbitration; Option to Proceed in Small Claims Court. Notwithstanding the provisions of Subsection 15(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 Agreement. 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 ORDER FORM AND RECEIVING SERVICES FROM ASTOUND, YOU ARE AGREEING TO THE PROVISIONS OF THIS SECTION 15 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 AGREEMENT AND THE SERVICES PROVIDED TO YOU BY ASTOUND.**

16. Miscellaneous.

(a) Entire Agreement. The Agreement constitutes the entire agreement between you and Astound regarding the Service(s) provided to you by Astound pursuant to the Agreement. The Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Small Business Services Subscriber Agreement



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 Agreement are of no effect.

(b) Governing Law; Interpretation. The Agreement and all matters arising out of the Agreement shall be governed by the laws of the State in which you receive your Service(s) from Astound. The Agreement 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 Agreement 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 Agreement 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 Agreement 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 Order Form you signed with Astound is for your sole benefit. You may not assign or transfer your rights under any Order Form 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 an Order Form without Astound's prior written consent shall be void and shall constitute a material breach by you of your Agreement.

(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 Agreement 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 Agreement 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 Agreement is a commercial contract between you and Astound and the relationship between the parties is that of independent contractors. Nothing in the Agreement 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 Agreement 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 Agreement.

(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 Agreement.

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