



## HelloSpoke Services Agreement, updated 1-14-21

This is a Services Agreement (“Agreement”) by and between hellospoke (“hellospoke”) and the Customer (“Customer”). In consideration of the mutual promises, terms, and conditions set forth below, hellospoke and Customer hereby agree as follows:

1. **BINDING AGREEMENT. CUSTOMER AGREES TO BE BOUND BY THIS AGREEMENT**, which affects the legal rights between hellospoke and Customer by, among other things, **LIMITING hellospoke’s LIABILITY UNDER THE AGREEMENT** and requiring **MANDATORY ARBITRATION OF DISPUTES**.

2. **DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings set forth below.

2.1 “Services” means the services provided by hellospoke to Customer pursuant to this Agreement.

2.2 “Service Plan” means the order, quote, or other document setting forth certain specific details, duration, and terms of the Services to be provided by hellospoke pursuant hereto and the charges and fees for the Services to be paid by Customer pursuant hereto, and other details and specifications of the Services, and which may be attached hereto and is incorporated into this Agreement by reference regardless.

2.3 “Service Fee” means the charges and fees for the Services set forth in the Service Plan, and/or otherwise described herein, Customer shall pay hellospoke as consideration for the Services.

2.4 “User” means Customer, its agents, employees, and contractors, and any other entity or person using the Services, and for all of whom and/or which Customer shall be liable and responsible with regard to the use of the Services.

2.5 “Customer Data” means data, information, or other materials of any nature whatsoever provided or made accessible to hellospoke by Customer in connection with this Agreement or the Services, including, but not limited to, the content of communications, including calls and Text Messages, made, received, or otherwise facilitated by or using the Services.

2.6 “Documentation” means instructions, information, technical specifications, user manuals, and other similar materials in any form relating to the Services.

2.7 “Login” means each separate, named individual login or User account of, for, or related to a Customer and/or associated with a Customer or Customer account.

2.8 “Text Message” means a short message service “text message” consisting of text per the Global System for Mobile communications alphabet.

2.9 “Software” means any proprietary software (including any Documentation relating to such software) owned by, licensed by, or which hellospoke has a right to sublicense under this Agreement, which software is either provided to Customer under this Agreement or is used in or used to provide the Services.

3. **SERVICES.** hellospoke will provide the Services to Customer, which shall use the Services exclusively for its own internal business purposes (as set forth in further detail below), which include activities Customer may perform for or on behalf of its own customers in the ordinary course of its business.

3.1. **CONDITIONS.** hellospoke’s obligation to provide the Services is expressly conditioned on Customer’s (a) payment for the Services as and when due, (b) compliance with this Agreement, and (c) adherence to the requirements and specifications, technical and otherwise, set forth in the Documentation as revised and/or updated by hellospoke from time to time or otherwise conveyed by hellospoke to Customer.

3.2. **MODIFICATION OF SERVICES.** The details of the Services may be modified at any time by a written amendment to the Service Plan signed by both hellospoke and Customer.

3.3. **ASSISTANCE, IMPLEMENTATION, AND TRAINING.** hellospoke will provide reasonable assistance, implementation, and training to Customer in the activation and use of the Services, which hellospoke shall use its best efforts to schedule and provide at places and times of Customer’s reasonable designation.

3.4. **ADDITIONAL ASSISTANCE OR SERVICES.** If Customer desires additional assistance or services from hellospoke, such as

further training, support services not provided under this Agreement, or consulting services, hellospoke may, but has no obligation to, provide such additional assistance or services on such terms and conditions as to which hellospoke and Customer may agree, but the provision of such additional assistance or services shall be otherwise subject to this Agreement.

4. TERM. This Agreement shall be and renew month-to-month unless and until terminated pursuant hereto.

5. TERMINATION.

5.1. TERMINATION FOR CONVENIENCE. Either party may terminate the Agreement at any time for any reason upon thirty (30) days' written notice of termination to the other party. Written notice to hellospoke must be sent to [change@hellospoke.com](mailto:change@hellospoke.com). If upon termination Customer transfers or ports a Number or Ported Number (as defined in Section 12) to another service provider, Customer must immediately notify hellospoke in order to cancel any Services related to such Numbers or Ported Numbers or charges related thereto will continue notwithstanding termination.

5.2. IMMEDIATE TERMINATION. hellospoke may change, suspend, or terminate the Services without advance notice to Customer if Customer materially breaches this Agreement, is reasonably suspected of fraud or any misuse of the Services that in the sole discretion of hellospoke may adversely affect the Services, hellospoke, hellospoke's network, or any other Customer(s) of hellospoke. hellospoke may require, and if required, Customer shall pay, a reasonable fee for any such change or as a condition to resuming such suspended or terminated Services. In the event of termination by hellospoke under this Section 5.2, early termination charges and/or disconnection fees and other charges may apply. If Customer transfers or ports a Number or Ported Number (as defined in Section 12) to another service provider, Customer must immediately notify hellospoke via email to [change@hellospoke.com](mailto:change@hellospoke.com) in order to cancel any Services related to such Numbers or Ported Numbers or service charges will continue notwithstanding termination.

5.3. EFFECT OF TERMINATION ON FEES. Upon termination of this Agreement Customer shall be responsible for paying for 30 days of service, starting from the date that service termination notice was received by hellospoke, and any applicable usage charges. Termination of the Agreement does not relieve Customer of responsibility to pay for all unpaid, accrued charges due hereunder.

6. OTHER SERVICE LIMITATIONS.

6.1. AVAILABILITY. hellospoke's services provide a high level of reliability and redundancy. However, as with any technology, service interruptions can occasionally occur for reasons including, but not limited to, circumstance at the carrier level beyond the control of hellospoke. Customer therefore acknowledges and agrees that the Services may not be available 100% of the time. Credit allowances for interruptions of the Services shall not be provided.

6.2. TEXT MESSAGING LIMITATIONS. The Services do not include and will not support Text Messages addressed to international destinations outside of United States and Canada. The Services support transmission of Text Messages from a single device to another single device, and do not support group messaging. In the event that a transmitted Text Message is destined for an address connected to a third-party network and that network is unreachable at the time delivery is attempted, the Text Message will be stored and queued for future delivery. Further delivery attempts will be performed based on a configurable time schedule with a reasonable, but limited number of attempts. hellospoke will use commercially reasonable efforts to minimize lost data from the bodies of Text Messages, but Customer agrees and acknowledges that such efforts will not be 100% effective.

6.3. CRITICAL SAFETY APPLICATIONS. Customer agrees and acknowledges that the Services are not authorized or suitable for use in or with critical safety or other applications where any failure may reasonably be anticipated to result in bodily injury, loss of life, or catastrophic damage to property.

7. EQUIPMENT. To provide the Services, hellospoke may sell equipment to Customer. All equipment shipments are F.O.B. shipping point. hellospoke's liability for delivery of any such equipment shall cease, and title (if applicable) and all risk of loss or damage shall pass to Customer upon hellospoke's delivery of the equipment to the carrier. Customer will be provided a twelve (12) month manufacturer's warranty from the date of purchase of equipment. Customer shall obtain authorization from hellospoke to return any equipment. hellospoke will provide replacement equipment only if the equipment is defective and covered under the warranty. hellospoke will not replace lost, stolen or modified equipment. Equipment returned by Customer that is not covered under warranty may be refused by hellospoke, and Customer will be responsible for any return shipping charges. hellospoke may refuse to provide Services if Customer has obtained or purchased refurbished or used hellospoke equipment from a third party.

8. CUSTOMER DATA. Subject to Section 22 (Privacy), Customer hereby grants to hellospoke a non-exclusive, non-transferable (except in connection with an assignment of this Agreement) license to copy, store, record, transmit, display, view, print, and use Customer Data solely to the extent necessary to provide the Services. Except as expressly provided herein, Customer grants to hellospoke no right, title, interest, or license in the Customer Data, and Customer hereby reserves for itself and its licensors all rights in and to all Customer Data. Notwithstanding the foregoing, hellospoke shall be permitted to disclose Customer Data to third parties as and to the extent required by law (including, without limitation, pursuant to a court order or subpoena).

9. BILLING, CHARGES AND PAYMENT.

9.1. **PAYMENT OF SERVICE FEES.** Customer will pay the Service Fee and any and all other applicable charges or fees for or related to the Services, and all other amounts due under this Agreement, all of which shall be non-refundable and non-creditable.

9.2. **CREDIT TERMS.** Customer shall at all times be subject to credit approval and/or review by hellospoke. Customer will provide such credit information or assurance as is reasonably requested by hellospoke. hellospoke in its sole discretion may without notice discontinue credit at any time and/or require a deposit.

9.3. **BILLING.** hellospoke will provide Customer with a monthly on-line billing statement for the Services provided each calendar month and bill all charges invoiced to Customer's account. Monthly Service Fees are paid in advance of each month's Service; toll charges and any other applicable charges are billed after each month's service. Unless otherwise specified by hellospoke, billing for monthly Service Fees commences upon Customer's order of the Services. The first month's Service Fee shall be prorated as appropriate.

9.4. **LATE/NON-PAYMENT.** If Service Fees or other charges are due but unpaid for any reason including, but not limited to, non-payment, hellospoke may suspend or terminate the Services and all accrued Service Fees and other charges shall be immediately due and payable, plus a late fee of the greater of ten dollars (\$10.00) or 1.5% per month (but in any event no greater than the maximum amount permitted by law). A fee will also be charged to reactivate a suspended or terminated account. Suspension or termination of the Services or of this Agreement does not relieve Customer of responsibility to pay for all unpaid, accrued charges due hereunder.

9.5. **TAXES.** Customs duties, sales, use, value added, excise, federal, state, local, public utility, universal service, and/or other similar taxes may be added to Service Fees and other charges. Customer shall pay all such taxes unless Customer provides hellospoke with an appropriate exemption certificate. If any amounts paid by Customer for the Services are refunded by hellospoke, applicable taxes may not be refundable.

9.6. **REGULATORY RECOVERY FEE.** A regulatory recovery fee will be charged monthly to offset costs incurred by hellospoke in complying with inquiries and obligations imposed by federal, state and municipal regulatory bodies/governments and the related legal and billing expenses. This fee is not a tax or charge required or assessed by any government. The regulatory recovery fee will apply to every Number and Ported Number (as defined in Section 12), including toll free and virtual numbers.

9.7. **RATE CHANGES.** hellospoke may change the prices for the Services, toll charges, fees and taxes, from time to time. In the event of a change in prices or toll charges, hellospoke will post such changes to its website currently located at <https://www.hellospoke.com/legal>. International toll calling rates are updated monthly on the first of each month and no other notice shall be provided for changes to international toll calling rates.

9.8. **DISCOUNTS.** From time to time in its sole discretion, hellospoke may offer promotions or discounts of activation or other fees. Any promotion or discount codes must be provided to hellospoke upon purchase of the Services. Customer shall not be entitled to a subsequent credit for such promotions or discounts, if not requested at the time of account creation or change of service. Promotions and/or discounts may not be used cumulatively or be used for Services retroactively. Promotions may be changed at hellospoke's sole discretion.

9.9. **BILLING DISPUTES.** Customer must dispute any charges for the Services in writing to hellospoke within thirty (30) days of the date of the charge by hellospoke. If Customer fails to provide a written statement disputing the charges within such time, Customer waives any objection and further recourse with regard to such charges. Written statements disputing charges must be sent to: Billing Department, HelloSpoke, 118 East Main Street, Louisville, KY 40202-or- [claims@hellospoke.com](mailto:claims@hellospoke.com).

10. **TOLL CHARGES.** Every call using the Services that originates or terminates in the Public Switched Telephone Network ("PSTN"), including other VoIP networks, is subject to the then applicable toll charges that are associated with the Service Plan, which hellospoke will include in bills and Customer will pay. For Customers subscribed to our hosted call center service, every PSTN call to or from a call center user and to or from a call center agent is subject to applicable toll charges at hellospoke's then current rates or as otherwise specified in the Service Plan. Calls to a non-hellospoke telephone phone number outside the United States and Canada will be charged the current rates on [hellospoke.com/legal](https://www.hellospoke.com/legal). The duration of each call is to be calculated in one-minute increments and rounded up to the nearest one-minute increment for any fraction of minutes used. If the computed charge for a call includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. When Customer dials an international PSTN phone number, charges may apply regardless of whether the party on the other line answers the call. Calls made by a Customer to an international mobile, rather than landline, or premium rate telephone number, may result in higher toll charges. Charges to Customer for inbound toll free numbers are subject to the geographic restrictions and location of the person calling into the toll free number.

11. **TELEPHONE NUMBER.** Any telephone number provided by hellospoke ("Number") to Customer is and shall be leased, not sold. Customer will not use the Number with any other device other than the equipment provided by hellospoke without the express written permission of hellospoke. Except with regard to telephone numbers which had been assigned to Customer by another service provider and then ported to hellospoke ("Ported Numbers"), hellospoke reserves the right to change, cancel or move Numbers in its reasonable discretion. Upon termination of the Services under Section 5.1 and at Customer's request, hellospoke will employ commercially reasonable efforts to assist Customer to port out the Numbers and the Ported Numbers and hellospoke will charge a port out fee of \$5.00 per Number or Ported Number. Customer acknowledges that the porting of all Numbers and

Ported Numbers is dependent upon the cooperation of third parties not under the control of hellospoke.

12. MONITORING SERVICES USE. Customer agrees that hellospoke is entitled to monitor Customer's use of Service at hellospoke's expense. Customer may also be subject to a preliminary fraud review and approval process for select hellospoke services.

### 13. PROHIBITED USES.

13.1. GENERAL. Any use of the Services or any other action that causes a disruption in the network integrity, or threatens or compromises the security of hellospoke, its vendors, or the Services whether directly or indirectly, is strictly prohibited and permits hellospoke to terminate the Services and the Agreement without prior notice at the sole discretion of hellospoke. Customer will not use the Services in ways that violate requirements in applicable agreements (including but not limited to privacy and security requirements imposed by Customer's financial institutions such as the Payment Card Industry Data Security Standard), violate applicable laws (including but not limited to laws prohibiting transmission of unsolicited fax advertisements or laws on obtaining third party consent for call recording), infringe the rights of others, or interfere with the users, agents, services, or equipment of the network. hellospoke shall have the right, in its sole, but reasonably exercised discretion, not to accept, transmit or deliver any messages and/or content that it reasonably believes contains inappropriate content or that is, or could reasonably become, the subject of any legal, regulatory, or other governmental proceeding or process, including without limitation a law enforcement proceeding, process, or inquiry. Customer acknowledges that neither hellospoke nor its vendors are responsible for the content of the transmissions that may pass through the Internet and/or the Services. Any use found to be inconsistent with the restrictions of this Section 15 will result in termination of the Services without prejudice to any other remedies hellospoke may have. Upon reasonable suspicion of misconduct by Customer hellospoke may request a valid business license from Customer. Failure by Customer to provide a valid business license may result in termination of Services.

13.2. REASONABLE BUSINESS USE. Customer agrees, represents, and warrants that it is purchasing the Services for its own internal use only, and shall not resell, transfer or charge for the Services or the equipment without the advance express written permission of hellospoke. hellospoke's Service Plans that offer unlimited minutes of PSTN calls ("Unlimited PSTN Plans"), unlimited faxing, or unlimited Text Messages are for reasonable business use of Customer only. Such use shall not include certain activities including, but not limited to, any autodialing, continuous or extensive call forwarding, continuous or extensive chat, continuous connectivity, fax or Text Message broadcast or blasting, telemarketing (including without limitation charitable or political solicitation or polling), call center operations (except with respect to Customer's use of subscribed to VCC Services), junk or Text Message faxing, fax spamming, calling/faxing/Text Messaging any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process or any other activity that would be inconsistent with reasonable business usage. Customer will not use the Services to send unsolicited commercial e-mail or Text Messages to recipients outside Customer's organization. Customer shall not transmit through the Services any unlawful, harassing, defamatory, abusive, threatening, harmful, vulgar, obscene, indecent, or otherwise objectionable communications or material of any kind or nature. Customers further agree not to transmit any material that encourages conduct that could constitute a criminal offense, violate the intellectual property rights of others, give rise to civil liability or otherwise violate any applicable local, state, national or international statute, regulation, or other law. Without limiting any other remedies hereunder, hellospoke reserves the right to immediately terminate or modify the Services of any Customer using Unlimited PSTN, fax or texting Service Plan if hellospoke determines, in its sole discretion, that Customer is not using such plan for Customer's reasonable business use.

13.3. TEXT MESSAGES. With respect to any Text Messages or other mobile messaging Services, Customer shall not use the Services in violation of the Mobile Marketing Association Guidelines or any network/wireless carrier requirements, conditions or codes of practice. All Text Messages are subject to hellospoke's policies and conditions, including without limitation the provisions of this Section 15 (Prohibited Uses) and the maximum permissible Text Message length. hellospoke reserves the right to segment, truncate, or otherwise reduce the length of any Text Message or to refuse to transmit and/or deliver a Text Message that does not comply with hellospoke or any third party network operator's policies or conditions.

14. USE, STORAGE AND OTHER LIMITATIONS. hellospoke reserves the right to establish or modify general practices and limits concerning use of the Services and Software. Where practical, hellospoke will provide Customer with prior notice of such new or modified practices.

15. ELECTRONIC RECORDING. Customer acknowledges and agrees that there are federal and state statutes governing the electronic recording of telephone conversations and that hellospoke will not be liable for any illegal use of the service by Customer or any other User. Because Customer circumstances vary widely, Customer agrees to carefully review its own circumstances when deciding whether to use the recording features of the service and it is Customer's responsibility to determine if the electronic recordings are legal under applicable federal and state laws. hellospoke is not responsible for any misinterpretation, lack of understanding or lack of knowledge regarding the use of electronic recordings or the use of its products by Customer, whether legal or illegal, and Customer will defend, indemnify, and hold hellospoke harmless from any action, claim, cost, damage, demand, expense, fine, liability, and/or penalty arising from or related to alleged or actual breach or violation by Customer or any other User of any applicable electronic recording law. Customer agrees and acknowledges that these obligations and limitations are reasonable and are in addition to and supplementary of other defense, indemnity, hold harmless, and/or liability limitations benefitting hellospoke in this Agreement. Customer agrees that hellospoke may, at its sole discretion, record any call between hellospoke and Customer for hellospoke quality control purposes.

16. **RESPONSIBILITY FOR REGISTRATION INFORMATION AND CONTENT OF CUSTOMER COMMUNICATIONS.** Customer is solely responsible for maintaining the confidentiality of Customer and User Logins, and will not transfer Customer or User Logins, email addresses or passwords, or lend or otherwise transfer use of or access to the hellospoke Services, to any third party. Customer is solely responsible for any and all activities that occur under Customer's account. Customer will comply with applicable foreign, federal, state, and local law in its use of the Services, including but not limited to laws regarding online behavior, acceptable content, the import or export of equipment and the transmission of information under applicable export laws. Recognizing the global nature of the Internet, Customer also agrees to comply with applicable local rules or codes of conduct (including, if applicable, codes of conduct or policies imposed by employers) regarding online behavior and acceptable content. Use of the Services is void where prohibited. Customer will immediately notify hellospoke of any unauthorized use of Customer's account or any other breach of security related to Customer's account or the hellospoke Services. Customer and other Users will complete a "log off"/exit from Customer's account (if applicable) at the end of each session. hellospoke is not liable for any loss or damage arising from Customer failure to comply with any of the foregoing obligations. In consideration for using the hellospoke Services, Customer will: (1) provide certain current, complete, and accurate information about Customer when prompted to do so by hellospoke and the Services, and (2) maintain and update this information as required to keep it current, complete and accurate. Customer warrants that any such information will be accurate. Customer agrees that Customer is solely responsible for the content of all visual, written or audible communications ("Content") sent by Customer or other Users or displayed or uploaded by Customer or other Users in using the Services. Customer acknowledges that neither hellospoke nor its vendors are responsible for any Content. Customer retains copyright and any other rights already held in Content that Customer submits, posts or displays on or through, the Services. Customer understands and agrees that by displaying, exchanging or uploading Content to a hellospoke website, transmitting Content using the Services or otherwise providing Content to hellospoke, Customer automatically grants (and warrants and represents that Customer has a right to grant) to hellospoke a world-wide, royalty-free, sub-licensable (so hellospoke affiliates, contractors, resellers and partners can deliver the Services) license to use, modify, publicly perform, publicly display, reproduce and distribute the Content solely in order to provide the Services to Customer, including websites (a "Site").

17. **RESPONSIBILITY FOR CONTENT OF OTHERS.** Customer acknowledges that other Users may violate one or more of the above prohibitions, but hellospoke assumes no responsibility or liability for such violation. If Customer becomes aware of misuse of the Services by any entity or person, please contact hellospoke Customer Support at 1-855-955-5155. hellospoke may investigate any complaints and violations that come to its attention and may take any action that it believes is appropriate, including, but not limited to issuing warnings, removing the content or terminating accounts and/or User profiles and/or Logins. However, because situations and interpretations vary, hellospoke also reserves the right not to take any action. Under no circumstances will hellospoke be liable in any way for any data or other content available on a Site, viewed or actions taken while using the Services, including, but not limited to, any errors or omissions in any such data, content or activity or any loss or damage of any kind incurred as a result of the use of, access to, or denial of access to any data, content or activities incurred from the actions taken on a Site. hellospoke does not endorse and has no control over what Users post, submit to, or do on a Site. Customer acknowledges that hellospoke cannot guarantee the accuracy of any information submitted by any User of a Site, nor any identity information about any User. hellospoke reserves the right, in its sole discretion, to reject, posting or other data, or to restrict, suspend, or terminate any User's access to all or any part of any Site at any time, for any or no reason, with or without prior notice, and without liability. hellospoke reserves the right to investigate and take appropriate action against anyone who, in hellospoke's sole discretion, is suspected of violating this Agreement, including without limitation, reporting Customer or any User to law enforcement authorities.

18. **CHANGES TO THE AGREEMENT, SERVICES OR SERVICE PLAN.** hellospoke reserves the right to make changes to the terms and conditions of the Services ("Change of Service") from time to time. In the event of a Change of Service, hellospoke will post the change to the website currently located at <http://hellospoke.com/legal>.

19. **NOTICE.** Notice of a Change of Service will be considered received by Customer and such change will become binding on Customer, on the date the change is posted to <http://hellospoke.com/legal> or other websites owned and managed by hellospoke ("Change Date"), and no additional notice will be required; provided, however, that any Change of Service that would reasonably be expected to be materially adverse to Customer shall not be binding on Customer unless hellospoke has notified Customer of such change in accordance with Section 35. If Customer does not send hellospoke notification of their desire to terminate the Agreement within 30 days after the Change Date, or continues to use the Services after such time, Customer is deemed to have accepted and consented to the Change of Service. If Customer does not consent to the Change of Service and terminates this Agreement, Customer will be responsible for any sums due hereunder as provided above.

20. **PRIVACY.** hellospoke utilizes the public Internet and third party networks to provide fax, voice, chat, Text Messages and video communication services. Accordingly, hellospoke cannot guarantee the confidentiality or security of fax, voice, chat, Text Messages and video communications of Customer. hellospoke is committed to respecting Customer's privacy, and the privacy of callers using the Services. Once Customer chooses to provide or gather personally identifiable information using the Services, it will only be used in connection with Customer's relationship with hellospoke or otherwise to deliver Services. hellospoke will not sell, rent, or lease Customer's personally identifiable information to others, except to a successor in interest or assignee of hellospoke purchasing all or substantially all of the assets of hellospoke, or acquiring a majority of the voting equity of hellospoke. Unless required by law or judicial or administrative process, or if Customer's prior permission is obtained, hellospoke will only share the personal data Customer provides or gathers using the Services with other hellospoke affiliates and/or business partners that are acting on hellospoke's behalf to provide the Services. Such hellospoke affiliates and/or national or international business partners are governed by hellospoke's privacy policies ("Privacy Policies") with respect to the use of this data. The Privacy Policy appears at <http://hellospoke.com/legal> and is incorporated by reference in the Agreement as if fully set forth. hellospoke is required to file

numerous reports with different administrative bodies. As such, hellospoke may provide aggregate statistics about Customer and other customers, sales and traffic patterns. None of these reports or statistics will include personally identifiable information. However, hellospoke reserves the right to use personally identifiable information to investigate and help prevent potentially unlawful activity that threatens either hellospoke or any company affiliated with hellospoke. Moreover, upon the appropriate request of a government agency, law enforcement agency, court or as otherwise required by law or judicial or administrative process, hellospoke may disclose personally identifiable information.

21. TECHNICAL SUPPORT. hellospoke provides technical support to customers via telephone and e-mail for the Services provided here under. Support for other applications and uses is not provided or implied and except as stated in this Section, hellospoke has no obligation to provide additional technical support.

22. REIMBURSEMENT IN CONNECTION WITH BREACH. In the event of Customer's breach of this Agreement, including without limitation, failure to pay any sum due hereunder, Customer shall reimburse hellospoke for its reasonable attorneys' fees and court, collection and other costs incurred by hellospoke in the enforcement of hellospoke's rights hereunder and hellospoke may keep any deposits or other payments made by Customer.

23. INDEMNIFICATION. Customer shall defend, indemnify and hold hellospoke, and its affiliates, directors, officers, employees, attorneys, agents, and vendors harmless from any action, claim, cost, damage, demand, expense, fine, liability, and/or penalty arising from or related to Customer's or any User's (a) use or misuse of the Services, (b) breach of this Agreement, (c) negligence or strict liability, or (d) fraud or other tort. Customer agrees and acknowledges that these obligations and limitations are reasonable and are in addition to and supplementary of other defense, indemnity, hold harmless, and/or liability limitations benefiting hellospoke in this Agreement.

24. WARRANTY. hellospoke warrants that the Services will substantially conform to the Documentation during the term of this Agreement. hellospoke will use commercially reasonable efforts to pass through to Customer manufacturers' warranties on Equipment, but shall not be liable for any failure or inability to do so.

25. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE EQUIPMENT, PRODUCTS, AND SERVICES DESCRIBED HEREIN AND PROVIDED PURSUANT HERETO ARE PROVIDED "AS IS" AND hellospoke MAKES NO OTHER WARRANTIES AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. NEITHER hellospoke NOR ITS VENDORS WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO hellospoke's OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISE 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 hellospoke's OR ITS VENDORS' NEGLIGENCE. NEITHER hellospoke NOR ITS VENDORS WILL BE LIABLE FOR MALFUNCTIONS OR FAILURES RESULTING FROM MISUSE, ABUSE, NEGLIGENCE, ALTERATION, MODIFICATION, IMPROPER INSTALLATION, OR REPAIRS BY ANYONE OTHER THAN hellospoke.

26. EXCLUSIVE REMEDY. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR FAILURE OF THE SERVICES OR EQUIPMENT, WHICH hellospoke SHALL BE ENTITLED TO ELECT, IS REPAIR, REPLACEMENT, CREDIT OR, REFUND. hellospoke MAY ELECT TO PROVIDE A REFUND IN LIEU OF CREDIT, REPLACEMENT, OR REPAIR.

27. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL hellospoke OR ITS VENDORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE SERVICES, EQUIPMENT, OR PRODUCTS PROVIDED HEREUNDER WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF hellospoke OR ITS VENDORS OR OTHERWISE. IN NO EVENT SHALL hellospoke's TOTAL LIABILITY HEREUNDER OR FOR ANYTHING ARISING UNDER OR RELATED HERETO EXCEED THE AMOUNTS PAID BY CUSTOMER TO hellospoke IN THE PRIOR TWELVE (12) MONTHS FROM THE DATE OF CLAIM. NEITHER hellospoke NOR ITS VENDORS WILL BE LIABLE FOR DELAYS OR INTERRUPTIONS IN ACCESS TO OR USE OF THE SERVICES RESULTING FROM CUSTOMER'S EQUIPMENT, USE OF THE INTERNET, OR TELECOMMUNICATIONS SYSTEMS NOT UNDER hellospoke's CONTROL, AND hellospoke SHALL HAVE NO LIABILITY FOR ANY SUCH DELAYS OR INTERRUPTIONS.

28. IMPORT AND EXPORT COMPLIANCE. Customer shall comply with U.S. export laws, and applicable import and export laws that may apply in Customer's location(s), concerning the transmission of technical data and other regulated materials via the Services, including, without limitation, laws governing the import and export of encryption software.

29. PHONE NUMBERS AND WEB PORTAL DISCONTINUANCE. Upon expiration, cancellation, or termination of this Agreement or the Services, Customer shall relinquish and discontinue use of any Numbers (except as provided for in Section 12), voice mail access numbers, Logins and/or web portals Sites assigned to Customer by hellospoke or its vendors.

30. SOFTWARE COPYRIGHT. The Software is protected by copyright law and international treaty provisions. The Software is subject to the terms and conditions in licenses of third parties, and hellospoke will use commercially reasonable efforts to pass through licenses for Software sublicensed to Customer in providing hellospoke's Services. Customer has no right to inspect,

possess, use, copy, or attempt to discover the source code (or any portion thereof) used to create any Software, except to the extent that Customer is expressly permitted to decompile the Software under applicable law and Customer notifies hellospoke of Customer's intention to decompile the Software and Customer's reason to do so.

31. SURVIVAL. The provisions of Sections 1, 2, 5.3, 6.8, 8, 10, 12, 21, 23 to 31 (inclusive) and 33 to 41 (inclusive) shall survive any expiration or termination of this Agreement.

32. NOTICES. hellospoke communicates with Customers primarily via email. Notices to Customer shall be sent to the email address specified by Customer at the time Customer ordered the Services or as subsequently specified by Customer ("Email Address"). Customer is responsible for providing hellospoke with a valid Email Address and notifying hellospoke of any Email Address changes. Customer agrees that sending a message to the Email Address is the agreed upon means of providing notification except as otherwise expressly provided in this Agreement (including, without limitation, in Section 21). Email is used to communicate important information about the Services, billing, changes to the Services and other information. The information is time-sensitive in nature. It is required that Customer read any email sent to the Email Address in a timely manner in order to avoid any potential interruption in the Services provided hereunder. All notices and communications required or permitted to be sent to hellospoke under this Agreement shall be in writing and sent to the following address or email address: Director of Customer Service, hellospoke, 118 East Main Street, Louisville, KY 40202 -or- notice@hellospoke.com.

33. FORCE MAJEURE (EVENTS BEYOND OUR CONTROL). hellospoke shall not be liable for any failure or delay in the performance of its obligations hereunder that are directly or indirectly caused by or resulting from events beyond hellospoke's reasonable control, including, without limitation, acts of God, fire, flood, hurricane, earthquake, tsunami, riot, war, terrorism, government actions and intervention, embargoes, strikes, destruction of facilities, late or failed delivery by suppliers, or unavailability of power or Internet services.

34. MANDATORY ARBITRATION.

34.1. ARBITRATION PROCEDURES. PLEASE READ THIS PROVISION CAREFULLY. EXCEPT AS SET FORTH BELOW, CUSTOMER AND hellospoke WILL ARBITRATE ANY DISPUTES OR CLAIMS IN ANY WAY ARISING FROM OR RELATED TO THE AGREEMENT, ANY BREACH OF THE AGREEMENT, OR THE PROVISION OF SERVICES, PRODUCTS, OR EQUIPMENT TO CUSTOMER, INCLUDING ANY BILLING DISPUTES ("CLAIM(S)"). CLAIMS SHALL BE SUBMITTED TO FINAL, BINDING ARBITRATION ADMINISTERED BY AMERICAN ARBITRATION ASSOCIATION ("AAA"). CUSTOMER HEREBY EXPRESSLY WAIVES THE CONSTITUTIONAL OR OTHER LEGAL RIGHT TO FILE A LAWSUIT OR HAVE A JURY TRIAL ON ANY CLAIMS. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. This agreement to arbitrate also requires Customer to arbitrate claims against other parties relating to Services or Products provided or billed to Customer if Claims are asserted against hellospoke in the same proceeding. ARBITRATION WILL BE CONDUCTED UNDER THE AAA'S PUBLISHED COMMERCIAL ARBITRATION RULES. Customer and hellospoke agree to bear their own fees, costs, and expenses, including those for any attorneys, experts, and witnesses. The place of arbitration shall be in Jefferson County, Kentucky, U.S.A. The language of the arbitration shall be English.

34.2. PREFILING NOTICE OF CLAIM. BEFORE INSTITUTING ARBITRATION PROCEEDINGS, CUSTOMER WILL PROVIDE hellospoke WITH AN OPPORTUNITY TO RESOLVE THE CLAIM BY SENDING A WRITTEN DESCRIPTION OF THE CLAIM TO hellospoke AT THE ADDRESS OR EMAIL ADDRESS BELOW. IF hellospoke IS NOT ABLE TO RESOLVE THE CLAIM WITHIN 30 DAYS OF RECEIPT OF NOTICE, THEN CUSTOMER OR hellospoke MAY INITIATE ARBITRATION PROCEEDINGS AS DESCRIBED IN SECTION 36.1. All Claim notices should be sent to: Director of Customer Service, hellospoke, 118 East Main Street, Louisville, KY 40202 -or- claims@hellospoke.com. CUSTOMER WILL NOT DEMAND ARBITRATION UNLESS CUSTOMER FOLLOWS THE FOREGOING PROCEDURES IN THIS SECTION 36.2 AND THIS SECTION 36.2 MAY BE PLEADED AS A FULL AND COMPLETE BAR AND DEFENSE TO, AND MAY BE USED AS A BASIS FOR AN INJUNCTION AGAINST, ANY ARBITRATION OR OTHER PROCEEDING INSTITUTED IN BREACH OF THIS SECTION.

34.3. TIME LIMITATION. Customer acknowledges and agrees that regardless of any statute or law to the contrary, any arbitration proceeding arising from or related to this Agreement or the Services must be commenced within one (1) year after the earlier of (a) when such Claim accrued or arose or (b) termination of the Agreement or the Services, or be forever barred.

34.4. PERSONAL JURISDICTION. To the extent court action is initiated to enforce an arbitration award or for any other reason consistent with Section 36, Customer and hellospoke agree to submit to the personal and exclusive jurisdiction of the state and federal courts within Jefferson County, Kentucky, and waive any objection as to venue or inconvenient forum in such courts.

35. ENTIRE AGREEMENT. The terms and conditions of this Agreement including any terms contained in an applicable Service Plan along with the rates posted to the website currently located at <http://hellospoke.com/legal> or otherwise agreed to as part of the Agreement, constitute the entire agreement with regard to the subject matter hereof and expressly supersede and replace any prior or contemporaneous agreements, written or oral. The terms and conditions of this Agreement are in lieu of and replace any and all terms and conditions set forth in any documents issued by Customer, including, without limitation, purchase orders and specifications. ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS AND CONDITIONS ON ANY SUCH DOCUMENT ISSUED BY CUSTOMER AT ANY TIME ARE HEREBY OBJECTED TO BY hellospoke, AND ANY SUCH DOCUMENTS SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE OR SERVICE RENDERED HEREUNDER AND SHALL NOT BE BINDING IN ANY WAY ON hellospoke. Except as set forth in Section 20, no waiver or amendment to this Agreement or these terms and con-

ditions shall be binding on hellospoke unless made in writing expressly stating that it is such a waiver or amendment and signed by an officer of hellospoke.

36. **GOVERNING LAW.** The Agreement and the relationship between Customer and hellospoke shall be governed by the laws of the Commonwealth of Kentucky without regard to its conflict of law provisions and any applicable federal and international laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

37. **NO WAIVER.** The failure of hellospoke to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision.

38. **SEVERABILITY.** The unenforceability of any provision or provisions of this Agreement shall not render unenforceable or impair its remainder. If any provision of the Agreement is deemed invalid or unenforceable in whole or in part, the Agreement shall be deemed amended to delete or modify, as necessary, the invalid or unenforceable provision to render it valid, enforceable, and, insofar as possible, consistent with the original intent of the parties.

39. **ASSIGNMENT; BINDING EFFECT.** Customer shall not assign this Agreement or delegate its rights or obligations hereunder without hellospoke's prior written consent. Each party represents and warrants to the other that the persons signing this Agreement and any Service Plans or otherwise contracting on their behalf here under are their authorized representatives. Subject to the foregoing, this Agreement shall be binding upon the permitted assigns and successors in interest of hellospoke and Customer.

40. **HEADINGS.** The headings in the Agreement are solely for the convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement.