

# ICS SERVICE AGREEMENT

THIS SERVICE AGREEMENT ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ or the date represented on the approved Service Order ("Effective Date"), by and between ICS, LLC, a North Carolina limited liability company, with its principal offices at 5100 Oak Park Rd, Suite 100, Raleigh NC. 27612, (hereinafter referred to as "ICS") and the customer company as represented on the Service Order,

("Customer") Name:	
<b>With principal place of business located at:</b>	
Street Address:	
City:	
State:	
Zip Code:	

Collectively referred to as the "Parties."

**NOW THEREFORE**, in consideration of the mutual covenants herein, inclusive of all attached appendices, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree to execute this agreement and be bound by its terms and conditions as outlined below.

## 1. DEFINITIONS

As used in this Agreement (including all schedules and exhibits attached hereto), the following terms shall have the meanings set forth below:

### 1.1 "Customer"

Customer means an end-user of the Services of ICS or any affiliate of Customer, who executes a Service Agreement (as defined below) and who has become an end-user of ICS services.

### 1.2 "Service"

Service is defined as any telecommunications and application subscriber services provided to Customer, inclusive of network based hosted Voice over IP (VoIP), that provides voice and optional hosted media traffic as defined by ICS.

### 1.3 "Service Agreement"

"Service Agreement" ("Agreement") is a written or digital subscription for Services furnished by ICS. The subscription shall be evidenced by a valid, fully executed ICS Service Order in the then current standard form or by the Customer's electronic acceptance of ICS's then-current Terms and Conditions for providing Service. A properly executed Agreement shall be submitted by the Customer with respect to each hosted solution inclusive of billing telephone number and working telephone numbers covered by such subscription, and for each other Service to which Customer intends to subscribe. Such Agreement shall be completed and submitted using only Agreement forms supplied, or facilities approved, by ICS, without modification to any of the terms thereof.

### 1.4 "Service Order"

The "Service Order" is an order form provided by ICS to the customer detailing the offered Services along with the term and pricing of said Services. A Service Order is executed by the customer's signed approval of the order. Once executed, the Service Order incorporates the terms of this Service Agreement and becomes an attachment within and governed by the Terms and Conditions of the Service Agreement.

### 1.5 "Telephony Service Charges"

"Telephony Service Charges" refers to all the additional charges over and above the monthly user fees. These charges, calculated on a monthly basis, include but are not limited to the following; international long distance charges, additional calling minute charges over and beyond the quoted usage plan and supplemental regulatory recovery fees. These charges are billed in arrears after they have been calculated.

## 2. SERVICE OFFERING

ICS ("ICS") may offer hosted voice and application services ("Service") and/or equipment and other professional services as part of this Service Agreement. The Service Offering is provided on a monthly per user recurring cost basis for each individual user of the Service. Equipment and other professional services may be offered as a one-time fee or on a monthly fee schedule as detailed in the Service Order.

ICS will provide the underlying Services during the Service Term including cloud host configuration, installation, testing, initial customer training and ongoing host maintenance.

## 2.1 Other Networks; Approval and Usage

Service may include the ability to transmit data through third-party networks, public and private. Customer acknowledges that use of or presence of third-party networks may require approval of the owners or operators of such third-party networks and will be subject to any acceptable usage policies such third-party networks may establish.

ICS shall not be liable for any failure to obtain such approval or any violation by Customer of such policies. Customer understands that ICS shall not be responsible or liable for the performance or non-performance of third-party networks or within interconnection points between the Service and third-party networks.

## 3. EQUIPMENT

### 3.1 ICON Premises-Based Service Supporting Equipment

The Service may be supported using equipment located at the customer site, provided, owned and maintained by ICS, which may include routers, Internet Access Devices, switches and/or universal power supplies. Customer understands that while the equipment is on any of the Customer's sites that they are custodial of the equipment and responsible for any damages and/or theft of the equipment. Customer shall reimburse ICS, on a time and materials basis, for the entire cost to repair and/or replace Equipment in the event of (a) misuse, (b) failure to exercise reasonable care, (c) altering original configuration, (d) damage, (e) theft, (f) disaster and (g) Customer caused service impairments.

### 3.2 Station Equipment (Telephones and Associated Devices)

**Purchase Option.** Customer may choose to purchase their station equipment to be used as the end points for the provided Service. Customer understands that purchased equipment includes its own manufacturer's warranty and its operation is covered under the manufacturer's warranty. Customer agrees that ICS is not obligated for any performance of the purchased equipment under this Service Agreement and that it is covered under the respective manufacturer's warranty.

**Rental Option.** Customer may choose to pay a monthly rental fee for the station equipment to be used as end points for the provided Service. Customer understands that under the rental option that the telephones are the property of ICS. Customer understands that upon termination of this Service Agreement that all rented equipment must be returned to ICS. Customer further understands that the monthly rental billing will continue until the all equipment is returned to ICON and guarantees payment of the rental charges until the equipment is returned.

**Lease Option.** Customer may choose to utilize a third party leasing option provided by an independent party from ICS. Customer agrees to pay the monthly lease fee according to the terms of the lease agreement. The terms of the lease agreement may be provided under separate copy or attached as set forth in Appendix A.

### 3.3 Customer-Provided Equipment

In the event that Customer desires to retain control over its switching device(s) currently deployed within its network, Customer may do so upon the prior approval by ICS. ICS will provide customer with instructions on how the Customer network equipment should be deployed and configured to support the Service. In no event shall ICS be responsible for managing and/or maintaining Customer network equipment. In the event that Customer equipment has a failure or corrupts the Service provided by ICS, customer may be subject to additional ICS service charges on a time and material basis to investigate and cure the disruption.

## 4. PAYMENT FOR SERVICES AND EQUIPMENT

### 4.1 Upfront Payments with Service Order

Customer agrees to pay all up front installation, equipment, and nonrecurring service charges at the time of placing the Service Order. Charges may include but are not limited to carrier-based service activation charges for number porting, directory listing, DID registration and E911 registration. The upfront payment due with the Service Order will also include one month's advance on all Monthly Recurring Fees and Charges.

### 4.2 Monthly Recurring User Fee Charges

Customer agrees to pay all Monthly Recurring User Fee Charges for the Service(s) provided under this Service Agreement and Service Order. Payment for Services must be made one month in advance of the respective month of Service. Failure to make payment of the Monthly Recurring User Fee Charges may result in suspension of Service as outlined in Section 6 of this Service Agreement.

### 4.3 Taxes and Other Regulatory Fees

Customer understands and agrees that they are responsible for all Federal and State Taxes, FCC and Regulatory Surcharges and that these fees are not included within the quoted Monthly Recurring User Fee Charges. These fees will be billed once they are calculated within the monthly billing cycle and are due within 25 days of invoice.

### 4.4 Telephony Service Charges

Customer understands and agrees that they are responsible for additional Telephony Service Charges as defined in this Service Agreement. These Telephony Service Charges will be billed monthly along with the taxes and other regulatory fees. Payment is due within 25 days of invoice.

### 4.5 Monthly Equipment Rental Charges

In the event that the customer chooses to pay for their station equipment on a monthly rental and/or lease basis the customer will be billed monthly one month in advance for the equipment. Failure to pay the monthly equipment rental fee may lead to suspension of service as defined in Section 6. All equipment rentals are governed by the terms and conditions of this agreement and the terms within Appendix A or third party lease agreement.

## 4.6 Late Fees

Customer understands and agrees that they are responsible for paying their monthly invoice when due. Further, customer understands and agrees that they accept that there will be an interest charge of 1.5% per month for all outstanding amounts not paid by the due date. These fees will be due to ICS in addition to all current fees.

## 5. TERM

This Service Agreement and each Service Order are effective as of the date such is signed by both ICS and Customer ("Effective Date") and the term of Services will commence on the date of Cutover (as Service Turn-up) for the period set out in the applicable Service Order ("Initial Term"). Thereafter, this Agreement shall automatically renew on an annual basis at the same monthly rate (less amounts for fully paid up Hardware) unless and until terminated in accordance with Section 6 below ("Renewal Term" together with the Initial Term, comprise the "Term").

## 6. TERMINATION

### 6.1 Default

If Customer is in breach of a material provision of this Agreement ("Default"), then ICS may suspend performance under this Agreement without any liability and, if the Customer has not cured the Default after thirty (30) days written notice, immediately terminate this Agreement for cause. Customer shall be deemed in Default if a bankruptcy or insolvency proceeding is filed by or against that party or if that party makes an assignment for the benefit of its creditors.

Notwithstanding the foregoing, ICS shall have the option to immediately suspend the Services and/or terminate this Agreement or any Service Order in the event Customer (i) is in violation of ICS's "Services Use Policy" as defined and may be referenced within the Terms and Conditions heading on the ICS website at [www.iconcloud.com](http://www.iconcloud.com), or (ii) is in default of its payment obligations. In the event ICS terminates this Agreement for Default during the Initial Term, to the extent there are Hardware fees outstanding, Customer shall continue to reimburse ICS monthly for the cost of the Hardware over the remaining months of the initial term, according to the hardware prices.

### 6.2 Early Termination by Customer

In the event Customer elects to terminate this Agreement prior to expiration of the Initial Term or during a subsequent renewal term, Customer shall,

- (i) provide immediate written notice of such to ICS; and
- (ii) in the case of termination during the Initial Term of a twenty-four month (24) or thirty-six month (36) Service Order, within thirty (30) days of the written termination notice pay to ICS as liquidated damages and not a penalty, an amount equal to the number of months remaining in the Initial Term multiplied by Customer's monthly rate as set out in the applicable Service Order; and
- (iii) in the case of termination during the initial Term of a forty-eight (48) month or sixty (60) month Service Order, within thirty (30) days of the written termination notice pay to ICS as liquidated damages and not a penalty, an amount equal to the number of months remaining in the Initial Term up to a total of thirty-six months (36) multiplied by Customer's monthly rate as set out in the applicable Service Order; and
- (iv) during any subsequent Renewal Term, within thirty (30) days of the written termination notice pay to ICS, as liquidated damages and not a penalty, an amount equal to (3) three months of the Customer's monthly rate as set out in the applicable Service Order; and
- (v) pay all additional accrued Taxes, Regulatory Fees and Telephony Service Charges due immediately upon invoice to them. Without limitation on the timing of the presentation of such invoices; and
- (vi) pay in its entirety the remaining months' rental or lease charges for any outstanding equipment rented or leased and any other customization or professional service charges incurred.

### 6.3 ICS' Right to Terminate

ICS shall be entitled to terminate all or a portion of this Agreement at any time upon ninety (90) days' notice to Customer. In the event ICS elects to terminate this Agreement during the Initial Term, to the extent there are Hardware fees outstanding, Customer shall continue to reimburse ICS monthly for the cost of the Hardware until such hardware has been returned to ICS. In the event that the customer does not return the hardware they shall be responsible for all of the remaining months' payments of the Initial Term, according to the prices allocated to the Hardware in Appendix A, or as such fees are updated by ICS from time to time ("Monthly Hardware Fees"). Any termination of the Agreement pursuant to this clause will be without prejudice to any other rights or remedies either party may be entitled to and will not affect any accrued rights or liabilities of either party.

## 7. SERVICES USE POLICY

Customer agrees to comply with the ICS "Services Use Policy" as amended from time to time and published for the Customer's access and review under the heading "Agreements and Policies" at the following link on ICS's website [www.iconcloud.com/resources/agreements-policies/](http://www.iconcloud.com/resources/agreements-policies/). Customer acknowledges that they have read the Services Use Policy and agrees to comply with its terms.

## 8. FRAUD

Customer agrees to immediately notify ICS of any fraudulent activity or unauthorized use of its Services and/or equipment when they become aware of such activity. ICS shall not be liable for any damages whatsoever resulting from fraudulent or unauthorized use of Customer's account and the payment of all charges to Customer's account shall be and remain the responsibility of Customer.

## 9. E911 SERVICE (HOSTED TELEPHONY)

Customer acknowledges that the Services provided by ICS include several different forms of voice calling connectivity and that each of these, individually and jointly, may have limitation on E911 service. The ICS E911 Disclosure and Service Limitation Notice is provided for the customer's convenience and review within the Resources heading, Agreements subheading on ICS website at [www.iconcloud.com/resources/agreements-policies/](http://www.iconcloud.com/resources/agreements-policies/). The ICS E911 Disclosure and Service Limitation Notice are hereby incorporated into this Service Agreement as Appendix B.

Customer agrees and acknowledges that while some individual services offer access to E911 service, others may not. By accepting this Agreement, Customer acknowledges that it has received and reviewed the information regarding the limitations of E911 services, understands them, and assumes the risks associated with the E911 limitations. ICS reserves the right to update the E911 Policy from time to time upon notice to Customer.

## 10. SUBSTITUTIONS/SUBCONTRACT

ICS may substitute the Hardware or any component thereof with comparable equipment of equivalent functionality. ICS may subcontract its obligations under this Agreement, but will remain responsible for such obligations.

## 11. GOVERNING TERMS AND CONDITIONS

It is agreed that terms and conditions of this document, its attachments and amendments represent and govern the entire terms and conditions to be bound by the parties. Although purchase orders (PO's), service requests and other documents may be used for convenience, Customer agrees that acceptance by ICS of any of these documents administratively required by Customer is conditional upon Customer's acceptance of these terms and conditions, as evidenced by Customer's signature on this Agreement.

## 12. USE

Customer agrees the Solution and associated Services are being purchased for its own use as an end-user (not for resale).

## 13. SOFTWARE LICENSE

All software provided by ICS and used by Customer to give effect to the Services ("Software") shall be licensed to Customer pursuant to the applicable end user license agreements, EULA's of ICS and any and all of its partner companies that have supplied software supporting the provided Services to the Customer. These EULA's are attached in Appendix C and are hereby incorporated within the terms of this Service Agreement. Title to the Software shall remain at all times with ICS and/or its suppliers; and used only with the Solution as part of the Services. Customer is granted no other rights to the Software and ICS reserves all other rights.

## 14. TITLE

Title and risk of loss to hardware detailed in a Service Order ("Hardware") shall pass to Customer upon shipment for hardware purchase option. In the event Customer has elected to finance such purchase, title shall pass to such third party financier until payment in full for the Hardware, unless the parties agree otherwise.

## 15. SECURITY INTEREST

Until payment is made in full of the Hardware by Customer, Customer hereby grants to ICS a security interest in the Hardware and authorizes ICS and shall assist ICS to file any forms necessary in order to perfect a security interest in the Hardware.

## 16. CONFIDENTIALITY

"Confidential Information" means any and all information that ICS treats as confidential, including but not limited to configuration and pricing information, and any information relating to third parties that ICS has advised it has an obligation to treat as confidential and which is disclosed by ICS in connection with this Agreement. Customer shall maintain in confidence and prevent the unauthorized use, disclosure, copying or publication of the Software and the Confidential Information.

**Advertisement/Publicity.** Each party agrees not to make public announcements regarding the other party's name in any way or to make any disclosure regarding the existence or content of this Agreement, or joint initiatives without the prior written consent of the other Party.

## 17. INDEMNIFICATION

### 17.1 ICS

ICS shall at its expense indemnify and defend Customer from any claim or action filed against Customer to the extent that it is based on a claim that the Hardware or Software infringes a valid U.S. intellectual property right; provided that the Customer promptly gives notice to ICS of any Intellectual Property Infringement upon becoming aware of the same; and gives ICS the sole conduct of the defense to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express instructions of ICS; and

### 17.2 Customer

Customer shall, at its expense, indemnify and defend ICS from any action filed by a court against ICS to the extent that it is based on

a claim that Customer's design, integration, specification, instruction or particular use infringes a valid intellectual property right.

Further, Customer agrees to indemnify and hold ICS harmless against any loss, damage or costs (including reasonable attorney's fees) incurred in connection with Claims made or brought against ICS by a third party arising from or relating to: (i) any act, error, omission, fault, negligence, or misconduct of Customer or any user of the Service or Equipment; (ii) Customer's material breach of the Services Use Policy; (iii) any claim by any employee or invitee of Customer or user other than a claim based on the gross negligence or willful misconduct of ICS; (iv) any claim by any customer of Customer, User, or any other third party relating to, or arising from, Customer's use of the Services or Equipment; or (v) violation of any law or regulation by Customer, any User, or any Customer employee, contractor, or agent.

### **17.3 Costs and Damages**

The indemnifying party shall pay resulting costs and damages finally awarded or agreed to in a settlement, provided the indemnified party: (i) makes no admission of the alleged infringement; (ii) gives the indemnifying party written notice of any action filed or threatened; (iii) gives the indemnifying party sole authority and control of the defense of any action and all related settlement negotiations; and (iv) furnishes all information and assistance necessary for the defense of the action as reasonably requested.

### **17.4 Infringement Remedies**

In the event Customer is enjoined from use of the Hardware or Software as a result of an action or the Hardware or Software becomes the subject of an infringement claim, ICS may at its sole option and without further obligation either (i) procure the Customer's right to continue using the affected Hardware or Software, (ii) replace or modify the affected Hardware or Software to be non-infringing and functionally equivalent or (iii) accept the return of the affected Hardware or Software and refund the purchase price paid, less depreciation.

### **17.5 Exclusions**

ICS, its affiliates, subsidiaries and related companies, and their respective officers, directors, employees and agents (collectively "ICS") for the purposes of this Section (17) shall have no liability for any claim or action, including without limitation contributory infringement and inducement to infringe, that is based upon:

- (i) use or operation of the Solution in combination with any product or services not provided by ICS;
- (ii) customer's modification of the Solution;
- (iii) customer's failure to implement corrections or modifications provided by ICS;
- (iv) design, integration, specification, instruction or information provided by or on behalf of the Customer or any third-party.

### **17.6 Mutual Provisions**

Each party's indemnity obligations are subject to the following: (i) the aggrieved party shall promptly notify the indemnifier in writing of the Claim; (ii) the indemnifier shall have sole control of the defense and all related settlement negotiations with respect to the Claim (provided that the indemnifier may not settle or defend any Claim unless it unconditionally releases the aggrieved party of all liability); and (iii) the aggrieved party shall cooperate fully to the extent necessary, and execute all documents necessary for the defense of such Claim.

## **18. LIMITATION OF LIABILITY**

Except for the provisions related to Confidentiality, Software License and Customer's indemnity obligations: (i) in no event shall either party be liable to the other for consequential, indirect, special or general damages arising from any claim or action based on contract, tort or other legal theory; and (ii) direct damages shall not exceed the amount payable to ICS under this Agreement. ICS shall not be liable for loss of data, the inability to use data, damage or expense arising from the use or inability to use the Solution, either separately or in combination with any other system, whether or not ICS has received notice of the possibility of such damages.

## **19. DELIVERY, CUTOVER AND ACCEPTANCE**

### **19.1 Delivery**

Upon execution of this Agreement and any applicable Service Order, ICS shall deliver the Hardware and Software on the date mutually agreed by the parties. Customer shall self-install the Solution, unless Customer has purchased professional installation services from ICS or one of its partner companies as evidenced in the Service Order. Customer must allow for access to their location and network and be prepared to assist ICS on the day of cutover.

### **19.2 Cutover Date**

The "Cutover Date" is the date of delivery the Service, equipment and turn-up of the services for operation as defined in the Service Order.

### **19.3 Customer Acceptance Date**

The Customer Acceptance Date of the Service is deemed to occur fifteen (15) days after the Cutover Date. Customer hereby acknowledges acceptance of the Service on the fifteenth day from the Cutover Date in the event that they have not notified ICS of any service disruption. During this first 15 days of service Customer may monitor the service for performance. Should an issue occur they then must immediately notify ICS customer service department. ICS will attempt to resolve the problem once notified. In the event the problem is an ICON system issue and cannot be resolved within 30 days of the original "cutover" the customer may opt out of the service and agreement.

## 20. WARRANTY

### 20.1 Services Warranty

All work provided hereunder will be performed in a good and workmanlike manner consistent with standard communications industry practice. ICS will make its best effort to delivery to the Customer a quality hosted voice solution. ICS makes no warranty of the customer provided/contracted IP connection to the ICS host and/or the customer premises network. Although ICS may assist in determining any network or connectivity issues ICS assumes no responsibility for the same. Customer understands that should Customer provided/contracted network require extensive diagnostic work by ICS that ICS has the right to charge and Customer agrees to pay for these professional services.

**Service Levels.** ICS will use commercially reasonable efforts to minimize service disruptions and outages. In the event of service disruptions or outages, Customer's sole remedy, and ICS' sole obligation, shall be to provide the service level credits and/or remedies for the applicable Service in accordance with the Service Level Agreement set forth on ICS web site at: <http://www.iconcloud.com/resources/agreements-policies/>.. ICS reserves the right to update the Service Level Agreement from time to time.

### 20.2 Software Warranty

During the Initial Term ("Software Warranty Period"), the Software media will be free from defects in material and workmanship under normal use and the Software will perform substantially in compliance with the manufacturer's specifications. To the extent that any deficiency in the material or workmanship prevents the Software from operating substantially in accordance with the manufacturer's specifications, ICS will use commercially reasonable efforts to correct the problem within a reasonable period of time. If the problem cannot be corrected, ICS will in its sole discretion either replace the Software or install a new release when made generally available or return the Solution to a prior release

### 20.3 Hardware Warranty

All provided Hardware is warranted under the terms of the respective manufacturers' warranties. In most cases this warranty is for a minimum period of twelve (12) months.

For equipment provided under the Monthly Recurring Billing option the warranty period runs for the agreed upon monthly service period.

### 20.4 Exceptions to Warranty

The warranties detailed in this section 20 shall become void if one of the following occurs: (i) the Solution is not used properly in accordance with the manufacturer's specifications and operating instructions or otherwise is abused, damaged, or negligently serviced or maintained by anyone other than ICS or an authorized ICS partner; (ii) work is performed on the Solution by anyone not authorized by ICS; (iii) the Solution is installed or used in combination or in assembly with products that are either not approved by ICS or not compatible with the Solution; and should such an event happen, Customer shall be required to cure the breach by removal of such products within a reasonable period. The Software and Hardware Warranties exclude Customer-supplied parts and equipment.

ICS shall have the right to inspect and test the Solution and the associated local area network and communications infrastructure to determine, in its reasonable discretion, whether the nonconformity is covered under the applicable warranty.

**THE WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, FROM ICS OR ITS SUPPLIERS. THERE ARE NO OTHER REPRESENTATIONS THAT EXTEND BEYOND THE FACE OF THESE WARRANTIES. ALL OTHER WARRANTIES OR CONDITIONS WHATSOEVER, INCLUDING THE WARRANTY OF MERCHANTABILITY & THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED & DISCLAIMED. ICS DOES NOT WARRANT THAT THE OPERATION OF THE SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE.**

## 21. EXPORT

Solutions, Services, material, technology, tools and technical data delivered by ICS to Customer ("Deliverables") may be subject to US export controls or the trade laws of other countries. Customer agrees not to release or re-export the Deliverables without prior written consent of an ICS corporate officer or director. If ICS consents, then Customer shall be solely responsible for determining and complying with all applicable export laws, import laws, regulations and requirements. In addition, where applicable, Customer shall not transfer, export or re-export Deliverables to any entity identified on the most current US government Export Exclusions Lists, or to any country subject to US embargo or terrorist controls as identified in the US Export Laws.

## 22. ASSIGNMENT

Customer shall not assign its rights or delegate its obligations under this Agreement in whole or in part without ICS's prior written consent, which will not be unreasonably withheld.

## 23. FORCE MAJEURE

Neither party shall be held liable for a breach of its obligations under this Agreement resulting from (i) force majeure events, such as debilitating forces of nature, acts of God, acts of governments, acts or omissions of third parties, or (ii) conditions beyond the reasonable control of the party that failed to perform. A party that fails to perform for reasons of force majeure or for reasons beyond the reasonable control of the party that failed to perform shall deliver the performance as soon as commercially practicable.

## 24. SEVERABILITY

In the event a provision contained herein is for any reason held to be unenforceable, such unenforceability shall not affect the validity of any other provision of this Agreement, and this Agreement shall then be construed as if such unenforceable provision had never been contained herein. The parties agree to work in good faith to substitute the invalid provision with one that best achieves the original intent of the parties.

## 25. APPLICABLE LAW

This Agreement shall be interpreted under the laws of Texas. Venue shall be in Dallas County. In the event of any controversy or claim arising from or related to this Agreement, its performance or interpretation, the parties, in good faith, will initially attempt to resolve the dispute between them.

Except for disputes, controversies, claims or collection efforts regarding Customer's failure to pay any charges, amounts or fees invoiced to Customer, any and all disputes, controversies and claims arising out of or relating to this Agreement or any Service Order Form, including its/their validity, shall be handled, determined, and resolved by arbitration conducted in Dallas County, Texas, before one (1) arbitrator in accordance with the Commercial Arbitration Rules and Mediation Procedures then in effect of the American Arbitration Association. The arbitrator's award shall be final and binding on the parties, and judgment confirming such arbitration award may be entered thereon in any court having jurisdiction over such proceedings. Each party shall bear its own costs and expenses of preparing and presenting its case and shall bear an equal share of the expenses and fees with respect to the arbitration. The arbitrator shall not be empowered to award damages in excess of direct compensatory damages and shall not be authorized to award special, indirect, punitive, incidental, or consequential damages, and each party irrevocably waives any damages in excess of direct compensatory damages.

## 26. ENTIRE AGREEMENT

This Agreement, together with any appendices or attachments referenced herein, expresses the entire agreement of the parties and supersedes any prior agreement or negotiation between the parties. There is no other understanding, agreement or representation, including any requests for proposal of Customer and responses of ICS, or POs issued in support of this Agreement, that in any way limits, extends, defines or relates to this Agreement. Any terms or conditions of a PO or other document that purports to add, delete or otherwise amend this Agreement shall be null and void. In the event of any conflict between the terms of this Agreement and any Service Order, precedence will follow in that order. Customer acknowledges and agrees that this document, which includes the appendices attached hereto, is intended to contain only this Agreement in effect on the Effective Date.

## 27. NOTICES

Notices regarding the following may be posted within the ICS website at <http://www.iconcloud.com/resources/agreements-policies/>; (i) Service Use Policy, (ii) E911 Limitations, (iii) Modifications, Impositions or Increases to Regulations and Fees; (iv) new or modified documentation, including but not limited to the ICS Service Level Agreement, Privacy Policy and other internal documents; (v) changes to rates, other than those affecting Customer under this Agreement; and (vi) new Services and information.

All other notices and communications between Customer and ICS pertaining to this Agreement shall be addressed to Customer and ICS at the addresses set out in this Agreement

## 28. COUNTERPARTS

This Agreement may be executed in counterparts with the same effect as if both parties signed the same document. The counterparts shall be construed together and shall constitute one and the same original Agreement. A signature on this Agreement by one party communicated to the other by electronic transmission, such as PDF, e-mail or facsimile, will constitute execution of this Agreement.

## 29. SURVIVING PROVISIONS

The parties agree that any limitations of liability, exclusions, and disclaimers of warranties and indemnification obligations are essential to the parties' entering into this Agreement; will survive the termination of the Agreement and will apply even if the Agreement is found to have failed of its essential purpose.

**WHEREFORE**, the parties intending to be legally bound have executed this agreement through their signatures as provided on the attached Service Order.

# Appendix A

(Reserved for Lease Agreement)



# Appendix B

## ICS

### 911 Disclosure and Service Limitation Notice

#### 1. History and Description of 911, E911

In 1968 AT&T created the calling number 911 as a national emergency number to provide an easy means of access for reaching emergency personnel within the United States. When a user dialed 911 the call was placed to the public service answering point (PSAP) and the main listed directory number of the user was presented to the PSAP. The PSAP is an emergency call center for access to fire, police, ambulance and other emergency responders.

**Enhanced 911 (E911)** In most areas of the country (approximately 96% in the U.S.) enhanced 911 service is available. The enhanced 911 service provides the caller ID number and, if available, the location address of the number to the PSAP upon dialing 911. The location address is automatically provided by cross referencing the caller ID number to an address in a database (known as the ALI, Automatic Location Identification Database). This database was traditionally maintained by the landline telephone company in coordination with the PSAP.

In many cases the user company's main listed directory number is sent to the PSAP and the ALI database identifies the main address of the company and sends this to the PSAP. However, in the cases of large and multi-story buildings, campus facilities and/or companies with remote buildings the recent demand has been for individual caller telephone numbers and locations to be provided for each individual user. In order to accommodate this unique caller information requirement for each individual user the company must provide and maintain a list of these numbers and locations to their service provider.

VoIP, Soft Phones, Mobile Devices and Bring Your Own Device (BYOD) Users Over the past several years the introduction of Voice over IP has enabled companies to benefit from calls originating over their LAN/WAN infrastructures and provided them the ability to use their broadband connectivity for both voice and data traffic. By the nature of the design of this infrastructure, users are able to freely move throughout the facility and have remote access to the company network.

This flexibility and portability creates a challenge with regards to proper E911 location registration of a user. In a VoIP environment an employee can simply move their office to another building on a large campus and connect their telephone to the network. An employee with a soft phone (VoIP on a computer) on their laptop could place calls through the company network while traveling. And finally, the ability to allow employees' BYOD and mobile devices to connect to a company's network adds the potential for new telephony devices on a daily basis.

The flexibility and advantage of using these portable devices benefits a company's ability to communicate and effectively operate their business. However, it is imperative that each company maintain a policy for updating equipment locations and providing notification to all device users of the limitations in the processing of E911 calls.

#### 2. ICS E911 Service

ICS (hereinafter "ICS") offers E911 service in compliance with Federal Communication Commission (FCC) mandates.

##### 2.1 Limitations of Service

ICS's telephony service is a Voice over IP (VoIP) service offering. It therefore, has limitations with regards to E911 and as required by the FCC we have listed these limitations below. When 911 is dialed from a user (subscriber) connected via a VOIP connection the Enhanced 911 service may be limited or may not be available. The following is an example of when E911 service may not effectively operate:

- (i) If the user (subscriber) has not registered or activated their account listings with ICS inclusive of locations for each subscriber number.
- (ii) When the location of your telephony device is at a physical address other than the one you listed when you activated your account and/or if the address was incorrectly registered.
- (iii) When an unregistered device is used.
- (iv) When the telephone number programmed for your VoIP device is from a different geographic rate center than where the telephone is located.
- (v) When there is a power outage restricting operation or connectivity of your devices.
- (vi) When a subscriber's broadband connection does not operate properly, is congested or service is terminated for any reason.
- (vii) When the phone device fails or is not configured properly.
- (viii) When using a PC-based / soft phone device running on a smart phone or similar smart device such as a tablet.
- (ix) When there is a delay in the provision of ICS service ("dial tone") at the physical address provided at the time of account activation.
- (x) When the local PSAP receiving E911 emergency service calls does not have a system configured for E911 services that enables the operator to capture and/or retain automatic number or location information.

#### 3. Customer (Subscriber) Acknowledgements and Responsibilities

By approving the ICS Order Form and Service Agreement customer hereby understands, acknowledges and agrees:

That although ICS will make its best effort to process E911 calls that customer understands that the VoIP service provided is different from that of landline based E911 service and,

That the service provided by ICS may not be sufficient to meet every customer's needs and that the customer should choose to provision any other services that they deem necessary to provide the appropriate E911 services for their individual company and employee needs and,

Customer is responsible for providing notification to its employees, guests, subcontractors and other users of the limitations of E911 service provided by ICS and,

That ICS's service offering and E911 operations requires that the customer register the proper addresses for each number with ICS so that ICS may properly update the associated customer database for E911 calls and,

That it may not be possible for the Public Safety Answering Point (PSAP) and local emergency personnel to identify Customer's telephone number and/ or location upon a user dialing 911 and,

That it may not be possible for ICS and its third party providers to transmit the caller ID and location of each number to the PSAP and emergency personnel and,

That customer will maintain a listing of all of their numbers and locations and provide ICS updates when locations for numbers change and, That ICS relies on third party providers for the forwarding, the routing and information provisioning of E911 calls. ICS and its third party providers hereby disclaim any and all liability or responsibility in the event any such information and routing is incorrect.

#### **4. Limitation of Liability and Indemnification**

Notwithstanding anything else in this Appendix or in the Service Agreement or Service Order Form, ICS is providing its Service in reliance upon the limitations and exclusions of liability and the disclaimers set forth in this E911 Disclosure and Service Limitation Notice, including, without limitation, this Section and the ICS Service Agreement, and that they jointly form an essential basis of the agreement between the parties. Further, ICS shall not be liable to Customer, nor to Customer's customers and users, nor to third parties, for any amounts, claims, damages, losses, injuries, expenses, or Additional Charges whatsoever associated with, related to or arising from the E911 service.

Under no circumstances shall ICS be liable for any indirect, incidental, consequential, reliance, or special damages suffered by Customer (including without limitation damages for harm to business, lost revenues, lost savings, or lost profits suffered by Customer, its customers, users or any other third parties), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including without limitation negligence of any kind whether active or passive, and regardless of whether the Parties knew of the possibility that such damages could result. Customer hereby releases ICS (and its respective officers, directors, employees and agents) from any such claim.

Customer waives any claim that these exclusions and disclaimers deprive it of an adequate remedy or cause this Agreement to fail for its essential purpose. Customer shall pay any amounts described in this Section and in this Appendix and defend and indemnify ICS, and save and hold it harmless, from and against any such claim, liability or expense.

**CUSTOMER ACKNOWLEDGES THAT ANY CALLER USING THE SERVICE FROM OUTSIDE THE UNITED STATES WILL NOT HAVE ACCESS TO E911 SERVICE.**

The parties agree that the limitations and exclusions of liability and disclaimers specified in the Service Agreement and this E911 Disclosure and Service Limitation Notice, including, without limitation, this Section, shall survive and apply even if found to have failed their essential purpose; and Customer hereby waives its right to contest the enforceability of any provision of this E911 Disclosure Notice by reason of such failure.

# Appendix C

End User License Agreements

Alcatei-Lucent Enterprise

**ALCATEL-LUCENT ENTERPRISE  
END USER LICENSE AGREEMENT (EULA)**

**1. GRANT OF LICENSE**

The Authorized Alcatel-Lucent Reseller, as Licensor, grants to you, the "Licensee", a non-transferable, non-exclusive and personal sublicense to use the software in object code form either incorporated in the Alcatel-Lucent Products or marketed by Alcatel-Lucent as a stand alone product (hereinafter the "SOFTWARE") solely as incorporated in or supplied with the Alcatel-Lucent Products and solely in connection with the operation of such Alcatel-Lucent Product for your own internal business purpose. Such sublicense shall be subject to payment in full of any specified license fee provided, however, that in the absence of any specified fee, the sublicense shall be deemed to be royalty free.

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**5. TERMINATION**

This License is effective until terminated. This License will terminate automatically without notice from Alcatel-Lucent if you fail to comply with any provision hereof. Upon termination you shall destroy the written materials and all copies of the SOFTWARE, including back-up copies, if any.

**6. NO EXPORT**

**END USER REPRESENTS, WARRANTS AND AGREES THAT IT WILL NOT USE, EMPLOY, OPERATE, DISPLAY, OR THE LIKE, OR CAUSE OR ALLOW TO BE USED, EMPLOYED, OPERATED, DISPLAYED, OR THE LIKE, DIRECTLY OR INDIRECTLY ANY EQUIPMENT, PRODUCT, PARTS, SOFTWARE, DOCUMENTATION, AND/OR TECHNICAL DATA IN ANY FORM OUTSIDE THE UNITED STATES OF AMERICA.**

**END USER REPRESENTS, WARRANTS AND AGREES THAT IT WILL NOT EXPORT, REEXPORT, RESELL, SHIP OR DIVERT, OR CAUSE OR ALLOW TO BE EXPORTED, REEXPORTED, RESOLD, SHIPPED OR DIVERTED, DIRECTLY OR INDIRECTLY ANY EQUIPMENT, PRODUCT, PARTS, SOFTWARE, DOCUMENTATION, AND/OR TECHNICAL DATA IN ANY FORM TO ANY COUNTRY OUTSIDE THE UNITED STATES OF AMERICA.**

End User shall indemnify and hold harmless Alcatel-Lucent, the Alcatel-Lucent Reseller Distributor, and their subsidiaries, and affiliates from and against any fines, penalties, damages and/or any other costs (including, but not limited to, attorney's fees) incurred or threatened as a result of End User's export of equipment, product, parts, software, documentation, and/or technical data, in any form, including those for End User's failure to comply with any Export Administration Regulation or

any other federal export law or requirement. End User shall indemnify and hold harmless Alcatel-Lucent Reseller, Alcatel-Lucent, and their subsidiaries, and affiliates for any payments made voluntarily to, or pursuant to any agreement with, any government or private party resulting from End User's export of equipment, product, parts, software, documentation, and/or technical data, in any form, including those for End User's failure to comply with any Export Administration Regulation or any other federal export law or requirement or from Alcatel-Lucent Reseller's reliance on End User's representations concerning the same.

## 7. GOVERNMENT PROVISIONS

If the Alcatel-Lucent Software and/or Documentation is acquired directly or indirectly on behalf of a unit or agency of the United States Government, this paragraph applies. For civilian agencies: This program was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with subparagraphs (a) through (d) of the Commercial Computer Software - Restricted Rights clause at 52.227-19 of the Federal Acquisition Regulations ("FAR") and its successors, and is unpublished and all rights are reserved under the copyright laws of the United States.

## 8. DEFINITIONS

For the purposes of this End User License Agreement, the following definitions shall apply:

**8.1 Alcatel-Lucent.** The term "**Alcatel-Lucent**" shall mean Alcatel-Lucent USA Inc. and shall be deemed to include any company of the Alcatel-Lucent Group.

**8.2 Distributor.** The term "**Distributor**" shall mean a distributor authorized by Alcatel-Lucent to sell and license Alcatel-Lucent Products to Reseller.

**8.3 Documentation.** The term "**Documentation**" shall mean written materials or graphic files (including, without limitation, user manuals, promotional brochures, and materials useful for design) that are displayed or printed and that relate to or support the Alcatel-Lucent Products.

**8.4 End User.** The term "**End User**" shall mean a person or entity that acquires the right to use the Alcatel-Lucent Products for the person or entity's own personal or internal business use, rather than for distribution or other transfer.

**8.5 Reseller.** The term "**Reseller**" shall mean a entity authorized by Alcatel-Lucent to sell and license Alcatel-Lucent Products to the End User.

**8.6 SOFTWARE.** The term "**SOFTWARE**" shall mean any software, computer program, source code, object code, listing, or related material in machine-readable or printed form (including firmware and all types of media), or any updates and modifications thereto, that are included in the Alcatel-Lucent Products or licensed separately.

## ICS Software License Agreement

### Precursor

CAREFULLY READ THE FOLLOWING SOFTWARE LICENSE AGREEMENT. USE OF THIS PRODUCT (JOINTLY AND SEVERALLY "SOFTWARE") CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS SOFTWARE LICENSE AGREEMENT PROMPTLY REMOVE SOFTWARE TOGETHER WITH ALL COPIES FROM YOUR COMPUTER. YOUR USE OF THE SOFTWARE IS CONDITIONAL UPON YOUR COMPLIANCE WITH THE TERMS OF THIS AGREEMENT.

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1.1 Upon payment of the applicable license fee, ICS grants to You a non exclusive, personal, paid up, non-transferable license to use the Software and Documentation solely for the following purposes: (a) operate one copy of the software for each license purchased unless expressly permitted otherwise by ICS; and (b) to make one copy of the Software for back-up purposes. You must reproduce all copyright notices on any copy of the Software. You will not Yourself or allow anyone else to: (i) disassemble, reverse engineer, decompile or otherwise attempt to discover the source code or structural framework to the Software except to the extent expressly permitted by applicable law notwithstanding this limitation (and then only subsequent to notice to ICS); (ii) translate, modify, or create any derivative work of any Software; (iii) disclose, publish, sublicense, sell, lend, rent, lease or transfer any Software (except that You may transfer all (but no lesser portion) of the Software (including Documentation and any back-up copy) to another person subject to this Software License Agreement with the prior written approval of ICS, which approval will not be unreasonably withheld, and upon payment of any transfer fee which ICS may impose); (iv) copy or reproduce any Software, except as permitted under (b) above; or (v) operate any Software to process data for anyone else.

1.2 This Software license will terminate automatically if You use or permit the use of the Software in any manner not permitted by this Software License Agreement. In the event of such termination, You will immediately, as directed by ICS, either return the Software and all copies You have made, including without limitation modifications and merged portions in any form, to ICS or destroy all copies of the Software as well as the Documentation and certify such destruction in writing to ICS.

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### **4.0 Limited Warranties:**

4.1 ICS warrants that: the Software as supplied by ICS in object code form, if

properly installed will perform substantially in conformance with the Documentation for a period of twelve months from date of download. ICS, does not, however, warrant that the functions contained in the Software will satisfy your particular purpose and/or requirements or that the operation of the Software will be uninterrupted or error free. In the event that (i) You purchased the Software, and (ii) during the Warranty Period the Software shall fail to perform substantially in accordance with the Documentation, ICON Voice Network's entire liability and your sole and exclusive remedy under the above limited warranty shall be, at ICON Voice Network's option, if timely notified of same in writing either (a) return of the price, if any, paid for the Software, or (b) to use its good faith reasonable efforts to devise a suitable corrective solution to the problem (also referred to in the industry as a "service pack") within a reasonable period of time. Should said action, however, not substantially resolve the problem, then ICS reserves the right to substitute a new release ("version") of software as soon as it is generally made available by ICS. Software and accompanying Documentation provided on a no-charge basis are supplied "AS IS" AND INCLUDES NO WARRANTY WHATSOEVER.

4.2 This limited warranty is void if failure of the Software has resulted from Acts of God, accident, abuse, misapplication or electrical surge or any other cause beyond ICON Voice Network's control.

4.3 TO THE FULL EXTENT PERMITTED BY LAW, ICS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT AND THIS IS SO ACKNOWLEDGED BY YOU. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS".

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**5.0 Limitations of Liability:**

5.1 IN NO EVENT WILL ICS OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, ARISING OUT OF OR IN CONNECTION WITH YOUR PURCHASE, USE OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION IN CONNECTION WITH THE SOFTWARE OR DOCUMENTATION AND/OR THE SOFTWARE LICENSE EVEN IF ICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU HEREBY AGREE TO WAIVE ANY RIGHTS WHICH YOU MAY HAVE AGAINST SUPPLIERS OF ICS ARISING FROM THIS AGREEMENT AND/OR THE SUPPLY OF THE SOFTWARE.

5.2 Some jurisdictions do not allow limitation or exclusion of incidental or consequential damages in certain circumstances, so that the above limitation or exclusion may not apply to You to the extent that liability is by law incapable of exclusion or restriction.

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**7.0 Export Controls:**

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#### **8.0 Entire Agreement, Governing Law and Venue:**

8.1 YOU AGREE THAT THIS AGREEMENT IS THE COMPLETE, FINAL AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND ICS AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT OR ANY OTHER COMMUNICATIONS RELATING TO THE USE OF THE SOFTWARE OR ANY OF THE DOCUMENTATION.

8.2 No amendment, modification or waiver of this Agreement will be valid unless set forth in a written instrument signed by both parties. This Agreement and the Software license granted herein shall be governed by, and construed in accordance with the laws of the Commonwealth of Virginia, exclusive of its conflict of laws provisions, and the federal laws of the United States applicable therein. In no event shall this Agreement or this Software license be construed or enforced under the provisions of the United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, the application of which are expressly excluded. ICON Voice Network’s Suppliers are deemed to be third party beneficiaries of this Agreement.

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#### **10.0 Authorized Reseller Obligations**

To the extent that this Software is first utilized, and/or configured or programmed by an ICS authorized reseller and not an end user customer, then authorized reseller understands and agrees that it has assumed the duty hereunder and/or under its dealership agreement with ICS, to obtain an acceptable sub-license from its end-user with respect to the Software.





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properly installed will perform substantially in conformance with the Documentation for a period of twelve months from date of download. ICS, does not, however, warrant that the functions contained in the Software will satisfy your particular purpose and/or requirements or that the operation of the Software will be uninterrupted or error free. In the event that (i) You purchased the Software, and (ii) during the Warranty Period the Software shall fail to perform substantially in accordance with the Documentation, ICON Voice Network's entire liability and your sole and exclusive remedy under the above limited warranty shall be, at ICON Voice Network's option, if timely notified of same in writing either (a) return of the price, if any, paid for the Software, or (b) to use its good faith reasonable efforts to devise a suitable corrective solution to the problem (also referred to in the industry as a "service pack") within a reasonable period of time. Should said action, however, not substantially resolve the problem, then ICS reserves the right to substitute a new release ("version") of software as soon as it is generally made available by ICS. Software and accompanying Documentation provided on a no-charge basis are supplied "AS IS" AND INCLUDES NO WARRANTY WHATSOEVER.

4.2 This limited warranty is void if failure of the Software has resulted from Acts of God, accident, abuse, misapplication or electrical surge or any other cause beyond ICON Voice Network's control.

4.3 TO THE FULL EXTENT PERMITTED BY LAW, ICS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT AND THIS IS SO ACKNOWLEDGED BY YOU. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS".

**4.4 IMPORTANT NOTICE:** Nothing in this Agreement is intended to or shall be construed as excluding or modifying any statutory rights, warranties or conditions which may be applicable to this Agreement, the Software or Documentation, and which by virtue of any national or state fair trading, trade practices or other consumer legislation may not be modified or excluded. To the extent such legislation is applicable to Your purchase of the Software or is required by such legislation, ICON Voice Network's liability for any breach of any such warranty or condition shall be and is hereby limited to either: (a) the supply of such Software again; or (b) the correction of any defect in such Software or Documentation as ICS at its sole discretion may determine to be necessary to correct the defect.

**5.0 Limitations of Liability:**

5.1 **IN NO EVENT WILL ICS OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES, ARISING OUT OF OR IN CONNECTION WITH YOUR PURCHASE, USE OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, OR THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION IN CONNECTION WITH THE SOFTWARE OR DOCUMENTATION AND/OR THE SOFTWARE LICENSE EVEN IF ICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU HEREBY AGREE TO WAIVE ANY RIGHTS WHICH YOU MAY HAVE AGAINST SUPPLIERS OF ICS ARISING FROM THIS AGREEMENT AND/OR THE SUPPLY OF THE SOFTWARE.**

5.2 Some jurisdictions do not allow limitation or exclusion of incidental or consequential damages in certain circumstances, so that the above limitation or exclusion may not apply to You to the extent that liability is by law incapable of exclusion or restriction.

5.3 **IN NO EVENT SHALL ICS'S TOTAL LIABILITY FOR ANY DAMAGES, DIRECT OR INDIRECT, ARISING FROM OR IN CONNECTION WITH THE SOFTWARE AND/OR DOCUMENTATION AND/OR THE SOFTWARE LICENSE GRANTED TO YOU HEREUNDER EXCEED THE PURCHASE PRICE PAID BY YOU , IF ANY, FOR THE SOFTWARE AND DOCUMENTATION (BUT NOT TO EXCEED THE SUGGESTED RETAIL PRICE) WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT OR OTHERWISE, INCLUDING NEGLIGENCE.**

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You agree to comply fully with all relevant export laws and regulations the United States (“Export Laws”) to ensure that the Software is (a ) not exported directly, or indirectly, in violation of Export Laws; or (b) is not intended to be used for any purposes prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation. Proscribed countries are set forth in the U.S. Export Administration Regulations. Countries subject to U.S. embargo are available from the U.S. Export Administration Regulations online at <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>. This list is subject to change without further notice from ICS, and you must comply with this list as it exists in fact.

#### **8.0 Entire Agreement, Governing Law and Venue:**

8.1 YOU AGREE THAT THIS AGREEMENT IS THE COMPLETE, FINAL AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND ICS AND SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT OR ANY OTHER COMMUNICATIONS RELATING TO THE USE OF THE SOFTWARE OR ANY OF THE DOCUMENTATION.

8.2 No amendment, modification or waiver of this Agreement will be valid unless set forth in a written instrument signed by both parties. This Agreement and the Software license granted herein shall be governed by, and construed in accordance with the laws of the Commonwealth of Virginia, exclusive of its conflict of laws provisions, and the federal laws of the United States applicable therein. In no event shall this Agreement or this Software license be construed or enforced under the provisions of the United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, the application of which are expressly excluded. ICON Voice Network’s Suppliers are deemed to be third party beneficiaries of this Agreement.

#### **9.0 Definitions:**

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