

IFBYPHONE TERMS OF SERVICE

This Agreement governs the acquisition and use of software and services of IFBYPHONE, Inc., a Delaware corporation (“Ifbyphone”) by your business organization (our “Customer”). BY COMPLETING OUR ORDER FORM AND PROVIDING THE NECESSARY INFORMATION FOR USE OF THE SERVICES PROVIDED THROUGH OUR WEBSITES (THE “SERVICE”), WHICH FORMS REFERENCE THESE TERMS AND CONDITIONS AS A PRECONDITION TO USE OF THE SERVICE, CUSTOMER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH HEREIN.

THE TERMS AND CONDITIONS SET FORTH HEREIN APPLY TO CUSTOMER AND ANY USERS ACCESSING THE SERVICES THROUGH CUSTOMER’S ACCOUNT. BY REGISTERING FOR AN ACCOUNT OR ISSUING A PURCHASE ORDER, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND CUSTOMER TO THE TERMS AND CONDITIONS SET FORTH HEREIN. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS SET FORTH HEREIN, DO NOT ATTEMPT USE OR ACCESS THE SERVICE OR THE IFBYPHONE WEBSITE.

1. Definitions.

1.1 “Account” means the account (a) under which Customer and Users use the Service, whether registered to User individually or Customer for use by its designated Users.

1.2 “Agreement” means this document defining the terms of service to which Customer agree to adhere by Your use of the Service and website.

1.3 Other relevant terms, including Customer, User, and Service shall have the meaning ascribed to them in the preamble to this Agreement.

2. User Accounts

2.1 **AUTHORIZED USERS.** You may use the Service only while you are a Customer or one of its authorized Users. Customer acknowledges Ifbyphone has the right to terminate the Account, suspend the Service, or cancel or revoke the hibernate status as provided in this Agreement or for any other reason as it reasonably feels is appropriate pursuant to any other agreement or policy.

2.2 **REQUIRED INFORMATION.** During registration, Customer must submit and maintain current and accurate Account and contact information, including a working e-mail address, telephone number, and an email for invoices (as applicable), and any inaccuracy therein shall be grounds for Account termination.

2.3 **NOTICE.** Customer is responsible to assure that any users of the Service through Customer’s account are

notified of any change to these term and conditions of use. Accordingly, all such users shall be deemed to have received such notice when provided to Customer’s contact person of record by email or other reasonable means.

2.4 **EQUIPMENT.** Customer is responsible for providing the equipment and any other software or components necessary for the proper use of the Service. Ifbyphone is not responsible for any telephone or internet connection charges, surcharges, taxes, or other amounts incurred in accessing the Service, for which Customer accepts responsibility. If Ifbyphone specifies, at any time, any particular system requirements or hardware specifications for use of the Service, you will be responsible to provide the same or to cease to use the Service.

2.5 **TERMINATION OF AGREEMENT.**

2.5.1 *By Ifbyphone.* Unless otherwise specified to the contrary, Customer’s right to access or use the Service terminates on the earlier of: (i) the date which is the last day of the billing cycle for which the last Service prepayment for the Account has been received by Ifbyphone, (ii) the date on which any charge or fee, or other balance due under the Account, is past due, or (iii) any other date upon which Ifbyphone has the right to terminate the Account or suspend the Service as provided in this Agreement or any other applicable agreement or policy.

2.5.2 *By Member.* Customer may cancel his, her, or its Account through the cancellation process at the customer portal page within the Ifbyphone Website (at www.ifbyphone.com). Such cancellation shall be effective at the end of the current billing cycle, unless Customer has expressly committed to a longer period of Service, in which case such cancellation is effective at the end of such period, by the process required in any agreement for such commitment.

2.5.3 *Termination for Non-Payment or Other Breach.* Ifbyphone may, without refund, terminate an Account or suspend access to the Service immediately without notice, in Ifbyphone’s sole discretion, if Customer fails to (i) pay all amounts when due, or (ii) comply with this Agreement, thereby terminating this Agreement (except for terms which by their nature should survive) and all obligations of Ifbyphone hereunder or with respect to the Service. Customer shall be responsible for any balance due on the Account.

2.6 **ACCOUNT INFORMATION AND DATA.** Ifbyphone may, after 30 days post Account cancellation, delete all account usage information and data, including, but not limited to, calling history, audio files, configuration profiles, and other information indicative of your use of the Service.

2.7 **TRIAL PROGRAMS.** Ifbyphone may provide free demonstrations of the Service in accordance with certain terms and conditions. Ifbyphone reserves the right to

suspend or terminate any trial programs or block access to trial programs, in its discretion, for any reason or no reason.

2.8 **LIMITATION OF USE.** Ifbyphone may establish other reasonable Account or Service registration or usage limits in its discretion. We further reserve the right to refuse or cancel Service to any Customer for any reason, in our discretion.

3. **Customer Representations and Warranties.** In order to utilize the Service, Customer hereby represents and warrants to the extent any features of the Service are used by any individual through an account, Customer has provided the express permission to use Customer's Account.

4. **Price and Payment.**

4.1 **APPLICABLE CHARGES.**

4.1.1 **Payment of Fees.** Customer acknowledges it has reviewed and accepts the fees and charges associated with Customer's Account. As such, Customer agrees to pay all fees, usage charges, international calling surcharges, per-minute calling rates, regulatory cost recovery fees, and other Service charges applied to the Member's Account in accordance herewith and with the applicable selected Service plan and in accordance with the billing plan selected by Customer. Customer shall comply with applicable billing terms (prepaid or post-paid) in effect at the time the fee or charge becomes payable (including without limitation, as applicable, that payments will be charged to the Customer's payment card). For clarification and without limitation to any the selected billing method, Ifbyphone shall bill for all minutes of usage for each call from the instant a call is initiated by, or connected to, the Ifbyphone network to the instant all parties to such call are disconnected (subject to minimum call durations, billing increments, and duration rounding practices used by Ifbyphone or its carriers), in accordance with Ifbyphone's standard practices, notwithstanding any call transfer, disconnection by one party, or other event.

4.1.2 **Payment of Additional Charges.** Customer is also responsible to pay (unless stated as included in Service charges): (i) any additional amounts attributed to Customer's use of the Service, including any additional amounts charged to Ifbyphone by domestic and international telephone companies, (ii) any penalties, administrative fees, or other amounts arising out of unauthorized payment card usage, charge-backs, bounced checks, and the like, and (iii) account reactivation fees imposed after Service termination or suspension.

4.1.3 **International Calling.** Unless expressly specified otherwise, the Service and all quoted fees and charges are for United States domestic voice only, and any international or other usage will be billed at Ifbyphone's standard rates plus applicable surcharges. International calling surcharges and rates, together with minimum call durations, billing increments, and duration rounding practices (collectively,

"International Calling Terms") are available for reference through Ifbyphone's [International Rates Calculator](#), however, International Calling Terms may be subject to change from time to time without notice, and accordingly Customer may not rely on the prices set forth in the **International Rates Calculator** for the price of any such international call.

4.2 **BILLING OPTIONS.** Customer will be billed according to the Service and billing plan chosen, as described on the applicable page(s) of the Ifbyphone Website, which selected page is specifically incorporated herein by reference. Generally, Accounts are billed under one of the following methods: (a) Prepaid Billing Plans (b) an Automatic Best Rate Plan (which may not be available for all Service plans or all Customers), and (c) a per seat license and meets all required criteria and other qualifications therefore. Ifbyphone reserves the right to withdraw or modify Service or billing plans at any time or from time to time effective at the end of any billing cycle. Customer may change its billing plan by accessing its account on the Ifbyphone website and selecting a different plan, if such plan is available.

4.3 **PREPAYMENTS.** Monthly prepaid amounts are valid for the billing cycle for which they are prepaid and expire at the end thereof, whether used or not. No refunds for unused time or capacity, or for partial periods of usage prior to effective Account cancellation, shall be given.

4.4 **PAYMENT AUTHORIZATION.** If Customer subscribes for a Service plan and/or billing plan that provides for monthly payment card billing, Customer hereby authorizes regular billing from time to time, including charges to be applied to the payment card, according to such plan(s) until cancelled as provided herein.

4.5 **DISPUTED CHARGES.** Billing disputes must be submitted within 30 days of the applicable billing date or are deemed waived. Disputes shall be considered in the order received and are subject to determination in the sole judgment of Ifbyphone.

4.6 **INTEREST.** Time is of the essence for payments required hereunder. Any amounts past due shall bear interest on the outstanding past due amount at the lower of 15% per annum or the highest rate allowed by applicable law. Payments to Ifbyphone are non-refundable.

4.7 **COSTS OF COLLECTION.** Customer is responsible for any costs or expenses (including legal or collection agent fees and expenses) related in any way to collecting any past due amounts from Customer. Unpaid bills may be sent to third party collections. Payment obligations are not, under any circumstances, contingent upon collection of any amounts from any users or third parties.

5. **Acceptable Use Policy.**

5.1 **PASSWORD.** When an Account is registered, Customer will select a Password (or, for multi-user accounts, multiple Passwords may be selected). Customer is responsible for the privacy and security of its Password(s). Customer will be responsible all Account use or misuse under its Password, and Customer Account holders are responsible for all activities under the Account under any Password (including, with respect to each of the foregoing, any civil or criminal liability therefor). If Customer feels there may have been a breach in security, such as the unauthorized disclosure or use of any phone number or Password, promptly notify Ifbyphone, and we strongly recommend that you change Passwords. Ifbyphone is not liable for any loss or damage arising from the failure to comply with this section or for any other unauthorized Account usage.

5.2 **PRIVACY POLICY.** Customer is bound by the Privacy Policy located at: <https://secure.ifbyphone.com/privacypolicy.pdf>. Ifbyphone may amend the Privacy Policy from time to time, which changes will be effective upon adoption at the Ifbyphone website. Ifbyphone will provide notice of such change to Ifbyphone website, Customer portal, or a Customer at the Customer contact address provided above.

5.3 **LINKS AND AFFILIATED SITES.** Additional terms of use and policies apply to the community features of the Ifbyphone or affiliated Website, and other community websites reachable through the Ifbyphone Website, to which you are bound to the extent the features are used. Customer may enter into correspondence with, participate in promotions by, or purchase the products or services of, sponsors marketing their products or services on or through the Ifbyphone Website, an Ifbyphone service, or an Ifbyphone partner. Notwithstanding anything herein (or on the Ifbyphone Website) to the contrary, all transactions or correspondence, including without limitation with respect to delivery of and payment for such goods and services, and any other terms, conditions, warranties or representations associated therewith, are solely between Customer and such sponsor or other person, and Ifbyphone shall have no liability, obligation or responsibility with respect to such transactions.

5.4 **COMPLIANCE WITH LAWS.** Customers using the Service for telemarketing or similarly regulated purposes are directly and solely responsible for compliance with applicable laws, including without limitation for filing, subscribing, or holding appropriate regulatory compliance documentation as required by competent jurisdictions and/or the purchase of access to any do-not-call lists and the like.

5.5 **HIPAA COMPLIANCE.** If Customer is a 'covered entity' or a "business associate" thereof, as each term is used under the Health Insurance Portability and Accountability Act of 1996 (as may be amended or replaced, "HIPAA") or are otherwise subject to any HIPAA, related, or similar legal requirement, Customer is solely responsible

to insure full compliance therewith, including without limitation those requirements codified at 42 U.S.C. and 1320 through d-8, and any regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Part 164, and the federal data security standards contained in 45 C.F.R. Part 142.

5.6 **REMEDIES.** Any violation of Ifbyphone policies by Customer or anyone using its Account will be grounds for termination of the Account, at Ifbyphone's sole discretion, and you may be reported to appropriate law-enforcement agencies.

6. **Ifbyphone Warranty and Limitations.**

6.1 **UP TIME.** Ifbyphone guarantees that the calling network component of the Service will be available 99% of the time (the "Service Guarantee"), subject to (and other than) (i) scheduled maintenance outages of which we provide notice on the Ifbyphone Website or by email, and (ii) regular backup and maintenance performed (without further notice) between 2 a.m. and 5 a.m. Central Time Zone. For the purposes of clarification, if the Ifbyphone network or Service is being used to full capacity and thus cannot be accessed by certain Users, this does not constitute Service unavailability or downtime.

6.2 **EXCLUSIVE REMEDY.** If the calling network component of the Service does not meet the up time warranty set forth in paragraph 6.1 in any 90 day period, Ifbyphone will, upon request from Customer, credit to the Account one minute of time for every minute of unavailability in excess of 1% down time, provided, however, that such credit cannot exceed the current monthly minimum service commitment level for that Account, or \$50.00, whichever is less. This shall be Customer's sole remedy for our failure to fulfill the Service Guarantee. You hereby waive all claims for damages for Service unavailability, scheduled or unscheduled other than claims under the Service Guaranty, and indemnify Ifbyphone for any similar claims made by any other users on your Account.

6.3 **MODIFICATION OF FEATURES.** Ifbyphone may at any time change, modify, suspend, or discontinue any aspect of the Service, including, without limitation, the availability of any Service feature, database or content, hours of availability, or equipment needed to access the Service. Ifbyphone may also impose limits on certain features or restrict your access to parts or all of the Service without notice or liability. Ifbyphone does not guaranty that the Service may be accessed from all locations or with all equipment or types of communications access.

6.4 **HIGH USE; SUDDEN CAPACITY INCREASES.** If you engage in any planned marketing activities or other calling events which may use significant Ifbyphone capacity, You agree to provide Ifbyphone with as much prior notice as possible (to the following email address: support@ifbyphone.com) so that we can take reasonable steps to make Service capacity available for your

event. Ifbyphone reserves the right to limit or suspend Service usage under any Account using the Service at volumes significantly in excess of planned usage or prior usage patterns, or when reasonable prior notice of capacity needs has not been provided. Customer acknowledges that such account limitations or suspensions from high volume without prior notice may result in inbound calls being rejected by fast-busy signal.

6.5 TELEPHONE NUMBERS. Ifbyphone will use commercially reasonable efforts to obtain the telephone number(s) requested, and use commercially reasonable efforts to initiate and complete port requests. Customer acknowledges that Ifbyphone may need to change the telephone number assigned to You (due to an area code reassignment or split, or for any other reason). Customer acknowledges that if the Service is suspended or terminated due to non-payment or breach of this Agreement, that Customer may not be able to obtain the same local or toll-free numbers should the Service be reactivated. Ifbyphone may, after 30 days post-cancellation of service and the inability or lack of desire to port the telephone number, remove all telephone numbers from Account.

6.6 DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE SET FORTH HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IFBYPHONE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, THE ACCOUNT, THE SOFTWARE, THE IFBYPHONE WEBSITE, OR ANY OTHER SERVICE OR MATERIALS PROVIDED BY IFBYPHONE. IFBYPHONE MAKES NO WARRANTY AS TO THE CONTINUOUS AVAILABILITY OF THE SERVICE OR THE RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICE. THE SERVICE IS PERFORMED AND THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (EACH OF WHICH IS HEREBY DISCLAIMED). YOU ARE SOLELY RESPONSIBLE FOR THE BACKUP OF ANY DATA WHICH YOU MAY REQUIRE BE STORED IN RESPECT OF THE SERVICE.

IN PARTICULAR, EXCEPT AS PROVIDED HEREUNDER, IFBYPHONE DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICE IS BORNE BY YOU.

THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT AND THE SERVICE WOULD NOT BE AVAILABLE WITHOUT IT. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OF AN IMPLIED WARRANTY, SO PORTIONS OF THIS DISCLAIMER MAY NOT

APPLY TO YOU AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY BY JURISDICTION.

Further, Ifbyphone disclaims any responsibility for the accuracy, content, or availability of information available through the Service, and Ifbyphone shall not be held responsible for the accuracy, legality, or decency of material contained in third-party sites or through third-party services (including any service or content reached through the Service or the Ifbyphone Website), and Customer hereby irrevocably waives any claim against Ifbyphone with respect thereto.

6.7 CREDIT CARD SECURITY. IFBYPHONE IVR SYSTEMS AND SURVO VOICE FORMS DO NOT COMPLY WITH AND ARE NOT INTENDED TO COMPLY WITH, ANY LEVEL OF CREDIT CARD SECURITY OR PCI (PAYMENT CARD INDUSTRY) STANDARDS AND MAY NOT OTHERWISE BE ENCRYPTED OR HACKER-PROOF. DO NOT USE IFBYPHONE VOICE DIALOGUES TO COLLECT CREDIT CARD OR OTHER PERSONAL OR FINANCIAL INFORMATION. IFBYPHONE EXPRESSLY DISCLAIMS ANY, AND CUSTOMER AGREES WE HAVE NO, LIABILITY FOR ANY CLAIMS OR DAMAGES RESULTING FROM FAILURE TO COMPLY WITH ANY DATA SECURITY STANDARDS PERTAINING TO USE OF THE SERVICE, INCLUDING WITHOUT LIMITATION ANY CREDIT CARD SECURITY/PCI COMPLIANCE STANDARDS.

6.8 WAIVER OF LIABILITY. EXCEPT AS SPECIFICALLY SET FORTH TO THE CONTRARY HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL IFBYPHONE BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY DAMAGES THAT RESULT IN ANY WAY FROM ANY USE OF THE ACCOUNT OR THE SERVICE BY ANY PARTY OR THE INABILITY TO USE THE SERVICE OR CUSTOMER'S RELIANCE ON OR USE OF INFORMATION OR SERVICES PROVIDED ON OR THROUGH THE SERVICE OR THE IFBYPHONE WEBSITE OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, ERRORS, DEFECTS, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER SUCH DAMAGES ARE DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF IFBYPHONE SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IF, NOTWITHSTANDING THE FOREGOING, IFBYPHONE IS FOUND LIABLE FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), IFBYPHONE'S LIABILITY TO CUSTOMER WILL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER FOR THE

SERVICE SUBSCRIPTION IN THE LAST THREE (3) MOST RECENTLY PAID MONTHS.

7. Additional Restrictions.

7.1 NO EMERGENCY DIALING. THE SERVICE DOES NOT INCLUDE ANY E911 OR RELATED SHORT DIGIT EMERGENCY DIALING FEATURE. CUSTOMER UNDERSTANDS THE SERVICE IS AN ENHANCED INFORMATION SERVICE AND NOT INTENDED, NOR CAN IT BE USED, AS A FULL INBOUND-OUTBOUND TELEPHONE REPLACEMENT, AND THAT CUSTOMER SHOULD MAINTAIN STANDARD ACCESS TO LAND-LINE OR MOBILE TELEPHONE SERVICE WITH E911/SHORT DIGIT EMERGENCY DIALING SERVICE, OTHER THAN OUR SERVICE. YOU WAIVE ANY CLAIMS AGAINST IFBYPHONE BASED UPON OR ARISING OUT OF ANY FAILURE TO PROVIDE SHORT DIGIT EMERGENCY DIALING CAPABILITY.

7.2 NOT FOR EMERGENCY SITUATIONS.

While the Service is designed to promptly broadcast voice messages to a large group of recipients, it is intended for general business, organizational, and personal use and may not have the capacity to deliver messages of an emergency nature on an immediate basis. Accordingly, use alternative methods for mission critical or emergency services usage to deliver emergency messages of any urgent, public safety or similar nature. You agree that Ifbyphone has no liability arising out of or related to any such use.

7.3 CALL DESTINATIONS OUTSIDE THE U.S.

Due to the methods (and networks) with which we use to connect calls and due to certain United States and foreign regulations, we cannot guarantee the successful completion of any call to any destination outside of the United States when placed: (a) without a local originating number provided as caller ID information, (b) using a toll-free number as the caller ID information, (c) blocking caller ID information or providing no caller ID information, or (d) using other non-compliant caller ID information. Such calls may receive a "fast-busy" signal or other error message.

8. Intellectual Property Rights.

8.1 OWNERSHIP. The brand names, slogans, trademarks, service marks, designs, and logos used on the Ifbyphone Website or in conjunction with the Service, including without limitation IFBYPHONE (collectively, the "Marks") are the trademarks of Ifbyphone and its licensors. You may not copy, display or use the Marks in any manner except as may be automatically displayed by the Service or the Ifbyphone Website or as may be provided in a separate express written agreement with Ifbyphone. You may not alter any Marks or logos or any other Ifbyphone materials, and you hereby agree that all goodwill and other intangible rights which accrue by use or display of any Marks or other materials shall accrue solely to the benefit of Ifbyphone. You further agree not to use any domain name, trademark, trade name, service mark, logo, or other materials

confusingly similar to the Marks (including without limitation any trademark or service mark which includes "byPhone" or any similar language), without the prior written consent of Ifbyphone.

8.2 SITE CONTENT. All information and materials published, transmitted, or otherwise available on the Ifbyphone Website or through the Service (including, but not limited to, terms of service, use policies, service documentation, user help, informational resources, images, equipment configurations, interactive voice response, menus, audio clips, and video clips, collectively, "Content") are protected by copyright or trademarked (as applicable), and owned or controlled by Ifbyphone, its licensors, or affiliated companies. Customer shall abide by all copyright and trademark notices, limitations, and restrictions applicable to any Content or to the Service. Without limiting the foregoing, no Content may be copied, reproduced, republished, reused, uploaded, downloaded, posted, or transmitted, other than through the Service in accordance with its intended use, nor may derivative works be created from it or distributed in any way.

8.3 PROPRIETARY TECHNOLOGY. The software, hardware, and other technologies which Ifbyphone uses to deliver the Service (the "Ifbyphone Technologies") contain confidential and proprietary information, trade secrets, and other property rights belonging to Ifbyphone and its licensors, and all rights to the Ifbyphone Technologies and all property rights related to the Service, including without limitation all patents (registered or unregistered), trade secrets (including diagrams, drawings, processes, production methods, information, data, computer software, and formulas), copyrights (whether registered or unregistered), domain names and subdomains, end-user and consumer information, work product resulting from custom implementation services, and contract rights, including all derivative works thereof (whether produced by Ifbyphone, you, or otherwise), shall remain exclusively with Ifbyphone and its applicable licensors. Customer rights to the Ifbyphone Technologies are limited to a non-exclusive and non-transferable runtime right solely during the term of the applicable Account subscription and solely for the purpose of using the Service. All Service is hosted by Ifbyphone and no software code (other than APIs if Ifbyphone agrees to provide the same in its sole discretion) will be provided to Customer.

8.4 DERIVATIVE WORKS. Customer may not modify, create derivative works or, redistribute, sell, decompile, reverse engineer, or disassemble the Ifbyphone Technologies or otherwise attempt to deduce the source code, design, or data transmission characteristics of the Ifbyphone Technologies. Customer may not use packet sniffers or other network or IP tracing technologies on the Service or with the Ifbyphone Technologies except for the specific purpose of optimizing your network for use of the Service in accordance with Ifbyphone Service documentation.

8.5 **RESTRICTIVE RIGHTS.** Any Ifbyphone Technology which is downloaded for or on behalf of the United States of America, its agencies and/or instrumentalities, or any other national government, is provided with Restricted Rights. Manufacturer is Ifbyphone, Inc., 300 W Adams, STE 900 Chicago, IL 60606.

8.6 **USE OF CUSTOMER NAME AND LOGO.** Customer hereby grants Ifbyphone a royalty-free, non-exclusive, limited license to use the name and logo of Customer on the Ifbyphone website or in other public relations materials to include Customer as a customer of Ifbyphone. Customer may terminate such authorized use upon 30 days written notice of same.

9. **Indemnification.** With respect to any violation of this Agreement, including, without limitation, the provisions of Articles 5, 6 and 7 of this Agreement, Customer agrees to indemnify and hold harmless Ifbyphone, and its subsidiaries, parents, affiliates, managers, shareholders, officers, directors, agents, resellers, sales affiliates, licensees or other partners, and employees, from all claims, demands, liabilities, losses, damages and expenses (including without limitation reasonable legal fees and expenses), arising from or in connection with the use of the Service, any other parties' use of the Customer Account, or any conduct while using the Service, violation of this Agreement, or violation of any rights of another, including without limitation any violation of applicable law or any tort committed while using the Service.

10. **Miscellaneous.**

10.1 **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the laws of Illinois, without giving effect to any principles of conflicts of law. All actions concerning any dispute arising out of the Agreement, the Account, the Service, or the Ifbyphone Website must be brought in the state or federal courts with appropriate subject matter jurisdiction located in (or having jurisdiction over) Cook County, Illinois, and each party consents to the jurisdiction and appropriate venue thereof, provided that actions for injunctive relief may be brought where sought to be enforced.

10.2 **ENFORCEABILITY.** If any provision of this Agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severed from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

10.3 **MODIFICATION.** Except when expressly provided by another written agreement with Ifbyphone, this is the entire Agreement between the parties relating to the subject matter herein and shall not be modified except in writing signed by an authorized representative of Ifbyphone. Customer agrees that Ifbyphone may, in its sole discretion, from time to time add to, delete from, or modify this Agreement in any reasonable manner by providing notice as permitted above.

10.4 **FORCE MAJEURE.** Ifbyphone shall not be deemed in breach of this Agreement, nor for any breach of any implied warranty or other obligation, for any failure in performance arising in connection with circumstances beyond its reasonable control, including, without limitation, fire, flood, storm, strike, lockout or other labor trouble, riot, war, rebellion, accident, or other acts of God.

10.5 **TRANSFERABILITY.** The right to use the Service and access the Account is not transferable, sublicenseable, and may not be sold, rented, or timeshared, unless expressly permitted in another agreement with Ifbyphone. Ifbyphone may assign this Agreement, in whole or in part, at any time with or without notice.

10.6 **NO WAIVER.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.