

Welcome to Megaphone, Inc. ("Megaphone"). These Terms and Conditions of Service (the "Agreement") govern the use of Megaphone's services (the "Services") and are binding upon all customers of Megaphone and users of Megaphone's Services. Customers, subscribers and users of the Services are referred to as "Customers," "Subscribers," "you," or "your" and Megaphone is referred to as "Megaphone," "us," or "we."

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE. THIS AGREEMENT CONSTITUTES A BINDING CONTRACT. MEGAPHONE MAY CHANGE THESE TERMS OF SERVICE FROM TIME TO TIME BY POSTING CHANGES TO THIS WEB SITE WHICH WILL CONSTITUTE NOTICE AND WILL BE BINDING UPON POSTING.

1. Initiation of Service.

1.1 Any of the following actions, without limitation or qualification, constitutes your acceptance and agreement to be bound by and to comply with all of the terms and conditions of service of this Agreement: (a) your submission of an order; (b) your accepting the terms and conditions electronically during the ordering process; or (c) your use of the Services offered by Megaphone from time to time (and as further defined herein). Accessing, installing, downloading, or using the Services will constitute your assent to this Agreement (or ratification of previous assent).

1.2 Initial charges, including first month service and shipping and handling charges are non-refundable immediately upon submission of an order.

1.3 This Agreement includes the terms set forth herein, the Acceptable Use Policy, the Privacy Policy, and all other materials specifically referred to in this Agreement, or which appear here or in other locations on Megaphone's web site, all of which are incorporated herein by reference.

1.4 This Agreement sets forth the terms and conditions under which you agree to use the Service and covers all of Megaphone's Service plans. If you do not or are not willing to be bound in its entirety by these terms and conditions of service, do not use the Services.

1.5 You represent that you are of legal age to form a binding contract. If you are accepting these terms on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to the terms of this Agreement. If you do not have such authority, are not of legal age to form a binding contract, or do not wish to be bound by the terms contained in this Agreement, do not access, install, download, or use the Services.

1.6 You understand that Megaphone relies on the information you supply and that providing false or incorrect information may result in Service delays or the suspension

or termination of your Services. You agree to promptly notify Megaphone whenever your personal or billing information changes, including without limitation, your name, address, telephone number, and credit card number and expiration date, if applicable.

2. Services Provided; Limitations

2.1 Basic Service. Megaphone provides voice over digital phone (internet telephony) services (“VoIP”), and such other services that it may notice either directly or on this web site, from time to time (“Services”). Megaphone recommends waiting until the Service is installed and tested for a few weeks before assuming that the Service will be available and of good quality.

2.2 Long Distance. Unlike most telephone service providers, Megaphone provides all local and long distance minutes within the continental US as a bundle within your package. No charges apply unless you exceed the total minutes permitted per month for your Service rate plan.

2.3 Megaphone Cloud Advanced Features. Some Service plans provide advanced features such as auto attendant, music on hold, and toll free numbers. Each such plan has a fixed monthly fee with additional fees for usage above plan limits.

2.4 International. International calling is enabled by default, but you may enable or disable it at anytime by logging into your account. International calls are billed at their respective international rates. These rates are updated on the first Tuesday of each month. All call charges are rounded to the nearest whole cent. Each customer account is given a credit limit for international calls. If an international calling balance exceeds the credit limit prior to the next bill date, the account will be charged the balance immediately. Service will be suspended until such balance is paid. International calls are subject to an FCC-mandated 15.5% Universal Service Fund tax. This rate changes quarterly based on the information located at the [FCC Website](#).

2.5 Operator assistance. Operator assistance is not provided at this time. Any operator assistance charges that are incurred will be billed through to you with an overhead surcharge.

2.6 Unlimited On-Net Calling. All calls between customers of Megaphone are free and do not have monthly usage limits.

2.7 Call Forwarding. Certain features such as call forwarding may incur outgoing minutes automatically when they are enabled. Forwarded calls count against standard minute usage caps. Consider this usage before enabling and determine whether it will affect your usage thresholds.

2.8 Toll Free, 900 and Interim (Anonymous) Numbers. Toll free, 900 and temporary anonymous/private phone number services are available under separate rate plans. Please contact Megaphone for rates.

2.9 Billing Increments. All calls are measures in full minutes, rounded up to the next minute.

2.10 Answer to Seizure Ratio; Incomplete Calls. If your outbound call attempts (including calls with a duration of less than 6 seconds) constitutes three (3) times or more of your total monthly call volume, Megaphone may levy an additional charge for every call attempted during the billing cycle, whether or not completed. This ratio and the resulting charge is based on the total calls made during any billing cycle.

2.11 911 Calls Made Without a Valid Address on File. Megaphone will charge \$150.00 for each 911 call made when you do not have a valid 911 address on file, and you waive the right to dispute these charges.

3. Pricing and Payment; Late Charges

3.1 All prices are shown in the Pricing Schedule and you will be charged based on the Plan and Options you select. "Month to Month" Plans ("Monthly Plans") are assessed the monthly price(s) listed on the Pricing Schedule corresponding to the Plan and Options chosen by you. Monthly Plan prices may vary from month to month and are subject at any time to change – either increase or decrease. Contract Plans provide fixed monthly prices for the term of the plan, and may change at the end of the plan period. Contract Plans automatically renew unless terminated in writing no less than thirty (30) days prior to the end of the plan period. Early termination of a Contract Plan may cause you to be subject to a termination fee, which may be equal to the payments remaining in your plan. Pre-paid Plans are provided additional discounts and guarantee the pricing for the term of the Pre-paid Plan. At the end of the Pre-paid Plan period you will be converted to a Month-to-Month Plan pricing, but can change your plan at any time. Plan changes must be made by the fifteenth (15th) of the month and will become effective the month following the one in which the change is made by the fifteenth (15th). Promotional plans may be offered from time to time and will be limited as set forth in the promotion.

3.2 Additional Charges. Plan fees do not include certain charges that are levied each month. In addition to fees set forth in the Pricing Schedule, you agree to pay all other charges, including but not limited to network usage, applicable taxes, fees and surcharges, and charges imposed by third party providers that are passed on to you. Taxes and surcharges often vary on a monthly basis and may change at any time without notice. Any variations will be reflected in your monthly charge. Megaphone will charge a Regulatory Recovery Fee; E911 Recovery Fee; and a Federal, State and Local Services (FSLs) Recovery fee. These fees change from time to time and some are fixed, while others are percentages, and are charged in order to cover a variety of taxes, surcharges and fees billed by federal, regional and local agencies. The fees are disclosed on the Service Schedules. Megaphone may, but is not obligated to, provide segregated detail of such charges.

3.3 Charges on Free Plans. Free Plans, if any, will also be assessed applicable taxes, surcharges, and fees, based on the details of the plan selected. These fees will be calculated based on the standard Month-to-Month Plan price for the Service.

3.4 Payment. All Services will be charged via automatic credit card withdrawal. Billing is performed monthly unless your plan specifies otherwise. You are responsible for monthly subscription charges even when your account is suspended for non-payment.

3.5 Termination Billing and Other Fees. If your account is terminated for any reason with an outstanding balance, Megaphone will continue to electronically charge the credit card on file for the outstanding balance until all balances are fully paid. All disconnected accounts and all accounts suspended for non-payment are subject to a fifty dollar (\$50.00) reconnection fee. Any requests for a change in telephone number are subject to a twenty dollar (\$20.00) change fee.

3.6 Unauthorized Charges. You are responsible for all charges attributable to your account. You agree to notify Megaphone immediately, in writing or by calling the Megaphone contact number (617) 374-3200, if you believe that Services are being stolen or fraudulently used. You are responsible for all usage charges attributable to your account, even if incurred as the result of fraudulent or unauthorized use by third parties, until you report the theft or fraudulent use of the Services. You are solely responsible for securing all passwords and access numbers to guard against and prevent unauthorized access to Services by third parties. Megaphone, may, but is not obligated to, detect or report unauthorized use or fraudulent use of Services, and may, but is not obligated to, suspend service when fraud is suspected. You agree to save, defend, indemnify and hold Megaphone harmless from all claims, costs, liabilities and damages arising out of such fraudulent use. ALL FRAUD MUST BE NOTICED TO MEGAPHONE WITHIN THIRTY DAYS OF THE INVOICE CONTAINING THE CHARGES, OTHERWISE, YOU ARE RESPONSIBLE FOR THE CHARGES.

3.7 No Guarantee. There is no money back guarantee for any Services. No fees are pro-rated. No credits are provided for unused time in any plan.

3.8 Late Fees. Any account that goes into collection will be transferred to a collection agency and incur a fifty dollar (\$50.00) processing fee, in addition to all other applicable fees and charges. You will be charged fifty dollar (\$50.00) service charge for disputed credit cards and credit card chargebacks.

3.9 Pricing Adjustments. Megaphone may adjust pricing and related terms at any time during the term of this Agreement upon seven (7) days advance notice to Customer. Customer agrees that notice is provided when it is posted on the web site, and agrees that Customer shall be deemed to have accepted the new pricing and terms unless it provides written notice of its intent to terminate Services within seven (7) days after notice is posted. Customer shall remain solely responsible for the access and use of Services by any user permitted by Customer to use the Services.

3.10 Payment and Invoicing. Megaphone will invoice Customer for the Services monthly. Invoices will cover the period from the first (1st) through the last day of each month. Amounts stated on each invoice are due and payable in U.S. currency within seven (7) days of the invoice date. All charges not paid within seven (7) days of the invoice date will be assessed a late payment charge of one and one-half percent (1.5%) per month, or the highest rate allowed by law, whichever is lower.

4. Emergency Services and 911 Calling

4.1 Megaphone uses the same national 911 network that all traditional telephone companies use.

4.2 Interruptions of 911 Service. 911 dialing **does not function** in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 dialing, will not function until power is restored. Following a power failure or disruption, you may need to reset or reconfigure your phone prior to utilizing the Service, including 911 dialing. Service outages or suspensions or disconnections of service by your broadband provider or ISP will prevent all Service, including 911 dialing, from functioning. If there is a Service outage 911 service will not work. Disconnection of your account will prevent all Service, including 911 dialing, from functioning. Your ISP, broadband provider or other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. If you suspect this has happened to you, you should alert us to this situation and we will work with you to attempt to resolve the issue. During the period that the ports are being blocked or your Service is impeded, your Service, including 911 dialing, may not function. You acknowledge that Megaphone is not responsible for the blocking of ports by any third party or any other impediment to your usage of the Service, and any loss of Service, including 911 dialing, which may result. In the event you lose service as a result of blocking of ports or any other impediment to your usage of the Service, you will continue to be responsible for payment of the Service charges unless and until you disconnect the Service in accordance with this Agreement. You acknowledge and recognize that there may be a greater possibility of network congestion and/or reduced speed in the routing of a 911 calls made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks.

4.3 Notification of Identity. You authorize us to disclose your name and address to third-parties providing 911 service or dialing to you, including but not limited to call routers, call centers and local emergency centers.

4.4 Physical Location Registration. You must register the physical location of each phone where you will be using the Service. Your initial location will be registered as a part of subscribing to the Service. You must confirm the accuracy of your physical address through your online account and update it if you have any changes, additions or transfers of phone numbers. When you move your device to another location, you must update your location. If you do not update your location, 911 calls you make may be sent to an emergency center near your old address. You may update a location by logging on to your

online account. For purposes of 911 dialing, you may only register one location at a time for each phone line.

4.5 **Alternate Arrangements.** If you are not comfortable with the limitations of Megaphone 911 dialing, you should make alternate arrangements for traditional 911 or E911 services. You acknowledge that you should make additional arrangements to access emergency services. You acknowledge and accept that it is your sole responsibility to purchase, with a third-party separately from Megaphone, traditional wireless or wireline telephone service that offers access to emergency services. You further recognize that Megaphone is not a replacement for your primary telephone service. You should maintain either a traditional wireline or wire-based telephone service at all times. By agreeing to these terms of service you acknowledge and accept that the Service may not support or provide emergency service at all times. You represent and warrant to Megaphone that you already have made additional arrangements with a third party to access emergency services.

4.6 **Duty to Notify.** It is your responsibility to notify all residents, employees, users, guests and other third parties who may be present at the physical location where you utilize the Service of the limitations of 911 dialing over Megaphone Services or devices as compared with basic 911 or E911. Each device provided by Megaphone may have documentation including a sticker concerning the potential non-availability of basic 911 or E911 (the "911 Sticker"). It is your responsibility, in accordance with the instructions that accompany each device, to place the 911 Sticker on each device that you use with the Service. If you did not receive a 911 Sticker with your device or need additional 911 Stickers please contact us.

4.7 **Important Disclaimer and Indemnification.** Megaphone does not have any control over whether, or the manner in which, 911 calls are answered or addressed by any local emergency response center. Megaphone expressly disclaims any and all responsibility for the conduct of local emergency response centers and the national emergency calling center. Megaphone relies on third parties to assist in routing 911 calls to local emergency response centers and to a national emergency calling center. Megaphone disclaims any and all liability and responsibility in the event that third party data used to route calls is incorrect or yields an erroneous result. Neither Megaphone nor any of its officers, directors, members or employees shall be held liable for any claim, damage, or loss, and you hereby waive any and all such claims or causes of action, arising from or relating to our 911 service unless such claims or causes of action arise from our gross negligence, recklessness or willful misconduct.

4.8 You shall defend, indemnify, and hold harmless Megaphone, its officers, directors, members, employees, affiliates and agents and any other service provider who furnishes services to you in connection the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, attorneys fees) by, or on behalf of, you or any third party relating to the absence, failure or outage of the Service, including 911 service, incorrectly routed 911 calls, and/or the inability of any user of the Service to be able to use 911 service or access emergency service personnel.

5. Equipment.

5.1 You may either use Megaphone provided equipment or your own equipment. All provided equipment is provided on as-is basis and you agree to hold Megaphone harmless for any defective equipment. Defective equipment, including the original power supply, must be returned to Megaphone at Megaphone's expense via a provided UPS shipping label within 30 days of receiving the replacement device. In the event of Service termination for any reason, you must return to Megaphone all leased equipment in undamaged, usable condition at your expense within thirty (30) days of termination. In the event you do not return the leased hardware to Megaphone in working condition within such thirty (30) day period, you must pay two hundred dollars (\$200.00) plus applicable taxes per unreturned device. In the event you do not return all original power supplies to Megaphone, you must pay a fifty dollar (\$50.00) replacement fee per unreturned power supply at the time the hardware is checked-in. Returned equipment check-in can take up to 3 business days from the date of receipt. Hardware purchased at a retail location or directly from Megaphone is owned by the customer and is exempt from the hardware return policy.

5.2 If you provide your own equipment you assume the risk of service incompatibility. Use of your equipment, even if not compatible, shall not relieve you from any of their obligations under this Agreement while troubleshooting defective or incompatible equipment even if your Service is down during such periods of troubleshooting. Megaphone retains the right to refuse to connect any particular incompatible equipment to its network.

5.3 If Megaphone supplied equipment appears to be malfunctioning, you must contact Technical Support and work with them to determine if the device is in need of replacement. Only a Technical Support representative has the ability to determine if a device is in need of replacement. If a device is determined to have malfunctioned due to manufacturer defect, a free replacement will be provided at Megaphone's expense. If a device is determined to have malfunctioned for any other reason, including but not limited to incorrect power supply, customer negligence, and damage from house wiring, Subscriber must pay a damaged device fee.

6. Dispute.

6.1 You shall have the affirmative obligation of providing written notice of any good faith dispute of an invoice, or any part thereof, within thirty (30) days after your receipt of the invoice. If you do not provide written notice of a dispute within thirty (30) days of receipt, you will have waived your right to dispute the invoice and agreed to pay the invoice. If you dispute all or any portion of any charges against your Megaphone account, you shall notify Megaphone in writing of the dispute. Written notice of the dispute must contain the following documentation: (a) date the dispute was initiated; (b) a description of the dispute; (c) the amount subject to the dispute; (d) beginning and end dates associated with the dispute; and (e) all supporting documentation in your possession.

6.2 In the event the dispute exceeds \$2,000, Megaphone reserves the right, in its sole judgment and discretion, to suspend service to you while the dispute is pending. If a dispute is resolved in Megaphone's favor, you will pay the disputed amount within five (5) business days of resolution. If a dispute is resolved in your favor, Megaphone will credit the full amount of the disputed amount on your next invoice after resolution.

7. Deposits.

Megaphone does not require or hold deposits.

8. Termination.

8.1 In addition to any other rights at law or in equity, Megaphone may terminate this Agreement immediately in the event that you (a) fail to make any undisputed payment when due hereunder and fails to remedy such breach within fifteen (15) days after receipt of written notice of such default; (b) become insolvent or bankrupt or ceases paying its debts generally as they mature; or (c) commit a breach of any of the terms of this Agreement (other than a breach of a payment obligation as addressed in (a) above) and fail to remedy such breach within thirty (30) days after receipt of written notice of such default.

8.2 If, in Megaphone's sole and absolute discretion, (a) you are in breach of any of the terms of this Agreement (including but not limited to the Acceptable Use Policy); (b) your use of the Service is prohibited by law or is disruptive to, adversely impacts or causes a malfunction to the Service, Megaphone's servers or other equipment, or the use and enjoyment of other users; (c) you act in an abusive or menacing manner when dealing with Megaphone's technical support staff, customer service staff or any other Megaphone employees or representatives; (d) Megaphone receives an order from a court of competent jurisdiction to terminate your Service; or (e) Megaphone for any reason ceases to offer the Service, then Megaphone at its sole election may terminate or suspend your Service immediately without notice. For a termination in accordance with this paragraph, you remain liable for all unpaid fees and other charges accrued or otherwise payable under the terms of this Agreement, including without limitation the equipment charges set forth herein, if applicable.

9. Re-subscription After Termination.

Megaphone, in its sole and absolute discretion may refuse to accept an application for renewal or re-subscription following a termination or suspension of your use of the Service. If your Service is terminated for any reason, you, upon approval by Megaphone, may enter into a new Agreement and must pay a new setup or activation fee. Upon the termination of your use of the Service, Megaphone has the right to immediately delete all data, files and other information stored in or used for your account without further notice to you.

10. Termination by Customer.

You may terminate Service at any time with thirty (30) days advance notice. You must pay all fees due Megaphone in order to terminate the Service, and return all Megaphone equipment.

11. Technical Support and Compatibility.

11.1 We assume that you possess a basic understanding of your computers and their limitations. Megaphone will not train you in basic computer skills (e.g., deleting files or creating directories). Technical support is intended to facilitate the setup of your properly functioning computer system for access to our services. Your computer must have an active working connection to the internet before any technical support will be dispensed. If you are having problems connecting to the internet, you will need to contact your Internet Service Provider (ISP) for assistance getting connected first. Our technical support staff is not trained to, has no obligation to, and will not assist you in installing and/or troubleshooting modems, network cards, routers, complex network configurations or telephone lines, neither will they provide any technical assistance or support for any third party Software. The scope of support is limited to a single line analog telephone connected directly to our device. Megaphone is not responsible for connection problems due to a computer that is infected with viruses, spyware or malware. It is your responsibility to initiate and be available for technical support during Megaphone's hours of operation. If you wish to utilize Megaphone's technical support, you must be available at the same location as the hardware to help troubleshoot the connection or computer setup. Megaphone assumes no obligation to provide support services for any third party products or services, including but not limited to the quality of the connection provided by the Internet Service Provider (ISP) or for problems with our service caused by third party products or services. It is your responsibility to troubleshoot any issues with third party products or services with the provider of that service. Megaphone does not provide on-site technical support.

11.2 You acknowledge that our service may not be compatible with all non-voice communications equipment, including but not limited to home security systems, TTY, medical monitoring equipment, TIVO, satellite television systems, PBX, Centrex, other private telephone networks, and dial-up modems. You waive any claim against Megaphone for interference with or disruption of these services and equipment, as well as any claim that Megaphone is responsible for any disruption to your business, if applicable.

11.3 Other internet services or hardware may be incompatible with Megaphone Services, including but not limited to: Fixed Wireless, Satellite, and Power over Ethernet connections. Some providers of broadband service may provide modems that prevent the transmission of communications using our service. We do not warrant that our services will be compatible with all broadband services and expressly disclaim any express or implied warranties regarding the compatibility of our service with any particular broadband service.

12. Indemnification.

You warrant that you will not use the Services to conduct or engage in unlawful activities; to violate any law or regulation; to violate or infringe upon the rights of Megaphone, or any third party, including without limitation, contractual rights, intellectual property rights, and privacy rights; or to act in any manner that encourages conduct that would constitute a criminal offense, give rise to a civil liability, or violate any other law. You shall obtain all approvals, consents and authorizations necessary to conduct your business and initiate or conduct any transmissions over any facilities covered by this Agreement. Megaphone shall obtain all approvals, consents and authorizations necessary to conduct its business and to provide the Services covered by this Agreement. You agree to defend, indemnify, and hold harmless Megaphone and its affiliates, officers, directors, employees, agents, shareholders, and suppliers from any and all claims, demands, liability, damages, actions, judgments, costs, and expenses (including reasonable attorney's fees and costs) that arise, directly or indirectly, out of your use of Services.

13. WARRANTIES.

13.1 THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND MEGAPHONE AND ITS SUPPLIERS HEREBY DISCLAIM AND EXCLUDE ALL WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, COMPLETENESS, QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE. MEGAPHONE HEREBY SPECIFICALLY DISCLAIMS ANY LIABILITY TO CUSTOMER FOR INTERRUPTIONS AFFECTING THE SERVICES FURNISHED UNDER THE AGREEMENT THAT ARE ATTRIBUTABLE TO CUSTOMER'S INTERCONNECTION FACILITIES, TO CUSTOMER'S EQUIPMENT FAILURES, OR TO CUSTOMER'S BREACH OF THE AGREEMENT.

13.2 YOU ACKNOWLEDGE AND AGREE THAT THE SERVICE, EQUIPMENT AND SOFTWARE SUPPLIED HEREUNDER ARE PROVIDED ON AN "AS IS" OR "AS AVAILABLE" BASIS, WITH ALL FAULTS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND AS OTHERWISE SPECIFICALLY SET FORTH IN ANY MANUFACTURER WARRANTY FOR ANY SOFTWARE OR EQUIPMENT PROVIDED BY MEGAPHONE (BUT ONLY IF SUCH WARRANTY IS INCLUDED WITH SUCH SOFTWARE OR EQUIPMENT). MEGAPHONE (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS DISCLAIM ANY AND ALL WARRANTIES FOR THE SERVICE, SOFTWARE AND EQUIPMENT WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, NON-INTERFERENCE, TITLE, COMPATIBILITY OF COMPUTER SYSTEMS, INTEGRATION, AND THOSE ARISING FROM COURSE OF DEALING, COURSE OF TRADE, OR ARISING UNDER STATUTE. NO ADVICE OR INFORMATION GIVEN BY MEGAPHONE OR ITS REPRESENTATIVES SHALL CREATE A WARRANTY. USE OF MEGAPHONE TECHNICAL SUPPORT IS AT YOUR OWN RISK AND IS NOT WARRANTED.

13.3 MEGAPHONE DOES NOT WARRANT OR GUARANTEE THAT VOIP SERVICE CAN BE PROVISIONED TO YOUR LOCATION, OR THAT PROVISIONING WILL OCCUR ACCORDING TO A SPECIFIED SCHEDULE, EVEN IF MEGAPHONE HAS ACCEPTED YOUR ORDER FOR VOIP SERVICE. THE PROVISIONING OF VOIP SERVICE IS SUBJECT TO CIRCUIT AVAILABILITY AND OTHER FACTORS. IN THE EVENT YOUR LINE IS NOT PROVISIONED FOR ANY REASON, NEITHER YOU NOR MEGAPHONE SHALL HAVE ANY DUTIES OR OBLIGATIONS UNDER THIS AGREEMENT (OTHER THAN YOUR OBLIGATION TO RETURN ANY PROVIDED EQUIPMENT, PURSUANT TO THE TERMS OF THIS AGREEMENT).

13.4 MEGAPHONE DOES NOT WARRANT THAT THE SERVICE, SOFTWARE OR EQUIPMENT PROVIDED BY MEGAPHONE WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR DATA THROUGHPUT RATE, OR WILL BE UNINTERRUPTED OR ERROR-FREE. MEGAPHONE SHALL NOT BE LIABLE FOR LOSS OF YOUR DATA, OR IF CHANGES IN OPERATION, PROCEDURES, OR SERVICES REQUIRE MODIFICATION OR ALTERATION OF YOUR EQUIPMENT, RENDER THE SAME OBSOLETE OR OTHERWISE AFFECT ITS PERFORMANCE. MEGAPHONE MAKES NO WARRANTY REGARDING ANY TRANSACTIONS EXECUTED USING THE SERVICE, THE SOFTWARE, THE EQUIPMENT OR THE INTERNET. YOU EXPRESSLY ASSUME ALL RISK AND RESPONSIBILITY FOR USE OF THE SERVICE, THE SOFTWARE, THE EQUIPMENT AND THE INTERNET GENERALLY. YOU AGREE NOT TO USE THE SERVICE, THE SOFTWARE OR THE EQUIPMENT IN ANY HIGH RISK ACTIVITIES WHERE DAMAGE OR INJURY TO PERSON, PROPERTY, ENVIRONMENT, OR BUSINESS MAY RESULT IF AN ERROR OCCURS.

13.5 IN NO EVENT SHALL MEGAPHONE (OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, PARENT, SUBSIDIARIES, OR AFFILIATES), ITS THIRD PARTY LICENSORS, PROVIDERS OR SUPPLIERS BE LIABLE FOR: (A) ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOSS OF REVENUE OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE OR INABILITY TO USE THE SERVICE, THE SOFTWARE OR THE EQUIPMENT, REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION, THOSE ARISING UNDER CONTRACT, TORT, NEGLIGENCE OR STRICT LIABILITY, EVEN IF MEGAPHONE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES, OR (B) ANY CLAIMS AGAINST YOU BY ANY OTHER PARTY.

13.6 ALL LIMITATIONS AND DISCLAIMERS STATED IN THIS SECTION ALSO APPLY TO MEGAPHONE'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS AS THIRD PARTY BENEFICIARIES OF THIS AGREEMENT.

13.7 ANY RIGHTS OR LIMITS STATED HEREIN ARE THE MAXIMUM FOR WHICH MEGAPHONE (AND ITS OFFICERS, EMPLOYEES, PARENT, SUBSIDIARIES, AND AFFILIATES), MEGAPHONE'S THIRD PARTY LICENSORS, PROVIDERS AND SUPPLIERS ARE COLLECTIVELY RESPONSIBLE.

13.8 THE REMEDIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN

LAWS (SUCH AS CONSUMER LAWS), WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY, OUR EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

13.9 MEGAPHONE RESERVES THE RIGHT TO PURSUE ANY AND ALL LEGAL AND EQUITABLE CLAIMS AGAINST YOU PERTAINING TO YOUR USE OR MISUSE OF THE SERVICE, THE SOFTWARE OR THE EQUIPMENT, OR FOR YOUR BREACH OF THE AGREEMENT (INCLUDING ANY POLICIES RELATING TO THE SERVICE.)

14. LIMITATION OF LIABILITY.

In no event shall Megaphone or any of its Affiliates be liable to Customer or any of its affiliates or employees or to any third party for any indirect, incidental, punitive, or consequential damages of any kind, including but not limited to damages arising under the Agreement from loss of revenues or profits, loss of data, unavailability or failure of Services, breach of network security, or any other damages related to Megaphone's supplying of Services, Customer's use of Services, or Customer's provision of services to its end user customers, even if Customer advises Megaphone of the possibility of this loss or damage.

15. Indemnification.

You agree to defend, indemnify and hold harmless Megaphone and its officers, directors, members and employees from and against all liabilities, costs and expenses, including reasonable attorney's fees, related to or arising from: (a) any violation of applicable laws, regulations or this Agreement by you (or any parties who use your account, with or without your permission, to access the Service); (b) the use of the Service, the Software, the Equipment or the Internet or the placement or transmission of any message, information, software or other materials on the Internet by you (or any parties who use your account, with or without your permission, to access the Service); (c) negligent acts, errors, or omissions by you (or any parties who use your account, with or without your permission, to access the Service); (d) injuries to or death of any person and for damages to or loss of any property, which may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the active negligence or willful misconduct of the other party; or (e) claims for infringement of any intellectual property rights arising from the use of the Service, the Software, the Equipment or the Internet.

16. Revisions.

Megaphone may revise the terms and conditions of this Agreement from time to time (including any of the policies which may be applicable to usage of the Service) by posting such revisions to our website at www.Megaphone.com. You agree to visit this page and the links therein periodically to be aware of and review any such revisions. Increases to the monthly price of the Service for Monthly Subscribers shall be effective beginning with the calendar month following the calendar month in which such increases are posted.

Revisions to any other terms and conditions shall be effective upon posting. By continuing to use the Service after revisions are in effect, you accept and agree to the revisions and to abide by them. Any Subscriber who does not agree to the revision(s) must terminate their Service immediately.

17. Assignment.

You agree not to assign or otherwise transfer this Agreement in whole or in part, including hardware, software or your rights to any of them or hereunder. Megaphone may assign any part or all of this Agreement at any time without notice and you agree to make all subsequent payments and be bound by such assignment. Except as provided herein, any assignment in contravention of the above shall be null and void *ab inito* and ineffective.

18. Intellectual Property.

The entire contents of this Agreement, the Services and Megaphone's website are protected under the United States copyright laws. The copyright notices and other proprietary legends shall not be removed from the Services and no right to use any trademark is granted under this Agreement. Megaphone reserves all rights in and to any and all patents and trademarks related to the Services or used or useful under this Agreement.

19. Compliance, No Waiver.

Megaphone's failure at any time to insist upon strict compliance with any of the provisions of this Agreement in any instance shall not be construed to be a waiver of such terms in the future.

20. Notice.

Notices by Megaphone to you shall be deemed given: (a) when sent to your primary contact email address, (b) when deposited in the United States mail addressed to you at the address you have specified in your account options, or (c) when hand delivered to your home, as applicable.

21. Acceptable Use Policy.

You agree to use Megaphone's Services in accordance with Megaphone's acceptable use policy ("Acceptable Use Policy"), published at [Megaphone.com](https://www.megaphone.com). Megaphone reserves the right to make changes to the Acceptable Use Policy without notice.

22. Privacy Policy.

Megaphone will treat your personal information in accordance with Megaphone's privacy policy ("Privacy Policy") published at [.Megaphone.com](https://www.megaphone.com). You agree to the terms of

the Privacy Policy. Megaphone reserves the right to make changes to the Privacy Policy without notice.

23. Caller ID Service.

Megaphone sends current Caller ID information with every call placed. For residential customers, Caller ID information is "Last Name, First Name", with a maximum of 15 characters. For business customers, Caller ID information is the business name, with a maximum of 15 characters. Caller ID information is not customizable. Megaphone has no control over the information that any terminating telephone company chooses to display. All telephone carriers update their Caller ID information periodically, but many companies do not update as often as Megaphone sends updated data. If a disparity is found between the information that Megaphone is sending and the information that a terminating telephone company is displaying, it is the Subscriber's responsibility to contact the terminating telephone company and request that they display the correct data. Megaphone is not responsible for errors involving spelling, punctuation, or capitalization of Caller ID information.

24. Electronic Communications.

When you visit Megaphone, sign up for service with us, or send e-mails to us, you are communicating with us electronically. By doing so, you consent to receive communications from us electronically in return. It is your responsibility to maintain and update a valid email address with Megaphone at all times. Megaphone will not be held responsible for interruptions in service or cancellation of service for non-payment due to an email not being received by you or filtered out by your email provider. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. Megaphone sends regular account notifications, balance notifications, and subscription renewal emails, these emails cannot be opted out of.

25. Severability.

If a court or a governmental agency with proper jurisdiction determines that a provision of this Agreement is unlawful, the provision shall be stricken, and it shall in no way affect, impair, or invalidate any other provision of the Agreement and the Agreement shall remain in full force and effect to the greatest extent permitted by law.

26. Confidential Information.

During the term of this Agreement and for a period of one (1) year following the termination of this Agreement for any reason, both Parties may disclose to one another certain information which is proprietary to the Party's business and/or of a confidential nature, which shall be considered "Confidential Information" under this Agreement. The Parties agree that the Agreement and its Addendums and Exhibits shall be kept confidential. Neither Party shall divulge or otherwise disclose any of the provisions of the

Agreement to any third Party without the prior written consent of the other Party, except that either Party may make disclosure to those required for the implementation of the Agreement, and to purchasers and prospective purchasers, auditors, attorneys, lenders and prospective lenders, investors and prospective investors, financial advisors, provided that in each case the recipient agrees in writing to be bound by the confidentiality provisions set forth in this Agreement. In addition, as required by a court order or as otherwise required by law or in any legal or arbitration proceeding relating to the Agreement, either Party may make disclosure, but is required to provide the other Party with prompt notice of this request.

27. Disclosure.

Without obtaining the prior written consent of the other Party hereto, a Party shall not (a) refer to itself as an authorized representative of the other Party in promotional, advertising, or other materials; (b) use the other Party's logos, trademarks, service marks, or any variations thereof in any of its promotional, advertising, or other materials; or (c) release any public announcements referring to the other Party or this Agreement without first having obtained said Party's written consent.

28. General Provisions.

This Agreement and any Addendum(s) and Exhibit(s), and the terms of service contained on the web site, contain the entire agreement of the Parties hereto and supersede all prior or contemporaneous agreements and understandings between the Parties hereto with respect to the subject matter. No amendment or alteration shall be binding upon Megaphone unless written and signed by an officer of Megaphone. Customer will be bound by any and all changes posted to the web site as set forth above. The failure of Megaphone to strictly enforce any provision of this Agreement shall not be construed as a waiver of its right to assert or rely upon such provision of this Agreement.

29. Force Majeure.

Other than with respect to failure to make payments due under the Agreement, a Party shall not be liable under the Agreement for its performance if its performance is due to any cause beyond its reasonable control, including, but not limited to, fire, earthquake, flood, strikes or other labor unrest, power failures, cable cuts, explosions, civil disturbances, vandalism, governmental actions, computer failures, shortages of equipment or supplies, or acts or omissions of third parties.

30. Governing Law.

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to any choice of law principles that could result in the application of the laws of any other jurisdiction. The Parties consent to personal jurisdiction and venue in the state and federal courts with jurisdiction in Middlesex County, Massachusetts, and waive any objection thereto.

31. Arbitration.

Any dispute or claim arising out of this agreement that cannot be solved amongst the parties, such dispute shall be settled by arbitration in accordance with the rules for commercial arbitration of the American Arbitration Association. A list of arbitrators shall be presented to the Claimant and Respondent from which one will be chosen using the applicable rules. The hearing shall be conducted in the City of Wayland, Massachusetts, unless both parties consent to a different location. The decision of the arbitrator shall be final and binding upon all Parties. The prevailing party shall be awarded all of the filing fees and related administrative costs. Administrative and other costs of enforcing an arbitration award, including the costs of subpoenas, depositions, transcripts and the like, witness fees, payment of reasonable attorney's fees, and similar costs related to collecting an arbitrator's award, will be added to, and become a part of, the amount due pursuant to this Agreement. Any questions involving contract interpretation shall rely upon applicable federal law and the laws of the Commonwealth of Massachusetts, without application of conflicts of law principles. An arbitrator's decision may be entered in any jurisdiction in which the party has assets in order to collect any amounts due hereunder.

32. Survival.

The covenants and agreements contained in this Agreement with respect to payment of amounts due, confidentiality, liability, and indemnification shall survive termination of this Agreement, regardless of the reason for termination. The rights and obligations under this Agreement shall survive any merger or sale of either party and shall be binding upon the successors and permitted assigns of each party.

33. Right to Assurance.

If a Customer suffers a material adverse change in its financial condition, Megaphone may: (i) request adequate assurance of Customer's performance per applicable law, and/or (ii) decline to provide Service.

34. Parties' Relationship.

The relationship between the Parties shall not be that of partners, and nothing herein contained shall be deemed to constitute a partnership between them, a joint venture, or a merger of their assets or their fiscal or other liabilities or undertakings. Neither Party is authorized to act as an agent for, nor legal representative of, the other Party and neither Party shall have the authority to assume or create any obligation on behalf of, in the name of, or binding upon the other Party. This Agreement is non-exclusive. Nothing in this Agreement shall be deemed to prevent either Party from entering into an agreement or negotiation of any kind or nature with third parties. All persons employed by either Party in connection with the Services provided under this Agreement shall be considered employees or agents of such party only, and shall in no way, either directly or indirectly, be considered employees or agents of the other Party.