

# TERMS OF SERVICE



## Terms of Service

These Terms and Conditions (hereinafter the "Agreement") shall govern all Sales Orders, Addendum(s) to Sales Orders and any other contracts or agreements entered into between CloudConnect, Inc. (CloudConnect), and its Customers.

## Terms and Conditions

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### 1. DEFINITIONS

Service(s) means provisioning of voice services, Internet access (including Shared Bandwidth and Dedicated lines), IP addressing, email, VPNs, firewalls, hosting, server collocation, hardware sales and all related support services, as provided.

**1.1** Software means any computer programs or code, software applications, and any other software provided by CloudConnect to Customer pursuant to this Agreement.

### 2. SERVICES AND EQUIPMENT

**2.1 CloudConnect Services.** CloudConnect shall provide the Services to Customer on the terms and conditions set forth in this Agreement and the Phone Purchase Agreement. CloudConnect's obligations under this Agreement are expressly conditioned upon Customer or Customer's landlord granting CloudConnect or its designated agents, contractors or representatives access to the building phone room and roof areas as necessary in CloudConnect's judgment to deliver the Services and to install and maintain equipment.

**2.2 Required Equipment.** Customer understands and agrees that the Service requires certain equipment provided by Customer such as a sip aware access device, personal computer, an Ethernet card and an appropriate operating system (the Customer Equipment), as well as certain equipment provided by CloudConnect such as the Software, an edge access device, an IP phone or media converter (the CloudConnect Equipment). Customer represents that it owns the Customer Equipment or otherwise has the right to use such equipment in connection with the Service.

**2.3 Access to Customer's Premises.** Customer authorizes CloudConnect and its employees, agents, contractors and representatives to enter Customer's premises (Premises) to install, maintain, inspect, alter, repair and remove the CloudConnect Equipment. All such services shall be conducted at a time agreed to with Customer. If Customer is not the owner of the Premises, upon CloudConnect's request Customer shall supply CloudConnect with the owner's name and address, evidence that the Customer is authorized to grant access to the Premises on the owner's behalf, and (if needed) written consent from the owner of the Premises. If Customer does not provide access as provided

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herein, CloudConnect shall, at its option, a) declare the full amount for the entire term due and payable immediately, or b) elect to terminate this agreement.

**2.4 Ownership of Equipment.** All CloudConnect Equipment and Software shall at all times remain the property of CloudConnect or its designee, unless purchased from CloudConnect at the time of installation or leased with a buy out at the end. Customer may not sell, transfer, lease, encumber or assign all or part of the CloudConnect Equipment or Software, nor shall Customer relocate the CloudConnect Equipment outside the Premises. Customer shall pay to CloudConnect the full manufacturer's suggested retail price for the replacement of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered or assigned Equipment or part thereof, together with any incidental costs incurred by CloudConnect relating to the replacement of the CloudConnect Equipment. Customer hereby authorizes CloudConnect to charge Customer's Visa, MasterCard, or other credit card for any such charges. CloudConnect may, at its option, install new or reconditioned CloudConnect Equipment.

**2.5 Back-up Requirements.** The installation, use, inspection, alteration, maintenance, repair or removal of the CloudConnect equipment and software may result in service outage or potential damage to Customer's Equipment. If Customer does not back-up all existing computer files by copying them to another storage medium prior to such activities, Customer understands and accepts the associated risks of not making such a backup. IN ANY EVENT, EXCEPT AS SET FORTH IN SECTION 2.7 BELOW, CLOUDCONNECT SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF THE CUSTOMER'S EQUIPMENT, PERIPHERALS, SOFTWARE OR DATA.

**2.6 Non-recommended Configuration.** CloudConnect has informed Customer of the recommended minimum computer hardware requirements, if any, (Minimum Requirements) for efficiently operating the Service. If Customer allows the installation of the Service utilizing hardware that does not meet the Minimum Requirements (a Non-recommended Configuration), Customer agrees that (i) Customer shall not be entitled to Customer support relating to any issues other than the quality of the signal delivered to Customer's IP phone or media converter, and (ii) the following limitations of liability shall apply: CLOUDCONNECT DOES NOT REPRESENT OR WARRANT THAT A NON-RECOMMENDED CONFIGURATION WILL ENABLE CUSTOMER TO SUCCESSFULLY ACCESS, OPERATE OR USE THE SERVICE, NOT THAT ANY SUCH INSTALLATION WILL NOT CAUSE DAMAGE TO THE CUSTOMER'S EQUIPMENT, PERIPHERALS, SOFTWARE OR DATA. CLOUDCONNECT DOES NOT ASSUME ANY LIABILITY WHATSOEVER FOR ANY DAMAGE OR FAILURE TO INSTALL, ACCESS OR USE THE SERVICE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in this Agreement.

**2.7 Customer's Hardware and Software.** Except for gross negligence or willful misconduct by CloudConnect, CloudConnect shall have no liability whatsoever for any damage, loss or destruction to Customer's Equipment or peripherals. CLOUDCONNECT SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF ANY SOFTWARE, FILES OR DATA. Customer acknowledges that the opening of Customer's computer may void warranties provided by the computer manufacturer or other parties relating to the computer's hardware or software. Customer consents to the opening of the computer for installing and providing the Service. CLOUDCONNECT SHALL HAVE NO LIABILITY WHATSOEVER AS THE RESULT OF THE VOIDING OF ANY SUCH WARRANTIES.

## 3. INSTALLATION AND SOFTWARE LICENSES

**3.1 Installation Process.** CloudConnect or its agents will supply and install the CloudConnect Equipment within the Premises.

**3.2 File Modification.** As part of the installation process, system files on Customer's computer may be modified. CloudConnect does not represent, warrant nor covenant that such modifications will not disrupt the normal operations of Customer's computer. For these and other reasons, CloudConnect recommends, and Customer agrees, that Customer will back-up all files in accordance with Section 2.5 above prior to installation of the Service. If Customer does not back-up all existing computer files, Customer understands and accepts the associated risks of not doing so. CloudConnect SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE RESULTING FROM THE ABOVE OR OTHER FILE MODIFICATIONS.

### 3.3 Software.

**3.3.1 Non-exclusive License.** If Software is provided by CloudConnect, CloudConnect grants to Customer a limited, non-exclusive license to use the Software, in object code form only, solely for the purpose of connecting Customer's computer(s) or sip aware device to the Service. This license will permit such use by Customer and any person authorized by Customer to use the Service, provided that Customer shall be responsible for all uses of the Service as provided in this Agreement. This license will commence upon CloudConnect's acceptance of Customer's subscription for the Service and will terminate immediately upon the expiration or termination of this Agreement for any reason. Customer will destroy all Software and any related written material, together with any copies, promptly upon the

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expiration or termination of this Agreement for any reason.

**3.3.2 Copies.** Customer may make a single copy of the Software solely for back-up purposes, provided that such copy contains the same copyright notices and proprietary markings as the original Software. Customer cannot engage in, nor permit, any other copying, or any translation, reverse engineering or reverse compiling, disassembly or modification of or preparation of any derivative works based on the Software, all of which are prohibited.

**3.3.3 End User Licenses.** Customer agrees to comply with the terms and conditions of all end user license agreements accompanying any software or plug-ins to such software distributed in connection with the Service. All end user licenses shall immediately terminate on the date that the Service expires or is otherwise terminated.

## 4. PAYMENT

**4.1 Fixed Monthly Service Fees.** The cost for Services requiring a fixed monthly fee shall be as stated in the Phone Purchase Agreement and shall be payable monthly, in advance, plus all applicable taxes, tariffs, governmental assessments, surcharges and fees (collectively, the Fixed Service Fee(s)). The Fixed Service Fee for the first month of Service shall be due and payable prior to installation of Service and if commencement of Service occurs on other than the first calendar day of the month then the Fixed Service Fee will be prorated by the number of calendar days remaining in the month. Thereafter, the Fixed Service Fee is due and payable in advance on the first day of each month and shall be considered late if not received by CloudConnect by the tenth calendar day of each month.

**4.2 Variable Monthly Usage Fees.** The cost for Services computed based on the usage by Customer and other variable factors shall be computed at the rates stated in the Phone Purchase Agreement and shall be payable monthly, using a cut-off date selected by CloudConnect, in arrears, plus all applicable taxes, tariffs, governmental assessments, surcharges and fees (collectively, the Usage Fee(s)). The rates for voice services set forth in the Phone Purchase Agreement shall be valid for the initial term, provided however, all rates for International Services are subject to change on five calendar days notice from CloudConnect. New rates are automatically effective on the 6th day from the date of such notice. CloudConnect, upon 10 days notice, can adjust the rates for voice services to include the cost, if any, of tariffs, taxes or assessments imposed upon CloudConnect by any governmental agency. The Usage Fees are due and payable on the first day of the month billed and shall be considered late if not received by CloudConnect by the tenth calendar day of such month.

**4.3 Installation Charge and Security Deposit.** The charge for Installation shall be as stated in the Sales Order and shall be due and payable prior to installation. Charges for Advanced Installation are detailed in the Sales Order. An equipment deposit for CloudConnect Equipment to be used in the Customer Premises shall be as stated in the Sales Order and shall be due prior to installation and shall be refunded to Customer upon termination of service, provided said CloudConnect Equipment is returned in good working condition.

**4.4 Agreement to Pay.** Monthly payments and any other amounts due to CloudConnect may be charged to Customer's Visa, MasterCard, American Express or other credit card, and/or electronically debited to Customer's bank account, at Customer's option. Customer agrees to pay all monthly Service Fees, Usage Fees, the Installation Charge, and Equipment Deposit. Customer hereby authorizes CloudConnect to charge Customer's Visa, MasterCard or other credit card and/or to electronically debit Customer's bank account for all such fees, charges, taxes and payment transaction processing costs.

**4.5 Late Payments/Failure to Pay.** If any payment due to CloudConnect is not received within 10 days of due date, an administrative charge of 5% of the amount due may be assessed and the Service may be discontinued. If the Service is discontinued, Customer will be required to pay a reconnect fee of \$200.00 in addition to all past due amounts before the Service is reconnected. The administrative charge is intended to be a reasonable advance estimate of CloudConnect's costs resulting from Customer's late payments and non-payments, and is set in advance due to the difficulty inherent in determining the costs associated with any particular late payment or non-payment. CloudConnect does not anticipate that Customer will fail to make payments on a timely basis. CloudConnect does not extend credit to its Customer, and the administrative charge is not interest, a credit service charge nor a finance charge. In the event CloudConnect, at its sole discretion, elects to use the services of a third party collection agency, the costs of such third party collection agent shall be paid by the Customer.

**4.6 Price Changes.** CloudConnect has the right to change its Service Fee at any time and upon 30 days advance notice unless otherwise stated in the Sales Order.

**4.7 Additional Charges.** The Service may allow Customer to access the Internet, on-line services and other information. Customer acknowledges that Customer may incur charges while using the Service in addition to those billed by CloudConnect. For example, Customer may incur charges as a result of accessing certain on-line services or

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purchasing or subscribing to certain other offerings. Customer agrees that all such charges, including all applicable taxes, are the sole responsibility of Customer.

**4.8 Credit Inquiries.** Customer authorizes CloudConnect to make inquiries and to receive information about Customer's credit experience from others, enter this information in Customer's file, and disclose such information concerning Customer to appropriate third parties for reasonable business purposes. CloudConnect reserves the right, in its sole discretion, to refuse to provide Service based upon lack of creditworthiness, or in the alternative to require a security deposit that will be returned to Customer, without interest thereon, upon the expiration or termination of Services assuming all amounts due CloudConnect have been paid in full. CloudConnect shall have the right to offset against the security deposit, in part or in full, for any amounts due CloudConnect

## 5. CUSTOMER CONDUCT

**5.1 Prohibited Uses.** Customer shall not use the Service or the CloudConnect Equipment, directly or indirectly;

**5.1.1** for any unlawful purposes; use of the Service for transmission or storage of any information, data or material in violation of any United States federal, state or local regulation or law is prohibited, such limitation shall include, without limitation, posting or disseminating content which is obscene, unlawful, threatening, defamatory, or infringes upon the intellectual property rights of any third party;

**5.1.2** to post, transmit or disseminate objectionable information, including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law or regulation;

**5.1.3** to access any other person's computer, software or data without the knowledge and consent of such person;

**5.1.4** to upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way, information, software or other material obtained through the Service which is protected by copyright or other proprietary rights without obtaining permission from the owner(s);

**5.1.5** to copy, distribute, or sublicense any software provided by CloudConnect, except that Customer may make one copy of each software program for back-up purposes only;

**5.1.6** to service, alter, modify or tamper with the CloudConnect Equipment or Service or permit any other person to do the same unless such person is authorized by CloudConnect to do so;

**5.1.7** to restrict, inhibit or otherwise interfere with the ability of any other person to use or enjoy the Service, including, without limitation, posting or transmitting any information or software which contains a virus or other harmful feature, or generating levels of traffic sufficient to impede others' ability to send or retrieve information;

**5.1.8** to knowingly disrupt the Service;

**5.1.9** to resell the Service or otherwise charge others to use the Service; the Service is for personal use only and Customer agrees not to use the Service for operation as an Internet service provider or for any other business enterprise in competition with the Service;

**5.1.10** to connect the sip aware access device or media converter to any computer outside of Customer's Premises;

**5.1.11** to allow or provide access to adult content material to anyone under the age of 18 years.

**5.1.12 Call Flooding.** To protect the integrity of its network, CloudConnect may in its reasonable discretion, and without liability for damages of any type to Customer, its affiliates or End Users, temporarily block duplicate or repeated numbers dialed in succession, where CloudConnect considers the number of attempts to be potentially harmful to the network.

**5.2 Termination.** CloudConnect reserves the right to immediately terminate this Agreement and the Service if Customer engages in any of the activities listed in Section 5.1 above or if Customer uses the Service or CloudConnect Equipment contrary to any other CloudConnect policy. Customer agrees to indemnify, defend and hold harmless CloudConnect against all claims and expenses (including reasonable attorneys' fees) resulting from Customer's use of the Services, including, without limitation, the activities listed in Section 5.1 above, or from any other violation of CloudConnect policies by Customer. This provision shall survive the expiration or other termination of this Agreement.

## 6. SERVICE INTERRUPTIONS

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**6.1 Force Majeure.** CloudConnect shall have no liability, including as set forth in this Section, for interruption of the Service due to circumstances beyond CloudConnect's control, including, without limitation, acts of God, flood, natural disaster, regulation or governmental acts, fire, civil disturbances, strike or weather.

## 7. AUTOMATIC RENEWAL AND TERMINATION

**7.1 Termination by Customer.** The Terms of this Agreement shall be as stated in the Phone Purchase Agreement beginning on the date of Installation and shall automatically renew for a period equal to the initial term on each anniversary unless written notice of cancellation is received by CloudConnect thirty days prior to the end of each Term. **For Shared Bandwidth Services only, Customer may terminate this Agreement at any time after the first ninety (90) days of Service provided a) Customer gives thirty (30) days advance written notice and b) such notice is delivered to CloudConnect along with an early termination fee (Shared Bandwidth Early Termination Fee) equal to the Fixed Service Fee specified in the Sales Order multiplied by the lesser of i) three (3) or ii) the number of months remaining in the initial term or any extension thereof. For all other Services billed by a Fixed Service Fee, Customer may only terminate prior to the end of the Term stated in the Sales Order by giving written notice to CloudConnect and by payment of a Fixed Service Fee Termination Amount equal to the number of months remaining in the Term times the amount of the monthly Fixed Service Fee (Fixed Service Fee Termination Amount). For Services billed pursuant to Usage Fees Customer may only terminate prior to the end of the Term stated in the Sales Order by giving written notice to CloudConnect and by payment of a Usage Fee Termination Amount equal to the number of months remaining in the Term times the average of the prior three (or if less than three months have elapsed, using the actual number of months elapsed) month's Usage Fees (Usage Fee Termination Amount). All such types of Termination Fees described herein shall collectively or individually be known as Termination Fee(s). ANY TERMINATION NOTICE RECEIVED BY CLOUDCONNECT WHICH IS NOT ACCOMPANIED BY THE PAYMENT OF THE APPLICABLE TERMINATION FEE SHALL BE NULL AND VOID.**

**7.2 Termination by CloudConnect** CloudConnect may terminate this Agreement immediately should Customer violate any of the terms of this Agreement. CloudConnect may also terminate this Agreement for any other reason by providing Customer with written notice of such termination no later than thirty (30) days before the date of termination. In the event that CloudConnect terminates this Agreement for any reason other than Customer's violation of the provisions of Section 5.1, Service Fees and other charges will continue to accrue through the date of termination, but all prepaid Service Fees and charges for cancelled Service will be refunded. If termination is due to violation of the provisions of Section 5.1, the termination amount will be equal to the number of months remaining in the Term times the amount of the monthly Fixed Service Fee;

**7.3 Customer Obligations.** Customer agrees that upon termination of this Agreement;

**7.3.1** Customer will pay CloudConnect in full for Customer's use of the Service and CloudConnect Equipment up to the later of (i) the effective date of termination of this Agreement or (ii) the date on which the Service and the CloudConnect Equipment have been disconnected and returned. Customer agrees to pay CloudConnect on a prorated basis for any use by Customer of the Service or CloudConnect Equipment for a part of a month;

**7.3.2** Customer will permit CloudConnect, its employees, agents, contractors and representatives to access Customer's Premises during regular business hours to remove the CloudConnect Equipment and other materials furnished by CloudConnect;

**7.3.3** Customer will ensure the return of all CloudConnect Equipment to CloudConnect. Customer will return or destroy all copies of any software provided to Customer pursuant to this Agreement. If the CloudConnect Equipment is not returned, Customer agrees to pay the charges referred to in Section 2.4 above and CloudConnect shall have the right to charge such amounts to Customer's Visa, MasterCard or other credit card, or to electronically debit Customer's bank account;

**7.3.4** Customer, upon request by CloudConnect made not more frequently than monthly, shall provide information regarding the number of desktop and/or portable computers connected to the CloudConnect Service during any month.

**7.4 Retention of Rights.** Nothing contained in this Agreement shall be construed to limit CloudConnect's rights and remedies available at law or in equity. CloudConnect reserves the right to delete all data, files, electronic messages or other information any reason. arising out of or related in any way to the use of the Service and/or CloudConnect Equipment by Customer or otherwise arising out of the use of Customer's computer.

**7.5 Survival.** The terms set forth in Sections 2, 3, and 4 shall survive the termination of this Agreement.

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### 8. MULTIPLE USERS

Customer acknowledges that Customer is executing this Agreement on behalf of all persons who use the Service and/or CloudConnect Equipment through Customer's computer(s), phone systems, PBXs and other telecommunications equipment. Customer shall have sole responsibility for ensuring that all such other users understand and comply with the terms and conditions of this Agreement. Customer further acknowledges and agrees that Customer is solely responsible and liable for any and all breaches of the terms and conditions of this Agreement whether such breach is the result of use of the Service and/or the CloudConnect Equipment by Customer or any other user of Customer's computer(s), phone systems, PBXs and other telecommunications equipment. Customer agrees to indemnify, defend and hold harmless CloudConnect against all claims and expenses (including reasonable attorneys' fees) arising out of the use of the Service and/or CloudConnect Equipment by any other user of Customer's computer(s), phone systems, PBXs and other telecommunications equipment.

### 9. IP ALLOCATION

**9.1 Exclusions.** UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT OR OTHERWISE PROHIBITED BY LAW, NEITHER CLOUDCONNECT, ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, NOR ANY OWNER OR MANAGER OF THE BUILDING OR LAND IN WHICH CUSTOMER'S PREMISES IS LOCATED SHALL HAVE ANY LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY FOR:

**9.1.1** ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF EARNINGS OR LOSS OF BUSINESS OPPORTUNITIES, RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, THE USE OF THE SERVICE BY CUSTOMER OR ANY OTHER USE OF THE CLOUDCONNECT EQUIPMENT OR SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE RESULTING FROM OR ARISING OUT OF CUSTOMER'S RELIANCE ON OR USE OF THE SERVICE OR CLOUDCONNECT EQUIPMENT OR SOFTWARE, OR THE MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, TRANSMISSION OR ANY FAILURE OF PERFORMANCE OF THE SERVICE OR CLOUDCONNECT EQUIPMENT OR SOFTWARE; OR

**9.1.2** ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES OR COSTS (INCLUDING LEGAL FEES) RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE CLOUDCONNECT EQUIPMENT OR SOFTWARE, OR SERVICE OR A THIRD PARTY INFRINGES UPON THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY OR OTHER INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY.

**9.2 Application.** The liability limitations set forth in this Section 10 apply to the acts, omissions and negligence of CloudConnect (and its officers, directors, employees, agents, contractors and representatives) which, but for this provision, would give rise to a cause of action in contract, tort or any other legal doctrine. However, the liability limitations set forth in this Section 10 shall apply to liability for personal injury or death only to the extent applicable law does not prohibit such limitation.

**9.3 No Third Parties.** No third party owner or manager of Customer's building or land is a party to this Agreement. Thus, no such owner or manager shall be responsible for, nor shall be liable for, the quality of the Service or CloudConnect Equipment.

**9.4 Sole Remedies.** Customer's sole and exclusive remedies under this Agreement are as set forth in this Agreement.

**9.5 Emergency 911 and Directory Assistance.** Customer shall coordinate and provide their own solution for Emergency 911 and Directory Assistance at their sole expense. CloudConnect is not responsible for providing this service and strongly urges the Customer to seek a safe and appropriate solution.

### 10. SERVICE GUARANTEE

**10.1 Indemnification Obligation.** Customer shall defend (with counsel reasonably acceptable to CloudConnect), indemnify and hold harmless CloudConnect and CloudConnect's officers, directors, employees, agents, contractors and representatives from and against any and all claims and expenses, including reasonable attorneys' fees).

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### 11. DISCONNECTION POLICY

Customer agrees that CloudConnect and/or its agents may, from time to time, collect information regarding Customer's use of the Service and activities on the Internet. Customer agrees that such information may be shared with third parties provided that (i) CloudConnect does not disclose any personally identifiable information to others except, as allowed by law and (ii) otherwise complies with applicable privacy laws. Customer expressly grants CloudConnect the right to disclose information relating to Customer and/or Customer's account in response to a subpoena issued in a civil or criminal investigation, litigation, court order or a civil investigation by a governmental entity.

### 12. HOSTING SERVICES

**12.1 Controlling Law; Venue.** The validity, performance, and interpretation of this Agreement will be governed and construed in accordance with the laws of the United States and the State of Arizona, County of Maricopa, without regard to its conflicts of law provisions. The parties will voluntarily appear before and hereby consent and submit to the exclusive jurisdiction of the state and federal courts located in Phoenix, Arizona. If any dispute, litigation, or other action arises between the parties with respect to the matters covered by this Agreement, the prevailing party in such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out of pocket costs incurred in connection with such proceeding, in addition to any other relief it may be awarded.

**12.2 Notices.** All notices permitted or required under this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally, (ii) by commercially established courier service upon delivery or, if the courier attempted delivery on a normal business day and delivery was not accepted, upon attempted delivery, (iii) by facsimile transmission when confirmed by facsimile transmission, or (iv) by certified or registered mail, return receipt requested, ten (10) calendar days after deposit in the mail. Such notices shall be sent to the addresses set in the Sales Order or such other address as a party hereto shall notify the other party of in writing.

**12.3 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

**12.4 Headings.** The headings in this Agreement are inserted for convenience and do not constitute a part of the Agreement, nor modify or limit any of the terms.

**12.5 Waiver Amendment Modification.** No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed by the party against whom such waiver or consent is asserted. The waiver by either party of, or consent of either party to, a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of, consent to, or excuse of any other or subsequent breach by the other party. This Agreement may be amended or modified only by mutual agreement of authorized representatives of the parties in writing.

**12.6 Enforceability of Provisions.** To the extent any provision or portion of this Agreement is determined to be invalid, illegal or unenforceable, such provision or portion shall be severed or deleted from this Agreement or limited so as to give effect to the intention of the parties insofar as possible. The invalidity or unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision or this Agreement as a whole.

**12.7 Assignment.** CloudConnect may assign its rights and obligations under this Agreement to any party without the consent of Customer. Customer may not assign or otherwise transfer its rights or obligations under this Agreement.

**12.8 Entire Agreement.** This Agreement, including the Sales Order and attachments hereto, constitutes the entire agreement between the parties regarding its subject matter. This Agreement supersedes all prior proposals, agreements or other communications between the parties, oral or written, regarding such subject matter. No other representation, warranty, term or condition, other than as expressly set forth in this Agreement, shall be binding on CloudConnect

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Customer Signature: \_\_\_\_\_